



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 15, 2022.

ZONING ADMINISTRATOR ACTIONS JULY 14, 2022

- Item 1: 2038 East Ocean Front Addition Coastal Development Permit No. CD2022-018 (PA2022-056)
Site Address: 2038 East Ocean Front
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| Action: Approved by Resolution No. ZA2022-048 | Council District | 1 |
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- Item 2: Lido Theater Renovation Minor Use Permit No. UP2021-039 (PA2021-245)
Site Address: 3459 Via Lido
- | | | |
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| Action: Approved by Resolution No. ZA2022-049 | Council District | 1 |
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APPEAL PERIOD: An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

RESOLUTION NO. ZA2022-048

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2022-018 TO ALLOW AN APPROXIMATELY 363-SQUARE-FOOT ADDITION TO AN EXISTING TWO (2)-STORY, 2,072-SQUARE-FOOT SINGLE FAMILY RESIDENCE WITH AN ATTACHED TWO (2)-CAR GARAGE LOCATED AT 2038 EAST OCEAN FRONT (PA2022-056)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Mark Becker, with respect to property located at 2038 East Ocean Front, requesting approval of a coastal development permit.
2. The lot at 2038 East Ocean Front is legally described as Lot 10 in Block D, in Tract 00518.
3. The applicant proposes a coastal development permit (CDP) to allow an approximately 363-square-foot addition to an existing two (2)-story 2,072-square-foot single-family residence with an attached two (2)-car garage. The CDP is required since the proposed addition is at least 10 percent of the existing gross floor area. The new total floor area would be approximately 2,435 square feet with no change to the existing two (2)-car garage. The proposed design complies with all development standards and no deviations are requested. All proposed improvements will be made within the confines of the private property.
4. The subject property is designated Single Unit Residential Detached (RS-D) by the General Plan Land Use Element and is located within the Single-Unit Residential (R-1) Zoning District Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Single Unit Residential Detached (RSD-C) (10.0-19.9 DU/AC) and it is located within the Single-Unit Residential (R-1) Coastal Zoning District.
6. A public hearing was held on July 14, 2022, online via Zoom. A notice of the time, place, and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15301, Division 6, Chapter 3, Guidelines for Implementation of the

California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities) because it has no potential to have a significant effect on the environment.

2. The Class 1 exemption includes additions of less than 50 percent to the existing development. The proposed addition includes approximately 363 square feet to the existing single-family development, which is approximately a 17 percent increase of the existing floor area. Therefore, the proposed project complies with the Class 1 exemption.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The maximum floor area limitation is 4,760 square feet and the proposed floor area is 2,435 square feet.
 - b. The proposed development provides the minimum required setbacks, which are 10.0 feet along the oceanfront, 3.00 feet along each side property line, and 0.00 feet along the rear property line abutting the alley.
 - c. The highest guardrail is less than 24.0 feet from the established grade and the highest ridge is no more than 29.0 feet from the established grade, which complies with the maximum height requirements.
 - d. The project includes garage parking for a total of two (2) vehicles, complying with the minimum two (2)-car garage parking requirement for single-family residences with less than 4,000 square feet of habitable floor area.
2. The neighborhood is predominantly developed with two (2)- and three (3)-story, single-family residences. The proposed design, bulk, and scale of the development are consistent with the existing neighborhood pattern of development.
3. The proposed addition is towards the rear of the property adjacent to the alley. The addition encloses the existing carport to create bike storage with 13.75 feet (NAVD88) finished floor. The existing carport is surplus and is not required parking. The project also includes an addition on the upper level for a new bedroom and bathroom.

4. The finished floor elevation of the existing single-family residence is 18.62 feet (NAVD88), which complies with the minimum 9.00 feet (NAVD88) elevation standard. The proposed addition will have a finished floor elevation that ranges from 13.75 feet NAVD88 (garage level) to 18.62 feet NAVD88 (first-floor level).
5. A Coastal Hazards Report and Sea Level Rise Analysis were prepared by GeoSoils, Inc., dated March 9, 2022, for the project. The report concludes that the proposed project is reasonably safe from shoreline erosion due to the lack of waves or wakes that can erode sand from the beach. The report also concludes that the project will be reasonably safe from future sea-level rise assuming an increase up to 10.9 feet NAVD88 (the likely range for sea-level rise over the 75-year design life of the structure based on risk low-risk aversion estimates for sea-level rise provided by the State of California, Sea Level Rise Guidance: 2018 Update). The finished floor elevation of the first floor of the existing structure is 18.62 feet based on the North American Vertical Datum of 1988 (NAVD88), which complies with the minimum 9.0-foot (NAVD88) elevation standard for new structures and exceeds the minimum requirements for sea-level rise (10.9 feet NAVD88). The addition on the garage level of the existing development is proposed with a finished floor elevation of 13.75 feet (NAVD88). Furthermore, the report concluded that due to the distance of the property from the current mean high tide line (approximately 450 feet), it is unlikely that the mean high tide line will reach the property within the next 75 years.
6. The property is located in an area known for seismic activity and liquefaction potential. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
7. The property is located approximately 450 feet from coastal waters. The design addresses water quality with a construction erosion control plan and a post-construction drainage system that includes drainage and percolation features designed to retain dry weather runoff and minor rain event runoff on-site. Any water not retained on-site is directed to the City's storm drain system.
8. Landscaping complies with Implementation Plan Section 21.30.075 (Landscaping). A condition of approval is included that requires drought-tolerant species. Prior to the issuance of building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
9. The project site is not located adjacent to a coastal view road, public access way, or Coastal Viewpoint as identified in the Coastal Land Use Plan. The closest public viewpoint is located approximately 1,000 feet to the east at West Jetty Park. 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 viewpoint and the project's compliance with height and setbacks, the project will not impact coastal views.

10. The front and side of the proposed residence are visible from the public beach. The existing development includes substantial architectural treatment and visual interest, in keeping with the design guidelines of the Zoning Code. The existing front of the dwelling facing the East Ocean Front public beach provides additional massing off-sets with open areas and patios on the first and second floors exceeding the minimum required front yard setback. Secondly, the addition is at the rear of the development towards the alley, below the heights of the existing dwelling, and not visible from the East Ocean Front public beach. Lastly, the existing dwelling with the proposed addition includes modulation of volume throughout the structure's substantial open space areas and a proposed floor area that is approximately 51 percent of the maximum allowed for the Zoning District. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts on existing public views.

Finding:

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

Fact 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 is a 363-square-foot addition to an existing single-family residence located on a standard R-1 lot. Therefore, the project does not involve a change in land use, density, or intensity that will result in increased demand for public access and recreation opportunities. The existing development with the proposed addition is well under the maximum allowed square footage. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.
2. Vertical access to the beach is available approximately 300 feet from the property at the terminus of "L" Street and approximately 200 feet from the property at the terminus of "M" Street. Lateral access is available along the wide beach in front of the site. 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 ("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 Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2022-018, 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. The final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 (Appeal to the Coastal Commission) of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

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



Jaime Murillo
Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan, floor plans, and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. 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 those 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.
3. Prior to the issuance of a building permit, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of development.
4. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter the sensitive habitat, receiving waters, or storm drains or results in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers. No demolition or construction materials shall be stored on public property.
5. This Coastal Development Permit does not authorize any development seaward of the private property.
6. The applicant 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 of 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.
- 7. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Erosion Control Plan.
 - 8. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
 - 9. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. 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.
 - 10. Trash and debris shall be disposed of in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed of in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
 - 11. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
 - 12. The project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
 - 13. The applicant shall comply with all federal, state, and local laws. The violation of any of those laws in connection with the use may be cause for the revocation of this Coastal Development Permit.
 - 14. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained are detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained to constitute a public nuisance.

15. *Prior to the issuance of building permits, the applicant shall submit a final construction erosion control plan. The plan shall be subject to review and approval by the Building Division.*
16. *Prior to the issuance of building permits, the applicant shall submit a final drainage and grading plan. The plan shall be subject to review and approval by the Building Division.*
17. *Prior to issuance of a building permit, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.*
18. *Prior to the issuance of a building permit, the applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought-tolerant plantings, non-invasive plant species, and water-efficient irrigation design. The plans shall be approved by the Planning Division.*
19. 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.
20. Construction activities shall comply with Section 10.28.040 (Construction Activity—Noise Regulations) of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise 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.
21. 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 7:00 AM and 10:00 PM		Between the hours of 10:00 PM and 7:00 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

22. Prior to the issuance of the building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
23. 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.

24. *This Coastal Development Permit No. CD2022-018 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code unless an extension is otherwise granted.*

25. To the fullest extent permitted by law, the applicant shall indemnify, defend and hold harmless the City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any 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 **2038 East Ocean Front Residence including, but not limited to, Coastal Development Permit No. CD2022-018 (PA2022-056)**. 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 the applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of the City's costs, attorneys' fees, and damages, which the 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. ZA2022-049

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING MINOR USE PERMIT NO. UP2021-039 FOR ALCOHOL SALES AT THE LIDO THEATER LOCATED AT 3459 VIA LIDO (PA2021-245)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Fritz Duda Company, Co., with respect to property located at 3459 Via Lido and legally described as Parcel 1 of Resubdivision No. 0516, requesting approval of a minor use permit.
2. The applicant requests a minor use permit to allow accessory food and alcohol sales with a Type 41 (On-Sale Beer and Wine – Eating Place) Alcoholic Beverage Control License at the Lido Theater. No late hours for alcohol sales are proposed and service would end by 11:00 p.m., daily. The service of food and alcohol would be accessory to the primary use as a one (1)-screen theater and event space. The project qualifies for the exemptions and allowances under the Newport Beach Municipal Code (NBMC) Section 20.38.070 (Landmark Structures) as a Landmark Theater. The property will undergo renovations to the theater and accessibility upgrades under the California Historic Building Code. Improvements include the construction of a 732-square-foot outdoor patio area and 160-square-foot addition for entry doors under the marquee.
3. The subject property is designated (CG) General Commercial by the General Plan Land Use Element and is located within the (CG) Commercial General Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is (CG-B) General Commercial - (0.0 - 0.75 FAR) and it is located within the (CG) Commercial General Coastal Zoning District. The minor use permit is required to allow for the sale of alcohol within the theater and proposed outdoor dining area, which is an accessory use to the structure's primary use as a theater. The project includes alterations to the structure including accessibility improvements, a reduction in the number of theater seats, a new 160-square-foot entrance area (less than 10 percent addition), and the provision of accessory outdoor seating for patrons. A new 732-square-foot outdoor dining area will be constructed within an existing hardscaped corridor that would not impact public access or views. Therefore, pursuant to NBMC Section 21.38.070 (Landmark Structures), structural alterations and changes in use are exempt from the requirements of the nonconforming chapter. The proposed improvements would not result in an increase in height or floor area greater than 10 percent nor an intensification of use that would require a coastal development permit. The project would not change the existing parking rate for the theater.
5. A public hearing was held on July 14, 2022, online via Zoom. A notice of time, place, and purpose of the hearing was given in accordance with the Newport Beach Municipal

Code. Evidence, both written and oral, was presented to and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3 because it has no potential to have a significant effect on the environment.
2. The Class 1 exemption consists of 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 an existing or former use. The proposed minor use permit would allow the service of alcohol service at an existing theater. The physical improvements to the structure are minor, and the addition at the front entry is approximately 160 square feet, which is less than 2,500 square feet and 50 percent of the existing floor area of the theater. Alcohol will also be served on a new 732-square-foot outdoor patio. The project would result in a net reduction in seats at the theater, thus the project would result in negligible or no expansion of use, and the Class 1 exemption is appropriate.
3. A Historical Resources Letter Report was prepared for the project by Pamela Daly, Architectural Historian of Daly & Associates dated December 7, 2021. The structure is eligible for listing in the National Register of Historic Places. The report concludes the project renovations will not have a substantial adverse effect to the historic aspects of the Lido Theater's building, design, materials, workmanship, feeling, or association. The project meets the Secretary of the Interiors' Guidelines for the treatment of a historic building in compliance with CEQA.

SECTION 3. REQUIRED FINDINGS.

Alcohol Sales

In accordance with NBMC Subsection 20.48.030(C)(3) (Alcohol Sales) and NBMC Subsection 20.52.020(F) (Conditional Use Permits and Minor Use Permits), the following findings and facts in support of the findings for a use permit are set forth:

Finding

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

Facts in Support of Finding

In finding that the Project 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.*

Reporting District	Part One Crimes (Serious offenses)	Part Two Crimes (All other offenses)	Part One Crimes Rate (per 100,000 people)
RD No. 15	187	566	6,697.1
RD No. 13	61	104	3,699.21
RD No. 16	48	101	2,2028.74
RD No. 25	62	142	2,207.19
Newport Beach	1,789	3,223	2,063.58

The Part One Crime Rate in Reporting District 15 (RD 15) is higher than the Part One Crime Rate for the City and adjacent districts. The highest volume crime is simple assault. RD 15's crime count is 645, 503 percent over the City-wide crime count average of 107. Since this area has a 20 percent greater number of reported crimes than the average number of reported crimes as determined from all crime reporting districts within the City, the area is found to have undue concentration. In comparison, neighboring RD 16 (37th Street to 54th Street) is 13 percent over the average, and RD25 (north of West Coast Highway) is 55 percent over the average. However, the Police Department does not have any objections to the addition of a beer and wine license with no late hours to an existing landmark theater.

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

Reporting District	DUI/Alcohol-Related ¹	Total Arrests
RD No. 15	255	580
RD No. 13	34	98
RD No. 16	26	104
RD No. 25	48	135
Newport Beach	511	2,959

There were four (4) police dispatch events geographically tagged to the property in 2021, and five (5) dispatch events in 2022. No calls were related to the subject business. Driving Under Influence (DUI), Public Intoxication, and liquor law violations make up 43 percent of arrests in RD 15. In comparison, the figure for neighboring RD 13 is 35 percent, RD 16 is 25 percent, and RD 29 is 36 percent. Based on the operational characteristics of the proposed use, the NBPD has reviewed the proposal and has no objection.

- 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.*

The existing theater is surrounded by other commercial uses. The closest residential zoning district is a Two-Unit Residential (R-2) Zoning District located approximately two hundred (200)

¹ This column includes DUI (alcohol), public intoxication, and liquor law related arrests.

feet from the theater to the northwest across Newport Boulevard. A Planned Community Zoning District that allows for residential uses is located approximately four-hundred-fifty (450) feet east of the theater opposite Via Oporto from the Lido Plaza Shopping Center. Hoag Hospital is located north of the subject property near Newport Boulevard and Hospital Road, but not in the immediate vicinity of the theater. A religious facility is located in the area near the intersection of Via Lido and Via Malaga. The project site is not in proximity to a daycare center, park, school, or other similar uses that attract minors. The nearest park is Lido Park, which is approximately 1,000 feet from the theater. Alcohol service is now common in theaters and would not be a concern for sensitive land uses in the greater vicinity.

The Balboa Peninsula is generally characterized by a high number of visitors. Commercial and residential zoning districts are located in close proximity to one another and eating and drinking establishments with alcohol service are common. The conditions of approval require alcohol service to end by 11:00 p.m., which will help minimize nuisances and help to ensure that the use remains compatible with the surrounding community.

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

Census Tract	Active On-Sale ABC License	Per Capita
635 (Subject)	65	1 per 76 residents
628	29	1 per 131 residents
636.03	6	1 per 1,075 residents
634	17	1 per 281 residents
City-wide	282	1 per 307 residents
County-wide	3,876	1 per 822 residents

The project site is located within census tract 635. This census tract has an approximate population of 4,938 residents with 65 active on-sale alcohol licenses, a per capita ratio of one (1) license for every 76 residents. This is higher than the County average, which has a per capita ratio of one (1) on-sale license for every 822 residents. Undue concentration exists in this location. Therefore, California Department of Alcoholic Beverage Control (ABC) will need to determine that alcohol service at the theater is a public convenience or necessity (PCN) during their licensing process. The Police Department has no objections to the addition of beer and wine service at the establishment. There are no late hours (i.e. after 11:00 p.m.) and the business has not been a burden on police resources. If there is an event at the establishment where alcohol service will extend past 11:00 p.m., a Special Events Permit will be required.

The addition of alcohol sales to the theater is consistent with the standards and permit requirements of NBMC Section 20.48.030 (Alcohol Sales). The purpose and intent of NBMC Section 20.48.030 (Alcohol Sales) is to preserve a healthy and safe environment for residents and businesses by establishing a set of consistent standards for the safe operation of retail alcohol sales establishments. Alcohol sales would end at 11:00 p.m., reducing any potential impacts from late-night operations.

Minor Use Permit

In accordance with NBMC Subsection 20.52.020(F) (Findings and Decision), the following findings and facts in support of the findings for an MUP are set forth below:

Finding

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

Facts in Support of Finding

1. The General Plan Land Use Element designates the subject property as General Commercial (CG), which is intended to provide for a wide variety of commercial activities oriented to primarily serve citywide or regional needs. The existing landmark theater is consistent with the CG land use designation as it offers daily movie screenings and live-shows that serve local and citywide residents and visitors. The addition of alcohol service and outdoor dining is accessory to the existing theater use and is consistent with the General Plan land use designation.
2. The Property is not part of a specific plan area.

Finding

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

Facts in Support of Finding

1. The zoning designation for the subject property is Commercial General (CG), which is intended to provide for areas appropriate for a wide variety of commercial activities oriented primarily to serve citywide or regional needs. The existing landmark theater is consistent with the CG Zoning District as it offers daily movie screenings and live-shows that serve local residents and visitors. The addition of alcohol service is accessory to the existing landmark theater and is compatible, as conditioned, with the land uses allowed within the CG Zoning District and the surrounding neighborhood, such as retail sales, personal service, office, and restaurant uses. Alcohol sales are allowed upon the approval of an MUP. The addition of 160 square feet combined with the existing floor area on the lot, complies with the maximum allowed floor area ratio of 0.5 for the CG Zoning District.
2. The Lido Theater is defined as a landmark theater by Zoning Code Section 20.38.070 (Landmark Structures) as it is a structure used as a cinema or theater that was constructed on or before December 12, 1950; has a single screen or stage and was designed to seat more than three hundred (300) people. To help facilitate the continued use of landmark theaters, encourage their adaptive reuse, and revitalize the older commercial areas in which they are located, NBMC Section 20.38.070 (Landmark Structures) grants relief from certain municipal code requirements for landmark theaters.

Therefore, the principal use of the theater, including movie screenings and shows, as well as the small addition and remodel are not required to undergo discretionary review. This use permit request is for the addition of alcohol sales at the existing landmark theater.

3. Lido Plaza Shopping Center is developed with a shared surface parking lot containing 290 spaces. Variance No. 741 was approved in 1963 that waived all required parking for the Lido Theater. The proposed sale of alcohol does not change or increase the parking requirement and the addition of the outdoor dining patio with approximately 52 seats is offset by the 137-seat reduction inside the theater. The theater patrons would utilize the outdoor dining area as an amenity to the theater and not a separate or destination use that would generate additional parking demand. The size of the proposed outdoor dining area is less than 25 percent of the interior service area of the existing theater. No additional parking is required for the Landmark Theater nor accessory alcohol service use pursuant to NBMC Section 20.38.070(D) (5 - (Landmark Structures - Conditions)).
4. The project has been conditioned to limit objectionable conditions resulting from the service of alcohol at the theater and is required to comply with all applicable Municipal Code regulations.

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

Facts in Support of Finding

1. The existing theater use includes daily movie screenings, live performances, philanthropic events, and other assembly uses. Alcohol service within the theater will be restricted to between 8:00 a.m. and 11:00 p.m., daily. Alcohol sales will be limited within the theater to concession areas within the lobby and drinks may be consumed throughout the theater. The provision of alcohol sales will not substantially change the operational characteristics of the theater use.
2. The new outdoor dining patio would serve as an amenity to the existing theater use and complement the existing theater experience. Outdoor dining is common in Lido Village and would be consistent with the adjacent Woody's Diner outdoor dining area.
3. The 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. The project has been conditioned to ensure that the business remains a theater and does not become a bar, club, or tavern.
4. The establishment must comply with the requirements of the California Building Code, Orange County Health Department, and Alcoholic Beverage Control Department to ensure the safety and welfare of customers and employees within the establishment.

5. The Lido Theater is a single-screen theater of 7,992 square feet in area with 657 theater seats. The first floor contains a ticket booth, lobby, office, storage area, and restrooms. The mezzanine level includes additional bathrooms, and the balcony level contains seating and the projection booth. The proposed renovation would increase the floor area by 160 square feet to accommodate an accessible entry and includes a net reduction in 137 theater seats, for a total of 520 seats. A theater has operated in this location since 1939 and the use has not proven detrimental to the area.
6. The proposed improvements would restore the theater to a condition closer to the original design of the building while upgrading the accessibility of the historic building.
7. The allowed uses in the vicinity include retail sales, personal service, office, and restaurant uses. The existing theater and the proposed alcohol service are consistent and compatible with these land uses. The theater has been a landmark of the Lido Village community for over 80 years. No residential zoning districts, or other incompatible land uses, are located within the immediate vicinity of the theater. The closest residential uses are located far enough from the theater to avoid any potential land-use conflicts from patrons leaving the theater.

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 Project is located within an existing commercial block. The design, size, location, and operating characteristics of the use have been physically suitable for the last 80 years since its original construction in 1939. The addition of alcohol service is accessory to the primary use of the structure as a one (1)-screen theater and event space and would complement the existing theater use. The existing show times of the theater run until 12:00 a.m. (midnight) and alcohol service would end at 11:00 pm. Therefore, hours of operation would not increase as part of the project and an operator license is not required in accordance with Chapter 5.25 of the NBMC since alcohol service will not occur in conjunction with late hours of operation (after 11:00 p.m.). Accessory alcohol service is common in the surrounding Lido Marina Village area which includes several restaurants.
2. The proposed outdoor dining patio consists of approximately 732 square feet and would support the theater as an accessory amenity. The outdoor dining area is located along the side of the theater within a corridor between the Griffith building and the theater building. There is an existing outdoor dining patio adjacent to Woody's diner, and the proposed outdoor dining for the theater would complement that existing use. The existing and proposed dining areas would be separated by an 8-foot walkway, which would be sufficient to allow for adequate access through the corridor.

3. The outdoor dining area is located within a utility easement. However, the patio is designed with a moveable barrier and paving to provide access to the utilities in event of an emergency or routine maintenance. As conditioned, the applicant is required to obtain an encroachment agreement from public works prior to the issuance of permits for the outdoor dining patio.
4. Adequate public and emergency vehicle access is provided from Via Lido and public services and utilities are provided on-site.
5. The design of the tenant improvements will comply with all Building, Public Works, and Fire Codes, and will require approval by the Orange County Health Department.

Finding

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

Facts in Support of Finding

1. The provision of alcohol service will improve the viability of the existing theater that has been in operation since 1939 and the proposed conditions of approval will reduce potential impacts to surrounding land uses. The tenant improvements to the existing commercial building should have a positive impact on the area and may promote the further revitalization of commercial properties located in the Lido Village area.
2. 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.
3. Alcohol service within the theater will serve the residents from surrounding neighborhoods and other visitors to the area. The proposed establishment will provide alcohol service as a public convenience to theater patrons. The addition of on-sale alcohol service is an accessory use and will not change the principal theater use. The service of alcohol will provide an economic opportunity for the property owner to maintain a successful business that is compatible with the surrounding community.
4. Sales and service of alcohol at the theater will end by 11:00 p.m., daily.

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. UP2021-039 subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

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



Jaime Murillo
Zoning Administrator

EXHIBIT “A”**CONDITIONS OF APPROVAL**

(Project-specific conditions are in italics)

Planning Division

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. *The sales and service of alcohol shall only be permitted between the hours of 8:00 a.m. and 11:00 p.m., daily.*
3. *This minor use permit authorizes a Type 41 (On-Sale Beer and Wine – Eating Place) ABC License. Any changes in license type would require an amendment to this minor use permit.*
4. *The outdoor patio area shall be limited to approximately 732-square-feet in compliance with the approved plans.*
5. The project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
6. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
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, shall require an amendment to this Use Permit or the processing of a new Use Permit.
9. *Demolition beyond the approved scope of work requires planning division approval prior to commencement of work. Approval of revisions to project plans is not guaranteed. Any changes in the current scope of work may require the applicant to obtain additional discretionary permits such as a site development review, use permit, or coastal development permit. Any changes to the proposed scope of work may require a new or revised Historic Resources Report to evaluate the implications of the proposed changes. The applicant understands that this may result in project delays or denial, and possible economic hardship.*

10. *All proposed signs shall be in conformance with the approved Comprehensive Sign Program No. CS2015-001 (PA2015-011) for the project site and provisions of Chapter 20.42 (Signs) of the Newport Beach Municipal Code.*
11. 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.
12. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
13. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, if in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
14. Prior to the issuance of a building permit, the applicant shall prepare a photometric study in conjunction with a final lighting plan for approval by the Planning Division. The survey shall show that lighting values are “1” or less at all property lines.
15. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
16. 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 7:00 AM and 10:00 PM		Between the hours of 10:00 PM and 7:00 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

17. 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 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.

18. No outside paging system shall be utilized in conjunction with this establishment.
19. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three (3) walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
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 the daily removal of trash, litter debris, and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
22. 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).
23. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and Saturdays and between the hours of 10:00 p.m. and 9:00 a.m. on Sundays and Federal holidays unless otherwise approved by the Director of Community Development and may require an amendment to this Use Permit.
24. 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.
25. A Special Events Permit is required for any event or promotional activity outside the normal operating 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.
26. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
27. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.

28. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the **Lido Theater Renovation including, but not limited to, Minor Use Permit No. UP2021-039 (PA2021-245)**. 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 the applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of the 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

29. *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. If required, approval from the Orange County Health Department shall be provided prior to the issuance of a building permit.*

Fire Department (Life Safety Services)

30. Prior to the issuance of permits, a fire alarm system shall be included in the building permit plans to the satisfaction of the Life Safety Services Division.

Police Department

31. *The applicant shall comply with all federal, state, and local laws, and all conditions of the Alcoholic Beverage License. A 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.*
32. *Any on-premises alcohol servers and managers must be certified by an accredited Responsible Beverage Service (RBS) training provider and pass a Department of Alcoholic Beverage Control (ABC) exam within 60 days from the date of employment or approval of this use permit. Certification must be renewed every three (3) years. Nine (9)-digit server identification numbers or "ID Numbers" of each employee shall be made available to the Police Department on demand.*
33. *Approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Newport Beach Municipal Code.*

34. *The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.*
35. *No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.*
36. *Sales of alcoholic beverages for consumption off the property is prohibited.*
37. *There shall be no dancing allowed on the premises.*
38. *There shall be no reduced-price alcoholic beverage promotions after 9:00 p.m.*
39. *Servers shall not carry a supply of unordered alcoholic beverages for sale.*
40. *Strict adherence to maximum occupancy limits is required.*
41. *The applicant shall maintain a security recording system with 30-day retention and make those recordings available to police upon request.*
42. *The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for the daily removal of trash, litter, and debris from the premises and on all abutting sidewalks within 20 feet of the premises. Graffiti shall be removed within 48 hours of written notice from the City.*
43. *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.*
44. *The operator of the theater shall be responsible for the control of noise generated by the subject facility. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code.*

Public Works Department

45. *Prior to issuance of building permits, an encroachment agreement shall be obtained from the Public Works Department for work within City easement(s).*