



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 for the week ending September 28, 2018.

ZONING ADMINISTRATOR ACTIONS SEPTEMBER 27, 2018

- Item 1: BDL Equities Duplex Coastal Development Permit No. CD2018-038 (PA2018-087)
Site Address: 417 East Bay Avenue and 410 Harding Street
Action: Approved by Resolution No. ZA2018-105 Council District 1
- Item 2: Silvers Bulkhead Improvements Coastal Development Permit No. CD2018-063 (PA2018-145)
Site Address: 1601 East Bay Avenue
Action: Approved by Resolution No. ZA2018-106 Council District 1
- Item 3: Juicy Seven Juice Bar Minor Use Permit No. UP2018-018 (PA2018-180)
Site Address: 229 Marine, Avenue, Unit A
Action: Approved by Resolution No. ZA2018-107 Council District 5
- Item 4: Hubmerman Residence Coastal Development Permit No. CD2018-076 (PA2018-171)
Site Address: 808 Via Lido Nord
Action: Approved by Resolution No. ZA2018-108 Council District 1
- Item 5: Annual Review of Development Agreement for Hoag Memorial Hospital Presbyterian (PA2009-064)
Site Address: 1 Hoag Drive
Action: The Zoning Administrator found that the Hoag Memorial Hospital Presbyterian Annual Review was in good faith compliance with the terms of the Development Agreement. Council District 1, 2, 3

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. ZA2018-105

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2018-038 TO DEMOLISH TWO EXISTING DUPLEXES AND TO CONSTRUCT A NEW THREE-STORY DUPLEX WITH TWO ATTACHED GARAGES AND TWO CARPORTS AT 417 EAST BAY AVENUE AND 410 HARDING STREET (PA2018-087)

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

SECTION 1. STATEMENT OF FACTS.

1. Mark Teale of Teale Architecture (“Applicant”) on behalf of Brad Labrecque (“Owner”) filed an application with respect to property located at 417 East Bay Avenue and 410 Harding Street, requesting approval of a coastal development permit (CDP).
2. The property is legally described as Lot 3 in Block 2 of the Balboa Tract, in the City of Newport Beach, County of Orange, State of California.
3. The Applicant proposes to demolish two separate duplexes (four residential units total) and to construct a new three-story, 3,191-square-foot residential duplex, including two attached garages and two carports. The proposed development includes landscape, hardscape, and subsurface drainage facilities all within the confines of private property. The design complies with all applicable development standards and no deviations are requested.
4. Newport Beach Municipal Code (“NBMC”) Chapter 21.34 (Conversion or Demolition of Affordable Housing) does not apply to this project, as there are no more than two units within each structure.
5. The subject property is designated Multiple-Unit Residential (“RM”) by the General Plan Land Use Element and is located within the Multi-Unit Residential (“RM”) Zoning District.
6. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Multiple-Unit Residential, 30.0 – 39.9 DU/AC (“RM-E”) and the property is located within the Multi-Unit Residential (“RM”) Coastal Zone District.
7. A public hearing was held on September 27, 2018, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place, and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15303, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act ("CEQA") under Class 3 (New Construction or Conversion of Small Structures), because it has no potential to have a significant effect on the environment.
2. Class 3 exempts the construction and location of limited numbers of new, small facilities or structures including a duplex or similar multi-family residential structures totaling no more than four dwelling units in a residential zone. The proposed project consists of the demolition of two separate two-unit residential structures (four units total) and construction of a new three-story, 3,191-square-foot residential duplex, including two attached garages and two carports in the RM Zoning District.
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 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 residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - A. The total proposed floor area, including the residential living area and enclosed garage, is 3,191 square feet, which complies with the maximum allowable floor area limit of 3,309 square feet.
 - B. The proposed development will provide the minimum required setbacks, which are one foot (1') along the front property line abutting East Bay Avenue, three feet (3') along each side property line, and one foot (1') along the other front property line abutting Harding Street.
 - C. The highest guardrail is no more than 28 feet and the highest roof ridge is no more than 33 feet, measured from the established grade level of 9.00 feet based on the

North American Vertical Datum of 1988 (“NAVD88”), which complies with the maximum height limitation.

- D. The project includes one enclosed garage parking space and one covered carport for each unit, in compliance with the minimum parking requirement for two-unit residential development.
2. The neighborhood is predominantly developed with two-story residential structures. Newer residences in the zoning district have a rooftop deck and a partial third story. The design, bulk, and scale of the proposed development is consistent with the anticipated neighborhood pattern of development.
 3. The project site is located approximately 230 feet from the Newport Harbor and is separated from the water by other developed residential and nonresidential lots, as well as public rights-of-way. The finished first floor elevation of the proposed residence is 9.00 feet based on the North American Vertical Datum of 1988 (NAVD88), which complies with the minimum required 9.00-foot (NAVD88) elevation standard. The finished floor elevation of the garage (not living area) is 8.00 feet (NAVD88)
 4. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
 5. The project design addresses water quality with a construction erosion control plan that outlines temporary Best Management Practices (BMPs) to be implemented during construction to minimize erosion and sedimentation, and to minimize pollution of runoff derived by construction chemicals and materials. No water quality impacts to coastal waters are anticipated based upon the location and elevation of the property.
 6. The property is not located on the shoreline nor is it located within 100 feet of coastal waters. 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.
 7. New landscaping will be verified for compliance with NBMC Section 21.30.075 (Landscaping). Condition of Approval No. 11 is included to require drought-tolerant, and prohibit invasive, species. Prior to issuance of the building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
 8. The property is not located near designated public viewpoints or coastal view roads and will not impact public coastal views.

Finding:

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

Fact in Support of Finding:

1. The project site is located on the Balboa Peninsula, between the nearest public road and the sea or shoreline. 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 legal nonconforming multi-family residential development located on a RM lot with a new duplex. 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 (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.
2. 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. Furthermore, 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 is located on an inland lot and will replace two existing residential structures with a new two-unit dwelling that complies with all applicable Local Coastal Program development standards and maintains a building envelope consistent with the existing and anticipated 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.
3. Vertical access to the harbor and beach is available east of the site along Adams Street. Additional vertical access to the harbor is provided west of the site along Cypress Street. Lateral access is available by way of pedestrian easements along Edgewater Place. The project does not include any features that would obstruct access along these routes. Lateral access is also provided adjacent to the beach along East Ocean Front.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2018-038, 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 (Appeals to Coastal Commission) of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 27TH DAY OF SEPTEMBER, 2018.



Patrick J. Alford, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
3. Coastal Development Permit No. CD2018-038 shall expire unless exercised within 24 months from the date of approval as specified in NBMC Section 21.54.060 (Time Limits and Extensions), unless an extension is otherwise granted.
4. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
5. The Applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.
6. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
7. Best Management Practices ("BMPs") and Good Housekeeping Practices ("GHPs") shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Pollution Prevention Plan ("CPPP").
8. 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.
9. Prior to issuance of a building permit, the Applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Coastal Development Permit file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Coastal Development Permit.
10. Prior to issuance of a building permit, the applicant shall submit a final construction erosion control plan. The plan shall be subject to review and approval by the Building Division.

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11. Prior to the issuance of a building permit, the Applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought tolerant plantings, non-invasive plant species, and water efficient irrigation design. The plans shall be approved by the Planning Division.
 12. 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.
 13. 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.
 14. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, wetland or their buffers.
 15. 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.
 16. 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.
 17. 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.
 18. The Applicant is responsible for compliance with the Migratory Bird Treaty Act ("MBTA"). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of Native Birds pursuant to MBTA:
 - A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no

longer observed. When the nest is no longer active, construction activity can continue in the nest area.

- B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
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 the current property owner or agent.
20. 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 BDL Equities Duplex including, but not limited to, Coastal Development Permit No. CD2018-038 (PA2018-087). 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. ZA2018-106

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2018-063 TO REPLACE AN EXISTING BULKHEAD WITH A NEW CONCRETE BULKHEAD LOCATED AT 1601 EAST BAY AVENUE (PA2018-145)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Jacquelyn Chung for Swift Slip Dock and Pier Builders, Inc., with respect to property located at 1601 East Bay Avenue, requesting approval of a coastal development permit.
2. The lot at 1601 East Bay Avenue is legally described as Lots 1 and 2, Block 25, Eastside Addition to Balboa Tract and Lots 1 and 2 of a portion of Block "P" of the bay front section of the Balboa Tract (APNs 048-231-40, 41).
3. The applicant proposes to replace an existing wooden bulkhead with a new pre-cast concrete bulkhead. The new bulkhead would be constructed to a top of wall elevation of 9.82 feet NAVD88 (10.0 feet MLLW), located inland of the existing wooden bulkhead and no new seaward encroachment would occur. The project also includes the construction of a pool, protection fencing, walls, hardscape, landscaping, and drainage features that are accessory to the existing residence.
4. The subject property is designated RS-D (Single-Unit Residential Detached) by the General Plan Land Use Element and is located within the R-1 (Single-Unit Residential) Zoning District.
5. The subject properties are located within the coastal zone. The Coastal Land Use Plan category is RSD-B (Single Unit Residential Detached) - (6.0-9.9 DU/AC) and it is located within the R-1 (Single-Unit Residential) Coastal Zone District.
6. A public hearing was held on September 27, 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 Sections 15303, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction of Conversion of Small Structures), because it has no potential to have a significant effect on the environment.

2. Class 3 exempts the construction and location of limited numbers of new, small facilities or structures including accessory structures. The proposed project consists of the removal of an existing bulkhead and construction of a new bulkhead and accessory structures associated with an existing single-family residence.
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 setbacks and height.
 - a. The top of the proposed bulkhead wall would be constructed to 9.82 feet NAVD88 (10.0 MLLW) in compliance with the Harbor Design Criteria minimum top of wall height requirement for new bulkheads.
 - b. The proposed accessory structures comply with the Zoning Code and Implementation Plan maximum height standards within front setback areas.
2. The proposed concrete bulkhead would be located inland of the existing wooden bulkhead. Thus, there would be no seaward encroachment of the new bulkhead.
3. A Bulkhead Conditions Report for the existing bulkhead was prepared by William Simpson & Associates, Inc. dated May 5, 2018. The report concludes that the seawall is required to protect the existing principal structure on the lot. In order to do so, the existing seawall shall be replaced in accordance with proposed plans. Once the replacement is completed, no additional repair or replacement of the seawall is anticipated for the next 75 years.

4. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by William Simpson & Associates, dated May 5, 2018 for the project. The report concludes that flooding, wave runup and erosion will not significantly impact the property over the anticipated life of the existing development. The finished floor elevation of the existing residence is approximately 8.86 feet NAVD88. The report states that future sea level rise is estimated to reach approximately 8.45 feet NAVD88, considering a 1.25-foot sea level rise (the low range of projected sea level rise over the 75-year design life of the structure based on estimates for sea level rise provided by the National Research Council 2012 SLR). The current City standard height for bulkheads is 10.0 feet (MLLW) (9.82 feet (NAVD88)) and the project has been conditioned to replace the seawall to this elevation standard. Once the existing seawall/bulkhead is replaced in accordance with the proposed plans, the need for a new shoreline protective device is not anticipated over the economic life of the development to protect it from flooding, wave runup, or erosion. If found inadequate for the actual sea level rise over the next 75 years, the bulkhead assembly allows for it to be increased in height without further seaward encroachment. Thus, based on the aforementioned assumptions, the site would be reasonably safe from future sea level rise.
5. Pursuant to NBMC Section 21.30.030(C)(3)(i)(iv), the property owner will be required to enter into an agreement with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction by coastal hazards (e.g., waves, erosion, and sea level rise). The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c). Both requirements are included as conditions of approval that will need to be satisfied prior to the issuance of building permits for construction.
6. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction, if required by the Building Department, will be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
7. The property is located along the Newport Bay. A Construction Erosion Control Plan was provided to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived by construction chemicals and materials. The project design also addresses water quality through the inclusion of a post construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event run-off on-site. Any water not retained on-site is directed to the City's storm drain system.

8. 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.

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. Implementation Plan Section 21.30A.040 requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact, and be proportional to the impact. In this case, the project replaces a wooden bulkhead with a new pre-cast concrete bulkhead that complies with the minimum 9.82 feet NAVD88 top of wall standard. The project also includes improvements such as a pool, walls, and hardscaping that are accessory to the existing single-family residence. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.
2. Vertical access to the bay and beach is available adjacent to the site along H street. Lateral access is available on the large public beach to the south. All improvements are located within private property, and the project does not include any features that would physically obstruct access to the water or beach along these public routes.
3. The project site is not located adjacent to a coastal view road or Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoint is located at the south end of the peninsula and is not visible from the site. The site is located adjacent to the H Street access point, which is accessible to the public and provides some limited opportunities to view the bay. As currently developed, the existing property and other residences along H Street are located within the view shed of the street end. However, the proposed bulkhead (and accessory structures) comply with all applicable Local Coastal Program (LCP) development standards and maintain a front setback area consistent with the existing neighborhood pattern of development. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.
4. All proposed accessory structures comply with the maximum height restrictions for front setbacks. All structures would be limited to 42" within the front setback (and abandoned right of way area), with the exception of pool protection fencing required for safety, which can reach up to five feet maximum from existing grade as long as at least 40 percent of the fence or wall is open (Implementation Plan Section 21.40.040 C, 3). These requirements would ensure that views are not obstructed.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2018-063, 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 27TH DAY OF SEPTEMBER, 2018.



Patrick J. Alford, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan, bulkhead plans, and elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. Prior to the issuance of a building permit, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices including the repair and maintenance, enhancement, reinforcement, or any other activity affecting the bulkhead, that results in any encroachment seaward of the authorized footprint of the bulkhead or other shoreline protective device. The agreement shall be binding against the property owners and successors and assigns.
3. Prior to the issuance of a building permit, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of development.
4. Prior to the issuance of building permits, a lot merger shall be approved and recorded to merge the existing underlying legal lots (APN 048-231-40 and 048-231-41).
5. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers.
6. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
7. This Coastal Development Permit does not authorize any development seaward of the private property.
8. Grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31. If such activities must occur inside the peak nesting season (from February 1 to August 15), compliance with the following is required to prevent the taking of Native Birds pursuant to the Migratory Bird Treaty Act (MBTA):

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- A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
- B. The applicant is responsible for compliance with the MBTA. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
9. Best Management Practices (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 Erosion Control Plan.
10. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
11. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. 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.
12. 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.
13. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
14. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
15. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.
16. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained 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.

17. Prior to the issuance of building permits, the applicant shall submit a final construction erosion control plan. The plan shall be subject to the review and approval by the Building Division.
18. Prior to the issuance of building permits, the applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.
19. 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.
20. 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.
21. 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.
22. 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.
23. 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.
24. 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.
25. This Coastal Development Permit No. CD2018-063 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.
26. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including

without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Silvers Bulkhead Improvements including, but not limited to, Coastal Development Permit No. CD2018-063 (PA2018-145). 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. ZA2018-107

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2018-018 FOR A TAKE-OUT SERVICE, LIMITED, EATING AND DRINKING ESTABLISHMENT LOCATED AT 229 MARINE AVENUE (PA2018-180)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Jinfeng Li with respect to property located at 229 Marine Avenue, and legally described as Lot 15 of Block 12 of Section 4 of Balboa Island, requesting approval of a minor use permit.
2. The applicant requests a minor use permit to allow a juice bar (take-out service, limited) to operate in an existing 1,111-square-foot, ground floor commercial tenant space with a maximum of six seats. The project includes tenant improvements to create a preparation area, front counter, and customer waiting area. The proposed hours of operation are 10:00 a.m. to 10:30 p.m., daily. No late hours (after 11:00 p.m.) or alcohol sales are proposed as part of this application.
3. The subject property is located within the Mixed-Use Water Related (MU-W2) Zoning District and the General Plan Land Use Element category is Mixed Use Water Related (MU-W2).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Mixed Use Water Related (MU-W) and it is located within the MU-W2 (Mixed-Use Water Related) Coastal Zone District. The proposed juice bar does not result in an increase in the parking rate and therefore is not considered a change or intensification of the existing use that would require a coastal development permit.
5. A public hearing was held on September 27, 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 meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.

2. 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.

In accordance with Section 20.52.020 (Conditional Use Permits and Minor Use Permits) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

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

Facts in Support of Finding:

1. The General Plan land use designation for this site is MU-W2 (Mixed Use Water Related). The MU-W2 designation is intended for marine-related uses that may be intermixed with general commercial, visitor-serving commercial and residential dwelling units on the upper floors.
2. The proposed establishment is a commercial use intended to serve nearby residents, the surrounding community, and visitors to the City of Newport Beach. Therefore, the use is consistent with this land use category.
3. The proposed take-out service, limited, establishment would be complementary to the surrounding commercial and residential uses.
4. The subject property is not part of a specific plan area.

Finding:

- B. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*

Facts in Support of Finding:

1. A juice bar (take-out service, limited) is permitted with the approval of a minor use permit in the Mixed-Use Water Related (MU-W2) zoning district. A minor use permit is required due to its location within 500 feet of a residential zoning district.
2. The subject property is legal, nonconforming due to having no parking available on-site. The building was constructed in 1963 and the Zoning Code has since changed to require one space per 250 square feet of gross floor area of off-street parking. The proposed juice bar is replacing an existing retail use, which has the same parking requirement. Therefore, no intensification or enlargement is proposed, and no additional parking is required.

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

Finding:

- C. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

1. Parking at the subject property is legal nonconforming as there is no parking available on-site. The proposed juice bar (take-out, limited) is replacing an existing retail use which shares the same parking requirement; therefore, no additional parking is required.
2. The proposed establishment is compatible with the existing and allowed uses in the area, which consist of retail commercial and mixed-use developments.
3. As conditioned, the allowed hours of operation will be 10:00 a.m. to 10:30 p.m., daily, which will minimize any disturbance to residences near the property.
4. The restaurant is oriented toward Marine Avenue in a manner that shields the restaurant activity from the residential uses at the rear.

Finding:

- D. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding:

1. The project site is located on Marine Avenue which is located at the entrance of Balboa Island and has heavy vehicular traffic and pedestrian activity. The proposed juice bar will not result in increased vehicular and pedestrian activity.
2. The Fire Department reviewed the project and site to ensure adequate public and emergency vehicle access is provided.
3. Any proposed site and tenant improvements must comply with the Zoning Code and all Building, Public Works, and Fire Codes for permits to be issued.

Finding:

- E. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise*

constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding:

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

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2018-018 (PA2018-180), 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 27TH DAY OF SEPTEMBER, 2018.



Patrick J. Alford, Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL**

1. The development shall be in substantial conformance with the approved site plan and floor plans stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Minor Use Permit.
3. This Minor Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
4. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
5. The hours of operation for the establishment shall be limited to 10:00 a.m. through 10:30 p.m., daily.
6. The sale of alcohol shall not be permitted.
7. The maximum number of seats allowed in the eating and drinking establishment shall be six . No outdoor seating is permitted without further review and may require an amendment to this Minor Use Permit.
8. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Minor Use Permit or the processing of a new use permit.
9. A copy of the Resolution, including conditions of approval Exhibit "A", shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
10. Prior to issuance of building permits, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Minor Use Permit file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the

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

11. Prior to issuance of building permits, the project plans shall identify if the building is protected with automatic fire sprinklers and/or a fire alarm system to the satisfaction of the City's Life Safety Services Division.
12. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner, or the leasing agent.
13. All trash shall be stored within a commercial trash bin with a solid lid to screen the trash and contain odors. The lid shall be kept closed at all times. The commercial trash bin shall be located flush against the rear wall of the residential building and parallel to the alley to minimize its encroachment into the 10-foot alley setback. Additionally, the operator must monitor all trash receptacles, having them emptied, maintained, and cleaned when necessary as to control odors and any nuisances.
14. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
15. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris, and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
16. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
17. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m., on weekdays and Saturdays, and between the hours of 10:00 p.m. and 9:00 a.m. on Sundays and federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this Minor Use Permit.
18. Storage outside of the building, in the front, or at the rear of the property shall be prohibited, with the exception of the required trash containers.
19. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permit.

20. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.

21. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Juicy Seven Juice Bar including, but not limited to, Minor Use Permit No. UP2018-018 (PA2018-180). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

RESOLUTION NO. ZA2018-108

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2018-076 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW TWO-STORY, SINGLE-FAMILY RESIDENCE AND ATTACHED THREE-CAR GARAGE AT 808 VIA LIDO NORD (PA2018-171)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Brandon Architects, Inc. ("Applicant"), on behalf of Bernie Hubmerman ("Owners"), with respect to property located at 808 Via Lido Nord, requesting approval of a coastal development permit.
2. The property is legally described as Lot 347 and the Southeasterly Half of Lot 348 of Tract 907.
3. The applicant proposed the demolition of an existing single-family residence and construction of a two-story, 5,646-square-foot, single-family residence with an attached 691-square-foot, three-car garage. The project includes landscape, hardscape and subsurface drainage facilities. The site is protected by an existing private bulkhead that will be reinforced in conjunction with the proposed construction. The design complies with all applicable development standards and no deviations are requested.
4. The subject property is designated RS-D (Single-Unit Residential Detached) by the General Plan Land Use Element and is located within the R-1 (Single-Unit Residential) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-C (Single-Unit Residential Detached - 10.0 - 19.9 DU/AC) and the property is located within the R-1 (Single-Unit Residential) Coastal Zone District.
6. A public hearing was held on September 27, 2018, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to and considered by the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15303, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction or

Conversion of Small Structures), because it has no potential to have a significant effect on the environment.

2. Class 3 exempts the construction and location of limited numbers of new, small facilities or structures including one single-family residence in a residential zone. The proposed project consists of the demolition of an existing single-family residence and construction of a new two-story, 5,646-square-foot, single-family residence with an attached 691-square-foot, three-car garage in the R-1 Zoning District.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The maximum floor area limitation is 7,904 square feet and the proposed gross floor area is 6,338 square feet.
 - b. The proposed development will provide the minimum required setbacks, which are four (4) feet along the front property line abutting Via Lido Nord, four (4) feet along each side property line, and ten (10) feet along the front property line abutting the waterway.
 - c. The highest guardrail and the highest roof ridge are no more than 24 feet, measured from the established grade level of 11.67 feet (North American Vertical Datum of 1988), which complies with the maximum height limitation.
 - d. The project includes enclosed garage parking for three vehicles, which complies with the minimum parking requirement for single-family residences with more than 4,000 square feet of habitable floor area.
2. The neighborhood is predominantly developed with two-story, single-family residences. The proposed design, bulk, and scale of the development will be consistent with the existing neighborhood pattern of development and expected future development.
3. The existing development includes a private seawall/bulkhead along the waterway. A Bulkhead Condition Report prepared by PMA Consulting, Inc., dated July 11, 2018, concludes that the cast-in-place wall is in good condition. In order to protect the

proposed new development, the report recommends that the wall be reinforced and repaired, and provides specific recommendations on how this should be accomplished. Once the wall has been reinforced and repaired, it is not anticipated that the wall will need further repair or replacement in the next 75 years.

4. 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.
5. A project-specific Coastal Hazards Analysis Report was prepared by PMA Consulting, Inc., dated July 11, 2018. The report concludes that flooding, wave run up and erosion will not significantly impact this property over the life of the proposed development, provided the existing seawall is reinforced and repaired as recommended.
6. Pursuant to NBMC Section 21.35.050 (Water Quality and Hydrology Plan), because of the project site's proximity to coastal waters, a Water Quality and Hydrology Plan (WQHP) was prepared by Forkert Engineering & Surveying, Inc., dated July 24, 2018. The WQHP includes a polluted runoff and hydrologic site characterization, a sizing standard for Best Management Practices (BMPs), use of a low-impact development approach to retain the design storm runoff volume on site, and documentation of the expected effectiveness of the proposed BMPs. Construction plans will be reviewed for compliance with the approved WQHP prior to building permit issuance.
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. New landscaping will be verified for compliance with NBMC Section 21.30.075. A condition of approval is included that requires drought-tolerant, and prohibits invasive, species (Condition of Approval No. 14). Prior to issuance of the building permits, the final landscape plans will be reviewed to verify invasive species are not planted.

10. The property is not located near designated public viewpoints or coastal view roads and will not impact public coastal views.

Finding:

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

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline; however, the project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities. 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 residence with a new single-family residence. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is designed and sited so as not to block or impede existing public access opportunities.
2. The residential lot does not currently provide nor does it inhibit public coastal access. The proposed scope of work involves the removal and replacement of an existing single-family residence with a new single-family residence. Development will occur within the confines of private property, and existing coastal access conditions will not be affected. Coastal access is currently provided and will continue to be provided by adjacent small public beach areas with access to the water.
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. Furthermore, 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 home with a new single-family home that complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing and anticipated 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. CD2018-076, 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 27TH DAY OF SEPTEMBER, 2018.



Patrick J. Alford, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
3. Coastal Development Permit No. CD2018-076 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted
4. Prior to the issuance of a building permit, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices including the repair and maintenance, enhancement, reinforcement, or any other activity affecting the bulkhead, that results in any encroachment seaward of the authorized footprint of the bulkhead or other shoreline protective device. The agreement shall be binding against the property owners and successors and assigns.
5. Prior to the issuance of a building permit, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of development.
6. The existing private seawall/bulkhead shall be reinforced and repaired, in keeping with the recommendations provided in the Bulkhead Condition Report prepared by PMA Consulting, Inc., dated July 11, 2018.
7. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
8. 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.

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9. 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.
 10. Best Management Practices and Good Housekeeping Practices shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Pollution Prevention Plan .
 11. Prior to issuance of the building permits, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.
 12. Prior to issuance of building permits, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the coastal development permit file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this coastal development permit.
 13. Prior to issuance of building permits, the applicant shall submit a final construction erosion control plan. The plan shall be subject to review and approval by the Building Division.
 14. 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.
 15. 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.
 16. Prior to the issuance of building permits, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
 17. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, wetland or their buffers.

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18. 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.
 19. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stockpiles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
 20. 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.
 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. The applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of Native Birds pursuant to MBTA:
 - A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
 - B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
 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 Hubmerman Residence including, but not limited to, Coastal Development

Permit No. CD2018-076 (PA2018-171). 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.