



## 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 July 29, 2022.

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### ZONING ADMINISTRATOR ACTIONS JULY 28, 2022

- Item 1: Cruisers Pizza Bar Grill Limited Term Permit No. XP2022-002 and Coastal Development Permit No. CD2022-016 (PA2022-049)  
Site Address: 801 East Balboa Boulevard
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| Action: Approved by Resolution No. ZA2022-050 | Council District | 1 |
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- Item 2: Annual Review of North Newport Center Development Agreement No. DA2007-002 (PA2009-023)  
Site Address: Fashion Island; Block 100, Block 400, Block 500, Block 600, and Block 800 of Newport Center Drive; and San Joaquin Plaza
- |   |                  |   |
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| Action: The Zoning Administrator found that the Irvine Company is in good faith compliance with the terms of the Development Agreement. | Council District | 5 |
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- Item 3: Pigazzi Residential Condominiums Tentative Parcel Map No. NP2022-005 (PA2022-051)  
Site Address: 507 Marguerite Avenue
- |   |                  |   |
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| Action: Approved by Resolution No. ZA2022-051 | 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.

## RESOLUTION NO. ZA2022-050

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA APPROVING LIMITED TERM PERMIT NO. XP2022-002 AND COASTAL DEVELOPMENT PERMIT NO. CD2022-016 TO ALLOW AN OUTDOOR DINING AREA LOCATED AT 801 EAST BALBOA BOULEVARD (PA2022-049)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Cruisers Pizza Bar Grill, with respect to a property located at 801 East Balboa Boulevard and legally described as Lots 1 through 6 of Block 12 of the Balboa Tract requesting approval of a limited term permit and coastal development permit.
2. The applicant proposes a 672-square-foot temporary outdoor dining area for Cruisers Pizza Bar Grill for up to a six-month term (July 28, 2022 through January 28, 2023). The expanded patio is a reduction from the 2,886-square-foot temporary outdoor dining area previously authorized through Emergency Coastal Development Permit No. CD2020-029 and Emergency Temporary Use Permit No. UP2020-011 (PA2020-084).
3. The subject property is designated Mixed-Use Vertical (MU-V) by the General Plan Land Use Element and is located within the Mixed-Use Vertical (MU-V) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Mixed-Use Vertical (MU-V) and it is located within the Mixed-Use Vertical (MU-V) Coastal Zone District.
5. A public hearing was held on July 28, 2022, online via Zoom. 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 Sections 15301 and 15303 under Class 1 (Existing Facilities) and Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The Class 3 exemption includes a store, motel, office, restaurant, or similar structure not

involving the use of significant amounts of hazardous substances, not exceeding 2,500 square feet in floor area or 10,000 square feet in floor area in urbanized areas zoned for such use. The proposed scope of work is a maximum 672-square-foot expanded outdoor dining patio at an existing restaurant for a six (6)-month limited term and qualifies under the parameters of the Class 1 and Class 3 exemptions.

3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource

### SECTION 3. REQUIRED FINDINGS.

#### **Limited Term Permit**

In accordance with Section 20.52.040.G (Limited Term Permits) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

#### Finding:

- A. *The operation of the limited duration use at the location proposed and within the time period specified would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the requested limited duration use;*

#### Facts in Support of Finding:

1. The limited term permit will allow an extended outdoor dining patio for six (6)-month term while the City reconsiders its parking requirements related to food service uses. The existing expanded outdoor dining area is authorized through Emergency Temporary Use Permit No. UP2020-011 and Emergency Coastal Development Permit No. CD2020-029 (PA2020-084) and includes 672 square feet of net public area.
2. The expanded dining area has not posed a hazard to the general welfare of persons residing in the area since it was placed during the COVID-19 pandemic in 2020 through an Emergency Temporary Use Permit. The operation of the expanded dining area is limited to six (6) months beginning July 28, 2022, through January 28, 2023, and has been reviewed and conditioned to preclude any detriment to the general welfare of the area. Additionally, the outdoor dining area has been reduced to 672-square-feet from its original 2,886-square foot dining area, approved through Emergency Temporary Use Permit UP2020-011 and Emergency Coastal Development Permit CD2020-029.
3. The proposed operation is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).

4. The permitted use shall adhere to applicable State of California and Orange County Health Care Agency guidelines for the safe operation of the use. It is the responsibility of the permittee to implement and follow industry-specific guidance of the State of California and the Orange County Health Care Agency guidelines.
5. The permitted use must be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
6. The overall plan includes appropriate delineation of outdoor use spaces with physical barriers or markers.

Finding:

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

Facts in Support of Finding:

1. The subject lot is approximately 0.35 acres in size and is a flat property adjacent to East Balboa Boulevard and Main Street. An existing food service use began operating at 801 East Balboa Boulevard prior to 1967. Based upon the site plan, there is adequate area to accommodate the expanded dining area without impacting traffic and pedestrian circulation.
2. An existing food service use with outdoor dining is located on site. The lot is bounded by commercial and mixed-use buildings to the west, and residentially zoned properties to the east. To the north are mixed-use and commercial buildings. To the south are residential units. The expanded outdoor dining use will not impede use and enjoyment of the properties in the area.
3. The existing restaurant site has a deficit of thirty-eight (38) parking spaces. The expanded dining area will reduce the private parking provided by four (4) parking spaces. The modified design will clear the one-way drive-aisle circulation through the site and provide a better flow of traffic for patrons seeking parking for the restaurant, as was the case before the implementation of the establishment's emergency temporary use permit. No ongoing traffic or site circulation issues are anticipated.

Finding:

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

Fact in Support of Finding:

1. The subject lot is accessed from East Balboa Boulevard to the north and Main Street to the west. Private parking is provided on-site. The food service use is located in a commercial, mixed-use and residential area and currently to operates from 11:00 a.m. to 12:00 a.m., Monday through Thursday; 11:00 a.m. to 1:00 a.m., Friday; 10:00 a.m. to 1:00 a.m., Saturday; and 10:00 a.m. to 12:00 a.m., Sunday. The parking lot on-site has historically accommodated Cruisers and no traffic issues are anticipated with the continued use of the expanded dining area.

Finding:

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

Facts in Support of Finding:

1. The existing business with outdoor dining has operated at the subject property since 2014. The existing parking on-site has historically accommodated the food service use and is expected to accommodate the temporary use.
2. The subject property's restaurant use predates the issuance of use permits for eating and drinking establishments. Therefore, a parking rate has not been formally established. However, a parking rate of 1 space per 40 square feet of net public area is common for businesses with similar operating characteristics to Cruisers.
3. The establishment maintains a total of twenty-one (21) existing parking spaces located on-site. The outdoor dining area will create additional parking demand and occupy four (4) spaces. Seventy-six (76) spaces are required per the parking rate established for similar businesses, including the demand created by the outdoor dining area, resulting in a deficit of fifty-nine (59) parking spaces.
4. The proposed outdoor dining area will use four (4) spaces, reducing the parking supply to seventeen (17) spaces based on the provided site plan. While the anticipated parking demand for the proposed outdoor dining area is not accommodated for on-site, there are several public parking lots and street parking near the subject property. Furthermore, Cruisers is proposing a bike parking area, further lessening the impact of the increased parking demand for the business.

Finding:

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

Facts in Support of Finding:

1. The General Plan land use designation for this site is MU-V (Mixed-Use Vertical). The MU-V designation is intended for the development of properties for mixed-use structures that

vertically integrate housing with retail uses including retail, office, restaurant, and similar nonresidential uses. Food service uses are consistent with nonresidential uses permitted in this zoning district, on the first floor. The expanded outdoor dining use is accessory to the existing food service use with outdoor dining, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the MU-V designation.

2. The site is located in the MU-V (Mixed-Use Vertical) Zoning District. The MU-V designation is intended to provide for areas appropriate for the development of mixed-use structures that vertically integrate residential dwelling units above the ground floor with retail uses including office, restaurant, retail, and similar nonresidential uses located on the ground floor or above. The expanded outdoor dining use is accessory to the existing food service use with outdoor dining, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the MU-V designation. The MU-V zoning district allows temporary uses as specified within the Zoning Code and the proposed limited duration use is consistent with this designation.
3. The Limited Term Permit for expanded outdoor dining would complement and be consistent with the other commercial uses permitted within the MU-V Zoning District. It provides amenities that support visitors to the area and provides a social gathering place for those who live and work in the neighborhood, consistent with General Plan Land Use Element Goal LU 2, below. Additional benefits from the proposed request include providing opportunities for the continuation of local businesses that generate sales tax and provide opportunities for employment, which is consistent with General Plan Land Use Element Policy LU 2.4 (Economic Development), also copied below:

**Goal LU 2** *A living, active, and diverse environment that complements all lifestyles and enhances neighborhoods, without compromising the valued resources that make Newport Beach unique. It contains a diversity of uses that support the needs of residents, sustain and enhance the economy, provide job opportunities, serve visitors that enjoy the City's diverse recreational amenities, and protect its important environmental setting, resources, and quality of life.*

**Policy LU 2.4 Economic Development** *Accommodate uses that maintain or enhance Newport Beach's fiscal health and account for market demands, while maintaining and improving the quality of life for current and future residents. (Imp 1.1, 24.1)*

4. Council Policy D-9 recognizes the need to balance economic development objectives with protection of the environment and the health and safety of the community. The policy recognizes the need to provide effective and efficient structures for implementing economic programs, utilizing staffing to provide healthy, thriving businesses, and maintain a healthy economy while preserving the unique commercial villages in Newport Beach. The proposed limited term permit would support a local business and its economic prosperity while maintaining the unique character of the Balboa Peninsula community.
5. The site is not located within a specific plan area.

## Coastal Development Permit

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

### Finding:

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

### Facts in Support of Finding:

1. The project site is not located adjacent to a coastal view road, public access way, or Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoints are the Balboa Pier and Peninsula Park, immediately to the south of the site and the property is not visible from the either viewpoint. The expanded outdoor dining area complies with all applicable Local Coastal Program (LCP) development standards and maintains an area consistent with the existing pattern of development in the Balboa Peninsula. The outdoor dining area has been reduced by over 2,000 square feet from the scope approved by Emergency Temporary Use Permit No. UP2020-011 and Emergency Coastal Development Permit No. CD2020-029 (PA2020-084), and placed entirely inside four (4) parking stalls, instead of encroaching into the property's drive aisle. This improved, narrow design will be less visible from East Balboa Boulevard and Main Street.
2. The Property is located in the coastal zone and the proposed improvements require a coastal development permit in accordance with Newport Beach Municipal Code (NBMC) Section 21.52.035(C)(2) (Projects Exempt from Coastal Development Permit Requirements). The improvements constitute an increase of ten (10) percent or more of the internal floor area of an existing structure or a lesser improvement that has previously been undertaken pursuant to California Public Resources Code Section 30610(a). The expanded outdoor dining area and barrier within the private parking lot are minor detached structures. The location of these improvements does not pose a conflict to coastal resources, parking, coastal access, or other adverse environmental effects.
3. The subject property's restaurant use predates the issuance of use permits for eating and drinking establishments. Therefore, a parking rate has not been formally established. However, a parking rate of one (1) space per 40 square feet of net public area is common for businesses with similar operating characteristics and hours of operation to Cruisers. The establishment maintains a total of twenty-one (21) existing parking spaces located on-site. Four (4) of these spaces will be occupied by the outdoor dining area. Seventy-six (76) spaces are required per the parking rate established for similar businesses, including the demand created by the outdoor dining area, resulting in a deficit of fifty-nine (59) parking spaces.

4. The dining area barrier is installed within the private parking lot. The barrier delineates the area dedicated for outdoor dining use and alcohol service from parking area. There are no existing City utilities within the expanded dining area. Substantial barriers in the form of water-filled barriers will be provided adjacent to drive aisles and parking areas to ensure the safety of pedestrians from vehicle areas.
5. Development authorized by this permit will not block public access to the coast. Coastal access is increased by allowing commercial establishments to re-open, allowing the public to visit coastal areas and providing an added amenity for visitors.
6. Development authorized is not located in an area in which the California Coastal Commission retains direct permit review authority.

Finding:

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

Fact in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline. 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 vertical access is provided at Main Street, and lateral access is provided at East Ocean Front. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 under Class 1 (Existing Facilities) and Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, 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 Limited Term Permit No. XP2022-002 and Coastal Development Permit No. CD2022-016, 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 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 28TH DAY OF JULY, 2022.**



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Jaime Murillo  
Zoning Administrator

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**EXHIBIT "A"****CONDITIONS OF APPROVAL**

*(Project-specific conditions are in italics)*

**Planning Division**

1. The development shall be in substantial conformance with the approved site plan stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The approval of this Limited Term Permit and Coastal Development Permit shall be effective from July 28, 2022, to January 28, 2023, unless an extension (up to one year) is granted by the Zoning Administrator in compliance with Municipal Code Sections 20.52.040.J (Extension of Limited Term Permit) and 21.54.060 (Time Limits and Extensions). The applicant shall be required to cease all permitted operations and remove any temporary improvements made to the outdoor spaces as part of this approval at the end of the effective period.
3. *The expanded dining area shall not exceed 672 square feet in area. The design and site circulation shall occupy no more than four (4) existing parking spaces on-site*
4. *The existing allowed hours of operation of the establishment shall not be extended. The hours of operation of the expanded area as part of this approval shall not extend beyond 10:00 p.m., daily.*
5. *All outdoor televisions shall be muted and no outdoor amplified sound systems shall be utilized.*
6. *The applicant shall install and maintain a physical barrier between any area in accordance with the requirements of the State Department of Alcoholic Beverage Control.*
7. The Applicant shall obtain and maintain authorization from the State Department of Alcoholic Beverage Control (ABC) for all areas where the sale, service or consumption of alcohol is under the control of the applicant. The establishment shall abide by all applicable regulations of the State Department of Alcoholic Beverage Control.
8. The sale of alcohol "to go" to patrons that dine within the expanded outdoor patios shall be prohibited.
9. The establishment shall abide by all applicable Orange County Health Care Agency requirements.
10. The permittee shall provide adequate trash receptacles within the permitted patio and shall provide for periodic and appropriate removal of trash, litter, debris, and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.

11. The Community Development Director or designee may inspect the modified area at any time during normal business hours.
12. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
13. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this approval.
14. This Limited Term Permit and Coastal Development Permit be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
15. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Limited Term Permit and Coastal Development Permit.
16. 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 this **Limited Term Permit No. XP2022-002 and Coastal Development Permit No. CD2022-016 (PA2022-049) for Cruisers Pizza Bar Grill**. 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 Division**

17. Any areas used for temporary commercial or institutional use shall be accessible to disabled persons.
  - a. A minimum 4-foot-wide accessible path to all functional area shall be provided.
  - b. Access to restrooms shall be provided at all times.
  - c. Accessible parking stalls shall not be used for seating areas when onsite parking is provided.
  - d. At least one (1) accessible seating area shall be provided.

- e. Detectable warnings are required when pedestrian paths cross or are adjacent to a vehicular way where no physical barrier are provided to separate the two.
18. All tops of dining and work surfaces shall be 28 inches to 34 inches above the finish floor.
19. All exiting paths shall be a minimum 36 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.
20. Detectable warning strips shall be provided where the pedestrian way cross into the vehicular way.

### **Fire Department**

21. Fire lane(s) shall be identified on the plan.
22. Parking, displays, seating or other obstacles that interfere with emergency vehicles and personnel shall not be permitted in fire lanes.
23. Vehicles are permitted to stop in fire lanes awaiting service or delivery provided that the driver remains inside the vehicle and the vehicle is ready to move immediately upon orders from emergency personnel.
24. All Fire Department devices (fire hydrants, fire department connections, water valves, etc.) shall have a three-foot clearance in all directions.
25. Fire Department devices shall not be covered, blocked or otherwise hidden from plain view.
26. All building exits shall remain free and clear of any obstacles that would impede exiting from a building or suite and accessing the nearest public right-of-way.
27. Heat lamps or other heating elements shall comply with the following requirements in accordance with code section 3107.12 of the California Fire Code:
  - a. Propane and other fuel-based heating elements (including but not limited to flammable/combustible gas, liquid, or solid materials) shall not be used within tents or canopies.
  - b. Electric heaters must be UL listed for use within tents and/or canopies.
  - c. Propane and other fuel-based heating devices with blowers may be permitted, with the heating element located a minimum of 10 feet from the edge of the tent or canopy.
  - d. All heating equipment installations shall be approved by the fire code official.
28. Covered outdoor dining areas (separate or consolidated) shall comply with the following standards for tents larger than 400 square feet (two [2] or more walls) and/or canopies larger than 700 square feet (no walls or one [1] wall):
  - Post maximum occupant load.

- Do not exceed posted occupant load inside the tent or canopy.
- Visible and Mounted Fire Extinguishers with current service tags.
- No Smoking Signs shall be installed.
- Illuminated Exit Signs shall be installed.
- Emergency Lighting shall be provided.
- Exit doors are not to be blocked and are to remain accessible as exits while the tent is occupied.
- All interior decorative fabrics or materials shall be flame resistant. Provide Certificates of Flame Resistance.
- If Propane is used, a permit is required: Cooking and heating equipment shall not be located within 10 feet of exits or combustible materials.
- LPG containers shall be located outside and be adequately protected and secured, and a permit will be required. Open flame or other devices emitting flame, such as candles, are not permitted inside or within 20 feet of the tent, canopy, or temporary membrane structure.
- Tents and canopies shall have the State Fire Marshal tag indicating fire resistance.
- Tents and canopies shall be designed and installed to withstand the elements of the weather and prevent collapsing through weights and ground anchorage.

### **Public Works Department**

29. The Applicant shall install and maintain a substantial physical barrier (water-filled traffic barrier or K-rail between any area used and adjacent to any street, driveway, or parking area). The barrels shall not project into the adjacent drive aisle.
30. There shall be a minimum of 5 feet of space around all overhead facilities such as power poles and 15 feet of spaces around all underground facilities, such as vault lids, vent pipes, pad mounted transformers, etc.
31. Seating or structures below overhead conductors and/or under the “drip line” shall be prohibited.
32. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.
33. Expanded outdoor dining areas shall adhere to the Southern California Edison clearance decal requirements.
34. All dead-end drive aisles shall be accommodated a dedicated turn-around area and minimum 5-foot hammerhead area.
35. Directional signage shall not impact the required dimensions of the drive aisle and parking stalls.

## RESOLUTION NO. ZA2022-051

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING TENTATIVE PARCEL MAP NO. NP2022-005 FOR TWO (2)-UNIT RESIDENTIAL CONDOMINIUM PURPOSES LOCATED AT 507 AND 507½ MARGUERITE AVENUE (PA2022-051)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Saul Urquiza of Millot Engineering and Consulting (Applicant), with respect to property located at 507 and 507 ½ Marguerite Avenue, and legally described as Lot 7, Block 538, of the Corona del Mar Tract requesting approval of a tentative parcel map for condominium purposes.
2. The Applicant requests a tentative parcel map for two (2)-unit condominium purposes. A single-family residence has been demolished and a new duplex is under construction. The tentative parcel map would allow each unit to be sold individually. No waivers of Newport Beach Municipal Code (NBMC) Title 19 (Subdivisions) are proposed.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two Unit Residential (RT).
4. The subject property is not located within the coastal zone; therefore, a coastal development permit is not required.
5. A public hearing was held on July 28, 2022, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the NBMC. 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, California Code of Regulations, Title 14, Division 6, Chapter 3, 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 (4) or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels are available, the parcel was not involved in a division of a larger parcel within the previous two (2) years, and the parcel does not have an average slope greater than 20 percent. The project meets all identified criteria; therefore, it 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 NBMC Title 20 (Planning and Zoning) and is approved based on the following findings per Section 19.12.070 (Required Findings for Action on Tentative Maps) of the NBMC:

#### 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 (2)-unit residential condominium purposes. The project site was previously developed with a single-family residence and has been cleared of existing improvements. A new duplex is under construction. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the current RT General Plan Land Use category.
2. The subject property is not located within a specific plan area.
3. The project is conditioned to require public improvements, including the reconstruction of sidewalks, curbs, and gutters along the Marguerite Avenue frontage and alley as needed, as well as the undergrounding of utilities, consistent with the Title 19 (Subdivisions) of the NBMC.

#### 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 duplex because it is relatively flat and rectangular. It was also previously developed with a single-family residence.
2. The subject property is accessible from both Marguerite Avenue and the alley in the rear.
3. The site is adequately served by existing utilities, as the site was previously developed with a single-family residence.

#### 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. The property is located within an existing residential neighborhood that does not contain any sensitive vegetation or habitat on-site.
2. 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. Section 2 of this Resolution is hereby incorporated by reference.

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 NBMC Section 19.28.010 (General Improvement Requirements) 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.*

Facts in Support of Finding:

1. The Public Works Department has reviewed the proposed Tentative 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.

2. There are no existing easements either through or adjacent to 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 the R-2 Zoning District, which is intended for and 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 meet minimum heating and cooling efficiency standards depending on location and climate. The City's 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 duplex is consistent with the R-2 Zoning District, which allows up to two (2) residential units on the property. Therefore, the Tentative Parcel Map for condominium purposes will not affect the City in meeting its regional housing needs. The proposed project (single-family residence to duplex) will add one (1) additional unit to the City's regional housing needs and is subject to fair share fees for one (1) dwelling unit.

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 project wastewater is designed to 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 3 of the Coastal Act.*

Fact in Support of Finding:

1. The subject property is not within the Coastal Zone.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines, California Code of

Regulations, Title 14, Division 6, Chapter 3, 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 Tentative Parcel Map No. NP2022-005, 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 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 NBMC Title 19 Subdivisions.

**PASSED, APPROVED, AND ADOPTED THIS 28<sup>th</sup> DAY OF JULY, 2022.**



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Jaime Murillo  
Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

**Planning Division**

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. After the recordation of the Parcel Map and prior to building permit final, 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 description change permit is final.
3. The building permit for the new construction shall not receive final inspection until after recordation of the parcel map.
4. 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.
5. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 19 Subdivisions of the NBMC.
6. Prior to recordation of the parcel map, park fees for one (1) additional unit shall be paid (currently \$34,309).
7. 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 **Pigazzi Residential Condominiums including, but not limited to, Tentative Parcel Map No. NP2022-005 (PA2022-051)**. 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.

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**Public Works Department**

8. A Parcel Map shall be recorded. The map shall be prepared on the California coordinate system (North American Datum of 1983, NAVD83). 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 Sections 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.**
9. 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 (1-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.
10. All improvements shall be constructed as required by Ordinance and the Public Works Department.
11. An encroachment permit shall be required for all work activities within the public right-of-way.
12. The existing broken and/or otherwise damaged concrete curb, gutter, and sidewalk along the Marguerite Avenue frontage and all damaged alley panels shall be reconstructed per City Standard.
13. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover.
14. All existing overhead utilities shall be undergrounded.
15. Above ground improvements are not permitted within the 5-foot rear alley setback.
16. The existing decorative carriage walk shall be removed and new sod or low groundcover shall be installed in its place.
17. New sod or low groundcovers of the type approved by the City shall be installed throughout the Marguerite Avenue parkways fronting the development site.
18. Existing City tree shall be protected in place.
19. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.

20. No structural encroachments are permitted within the public right of way including but not limited to walls, foundation, stairs, etc.
21. 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.