



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 Hearing Officer for the week ending August 11, 2023.

ZONING ADMINISTRATOR PUBLIC HEARING ACTIONS AUGUST 10, 2023

- Item 1: Byk Residential Condominiums Tentative Parcel Map and Coastal Development Permit (PA2023-0093)
Site Address: 205 28th Street Units A & B
Action: Approved by Resolution No. ZA2023-051 Council District 1
- Item 2: Bire II LLC Residential Condominiums Tentative Parcel Map and Coastal Development Permit (PA2023-0095)
Site Address: 310 Heliotrope Avenue
Action: Approved by Resolution No. ZA2023-052 Council District 6
- Item 3: Santiago Oxford Grantor Trust Residence Coastal Development Permit (PA2022-060)
Site Address: 2124 Santiago Drive
Action: Approved by Resolution No. ZA2023-053 Council District 3
- Item 4: Fletcher Residence Coastal Development Permit (PA2023-0044)
Site Address: 439 Harbor Island Drive
Action: Approved by Resolution No. ZA2023-054 Council District 1
- Item 5: Pilates Plus OC Minor Use Permit (PA2023-0003)
Site Address: 1220 Bison Ave, Suites A5 and A6
Action: Approved by Resolution No. ZA2023-055 Council District 3
- Item 6: Dawson Residence Coastal Development Permit, Modification Permit, and Staff Approval (PA2022-0315)
Site Address: 2741 Ocean Boulevard
Action: Approved by Resolution No. ZA2023-056 Council District 6

**HEARING OFFICER ACTIONS
JULY 13, 2023**

Item 1: Campbell Residence Reasonable Accomodation (PA2022-098)

Site Address: 1691 Orchard Drive

Action: Approved by Resolution No. HO2023-001

Council District 3

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.

RESOLUTION NO. ZA2023-051

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A TENTATIVE PARCEL MAP AND COASTAL DEVELOPMENT PERMIT FOR TWO (2)-UNIT RESIDENTIAL CONDOMINIUM PURPOSES LOCATED AT 205 28th STREET (PA2023-0093)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by William Rolph of CivilScapes Engineering, Inc. (“Applicant”), with respect to property located at 205 28th Street, and legally described as Lot 16 of Block 128 in the Lake Tract (“Property”), requesting approval of a tentative parcel map and associated coastal development permit (CDP) for condominium purposes.
2. The Applicant requests a tentative parcel map for two (2)-unit residential condominium purposes. An existing residential duplex has been demolished, and a new duplex is under construction. The tentative parcel map would allow each unit to be sold individually. No waivers of Newport Beach Municipal Code (NBMC) Title 19 (Subdivisions) are proposed. A CDP is required because this property is in the coastal zone (“Project”).
3. The Property is categorized as Two Unit Residential (RT) by the General Plan Land Use Plan and is located within the Two-Unit Residential (R-2) Zoning District.
4. The 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-2 (Two-Unit Residential) Coastal Zoning District.
5. A public hearing was held on August 10, 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 exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15315 under Class 15 (Minor Land Divisions) 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 15 Exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four (4) or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two (2) years, and the

parcel does not have an average slope greater than 20 percent. The Project is for a two (2)-unit condominium subdivision and meets all identified criteria; therefore, it is eligible for the Class 15 Exemption.

SECTION 3. REQUIRED FINDINGS.

Tentative Parcel Map

The Zoning Administrator determined in this case that the Tentative Parcel Map is consistent with the legislative intent of Title 20 of the Newport Beach Municipal Code and is approved based on the following findings per Section 19.12.070 (Required Findings for Action on Tentative Maps) of the NBMC:

Finding:

- A. *The proposed map and the design or improvements of the subdivision are consistent with the General Plan and any applicable specific plan, and with applicable provisions of the Subdivision Map Act and this Subdivision Code.*

Facts in Support of Finding:

1. The Project includes a tentative parcel map for two (2)-unit residential condominium purposes. The two (2)-unit dwellings will comply with current condominium standards. The Property was previously developed with a residential duplex which has been demolished, and a new duplex is under construction. The proposed subdivision and improvements are consistent with the density of the RT General Plan Land Use category and R-2 Zoning District.
2. The Property is not located within a specific plan area.

Finding:

- B. *The site is physically suitable for the type and density of development.*

Facts in Support of Finding:

1. The Property is physically suitable for a duplex because it is regular in shape and size. An existing duplex has been demolished, and a new duplex is under construction.
2. The Property is accessible from both 28th Street and the alley in the rear. Vehicular access is taken from the alley.
3. The Property is adequately served by existing utilities, as it was previously developed with a duplex and there is no increase in density.

Finding:

- C. *The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision-making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.*

Facts in Support of Finding:

1. The Property is located within an existing residential neighborhood that does not contain any sensitive vegetation or habitat on-site.
2. This Project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines. Section 2 of this Resolution is hereby incorporated by reference.

Finding:

- D. *The design of the subdivision or the type of improvements is not likely to cause serious public health problems.*

Facts in Support of Finding:

1. The Tentative Parcel Map is for residential condominium purposes. All improvements associated with the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the applicant per Section 19.28.010 (General Improvement Requirements) of the Municipal Code and Section 66411 (Local agencies to regulate and control design of subdivisions) of the Subdivision Map Act. All ordinances of the City and all Conditions of Approval will be complied with.
2. The Project has been conditioned to require public improvements, including the reconstruction of sidewalks, curbs, and gutters along the 28th Street frontage and alley, as needed. All existing private, non-standard improvements within the 28th Street right-of-way and/or extensions of private, non-standard improvements into the 28th Street right-of-way fronting the development must be removed. The utilities will be undergrounded, consistent with Title 19 (Subdivisions) of the Newport Beach Municipal Code (NBMC).

Finding:

- E. *The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision. In this connection, the decision-making body may approve a map if it finds that alternate easements, for access or use, will be provided and that these easements will be substantially equivalent to ones previously acquired by the public. This finding shall apply only to easements of record or to easements established by the judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.*

Fact in Support of Finding:

1. The Public Works Department has reviewed the proposed Tentative Parcel Map and determined that the design of the development will not conflict with easements acquired by the public at large, for access through, or use of Property within the proposed development because no public easements are located on the Property.

Finding:

- F. *The subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.*

Facts in Support of Finding:

1. The Property is not subject to the Williamson Act because the subject property is not designated as an agricultural preserve and is less than 100 acres in area.
2. The Property is developed for residential use and lies in the R-2 Zoning District, which permits residential uses.

Finding:

- G. *In the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (1) there is an adopted specific plan for the area to be included within the land project; and (2) the decision-making body finds that the proposed land project is consistent with the specific plan for the area.*

Facts in Support of Finding:

1. California Business and Professions Code Section 11000.5 has been repealed by the Legislature. However, this project site is not considered a “land project” as previously defined in Section 11000.5 of the California Business and Professions Code because the Project site does not contain 50 or more parcels of land.
2. The Project is not located within a specific plan area.

Finding:

- H. Solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.*

Fact in Support of Finding:

1. The Tentative Parcel Map and any future improvements are subject to Title 24 of the California Building Code which requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Division enforces Title 24 compliance through the plan check and inspection process.

Finding:

- I. The subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City’s share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City’s residents and available fiscal and environmental resources.*

Fact in Support of Finding:

1. The duplex is consistent with the R-2 Zoning District, which allows up to two (2) residential units on the property. Therefore, the Tentative Parcel Map for residential condominium purposes will not affect the City in meeting its regional housing needs.

Finding:

- J. The discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.*

Fact in Support of Finding:

1. The Project wastewater is designed to discharge into the existing sewer system and complies with the Regional Water Quality Control Board (RWQCB) requirements.

Finding:

- K. *For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three (3) of the Coastal Act.*

Fact in Support of Finding:

1. The Property is located within the coastal zone and a CDP is therefore requested in conjunction with the proposed tentative parcel map. The project complies with the certified Local Coastal Program (LCP) and public access and recreation policies of Chapter 3 of the Coastal Act. The Facts in Support of Findings L and M for the *Coastal Development Permit* (below) are hereby incorporated by reference.

Coastal Development Permit

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:

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

Facts in Support of Finding:

1. The Project is for a tentative parcel map for two (2)-unit residential condominium purposes. The proposed duplex conforms to all applicable development standards, including floor area limit, setbacks, height, and off-street parking. The proposed subdivision and improvements are consistent with the density of the R-2 Coastal Zoning District.
2. 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 and the project does not have the potential to degrade the visual quality of the Coastal Zone or to result insignificant adverse impacts to public view.
3. The Property is located in an area known for the potential for seismic activity. All projects are required to comply with the California Building Code and Building Division standards and policies.
4. The Property is located more than 800 feet from the harbor and more than 550 feet from the beach and is not near any natural landforms or environmentally sensitive areas.

Finding:

- M. *Conforms to 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 not located between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the Project's impact and be proportional to the impact. In this case, the Project is a tentative parcel map for two (2)-unit condominium purposes. 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. 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 and the project does not have the potential to degrade the visual quality of the Coastal Zone or to result insignificant adverse impacts to public view.
3. The Tentative Parcel Map is for a property that is over 800 feet from the harbor and more than 550 feet from the beach and approval of the parcel map will not affect public recreation, access, or views.

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 15315 under Class 15 (Minor Land Divisions) 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 Tentative Parcel Map and Coastal Development Permit filed as PA2023-0093, 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 Director of Community Development in accordance with the provisions of NBMC Title 19 (Subdivisions) and Title 21 (Local Coastal Program Implementation Plan).

PASSED, APPROVED, AND ADOPTED THIS 10TH DAY OF AUGUST, 2023.



Benjamin M. Zueba, AICP, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

Planning Division

1. The project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
2. After the recordation of the Parcel Map and prior to building permit final, the Applicant shall apply for a building permit for a description change of the subject project development from "duplex" to "condominium." The development will not be condominiums until this description change permit is final.
3. 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 approval.
4. 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 19 Subdivisions and Title 21 of the NBMC.
5. 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 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 **Byk Residential Condominiums** including, but not limited to **Tentative Parcel Map and Coastal Development Permit (PA2023-0093)**. 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 the City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Public Works Department

6. Prior to building permit final, a Parcel Map shall be recorded. The Map shall be prepared on the California coordinate system (NAD83). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County

Subdivision Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**

7. Prior to recordation of the Parcel Map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual Subarticle 18. Monuments (1-inch iron pipe with tag) shall be set **on each lot corner** unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of the construction project.
8. All improvements shall be constructed as required by Ordinance and the Public Works Department.
9. An encroachment permit shall be required for all work activities within the public right-of-way.
10. All damaged sidewalk panels, curb, gutter, and street along the 28th Street frontage and any damaged concrete alley panels along the alley property frontage shall be reconstructed as determined by the Public Works Department.
11. All existing overhead utilities shall be undergrounded.
12. All existing private, non-standard improvements within the public right-of-way and/or extensions of private, non-standard improvements into the public right-of-way fronting the development site shall be removed.
13. Each unit shall be served by its individual water service/meter and sewer lateral/cleanout.
14. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
15. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.

Building Division

16. Independent utility services shall be provided for each unit, including fire sprinklers.
17. The project foundation shall comply with City liquefaction mitigation requirements.

Fire Department

18. An NFPA 13D fire sprinkler system shall be required for this project.

RESOLUTION NO. ZA2023-052

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A TENTATIVE PARCEL MAP AND COASTAL DEVELOPMENT PERMIT FOR TWO (2)-UNIT RESIDENTIAL CONDOMINIUM PURPOSES LOCATED AT 310 HELIOTROPE AVENUE (PA2023-0095)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by William Rolph of CivilScapes Engineering, Inc. ("Applicant"), with respect to property located at 310 Heliotrope Avenue, and legally described as Lot 8 of Block 235 in the Corona del Mar Tract ("Property"), requesting approval of a tentative parcel map and associated coastal development permit ("CDP") for condominium purposes.
2. The Applicant requests a tentative parcel map for two (2)-unit residential condominium purposes. An existing single residential unit has been demolished, and a new duplex is under construction. The tentative parcel map would allow each unit to be sold individually. No waivers of Newport Beach Municipal Code (NBMC) Title 19 (Subdivisions) are proposed. A CDP is required because this property is in the coastal zone ("Project").
3. The Property is categorized as Two Unit Residential (RT) by the General Plan Land Use Plan and is located within the Two-Unit Residential (R-2) Zoning District.
4. The Property is located within the coastal zone. The Coastal Land Use Plan category is RT-D (Two Unit Residential) - (20.0-29.9 DU/AC) and it is located within the R-2 (Two-Unit Residential) Coastal Zoning District.
5. A public hearing was held on August 10, 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 exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15315 under Class 15 (Minor Land Divisions) 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 15 Exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four (4) or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are

required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two (2) years, and the parcel does not have an average slope greater than 20 percent. The Project is for a two (2)-unit condominium subdivision and meets all identified criteria; therefore, it is eligible for the Class 15 Exemption.

SECTION 3. REQUIRED FINDINGS.

Tentative Parcel Map

The Zoning Administrator determined in this case that the tentative parcel map is consistent with the legislative intent of Title 20 of the Newport Beach Municipal Code and is approved based on the following findings per Section 19.12.070 (Required Findings for Action on Tentative Maps) of the NBMC:

Finding:

- A. *The proposed map and the design or improvements of the subdivision are consistent with the General Plan and any applicable specific plan, and with applicable provisions of the Subdivision Map Act and this Subdivision Code.*

Facts in Support of Finding:

1. The Project includes a tentative parcel map for two (2)-unit residential condominium purposes. The two (2)-unit dwellings will comply with current condominium standards. The Property was previously developed with a single-unit residence which has been demolished, and a new duplex is under construction. The proposed subdivision and improvements are consistent with the density of the RT General Plan Land Use category and R-2 Zoning District.
2. The Property is not located within a specific plan area.

Finding:

- B. *The site is physically suitable for the type and density of development.*

Facts in Support of Finding:

1. The Property is physically suitable for a duplex because it is regular in shape and size. An existing single-unit residence has been demolished, and a new duplex is under construction.
2. The Property is accessible from both Heliotrope Avenue and the alley in the rear. Vehicular access is taken from the alley.
3. The Property is adequately served by existing utilities.

Finding:

- C. *The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision-making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.*

Facts in Support of Finding:

1. The Property is located within an existing residential neighborhood that does not contain any sensitive vegetation or habitat on-site.
2. This Project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines. Section 2 of this Resolution is hereby incorporated by reference.

Finding:

- D. *The design of the subdivision or the type of improvements is not likely to cause serious public health problems.*

Facts in Support of Finding:

1. The tentative parcel map is for residential condominium purposes. All improvements associated with the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the applicant per Section 19.28.010 (General Improvement Requirements) of the Municipal Code and Section 66411 (Local agencies to regulate and control design of subdivisions) of the Subdivision Map Act. All ordinances of the City and all Conditions of Approval will be complied with.
2. The Project has been conditioned to require public improvements, including the reconstruction of sidewalks, curbs, and gutters along the Heliotrope Avenue frontage and alley, as needed. All existing private improvements within the Heliotrope Avenue right-of-way must be removed and new sod and groundcovers installed. The existing street tree in the Heliotrope Avenue public right-of-way is to be protected in place. The utilities will be undergrounded, consistent with Title 19 (Subdivisions) of the Newport Beach Municipal Code.

Finding:

- E. *The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision. In this connection, the decision-making body may approve a map if it finds that alternate easements, for access or use, will be provided and that these easements will be substantially equivalent to ones previously acquired by the public. This finding shall apply only to easements of record or to easements established by the judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.*

Fact in Support of Finding:

1. The Public Works Department has reviewed the proposed tentative parcel map and determined that the design of the development will not conflict with easements acquired by the public at large, for access through, or use of Property within the proposed development because no public easements are located on the Property.

Finding:

- F. *The subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.*

Facts in Support of Finding:

1. The Property is not subject to the Williamson Act because the subject property is not designated as an agricultural preserve and is less than 100 acres in area.
2. The Property is developed for residential use and lies in the R-2 Zoning District, which permits residential uses.

Finding:

- G. *In the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (1) there is an adopted specific plan for the area to be included within the land project; and (2) the decision-making body finds that the proposed land project is consistent with the specific plan for the area.*

Facts in Support of Finding:

1. California Business and Professions Code Section 11000.5 has been repealed by the Legislature. However, this project site is not considered a “land project” as previously defined in Section 11000.5 of the California Business and Professions Code because the Project site does not contain 50 or more parcels of land.
2. The Project is not located within a specific plan area.

Finding:

- H. Solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.*

Fact in Support of Finding:

1. The tentative parcel map and any future improvements are subject to Title 24 of the California Building Code which requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Division enforces Title 24 compliance through the plan check and inspection process.

Finding:

- I. The subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City’s share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City’s residents and available fiscal and environmental resources.*

Fact in Support of Finding:

1. The duplex is consistent with the R-2 Zoning District, which allows up to two (2) residential units on the property. Therefore, the tentative parcel map for residential condominium purposes will not affect the City in meeting its regional housing needs.

Finding:

- J. The discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.*

Fact in Support of Finding:

1. The Project wastewater is designed to discharge into the existing sewer system and complies with the Regional Water Quality Control Board (RWQCB) requirements.

Finding:

- K. *For subdivisions lying partly or wholly within the coastal zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three (3) of the Coastal Act.*

Fact in Support of Finding:

1. The Property is located within the coastal zone and a CDP is therefore requested in conjunction with the proposed tentative parcel map. The project complies with the certified Local Coastal Program (LCP) and public access and recreation policies of Chapter 3 of the Coastal Act. The Facts in Support of Findings L and M for the *coastal development permit* (below) are hereby incorporated by reference.

Coastal Development Permit

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:

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

Facts in Support of Finding:

1. The Project is for a tentative parcel map for two (2)-unit residential condominium purposes. The proposed duplex conforms to all applicable development standards, including floor area limit, setbacks, height, and off-street parking. The proposed subdivision and improvements are consistent with the density of the R-2 Coastal Zoning District.
2. 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 and the project does not have the potential to degrade the visual quality of the coastal zone or to result insignificant adverse impacts to public view.
3. The Property is located in an area known for the potential for seismic activity. All projects are required to comply with the California Building Code and Building Division standards and policies.
4. The Property is located more than 1,100 feet from the harbor and 1,500 feet from the beach and is not near any natural landforms or environmentally sensitive areas.

Finding:

- M. Conforms to 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 not located between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the Project's impact and be proportional to the impact. In this case, the Project is a tentative parcel map for two (2)-unit condominium purposes. The Project does not involve a change in land use, density, or intensity that will result in a significant increase in 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. 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 and the project does not have the potential to degrade the visual quality of the coastal zone or to result insignificant adverse impacts to public view.
3. The Project is for a property that is over 1,100 feet from the harbor and 1,500 feet from the beach and approval of the parcel map for condominium purposes will not affect public recreation, access, or views.

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 15315 under Class 15 (Minor Land Divisions) 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 tentative parcel map and coastal development permit filed as PA2023-0095, 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 Director of Community Development in accordance with the provisions of NBMC Title 19 (Subdivisions) and Title 21 (Local Coastal Program Implementation Plan).

PASSED, APPROVED, AND ADOPTED THIS 10TH DAY OF AUGUST, 2023.



Benjamin M. Zueba, AICP, Zoning Administrator

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

1. The project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
2. After the recordation of the Parcel Map and prior to a final building permit, the Applicant shall apply for a building permit for a description change of the subject project development from "duplex" to "condominium." The development will not be condominiums until this description change permit is final.
3. 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 approval.
4. 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 19 Subdivisions and Title 21 of the NBMC.
5. Prior to the recordation of the parcel map, an *In-Lieu Park Dedication Fee* for one (1) additional residential unit shall be paid in accordance with the fee effective at the time of payment.
6. Prior to building permit final, a *Fair Share Fee* for one (1) additional residential unit shall be paid in accordance with the fee effective at the time of payment.
7. 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 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 **Bire II LLC Residential Condominiums** including, but not limited to **Tentative Parcel Map and Coastal Development Permit (PA2023-0095)**. 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 the City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Public Works Department

8. Prior to building permit final, a Parcel Map shall be recorded. The Map shall be prepared on the California coordinate system (NAD83). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**
9. Prior to recordation of the Parcel Map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual Subarticle 18. Monuments (1-inch iron pipe with tag) shall be set **on each lot corner** unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of the construction project.
10. All improvements shall be constructed as required by Ordinance and the Public Works Department.
11. An encroachment permit shall be required for all work activities within the public right-of-way.
12. All damaged sidewalk panels, curb, gutter, and street along the Heliotrope Avenue frontage and any damaged concrete alley panels along the alley property frontage shall be reconstructed as determined by the Public Works Department.
13. All existing overhead utilities shall be undergrounded.
14. All existing private, non-standard improvements within the public right-of-way and/or extensions of private, non-standard improvements into the public right-of-way fronting the development site shall be removed.
15. Each unit shall be served by its individual water service/meter and sewer lateral/cleanout.
16. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
17. New turf or drought tolerant landscaping shall be installed throughout the entire Heliotrope Avenue parkway.
18. The existing street tree along the Heliotrope Avenue frontage shall be protected in place.

19. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.

Building Division

20. Independent utility services shall be provided for each unit, including fire sprinklers.

Fire Department

21. NFPA 13D fire sprinkler system shall be required for this Project.

RESOLUTION NO. ZA2023-053

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2022-021 TO ALLOW AN APPROXIMATELY 938-SQUARE-FOOT ADDITION TO AN EXISTING SINGLE-FAMILY RESIDENCE AND NEW ATTACHED THREE (3)-CAR GARAGE LOCATED AT 2124 SANTIAGO DRIVE (PA2022-060)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Rolando Serrano, with respect to property located at 2124 Santiago Drive, requesting approval of a coastal development permit. The lot at 2124 Santiago Drive is legally described as Lot 2 of Tract 4224.
2. The applicant requests a coastal development permit (CDP) to remodel and add approximately 938 square feet to an existing one-story, 3,830-square-foot, single-family residence. The existing garage will be reconstructed and the primary area of addition is located above the garage to create a second story. A CDP is required since the proposed addition exceeds ten (10) percent of the existing gross floor area and would increase the overall height of the existing structure by more than ten (10) percent. The total gross floor area after the addition would be approximately 4,768 square feet. The project includes additional appurtenances such as a new landscape, driveway approach, and drainage areas within the public right-of-way. The proposed design complies with all development standards and no deviations are requested.
3. The subject property is designated RS-D (Single Unit Residential Detached) by the General Plan Land Use Element and is located within the R-1-6,000 (Single-Unit Residential) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-A (Single Unit Residential Detached - 0.0-5.9 DU/AC) and it is located within the R-1-6,000 (Single-Unit Residential) Coastal Zone District.
5. A public hearing was held on August 10, 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 15301, 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 addition of approximately 938 square feet to an existing single-family residence.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. Lot coverage is limited to 60 percent (5,760 square feet) of the 9,600-square-foot lot area. The proposed lot coverage is approximately 42.2 percent (4,057 square feet).
 - b. The proposed development provides the minimum required setbacks, which are six (6) feet along the rear property line abutting the bluff, six (6) feet along each side property line, and six (6) feet for the front setback along the street.
 - c. The highest ridge is approximately 25 feet from established grade and complies with the maximum height requirement of 29 feet.
 - d. The project includes garage parking for a total of three (3) vehicles, complying with the minimum three (3)-car garage parking requirement for single-family residences with more than 4,000 square feet of habitable floor area.
 - e. The project is located within the Bluff Overlay District. Pursuant to the Bluff Overlay Map B-9-Upper Newport Bay Bluffs (NBMC Section 21.28.040[D][8][b]), the project is located on a bluff that is not subject to marine erosion. The project complies with the bluff overlay limitations as follows:

- i. The principal structure is allowed within Development Area A, which extends from the front property line and the rear six (6)-foot setback line. The residence is located within Development Area A in compliance with the Bluff Overlay. Existing accessory structures are also within Development Area A.
 - ii. Development Area B extends from the rear setback line (six (6) feet from the rear property) to the rear property line. Accessory Structures such as decks, detached patio covers, above ground hot tubs and fences are allowed in Development Area B. A small area of existing hardscape and landscape will remain within Development Area B. All other accessory structures are located within Area A.
 - iii. There is no Development Area C on the property.
2. There is an existing off-site fence located within County property. Condition of Approval No. 23 is included to remove the existing fence with oversight from the property owner (County of Orange) and the California Coastal Commission.
3. The neighborhood is predominantly developed with one (1)- and two (2)-story, single-family residences. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development.
4. The lot has been graded previously to provide a relatively level building pad. From a geotechnical standpoint, the project is considered an addition and a remodel and not a full demolition and reconstruction project warranting additional analysis. Because of the project's proximity to the bluff, a Geotechnical Evaluation prepared by Global Geo-Engineer, Inc. dated May 4, 2022, was prepared for the subject property to evaluate the proposed improvements. The report states that the property is not located within a State of California designated liquefaction zone, landslide zone, or earthquake fault zone. The report concludes that the site will be suitable for the proposed development from a geotechnical aspect, assuming the recommendations of the report are implemented during construction. Condition of Approval No. 4 is included to require compliance with the recommendations of the report.
5. The finished floor elevation of the existing single-family residence and addition is approximately 69 feet (NAVD88), which complies with the minimum 9.00-foot (NAVD88) elevation standard.
6. Pursuant to NBMC Section 21.30.030(C)(3)(i)(iv), the property owner will be required to enter into an agreement with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction by coastal hazards (e.g., waves, erosion, and sea level rise). This requirement is included as a condition of approval that will need to be satisfied prior to a final building permit inspection.

7. The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c). This requirement is included as a condition of approval that will need to be satisfied prior to the issuance of building permits.
8. The property is located in an area known for the potential of seismic activity. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing site specific concerns are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
9. The property is located adjacent to the Upper Newport Bay. A Construction Erosion Control Plan was provided to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived by construction chemicals and materials. The project design also addresses water quality through the inclusion of a post-construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event runoff on-site. Any water not retained on-site is directed to the City's storm drain system.
10. Proposed landscaping complies with Implementation Plan Section 21.30.075. Condition of Approval No. 19 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.
11. The project site is located adjacent to Upper Newport Bay, which is a public park in the Coastal Land Use Plan (CLUP) and offers public views of the Upper Newport Bay. There is also a public viewpoint from the terminus of Constellation Drive, that is designated in the CLUP and provides views of the Upper Newport Bay. Site evaluation revealed that the proposed one-story design with two-story elements is consistent with the existing neighborhood pattern of development and will not negatively impact the existing views afforded from the Back Bay. The proposed addition would primarily retain the same footprint as the existing structure, with the second story addition located away from the Upper Newport Bay along the street. There is also a small area of addition towards the Upper Newport Bay, however, it is setback from the rear property line much further than the minimum six (6)-foot requirement.
12. The project includes the remodel and addition of an existing single-family residence that complies with all applicable development standards, including the Bluff Overlay standards. The Upper Newport Bay including the public trails orient and frames views from pedestrians and cyclists toward the bay and not over the subject site. Views across the project site from the trails are currently impacted due to the elevation of the home on the top of the bluff, and significant natural vegetation. No views of the Bay are present through the site from the Santiago Drive. The portion of the structure that's visible from the trails would look the same in terms of bulk and scale with an updated exterior. Additionally, the public views from Constellation Drive are oriented towards the Bay, and

the subject property would not be visible due to five (5) intervening residences and their accessory structures and landscaping. Lastly, project implementation includes removal of fencing within the Upper Newport Bay in the County of Orange property. Therefore, the project does not have the potential to degrade the visual quality of the coastal zone or result in significant adverse impacts to public views.

Finding:

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

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea along the Upper Newport Bay Bluffs. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project includes an addition to an existing single-family residence on a R-1-6000 zoned lot. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.
2. Vertical access to the Upper Newport Bay is available 561 feet (walking distance) from the project site at the terminus of Constellation Drive, which leads to a dirt trail that continues to the Upper Newport Bay trails. Lateral access is available on nearby multi-modal trails (bluff top access routes) accessible from Irvine Avenue approximately 146 feet (walking distance) from the property. The project does not include any features that would obstruct access along these public trails and there is no existing or proposed direct access from the property to the Upper Newport Bay. Condition of Approval No. 23 would also require removal of an existing fence that encroaches onto County of Orange property within the Upper Newport Bay.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit PA2022-060, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.

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

PASSED, APPROVED, AND ADOPTED THIS 10th DAY OF AUGUST, 2022.



Benjamin M. Zueba, AICP, 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. *Prior to a 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.*
3. *Prior to the issuance of a building permit, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of development. This letter shall be scanned into the plan set prior to building permit issuance.*
4. *The final project plans shall incorporate and comply with the Recommendations of the Geotechnical Evaluation by Global Engineering, Inc. dated May 4, 2022.*
5. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers. No demolition or construction materials shall be stored on public property.
6. *After demolition and prior to framing, the architect of record shall certify that less than 50 percent of exterior walls have been removed and will require replacement. The architect of record shall provide the applicable documentation to the Community Development Director for review. If it is determined that 50 percent or more of exterior walls have been removed during construction, all project work shall cease and the project shall be subject to applicable requirements of the Zoning Code and Local Coastal Program Implementation Plan, which may include, but are not limited to, a coastal development permit and/or other discretionary application. The applicant understands that this may result in project delays or denial, and possible economic hardship.*
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 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 or two 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 prior to 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 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.
 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. Material violation of any of those laws in connection with the use may be cause for 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 is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
16. *Prior to the issuance of building permits, the applicant shall submit a final construction erosion control plan. The plan shall be subject to the review and approval by the Building Division.*
17. *Prior to the issuance of building permits, the applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.*
18. *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.*
19. *Prior to issuance of a building permit, the applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought tolerant plantings, non-invasive plant species and water efficient irrigation design. The plans shall be approved by the Planning Division.*
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 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

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23. *Prior to final building permit inspection, the applicant shall remove the existing off-site fence. At such time as directed by the City, County of Orange, or the California Coastal Commission, the applicant shall agree to and cooperate with all applicable agencies for: 1) the removal of any unpermitted development located beyond the rear property line on the bluff and within the prolongation of the side property lines of the subject property, and 2) the restoration of the affected area consistent with a restoration plan approved by the City, County of Orange, and/or Coastal Commission.*
24. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
25. 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 No. CD2022-021 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.
27. 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 Santiago Oxford Grantor Trust Residence including, but not limited to, Coastal Development Permit (PA2022-060). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

RESOLUTION NO. ZA2023-054

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A COASTAL DEVELOPMENT PERMIT TO DEMOLISH AN EXISTING SINGLE-UNIT DWELLING AND CONSTRUCT A NEW THREE (3)-STORY SINGLE-UNIT DWELLING AND ATTACHED THREE (3)-CAR GARAGE LOCATED AT 439 HARBOR ISLAND DRIVE (PA2023-0044)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Caitlin Smith with Brandon Architects on behalf of the owner Michael Fletcher with respect to property located at 439 Harbor Island Drive, and legally described as Lot 7 of Tract 3283, requesting approval of a Coastal Development Permit.
2. The Applicant requests a coastal development permit (CDP) to allow the demolition of an existing 2,286-square foot, one (1)-story, single-unit dwelling with an attached 600-square-foot, two (2)-car garage and construction of a new 6,186-square-foot, three (3)-story, single-unit dwelling with an attached 849-square-foot, three (3)-car garage. The project includes landscape, hardscape, drainage, and accessory structures all within the confines of the property. The project includes raising the height of the existing bulkhead. 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 the dock and boat slip 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-A (Single Unit Residential Detached) - (0.0 – 5.9 DU/AC) and it is located within the R-1 (Single-Unit Residential) Coastal Zoning District.
6. A public hearing was held on August 10, 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 2,286-square foot, one (1)-story, single-unit dwelling with an attached 600-square-foot, two (2)-car garage and construction of a new 6,186-square-foot, three (3)-story, single-unit dwelling with an attached 849-square-foot, three (3)-car garage.
3. There are no known exceptions listed in CEQA Guidelines Section 15300.2 (Exceptions) 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 10,516 square feet and the proposed floor area is 7,036 square feet.
 - b. The proposed development provides the minimum required setbacks, which are ten (10) feet along the front property line along the street, four (4) feet along each side property line, and 20 feet along the second front property line abutting the Bay.
 - 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 finished floor elevation is 9.24 feet North American Vertical Datum of 1988 (NAVD 88), which complies with the minimum 9.0-foot top of slab elevation requirement for interior living areas of new structures.
2. The neighborhood is predominantly developed with two (2)-story single-unit dwellings with scattered one (1)- and three (3)-story single-unit dwellings. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development.
 3. The development fronts the Newport Harbor and is protected by a bulkhead. A bulkhead conditions report was prepared by PMA Consulting, Inc. dated January 20, 2023. 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 PMA Consulting, Inc. on January 20, 2023. The current maximum bay water elevation is 7.7 feet (NAVD88) and may exceed the existing top of bulkhead elevation of 9.16 feet 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 runoff, 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. PMA Consulting, 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. The finish floor elevation of the proposed single-unit dwelling is at a minimum elevation of 9.24 feet NAVD88, which complies with the minimum 9.0-foot NAVD88 elevation standard.

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 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.
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 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.
9. 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 a final building inspection.
10. 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.
11. Pursuant to NBMC Section 21.35.050 (Water Quality Management 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 Management Plan (WQMP) is required. The preliminary WQMP was prepared by Forkert Engineering & Surveying, Inc. dated February 1, 2023. The WQMP 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.
12. 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.
13. The project site is not located adjacent to a coastal view road, public access way, or Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest coastal

viewpoint is approximately 200 feet northeast of the property near the intersection of Harbor Island Drive and Bayside Drive. Similarly, the nearest coastal view road segment is located along Bayside Drive. These areas offer localized, limited views of the harbor and several dwellings. Views are oriented to the bay and properties along the southeast side of the street, where the row of residences impedes visibility to the subject property.

14. The proposed three (3)-story design is consistent with the existing neighborhood pattern of development containing one (1)-, two (2)-, and some scattered three (3)-story dwellings, and will not affect the existing, limited views afforded from the small viewing areas. The project will replace an existing single-unit dwelling with a new single-dwelling unit that complies with all applicable development standards, including the third-story setbacks that provide additional fifteen (15)-foot setbacks along the bay and street property lines (as measured from the setback lines). There are also two (2)-foot third floor setbacks from the side setback lines. The project presents the opportunity to enhance views by updating an older structure with a new building with an updated design. All structures within the front setback area along the bay would be limited to 42 inches in height, ensuring that the bay does not appear to be walled off. Therefore, the project does not have the potential to degrade the visual quality of the coastal zone or result in significant adverse impacts to public views.

Finding:

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

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project includes demolition and reconstruction of a single-unit dwelling on a R-1 zoned lot. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.
2. 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.
3. The nearest lateral access is located less than 200 feet east of the property near the intersection of Harbor Island Drive and Bayside Drive. Harbor Island Drive does not contain an outlet. Public access points with lateral access are also provided to the south parallel to Beacon Bay, where there is a public beach along the Bay. The project would not impact access along these routes.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves the Coastal Development Permit (PA2023-0044), 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 10TH DAY OF AUGUST, 2023.



Benjamin M. Zueba, AICP, 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. PA2023-0044 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 a final building permit inspection for the dwelling, 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.*
6. 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.
7. Prior to a 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.
8. 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.

9. 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.
10. 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.
11. 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.
12. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
13. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
14. 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.
15. 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.
16. 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.
17. 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.
18. 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.
19. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be

kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.

- 20. Construction activities shall comply with Section 10.28.040 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.
- 21. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

Location	Between the hours of 7:00AM 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

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

24. 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.
25. 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.
26. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner, or the leasing agent.
27. 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 **Fletcher Residence including, but not limited to, Coastal Development Permit (PA2023-0044)**. 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

28. Prior to issuance of a building permit, a Construction Management Plan (CMP) shall be submitted for review and approved by the City Traffic Engineer and Community Development Director.

RESOLUTION NO. ZA2023-055

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A MINOR USE PERMIT FOR A PILATES STUDIO (LARGE HEALTH AND FITNESS FACILITY) LOCATED AT 1220 BISON AVENUE, SUITES A-5 AND A-6 (PA2023-0003)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Rand Kruse (“Applicant”), with respect to property located at 1220 Bison Avenue, Suites A-5, and A-6, and legally described as Lot 6 of Tract Number 12309 (“Property”).
2. The Applicant proposes to convert two vacant 1,200-square-foot commercial tenant spaces (Suites A-5 and A-6) into a 2,400-square-foot pilates studio (large health and fitness facility). The applicant proposes to improve the studio with a pilates instruction area, reception and retail area, restrooms, and storage lockers for patrons. The studio offers group training sessions and proposes a maximum of 12 students and 1 instructor at any given time. The proposed studio is a relocation of the existing pilates studio within the same shopping center, which is currently located in Suite A-3 (“Project”).
3. The Property is located within the North Ford Planned Community (PC-5) and the General Plan Land Use Element category is General Commercial (CG).
4. The Property is not located within the coastal zone.
5. A public hearing was held on August 10, 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 has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities). 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.
2. The Project involves interior improvements to two commercial tenant spaces which are currently vacant in order to establish a Pilates studio which is a negligible expansion of use. Therefore, the project qualifies for a categorical exemption under Class 1.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The General Plan land use designation for this site is General Commercial (CG), which is intended to provide a wide variety of commercial activities oriented primarily to serve citywide or regional needs. These may include professional and medical offices, restaurant, retail, and service uses. The Pilates studio proposes group training sessions and will provide an ancillary retail sales area consistent with this land use designation.
2. The Property is not part of a specific plan area.

Finding:

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

Facts in Support of Finding:

1. The Property is categorized under the Commercial land use (Area 3) of the North Ford Planned Community (PC-5). This area of PC-5 allows the location of light, general commercial activities engaged in the sale of products to the general public. The Project is a large health and fitness facility use which provides a service to residents and visitors of the City.
2. Section VI.B (Commercial, Area 3 – Permitted Uses) of PC-5 allows convenient services; however, there is no definition provided for this use classification. Therefore, the Zoning Code is utilized to classify the use. Under Section 20.70.020 (Definitions of Specialized Terms and Phrases), it is appropriate to classify the project as a Large Health and Fitness Club, as it is a fitness center that is over 2,000 square feet and provides aerobic-type classes and other indoor sports activities. The Project, which is considered a commercial use, is consistent with the Commercial land use designation of PC-5 and is a relocation of an existing pilates studio in the same shopping center (Suite A-3) into a larger tenant space (Suites A-5 and A-6).
3. Pursuant to Section VI.H (Commercial, Area 3 - Parking) of the PC-5 Text, commercial uses require a parking ratio of one parking space per 250 square feet of gross floor area and one loading space for each 10,000 square feet of gross floor area. Other commercial uses, which in the opinion of the Director are compatible, are parked in accordance with NBMC Section 20.40.030 (Requirements for Off-Street Parking).

Large Health and Fitness Facilities are parked at a rate of one parking space for each 200 square feet of gross floor area.

4. Twelve parking spaces are required for the Project with a required parking rate of one parking space per 200 square feet of gross floor area, as required by the Zoning Code. The Project requires an additional two parking spaces compared to the 10-space requirement for general commercial uses (one space per 250 square feet). Including the Project, a total of 257 parking spaces are required to accommodate all uses within the Property. The on-site surface parking lot contains 270 parking spaces, which results in a surplus of 13 spaces. Therefore, the increased parking requirement of two additional spaces can be accommodated on-site.

Finding:

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

Facts in Support of Finding:

1. The Project will occupy two existing 1,200-square-foot tenant spaces, totaling 2,400-square-feet, within the Newport North Shopping Center. The space will be improved with a pilates instruction area, reception and retail area, restrooms, and storage lockers for patrons.
2. The Project is located within a commercial area of the North Ford Planned Community Zoning District. Nearby uses include residential, personal services, retail sales, eating and drinking establishments, and a service station. The operational characteristics of the Project are that of a typical pilates studio with retail sales, and are compatible with the residential and commercial uses in the vicinity.
3. As conditioned, the allowed hours of operation are between 6:00 a.m. and 7:00 p.m., Monday through Friday and between 7:00 a.m. to 11a.m., Saturday and Sunday. The proposed hours of operation limit operational conflicts during the evenings and weekends with nearby surrounding uses in the shopping center.

Finding:

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

Facts in Support of Finding:

1. The Newport North Shopping Center is 4.84 acres in size, comprising two in-line multi-tenant buildings, two pad buildings, and a service station totaling approximately 47,800 square feet. Additionally, the Property features a 270-space surface parking lot. The existing buildings and parking lot have functioned satisfactorily with the current configuration, which allows vehicular access from Bison Avenue and Camelback Street.

2. Adequate public and emergency vehicle access, public services, and utilities are provided within the Property and the Project will not negatively affect emergency access, as it involves the conversion of two vacant commercial suites into a pilates studio.

Finding:

- E. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, a 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.
2. The Project will serve the surrounding neighborhood, as it provides an additional health and fitness club option for residents and visitors.
3. The Project will not create additional noise impacts as the Project site is entirely enclosed and soundproofed. There are no unusual services that have the potential to adversely impact the surrounding environment.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. PA2023-0003, 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 fourteen days after the adoption of this Resolution unless within such time an appeal 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 10TH DAY OF AUGUST, 2023.



Benjamin M. Zueba, 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. This approval shall expire and become void unless exercised within twenty-four (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.
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 Use Permit.
5. Any change in operational characteristics, hours of operation, expansion in area, or other modification to the approved plans, may require an amendment to this minor use permit or the processing of a new use permit.
6. *The hours of operation shall be limited to between 6:00 a.m. and 7:00 p.m., Monday through Friday and 7:00 a.m. to 11:00 a.m., Saturday and Sunday.*
7. *The use shall be limited to a maximum of one instructor and twelve students.*
8. *All instruction shall take place within the interior of the tenant space.*
9. *A total of twelve parking spaces shall be provided for the proposed health and fitness club.*
10. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of this health and fitness club that would attract large crowds, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
11. The Applicant is required to obtain all applicable permits from the City Building Division and Fire Department. Prior to the issuance of any building, mechanical, and/or electrical permits, architectural drawings and structural design plans shall be submitted to the City of Newport Beach for review and approval by the applicable departments. A copy of

these conditions of approval shall be incorporated into the drawings approved for the issuance of permits.

12. The project and all tenant improvements must comply with the most recent, City-adopted version of the California Building Code.
13. This Minor Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or is materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
14. The reciprocal arrangement for ingress, egress and parking that applies to the subject property shall remain in effect for the duration of this health and fitness club.
15. All signs shall conform to the provisions of the North Ford Planned Community District regulations and Chapter 20.42 (Signs) of the Newport Beach Municipal Code, where applicable.
16. The operator of the facility shall be responsible for the control of noise generated on the subject facility. Pre-recorded music may be played in the tenant space, provided exterior noise levels outlined below are not exceeded. The noise generated by the proposed use shall comply with the provisions of Chapter 10.26 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

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 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 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, except for the required trash container enclosure.
24. Temporary signs shall be prohibited in the public right-of-way unless otherwise approved by the Public Works Department in conjunction with the issuance of an encroachment permit or encroachment agreement.
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.

Building Division

26. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required before the issuance of a building permit.
27. 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 **Pilates Plus OC Minor Use Permit including, but not limited to, PA2023-0003**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other

expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

RESOLUTION NO. ZA2023-056

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING A COASTAL DEVELOPMENT PERMIT, MODIFICATION PERMIT, AND STAFF APPROVAL FOR AN ADDITION AND ALTERATIONS TO AN EXISTING 5,781-SQUARE-FOOT, NON-CONFORMING SINGLE-UNIT RESIDENCE LOCATED AT 2741 OCEAN BOULEVARD (PA2022-0315)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Blues 1905 LLC (“Applicant”), concerning property located at 2741 Ocean Boulevard, and legally described as Parcel B of Resubdivision No. 082 together with the abandoned portion of Ocean Boulevard vacated under City Council Resolution No. 98-66 (“Property”), requesting approval of a coastal development permit, modification permit, and staff approval.
2. The Applicant requests a coastal development permit (“CDP”) to add 2,511 square feet to an existing, non-conforming single-unit residence, which results in a total of 8,292 square feet of gross floor area. The scope of work includes grading, landscape and hardscape, drainage, a swimming pool, and various accessory structures. Additionally, the Applicant requests a modification permit for retaining walls and associated guardrails located within the front yard setback along Ocean Boulevard which exceeds the maximum 42-inch height limit and Ocean Boulevard curb height elevation. Finally, the Applicant requests a staff approval for substantial conformance with a previously approved Variance (“Project”).
3. The Property is designated Single-Unit Residential Detached (RS-D) by the General Plan Land Use Element and is located within the Single-Unit Residential (R-1) Zoning District.
4. The Property is located within the coastal zone. The Coastal Land Use Plan category is Single-Unit Residential Detached – (6.0 – 9.9 DU/AC) (RSD-B) and it is located within the Single-Unit Residential (R-1) Coastal Zoning District.
5. A public hearing was held on August 10, 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-unit residences and additions of up to 10,000 square feet to existing structures. The proposed project consists of the remodel and 2,511-square-foot addition to an existing single-unit residence.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

Modification Permit

Pursuant to Newport Beach Municipal Code (NBMC) Subsection 20.52.050(B)(3)(g), the Applicant requests a modification permit to allow for retaining walls and associated guardrails to exceed the maximum height of 42 inches within the front yard setback and exceed the Ocean Boulevard curb elevation. In accordance with NBMC Subsection 20.52.050(E) (Modification Permits – Required Findings), the following findings and facts in support of such findings are set forth:

Finding:

- A. *The requested modification will be compatible with existing development in the neighborhood.*

Facts in Support of Finding:

1. The Property is located on a unique block of single-unit residences which slope steeply downward from Ocean Boulevard towards Way Lane. The steep slope from Ocean Boulevard towards the interior of the lot requires retaining walls to support an entry stair for access into the residences and to provide a guardrail for fall protection.
2. The proposed retaining walls and associated guardrails range from approximately seven (7) to eight (8) feet tall from existing grade. All proposed guardrails located within the front setback area are approximately 3.5 feet above the retaining wall below. At the worst-case slope area, the highest part of the retaining wall and associated guardrail is 8.13 feet above existing grade (69.61 feet North American Vertical Datum of 1988 (NAVD 88) top of rail elevation above 61.48 feet NAVD 88 existing grade).
3. Currently, the existing entry system includes guardrails approximately 55 feet in width and include eight (8) pilasters that all exceed the Ocean Boulevard curb height by approximately three (3) feet. The proposed entry system, which replaces the existing, is smaller measuring approximately 33 lineal feet in width and includes only three (3) pilasters ranging in height from three (3) to 3.5 feet in height above the curb height. At the worst-case area, the top of railing is only three (3) feet above the curb elevation. The entry gate and proposed rails are necessary for the safety of pedestrians on Ocean

Boulevard to prevent fall hazards onto the slope and into the steps and landing of the Property's entryway.

4. Overall, the reduced width of the proposed railing system is an improvement compared to the existing conditions. Additionally, the proposed railings are an open, wrought-iron design, which maintains view opportunities to the ocean. Although the railings exceed the curb height, they are not comprised of a solid material and are not tall enough to significantly alter the public view of the ocean.
5. The existing property and nearby properties along Ocean Boulevard have small accessory structures, walls, and landscaping hedges located along the top of slope adjacent to Ocean Boulevard. The proposed retaining walls are consistent with the pattern of existing development amongst similar residences located on the Ocean Boulevard bluff.

Finding:

- B. The granting of the modification is necessary due to the unique physical characteristic(s) of the property and/or structure, and/or characteristics of the use.*

Facts in Support of Finding:

1. The Property has topography which slopes from Ocean Boulevard down towards Way Lane. Within the ten (10)-foot front yard setback, there is an approximate eight (8)-foot slope from Ocean Boulevard towards the interior of the lot.
2. The steep decline creates difficulty in constructing an entry stair access way without higher retaining walls to support the path of travel from Ocean Boulevard to the front entry of the Project. Due to the approximate eight (8)-foot change in grade within the front setback area, retaining walls with required protective guard rails are proposed to exceed the 42-inch height limit and be constructed approximately eight (8) feet above existing grade. As seen from street level, the required protective guardrails would also exceed the Ocean Boulevard curb elevation by approximately three (3) feet at worst case.

Finding:

- C. The granting of the modification is necessary due to practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code.*

Facts in Support of Finding:

1. The Project includes an addition on the Ocean Boulevard bluff side of the property, which relocates the entryway of the existing residence closer to Ocean Boulevard due to the additional floor area. Due to this relocation, the existing staircase requires reconfiguration and must comply with the Building Code for access into the residence.

Without the proposed reconfiguration, Building Code compliant access into the residence's front entry from Ocean Boulevard is not possible.

2. Due to the steep slope, there is a physical hardship associated with constructing a functional stairway which provides access to the front entry of the residence from Ocean Boulevard. Therefore, since the addition reduces the amount of space for a straight staircase similar to the existing condition, the proposed staircase features an L-shape design with two portions of steps and two landings, which is supported by higher retaining walls and protective guard rails above.

Finding:

- D. There are no alternatives to the modification permit that could provide similar benefits to the applicant with less potential detriment to surrounding owners and occupants, the neighborhood, or to the general public.*

Facts in Support of Finding:

1. The requested retaining wall system, which supports the entry stairway, spans an approximate 33 feet in width, which is relatively small compared to the approximately 120-foot wide lot. The staircase occupies approximately 250 square feet of the ten (10)-foot front yard setback area, which is approximately 1,200 square feet in area. The retaining walls and protective guardrails, which provide support to the stair system, are relatively small in scale and will not be detrimental to the neighborhood or general public.
2. The proposed retaining walls are not placed directly on the property line abutting Ocean Boulevard, but instead support a landing and staircase that is set back from the property line in the front setback area. The proposed retaining walls do not interfere with the views of the ocean and are necessary for access and safety of the residents to enter the residence from Ocean Boulevard.

Finding:

- E. The granting of the modification would not be detrimental to public health, safety, or welfare, to the occupants of the property, nearby properties, the neighborhood, or the City, or result in a change in density or intensity that would be inconsistent with the provisions of this Zoning Code.*

Facts in Support of Finding:

1. Facts 3, 4, and 5 in Support of Finding A are hereby incorporated.
2. Fact in Support of Finding D.1 is hereby incorporated.
3. The granting of the modification results in retaining walls on a steeply sloping lot which is necessary to support access stairs. As a result, the stairs comply with the Building Code and provide safety to the residents.

Modification Permit Coastal Findings

Pursuant to Section 21.52.090 (Relief from Implementation Plan Development Standards), the Zoning Administrator may approve or conditionally approve a modification to a development standard of the Implementation Plan only after making the following findings:

Finding:

- F. The granting of the modification is necessary due to practical difficulties associated with the property and that the strict application of the Implementation Plan results in physical hardships.*

Facts in Support of Finding:

1. Facts in Support of Finding B are hereby incorporated.

Finding:

- G. The modification complies with the findings required to approve a coastal development permit in Section 21.52.015(F) (Findings and Decision).*

Facts in Support of Finding:

1. Facts in Support of Finding L are hereby incorporated.
2. The proposed retaining walls do not affect coastal access to or views of the ocean. The existing residence includes an approximately 55-foot long lower guardrail located on the property line abutting Ocean Boulevard. The Project removes the property line railing and replaces it with an approximately 22-foot-wide retaining wall and guardrail that is set back approximately two (2) feet from the property line. Additionally, there is an approximately ten (10)-foot wide entry pilaster and gate proposed to be constructed along the property line abutting Ocean Boulevard. Overall, the visual impact is being reduced with the removal of a long stretch of guardrails on Ocean Boulevard, which improves the visibility to the ocean.

Finding:

- H. The modification or variance will not result in development that blocks or significantly impedes public access to and along the sea or shoreline and to coastal parks, trails, or coastal bluffs.*

Facts in Support of Finding:

1. Fact in Support of Finding M is hereby incorporated.

Finding:

- I. *The modification will not result in development that blocks or significantly impairs public views to and along the sea or shoreline or to coastal bluffs and other scenic coastal areas.*

Facts in Support of Finding:

1. Fact in Support of Finding L.13 is hereby incorporated.

Finding:

- J. *The modification will not result in development that has an adverse effect, either individually or cumulatively, on coastal resources, including wetlands, sensitive habitat, vegetation, or wildlife species.*

Facts in Support of Finding:

1. The Property is currently zoned for and developed with a single-unit residence, and includes accessory structures and landscaping. The Project includes a 2,511-square-foot net addition to the existing residence towards the existing bluff on Ocean Boulevard. All construction is to be completed in compliance with applicable Building Code requirements related to grading and excavation, vegetation removal and erosion control. The Project has been reviewed by applicable City departments such as Building, Geotechnical, Fire, and Public Works.
2. The Project will not have an adverse effect, on either individually or cumulatively, on coastal resources as there are no wetlands, sensitive habitat, vegetation, or wildlife species on the property.
3. The Property includes large areas of bluff that will remain undisturbed adjacent to the City bluff area located between the subject property and the adjacent to the Lookout Point public walkway that provides access from Ocean Boulevard to Way Lane. Preserving these areas of bluff maintains the scenic and visual qualities of the City bluff, public walkway, and Lookout Point.

Finding:

- K. *The granting of the modification will not be contrary to, or in conflict with, the purpose of this Implementation Plan, nor to the applicable policies of the certified Local Coastal Program.*

Facts in Support of Finding:

1. Facts in support of Finding L are hereby incorporated.
2. Facts in support of Finding G.2 and G.3 are hereby incorporated.

3. Per Section 21.52.090(B)(1)(d), modifications shall be allowed for an increase in the allowed height of retaining walls up to a maximum height of ten (10) feet. The proposed retaining walls and associated guardrails above range from approximately seven (7) to eight (8) feet tall from existing grade. All proposed guardrails located within the front setback area are approximately 3.5 feet above the retaining wall below. At the worst-case slope area, the highest part of the retaining wall and associated guardrail is 8.13 feet above existing grade.

Coastal Development Permit Coastal Findings

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

Finding:

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

Facts in Support of Finding:

1. The Property is categorized as Single Unit Residential Detached – (6.0 – 9.9 DU/AC) (RSD-B) by the Coastal Land Use Plan (CLUP) and is located within the Single-Unit Residential (R-1) Coastal Zoning District. The Project consists of an existing single-unit residence with a proposed addition and remodel.
2. The Property is located within the coastal zone. The Coastal Land Use Plan category is Single Unit Residential Detached (RSD-B) (6.0- 9.9 DU/AC), and it is located within the Single-Unit Residential (R-1) Coastal Zoning District. The Project does not change the residential density of the existing single-unit residence.
3. The Property is located within a row of uniquely oriented single-unit residences which are constructed between Ocean Boulevard and Way Lane, which has a steep slope descending towards Way Lane. This row of residences, located between Shell Street and Fernleaf Avenue, is predominantly developed with single-unit residences. The proposed design, bulk, and scale of the development are consistent with the existing neighborhood pattern of development.
4. The proposed additions and alterations to the existing home comply with all applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, parking, and non-conforming structure regulations as supported by the facts below. Although portions of the existing residence exceed the maximum allowed height, those existing elements are either nonconforming or granted a deviation through Variance No. VA1137. The Project is in substantial conformance with VA1137, as discussed in Findings P through S.
 - a. The Property has a buildable area of 6,813 square feet. The corresponding floor area limit (FAL) is 10,219.5 square feet ($6,813 \times 1.5 = 10,219.5$). Therefore, the proposed 8,292-square-foot residence is 1,927 square feet less than maximum FAL.

- b. The additional floor area associated with the Project provides the minimum required front and left side setbacks, which are ten (10) feet along the front property line along Ocean Boulevard, four (4) feet along the left side property line. The existing dwelling is nonconforming in that portions of the dwelling and garage encroach into the rear 10-foot setback adjacent to Way Lane and portions of the garage also encroach into the northerly four (4)-foot side setback. Variance No. VA1137 also permitted additions and alterations to the dwelling and garage to encroach the rear ten (10)-foot setback adjacent to Way Lane and to exceed the allowable height limit.
 - c. All areas of addition comply with the height limits of the R-1 zoning district, which are 24 feet for a flat roof and 29 feet for a sloping roof and comply with the additional Ocean Boulevard curb height elevation limitation. The existing top of roof elevations which exceed the height limit are not proposed to be modified. Additionally, all three (3) existing chimneys which exceed the maximum height limit and Ocean Boulevard curb height elevation are proposed to be removed.
 - d. The Project includes compliant garage parking spaces for a total of three (3) vehicles, which complies with the minimum three (3)-car garage parking requirement for single-family residences with greater than 4,000 square feet of habitable floor area. Two (2) additional garage spaces slightly smaller than the code minimum yet large enough to reasonably accommodate most vehicles are also provided as part of the existing residence.
5. Pursuant to NBMC Section 21.38.040(G) (Nonconforming Structures, Additions), a nonconforming structure can be expanded up to fifty (50) percent of the gross floor area of the existing structure, if the nonconforming structure is consistent with the following: 1) does not impede public access to and along the sea or shoreline and to coastal parks, trails, or coastal bluffs; 2) does not block or impair public views to and along the sea or shoreline or to coastal bluffs and other scenic coastal areas; 3) conforms to coastal resource protection development regulations of NBMC Sections 21.28.040 (Bluff Overlay District), 21.28.050 (Canyon Overlay District), 21.30.030 (Natural Landform and Shoreline Protection), 21.30A (Public Access and Recreation), or Chapter 21.30B (Habitat Protection). The Project does not impede public access or views to the sea, as addressed in Facts in Support of Finding L.13 and M.1. The Property is not located in the designated Bluff or Canyon Overlay Districts. However, the Project includes grading of the Property including approximately 1,400 cubic yards of cut and exporting to accommodate the addition and remodel. The preliminary grading plan has been reviewed by all applicable City departments such as Building, Public Works, and Geotechnical and has been conceptually approved. The Property is not located in an environmentally sensitive habitat area (ESHA).
6. The Project is consistent with Coastal Land Use Plan (CLUP) Policy 4.4.1-3 and NBMC Section 21.30.030 (Natural Landform and Shoreline Protection), as the Project has been sited to minimize adverse impacts on bluffs to the maximum feasible extent. The areas which contain buildable area on the Property are all similarly sloped so that there are no flat areas for development. Although the Project includes an excavation of approximately 1400 cubic yards from the private bluff area, it is a necessary component of the addition as the intention is to provide interior access to all residential levels through a new interior staircase and elevator which begins on the garage level. The proposed excavation is

not visible from the Way Lane side of the Property, which is where the views of the bluff are most prominent. The excavation will also not be noticeable from the Ocean Boulevard side of the Property, as the residence is located below the curb height and the bluff is below the view plane of visitors on Ocean Boulevard. Overall, the Project minimizes the alteration of the site's natural topography where possible, including the approximately 85-foot wide triangular section of bluff on the southwestern part of the lot directly below a public bluff part of Lookout Point park. This triangular area is proposed to remain and appear as an extension of the public bluff area. Furthermore, the expansion of the building footprint is concentrated between the existing dwelling and Ocean Boulevard, thereby preserving significant portions of bluff area adjacent to the public bluff area between the subject property and the public walkway adjacent to Lookout Point.

7. The Project is consistent with CLUP Policy 4.4.1-1 and NBMC Section 21.30.100 (Scenic and Visual Quality Protection), as the Project has been sited and designed to protect and enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean and coastal bluffs. Ocean Boulevard is designated as a coastal view road by the CLUP. The existing three chimneys which exceed the height limit and partially impede public views of the ocean, are proposed to be removed from the Project. There are existing guardrails located on the property line along Ocean Boulevard that are approximately 55 feet wide, which are proposed to be replaced by new guardrails that are approximately 33 feet wide. The shorter segment of railings will enhance the existing public view of the ocean while providing the necessary fall protection for pedestrians on Ocean Boulevard. Additionally, as required by Condition of Approval No. 16, all landscaping located on private property, including trees, are to be maintained to be below the highest point of the residence, which will further improve public views of the ocean as seen from Ocean Boulevard. The proposed addition to the residence at the front of the building does not exceed maximum heights or the Ocean Boulevard curb height, protecting and enhancing existing views to the ocean.
8. The Property is located adjacent to and immediately north of Lookout Point, which is a designated public viewpoint in the CLUP and offers public views of the Pacific Ocean. The Project is an addition to an existing residence which will maintain a design consistent with the existing neighborhood pattern of development for the row of residences between Ocean Boulevard and Way Lane and will not affect the existing views afforded from Lookout Point, as it is not between the viewpoint and the ocean. An additional designated public viewpoint, West Jetty View Park, is located approximately 1,700 feet across the Harbor entrance. The Project does not disturb the public view of the bluff areas, as the areas of addition are behind the existing residence and are not visible from West Jetty View Park. Additionally, the height of the existing residence is not proposed to change. 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.
9. The Project expands the residence to 8,292 square feet, which is a 2,511-square-foot addition and less than the 2,890.5 square feet (50 percent) allowed for expansion of a nonconforming structure. Therefore, the proposed addition to the existing home complies with the 50 percent addition limit in NBMC Section 21.38.040(G).

10. Proposed landscaping complies with NBMC Section 21.30.075 (Landscaping). 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.
11. A Preliminary Geotechnical Study has been prepared by Stoney Millar Consultants, Inc., dated December 6, 2022. The Project has been designed consistent with the recommendations in the studies. Additionally, the structural engineers and contractors have developed a constructability plan that details the approach to demolition, excavation, and monitoring to minimize and eliminate potential impacts.
12. 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.
13. The Property is located approximately 150 feet from 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.
14. 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 Water Quality Management Plan (WQMP) is required. A preliminary WQMP has been prepared for the project by Toal Engineering dated, December 15, 2022. 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. The Project includes a vastly upgraded drainage system and is particularly important given the proximity to China Cove, and improves the existing drainage system

Finding:

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

Fact in Support of Finding:

1. The Property is located between the first public road and the sea and does not currently provide nor inhibit public coastal access. Public access to Lookout Point is adjacent to

the Property. Additionally, pedestrian public access is provided by stairs from Lookout Point to Way Lane and China Code are located adjacent to the Property. Ocean Boulevard includes multiple access points to the public beach, including the Corona del Mar main beach ramp and a walkway located at Inspiration Point. The project does not include any features that would obstruct access along these routes.

In accordance with NBMC Section 21.52.090 (Relief from Implementation Plan Development Standard), the Zoning Administrator may approve a modification to a development standard of the Implementation Plan only after making all of the following findings:

Finding:

N. Whether or not the development is consistent with the certified Local Coastal Program to the maximum extent feasible.

Facts in Support of Finding:

1. Facts in support of Finding L is hereby incorporated as reference.
2. Fact in support of Finding M is hereby incorporated as reference.
3. The modification for the front entry retaining walls and associated protective guardrails to exceed the 42-inch height limit within the front setback area and Ocean Boulevard curb elevation is necessary to provide access to the residence's front entry. The guardrails are constructed of decorative wrought iron and are of a visibility-open nature. The modification does not disrupt public access to the beach nor public views from Ocean Boulevard, as views of the ocean are predominately south-facing towards and beyond Lookout Point. The guardrails are low enough in height to maintain views above for pedestrians walking along Ocean Boulevard.

Finding:

O. Whether or not there are feasible alternatives that would provide greater consistency with the certified Local Coastal Program and/or that are more protective of coastal resources.

Facts in Support of Finding:

1. The slope from Ocean Boulevard down towards the interior of the lot is severe and creates practical design difficulties to provide access to the residence. The existing stairway has a longer distance, which creates the ability to mitigate the slope of the stairs before reaching the existing entrance, which is located near the center of the Property.
2. Since there is significant buildable area and undeveloped potential floor area available for development, the Applicant is proposing an addition on the Ocean Boulevard bluff side, resulting in a shorter distance between the Ocean Boulevard right-of-way and proposed entryway. To mitigate the severe slope and comply with the requirements of the Building Code, the stair has been designed in an L-shape instead of a straight path

from Ocean Boulevard into the entryway. There is not another feasible design for the stairs as there is minimal space left in the front of the property with the proposed addition.

Staff Approval

In accordance with NBMC Section 20.54.070 (Changes to an Approved Project), the Zoning Administrator may authorize minor changes to an approved site plan, architecture, or the nature of the approved use, where the Zoning Administrator finds that the changes are consistent with the following findings:

Finding:

P. Are consistent with all applicable provisions of this Zoning Code.

Fact in Support of Finding:

1. The Project, which includes an addition and remodel to an existing single-unit residence, is consistent with development standards of the R-1 Zoning District such as setbacks, maximum floor area, and off-street parking.
2. The existing height of the residence, which was constructed to be approximately 54 feet high from existing grade at the southwest and northwest property corners, was authorized by the Planning Commission on November 6, 1986 to exceed the height limit through Variance No. VA1137. Although the Project does not propose to modify the existing approved roof height, it includes an addition towards the Ocean Boulevard bluff side which is approximately 20 feet high from existing grade where there is a more severe slope. The areas of addition do not exceed the Ocean Boulevard curb height and comply with the current height standards of the Zoning Code.
3. Variance No. VA1137 also authorized the dwelling to exceed the maximum allowable floor area and included Condition of Approval No. 3, which states that the gross floor area of the structure shall not exceed 5,264 square feet (1.93 times the buildable area). The subsequent amendment approved for VA1137 allowed an additional 300 square feet of as-built structures, totaling a maximum allowed floor area of 5,564 square feet (2.04 times the buildable area). At the time of the approval of VA1137, the lot area was 4,971 square feet and the buildable area was 2,725 square feet. The area between the existing dwelling and Ocean Boulevard was considered public right-of-way. However, in October of 1999, the City Council adopted Resolution No. 98-66 which vacated and abandoned a 5,556-square-foot portion of the Ocean Boulevard right-of-way and added it to the Property. This resulted in an increased lot area of 10,360 square feet and increased buildable area to 6,692 square feet. Condition No. 3, which intended to minimize the size of the residence in relation to the lot area at the time, is no longer applicable since the buildable area is now larger. The applicant is proposing to add to the existing residence, resulting in an 8,292-square-foot residence, where the maximum floor area is now $10,038$ square feet ($6,692 \times 1.5 = 10,038$).

Finding:

Q. *Do not involve a feature of the project that was a basis for or subject of findings or exemptions in a negative declaration or Environmental Impact Report for the project.*

Fact in Support of Finding:

1. As a part of the approval for VA1137, the City prepared a Negative Declaration under the provisions of the California Environmental Quality Act (CEQA) which stated that the residence would not have a significant effect on the environment, and incorporated six mitigation measures as Conditions of Approval No. 9 through 14 for the project related to grading and drainage.
2. Preliminary grading plans, erosion control plans, and Water Quality Management Plan (WQMP) have been conceptually reviewed by applicable City departments, including Planning, Building, Geotechnical, and Public Works. If approved by the Zoning Administrator, the Project will be required to obtain building permits through plan check review, where additional review and approval of these plans are required. The required plans and process satisfy the mitigation measures and conditions of the original Negative Declaration as part of VA1137.

Finding:

R. *Do not involve a feature of the project that was specifically addressed or was the subject of a condition(s) of approval for the project or that was a specific consideration by the applicable review authority in the project approval.*

Fact in Support of Finding:

1. The Project's additional floor area and alterations comply with all applicable development standards. There is no additional height beyond the existing height, which was authorized by VA1137. The new floor area complies with all required height limits. The remodel of the existing structure removes massing on multiple levels, as well as removes three (3) existing chimneys which exceeded the height limit and interfered with public views of the ocean.
2. Other than the requested modification permit for retaining walls, associated guardrails, and pilasters which exceed the height limits in the front yard setback, all new construction is below the top of curb height of Ocean Boulevard. At the time of the approval of VA1137, the existing railings, which are approximately 55 feet wide along the Ocean Boulevard property line, were located within the public right-of-way and it was recognized that the railings would remain in place. This was prior to the City's abandonment of the right-of-way and dedication of the land to the Property. The Project includes the replacement of the existing railings with a shorter, 33-foot wide segment of railings. While the proposed railings are designed to be open wrought-iron and improve the public views compared to the existing condition, it continues to provide fall protection for pedestrians traveling on the Ocean Boulevard right-of-way.
3. Fact in support of Finding P.3 is hereby incorporated as reference.

4. The Project includes rehabilitated landscaping areas. Condition of Approval No. 5 of VA1137 allowed for trees and shrubs located on the Ocean Boulevard slope to be maintained above the top of curb, up to the height of the existing railings. For the Project, the species of trees have been reviewed and Condition of Approval No. 16 specifies that all landscaping located on private property, including trees, shall be maintained to be below the highest point of the residence, which is an improvement for public views compared to the existing requirement.

Finding:

- S. *Do not result in an expansion or change in operational characteristics of the use.*

Fact in Support of Finding:

1. The Property is currently a single-unit residence. Although the Project includes an addition of floor area, it does not include additional density and will remain a single-unit residence. The addition is appropriate as it complies with the Property's maximum floor area limit. Therefore, there is not an expansion or change in operational characteristics of the use.

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 under 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 a coastal development permit, modification permit, and staff approval under PA2022-0315, 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 10TH DAY OF AUGUST, 2023.



Benjamin M. Zueba, AICP, Zoning Administrator

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

1. The development shall be in substantial conformance with the approved site plan, floor plans, and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. 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.
3. Demolition beyond the approved scope of work requires planning division approval before the commencement of work. Approval of revisions to project plans is not guaranteed. Any changes in the current scope of work may require the entire structure to be demolished and redeveloped in conformance with the current Zoning Code Development Standards.
4. 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 or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
5. 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.
6. 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.

7. 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.
8. 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.
9. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
10. The project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
11. 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.
12. 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.
13. Before 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.
14. Before the issuance of a building permit, the applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought-tolerant plantings, non-invasive plant species, and water-efficient irrigation design. The plans shall be approved by the Planning Division.
15. Before the issuance of a building permit, the applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought-tolerant plantings, non-invasive plant species, and water-efficient irrigation design. The plans shall be approved by the Planning Division.
16. All landscaping located on private property, including trees, shall be maintained to be below the highest point of the residence.
17. All landscape materials and irrigation systems shall be maintained by 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.

- 18. 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 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.
- 19. 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

- 20. Prior to the final building permit inspection, the three existing chimneys located above the curb height shall be removed.
- 21. The guardrails along Ocean Boulevard shall be constructed of open wrought-iron material and be at least 40 percent open from the top of the railing to the bottom.
- 22. Before the commencement of demolition and grading of the project, the applicant shall submit a construction management and delivery plan to be reviewed and approved by the Planning Division and Public Works Department. The plan shall include a discussion of project phasing; parking arrangements for both sites during construction; anticipated haul routes and construction mitigation. Upon approval of the plan, the applicant shall be responsible for implementing and complying with the stipulations outlined in the approved plan.
- 23. Before the issuance of the building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
- 24. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by the current property owner or agent.
- 25. This coastal development permit, modification permit, and staff approval 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.

26. 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 Dawson Residence including but not limited to, a coastal development permit, modification permit, and staff approval under PA2022-0315. 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.

Building

27. Emergency escape and rescue openings shall be required from non-habitable basement areas with more than 200 square feet of floor area.
28. Building shall comply with fire and life safety provisions according to the 2022 California Residential Code.
29. Emergency escape and rescue openings that open on to decks or roofs shall require that a Request for Alternate Method of Construction be submitted for review during Building Division plan check.
30. Side yard terraces serving emergency escape and rescue openings shall include ladders to facilitate egress to public way required per code.
31. Advanced thirty (30-day) notice shall be provided to adjacent neighbors prior to start of excavation for slope work or required shoring where the depth of the excavation is greater than the distance from the property line to the edge of the excavation.
32. 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.
33. Before the issuance of building permits, the applicant shall submit a final drainage and grading plan. The plan shall be subject to review and approval by the Building Division.
34. Before issuance of building permits, the final WQMP shall be reviewed and approved by the Building Division. The implementation shall comply with the approved CPPP and

WQMP and any changes could require separate review and approval by the Building Division.

Public Works

35. An encroachment permit and encroachment agreement shall be obtained for the existing wall that encroaches into the Way Lane public right-of-way.
36. A sewer clean out shall be installed on the existing sewer lateral per City Standard 406.
37. Landscaping shall comply with the Restrictive Covenant and Agreement.
38. Existing drainage discharge pipes along Way Lane that discharge into the right-of-way above the roadway surface shall be modified so that the discharge will sheet flow into the right-of-way.

Fire

39. Emergency Escape and Rescue windows shall be provided where required by the California Fire Code, California Building Code, and California Residential Code.

HEARING OFFICER DETERMINATION NO. HO2023-001

A HEARING OFFICER DETERMINATION APPROVING A REASONABLE ACCOMODATION TO ALLOW THREE (3) CHICKENS AT A SINGLE-UNIT RESIDENTIAL PROPERTY LOCATED AT 1691 ORCHARD DRIVE SUBJECT TO ADDITIONAL CONDITIONS OF APPROVAL (PA2022-098)

THE HEARING OFFICER OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. A request for a reasonable accommodation was filed by Mary Alice Campbell (“Applicant”), concerning property located at 1691 Orchard Drive, and legally described as Lot 4 of Tract No. 4146 (“Property”).
2. The Applicant requests a reasonable accommodation to provide relief from Newport Beach Municipal Code (“NBMC”) Section 7.12.010 (Keeping of Livestock) to allow ten (10) chickens on a single-unit residential property within a single-unit residential neighborhood for an individual with a disability.
3. The Property is designated Single Unit Residential Detached (RS-D) by the General Plan Land Use Element and is located within the Residential Single Family (RSF) area of the Santa Ana Heights Specific Plan (SP-7) Zoning District and is situated within a single-unit residential neighborhood.
4. The Property is not located within the coastal zone.
5. A hearing before the Hearing Officer was held on July 13, 2023, in the Corona del Mar Conference Room (Bay E-1st Floor) located at 100 Civic Center Drive, Newport Beach, California. Evidence, both written and oral, was presented to, and considered by, the Hearing Officer 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 15303 under Class 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 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.

3. The Applicant proposes ten (10) chickens on a property that is developed with a single-unit dwelling and the construction of an enclosed chicken coop to house the chickens.

SECTION 3. REQUIRED FINDINGS.

1. By Section 20.52.070(D)(2) (Reasonable Accommodations – Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

- A. *That the requested accommodation is requested by or on behalf of one or more individuals with a disability protected under the Fair Housing Laws.*

Facts in Support of Finding:

1. A letter from [REDACTED] dated April 21, 2021, was submitted by the Applicant indicating that [REDACTED]
[REDACTED]
2. A letter from [REDACTED] dated May 25, 2021, was submitted by the Applicant indicating that [REDACTED]
[REDACTED]
3. Letters from [REDACTED] dated April 21, 2022, June 29, 2022, and September 23, 2022, were submitted by the Applicant [REDACTED]
[REDACTED]
[REDACTED]
4. Two letters from [REDACTED] dated July 19, 2022, and September 6, 2022, were submitted by the Applicant [REDACTED]
[REDACTED]
[REDACTED]
5. A letter from [REDACTED] dated August 24, 2022, was submitted by the Applicant [REDACTED]
[REDACTED]
[REDACTED]

Finding:

- B. *That the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.*

Facts in Support of Finding:

1. In the letter from [REDACTED] indicates that the chickens can provide the Applicant with [REDACTED] further explains that the chickens will allow the Applicant the comfort to maintain [REDACTED] routine [REDACTED] also indicates in a letter that the chickens will provide [REDACTED]
2. The Applicant indicated that the chickens provide [REDACTED] [REDACTED] She stated that the complete removal of the chickens from the Property would be detrimental to the Applicant, and should the Applicant relocate to a property that would allow the keeping of chickens, the Applicant would face [REDACTED]
3. However, the letters from [REDACTED] and the Applicant's representations do not support why ten (10) chickens are necessary for [REDACTED] Moreover, it is unclear if [REDACTED] were aware of the existing nuisance conditions over the past two (2) years associated with the ten (10) chickens as detailed below.
4. The City did not perform its own medical evaluation regarding the Applicant's disability or the support provided by the chickens. The City's testimony and evidence centered on the nuisance created by the existing number of chickens (smell, noise, vermin, and potential predation).
5. Neighboring property owners have provided written correspondences and photographs that have shown the condition of the Applicant's property and the effects on their own property from residing in proximity to the Applicant which include an increase in noise, odor, and vermin. Photographs provided depict the conditions of the yard and the presence of vermin on neighboring yards.
6. The evidence of these nuisance conditions are further supported by the photos which are made part of the administrative record.
7. Animal Control Officer, Nicholas Ott, has served with the Newport Beach Police Department (NBPD) over the past 14 years. His training and experience include in-depth courses on the application of Penal Code Section No. 597.1 to a variety of animal-related investigations, animal hoarding, animal fighting, malicious animal cruelty, and criminal liability dog bite investigations. Additionally, Officer Ott has three (3) years of experience with Orange County Animal Care (OCAC) handling overnight emergency animal incidents countywide. In his time as Animal Control Officer, he has served as the NBPD's case agent for environmental protection, animal welfare, and dangerous animal cases that require follow-up investigation and liaison with prosecutors.

8. Officer Ott has responded to complaints from the neighbors at the Property with twenty (20) or more phone complaints and several site visits for follow-ups and welfare checks. A log of his dispatch calls for service at the Property which are incorporated herein by reference.
9. He recommends keeping a maximum of three (3) chickens on the property, instead of the requested ten (10) chickens to assist the Applicant. Officer Ott indicates that chickens cannot be classified as service animals under the Americans with Disabilities Act (ADA) because they are neither dogs nor miniature horses.
10. Officer Ott provided testimony that he had consulted with Jamie Link, the Administrative Manager of Field Services at the Orange County Animal Care, who is a court-recognized expert witness in livestock care, including chickens and domestic rabbits. Ms. Link's expert opinion is often sought in cases involving the neglect or mistreatment of livestock. Ms. Link advised Officer Ott that keeping of two (2) chickens would not be inhumane if they are a "well-bonded pair." She indicated that a well-bonded pair of two (2) chickens would provide for sufficient companionship for each other. However, Ms. Link also recommends that a maximum of three (3) chickens, rather than two (2), would further alleviate concerns for the chickens but indicated that there was no need, from a humane standpoint, to keep more than three (3) chickens. While Ms. Link did not provide testimony at the hearing (and would ordinarily be considered hearsay) the hearing was informal in nature and the Hearing Officer gave the information due weight.
11. Under the Federal Housing Administration (FHA) of the U.S. Department of Housing and Urban Development, an assistance animal is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or that provides an emotional support that alleviates one or more identified effects of a person's disability. An assistance animal is not a pet.
12. With consideration of the factors provided by NBMC Section 20.52.070(D)(3), the requested reasonable accommodation is intended to provide the individual with a disability an equal opportunity to use and enjoy a dwelling. According to the Applicant's care provider, the chickens [REDACTED] According to the Applicant's medical professionals, the chickens would also provide [REDACTED] that would improve or maintain the Applicant's quality of life while also balancing the quality of life for the surrounding community and mitigating nuisance conditions.

Finding:

- C. *That the requested accommodation will not impose an undue financial or administrative burden on the City as "undue financial or administrative burden" is defined in Fair Housing Laws and interpretive case law.*

Fact in Support of Finding:

1. Title 2 of the California Code of Regulations Section 12179(d) enumerates the factors to consider when evaluating whether a reasonable accommodation would impose an undue financial or administrative burden. The factors include:

-
- a. The cost of the requested accommodation or the cost of a requested modification if the person considering the request is paying for the modification pursuant to section 12181(h);
 - b. The financial resources of the person or persons who have a duty under the Act to provide the accommodation or the financial resources of that person or persons if they are the persons obligated to pay for the modification pursuant to section 12181(h);
 - c. The benefits that a proposed alternative accommodation or modification would provide to the individual with a disability;
 - d. The availability of alternative accommodations or modifications that would effectively meet the disability-related needs of the individual with a disability;
 - e. Where the entity being asked to make the accommodation or the entity being asked to pay for the modification under section 12181(h) is part of a larger entity, the structure and overall resources of the larger organization, as well as the financial and administrative relationship of the entity to the larger organization. In general, a larger entity with greater resources would be expected to make accommodations and modifications requiring greater effort or expense than would be required of a smaller entity with fewer resources; and
 - f. Whether the need for the accommodation or modification arises from the owner's failure to develop, maintain or repair the property as required by law or contract, or to otherwise comply with related legal obligations such as circumstances covered by California building codes or state or federal accessibility design and construction standards, in which case the defenses of fundamental alteration and undue financial and administrative burden do not apply.
2. With the exception of factors (c) and (d) above, most of the factors referenced above are not applicable since the City and/or a landlord are not being asked to provide the reasonable accommodation. However, with respect to factors (c) and (d) above, the reasonable accommodation allowing three (3) chickens would not impose an undue financial or administrative burden that ten (10) chickens impose.
 3. The keeping of ten chickens on a residential property that is not zoned for the keeping of livestock is considered an undue financial or administrative burden as defined in the California Code of Regulations 2 CCR 12179.
 4. With the ten (10) chickens currently at the Property, the NBPD's Animal Control Unit has responded to twenty (20) complaints and responded to approximately ten (10) resident complaints associated with the existing conditions at the subject property in addition to several follow-ups and welfare checks to the property within the past two (2) years alone. The complaints received pertained to the noise and smell from the Property.

5. Allowing the maximum of three (3) chickens on the Property should result in a reduction in the amount of City resources allocated to the Property as a result of having to respond to complaints of nuisance conditions. The ten (10) chickens currently present at the Property have generated a considerable number of complaints and nuisance conditions as set forth in the administrative record for the hearing. Keeping ten chickens on the Property instead of three (3) would require more care and clean-up and ensuring that the chickens kept in a safe and clean environment would require continuous welfare checks from the Animal Control Unit.
6. Allowing the maximum of three (3) chickens on the Property will not impose an undue financial or administrative burden on the City. The Applicant shall be required to provide a chicken coop for the chickens that meets the City's setback requirements. If the chicken coop exceeds 150 square feet, then the Applicant must obtain a building permit for the chicken coop that is approved by the City's Building and Life Safety Services (Fire) Division. The process to obtain a building permit is consistent with typical building permit review processes without constituting additional administrative burden.

Finding:

- D. *That the requested accommodation will not result in a fundamental alteration in the nature of the City's zoning program, as "fundamental alteration" is defined in Fair Housing Laws and interpretive case law.*

Facts in Support of Finding:

1. Comprehensive zoning regulations lie within the police power of local governments wherein uses are established consistent with general plan land-use designations and are often separated by an intermediate district as a buffer. Regulations specify the intensity or density of use, with an emphasis on what is not allowed. [Village of Euclid v Ambler Realty Co. \(1926\) 272 US 365, 47 S Ct 114.](#)
2. Whether a requested accommodation would fundamentally alter the nature of a zoning program will be analyzed on a case-by-case basis. In [Kulin v. Deschutes County](#), the Plaintiff constructed a structure on his property to run his home business, which was in violation of the county's Home Occupation Code. 872 F. Supp. 2d 1093, 1095 (2012). The Home Occupation Code prohibited the use of more than thirty-five percent of one's dwelling for home occupation and the employment of more than two employees. [Id.](#) at 1097. Plaintiff, who was legally blind and suffered from osteoarthritis, sought an accommodation to the limitations pursuant to the ADA. [Id.](#) at 1096. The Hearing Officer stated that the home business was inconsistent with home occupation and conflicts with the goal of preserving the land for agricultural purposes. [Id.](#) at 1105.

The Court considered several factors in determining whether Plaintiff's accommodation would be unduly burdensome and whether it would create a fundamental alteration to the Home Occupation Program:

- a. If costs are clearly disproportionate to the benefits it will produce:

-
- i. The County would incur no costs, and
 - ii. Plaintiff already made many serious improvements and investments of \$120,000.
 - b. “Intangible but very real human costs” associated with Plaintiff’s disability:
 - i. Plaintiff would be able to operate a business on his property and be self-reliant, and
 - ii. Working from home allowed Plaintiff to take frequent breaks and feel safe and comfortable.
 - c. Impact on surrounding land use:
 - i. There would be inconsequential impact of the warehouse on surrounding agricultural land use – the impact of the warehouse remains the same regardless if the structure was for business or personal use, and
 - ii. Continued use of the warehouse does not fundamentally alter the nature of the code.
 - iii. Dangers of setting a precedent for others to circumvent the code in the future. Id. at 1105.
 3. In applying the factors set forth in Kulin to the present circumstances, the reasonable accommodation as requested would result in a fundamental alteration in the nature of the City's zoning program. For instance, in conducting the cost/benefit analysis, the cost to the City to maintain ten (10) chickens far outweighs the benefit to the Applicant. The Property is a residentially zoned property and is surrounded by other residentially zoned property. Livestock are prohibited altogether in this zone so as to maintain the residential character of the surrounding area. As evidenced in the Staff Report and public correspondences, the City allocates a significant amount of time and resources addressing nuisance issues associated with the ten (10) chickens at the Property. Whereas in Kulin, the property owner invested \$120,000 in improvements, that is not the case here.
 4. With respect to the second factor, the City’s recommendation to allow three (3) chickens accommodates the Applicant need to maintain the chickens while also balancing the needs of the neighboring property owners who have expressed concerns regarding the increase in odor, noise, and vermin. Written statements describe the increase in vermin, such as rats, entering the neighboring properties and photographs provided show the conditions of the Applicant’s yard which are attached hereto and incorporated herein by reference. The odor, noise, and vermin have made it increasingly difficult for the neighboring properties to enjoy their yard. Moreover, whereas in Kulin, the reasonable accommodation was necessary for the applicant for work purposes and to support himself financially, that is not the case here. If the City’s recommendation of three (3) chickens is approved, the intangible but very real human costs cited in Kulin are accommodated while also respecting the needs of the surrounding community.
 5. With respect to the third factor, the ten (10) chickens currently existing at the Property has resulted in a significant impact to the surrounding neighbors. As stated above and based upon the additional evidence in the record, the neighboring property owners have expressed concerns regarding the increase in odor, noise, and vermin. Written statements

describe the increase in vermin, such as rats, entering the neighboring properties and photographs provided show the conditions of the Applicant's yard which are attached hereto and incorporated herein by reference. The odor, noise, and vermin have made it increasingly difficult for the neighboring properties to enjoy their yard.

6. Requiring a municipality to waive a zoning rule would ordinarily cause a "fundamental alteration of its zoning scheme if the proposed use was incompatible with surrounding land uses." Schwarz v. City of Treasure Island, 544 F.3d 1201, 1220 (2008). The proposed accommodation to allow for a maximum of three (3) chickens to be kept on the Property does not result in any fundamental alteration to the character and use of the home or neighborhood. The Property will continue to be used as a single-unit dwelling which is consistent with the development of the neighborhood. The keeping of chickens is a private use that is ancillary to the existing single-family development and is not a commercial operation that could fundamentally alter the nature of the City's zoning program in this area of the City. The Applicant requested to keep ten (10) chickens at the property, however, keeping more than three (3) chickens could result in a significant alteration, as explained above, to the character of the use or neighborhood, as it would no longer constitute an ancillary use. Therefore, the keeping of up to three (3) chickens is recommended.

Finding:

- E. That the requested accommodation will not, under specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the Property of others.*

Facts in Support of Finding:

1. Pursuant to Section 7.20.050 (Maintaining Sanitary Conditions) of the NBMC, the chicken coop will be conditioned to be kept clean and sanitary and any animal waste, uneaten feed, or other matter that emits an offensive odor or encourages the breeding of flies or other insects shall be collected daily and not allowed to accumulate. Conditions No. 7 and 8 have been included to ensure compliance with these requirements.
2. Title 2 of the California Code of Regulations Section 12179 provides that if a support animal, as defined in subsection 12005(d)(1), is requested as a reasonable accommodation, the request may be denied if it would constitute a direct threat to the health or safety of others or would cause substantial physical damage to the property of others under subsection 12185(d)(9).
3. Although the Applicant requests the keeping of ten (10) chickens, it is Officer Ott's recommendation to allow no more than three (3) chickens on the Property. The Property is 72-feet by 100-feet or 7,200 square feet, and the chickens will primarily occupy the rear yard. The rear yard is approximately 2,700-square-feet in size, which Officer Ott indicates is not large enough for ten (10) chickens. Furthermore, ten (10) chickens will produce significantly more noise, odor, and potential for vermin as opposed to three (3) chickens.

4. The increase in chickens also has the potential to attract coyotes to the neighborhood which creates a safety risk for the neighborhood. The neighborhood is adjacent to two golf courses (Newport Beach Golf Course and Santa Ana Country Club) and an ecological reserve. In Officer Ott's experience, open spaces such as these tend to attract coyotes and the neighborhood is susceptible to coyote activity. Keeping chickens on the Property may attract coyotes to the neighborhood as the coyotes may view the chickens as a food source. The project includes a condition requiring the chickens be kept in a secured chicken coop when they are not performing yardwork to prevent coyotes or other predators from frequenting the neighborhood.
5. Neighboring property owners have submitted written correspondence and photographs that show the condition of the Applicant's property and the effects on their own property from residing near the Applicant. Complaints from surrounding neighbors relate to noise, odors, and the increasing presence of vermin such as rats. Based on photographs and site investigations conducted by staff, there are old cages and crates as well as other debris in the rear yard. Other photographs show several chickens in cages that do not meet the City's requirements for animal keeping and lack all weather enclosures for protection from the sun and rain. Conditions have been included to ensure that if the Applicant is permitted to keep chickens on the Property, the chickens will be maintained in animal enclosures that shall comply with the provisions set forth in Chapter 7.20 (Animal Nuisances) of the NBMC. Based on photographic evidence collected from 2021-2023, the existing chickens are not currently kept or maintained in an acceptable condition and if ten (10) chickens are permitted to remain onsite, additional nuisances may arise that create health of safety concerns for nearby residents and the Applicant.
6. Based upon the threats to the surrounding neighbors described above and supported by the evidence provided, the reasonable accommodation as requested should be modified to only allow three (3) chickens.
7. Jamie Link, the Administrative Manager of Field Services for Orange County Animal Care, is a court-recognized expert witness in livestock care, including chickens and domestic rabbits. Ms. Link's expert opinion is often sought in cases involving the neglect or mistreatment of livestock. Ms. Link advised that the keeping of as few as two (2) chickens would not be inhumane if they are a "well-bonded pair." She indicated that a well-bonded pair of two (2) would provide for sufficient companionship. However, Ms. Link also stated that a maximum of three (3) chickens, rather than two (2), would further alleviate concerns for the chickens and indicated that there was no need, from a humane standpoint, to keep more than three (3) chickens.

Finding:

- F. *For housing located in the coastal zone, a request for reasonable accommodation under Section 21.16.020 (E) may be approved by the City if it is consistent with the findings provided in subsection (D)(2) of this section; with Chapter 3 of the California Coastal Act of 1976; with the Interpretative Guidelines for Coastal Planning and Permits established by the California Coastal Commission dated February 11, 1977, and any subsequent amendments, under the Local Coastal Program.*

Facts in Support of Finding:

1. This Property is not located within the coastal zone.
- I. In addition, by Section 20.52.070(D)(3-4) (*Reasonable Accommodations – Factors for Consideration*), the Hearing Officer may consider, but is not limited to, the following factors in determining whether the requested accommodation is the minimum necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling and whether the requested accommodation would require a fundamental alteration in the nature of a City program:

Finding:

- G. Whether the requested accommodation will affirmatively enhance the quality of life of one or more individuals with a disability.*

Facts in Support of Finding:

Facts in Support of Finding A(1)-(6) are incorporated herein by reference. However, in balancing the quality of life of the Applicant, Facts in Support of Finding B(1) – (12), D(1) – (7), and (E)(1) – (7) are incorporated herein by reference.

Finding:

- H. Whether the individual(s) with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation.*

Facts in Support of Finding:

Facts in Support of Finding B(1) – (12) are incorporated herein by reference.

Finding:

- I. Whether the requested accommodation would fundamentally alter the character of the neighborhood.*

Facts in Support of Finding:

Facts in Support of Finding D(1) – (6) are incorporated herein by reference.

Finding:

- J. Whether the accommodation would result in a substantial increase in traffic or insufficient parking.*

Facts in Support of Finding:

The request for reasonable accommodation as modified will not result in a substantial increase in traffic or insufficient parking.

Finding:

K. Whether granting the requested accommodation would substantially undermine any express purpose of either the City's General Plan or an applicable specific plan.

Facts in Support of Finding:

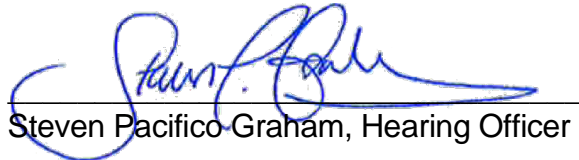
The Property is designated Single Unit Residential Detached (RS-D) by the General Plan Land Use Element and is situated within a single-unit residential neighborhood.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Hearing Officer of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act under 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 Hearing Officer of the City of Newport Beach hereby approves the Campbell Animal Keeping Reasonable Accommodation as modified, 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 Hearing Officer's final decision unless within such time an appeal is filed with the City Clerk by the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 13TH DAY OF JULY, 2023.



Steven Pacifico-Graham, Hearing Officer

The final and effective date for calculation of appeal deadlines shall be the date this order is actually published by the City.

PUBLISHED: AUGUST 11, 2023

EXHIBIT "A"

CONDITIONS OF APPROVAL

Planning Division

1. The development shall be in substantial conformance with the approved site plan.
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. A material violation of any of those laws in connection with the use may be caused the revocation of this reasonable accommodation.
4. *The maximum number of chickens on-site at any one time shall be three (3).*
5. *No male chickens or roosters shall be permitted on the property.*
6. *All chickens shall be housed and remain in the on-site chicken coup structure when not performing yard work or exercising. At minimum, the chickens shall be housed in the coup from 9:00 p.m. to 6:00 a.m., daily.*
7. *Animal enclosures shall be maintained free from litter, garbage, and the accumulation of animal waste to discourage flies and other disease vectors and shall comply with the provisions of Chapter 7.20 (Animal Nuisances). Animal waste shall not be allowed to accumulate within setback areas. The site shall be continually maintained in a neat and sanitary manner.*
8. *The Applicant shall collect/dispose any animal waste, uneaten feed, or other matter that emits an offensive odor or encourages the breeding of flies or other insects daily. The Applicant may store animal waste, uneaten feed, or other matter in a closed container prior to disposal.*
9. *If the person(s) initially occupying the residence vacates or conveys the Property for which the reasonable accommodation was granted, the chickens and chicken coop shall be removed from the Property within 30-days.*
10. *The storage of materials or feed for the chickens shall be prohibited in the front yard setback of 20 feet.*
11. *The chicken coop(s) shall be required to meet the required side yard and rear yard setbacks of 25 feet.*
12. This reasonable accommodation may be modified or revoked by Hearing Officer should they determine 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.

13. Any change in operational characteristics, expansion in the area, or other modification to the approved reasonable accommodation, shall require an amendment to this reasonable accommodation or the processing of a new reasonable accommodation application.
14. A copy of the Hearing Officer Determination, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans before issuance of the building permits.
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 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

16. 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 Sundays, or Holidays.
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.
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 **Campbell Animal Keeping including, but not limited to Reasonable Accommodation (PA2022-098)**. 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.