



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 March 17, 2023.

ZONING ADMINISTRATOR ACTIONS MARCH 16, 2023

Item 1: Boone Residence Coastal Development Permit (PA2022-033)
Site Address: 408 Via Lido Nord

Action: Approved by Resolution No. ZA2023-011 Council District 1

Item 2: Karahalios Residence Coastal Development Permit (PA2022-125)
Site Address: 607 and 607 ½ North Bay Front

Action: Approved by Resolution No. ZA2023-012 Council District 5

Item 3: Hedge Residence Coastal Development Permit (PA2022-0187)
Site Address: 1400 West Bay Avenue

Action: Approved by Resolution No. ZA2023-013 Council District 1

Item 4: Horton Residence Coastal Development Permit (PA2022-0254)
Site Address: 76 Linda Isle

Action: Approved by Resolution No. ZA2023-014 Council District 5

Item 5: Sanderson Residence Coastal Development Permit (PA2022-0295)
Site Address: 6104 West Ocean Front

Action: Approved by Resolution No. ZA2023-015 Council District 1

Item 6: Real Food Companies Minor Use Permit (PA2022-109)
Site Address: 561 Newport Center Drive

Action: Approved by Resolution No. ZA2023-016 Council District 5

Item 7: ARC Private Dining Room Minor Use Permit (PA2022-105)
 Site Address: 501 30th Street

Action: Approved by Resolution No. ZA2023-017	Council District	1
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Item 8: Casablanca The Restaurant Minor Use Permit (PA2022-0208)
 Site Address: 6800 West Coast Highway

Action: Approved by Resolution No. ZA2023-018	Council District	1
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**COMMUNITY DEVELOPMENT DIRECTOR
 OR PLANNING DIVISION STAFF ACTIONS**
 (Non-Hearing Items)

Item 1: Thacker Berry Farms Strawberry Stand – Limited Term Permit (PA2023-0008)
 Site Address: 2401 Irvine Avenue

Action: Approved	Council District	3
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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 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.

Wendy Joe, Civilian Investigator, NBPD (*Telecom - Massage – ABC License*)
 Mark Short, Police Sergeant, NBPD (*Massage – ABC License*)

RESOLUTION NO. ZA2023-011

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A COASTAL DEVELOPMENT PERMIT TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW TWO (2)-STORY SINGLE-FAMILY RESIDENCE AND ATTACHED TWO (2)-CAR GARAGE LOCATED AT 408 VIA LIDO NORD (PA2022-033)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Jacquelyn Gentes (Applicant) concerning property located at 408 Via Lido Nord requesting approval of a coastal development permit. The property is legally described as Lot 477 and the northwesterly 15 feet of Lot 478 of Tract 907, excepting therefrom the northwesterly 10 feet of Lot 477 (Property).
2. The Applicant requests a coastal development permit to demolish an existing single-family residence and construct a new 3,422-square-foot, two (2)-story, single-family residence with a 500-square-foot two (2)-car garage. The project also includes additional appurtenances such as site walls, fences, patios, drainage devices, and landscaping. A modification to the existing seawall is proposed. The design complies with all applicable development standards, including height, setbacks, and floor area limit; no deviations are requested (Project).
3. The Property is designated Multiple Residential (RM) by the General Plan Land Use Element and is located within the Multiple Residential (RM) Zoning District.
4. The Property is located within the coastal zone. The Coastal Land Use Plan category is Multiple Unit Residential (RM-E) – (30.0 – 39.9 DU/AC) and it is located within the RM (Multiple Residential) Coastal Zoning 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 existing seawall is adjacent to a public walkway, 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 existing seawall is contained entirely within private property and all alterations 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 March 16, 2023, online via Zoom. A notice of the time, place, and purpose of the hearing was given by 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 Project consists of the demolition of one (1) single-family residence and the construction of a new 3,501-square-foot single-family dwelling and an attached 500-square-foot two (2)-car garage.
3. The exceptions to this categorical exemption under Section 15300.2 of the CEQA Guidelines 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.

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

Finding:

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

Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The maximum floor area limitation is 4,363 square feet. The Project includes 3,422 square feet of livable area and an attached 500-square-foot two (2)-car garage. The Multiple Residential (RM) zoning category excludes 200 square feet from the total gross floor area per required parking space devoted to enclosed parking. Therefore, the gross floor area is 3,522 square feet and complies with the maximum floor area limitation.
 - b. The proposed development provides the minimum required setbacks, which are 4 feet along the front property line abutting Via Lido Nord and 3 feet along each side

property line. There is no required setback along the front property line abutting the shore.

- c. The highest two (2)-story roofline is no more than 24 feet from the established grade level of 11.45 feet based on the North American Vertical Datum of 1988 (NAVD 88), which complies with the maximum height limitation.
 - d. The Project includes enclosed garage parking for two (2) vehicles, which complies with the minimum two (2)-car parking requirement for single-family residences with less than 4,000 square feet of habitable floor area.
2. The neighborhood is predominantly developed with two (2)-story, single- and multi-family residences. The proposed design, bulk, and scale of the development are 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 27, 2022, for the Project. The current maximum bay water elevation is 7.7 NAVD 88. The report analyzes future sea level rise scenarios assuming a 3.05-foot increase in the maximum water level over the next 75 years (i.e., the life of the structure). Therefore, the sea level is estimated to reach approximately 10.75 feet NAVD 88 (the likely range for sea level rise over the 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).
 4. 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 NAVD 88 with a design for adaptability elevation of 14.4 feet NAVD 88. The existing seawall elevation is 12.8 feet NAVD 88 and is adaptable to 14.4 feet NAVD 88. The Project includes the alteration of the existing seawall, which includes removing a portion of the seawall to provide a private walkway that leads to the shore. The stairs of the walkway are located on private property and the top of concrete deck is 11.04 feet NAVD 88. Both the existing retaining wall and new concrete deck are above the minimum 10.9 feet NAVD 88 required. The Coastal Hazard Report concludes that the seawall, as altered, will not require additional shoreline protective devices as the existing wall is adequate and can be raised to 14.4 feet NAVD 88, making the Project safe from flooding hazards for the next 75 years.
 5. The finish floor elevation of the proposed single-family residence is 11.4 feet NAVD 88, which complies with the minimum 9.0-foot NAVD 88 elevation standard.
 6. Under NBMC Section 21.30.030(C)(3)(i)(iv), the property owner will be required to agree 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 before the final building permit inspection.
 7. The property owner will 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). This requirement is included as a condition of approval that will need to be satisfied before the issuance of building permits.

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 before 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 before building permit issuance.
9. 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 from 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. Under 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 Management Plan (WQMP) is required. A preliminary WQMP has been prepared for the Project by Forkert Engineering and Surveying, Inc., dated December 10, 2021. The WQMP includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, the use of a LID approach to retain the design storm runoff volume on-site, and documentation of the expected effectiveness of the proposed BMPs. Construction plans will be reviewed for compliance with the approved WQMP before building permit issuance.
11. The Project design addresses water quality with a construction erosion control plan and a post-construction drainage system that includes drainage and percolation features designed to retain dry weather runoff and minor rain event runoff on-site. Any water not retained on-site is directed to the City's storm drain system.
12. The Property is not located adjacent to a coastal view road, public access way, or coastal viewpoint as identified in the Coastal Land Use Plan (CLUP). The nearest coastal viewpoint identified by the CLUP is a small park on the street end of Via Genoa, which is approximately 110 feet east of the Property. As currently developed, the Property and other residences along Via Lido Nord are visible from the channel and within the view shed of the park. However, the proposed single-family residence complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. 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:

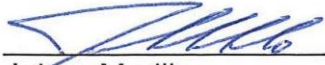
1. The Property is located between the nearest public road and the sea or shoreline. Section 21.30A.040 (Determination of Public Access/Recreation Impacts) of the NBMC requires that the provision of public access bear a reasonable relationship between the requirement and the Project's impact and be proportional to the impact. As identified in the CLUP, a small park on the street end of Via Genoa is a public beach access point and is located approximately 110 feet east of the Property. In this case, the Project replaces an existing single-family residence located on an RM 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 for 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 exists throughout Lido Isle, with the closest vertical access point located at the street end of Via Genoa. Additionally, lateral access is available on the walkway and small beach in front of the site. The Project only involves work on private property and 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) because it has no potential to have a significant effect on the environment and the exceptions to the Class 3 exemption do not apply.
2. The Zoning Administrator of the City of Newport Beach hereby approves the Coastal Development Permit, subject to the conditions outlined 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 by 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 16TH DAY OF MARCH, 2023.



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. *Before the final building permit inspection, the alteration of the existing seawall shall be constructed to a minimum elevation of 12.8 feet NAVD 88 with the capability to be raised up to 14.4 feet NAVD 88, in compliance with the City of Newport Beach Waterfront Project Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities.*
3. *Before the final building permit inspection, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices including the repair and maintenance, enhancement, reinforcement, or any other activity affecting the bulkhead, that results in any encroachment seaward of the authorized footprint of the bulkhead or other shoreline protective device. The agreement shall be binding against the property owners and successors and assigns.*
4. *Before issuance of building permits, 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 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 development. This letter shall be scanned into the plan set before building permit issuance.*
5. 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 result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers. No demolition or construction materials shall be stored on public property.
6. This Coastal Development Permit does not authorize any development seaward of the private property.
7. *All construction activities shall occur within private property and the use of mechanized equipment is prohibited within the Bay and public property.*
8. 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).

9. 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 under 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.
10. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented before and throughout the duration of construction activity as designated in the Construction Erosion Control Plan.
11. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
12. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stockpiles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
13. Trash and debris shall be disposed 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.
14. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
15. The project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.

16. The Applicant shall comply with all federal, state, and local laws. A material violation of any of those laws in connection with the use may be caused by the revocation of this Coastal Development Permit.
17. 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, and welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained to constitute a public nuisance.
18. *Before 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.*
19. *Before 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.*
20. Before issuance of building permits, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.
21. *Before issuance of building permits, the final WQHP/WQMP shall be reviewed and approved by the Building Division. The implementation shall comply with the approved WQHP/WQMP and any changes could require separate review and approval by the Building Division.*
22. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
23. Construction activities shall comply with Section 10.28.040 (Construction Activity—Noise Regulations) of the NBMC, 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.
24. Before the issuance of building permits, the Applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
25. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by the current property owner or agent.
26. This Coastal Development Permit 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.

27. 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 the **Boone Residence, including, but not limited to the Coastal Development Permit (PA2022-033)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorney's 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 the City's costs, attorneys' fees, and damages, which the City incurs in enforcing the indemnification provisions outlined in this condition. The Applicant shall pay to the City upon demand any amount owed to the City under the indemnification requirements prescribed in this condition.

RESOLUTION NO. ZA2023-012

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A COASTAL DEVELOPMENT PERMIT TO DEMOLISH A TWO (2)-UNIT RESIDENCE AND TO CONSTRUCT A NEW SINGLE-UNIT RESIDENCE AND JUNIOR ACCESSORY DWELLING UNIT LOCATED AT 607 and 607 ½ NORTH BAY FRONT (PA2022-125).

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Brandon Architects (“Applicant”) concerning property located at 607 and 607 ½ North Bay Front, requesting approval of a coastal development permit. The property is legally described as Lot 14 of Block 12 of Balboa Island Tract (“Property”).
2. The Applicant requests a coastal development permit to demolish an existing two (2)-unit residence and to construct a new 2,037-square-foot, three (3)-story, single-unit residence with a 298-square-foot junior accessory dwelling unit and attached 436-square-foot, two (2)-car garage. The project includes landscape, hardscape and subsurface drainage facilities all within the confines of private property. The project (“Project”) complies with all development standards and no deviations from the municipal code are requested.
3. The subject property is designated RT (Two Unit Residential) by the General Plan Land Use Element and is located within the R-BI (Two-Unit Residential, Balboa Island) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RT-E (Two Unit Residential) - (30.0 - 39.9 DU/AC) and it is located within the R-BI (Two-Unit Residential, Balboa Island) Coastal Zoning District.
5. A public hearing was held on March 16, 2023, online via Zoom. A notice of the time, place, and purpose of the hearing was given by 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 under 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 an existing duplex and construction of a new 2,037-square-foot, three (3)-

story, single-unit residence with a 298-square-foot junior accessory dwelling unit and attached 436-square-foot, two (2)-car garage.

3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The project complies with all applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The total proposed floor area, including the residence and enclosed parking, is 2,772 square feet, which complies with the maximum allowable floor area limit of 3,430 square feet.
 - b. The proposed development will provide the minimum required setbacks, which are ten (10)-feet along the front property line abutting North Bay Front, five (5)-feet along the rear property line abutting the alley, and three (3)-feet along each side property line.
 - c. The highest two-story roofline is no more than 29 feet from the established grade level of 9.0 feet based on the North American Vertical Datum of 1988 ("NAVD88"), which complies with the maximum height limitation.
 - d. The project includes an enclosed garage parking for two (2) vehicles, which complies with the minimum two (2)-car parking requirement for single-unit residences with less than 4,000 square feet of habitable floor area. Onsite parking is not required for the accessory dwelling unit.
 - e. The project is conditioned to require the recordation of a deed restriction that will prohibit the use of the ADU for short-term rentals (i.e., less than 30 days) and will also prohibit the sale of the ADU separate from the principal dwelling.

2. The neighborhood is predominantly developed with two (2)- and three (3)-story, single- and two-unit residences. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development consistent with applicable development standards.
3. A Coastal Hazards Report and Sea Level Rise Analysis was prepared for the project by GeoSoils, Inc, dated June 2, 2022. The project site is protected by a public boardwalk fronting the site along South Bay Front and an existing City-owned bulkhead that will remain in place. The maximum bay water elevation is 7.7 feet North American Vertical Datum of 1988 (NAVD 88) and may exceed the current top of the City-owned bulkhead elevation of 8.6 feet (NAVD 88) during high tide or storm events. The report analyzes future sea level rise scenarios assuming a 2.9-foot increase in the maximum water level over the next 75 years (i.e. the life of the structure). Therefore, the sea level is estimated to reach approximately 10.6 feet NAVD 88 (the likely range for sea level rise over 75-year design life of the structure based on low risk aversion estimates for sea level rise provided by the State of California, Sea Level Rise Guidance: 2018 Update). The report recommends that the bulkhead be raised in the future. Since the bulkhead is not privately owned and cannot be raised by the homeowner, the report recommends future mitigation measures be identified and implemented as needed including waterproofing, flood shields, watertight doors, moveable floodwalls, partitions, water-resistive sealant devices, sandbagging and other similar flood-proofing techniques.
4. The finished floor elevation of the first floor of the Project is 9.13-feet (NAVD88), which complies with the minimum 9.00-foot (NAVD88) elevation standard for new structures.
5. Under NBMC Section 21.30.030(C)(3)(i)(iv), the property owner will be required to agree 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 before the final building permit inspection, respectively.
6. The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c) (Development Standards). This requirement is included as a condition of approval that will need to be satisfied before the issuance of building permits, respectively.
7. The Property is in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved before 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 before building permit issuance.
8. The Project comprises less than 2,500 square-feet of impervious surface area and a Water Quality and Hydrology Plan (WQHP) is therefore, not required.

9. The Project design addresses water quality with a construction erosion control plan and a post-construction drainage system that includes drainage and percolation features designed to retain dry weather runoff and minor rain event runoff on-site. Any water not retained on-site is directed to the City's storm drain system.
10. The Project will replace an existing duplex with a new single-family residence and junior accessory dwelling unit that complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing and anticipated neighborhood pattern of development. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to public views.
11. The project proposes to demolish an existing duplex and construct a single-family unit and attached junior accessory dwelling unit (JADU). As a result, the Project complies with the Housing Crisis Act of 2019 and Senate Bill 8 (Skinner) because it does not result in the loss of residential density. The State Department of Housing and Community Development ("HCD") has verified with the City in an email dated March 23, 2022, that an ADU is considered a housing unit under Government Code Section 66300 provisions to replace existing units. The property owner has certified that the units are not "protected" units under Section 66330 Subdivision (d)(2). The project is consistent with the General Plan, Local Coastal Program, and Zoning designations that allow the single-family and accessory dwelling unit land uses. Under the Coastal Land Use Plan Table 2.1.1-1, the Two Unit Residential (RT) category is intended for a range of two-family residential dwelling units such as duplexes and townhomes. Implementation Program (IP) Table 21.18-1 shows "Single-Unit Dwellings – Detached" and "Junior Accessory Dwelling Units" as allowed uses in the R-BI Coastal Zoning District. Therefore, the project of demolishing a duplex and constructing a single-family residence with a junior accessory dwelling unit is consistent with the R-BI zoning and land use designations and does not result in a loss of residential density.
12. As designated in the Coastal Land Use Plan, the nearest designated coastal viewpoint is located approximately 1,700 feet east of the project site at the Marine Avenue bridge that crosses the channel. The Property may be located within the viewshed of distant public viewing areas. However, the Project will replace an existing duplex with a new single-family unit and junior accessory dwelling unit that complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing and anticipated neighborhood pattern of development. Therefore, the Project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to public views.

Finding:

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

Facts in Support of Finding:


1. The Property is located on a waterfront lot that abuts the Balboa Island Loop, which is a walkway around the outer perimeter of Balboa Island that grants pedestrians bay views. Existing lateral access to the bay is provided by the loop, which is not affected by the Project. Vertical access to the Balboa Island Loop is available through Ruby Avenue, approximately 60 feet east of the Property, and Collins Avenue, approximately 90 west of the Property.
2. The Property 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 duplex located on a standard residential lot with a new single-unit residence and junior accessory dwelling unit consistent with the existing neighborhood pattern of development and in keeping with applicable development standards. 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. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.

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) because it has no potential to have a significant effect on the environment and the exceptions to the Class 3 exemption do not apply.
2. The Zoning Administrator of the City of Newport Beach hereby approves the Coastal Development Permit (PA2022-125), subject to the conditions outlined 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 by 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 16TH DAY OF MARCH, 2023.



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. Revisions to the approved exhibits and plans may require an amendment to this approval or the processing of a new planning application.
3. The Project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
4. This approval 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.
5. The applicant shall comply with all federal, state, and local laws. A material violation of any of those laws in connection with the use may be caused the revocation of this lot merger.
6. *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.*
7. *Prior to the issuance of a building and/or grading permit for an accessory dwelling unit, the property owner shall record a deed restriction with the County Recorder’s Office, the form and content of which is satisfactory to the City Attorney, prohibiting the use of the ADU for short term rentals (i.e., less than 30 days) and prohibiting the sale of the ADU separate from the principal dwelling. This deed restriction shall remain in effect so long as the accessory dwelling unit exists on the property.*
8. *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 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 development. This letter shall be scanned into the plan set before building permit issuance.

9. *Prior to the 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. *This Coastal Development Permit does not authorize any development seaward of the private property.*
11. *All construction activities shall occur within private property and the use of mechanized equipment is prohibited within the Bay and public property.*
12. 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).
13. 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 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.
14. 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 under 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.

15. All proposed accessory structures located within setback areas shall comply with applicable height limits consistent with Zoning Code Section 20.30.040 (Fences, Hedges, Walls, and Retaining Walls).
16. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented before and throughout the duration of construction activity as designated in the Construction Erosion Control Plan.
17. 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.
18. 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.
19. 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.
20. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
21. The Project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
22. The applicant shall comply with all federal, state, and local laws. A material violation of any of those laws in connection with the use may be caused by the revocation of this Coastal Development Permit.
23. 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, and welfare or materially injurious to property or improvements in the vicinity or if the Property is operated or maintained to constitute a public nuisance.
24. *Before 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.*

25. Before 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.
26. Before issuance of building permits, a copy of the Resolution, including conditions of approval Exhibit “A” shall be incorporated into the Building Division and field sets of plans.
27. 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.
28. 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.
29. 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 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

30. Before the issuance of building permits, the Applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
31. 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.
32. This Coastal Development Permit 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.
33. 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 **Karahalios Residence including, but not limited to the Coastal Development Permit (PA2022-125)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorney's 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 the 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 outlined in this condition. The applicant shall pay to the City upon demand any amount owed to the City under the indemnification requirements prescribed in this condition.

Fire Department

34. A minimum three (3)-foot wide fire department access way is required on one side of the yard from the street frontage to the rear yard.
35. Fire sprinklers shall be provided in accordance with NFPA 13D.

Building Division

36. 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.
37. The Applicant shall employ the following best available control measures ("BACMs") to reduce construction-related air quality impacts:

Dust Control

- Water all active construction areas at least twice daily.
- Cover all haul trucks or maintain at least two feet of freeboard.
- Pave or apply water four times daily to all unpaved parking or staging areas.
- Sweep or wash any site access points within two hours of any visible dirt deposits on any public roadway.
- Cover or water twice daily any on-site stockpiles of debris, dirt or other dusty material.
- Suspend all operations on any unpaved surface if winds exceed 25 mph.

Emissions

- Require 90-day low-NOx tune-ups for off road equipment.
- Limit allowable idling to 30 minutes for trucks and heavy equipment.

Off-Site Impacts

- Encourage carpooling for construction workers.
- Limit lane closures to off-peak travel periods.
- Park construction vehicles off traveled roadways.
- Wet down or cover dirt hauled off-site.
- Sweep access points daily.
- Encourage receipt of materials during non-peak traffic hours.
- Sandbag construction sites for erosion control.

Fill Placement

- The number and type of equipment for dirt pushing will be limited on any day to ensure that SCAQMD significance thresholds are not exceeded.
- Maintain and utilize a continuous water application system during earth placement and compaction to achieve a 10 percent soil moisture content in the top six (6)-inch surface layer, subject to review/discretion of the geotechnical engineer.

38. *Before 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.*

Public Works Department

39. A new sewer clean out shall be installed on the existing sewer lateral per City Standard 406.
40. Proposed improvements along the North Bay Front right of way shall comply with City Council Policy L-6. An encroachment permit and encroachment agreement shall be obtained for the proposed improvements within the right-of-way.

RESOLUTION NO. ZA2023-013

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING A COASTAL DEVELOPMENT PERMIT TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW THREE (3)-STORY SINGLE-UNIT RESIDENCE AND ATTACHED TWO (2)-CAR GARAGE LOCATED AT 1400 WEST BAY AVENUE (PA2022-0187)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Brandon Architects (“Applicant”) concerning property located at 1400 West Bay Avenue requesting approval of a coastal development permit. The property is legally described as Lot 12 of Block 1 of Tract 626 (“Property”).
2. The Applicant requests a coastal development permit to demolish an existing single-unit residence and construct a new 3,880-square-foot, three (3)-story, single-unit residence with a 500-square-foot two (2)-car garage. The project also includes a reinforced and raised bulkhead for coastal hazard protection. All work will be performed from the landside of the U.S. Bulkhead Line and all construction will occur from private property (i.e., the landside). The project also includes additional appurtenances such as landscape, hardscape, spa, and subsurface drainage facilities. The design complies with all applicable development standards, including height, setbacks, and floor area limit. No deviations of the Newport Beach Municipal Code (NBMC) are requested (“Project”).
3. The 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 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 Zoning District.
5. A public hearing was held on March 16, 2023, online via Zoom. A notice of the time, place, and purpose of the hearing was provided consistent with the provisions of 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 Project consists of the demolition of one (1) single-unit residence and the construction of a new 3,880-square-foot single-unit residence with an attached 500-square-foot two (2)-car garage.
3. The exceptions to this categorical exemption under Section 15300.2 of the CEQA Guidelines 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.

By 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 4,678 square feet and the proposed floor area is 4,379 square feet.
 - b. The proposed development provides the minimum required setbacks, which are 25 feet along the front property line abutting the bay, 3 feet along each side property line, and 5 feet along the property line abutting West Bay Avenue.
 - c. The highest three (3)-story roofline is no more than 29 feet from the established grade level of 9.00 feet based on the North American Vertical Datum of 1988 ("NAVD 88"), which complies with the maximum height limitation.
 - d. The Project includes enclosed garage parking for two (2) vehicles, which complies with the minimum two (2)-car parking requirement for single-unit 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. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by GeoSoils, Inc. dated March 23, 2022, for the Project. The maximum bay water elevation is 7.7 feet NAVD

88 (North American Vertical Datum of 1988 (NAVD 88) and may exceed the current top of bulkhead elevation of 8.4 feet (NAVD 88) during high tide or storm events. 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). Therefore, the sea level is estimated to reach approximately 10.9 feet NAVD 88 (the likely range for sea level rise over the 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).

4. 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 NAVD 88 with a design for adaptability elevation of 14.4 feet NAVD 88. The Project has been conditioned to raise the bulkhead to an elevation of 10.9 feet NAVD 88. GeoSoils, Inc. has confirmed the bulkhead can be raised to 14.4 feet NAVD 88 if needed and complies with the updated guidelines.
5. Once the existing bulkhead is reinforced and raised per the report's recommendations, flooding, wave run-up, and erosion will not significantly impact the Property over the proposed 75-year economic life of the development. Flood shields (sandbags and other barriers) can be deployed across the openings to protect and prevent flooding to the structure. The report concludes that the Project will be safe from flooding hazards for the next 75 years with the reinforced and raised bulkhead, the proposed elevation of the finished floor, and the ability to waterproof the building, if necessary. The Project has been conditioned to raise the bulkhead to a minimum elevation of 10.9 feet NAVD 88.
6. The finished floor elevation of the proposed single-family residence is 9.00 feet NAVD 88, which complies with the minimum 9.00-foot NAVD 88 elevation standard. The Coastal Hazard Report concludes that the bay water elevation (currently 7.7 feet NAVD 88) will likely not exceed the reinforced and raised seawall/bulkhead for the anticipated 75-year life of the structure.
7. Under NBMC Section 21.30.030(C)(3)(i)(iv), the property owner will be required to agree 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 before the final building permit inspection.
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). This requirement is included as a condition of approval that will need to be satisfied before the issuance of building permits.
9. 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 before 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 before building permit issuance.

10. Under Municipal Code Section 21.35.050 (Water Quality and Hydrology Plan), due to the proximity of the development to the shoreline and the development containing more than 75 percent of impervious surface area, a preliminary Water Quality and Hydrology Plan (WQHP) is required. A preliminary WQMP has been prepared for the Project by CivilScapes Engineering, Inc., dated December 18, 2022. The WQHP includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, the use of a LID approach to retain the design storm runoff volume on-site, and documentation of the expected effectiveness of the proposed BMPs. Construction plans will be reviewed for compliance with the approved WQHP before building permit issuance.
11. The Project's 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.
12. The Property 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 Veterans Park and Marina Park, approximately 500 feet east of the Property. While visible from the channel and public beach access points on Lido Island, the proposed single-family residence complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Additionally, the Project does not contain any unique features that could degrade the visual quality of the coastal zone.
13. The waterfront and street side of the Project, which are visible from the channel and Bay Avenue, contain substantial architectural treatment and visual interest, in keeping with the design guidelines of the Zoning Code. The new structure would comply with the required setbacks and the design includes modulation of volume, varied materials, and glass railings that prevent the appearance of the site from being walled off from the surrounding area. 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.*

Facts in Support of Finding:

1. The Property is located between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship

between the requirement and the project's impact and be proportional to the impact. In this case, the Project replaces an existing single-family residence located on a standard R-1 lot with a new single-family residence. Therefore, the Project does not involve a change in land use, density, or intensity that will result in increased demand for 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 and lateral access to the waterfront exists at various points along the peninsula, with expansive public beach areas along the oceanfront located to the south of the Property. Along the channel side and nearest the project site, public access is available at Veterans Park and Marina Park, approximately 500 feet east of the Property. 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) because it has no potential to have a significant effect on the environment and the exceptions to the Class 3 exemption do not apply.
2. The Zoning Administrator of the City of Newport Beach hereby approves the Coastal Development Permit, subject to the conditions outlined 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 by 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 16TH DAY OF MARCH 2023.



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. *Before the final building permit inspection, the existing seawall shall be reinforced and raised to a minimum elevation of 10.90 feet NAVD 88 with the capability to be raised up to 14.4 feet NAVD 88, in compliance with the City of Newport Beach Waterfront Project Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities.*
3. *Before the final building permit inspection, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices including the repair and maintenance, enhancement, reinforcement, or any other activity affecting the bulkhead, that results in any encroachment seaward of the authorized footprint of the bulkhead or other shoreline protective device. The agreement shall be binding against the property owners and successors and assigns.*
4. *Before issuance of building permits, 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 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 development. This letter shall be scanned into the plan set before building permit issuance.*
5. 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 result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers. No demolition or construction materials shall be stored on public property.
6. This Coastal Development Permit does not authorize any development seaward of the private property.
7. The applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of native birds under 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.
8. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented before and throughout the duration of construction activity as designated in the Construction Erosion Control Plan.
9. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
10. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stockpiles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
11. Trash and debris shall be disposed 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.
12. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
13. The Project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
14. The applicant shall comply with all federal, state, and local laws. A material violation of any of those laws in connection with the use may be caused by the revocation of this Coastal Development Permit.
15. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained are detrimental to the public health, and welfare or materially injurious to property or improvements in the vicinity or if the Property is operated or maintained to constitute a public nuisance.

16. Before 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.
17. Before 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.
18. Before issuance of building permits, a copy of the Resolution, including conditions of approval Exhibit “A” shall be incorporated into the Building Division and field sets of plans.
19. 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 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. Before the issuance of building permits, 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 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 the **Hedge Residence, including, but not limited to the Coastal Development Permit (PA2022-0187)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorney's 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 the City's costs, attorneys' fees, and damages, which the City incurs in enforcing the indemnification provisions outlined in this condition. The applicant shall pay to the City upon demand any amount owed to the City under the indemnification requirements prescribed in this condition.

Fire Department

26. A minimum three (3)-foot wide fire department access way is required on one side of the yard from the street frontage to the rear yard.

Public Works Department

27. The driveway approach shall be reconstructed per City Standard 163.
28. A new sewer clean-out shall be installed on the existing sewer lateral, per City Standard 406.
29. The existing gas service meter shall be relocated onto the private property.

Building Division

30. The Applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code.
31. The Applicant shall employ the following best available control measures ("BACMs") to reduce construction-related air quality impacts:

Dust Control

- Water all active construction areas at least twice daily.
- Cover all haul trucks or maintain at least two feet of freeboard.
- Pave or apply water four times daily to all unpaved parking or staging areas.
- Sweep or wash any site access points within two hours of any visible dirt deposits on any public roadway.
- Cover or water twice daily any on-site stockpiles of debris, dirt or other dusty material.

- Suspend all operations on any unpaved surface if winds exceed 25 mph.

Emissions

- Require 90-day low-NOx tune-ups for off road equipment.
- Limit allowable idling to 30 minutes for trucks and heavy equipment.

Off-Site Impacts

- Encourage carpooling for construction workers.
- Limit lane closures to off-peak travel periods.
- Park construction vehicles off traveled roadways.
- Wet down or cover dirt hauled off-site.
- Sweep access points daily.
- Encourage receipt of materials during non-peak traffic hours.
- Sandbag construction sites for erosion control.

Fill Placement

- The number and type of equipment for dirt pushing will be limited on any day to ensure that SCAQMD significance thresholds are not exceeded.
- Maintain and utilize a continuous water application system during earth placement and compaction to achieve a 10 percent soil moisture content in the top six (6)-inch surface layer, subject to review/discretion of the geotechnical engineer.

32. The Project shall comply with SFHA one AE8 flood requirements.
33. The third living level shall provide a maximum unobstructed exit travel distance of fifty (50) feet from the most remote point.
34. Open flames shall not be permitted under combustible framing.

RESOLUTION NO. ZA2023-014

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A COASTAL DEVELOPMENT PERMIT TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW TWO (2)-STORY SINGLE-FAMILY RESIDENCE AND ATTACHED THREE (3)-CAR GARAGE LOCATED AT 76 LINDA ISLE (PA2022-0254)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Marcus Hernandez with Rost Architects on behalf of the owner Steve Horton with respect to property located at 76 Linda Isle, and legally described as Lot 76 of Tract 4003, requesting approval of a Coastal Development Permit.
2. The applicant requests a coastal development permit (CDP) to allow the demolition of an existing single-family residence and construction of a new 5,344-square-foot, two (2)-story, single-family residence with an attached 852-square foot three (3)-car garage. The project includes landscape, hardscape, drainage, and accessory structures all within the confines of the property. The project complies with all development standards and no deviations are requested. All improvements authorized by this CDP will be located on private property.
3. The subject property is bisected by the coastal permit jurisdiction boundary, resulting in a portion of the front patio accessory improvements, bulkhead improvements, and new dock within California Coastal Commission's permit jurisdiction. This Coastal Development Permit is intended to cover portions of the project within the City's permit authority as designated in the Local Coastal Program (Title 21 of the Newport Beach Municipal Code).
4. The subject property is categorized RS-D (Single Unit Residential Detached) by the General Plan Land Use Element and is located within the R-1 (Single-Unit Residential) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-B (Single Unit Residential Detached – 6.0 – 9.9 DU/AC) and it is located within the R-1 (Single-Unit Residential) Coastal Zoning District.
6. A public hearing was held on March 16, 2023, 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 and construction of up to three (3) single-family residences in urbanized areas. The proposed project consists of the demolition of an existing single-family residence and the construction of a new 5,344-square-foot, two-story, single-family residence with an attached 852-square-foot, three-car garage.
3. There are no known exceptions listed in CEQA Guidelines Section 15300.2 that would invalidate the use of these exemption. 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(F) (Coastal Development Permits, Findings and Decision) of the Newport Beach Municipal Code (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 8,170 square feet and the proposed floor area is 6,196 square feet.
 - b. The proposed development provides the minimum required setbacks, which are 10 feet along the property line abutting the Newport Bay, 4 feet along each side property line, and 25 feet along the property line abutting the Linda Isle private drive.
 - c. The highest flat roof/guardrail is below 24 feet from established grade and the highest ridge is no more than 29 feet from established grade. The proposed development complies with all height requirements.
 - d. The proposed development provides a three (3)-car garage, meeting the minimum three (3)-car garage requirement for a single-family residence with more than 4,000 square feet of habitable floor area.

- e. The proposed development complies with the minimum 9.0-foot North American Vertical Datum of 1988 (NAVD 88) top of slab elevation requirement for interior living areas of new structures.
 - f. The design of any improvements bayward of the property shall conform with NBMC Section 21.30C.050 (Harbor Development Regulations). Said improvements will be reviewed for compliance separately through an Approval In Concept (AIC) application and will require approval from the California Coastal Commission per Condition of Approval No. 4.
2. The neighborhood is predominantly developed with two (2)-story, single-family residences. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development consistent with applicable development standards.
 3. The development fronts the Newport Bay and is protected by a bulkhead with cantilevered deck. A bulkhead conditions report was prepared by William Simpson & Associates, Inc. dated December 1, 2022. The report concluded that while the bulkhead is in good condition with minor repairable cracks, it should be reinforced through the installation of new tiebacks and new deadmen. The installation of the tiebacks and deadmen will occur after the demolition of the existing home is complete and prior to the construction of the new home. Once the bulkhead is reinforced in accordance with the report, no repair or replacement of the bulkhead is anticipated within the next 75 years.
 4. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by William Simpson & Associates, Inc. on December 1, 2022. The current maximum bay water elevation is 7.7 feet (NAVD88) and may exceed the existing top of bulkhead elevation of 8.9 during high tide or storm events. 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 (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). Once the existing bulkhead is reinforced and capped 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.
 5. On March 23, 2021, the City Council approved updated Waterfront Project Design Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities. The guidelines require that any bulkhead structure permitted within the years 2021 through 2025 must have a minimum bulkhead elevation of 10.9 feet (NAVD88) with a design for adaptability elevation of 14.4 feet (NAVD 88). The project has been conditioned to raise the bulkhead to an elevation of 10.9 feet (NAVD 88) per the proposed plans. William Simpson & Associates, Inc. has confirmed the bulkhead design can be raised up to 14.4 feet (NAVD88) if needed and in compliance with the updated guidelines.
 6. Once the existing seawall/bulkhead is reinforced and raised 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. The report concludes that the proposed project will be safe from flooding hazards for the next 75 years with the reinforced and raised bulkhead. Therefore, the project has been conditioned to raise the bulkhead to the 10.9 feet (NAVD88) per the approved plans.

7. The finish floor elevation of the proposed single-family residence is at a minimum elevation of 10.90 feet NAVD88, which complies with the minimum 9.00-foot NAVD88 elevation standard.
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 a building permit. 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. 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 Newport Beach Municipal Code (NBMC) Section 21.30.015(D)(3)(c) – (Waterfront - Development Standards). The Acknowledgement of Coastal Hazards is included as a condition of approval that will need to be recorded prior to the issuance of building permits.
10. Pursuant to Newport Beach Municipal Code (NBMC) Section 21.30.030(C)(3)(i)(iv) - (Natural Landform and Shoreline Protection), the property owner will be required to enter into an agreement with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction by coastal hazards (e.g., waves, erosion, and sea level rise). The Waiver of Future Protection is included as a condition of approval that will need to be recorded prior to final building inspection.
11. The project design addresses water quality with a construction erosion control plan and a post-construction drainage system that includes drainage and percolation features designed to retain dry weather runoff and minor rain event runoff on-site. Any water not retained on-site is directed to the City's storm drain system.
12. The property is located adjacent to coastal waters. Pursuant to Section 21.35.030 (Construction Pollution Prevention Plan) of the Municipal Code, a Construction Pollution Prevention Plan (CPPP) is required to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation, and to minimize pollution of runoff, and coastal waters derived from construction chemicals and materials. A CPPP has been provided and construction plans and activities will be required to adhere to the CPPP.
13. Pursuant to NBMC Section 21.35.050 (Water Quality and Hydrology Plan), due to the proximity of the development to the shoreline and the development containing more than 75 percent of impervious surface area, a preliminary Water Quality and Hydrology Plan

(WQHP) is required. The preliminary WQHP was prepared by Toal Engineering, Inc. dated January 12, 2023. The WQHP includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, use of an LID approach to retain the design storm runoff volume on site, and documentation of the expected effectiveness of the proposed BMPs. Construction plans will be reviewed for compliance with the approved WQHP prior to building permit issuance.

14. Proposed landscaping complies with Implementation Plan Section 21.30.075. A condition of approval is included that requires drought-tolerant species. Before the issuance of building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
15. The closest designated Public Viewpoint is located approximately 860 feet to the east of the property near the intersection of Bayside Drive and Harbor Island Drive. Additionally, the proposed residence is located to the south of Coast Highway and to the west of Bayside Drive, which are both Coastal View Roads as designated in the Coastal Land Use Plan. Due to the distance of the proposed development from the Public Viewpoint and Coastal View Roads and intervening development, the project will not be visible from the aforementioned locations and will not result in impacts to coastal views. As a bayfront property, the west elevation of the new development will be visible from the water. The design complies with all required setbacks which minimizes the appearance of building bulk and the design uses architectural treatments which will enhance views from the water. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts on public views.

Finding:

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

Facts in Support of Finding:

1. Linda Isle is a private, 107-lot, single-family residential community created in the 1960's and the existing home on-site was developed in 1973. The community predates the California Coastal Act and does not provide public access to the bay or shoreline. A gated bridge connects the island to the mainland at Bayside Drive. While Bayside Drive is the first public road paralleling the sea and the project site is located between Bayside Drive and the Harbor, the project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities.
2. 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-1 lot with a new single-family residence. The project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities.

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 the Coastal Development Permit (PA2022-0254), subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code (NBMC). 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 16TH DAY OF MARCH, 2023.



Jaime Murillo
Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

Planning Division

1. The development shall be in substantial conformance with the approved site plan, floor plans, and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new Coastal Development Permit.
3. This Coastal Development Permit does not authorize any development bayward of the private property.
4. Coastal Development Permit No. PA2022-0254 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 (NBMC), unless an extension is otherwise granted.
5. Prior to final building permit inspection, the Applicant shall obtain approval from the California Coastal Commission for any improvements or construction bayward of the property, including, but not limited to, demolition of the cantilevered deck.
6. Prior to final building permit inspection, the existing seawall shall be reinforced and capped to 10.90 feet (NAVD88) and capable to be raised up to 14.4 feet (NAVD88), in compliance with the City of Newport Beach Waterfront Project Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities.
7. 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. The letter shall be scanned into the plan set prior to building permit issuance.
8. Prior to final building permit inspection, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices to address the threat of damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards that may affect the property, or development of the property, today or in the future. The agreement shall be binding against the property owners and successors and assigns.

9. Prior to issuance of building permits, the final WQHP/WQMP shall be reviewed and approved by the Building Division. Implementation shall comply with the approved CPPP and WQHP/WQMP and any changes could require separate review and approval by the Building Division.
10. Prior to the issuance of a building permit, the applicant shall submit a final construction erosion control plan. The plan shall be subject to the review and approval by the Building Division.
11. Prior to the issuance of a building permit, the applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.
12. Prior to the 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.
13. 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.
14. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
15. 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.
16. 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.
17. 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.
18. 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.
19. 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.

- 20. 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.
- 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, and 8:00 a.m. and 6:00 p.m. on Saturday. 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. 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.

24. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
25. 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.
26. 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.
27. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner, or the leasing agent.
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 **Horton Residence including, but not limited to, Coastal Development Permit (PA2022-0254)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Public Works Department

29. Prior to submittal to California Coastal Commission, an Approval-In-Concept (AIC) shall be required from the Public Works Department for any new dock and/or deck improvements.
30. A new sewer clean out shall be installed on the existing sewer lateral per City Standard 406.

RESOLUTION NO. ZA2023-015

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A COASTAL DEVELOPMENT PERMIT TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW THREE (3)-STORY SINGLE-FAMILY RESIDENCE AND ATTACHED TWO (2)-CAR GARAGE INCLUDING A ONE (1)-CAR COVERED CARPORT LOCATED AT 6104 WEST OCEAN FRONT (PA2022-0295)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Oscar Almendarez on behalf of the owner with respect to property located at 6104 West Ocean Front, and legally described as Lot 3 and a portion of Lot 4, of Block A, of the Seashore Colony Tract addition to Newport Beach, requesting approval of a Coastal Development Permit.
2. The applicant requests a coastal development permit to allow the demolition of an existing single-family residence and the construction of a new 3,675-square-foot, three (3)-story, single-family residence with an attached 525-square-foot, two (2)-car garage and a 196-square-foot, one (1)-car covered carport. The proposed development also includes additional appurtenances such as walls, fences, patios, hardscape, drainage devices, and landscaping. The project complies with all development standards and no deviations are requested. All proposed improvements are located within the confines of private property. No development is proposed within the existing 15-foot-deep west ocean front encroachment area on the beach.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (RT).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Two-Unit Residential (RT-E) (30.0 – 39.9 DU/AC) and the Coastal Zoning District is Two-Unit Residential (R-2).
5. A public hearing was held on March 16, 2023, 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 and construction of up to three (3) single-family residences in urbanized areas. The proposed project consists of the demolition of an existing single-family residence and the construction of a new 3,675-square-foot, three (3)-story, single-family residence with an attached 525-square-foot, two (2)-car garage and a 196-square-foot, one (1)-car covered carport.
3. There are no known exceptions listed in CEQA Guidelines Section 15300.2 that would invalidate the use of these exemption. 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(F) (Coastal Development Permits, Findings and Decision) of the Newport Beach Municipal Code (NBMC), the following findings and facts in support of such findings are set forth:

Finding:

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

Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The maximum floor area limitation is 4,420 square feet and the proposed floor area is 4,200 square feet.
 - b. The proposed development complies with the required setbacks, which are five feet along the front property line abutting West Ocean Front, five feet along the rear property line abutting the alley, and three feet along each side property line.
 - c. The highest guardrail/parapet is below 24 feet from established grade and the highest ridge is no more than 29 feet from established grade. The proposed development complies with all height requirements.
 - d. The proposed development provides a two (2)-car garage, meeting the minimum garage requirement for a single-family residence with less than 4,000 square feet of habitable floor area. The proposed development also includes a one (1)-car covered carport.

- e. The proposed development complies with the minimum 9.0-foot North American Vertical Datum of 1988 (NAVD 88) top of slab elevation requirement for interior living areas of new structures.
2. The neighborhood is predominantly developed with two (2)- and three (3)-story single and multi-family residences. The proposed three-story design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development.
3. The existing 15-foot encroachment of the patio is allowed pursuant to Title 21 Appendix C (Oceanfront Encroachment Policy Guidelines). The project has been conditioned to remove all encroachments within the 15-foot Ocean Front encroachment area that are inconsistent with the existing Ocean Front encroachment permit. No other work is proposed within the encroachment area.
4. A Coastal Hazards Report was prepared by PMA Consulting, Inc. dated November 7, 2022. The project site is separated from the water by a wide sandy beach. The report concludes that the proposed project is reasonably safe from the shoreline erosion due to lack of wave or wakes that can erode sand from the beach. The site is approximately 350 feet from the mean high tide line. The report also concludes that the project will be reasonably safe from future sea level rise assuming an increase up to 10.9 feet NAVD 88 (the likely range for sea level rise over 75-year design life of the structure based on low risk aversion estimates for sea level rise provided by the State of California, Sea Level Rise Guidance: 2018 Update).
5. The report also assesses risks from sea level rise using the Medium-High Risk Aversion scenario, which assumes an increase in 6 feet (13.7 feet NAVD 88) over the next 75 years. The site has not historically been subject to any wave overtopping, nor is overtopping waters over the next 75 years expected to reach the subject site, even under extreme conditions. The finish floor elevation of the proposed dwelling is 14.37 feet NAVD88 which complies with the minimum 9.0-foot (NAVD 88) elevation standard for new structures and exceeds the minimum requirements for sea level rise under both scenarios (10.9 and 13.7 feet NAVD 88). The project should be designed for adaptability up to an elevation of 14.4 feet (NAVD 88). Flood shields (sandbags and other barriers) can be deployed across the openings to protect and prevent flooding to the structure. Based on the data provided, the study provides no recommendations for shoreline protection devices and concludes that coastal hazards will not impact the property over the next 75 years, as the proposed project has minimal risk from flooding.
6. The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c) – (Waterfront - Development Standards). The Acknowledgement of Coastal Hazards is included as a condition of approval that will need to be recorded prior to the issuance of building permits.
7. Pursuant to Newport Beach Municipal Code (NBMC) Section 21.30.030(C)(3)(i)(iv) - (Natural Landform and Shoreline Protection), the property owner will be required to enter into an agreement with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or

destruction by coastal hazards (e.g., waves, erosion, and sea level rise). The Waiver of Future Protection is included as a condition of approval that will need to be recorded prior to final building inspection.

8. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of a building permit. 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 the CBC prior to building permit issuance.
9. The property is located approximately 350 feet east of coastal waters. Pursuant to Section 21.35.030 (Construction Pollution Prevention Plan) of the Municipal Code, a Construction Pollution Prevention Plan (CPPP) is required to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived from construction chemicals and materials. A CPPP has been provided and construction plans and activities will be required to adhere to the CPPP.
10. The project design addresses water quality with a construction erosion control plan and a post-construction drainage system that includes drainage and percolation features designed to retain dry weather runoff and minor rain event runoff on-site. Any water not retained on-site is directed to the City's storm drain system.
11. The project site is not located adjacent to a coastal view road or public viewpoint, as identified in the Coastal Land Use Plan. The nearest public view road occurs along West Coast Highway crossing over the bridge to and from Huntington Beach. The project site is adjacent to a public beach. However, the project will replace an existing single-family residence with a new single-family residence that complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing and anticipated neighborhood pattern of development. Therefore, the project does not include any unique features, does not have the potential to degrade the visual quality of the Coastal Zone, or result in significant adverse impacts to public views.
12. The front of the proposed residence, which is visible from the public boardwalk and bay, contains substantial architectural treatment and visual interest, in keeping with the design guidelines of the Zoning Code. The design includes modulation of volume throughout the structure, an increased front setback along the public boardwalk beyond what is required by code, and low walls that prevent the appearance of the site from being walled off from the boardwalk and bay. 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.*

Facts in Support of Finding:

1. The site is located between the nearest public road and the sea or shoreline; however, the project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities. The existing residential development neither provides nor inhibits public coastal access. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project replaces an existing single-family residence with a new single-family residence. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities.
2. The project is designed and sited so as not to block or impede existing public access opportunities and all development will occur within the confines of private property. Coastal access is currently provided and will continue to be provided by street ends throughout the Balboa Peninsula with access to the beach and water. The nearest vertical access points are at the 62nd and 61st Street ends, each located less than 100 feet from the subject property. The project does not include any features that would obstruct access along these routes.
3. The existing 15-foot encroachment of the patio is allowed pursuant to Title 21 Appendix C (Oceanfront Encroachment Policy Guidelines). The project has been conditioned to remove all inconsistent encroachments within the 15-foot Ocean Front encroachment area. The existing patio does not affect public views or access to the public beach.

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 the Coastal Development Permit (PA2022-0295), subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the

Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code (NBMC). 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 16TH DAY OF MARCH, 2023.



Jaime Murillo
Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

Planning Division

1. The development shall be in substantial conformance with the approved site plan, floor plans, and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new Coastal Development Permit.
3. Coastal Development Permit No. PA2022-0295 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 (NBMC), unless an extension is otherwise granted.
4. Prior to the issuance of a building permit, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of development. The letter shall be scanned into the plan set prior to building permit issuance.
5. Prior to final building permit inspection, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices to address the threat of damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards that may affect the property, or development of the property, today or in the future. The agreement shall be binding against the property owners and successors and assigns.
6. Prior to the issuance of building permits, a Certificate of Compliance shall be submitted and recorded by the applicant.
7. Prior to the issuance of a building permit, the applicant shall submit a final construction erosion control plan. The plan shall be subject to the review and approval by the Building Division.
8. Prior to the issuance of a building permit, the applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.

9. Prior to the 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.
10. 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.
11. *This Coastal Development Permit does not authorize any development seaward of the private property, including the West Ocean Front Encroachment Area.*
12. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
13. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers.
14. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
15. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. 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. 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.
18. 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.
19. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that

produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday, and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Saturdays, Sundays or holidays.

20. 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

21. 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.
22. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
23. 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.
24. 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.

25. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner, or the leasing agent.
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 **Sanderson Residence including, but not limited to, Coastal Development Permit (PA2022-0295)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Public Works Department

27. *Prior to the issuance of a building permit, the applicant shall submit a construction management plan for review and approval by the Public Works Department. The construction management plan shall demonstrate that the applicant/owner will have sufficient and guaranteed access to the site through private property and will not impact public access including the public right-of-way and alley. Said plan shall also indicate areas for the storage of construction equipment and materials.*
28. Prior to issuance of final building permits, all encroachments within the Ocean Front Encroachment area that are inconsistent with the existing Ocean Front Encroachment Permit shall be removed. The existing gate shall be modified to open inward of (i.e. towards) the subject property.
29. A new sewer clean out shall be installed on the existing sewer lateral per City Standard 406.
30. All improvements shall be constructed as required by Ordinance and the Public Works Department.

RESOLUTION NO. ZA2023-016

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING A MINOR USE PERMIT TO ALLOW A TYPE 41 (ON-SALE BEER AND WINE) ALCOHOLIC BEVERAGE CONTROL LICENSE AT AN EXISTING CAFÉ, SCRATCH BAKERY CAFÉ, IN THE FASHION ISLAND SHOPPING CENTER, LOCATED AT 561 NEWPORT CENTER DRIVE (PA2022-109)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Real Food Companies, with respect to property located at 561 Newport Center Drive, and legally described as Parcel 1, Block 221, Page 30 requesting approval of a minor use permit.
2. The applicant requests a minor use permit for an existing eating and drinking establishment, Scratch Bakery Café, to operate with a Type 41 (On-Sale Beer and Wine) Alcoholic Beverage Control (ABC) license. The café operates an accessory outdoor dining patio within an adjacent common area. The request does not include any physical changes to the existing establishment. No late hours (after 11:00 p.m.), live entertainment, or dancing is proposed.
3. The subject property is designated Regional Commercial (CR) by the General Plan Land Use Element and is located within the North Newport Center (PC56) Zoning District.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on March 16, 2023 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 includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The existing café is located within Fashion Island and has an associated outdoor dining patio within a common area of the mall. The proposed project is a request to obtain an ABC

license and does not include any interior or exterior alterations to the café and no increase in gross floor area or net public area.

SECTION 3. REQUIRED FINDINGS.

Alcohol Sales

In accordance with Section 20.48.030 (Alcohol Sales) of the NBMC, the Zoning Administrator shall consider the following findings prior to the approval of a new or amended alcohol sales establishment:

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 (Alcohol Sales) 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.*
- a. The property is in an area the Newport Beach Police Department (NBPD) has designated as Reporting District (RD) 39. RD 39 is bordered to the north by San Joaquin Hills Road, to the east by MacArthur Boulevard, to the south by East Coast Highway, and to the West by Jamboree Road. The 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 California Department of Alcoholic Beverage Control (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. RD 39 is considered a higher crime area, as compared to other RDs within the City. The RD 39 crime count for 2021 is 334, which is 81 percent over the citywide average of 140 crimes per RD. The higher crime rate is largely attributable to the concentration of commercial land uses and the high ratio of nonresidential to residential uses. For example, the RD to the southeast, RD 44, contains the entire commercial corridor along East Coast Highway within Corona del Mar. RD 44 is smaller in land area than RD 39 yet it maintains a comparable number of crimes due to the similarly high ratio of nonresidential to residential uses. The remaining neighboring RDs, 43 and 47, are primarily residential with few commercial uses. As a result, they have a significantly lower number of crimes. Their crime count is 37 and 50, respectively.
- b. The NBPD has reviewed the project and has no objection to the Type 41 ABC license, subject to appropriate conditions of approval which have been incorporated into Exhibit "A" of this Resolution. These conditions include provisions such as the requirement that

all owners, managers, and employees selling alcoholic beverages shall undergo and complete a certified training program in responsible methods and skills for selling alcoholic beverages, a prohibition on live entertainment, and no games or contests requiring or involving the consumption of alcoholic beverages.

- ii. *The number of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*
 - a. Compared to the adjacent RDs, RD 39 had a higher percentage of alcohol-related crimes in 2021. The higher number of crimes is to be expected given the crime figure includes driving under the influence, public intoxication, and liquor law violations. These are crimes associated with commercial establishments. RD 43 and 47, which are primarily residential, are unlikely to have similar crime incidents. The alcohol-related crimes of RD 39 were slightly higher than that of its neighbor RD 44 however the difference was not substantial enough to warrant objection from the NBPD.
- 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.*
 - a. The café is located within the Fashion Island mall and features an interior dining space and an accessory outdoor patio adjacent to the common area of the mall. Fashion Island does not abut any sensitive land uses and is separated from other structures and uses by parking lots, a busy roadway, and other commercial uses. Residential uses are permitted in the northern sections of PC56; however, the café is separated from the nearest residential use by over 1,000 feet. There are no day care centers, hospitals, parks, places of worship, or schools within the mall. While some minors are expected to be present at the mall, the mall is intended to attract a variety of users and not specifically minors.
 - b. Eating and drinking establishments with incidental alcohol service are common within the mall and the ABC license is not anticipated to alter the operational characteristics of the current café such that it becomes detrimental to the area.
 - c. Condition of approval no. 21 prohibits the café from operating as a bar or tavern which should help ensure compatibility with the surrounding businesses. Late hours are not proposed as part of this project nor are they allowed by this use permit.
- iv. *The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.*
 - a. There are several other restaurants within the mall. These include Fleming's Steak House, True Food Kitchen, Back Bay Tavern at Whole Foods Market, P.F. Chang's and 59th & Lex Café'. Generally, these restaurants operate with either a Type 41 (On-Sale Beer and Wine) or a Type 47 (On-Sale General) ABC license. There is no evidence suggesting that these uses have been detrimental to the surrounding vicinity.

Additionally, there is no evidence to suggest that the approval of this alcohol sales license would create any new objectionable conditions.

- v. *Whether or not the proposed amendment will resolve any current objectionable conditions.*
- a. No objectionable conditions are presently occurring at the Property.
- b. Approving the Project will allow the existing café to diversify its offerings as a convenience to its patrons. The NBPD acknowledges the addition of alcohol to the existing restaurant is a new privilege; however, the project has been reviewed and conditioned to help ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the NBMC are maintained and that a healthy environment for residents and businesses is preserved.

Minor Use Permit

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

Finding:

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

Facts in Support of Finding:

1. The Land Use Element of the General Plan designates the project site as Regional Commercial (CR), which is intended to provide retail, entertainment, service, and supporting uses that serve local and regional residents. The proposed eating and drinking establishment with alcoholic beverage services is a use that serves local and regional residents and is consistent with land uses in the CR land use designation.
2. Land Use Element Policy LU 6.14.1 Fashion Island ["CR" designation] is intended to: *Provide the opportunity for an additional anchor tenant, other retail, and/or entertainment and supporting uses that complement, are integrated with, and enhance the economic vitality of existing development. A maximum of 213,257 square feet of retail development capacity specified by Table LU2 (Anomaly Locations) may be reallocated for other permitted uses in Newport Center, provided that the peak hour vehicle trips generated do not exceed those attributable to the underlying retail entitlement.*
The project does not include the addition of floor area, an increase in the number of seats for the café, or the transfer of development capacity to the project site. Scratch Bakery Café is intended to serve employees of and visitors to the Fashion Island Mall and the surrounding area. The applicant requests the addition of alcohol service to an eating and drinking establishment, which will complement the food served daily. The project is not expected to result in increased traffic.

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. Fashion Island is the primary retail hub within Newport Center and is developed with retail, dining, and commercial entertainment uses. Permitted uses for Fashion Island include uses in support of the existing retail, dining, and commercial entertainment uses. Fashion Island is intended to be a vibrant regional retail and entertainment center and a day/evening destination with a wide variety of uses that will serve visitors, residents, and employees of the area. A café with alcoholic beverage sales is consistent with the purposes of the Fashion Island Sub-Area of PC56.
2. Eating and drinking establishments are permitted uses within the Fashion Island Sub-Area of the North Newport Center Planned Community Zoning District. Pursuant to the Planned Community Text, the on-premises sale of alcohol in conjunction with an eating and drinking establishment requires a minor use permit.
3. The proposed eating and drinking establishment is within the limits of the cumulative floor area allocated for Fashion Island.
4. No physical improvements are proposed as part of this project therefore no development standards from PC56 are applicable at this time.

Finding:

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

Facts in Support of Finding:

1. The Fashion Island mall is developed around an internal pedestrian network and surrounded by parking lots, providing little or no connectivity to adjoining office, entertainment, or residential areas. The proposed project should have no interaction with the surrounding uses in the vicinity and therefore should be compatible.
2. Fact (iv)(a) in support of Finding A incorporated by reference.

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 application includes the addition of an ABC license to an existing bakery café. There is no addition of floor area associated with the project. The size of the kitchen does not change as part of the project nor is there an increase in the number of seats.
2. The Fashion Island mall is an existing development that is adequately served by utilities and can be accessed by emergency vehicles.
3. Fashion Island features a shared parking pool provided through on-site surface parking lots and parking structures. There should be no noticeable change in parking demand as a result of this project as the project is simply an enhanced menu for customers that would otherwise already be visiting the mall to shop and dine.

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. Scratch Bakery Café has been in operation since 2021, and a café has been in operation at the tenant space since 2010. The café has not proven detrimental to the surrounding businesses. Adding alcoholic beverage options to the menu is not expected to change this, given the included conditions of approval from the NBPD.
2. The café with expanded privileges should have a positive impact on the area. The café serves both the local shoppers and visitors to Fashion Island. It promotes economic activity in an area which the General Plan intends to be busy with a variety of commercial uses.
3. The Project 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 within the facility, adjacent properties, or surrounding public areas, sidewalks, or parking lots of the restaurant, during business hours, if directly related to the patrons of the establishment.

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 PA2022-109, 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 16th DAY OF March, 2023.



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 and floor plans stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. 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.
3. *The hours of operation for the restaurant shall be limited to 7 a.m. to 9 p.m., daily.*
4. The project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
5. The Applicant shall comply with all federal, state, and local laws. A material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
6. This Use Permit may be modified or revoked by the Zoning Administrator should they determine that the proposed uses or conditions under which the use 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 so as to constitute a public nuisance.
7. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the NBMC. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

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

8. 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.

9. No outside paging system shall be utilized in conjunction with this establishment.
10. 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.
11. 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.
12. 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.
13. 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).
14. 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.
15. 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.
16. 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.
17. 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.

Police Department

18. The approval is for an eating and drinking establishment with on-sale alcoholic beverage service. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be a Type 41 (On-Sale Beer and Wine) license, in conjunction with the restaurant as the principal use of the facility.
19. All owners, managers, and employees must abide by all requirements and conditions of the Alcoholic Beverage License.
20. 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.
21. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge, or nightclub as defined by the NBMC.
22. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall always 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.
23. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
24. There shall be no live entertainment or dancing allowed on the premises.
25. No games or contests requiring or involving the consumption of alcoholic beverages shall be allowed.
26. There shall be no reduced-price alcoholic beverage promotions after 9 p.m.
27. Food service from the regular menu shall be made available to patrons until closing.
28. 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.

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29. 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.
 30. "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).
 31. Strict adherence to maximum occupancy limits is required.
 32. The Applicant shall maintain a security recording system with 30-day retention and make those recordings available to police upon request.
 33. 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.
 34. No off-sales of alcohol shall be permitted.
 35. 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 **Scratch Bakery Café Alcohol License** including, but not limited to, **Minor Use Permit (PA2022-109)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorney's 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 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.

RESOLUTION NO. ZA2023-017

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A MINOR USE PERMIT TO CREATE A PRIVATE DINING ROOM (EATING AND DRINKING ESTABLISHMENT) WITH ALCOHOL SERVICE AND NO LATE HOURS LOCATED AT 501 30TH STREET (PA2022-105)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by DSH Industries, LLC (Applicant), with respect to the property located at 501 30th Street, and legally described as Lot No. 1 of Tract No. 16292 (Property), requesting approval of a minor use permit.
2. The Applicant requests to operate a small 10-seat private dining room in conjunction with an existing restaurant, ARC Butcher & Baker, located at 417 30th Street. The proposed use would replace the existing ARC Bottle Shop and would remove the Type 20 (Off-Sale Beer & Wine) Alcoholic Beverage Control (ABC) License. The private dining room would serve food and alcohol using ARC Butcher & Baker's existing Type 41 (On-Sale Beer & Wine – Eating Place) and Type 58 (Caterer's Permit) ABC Licenses. The operating hours would be from 10 a.m. to 10 p.m., daily. If approved and implemented, this Minor Use Permit would supersede Minor Use Permit No. UP2021-003 (Project).
3. The Property is designated Mixed-Use Horizontal (MU-H4) by the General Plan Land Use Element and is located within the Mixed-Use Cannery Village and 15th Street (MU-CV/15TH ST) Zoning District.
4. The Property is located within the coastal zone. The Coastal Land Use Plan category is Mixed-Use Horizontal (MU-H) and it is located within the Mixed-Use Cannery Village and 15th Street (MU-CV/15TH ST) Coastal Zone District. The project is exempt from the requirements of a Coastal Development Permit (CDP) because there is no expansion in floor area and no additional parking is required; therefore, the proposed changes do not constitute any changes in land use that are anticipated to result in an intensification nor a de-intensification of land use.
5. A public hearing was held on March 16, 2023, 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 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 proposal is to occupy an existing nonresidential tenant space with a new private dining room (i.e., eating and drinking establishment land use). There will be no significant improvements to the interior of the building and no expansion of floor area. Given there is no change to the amount of parking required, there is also no anticipated increase in intensity.

SECTION 3. REQUIRED FINDINGS.

Alcohol Sales

Although there is a net reduction in alcohol licenses with no new licenses being proposed, the Project will still include alcohol sales and service onsite. In accordance with Section 20.48.030 (Alcohol Sales) of the NBMC, the following findings and facts in support of the findings for a use permit are set forth:

Finding

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

Facts in Support of Finding

In finding that the proposed use is consistent with Section 20.48.030 (Alcohol Sales) of 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 crime rate in the subject reporting district (RD 15) as well as two (2) of the three (3) adjacent RDs (Reporting Districts) are over the City average. RD 15 contains the large commercial shopping center known as The Landing at 32nd Street and Balboa Boulevard and much of Via Lido and Balboa Boulevard. The purpose of the Zoning of these beach areas is to provide various commercial and retail uses to support the surrounding residential area, as well as the surrounding tourist destinations. Therefore, these beach areas with a higher concentration of commercial land uses tend to have a higher crime rate than adjacent RDs with more residential development.
 2. The Newport Beach Police Department (NBPD) reviewed the Project and has no objections given the limited operation, the net reduction in alcohol licenses, and the conditions of approval contained in Exhibit "A."

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

1. Due to the high concentration of commercial land uses, the calls for service and number of arrests are greater than adjacent RDs. Additionally, this is the beach area that is considered one of the most significant tourist areas of the City.
2. The NBPd reviewed the Project and has no objections given the limited operation, the net reduction in alcohol licenses, and the conditions of approval contained in Exhibit "A."

iii. The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.

1. The tenant space is located on the ground floor of a mixed-use building with residential units above. The surrounding area is mixed-use with residential and various commercial services including offices, personal services, retail, and eating and drinking establishments of a similar nature. The residential uses are intermixed amongst these uses, mostly on second floors. The neighborhood is intended and designed for a mix of residential and commercial uses. The nearest park, Lido Park, is approximately 600 feet northeast of the site. There is one (1) church more than 500 feet north. Other sensitive land uses above are not located within proximity of the subject building.

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

1. The Project will result in the removal of an existing Type 20 (Off-Sale Beer & Wine) Alcoholic Beverage Control (ABC) License.
2. Several other establishments along 32nd Street, Balboa Boulevard and Via Lido currently have active ABC Licenses, most of which are bona fide eating and drinking establishments and are not defined as bars, lounges or nightclubs by the NBMC. Approximately 200 feet west on the same block is ARC Butcher & Baker. Approximately 350 feet across 30th Street on the south corner of 30th Street and Newport Boulevard is Helmsman Ale House (formerly Newport Brewing Company). On the opposite corner is Porro Vita Juice store. North of Porro Vita along Newport Boulevard is Mama Ds. Across Newport Boulevard is Malarky's Irish Pub (the only bar in the vicinity). North of Malarky's is The Landing Shopping Center with Chipotle, Gina's Pizza, and Chihuahua Cervezeria.
3. The Project is a unique operation that is conditioned to close at 10 p.m. There are appropriate conditions in place to prevent the establishment from operating as a bar, lounge, or nightclub. The proximity to other food service establishments does not appear to create foreseeable concern.

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

1. There are no current objectionable conditions at this location.

Minor Use Permit

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

Finding

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

Facts in Support of Finding

1. The General Plan designates the site as Mixed-Use Horizontal (MU-H4), which applies to areas where it is the intent to establish a cohesively developed district or neighborhood containing multi-unit residential dwelling units with clusters of mixed-use and/or commercial structures on interior lots of Cannery Village and 15th Street on Balboa Peninsula. The proposed use will occupy the ground-floor nonresidential tenant space of an existing mixed-use building that has a residential unit above.
2. The Project is consistent with the MU-H4 designation, as it is intended to provide a service not only to visitors, but also to residents within the immediate neighborhood and surrounding area.
3. Several mixed-use structures including office, personal service, and eating and drinking establishment uses exist nearby and are complementary to the surrounding commercial and residential uses.
4. 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 Property is in the Mixed-Use Cannery Village and 15th Street (MU-CV/15TH ST) Zoning District. The proposed private dining room is considered an eating and drinking establishment. This land use is allowed subject to the approval of a minor use permit (MUP) pursuant to Section 20.22.020 (Mixed-Use Zoning Districts Land Uses and Permit Requirements) of the NBMC.

2. The ground-floor tenant space is approximately 660 square feet and is occupied by ARC Bottle Shop, a retail sales use. The current parking requirement is one parking space for every 250 square feet of gross floor area or three spaces. The proposed private dining room will maintain 150 square feet of net public area with a single dining table and no more than ten seats. Section 20.40.060 (Parking Requirements for Food Service Uses) of the NBMC allows the review authority to establish a rate between one parking space for every 30 square feet and one space for every 50 square feet of net public area. In this case, given the limited size and nature of the operation with no patron turnover, staff recommends applying the lowest rate of one parking space for every 50 square feet of net public area. Therefore, there is a resulting requirement of three parking spaces, which is equivalent to the current requirement for the retail sales land use.
3. All criteria outlined by Section 20.48.030 (Alcohol Sales) of the NBMC have been considered and are analyzed in the preceding section of this Resolution.

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 operation of the use will be restricted to the hours between 10 a.m. and 10 p.m., daily. These hours are consistent with the business hours of other uses in the commercial area. It is expected to be harmonious with the residential uses nearby.
2. The existing ground-floor nonresidential tenant space is located within an existing two (2)-story mixed-use building accessible from 30th Street and the alley at the rear, which provides convenient access to motorists, pedestrians, and bicyclists.
3. The surrounding area contains various, retail, business office and visitor-serving commercial uses including restaurants and take-out eating establishments. The proposed use will be compatible with and complementary to the existing and permitted uses within the area.
4. The operational conditions of approval will help ensure compatibility with the surrounding uses. The Project has been conditioned to ensure that the business remains a private dining room and that it does not become a self-sufficient restaurant, bar, lounge, or nightclub.

Finding

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

Facts in Support of Finding

1. The Project will occupy an existing nonresidential tenant space, which has existed for nearly 20 years. There will be no material changes to the floor plan or alterations to the site that would compromise its suitability.
2. There are three (3) tandem parking spaces on-site, including two (2) for employees and one for a visitor to the tenant space. In addition, there is a fourth accessible space that is accessed from 30th Street. As conditioned, no more than two (2) employees will be on-site at any given time.
3. Original site plan approvals for the tenant space included a review to ensure adequate public and emergency vehicle access, and that public services, and utilities are provided. Any tenant improvement plans will be reviewed for compliance with applicable building and fire codes.

Finding

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

Facts in Support of Finding

1. The Project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The Applicant 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 Project will operate similarly to an eating and drinking establishment. It will serve the surrounding community in a commercial area designed for such uses. The service of alcohol is provided as a public convenience that is part of, and not separate from, a dining experience.

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 the Minor Use Permit filed as PA2022-105, 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 NBMC.
4. This resolution supersedes Zoning Administrator Resolution No. ZA2021-014, which upon vesting of the rights authorized by this Minor Use Permit, shall become null and void.

PASSED, APPROVED, AND ADOPTED THIS 16TH DAY OF MARCH, 2023.



Jaime Murillo
Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL**

(Project-specific conditions are in italics)

Planning Division

1. The development and operation shall be in substantial conformance with the approved floor plan and project description attached to the staff report 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 Minor Use Permit (MUP).
4. This MUP 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.
5. *The hours of operation shall be limited to between 10 a.m. and 10 p.m., daily. All patrons shall vacate the premise by the designated closing hour.*
6. *The net public area shall be limited to no more than 150 square feet. The private dining area shall have no more than 10 seats for patrons at any one time.*
7. *There shall be no more than two (2) employees on-site at any given time. All employees shall park in the spaces designated as "Employee Parking" on the approved site plan. The two spaces designated as "Visitor Parking" on the approved site plan shall always remain unobstructed and available to patrons.*
8. *The Project shall not be allowed to obtain its own Alcoholic Beverage Control (ABC) License. All alcohol service must be done through the existing Type 58 (Caterer's Permit) License.*
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 MUP or the processing of a new MUP.
10. 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 leasing agent.

11. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes. 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.
12. 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).
13. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10 p.m. and 8 a.m. on weekdays and Saturdays and between the hours of 10 p.m. and 9 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this MUP.
14. 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.
15. 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 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

16. 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.
17. 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.

18. 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 **ARC Private Dining Room including, but not limited to, the Minor Use Permit (PA2022-105)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorney's 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 the such proceeding. The applicant shall indemnify the City for all the City's costs, attorneys' fees, and damages that which City incurs in enforcing the indemnification provisions outlined in this condition. The applicant shall pay to the City upon demand any amount owed to the City under the indemnification requirements prescribed in this condition.

Police Department

19. All owners, managers, and employees serving or selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages within 60 days of hire. This training must be updated every three years regardless of the certificate expiration date. The certified program must meet the standards of the certifying/licensing body designated by the State of California. The establishment shall comply with the requirements of this section within 60 days of approval. Records of each owner's, manager's, and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.
20. Approval does not permit the premises to operate as a standalone restaurant, bar, tavern, cocktail lounge or nightclub as defined by the NBMC.
21. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under control of the licensee.
22. There shall be no live entertainment and no dancing by patrons, as defined by Section 5.32.010 of the NBMC. Amplified sound is prohibited.
23. Strict adherence to occupancy limits is required.
24. The exterior of the business shall be always 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 10 feet of the premises. Graffiti shall be removed within 48 hours of written notice from the City.
25. 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.

RESOLUTION NO. ZA2023-018

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A MINOR USE PERMIT TO ALLOW A TYPE 41 (ON-SALE BEER AND WINE – EATING PLACE) AND LIMITED LIVE ENTERTAINMENT FOR AN EXISTING RESTAURANT SPACE LOCATED AT 6800 WEST COAST HIGHWAY (PA2022-0208)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Abder Amokrane of Casablanca The Restaurant (Applicant), with respect to property located at 6800 West Coast Highway, and legally described as Lot 4 and Portion of Lot 3, Block 8, of the Seashore Colony Tract requesting approval of a minor use permit (MUP).
2. The applicant proposes to add a Type 41 (On-Sale Beer and Wine – Eating Place) Alcoholic Beverage Control (ABC) License and limited live entertainment to an existing restaurant space that is currently vacant. No physical alterations are proposed to the space and no late hours (after 11 p.m.) are requested. The current MUP, UP2016-047, would be superseded if the request is approved and implemented. In accordance with Newport Beach Municipal Code (NBMC) Chapter 5.25 (Operator License), the Applicant must also obtain an operator license from the Chief of Police, as they intend to offer alcoholic beverages for on-site consumption in combination with live entertainment (Project).
3. The subject property is located within the Commercial Visitor-Serving (CV) Zoning District and categorized as Visitor Serving Commercial (CV) by the Land Use Element of the General Plan.
4. The subject property is located within the coastal zone. The property is within the Commercial Visitor-Serving Coastal Zoning District and is categorized as Visitor Serving Commercial (CV-A) by the Coastal Land Use Plan. The Project is exempt from obtaining a coastal development permit because, if approved, the project would only allow for additional menu offerings and limited live entertainment and is not considered development.
5. A public hearing was held on March 16, 2023, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the NBMC. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This Project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 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 minor alterations to existing structures involving negligible or no expansion of use. The project does not propose physical alterations to the existing restaurant building. Rather, the project includes operational changes (i.e., limited live entertainment) and additional menu offerings (i.e., alcohol). The additional menu offerings and limited entertainment will not expand the use of the property beyond its current use (i.e., a restaurant).

SECTION 3. REQUIRED FINDINGS.

Alcohol Sales

In accordance with Section 20.48.030 (Alcohol Sales) of the NBMC, the Zoning Administrator shall consider the following findings prior to the approval of a new or amended alcohol sales establishment:

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 (Alcohol Sales) 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.*
 - a. The subject property is within an area the Newport Beach Police Department (NBPD) designates as Reporting District (RD) 17. RD 17 is located on the western edge of the City and runs from the intersection of 54th Street and Seashore Drive to its western terminus at the City limits. RD 17 includes the Newport Shores Community, the residences along West Ocean Front, and commercial uses along West Coast Highway. RD 17 is abutted by only one other reporting district; RD 16 to the east, with RD 24 and RD 15 beyond.
 - b. The 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 California Department of Alcoholic Beverage Control (ABC). Part One Crimes

are the eight most serious crimes defined by the FBI Uniform Crime Report: criminal homicide, rape, robbery, aggravated assault, burglary, larceny-theft, auto theft, and arson. RD 17 is considered and reported to ABC as a higher crime area, as compared to other RDs within the City. The RD 17 crime count for 2021 is 127, which is twenty-six (26) percent over the citywide average of 101 crimes per RD.

- c. The NBPD has reviewed the project and has no objection to the new Type 41 ABC license, subject to appropriate conditions of approval which have all been incorporated into Exhibit "A" of this Resolution. These conditions include provisions such as the requirement that all owners, managers, and employees selling alcoholic beverages shall undergo and complete a certified training program in responsible methods and skills for selling alcoholic beverages, a prohibition of the store from operating as a bar, tavern, cocktail lounge or nightclub, and the requirement that any substantial operational change require a subsequent review.

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

- a) In 2021, RD 17 had a higher percentage of alcohol-related crimes than the immediately adjacent RD 16 but had a significantly lower percentage than RD 24 and RD 15. The alcohol-related crimes of RD 16 were four percent lower than RD 17 while both RD 24 and RD 15 were 146 percent higher and 515 percent higher respectively. The higher number of alcohol-related crimes of RD 17 compared to the neighboring RD 16 is expected, given that the crime figure includes driving under the influence, public intoxication, and liquor law violations. These alcohol-related crimes are typically associated with commercial establishments. RD 16, which is almost exclusively residential, is unlikely to have similar crime incidents. The difference between the RD 17 and RD 16 was not substantial enough to warrant objection from the NBPD.

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.

- a) The restaurant is located at the intersection of West Coast Highway and Orange Street. The restaurant is abutted on all sides by residential uses. The nearest park, West Newport Park, is 125 feet away, across West Coast Highway. The public beach is located approximately 375 feet to the southwest of the site. There are no schools, child daycare facilities, or churches within a 500-foot radius of the site.

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

- a) There are 2 active Off-Sale ABC Licenses within one mile (5,280 feet) of the project site.

License Type	Address	Distance from Subject Property
Type 21 (Off-Sale General)	6710 W. Coast Highway	164 feet
Type 21 (Off-Sale General)	6110 W. Coast Highway	1,584 feet

- b) There are 5 active On-Sale ABC Licenses within one mile (5,280 feet) of the project site. All licenses belong to restaurants and there are no bars within the vicinity of the project.

License Type	Address	Distance from Subject Property
Type 47 (On-Sale General)	6700 W. Coast Highway	180 feet
Type 41 (On-Sale Beer and Wine)	6310 W. Coast Highway	885 feet
Type 41 (On-Sale Beer and Wine)	6204 W. Coast Highway	1,056 feet
Type 47 (On-Sale General)	211 62 nd Street	1,584 feet
Type 47 (On-Sale General)	5930 W. Coast Highway	2,112 feet

- c) While there are ABC licenses within proximity of the project site, the NBPD did not object to the addition of a new license to the area.

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

- a) There were three police dispatch events in 2021 to the 6800 West Coast Highway vicinity. None of the events resulted in arrests.
- b) The project was reviewed by the Water Quality and Code Enforcement Division. There are no active code complaints at the Project site and there are no objectionable conditions presently occurring at the property.

Minor Use Permit

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

Finding

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

Facts in Support of Finding:

1. The General Plan categorizes the site Visitor Serving Commercial (CV), which is intended to provide for either accommodations, goods, or services that will benefit visitors to the City. A food service establishment with alcohol is consistent with this land use category, as the restaurant will serve visitors enjoying the nearby public and staying in the nearby hotels.
2. Land Use Element Policy 1.5 (Economic Health) encourages a local economy that provides adequate commercial, office, industrial, and marine-oriented opportunities that provides employment and revenue to support high-quality community services. The existing restaurant has been without a tenant since 2020. The building is currently vacant and provides no benefit to visitors or the community. The Project will help facilitate a new restaurant operator moving into the space and using the suite for its intended commercial purpose of a restaurant.
3. The subject property is not part of a specific plan area.

Finding

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

Facts in Support of Finding

1. The Property is in the Commercial Visitor-Serving (CV) Zoning District. A restaurant with alcohol service and no late hours is a permitted use subject to the approval of a MUP pursuant to NBMC Section 20.20.020 (Commercial Zoning Districts Land Uses and Permit Requirements).
2. While live entertainment is not a specific land use, it is regulated by NBMC Chapter 5.28 (Live Entertainment Establishments). The restaurant will provide limited live entertainment in the form of a single dancer, performing for approximately 15 minutes, twice an evening. The dancer will use amplified, pre-recorded, music and will dance in an open area of the dining room and will visit each table. Condition of Approval no. 35 requires the operator to obtain a live entertainment permit pursuant to NBMC 5.28.020 (Permit Required).

3. As the operator will also be serving beer and wine (i.e., alcohol), Condition of Approval No. 28 requires the operator obtain an Operator License pursuant to NBMC Chapter 5.25 (Operator License for Establishments Offering Alcoholic Beverages for On-Site Consumption in Combination with Late Hours, Entertainment, And/or Dance).
4. The Project site has an existing 80-square-foot trash enclosure. This is more than double the minimum required size provided in NBMC chapter 20.30.120 (Solid Waste and Recyclable Materials Storage) and should be adequate.
5. Prior to the current restaurant configuration, the Project site was developed with a fast-food restaurant and a tattoo establishment. The remodel allowed for the expansion of the restaurant space by eliminating the tattoo establishment and the restaurant was converted from a fast-food eating and drinking establishment to a food service (no late hours) eating and drinking establishment. The elimination of the tattoo establishment and the conversion of the fast-food to food service (no late hours) ultimately resulted in a reduced parking demand as required by Table 3-10 of NBMC chapter 20.40.040 (Off-Street Parking Spaces Required).
6. The past restaurant, while considered a food service (no late hours) land use by the NBMC, operated as what is colloquially known as a fast-casual restaurant. Customers would wait in line to order from a service counter. Customers would then pick up their order from a service counter and return to their table to enjoy. This model of operation could accommodate a large volume of customers at any given time. The Project will operate more similarly to a traditional sit-down restaurant with customers being seated and ordering from a waiter. While the addition of alcohol and evening performances will encourage guests to stay at the restaurant for a longer duration, the Project does not anticipate servicing the same volume of customers per day.
7. The previous MUP allowed the restaurant to operate from 6 a.m. to 10 p.m. The current project proposes a reduction in hours with daily lunch service from 11 a.m. to 2 p.m. and dinner service from 5 p.m. to 9 p.m., Sunday to Thursday, and 5 p.m. to 10 p.m. on, Friday and Saturday.
8. The Property currently provides no onsite parking and is considered nonconforming. Given the project will have a reduction in hours of operation from the previous restaurant, will serve fewer customers per day, has no late hours, the walkability to the establishment from surrounding residences, hotels, and public spaces in the area, and the onsite bicycle rack, staff has determined the required parking ratio of one space per 40 square feet of net public area is appropriate. This parking rate is consistent with the previous MUP and does not represent an intensification in use from the past restaurant. Therefore, no additional parking is required.

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. Surrounding properties are developed with both residential uses and commercial uses. Commercial uses include retail, veterinary/boarding, other restaurants, and hotels to the east. The proposed establishment is compatible with the existing and permitted uses in the area.
2. The Project will continue to use the site as a restaurant, which is the historic land use of the site.
3. The design of the restaurant building should help minimize the potential for disturbance to neighboring residential properties. The restaurant orients toward West Coast Highway with doors opening toward the intersection of West Coast Highway and Orange Street. There are a limited numbers of doors along the side of the building facing the residence on Orange Street. The outdoor dining area is along the West Coast Highway side of the property, the furthest away from the residences as possible.
4. Given the proximity of the site to residential uses, conditions of approval have been incorporated into the resolution to minimize disturbances to the occupants. These conditions include but are not limited to Condition of Approval No. 27, which requires all doors and windows to be closed during the two nightly performances and Condition of Approval No. 22 which prohibits deliveries and trash pick-up between the hours of 10 p.m. and 7 a.m. on weekdays and Saturdays and between the hours of 10 p.m. and 9 a.m. on Sundays and Federal holidays.
5. Fact 7 in support of Finding C incorporated by reference.

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 has been reviewed by relevant City departments including the Building Division, Public Works Department, Fire/Life Safety Services, and Police Department. All comments have been incorporated into the resolution as Conditions of Approval.
2. Although no parking is provided on-site, the project is located on West Coast Highway, a commercial corridor through West Newport. The corridor has heavy vehicular and pedestrian activity. On-street parking is provided along West Coast Highway and Orange Street with multiple municipal parking lots on Seashore Drive. In addition, the restaurant benefits from high visitor foot traffic, nearby hotels, and close proximity to the Newport Shores and West Newport communities.

3. Fact 2 in support of Finding D incorporated by reference.

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. Fact 1 and 2 in support of Finding E are incorporated by reference.
2. 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. Conditions of Approval Nos. 6 and 7 have been carried over from UP2016-047 to ensure that the same considerations that allowed for the past restaurant to operate harmoniously with the surrounding land uses are continued.
4. The Applicant is required to obtain Health Department approval prior to opening for business and comply with the California Building Code to ensure the safety and welfare of customers and employees in the establishment.

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 the Minor Use Permit (PA2022-0208), 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 NBMC.

4. This resolution supersedes Minor Use Permit No. UP2016-047 (PA2016-191), which upon vesting of the rights authorized by this minor use permit, shall become null and void.

PASSED, APPROVED, AND ADOPTED THIS 16TH DAY OF MARCH, 2023.



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 and floor plans stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The Project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this MUP.
4. *The interior net public area shall not exceed 953 square feet and the exterior net public area shall not exceed 419 square feet.*
5. *The hours of operation for the establishment shall be limited to between the hours of 11:00 a.m. and 10:00 p.m., daily.*
6. *The use of amplified music within the outdoor dining area is prohibited.*
7. *Bicycle parking shall be provided on-site and shall be positioned to ensure that the bicycle rack and bicycles do not encroach into the public right-of-way.*
8. *Employees of the restaurant shall not use the alley or the northerly side setback area as a break area or smoking area.*
9. All proposed signs shall be in conformance with the provisions of Chapter 20.42 (Signs) of the NBMC.
10. This MUP shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the NBMC, unless an extension is otherwise granted.
11. This MUP may be modified or revoked by 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.

12. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require subsequent review by the Planning Division and potential amendment of this MUP.
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. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
15. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the NBMC. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

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

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 trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
19. 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.
20. 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.

21. 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).
22. 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.
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 on-site media broadcast, or any other activities as specified in the NBMC 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 **Casablanca The Restaurant including, but not limited to Minor Use Permit PA2022-0208**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Fire Department

26. No open flames permitted in connection with the live entertainment.

Water Quality and Code Enforcement Division

27. *All windows and doors, with the exception of required ingress and egress, shall be closed while the entertainment is performed.*

Police Department

28. *The applicant shall apply for and obtain an Operator License pursuant to NBMC 5.25.010.*
29. *The ABC License shall be limited to a Type41 (On-Sale Beer and Wine – Eating Place). Any substantial change to the ABC license type shall require subsequent review and potential amendment of the MUP.*
30. *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 may be cause for revocation of the MUP.*
31. *All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages within 60 days of hire. The certified program must meet the standards of the State of California. This training must be updated every three years regardless of certificate expiration date. Records of each owner's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.*
32. *The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.*
33. *No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under control of the licensee.*
34. *Live entertainment in the form of dance performances will be permitted between the hours of 7 p.m. and 9 p.m., daily. The performances shall be limited to two performances per night, each lasting approximately 15 minutes in length, and are permitted only within the interior dining area. Live music is not permitted.*
35. *The applicant shall obtain a Live Entertainment Permit issued by the City of Newport Beach.*
36. *Dancing by patrons, as defined in NBMC 5.32.010, is not permitted.*
37. *No games or contests requiring or involving the consumption of alcoholic beverages shall be allowed.*
38. *There shall be no reduced-price alcoholic beverage promotion after 9 p.m.*
39. *Food service from the regular menu shall be made available to patrons until closing.*

40. *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.*
41. *Any event or activity staged by an outside promoter or entity where the applicant, operator, owner of his employees or representatives share in any profits or pay any percentage of 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.*
42. *“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 or the sale of drinks is prohibited (excluding charges for prix fixe meals).*
43. *Strict adherence to maximum occupancy limits is required.*
44. *Approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the NBMC.*
45. *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, 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.*
46. *The Applicant shall maintain a security recording system with a 30-day retention and make those recordings available to the Police Department upon request.*



COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION
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ZONING ADMINISTRATOR ACTION LETTER

Subject: Thacker Berry Farms Strawberry Stand PA2023-0008
▪ Limited Term Permit

Site Location 2401 Irvine Avenue

Applicant Thacker Berry Farms

Legal Description Parcel 1 of Block 38, Page 14

On **March 16, 2023**, the Zoning Administrator approved a limited term permit (less than 90 days) to allow a temporary prefabricated wooden strawberry stand in the parking lot of Harbor Christian Church located at 2401 Irvine Avenue. The strawberry stand will occupy one parking space in the southeastern corner of the parking lot and will sell locally grown, fresh-picked strawberries to the community. The strawberry stand will be permitted to operate from March 30, 2023, to June 27, 2023.

LAND USE AND ZONING

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

I. FINDINGS

Pursuant to Section 20.52.040(G) (Limited Term Permits – Findings and Decision) of the Newport Beach Municipal Code (NBMC), the following findings and facts in support of those findings are set forth:

Finding:

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

Fact in Support of Finding:

1. Class 11 exempts the placement and use of seasonal or temporary items such as lifeguard towers, mobile food units, portable restrooms, or similar items. The proposed temporary strawberry stand will occupy one parking space within the

private parking lot of Harbor Christian Church for a limited time period and will not change the operational nature of the existing religious assembly use.

Finding:

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

Facts in Support of Finding:

1. The Limited Term Permit will allow a temporary strawberry stand to sell locally grown, fresh-picked strawberries on-site for a limited duration (less than 90 days), as conditioned.
2. The operation of the strawberry stand is limited to the hours between 10 a.m. to 5 p.m. to reduce the impact of noise and traffic to surrounding residents. The strawberry stand is allowed to be in operation between March 30, 2023, to June 27, 2023.
3. The proposed strawberry stand is approximately 8 feet in width and 8 feet in depth. The strawberry stand will occupy one parking space for a limited duration in the southeastern corner of the Harbor Christian Church parking lot. Queuing customers will gather within the parking space. The drive aisle is expected to remain free and clear for vehicle maneuvering and circulation.
4. The proposed strawberry stand is located in the Harbor Christian Church parking lot. Conditions of approval require the area of the strawberry stand to be maintained daily for the removal of trash. All trash shall be stored within the building or within the on-site trash enclosures, screened from view of neighboring properties.

Finding:

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

Facts in Support of Finding:

1. The subject lot is approximately 2 acres in size. Based on the site plan, there is adequate area to accommodate the proposed strawberry stand and existing uses without impacting vehicle circulation. The strawberry stand will occupy one parking space in the southeastern corner of the Harbor Christian Church parking lot for a limited duration (less than 90 days).

2. The lot is bound by Irvine Avenue to the north and east, Tustin Avenue to the west, and Santa Isabel Avenue to the south. The adjacent rights-of-way (Tustin Avenue, Santa Isabel Avenue, and Irvine Avenue) separate the lot from nearby residential properties within the R-1 (Single-Unit Residential) Zoning District to the south, residential properties in the City of Costa Mesa to the north and west and the Upper Back Bay to the east.
3. The strawberry stand will occupy one parking space for a limited time period and will not conflict with peak use hours for regular church services and daycare operations on-site.

Finding:

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

Fact in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

1. The proposed limited-duration strawberry stand will create nominal additional parking demand since it is small in size and operates only from 10 a.m. to 5 p.m., daily, and may close early if the stand sells out of strawberries for the day. The single parking space that the strawberry stand will occupy will not have a detrimental effect on parking demand within Harbor Christian Church since the space is typically underutilized for most of the week due to religious services primarily being offered on the weekends.
2. The proposal does not include any additional attractions that would increase the visiting time for patrons. Patrons visiting the strawberry stand are not expected to linger onsite after making a purchase, such that there will be adequate turnover in the parking lot.

Finding:

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

Facts in Support of Finding:

1. The General Plan land use category for this site is PI (Private Institutions). The PI category is intended to provide for privately owned facilities that serve the public, including places for religious assembly, private schools, health care, cultural institutions, museums, yacht clubs, congregate homes, and comparable facilities. The proposed use is accessory to the existing religious assembly use, will be used for a limited duration on-site, and will not impede use of the site consistent with the PI designation.
2. The site is located in the PI (Private Institutions) Zoning District. The PI designation is intended to provide for areas appropriate for privately owned facilities that serve the public, including places for assembly/meeting facilities (e.g., religious assembly), congregate care homes, cultural institutions, health care facilities, marinas, museums, private schools, yacht clubs, and comparable facilities. The proposed use is ancillary to the existing religious assembly use, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the PI designation. The PI Zoning District allows temporary uses as specified within the Zoning Code and the proposed limited-duration use is consistent with this designation.
3. The site is located in the PI (Private Institutions) land use category of the Coastal Land Use Plan and is within the PI (Private Institutions) Coastal Zone District. The PI designation is intended to provide for areas appropriate for privately owned facilities that serve the public, including places for assembly/meeting facilities (e.g., religious assembly), congregate care homes, cultural institutions, health care facilities, marinas, museums, private schools, yacht clubs, and comparable facilities. Table 21.26-1 of the NBMC indicates that temporary uses and accessory structures are allowed within the PI Coastal Zone District. As the project is the temporary placement of a small structure for retail sales of strawberries and other fresh fruits within a private parking lot, it is exempt from obtaining a coastal development permit consistent with Section 21.52.035 (Projects Exempt from Coastal Development Permit Requirements) of the NBMC. The project's operation is not within a sensitive area and is further not expected to prove detrimental to any coastal resources, including access and views.
4. The site is not located within a specific plan area.

II. CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan except as noted in the following conditions.
2. Anything not specifically approved by this Limited Term Permit is prohibited and must be addressed by a separate and subsequent review.
3. *The strawberry stand shall be located within the southeastern corner of the Harbor Christian Church parking lot, as shown on the site plan (Attachment No. ZA 2). The strawberry stand shall occupy a maximum of one parking space.*
4. *The strawberry stand shall be limited to the sale of strawberries and other fruits. No alcohol or prepared food shall be sold.*
5. *The temporary strawberry stand is permitted on-site for a duration between March 30, 2023, to June 27, 2023. Operation of a strawberry stand outside of the dates specified is prohibited.*
6. *Operation of and access to the strawberry stand shall be limited to the hours of 10 a.m. to 5 p.m., daily.*
7. *The strawberry stand shall comply with the noise standards of Chapter [10.26 \(Community Noise Control\)](#) of the City of Newport Beach Municipal Code. The maximum noise generated by the proposed use shall not exceed a noise level equal to the value of the noise standard plus 20 DBA for any period of time, as measured using A-weighted slow response. The Code Enforcement Officer may require additional sound testing and attenuation at his/her discretion to comply with the noise standards of the Municipal Code.*
8. The strawberry stand and customer queuing shall not restrict vehicle circulation or obstruct the public right-of-way. Patrons shall be prohibited from standing or waiting within the adjacent parking stalls or vehicle drive aisle.
9. *The strawberry stand shall not block any firefighting equipment such as fire hydrants, standpipe connections, or fire department connections.*
10. *There shall be no hazardous materials stored within the strawberry stand.*
11. *There shall be no trash stored within the strawberry stand or within the vicinity of the stand. All trash shall be stored within the church building or within dumpsters stored in the on-site trash enclosures, screened from view of neighboring properties.*
12. *The exterior of the strawberry stand shall be maintained free of trash, litter, and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris, and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.*

13. *The strawberry stand shall be securely locked when not in use.*
14. *No objects (such as construction materials, etc.) shall be stored behind and/or in the vicinity of the strawberry stand.*
15. *The strawberry stand shall not be located in a fire access lane.*
16. *A type 2410BC fire extinguisher shall be located at the stand at all times.*
17. *All routes to the strawberry stand and service transactions shall be accessible.*
18. *Substantial barricades shall be placed around the strawberry stand. The barricades shall not impact the adjacent parking stalls or vehicular drive aisle.*
19. The Limited Term Permit is for the operation of one temporary strawberry stand for the hours and dates specified and does not authorize the use or operation of additional strawberry stands on-site.
20. Should the temporary strawberry stand become a detriment to the public health, comfort, convenience, safety, and general welfare of the peace and quiet of the neighboring properties and their inhabitants, this permit may be revoked.
21. *The Community Development Director may impose whatever reasonable conditions are deemed necessary to assure that the strawberry stand is compatible with adjoining uses and does not result in significant negative impacts to the health, safety, peace, comfort and the welfare of persons residing or working in the general vicinity.*
22. To the fullest extent permitted by law, applicant shall indemnify, defend, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the **Thacker Berry Farms Strawberry Stand** including, but not limited to, **Limited Term Permit No. PA2023-0008**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

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

Prepared by:

Approved by:



Oscar Orozco
Assistant Planner



Benjamin M. Zdeba, AICP, Zoning Administrator

CC/oo

Attachments: ZA 1 Vicinity Map
 ZA 2 Site Plan

Attachment No. ZA 1

Vicinity Map

VICINITY MAP

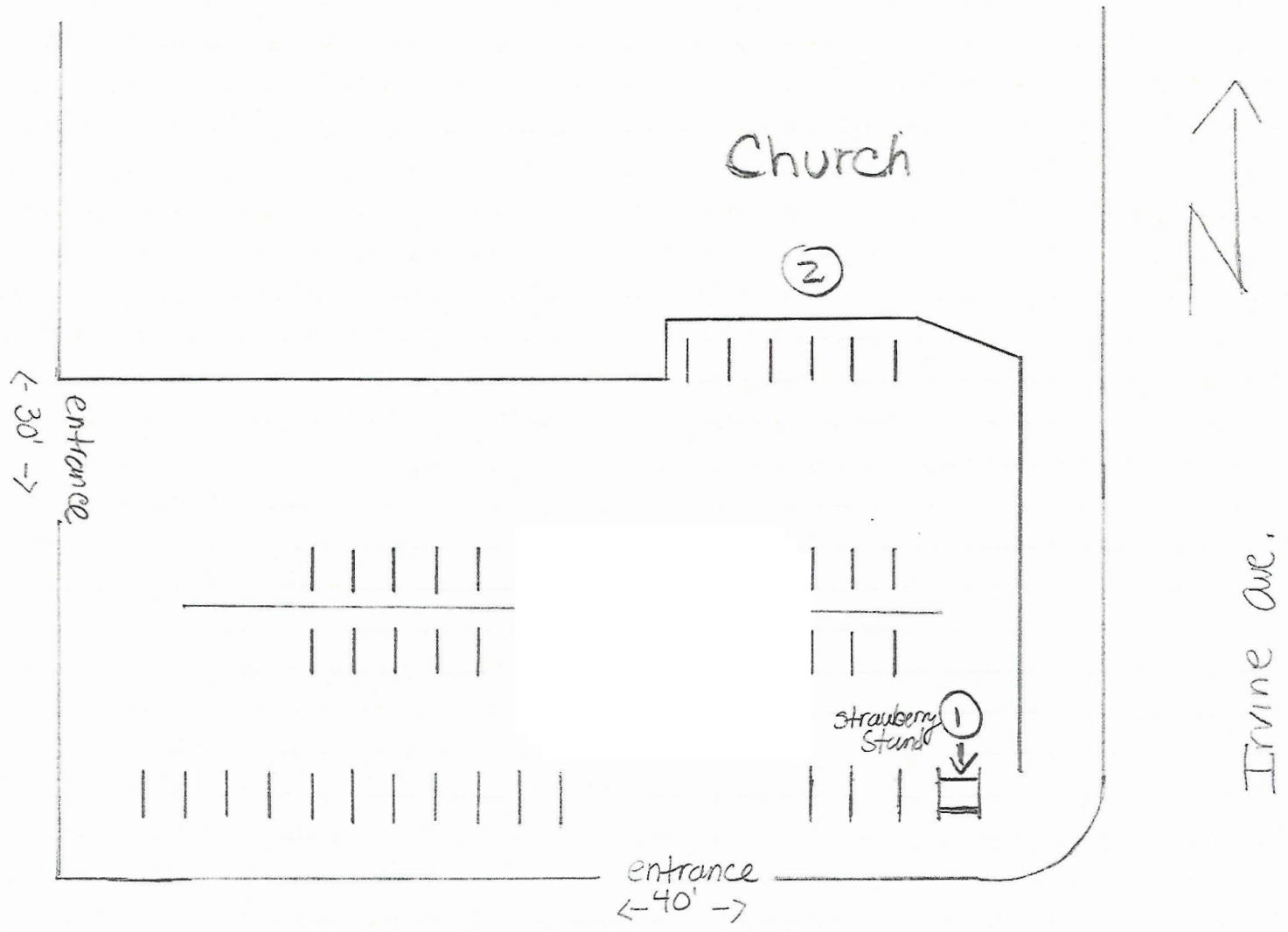


Limited Term Permit
PA2023-0008

2401 Irvine Avenue

Attachment No. ZA 2

Site Plan



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

Santa Isabel Ave.
 ← →

- 1. Strawberry Stand 8' X 8'
- 2. restroom facility

