



## CITY OF NEWPORT BEACH COMMUNITY DEVELOPMENT DEPARTMENT PLANNING DIVISION ACTION REPORT

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION

FROM: Kimberly Brandt, Community Development Director  
Brenda Wisneski, Deputy Community Development Director

SUBJECT: Report of actions taken by the Zoning Administrator and/or Planning Division staff for the week ending May 26, 2017.

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### ZONING ADMINISTRATOR ACTIONS MAY 25, 2017

- Item 1: Nektar Juice Bar Minor Use Permit No. UP2017-012 (PA2017-089)  
Site Address: 1620 San Miguel Drive  
Action: Approved by Resolution No. ZA2017-033 Council District 6
- Item 2: 226 Orange Street Coastal Development Permit No. CD2017-026 (PA2017-060)  
Site Address: 226 Orange Street  
Action: Approved by Resolution No. ZA2017-034 Council District 2
- Item 3: Newport Beach Wellness Massage Services Minor Use Permit No. UP2017-002 (PA2017-008)  
Site Address: 1501 Westcliff Drive  
Action: Approved by Resolution No. ZA2017-035 Council District 4
- Item 4: 1706 East Ocean Front Coastal Development Permit No. CD2017-013 (PA2017-030)  
Site Address: 1706 E. Ocean Front  
Action: Approved by Resolution No. ZA2017-036 Council District 1

APPEAL PERIOD: An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

## RESOLUTION NO. ZA2017-033

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2017-012 FOR A TAKE-OUT SERVICE, LIMITED, EATING AND DRINKING ESTABLISHMENT LOCATED AT 1620 SAN MIGUEL DRIVE (PA2017-089)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Karla McCommon of Interplan LLC, representing the applicant, Nekter Juice Bar, with respect to property located at 1620 San Miguel Drive, and legally described as Parcel 2 of Resubdivision No. 284 in the City of Newport Beach, County of Orange, California, being a portion of Block 93, of Irvine's Subdivision per Map recorded in Book 1, Page 88, Miscellaneous Record Maps, records of Orange County, California.
2. The applicant requests a minor use permit to allow a take-out service, limited, eating and drinking establishment, within an existing 1,080-gross-square-foot retail tenant space with 422 square feet of net public area and a maximum of 6 seats. The proposed hours of operation are from 7:00 a.m. to 7:00 p.m. No late hours (after 11:00 p.m.) or alcohol service are proposed as part of this application.
3. The subject property is located within the CN (Commercial Neighborhood) Zoning District and the General Plan Land Use Element category is CN (Neighborhood Commercial).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on May 25, 2017, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting 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 meeting.

#### 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, Chapter 3, because it has no potential to have a significant effect on the environment.
2. This Section exempts the construction and location of limited numbers of new, small facilities or structures (up to 10,000 square feet in area) and the conversion of existing small structures from one use to another where only minor modifications are made to the interior or exterior of the structure. The project involves the conversion of an existing

retail tenant space (1,080 square feet) to an eating and drinking establishment. The scope of work thus complies with the thresholds identified under the Class 3 exemption.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020 (Conditional Use Permits and Minor Use Permits) of the Newport Beach Municipal Code, 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 property is designated Neighborhood Commercial (CN) by the Land Use Element of the General Plan, which is consistent in intent with the CN Zoning District.
2. The proposed establishment is a commercial use intended to serve nearby residents, the surrounding community, and visitors to the City of Newport Beach. Therefore, the use is consistent with this land use category.
3. The proposed take-out service, limited, establishment would be complementary to the surrounding commercial and residential uses.
4. The subject 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 in the CN (Commercial Neighborhood) Zoning District. This designation is intended to provide for areas appropriate for a limited range of retail and service uses developed in one or more distinct centers oriented to serve primarily the needs of and maintain compatibility with residential uses in the immediate area. A take-out service limited, eating and drinking establishment is a permitted use in the Zoning District, subject to the approval of a minor use permit pursuant to Table 2-5 of Newport Beach Municipal Code Section 20.20.020 (Commercial Zoning Districts Land Uses and Permit Requirements).
2. The project site is primarily served by a 281-space surface parking lot. The parking requirement for a take-out service limited, eating and drinking establishment is one space per 250 square feet and no intensification or enlargement is proposed. Therefore, no additional parking is required.

3. As conditioned, the proposed establishment will comply with Zoning Code standards for eating and drinking establishments, including those specific to the take-out service, limited use classification, which includes a maximum of six seats.

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 proposed establishment within Harbor View Center will be accessible from San Miguel Drive, San Joaquin Hills Road, and Pacific View Drive, which provide convenient access to motorists, pedestrians, and bicyclists.
2. The proposed establishment is compatible with the existing and allowed uses in the area.
3. As conditioned, the allowed hours of operation will be 7:00 a.m. to 9:00 p.m., daily, which will minimize any disturbance to residences near the property.
4. The existing trash storage area at the rear of the property is adequate to accommodate the proposed use. It is conveniently located where materials can be deposited and collected and does not impede with parking spaces.

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 existing 281-space parking lot provides adequate circulation for patrons.
2. The Fire Department reviewed the project and site to ensure adequate public and emergency vehicle access.
3. Any proposed site and tenant improvements must comply with the Zoning Code and all Building, Public Works, and Fire Codes for permits to be issued.

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 project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.
2. The proposed take-out service, limited, eating and drinking establishment will help revitalize the project site and provide an economic opportunity for the property owner to update the tenant space and provide additional services to residents and visitors.
3. The applicant is required to obtain Health Department approval prior to opening for business and comply with the California Building Code to ensure the safety and welfare of customers and employees within the establishment.
4. The proposed use includes limited hours, no alcohol service is proposed, and there is no increased parking demand. Based upon the Zoning Code requirements, the proposed use will not result in a detriment to the existing retail shopping center or surrounding community.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2017-012 (PA2017-089), subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 25<sup>TH</sup> DAY OF MAY, 2017.**



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Patrick J. Alford, Zoning Administrator

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

*(Project-specific conditions are in italics)*

1. The development shall be in substantial conformance with the approved site plan and floor plans stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. The 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.
3. 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 materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
4. 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.
5. The hours of operation for the establishment shall be limited to 7:00 a.m. through 9:00 p.m., daily.
6. The sale of alcohol shall not be permitted.
7. The maximum number of seats allowed in the eating and drinking establishment shall be six (6). No outdoor seating is permitted without further review and may require an amendment to this Minor Use Permit.
8. 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.
9. A copy of the Resolution, including conditions of approval Exhibit "A", shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
10. Prior to issuance of building permits, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Minor Use Permit file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the

elements approved by this Minor Use Permit and shall highlight the approved elements such that they are readily discernible from other elements of the plans.

11. *Prior to issuance of building permits, the project plans shall identify if the building is protected with automatic fire sprinklers and/or a fire alarm system to the satisfaction of the Life Safety Services.*
12. 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.
13. 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.
14. 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.
15. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
16. 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).
17. 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 Minor Use Permit.
18. 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.
19. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permit.

20. 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.
  
21. 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 Nekter Juice Bar Minor Use Permit including, but not limited to, Minor Use Permit No. UP2017-012 (PA2017-089). 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. ZA2017-034

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2017-026 FOR FIRST AND SECOND FLOOR ADDITIONS TO AN EXISTING SINGLE FAMILY RESIDENCE LOCATED AT 226 ORANGE STREET (PA2017-060)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Bart Valdez & Associates, with respect to property located at 226 Orange Street and legally described as Lot 22, Block 7, of Tract 772 requesting approval of a Coastal Development Permit.
2. The applicant proposes a 476 square-foot addition divided between the first and second floors of an existing single-family residence. The project also includes the addition of a second-story deck. The height of the overall residence would not increase and the project complies with all applicable development standards including height, setbacks, and floor area limits.
3. The subject property is located within the Single-Unit Residential (R-1) Zoning District and the General Plan Land Use Element category is Single-Unit Residential Detached (RS-D).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Single-Unit Residential Detached (10.0 – 19.9 DU/AC) (RSD-C) and the Coastal Zoning District is Single-Unit Residential (R-1).
5. A public hearing was held on May 25, 2017 in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting 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 meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Class 1 exemption includes additions to existing structures that do not result in an increase of more than 50 percent of the floor area of the structure before the addition, or 2,500 square feet. The proposed addition constitutes less than 50 percent of the existing floor area and is less than 2,500 square feet.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 21.52.015 (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 3,221 square feet and the proposed floor area is 2,607 square feet.
  - b. The proposed development complies with the required setbacks, which are 5 feet along the front property line, 3 feet along each side property line and 5 feet along the rear property line.
  - c. The highest guardrail/parapet is less than 24 feet from established grade and the highest ridge is 29 feet from established grade. The proposed development complies with all height requirements.
  - d. As the proposed development includes less than 4,000 square feet of livable floor area, a two-car garage is required. The proposed development provides a compliant two-car garage.
2. The neighborhood is predominantly developed with one and two story single-family residences. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development and expected future development.
3. The proposed development is not located on the shoreline and is approximately 225 feet from the nearest body of water, and more than 600 feet from the nearest beach. The proposed finished floor of the addition will be required to meet the minimum finished floor elevation of 9.00 MSL (NAVD88). Impacts from wave run-up and sea level rise are not anticipated.
4. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of 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.

5. The property is not located within 100 feet of coastal waters. A construction erosion control plan is provided and a post-construction drainage system will be installed that includes drainage and percolation features designed to retain dry weather and minor rain run-off on-site to ensure the project does not impact water quality. Any water not retained on-site is directed to the City's storm drain system.
6. No new landscaping is proposed.

Finding:

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

Fact in Support of Finding:

1. The proposed project is not located between the nearest public road and the sea or shoreline.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2017-026 subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. 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. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 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 25TH DAY OF MAY, 2017.**



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Patrick J. Alford, 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. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new Coastal Development Permit.
3. Coastal Development Permit No. CD2017-026 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.
4. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
5. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.
6. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
7. 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.
8. Prior to issuance of the 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.
9. Prior to issuance of building permits, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Coastal Development file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Coastal Development Permit.
10. 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.

11. 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.
12. Prior to the issuance of building permits, the existing and proposed finished floor of the structure shall be verified. The proposed addition shall be required to meet the minimum finished floor elevation of 9.0 MSL (NAVD88).
13. Prior to the issuance of building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
14. 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.
15. 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 226 Orange Street Coastal Development Permit including, but not limited to, Coastal Development Permit No. CD2017-026 (PA2017-060). 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. ZA2017-035

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2017-002 TO ALLOW ACCESSORY MASSAGE SERVICES FOR A CHIROPRACTIC OFFICE LOCATED AT 1501 WESTCLIFF DRIVE (PA2017-008)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Dr. Corinne Ethel Dadvivas, with respect to property located at 1501 Westcliff Drive, and legally described as Parcel 1 in Resubdivision 0195 in the City of Newport Beach, County of Orange requesting approval of a minor use permit.
2. The applicant proposes to maintain existing accessory massage services at a chiropractic office. The chiropractic doctors include the massage services as a part of their medical treatment for patients on an as needed basis.
3. The subject property is located within the Mixed-Use Dover/Westcliff (MU-DW) Zoning District and the General Plan Land Use Element category is Mixed-Use Horizontal (MU-H1).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on May 25, 2017, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting 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 meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Class 1 exemption authorizes minor alterations to existing structures involving negligible or no expansion of use. The proposed project involves the allowance of massage services and does not result in an intensification of use, parking, or expansion in floor area.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020.F (Conditional Use Permits and Minor Use 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. The use is consistent with the General Plan and any applicable specific plan.*

#### Facts in Support of Finding:

1. The property is designated MU-H1 in the Land Use Element of the General Plan. This designation is intended to provide for professional office or retail uses, or as horizontal or vertical mixed-use projects that integrate multi-unit residential dwelling units with retail and/or office uses.
2. The existing chiropractic office with accessory massage is consistent with the MU-H1 designation, as it will provide medical services to the surrounding neighborhood, Newport Beach residents and neighboring communities.
3. The subject 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 the Zoning Code and the Municipal Code.*

#### Facts in Support of Finding:

1. The subject property is located in the MU-DW Zoning District, which is intended to provide for professional office or retail uses, or as horizontal or vertical mixed-use projects that integrate multi-unit residential dwelling units with retail and/or office uses.
2. Pursuant to Table 2-8 of Zoning Code Section 20.22.020 (Mixed-Use Zoning Districts Land Uses and Permit Requirements), accessory massage is a service use that may be permitted in the MU-DW Zoning District subject to the approval of a minor use permit. Offices – medical and dental are permitted by right. The chiropractic office with its treatment services including massage provides medical services to the surrounding neighborhood, Newport Beach residents and neighboring communities.
3. Pursuant to Table 3-10 of 20.40.040 (Off-Street Parking Spaces Required), a massage establishment has a parking rate of one space for every 200 square feet of gross floor area. This parking rate is also the parking rate for medical office. One space for every 200 square feet of gross floor area (1,276 square feet) or seven

spaces are provided for the existing chiropractic office within the existing shared parking lot (161 total parking spaces) for the subject office building and the adjacent bank building.

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 chiropractic office operates with two doctors and an office manager. The space consists of three offices, two treatment rooms, a physical therapy room, a massage room, a kitchen and a waiting area. Massage is provided on an as needed basis as a part of the chiropractic treatment along with acupuncture, pilates, and physical therapy. The massage could be provided in two of the rooms within the existing office with a maximum two massage therapists on-site on an as needed basis.
2. The hours of operation for the chiropractic office is Monday through Wednesday, 12 p.m. to 7 p.m.; Friday and Saturday, 9 a.m. to 1 p.m.; and closed Thursday and Sunday. Staff recommends allowing hours of operation between 8 a.m. and 9 p.m., daily to allow flexibility in operation. These hours of operation are compatible with the allowed uses in the vicinity, as there will not be any late hours which would contribute to noise in the area.
3. The project site and surrounding area consist of a mixture of professional and medical offices, as well as retail and service uses which serve residents and visitors. The existing chiropractic office has been in operation since 2013 and has proven to be compatible with the existing uses in the area.

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 subject property is located on the northeasterly commercial block of Westcliff Drive and on the corner of Dover Drive. The property contains one multi-story, multi-tenant building and shares a parking lot with the abutting property to west, which also contains one multi-story, multi-tenant building. The site is accessible from Westcliff Drive and Dover Drive. The parking lot provides a surplus of parking and is conveniently located for patrons and employees.



2. Adequate public and emergency vehicle access, public services, and utilities are provided on the property and the proposed massage establishment will not change this.

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 chiropractic office with massage as an accessory use as treatment for the chiropractic patients is not provided outside of the normal operating hours of the chiropractic office which minimizes any potential detriment to the area.
2. The accessory massage is part of typical chiropractic practices and is necessary as part of the medical treatment.
3. The proposal has been reviewed by the Building and Code Enforcement Divisions, Public Works, Fire, and Police Departments, and recommended conditions of approval have been included to limit any detriment to the City or general welfare of persons visiting or working in the surrounding neighborhood.

In accordance with Section 20.48.120.B (Massage Establishments and Services – Waiver of Location Restrictions) of the Newport Beach Municipal Code, the following findings and facts in support of such findings for a Minor Use Permit are set forth:

Finding:

*F. The proposed use will not be contrary to the public interest or injurious to nearby properties, and that the spirit and intent of this section will be observed.*

Facts in Supporting of Finding:

1. The intent of the section is to promote the operation of legitimate massage services and to prevent problems of blight and deterioration, which accompany and are brought about by large numbers of massage establishments that may act as fronts for prostitution and other illegal activity.
2. Although the proposed massage services are located within 500 feet of other establishments offering massage, the chiropractic office operates similar to other doctor offices and is located in a separate development, sufficiently separated from the other massage locations. The chiropractic office does not operate exclusively as a massage establishment. The massage service is provided to the chiropractic patients on an as needed basis as a part of the medical treatment.

3. There will be no late hours of operation.
4. A condition of approval is included to ensure the applicant will obtain an Operator's Permit from the Newport Beach Police Department in compliance with Chapter 5.50 (Massage Establishments) of the Newport Beach Municipal Code prior to continuation of the business. The Police Department has reviewed the application and has no objections to the accessory massage use at this location and the Massage Operator Permit is pending approval upon approval of the minor use permit.

Finding:

- G. *The proposed use will not enlarge or encourage the development of an urban blight area.*

Facts in Supporting of Finding:

1. The proposed use is located in a single tenant space within a managed, multi-tenant commercial office building which will prevent problems and discourage the development of blight. The subject property is not located within a blighted area, is well maintained, and is intended to provide a service that supports the surrounding residents and visitors to Newport Beach.

Finding:

- H. *The proposed use will not adversely affect a religious institution, school, park, or playground.*

Facts in Supporting of Finding:

1. The proposed use is located adjacent to nonresidential uses. There are residential uses across Westcliff Drive and Dover Drive. Bob Henry Park is approximately 300 feet southeast of the use across Dover Drive. However, the massage service as a part of the chiropractic treatment of patients under the care of a doctor does not have the potential to create a negative impact on the park patrons.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2017-002, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the

Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 25<sup>th</sup> DAY OF MAY, 2017.**



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Patrick J. Alford, Zoning Administrator

**EXHIBIT "A"****CONDITIONS OF APPROVAL****PLANNING**

1. The development shall be in substantial conformance with the approved site plan and floor plans stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
4. 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 materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
5. Any change in operational characteristics, or expansion in area, may require an amendment to this Minor Use Permit or the processing of a new Use Permit.
6. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
7. Strict adherence to Newport Beach Municipal Code 5.50 must be upheld.
8. The applicant business must apply for and obtain an Operator Permit from the Chief of Police, and keep said permit in good standing.
9. All employees of the applicant business who conduct massage on or off premises must be certified by the California Massage Therapy Council (physicians, physical therapists, and chiropractors exempt).
10. As outlined in Newport Beach Municipal Code 5.50.030, the business must maintain requirements of operation, and submit to inspections by officers of the Police Department.
11. The owner, operator, or responsible manager's contact information for the massage establishment shall be provided to the City of Newport Beach Code Enforcement Division.

12. The names of employees shall be posted upon entry and contact information and a list of state certifications shall be provided upon request. A current list of employees shall be kept onsite and maintained at all times.
13. All windows shall remain visible and transparent in nature. Window signage shall comply with the City of Newport Beach Municipal Code.
14. The facility shall be maintained in a safe and sanitary condition.
15. No alcohol shall be served or offered onsite.
16. Violations of the Penal Code may invoke revocation of this permit.
17. The hours of operation shall be limited between 8 a.m. to 9 p.m., daily.
18. All employees shall park on-site.
19. A maximum of two massage therapists shall be on-site at any one time and a maximum of two rooms shall be used for massage therapy.
20. All signs shall conform to the provisions of Chapter 20.42 of the Municipal Code.
21. 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.
22. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
23. 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.
24. 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 Newport Beach Wellness Massage Services Minor Use Permit including, but not limited to, Use Permit No. UP2017-002 (PA2017-008). 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. ZA2017-036

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2017-013 FOR A NEW SINGLE-FAMILY RESIDENCE LOCATED AT 1706 EAST OCEAN FRONT (PA2017-030)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Patrick Burcher, with respect to property located at 1706 East Ocean Front, and legally described as Lot 2, Block C in Tract 00518 requesting approval of a Coastal Development Permit.
2. The applicant proposes the demolition of an existing single-family residence with attached garage and the construction of a new 3,649-square-foot single-family residence with a 400-square foot attached garage. The proposed development includes additional appurtenances such as walls, fences, patios, hardscape, drainage devices, and landscaping.
3. The subject property is located within the Single-Unit Residential (R-1) Zoning District and the General Plan Land Use Element category is Single-Unit Detached (RS-D).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Single-Unit Residential Detached (RSD-C) and the Coastal Zoning District is R-1.
5. A public hearing was held on May 25, 2017 in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting 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 meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations (Section 15315, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction or Conversion of Small Structures).
2. Class 3 exempts the construction of limited numbers of new, small structures, including one single-family residence. The proposed project is a new single-family residence located in the R-1 Coastal Zoning District.

### SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
  - a. The maximum floor area limitation is 4,760 square feet and the proposed floor area is 4,048.51 square feet.
  - b. The proposed development complies with the required setbacks, which are 10 feet along the ocean front property line, 3 feet along each side property line and 0 feet along the rear alley property line.
  - c. The highest guardrail/parapet is less than 24 feet from established grade and the highest ridge is 29 feet from established grade. The proposed development complies with all height requirements.
  - d. As the proposed development includes less than 4,000 square feet of livable floor area, a two-car garage is required. The proposed development provides a two-car garage.
2. The neighborhood is predominantly developed with two-and three-story single-family residences. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development and expected future development.
3. Pursuant to Section 21.30.15E.2., a Geotechnical Investigation has been prepared and concluded that due to the substantial width of beach between the water and the subject property, impacts from wave run-up, high-tide conditions, storm waves and rise of sea level are not anticipated. It further concluded shoreline protection devices are not necessary. The proposed development complies with the minimum 9.00 MSL (NAVD88) with a proposed finished floor of 14.29 MSL (NAVD88).
4. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of 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.



5. The property is located within 100 feet of coastal waters. Pursuant to Section 21.35.030 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 by construction chemicals and materials. A CCCP has been reviewed and approved by the City's Engineer Geologist.
6. Pursuant to 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. The WQHP has been reviewed and approved by the City's Engineer Geologist. The WQHP includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, use of an LID approach to retain the design storm runoff volume on site, and documentation of the expected effectiveness of the proposed BMPs.
7. Proposed landscaping complies with Implementation Plan Section 21.30.075. A condition of approval is included that requires drought tolerant and prohibits invasive species. Prior to issuance of building permits, the final landscape plans will be reviewed to verify invasive species are not planted.

Finding:

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

Fact in Support of Finding:

1. The existing residential lot does not currently provide nor inhibit public coastal access. The proposed development will remain within the existing residential lot. The property is located adjacent the public beach and multiple access points are provided at street ends throughout the Balboa Point area and along the East Ocean Front boardwalk.
2. The property is not located near Public View Points or Coastal View Roads, as designated in the Coastal Land Use Plan, and will not impact public coastal views.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2017-013, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. 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. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 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 25<sup>th</sup> DAY OF MAY, 2017.**



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Patrick J. Alford, 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. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new Coastal Development Permit.
3. Prior to issuance of the building permits, the approved CCCP and WQHP shall be submitted with the Building Permit plans. Implementation shall be in compliance with the approved CCCP and WQHP and any changes could require separate review and approval by the Building Division.
4. Coastal Development Permit No. CD2017-013 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.
5. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
6. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.
7. 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.
8. Prior to issuance of the 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.
9. Prior to issuance of building permits, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Coastal Development file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Coastal Development Permit.

10. Prior to the issuance of building permits, the applicant shall submit a 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.
11. 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.
12. Prior to the issuance of building permits, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
13. 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.
14. 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 21 Planning and Zoning of the Newport Beach Municipal Code.
15. 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 1706 East Ocean Front Coastal Development Permit including, but not limited to, Coastal Development Permit No. CD2017-013 (PA2017-030). 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.