



CITY OF NEWPORT BEACH COMMUNITY DEVELOPMENT DEPARTMENT PLANNING DIVISION ACTION REPORT

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION

FROM: Seimone Jurjis, Community Development Director

SUBJECT: Report of actions taken by the Zoning Administrator, and/or Planning Division staff for the week ending November 30, 2018.

ZONING ADMINISTRATOR ACTIONS NOVEMBER 29, 2018

- Item 1: Naehring Residential Condominiums Coastal Development Permit No. CD2018-061 and Tentative Parcel Map No. NP2018-018 (PA2018-143)
Site Address: 3406 and 3406 1/2 Marcus Avenue
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| Action: Approved by Resolution No. ZA2018-131 | Council District | 1 |
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- Item 2: Pack Condominiums Coastal Development Permit No. CD2018-090 and Tentative Parcel Map No. NP2018-031 (PA2018-221)
Site Address: 1045 West Balboa Boulevard
- | | | |
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| Action: Approved by Resolution No. ZA2018-132 | Council District | 1 |
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- Item 3: Harbor Thai Massage Minor Use Permit No. UP2018-017 (PA2018-188)
Site Address: 2400 West Coast Highway, Suite J
- | | | |
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| Action: Approved by Resolution No. ZA2018-133 | Council District | 3 |
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- Item 4: Building Worx Condominiums Coastal Development Permit No. CD2018-093 and Tentative Parcel Map No. NP2018-032 (PA2018-220)
Site Address: 507 and 507 ½ Carnation Avenue
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| Action: Approved by Resolution No. ZA2018-134 | Council District | 6 |
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- Item 5: Coastal Body Care Minor Use Permit No. UP2018-020 (PA2018-201)
Site Address: 3520 Irvine Avenue
- | | | |
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| Action: Approved by Resolution No. ZA2018-135 | Council District | 3 |
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APPEAL PERIOD: An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

CC Wendy Joe, Civilian Investigator, NBPD
Sgt. Brad Miller, NBPD

RESOLUTION NO. ZA2018-131

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH COASTAL DEVELOPMENT PERMIT NO. CD2018-061 AND TENTATIVE PARCEL MAP NO. NP2018-018 TO CONSTRUCT A NEW THREE-STORY, TWO-UNIT CONDOMINIUMS LOCATED AT 3406 AND 3406 1/2 MARCUS AVENUE (PA2018-143)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Rick Guina of GB Architecture, representing the property owner, Matt Naehring, with respect to property located at 3406 and 3406 ½ Marcus Avenue, requesting approval of a coastal development permit and tentative parcel map.
2. The lot at 3406 and 3406 ½ Marcus Avenue is legally described as Lot 4 and the northwesterly half of Lot 3, Block 334, Canal Section, Newport Beach, as shown on a map recorded in Book 4, Page 98 of Miscellaneous Maps, records of Orange County, California.
3. The applicant requests a coastal development permit and tentative parcel map to demolish an existing duplex and construct a new 3-story, 4,226-square-foot two-unit condominium with two attached single-car garages totaling 450 square feet and two carport spaces. The project includes hardscape, drainage, landscaping improvements, and accessory structures. The project also includes a reinforced bulkhead with cap for coastal hazards protection. The proposed residence complies with all applicable development standards including height, setbacks, and floor area limits. No deviations are requested. The tentative parcel map will merge the underlying lot lines for development of a 2-unit condominium.
4. The subject property is bisected by the coastal permit jurisdiction boundary resulting in a portion of the property within California Coastal Commission's permit jurisdiction. This Coastal Development Permit is intended to cover portions of the project within the City's permit authority as designated in the certified Local Coastal Program (LCP) (Title 21 of the Newport Beach Municipal Code).
5. The subject property is designated RT (Two-Unit Residential) by the General Plan Land Use Element and is located within the R-2 (Two-Family Residential) Zoning District.
6. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RT-E (Two-Unit Residential) (30.0 -39.9 DU/AC) and it is located within the R-2 (Two-Unit Residential) Coastal Zone District.
7. A public hearing was held on November 29, 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) and Section 15315 under Class 15 (Minor Land Divisions) 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 4,676-square-foot two-family condominium in the R-2 Zoning District.
3. Class 15 exempts the division of property in urbanized areas zoned for residential, commercial, or industrial use into four (4) or fewer parcels when the division is in conformance with the General Plan and Zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two (2) years, and the parcel does not have an average slope greater than 20 percent. The Tentative Parcel Map is for condominium purposes and to merge underlying legal lot lines and is therefore consistent with all of the requirements of the Class 15 exemption.

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 and Tentative Parcel Map for condominium purposes complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The total proposed floor area, including the residences and enclosed parking, is 4,676 square feet, which complies with the maximum allowable floor area limit of 5,022 square feet.
 - b. The proposed development provides the minimum required setbacks, which are 25 feet along the water (front setback), 3 feet along the street (front setback), and 4 feet along each side property line.

- c. The highest guardrail is no more than 24 feet and the highest roof ridge is no more than 29 feet, measured from the established grade level of 9.00 feet based on the North American Vertical Datum of 1988 ("NAVD88"), which complies with the maximum height limitation.
 - d. The project includes one enclosed garage for each residence parking and one covered carport for each residence for a total of four parking spaces vehicles, in compliance with the minimum parking requirement for two-unit residences.
2. The neighborhood is predominantly developed with one- and two-story, single-and-two-family residences. Newer three-story development is also present in the vicinity. The proposed design, bulk, and scale of the development is compatible with the existing neighborhood pattern of development and expected future development consistent with applicable development standards.
3. The property fronts the Rivo Alto Waterway of Newport Bay and is a private waterfront parcel. The project site is protected by an existing seawall with the top of the bulkhead at elevation 6.71 feet (NAVD88). The existing bulkhead is low, is not in good condition, and is in need of maintenance and repair at this time. The site is also vulnerable to flooding from the adjacent street ends and other low-lying properties that will need to be protected in the future. The project proposes to reinforce the existing wall and add a cap that will bring the height to 10.05 feet (NAVD88). No development is proposed bayward of the existing seawall.
4. A Coastal Hazard Report and Sea Level Rise Analysis was prepared by PMA Consulting, Inc. dated October 15, 2018, for the project. The bay water elevation (currently maximum 7.2 NAVD88) may exceed the current 6.71 feet NAVD88 top of bulkhead elevation during high tide or storm events. Once the existing seawall/bulkhead is repaired/reinforced per the report's recommendations, flooding, wave runup, and erosion will not significantly impact this property over the proposed life of the development. A waterproofing curb is proposed be constructed around the perimeter of the dwelling that would protect against flooding up to an elevation of 10.05 feet (NAVD88). Flood shields (sand bags and other methods) can be deployed across the openings to protect and prevent flooding to the structure. The report concludes that the proposed project will be safe from flooding hazards for the next 75 years with the reinforced/capped bulkhead and a flood protection curb. Therefore, the project has been conditioned to raise or cap the bulkhead and include a curb structure up to 10.05 feet (NAVD88). This analysis used estimates for sea level rise from The State of California, Sea Level Rise Guidance: 2018 Update estimates.
5. The finished floor elevation of the proposed condominiums is 9.0 feet (NAVD 88), which complies with the minimum 9.00 feet (NAVD88) elevation standard. The Coastal Hazard Report concludes that the bay water elevation (currently 7.2 feet NAVD88) will not exceed the proposed flood protection curb around the two-unit condominium at 10.05 feet (NAVD88 datum) for the anticipated 75-year life of the structure.
6. Pursuant to [NBMC Section 21.30.030 \(Natural Landform and Shoreline Protection\) \(C\)\(3\)\(i\)\(iv\)](#), 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 \(General Site Planning and Development Standards\) \(D\)\(3\)\(c\)](#). Both requirements are included as conditions of approval that will need to be satisfied prior to the issuance of building permits for construction.

7. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
8. The project design addresses water quality with a construction erosion control plan 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.
9. The project design includes 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.
10. The property fronts the Rivo Also waterway of Newport Bay. Pursuant to NBMC [Section 21.35.030 \(Construction Pollution Prevention Plan\)](#), a Construction Pollution Prevention Plan (CPPP) is required to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived from construction chemicals and materials. A CPPP has been prepared for review and approval prior to the issuance of construction permits. Construction plans and activities will be required to adhere to the approved CPPP.
11. Pursuant to NBMC [Section 21.35.050 \(Water Quality and Hydrology Plan\)](#), because of the site's proximity to the water and because the development contains more than 75 percent of impervious surface area, a Water Quality and Hydrology Plan (WQHP/WQMP) was prepared by John Dinh Tran of JT Consulting Engineers, dated May 8, 2018. The final WQHP/WQMP will be required to be reviewed and approved by the City's Engineer Geologist prior to building permit issuance. The WQHP/WQMP includes a polluted runoff and hydrologic site characterization, treatment control BMPs, use of a low-impact development approach and bioretention system to retain the design storm runoff volume on-site, and documentation of the expected effectiveness of the proposed BMPs. Construction plans will be required to comply with the approved WQHP/WQMP prior to the issuance of building permits.
12. New landscaping will be verified for compliance with NBMC [Section 21.30.075 \(Landscaping\)](#). A condition of approval is included to require 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.

13. The Tentative Parcel Map is for condominium purposes and meets all of the requirements of the Local Coastal Program, including [Section 21.30.025 \(Coastal Subdivisions\)](#).

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 and Tentative Parcel Map is located between the nearest public road and the sea or shoreline; however, the project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities.
2. The residential lot does not currently provide nor does it inhibit public coastal access, and the proposed development does not alter or affect existing access conditions. Coastal access is provided along the public streets and street ends throughout the neighborhood. Vertical access to the Rivo Alto is available approximately 60 feet east of the site at the street end along 34th Street and 80 feet west at the street end along 35th Street with access to the water. Vertical access to the beach is also available approximately 1,000 feet southwest of the site at the street ends along 34th Street and 35th Street. The public beach to the southwest also includes a 12-foot-wide public sidewalk along West Ocean Front, providing lateral access and views of the beach.
3. 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 duplex with a new residential two-unit condominium 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.
4. The closest Public Viewpoint is located at Newport Island Park, approximately 820 feet northwest from the property. The proposed two-unit condominium is not located near Coastal View Roads, as designated in the Coastal Land Use Plan. Due to the distance of the proposed development from the Public Viewpoint and the project's compliance with height, setbacks, and floor area limits, the project will not impact coastal views.

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

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is to consolidate underlying legal lots and for two-unit residential condominium purposes. An existing duplex will be demolished and replaced with a new two-unit condominium. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the current RT General Plan Land Use Designation.
2. The Tentative Parcel Map does not apply to any specific plan area.

Finding:

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

Facts in Support of Finding:

1. The lot is physically suitable for two-unit development because it is regular in shape and is relatively flat.
2. The subject property is accessible from Marcus Avenue, and is adequately served by existing utilities.

Finding:

- E. *That the design of the subdivision or the proposed improvements, are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.*

Facts in Support of Finding:

1. The existing duplex will be demolished and replaced with a new two-unit condominium. A duplex has existing on this site since 1950. The proposed project will replace the existing structure with a new two-unit residential condominium that is compliant with all current code requirements.
2. The property is located in an urbanized area that does not contain any sensitive vegetation or habitat.

3. The subdivision is categorically exempt under Section 15315 (Article 19 of Chapter 3), of the California Environmental Quality Act (CEQA) Guidelines – Class 15 (Minor Land Alterations).

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Fact in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Fact in Support of Finding:

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

Finding:

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

Fact in Support of Finding:

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

Finding:

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

Fact in Support of Finding:

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

Finding:

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

Fact in Support of Finding:

1. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RT-E (Two-Unit Residential) and the property is located within the R-2 (Two-Unit Residential) Coastal Zone District. The Facts in Support of Findings A and B for Section 21.52.015 (Coastal Development Permits, Findings and Decision) found above are hereby incorporated for reference.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2018-061 and Tentative Parcel Map No. NP2018-018, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
2. The subject property is bisected by the coastal permit jurisdiction boundary resulting in a portion of the property within Coastal Commission's permit jurisdiction. This coastal development permit is intended to cover portions of the project within the City's permit authority under the certified Local Coastal Program.
3. 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 \(Appeal to the Coastal Commission\)](#) of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

4. This Coastal Development Permit shall take effect upon the effective date of approval of the California Coastal Commission's action on a Coastal Development Permit for portions of the project within their permit authority.

PASSED, APPROVED, AND ADOPTED THIS 29TH DAY OF NOVEMBER, 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 issuance of building permits, the project plans shall be updated to reflect that a minimum waterproofing curb will be constructed around the proposed residence as an adaptive flood protection device up to 10.05 feet (NAVD88). Flood shields (sand bags and other methods) can be deployed across the openings to protect prevent flooding to the structure.*
3. *Prior to final of building permits for the new home, the existing bulkhead or similar flood protection improvement shall be raised or replaced to provide a minimum elevation of 10.05 feet NAVD88 datum or a height elevation to the satisfaction of the Public Works Department. All improvements shall occur landward of the existing bulkhead.*
4. *Waiver of Future Protection for Properties with Approved Bulkheads – 21.30.030.C.3(i)*

Prior to the issuance of a building permit, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices including the repair and maintenance, enhancement, reinforcement, or any other activity affecting the bulkhead, that results in any encroachment seaward of the authorized footprint of the bulkhead or other shoreline protective device. The agreement shall be binding against the property owners and successors and assigns.
5. *Acknowledgement of Hazards for Waterfront Development - 21.30.015.D.3(c)*

Prior to the issuance of a building permit, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney’s fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City’s approval of development.
6. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers.

7. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way. Any improvements located on tidelands, submerged lands, and/or lands that may be subject to the public trust shall require a coastal development permit (CDP) approved by the California Coastal Commission (Coastal Commission). Prior to the issuance of building permits, the applicant shall provide a copy of said coastal development permit or CDP waiver or documentation from the Coastal Commission that subject improvements are not subject to the permit requirements of the Coastal Act and/or not located within the permit jurisdiction of the Coastal Commission.
8. This Coastal Development Permit does not authorize any development seaward of the private property.
9. Best Management Practices (BMP's) and Good Housekeeping Practices (GHP's) shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Pollution Prevention Plan (CPPP).
10. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
11. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stock piles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
12. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
13. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
14. 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. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
16. 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.

17. Prior to the issuance of building permits, the applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought tolerant plantings, non-invasive plant species and water efficient irrigation design. The plans shall be approved by the Planning Division.
18. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing, and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
19. Prior to the issuance of building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.

Building Conditions

20. *Combustible decking shall not be permitted within 3 feet of the side property lines adjacent to the residential units.*
21. *The trash enclosure shall be isolated from the building envelope as it relates to energy and drainage (washout).*
22. *The building shall be 1-hour construction for floors and walls when horizontal and vertical 1 hour assembly overlap.*
23. 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.
24. 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.
25. 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.
26. Prior to issuance of a building permits, the approved CPPP and WQHP/WQMP shall be submitted with the Building Permit plans. Implementation shall be in compliance with the approved CPPP and WQHP/WQMP and any changes could require separate review and approval by the Building Division.

Parcel Map Conditions

27. *A parcel map shall be recorded. The Map shall be prepared on the California coordinate system (NAD83). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach, a digital-*

graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. The Map to be submitted to the City of Newport Beach shall comply with the City's CADD standards. Scanned images will not be accepted.

28. *Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set on each lot corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of the construction project.*
29. *All improvements shall be constructed as required by Ordinance and the Public Works Department.*
30. *Reconstruct all damaged sidewalk panels, curb, gutter, and street along the Marcus Avenue property frontage as determined by the Public Works Department.*
31. *All existing overhead utilities shall be undergrounded.*
32. *Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic grade box and cover.*
33. *Each unit shall provide fire sprinkler service with a separate and independent fire riser.*
34. *An encroachment permit is required for all work activities within the public right-of-way.*
35. *All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.*
36. *In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.*
37. *The driveway shall be designed per City Standard STD-163-L with the maximum width of the approach bottom is 25 feet or less. The garage finish floor elevation at the garage door shall be a minimum of 6-inches above the gutter flow line. The driveway design shall accommodate a minimum 4-foot landing between neighboring driveways.*
38. *The unused portion of the existing driveway approach shall be plugged per City Standard STD-165-L.*
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. *This Coastal Development Permit No. CD2018-061 and Tentative Parcel Map No. NP2018-018 shall expire unless exercised within 24 months from the date of approval as*

specified in Title 19 (Subdivisions) and Title 21 (Implementation Plan) of the Newport Beach Municipal Code, unless an extension is otherwise granted.

41. 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 Naehring Residential Condominiums including, but not limited to, Coastal Development Permit No. CD2018-061 and Tentative Parcel Map No. NP2018-018 (PA2018-143). 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. ZA2018-132

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2018-031 AND COASTAL DEVELOPMENT PERMIT NO. CD2018-090 FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 1045 WEST BALBOA BOULEVARD (PA2018-221)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by FoxLin Architects, with respect to property located at 1045 West Balboa Boulevard, and legally described as Lot 12 of Block 10, requesting approval of a tentative parcel map and a coastal development permit.
2. The applicant proposes a tentative parcel map for two-unit condominium purposes. Four residential apartment units have been demolished and a new two-unit dwelling is currently under construction. No waivers of Title 19 are proposed. The Tentative Parcel map would allow each unit to be sold individually. The Tentative Parcel Map also requires the approval of a coastal development permit pursuant to Title 21 Local Coastal Program Implementation Plan of the Municipal Code. Coastal Development Permit No. CD2017-078 was previously issued by the Zoning Administrator on November 16, 2017, authorizing the demolition of four units and the construction of a new duplex.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential.
4. The subject property is located within the coastal zone and has a Coastal Land Use Designation of Two-Unit Residential (RT-D) and a Coastal Zoning District of Two-Unit Residential (R-2).
5. A public hearing was held on November 29, 2018 in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt pursuant to the State CEQA (California Environmental Quality Act) Guidelines under Class 15 (Minor Land Divisions).
2. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four (4) or fewer parcels when the division is in conformance with the General Plan and Zoning, no variances or exceptions are

required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two (2) years, and the parcel does not have an average slope greater than 20 percent. The Tentative Parcel Map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for condominium purposes and meets all of the requirements of the Local Coastal Program, including 21.30.025 Coastal Subdivisions.
2. The 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 and Building Division standards and policies.
3. The Tentative Parcel Map is for a property within a developed neighborhood that is approximately 660 feet from the mean high water line and is not near any natural landforms or environmentally sensitive areas.

Finding:

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

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline. The residential lots do not currently provide nor inhibit public coastal access. Newport Beach Municipal Code Section 21.30A.040 requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project is a tentative parcel map for condominium purposes. Thus, 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.

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

1. The lot is physically suitable for a two-unit development because it is regular in shape.
2. The subject property is accessible from the alley at the rear and is adequately served by existing utilities.

Finding:

E. That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California

Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.

Facts in Support of Finding:

1. Four residential apartment units have been demolished and a new two-unit dwelling is currently under construction.
2. The property is located in an urbanized area that does not contain any sensitive vegetation or habitat.
3. The project is categorically exempt under Section 15315 (Article 19 of Chapter 3), of the California Environmental Quality Act (CEQA) Guidelines – Class 15 (Minor Land Alterations).

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2018-031 and Coastal Development Permit No. CD2018-090, 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 29TH DAY OF NOVEMBER, 2018.



Patrick J. Alford, Zoning Administrator

EXHIBIT “A”**CONDITIONS OF APPROVAL****PLANNING**

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval. All conditions of Coastal Development Permit No. CD2017-078 shall remain in effect.
2. Subsequent to the recordation of the Parcel Map, the applicant shall apply for a building permit for a description change of the subject project development from “duplex” to “condominium.” The development will not be condominiums until this permit is final. The building permit for the new construction shall not be final until after recordation of the parcel map.
3. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 19 (Subdivisions) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code.
4. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney’s fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City’s approval of the Pack Residence Condominiums including, but not limited to, Tentative Parcel Map No. NP2018-031 and Coastal Development Permit No. CD2018-090 (PA2018-221). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys’ fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City’s costs, attorneys’ fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

PUBLIC WORKS

5. A parcel map shall be recorded. The Map shall be prepared on the California coordinate system (NAD83). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City’s CADD Standards. Scanned images will not be accepted.**

6. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
7. All improvements shall be constructed as required by Ordinance and the Public Works Department.
8. All damaged sidewalk panels, curb, gutter and street along the West Balboa Boulevard property frontage shall be reconstructed and any damaged concrete alley panels along the alley property frontage as determined by the Public Works Department.
9. All existing overhead utilities shall be undergrounded.
10. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed per City standard with a traffic-grade box and cover. Each water meter and sewer clean out shall be located within the public right of way.
11. An encroachment permit is required for all work activities within the public right-of-way.
12. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
13. Any non-standard encroachment within the public right of way shall be removed.
14. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.

BUILDING

15. Independent utility services shall be provided for each unit.
16. Independent fire risers shall be required for each unit.
17. Construction shall comply with the California Code of Regulations.

RESOLUTION NO. ZA2018-133

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2018-017 FOR A MASSAGE USE LOCATED AT 2400 WEST COAST HIGHWAY (PA2018-188)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Tom Gunckel of Harbor Thai with respect to property located at 2400 West Coast Highway and described as Assessor's Parcel Number 425-471-23 requesting approval of a minor use permit.
2. The applicant requests a minor use permit to allow the operation of a massage establishment. The establishment would be comprised of two massage rooms, a customer waiting area, and a bathroom. Included is a request to waive location restrictions associated with massage establishments.
3. The subject property is designated MU-H1 (Mixed Use Horizontal) by the General Plan Land Use Element and is located within the MU-MM (Mixed Use Mariner's Mile) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is MU-H (Mixed Use Horizontal) and it is located within the MU-MM (Mixed Use Mariner's Mile) Coastal Zone District. The proposed massage use does not result in an increase in overall parking demand and therefore is not considered a change or intensification of the existing use that would require a coastal development permit.
5. A public hearing was held on November 29, 2018 in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt pursuant to Title 14 of the California Code of Regulations (Section 15301, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 1 (Existing Facilities) of the Guidelines for CEQA.
2. The Class 1 exemption authorizes minor alterations to existing structures involving negligible or no expansion of use. The proposed project involves the allowance of massage services and does not result in an intensification of use, parking, or expansion in floor area.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The property is designated Mixed Use Horizontal (MU-H1) in the Land Use Element of the General Plan. This designation on the inland side of Coast Highway along the highway frontage is intended for marine-related and highway-oriented general commercial uses in accordance with CM and CG designations. The CM and CG designations are intended to provide for a wide variety of commercial activities oriented primarily to serve citywide or regional needs as well as coastal dependent and coastal related uses.
2. The proposed massage use is consistent with the MU-H1 designation as it will provide services that support the surrounding neighborhood and the region.
3. The subject property is not part of a specific plan area.

Finding:

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

Facts in Support of Finding:

1. The subject property is located in the Mixed Use Mariner's Mile (MU-MM) Zoning District, which is intended to provide for nonresidential uses along Coast Highway in Mariner's Mile.
2. Pursuant to Table 2-8 of Zoning Code Chapter 20.22.020 (Mixed Use Zoning Districts Allowed Uses and Permit Requirements), a massage use is a personal services use that may be permitted in the MU-MM Zoning District subject to the approval of a minor use permit.
3. Pursuant to Table 3-10 of 20.40.040 (Off-Street Parking Spaces Required), a massage establishment has a parking rate of one (1) space for every 200 square feet of gross floor area. The proposed massage use would occupy 350 square feet and require a total of two parking spaces. The previous use occupying the tenant

space was a personal services use that required a parking rate of one (1) space per 250 square feet of floor area, or 2 parking spaces. Therefore, based on the size of the tenant space the parking demand would not change.

Finding:

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

Facts in Support of Finding:

1. The proposed day spa will occupy a 350-square-foot tenant space in an existing two-story commercial building. The operation will consist of two (2) treatment rooms, a customer waiting area, and a bathroom, all of which are included in the existing commercial space.
2. The proposed hours of operation for the business are 10:00 a.m. to 7:00 p.m., 6-days a week (closed Tuesdays). To provide future flexibility, the conditions of approval limit hours from 9:00 a.m. to 8:00 p.m, 7-days a week. The neighboring uses are offices, personal service uses such as salons, and a restaurant. The facility has proposed hours of operation that are compatible with the allowed uses in the vicinity, as there will not be any late hours which would contribute to noise in the area.
3. The project site and surrounding area consist of a mixture of professional offices, as well as retail and service uses, that serve residents and visitors in the surrounding area. There are residential uses located above the property to the rear on Cliff Drive as well as John Wayne Park. The proposed day spa will provide a service that supports residents and visitors, consistent with the existing uses in the area.

Finding:

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

Facts in Support of Finding:

1. The subject property is located on West Coast Highway, near a public parking lot, commercial uses, and John Wayne Park. The property contains one two-story building with several tenant spaces, and a separate two story building that contains a restaurant. The site is accessible via the driveway on West Coast Highway. The parking lot provides adequate parking and is conveniently located for patrons and employees.

2. Adequate public and emergency vehicle access, public services, and utilities are provided on the property and the proposed massage establishment will not change this.

Finding:

E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding:

1. The use has been conditioned with typical daytime hours of operation that will minimize any potential detriment to the area.
2. The massage use would provide additional services to the residents and visitors in the surrounding area.
3. The proposal has been reviewed by the Building and Code Enforcement Divisions, Public Works, Fire, and Police Departments, and recommended conditions of approval have been included to limit any detriment to the City or general welfare of persons visiting or working in the surrounding neighborhood.

In accordance with Section 20.48.120.B (Massage Establishments and Services – Waiver of Location Restrictions) of the Newport Beach Municipal Code, the following findings and facts in support of such findings for a Minor Use Permit are set forth:

Finding:

F. The proposed use will not be contrary to the public interest or injurious to nearby properties, and that the spirit and intent of this section will be observed.

Facts in Supporting of Finding:

1. The intent of the section is to promote the operation of legitimate massage services and to prevent problems of blight and deterioration, which accompany and are brought about by large numbers of massage establishments that may act as fronts for prostitution and other illegal activity.
2. Although the proposed massage use is located within 500 feet of John Wayne Park, the park is separated from the use by a City parking lot and a steep slope.
3. There will be no late hours of operation, as the proposed hours are 10:00 a.m. to 7:00 p.m., 6-days a week (closed Tuesdays). To provide future flexibility, hours have been conditioned to limit operations from 9:00 a.m. to 8:00 p.m., 7-days a week.

4. A condition of approval is included to ensure the applicant will obtain an Operator's Permit from the Newport Beach Police Department in compliance with Chapter 5.50 (Massage Establishments) of the Newport Beach Municipal Code prior to operation of the business.

Finding:

G. The proposed use will not enlarge or encourage the development of an urban blight area.

Facts in Supporting of Finding:

1. The proposed use is located in a single tenant space within a managed, multi-tenant commercial building, which will prevent problems and discourage the development of blight. The subject property is not located within a blighted area, is well maintained, and is intended to provide a service that supports the surrounding residents and visitors to Newport Beach.

Finding:

H. The proposed use will not adversely affect a religious institution, school, park, or playground.

Facts in Supporting of Finding:

1. The proposed use is located adjacent to nonresidential and residential uses. There are no public or private schools, playgrounds, or religious institutions within 500 feet of the subject property.
2. The proposed massage use is located within 500 feet of John Wayne Park. The park serves mainly as a viewing and walking area. There are no playgrounds or areas designated for children. The subject property has adequate lighting and is highly visible from the nearby Coast Highway. The subject use is also separated from the park by a steep slope and public parking lot.
3. The Police Department has reviewed the request for a waiver of location restrictions and has no concerns regarding the proposed massage operation.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2018-017 subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the

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

PASSED, APPROVED, AND ADOPTED THIS 29TH DAY OF NOVEMBER, 2018.



Patrick J. Alford, Zoning Administrator

EXHIBIT “A”**CONDITIONS OF APPROVAL****PLANNING**

1. The development shall be in substantial conformance with the approved site plan and floor plans stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. The 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. This Minor Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
5. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Minor Use Permit or the processing of a new Use Permit.
6. If applicable, a copy of the Resolution, including conditions of approval Exhibit “A” shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
7. Strict adherence to Newport Beach Municipal Code 5.50 “Massage Establishments” must be upheld.
8. The applicant business must apply for and obtain an Operator’s Permit from the Chief of Police, and keep said permit in good standing.
9. All employees of the applicant business who conduct massage on or off premises must be certified by the CAMTC (physicians, physical therapists, and chiropractors exempt).
10. As outlined in Newport Beach Municipal Code 5.50.030, the business must maintain requirements of operation, and submit to inspections by officers of the Police Department.
11. The owner, operator, or responsible manager’s contact information for the massage establishment shall be provided to the City of Newport Beach Code Enforcement Division.

12. The names of employees shall be posted upon entry and contact information and list of state certifications shall be provided upon request. A current list of employees shall be kept onsite and maintained at all times.
13. All windows (except treatment room windows) shall remain visible and transparent in nature. Window signage shall comply with the City of Newport Beach Municipal Code.
14. The facility shall be maintained in a safe and sanitary condition.
15. No alcohol shall be served or offered onsite.
16. Violations of the Penal Code may invoke revocation of this permit.
17. The hours of operation shall be limited to between 9:00 a.m. to 8:00 p.m., daily (maximum).
18. All employees shall park on-site.
19. A maximum of two rooms shall be used for massage therapy.
20. All signs shall conform to the provisions of Chapter 20.42 of the Municipal Code.
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. 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.
23. 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.
24. 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 Harbor Thai Massage including, but not limited to, Minor Use Permit No. UP2018-017 (PA2016-188). 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. ZA2018-134

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2018-032 AND COASTAL DEVELOPMENT PERMIT NO. CD2018-093 FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 507 and 507 ½ CARNATION AVENUE (PA2018-220)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Building Worx Development, LLC, with respect to property located at 507 Carnation Avenue, and legally described as Lot 7 of Block 530 of the Corona del Mar Tract requesting approval of a tentative parcel map and a coastal development permit.
2. The applicant proposes a tentative parcel map for two-unit condominium purposes. An existing duplex has been demolished and a new two-unit dwelling is currently under construction. No waivers of Title 19 are proposed. The Tentative Parcel map would allow each unit to be sold individually. The Tentative Parcel Map also requires the approval of a coastal development permit pursuant to Title 21 Local Coastal Program Implementation Plan of the Municipal Code.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential.
4. The subject property is located within the coastal zone and has a Coastal Land Use Designation of Two-Unit Residential (RT-D) and a Coastal Zoning District of Two-Unit Residential (R-2).
5. A public hearing was held on November 29, 2018, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt pursuant to the State CEQA (California Environmental Quality Act) Guidelines under Class 15 (Minor Land Divisions).
2. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four (4) or fewer parcels when the division

is in conformance with the General Plan and Zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two (2) years, and the parcel does not have an average slope greater than 20 percent. The Tentative Parcel Map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for condominium purposes and meets all of the requirements of the Local Coastal Program, including 21.30.025 Coastal Subdivisions.
2. The project site is not located between the nearest public road and the sea or shoreline and approval of the parcel map will not affect public recreation, access or views.
3. The Tentative Parcel Map is for a property within a developed neighborhood that is approximately 1,200 feet from the shoreline and is not near any natural landforms or environmentally sensitive areas.

Finding:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is not located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.

The Zoning Administrator determined in this case that the Tentative Parcel Map is consistent with the legislative intent of Title 20 (Planning and Zoning) of the Newport Beach Municipal

Code and is approved based on the following findings per Section 19.12.070 (Required Findings for Action on Tentative Maps) of Title 19:

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

1. The lot is physically suitable for a two-unit development because it is regular in shape.
2. The subject property is accessible from the alley at the rear and is adequately served by existing utilities.

Finding:

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

Facts in Support of Finding:

1. An existing duplex has been demolished and a new two-unit dwelling is currently under construction.
2. The property is located in an urbanized area that does not contain any sensitive vegetation or habitat.
3. The project is categorically exempt under Section 15315 (Article 19 of Chapter 3), of the California Environmental Quality Act (CEQA) Guidelines – Class 15 (Minor Land Alterations).

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2018-032 and Coastal Development Permit No. CD2018-093, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 21 Local Coastal

Implementation Plan, of the Newport Beach Municipal Code. The project site is not located within the appeal area of the coastal zone; therefore, final action by the City on the applications may not be appealed to the California Coastal Commission.

PASSED, APPROVED, AND ADOPTED THIS 29TH DAY OF NOVEMBER, 2018.



Patrick J. Alford, Zoning Administrator

EXHIBIT “A”**CONDITIONS OF APPROVAL****PLANNING**

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. Subsequent to the recordation of the Parcel Map, the applicant shall apply for a building permit for a description change of the subject project development from “duplex” to “condominium.” The development will not be condominiums until this permit is final. The building permit for the new construction shall not be final until after recordation of the parcel map.
3. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 19 (Subdivisions) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code.
4. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Building Worx Condominiums including, but not limited to, Tentative Parcel Map No. NP2018-032 and Coastal Development Permit No. CD2018-093 (PA2018-220). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

PUBLIC WORKS

5. A parcel map shall be recorded. The Map shall be prepared on the California coordinate system (NAD83). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**

6. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
7. All improvements shall be constructed as required by Ordinance and the Public Works Department.
8. All damaged sidewalk panels, curb, gutter and street along the Carnation Avenue property frontages and any damaged concrete alley panels along the alley property frontage shall be reconstructed as determined by the Public Works Department.
9. All existing overhead utilities shall be undergrounded.
10. All above ground improvements shall be prohibited within the 5-foot alley setback.
11. All existing private, non-standard improvements, including fencing, within the public right-of-way and/or extensions of private, non-standard improvements into the public right-of-way fronting the development site shall be removed.
12. New sod or low groundcovers of the type approved by the City throughout the Carnation Avenue parkway fronting the development site shall be installed.
13. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover.
14. An encroachment permit is required for all work activities within the public right-of-way.
15. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
16. The existing street tree shall be protected in place along the Carnation Avenue frontage.
17. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.

BUILDING

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

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

RESOLUTION NO. ZA2018-135

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2018-020 FOR A MASSAGE ESTABLISHMENT LOCATED AT 3520 IRVINE AVENUE (PA2018-201)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Yanqing Hao with respect to property located at 3520 Irvine Avenue, and legally described as Parcel 1, as shown on a map filed in Book 59, Page 4 of Parcel Maps in the City of Newport Beach, requesting approval of a minor use permit.
2. The applicant requests a minor use permit to allow the operation of a massage establishment. The establishment will provide two massage rooms, a customer waiting area, and an employee break room. Proposed hours of operation are 10:00 a.m. to 7:00 p.m., daily. Included is a request to waive location restrictions associated with massage establishments.
3. The subject property is located within the Commercial General (CG) Zoning District and the General Plan Land Use Element category is General Commercial (CG).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on November 29, 2018, in the Corona del Mar Conference Room (Bay E-1st floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.
2. This exemption authorizes minor alterations to existing structures involving negligible or no expansion of use. The proposed project involves alterations to the interior floor plan of an existing commercial space with no expansion in floor area.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The General Plan land use designation for this site is CG (General Commercial). The CG designation is intended to provide for a wide variety of commercial activities oriented primarily to serve Citywide or regional needs.
2. The proposed massage establishment is a commercial use intended to serve nearby residents and the surrounding community. Therefore, the use is consistent with this land use category.
3. The subject property is not part of a specific plan area.

Finding:

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

Facts in Support of Finding:

1. The subject property is located in the Commercial General (CG) Zoning District, which is intended to provide for areas appropriate or a wide variety of commercial activities oriented primarily to serve Citywide or regional needs.
2. A massage establishment is permitted with the approval of a minor use permit in the CG Zoning District. The establishment will provide services that support the surrounding neighborhood and the region.
3. Pursuant to Table 3-10 of 20.40.040 (Off-Street Parking Spaces Required), a massage establishment has a parking rate of one (1) space for every 200 square feet of gross floor area. The proposed massage use would occupy 925 square feet and require a total of five parking spaces. There is one other 900-square-foot tenant space at the building, which is used for property owner storage and therefore has a parking rate of one (1) space for every 250 square feet of gross floor area. There are nine total parking spaces required onsite, which are provided.
4. The proposed massage establishment is consistent with the legislative intent of Section 20.48.120 (Massage Establishments and Services) and Chapter 5.50 (Massage

Establishments) of the Municipal Code. These sections provide standards for the establishment, location, and operation of massage establishments operated as an independent use. The intent is to promote the operation of legitimate massage services and to prevent problems of blight and deterioration that may accompany and result from large numbers of massage establishments.

Finding:

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

Facts in Support of Finding:

1. The massage establishment will occupy a 925-square-foot tenant space in an existing commercial building. The operation will consist of two massage rooms, a customer waiting area, and an employee break room, all of which will fit within the existing commercial space.
2. The proposed hours of operation for the business are 10:00 a.m. to 7:00 p.m., daily. The surrounding uses are convenience markets, a gas station, car wash, and fast food restaurant. The facility has proposed hours of operation that are compatible with the allowed uses in the vicinity, as there will not be any late hours which may contribute to noise or blight in the area.
3. The project site and surrounding area consist of a mixture of offices, retail and service uses which serve residents and the surrounding community. There are some residential uses located on Birch Street, approximately 60 feet from the subject property. These residential uses are nonconforming and are located within the Business Park area of the Santa Ana Heights Specific Plan. The proposed massage establishment will provide a service that supports residents and visitors, consistent with the existing uses in the area.

Finding:

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

Facts in Support of Finding:

1. The subject property is located on Irvine Avenue, near commercial uses. The Newport Beach Golf Course is located across Irvine Avenue. The property contains one commercial building with two tenant spaces. The property does not have a street frontage, and the site is accessible via a 15-foot private ingress/egress easement through 3530 Irvine Avenue (Minute King Market). The parking lot provides parking and is conveniently located for patrons and employees.

2. Adequate public and emergency vehicle access, public services, and utilities are provided on the property and the proposed massage establishment will not change this.

Finding:

- E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

1. The use has been conditioned with typical daytime hours of operation that will minimize any potential detriment to the area.
2. The proposed massage establishment would provide additional services to the residents and visitors in the surrounding area.
3. The proposal has been reviewed by the Building and Code Enforcement Division, and Police Department and recommended conditions of approval have been included to limit any detriment to the City or general welfare of persons visiting or working in the surrounding neighborhood.

In accordance with Section 20.48.120.B (Massage Establishments and Services – Waiver of Location Restrictions) of the Newport Beach Municipal Code, the following findings and facts in support of such findings for a Minor Use Permit are set forth:

Finding:

- F. The proposed use will not be contrary to the public interest or injurious to nearby properties, and that the spirit and intent of this section will be observed.*

Facts in Supporting of Finding:

1. The intent of the section is to promote the operation of legitimate massage services and to prevent problems of blight and deterioration, which accompany and are brought about by large numbers of massage establishments that may act as fronts for prostitution and other illegal activity.
2. Although the massage establishment is located within 500 feet of other establishments offering massage, the establishment is located in a separate development and is sufficiently separated from the other massage services, the closest of which is located 200 feet away, at 20101 Southwest Birch Street Suite 110.
3. There will be no late hours of operation, as the proposed hours are 10:00 a.m. to 7:00 p.m., daily.

4. A condition of approval is included to ensure the applicant will obtain an Operator's Permit from the Newport Beach Police Department in compliance with Chapter 5.50 (Massage Establishments) of the Newport Beach Municipal Code prior to continuation of the business.

Finding:

G. The proposed use will not enlarge or encourage the development of an urban blight area.

Fact in Supporting of Finding:

1. The proposed use is located in a one tenant space within a two-tenant building. The subject property is located behind an existing convenience market, however it is proposed to operate with typical daytime hours, and is intended to provide a service that supports the surrounding residents and visitors to Newport Beach.

Finding:

H. The proposed use will not adversely affect a religious institution, school, park, or playground.

Fact in Supporting of Finding:

1. There are no religious institutions, schools, parks, or playgrounds in the immediately surrounding area. The nearest religious institution is located approximately 4,500 feet away on Monte Vista Avenue in Costa Mesa. The closest school is located approximately 1,100 feet away on Cypress Street, which is within a residential area of the Santa Ana Heights Specific Plan. The closest park and playground is located approximately 6,000 feet away in Costa Mesa. The property is also located approximately 3,500 feet away from the Peter and Mary Muth Interpretive Center.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2018-020 (PA2018-201), subject to the conditions set forth in Exhibit "A", which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 29TH DAY OF NOVEMBER 2018.



Patrick J. Alford, Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL**

1. The development shall be in substantial conformance with the approved site plan and floor plans stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Minor Use Permit.
3. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval
4. This Minor Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
5. The hours of operation for the establishment shall be limited to 10:00 a.m. through 7:00 p.m., daily.
6. Any change in operational characteristics, expansion in area, expansion to hours of operation, or other modification to the approved plans, shall require an amendment to this Minor Use Permit or the processing of a new use permit.
7. If applicable, 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.
8. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner, or the leasing agent.
9. 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.
10. 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.
11. All employees shall park onsite.

12. There shall be a maximum of two massage therapists working onsite at any time.
13. A maximum of two rooms shall be used for massage therapy.
14. The owner, operator, or responsible manager's contact information for the massage establishment shall be provided to the City of Newport Beach Code Enforcement Division.
15. The names of employees shall be posted upon entry and contact information and list of state certifications shall be provided upon request. A current list of employees shall be kept onsite and maintained at all times.
16. All windows (except treatment room windows) shall remain visible and transparent in nature. Window signage shall comply with the City of Newport Beach Municipal Code.
17. The facility shall be maintained in a safe and sanitary condition.
18. No alcohol shall be served or offered onsite.
19. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Coastal Body Care including, but not limited to, Minor Use Permit No. UP2018-020 (PA2018-201). 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.

Police Department

20. Strict adherence to Newport Beach Municipal Code 5.50 must be upheld.
21. The applicant business must apply for and obtain an Operator's Permit from the Chief of Police, and keep said permit in good standing.
22. All employees of the applicant business who conduct massage on or off premises must be certified by the CAMTC (physicians, physical therapists, and chiropractors exempt).
23. As outlined in Newport Beach Municipal Code 5.50.030, the business must maintain requirements of operation, and submit to inspections by officers of the Police Department.

Code Enforcement

- 24. All exterior windows must be transparent.
- 25. All proposed signs shall be in compliance with Newport Beach Municipal Code Chapter 20.42 (Signs).

Building Division

- 26. Revisions to parking facilities must illustrate compliance with Section 11B-202 California Building Code (CBC)
- 27. If applicable, accessible path of travel must be illustrated on approved building plans.