



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

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION  
FROM: Seimone Jurjis, Community Development Director  
SUBJECT: Report of actions taken by the Zoning Administrator and/or Planning Division staff for the week ending January 26, 2018.

---

### ZONING ADMINISTRATOR ACTIONS JANUARY 25, 2018

Item 1: Streiff Residence Coastal Development Permit No. CD2017-075 (PA2017-180)  
Site Address: 488 62nd Street

Action: Approved by Resolution No. ZA2017-003 Council District 2

Item 2: Davis Residence Coastal Development Permit No. CD2017-084 (PA2017-195)  
Site Address: 720 Via Lido Nord

Action: Approved by Resolution No. ZA2017-004 Council District 1

Item 3: Borba Residence Coastal Development Permit No. CD2017-096 (PA2017-221)  
Site Address: 5205 Seashore Drive

Action: Approved by Resolution No. ZA2017-0005 Council District 1

Item 4: Greubel Residence Coastal Development Permit No. CD2017-110 (PA2017-259)  
Site Address: 800 West Ocean Front

Action: Approved by Resolution No. ZA2017-006 Council District 1

Item 5: Chocolate Bash Minor Use Permit Amendment No. UP2017-027 (PA2017-194)  
Site Address: 2233 West Balboa Boulevard

Action: Approved by Resolution No. ZA2017-007 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. ZA2018-003

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2017-075 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND TO CONSTRUCT A NEW THREE-STORY SINGLE-FAMILY RESIDENCE WITH AN ATTACHED TWO-CAR GARAGE AT 488 62<sup>ND</sup> STREET (PA2017-180)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Laidlaw Schultz Architects with respect to property located at 488 62<sup>nd</sup> Street, requesting approval of a coastal development permit.
2. The property is legally described as Lot 13 and the southerly 23 feet of Lot 15 and the southerly 23 feet of Lot 14, all in Block 22 of Tract 772, except the southerly 19 feet of said Lot 13.
3. The applicant proposes to demolish an existing single-family residence and to construct a new three-story, 3,364-square-foot, single-family residence with an attached 445-square-foot, two-car garage. The project includes hardscape, landscape, and subsurface drainage facilities all located within the confines of the private property. The design complies with all applicable development standards and no deviations are requested.
4. The subject property is designated RS-D (Single-Unit Residential Detached) by the General Plan Land Use Element and is located within the R-1 (Single-Unit Residential) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-C (Single-Unit Residential Detached, 10.0 – 19.9 DU/AC) and the property is located within the R-1 (Single-Unit Residential) Coastal Zone District.
6. A public hearing was held on January 25, 2018, 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 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), because it has no potential to have a significant effect on the environment.

2. Class 3 exempts the demolition and construction of limited numbers of new, small facilities or structures including one single-family residence in a residential zone. The proposed project consists of the demolition of an existing single-family residence and the construction of a new 3,364-square-foot single-family residence with an attached 445-square-foot, two-car garage in the R-1 Zoning District.

### SECTION 3. REQUIRED FINDINGS.

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

#### Finding:

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

#### Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
  - a. The total proposed floor area, including the residence and enclosed parking, is 3,809 square feet, which complies with the maximum allowable floor area limit of 4,198 square feet.
  - b. The proposed development will provide the minimum required setbacks, which are five (5) feet along the front property line abutting the street, five (5) feet along the front property line facing the water, and three (3) feet along each side property line.
  - c. The highest guardrail is no more than 24 feet and the highest roof ridge is no more than 29 feet, measured from the finished first floor level of 9.00 feet (NAVD88), which complies with the maximum height limitation.
  - d. The project includes enclosed garage parking for two vehicles, in compliance with the minimum parking requirement for single-family residences with less than 4,000 square feet of habitable floor area.
2. The neighborhood is predominantly developed with two- and three-story residences. The proposed design, bulk, and scale of the development will be consistent with the existing neighborhood pattern of development and expected future development.
3. The lowest finished first floor elevation of the interior living area of the proposed residence is 9.00 feet (NAVD88), which complies with the minimum required 9.00-foot (NAVD88) elevation standard. The finished floor elevation of the garage (i.e., not living area) is 7.17 with a 9-percent slope driveway connecting to the existing street.

- 
4. The property is located in an area known for the potential of seismic activity and liquefaction. A project-specific Geotechnical Investigation prepared by Petra Geosciences Inc., dated July 17, 2017, provides recommendations relative to grading, drainage and foundation design. 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. A Coastal Hazard and Wave Runup Study was not required. Based upon the location and elevation of the project site, the geotechnical investigation determined that beach erosion, high tide conditions, storm waves or wave impacts are not anticipated.
  6. The project design addresses water quality with a construction erosion control plan that outlines temporary Best Management Practices (BMPs) to be implemented during construction to minimize erosion and sedimentation, and to minimize pollution of runoff derived by construction chemicals and materials. No water quality impacts to coastal waters are anticipated based upon the location and elevation of the property.
  7. Pursuant to NBMC Section 21.35.050 (Water Quality and Hydrology Plan), because the development contains more than 75 percent of impervious surface area, a Water Quality and Hydrology Plan (WQHP) was prepared by Toal Engineering, dated August 5, 2017. 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 a low-impact development (LID) approach to retain the design storm runoff volume on site, and documentation of the expected effectiveness of the proposed BMPs. The WQHP has been reviewed and approved by the City's Engineer Geologist. Construction plans will be reviewed for compliance with the approved WQHP prior to building permit issuance.
  8. The proposed development includes a post-construction drainage system with drainage and percolation features designed to retain dry weather and minor rain event run-off on-site. Any water not retained on-site will be directed to the City's storm drain system.
  9. New landscaping will be verified for compliance with NBMC Section 21.30.075 (Landscaping). A condition of approval is included that requires drought-tolerant, and prohibits invasive, species (Condition of Approval No. 16). Prior to issuance of the building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
  10. The property is not located near designated public viewpoints 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; however, the project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities.
2. The residential lot does not currently provide nor does it inhibit public coastal access. Vertical access to the shoreline is available approximately 75 feet north of the project site at Canal Street.
3. There are no designated Public Viewpoints or Coastal View Roads near the project site, per the Coastal Land Use Plan. Due to the distance of the proposed development from Public Viewpoints and the project's compliance with all applicable development standards, including height and setbacks, the project will not impact 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. CD2017-075, 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 JANUARY, 2018.**



---

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. 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.
3. 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.
4. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Pollution Prevention Plan (CPPP).
5. 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.
6. 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.
7. 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.
8. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
9. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.

- 
10. 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.
  11. 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.
  12. Prior to issuance of a building permit, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.
  13. Prior to issuance of a building permit, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Coastal Development 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 Coastal Development Permit.
  14. Prior to issuance of a building permit, the approved CPPP shall be submitted with the Building Permit plans. Implementation shall be in compliance with the approved CPPP and any changes could require separate review and approval by the Building Division.
  15. Prior to the issuance of a building permit, the applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought tolerant plantings, non-invasive plant species, and water efficient irrigation design. The plans shall be approved by the Planning Division.
  16. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
  17. 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.
  18. Coastal Development Permit No. CD2017-075 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.
  19. 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 Streiff Residence including, but not limited to, Coastal Development Permit No. CD2017-075 (PA2017-180). 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. ZA2018-004

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2017-084 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW SINGLE-FAMILY RESIDENCE AND ATTACHED 2-CAR GARAGE LOCATED AT 720 VIA LIDO NORD (PA2017-195)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Eric Aust Architect on behalf of Robin and Lyle Davis, with respect to property located at 720 Via Lido Nord, requesting approval of a coastal development permit.
2. The lot at 720 Via Lido Nord is legally described as Lot 47 in Tract 907 in the City of Newport Beach of the County of Orange, California.
3. The applicant proposes a coastal development permit (CDP) for the demolition of an existing single-family dwelling and the construction of a new, 3,695-square-foot, two-story single-family dwelling including a 464-square-foot two-car garage. The project includes hardscape, drainage, and landscaping improvements, and the replacement of the existing bulkhead. The proposed development complies with all applicable development standards including height, setbacks, and floor area limits. No deviations are requested. The CDP does not propose any development bayward of the existing bulkhead.
4. The subject property is designated RS-D (Single-Unit Residential Detached) by the General Plan Land Use Element and is located within the R-1 (Single-Unit Residential) Zoning District.
5. The subject property located within the coastal zone. The Coastal Land Use Plan category is Single Unit Residential Detached (RSD-C) and it is located within the Single-Unit Residential (R-1) Coastal Zone District.
6. A public hearing was held on January 25, 2018, 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 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, because it has no potential to have a significant effect on the environment.

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 3,695-square-foot single-family residence and attached 464-square-foot 2-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 4,408 square feet and the proposed floor area is 3,695 square feet.
  - b. The proposed development provides the minimum required setbacks, which are 10 feet along the water front, 3 feet along each side property line and 4 feet along the second frontage property line abutting the Via Lido Nord.
  - c. The highest guardrail and roof ridge are less than 24 feet from established grade, which comply with the maximum height requirements.
  - d. The project includes garage parking for a total of two vehicles, complying with the minimum two-car garage parking requirement for single-family residences with 4,000 square feet or less 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 Lido Chanel of the Newport Bay and is a private bayfront parcel. The project site is protected by an existing cast-in-place concrete bulkhead with the top of the bulkhead elevation at 8.00 feet (NAVD88). A Bulkhead Conditions Report was prepared by William, Simpson & Associates on November 7, 2017, and concluded that the existing concrete bulkhead was in very poor condition, exhibiting obvious signs

of distress in the format of significant unrepairable cracks. Therefore, the existing bulkhead is proposed to be replaced in the same location with a new bulkhead to protect the existing principal structure and adjacent development. The top of bulkhead elevation is proposed to be 10 feet (NAVD88), exceeding the City's Harbor Design Criteria standard of 9.82 feet NAVD88 (10.0 feet MLLW), will remain in alignment with adjacent protective devices, and is not located in State tidelands.

4. A Coastal Hazard and Sea Level Rise Analysis was prepared by GeoSoils, Inc., dated June 12, 2017, for the project. The report concludes that with the proposed replacement bulkhead with a top of wall elevation of 10.0 feet NAVD88, the project will not be adversely impacted by potential coastal hazards, including sea level rise over the next 75 years. The need for a new shoreline-protective device is not anticipated over the economic life of the proposed development. Furthermore, if the bulkhead is found to not adequately protect the development for the actual sea level rise over the next 75 to 100 years, the bulkhead assembly allows an increase in height without further seaward encroachment. The bay water elevation (currently maximum 7.2 NAVD88) is estimated to rise to 8.62 feet NAVD88 based on the minimum estimates for sea level rise provided by the National Research Council 2012 Sea Level Rise (SLR) estimates. Therefore, the new bulkhead with a height of 10 feet NAVD88 is sufficient to protect the project site.
5. The finished floor elevation of the proposed dwelling is 10.75 feet (NAVD88), which complies with the minimum 9.00 feet (NAVD88) elevation standard. The Coastal Hazard Report concludes that the bay water elevation (currently 7.2 NAVD88) will not exceed the proposed finished floor elevation (10.75 feet NAVD88) beyond the year 2100 using the minimum estimates for sea level rise from the National Research Council 2012 SLR estimates. Flood shields (sand bags and other adaptive methods) can be deployed across the openings to protect and prevent flooding to the structure associated with greater than anticipated sea level rise.
6. Pursuant to NBMC Section 21.30.030(C)(3)(i)(iv), the property owner will be required to enter into an agreement with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction by coastal hazards (e.g., waves, erosion, and sea level rise). The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c). Both requirements are included as conditions of approval that will need to be satisfied prior to the issuance of building permits for construction.
7. 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.

8. The applicant provided a Construction Pollution Prevention Plan (CPPP) pursuant to Section 21.35.030 of the Municipal Code, to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived by construction chemicals and materials. The CPPP was reviewed and approved by the City's Engineer Geologist. Construction plans and activities will be required to adhere to the approved CPPP.
9. 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 Toal Engineering, Inc. dated September 13, 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.
10. Proposed landscaping complies with Implementation Plan Section 21.30.075. A condition of approval is included that requires drought-tolerant species. Prior to issuance of building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
11. The property is not located near designated Public Viewpoints 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.
2. Vertical access to the bay front is available approximately 175 feet west of the site at the terminus of Via San Remo and the Lido Chanel where there is park and beach. Additionally there is another public park and beach approximately 400 feet east of the site at the terminus of intersection of Via Waziers and the Lido Chanel.
3. The proposed residence is not located near Public View Points or Coastal View Roads, as designated in the Coastal Land Use Plan.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2017-084, 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 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 JANUARY 2018.**



---

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. 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.
3. Prior to the issuance of a building permit, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of development.
4. The replacement bulkhead shall meet the minimum City's Harbor Design Criteria standard of 9.82 feet NAVD88 (10.0 feet MLLW), and remain in alignment with adjacent protective devices.
5. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers.
6. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
7. This Coastal Development Permit does not authorize any development bayward of the existing bulkhead.
8. Best Management Practices (BMP's) 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).

9. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
10. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. 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.
11. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
12. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
13. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
14. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.
15. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
16. Prior to issuance of a building permit, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.
17. Prior to issuance of a building permit, 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.
18. Prior to issuance of a building permits, the approved CPPP and WQMP shall be submitted with the Building Permit plans. Implementation shall be in compliance with the approved CPPP and WQMP and any changes could require separate review and approval by the Building Division.

19. 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.
20. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
21. 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.
22. Prior to the issuance of a building permit for the replacement bulkhead, the applicant shall obtain approval from the Army Corps of Engineers and the Regional Water Quality Board.
23. 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.
24. This Coastal Development Permit No. CD2017-084 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.
25. 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 Davis Residence including, but not limited to, Coastal Development Permit No. CD2017-084 (PA2017-195). 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. ZA2018-005

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2017-096 TO DEMOLISH AN EXISTING DUPLEX AND CONSTRUCT A NEW SINGLE-FAMILY RESIDENCE AND ATTACHED 2-CAR GARAGE LOCATED AT 5205 and 5205 1/2 SEASHORE DRIVE (PA2017-221)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Eric Mossman, Architect, with respect to property located at 5205 and 5205 1/2 Seashore Drive, requesting approval of a coastal development permit.
2. The lot at 5205 and 5205 1/2 Seashore Drive is legally described as Lot 3, Block 52, Tract 523, Ocean Front Tract.
3. The applicant is requesting approval of a Coastal Development Permit (CDP) to allow the demolition of an existing duplex and attached garage and the construction of a new 3-story single-family residence and attached 2-car garage.
4. The subject property is designated RS-D (Single-Unit Residential) by the General Plan Land Use Element and is located within the R-1 (Single-Unit Residential) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-D (Single-Unit Residential Detached) and is located within the R-1 (Single-Unit Residential) Coastal Zone District.
6. A public hearing was held on January 25, 2018, 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 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, because it has no potential to have a significant effect on the environment.
2. Class 3 exempts the construction 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 a duplex and the construction of a new 2,449-square-foot single-family residence and attached 381-square-foot 2-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 2,580 square feet and the proposed floor area is 2,449 square feet.
  - b. The proposed development provides the minimum required setbacks, which are 5 feet along the front property line abutting the West Ocean front right-of-way, 3 feet along each side property line and 0 feet along the rear property line abutting Seashore Drive.
  - c. The highest guardrail is less than 24 feet from established grade (13.67 feet NAVD88) and the highest ridge is no more than 29 feet from established grade, which comply with the maximum height requirements.
  - d. The project includes garage parking for a total of two vehicles, complying with the minimum two-car garage parking requirement for single-family residences with less 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 an approximately 375-foot-wide public beach. The finished floor elevation of the proposed dwelling is + 14.5 feet (NAVD 88), which complies with the minimum 9.00 feet (NAVD88) elevation standard.
4. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by GeoSoils, Inc., dated June 17, 2017 for the project. The report concludes it is very unlikely that any type of wave will reach the site even considering a 4.75-foot sea level rise and 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. Overall, the analysis concludes that the proposed project will be safe from flooding hazards for the next 75 years. Furthermore, the report concluded that due to the distance of the property from the current mean high tide line (approximately 350 feet) that it is unlikely that the mean high tide line will reach the property within the next 75 years.

5. Pursuant to NBMC Section 21.30.030(C)(3)(i)(iv), the property owner will be required to enter into an agreement with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction by coastal hazards (e.g., waves, erosion, and sea level rise). The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c). Both requirements are included as conditions of approval that will need to be satisfied prior to the issuance of building permits for construction.
6. 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.
7. The project design addresses water quality with 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 system.
8. The property is not located near designated Public Viewpoints 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 however, the project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities.
2. Vertical access to the beach is available approximately 60 feet southerly of the site via 52<sup>nd</sup> Street and approximately 90 feet northerly of the site via 53<sup>rd</sup> Street. Lateral access is provided by the public beach adjacent to the project site.

3. The subject property is not located near a Public View Point or Coastal View Road, as designated in the Coastal Land Use Plan. Due to the project's compliance with height, setbacks, it will not impact 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. CD2017-096, 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 JANUARY, 2018.**



---

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. 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 to address the threat of damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards that may affect the property, or development of the property, today or in the future. The agreement shall be binding against the property owners and successors and assigns.
3. Prior to the issuance of a building permit, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of development.
4. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers.
5. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
6. This Coastal Development Permit does not authorize any development seaward of the private property.
7. Best Management Practices (BMP's) 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 a building permit, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.
16. Prior to issuance of a building permit, 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 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.
18. 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.

19. 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.
20. 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.
21. This Coastal Development Permit No. CD2017-096 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.
22. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Borba Residence CDP including, but not limited to, Coastal Development Permit No. CD2017-096 (PA2017-221). 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. ZA2018-006

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2017-110 FOR A NEW SINGLE-FAMILY RESIDENCE LOCATED AT 800 WEST OCEAN FRONT (PA2017-259)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Jerome Greubel, with respect to property located at 800 West Ocean Front, and legally described as a portion of Lots 4 and 5 of Block 7, requesting approval of a Coastal Development Permit.
2. The applicant proposes the demolition of an existing single-family residence and the construction of a new 2,187-square-foot single-family residence with a 431-square-foot attached garage. The proposed development also 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 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 January 25, 2018, 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 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), because it has no potential to have a significant effect on the environment.
2. Class 3 exempts the construction of limited numbers of new, small structures, including 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. Consistent with Municipal Code Section 21.30.110.C, the Director approved Staff Approval SA2017-012 on December 7, 2017, redefining the location of the rear setback to 5 feet.
2. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
  - a. The maximum floor area limitation is 2,787 square feet and the proposed floor area is 2,618 square feet.
  - b. The proposed development complies with the required setbacks, which are 7 feet along the property line abutting West Ocean Front, 3 feet along each side property line, and 5 feet along the rear property line.
  - c. The highest guardrail/parapet is 24 feet from established grade and the highest ridge is 29 feet from established grade. The proposed development complies with all height requirements.
  - d. The proposed development provides a two-car garage, meeting the minimum garage requirement for a single-family residence.
  - e. The proposed development exceeds the minimum 9.0 (NAVD88) top of slab elevation requirement for interior living areas of new structures.
3. 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.
4. The development is set back approximately 560 feet from the mean high water line. Due to the large distance from coastal waters, a Water Quality Management Plan (WQMP) and a Construction Pollution Prevention Plan (CPPP) are not required. 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.
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.

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. Adequate vertical access to the sea exists on 8<sup>th</sup> Street. In addition, lateral public access is provided by the Ocean Front boardwalk and the beach. The proposed project will not affect public recreation, access or views.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2017-110, 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 JANUARY, 2018.**



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. CD2017-110 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. 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.
7. 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.
8. 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.
9. 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.
10. 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.

11. 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.
12. 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.
13. 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 Greubel Residence Coastal Development Permit including, but not limited to, Coastal Development Permit No. CD2017-110 (PA2017-259). 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. ZA2018-007

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA SUPERSEDING MINOR USE PERMIT NO. UP2015-027 AND APPROVING MINOR USE PERMIT NO. UP2017-027 TO MODIFY THE HOURS OF AN EXISTING TAKE-OUT SERVICE LIMITED, EATING AND DRINKING ESTABLISHMENT LOCATED AT 2233 WEST BALBOA BOULEVARD, SUITE 110 (PA2017-194)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Albasha LLC (“Applicant”), with respect to property located at 2233 West Balboa Boulevard, Suite 110, and legally described as Lot 9, 10, 11, 12, 13, 14 and 15, in Block 22 of Newport Beach, as shown on map recorded in Book 3, Page 26, Miscellaneous Maps, Records of Orange County, requesting approval of a minor use permit.
2. Applicant proposes a minor use permit to extend the hours of an existing take-out service limited, eating and drinking establishment with six seats in a mixed-use building. Proposed hours of operation are 7 a.m. to 2 a.m., where the existing use permit allows business hours of 7 a.m. to 11 p.m. daily. There are no alcohol sales proposed as a part of this application. If approved this minor use permit would supersede UP2015-027.
3. The Property is located within the Mixed-Use Water Related (“MU-W2”) Zoning District and the General Plan Land Use Element category is Mixed-Use Water Related (“MU-W2”).
4. The subject Property is located within the Coastal Zone. The Coastal Land Use category is Mixed Use Water Related (MU-W) and it is located within the Mixed Use Water Related (MU-W2) Coastal Zoning District. The project is exempt from coastal development permitting requirements because project does not intensify or expand the existing eating and drinking establishment use.
5. A public hearing was held on January 25, 2018 in the Corona del Mar Conference Room (Bay E-1<sup>st</sup> Floor) located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with the Newport Beach Municipal Code (“NBMC”). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

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

1. This project is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 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. Class 1 (Existing Facilities) exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of public or private structure, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The proposed project involves no alteration of an existing mixed use building.

### SECTION 3. REQUIRED FINDINGS.

In accordance with NBMC Subsection 20.48.030(C)(3) (Alcohol Sales) and NBMC Subsection 20.52.020(F) (Conditional Use Permits and Minor Use Permits), the following findings and facts in support of the findings for a use permit are set forth:

#### Finding

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

#### Facts in Support of Finding

1. The MU-W2 (Mixed-Use Water Related) General Plan and Coastal Land Use Plan land use designations apply to waterfront properties in which marine-related uses may be intermixed with general commercial, visitor-serving commercial, and residential dwelling units on the upper floors.
2. The take-out service limited, eating and drinking establishment with late hours is a commercial use intended to serve nearby residents, the surrounding community, and visitors to the City of Newport Beach and is consistent with the MU-W2 land use designation.
3. A variety of small eating and drinking establishments exist within the multi-tenant building and the take-out service is 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 located in the Mixed-Use Water Related (MU-W2) Zoning District. The existing establishment, which includes kitchen facilities, six seats, no alcohol service, and late hours is a permitted use subject to approval of a minor use permit pursuant to NBMC 20.22.020 (Mixed-Use Zoning Districts Land Uses and Permit Requirements).

2. The property is nonconforming due to a deficiency in on-site parking for the nonresidential uses. Six parking spaces are provided on-site, where, based on a retail parking ratio of one space per 250 square feet, a total of 42 spaces ( $10,400/250=41.6$ ) are required. Each residential unit is provided a two-car garage, consistent with the Zoning Code. The extension of hours does not require additional parking and the property will remain legal, nonconforming.
3. As conditioned, the 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 location of the take-out service use is appropriate given the establishment is accessible from 23<sup>rd</sup> Street, West Balboa Boulevard and two alleys, which provides convenient access to motorists, pedestrians, and bicyclists.
2. The mixed-use building contains various retail and visitor-serving commercial uses including small eating and drinking establishments. The existing establishment is compatible with the existing and allowed uses in the area.
3. The McFadden Square area, served by municipal parking lots and the close proximity to multiple commercial uses, including many operating with late hours, and beach and coastal recreation areas, will result in shared trips to the eating and drinking establishment.
4. As conditioned, the allowed hours of operation will be 7 a.m. to 2 a.m., daily. The area is an established commercial area with several establishments operating with late hours, including Mutt Lynch's (restaurant/bar with alcohol service and late hours located at 2300 West Oceanfront) located approximately 78 feet west of the subject property.
5. The applicant is required to comply with NBMC Section 20.30.070 (Outdoor Lighting), which ensures compatibility with surrounding uses. The project does not include changes to existing outdoor lighting.
6. The existing trash storage area at the rear of the property is adequate to accommodate the food service use, including the extended hours, and is conveniently located where materials can be deposited and collected, and does not impede with the 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 subject Property is developed with the existing take-out service, limited food service eating and drinking establishment. There is adequate public and emergency vehicle access, public services, and utilities, which are existing onsite. There is no proposed expansion to the existing building.

Finding

- E. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, 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 patrons of the establishment.
2. The resolution includes a condition that requires the premises and immediate surroundings to be kept clear of litter and graffiti at all times to ensure there are no conflicts with the surrounding commercial tenants. Additionally, the project includes a condition of approval requiring doors to remain closed after 11 p.m. and noise to be contained within the tenant space. This is to ensure compatibility with surrounding residential uses.

## SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2017-027, 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 fourteen (14) days after the adoption of this Resolution unless within such time an appeal is filed with the Community



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

3. This resolution supersedes Use Permit No. UP2015-027 as approved by the Zoning Administrator on July 16, 2015, which upon vesting of the rights authorized by this use permit, shall become null and void.

**PASSED, APPROVED AND ADOPTED THIS 25<sup>TH</sup> DAY OF JANUARY, 2018.**



---

Patrick J. Alford, Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

*Project Specific Conditions in Italics***PLANNING DIVISION**

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. 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).
3. Minor Use Permit No. UP2017-027 shall expire if not exercised within 24 months from the date of approval as specified in NBMC Section 20.54.060 (Time Limits and Extensions), unless an extension is otherwise granted.
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, hours of operation, 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.
6. 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.
7. All exits shall remain free of obstructions and available for ingress and egress at all times.
8. 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 NBMC to require such permits.
9. Should this business be sold or otherwise come under different ownership, any future owners or assignees shall be notified in writing of the conditions of this approval by the current owner or leasing company.

10. 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 building permits.
11. *The hours of operation for the take-out limited, food service eating and drinking establishment shall be limited to 7 a.m. to 12 a.m. daily.*
12. *The sale of alcohol shall not be permitted.*
13. *The maximum number of seats allowed within the eating and drinking establishment shall be six (6). No outdoor seating is permitted unless an amendment to this Minor Use Permit is acquired.*
14. *There shall be no dancing allowed on the premises.*
15. Live entertainment shall not be permitted unless an amendment to this Minor Use Permit is approved and the operator has obtained a live entertainment permit from the Revenue Division.
16. All proposed signs shall be in conformance with any approved Comprehensive Sign Program for the project site and provisions of NBMC Section 20.42.
17. No temporary "sandwich" signs shall be permitted, either on-site or off-site, to advertise the restaurant facility. Temporary signs shall be prohibited in the public right-of-way unless otherwise approved by the Public Works Department in conjunction with the issuance of an encroachment permit or encroachment agreement.
18. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
19. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment; however, not located on or within any public property or right-of-way.
20. The exterior of the business shall be 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.
21. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.

- 
22. No outside paging system shall be utilized in conjunction with this establishment.
  23. 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.
  24. 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.
  25. *Doors shall be kept closed after 11 p.m. and noise shall be confined to the interior of the tenant space.*
  26. The operator of the establishment shall be responsible for the control of noise generated by the subject facility. All noise generated by the proposed use shall comply with the provisions of NBMC Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code.
  27. *Strict adherence to occupancy limits is required.*
  28. 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 Chocolate Bash Minor Use Permit including, but not limited to, Minor Use Permit No. UP2017-027 (PA2017-194). 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. 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. Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.