



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

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION  
FROM: Seimone Jurjjs, Community Development Director  
SUBJECT: Report of actions taken by the Zoning Administrator and/or Planning Division staff for the week ending May 25, 2018.

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### ZONING ADMINISTRATOR ACTIONS MAY 24, 2018

- Item 1: Cefalia Residence Coastal Development Permit No. CD2018-014 (PA2018-034)  
Site Address: 104 Via Palermo
- |                                |                  |   |
|--------------------------------|------------------|---|
| Action: Withdrawn by Applicant | Council District | 1 |
|--------------------------------|------------------|---|
- Item 2: Carter Residence Coastal Development Permit No. CD2018-042 (PA2018-093)  
Site Address: 257 Mayflower Drive
- |   |                  |   |
|---|------------------|---|
| Action: Approved by Resolution No. ZA2018-064 | Council District | 4 |
|---|------------------|---|
- Item 3: Florance Residence Lot Line Adjustment No. LA2018-003 (PA2018-047)  
Site Address: 916 Almond Place and 915 Alder Place
- |   |                  |   |
|---|------------------|---|
| Action: Approved by Resolution No. ZA2018-065 | Council District | 4 |
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- Item 4: Bercaw Residence Coastal Development Permit No. CD2017-057 (PA2017-127)  
Site Address: 6210 West Ocean Front
- |   |                  |   |
|---|------------------|---|
| Action: Approved by Resolution No. ZA2018-066 | Council District | 1 |
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- Item 5: Shirley/Windmuller Residential Condominiums - Condominium Conversion No. CC2018-001, Tentative Parcel Map No. NP2018-011, and Coastal Development Permit No. CD2018-028 (PA2018-067)  
Site Address: 206 and 206-1/2 29th Street
- |   |                  |   |
|---|------------------|---|
| Action: Approved by Resolution No. ZA2018-067 | Council District | 1 |
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- Item 6: Marigold Properties, LP Residential Condominiums - Tentative Parcel Map No. NP2018-010 (PA2018-066)  
Site Address: 413 and 413-1/2 Marigold Avenue
- |   |                  |   |
|---|------------------|---|
| Action: Approved by Resolution No. ZA2018-068 | Council District | 6 |
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- Item 7: 431 Goldenrod LLC Residential Condominiums - Tentative Parcel Map No. NP2018-009 and Coastal Development Permit No. CD2018-025 (PA2018-064)  
Site Address: 431 Goldenrod and 431 1/2 Goldenrod Avenue
- |   |                  |   |
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| Action: Approved by Resolution No. ZA2018-069 | Council District | 6 |
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- Item 8: Ikon LLC Residential Condominiums - Tentative Parcel Map No. NP2018-008 and Coastal Development Permit No. CD2018-024 (PA2018-063)  
 Site Address: 616 Acacia Avenue
- |   |                  |   |
|---|------------------|---|
| Action: Approved by Resolution No. ZA2018-070 | Council District | 6 |
|---|------------------|---|
- Item 9: Fable and Spirit Restaurant Minor Use Permit No. UP2018-002 and Coastal Development Permit No. CD2018-048 (PA2018-006)  
 Site Address: 3441 Via Lido
- |   |                  |   |
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| Action: Approved by Resolution No. ZA2018-071 | Council District | 1 |
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- Item 10: Annual Review of Pacific View Memorial Park Development Agreement (PA2009-024)  
 Site Address: 3500 Pacific View Drive
- |  |                  |       |
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| Action: Find that the applicant has demonstrated good faith compliance with the terms of the Annual Review for Pacific View Memorial Park Development Agreement. | Council District | 6 & 7 |
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APPEAL PERIOD: An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period 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. ZA2018-064

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2018-042 TO REMOVE AN EXISTING SINGLE-STORY MANUFACTURED HOME AND INSTALL A NEW SINGLE-STORY MANUFACTURED HOME AND ATTACHED AWNING CARPORT LOCATED AT 257 MAYFLOWER DRIVE (PA2018-093)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Steve Almquist of Coastline Construction ("Applicant") on behalf of Jennifer Carter ("Manufactured Home Owner"), with respect to a manufactured home site located at 257 Mayflower Drive, requesting approval of a coastal development permit.
2. The site is located within Bayside Village Mobile Home Park, legally described as Parcel 1 of Parcel Map No. 93-111.
3. The Applicant proposes the removal of an existing single-story manufactured home and the installation of a new single-story manufactured home. The development also includes an aluminum carport awning, ingress/egress stairs, hardscape, drainage, and landscaping. The development complies with all applicable standards and no deviations are requested.
4. The subject property is designated Multiple-Unit Residential ("RM") by the General Plan Land Use Element and is located within the Bayside Village Mobile Home Park Planned Community ("PC-1") Zoning District.
5. The subject site is located within the coastal zone. The Coastal Land Use Plan category is Multiple-Unit Residential 10.0 – 19.9 DU/AC ("RM-C") and it is located within the Bayside Village Mobile Home Park ("PC-1") Coastal Zone District.
6. A public hearing was held on May 24, 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 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 removal of one single-family manufactured home and the installation of a new single-family manufactured home.

### SECTION 3. REQUIRED FINDINGS.

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

#### Finding:

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

#### Facts in Support of Finding:

1. The proposed development complies with applicable development standards identified by the PC-1 Development Plan and the proposed design is in substantial conformance with the approved site plan.
  - a. The Project is within the confines of the manufactured home site plan.
  - b. The Project has been reviewed and approved by the Mobile Home Park Owner, as evidenced by the Application for Permit to Construct included with the application.
  - c. The Project includes a covered parking area for one vehicle, complying with the minimum parking requirement per site.
2. The Bayside Village Mobile Home Park is predominantly developed with single- and two-story, mobile/manufactured homes. The proposed design, bulk, and scale of the development is consistent with the existing pattern of development and expected future development consistent with applicable development standards.
3. The Bayside Village Mobile Home Park is comprised of Parcel 1 (South) and Parcel 2 (North) of Parcel Map No. 93-111. The project site is located within the south parcel and is approximately 650 feet from the Newport Bay. It is separated from Newport Bay by several rows of manufactured home sites, Bayside Drive, and the entirety of the north parcel. The site is at an approximate elevation of between 13 and 14 feet based on the North American Vertical Datum of 1988 (NAVD88).

4. 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.
5. The building codes for construction and installation of a manufactured home are contained within the California Health and Safety Code. The State of California Department of Housing and Community Development (HCD) issues all construction permits. The applicant has provided evidence of approval from the State, as well as the park owner.
6. Proposed landscaping complies with NBMC Section 21.30.075 (Landscaping). 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.

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, and the existing residential development neither provides nor inhibits public coastal access. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project replaces an existing single-family manufactured home on an interior site located within an existing mobile/manufactured home park with a new single-family manufactured home. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities.
2. Bayside Drive bisects the north and south parcels of the Bayside Village Mobile Home Park and provides access to the Newport Dunes, which provides several coastal recreational opportunities for the public's use.
3. The mobile/manufactured home park abuts Coast Highway, a public coastal view road. The park is separated from the public right-of-way by an existing site wall that is approximately seven feet tall and provides for limited views across the park. An investigation of the project site and surrounding area did not identify any other public view opportunities. The project site may be located within the viewshed of distant public viewing areas. However, the project will replace an existing single-family manufactured home with a new single-family manufactured home that complies with all applicable Local Coastal Program development standards and maintains a building envelope consistent with the existing pattern of development. Therefore, the project does not have the potential to

degrade the visual quality of the Coastal Zone or result in significant adverse impacts to public views.

**SECTION 4. DECISION.**

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2018-042, 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 24<sup>TH</sup> DAY OF MAY, 2018.**



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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. 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.
3. 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).
4. 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.
5. 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.
6. 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.
7. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
8. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
9. 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.
10. 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.

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11. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. and shall incorporate drought tolerant plantings, non-invasive plant species and water efficient irrigation design. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
  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 the current property owner or agent.
  13. This Coastal Development Permit No. CD2018-042 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.
  14. 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 **Carter Residence Coastal Development Permit including, but not limited to, Coastal Development Permit No. CD2018-042 (PA2018-093)**. 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. ZA2018-065

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING LOT LINE ADJUSTMENT NO. LA2018-003 FOR A LOT LINE ADJUSTMENT BETWEEN PARCELS LOCATED AT 916 ALMOND PLACE AND 915 ALDER PLACE (PA2018-047)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by James and Cynthia Florance, with respect to property located at 916 Almond Place and 915 Alder Place, legally described as Lot 12 and Lot 7 of Tract 4705 in the City of Newport Beach, County of Orange, State of California, requesting approval of a lot line adjustment.
2. The applicant proposes to adjust a portion of the rear property line between two contiguous single-family residential lots located at 916 Almond Place and 915 Alder Place and legally described as Lots 12 and 7 of Tract No. 4705. A portion of the rear property line of 916 Almond Place would be moved north 7.13 feet into the rear yard of 915 Alder Place. The property at 916 Almond Place would be increased by approximately 260 square feet and the property at 915 Alder Place would be reduced by approximately 260 square feet. There will be no change in the number of parcels..
3. The subject sites are designated Single-Unit Residential Detached (RS-D) by the General Plan Land Use Element and is located within the Single-Unit Residential (R-1-6,000) Zoning District.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on May 24, 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 exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15305 under Class 5 (Minor Alterations in Land Use Limitations) 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 exemption consists of minor alterations in land use limitations in areas with an average slope of less than 20 percent, which do not result in any changes in land use or density, including minor lot line adjustments. The proposed lot line adjustment affects the

property line between two (2) parcels and is for the purpose of creating a larger rear yard above the top of slope for 916 Almond Place. The average slope of the two affected parcels is less than 20 percent.

3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 19.76.020 (Procedures for Lot Line Adjustments) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

#### Finding:

- A. *Approval of the lot line adjustment will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City, and further that the proposed lot line adjustment is consistent with the legislative intent of the title.*

#### Facts in Support of Finding:

1. The proposed lot line adjustment will not change the existing use of either property. The General Plan Land Use designation of Single-Unit Residential Detached will be maintained for both lots.
2. The proposed lot line adjustment will not result in a development pattern that is inconsistent with the surrounding neighborhood. The properties will continue to allow for single-unit development consistent with the applicable General Plan Land Use and Zoning designation.
3. The proposed lot line adjustment is consistent with the purpose identified in Chapter 19.76 (Lot Line Adjustment) of the Newport Beach Municipal Code. The lot line adjustment constitutes a minor boundary adjustment involving two (2) adjacent lots where land taken from one lot is added to an adjacent lot. The original number of lots will remain unchanged after the adjustment.
4. The subdivision is consistent with the General Plan, does not negatively impact surrounding land owners, and will not in itself be detrimental to the health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood, as the

adjustment affects interior property lines between two (2) adjacent parcels. Access to the project site and surrounding properties would remain unchanged.

Finding:

- B. The number of parcels resulting from the lot line adjustment remains the same as before the adjustment.*

Fact in Support of Finding:

1. The proposed lot line adjustment will adjust the property line between two (2) contiguous parcels. The number of parcels remains the same as before the lot line adjustment.

Finding:

- C. The lot line adjustment is consistent with applicable zoning regulations except that nothing herein shall prohibit the approval of a lot line adjustment as long as none of the resultant parcels is more nonconforming as to lot width, depth and area than the parcels that existed prior to the lot line adjustment.*

Facts in Support of Finding:

1. Both properties are located within the R-1 6,000 Zoning District, which is intended to provide for detached single-family dwellings. The proposed lot line adjustment will not change the existing use of the two parcels.
2. The proposed lot line adjustment is to move a portion of the rear lot line to accommodate additional top of slope area for 916 Almond Place and allow slope stabilization improvements above their backyard and pool. This will enable the owner of 916 Almond Place to construct a wall and grading solution to prevent down slope failure into their pool.
3. Both parcels will continue to exceed the minimum 6,000 square feet site area requirement of the Zoning development regulations. The proposed parcel at 915 Alder Place will be reduced by approximately 260 square feet and will still meet the minimum lot size requirement with a resulting area of 8,806.9 square feet. The proposed parcel at 916 Almond Place will maintain the minimum lot size requirement with a new lot area of 20,759 square feet.
4. The proposed parcels comply with all applicable lot size regulations of the R-1 6,000 Zoning District and will not result in a change in allowed land uses, density, or intensity on the properties.

Finding:

- D. Neither the lots as adjusted nor adjoining parcels will be deprived legal access as a result of the lot line adjustment.*

Fact in Support of Finding:

1. The proposed lot line adjustment affects the interior rear property lines between two (2) adjacent parcels. Legal access to the two properties will be maintained along Almond Place and Alder Place, thus access to the subject properties will not be affected by the adjustment.

Finding:

- E. That the final configuration of the parcels involved will not result in the loss of direct vehicular access from an adjacent alley for any of the parcels that are included in the lot line adjustment.*

Fact in Support of Finding:

1. Vehicular access to the existing properties is from Almond Place and Alder Place, and the final configuration will not change.

Finding:

- F. That the final configuration of a reoriented lot does not result in any reduction of the street site setbacks as currently exist adjacent to a front yard of any adjacent key, unless such reduction is accomplished through a zone change to establish appropriate street site setbacks for the reoriented lot. The Planning Commission and City Council in approving the zone change application shall determine that the street site setbacks are appropriate, and are consistent and compatible with the surrounding pattern of development and existing adjacent setbacks.*

Fact in Support of Finding:

1. The final configuration of the proposed parcels does not result in a requirement for revised setbacks since the parcels are not proposed to be reoriented. The required setbacks applicable to parcels in the R-1 6,000 Zoning District shall continue to apply to the adjusted parcels.

## SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Lot Line Adjustment No. LA2018-003, 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 10 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 19 Subdivisions, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 24<sup>th</sup> DAY OF MAY, 2018.**



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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. Prior to the recordation of the lot line adjustment, the applicant shall submit the exhibits to the Public Works Department for final review.
3. 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.
4. 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 Florance Lot Line Adjustment including, but not limited to, Lot Line Adjustment No. LA2018-003 (PA2018-047). 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. ZA2018-066

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2017-057 TO DEMOLISH AN EXISTING TWO-UNIT RESIDENCE AND CONSTRUCT A NEW SINGLE-FAMILY RESIDENCE AND ATTACHED 2-CAR GARAGE LOCATED AT 6210 WEST OCEAN FRONT (PA2017-127)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by C.J. Light Associates, with respect to property located at 6210 West Ocean Front, requesting approval of a coastal development permit.
2. The lot at 6210 W. Ocean Front is legally described as Lot 6, Block B, of the Seashore Colony Tract, and a portion of that certain street known as Ocean Front adjoining said Lot 6 on the Southeast, abandoned by order of the City Council of the City of Newport Beach, a copy of said order having been recorded April 3, 1953 in Book 2481, Page 432, official records.
3. The applicant proposes a coastal development permit (CDP) for the demolition of an existing two-unit residence and attached garage and the construction of a new 2,289-square-foot single-family development, including a 474-square-foot attached garage. The development also includes hardscape, drainage, and landscaping. The proposed development complies with all applicable development standards including height, setbacks, and floor area limits. No deviations are requested.
4. The subject property is designated RT (Two-Unit Residential) by the General Plan Land Use Element and is located within the R-2 (Two-Family Residential) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Two Unit Residential (RT-E) and it is located within the Two-Unit Residential (R-2).
6. A public hearing was held on May 24, 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 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 2,289-square-foot single-family residence including an attached 474-square-foot, two-car garage.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

### SECTION 3. REQUIRED FINDINGS.

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

#### Finding:

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

#### Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
  - a. The maximum floor area limitation is 3,120 square feet and the proposed floor area is 2,289 square feet.
  - b. The proposed development provides the minimum required setbacks, which are 5 feet along the front property line abutting West Ocean Front, 3 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 (14.06 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 and two-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 existing development is provided vehicular access from the side on Prospect Street. The proposed development maintains this vehicular access from Prospect Street, instead of the alley. In this case, the side access and required curb cut is consistent with Local Coastal Program Section 21.40.070.B. subsection 1(a) because access from the alley was determined to be inadequate by the City Traffic Engineer due to the existing development across the alley creating a substandard back-up area. Furthermore, even if the access was removed from Prospect Street, there would not be an opportunity to add additional street parking due to the minimum clear aisle width needed for beach access at this location.
4. The development fronts an approximately 450-foot-wide public beach known as West Ocean Front. The finished floor elevation of the proposed dwelling is 15.58 feet (NAVD 88), which complies with the minimum 9.00 feet (NAVD88) elevation standard.
5. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by GeoSoils, Inc., dated March 31, 2016 for the project indicates a maximum sea level rise of 4.75 feet over the next 75 years resulting in a future sea level elevation of 12.25 feet (NAVD). 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 400 feet) that it is unlikely that the mean high tide line will reach the property within the next 75 years.
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 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.

9. 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
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; 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 project site is located in West Newport between the nearest public road and the sea. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project is the demolition of an existing two-unit residence and construction of a new single-family residence located on a private lot adjacent to the public beach. Existing vertical access exists to the beach via the terminus of Prospect Street. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is designed and sited so as not to block or impede existing public access opportunities.
3. The project site is not located adjacent to a coastal view road, public viewpoint, public park or beach, or public accessway, as identified in the Coastal Land Use Plan (CLUP). The property abuts the southern terminus of Prospect Street, which provides a view corridor to the ocean. However, the project is designed and sited so as not to block or diminish this view corridor; this includes landscaping in the planter planned for in the western side setback. Furthermore, an investigation of the project site and surround area presented no opportunities to provide or enhance public views. The project site may be located within the viewshed of distant public viewing areas. The project will replace an existing duplex with a new single-family home that complies with all applicable LCP development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to public views.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2017-057, 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 24<sup>H</sup> DAY OF MAY 2018.**



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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. 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. Landscape materials and landscaped areas along the Prospect Street frontage shall be maintained to a maximum height of four feet.
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. CD2017-057 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 Bercaw Residence including, but not limited to, Coastal Development Permit No. CD2017-057 (PA2017-127). 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. ZA2018-067

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CC2018-001, CONDOMINIUM CONVERSION NO. CC2018-001, AND TENTATIVE PARCEL MAP NO. NP2018-011 TO CONVERT AN EXISTING DUPLEX LOCATED AT 206 AND 206 ½ 29TH STREET TO CONDOMINIUMS (PA2018-067)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Bryan Shirley and June Windmuller (“Applicant and “Owner”), with respect to property located at 206 and 206 ½ 29th Street, requesting approval of a coastal development permit, condominium conversion, and tentative parcel map.
2. The lot at 206 and 206 ½ 29th Street is legally described as Lot 4, Block 128, Lake Tract.
3. The applicant proposes a coastal development permit, condominium conversion, and tentative parcel map to convert an existing 2,897-square-foot, two-story, duplex into condominiums for individual sale of the units. The code required two-car parking per unit will be provided and no waivers of Title 19 (Subdivision Code) development standards are proposed with this application. The proposed residence complies with all other applicable development standards including height and floor area limits. Approval of the Tentative Parcel Map and Condo Conversion Permit would allow each unit to be sold individually as condominiums.
4. The subject property is designated RT (Two-Unit Residential) by the General Plan Land Use Element and is located within the R-2 (Two-Family Residential Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RT-E (Two-Unit Residential) (30.0-39.9 DU/AC) and it is located within the R-2 (Two-Unit Residential) Coastal Zone District.
6. A public hearing was held on May 24, 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 15301 and 15315, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 1

(Existing Facilities) and Class 15 (Minor Land Divisions), because it has no potential to have a significant effect on the environment.

2. Class 1 exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The proposed project consists of the conversion of an existing 2,897-square-foot duplex with an attached 4-car garage involves minimal physical improvements to an existing duplex. The conversion of the duplex into condominiums will allow the units to be sold separately.
3. 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 and Condominium Conversion is for individual sale of the units and is consistent with all of the requirements of the Class 15 exemption.
4. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

### SECTION 3. REQUIRED FINDINGS.

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

#### Finding:

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

#### Facts in Support of Finding:

1. The Tentative Parcel Map and Condominium Conversion is for condominium purposes and meets all of the requirements of the Local Coastal Program including [21.30.025 \(Coastal Subdivisions\)](#).
2. The existing duplex complies with applicable residential development standards including, but not limited to, floor area limitation, height, and parking.
  - a. The maximum floor area limitation is 3,576 square feet and the existing floor area is 2,897 square feet.



- b. The existing duplex is nonconforming at the right side yard setback where the structure projects 2 feet into the required 3-foot side setback. This nonconformity is allowed to remain by right since there is no addition or expansion of the existing structure. The duplex complies with all other minimum required setbacks, which are 5 feet along the front property line abutting 29<sup>TH</sup> Street, 3 feet along the left side property line and 5 feet along the rear property line abutting the alley.
  - c. The highest roofline is 24 feet from existing grade, which complies with the maximum height requirement of 24 feet for flat roof structures and 29 feet for pitched rooflines.
  - d. The project includes garage parking for a total of four vehicles, complying with the minimum one-car garage and one covered or garage parking space per dwelling unit.
3. The neighborhood is predominantly developed with two- and three-story, single-family and two-unit residences. The design, bulk, and scale of the existing development is consistent with the existing neighborhood pattern of development and expected future development.
  4. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies.
  5. The project site is not located between the nearest public road and the sea or shoreline area and approval of the parcel map would not affect public recreation access or views. There are no open space areas or bikeways within the boundaries of the parcel map that would require any easements or dedication.
  6. 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 closest Public Viewpoint is located at Newport Pier, approximately 2,000 feet from the property. The existing duplex is not located near Coastal View Roads, as designated in the Coastal Land Use Plan. Due to the distance of the proposed development from the Public Viewpoint and the project's compliance with height and floor area, the project will not impact 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 not 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 is available approximately 780 feet southeast of the site at the street end along Villa Way.
3. Vertical access to the beach is available approximately 530 feet southwest of the site at the street end along 29<sup>TH</sup> Street where there is a public beach with access to the water.
4. The public beach is also the start of a 12-foot-wide public sidewalk providing lateral access and views of the ocean.

### *Condominium Conversion*

In accordance with Section 19.64.070 (Standards for Condominium Conversions) of the Newport Beach Municipal Code, the following findings are set forth:

#### Finding:

- C. *The minimum number, and the design and location of off-street parking spaces shall be provided in conformance with the provisions of the Zoning Ordinance in effect at the time of approval of the conversion.*

#### Facts in Support of Finding:

1. As permitted and conditioned, each unit will provide a one-car garage and a one-car carport or garage.
2. The four spaces provided meet the number of spaces required (two per unit) per Chapter 20.40 (Off-Street Parking) of the Zoning Ordinance.

#### Finding:

- D. *Each dwelling unit within a building shall have a separate sewer connection to the City sewer.*

#### Fact in Support of Finding:

1. As permitted and conditioned, each unit of the duplex will maintain separate sewer connections to the City sewer.

#### Finding:

- E. *Each sewer lateral shall be retrofitted/fitted with a cleanout at the property line.*

#### Fact in Support of Finding:

1. As permitted and conditioned, each unit of the duplex will maintain a separate sewer cleanout located at the property line.

Finding:

*F. Each unit shall maintain a separate water meter and water meter connection.*

Fact in Support of Finding:

1. As permitted and conditioned, each unit of the duplex will maintain a separate water meter and water meter connection.

Finding:

*G. The electrical service connection shall comply with the requirements of Chapter 15.32 (Underground Utilities) of the Newport Beach Municipal Code.*

Fact in Support of Finding:

1. The duplex was constructed with an electrical service connection that was, at such time, determined to be in compliance with the requirements of Chapter 15.32. No upgrades or changes are required to the existing service connections.

Finding:

*H. The applicant for a condominium conversion shall request a special inspection from the Building Division for the purpose of identifying any building safety violations. The applicant shall correct all identified safety violations prior to approval of a final map for the condominium conversion.*

Facts in Support of Finding:

1. A special inspection was conducted on April 30, 2018, and the building inspector noted the presence of a habitable loft area over the kitchen and nonconforming guardrail heights (Attachment No. ZA 4). As conditioned, access to the loft area must be removed so this area cannot be utilized as habitable floor area prior to condominium conversion permit issued by the Building Division.

Finding:

*I. Permanent lot stakes and tags shall be installed at all lot corners by a licensed surveyor or civil engineer unless otherwise required by the City Engineer.*

Fact in Support of Finding:

1. As conditioned, the project will comply with this requirement prior to recordation of the final parcel map.

Finding:

- J. *For residential conversions, the project shall be consistent with the adopted goals and policies of the General Plan, particularly with regard to the balance and dispersion of housing types within the City.*

Facts in Support of Finding:

1. The project is consistent with the adopted goals and policies of the Land Use Element and other Elements of the General Plan. The project site is designated as RT (Two-Unit Residential) by the Land Use Element of the General Plan. The existing duplex is consistent with the RT land use category, which is intended to provide for a range of two-family dwelling units such as duplexes and townhomes.
2. An existing, remodeled two-unit duplex will be converted into a two-unit condominium. The residential density on the site will remain the same.

Finding:

- K. *The establishment, maintenance or operation of the use or building applied for shall not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City.*

Facts in Support of Finding:

1. The application of the project as conditioned will ensure the health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood and the City.
2. The requested application is to convert an existing duplex into two condominiums for individual sale of the units on property located within the R-2 Zoning District.
3. Public improvements will be required of the Applicant per the Municipal Code and the Subdivision Map Act.

*Tentative Parcel Map*

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

Finding:

- L. *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 two-unit residential condominium purposes. The two-unit duplex will comply with current condominium standards. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the current RT General Plan Land Use Designation.
2. The Tentative Parcel Map does not apply to any specific plan area.

Finding:

*M. 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-unit development because it is regular in shape and is relatively flat.
2. The subject property is accessible from 29<sup>TH</sup> Street and the alley at the rear and is adequately served by existing utilities.

Finding:

*N. 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.*

Fact in Support of Finding:

1. This project has been reviewed, and it has been determined that it qualifies for a Class 1 and a Class 15 categorical exemption pursuant to Title 14 of the California Code of Regulations (Sections 15301 and 15315, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act). Class 1, exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The proposed project consists of the conversion of an existing 2,897-square-foot duplex with an attached 4-car garage involves minimal physical improvements to an existing duplex. The conversion of the duplex into condominiums will allow the units to be sold separately. 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 existing duplex is a permitted use and minimal physical improvements are necessary to allow the requested condominium conversion for the individual sale of the units. The site has not been subject to a prior subdivision and does not have a slope of greater than 20 percent.

Finding:

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

Fact in Support of Finding:

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

Finding:

- P. *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.*

Fact 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:

- Q. *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, developed for residential use and lies in a Zoning District that permits residential uses.

Finding:

- R. *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:

- S. *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.*

Fact in Support of Finding:

1. The Tentative Parcel Map and any future improvements 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:

- T. *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.*

Fact in Support of Finding:

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

Finding:

- U. *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.*

Fact in Support of Finding:

1. The two-unit duplex is designed so that wastewater discharge into the existing sewer system complies with the Regional Water Quality Control Board (RWQCB) requirements.

Finding:

- V. *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.*

Fact in Support of Finding:

1. The subject property is located within the Coastal Zone. A coastal development permit is requested in conjunction with the proposed tentative parcel map and condominium conversion application. The project complies with the certified Local Coastal Program (LCP) and public access and recreation policies of Chapter Three of the Coastal Act. The facts in support of findings A and B above are hereby incorporated by reference.

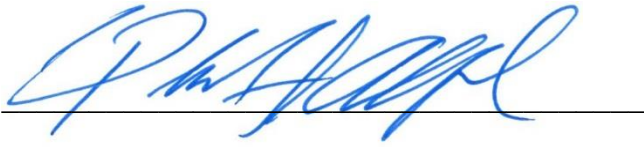
## SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2018-028, Tentative Parcel Map No. NP2018-011, and Condominium Conversion No. CC2018-001, 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 24<sup>TH</sup> DAY OF MAY, 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. 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.

**Coastal Development Permit Conditions**

3. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
4. This Coastal Development Permit does not authorize any development seaward of the private property.
5. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
6. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
7. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare, or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
8. 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.
9. 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.

**Tentative Parcel Map/Condominium Conversion Conditions**

10. *A parcel map shall be recorded. The Map shall be prepared on the California coordinate system (North American Datum of 1983). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach, a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County*

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

11. *Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivisions Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of the project.*
12. *No more than two dwelling units shall be permitted on the site.*
13. *Two-car parking, including one enclosed garage space and one covered or enclosed parking space, shall be provided on site for each dwelling unit per requirements of the Zoning Code. All parking spaces shall be maintained clear of obstructions for the parking of vehicles at all times.*
14. *Prior to the final of the building permit for the special inspection, the applicant shall resolve all building safety violations identified in the Condominium Conversion Inspection Report dated April 30, 2018.*
15. *Reconstruct all damaged sidewalk panels, curb, gutter, and street along the 29<sup>th</sup> Street property frontage and any damaged concrete alley panels along the alley property frontage as determined by the Public Works Department.*
16. *Prior to recordation of the Parcel Map, the ladder to the open space above the kitchen shall be removed and this area shall not be utilized as habitable floor area.*
17. *Prior to recordation of the Parcel Map, each unit shall separately and independently provide a fire riser to the satisfaction of the Building Official.*
18. *Prior to the recordation of the Parcel Map, the applicant shall provide plans to the satisfaction of the Building Division demonstrating:*
  - a. *That walls separating units have one-hour fire resistive assembly with a sound rating of STC50.*
  - b. *That floors separating units have one-hour fire resistive assembly and sound rating meeting STE50.*
  - c. *That the separation from garage or carport shall comply with 3(b).*
  - d. *That the walls supporting one-hour floors shall be one-hour assembly.*
  - e. *That the structure shall comply with required fire separation distance to the property line.*
19. *All existing overhead utilities shall be undergrounded.*
20. *All above ground improvements shall stay a minimum 5-foot clear of the alley setback.*

21. *Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover.*
22. *An encroachment permit is required for all work activities within the public right-of-way.*
23. *All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.*
24. *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.*
25. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by the current property owner or agent.
26. This Coastal Development Permit No. CD2018-028, Tentative Parcel Map No. ND2018-011, and Condominium Conversion No. CC2018-001 shall expire unless exercised within 24 months from the date of approval as specified in [Section 21.54.060 \(Time Limits and Extensions\)](#) and [Section 20.54.060 \(Time Limits and Extensions\)](#) of the Newport Beach Municipal Code, unless an extension is otherwise granted.
27. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorneys' 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 **Shirley/Windmuller Condominium Conversion** including, but not limited to, **Coastal Development Permit No. CD2018-028, Condominium Conversion No. CC2018-001, and Tentative Parcel Map No. NP2018-011 (PA2018-067)**. 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. ZA2018-068

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2018-010 FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 413 AND 413 ½ MARIGOLD AVENUE (PA2018-066)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by James Person, representing property owner, Marigold Properties LP, a California Limited Partnership, with respect to property located at 413 and 413 ½ Marigold Avenue, and legally described as Lot 5, Block 439, of the Corona del Mar tract requesting approval of a tentative parcel map.
2. The Applicant requests a tentative parcel map application for two-unit condominium purposes. No waiver of Title 19 (Subdivisions) development standards are proposed with this application. A single-family residence was demolished and a new duplex is currently being constructed. The Tentative Parcel Map would allow each unit to be sold individually as condominiums.
3. The subject property is designated RT (Two-Unit Residential) by the General Plan Land Use Element and is located within the R-2 (Two-Family Residential) Zoning District.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on May 24, 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 exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, 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 condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

### SECTION 3. REQUIRED FINDINGS.

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

#### Finding:

- A. *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 two-unit residential condominium purposes. A single-family dwelling, originally constructed in 1968, was demolished and is being replaced with a new duplex. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the RT General Plan Land Use Designation.
2. The proposed project site is not located within any specific plan area.

#### Finding:

- B. *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-unit development because it is rectangular in shape and topographically flat, which is typical of lots in this area.
2. A residential use has existed on this site since at least 1968. The proposed project will replace the previously existing single-family residence with a new duplex that is compliant with all current code requirements. The proposed project is a parcel map to allow the units to be sold separately and will comply with all code requirements.
3. The subject property has street frontage on Marigold Avenue and is also accessible from the alley at the rear. It is adequately served by existing utilities.

Finding:

- C. *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. A residential use has existed on this site since at least 1968. The property is located in an urbanized area that does not contain any sensitive vegetation or habitat.
2. The project is categorically exempt under Section 15315 (Article 19 of Chapter 3), of the California Environmental Quality Act (CEQA) Guidelines – Class 15 (Minor Land Divisions).

Finding:

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

Fact in Support of Finding:

1. The Tentative Parcel Map is for residential condominium purposes. All improvements associated with the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per NBMC Section 19.28.010 (General Improvement Requirements) 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:

- E. *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.*

Fact 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:

- F. 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 within the R-2 Zoning District, which permits residential uses.

Finding:

- G. 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.*

Facts in Support of Finding:

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

Finding:

- H. 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.*



Fact in Support of Finding:

1. The Tentative Parcel Map and any future improvements 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:

- I. 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.*

Fact in Support of Finding:

1. The duplex under construction is consistent with the R-2 Zoning District, which allows two (2) residential units on the property. Therefore, the construction of one additional unit on the property and the Tentative Parcel Map for condominium purposes will contribute toward meeting the City's regional housing need.

Finding:

- J. 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.*

Fact in Support of Finding:

1. The new duplex has been designed and will be constructed so that wastewater discharge into the existing sewer system complies with the Regional Water Quality Control Board (RWQCB) requirements.

Finding:

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

Facts in Support of Finding:

1. The subject property is not located within the Coastal Zone.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2018-010 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 10 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 19 Subdivisions, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 24<sup>TH</sup> DAY OF MAY, 2018.**



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Patrick J. Alford, Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

*(Project-specific conditions are in italics)*

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. Prior to recordation of the Parcel Map, the Applicant shall apply for a building permit for a description change of the subject project development from "duplex" to "condominium." **The development will not be condominiums until this permit is finalized.** The building permit for the new construction shall not be finalized until after recordation of the Parcel Map.
3. *Prior to recordation of the Parcel Map, the Applicant shall pay an in-lieu park dedication fee for an increase of one dwelling unit. The fee shall be charged consistent with that in effect at the time of payment (currently \$26,125).*
4. *Prior to recordation of the Parcel Map, each unit shall separately and independently provide a fire riser.*
5. *A Final Parcel Map shall be recorded. The Map shall be prepared on the California coordinate system (NAD83). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.***
6. *Prior to recordation of the Parcel Map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.*
7. *All improvements shall be constructed as required by Ordinance and the Public Works Department.*
8. *The Applicant shall reconstruct all damaged concrete sidewalk panels, curb, and gutter along the Marigold Avenue property frontage and any damaged concrete alley panels along the alley property frontage as determined by the Public Works Department.*
9. *All existing overhead utilities shall be undergrounded.*
10. *All above ground improvements shall stay a minimum 5-foot clear of the alley setback.*

11. *All existing private, non-standard improvements, including but not limited to concrete carriage walks and fences, within the public right-of-way, and/or extensions of private, non-standard improvements into the public right-of-way fronting the development site shall be removed.*
12. *Prior to the final of building permits, the Applicant shall install new sod or low groundcovers of the type approved by the City throughout the Marigold Avenue parkway fronting the development site.*
13. *Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover.*
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 110-L.*
16. *Prior to the final of building permits, the Applicant shall install a new 36-inch box tree along the Marigold Avenue frontage.*
17. *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.*
18. 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 NBMC Title 19.
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 the **Marigold Properties, LP, Residential Condominiums** including, but not limited to, **Tentative Parcel Map No. NP2018-010 (PA2018-066)**. 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. ZA2018-069

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2018-009 AND COASTAL DEVELOPMENT PERMIT NO. CD2018-025 FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 431 AND 431½ GOLDENROD AVENUE (PA2018-064)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by James “Buzz” Person, with respect to property located at 431 and 431½ Goldenrod Avenue, and legally described as Lot 11 of Block 433 of the Corona del Mar Tract requesting approval of a tentative parcel map and a coastal development permit.
2. The applicant proposes a tentative parcel map for two-unit condominium purposes. An existing duplex has been demolished and a new two-unit dwelling is currently under construction. No waivers of Title 19 are proposed. The Tentative Parcel map would allow each unit to be sold individually. The Tentative Parcel Map also requires the approval of a coastal development permit pursuant to Title 21 Local Coastal Program Implementation Plan of the Municipal Code.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential.
4. The subject property is located within the coastal zone and has a Coastal Land Use Designation of Two-Unit Residential (RT-D) and a Coastal Zoning District of Two-Unit Residential (R-2).
5. A public hearing was held on May 24, 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 has been determined to be categorically exempt pursuant to the State CEQA (California Environmental Quality Act) Guidelines under Class 15 (Minor Land Divisions).
2. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four (4) or fewer parcels when the division

is in conformance with the General Plan and Zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two (2) years, and the parcel does not have an average slope greater than 20 percent. The Tentative Parcel Map is for condominium purposes and is consistent with all of the requirements of 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 is for condominium purposes and meets all of the requirements of the Local Coastal Program, including 21.30.025 Coastal Subdivisions.
2. 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.
3. The Tentative Parcel Map is for a property within a developed neighborhood that is approximately 2,000 feet from the shoreline and is not near any natural landforms or environmentally sensitive areas.

#### 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 Tentative Parcel Map is not 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 two-unit residential condominium purposes. An existing duplex has been demolished and a new two-unit dwelling is under construction. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the current General Plan Land Use Designation (Two-Unit Residential).
2. The subject property is not located within a specific plan area.
3. The project has been conditioned to require public improvements, including the reconstruction of sidewalks, curbs, and gutters along the Goldenrod Avenue frontage, consistent with the Subdivision Code (Title 19).

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 a two-unit development because it is regular in shape.
2. The subject property is accessible from the alley at the rear and is 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. An existing duplex has been demolished and a new two-unit dwelling is currently under construction.
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 of Chapter 3), of the California Environmental Quality Act (CEQA) Guidelines – Class 15 (Minor Land Alterations).

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 condominium purposes. All improvements associated with the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the 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 in 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.*

Facts in Support of Finding:

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

Finding:

*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 future improvements 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 two-unit dwelling is consistent with the R-2 Zoning District, which allows two residential units on the property. Therefore, the Tentative Parcel Map for condominium purposes 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. The new two-unit dwelling will be designed so that wastewater discharge into the existing sewer system complies 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 within the Coastal Zone. The facts in support of findings A and B above are hereby incorporated by reference.

SECTION 4. DECISION.

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

1. Zoning Administrator of the City of Newport Beach hereby approves PA2018-064 for Tentative Parcel Map No. NP2018-009 and Coastal Development Permit No. CD2018-025, 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. The project site is not located within the appeal area of the coastal zone; therefore, final action by the City on the applications may not be appealed to the California Coastal Commission.

**PASSED, APPROVED, AND ADOPTED THIS 24<sup>TH</sup> DAY OF MAY, 2018.**



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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. Subsequent to the recordation of the Parcel Map, the applicant shall apply for a building permit for a description change of the subject project development from "duplex" to "condominium." The development will not be condominiums until this permit is final. The building permit for the new construction shall not be final until after recordation of the parcel map.
3. 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.
4. 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 431 and 431½ Goldenrod Avenue Condominiums including, but not limited to, Tentative Parcel Map No. NP2018-009 and Coastal Development Permit No. CD2018-025 (PA2018-064). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

**PUBLIC WORKS**

5. A parcel map shall be recorded. The Map shall be prepared on the California coordinate system (North American Datum of 1983). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.

6. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
7. All improvements shall be constructed as required by Ordinance and the Public Works Department.
8. All damaged sidewalk panels, curb, gutter and street shall be reconstructed along the Goldenrod Avenue property frontage and any damaged concrete alley panels along the alley property frontage as determined by the Public Works Department.
9. All existing overhead utilities shall be undergrounded.
10. All above ground improvements shall stay a minimum five feet clear of the alley setback.
11. All existing private, non-standard improvements, including but not limited to the existing fences and parkway paving, within the public right-of-way fronting the development site shall be removed.
12. New sod or low groundcovers of the type approved by the City shall be installed throughout the Goldenrod Avenue parkways fronting the development site.
13. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover.
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 110-L.
16. The existing City street tree shall be protected in place.
17. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.

### **BUILDING**

18. Independent utility services shall be provided for each unit.
19. Independent fire risers shall be required for each unit.

20. Construction shall comply with the California Code of Regulations.

## RESOLUTION NO. ZA2018-070

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2018-008 AND COASTAL DEVELOPMENT PERMIT NO. CD2018-024 FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 616 ACACIA AVENUE (PA2018-063)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by James “Buzz” Person, with respect to property located at 616 Acacia Avenue, and legally described as Lot 18 of Block 629 of the Corona del Mar Tract requesting approval of a tentative parcel map and a coastal development permit.
2. The applicant proposes a tentative parcel map for two-unit condominium purposes. An existing single-family residence has been demolished and a new two-unit dwelling is currently under construction. No waivers of Title 19 are proposed. The Tentative Parcel map would allow each unit to be sold individually. The Tentative Parcel Map also requires the approval of a coastal development permit pursuant to Title 21 Local Coastal Program Implementation Plan of the Municipal Code.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential.
4. The subject property is located within the coastal zone and has a Coastal Land Use Designation of Two-Unit Residential (RT-D) and a Coastal Zoning District of Two-Unit Residential (R-2).
5. A public hearing was held on May 24, 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 has been determined to be categorically exempt pursuant to the State California Environmental Quality Act (CEQA) Guidelines under Class 15 (Minor Land Divisions).
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 condominium purposes and is consistent with all of the requirements of 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 is for condominium purposes and meets all of the requirements of the Local Coastal Program, including 21.30.025 Coastal Subdivisions.
2. 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.
3. The Tentative Parcel Map is for a property within a developed neighborhood that is approximately 1,700 feet from the shoreline and is not near any natural landforms or environmentally sensitive areas.

#### 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 Tentative Parcel Map is not 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 two-unit residential condominium purposes. An existing single-family residence has been demolished and a new two-unit dwelling is under construction. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the current General Plan Land Use Designation (Two-Unit Residential).
2. The subject property is not located within a specific plan area.
3. The project has been conditioned to require public improvements, including the reconstruction of sidewalks, curbs, and gutters along the Acacia Avenue frontage, consistent with the Subdivision Code (Title 19).

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 a two-unit development because it is regular in shape.
2. The subject property is accessible from the alley at the rear and is 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. An existing single-family residence has been demolished and a new two-unit dwelling is currently under construction.

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 of Chapter 3), of the California Environmental Quality Act (CEQA) Guidelines – Class 15 (Minor Land Alterations).

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 condominium purposes. All improvements associated with the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the 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 in 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.*

Facts in Support of Finding:

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

Finding:

- 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 future improvements 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 two-unit dwelling is consistent with the R-2 Zoning District, which allows two residential units on the property. Therefore, the Tentative Parcel Map for condominium purposes 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. The new two-unit dwelling will be designed so that wastewater discharge into the existing sewer system complies 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 within the Coastal Zone. The facts in support of findings A and B above are hereby incorporated by reference.

SECTION 4. DECISION.

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

1. Zoning Administrator of the City of Newport Beach hereby approves PA2018-063 for Tentative Parcel Map No. NP2018-008 and Coastal Development Permit No. CD2018-024, 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. The project site is not located within the appeal area of the coastal zone; therefore, final action by the City on the applications may not be appealed to the California Coastal Commission.

**PASSED, APPROVED, AND ADOPTED THIS 24<sup>TH</sup> DAY OF MAY, 2018.**



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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. Subsequent to the recordation of the Parcel Map, the applicant shall apply for a building permit for a description change of the subject project development from "duplex" to "condominium." The development will not be condominiums until this permit is final. The building permit for the new construction shall not be final until after recordation of the parcel map.
3. Prior to recordation of the Parcel Map, a park fee shall be assessed for one additional dwelling unit.
4. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code.
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 the Ikon LLC Condominiums including, but not limited to, Tentative Parcel Map No. NP2018-008 and Coastal Development Permit No. CD2018-024 (PA2018-063). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

**PUBLIC WORKS**

6. A parcel map shall be recorded. The Map shall be prepared on the California coordinate system (North American Datum of 1983). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County

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

7. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
8. All improvements shall be constructed as required by Ordinance and the Public Works Department.
9. All damaged sidewalk panels, curb, gutter and street shall be reconstructed along the Acacia Avenue property frontage and any damaged concrete alley panels along the alley property frontage as determined by the Public Works Department.
10. All existing overhead utilities shall be undergrounded.
11. All above ground improvements shall stay a minimum five-foot clear of the alley setback.
12. All existing private, non-standard improvements, including but not limited to the existing fences and parkway paving, within the public right-of-way fronting the development site shall be removed.
13. New sod or low groundcovers of the type approved by the City shall be installed throughout the Acacia Avenue parkways fronting the development site.
14. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover.
15. An encroachment permit is required for all work activities within the public right-of-way.
16. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
17. A new 36" box tree shall be installed along the Acacia Avenue frontage.
18. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.

**BUILDING**

19. Independent utility services shall be provided for each unit.
20. Independent fire risers shall be required for each unit.
21. Construction shall comply with the California Code of Regulations.



## RESOLUTION NO. ZA2018-071

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2018-002 AND COASTAL DEVELOPMENT PERMIT NO. CD2018-048 FOR A FOOD SERVICE USE WITH A TYPE 47 (ON SALE GENERAL) ALCOHOLIC BEVERAGE CONTROL LICENSE (ABC) LOCATED AT 3441 VIA LIDO (PA2018-006)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Keisker and Wiggle Architects, with respect to property located at 3441 Via Lido, and legally described as Parcel 1 of Resubdivision No. 516 requesting approval of a minor use permit and coastal development permit.
2. The applicant proposes to convert an existing 3,104-square-foot retail space to a food service eating and drinking establishment (restaurant) with alcohol sales (Type 47 ABC License - On-Sale General Eating Place). The proposal includes 1,141 square feet of interior net public area and an outdoor dining area with a net public area of 269 square feet. No late hours, live entertainment, or dancing are proposed as part of this application.
3. The subject property is designated General Commercial (CG) by the General Plan Land Use Element and is located within the Commercial General (CG) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is General Commercial (CG-B) and it is located within the Commercial General (CG) Coastal Zone District.
5. A public hearing was held on May 24, 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 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. This exemption authorizes minor alterations to existing structures involving negligible or no expansion of use. The proposed project involves alterations to the interior floor plan of an existing commercial space with no expansion in floor area.

### SECTION 3. REQUIRED FINDINGS.

#### **Alcohol Sales**

In accordance with Section 20.48.030 (Alcohol Sales) of the Newport Beach Municipal Code, 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 purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code.*

#### Facts in Support of Finding:

- a. The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.
  1. The crime rate in the subject reporting district (RD 15) exceeds the City average. However, RD 15 contains a large number of visitor and tourist-serving nonresidential uses. Lido Marina Village, Cannery Village, the Newport Boulevard business corridor, and McFadden Square consist of many eating and drinking establishments that serve residents and visitors to the area. The intent of the zoning designations in this beach area, as well as the two adjacent reporting districts, is to provide various commercial and retail uses to support the surrounding residential area and surrounding visitor-serving and tourist destinations. Beach areas have a higher concentration of land uses and therefore tend to have a higher crime rate than other areas in the City.
- b. The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.
  1. Due to the high concentration of commercial land uses, the resulting calls for service and number of arrests in RD 15 and adjacent reporting districts are greater than other areas of the City. However, the area is considered one of the more attractive tourist areas in the City, which results in a higher number of alcohol-related calls for service, crimes and arrests.
- c. The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.
  1. Although the establishment is located near a residential district, the property is situated in a commercial zoning district within an existing commercial plaza with other nonresidential uses. A Planned Community Zoning District that allows for residential uses is located approximately 400 feet east of the proposed restaurant location opposite Via Oporto from the Lido Plaza Shopping Center. Hoag Hospital is located north of the subject property near Newport Boulevard and Hospital Road, but

not in the immediate vicinity of the theater. A religious facility is located in the area near the intersection of Via Lido and Via Malaga. The project site is not in proximity to a daycare center, park, recreational facility, school, or similar uses that attract minors. The proposed alcohol sales is not detrimental to the community as a result of the proximity to any sensitive land uses.

- d. The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.
1. Several other establishments along Newport Boulevard and Balboa Boulevard currently have active ABC Licenses, most of which are bona fide eating and drinking establishments and are not defined as bars, lounges or nightclubs by the Zoning Code. Within Lido Plaza, Woody's Diner, Bear Flag Fish Company, and Z Pizza provide alcohol service to patrons.
  2. The proximity to other establishments selling alcohol does not raise a concern due to characteristics of the use, which is limited to 1,141 square feet of interior net public area and an outdoor patio space of 269 square feet, as well as hours of operation between 11:30 a.m. and 11:00 p.m., daily. Conditions of approval will further prevent the establishment from operating as a bar or lounge.
- e. Whether or not the proposed amendment will resolve any current objectionable conditions.
1. The subject plaza has historically been used by commercial businesses. There is no evidence that suggest the proposed commercial use will create objectionable conditions.
  2. The project has been reviewed and conditioned to ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code is maintained and that a healthy environment for residents and businesses is preserved. The service of alcohol is intended for the convenience of customers dining at the establishment. Operational conditions of approval recommended relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize any alcohol related impacts.

### **Minor Use Permit**

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:

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

Facts in Support of Finding:

1. The General Plan designates the site as General Commercial (CG) which is intended to provide for a wide variety of commercial activities oriented primarily to serve citywide or regional needs.
2. The proposed restaurant use is consistent with the CG designation as it is intended to provide a service to visitors and residents within the immediate neighborhood and surrounding area.
3. Eating and drinking establishments are common in the vicinity along Via Lido and Newport Boulevard, and are complimentary to the surrounding commercial and residential uses.
4. The subject property is not part of a specific plan area.

Finding:

- C. 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. Pursuant to Section 20.20.020 (Commercial Zoning Districts Land Uses and Permit Requirements, Table 2-5) of the Zoning Code, eating and drinking establishments located in the CG Zoning District that are classified as *Food Service, No Late Hours*, requires the approval of a minor use permit.
2. Pursuant to Sections 20.40.040 and 21.40.040 (Off-Street Parking Spaces Required) of the Municipal Code, parking required for restaurant uses may range from a rate of one space per 30 square feet to one space per 50 square feet of interior net public area based on physical and operational characteristics of the proposed establishment. A parking rate of one parking space per 50 square feet of net public area is appropriate in this case based on the following location and operational characteristics of the proposed use: 1) there is no live entertainment or dancing and no presence of pool tables and other attractions; 2) lower-turnover is expected as a fine dining restaurant; 3) the restaurant would benefit from shared parking demand and internal capture due to its location within a large commercial shopping center that includes a mix of retail, office, and theater uses; and 4) due to its close proximity to the Lido House Hotel, future Lido Villas, and other residential neighborhoods, increased walk-up traffic is expected.
3. The proposed tenant space was previously occupied by a retail use, which required parking at a ratio of one space per 250 square feet of gross floor area, or 13 spaces ( $3,104/250=12.41$ ). The proposed restaurant use, based on a parking ratio of one space per 50 square feet of interior net public area, results in a parking requirement of 23 spaces ( $1,141/50=22.82$ ), or 10 additional spaces beyond the previous retail use. The 269 square feet of outdoor dining is less than 25 percent of the interior net public area (8.6 percent) and does not require additional parking.

4. Based on a Parking Covenant Agreement between the property owner and the City of Newport Beach in May 2016, the total number of parking spaces required for the shopping center is 286 spaces, effecting a surplus of 14 spaces for the property. With the proposed parking demand increase of 10 spaces associated with the restaurant conversion, the total parking demand for the shopping center would increase to 296 spaces, leaving a surplus of four spaces within the 300-space parking lot.
5. As conditioned, the proposed project will comply with the Zoning Code standards for eating and drinking establishments.

Finding:

*D. 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 restaurant is appropriate given the establishment will be located in an existing shopping center with a 300-space onsite shared parking lot. The restaurant will be easily accessible to motorists, pedestrians, and bicyclists. A parking analysis was prepared by Gibson Transportation Consulting, Inc, dated April 26, 2018, illustrating the actual parking demand usage within the center and an applied seasonal adjustment projecting the peak parking demand that would occur during the month of August when the center is anticipated to experience its peak activity. The results of the analysis conclude that the August peak parking demand would occur in the afternoon with 264 parking spaces occupied on a weekday and further support that 300-space parking supply of the shopping center is adequate to accommodate the 23-space total parking demand of the restaurant (287 space total projected demand).
2. The surrounding area contains various business office, retail, and visitor serving commercial uses, including restaurants and take-out eating establishments. The proposed restaurant is compatible with the existing and permitted uses within the area.
3. The proposed restaurant will provide a service for residents of the neighborhood and visitors to the area and will not require the provision of additional parking spaces onsite.
4. The existing trash storage area is adequate to accommodate the proposed restaurant and is conveniently located where materials can be deposited and collected, and does not impede the existing parking spaces.

Finding:

*E. 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 project site provides adequate parking and circulation within the existing parking lots on site and internal circulation throughout the center. The design, location, shape, and size of the center has proven suitable for the existing commercial, retail, and restaurant uses on-site. Adequate public and emergency vehicle access, public services, and utilities are provided within the existing property and the proposed project will not negatively affect emergency access.
2. The kitchen and dining areas have been designed for a restaurant use with sufficient means of ingress and egress.
3. The Public Works Department, Building Division, and Life Safety Services have reviewed the application and the project is required to comply with all applicable codes and regulations.

Finding:

*F. 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 that 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 during adjacent properties during business hours, if directly related to the patrons of the establishment.
2. The Police Department believes that with the conditions of approval, the proposed project will not have a negative impact on the community and police services.
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. Compliance with the Municipal Code standards related to noise, lighting and other performance standards will help ensure that the proposed use will be compatible with the surrounding area.
5. The proposed renovations to the existing commercial building will have a positive impact on the overall economic health of the community and may promote further revitalization of other commercial properties in the vicinity.

## Coastal Development Permit

The Zoning Administrator determined in this case that the Minor Use Permit 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:

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

### Facts in Support of Finding:

1. The Minor Use Permit is for the conversion of an existing retail space into a new restaurant and meets all of the requirements of the Local Coastal Program.
2. Pursuant to Section 21.20.020 (Commercial Coastal Zoning Districts Land Uses, Table 21.20-1) of the Implementation Plan, eating and drinking establishments located in the CG Coastal Zoning District that are classified as *Food Service, No Late Hours*, are allowed uses.
3. Adequate on-site parking is provided for the change in use. With the proposed parking demand increase of 10 spaces associated with the restaurant conversion, the total parking demand for the shopping center would increase to 296 spaces, leaving a surplus of four spaces within the 300-space parking lot.
4. The project site is not located between the nearest public road and the sea or shoreline and approval of the Minor Use Permit will not affect public recreation, access or views.
5. The Minor Use Permit is for a property within a developed neighborhood that is approximately 220 feet from the nearest bulkhead and is not near any natural landforms or environmentally sensitive areas.

### Finding:

*H. 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 project site is not between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2018-002 and Coastal Development Permit No. CD2018-048, 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 24<sup>TH</sup> DAY OF MAY, 2018.**



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Patrick J. Alford, Zoning Administrator



**EXHIBIT “A”****CONDITIONS OF APPROVAL**  
*(Project specific conditions in italics)***PLANNING**

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
4. *The interior net public area shall not exceed 1,141 square feet.*
5. *The accessory outdoor dining area shall be used only in conjunction with the related adjacent establishment. The outdoor dining patio shall be limited to 269 square feet in area.*
6. *The installation of roof coverings shall not have the effect of creating a permanent enclosure of the outdoor patio area. The use of umbrellas for shade purposes shall be permitted. The use of any other type of overhead covering shall be subject to review and approval by the Community Development Director and may require an amendment to this permit.*
7. *Employees of the restaurant shall park on-site.*
8. All proposed signs shall be in conformance with applicable provisions of Chapter 20.42 (Signs) of the Newport Beach Municipal Code.
9. 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.
10. *Use Permit No. UP2018-002 and Coastal Development Permit No. CD2018-048 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 and 21.54.060 of the Newport Beach Municipal Code, unless an extension is otherwise granted.*

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11. *Prior to the issuance of building permits, Fair Share Traffic Fees shall be paid for the conversion of retail to restaurant use in accordance with Chapter 15.38 of the Newport Beach Municipal Code.*
  12. This Minor Use Permit and 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.
  13. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Minor Use Permit and Coastal Development Permit or the processing of a new Minor Use Permit and Coastal Development Permit.
  14. 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.
  15. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
  16. All lighting shall conform with the standards of Sections 20.30.070 and 21.30.070 (Outdoor Lighting). The Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
  17. 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.
  18. The operator of the facility shall be responsible for the control of noise generated by the subject facility including, but not limited to, noise generated by patrons, restaurant operations, and mechanical equipment. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. Pre-recorded music may be played in the tenant space, provided exterior noise levels outlined below are not exceeded. The noise generated by the proposed use shall comply with the provisions of Chapter 10.26 of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time period unless the ambient noise level is higher:

Location	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

19. 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.
20. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
21. *No outside paging or outside speaker system shall be utilized in conjunction with this establishment.*
22. 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.
23. 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.
24. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter, and debris from the premises and on all abutting sidewalks within 20 feet of the premises. Graffiti shall be removed within 48 hours of written notice from the City.
25. 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).
26. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and Saturdays and between the hours of 10:00 p.m. and 9:00 a.m. on Sundays and Federal holidays, unless otherwise approved by the

Director of Community Development, and may require an amendment to this Use Permit.

27. A covered wash-out area for refuse containers and kitchen equipment, with minimum useable area dimensions of 36 inches wide, 36 inches deep and 72 inches high, shall be provided, and the area shall drain directly into the sewer system, unless otherwise approved by the Building Official and Public Works Director in conjunction with the approval of an alternate drainage plan.
28. 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.
29. 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 permits.
30. 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 **Fable and Spirit Restaurant Minor Use Permit and Coastal Development Permit including, but not limited to, Minor Use Permit No. UP2018-002 and Coastal Development Permit No. CD2018-048 (PA2018-006)**. 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.

### **LIFE SAFETY SERVICES**

31. Where carbon dioxide storage tanks, cylinders, piping and equipment are located indoors, rooms or areas containing carbon dioxide storage tanks, cylinders, piping and fittings and other areas where a leak of carbon dioxide can collect shall be provided with either ventilation in accordance with California Fire Code (CFC) Section 5307.5.1 or an emergency alarm system in accordance with CFC Section 5307.5.2.
32. A type I hood shall be installed at or above all commercial cooking appliances used for commercial purposes that produce grease vapors. CFC Section 609.2

33. Each required commercial kitchen exhaust hood and duct system, required by CFC Section 609 to have a type I hood, shall be protected with an approved automatic fire extinguishing system installed in accordance with this code. CFC Section 904.2.2.
34. Open-flame devices shall not be used in a Group A occupancy unless the candles on the tables are securely supported on substantial noncombustible bases and the candle flames are protected. CFC Section 308.3. Additionally, in order to use a candle, a fire permit is required as per CFC Section 105.6.34.
35. A permit for "Places of Assembly" is required as per CFC Section 105.6.36.

### **BUILDING**

36. 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. Complete sets of drawings including architectural, electrical, mechanical, and plumbing plans shall be required at plan check.
37. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
38. Strict adherence to maximum occupancy limits is required.

### **POLICE**

39. *The hours of operation shall be limited to between the hours of 11:30 a.m. to 11:00 p.m., daily.*
40. *Food service from the regular menu shall be made available to patrons until closing.*
41. *The approval for an eating and drinking establishment with on-sale alcoholic beverage service. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be a Type 47 (On Sale General) license, in conjunction with the restaurant as the principal use of the facility.*
42. All owners, managers and employees must abide by all laws and conditions of the Alcoholic Beverage License.
43. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Newport Beach Municipal Code.
44. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
45. No games or contests requiring or involving the consumption of alcoholic beverages shall be allowed.

46. There shall be no reduced price alcoholic beverage promotions after 9:00 p.m.
47. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.
48. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
49. There shall be no live entertainment or dancing allowed on the premises.
50. The removal or relocation of tables, chairs, stools, or other furniture to accommodate an area for standing or dancing shall be prohibited.
51. "VIP" passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order of the sale of drinks is prohibited (excluding charges for prix fixe meals).
52. Any event or activity staged by an outside promoter or entity, where the applicant, operator, owner or his employees or representatives share in any profits, or pay any percentage or commission to a promoter or any other person is prohibited.
53. There shall be no on-site radio, television, video, film, or other electronic media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved Special Event Permit issued by the City of Newport Beach.
54. All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages within 60 days of hire. This training must be updated every 3 years regardless of certificate expiration date. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The establishment shall comply with the requirements of this section within 60 days of approval. Records of each owner's, manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.
55. Strict adherence to maximum occupancy limits is required.
56. The applicant shall maintain a security recording system with a 30-day retention and make those recording available to police upon request.

57. Management shall maintain an operational log of daily activities related to the sale and service of alcoholic beverages, as well as any additional security actions. Management shall make this log available to the Police Department upon request.