



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 August 30, 2019.

ZONING ADMINISTRATOR ACTIONS AUGUST 29, 2019

Item 1: Arc Butcher and Baker Minor Use Permit No. UP2019-026 (PA2019-105)
Site Address: 417 30th Street

Action: Approved by Resolution No. ZA2019-057	Council District	1
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Item 2: Fluter Residence Coastal Development Permit No. CD2019-034 (PA2019-140)
Site Address: 1808 and 1808 1/2 West Ocean Front

Action: Approved by Resolution No. ZA2019-058	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.

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

RESOLUTION NO. ZA2019-057

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2019-026 TO CONVERT AN EXISTING TAKE-OUT SERVICE EATING AND DRINKING ESTABLISHMENT TO A FULL SERVICE EATING AND DRINKING AND ESTABLISHMENT LOCATED AT 417 30TH STREET (PA2019-105)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by DSH Industries, LLC on behalf of Marin Howarth Von Blom and Noah Von Blom, owners, with respect to property located at 417 30th Street, and legally described as Parcel 1 of Lot Line Adjustment No. 94-8 requesting approval of a minor use permit.
2. The applicant proposes a minor use permit to convert an existing take-out service limited eating and drinking establishment into a full-service eating and drinking establishment. The change to the existing establishment includes adding 4 seats and a Type 41 Alcoholic Beverage Control License (Type 41). The hours of operation at 7:00 a.m. to 10:00 p.m. will remain consistent with the existing operation.
3. The subject property is located in the Mixed-Use Cannery Village/15th Street (MU-CV/15TH ST) Zoning District and the General Plan Land Use Element category is Mixed Use Horizontal (MU-H4).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Mixed-Use Horizontal (MU-H) and it is located within the Mixed-Use Cannery Village/15th Street (MU-CV/15th St) Coastal Zone District. The project is exempt from the requirements of a Coastal Development Permit (CDP) because the addition of 4 seats is negligible, no expansion in floor area, no additional parking is required, and the addition of alcohol sales is intended as a convenience for on-site patrons therefore, the proposed changes are not considered an intensification of use
5. A public hearing was held on August 29, 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 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. The proposed project involves minor interior improvements to an existing eating and drinking establishment and involves no expansion in floor area or change in parking requirement.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.48.030 (Alcohol Sales) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a use permit are set forth:

Finding

- A. *The use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code.*

Facts in Support of Finding

In finding that the proposed use is consistent with Section 20.48.030 (Alcohol Sales) of the Zoning Code, the following criteria must be considered:

- i. *The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.*
 1. The crime rate in the subject reporting district (RD 15) as well as two of the three adjacent RDs (Reporting Districts) are over the City average. RD 15 contains the large commercial shopping center known as The Landing at 32nd Street and Balboa Boulevard and much of Via Lido and Balboa Boulevard. The purpose of the Zoning of these beach areas is to provide various commercial and retail uses to support the surrounding residential area as well as the surrounding tourist destinations. Therefore, these beach areas with a higher concentration of commercial land uses tend to have a higher crime rate than adjacent RDs.
- ii. *The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*
 1. Due to the high concentration of commercial land uses, the calls for service and number of arrests are greater than adjacent RDs. Additionally, this is the beach area that is considered one of the most significant tourist areas of the City.
- iii. *The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.*

1. The commercial building is within a mixed-use area with residential and various commercial services including offices, personal services, retail, and eating and drinking establishments of a similar nature. The residential uses are intermixed amongst these uses, mostly on second floors. The neighborhood is intended and designed for mixed residential and commercial uses. There are no parks nearby. There is one church more than 600 feet north. Other sensitive land uses above are not located within close proximity of the subject building.
- iv. *The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.*
1. Several other establishments along 32nd Street, Balboa Boulevard and Via Lido currently have active ABC Licenses, most of which are bona fide eating and drinking establishments and are not defined as bars, lounges or nightclubs by the Zoning Code. Approximately 150 feet across 30th Street on the south corner of 30th Street and Newport Boulevard is Helmsman Ale House (formerly Newport Brewing Company). On the opposite corner is Porro Vita Juice store. North of Porro Vita along Newport Boulevard is Mama Ds. Across Newport Boulevard is Malarky's (the only bar in the vicinity). North of Malarkeys is The Landing Shopping Center with Chipotle Gina's Pizza, Chihuahua, Sambazon and Poke Café.
 2. Due to the type and operation of the restaurant which is conditioned to close at 10:00 p.m. with only 10 seats, and the appropriate conditions are in place to prevent the restaurant from operating as a bar or lounge, the proximity to other establishments does not appear to create foreseeable concern.
- v. *Whether or not the proposed amendment will resolve any current objectionable conditions*
1. The subject building has historically been occupied by a small take-out service eating and drinking establishment with a similar amount of seats and hours of operation. There is no evidence that suggests this type of use has created objectionable conditions.

Minor Use Permit

In accordance with Section 20.52.020.F (Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a minor use permit 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 designates the site as Mixed Use Horizontal (MU-H4) which applies to areas where it is the intent to establish a cohesively developed district or neighborhood containing multi-unit residential dwelling units with clusters of mixed-use and/or commercial structures on interior lots of Cannery Village and 15th Street on Balboa Peninsula.
2. The proposed addition of alcohol service and 4 additional seats to the existing restaurant use is consistent with the (MU-H4) designation as it is intended to provide a service not only to visitors, but also to residents within the immediate neighborhood and surrounding area.
3. Several mixed-use structures including office, personal service, and eating and drinking establishment uses exist nearby and are complementary to the surrounding commercial and residential uses.
4. The subject property is not part of a specific plan area.

Finding

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

Facts in Support of Finding

1. The property is located in the Mixed-Use Cannery Village/15th Street (MU-CV/15TH ST) Zoning District. The proposed changes to convert the existing take-out service eating and drinking establishment into a full service eating and drinking establishment by adding 4 additional seats and alcohol service is a permitted use subject to the approval of a minor use permit pursuant to Newport Beach Municipal Code Section 20.22.020 (Mixed-Use Zoning Districts Land Uses and Permit Requirements).
2. Required parking is adequately provided within the eight space parking lot on-site. The food service eating and drinking establishment is required at 1 space per 30-50 sf (square feet) of net public area (NPA). In this case, a parking requirement of 1 space per 40 sf of NPA ($298/40 = 7.45$) is appropriate, which results in the same number of spaces (8) that were required of the previous take-out service limited use. Therefore, there is no intensification of use and the existing onsite parking complies with the Zoning Code. The 1 space per 40 square feet of net public area is appropriate for this type of use based on several physical design and operational characteristics. For example, there are only 4 tables and 10 seats included on the floor plan and the net public area is only 298 square feet. The existing operation includes take-out service which will be maintained and does add some added turn-over that is shared within that net public area. The project does not include outdoor

- dining, and does not have opportunities for future outdoor dining. Lastly, the project is conditioned to prohibit live entertainment and dancing with no late hours.
3. As conditioned, the proposed project will comply with Zoning Code standards for eating and drinking 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 existing establishment consists of 298 square feet of net public area, kitchen facilities, indoor storage and washing areas, a restroom, dedicated wash down area that will drain directly into the sewer system, and a covered trash enclosure with gate. There is no construction or change to the floor plan proposed with this application except for the addition of 4 seats for a total of 10 seats. A maximum of four employees will be present at any one time.
2. The operation of the restaurant will continue to be restricted to the hours between 7:00 a.m. and 10:00 p.m., daily. These hours are consistent with the business hours of other restaurants and uses in the commercial area.
3. The existing restaurant is located within an existing single-story building accessible from 30th Street and the alley at the rear, which provides convenient access to motorists, pedestrians, and bicyclists.
4. The surrounding area contains various, retail, business office and visitor serving commercial uses including restaurants and take-out eating establishments. The existing restaurant is compatible with the existing and permitted uses within the area.
5. The operational conditions of approval relative to the sale of alcoholic beverages will help ensure compatibility with the surrounding uses and minimize alcohol related impacts. The project has been conditioned to ensure that the business remains a restaurant and does not become a bar or tavern. Additionally, dancing or live entertainment is not permitted.

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; and*

Facts in Support of Finding

1. The restaurant is currently in operation and the tenant space has been reviewed and permitted.

2. Original site plan approvals for the tenant space included a review to ensure adequate public and emergency vehicle access, and that public services, and utilities are provided. The tenant improvement plans were reviewed for compliance with applicable building and fire codes.

Finding

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

Facts in Support of Finding

1. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.
2. The food service, eating and drinking establishment will serve the surrounding community in a commercial area designed for such uses. The service of alcohol is provided as a public convenience and is not uncommon in establishments of this type. Additionally, the service of alcohol will provide an economic opportunity for the property owner to maintain a successful business that is compatible with the surrounding community.
3. All owners, managers, and employees selling or serving alcohol will be required to complete a Responsible Beverage Service Certification Program.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this Project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2019-026, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
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 20 Planning and Zoning, of the Newport Beach Municipal Code.

4. This resolution supersedes Zoning Administrator Resolution No. ZA2016-006, which upon vesting of the rights authorized by this [application], shall become null and void.

PASSED, APPROVED, AND ADOPTED THIS 29th DAY OF AUGUST, 2019.



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Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL****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 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 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 is materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
4. Any change in operational characteristics, expansion in net public area beyond 298 square feet, or other modifications to the approved plans, shall require an amendment to the Minor Use Permit or the processing of a new use permit.
5. 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.
6. Seating for the eating and drinking establishment shall be limited to a maximum of 10 patrons.
7. The hours of operation shall be limited to between 7:00 a.m. and 10:00 p.m. daily.
8. Employees shall park on-site and utilize parking spaces at the rear of the property. Eight (8) parking spaces shall be maintained on-site.
9. A maximum of four (4) employees shall be on-site at any one time.
10. A dedicated wash-out area for refuse containers and kitchen equipment, with minimum useable area dimensions of 36-inches wide, 36-inches deep and 72-inches high, shall be provided, and the area shall drain directly into the sewer system, unless otherwise approved by the Building Director and Public Works Director in conjunction with the approval of an alternate drainage plan.
11. A valid business license from the City of Newport Beach with a sellers permit shall be required prior to start of business. Any contractors/subcontractors doing work at the subject

site shall be required to obtain a valid business license from the City of Newport Beach prior to the commencement of any work on the subject site.

12. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
13. All proposed signs shall conform to Title 20, Chapter 20.42 (Sign Standards) of the Newport Beach Municipal Code regulations or any sign program applicable to the property.
14. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

Location	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

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 applicant is required to obtain all applicable permits from the City’s Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access Requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
17. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday. Noise-generating construction activities are not allowed on Saturdays, Sundays or Holidays.
18. Strict adherence to maximum occupancy limits is required.
19. No outside paging system shall be utilized in conjunction with this establishment.
20. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three (3) walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies.

21. The applicant is required to provide a trash enclosure with metal gate and decorative solid roof.
22. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment; however, not located on or within any public property or right-of-way.
23. 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 twenty (20) feet of the premises.
24. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
25. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m. daily, unless otherwise approved by the Director of Community Development, and may require an amendment to this Use Permit.
26. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
27. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
28. This approval shall expire and become void unless exercised within twenty-four (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.
29. 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 **Arc Butcher and Baker Minor Use Permit including, but not limited to, UP2019-026 (PA2019-105)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees,

and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

BUILDING

30. The restroom shall remain accessible without going through the kitchen. Clearly delineate the path for patrons to the restroom and provide directional signs to the restrooms.
31. The plans must illustrate complete accessibility compliances.

POLICE DEPARMTENT

32. The applicant shall comply with all federal, state, and local laws, and all conditions of the Alcoholic Beverage License. Material violation of any of those laws or conditions in connection with the use may be cause for revocation of the use permit.
33. Approval does not permit the premise to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Newport Beach Municipal Code.
34. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
35. No games or contests requiring or involving the consumption of alcoholic beverages shall be allowed.
36. There shall be no live entertainment or dancing allowed on the premises.
37. There shall be no reduced price alcoholic beverage promotions after 9:00 p.m.
38. Food service from the regular menu shall be made available to patrons until closing.
39. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.
40. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
41. All persons selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible beverage service within 60 days of hire or within

60 days of approve of the use permit. This training must be updated at least every 3 years. The certified program must meet the standards of the Department of Alcoholic Beverage Control. Records of each owner, manager and employee's successful completion of the required certified training program shall be maintained on the premises and be presented upon request by a representative of the City of Newport Beach.

RESOLUTION NO. ZA2019-058

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2019-034 TO DEMOLISH AN EXISTING RESIDENTIAL DUPLEX AND CONSTRUCT A NEW SINGLE-FAMILY RESIDENCE LOCATED AT 1808 AND 1808 ½ WEST OCEAN FRONT (PA2019-140)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by William Guidero, with respect to property located at 1808 and 1808 ½ West Ocean Front, and legally described as Lot 5, Block 18, Tract 515 requesting approval of a coastal development permit.
2. The applicant proposes to demolish an existing residential duplex and construct a new 3,548-square-foot, single-family residence with an attached 649-square-foot, two-car garage.
3. The subject property is located within the RM (Multiple-Unit Residential) Zoning District and the General Plan Land Use Element category is RM (Multiple-Unit Residential).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RM-E (Multiple-Unit Residential) (30.0-39.9 DU/AC) and the Coastal Zone District is RM (Multi-Unit Residential).
5. A public hearing was held on August 29, 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 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines.
2. Class 3 includes the construction of a single-family residence in a residential zone. The proposed project includes the demolition of an existing residential duplex and construction of a new 3,548-square-foot, single-family residence with an attached 649-square-foot, two-car garage.

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 proposed structure conforms to all applicable development standards including, but not limited to, floor area limitation, setbacks, height, and parking:
 - a. The maximum floor area limitation is 4,420square feet and the proposed gross floor area is 4,197 square feet.
 - b. The proposed development will provide the required setbacks, which are 7 feet along the front property line abutting the beach, 3 feet along the side property lines, and 0 feet along the rear property line abutting the alley..
 - c. The highest flat roof is no more than 28 feet, measured from the established grade level of 10.49 feet North American Vertical Datum of 1988 (NAVD 88) and the highest roof ridge is no more than 33 feet, measured from the established grade, which complies with the maximum height limitation.
 - d. The project includes enclosed garage parking for two vehicles, which complies with the minimum two-space parking requirement for single-family residences with less than 4,000 square feet of livable floor area.
2. 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 two-story, single- and two-family residences. Some newer structures incorporate a partial third-story.
3. A Coastal Hazards and Wave Runup Study was prepared for the project by GeoSoils, Inc., dated June 26, 2019. 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 150 feet of retreat over the life of the structure, beach width will not be reduced to less than 350 feet in nominal width. A beach width of 200 feet is recognized by coastal engineers as sufficiently wide to protect landward development. The GeoSoils study 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.

4. 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.
5. The finished floor elevation of the first habitable floor of the proposed structure is 14.00 feet North American Vertical Datum of 1988 (NAVD 88), which exceeds the minimum 9.0-foot (NAVD 88) elevation standard for new structures and exceeds the minimum requirements for sea level rise (10.1 feet NAVD 88).
6. The property is located in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of building permits. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and the CBC prior to building permit issuance.
7. A post-construction drainage system will be installed that includes drainage and percolation features designed to retain dry weather and minor rain runoff on-site to ensure the project does not impact water quality. Any water not retained on-site is directed to the City's storm drain system.
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. No water quality impacts to coastal waters are anticipated based upon the location and elevation of the property.
9. New landscaping will be verified for compliance with NBMC Section 21.30.075 (Landscaping). A condition of approval is included that requires drought-tolerant, and prohibits invasive species. Prior to issuance of the building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
10. The property is not located near coastal view roads and is not located near any identified public viewpoints; therefore, the project will not negatively impact public coastal views.

Finding:

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

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline; however, the project will not affect the public's ability to gain access to use and/or view the coast and nearby recreational facilities. The proposed 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 the replacement of an existing two-story residential duplex with a new three-story, 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 project is designed and sited so as not to block or impede existing public access opportunities and occurs within the confines of private property. Existing coastal access conditions will not be affected by the proposed development. 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 finds this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2019-034, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
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 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 AUGUST, 2019.

Rosalinh Ung
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. CD2019-034 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. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
5. Prior to the issuance of building permit, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices to address the threat of damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards that may affect the property, or development of the property, today or in the future. The agreement shall be binding against the property owners and successors and assigns.
6. 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.
7. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
8. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this coastal development permit.

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9. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined 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.
 10. 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.
 11. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
 12. 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.
 13. 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.
 14. This Coastal Development Permit does not authorize any development seaward of the private property.
 15. Construction staging, storage and/or access is not allowed to occur on or from the adjacent sandy beach.
 16. 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.

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17. 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.
 18. Prior to issuance of a building permit, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the coastal development 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.
 19. Prior to issuance of a building permit, the applicant shall submit a final construction erosion control plan. The plan shall be subject to review and approval by the Building Division.
 20. 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.
 21. 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.
 22. Prior to issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
 23. 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 as far away from storm drain systems or receiving waters as possible.
 24. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stockpiles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.
 25. At such time as directed by the City or the California Coastal Commission, the applicant shall agree to and cooperate with the removal of any development not in compliance with and authorized by Appendix C (Oceanfront Encroachment Policy Guidelines) of the certified Local Coastal Program seaward of the rear property line within a prolongation of the side property lines of the subject property.
 26. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents

from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Fluter Residence including, but not limited to, Coastal Development Permit No. CD2019-034 (PA2019-140). 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.