



CITY OF NEWPORT BEACH COMMUNITY DEVELOPMENT DEPARTMENT PLANNING DIVISION ACTION REPORT

TO: CITY COUNCIL, CITY MANAGER, AND PLANNING COMMISSION
FROM: Seimone Jurjis, Assistant City Manager/Community Development Director
SUBJECT: Report of actions taken by the Zoning Administrator, and/or Community Development Director for the week ending July 28, 2023.

ZONING ADMINISTRATOR PUBLIC HEARING ACTIONS JULY 27, 2023

Item 1: Bland Residence Coastal Development Permit (PA2021-285)
Site Address: 125 and 125 ½ East Bay Front

Action: Approved by Resolution No. ZA2023-050

Council District

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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. ZA2023-050

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A COASTAL DEVELOPMENT PERMIT TO DEMOLISH AN EXISTING TWO (2)-UNIT RESIDENCE AND CONSTRUCT A NEW THREE (3)-STORY SINGLE-UNIT RESIDENCE WITH AN ATTACHED TWO (2)-CAR GARAGE AND JUNIOR ACCESSORY DWELLING UNIT LOCATED AT 125 & 125 1/2 EAST BAY FRONT (PA2021-285)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Studio William Hefner, with respect to property located at 125 & 125 ½ East Bay Front, and legally described Lot 17, Block 4, Section 5, Balboa Island, requesting approval of a coastal development permit (CDP).
2. The applicant requests a CDP to allow the demolition of an existing duplex, consisting of a front unit of approximately 1,824 square feet and a rear unit of approximately 528 square feet, and the construction of a new 2,252-square-foot, three (3)-story single-unit dwelling with a 169-square-foot junior accessory dwelling unit (JADU), and an attached 405-square-foot, two (2)-car garage. The project also includes the installation of hardscape, drainage, site walls, and patio improvements. The design complies with all applicable development standards and no deviations are requested. All improvements authorized by this CDP will be located on private property.
3. The subject property is categorized as Two Unit Residential (RT) by the General Plan Land Use Element and is located within the Two-Unit Residential, Balboa Island (R-BI) Zoning District.
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 it is located within the Two- Unit Residential, Balboa Island (R-BI) Coastal Zoning District.
5. A public hearing was held on July 27, 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 construction of limited numbers of new, small, structures including construction of up to six (6) dwelling units in urbanized areas. The proposed project consists of the demolition of one (1) two-unit dwelling and the construction of a new 2,252-square-foot, three (3)-story, single-unit dwelling with a 169-square-foot JADU, and an attached 405-square-foot, two (2)-car garage in the R-BI coastal zoning district.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The maximum floor area limitation is 2,900 square feet and the proposed floor area is 2,825 square feet.
 - b. The proposed development provides the minimum required setbacks, which are 5 feet along the front property line abutting East Bay Front, 3 feet along each side property line, and 5 feet along the rear property line abutting the alley.
 - c. The highest guardrail is less than 24 feet from established grade (9.00 feet North American Vertical Datum of 1988 (NAVD 88)) and the highest ridge is no more than 29 feet from established grade, which comply with the maximum height requirements.
 - d. The project includes garage parking for a total of two (2) vehicles, complying with the minimum two (2) garage parking requirement for single-family residences with less than 4,000 square feet of habitable floor area. A JADU does not require a dedicated parking space.

2. The neighborhood is predominantly developed with a mix of two (2)-story single-unit and two (2)-unit dwellings with the occasional three (3)-story residence. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development and applicable development standards.
3. The Project proposes to demolish the existing duplex on-site to construct a single-family residence and attached JADU. 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 a JADU 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 single-family and accessory dwelling unit land uses. Under Coastal Land Use Plan Table 2.1.1-1, the Two Unit Residential (RT) category is intended to provide primarily for two (2)-family residential development such as duplexes or townhomes. Implementation Program (IP) Table 21.18-1 shows “Single-Unit Dwellings – Detached” and “Accessory Dwelling Units” as allowed uses in the R-BI Coastal Zoning District. Therefore, the project of a single-family residence and accessory dwelling unit to replace the existing duplex is consistent with the R-BI zoning and land use designations and does not result in a loss of residential density.
4. A Coastal Hazards Report and Sea Level Rise Analysis was prepared for the project by GeoSoils, Inc., dated September 9, 2021. The report analyzes future sea level rise scenarios over the next 75 years (i.e., the life of the structure). The report assumes a 3.2-foot increase to the current maximum bay water level of 7.7 feet (NAVD 88), (i.e., 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 bay water level is estimated to reach approximately 10.90 feet (NAVD 88).
5. The project site is separated from the Bay by the public boardwalk and a City-owned bulkhead that is located outside of the property. The top of the bulkhead is currently at an elevation of 8.75 feet (NAVD 88). The Coastal Hazards Report and Sea Level Rise Analysis states the bulkhead will need to be raised in the future to protect from overtopping during high tide or storm events and to protect against future anticipated sea level rise. Because 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.
6. The finished floor elevation of the first floor of the Project is 9.00 feet (NAVD 88), which complies with the minimum 9.00-foot (NAVD 88) elevation standard for new structures.
7. Under NBMC Section 21.30.030(C)(3)(i)(iv) (Natural Landform and Shoreline Protection), 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. The property is located adjacent to coastal waters. A Construction Erosion Control Plan was provided to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived by construction chemicals and materials. The project design also addresses water quality through the inclusion of a post-construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event runoff on-site. Any water not retained on-site is directed to the City's storm drain system.
11. Pursuant to Municipal Code Section 21.35.050 (Water Quality and Hydrology Plan), due to the proximity of the development to the shoreline and the development containing more than 75 percent of impervious surface area, a Water Quality and Hydrology Plan (WQHP) is required. A preliminary WQHP has been prepared for the project by Toal Engineering, Inc. November 11, 2021. The WQHP includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, use of an LID approach to retain the design storm runoff volume on site, and documentation of the expected effectiveness of the proposed BMPs.
12. Proposed landscaping complies with Implementation Plan Section 21.30.075. A condition of approval is included that requires drought-tolerant species. Prior to issuance of building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
13. The project site is not located adjacent to a coastal view road or Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoint is at the Park Avenue Bridge that is approximately 700 feet to the west, however the project is not visible from the bridge due to distance and intervening structures. The Project is within the general viewshed of the harbor as seen from designated viewing points above the project site. The Project replaces an existing duplex with a single-family unit and junior accessory dwelling unit that comply with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing and anticipated

neighborhood pattern of development. The Project ultimately should blend into the skyline and does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts on existing public views.

14. The front of the proposed residence, which is visible from the public boardwalk and bay, contains architectural treatment and visual interest, in keeping with the design guidelines of the NBMC. The design uses glass guardrails which prevents the residence from appearing overly bulky or walled off from the boardwalk and bay.

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 proposed residence 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 along the Balboa Island Loop, which would not be impacted by the Project. Vertical access to the Balboa Island Loop is available via Park Avenue, approximately 50 feet north of the Property. The project does not include any features that would impede access along these routes.
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 complies 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 (PA2021-285), 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 27TH DAY OF JULY, 2023.



Benjamin M. Zieba, AICP, 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 and potentially 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. 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.
5. *Prior to the final building permit inspection, a waterproofing curb or similar design feature shall be constructed around the proposed residence as an adaptive flood protection device up to a minimum of 10.9 feet (NAVD88). Flood shields (sandbags and other methods) can be deployed across the openings to protect and prevent flooding to the structure.*
6. *Prior to issuance of a building permit, the Junior Accessory Dwelling Unit (JADU) shall require a deed restriction that prohibits the sale of the JADU separately and prohibits rental or leasing of the JADU for 30 days or less. The deed restriction will also require the owner of the Property to reside in either the primary dwelling or in the JADU. Owner occupancy is not required if the owner is another governmental agency, land trust, or housing organization within the meaning of Government Code 65852.22.*
7. *Prior to 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.*

8. *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.*
9. 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.
10. Prior to issuance of a building permit, the Applicant shall submit a final construction erosion control plan. The plan shall be subject to review and approval by the Building Division.
11. Prior to issuance of a building permit, 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.
12. Prior to issuance of a building permit, the Applicant shall submit a final drainage and grading plan. The plan shall be subject to review and approval by the Building Division.
13. This Coastal Development Permit does not authorize any development seaward of the private property.
14. All construction activities shall occur within private property and the use of mechanized equipment is prohibited within the Bay and public property.
15. 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).
16. 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.
17. 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.
- 18. All proposed accessory structures located within setback areas shall comply with applicable height limits consistent with NBMC Section 20.30.040 (Fences, Hedges, Walls, and Retaining Walls).
 - 19. 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.
 - 20. 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.
 - 21. 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.
 - 22. 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.
 - 23. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
 - 24. Construction activities shall comply with Section 10.28.040 (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.

25. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified 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

26. 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.
27. Should the Property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by the current property owner or agent.
28. This Coastal Development Permit shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code unless an extension is otherwise granted.
29. To the fullest extent permitted by law, 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 **Bland Residence including, but not limited to the Coastal Development Permit (PA2021-285)**. 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.