



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 May 17, 2019.

ZONING ADMINISTRATOR ACTIONS MAY 16, 2019

- Item 1: Annual Review of Uptown Newport Development Agreement No. DA2012-003 (PA2014-039)
Site Address: 4311-4321 Jamboree Road
- | | | |
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| Action: The Zoning Administrator found that Uptown Newport Development Agreement Annual Review was in good faith compliance with the terms of the Development Agreement. | Council District | 3 |
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- Item 2: Tida Thai Day Spa Minor Use Permit No. UP2019-013 (PA2019-030)
Site Address: 3848 Campus Drive, Unit 105
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| Action: Approved by Resolution No. ZA2019-035 | Council District | 3 |
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- Item 3: Argent LLC Lot Merger No. LM2018-006 (PA2018-261)
Site Address: 1601 East Bay Avenue (APN 048 231 40 and 048 231 41)
- | | | |
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| Action: Continued to 05/30/2019 Meeting | Council District | 1 |
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- Item 4: Ackerman Residence Coastal Development Permit No. CD2019-006 (PA2019-008)
Site Address: 2016 East Ocean Front
- | | | |
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| Action: Approved by Resolution No. ZA2019-037 | Council District | 1 |
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- Item 5: Sessions Sandwiches Patio Expansion Coastal Development Permit No. CD2018-094 and Minor Use Permit No. UP2018-022 (PA2018-241)
Site Address: 2823 Newport Boulevard
- | | | |
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| Action: Referred to the Planning Commission | Council District | 1 |
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- Item 6: 717 Marigold Partners, LLC Residential Condominiums Tentative Parcel Map No. NP2019-002 (PA2019-041)
Site Address: 717 Marigold Avenue
- | | | |
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| Action: Approved by Resolution No. ZA2019-039 | Council District | 6 |
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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.

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

RESOLUTION NO. ZA2019-035

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2019-013 FOR A MASSAGE USE LOCATED AT 3848 CAMPUS DRIVE, UNIT 105 (PA2019-030)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Wallada Corp, with respect to property located at 3848 Campus Drive, Unit 105 and legally described as Lot 10 of Tract 3201, requesting approval of a minor use permit.
2. The applicant proposes a minor use permit to allow the operation of a massage establishment within an existing tenant suite. No construction is proposed. The establishment will provide six (6) massage rooms, a customer waiting area, and an employee break room. A maximum of three (3) massage technicians will provide the massage service at any given time. The proposed hours of operation are 9:00 a.m. to 8:30 p.m., daily. Included is a request to waive location restrictions associated with massage establishments.
3. The subject property is designated Airport Office and Supporting Uses (AO) by the General Plan Land Use Element and is located within the Office Airport (OA) Zoning District.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on May 16, 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 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 in an existing tenant space and does not result in an intensification of use, parking, or expansion in floor area.

SECTION 3. REQUIRED FINDINGS.

In accordance with [Section 20.52.020.F \(Conditional Use Permits and Minor Use Permits\)](#) 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 property is designated Airport Office and Supporting Uses (AO) in the Land Use Element of the General Plan. This designation is intended to provide for the development of properties adjoining the John Wayne Airport for uses that support or benefit from airport operations. These may include professional offices, aviation uses, and ancillary retail, restaurant, and service uses.
2. The proposed massage use is consistent with the AO designation as it will provide services that support the surrounding commercial uses and the region at large.
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 Municipal Code.

Facts in Support of Finding:

1. The subject property is located in the Office Airport Zoning District, which is intended to provide for uses that support or benefit from airport operations. These may include corporate and professional offices, accessory retail, restaurant, service uses, etc.
2. Pursuant to Table 2-4 of [Newport Beach Municipal Code Section 20.22.020 \(Commercial Zoning Districts Land Uses and Permit Requirements\)](#), a massage use is a personal services use that may be permitted in the OA Zoning District subject to the approval of a minor use permit.
3. Pursuant to Table 3-10 of [Newport Beach Municipal Code Section 20.40.040 \(Off-Street Parking Spaces Required\)](#), the City may establish the parking requirement for a massage establishment through the use permit process. Although six (6) massage rooms are provided, the project has been conditioned to limit a maximum of three (3) massage technicians providing massage services at any given time. In addition, the couple's massage room, often servicing customers who utilize a single vehicle, is predicted to lighten parking demand. Lastly surveys of the parking lot revealed that

on average, 32 percent of the spaces in the 76-space parking lot were vacant during weekday peak hours ensuring that adequate parking is available throughout the day. Based on the proposed operation as conditioned and the availability of parking, a rate of one (1) parking space for every 250 square feet is appropriate in this case. The recommended parking requirement is the same standard required of the previous office use; therefore, the proposed change does not result in an intensification of use and no additional parking is required.

4. Considering these conditions, along with the other low-impact operational characteristics of the use, evidence exists to support that the proposed use will ultimately result in a similar parking demand to the prior professional office use. A condition of approval is included to ensure that the project continues to provide one (1) parking space per 250 square feet of floor area.
5. 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 Newport Beach 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 proposed massage operation will occupy a 1,711-square-foot tenant space in an existing two (2)-story commercial building. The operation will consist of six (6) potential massage rooms, a customer waiting area, and an employee breakroom; all of which are included in the existing commercial space.
2. The proposed hours of operation for the business are between 9:00 a.m. and 8:30 p.m., seven (7) days a week. The neighboring uses consist of offices, storage, vehicle service, a sandwich shop, various personal services, and fitness facilities. The project's proposed hours of operation 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. The proposed massage use 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 Campus Drive in the Airport Area, near commercial uses and next to the southern boundary of John Wayne Airport. The property contains one (1) two (2)-story building with multi-tenant spaces. The site is accessible via the driveways on Campus Drive and Quail Street. The parking lot that encompasses the tenant building provides adequate parking and is conveniently located for patrons and employees.
2. A parking survey illustrates that the 76 spaces are adequate to accommodate parking demand for patrons and employees of the multi-tenant building. The proposed massage establishment will not result in an intensification of use and will not require the provision of additional parking.
3. 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 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 effects to the City or 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 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 Support 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 another establishment offering massage services, it is located in a separate development and is sufficiently separated from other massage services, the closest of which is located approximately 470 feet away at 3900 Birch Street, Suite 101.
3. There will be no late hours of operation, as the proposed hours are 9:00 a.m. to 8:30 p.m., seven (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.

Fact in Support 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. Additionally, there are no residential uses within the surrounding area.

Finding:

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

Facts in Support of Finding:

1. The proposed use is located adjacent to John Wayne Airport and commercial uses. There are no public or private schools, playgrounds, or religious institutions within 500 feet of the subject property.
2. The subject property has adequate lighting and is visible from Campus Drive and Quail Street.
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. UP2019-013 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 16TH DAY OF MAY, 2019.



Patrick J. Alford, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

(Project-specific conditions are in italics)

PLANNING

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval, except as modified by applicable conditions of approval.
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. *This approval does not authorize any unpermitted improvements. Any unpermitted improvements shall be removed or a building permit shall be obtained for the work.*
4. *This approval does not authorize a "personal services, restricted" land use such as a day spa (as defined by the City of Newport Beach Zoning Code Section 20.70.020 Definitions).*
5. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Minor Use Permit.
6. 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.
7. *All signs shall conform to the provisions of Chapter 20.42 of the Municipal Code.*
8. *Minor Use Permit No. UP2019-013 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.*
9. 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 Minor Use Permit.
10. The facility shall be maintained in a safe and sanitary condition.
11. No alcohol shall be served or offered on-site.
12. Violations of the Penal Code may invoke revocation of this permit.

13. *The hours of operation shall be limited to between 9:00 a.m. to 8:30 p.m., daily (maximum).*
14. *A maximum of three (3) massage technicians shall perform massage services at any given time.*
15. 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.
16. 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.
17. 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 Tida Thai Day Spa including, but not limited to, Minor Use Permit No. UP2019-013 (PA2019-030). 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

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

CODE ENFORCEMENT

22. 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.
23. 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 on-site and maintained at all times.
24. 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.

RESOLUTION NO. ZA2019-037

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2019-006 TO CONSTRUCT A 334-SQUARE-FOOT, ATTACHED STORAGE AREA (BICYCLE GARAGE) WITH A 414-SQUARE-FOOT LIVING AREA ABOVE AT 2016 EAST OCEAN FRONT (PA2019-008)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Mark Becker, Inc., with respect to property located at 2016 Ocean Front, and legally described as Lot 5 and a portion of Lot 4 of Tract 518, requesting approval of a coastal development permit.
2. The applicant requests a coastal development permit to construct a 334-square-foot, attached storage area (bicycle garage) with a 414-square-foot living area above.
3. The subject property is located within the R-1 (Single-Unit Residential) Zoning District and the General Plan Land Use Element category is RS-D (Single-Unit Residential Detached).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-C (Single Unit Residential Detached) (10.0 - 19.9 DU/AC) and the Coastal Zone District is R-1 (Single-Unit Residential).
5. A public hearing was held on May 16, 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 from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines.
2. Class 1 includes additions to existing structures where the additions will not result in an increase of more than 50 percent of the floor area of the structure before the additions, or 2,500-square-feet, whichever is less. The proposed project includes the addition of a 334-square-foot, attached storage area (bicycle garage) with a 414-square-foot living area above, to an existing 2,237-square-foot, single-family residence and attached 440-square-foot, two-car garage. The proposed additions total less than 2,500-square-feet and less than 50 percent of the existing structure.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The subject property is currently developed with an existing 2,237-square-foot, single-family residence and attached 440-square-foot, two-car garage on an existing lot designated for residential development by the Local Coastal Program.
2. The proposed additions conform to all applicable development standards, including setbacks and height. The ground level storage area and second level living area above comply with the minimum required setbacks of 10 feet along the front property line abutting East Ocean Front, 4 feet along the side property line and 0 feet along the rear property line abutting the alley. The height of the new roofline is approximately 28 feet 11 inches, which is below the 29-foot maximum height limit.
3. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development and expected future development consistent with applicable development standards as the neighborhood is predominantly developed with one- and two-story, single-family residences.
4. A Coastal Hazards and Wave Runup Study was prepared by GeoSoils, Inc., dated March 11, 2019 for the project. The report concludes that the long-term shoreline erosion rate is small, if any long-term erosion occurs at all. Assuming a conservative future erosion rate of 40 feet for every one-foot of sea level rise (SLR), the shoreline would move approximately 128 feet over the life of the development and experience 3.2 feet of SLR. A beach width of approximately 272 feet would remain, and 200 feet of beach width is recognized by coastal engineers as sufficiently wide to protect landward development. The GeoSoils study therefore also concludes that coastal hazards will not impact the property over the next 75 years and there is no anticipated need for a shore protection device over the life of the proposed development.
5. Pursuant to Newport Beach Municipal Code (NBMC) Section 21.30.030(C)(3)(i)(iv), the property owner will be required to enter into an agreement with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction by coastal hazards (e.g., waves, erosion, and sea level rise). The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c). Both requirements are included as conditions of approval that will need to be satisfied prior to the issuance of building permits for construction.

6. The property is located in an area known for the potential for 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 a building permit. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance
7. The project design addresses water quality with a construction erosion control plan 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.

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 includes modest additions to an existing single-family residence. 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 existing development does not block or impede existing public access opportunities and occurs within the confines of private property. Existing coastal access conditions will not be affected with the alteration and expansion. Coastal access is currently provided and will continue to be provided by street ends throughout the neighborhood with access to the beach and water.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2019-006, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.

2. This action shall become final and effective 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 16th DAY OF MAY, 2019.



Patrick J. Alford, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
3. Coastal Development Permit No. CD2019-006 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.
4. Prior to 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.
5. Prior to the issuance of a building permit, the property owner shall sign 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, judgements, 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.
6. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
7. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Coastal Development Permit.
8. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare

or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.

9. 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.
10. 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.
11. No demolition or construction materials, equipment debris or waste shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain, or result in impacts to environmentally sensitive habitat areas, streams, wetland or their buffers.
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. 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 Ackerman Residence including, but not limited to, Coastal Development Permit No. CD2019-006 (PA2019-008). 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. ZA2019-039

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2019-002 FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 717 MARIGOLD AVENUE (PA2019-041)

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 717 Marigold Avenue, and legally described as Lot 17, Block 739 of the Corona Del Mar Tract requesting approval of a tentative parcel map.
2. The applicant proposes a tentative parcel map for condominium purposes. No waivers of development standards are requested. A single-family residence has been demolished and a new duplex is currently under construction. The Tentative Parcel Map would allow each unit to be sold individually. No waivers of Title 19 (Subdivisions) are proposed.
3. The subject property is designated RT (Two-Unit Residential) by the General Plan Land Use Element and is located within the R-2 (Two-Unit Residential) Zoning District.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on May 16, 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 exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment.
2. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. Therefore, the proposed parcel map is eligible for 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 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:

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

Facts in Support of Finding:

1. The Tentative Parcel Map is for two-unit residential condominium purposes. A single-family residence has been demolished and 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 Marigold Avenue frontage, as needed, as well as the undergrounding of utilities, consistent with the Subdivision Code (Title 19).

Finding:

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

Facts in Support of Finding:

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

Finding:

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

considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.

Facts in Support of Finding:

1. A single-family residence has been demolished and a new two-unit dwelling is currently under construction.
2. The property is located in an urbanized area that does not contain any sensitive vegetation or habitat on-site.
3. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines. .

Finding:

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

Fact in Support of Finding:

1. The Tentative Parcel Map is for 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:

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

Fact in Support of Finding:

1. The Public Works department has reviewed the proposed parcel map and determined that 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 no public easements are located on the property.

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Fact in Support of Finding:

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

Finding:

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

Fact in Support of Finding:

1. The 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:

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

Fact in Support of Finding:

1. The residential building under construction has been designed to have wastewater discharge into the existing sewer system and complies with the Regional Water Quality Control Board (RWQCB) requirements.

Finding:

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

Fact in Support of Finding:

1. The subject property is not located within the coastal zone.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2019-002, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
2. This action shall become final and effective 10 days after the adoption of this Resolution unless within such time an appeal or call for review is filed with the Director of Community Development in accordance with the provisions of Title 19 Subdivisions, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 16th DAY OF MAY, 2019.



Patrick 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. 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 Tentative Parcel Map.
4. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 19 Subdivisions of the Newport Beach Municipal Code.
5. Prior to recordation of the Parcel Map, a park fee shall be assessed for one additional dwelling unit.
6. 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 717 Marigold Partners, LLC Residential Condominiums including, but not limited to Tentative Parcel Map NP2019-002 (PA2019-041). 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

7. A Parcel Map shall be recorded. The map shall be prepared on the California coordinate system (North American Datum of 1983, 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 Subdivisions 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.**

8. 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.
9. All improvements shall be constructed as required by Ordinance and the Public Works Department.
10. All damaged sidewalk panels, curb, gutter, and street along the Marigold Avenue property frontage and any damaged concrete alley panels along the alley property frontage shall be reconstructed as determined by the Public Works Department.
11. All existing overhead utilities shall be undergrounded.
12. No above ground improvements will be permitted within the 5-foot rear alley setback. Smooth transitions between neighboring properties shall be provided.
13. New sod or low groundcovers of the type approved by the City shall be installed throughout the Marigold Avenue parkway fronting the development site.
14. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover.
15. An encroachment permit shall be required for all work activities within the public right-of-way.
16. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
17. The existing street trees along the Marigold Avenue frontage shall be protected in place.
18. All existing private improvements within the Marigold Avenue right of way shall be removed, including but not limited to, walls, decorative walkways and loose rock/gravel.
19. In case of damage done to public improvements surrounding the development site by private construction, additional reconstruction within the public right-of-way shall be required at the discretion of the Public Works Inspector.