

## RESOLUTION NO. ZA2021-010

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2020-131 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW THREE-STORY SINGLE-FAMILY RESIDENCE AND ATTACHED 2-CAR GARAGE LOCATED AT 3807 SEASHORE DRIVE (PA2020-262)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Brandon Architects, with respect to property located at 3807 Seashore Drive, requesting approval of a coastal development permit.
2. The lot at 3807 Seashore Drive is legally described as Lot 4 of Block 38 of the Map of Third Addition to Newport Beach Tract.
3. The applicant requests a coastal development permit to demolish an existing single-family residence and construct a new 2,400 square foot single-family residence and attached 374 square foot garage in the VE Special Flood Hazard Area ("VE Flood Zone"). The proposed structure includes a raised foundation supported by caissons to meet the minimum finished floor requirements of the VE Flood Zone. The project includes hardscape, walls, landscaping, and drainage facilities.
4. The subject property is designated RT (Two Unit Residential) by the General Plan Land Use Element and is located within the R-2 (Two-Unit Residential) Zoning District.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RT-E (Two Unit Residential) - (30.0 - 39.9 DU/AC) and it is located within the R-2 (Two-Unit Residential) Coastal Zone District.
6. A public hearing was held online on February 25, 2021, observing restrictions due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15303, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction or Conversion of Small Structures), because it has no potential to have a significant effect on the environment.

2. Class 3 exempts the construction of up to six (6) dwelling units in urbanized areas. The proposed project consists of the demolition of one (1) single-family residence and the construction of a new 2,400-square-foot single-family residence and attached 374 square-foot two (2)-car garage.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 21.52.015 (Coastal Development Permits, Findings and Decision) 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 development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
  - a. The maximum floor area limitation is 2,774 square feet and the proposed floor area is approximately 2,773.5 square feet.
  - b. The proposed development provides the minimum required setbacks, which are 5 feet along the front property line abutting the beach, 4 feet along each side property line and 0 feet along the rear property line abutting Seashore Drive.
  - c. The project includes garage parking for a total of two (2) vehicles, complying with the minimum two (2)-car garage parking requirement for single-family residences with less than 4,000 square feet of habitable floor area.
  - d. The highest guardrail is less than 24 feet from established grade (17.5 feet NAVD88) and the highest ridge is no more than 29 feet from established grade, which comply with the maximum height requirements. Pursuant to Section 21.30.060 (B), the minimum required top of slab elevation for interior living areas of all new development within flood hazard areas shall be as established by the Flood Insurance Rate Maps recognized by the Building Division as part of flood safety requirements and maps adopted by the Council. The subject property is located in the VE Flood Zone and the minimum top of slab elevation is required to be a minimum of 17.5 feet NAVD88. Pursuant to 21.30.060 (B), the height of a principal structure shall be measured from the top of slab elevation. Therefore, the

established grade for the subject property is 17.5 feet NAVD88, and the maximum elevation allowed for a guardrail or flat roof is 41.5 feet NAVD88 and 46.5 feet NAVD88 for a sloping roof (minimum 3:12 pitch).

2. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by GeoSoils, Inc., dated June 13, 2020 for the project. The report concludes that the project will be reasonably safe from wave overtopping and future sea level rise. The estimates assume an approximate 2.95-foot increase from sea level rise over the next 75 years (i.e. the life of the structure). The maximum water elevation is 7.7 NAVD88, therefore the future sea level is estimated to reach approximately 10.65 feet NAVD88 (the likely range for sea level rise over 75-year design life of the structure based on low risk aversion estimates for sea level rise provided by the State of California, Sea Level Rise Guidance: 2018 Update). The finished floor elevation of the first floor of the proposed structure is approximately 17.5 feet NAVD88, which complies with the minimum 9.0-foot (NAVD88) elevation standard for new structures and exceeds the minimum requirements for future sea level rise (10.65 feet NAVD88).
3. The Coastal Hazards Report and Sea Level Rise Analysis also evaluates the potential for shoreline erosion and wave attack at the site. The report concludes that future wave runup will likely not reach the site under severely eroded beach conditions and extreme storms. The report states that this section of Newport Beach does experience short term erosion, but that the erosion is temporary and largely the result of an energetic winter. The report concludes that the sandy beach in front of the property is typically over 375 feet wide and has provided adequate protection for the property over the last several decades. The proposed development will not need shoreline protection over the life of the development.
4. The project would be reviewed for compliance with building code and FEMA standards prior to issuance of a building permit. The VE Flood Zone mapped at the site requires a base flood elevation (BFE) of +15 feet NAVD88, and the City requires an additional one (1) foot of freeboard to the bottom of the lowest horizontal structural member. Therefore, the project has been designed with a raised finished floor of approximately 17.5 feet NAVD88. The residential structure is also required to have a pile foundation. Therefore, although unlikely to occur at the project site over the life of the development, the structure has been designed to withstand potential wave overtopping in compliance with the FEMA VE Flood Zone standards.
5. Pursuant to NBMC Section 21.30.030(C)(3)(i)(iv) (Protective Structures), 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) (Development Standards). Both requirements are included as conditions of approval that will need to be satisfied prior to final building inspection, and prior to the issuance of building permits, respectively.

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 CBC prior to building permit issuance.
7. The property is located on a wide beach, approximately 200 feet from the mean high tide line. A Construction Erosion Control Plan was provided to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation and to minimize pollution of runoff and coastal waters derived by construction chemicals and materials. The project design also addresses water quality through the inclusion of a post-construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event runoff on-site. Any water not retained on-site is directed to the City's storm drain system.
8. Pursuant to Municipal Code Section 21.35.050 (Water Quality and Hydrology Plan), due to the proximity of the development to the shoreline and the development containing more than 75 percent of impervious surface area, a Water Quality and Hydrology Plan (WQHP) is required. A preliminary WQHP has been prepared for the project by Forkert Engineering & Surveying Inc. The WQHP includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, use of an LID approach to retain the design storm runoff volume on site, and documentation of the expected effectiveness of the proposed BMPs.
9. Proposed landscaping complies with Implementation Plan Section 21.30.075 (Landscaping). A condition of approval is included that requires drought-tolerant species. Prior to issuance of building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
10. The project site is not located adjacent to a Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoint is on Newport Island and is not visible from the site. The site is located adjacent to Seashore Drive, which serves as lateral access and provides intermittent views of the beach where it intersects with street ends. As currently developed, the existing property and other residences along Seashore Drive impede views of the ocean from Seashore Drive and provide very limited opportunities to see the beach through side yard setbacks. The subject lot is located in the middle of the block, and existing views of the beach are available along the 38<sup>th</sup> and 39<sup>th</sup> Street ends. The proposed project would not block any existing views through the project site. Additionally, the proposed single-family residence complies with all applicable Local Coastal Program (LCP) development standards and maintains a building footprint consistent with the existing neighborhood pattern of development.
11. The project site is located in the viewshed of the public beach, which is not a designated viewpoint but provides scenic views of the ocean. The project will replace an existing single-family home with a new single-family home that complies with all applicable development standards. Although not required for the subject lot, the project also complies with the City's Residential Design Standards that restrict the size and location of third

floors. The project proposes a third floor of 39 square feet to accommodate a powder room, which is set back approximately 29 feet from the rear setback and approximately 37 feet from the front setback. For comparison, the City's Design Standards would allow up to 277 square feet on the third floor with a minimum setback of 15 feet from the front and rear setback lines. The reduced size and greater setbacks would minimize the appearance of bulk and scale from the adjacent beach, neighboring properties, and street. The project would be constructed with a finished floor that is approximately 5 feet above the existing beach elevation and the overall height of the structure will appear higher than neighboring properties. However, as the other 165 properties along the beach from 24<sup>th</sup> Street to 48<sup>th</sup> street redevelop, they will also be required to comply with the VE Flood Zone construction standards that necessitate raised foundations on caissons. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to public views.

12. The rear of the proposed residence, which is visible from Seashore Drive, includes substantial architectural treatment and visual interest, in-keeping with the design guidelines of the NBMC, specifically Section 21.30.100 (Scenic and Visual Quality Protection). The existing structure does not include architectural treatment, with a solid building face, one (1) window, and a garage door. There are no window treatments or architectural features, nor does it include any "see through" elements that reduce scale. There are also visible signs of aging since original construction in the 1950s. Although the proposed structure will appear taller as viewed from the street, the upper levels have been setback and include areas of visual interest. The design includes modulation of volume throughout the structure, and increased front and rear setbacks beyond what is required by code. The project design also includes low walls and "see through" elements such as glass balcony railings that prevent the appearance of the site being walled off from the beach and streets. Therefore, the project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts to existing public 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. Implementation Plan Section 21.30A.040 requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project replaces an existing single-family residence located on standard R-2 lot with a new single-family residence. Therefore, the project does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities. Furthermore, the project is located in the middle of the block, and designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.

2. Vertical access to the beach is available at the 38<sup>th</sup> and 39<sup>th</sup> Street ends. Lateral access is available on the beach in front of the property and along Seashore Drive to the rear of the property. The project does not involve the removal or creation of additional street parking spaces. The project design does not include any unique features in the rear of the property that could obstruct access or create hazards for the motorists or pedestrians on Seashore Drive. The first-floor garage is setback approximately 9 feet from the property line, which would allow the residents additional visibility to the bike path and street as they enter and exit the garage.
3. Any new encroachments within the Ocean Front Encroachment area would require review and approval by Public Works Department and the California Coastal Commission. No new encroachments on the beach are proposed as part of this project.

#### 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 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 Coastal Development Permit No. CD2020-131, 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 (Appeal to the Coastal Commission) of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

**PASSED, APPROVED, AND ADOPTED THIS 25<sup>TH</sup> DAY OF FEBRUARY, 2021.**



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Jaime Murillo  
Zoning Administrator

**EXHIBIT "A"**

## CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. Prior to final building permit inspection, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices to address the threat of damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards that may affect the property, or development of the property, today or in the future. The agreement shall be binding against the property owners and successors and assigns.
3. Prior to the issuance of a building permit, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of development. This letter shall be scanned into the plan set prior to building permit issuance.
4. Prior to the issuance of building permits, the applicant shall submit a final construction erosion control plan. The plan shall be subject to the review and approval by the Building Division.
5. Prior to the issuance of building permits, the applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.
6. Prior to issuance of a building permit, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.
7. 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 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.
8. Prior to issuance of building permits, the final WQHP/WQMP shall be reviewed and approved by the Building Division. Implementation shall be in compliance with the

approved CPPP and WQHP/WQMP and any changes could require separate review and approval by the Building Division.

9. 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.
10. Prior to the issuance of building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
11. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers. No demolition or construction materials shall be stored on public property.
12. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
13. This Coastal Development Permit does not authorize any development seaward of the private property.
14. The applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). 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 (1) or two (2) short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
15. 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.

16. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
17. 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.
18. 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.
19. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
20. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
21. 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.
22. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
23. 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.
24. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by the current property owner or agent.
25. This Coastal Development Permit No. CD2020-131 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.

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 Soliman Residence including, but not limited to, Coastal Development Permit No. CD2020-131 (PA2020-262). 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.