



## 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, Patrick Alford, and/or Planning Division staff for the week ending June 30, 2017.

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### ZONING ADMINISTRATOR ACTIONS JUNE 29, 2017

- Item 1: 109 Onyx Avenue Tentative Parcel Map No. NP2017-023 and Coastal Development Permit No. CD2017-023 (PA2017-057)  
Site Address: 109 Onyx Avenue  
Action: Approved by Resolution No. ZA2017-047 Council District 5
- Item 2: Lumpkin Residence Coastal Development Permit No. CD2017-017 (PA2017-042)  
Site Address: 1519 E. Bay Avenue  
Action: Approved by Resolution No. ZA2017-048 Council District 1
- Item 3: Balboa Pharmacy Sign Replacement Modification Permit No. MD2017-004 (PA2017-104)  
Site Address: 716 East Balboa Boulevard  
Action: Approved by Resolution No. ZA2017-049 Council District 1
- Item 4: Tower 48 Deli Minor Use Permit No. UP2017-010 (PA2017-084)  
Site Address: 4525 W. Coast Highway, Unit A  
Action: Approved by Resolution No. ZA2017-050 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. ZA2017-047

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2017-010 AND COASTAL DEVELOPMENT PERMIT NO. CD2017-023 FOR THE SUBDIVISION OF PROPERTY INTO TWO PARCELS LOCATED AT 109 ONYX AVENUE (PA2017-057)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by 109 Onyx Avenue, Newport Beach, LLC with respect to property located at 109 Onyx Avenue and legally described as Lot 7 and the southerly 20 feet of Lot 8, Balboa Island, requesting approval of a tentative parcel map and coastal development permit for condominium purposes.
2. A Tentative Parcel Map and associated Coastal Development Permit to subdivide an existing 60-foot wide property, which consists of one underlying 40-foot wide lot and a 20-foot wide portion of an adjoining underlying lot into two 30-foot wide lots. Two detached homes are currently under construction, one on each proposed lot. The new lots would not meet the minimum lot width of 50 feet for an interior lot and 60 feet for a corner lot as set forth in Title 20 (Zoning) for new subdivisions; however, the proposed lot area complies with the RB-1 Zoning District minimum. Therefore, deviation from the minimum lot width is requested.
3. The subject property is located within the Two-Unit Residential Balboa Island (R-BI) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (RT).
4. The subject property is located within the coastal zone and has a Coastal Land Use Designation of Two-Unit Residential (RT-E) and a Coastal Zoning District of Two-Unit Residential Balboa Island (R-BI).
5. A public hearing was held on June 29, 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 from the California Environmental Quality Act (CEQA) pursuant to Section 15315 under Class Class 15 (Minor Land Divisions) 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 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. The Tentative Parcel Map is for to create two lots and is consistent with all of the requirements of the Class 15 exemption. The proposed parcels are consistent with the land use and zoning designations. The deviation to lot width requires findings to be made to ensure development is consistent with the surrounding pattern of development and that the project will not be detrimental to the neighborhood. The requested lot width is consistent with the width of the majority of lots on Balboa Island and development intensity and density will be the same as approved by the original Balboa Island subdivision on this block. Therefore, the proposed parcel map is consistent with the intent and is eligible for the Class 15 exemption.

### SECTION 3. REQUIRED FINDINGS.

The Zoning Administrator determined in this case that the Tentative Parcel Map is consistent with the legislative intent of Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code and approves the Coastal Development Permit based on the following findings per Section 21.52.015 F. of Title 21:

#### Finding:

- A. *That the proposed map conforms to all applicable sections of the certified Local Coastal Program.*

#### Facts in Support of Finding:

1. The Tentative Parcel Map meets all of the requirements of the Local Coastal Program, including the provisions contained within Section 21.30.025 Coastal Subdivisions.
2. The subject property is within a developed neighborhood and is located more than 100 feet from the shoreline. The subject property is not located near or adjacent to any natural landforms including coastal bluffs, and is not within the proximity of any environmentally sensitive areas.
3. The project site is not located between the nearest public road and the sea or shoreline and approval of the parcel map will not affect public recreation access or views. The Balboa Island boardwalk, which provides public access, is located approximately 100 feet to the south of the property.

4. The homes currently under construction meet the Title 21 requirement that off-street parking spaces be accessed by the existing alley. Therefore, there is no loss of existing on-street parking available for visitors and the public.

Finding:

*B. Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is 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 subject property is not located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.

The Zoning Administrator determined in this case that the Tentative Parcel Map is consistent with the legislative intent of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code and is approved based on the following findings per Section 19.12.070 (Required Findings for Action on Tentative Maps) of Title 19:

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for the purpose of subdividing an existing property lot consisting of one legal underlying lot (40 feet wide by 85 feet deep), and 20 feet of an adjoining lot (20 feet wide by 85 feet deep) into two 30-foot wide lots.
2. The proposed subdivision and improvements are consistent with the density of the R-BI Zoning District and the RT General Plan Land Use Designation.
3. The proposed lots are 2,554 square feet in area and exceed the R-BI development standard minimum of 2,375 square feet.
4. The homes currently under construction will comply with all applicable R-BI zoning district development standards.
5. The Tentative Parcel Map is not located within a specific plan area.

Finding:

*D. That the site is physically suitable for the type and density of development.*

Facts in Support of Finding:

1. The lot is physically suitable for two 30-foot by 85-foot lots. The lots are rectangular in shape, consistent with the lot, width and area of other lots in the vicinity and the topography is relatively flat.
2. The subject property is accessible from Onyx Avenue and the alley at the rear. The lots are adequately served by existing utilities.

Finding:

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

Facts in Support of Finding:

1. The site was previously developed with a duplex, which was demolished, and replaced with one home on each proposed lot.
2. The property is located in an urbanized area that does not contain any sensitive vegetation or habitat.
3. The project is categorically exempt under Section 15315 (Article 19 or Chapter 3), of the California Environmental Quality Act (CEQA) Guidelines – Class 15 (Minor Land Divisions).

Finding:

*F. That the design of the subdivision or the type of improvements is not likely to cause serious public health problems.*

Facts in Support of Finding:

1. The Tentative Parcel Map is for residential development. All improvements associated with the project will comply with required Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per Section 19.28.010 (General Improvement Requirements) of the Municipal code and Section 66411 (Local agencies to regulate and control design of subdivisions) of the Subdivision Map Act. All ordinances of the City and all Conditions of Approval will be complied with.

Finding:

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

Facts in Support of Finding:

1. The design of the development will not conflict with easements acquired by the public at large, for access through, or use of property within the proposed development, because there are no public easements located on the property.

Finding:

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

Facts in Support of Finding:

1. The property is not subject to the Williamson Act because the subject property is not designated as an agricultural preserve and is less than 100 acres in area.
2. The site is developed for residential use and is located within a Zoning District that permits residential uses.

Finding:

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

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

Finding:

*J. That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.*

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

1. The proposed subdivision is consistent with the R-BI Zoning District, which allows two (2) residential units on the property. Therefore, the Tentative Parcel Map will not affect the City in meeting its regional housing need.

Finding:

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

Facts in Support of Finding:

1. Plans for the homes currently under construction included a construction erosion control plan and a post construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event run-off on-site. Any water not retained on-site is directed to the City's storm drain and sewer system in compliance with the Regional Water Quality Control Board (RWQCB) requirements.

Finding:

*M. For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of chapter three of the Coastal Act.*

Facts in Support of Finding:

1. The subject property is located within the Coastal Zone. The facts in support of Findings A and B above are hereby incorporated by reference.

***Deviation from Design Standards***

Per Section 19.24.050.A of Title 19 (Lot Design, Lot Size), new subdivisions must meet the applicable zoning district regulations stated in Title 20 (Zoning Code). Deviation from the design standards set forth in Chapter 19 of Title 19 may be approved by the Zoning Administrator subject to specific findings stated per Section 19.24.130.C. The proposed subdivision would create lots which would not meet the lot width standards required by the Zoning Code for new subdivisions within the R-BI Zoning District. The Zoning Code requires new subdivision interior lots to be 50 feet wide and corner lots to be 60 feet wide, and have a lot area of 2,375 square feet. Although the proposed parcels exceed the minimum lot area requirement (2,554 square feet) they are proposed to be 30-feet in width. The required findings to deviate from the standards and facts in support of those findings are as follows:

Finding:

- A. *The requested deviations will create a land plan or development design equal or superior to that under the baseline design standards in this Chapter.*

Facts in Support of Finding:

1. The proposed lots are comparable in width, length, and area with the majority of the original subdivision which was comprised of 30-foot-wide by 85-foot-deep interior lots and 40-foot-wide by 85-foot-deep corner lots. Since the original subdivision was created, some lots in the vicinity have been re-subdivided but the majority remain 30-foot-wide by 85-foot-deep. Thirteen of the eighteen properties in the 100 block of Onyx Avenue are 30 feet in width.
2. The proposed lots are 2,554 square feet in area and exceed the R-BI development standard minimum of 2,375 square feet.
3. The existing lot orientation with vehicular access from both Onyx Avenue and the rear alley and pedestrian access from Onyx Avenue are maintained.

Finding:

- B. *The deviations will not negatively impact the carrying capacity of the local vehicular circulation network.*

Facts in Support of Finding:



1. The proposed subdivision would not increase the density beyond the original subdivision. The subject property is comprised of Lot 7 and portion of Lot 8 of the original subdivision. The adjacent property, 113 Onyx Avenue, is comprised of the remaining portion of Lot 8 and the entire Lot 9 of the original subdivision. 113 Onyx Avenue is 40-feet in width and would not be eligible for approval of a parcel map since a 20-foot lot would not be consistent with the development pattern of the original subdivision or the existing development pattern. Therefore the impact on the vehicular circulation network will be the same as the original subdivision. Therefore, three parcels will exist with the approval of this parcel map, which is the same number as approved by the original subdivision (Lots 7, 8 and 9).

Finding:

*C. The deviations will not negatively impact pedestrian circulation.*

Facts in Support of Finding:

1. The subdivision will not reduce, encroach or change the size of location of the Onyx Avenue sidewalk.
2. The subdivision will not eliminate or impede pedestrian circulation provided that the necessary improvements are provided in accordance with applicable Public Works design standards and permitting.

Finding:

*D. The resulting subdivision will be compatible with the pattern of surrounding subdivisions.*

Facts in Support of Finding:

1. The original subdivision established 30-foot-wide lots on both sides of Onyx Avenue with the exception of the southerly two corner lots which were 40 feet wide. Some lot line adjustments, lot splits and lot consolidation have occurred on Onyx Avenue and throughout Balboa Island; however, the majority of the lots remain 30 feet in width.
2. Thirteen of the eighteen properties in the 100 block of Onyx Avenue are 30 feet in width and eleven lots have a lot area of 2,550 square feet which is consistent with the proposed lot area of 2,554 square feet.

Finding:

*E. The resulting subdivision design and improvements will not be materially detrimental to the residents or tenants of the proposed subdivision or surrounding properties, nor to public health or safety.*

Facts in Support of Finding:

1. The proposed subdivision to re-subdivide the existing parcel in a comparable manner to the underlying legal lots would allow two units to be constructed on each lot in accordance with the General Plan. Approval does not introduce an incompatible land use, and the resulting subdivision design would not be detrimental to the residents as vehicular and pedestrian access would be maintained. Any development must be in accordance with the conditions of approval and the Municipal Code. The resulting lot widths are consistent with the lot widths of the original subdivision or the existing development pattern of the neighborhood.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves PA2017-057 for Tentative Parcel Map No. NP2017-010 and Coastal Development Permit No. CD2017-023, 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 after the adoption of this Resolution unless within such time an appeal or call for review is filed with the Director of Community Development in accordance with the provisions of Title 21 Local Coastal Program Implementation Plan, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 29<sup>TH</sup> DAY OF JUNE 2017.**



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Patrick J. Alford, Zoning Administrator

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

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. 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.
3. *Subsequent to the recordation of the parcel map, and prior to the final of building permits issued under Plan Check No. 0634-2015 the applicant shall apply for a building permit to modify the permit description to reflect the creation of two dwelling units on separate lots (one on each lot). The building permit for the new construction (PC0634-2015) shall not be finalized until after recordation of the parcel map.*
4. *Prior to the recordation of the parcel map, construction plans approved as Plan Check No. 0634-2015 shall be reviewed by the Planning Division, Building Division and Public Works Department to confirm that the plans have been revised to show compliance with all applicable development regulations and standards applicable in relation to the newly created property lines.*
5. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any 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 109 Onyx Avenue Tentative Parcel Map and Coastal Development Permit including, but not limited to Tentative Parcel Map No. NP2017-010 and Coastal Development Permit No. CD2017-023 (PA2017-057). 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.

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**Public Works Conditions**

6. A Final Parcel Map shall be recorded. The Map shall be prepared on the California coordinate system (NAD83). Prior to the recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**
7. Prior to the recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the horizontal Control System established by the County Surveyor in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with targe) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
8. Reconstruct the existing broken and/or otherwise damaged concrete sidewalk panels, curb and gutter along the Onyx Avenue frontage as determined by the Public Works Department.
9. Reconstruct the existing broken and/or otherwise damaged concrete alley along the rear and southerly property frontages.
10. All existing overhead utilities shall be undergrounded.
11. No aboveground improvements shall be installed within the 5-foot alley setback.
12. All existing private, non-standard improvements within the public right-of-way and/or extensions of private, non-standard improvements into the public right-of-way fronting the development shall be removed (i.e. loose rocks around the trees, decorative concrete at stair landing, etc.).
13. Each unit shall be served by its own individual water service/meter and sewer lateral/cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover. Water meter and sewer clean-out shall be located in the public right-of-way.
14. An encroachment permit is required for all work activities within the public right-of-way.
15. All improvements shall comply with the City's sight distance requirement. See City Standard 100-L and Municipal Code Section 20.30.130.
16. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.

17. All on-site drainage shall comply with the latest City Water Quality requirements.
18. All unused water services to be abandoned shall be capped at the main (corporation stop) and all unused sewer laterals to be abandoned shall be capped at property line. If the sewer lateral to be abandoned has an existing cleanout, abandonment shall include removal of the cleanout riser, the 4TT box and the wye. Sewer lateral shall then be capped where the wye used to be.
19. All temporary construction fencing and sandbags shall not be located in the public right-of-way.
20. All improvements shall be constructed as required by Ordinance and the Public Works Department.

## RESOLUTION NO. ZA2017-048

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2017-017 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW SINGLE-FAMILY RESIDENCE AND ATTACHED 3-CAR GARAGE LOCATED AT 1519 EAST BAY AVENUE (PA2017-042)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by William Guidero Design, with respect to property located at 1519 East Bay Avenue, requesting approval of a Coastal Development Permit.
2. The lot at 1519 East Bay Avenue is legally described as the Easterly ½ of Lot 9 and Lot 10, Block 24, Balboa Tract East Side Addition.
3. The applicant proposes to demolish a 2-story single-family residence and 2-car garage and construct a new 4,069-square-foot, 3-story, single-family residence with attached 692-square-foot, 3-car garage. The design includes hardscape, drainage, and 62 square feet of landscaping. The project complies with all applicable development standards and no deviations are requested.
4. The subject property is located within the R-1 (Single-Unit Residential) Zoning District and the General Plan Land Use Element category is RS-D (Single-Unit Residential Detached).
5. The subject properties are located within the coastal zone. The Coastal Land Use Plan category is RSD-B (Single-Unit Residential Detached – 6.0-9.9 DU/AC).
6. A public hearing was held on June 29, 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 15303, 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 demolition of up to three single-family residences and additions of up to 10,000 square feet to existing structures. The proposed project consists of the

demolition of one single-family residence and the construction of a new 4,069-square-foot, single-family residence and 692-square-foot, 3-car garage.

### SECTION 3. REQUIRED FINDINGS.

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

#### Finding:

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

#### Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
  - a. The maximum floor area limitation is 5,550 square feet and the proposed floor area is 4,761 square feet.
  - b. The proposed development provides the minimum required setbacks, which are 5 feet along the front property line abutting the waterfront, 4 feet along each side property line and 5 feet along the rear property line abutting the alley.
  - c. The highest guardrail is less than 24 feet from established grade (9.0 feet NAVD88) and the highest ridge is no more than 29 feet from established grade, which complies with the maximum height requirements.
  - d. The project includes garage parking for a total of three vehicles, complying with the minimum three-car garage parking requirement for single-family residences with more than 4,000 square feet of habitable floor area.
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. The development fronts the Newport Bay and is a private bay front parcel. The project site is protected by an existing bulkhead. The finish floor elevation of the proposed dwelling is 9.03 MSL (NAVD 88), which complies with the 9.00 MSL (NAVD88) elevation standard. A waterproofing 6-inch curb is proposed be constructed around the perimeter of the dwelling that would protect against flooding up to an elevation of 9.53 feet (NAVD88). Flood shields (sand bags and other methods) can be deployed across the openings to protect prevent flooding to the structure.
4. A Coastal Hazard and Sea Level Rise Analysis was prepared by GeoSoils, Inc., dated March 6, 2017 for the project. The report concludes that the proposed project is

reasonably safe from the shoreline erosion due to lack of wave or wakes that can erode sand from the beach. However, the site requires a raised bulkhead considering a 1.25-foot sea level rise (the low range of projected sea level rise over the 75-design life of the structure based on estimates for sea level rise provided by the National Research Council 2012 SLR estimates) to protect the site and surrounding development from sea level rise. The current City standard is 10.0 feet (NAVD88) and the project has been conditioned to raise or replace the seawall to this elevation standard.

5. 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.
6. 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 CPPP prepared by Civilscapes Engineering, dated March 7, 2017, has been reviewed and approved by the City's Engineer Geologist.
7. 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. A WQHP prepared by Civilscapes Engineering, dated March 7, 2017, 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.
8. 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.
9. The property is not located near designated public view points or coastal view roads and will not impact public coastal 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.*



Fact in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline; the project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities. Vertical access to the bay front is available immediately adjacent to the project site at the intersection of H Street and East Bay Avenue where there is a small public beach with access to the water.
2. The project complies with the setbacks and height limitations so views will be unaffected.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2017-017, 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 29<sup>TH</sup> DAY OF JUNE, 2017.**



Patrick J. Alford, Zoning Administrator

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

*(project specific conditions are italicized)*

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 issuance of building permits, the project plans shall be updated to reflect that a minimum 6-inch waterproofing curb will be constructed around the proposed residence as an adaptive flood protection device. Flood shields (sand bags and other methods) can be deployed across the openings to protect prevent flooding to the structure.*
3. *Prior to final of building permits for the new home, the existing bulkhead or similar flood protection improvement shall be raised or replaced to provide a minimum elevation of 10.0 feet NAVD88 datum or a height elevation to the satisfaction of the Public Works Department. All improvements shall occur landward of the existing bulkhead.*
4. *Waiver of Future Protection for Properties with Approved Bulkheads – 21.30.030.C.3(i)*

*Prior to the issuance of a building permit, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices including the repair and maintenance, enhancement, reinforcement, or any other activity affecting the bulkhead, that results in any encroachment seaward of the authorized footprint of the bulkhead or other shoreline protective device. The agreement shall be binding against the property owners and successors and assigns. A case is pending before the California Supreme Court (*Lynch v. California Coastal Commission* (2014) 229 Cal.App.4th 658), which may affect this condition. If the Court finds the California Coastal Commission is unable to limit future shoreline protection, this condition shall be null and void without further action by either party.*

5. *Acknowledgement of Hazards for Waterfront Development - 21.30.015.D.3(c)*

*Prior to the issuance of a building permit, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of development.*

6. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain, or result in impacts to environmentally sensitive habitat areas, streams, wetland or their buffers.
7. Best Management Practices (BMPs) and Good Housekeeping Practices (GHP's) shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Pollution Prevention Plan (CPPP).
8. 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.
9. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stock piles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
10. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
11. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new Coastal Development Permit.
12. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
13. 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.
14. 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.
15. 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.
16. 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.

17. Prior to issuance of the building permits, the approved CPPP and WQMP/WQHP shall be submitted with the Building Permit plans. Implementation shall be in compliance with the approved CPPP and WQMP/WQHP and any changes could require separate review and approval by the Building Division.
18. Prior to the issuance of building permits, the applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought tolerant plantings, non-invasive plant species and water-efficient irrigation design. The plans shall be approved by the Planning Division.
19. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
20. 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.
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 the current property owner or agent.
22. This Coastal Development Permit No. CD2017-017 (PA2017-042) 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.
23. 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 Lumpkin Residence CDP including, but not limited to, Coastal Development Permit No. CD2017-017 (PA2017-042). 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. ZA2017-049

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MODIFICATION PERMIT NO. MD2017-004 TO ALLOW DEVIATIONS FOR A NEW PROJECTING SIGN LOCATED AT 716 EAST BALBOA BOULEVARD (PA2017-104)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Mike B. Martin, with respect to property located at 716 East Balboa Boulevard, and legally described as Lot Nos. 13 and 14, Block 9 of the Balboa Tract, requesting approval of a modification permit.
2. The applicant proposes to deviate from the maximum area and projection distance over the public sidewalk allowed for a projecting sign, and to permit a sign above the roof parapet. The proposed sign would replace the nonconforming projecting sign for the Balboa Pharmacy, which was involuntarily damaged earlier this year due to inclement weather.
3. The subject property is designated Mixed-Use Vertical (MU-V) by the General Plan Land Use Element and is located within the Mixed-Use Vertical (MU-V) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Mixed Uses Vertical (MU-V) and it is located within the Mixed-Use Vertical (MU-V) Coastal Zoning District. The proposed project is exempt from the coastal development permit requirements pursuant to Newport Beach Municipal Code (NBMC) Section 21.52.035 (Projects Exempt from Coastal Development Permit Requirements). The project involves the replacement of a nonconforming sign that was involuntarily destroyed. The sign is accessory to the existing commercial use onsite and does not result in any change in use and the nonconformity did not relate to or affect coastal resources or coastal access.
5. A public hearing was held on June 29, 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 hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

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

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15311 under Class 11 (Accessory 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. Class 11 allows for the construction or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institutional facilities, including but not limited to signs. The proposed project is the replacement of a projecting sign, which is accessory to the existing multi-tenant commercial building on the property.

### SECTION 3. FINDINGS.

In accordance with Section 20.52.050(E) (Modification Permits – Required Findings) of the NBMC, the following findings and facts in support of such findings are set forth:

#### Finding:

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

#### Facts in Support of Finding:

1. The project site is located within Balboa Village at the corner of East Balboa Boulevard and Main Street. One- and two-story nonresidential buildings that have a wide variety of sign types surround the project site. The historic Balboa Pavilion is visible from the corner to the north.
2. The Balboa Village Design Guidelines were updated in 2014, which include suggestions for sign character. The proposed project would allow replacement of a previously existing nonconforming projecting sign, which was labeled as a corner projecting sign that adds character to Balboa Village.
3. The proposed replica sign would maintain the same character and remain compatible with surrounding signage, but will be more conforming to the current standards for signage as it will be in good repair with improved energy efficiency.

#### Finding:

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

#### Facts in Support of Finding:

1. The proposed replacement sign is necessary to maintain and promote the historic character of the project site and will continue to identify the traditional use of the tenant space as a pharmacy/drug store.
2. As the building is constructed from property line to property line, not allowing a larger projecting sign as proposed would detract from its visual interest.

Finding:

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

Facts in Support of Finding:

1. The purpose and intent of NBMC Chapter 20.42 (Sign Standards) includes protection and enhancement of the City's unique character and aesthetic standards, promoting tourism through enhanced aesthetic appeal, and preservation and enhancement of the community's appearance. Additionally, sign standards provide each user an opportunity for adequate identification while guarding against excessive signs. Strict application of the Zoning Code would prohibit the replacement of a character-defining feature at a prominent corner building within Balboa Village. While conforming signs are possible through strict application of the sign standards, said application would not allow adequate identification of the pharmacy as they would not provide similar iconic and historic qualities as the proposed replacement.
2. The Balboa Village Design Guidelines recognize that the historic elements, including signage, are what help create a sense of identity of the Village. Not allowing sign replacement such as the proposed may result in a loss in character, which is not in accordance with the spirit and intent of the Zoning Code Sign Standards.

Finding:

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

Facts in Support of Finding:

1. A smaller sign that complies with the Zoning Code would not capture the whimsical and traditional architectural character of the Balboa Village. Limiting the replacement of the existing nonconforming projecting sign, which was involuntarily damaged, to a sign with a maximum area of 20 square feet would result in a sign that is substantially smaller.
2. See Facts in Support of Finding C1 and C2.

Finding:

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



Facts in Support of Finding:

1. The previously existing nonconforming sign was in place since the early 1900s and had not proven detrimental.
2. The size of the sign is within scale of the signs in the surrounding area and will not adversely affect or be detrimental to persons, property, or improvements in the surrounding neighborhood.
3. Project approval will not result in a change in intensity or density of the existing restaurants, marine serving, and office uses.
4. The new sign will be designed and fabricated of new, rust-resistant materials and affixed to façade of the building in accordance with the Building Code.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Modification Permit No. MD2017-004 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 29<sup>TH</sup> DAY OF JUNE, 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. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The sign must be maintained in accordance with Section 20.42.170 (Maintenance Requirements) of the Newport Beach Municipal Code.
4. A building permit shall be obtained prior to commencement of the construction and/or installation of the sign.
5. The sign shall not extend higher above the parapet/roofline than the previous sign.
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. 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 Modification 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 Modification Permit and shall highlight the approved elements such that they are readily discernible from other elements of the plans.
8. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
9. 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 a.m. and 6:30 p.m., Monday through Friday and 8 a.m. and 6 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
10. 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.

11. 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 Balboa Pharmacy Sign Replacement including, but not limited to, Modification Permit No. MD2017-004 (PA2017-104). 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. ZA2017-050

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2017-010 FOR A TAKE-OUT SERVICE, LIMITED, EATING AND DRINKING ESTABLISHMENT LOCATED AT 4525 WEST COAST HIGHWAY, UNIT A (PA2017-084)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Tower 48 LLC, with respect to property located at 4525 West Coast Highway, Unit A, and legally described as Parcel 2 of Parcel Map No. 85-268.
2. The applicant requests a minor use permit to allow a take-out service, limited, eating and drinking establishment, within an existing 650-square-foot retail tenant space with 122 square feet of net public area and a maximum of 6 seats. The proposed hours of operation are from 8:00 a.m. to 10:00 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 located within the coastal zone. The Coastal Zoning District is Neighborhood Commercial (CN) and the Coastal Land Use designation is Neighborhood Commercial (CN).
5. A public hearing was held on June 29, 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 (650 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. These centers are 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 includes a 122-space surface parking lot. The parking requirement for a take-out service, limited, eating and drinking establishment is one space per 250 square feet, consistent with the parking requirement of the previous retail use. No intensification or enlargement is proposed; therefore, no additional parking is required.
3. The Coastal Zoning District is Neighborhood Commercial (CN) and the Coastal Land Use designation is Neighborhood Commercial (CN). The project is exempt from the

requirements of a coastal development permit because the improvements to the existing structure do not change the intensity of use or result in an increase in floor area.

4. 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 the commercial plaza will be accessible from West Coast Highway, Balboa Boulevard, and River Avenue, which provide convenient access for motorists, pedestrians, and bicyclists.
2. The proposed establishment is compatible with the existing and allowed uses in the area, which consist of retail commercial and residential developments.
3. A residential development is located to the east of the property. As conditioned, the allowed hours of operation will be 8:00 a.m. to 10:00 p.m., daily, which will minimize any disturbance to residences near the property.
4. As conditioned, the existing trash storage area at the rear of the property will be improved to have three walls and a self-latching gate. 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 122-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. UP2017-010 (PA2017-084), 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 29<sup>TH</sup> DAY OF JUNE, 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 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 8:00 a.m. through 10:00 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 City's Life Safety Services Division.
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. The existing trash enclosure located in the southeasterly corner of the lot shall be reconstructed to have three walls and a self-latching gate. All trash shall be stored within the building or within dumpsters stored in the trash enclosure or otherwise screened from view of neighboring properties. Trash bins shall have a lid which shall remain closed at all times, except when being loaded or while being collected by the refuse collection agency. Additionally, the operator must monitor all trash receptacles, having them emptied, maintained, and cleaned when necessary as to control odors and any nuisances.
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 Tower 48 Deli Minor Use Permit including, but not limited to, Minor Use Permit No. UP2017-010 (PA2017-084). 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.