



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 Planning Division staff for the week ending October 26, 2018.

ZONING ADMINISTRATOR ACTIONS OCTOBER 25, 2018

- Item 1: Barnes Residence Coastal Development Permit No. CD2018-083 (PA2018-192)
Site Address: 209 Tremont
Action: Approved by Resolution No. ZA2018-111 Council District 5
- Item 2: Hohberg Residence Coastal Development Permit No. CD2018-084 (PA2018-194)
Site Address: 27 Saratoga
Action: Approved by Resolution No. ZA2018-112 Council District 5
- Item 3: Gondola Adventures Coastal Development Permit No. CD2018-085 and Limited Term Permit No. XP2018-008 (PA2018-204)
Site Address: 200 Bayside Drive
Action: Approved by Resolution No. ZA2018-113 Council District 5
- Item 4: BCYC T-Mobile Installation Coastal Development Permit No. CD2018-067 (PA2018-151)
Site Address: 1601 Bayside Drive
Action: Approved by Resolution No. ZA2018-114 Council District 5
- Item 5: Fanticola Residence Coastal Development Permit No. CD2018-069 (PA2018-161)
Site Address: 1120 West Ocean Front
Action: Approved by Resolution No. ZA2018-115 Council District 1
- Item 6: Way Residence Modification No. MD2018-006 (PA2018-193)
Site Address: 1608 Ruth Lane
Action: Approved by Resolution No. ZA2018-116 Council District 3
- Item 7: Grimm Residence Coastal Development Permit No. CD2018-070 (PA2018-159)
Site Address: 1604 South Bay Front
Action: Approved by Resolution No. ZA2018-117 Council District 5

- Item 8: Guo Residence Coastal Development Permit No. CD2018-077 (PA2018-191)
 Site Address: 515 36th Street
 Action: Approved by Resolution No. ZA2018-118 Council District 1
- Item 9: Clarizio Residence Coastal Development Permit No. CD2018-081 (PA2018-190)
 Site Address: Site Location: 7401 Seashore Drive
 Action: Approved by Resolution No. ZA2018-119 Council District 1
- Item 10: 27 Burning Tree Circle and 1 Big Canyon Drive Lot Line Adjustment No. LA2018-005
 (PA2018-148)
 Site Address: 27 Burning Tree and 1 Big Canyon Drive
 Action: Approved by Resolution No. ZA2018-120 Council District 5
- Item 11: 81 Royal Saint George Road and 1 Big Canyon Drive Lot Line Adjustment No. LA2018-006
 (PA2018-162)
 Site Address: 81 Royal Saint George Road and 1 Big Canyon Drive
 Action: Approved by Resolution No. ZA2018-121 Council District 5

**COMMUNITY DEVELOPMENT DIRECTOR
 OR PLANNING DIVISION STAFF ACTIONS**
 (Non-Hearing Items)

- Item 1: Director's Determination Regarding Use of a Duplicate Type 23 Alcoholic Beverage Control
 License for Use Permit No. UP2010-036 (Director's Determination No. DD2018-002/PA2018-
 236)
 Site Address: 3107 Newport Boulevard
 Action: Approved Council District 1

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

Lt. Damon Psaros, NBPD (*Telecom Permit*)
 Wendy Joe, Civilian Investigator, NBPD (*Massage Therapy – ABC License*)
 Sgt. Brad Miller, NBPD (*Massage Therapy - ABC License*)

RESOLUTION NO. ZA2018-111

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2018-083 REMOVE AN EXISTING SINGLE-STORY MANUFACTURED HOME AND INSTALL A NEW SINGLE-STORY MANUFACTURED HOME AND ATTACHED CARPORT AWNING LOCATED AT 209 TREMONT DRIVE (PA2018-192)

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 ("Applicant") on behalf of Bog Barnes ("Manufactured Home Owner", with respect to property located at 209 Tremont 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 Resub 0995.
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, hardscape, and drainage. 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 October 25, 2018, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15303, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act ("CEQA") under Class 3 (New Construction or Conversion of Small Structures), because it has no potential to have a significant effect on the environment.

2. Class 3 exempts the demolition 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.
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 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 lines.
 - 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 560 feet from the Newport Bay. It is separated from Newport Bay by Bayside Drive, and the entirety of the north parcel. The site is at an approximate elevation of between 14 feet and 15 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 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 houses 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. CD2018-083, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 25th DAY OF OCTOBER, 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. 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.

11. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
12. 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. CD2018-083 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 Barnes Residence Coastal Development Permit including, but not limited to, Coastal Development Permit No. CD2018-083 (PA2018-192). 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. ZA2018-112

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2018-084 TO REMOVE AN EXISTING SINGLE-STORY MANUFACTURED HOME AND INSTALL A NEW ONE-STORY MANUFACTURED HOME AND ATTACHED DECK LOCATED AT 27 SARATOGA (PA2018-194)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Lou Spampinato ("Applicant") on behalf of Bob Hohberg ("Manufactured Home Owner"), with respect to a manufactured home site located at 27 Saratogo, requesting approval of a coastal development permit.
2. The site is located within Bayside Village Mobile Home Park, legally described as Parcel 2 of Resubdivision No. 0995.
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 a deck, hardscape and drainage. 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 October 25, 2018, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15303, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act ("CEQA") under Class 3 (New Construction or Conversion of Small Structures), because it has no potential to have a significant effect on the environment.

2. Class 3 exempts the demolition 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 lines.
 - 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 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 in the first row of mobile homes along the Newport Bay within the north parcel, approximately 30 feet from the Bay. However, the site is separated from the Newport Bay by the approximately 20-foot-wide marina access walkway that runs the entire water-front perimeter of the mobile home park. The project site is at an approximate elevation between 11 feet and 12 feet based on the North American Vertical Datum of 1988 (NAVD88). The walkway is below the project site elevation at approximately 8 feet 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.

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 on 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 houses 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. CD2018-084, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 25TH DAY OF OCTOBER, 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. 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.

11. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
12. 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. CD2018-084 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.
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 Hohberg Residence Coastal Development Permit including, but not limited to, Coastal Development Permit No. CD2018-084 (PA2018-194). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. 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. ZA2018-113

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING CD2018-085 AND XP2018-008 FOR A TEMPORARY MODULAR UNIT TO BE USED AS AN OFFICE FOR GONDOLA TOURS LOCATED AT 200 BAYSIDE DRIVE (PA2018-204)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Newport Gondola Adventures, Inc., with respect to property located at 200 Bayside Drive, and legally described as a portion of Parcel 3 of Parcel Map No. 93-111 requesting approval of a Coastal Development Permit and Limited Term Permit (More than 90 days).
2. The applicant proposes to construct a temporary modular office for gondola boat tours. The gondola boats will be docked within existing marina slips accessible from the property. The office will be used for general office operations, storage, and setup area for gondola tours. The office will include an attached restroom to serve employees and customers.
3. The subject property is designated Mixed Use Water Related (MU-W2) by the General Plan Land Use Element and is located within the Back Bay Landing (PC9) Zoning District.
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 Back Bay Landing (PC9) Coastal Zone District.
5. A public hearing was held on October 25, 2018, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.
2. Class 3 exempts the construction of a store, motel, office, restaurant or similar structure not involving the use of hazardous substances, and not exceeding 2,500 square feet in floor area. The proposed 720-square-foot temporary modular office will be used as an office space.

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.

Limited Term Permit

In accordance with Section 20.52.040 of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

- A. *The operation of the limited duration use at the location proposed and within the time period specified 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 requested limited duration use;*

Facts in Support of Finding:

1. The limited term permit will allow one temporary modular office. The office will be used for general office operations, storage, and setup area for gondola cruises. The office will also include a restroom for employees and customers.
2. The subject property contains a variety of marine-related uses, including marina parking, outside storage for recreational vehicles and trailered boats, kayak and paddle board rentals and launch area, a floating fish market, and additional marine-related material storage. The proposed temporary modular office will be used as an office to support the gondola boat tours, which is a coastal-dependent use that is compatible with the other uses within the subject property.
3. The modular office is located within the Back Bay Landing Planned Community Development Plan (PC9) zoning and coastal zoning districts. The purpose of PC9 is to provide a vision for the land uses, set the development standards and design guidelines for the future review and approval of an integrated, mixed-use waterfront development. The proposed modular office is located within the future bayfront promenade identified in PC9 for the future mixed-use development; however, the modular office is temporary in use and is not part of the future development. As conditioned, if the future development is implemented prior to the expiration of the Limited Term Permit, the modular office shall be removed. The modular office does not interfere with nearby uses.

Finding:

- B. *The subject lot is adequate in size and shape to accommodate the limited duration use without material detriment to the use and enjoyment of other properties located adjacent to and in the vicinity of the lot;*

Facts in Support of Finding:

1. The modular building would be located within Planning Area 1 (Mixed-Use Area) of PC-9, which is approximately 5 acres in size. Based upon the site plan, there is adequate area to accommodate the proposed modular office and existing uses without impacting vehicle circulation. The modular office will be located in the rear of the lot, adjacent to the bay and marina access walkway.
2. The placement of the temporary modular office has been conditioned to ensure that it will not negatively impact on-site circulation.
3. The lot is bounded by the Back Bay to the north and west, the Bayside Village mobile home park to the east, and East Coast Highway to the south. The temporary modular office will not affect any of the surrounding uses.
4. The temporary modular office will be placed on private property.

Finding:

- C. *The subject lot is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the limited duration use would or could reasonably be expected to generate;*

Facts in Support of Finding:

1. The subject lot has a direct driveway approach taken from Bayside Drive. The temporary modular office is located in the rear of the lot will not impede access to the existing lot. There are no traffic issues anticipated.

Finding:

- D. *Adequate temporary parking to accommodate vehicular traffic to be generated by the limited duration use would be available either on-site or at alternate locations acceptable to the Zoning Administrator; and*

Facts in Support of Finding:

1. The gondola boats will be docked within the existing marina slips for which parking is provided for within the existing parking lot. Although the operation of the boat tours is expected to increase parking demands at the site, the site provides approximately 141 marked and unmarked parking spaces that are significantly underutilized. The proposed

location of the modular office will result in the temporary loss of 7 parking spaces, reducing the total on-site parking supply to approximately 134 spaces. According to the on-site project manager for the future Back Bay Landing project, approximately 20 vehicles are parked in the main parking area during daytime weekdays. Weekend parking increases to approximately 30 vehicles. There are no significant parking increases at the marina during summer months, except during the Fourth of July special event fireworks display at the nearby Newport Dunes. This underutilization of the parking areas has been verified by staff visits on numerous occasions and review of historical aerial photographs of the site. Therefore, the proposed gondola operation and modular office are not anticipated to negatively impact parking availability of the site.

Finding:

- E. The limited duration use is consistent with all applicable provisions of the General Plan, any applicable specific plan, the Municipal Code, and other City regulations.*

Facts in Support of Finding:

1. The temporary modular office is conditioned to comply with all applicable provisions of the General Plan, Municipal Code, and other City regulations.
2. The site is not located within a specific plan area.

Coastal Development Permit

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

Finding:

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

Facts in Support of Finding:

1. The proposed temporary modular office is 720 square feet and includes a restroom.
2. The Mixed Use Water Related Coastal Land Use is intended to provide for commercial development on or near the bay in a manner that will encourage the continuation of coastal-dependent and coastal-related uses and visitor-serving uses. The proposed boat tour use is a coastal-dependent use that requires close proximity to the bay.
3. The subject property contains a variety of uses including marina parking, outdoor storage for recreational vehicles and trailered boats, kayak and paddle board rentals and launch area, a floating fish market, and additional marine-related material storage. The proposed boat tour use and temporary modular office is compatible with other marine-related uses.

The development to the east is a mobile home park. The bulk and scale of the temporary modular office is compatible with the surrounding development.

4. As conditioned, all outdoor lighting fixtures shall be designed, shielded, aimed, located, and maintained to shield adjacent properties, and not flood light toward the shoreline, coastal waters and coastal bluffs and to not produce glare onto adjacent properties, roadways, the shoreline, coastal waters or coastal bluffs. Parking lot light fixtures and light fixtures on buildings shall be full cut-off fixtures.
5. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
6. Landscaping is not proposed as a part of this project.

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. An initial evaluation was conducted by staff to determine if the proposed modular office has the potential to impact the public view of the bay. A visual impact analysis was conducted from multiple public view vantage points facing the bay. Views of the bay are visible from East Coast Highway along the western portion of the subject property. The subject property is lower in topography than East Coast Highway, and the proposed modular office is a single-story structure approximately 10 feet in height. The portion of East Coast Highway abutting the eastern portion of the subject lot, as well as Bayside Drive, do not provide existing views of the bay.
3. The modular office has been sited to minimize impacts to public views of the bay, as it is located a northern corner of the lot that is outside of the viewshed of the bay as seen from East Coast Highway. The development does not include landscaping or fencing that would block views and access to the harbor.
4. The proposed boat tour use will provide additional recreation options to residents and visitors and encourage access to and usage of the bay.

5. The proposed modular office is located within a future pedestrian easement, which is a feature of a future project on the subject property. The modular building has been conditioned to be removed upon recordation of the pedestrian easement. Also as conditioned, if the future development is implemented prior to the expiration of the Limited Term Permit, the modular office shall be removed.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves CD2018-085 and XP2018-008, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 25TH DAY OF OCTOBER, 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 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. *Coastal Development Permit No. CD2018-085 and Limited Term Permit No. XP2018-008 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.*
5. 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.
6. This Coastal Development Permit and Limited Term 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. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Coastal Development Permit and Limited Term Permit or the processing of a new Coastal Development Permit and Limited Term Permit.
8. 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.
9. Prior to issuance of building permits, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Coastal Development Permit and Limited Term 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 and Limited Term Permit and shall highlight the approved elements such that they are readily discernible from other elements of the plans.

10. This Limited Term Permit shall expire twelve (12) months from the issued date of building occupancy, unless an extension of up to one (1) additional period of 12 months is granted by the Zoning Administrator in compliance with Section 20.54.060 (Time Limits and Extensions) of the Zoning Code. A letter requesting the extension shall be submitted to the Planning Division no later than thirty (30) days prior to the expiration date of this permit.
11. Upon recordation of a future pedestrian easement in compliance with PC-9, the temporary trailer shall be removed.
12. The hours of operation for the modular office and the gondola boat tours shall be limited to 10:00 a.m. through 10:00 p.m., daily, except that the gondola boat tours shall be permitted to operate to later hours with the prior approval of the Planning Division for up to six (6) special occasions per calendar year. Examples of special occasions include New Years, Valentine's Day, Mother's Day, etc.
13. A Marine Activities Permit (MAP) shall be obtained prior to the operation of boat tours.
14. In the event that the future Back Bay Landing mixed-use development is implemented prior to the expiration of this Limited Term Permit, the modular building shall be removed.
15. Prior to the issuance of a building permit, approval shall be obtained from the Building Division for the use of a pump out and holding station instead of connecting to a sewer system.
16. Prior to the issuance of building permits, all requirements from the Fire Department shall be completed to the satisfaction of the Fire Chief.
17. 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.
18. All outdoor lighting fixtures shall be designed, shielded, aimed, located, and maintained to shield adjacent properties, and not flood light toward the shoreline, coastal waters and coastal bluffs and to not produce glare onto adjacent properties, roadways, the shoreline, coastal waters or coastal bluffs. Parking lot light fixtures and light fixtures on buildings shall be full cut-off fixtures.
19. 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.

20. 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. The maximum noise shall be limited to no more than depicted below for the specified time periods 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

21. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
22. 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.
23. No outside paging system shall be utilized in conjunction with this establishment.
24. All trash shall be stored within the building or within dumpsters stored in the on-site trash enclosures or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies.
25. 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.
26. 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.
27. 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.
28. 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).

29. The applicant shall ensure that the pump-out restroom is regularly serviced and maintained to control odors.
30. 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.
31. 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.
32. 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.
33. 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.
34. 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 Gondola Adventures including, but not limited to, CD2018-085 and XP2018-008 (PA2018-204). 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. ZA2018-114

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2018-067 TO ALLOW A NEW COLLOCATED, CLASS 1 (STEALTH/SCREENED) WIRELESS TELECOMMUNICATIONS FACILITY LOCATED AT 1601 (CS) BAYSIDE DRIVE (PA2018-151)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by T-Mobile (“Applicant”), with respect to property located at 1601 (CS) Bayside Drive, requesting approval of a coastal development permit.
2. The parcel at 1601 Bayside Drive is legally described as Parcel 1 of Parcel Map No. 93-115
3. The Applicant proposes a new Class 1 (Stealth/Screened) wireless telecommunications facility (“telecom”) at the Bahia Corinthian Yacht Club (“BCYC”). The proposal includes a new faux chimney structure that will house up to six (6) panel antennas and will match an existing faux chimney structure. Also included is a fiberglass reinforced plastic (“FRP”) screen wall extension of the existing rooftop elevator penthouse that will house up to three (3) panel antennas. All supporting equipment will be located within an enclosure at the ground level.
4. The subject property is designated Private Institutions (PI) by the General Plan Land Use Element and is located within the Private Institutions (PI) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Private Institutions (0.0 – 0.30 FAR) (PI-A) and the property is located within the Private Institutions (PI) Coastal Zone District.
6. A public hearing was held on October 25, 2018, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15303, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction or Conversion of Small Structures), because it has no potential to have a significant effect on the environment.

2. The proposed project is the installation of a new telecom facility at an existing nonresidential building. The project consists of a new faux chimney, the extension of an existing elevator penthouse, and the installation of supporting equipment within a screening enclosure at the ground level. No additional square footage is being created as a result of the project.
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 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. Telecoms are an allowed use within the PI District per Table 21.26-1 (Allowed Uses) of NBMC Section 21.26.020 (OS, PF, PI, PR, and TS Coastal Zoning District Land Uses).
2. The proposed telecom is considered a Class 1 (Stealth/Screened) installation which will be collocated at an existing facility. NBMC Section 21.49.040 (Telecom Facility Preferences and Prohibited Locations) lists collocated and Class 1 installations at the top of the installation preference list.
3. The design of the proposed faux chimney closely matches that of the existing faux chimney occupied by antennas and equipment for Verizon Wireless. The extension of the existing elevator penthouse by two feet will not create additional bulk such that building scale is compromised. This will help to ensure the telecom blends into the surrounding environment as common architectural elements.
4. The proposed faux chimney and elevator penthouse extension will comply with the maximum height limit of 26 feet and will serve to screen all proposed antennas and related equipment. The supporting equipment will be located at ground level to the immediate south of the BCYC building within a concrete masonry unit (“CMU”) wall enclosure. Therefore, the proposed telecom will be completely screened from view.
5. The proposed telecom complies with NBMC Section 21.30.100 (Scenic and Visual Quality Protection) inasmuch as it is not located in any public viewshed to or along the ocean, bay, beach or coastal bluffs. The closest public viewpoint identified in the Coastal

Land Use Plan is from Irvine Terrace Park to the east from which the BCYC building is not visible due to intervening development and landscaping.

6. The proposed faux chimney and elevator penthouse extensions will comply with the maximum allowable height limit of 26 feet to the top of a flat structure within the PI District and the Shoreline Height Limit Zone.
7. All proposed landscaping around the supporting equipment enclosure will comply 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; however, the project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities. Vertical access to the bay front is provided by way of an existing 10-foot-wide pedestrian easement over the BCYC property. Said easement will not be impacted by the proposed telecom installation.
2. Lateral access and views of the ocean are also available along an existing 6-foot-wide public sidewalk in front of the project site.
3. See Fact in Support of Finding A(5).
4. The project will allow the collocation of a telecom that complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing and anticipated future surrounding neighborhood pattern of development. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2018-067, 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 NBMC Title 21

Local Coastal Implementation Plan. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 25TH DAY OF OCTOBER, 2018.



Patrick J. Alford, Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL****Planning Division**

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. The telecom facility approved by this permit shall comply with all applicable rules, regulations, and standards of the Federal Communications Commission ("FCC") and the California Public Utilities Commission ("CPUC").
4. The telecom facility approved by the permit shall comply with any easements, covenants, conditions, or restrictions on the underlying real property upon which the facility is located.
5. Anything not specifically approved by this permit is not permitted and must be addressed in a separate and subsequent Telecom Permit review.
6. *The telecom approved by this permit shall not exceed twenty-six feet (26') in height from the finish floor elevation, as depicted on the project plans attached to the staff report dated October 25, 2018. A Height Certification Inspection shall be required prior to final of building permits.*
7. *The Applicant shall continually maintain the wireless telecom facility so that it retains its original appearance at the time the building permit is finalized by the City of Newport Beach.*
8. On an annual basis, the Applicant shall conduct maintenance inspections of the wireless telecom facility, including the monopole, equipment enclosure areas and walls, and make all necessary repairs. The Community Development Director may require additional inspections and/or maintenance activities at his/her discretion
9. The Applicant shall not prevent the City of Newport Beach from having adequate spectrum capacity on the City's 800 MHz radio frequencies at any time.
10. The facility shall transmit at the approved frequency ranges established by the FCC. The Applicant shall inform the City in writing of any proposed changes to the frequency range in order to prevent interference with the City's Public Safety radio equipment.

11. Should interference with the City's Public Safety radio equipment occur, use of the telecom facility authorized by this permit may be suspended until the radio frequency interference is corrected and verification of the compliance is reported.
12. The Applicant recognizes that the frequencies used by the cellular facility located at 1601 (CS) Bayside Drive are extremely close to the frequencies used by the City of Newport Beach for public safety. This proximity will require extraordinary "comprehensive advanced planning and frequency coordination" engineering measures to prevent interference, especially in the choice of frequencies and radio ancillary hardware. This is encouraged in the "Best Practices Guide" published by the Association of Public-safety Communications Officials-International, Inc. ("APCO"), and as endorsed by the FCC.
13. The Applicant shall provide a "single point of contact" for both carriers in its Engineering and Maintenance Departments that is monitored twenty-four (24) hours per day to ensure continuity on all interference issues, and to which interference problems may be reported. The name, telephone number, fax number, and e-mail address of that person shall be provided to the Community Development Department and Newport Beach Police Department's Support Services Commander prior to activation of the facility. If the point of contact changes, the City shall be alerted and updated immediately.
14. Appropriate information warning signs or plates shall be posted at the access locations and each transmitting antenna. In addition, contact information (e.g., a telephone number) shall be provided on the warning signs or plates. The location of the information warning signs or plates shall be depicted on the plans submitted for construction permits.
15. No advertising signage or identifying logos shall be displayed on the telecom facility except for small identification, address, warning, and similar information plates. A detail of the information plates depicting the language on the plate shall be included in the plans submitted for issuance of building permits.
16. The telecom facility shall not be lighted except as deemed necessary by the Newport Beach Police Department for security lighting. The night lighting shall be at the lowest intensity necessary for that purpose and such lighting shall be shielded so that direct rays do not shine on nearby properties. Prior to the final of building permits, the Applicant shall schedule an evening inspection by the Code Enforcement Division to confirm compliance with this condition.
17. At all times, the operator for T-Mobile shall ensure that its telecom facility complies with the most current regulatory, operations standards, and radio frequency emissions standards adopted by the FCC. The operator shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. Said information shall be made available by the operator upon request at the discretion of the Community Development Director.
18. *Prior to final of building permits, the Applicant shall schedule an inspection by the Planning Division to ensure materials and colors match existing architecture as illustrated in the approved photographic simulations and in conformance with Municipal Code Section 21.49.050.*

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 Applicant, current property owner, or leasing agent.
20. The Applicant shall ensure that lessee or other user(s) shall comply with the terms and conditions of this permit, and shall be responsible for the failure of any lessee or other users under the control of the Applicant to comply.
21. Any operator who intends to abandon or discontinue use of a telecom facility must notify the Planning Division by certified mail no less than thirty (30) days prior to such action. The operator or property owner shall have ninety (90) days from the date of abandonment or discontinuance to reactivate use of the facility, transfer the rights to use the facility to another operator, or remove the telecom facility and restore the site.
22. The City reserves the right and jurisdiction to review and modify any permit approved pursuant to NBMC Chapter 21.49, including the conditions of approval, based on changed circumstances. The operator shall notify the Planning Division of any proposal to change the height or size of the facility; increase the size, shape, or number of antennas; change the facility's color or materials or location on the site; or increase the signal output above the maximum permissible exposure ("MPE") limits imposed by the radio frequency emissions guidelines of the FCC. Any changed circumstance shall require the operator to apply for a modification of the original telecom permit and obtain the modified telecom permit prior to implementing any change.
23. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
24. This Coastal Development Permit does not authorize any development seaward of the private property.
25. 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).
26. 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.
27. 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.
28. 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.

29. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
30. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
31. 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.
32. 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.
33. 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.
34. 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.
35. 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.
36. 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.
37. 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.
38. 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.
39. 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.

40. The applicant is responsible for compliance with the Migratory Bird Treaty Act. 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.
41. This Coastal Development Permit No. CD2018-067 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.
42. *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 Bahia Corinthian Yacht Club Telecom including, but not limited to Coastal Development Permit No. CD2018-067 (PA2018-151). 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.*

Fire Department

43. Storage of batteries must comply with California Fire Code Section 608, Stationary Storage Battery Systems.

44. Manufactures specifications for any generators will be required with plan review. Generator shall be installed as per manufactures specifications and comply with California Fire Code Section 601.

Building Division

45. The Applicant is required to obtain all applicable permits from the City Building Division and Fire Department. Prior to the issuance of any building, mechanical, and/or electrical permits, architectural drawings and structural design plans shall be submitted to the City of Newport Beach for review and approval by the applicable departments. A copy of these conditions of approval shall be incorporated into the drawings approved for the issuance of permits.
46. The telecom facility shall comply with all regulations and requirements of the California Building Code, California Fire Code, California Mechanical Code, and California Electrical Code. All required permits shall be obtained prior to commencement of the construction.

Public Works

47. In case of damage done to public improvements surrounding the site by private construction, additional reconstruction within the public right-of-way may be required at the discretion of the Public Works Department.
48. The storage of all project related equipment during construction shall be on-site and outside the public right-of-way.
49. An approved encroachment permit is required for all work activities within the public right-of-way.
50. The project shall not conflict with any easements over the property. If an easement is determined to be no longer necessary, the property owner shall work with the City or responsible agency to abandon it.

RESOLUTION NO. ZA2018-115

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2018-069 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW THREE-STORY SINGLE-FAMILY RESIDENCE AND ATTACHED 3-CAR GARAGE LOCATED AT 1120 WEST OCEAN FRONT (PA2018-161)

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, with respect to property located at 1120 West Ocean Front, requesting approval of a coastal development permit.
2. The lot at 1120 West Ocean Front is legally described as Lot 6, Block 11, Tract No. 234.
3. The applicant proposes the demolition of an existing two-story single-family residence and construction of a new approximately 4,523-square-foot, three-story single-family residence with a 624-square-foot three-car garage. Also included are site walls and other accessory structures, hardscape, drainage, and landscaping.
4. The subject property is designated Single-Unit Residential Detached (RS-D) by the General Plan Land Use Element and is located within the Single-Unit Residential (R-1) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Single-Unit Residential Detached (10.0 - 19.9 DU/AC) (RSD-C) and the property is located within the Single-Unit Residential (R-1) Coastal Zone District.
6. A public hearing was held on October 25, 2018, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15303, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction or Conversion of Small Structures), because it has no potential to have a significant effect on the environment.
2. Class 3 exempts the demolition of up to three single-family residences and additions of up to 10,000 square feet to existing structures. The proposed project consists of the

demolition of one single-family residence and the construction of a new 4,523-square-foot single-family residence and 624-square-foot two-car garage in the R-1 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 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 residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The maximum floor area limitation is 5,686.26 square feet and the proposed floor area is 5,147 square feet.
 - b. The proposed development provides the minimum required setbacks, which are 9 feet along the front property line abutting West Ocean Front, 3 feet along each side property line and 0 feet along the rear property line.
 - c. The highest guardrail is less than 24 feet from established grade (11.81 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 three vehicles, complying with the minimum three-car garage parking requirement for single-family residences with 4,000 square feet or more of habitable floor area.
2. The property currently consists of one legal lot developed with a single-family residence. The neighborhood is predominantly developed with two- and three-story, single-unit and two-unit residences.
3. The proposed three-story design and partially covered roof deck results in bulk and scale of the development that is consistent with the existing neighborhood pattern of development and expected future development consistent with applicable development standards.

4. The subject property fronts the Pacific Ocean, but is separated from the shoreline by a very wide sandy beach (approximately 575-foot separation). The project site is not protected by a bulkhead.
5. The finish floor elevation of the proposed dwelling is 12.40 feet based on the North American Vertical Datum of 1988 (NAVD88), which exceeds the minimum 9.0-foot (NAVD88) elevation standard for new structures. A Coastal Hazard Report and Wave Runup Study prepared by GeoSoils, Inc., dated July 11, 2018, indicates a likely sea level rise projection of between 1.8 and 4.6 feet over the next 75 years resulting in a future water elevation of between 9.3 feet and 12.1 feet (NAVD88). The report concludes it is very unlikely that any type of wave will reach the site even considering a 4.6-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 575 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 development is set back approximately 575 feet from coastal waters. Due to the large distance, a Water Quality Management Plan is not required. A post-construction drainage system will be installed that includes drainage and percolation features designed to retain dry weather and minor rain run-off on-site to ensure the project does not impact water quality. Any water not retained on-site is directed to the City's storm drain system.
9. 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.

10. All proposed landscaping will comply 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; however, the project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities. Vertical access to the bay front and beach front is available approximately 180 feet east of the site at the intersection of West Ocean Front and 11th Street, and also 180 feet to the west of the site at the intersection of West Ocean Front and 12th Street.
2. Lateral access and views of the ocean are also available along an existing 6-foot-wide public boardwalk in front of the project site.
3. The project site is located adjacent to the public beach and the public sidewalk Ocean Front walkway. Due to the project location, an initial evaluation of the potential impact to the view shed or the scenic and visual qualities of the coastal zone was conducted pursuant to NBMC Section 21.30.100 (Scenic and Visual Quality Protection). Expansive views of the Newport Pier, Balboa Pier, Pacific Ocean, and public beach are afforded from the public boardwalk along West Ocean Front. However, the subject property is located landward of the public vantage points and not between public vantage points and these view features. Therefore, the project will not impact existing, nor provide an opportunity to enhance, public views along these vantage points.
4. The project will replace an existing single-unit residence with a new single-unit residence that complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing and anticipated future neighborhood pattern of development. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2018-069, 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 NBMC Title 21 Local Coastal Implementation Plan. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 25TH DAY OF OCTOBER, 2018.



Patrick J. Alford, Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL**

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. Prior to the issuance of a building permit, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices to address the threat of damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards that may affect the property, or development of the property, today or in the future. The agreement shall be binding against the property owners and successors and assigns.
3. Prior to the issuance of a building permit, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of development.
4. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers.
5. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
6. This Coastal Development Permit does not authorize any development seaward of the private property.
7. Best Management Practices (BMP's) and Good Housekeeping Practices (GHP's) shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Pollution Prevention Plan (CPPP).
8. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.

9. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stock piles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
10. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
11. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
12. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
13. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.
14. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
15. Prior to 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.
16. 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.
17. 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.
18. 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.
19. Prior to the issuance of building permits, the applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought tolerant plantings, non-invasive plant species and water efficient irrigation design. The plans shall be approved by the Planning Division.

20. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
21. Prior to the issuance of building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
22. 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.
23. The applicant is responsible for compliance with the Migratory Bird Treaty Act. 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.
24. This Coastal Development Permit No. CD2018-069 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.
25. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Fanticola Residence including, but not limited to, Coastal Development Permit No. CD2018-069 (PA2018-161). 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. ZA2018-116

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MODIFICATION PERMIT NO. MD2018-006 TO ALLOW A 3-INCH ENCROACHMENT INTO A REQUIRED 6-FOOT SIDE SETBACK AT 1608 RUTH LANE (PA2018-193)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Scott Way ("Owner"), with respect to property located at 1608 Ruth Lane, requesting approval of a modification permit.
2. The property is legally described as Lot 19 of Tract 1645 in Newport Beach.
3. The applicant proposed a 440-square-foot second floor addition and first floor remodel to an existing nonconforming 2,714-square-foot single family residence. The structure is nonconforming because the existing residence projects a maximum of 9 inches into the required 6-foot left side yard setback. The request for a modification permit is necessary to allow the proposed second floor to encroach a maximum of 3 inches into the left side yard setback, consistent with the nonconforming first floor.
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-1-6000 (Single-Unit Residential) Zoning District.
5. The subject property is not located within the coastal zone.
6. A public hearing was held on October 25, 2018, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to and considered by the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15301, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities), because it has no potential to have a significant effect on the environment.
2. Class 1 exempts additions of up to 10,000 square feet where public services and utilities are available and the area is not considered environmentally sensitive. The proposed project is a 440-square-foot addition to an existing single-family residence in a developed neighborhood and is not within an environmentally sensitive area.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The neighborhood is comprised of one- and two-story single-unit dwellings. The Modification Permit will allow expansion of the existing two-story, single-unit dwelling, which is compatible with other properties in the neighborhood.
2. The addition would increase the dwelling by 440 square feet, to enlarge a bedroom and bathroom on the second floor. With the exception of a three-inch encroachment into the left side setback, the proposed addition will comply with all applicable development standards, including height, parking and site coverage. The proposed addition will not encroach farther into the side setback than the existing legal nonconforming first floor below.
3. The proposed addition will result in a total floor area of approximately 3,154 square feet (including the 464-square-foot garage), which is consistent with the bulk and scale of the other single-unit dwellings within the neighborhood.
4. The existing development on the property is a single-family dwelling and will remain a single-family dwelling. Therefore, there is no change to the density or intensity as a result of the proposed remodel and addition.

Finding:

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

Facts in Support of Finding:

1. The side setback of the existing two-story single-family residence was compliant with the Newport Beach Zoning Code at the time of construction in 1958. As a result of amendments to the Zoning Code, the structure's side setback is substandard in width and is therefore legal nonconforming.
2. The lot has a slight rhombus-like shape and the existing single-family residence was constructed with side wall alignments that are not parallel with the side property lines.

Consequently, the structure's distance from the north property line ranges from five feet, nine inches to six feet, seven inches.

3. Redesigning the addition to comply with the six-foot side setback would be costly and significantly increase the scope of the project in order to gain three additional inches of separation from the side property line.
4. The granting of the Modification Permit is necessary to allow a reasonable addition to an existing dwelling that was constructed in compliance with setback standards in effect at the time of original construction. The home will maintain five-foot, nine-inch setbacks at its closet point which adequately provides separation from the adjacent property for light and ventilation.

Finding:

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

Facts in Support of Finding:

1. See Fact in Support of Finding B(2).
2. The second-story addition is proposed in line with the nonconforming first story below, which encroaches a maximum of three inches in this location. Redesigning the addition to comply with the six-foot side setback would require additional framing elements to properly support the addition, thereby significantly increasing the cost and scope of the project.
3. The existing nonconforming structure provides a minimum setback of five feet, 3 inches and the proposed addition will provide a minimum setback of five feet, nine inches, only three inches less than the standard six-foot setback. The setbacks provide adequate light, air and separation from the neighboring property; therefore, fulfilling the intent of the Zoning Code. Approval of the Modification Permit allows the applicant to construct a 440-square-foot addition that is consistent with and in line with the setbacks of the existing structure, which has not proven detrimental to the occupants or neighbors of the dwelling.

Finding:

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

Facts in Support of Finding:

1. The alternative would require that the applicant construct the second-story addition in compliance with the six-foot side setback. This would require the second story wall to be off-set from the first story below by up to three inches. This would require significant changes to the framing and structural design of the addition well beyond the scope of the small addition.
2. The other alternative is to reduce the size of the addition, and only construct the second story addition above the first story with conforming setbacks. Given the intent of the project is to provide a larger bedroom and bathroom on the second floor, a redesign will significantly impact the project and not meet the objectives of the applicant.

Finding:

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

Facts in Support of Finding:

1. The proposed second-story addition complies with height and site coverage limitations and provides a five-foot, nine-inch side setback that will provide adequate protection for light, air, and privacy. The addition will not preclude access to the dwelling and will be consistent in scale with other dwellings in the neighborhood. The addition runs 17 feet nine inches along the left side property line. However, due to the slightly irregular shape of the lot, only approximately 7 feet of the addition will encroach into the 6-foot side setback.
2. The existing nonconforming structure has not proven to be detrimental to the occupants of the property, nearby properties, the neighborhood, or the City.
3. The approval of this Modification Permit is conditioned such that the applicant is required to obtain all necessary permits in accordance with the Building Code and other applicable Codes.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Modification Permit No. MD2018-006, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.

2. This action shall become final and effective fourteen (14) days 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 (Planning and Zoning), of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 25TH DAY OF OCTOBER, 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. This approval shall expire and become null and void unless exercised within twenty-hour (24) months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code.
3. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department, including for existing improvements that were constructed without the benefit of building permits. 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.
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 modification permit.
6. 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.
7. Prior to issuance of building permits, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the 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.
8. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by the current property owner or agent.
9. 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.

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.

10. 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 Way Residence including, but not limited to, Modification Permit No. MD2018-006 (PA2018-193). 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 Department

11. Existing street trees shall be protected in place.
12. Ruth Lane is on the City's street-cut moratorium list. Any damage to said street will require moratorium street repair.
13. Reconstruct all damaged/broken concrete curb, gutter and sidewalk per City Standard. Extent of repair shall be per the Public Works Inspector.

RESOLUTION NO. ZA2018-117

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2018-070 TO CONSTRUCT A NEW TWO-STORY, SINGLE-FAMILY RESIDENCE AND ATTACHED TWO-CAR GARAGE AT 1604 SOUTH BAY FRONT (PA2018-159)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Ritner Group, Inc. ("Applicant"), on behalf of Barbara Grimm ("Owner"), with respect to property located at 1604 South Bay Front, requesting approval of a coastal development permit.
2. The property is legally described as Parcel 1 of Lot Line Adjustment No. LA2018-001.
3. The applicant proposed the construction of a two-story, 5,005-square-foot, single-family residence with an attached 619-square-foot, two-car garage. The project includes landscape, hardscape, accessory structures and subsurface drainage facilities. The site is protected by an existing public bulkhead. The design complies with all applicable development standards and 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-BI (Balboa Island) 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 the property is located within the R-BI (Balboa Island) Coastal Zone District.
6. A public hearing was held on October 25, 2018, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to and considered by the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15303, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction or Conversion of Small Structures), because it has no potential to have a significant effect on the environment.

2. Class 3 exempts the construction 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 construction of a new two-story, 5,005-square-foot, single-family residence with an attached 619-square-foot, two-car garage in the RBI 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 7,640 square feet and the proposed gross floor area is 5,624 square feet.
 - b. The proposed development will exceed the minimum required setbacks, which are zero (0) feet along the front property line abutting the public boardwalk, four (4) feet along each side property line, and 5 (5) feet along the rear property line abutting the alley.
 - c. The highest guardrail and the highest roof ridge are no more than 24 feet, measured from the established grade level of 9.00 feet (North American Vertical Datum of 1988) and the highest ridge is no more than 29 feet from established grade, which comply with the maximum height limitation.
 - d. The project includes enclosed garage parking for two vehicles, which complies with the minimum two-car garage parking requirement.
2. The neighborhood is predominantly developed with two- and three-story single-family and two-unit 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 development fronts the Newport Bay, but is separated from the shoreline by a public sidewalk and bulkhead. The public bulkhead is at a height of 7.75 feet (NAVD 88). The finished floor elevation of the interior living area of the proposed residence is 9.00 feet (NAVD 88), which complies with the minimum required 9.00-foot (NAVD 88) elevation standard.

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 William Simpson and Associates, Inc., dated November 5, 2015. The report concludes that flooding, wave run up and erosion will not significantly impact this property over the expected life of the proposed development.
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 Toal Engineering, Inc., dated June 20, 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. Prior to issuance of the building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
10. Public coastal views from the public sidewalk and beach located between the project site and the bay will not be negatively affected by the proposed development.

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 on Balboa Island 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 residential development demolished in 2016 neither provided nor inhibited 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 a previously existing single-family residence with a new single-family residence. Therefore, the project does not involve a change in allowed 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 replacement of a single-family residence, demolished in 2016, with a new single-family residence. Development will occur within the confines of private property, and existing coastal access conditions will not be affected. Lateral coastal access is provided by the bay front public sidewalk and public beach, located between the project site and the bay. Vertical access to the public bay front area is provided at various street-ends throughout Balboa Island, with the nearest vertical access point at the Crystal Avenue street-end, approximately 50 feet east of the project site.
3. Public coastal views from the bay front public sidewalk and beach located between the project site and the bay will not be affected by the proposed development. 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 a previously existing single-family residence with a new single-family residence 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. CD2018-070, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 25TH DAY OF OCTOBER, 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. CD2018-070 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, Lot Line Adjustment No. LA2018-001 (PA2018-026) shall be recorded.
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 project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
7. 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.
8. 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.
9. 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.

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10. 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.
 11. 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.
 12. 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.
 13. 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.
 14. 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.
 15. 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.
 16. 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.
 17. 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.
 18. 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.

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19. 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.
 20. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by the current property owner or agent.
 21. 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.
 22. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Grimm Residence including, but not limited to, Coastal Development Permit No. CD2018-070 (PA2018-159). 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. ZA2018-118

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2018-077 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW THREE-STORY, RESIDENTIAL DUPLEX AND TWO ATTACHED SINGLE-CAR GARAGES AT 515 36TH STREET (PA2018-191)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Jack Guo ("Owner"), with respect to property located at 515 36th Street, requesting approval of a coastal development permit.
2. The property is legally described as Lot 8 and the Northeasterly Half of Lot 7 in Block 536 of Canal Section of Newport Beach.
3. The applicant proposed the demolition of a single-family dwelling and the construction of a new, three-story, 4,082-square-foot residential duplex, including two attached 211-square-foot single-car garages and two covered carports. The proposed development includes landscape, hardscape, accessory structures, and subsurface drainage facilities all within the confines of private property. 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 RT (Two Unit Residential) by the General Plan Land Use Element and is located within the R-2 (Two-Unit Residential) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RT-D (Two Unit Residential - 20.0 - 29.9 DU/AC) and the property is located within the R-2 (Two-Unit Residential) Coastal Zone District.
6. A public hearing was held on October 25, 2018, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to and considered by the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

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

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

2. Class 3 exempts the construction and location of limited numbers of new, small facilities or structures including one residential duplex in a residential zone. The proposed project consists of the demolition of an existing single-family residence and construction of a new three-story, 4,082-square-foot, residential duplex with two attached 211-square-foot, single-car garages in the R-2 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 4,810 square feet and the proposed gross floor area is 4,504 square feet.
 - b. The proposed development will provide the minimum required setbacks, which are five (5) feet along the front property line abutting 36th Street, four (4) feet along each side property line, and thirty (30) feet along the front property line abutting the waterway.
 - c. The highest guardrail is no more than 24 feet, measured from the established grade level of 9.00 feet (NAVD 88) and the highest roof ridge is no more than 29 feet, measured from the established grade, which complies with the maximum height limitation.
 - d. The project includes enclosed garage parking for two vehicles and covered carport parking for two vehicles, which complies with the minimum parking requirement for residential duplexes.
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 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 24, 2018, concludes that the 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 24, 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 Robin Hamers & Associates, Inc., dated August 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. 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 negatively 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 residential duplex in an R-2 zoning district. Therefore, the project does not involve a change in land use, density or intensity that will result in significant 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 residential duplex. 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 street ends throughout the Balboa Peninsula 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 residential duplex 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. CD2018-077, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 25TH DAY OF OCTOBER, 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. CD2018-077 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 24, 2018. The reinforcement and repair of the bulkhead shall not result in any seaward encroachment beyond the existing bulkhead.
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 Guo Residence including, but not limited to, Coastal Development Permit No.

CD2018-077 (PA2018-191). 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. ZA2018-119

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2018-081 TO ADD A THIRD-STORY ROOF DECK TO AN EXISTING DUPLEX LOCATED AT 7401 SEASHORE DRIVE (PA2018-190)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Chris Clarizio, with respect to property located at 7401 Seashore Drive, and legally described as Lot 8 of Block N, requesting approval of a Coastal Development Permit.
2. The applicant proposes the construction a third-story roof deck to an existing duplex. An addition and remodel to the existing duplex was approved and is currently under construction. The height of the existing dwelling will be increased by approximately 3 feet 7 inches from the existing flat roof to the top of the proposed guardrail. The addition of the third-story roof deck increases the height by more than 10 percent of the existing height of the dwelling and causes the requirement for a coastal development permit.
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 (RT).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Two Unit Residential – (20.0 - 29.9 DU/AC) (RT-E) and the Coastal Zoning District is Single-Unit Residential (R-2).
5. A public hearing was held on October 25, 2018, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place, and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations (Section 15301, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Existing Facilities), because it has no potential to have a significant effect on the environment.
2. Class 1 includes additions to existing structures. The proposed project is the addition of a new roof deck to an existing duplex located in the R-2 Coastal Zoning District.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. An addition and remodel to the existing duplex was approved and is currently under construction. The approved 241-square-foot addition creates a total floor area (including garage spaces) of 2,993 square feet. The applicant requests to add a new 333-square-foot open roof deck. The height of the duplex will increase from approximately 18 feet 9 inches to 22 feet 4 inches, which is an increase of approximately 19 percent.
2. The property is considered nonconforming due to parking because only two one-car garage spaces are provided, where the Zoning Code and Local Coastal Program requires one space in a garage and one space covered or in a garage per dwelling unit. The Zoning Code and Local Coastal Program allows for additions up to a maximum of 10 percent of the existing floor area of a structure nonconforming due to parking within a 10 year period. No increase of floor area is proposed with the proposed roof deck addition.
3. The proposed development complies with all other applicable residential development standards including, but not limited to, floor area limitation, setbacks, and height.
 - a. The maximum floor area limitation is 3,794 square feet. The previously approved addition that is currently under construction has a proposed floor area of 2,993 square feet. No additional floor area is proposed as part of the roof deck addition.
 - b. The proposed development complies with the required setbacks, which are 5 feet along the property line abutting West Ocean Front Alley, and 3 feet along each side property line. There is no required setback abutting Seashore Drive.
 - c. The highest guardrail/parapet is 22 feet 4 inches from established grade. The proposed development complies with all height requirements.
4. The neighborhood is predominantly developed with two- and three-story single-family residences and duplexes. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development and expected future development.
5. The development is set back approximately 570 feet from the mean high water line. Due to the large distance from coastal waters, a Water Quality Management Plan (WQMP) and a Construction Pollution Prevention Plan (CPPP) are not required.
6. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC)

and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.

7. Landscaping is not proposed as a part of this project.

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 addition of a third-story roof deck to an existing duplex located on a private lot. 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, or public viewpoint, 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 may be located within the viewshed of distant public viewing areas. However, the project is located on an inland lot, and the addition to the existing duplex complies with all applicable Local Coastal Program (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.
4. The Coastal Land Use Plan identifies Seashore Drive as a means of lateral access to the nearby public beach. Vertical access to the public beach is provided by Summit Street and Olive Street. The addition of the roof deck does not impact access to the public beach.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2018-081, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 25TH DAY OF OCTOBER, 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. CD2018-081 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.
4. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
5. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.
6. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
7. Prior to issuance of the building permits, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.
8. Prior to issuance of building permits, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Coastal Development file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Coastal Development Permit.
9. Prior to the issuance of building permits, the applicant shall submit a final construction erosion control plan. The plan shall be subject to the review and approval by the Building Division.
10. Prior to the issuance of building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.

11. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner, or the leasing agent.
12. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 21 Planning and Zoning of the Newport Beach Municipal Code.
13. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Clarizio Residence Coastal Development Permit including, but not limited to, Coastal Development Permit No. CD2018-081 (PA2018-190). 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. ZA2018-120

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING LOT LINE ADJUSTMENT NO. LA2018-005 TO ADJUST THE BOUNDARIES OF PARCELS LOCATED AT 27 BURNING TREE CIRCLE AND 1 BIG CANYON DRIVE (PA2018-148)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Chris Erwin with respect to property located at 27 Burning Tree Circle and 1 Big Canyon Drive, and legally described as Lot 51 of Tract 7638 and Parcel 2 of Lot Line Adjustment No. LA2016-002 respectively, requesting approval of a lot line adjustment.
2. The applicant proposes to adjust the boundary between two (2) contiguous parcels located in the Big Canyon Planned Community (PC8). Land taken from 1 Big Canyon Drive will be reallocated to 27 Burning Tree Circle. There will be no change in the number of parcels.
3. The property at 1 Big Canyon Drive is the golf course area of the Big Canyon Planned Community (PC8) Zoning District and the General Plan Land Use Element category is Parks and Recreation (PR). The property at 27 Burning Tree Circle is located within Low Density Residential Area 9 of the PC8 Zoning District and the General Plan Land Use Element category is Single-Unit Residential Detached (RS-D).
4. The subject properties are not located within the coastal zone.
5. A public hearing was held on October 25, 2018, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the 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 has been determined to be categorically exempt pursuant to Title 14 of the California Code of Regulations (Section 15305, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 5 (Minor Alterations in Land Use Limitations) of the Guidelines for CEQA.
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 boundary adjustment affects the

property line between two (2) parcels and is for the purpose of accommodating existing residential accessory structures entirely on one parcel, 27 Burning Tree Circle.

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 the 27 Burning Tree Circle parcel. The Parks and Recreation designation will be maintained for the 1 Big Canyon Drive parcel.
2. The proposed lot line adjustment will not result in a development pattern that is inconsistent with the surrounding neighborhood. The 27 Burning Tree Circle property will continue to allow for single-unit development consistent with the applicable General Plan Land Use and zoning designation. The proposed 1 Big Canyon Drive parcel will remain a golf course and development will continue to be consistent with limits specified by the General Plan 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.

Finding:

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

Facts 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. The 27 Burning Tree Circle property is located within Low Density Residential Area 9 of the Big Canyon Planned Community (PC8) Zoning District, which is intended to provide for detached single-unit dwellings. The 1 Big Canyon Drive is located in an area of the PC8 Zoning District which is intended for a golf course. The proposed lot line adjustment will not change the existing use of the parcels affected.
2. The proposed boundary adjustment will shift the property line between the subject parcels to the southwest, reallocating approximately 3,118 square feet of land from 1 Big Canyon Drive to 27 Burning Tree Circle. The resulting boundary will allow existing residential accessory structures to be located entirely on the parcel of 27 Burning Tree Circle.
3. The proposed 27 Burning Tree Circle parcel will continue to exceed the minimum site area requirement of the Big Canyon Planned Community development regulations. Lots in Area 9 are required to provide a minimum lot area of 8,000 square feet. In this case, the proposed 27 Burning Tree Circle parcel is compliant in size with an area of 27,509 square feet.
4. The proposed parcels comply with all applicable lot size regulations of the Big Canyon Planned Community Development Plan 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.*

Facts in Support of Finding:

1. The proposed lot line adjustment affects the interior property lines between two (2) adjacent parcels. Legal access to the subject properties is not 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.*

Facts in Support of Finding:

1. Vehicular access to the existing properties is from Big Canyon Drive, Jamboree Road, and Burning Tree Circle, 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.*

Facts 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 PC8 Zoning District shall continue to apply to the adjusted parcels per the Planned Community Development.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Lot Line Adjustment No. LA2018-005, 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 ten (10) days following the date this Resolution was adopted unless within such time an appeal is filed with the Community Development Director in accordance with the provisions of Title 19 (Subdivisions) of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 25th DAY OF OCTOBER, 2018.

BY:



Patrick J. Alford, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. The 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 19 (Subdivisions) of the Newport Beach Municipal Code.
3. Prior to recordation of the lot line adjustment, the applicant shall submit the exhibits to the Public Works Department for final review.
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 27 Burning Tree Circle and 1 Big Canyon Road Lot Line Adjustment including, but not limited to, Lot Line Adjustment No. LA2018-005 (PA2018-148). 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. ZA2018-121

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING LOT LINE ADJUSTMENT NO. LA2018-006 TO ADJUST THE BOUNDARIES OF PARCELS LOCATED AT 81 ROYAL SAINT GEORGE ROAD AND 1 BIG CANYON DRIVE (PA2018-162)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Paul J. Meshek of Fidelity National Law Group with respect to property located at 81 Royal Saint George and 1 Big Canyon Drive, and legally described as Lot 2 of Tract 7223 and Parcel 2 of Lot Line Adjustment No. LA2016-002 respectively, requesting approval of a lot line adjustment.
2. The applicant proposes to adjust the boundary between two (2) contiguous parcels located in the Big Canyon Planned Community (PC8). Land taken from 1 Big Canyon Drive will be reallocated to 81 Royal Saint George Road. There will be no change in the number of parcels.
3. The property at 1 Big Canyon Drive is the golf course area of the Big Canyon Planned Community (PC8) Zoning District and the General Plan Land Use Element category is Parks and Recreation (PR). The property at 81 Royal Saint George Road is located within Low Density Residential Area 12 of the PC8 Zoning District and the General Plan Land Use Element category is Single-Unit Residential Detached (RS-D).
4. The subject properties are not located within the coastal zone.
5. A public hearing was held on October 25, 2018, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the 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 has been determined to be categorically exempt pursuant to Title 14 of the California Code of Regulations (Section 15305, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 5 (Minor Alterations in Land Use Limitations) of the Guidelines for CEQA.
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 boundary adjustment affects the

property line between two (2) parcels and is for the purpose of accommodating existing residential accessory structures entirely on one parcel, 81 Royal Saint George Road.

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, or allowable intensity or density, of either property. The General Plan Land Use Designation of Single-Unit Residential Detached will be maintained for the 81 Royal Saint George Road parcel. The Parks and Recreation designation will be maintained for the 1 Big Canyon Drive parcel.
2. The proposed lot line adjustment will not result in a development pattern that is inconsistent with the surrounding neighborhood. The 81 Royal Saint George Road property will continue to allow for a maximum of one single-unit dwelling consistent with the applicable General Plan Land Use and zoning designation. The proposed 1 Big Canyon Drive parcel will remain a golf course and development will continue to be consistent with limits specified by the General Plan (Anomaly No. 31) 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 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.

Finding:

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

Facts 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. The 81 Royal Saint George Road property is located within Low Density Residential Area 9 of the Big Canyon Planned Community (PC8) Zoning District, which is intended to provide for detached single-unit dwellings. The 1 Big Canyon Drive is located in an area of the PC8 Zoning District which is intended for a golf course. The proposed lot line adjustment will not change the existing use of the parcels affected.
2. The proposed boundary adjustment will shift the property line between the subject parcels to the southwest, reallocating approximately 745 square feet of land from 1 Big Canyon Drive to 81 Royal Saint George Road. The resulting boundary will allow existing residential accessory structures to be located entirely on the parcel of 81 Royal Saint George Road.
3. The proposed 81 Royal Saint George Road parcel will continue to exceed the minimum site area requirement of the Big Canyon Planned Community development regulations. Lots in Area 9 are required to provide a minimum lot area of 8,000 square feet. In this case, the proposed 81 Royal Saint George Road parcel is compliant in size with an area of 12,846 square feet.
4. The proposed parcels comply with all applicable lot size regulations of the Big Canyon Planned Community Development Plan 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.*

Facts in Support of Finding:

1. The proposed lot line adjustment affects the interior property lines between two (2) adjacent parcels. Legal access to the subject properties is not 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.*

Facts in Support of Finding:

1. Vehicular access to the existing properties is from Big Canyon Drive, Jamboree Road, and Royal Saint George Road, 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.*

Facts 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 PC8 Zoning District shall continue to apply to the adjusted parcels per the Planned Community Development.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Lot Line Adjustment No. LA2018-006, 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 ten (10) days following the date this Resolution was adopted unless within such time an appeal is filed with the Community Development Director in accordance with the provisions of Title 19 (Subdivisions) of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 25th DAY OF OCTOBER, 2018.

BY:



Patrick J. Alford, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. The 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 19 (Subdivisions) of the Newport Beach Municipal Code.
3. Prior to recordation of the lot line adjustment, the applicant shall submit the exhibits to the Public Works Department for final review.
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 81 Royal Saint George Road Lot Line Adjustment including, but not limited to, Lot Line Adjustment No. LA2018-006 (PA2018-162). 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.



October 23, 2018

Phil Jamison, President
Chihuahua Brewing Company
660 Newport Center Drive, Suite 200
Newport Beach, CA 92660

RE: Director's Determination Regarding Use of a Duplicate Type 23 Alcoholic Beverage Control (ABC) License for Use Permit No. UP2010-036 (Director's Determination No. DD2018-002/PA2018-236)

Dear Mr. Jamison,

This letter is in response to your recent request for Chihuahua Cerveza, a restaurant located at 3107 Newport Boulevard, to operate with a Duplicate Type 23 (Small Beer Manufacturer).

Chihuahua Cerveza currently operates under Use Permit No. UP2010-036 (Attachment A), which authorizes a food service, eating and drinking establishment (restaurant). Condition No. 26 of the Use Permit limits the type of ABC license to a Type 41 to ensure that the principal use of the facility remains a restaurant. However, Chihuahua Cerveza manufactures its own beer in a separate brewery facility off-site. If operating under a Type 41 license, Chihuahua Cerveza would be required to sell its manufactured beer to a third-party distributor, and then re-purchase from the distributor at retail costs. A Duplicate Type 23 license will give the restaurant the ability to bypass this process and directly supply the restaurant.

The proposed Duplicate Type 23 License allows for a brewery to directly supply its manufactured beer to a duplicate license location that operates as a bona fide public eating place, which in this case would be the Chihuahua Cerveza restaurant. A Duplicate Type 23 License does not permit the manufacturing of beer on-site (Attachment B).

Based on the reasons above, I have determined that use of a Duplicate Type 23 ABC license is in compliance with the purpose and intent of Condition No. 26 of the Use Permit.

The restaurant will continue to be subject to the conditions of approval of Use Permit No. UP2010-036 and be required to operate as a restaurant as its principal use. The facility would remain prohibited from operating as a brewpub or microbrewery, and from manufacturing any alcoholic beverages on its premises.

All decisions of the Community Development Director may be appealed to the Planning Commission pursuant to Zoning Code Chapter 20.64 (Appeals) within fourteen (14) days following the date of this decision, by any interested party.

If you have any questions, please do not hesitate to contact me.

Sincerely,


Seimone Jurjis, PE/CBO
Community Development Director

Attachments: A Use Permit No. 2010-036
B ABC Business and Professions Code 23389

Attachment A

Use Permit No. UP2010-036

RESOLUTION NO. 2011-27

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH APPROVING USE PERMIT NO. UP2010-036 TO ALLOW A FOOD SERVICE, EATING AND DRINKING ESTABLISHMENT WITH NO LATE HOURS, A COVERED OUTDOOR PATIO, AND A TYPE 41 (ON SALE, BEER AND WINE, EATING PLACE) ALCOHOLIC BEVERAGE CONTROL (ABC) LICENSE LOCATED AT 3107 NEWPORT BOULEVARD (PA2010-155).

THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Steve Geary, with respect to property located at 3107 Newport Boulevard, and legally described as Lots E, F, and H on Parcel Map, as per map filed in book 32, page 41 of Parcel Maps, in the office of the County Recorder in the County of Orange, together with that portion of Lake Avenue shown as Parcel "G" on said Parcel Map, vacated and abandoned by Resolution No. 1012 of the City Council of Newport Beach, recorded May 15, 1981 as Instrument No. 40308 in book 14079, page 939 of official records in the office of said County Recorder, also together with a portion of Section 28, Township 6 south, range 10 west, San Bernardino Meridian, as per Parcel Nos. 1, 2, and 3 of the official plat filed in the district land office August 4, 1980 requesting approval of a minor use permit.
2. The applicant proposes a food service, eating and drinking establishment with no late hours, a covered outdoor patio, and a Type 41 (On Sale Beer and Wine, Eating Place) Alcoholic Beverage Control (ABC) license. The proposed gross floor area of the establishment is 1,878 square feet, the interior net public area is 650 square feet, and the outdoor patio is 259 square feet in area. The establishment provides a maximum of 42 interior seats and 22 seats on the outdoor dining patio. The hours of operation are from 9:00 a.m. to 11:00 p.m., daily, for the interior of the establishment and from 9:00 a.m. to 10:00 p.m., daily, for food and alcohol service on the outdoor dining patio.
3. The subject property is located within the Commercial Neighborhood (CN) zoning district and the General Plan Land Use Element category is Neighborhood Commercial (CN).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Neighborhood Commercial (CN).
5. A public hearing was held by the Zoning Administrator on January 13, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. The Zoning Administrator continued Use Permit No. UP2010-036 to a date certain on January 27, 2011. 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 Planning Commission at this meeting.

6. A public hearing was held by the Zoning Administrator on January 27, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. The Zoning Administrator approved Use Permit No. UP2010-036 based on the findings and conditions of approval contained in the Zoning Administrator Action Letter. 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 Planning Commission at this meeting.
7. On February 7, 2011, the Zoning Administrator's decision to approve Use Permit No. UP2010-036 was appealed by Planning Commissioner Charles Unsworth. The appeal was filed to review the process by which the use permit was approved, alcohol service on the outdoor dining patio, and the applicability of the operator's license ordinance.
8. On February 9, 2011, the Zoning Administrator's decision to approve Use Permit No. UP2010-036 was further appealed by Planning Commissioner Robert Hawkins. The appeal was filed to review the process by which the use permit was approved, alcohol service on the outdoor dining patio, the applicability of the operator's license ordinance, the required findings for the subject application, and a typographical error in the Zoning Administrator Action Letter.
9. At a noticed public hearing held on March 3, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California, the Planning Commission considered the application, plans, and written and oral evidence presented at this meeting, and approved Use Permit No. UP2010-036 based on the findings and conditions of approval in the Planning Commission Resolution. 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 Planning Commission at this meeting.
10. Pursuant to Section 20.95.060.C, the public hearing was conducted "de novo," meaning that it is a new hearing and the decision being appealed has no force or effect as of the date the call for review was filed.
11. On March 6, 2011, the Planning Commission's decision to approve Use Permit No. UP2010-036 was appealed by City Council Member Steven Rosansky. The appeal was filed to review the authorized hours for alcohol service on the outdoor dining patio.
12. The City Council held a public hearing on March 22, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. The City Council considered evidence, both written and oral presented at this meeting. 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 Planning Commission at this meeting.

13. Pursuant to Section 20.64.030.C, the public hearing was conducted “de novo,” meaning that it is a new hearing and the decision being appealed has no force or effect as of the date the call for review was filed.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 3, (New Construction or Conversion of Small Structures). The Class 3 exemption includes a store, motel, office, restaurant or similar structure not involving significant amounts of hazardous substances, and not exceeding 2,500 square feet in floor area. This exemption also includes accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.
2. The proposed project involves the establishment of a restaurant in an existing retail tenant space and the construction of a new outdoor patio. The proposed use is less than 2,500 square feet. Therefore, proposed use and outdoor patio qualifies for a categorical exemption under Class 3.

SECTION 3. REQUIRED FINDINGS.

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 Subsection 20.48.030 (Alcohol Sales) of the Zoning Code.*

Facts in Support of Finding

- A-1. 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 beer and wine is intended for the convenience of customers dining at the restaurant. Operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol related impacts.

In accordance with Section 20.52.020.F of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a use permit are set forth:

Finding

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

Facts in Support of Finding

- B-1. The General Plan land use designation for this site is CN (Neighborhood Commercial). The CN designation is intended to provide for a limited range of retail and service uses developed in one or more distinct centers oriented to serve the needs of and maintain compatibility with residential uses in the immediate area. An eating and drinking establishment with alcohol sales and accessory outdoor dining is a consistent use within this land use designation. Restaurant uses can be expected to be found in this area and similar locations and are complimentary to the surrounding commercial and residential uses.
- B-2. Eating and drinking establishments are common in the vicinity along the Balboa Peninsula and are frequented by visitors and residents alike. The establishment is compatible with the land uses permitted within the surrounding neighborhood. The new establishment will improve and revitalize the existing retail building and the surrounding neighborhood.
- B-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

- C-1. The site is located in the CN (Commercial Neighborhood) Zoning District. The CN zoning district is intended to provide for areas appropriate for a limited range of retail and service uses developed in one or more distinct centers oriented to serve primarily the needs of and maintain compatibility with residential uses in the immediate area. The proposed food service, eating and drinking establishment with beer and wine alcohol service and an outdoor patio is consistent with land uses permitted by the CN Zoning District.

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

- D-1. The operation of the interior of the restaurant will be restricted to the hours between 9:00 a.m. and 11:00 p.m., daily. The operation of the outdoor patio will be restricted to the hours between 9:00 a.m. and 10:00 p.m., daily.

- D-2. A restaurant has been operated in this location since 1971 pursuant to Use Permit No. 1551 and has not proven detrimental to the area. The tenant space within the shopping center has operated as an eating and drinking establishment in the past and demonstrated the location's capability of operating as a compatible use with other land uses in the vicinity.
- D-3. The project includes conditions of approval to ensure that potential conflicts are minimized to the greatest extent possible. The restaurant is oriented toward the parking lot and is located approximately 225 feet from residential properties across 32nd Street. The use permit has been conditioned to require the folding doors and the outdoor patio area to be closed by 10:00 p.m. so that the establishment will comply with exterior noise standards and shield the restaurant activity from the residential uses across 32nd Street. The applicant is also required to control trash and litter around the subject property.
- D-4. The operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol related impacts. The project has been conditioned to ensure the welfare of the surrounding community so that the business remains a restaurant and does not become a bar or tavern. The project has been conditioned so that no dancing or live entertainment will be permitted on the premises.
- D-5. The applicant is required to install a grease interceptor, 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.

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

- E-1. The project site is located within an existing retail building and the tenant space is designed and developed for an eating and drinking establishment. The design, size, location, and operating characteristics of the use are compatible with the surrounding neighborhood.
- E-2. Adequate public and emergency vehicle access, public services, and utilities are provided within the renovated shopping center.
- E-3. The tenant improvements to the project site will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

Finding

- F. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, a safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding

- F-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. The outdoor patio and louvered folding doors must be closed by 10:00 p.m. to limit the exterior noise to the surrounding residents.
- F-2. The food service, eating and drinking establishment will serve the surrounding residential community. The proposed establishment will provide dining services as a public convenience to the surrounding neighborhood. This will revitalize the project site and provide an economic opportunity for the property owner to update the retail tenants and services, which best serve the quality of life for the surrounding residential community.

SECTION 4. DECISION.

NOW THEREFORE, the City Council of the City of Newport Beach, California, hereby resolves as follows:

SECTION 1: The City Council of the City of Newport Beach does hereby approve Use Permit No. UP2010-036 subject to the conditions contained in Exhibit "A," which is attached hereto and incorporated by reference.

SECTION 2: This resolution was approved and adopted at a regular meeting of the City Council of the City of Newport Beach, held on the 22nd day of March, 2011.



MAYOR

ATTEST:



CITY CLERK



EXHIBIT "A"

CONDITIONS OF APPROVAL

(Project-specific conditions are in italics)

Planning Department Conditions

1. The development shall be in substantial conformance with the approved site plan, floor plan(s) and building elevations dated with this date of approval. (Except as modified by applicable conditions of approval.)
2. This Use Permit may be modified or revoked by the City Council, Planning Commission, or Zoning Administrator should they determine 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.
3. Any change in operational characteristics, hours of operation, expansion in area, or other modification to the approved plans, shall require an amendment to this Use Permit or the processing of a new Use Permit.
4. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
5. Use Permit No. UP2010-036 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 (Time Limits and Extensions) of the Newport Beach Zoning Code, unless an extension is otherwise granted.
6. Should this business be sold or otherwise come under different ownership, any future owners or assignees shall be notified in writing of the conditions of this approval by the current owner or leasing company.
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 Use Permit.
9. 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 Department.

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10. *Prior to the issuance of building permits, Fair Share Traffic Fees shall be paid for the outdoor dining area in excess of 25 percent of the interior net public area in accordance with Chapter 15.38 of the Newport Beach Municipal Code.*
 11. *A copy of this approval letter shall be incorporated into the Building Department and field sets of plans prior to issuance of the building permits.*
 12. *The hours of operation for the interior of the eating and drinking establishment are limited from 9:00 a.m. to 11:00 p.m., daily. The hours of operation for the outdoor patio are limited from 9:00 a.m. to 10:00 p.m., daily. The hours of operation for alcohol service on the outdoor patio are limited from 9:00 a.m. to 10:00 p.m., daily. All activities within the outdoor dining area, including cleanup activities, shall cease at the specified closing hour and no later.*
 13. *The doors to the outdoor patio area shall be closed by 10:00 p.m., daily, to limit the impact of interior noise to residents in the vicinity.*
 14. *[deleted]*
 15. *Live entertainment and dancing shall be prohibited as a part of the regular operation.*
 16. *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 Director and Public Works Director in conjunction with the approval of an alternate drainage plan.*
 17. *The patio floor area in excess of the 25 percent allowance will be deducted from the 15 percent of gross floor area limitation for eating and drinking establishment uses.*
 18. *The accessory outdoor dining shall be used only in conjunction with the related adjacent establishment.*
 19. *The outdoor patio shall be limited to 259 square feet in area and provide seating for twenty two persons maximum.*
 20. *The seating and dining in the outdoor area shall be limited to dining table height (approximately 30 inches) and table surface area of 24 inches by 30 inches minimum. The use of elevated counters, tables, and barstools are prohibited in the outdoor dining area.*
 21. *Prior to issuance of building permits, plans for the outdoor dining/patio areas shall be reviewed and approved by the Planning Department. Final material, height, and location of the fence shall be subject to approval by the Building and Planning Department staff.*

22. *The boundary of the accessory outdoor dining area shall be marked through the use of a 36-inch-high rail as shown on the approved plans. Fences, walls, or similar barriers shall serve only to define the outdoor dining area and not constitute a permanent all weather enclosure.*
23. *The material and color of any awning or umbrella located on the outdoor dining/patio areas shall be subject to review and approval by the Planning Department. No form of advertisement shall be placed on an awning, umbrella or elsewhere in the outdoor patio dining areas. The outdoor patio dining areas, including any awning or umbrella, shall be maintained in a clean orderly condition at all times.*
24. *The installation of roof coverings in addition to the proposed fabric awning shall not have the effect of creating a permanent enclosure. 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 Planning Director and may require an amendment to this permit.*
25. *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.*
26. *The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be a Type 41 in conjunction with the service of food as the principal use of the facility.*
27. *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. 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 180 days of the issuance of the certificate of occupancy. 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.*
28. *This approval does not permit the premises to operate as a bar, tavern, cocktail lounge, or nightclub as defined by the Newport Beach Municipal Code.*
29. *No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.*
30. *No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except when offered in conjunction with food ordered from the full service menu. There shall be no reduced price alcoholic beverage promotion after 9:00 p.m.*

31. *The petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based up on monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.*
32. *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 command.*
33. *There shall be no on-site radio television, video, film, or other electronic or 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.*
34. *[deleted]*
35. *No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.*
36. *The approval is only for the establishment of a restaurant type facility as defined by Title 20 of the Municipal Code, with the principal purpose for the sale or service of food and beverages with sale and service of alcoholic beverages incidental to the food use.*
37. *Full meal service shall be provided during all hours of operation.*
38. *Strict adherence to maximum occupancy limits is required.*
39. *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.*
40. *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 based upon money collected as a door charge, cover charge or any other form of admission charge is prohibited.*
41. *The proprietor shall actively control any noise generated by the patrons of the facility.*

42. The operator of the facility shall be responsible for the control of noise generated on the subject facility. 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

43. 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, food service 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.
44. [deleted]
45. *No amplified music, outside paging system, loudspeaker or other noise generating device are permitted in conjunction with the outdoor dining area.*
46. No outside paging system shall be utilized in conjunction with this establishment.
47. 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.
48. All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of Chapter 20.67 of the Newport Beach Municipal Code.
49. No temporary "sandwich" signs or similar temporary signs shall be permitted, either on-site or off-site, to advertise the restaurant.

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50. 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.
 51. 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. The trash dumpsters shall have a top, which shall remain closed at all times, except when being loaded or while being collected by the refuse collection agency.
 52. Prior to the final of building permits, the refuse storage facilities should be upgraded to meet the requirements specified by Title 20 by providing self-locking gates.
 53. The applicant shall provide a minimum of one common trash enclosure evenly distributed throughout the project site. The size, design and location of trash enclosures shall be subject to the review and approval of the Public Works and Planning Departments prior to issuance of a building permit for new construction. The enclosures shall be located on a four inch concrete pad screened by a six foot high decorative concrete block wall that is compatible with the architectural design of the residential buildings. The enclosures shall incorporate a cover of decorative beams or other roofing material to provide security and visual screening from above.
 54. 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.
 55. 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.
 56. 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 Department. 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).
 57. Prior to final of the building permits, the applicant shall prepare and submit a practical program for controlling litter, spills, and stains resulting from the use on the site and adjacent areas to the Planning Department for review. The building permit shall not be finalized and use cannot be implemented until that program is approved. The program shall include a detailed time frame for the policing and cleanup of the public sidewalk and right-of-way in front of the subject property as well as the adjacent public right-of-way (25 feet north and south of the subject property) not just in front of the subject

tenant space. Failure to comply with that program shall be considered a violation of the use permit and shall be subject to administrative remedy in accordance with Chapter 1.05 of the Newport Beach Municipal Code that includes issuance of a citation of violation and monetary fines.

58. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Planning Director, and may require an amendment to this use permit.
59. 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.
60. 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 Crow Burger Kitchen including, but not limited to Use Permit No. 2010-036 and the determination that the project is exempt under the requirements of the California Environmental Quality Act. 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.

Building and Fire Department Conditions

61. Public sanitation facilities shall be available to the general public (patrons) during regular business hours of the operation, unless otherwise approved by the Building Department.
62. A building permit is required to allow the change in use to an eating and drinking establishment. The construction plans must comply with the most recent, City-adopted version of the California Building Code.
63. The applicant is required to obtain all applicable permits from the City Building and Fire Departments. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The facility shall be designed to meet exiting and fire protection requirements as specified by the California Building Code and shall be subject to review and approval by the Building Department.
64. *The construction plans must meet all applicable State Disabilities Access requirements.*

65. *Approval from the Orange County Health Department is required prior to the issuance of a building permit.*
66. *A grease interceptor shall be installed prior to the establishment opening for business.*
67. *Complete sets of drawings including architectural, electrical, mechanical, and plumbing plans shall be required at plan check.*
68. Kitchen exhaust fans shall be installed/maintained in accordance with the Uniform Mechanical Code. The issues with regard to the control of smoke and odor shall be directed to the South Coast Air Quality Management District.
69. *The applicant shall provide a Type I hood with a kitchen suppression system for cooking equipment.*
70. *Portable propane heaters shall be prohibited on the outdoor patio. Natural gas or electric heaters are allowed if installed per their listing and the California Electrical or Plumbing Code.*
71. The rear doors of the facility shall remain closed at all times. The use of the rear door shall be limited to deliveries and employee use only. Ingress and egress by patrons is prohibited unless there is an emergency.
72. All exits shall remain free of obstructions and available for ingress and egress at all times.
73. Strict adherence to maximum occupancy limits is required.

Public Works Department Conditions


74. County Sanitation District fees shall be paid prior to the issuance of any building permits.

STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing resolution, being Resolution No. 2011-27 was duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 22nd day of March, 2011, and that the same was so passed and adopted by the following vote, to wit:

Ayes: Hill, Rosansky, Gardner, Selich, Curry, Daigle, Mayor Henn
Noes: None
Absent: None
Abstain: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 23rd day of March, 2011.



City Clerk
Newport Beach, California

(Seal)



Attachment B

ABC Business and Professions Code 23389

§ 23389. Duplicate licenses for branch office operations; Limitations; Application

(a) The department may issue to a beer manufacturer a duplicate of its original license for a location or locations other than its licensed premises of production or manufacture. A duplicate license issued by the department authorizes the maintenance and operation of each branch office by the beer manufacturer and shall only have the license privileges set forth in this section. The fee for each duplicate license, regardless of type, shall be as specified in Section 23320.

(b) Subject to the limitations set forth in this section, a licensed beer manufacturer may exercise all of the privileges under its manufacturer's license at branch offices licensed by the department, except for production or manufacture; sales to consumers for consumption on or off the branch office premises, except as provided for in subdivision (c); and the sale of beer and wine to consumers for consumption on the branch office premises where a bona fide public eating place is owned and operated by and for the beer manufacturer, except as provided for in subdivision (c).

(c)(1) A beer manufacturer shall not sell any alcoholic beverages to consumers for consumption on or off the licensed premises, or provide authorized tastings to consumers, at more than six branch office locations, regardless of how many beer manufacturer licenses are held by the beer manufacturer either alone or under common ownership with any other licensed beer manufacturer, and no more than two of the six branch locations may be bona fide public eating places owned and operated by and for the beer manufacturer. A branch office location authorized to sell an alcoholic beverage or provide a tasting to consumers for consumption on or off the licensed premises or that is a bona fide public eating place owned and operated by and for the beer manufacturer before the effective date of the act adding this section, shall be counted against the limit imposed by this subdivision.

(2) A branch office location where consumer tastings or sales for on- or off- premises consumption are authorized shall not sell or serve any alcoholic beverages other than beer that is produced and bottled by, or produced and packaged for, the beer manufacturer.

(3) A branch office location where the sale of beer and wine to consumers for consumption on the premises of a bona fide public eating place is authorized shall not sell or serve alcoholic beverages other than the following:

(A) Beer and wine that is produced and bottled by, or produced and packaged for, the beer manufacturer.

(B) Beer and wine that is purchased by the beer manufacturer from a licensed wholesaler that is not owned, either alone or under common ownership, by the beer manufacturer.

(d) In order to obtain a duplicate license for a branch location or locations with the privileges described in subdivision (c), a beer manufacturer shall submit any application forms as the department may require. Upon request, and upon payment by the beer manufacturer of a fee of one hundred dollars (\$100), the department shall issue to a beer manufacturer a beer manufacturer temporary permit for use at a branch office location during the period the application for a duplicate license with privileges pursuant to subdivision (c) is pending. The beer manufacturer temporary permit shall authorize the beer manufacturer to exercise all of the privileges under the duplicate license except for those privileges described in subdivision (c).

(e) A beer manufacturer temporary permit shall be effective for a period of 120 days and may be extended at the discretion of the department for additional 120-day periods as necessary and upon payment of an additional fee of one hundred dollars (\$100).

(f) In order to obtain a duplicate license for a branch office location or locations without the privileges described in subdivision (c), a beer manufacturer shall submit all application forms as the department may require, and the department shall issue that duplicate license forthwith; provided, however, that any duplicate license issued forthwith by the department shall be contingent on the beer manufacturer consenting to the imposition of a condition that the beer manufacturer shall make no changes in the character or mode of operation of the branch office premises that would directly or indirectly expand the privileges under the duplicate license, such as to include those privileges described in subdivision (c), without notice to and approval by the department. If the department receives any protest concerning the issuance of the duplicate license forthwith under this subdivision, the protest shall be considered as an accusation against the licensee and a hearing had thereon as if an accusation had been filed. Any proposed changes in the character or mode of operation of the branch office premises that would directly or indirectly expand the privileges under the duplicate license, such as to include those privileges described in subdivision (c), shall require reapplication and

reissuance of the duplicate license pursuant to subdivision (d).

(g) Notwithstanding the provisions of any other section of this division, a beer manufacturer may continue to exercise privileges at all of its licensed branch offices that were in existence and authorized by the department prior to the effective date of the act adding this section, including any privileges resulting from any renewal or transfer of the duplicate licenses for the branch locations, that it was authorized to exercise prior to that date.

HISTORY:

Added Stats 2014 ch 808 § 3 (AB 2010), effective September 29, 2014.

Former Sections:

Former B & P C § 23389, similar to the present section, was added Stats 1953 ch 152 § 1, amended Stats 1955 ch 447 § 37, Stats 1957 ch 630 § 1, Stats 2001 ch 488 § 9, and repealed Stats 2014 ch 808 § 2, effective September 29, 2014.

Historical Derivation:

(a) Former B & P C § 23389, as added Stats 1953 ch 152 § 1, amended Stats 1955 ch 447 § 37, Stats 1957 ch 630 § 1, Stats 2001 ch 488 § 9.

(b) Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

(c) Stats 1933 ch 178 § 2.

RESEARCH REFERENCES AND PRACTICE AIDS

Cross References:

Types of licenses and annual fees therefor: B & P C § 23320.
Separate licenses for establishment having more than one location: B & P C § 24041.

Treatises:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.200[1].

§ 23390. Winegrower and brandy manufacturer off-site privileges; Duplicate license; Transferability

(a) A licensed winegrower or brandy manufacturer, in addition to exercising all the privileges of his or her license at his or her licensed premises, may exercise all his or her license privileges at or from branch offices or warehouses, or United States bonded wine cellars located away from his or her place of production or manufacture, other than the following privileges:

- (1) Production or manufacture.
- (2) The sale of wine or brandy to consumers for consumption on the premises in a bona fide eating place.
- (3) The sale or delivery of wine to consumers in containers supplied, furnished, or sold by the consumer.

(b) The department may issue to a winegrower or brandy manufacturer a duplicate of his or her original license for a location or locations other than his or her wine production or brandy manufacture premises. The duplicate license authorizes the maintenance and operation of each branch or warehouse or United States bonded wine cellar declared and designated by the winegrower or brandy manufacturer at the location for which the duplicate license is issued. The fee for each duplicate winegrower's license and for each duplicate brandy manufacturer's license is as specified in Section 23320.

(c) Notwithstanding any other provision of law, the department may allow any person who held more than one original winegrower's license, on or before January 1, 1981, to transfer any duplicate license which has been issued, on or before January 1, 1981, on any of the original winegrower's licenses to any other original winegrower's license held by that person, on or before January 1, 1981, provided that the licensee cancels the original winegrower's license from which any duplicate license is transferred. This subdivision shall not authorize any person to acquire any additional duplicate licenses other than those held by that licensee on or before January 1, 1981.

HISTORY:

Added Stats 1953 ch 152 § 1. Amended Stats 1955 ch 447 § 38, ch 1600 § 4; Stats 1957 ch 630 § 2; Stats 1967 ch 1067 § 3; Stats 1970 ch 631 § 3; Stats 1981 ch 450 § 1; Stats 2001 ch 488 § 10 (AB 1298); Stats 2008 ch 127 § 2 (AB 2004), effective January 1, 2009; Stats 2009 ch 535 § 1 (AB 1470), effective January 1, 2010.

Historical Derivation:

(a) Stats 1935 ch 330 § 6, as amended Stats 1937 ch 758 § 7, Stats 1941 ch 1044 § 1, Stats 1945 ch 1401 § 4, Stats 1947 ch 839 § 1, Stats 1949 ch 1348 § 2, Stats 1951 ch 1257 § 3.

(b) Stats 1933 ch 178 § 2.

Amendments:

1955 Amendment: Substituted (1) "wine cellars" for "storerooms" in the first sentence; (2) "department" for "board" in the second sentence; and (3) "wine cellar" for "storeroom" in the third sentence.

1957 Amendment: Added the second and third paragraphs.

1967 Amendment: Added "the sale of wine to consumers for consumption on the premises in a bona fide eating place," in the first sentence of the first paragraph.

1970 Amendment: Added "or brandy" in the first sentence of the first paragraph.

1981 Amendment: Added the last paragraph.

2001 Amendment: (1) Amended the first paragraph by (a) adding "or her" wherever it appears; (b) deleting "is an amount equal to the license fee payable for a like period for a wholesale beer and wine license," after "winegrower's license" in the last sentence; and (c) substituting "is as specified in Section 23320" for "an amount equal to the fee paid for the original license"; and (2) substituted "the" for "such" after "issuance of" in the