



**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 April 12, 2019.

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**ZONING ADMINISTRATOR ACTIONS  
APRIL 11, 2019**

Item 1: 2007 Flanagan Family Trust Residence Coastal Development Permit No. CD2018-103 (PA2018-249)  
Site Address: 7006 West Ocean Front

Action: Approved by Resolution No. ZA2019-033	Council District	1
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APPEAL PERIOD: An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

## RESOLUTION NO. ZA2019-033

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2018-103 TO DEMOLISH AN EXISTING RESIDENTIAL DUPLEX AND CONSTRUCT A NEW THREE-STORY SINGLE-FAMILY RESIDENCE AND ATTACHED TWO-CAR GARAGE LOCATED AT 7006 WEST OCEAN FRONT (PA2018-249)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Ritner Group, Inc., on behalf of property owner 2007 Flanagan Family Trust, with respect to property located at 7006 West Ocean Front, requesting approval of a coastal development permit.
2. The lot at 7006 West Ocean Front is legally described as Lot 4 in Block J of Seashore Colony Tract.
3. The applicant proposes a coastal development permit to allow the demolition of an existing duplex and construction of a new three-story, 2,629-square-foot, single-family residence with an attached 450-square-foot, two-car garage. The project includes landscape, hardscape, accessory structures, and subsurface drainage facilities all within the confines of private property. The design complies with all applicable development standards and no deviations are requested.
4. The subject property is designated RT (Two-Unit Residential) by the General Plan Land Use Element and is located within the R-2 (Two-Unit Residential) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RT-E (Two-Unit Residential – 30.0-39.9 DU/AC) and it is located within the R-2 (Two-Unit Residential) Coastal Zoning District.
6. A public hearing was held on April 11, 2019, 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 13503, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (Construction or Conversion of Small Structures), because it has no potential to have a significant effect on the environment.

2. Class 3 exempts the demolition of up to three single-family residences and additions of up to 10,000 square feet to existing structures. The proposed project consists of the demolition of a residential duplex and the construction of a new 2,629-square-foot single-family residence and attached 450-square-foot two-car garage.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

### SECTION 3. REQUIRED FINDINGS.

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

#### Finding:

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

#### Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
  - a. The maximum floor area limitation is 3,120 square feet and the proposed floor area is 3,079 square feet.
  - b. The proposed development provides the minimum required setbacks, which are 5 feet along the front property line abutting West Ocean Front, 3 feet along each side property line and 5 feet along the rear property line abutting the alley.
  - c. The highest guardrail is less than 24 feet from established grade (13.56 feet North American Vertical Datum of 1988 [NAVD88]) and the highest ridge is no more than 29 feet from established grade, which comply with the maximum height requirements.
  - d. The project includes garage parking for a total of two vehicles, complying with the minimum two-car garage parking requirement for single-family residences with less than 4,000 square feet of habitable floor area.
2. The neighborhood is predominantly developed with two- and three-story, single-family and two-unit residences. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development.

3. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by William Simpson & Associates, Inc, dated March 19, 2019 for the project. The report concludes that the proposed project is reasonably safe from shoreline erosion due to the lack of wave or wakes that can erode sand from the beach. The report also concludes that the project will be reasonably safe from future sea level rise assuming an increase up to 10.6 feet NAVD88 (the likely range for sea level rise over 75-year design life of the structure based on low risk aversion estimates for sea level rise provided by the State of California, Sea Level Rise Guidance: 2018 Update). The finished floor elevation of the first floor of the proposed structure is 13.78 feet (NAVD88), which complies with the minimum 9.0-foot (NAVD88) elevation standard for new structures and exceeds the minimum requirements for sea level rise (10.6 feet NAVD88).
4. Pursuant to NBMC Section 21.30.030(C)(3)(i)(iv), the property owner will be required to enter into an agreement with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction by coastal hazards (e.g., waves, erosion, and sea level rise). The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c). Both requirements are included as conditions of approval that will need to be satisfied prior to the issuance of building permits for construction.
5. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
6. The property is located adjacent to the beach and approximately 420 feet from the ocean. A Construction Erosion Control Plan was provided to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived by construction chemicals and materials. The project design also addresses water quality through the inclusion of a post-construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event run-off on-site. Any water not retained on-site is directed to the City's storm drain system.
7. Proposed landscaping complies with NBMC Section 21.30.075. A condition of approval is included that requires drought-tolerant species. Prior to issuance of building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
8. The public beach is directly in front of the subject property, with views oriented towards the Pacific Ocean. Additional access and views are provided at the street ends of Highland Street and Grant Street, less than 100 feet from the subject property. Along this area in the public right-of-way are City planters and walls that were permitted pursuant to the Title 21

Appendix C (Oceanfront Encroachment Policy Guidelines). This area is maintained by the City and the planting heights are limited by this policy.

Finding:

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

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline; however, the project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities. The existing residential development neither provides nor inhibits public coastal access. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project replaces an existing residential duplex with a new single-family residence. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities.
2. The project is designed and sited so as not to block or impede existing public access opportunities and development will occur within the confines of private property. Existing coastal access conditions will not be affected. Coastal access is currently provided and will continue to be provided by street ends throughout the Balboa Peninsula with access to the beach and water.
3. The project site is not located adjacent to a coastal view road or public viewpoint, as identified in the Coastal Land Use Plan. The project site is located adjacent to a public beach. The project site may be located within the viewshed of distant public viewing areas. However, the project will replace an existing residential duplex with a new single-family residence that complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing and anticipated neighborhood pattern of development. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to public views.
4. The existing 15-foot encroachment of the patio is allowed pursuant to Title 21 Appendix C (Oceanfront Encroachment Policy Guidelines) and is conditioned to require an encroachment permit from Public Works to be maintained consistently. The existing patio does not affect public views or access to the public beach.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2018-103, 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 Program 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 11<sup>TH</sup> DAY OF APRIL, 2019.**



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Patrick J. Alford, Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. This Coastal Development Permit does not authorize any development seaward of the private property, including the West Ocean Front Encroachment Area.
3. Existing patio improvements within the West Ocean Front Encroachment Area shall be maintained consistent with the existing encroachment permit and Title 21, Appendix C (Oceanfront Encroachment Policy Guidelines). Any new development shall require a coastal development permit or otherwise be authorized by the California Coastal Commission, unless the development is exempt from coastal development permit requirements pursuant to certified LCP Implementation Plan Section 21.52.035 and the Coastal Act.
4. Any new development within the existing 15-foot deep encroachment area authorized by the existing encroachment permit shall require a new encroachment permit issued by the Public Works Department and a coastal development permit or other authorization by California Coastal Commission, unless the development is exempt from coastal development permit requirements pursuant to certified LCP Implementation Plan Section 21.52.035 and the Coastal Act.
5. An encroachment permit shall be maintained as required from the Public Works Department for the existing 15-foot patio encroachment, pursuant to Title 21, Appendix C (Oceanfront Encroachment Policy Guidelines).
6. If future changes to the patio encroachment are determined by the Coastal Commission to be located within its permit jurisdiction, authorization from the Coastal Commission shall be required.
7. Prior to final building permit inspection, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices to address the threat of damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards that may affect the property, or development of the property, today or in the future. The agreement shall be binding against the property owners and successors and assigns.
8. 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. The letter shall be scanned into the plan set prior to building permit issuance.

9. 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. No demolition or construction materials shall be stored on the boardwalk area or other public property.
10. Prior to the issuance of a building permit, the applicant shall submit a construction management plan, reviewed and approved by the Public Works Department, demonstrating the applicant will have sufficient and guaranteed access to the site through private property and will not impact public access. Said plan shall also indicate areas for the storage of construction equipment and materials.
11. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
12. This Coastal Development Permit does not authorize any development seaward of the private property.
13. The applicant is responsible for compliance with the Migratory Bird Treaty Act. In compliance with the (MBTA), grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of Native Birds pursuant to MBTA:
  - a. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.
  - b. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
14. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Erosion Control Plan.



15. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
16. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stock piles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
17. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
18. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
19. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
20. 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.
21. 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.
22. Prior to the issuance of a building permit, the applicant shall submit a final construction erosion control plan. The plan shall be subject to the review and approval by the Building Division.
23. Prior to the issuance of a building permit, the applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.
24. Prior to the 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.
25. Prior to the issuance of a building permit, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Coastal Development Permit file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The

plans shall accurately depict the elements approved by this Coastal Development Permit.

26. Prior to the issuance of a building permit, the applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought-tolerant plantings, non-invasive plant species and water-efficient irrigation design. The plans shall be approved by the Planning Division.
27. 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.
28. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
29. 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.
30. This Coastal Development Permit No. CD2018-103 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.
31. 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 2007 Flanagan Family Trust Residence including, but not limited to, Coastal Development Permit No. CD2018-103 (PA2018-249). 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.