



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 for the week ending October 27, 2023.

ZONING ADMINISTRATOR PUBLIC HEARING ACTIONS OCTOBER 26, 2023

Item 1: Annual Review of North Newport Center Development Agreement (PA2023-0189)
Site Address: 1101 Newport Center Drive

Action: The Zoning Administrator found that the North Newport Center is in good faith compliance with the terms of the Development Agreement.	Council District	5
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Item 2: GuacAmigos Minor Use Permit (PA2023-0119)
Site Address: 2607 West Coast Highway

Action: Approved by Resolution No. ZA2023-064	Council District	2
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Item 3: Nibeel Residence Coastal Development Permit (PA2023-0111)
Site Address: 206 Grand Canal

Action: Approved by Resolution No. ZA2023-065	Council District	5
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Item 4: Irwin Residence Coastal Development Permit (PA2023-0123)
Site Address: 7 Beacon Bay

Action: Approved by Resolution No. ZA2023-066	Council District	5
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APPEAL PERIOD: An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

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

RESOLUTION NO. ZA2023-064

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A MINOR USE PERMIT TO REDUCE HOURS OF OPERATION AND ALLOW LIVE ENTERTAINMENT CONSISTING OF A DJ AND/OR PRE-PROGRAMMED AMPLIFIED MUSIC FOR AN EXISTING RESTAURANT (GUACAMIGOS) LOCATED AT 2607 WEST COAST HIGHWAY (PA2023-0119)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Eric Lofgren of Kelly Investment Group (“Applicant”), concerning property located at 2607 West Coast Highway, which is legally described in Exhibit “A,” which is attached hereto and incorporated herein by reference (“Property”).
2. The Applicant proposes to remove late hours (up to 11:30 p.m.) on Fridays, Saturdays, and holidays which were approved under UP3627. The revised hours of operation proposed are: 11:00 a.m. to 10:30 p.m., Monday through Thursday; 11:00 a.m. to 11:00 p.m., Friday, Saturday, and holidays; and 9:30 a.m. to 10:30 p.m. Sundays. Additionally, the request includes live entertainment consisting of a DJ and/or pre-programmed amplified music, in addition to singing and dancing of waitstaff previously approved with Use Permit No. 3627, within the interior of the restaurant (“Project”).
3. The existing restaurant was constructed in 1968, prior to the requirement for a use permit a restaurant use in commercial and mixed-use districts. On August 20, 1987, the Planning Commission approved Use Permit No. UP3288 authorizing on-site valet parking and compact parking spaces to accommodate a portion of the required parking. On March 19, 1998, the Planning Commission approved Use Permit No. UP3627 authorizing live entertainment involving singing and dancing performances by waiters and waitresses in association with amplified music, as well as late hours up to 11:30 p.m. on Friday, Saturday, and holidays. Under this use permit, the project plans reflected a net public area of 2,725 square feet.
4. On January 18, 2019, the Community Development Director approved Staff Approval No. SA2018-010 (PA2018-283) to allow an interior remodel and Americans with Disabilities Act (ADA) site improvements related to the parking lot layout at an existing food service establishment with a Type 47 (On-Sale General) alcohol license and late hours of operation (Attachment ZA 5). Newport Beach Municipal Code (NBMC) Section 20.40.110 (Adjustments to Off-Street Parking Requirements), subsection A, authorizes the adjustment of parking spaces to accommodate required ADA improvements. The updated parking layout results in 55 on-site parking spaces where 57 parking spaces were originally required under Use Permit No. UP3288. Additionally, the net public area of the restaurant was reduced to 2,646 square feet and 178 seats.

5. The Property is designated Mixed-Use Water (MU-W1) by the General Plan Land Use Element and is located within the Mixed-Use Water (MU-W1) Zoning District.
6. The Property is located within the coastal zone. The Coastal Land Use Plan category is Mixed-Use Water Related (MU-W) and it is located within the Mixed-Use Water (MU-W1) Coastal Zone District. The Project does not require a coastal development permit because the request for changes to hours of operation and live entertainment do not intensify or expand the existing eating and drinking establishment use.
7. A public hearing was held on October 26, 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 pursuant to Section 15301, Division 6, Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities) because it has no potential to have a significant effect on the environment.
2. The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The subject application is a request to modify hours and operations of an existing restaurant with no expansion of the existing use on the project site.

SECTION 3. REQUIRED FINDINGS.

Alcohol Sales

In accordance with Section 20.48.030(C)(3) (Alcohol Sales-Required Findings) of the Newport Beach Municipal Code ("NBMC"), the findings and facts in support of such findings are set forth as follows:

Finding:

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

Facts in Support of Finding:

- i. *The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.*
 1. The Property is in Reporting District 25 (RD 25). RD 25 exceeds the Citywide average and is considered a higher crime area as compared to other reporting

districts. The crime count in RD 25 is 249, which is 147 percent over the Citywide crime count average of 101. Since this area has 20 percent or greater reported crimes than the average number of reported crimes as determined from all crime reporting districts within the city, the area is found to have undue concentration. However, RD 25 contains many visitor- and tourist-serving nonresidential uses along West Coast Highway. The MU-W1 zoning district applies to waterfront properties along the Mariner's Mile Corridor, in which nonresidential uses and residential dwelling units may be intermixed. Mariner's Mile Corridor contains several restaurants that serve residents and visitors to the area. Areas near the water have a higher concentration of visitor-serving commercial land uses and, therefore, tend to have a higher crime rate than other areas in the city. Furthermore, since the existing restaurant currently maintains alcohol sales, the reduction in operating hours and narrowly defined live entertainment are unlikely to increase crime in the area.

2. The Newport Beach Police Department ("NBPD") has reviewed the proposed use. Based on the location, operational characteristics, and closing hours, the NBPD has no objection to the proposed modifications to the hours of operation for the existing Type 47 Alcoholic Beverage Control (ABC) License, subject to appropriate conditions of approval, which are included as Conditions 31 through 49 in Exhibit "B" attached to this Resolution.

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

1. Due to the higher concentration of commercial land uses, RD 25 is reported to ABC as a high crime area as compared to other reporting districts in the city. The highest volume crime in this area is theft/larceny. The highest volume arrest in the area is for narcotics related offenses. DUI, public intoxication, and liquor law violations make up 25 percent of arrests in this reporting district. However, the area is considered an attractive tourist area in the City, which results in a higher number of alcohol-related calls for service, crimes and arrests.
2. During 2022, the subject restaurant had 20 dispatch events to the location, but these calls did not result in any alcohol-related arrests. The business did not receive any alcohol-related citations within the same period. Therefore, the NBPD has no concerns with the proposed application. In addition, updated conditions of approval have been provided to bring conditions related to alcohol sales to current standards.

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

1. The Project is located within a mixed use nonresidential and residential district and is a single-tenant commercial building that is situated in a commercial zoning district along West Coast Highway. Nearby residential dwelling units are generally located to the northeast of the Property in an adjacent neighborhood to the commercial corridor, but none are directly abutting to the Property. The nearest residential dwelling is approximately 660 feet from the subject building to the northeast along

Tustin Avenue and is further separated by the business's parking lot. Furthermore, the restaurant is oriented towards the water and is buffered from residential by the on-site parking lot and nearby commercial uses along West Coast Highway to the north and by the channel to the south.

2. The Project is not directly abutting a religious facility, daycare center, park, recreational facility, school, or similar uses that attract minors. The nearest school is Bright Horizons (2500 West Coast Highway), which is a preschool located approximately 270 feet northeast of the restaurant. The existing restaurant was constructed in 1968, and the current tenant (GuacAmigos) has been in operation at this location with alcohol sales without causing detriment to the surrounding neighborhood.
 3. Alcohol sales currently exist on the site and the reduced hours of operation and modified live entertainment provisions are not anticipated to be detrimental to the community because of the proximity to any sensitive land uses, especially with the allowed operation narrowed by the Conditions of Approval.
- iv. *The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.*
1. The Property is located within Census Tract 634. This census tract has an approximate population of 4,776 residents with 65 active on-sale alcohol licenses which is a per capita ratio of one on-sale license for every 73 residents. The per capita ratio of on-sale alcohol licenses for Orange County is one license for every 822 residents. This location meets the legal criteria for undue concentration pertaining to alcohol establishments.
 2. Several other establishments along West Coast Highway currently have active ABC Licenses, most of which are bona fide eating and drinking establishments and are not defined as bars, lounges, or nightclubs by the Zoning Code. The closest establishments selling alcoholic beverages for on-site consumption are directly abutting the project site: The Shamrock Bar & Grill (2633 West Coast Highway, Suite C) to the west operates with a Type 47 (On-Sale General - Eating Place) ABC license and The House (2601 West Coast Highway) to the east operates with Type 57 (Special On-Sale General) and 58 (Caterer Permit) ABC licenses.
 3. The Project's proximity to other establishments selling alcohol does not raise concern due to the limited characteristics of the use, including 2,646 square feet of interior net public area with conditioned hours of operation that are limited from 11:00 a.m. to 10:30 p.m., Monday through Thursday; 11:00 a.m. to 11:00 p.m., Friday, Saturday, and Holidays; and 9:30 a.m. to 10:30 p.m. on Sunday. The proposed cessation of alcohol sales is reduced from the current allowed hours approved by Use Permit No. 3627, resulting in no late hour operations. Conditions of approval will further prevent the establishment from operating as a bar, lounge, or nightclub.
 4. Although the per capita ratio of on-sale alcohol licenses to residents is higher than the average in the County and the Property is proximate to establishments selling

alcoholic beverages for on-site and off-site consumption, the operational conditions of approval recommended by the NBPD and requirement to obtain an operator's license will ensure compatibility with the surrounding uses and minimize alcohol related impacts.

- v. *Whether or not the proposed amendment will resolve any current objectionable conditions.*
1. No objectionable conditions are presently occurring at the Property. The Property has historically been used as a restaurant. There is no evidence that suggests the Project will create objectionable conditions with the proposed hours of operation.
 2. The Project has been reviewed by the NBPD, which has provided conditions of approval as provided in the draft resolution. The conditions of approval help to ensure that the purpose and intent of Section 20.48.030 of the NBMC is maintained and that a healthy environment for residents and businesses is preserved. The NBPD do not anticipate detrimental conditions due to the proposed limited operational characteristics and conditions.
 3. As conditioned, the owners, managers, and employees selling alcohol are required to undergo and successfully complete a certified training program in responsible methods and skills for selling alcohol.
 4. The Project proposes to add a DJ and/or pre-programmed amplified music in addition to the existing live entertainment approval for waitstaff singing/performances. Condition of Approval No. 9 limits the hours of operation and Conditions of Approval No. 10 through 12 limits the type and hours of live entertainment allowed within the restaurant.

Minor Use Permit

In accordance with Section 20.52.020 (F) (Conditional Use Permits and Minor Use Permits – Findings and Decision) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

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

Facts in Support of Finding:

1. The General Plan Land Use category for this property is Mixed Use Water (MU-W1). The MU-W1 land use designation encompasses waterfront properties along the Mariner's Mile Corridor, in which marine-related, visitor-serving, commercial and residential uses are intermixed with buildings that provide residential uses above the ground floor. The Project is consistent with the land uses permitted within this land use designation of the General Plan, as it concerns an existing restaurant that intends to serve nearby residents and visitors to the city.

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 located in the Mixed-Use Water (MU-W1) Zoning District, which applies to waterfront properties along the Mariner's Mile Corridor in which nonresidential and residential dwelling units may be intermixed. Food service with no late hours is permitted with the approval of a minor use permit in the MU-W1 Zoning District. The existing restaurant was constructed in 1968, prior to the requirement for a use permit.
2. The existing restaurant operates pursuant to both Use Permit No. UP3288 and UP3627. On August 20, 1987, the Planning Commission approved Use Permit No. UP3288 authorizing on-site valet parking and compact parking spaces to accommodate a portion of the required parking. On March 19, 1998, the Planning Commission approved UP3627 authorizing live entertainment involving singing and dancing performances by waiters and waitresses in association with amplified music. Under this use permit, the restaurant was authorized for a net public area of 2,725 square feet. Use Permit No. UP3627 also incorporated all conditions of UP3288 by reference in the conditions of approval.
3. On January 18, 2019, the Community Development Director approved Staff Approval No. SA2018-010 (PA2018-283) to allow interior remodel and Americans with Disabilities Act (ADA) site improvements related to the parking lot layout at an existing food service establishment with a Type 47 (On-Sale General) ABC license and late hours of operation (Attachment ZA 5). Per Newport Beach Municipal Code (NBMC) Section 20.40.110 (A) (Adjustments to Off-Street Parking Requirements), the Community Development Director administratively reduced the required parking to accommodate required ADA improvements. The updated parking layout resulted in 55 on-site parking spaces where 57 parking spaces were originally required under Use Permit No. UP3288. Additionally, the net public area of the restaurant was reduced to 2,646 square feet and 178 seats.
4. The Project does not increase the required parking for the restaurant and only minor construction is proposed within the existing tenant space to remove two seating booths and construct the DJ/music booth.
5. Approval of this Minor Use Permit supersedes the conditions of approval of Use Permits No. 3288 and 3627. All applicable conditions of approval for Staff Approval No. SA2018-2010 (PA2018-283) shall remain in effect.

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 existing restaurant is located within the Mariner's Mile Corridor, which includes a variety of commercial uses intermixed with residential dwelling units. The Property is located along West Coast Highway and consists of an existing restaurant surrounded by a mix of commercial uses to the east, north, and west. Nearby businesses include the Shamrock Bar and Grill (2633 West Coast Highway) to the west, The House Restaurant (2601 West Coast Highway) to the east, and Lido Consignment (2700 West Coast Highway, Suite #100) to the north.
2. The existing commercial building is oriented towards West Coast Highway to the north and the water to the south, facing away from the adjacent commercial neighbors. The surrounding properties fronting West Coast Highway are also in the MU-W1 Zoning District to provide a range of commercial uses to serve nearby residential neighborhoods and visitors to the city. The nearest residential dwelling is approximately 660 feet from the subject building to the northeast along Tustin Avenue and is additionally separated by the parking lot of the business.
3. The Applicant is proposing the hours of operations between 11:00 a.m. to 10:30 p.m., Monday through Thursday; 11:00 a.m. to 11:00 p.m., Friday, Saturday, and Holidays; and 9:30 a.m. to 10:30 p.m. Sundays, when it is currently permitted to operate until 11:30 p.m. on Fridays, Saturdays, and holidays. The project does not propose late hours (past 11 p.m.) which will minimize any disturbance to nearby properties.
4. Fact 3 in support of Finding B is hereby incorporated as reference.
5. Due to location and operational characteristics of the establishment, the proposed live entertainment is not anticipated to cause noise disturbances to surrounding commercial or residential properties. Per Conditions of Approval #9 through 12 of this resolution, all live entertainment is limited to the interior of the restaurant with all doors and windows closed, hours for performances are limited to between the hours of 11:00 a.m. and 10:00 p.m., sound amplification devices which do not provide volume control are prohibited, and the business are to comply with Chapter 10.26 (Community Noise Control) of the NBMC. The NBPD has reviewed the project and has no objections to the proposed live entertainment. There have been no calls for service for loud music or noise disturbances at this location since January 1, 2019.

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 Property is located on West Coast Highway between Riverside Avenue and Tustin Avenue, within the Mariner's Mile Corridor. An on-site parking lot is accessible to patrons and employees from West Coast Highway. The proposed reduction in hours of operation

and modification to the existing live entertainment are not expected to result in increased vehicular and pedestrian traffic that would negatively impact access to the Property.

2. The existing restaurant is located within an existing commercial building serviced by all necessary utilities. A minor alteration to remove two seating booths is proposed to create the proposed DJ station. The design, location, shape, size, and operating characteristics of the use are compatible with the existing commercial uses the surrounding areas.
3. The Project has been reviewed by the City's Public Works and Fire Departments has reviewed the Project to ensure adequate public and emergency vehicle access is provided and does not have any concerns with the proposed use.

Finding:

- E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

1. The proposed hours of operation and live entertainment request have been reviewed and this resolution includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The business operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.
2. The Project has been conditioned with typical daytime and evening hours of operation (no late hours) that will minimize any detriment to the surrounding area. Condition of Approval No. 9 limits the hours of operation and Conditions of Approval No. 10 through 12 limits the type and hours of live entertainment allowed within the restaurant.
3. As conditioned, all owners, managers, and employees selling alcohol are required to undergo and successful complete a certified training program in responsible methods and skills for selling alcoholic beverages within 60 days of hire. The certified program must meet the standards of the certifying/licensing body designated by the State of California and records of successful completion shall be maintained on the premises.
4. The Project does not increase the parking requirement and only minor alterations are proposed within the existing tenant space to remove two seating booths and construct the DJ booth. The Project will not result in a detriment to the existing retail, service, and residential uses of the surrounding area.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit PA2023-0119, subject to the conditions set forth in Exhibit "B," which is attached hereto and incorporated by reference.
2. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act under Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3 because it has no potential to have a significant effect on the environment.
3. This resolution supersedes Use Permit No. 3288 and 3627, which vesting of the rights authorized by the Minor Use Permit (PA2023-0119), shall become null and void.
4. 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 20 Planning and Zoning of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 26TH DAY OF OCTOBER 2023.



Benjamin M. Zieba, AICP, Zoning Administrator

EXHIBIT "A"

LEGAL DESCRIPTION

APN: 049-150-27

Parcel 1:

The Northwesterly 87.99 feet of the Southeasterly 1,387.99 feet of Lot "H" of Tract No. 919, in the City of Newport Beach, County of Orange, State of California, as shown on a map thereof recorded in Book 29, Pages 31, 32, 33 and 34 of Miscellaneous Maps, records of said Orange County, said footage being measured along the Southwesterly line of said Lot "H" and the Northwesterly and Southeasterly lines of said 87.99 feet, being parallel with the Northwesterly line of said Lot "H".

Parcel 2:

The Southeasterly 25 feet of the Northwesterly 575 feet of Lot "H" of Tract No. 919, as shown on a map thereof recorded in Book 29, Pages 31, 32, 33 and 34 of Miscellaneous maps, records of said Orange County, said 575 feet being measured along the Southwesterly line of said Lot "H" and the Southeasterly line thereof being parallel with the Northwesterly line of said Lot "H".

Excepting any of Parcels 1 and 2 which was formerly tidelands lying Southerly and Waterward of the U.S. Bulkhead line between Stations U.S. 129 and U.S. 130 which is also the mean high tide line established in Orange County Superior Court Case No. 23687.

Commonly known as 2607 West Coast Highway, Newport Beach, California.

EXHIBIT “B”**CONDITIONS OF APPROVAL**

(Project-specific conditions are in italics)

Planning Division

1. The development shall be in substantial conformance with the approved site plan and floor plans stamped and dated with the date of this approval, except as modified by applicable conditions of approval.
2. 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. Material violation of any of those laws in connection with the use may be cause for revocation of this Minor Use Permit.
5. 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.
6. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Minor Use Permit or the processing of a new Use Permit.
7. *Approval of this Minor Use Permit supersedes the conditions of approval of Use Permits No. 3288 and 3627. All applicable conditions of approval for Staff Approval No. SA2018-2010 (PA2018-283) shall remain in effect.*
8. *The hours of operation for the establishment shall be limited to: 11:00 a.m. to 10:30 p.m., Monday through Thursday; 11:00 a.m. to 11:00 p.m., Friday, Saturday, and Holidays; and 9:30 a.m. to 10:30 p.m. on Sundays.*
9. *Live entertainment shall be limited to 1) Waitstaff performances and patron participation in association with pre-recorded music, and/or 2) A DJ station with live DJ or pre-programmed amplified music only. The sound of these activities shall be confined to the interior of the restaurant and all doors and windows of the establishment shall*

remain closed during all performances, except when persons enter and leave by the main entrance of the facility.

- 10. *Live entertainment shall be limited to between the hours of 11:00 a.m. and 10:00 p.m., daily.*
- 11. *The use of bull horns, megaphones, sirens and other sound amplification equipment which does not provide volume control capabilities shall be prohibited.*
- 12. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the NBMC. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

Location	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
	Interior	Exterior	Interior	Exterior
Single-, two-or multiple-family residential	45dBA	55dBA	40dBA	50dBA
Residential portions of mixed-use properties	45dBA	60dBA	40dBA	50dBA
Commercial	N/A	65dBA	N/A	60dBA
Industrial or manufacturing	N/A	70dBA	N/A	70dBA

- 13. 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 prior to the issuance of a building permit.
- 14. A copy of the Resolution, including conditions of approval, Exhibit “B,” shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
- 15. 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.
- 16. No outside paging system shall be utilized in conjunction with this establishment.
- 17. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three (3) walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
- 18. 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).

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. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Community Development Director, and may require an amendment to this Minor Use Permit.
21. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter, and debris from the premises and on all abutting sidewalks within 20 feet of the premises. Graffiti shall be removed within 48 hours of written notice from the City.
22. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
23. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
24. A Special Event Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permit.
25. *Prior to operation of proposed live entertainment, the Applicant shall obtain a Live Entertainment Permit from the Revenue Division.*
26. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's **approval of the GuacAmigos Minor Use Permit including, but not limited to, PA2023-0119**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the

parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Building Division

27. The restaurant shall provide an accessible path of travel to the DJ booth.

Fire Department

28. Any changes to the approved seating and occupant load design will require a review by Newport Beach Fire Department.
29. No portion of the design egress pathways can be obstructed by the new equipment.
30. No use of special effects such as, fire, smoke, visual effects created by a chemical compound or other items that would potentially cause fire/panic hazards.

Police Department

31. The approval is for an eating and drinking establishment with on-sale alcoholic beverage service. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be a Type 47 (On-Sale General – Eating Place) license in conjunction with the restaurant as the principal use of the facility.
32. The Applicant shall comply with all federal, state, and local laws, and all conditions of the Alcoholic Beverage License. Material violation of any of those laws or conditions in connection with the use may be cause for revocation of the use permit.
33. *Prior to the combination of alcohol service and the live DJ use, the Operator of the establishment shall secure, maintain, and abide by an Operator License pursuant to Chapter 5.25 of the Municipal Code.*
34. All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages within 60 days of hire. This training must be updated every 3 years regardless of certificate expiration date. The certified program must meet the standards of the certifying/licensing body designated by the State of California. The establishment shall comply with the requirements of this section within 60 days of approval. Records of each owner's, manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.
35. Food service shall be made available to patrons until closing.

36. "VIP" passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink requirement or the sale of drinks is prohibited (excluding charges for prix fixe meals).
37. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Newport Beach Municipal Code.
38. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
39. No games or contests requiring or involving the consumption of alcoholic beverages shall be allowed.
40. There shall be no reduced-price alcoholic beverage promotions after 9:00 p.m.
41. The sale of alcoholic beverages for consumption off the premises shall be prohibited.
42. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.
43. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
44. There shall be no dancing allowed on the premises.
45. The removal or relocation of tables, chairs, stools, or other furniture to accommodate an area for standing or dancing shall be prohibited.
46. Any event or activity staged by an outside promoter or entity, where the Applicant, operator, owner or his employees or representatives share in any profits, or pay any percentage or commission to a promoter or any other person is prohibited.
47. Strict adherence to maximum occupancy limits is required.
48. The Applicant shall maintain a security recording system with a 30-day retention and make those recording available to police upon request.
49. The operator of the restaurant facility shall be responsible for the control of noise generated by the subject facility. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code.

RESOLUTION NO. ZA2023-065

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A COASTAL DEVELOPMENT PERMIT TO DEMOLISH AN EXISTING DUPLEX AND CONSTRUCT A NEW THREE-STORY SINGLE-UNIT DWELLING, JUNIOR ACCESSORY DWELLING UNIT, AND ATTACHED TWO-CAR GARAGE LOCATED AT 206 AND 206 ½ GRAND CANAL (PA2023-0111)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Brittany Oakes of Brandon Architects, concerning property located at 206 and 206 ½ Grand Canal, requesting approval of a coastal development permit.
2. The lot at 206 and 206 ½ Grand Canal is legally described as Lot 4, Block 7, Section 5 of the Balboa Island Tract.
3. The applicant requests a coastal development permit (CDP) to allow the demolition of an approximately 2,400 square foot existing duplex and construction of a new 2,614 square-foot three-story single-unit dwelling, a 286 square-foot junior accessory dwelling unit (JADU), and an attached 441 square-foot two-car garage. The project also includes landscaping, hardscaping, and site walls. The project complies with all applicable development standards and no deviations are requested.
4. The subject property is designated Two-Unit Residential (RT) by the General Plan Land Use Element and is located within the Two-Unit Residential, Balboa Island (R-BI) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Two Unit Residential (RT-E), and it is located within the Two-Unit Residential, Balboa Island (R-BI) Coastal Zoning District.
6. A public hearing was held on October 26, 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 and construction of up to three single-unit residences in urbanized areas. The proposed project consists of the demolition of a duplex and the construction of a new 2,614 square-foot three-story single-unit dwelling, a 286 square-foot junior accessory dwelling unit (JADU), and an attached 441 square-foot two-car garage.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, and is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The maximum floor area limitation is 2,900 square feet and the proposed floor area is 2,900 square feet.
 - b. The proposed development provides the minimum required setbacks, which are 5 feet along the front property line abutting the boardwalk, 3 feet along each side property line, and 0 feet along the rear property line abutting the alley.
 - c. The highest guardrail is less than 24 feet from the established grade (9.00 feet NAVD88) and the highest ridge is no more than 29 feet from the established grade, which complies with the maximum height requirements.
 - d. The project includes garage parking for a total of two vehicles, complying with the minimum two-car garage parking requirement for single-unit dwelling with less than 4,000 square feet of habitable floor area. The JADU does not require any additional parking spaces.
2. The neighborhood is predominantly developed with two- and three-story, single- and two-unit residences. The proposed design, bulk, and scale of the development are consistent with the existing neighborhood pattern of development.

3. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by PMA Consulting, Inc. dated May 25, 2023, for the project. The maximum bay water elevation is 7.7 feet NAVD88 (North American Vertical Datum of 1988 (NAVD88)) and may exceed the current top of bulkhead elevation of 8.62 feet (NAVD88) during high tide or storm events. The report analyzes future sea level rise scenarios assuming a 3.2-foot increase in the maximum water level over the next 75 years (i.e., the life of the structure). Therefore, the sea level is estimated to reach approximately 10.9 feet NAVD 88 (the likely range for sea level rise over the 75-year design life of the structure based on low-risk aversion estimates for sea level rise provided by the State of California, Sea Level Rise Guidance: 2018 Update).
4. Most of the streets on Balboa Island are approximately 6.5 feet (NAVD88), and flooding on Balboa Island is an existing coastal hazard. The public boardwalk is continuous and provides public access around the entire island including Little Balboa Island. The existing bulkhead is owned by the City of Newport Beach; therefore the adjacent property owner is not able to increase the height of the bulkhead as part of this CDP. If the City adopts comprehensive sea level rise adaptation strategies to protect the public streets and public access areas that are already experiencing flooding, then the property owner will be protected as a result. As a condition of approval, the property owner will be required to waive their rights to future protection devices and acknowledge coastal hazards present at the site.
5. The finished floor elevation of the proposed single-unit residence is 9.00 feet (NAVD 88), which complies with the minimum 9.00-foot (NAVD88) elevation standard but does not protect against future sea level rise assuming a bay water elevation of 10.9 feet NAVD88. Therefore, a waterproofing curb or similar waterproofing material will be installed around the residence to protect from future sea level rise. The Coastal Hazard Report concludes that the bay water elevation (currently 7.7 feet NAVD 88) will not exceed the proposed flood protection curb around the single-unit residence at 10.9 feet (NAVD88) for the anticipated 75-year life of the structure.
6. 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.
7. The property is separate from the Bay by a public bulkhead and boardwalk. Under 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.

8. 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.
9. The project proposes to demolish the existing duplex and construct a new single-unit dwelling and JADU. As a result, the project complies with the Housing Crisis Act of 2019 and Senate Bill 8 (Skinner) because it does not result in the loss of residential density. The State Department of Housing and Community Development (HCD) has verified with the City in an email dated March 23, 2022, that a JADU is considered a housing unit under Government Code Section 66300 provisions to replace existing units. The property owner has certified that the units are not "protected" units under Section 66330 Subdivision (d)(2). The project is consistent with the General Plan, Local Coastal Program, and Zoning designations that allow the single-unit dwelling and JADU land uses. Under the Coastal Land Use Plan Table 2.1.1-1 (Land Use Plan Category), the Two Unit Residential (RT-E) category is intended for a range of two-unit residential dwelling units such as duplexes and townhomes. Section 21.18.020 of the Local Coastal Program Implementation Plan shows "Single-Unit Dwellings" and "Accessory Dwelling Units" as allowed uses in the Two-Unit Residential, Balboa Island (R-BI) Coastal Zoning District. Therefore, the project of a single-unit dwelling and JADU to replace an existing duplex is consistent with the R-BI zoning and land use designations, does not result in a loss of residential density, and will not affect the City in meeting its regional housing needs.
10. The project site is not located adjacent to a coastal view road or Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoints are approximately 100 feet south on the Park Avenue bridge and approximately 970 feet north of the project on the Marine Avenue bridge. The project site is visible from the Park Avenue bridge; however, the project does not include projections or features that would obstruct the view of the canal. The project site is adjacent to the public boardwalk surrounding the island. However, the proposed single-unit dwelling and JADU complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.
11. The front of the proposed residence, which is visible from the public boardwalk and bay, contains substantial architectural treatment and visual interest, in keeping with the design guidelines of the Zoning Code. The design includes modulation of volume throughout the structure, an increased front setback along the public boardwalk beyond what is required by code, and low walls that prevent the appearance of the site from being walled off from the boardwalk and bay. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts on existing public views.

Finding:

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

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project replaces an existing duplex located on a standard R-BI lot with a new single-unit dwelling and JADU. Therefore, the project does not involve a change in land use, density, or intensity that will result in increased demand for public access and recreation opportunities. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.
2. Vertical access to the bay front public boardwalk and Newport Bay is available approximately 300 feet north of the property at the intersection of Balboa Avenue and the boardwalk; and approximately 90 feet south at the intersection of the alley and Park Avenue. Lateral access is available along the public boardwalk adjacent to the waterfront around Balboa Island. The project does not include any features that would obstruct access along these routes.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act 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 Coastal Development Permit (PA2023-0111), 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 26TH DAY OF OCTOBER, 2023.



Benjamin M. Zieba, 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 the final building permits, a waterproofing curb or similar waterproofing design feature shall be constructed around the proposed residence as an adaptive flood protection device up to a minimum of 10.9 feet (NAVD88). Flood shields (sandbags and other methods) can be deployed across the openings to protect and prevent flooding to the structure.*
3. *Prior to the final building permits, 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.*
4. *Prior to the issuance of building permits, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs, and expenses (including without limitation, attorney's fees, disbursements, and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the development. This letter shall be scanned into the plan set before building permit issuance.*
5. *Prior to issuance of building permits, the Junior Accessory Dwelling Unit (JADU) shall require a deed restriction that prohibits the sale of the JADU separately and prohibits rental or leasing of the JADU for 30 days or less. The deed restriction will also require the owner of the Property to reside in either the primary dwelling or in the JADU. Owner occupancy is not required if the owner is another governmental agency, land trust, or housing organization within the meaning of Government Code 65852.22.*
6. This approval does not authorize any new or existing improvements (including landscaping) on California Coastal Permit Jurisdiction, State tidelands, public beaches, or the public right-of-way.
7. 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.

8. This Coastal Development Permit does not authorize any development seaward of the private property.
9. The applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of native birds under MBTA:
 - A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
 - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
10. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented before and throughout the duration of construction activity as designated in the Construction Erosion Control Plan.
11. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
12. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stockpiles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
13. Trash and debris shall be disposed of in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed of in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
14. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.

15. The project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
16. The applicant shall comply with all federal, state, and local laws. A material violation of any of those laws in connection with the use may be caused by the revocation of this Coastal Development Permit.
17. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained are detrimental to the public health, and welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained to constitute a public nuisance.
18. *Prior to issuance of building permits, the applicant shall submit a final construction erosion control plan. The plan shall be subject to review and approval by the Building Division.*
19. *Prior to issuance of building permits, the applicant shall submit a final drainage and grading plan. The plan shall be subject to review and approval by the Building Division.*
20. *Prior to issuance of building permits, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.*
21. *Prior to 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.*
22. 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.
23. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday. Noise-generating construction activities are not allowed on Saturdays, Sundays, or Holidays.
24. 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

25. Prior to issuance of building permits, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
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 the current property owner or agent.
27. This Coastal Development Permit (PA2023-0111) 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.
28. 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 **Nibeel Residence including but not limited to, Coastal Development Permit (PA2023-0111)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorney’s fees, and other expenses incurred in connection with such claim, action, causes of action, suit, or proceeding whether incurred by the applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all the City’s costs, attorneys’ fees, and damages, which the City incurs in enforcing the indemnification provisions outlined in this condition. The applicant shall pay to the City upon demand any amount owed to the City under the indemnification requirements prescribed in this condition.

RESOLUTION NO. ZA2023-066

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A COASTAL DEVELOPMENT PERMIT TO DEMOLISH AN EXISTING SINGLE-UNIT RESIDENCE AND CONSTRUCT A NEW THREE-STORY SINGLE-UNIT RESIDENCE AND ATTACHED THREE-CAR GARAGE LOCATED AT 7 BEACON BAY (PA2023-0123)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Ian Harrison, concerning property located at 7 Beacon Bay, requesting approval of a coastal development permit.
2. The lot at 7 Beacon Bay is legally described as Lot 7 Record of Survey Book 9 Page 42-43.
3. The applicant requests a coastal development permit to allow the demolition of an existing single-unit residence and the construction of a new, three-story, 4,595-square-foot single-unit residence including a 617-square-foot, 3-car garage. The proposed development includes additional appurtenances such as walls, fences, patios, hardscape, drainage devices, and landscaping.
4. The property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two Unit Residential (RT). The R-2 Zoning District permits single and two-unit residential dwellings.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Two Unit Residential (10.0 – 19.9 DU/AC) – (RT-C) and the Coastal Zoning District is Two-Unit Residential (R-2).
6. A public hearing was held on October 26, 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 single-unit residences and additions of up to 10,000 square feet to existing structures. The proposed project consists of the demolition of one single-unit residence and the construction of a new 3,978-square-foot, single-unit residence, and attached 617-square-foot, three-car garage.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The maximum floor area limitation is 5,576 square feet and the proposed floor area is 4,595 square feet.
 - b. The proposed development provides the minimum required setbacks, which are 15 feet along the front property line abutting the Bay, 3 feet along each side property line, and 3 feet along the front property line abutting the street.
 - c. The highest guardrail is less than 24 feet from the established grade (9.80 feet NAVD88) and the highest ridge is no more than 29 feet from the established grade, which complies with the maximum height requirements.
 - d. The project includes garage parking for a total of three vehicles, exceeding the minimum two-car garage parking requirement for single-unit residences with less than 4,000 square feet of habitable floor area.
 - e. Variance No. 342 was approved in 1957, and created unique development standards for awnings and patios for all the Beacon Bay properties along the bay. These awnings and patio covers are permitted to encroach to within 6 inches of front property line on the water and half of the patio on the westerly side is permitted to be enclosed by glass. The design of the patio proposed with the new single-unit residence incorporates this allowed encroachment pursuant to the Variance that runs with the land. The principal structure complies with the 15-foot setback.

2. The neighborhood is predominantly developed with two- and three-story, single-unit residences. The proposed design, bulk, and scale of the development are consistent with the existing neighborhood pattern of development.
3. A Coastal Hazards Report was prepared by PMA Consulting, Inc. dated August 12, 2023. The project site is separated from the water by a small sandy beach. The report concludes that the maximum high tide elevation (currently 7.7 feet NAVD 88) will not exceed 10.9 feet (NAVD 88) using the low-risk aversion projected sea level rise (3.2-foot increase) over the 75-year design life of the structure based on estimates for sea level rise provided by the State of California Sea-Level Rise Guidance 2018. Therefore, the proposed project includes a waterproofing curb around the primary structure at 10.9 feet NAVD 88. The report states that the estimated sea level rise over the next 75 years, using the Medium-High Risk Aversion, is potentially 6.7 feet (14.4 feet NAVD 88). Due to its location, the site is not subject to typical ocean waves and associated wave runup. Bay generated waves that may arrive at this site are very small and are generally dampened by the vessels and dock systems in front of the site; therefore, the site has not historically been subject to wave overtopping, nor is overtopping waters over the next 75 years expected to reach the subject site, even under extreme conditions. However, if the 6.7 feet NAVD88 (Medium High-Risk) projection holds true for year 2100, block walls could be built along site property lines to an elevation of 14.4 feet NAVD88. Based on the data provided, the study concludes that coastal hazards will not impact the property over the next 75 years, as the proposed project has minimal risk from flooding.
4. The finished floor elevation of the proposed single-unit residence is 10.5 feet (NAVD88), which complies with the minimum 9.00 feet (NAVD88) elevation standard. The Coastal Hazard Report concludes that the bay water elevation (currently 7.7 feet NAVD88) will not exceed the proposed flood protection curb around the single-unit residence at 10.9 feet (NAVD88 datum) for the anticipated 75-year life of the structure.
5. Under NBMC Section 21.30.030(C)(3)(i)(iv) (Natural Landform and Shoreline Protection), the property owner will be required to agree with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction by coastal hazards (e.g., waves, erosion, and sea level rise). This requirement is included as a condition of approval that will need to be satisfied before the final building permit inspection, respectively.
6. The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c) (General Site Planning and Development Standards). This requirement is included as a condition of approval that will need to be satisfied before the issuance of building permits, respectively.
7. The property is in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved before the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified

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

8. The property is located adjacent to of 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.
9. Under Municipal Code Section 21.35.050, due to the proximity of the development to the shoreline and the development containing more than 75 percent of impervious surface area, a Water Quality and Hydrology Plan (WQHP) is required. A preliminary WQMP has been prepared for the project by Thomas M. Ruiz dated, June 23, 2023. The WQHP includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, the use of a LID approach to retain the design storm runoff volume on-site, and documentation of the expected effectiveness of the proposed BMPs. Construction plans will be reviewed for compliance with the approved WQHP before building permit issuance.
10. 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.
11. The project site is not located adjacent to a coastal view road, public viewpoint, public park, or public accessway, as identified in the Coastal Land Use Plan. The project site is located adjacent to a public beach and is visible from the beach. The project may be located within the viewshed of other distant public viewing areas. Site evaluation revealed that the proposed three (3)-story design is consistent with the existing neighborhood pattern of development and will not affect the existing views afforded on the Cape Cove or Shelter Cove Street ends. The project design includes low walls along the front property line on the beach, which prevents the appearance of the project being walled off from the beach. The project will replace an existing single-unit residence with a new single-unit residence that complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to public views.

Finding:

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

Facts in Support of Finding:

1. The project site is located in the Beacon Bay area 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 replaces an existing single-unit residence with a new single-unit residence. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is designed and sited so as not to block or impede existing public access opportunities.
2. Vertical access to the bay and beach is available at the terminus of Cape Cove, Shell Cove, and Reef Cove. Lateral access is available along the sandy beach. The closest access is approximately 90 feet to the east of the site at Cape Cove. The project does not include any features that would obstruct access along these routes.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act 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 Coastal Development Permit (PA2023-0123), 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 26TH DAY OF OCTOBER, 2023.



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. *Before final building permit inspection, a waterproofing curb or similar design feature shall be constructed around the proposed residence as an adaptive flood protection device up to a minimum of 10.9 feet (NAVD88). Flood shields (sandbags and other methods) can be deployed across the openings to protect and prevent flooding to the structure.*
3. *Should future bay water elevations exceed the proposed waterproofing curb of 10.95 feet (NAVD 88) on-site block walls shall be constructed up to 14.4 feet (NAVD 88), in compliance with the City of Newport Beach Waterfront Project Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities. However, the future on-site block walls shall not be required if the City installs a structure to protect the community that meets the minimum elevation requirements.*
4. Before the final building permit inspection, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices 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.
5. Before the issuance of a building permit, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs, and expenses (including without limitation, attorney's fees, disbursements, and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the development. This letter shall be scanned into the plan set before building permit issuance.
6. 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.

7. This Coastal Development Permit does not authorize any development seaward of the private property. Prior to the final of building permits, all nonconforming hardscape encroachments onto the sand shall be removed.
8. 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
14. The project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.

15. 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.
16. 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.
17. *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.*
18. *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.*
19. *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.*
20. *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.*
21. *Before issuance of building permits, the final WQHP/WQMP shall be reviewed and approved by the Building Division. The implementation shall comply with the approved CPPP and WQHP/WQMP and any changes could require separate review and approval by the Building Division.*
22. 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.
23. 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. Noise-generating construction activities are not allowed on Saturdays, Sundays, or Holidays.
24. 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

25. 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.
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 the current property owner or agent.
27. This Coastal Development Permit filed as PA2023-0123 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.
28. 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 **Irwin Residence including but not limited to, Coastal Development Permit filed as PA2023-0123**. 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.