

RESOLUTION NO. ZA2021-015

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2017-040 ALLOWING REMOVAL, RESTORATION AND MAINTENANCE OF EXISTING ACCESSORY STRUCTURES, HARDSCAPING AND LANDSCAPING, AND GRANTING RELIEF FROM THE DEVELOPMENT STANDARDS OF THE LOCAL COASTAL PROGRAM IMPLEMENTATION PLAN AT 169 SHORECLIFF ROAD (PA2017-092)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by EBTA Architects, Inc. (Applicant), with respect to property located at 169 Shorecliff Road, and legally described as Lot 106, Tract 1116 requesting approval of a coastal development permit.
2. The Applicant proposes to remove, restore and maintain existing accessory structures, hardscaping and landscaping on an oceanfront bluff property (Project). The request was prompted by a notice from the California Coastal Commission advising that the existing improvements require a coastal development permit.
3. The subject property is located within the R-1-6000 (Single-Unit Residential) Zoning District and the General Plan Land Use Element category is RS-D (Single Unit Residential Detached).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-A (Single Unit Residential Detached –0.0 - 5.9 DU/AC) and the Coastal Zoning District is R-1-6000 (Single-Unit Residential).
5. A public hearing was held online on March 11, 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 (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 categorically 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, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. Class 1 exempts the permitting, maintenance or minor alteration of existing private structures. The proposed project includes the removal, restoration and maintenance of existing accessory structures, hardscaping and landscaping on an oceanfront bluff property.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The subject property is zoned R-1-6000. It is currently developed with a single-family residence and accessory site improvements. The proposed project is not affecting the existing single-family residential structure. All work is proposed within the site area on private property between the residence and the ocean.
2. The project includes the removal of several unauthorized improvements and the removal of invasive plant species. These previously altered areas will be restored with native plantings and will enhance the natural visual quality of the bluff, as can be seen from the Pacific Ocean and distant viewsheds.
3. Approval of the project will result in a property that is more conforming to the Bluff Development Overlay requirements and will abate all violations, as identified by the California Coastal Commission. Development Area C will be mostly restored to appear as a natural coastal bluff. Development outside of Area B will be removed and relocated into the appropriate location for compliance.
4. The proposed scope of work conforms to all applicable policies of the Coastal Land Use Plan (CLUP) related to coastal hazards, including but not limited to:
 - a. Policy 2.8.1-2 Design and site new development to avoid hazardous areas and minimize risks to life and property from coastal and other hazards.
 - b. Policy 2.8.1-4 Require new development to assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The proposed project will remove unauthorized improvements from more sensitive areas while providing a restored, natively landscaped bluff in several previously altered areas.

5. Adjoining properties also have improvements adjacent to the same bluff areas. The proposed project will not appear out of character for existing and expected development in the neighborhood.

6. New landscaping will be verified for compliance with NBMC Section 21.30.075 (Landscaping). A condition of approval is included to require 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.
7. The property is located within an area identified as hazardous due to erosion factors or coastal hazards. The project will be required to comply with the California Building Code (CBC) and Building Division standards and policies.
8. As conditioned, 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 Section 21.30.015(D)(3)(c) – (Waterfront Development - Development Standards) of the NBMC prior to the issuance of building permits for construction.
9. The property is not located adjacent to a coastal view road or coastal viewpoint identified by Local Coastal Program maps. The project site may be located within the viewshed of distant public viewing areas; however, the project is limited to on-grade and low-profile accessory improvements and complies with all applicable Local Coastal Program (LCP) development standards. 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. The restoration work within Area C will improve the natural quality of the bluff.

Finding:

- B. Conforms to 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 is limited to the removal, restoration and maintenance of existing improvements on a developed site and does not involve a change in land use, density or intensity that will result in increased demand on public access and recreation opportunities.
2. Section 21.30A.040 (Determination of Public Access/Recreation Impacts) of the NBMC 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 involves the removal, restoration and maintenance of existing accessory structures, hardscaping and landscaping within the confines of private property located in the Coastal Zone. 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. Public coastal access is provided west of the project site at Corona del Mar State Beach and Little

Corona Beach and to the east of the project site at Crystal Cove State Park, as well as along the coastline.

Finding:

C. The Zoning Administrator has considered the following:

- i. Whether or not the development is consistent with the certified Local Coastal Program to the maximum extent feasible; and*
- ii. Whether or not there are feasible alternatives that would provide greater consistency with the certified Local Coastal Program and/or that are more protective of coastal resources.*

Facts in Support of Finding:

1. The property has steep bluffs with preexisting private stair access to the beach area below. The requested deviation to maintain safety railing within Area C adjacent to a sheer drop off area is necessary for safety purposes.
2. With the exception of the variance to maintain safety railing within Area C, the proposed project complies and is consistent with the certified LCP.
3. The proposed guard rail will have no detrimental effect on coastal resources that the development standards are intended to protect. Section 21.52.090(B)(1) (Relief from Implementation Plan Development Standards) of the NBMC specifically allows a waiver of development standards through approval of a coastal development for projects that will not have an adverse effect on coastal resources.

Finding:

D. The granting of the variance is necessary due to special circumstances applicable to the property, including location, shape, size, surroundings, topography, and/or other physical features, the strict application of the development standards otherwise applicable to the property denies the property owner privileges enjoyed by other property owners in the vicinity and in the same coastal zoning district.

Facts in Support of Finding:

1. The project site contains steep bluff areas characterized by sheer drop offs to the rocky beach area below. The requested guardrail facilitates use and enjoyment of the property in a safe manner without causing detrimental effects on coastal resources that the development standards are intended to protect. The guardrail is necessary to provide a measure of safety for residents. The safety guardrail has an open and transparent design and alternatives to including this project feature are not available.
2. All Facts in Support of Findings A and B above are hereby incorporated by reference.

Finding:

E. The variance complies with the findings required to approve a coastal development permit in Section 21.52.015(F).

Fact in Support of Finding:

All Facts in Support of Findings A and B above are hereby incorporated by reference.

Finding:

F. The variance will not result in development that blocks or significantly impedes public access to and along the sea or shoreline and to coastal parks, trails, or coastal bluffs.

Facts in Support of Finding:

1. The project will not affect the public's ability to gain access to use and/or view the coast and nearby recreational facilities. The property is located south of Coast Highway. Public coastal access is provided west of the project site at Corona del Mar State Beach and Little Corona Beach and to the east of the project site at Crystal Cove State Park, as well as along the coastline.
2. All Facts in Support of Finding B are hereby incorporated by reference.

Finding:

G. The variance will not result in development that blocks or significantly impairs public views to and along the sea or shoreline or to coastal bluffs and other scenic coastal areas.

Fact in Support of Finding:

Fact in Support of Finding A (7) is hereby incorporated by reference.

Finding:

H. The variance will not result in development that has an adverse effect, either individually or cumulatively, on coastal resources, including wetlands, sensitive habitat, vegetation, or wildlife species.

Fact in Support of Finding:

The project will not negatively impact any coastal resources, which the bluff setback is intended to protect. Several unauthorized improvements will be removed, and the affected areas will be restored as a bluff with native plants. Invasive plant species will also be removed from the site, which will ultimately benefit, improve and protect coastal resources on-site and beyond.

Finding:

1. *The granting of the variance will not be contrary to, or in conflict with, the purpose of this Implementation Plan, nor to the applicable policies of the certified Local Coastal Program.*

Facts in Support of Finding:

1. Approval of the CDP and associated deviation will not be contrary to the applicable policies of the City's Coastal Land Use Plan intended to protect coastal resources. The proposed project includes substantial rehabilitation of previously affected bluff areas and will help to ensure coastal resources are protected and enhanced on the property.
2. The granting of the coastal development permit to allow a guardrail for safety purposes in Development Area C is consistent with NBMC Section 21.52.090 (Relief from Implementation Plan Development Standards), which provides for relief from development standards for projects that will have no detrimental effect on environmental or visual coastal resources. The guardrail is necessary to provide a measure of safety for residents. It has an open design and alternatives to including this project feature are not available.

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 CEQA pursuant to Section 15301 under Class 1 (Existing Facilities) 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. CD2017-040, 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 11TH DAY OF MARCH, 2021.

Jaime Murillo
Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL**

1. The development shall be in substantial conformance with the approved site plan and landscaping plans stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. Revisions to the approved plans shall require separate review by the Planning Division and may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
3. Prior to the issuance of a building permit, the property owner shall provide 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.
4. Prior to the final inspection of the 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.
5. 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.
6. 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.

7. 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.
8. 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.

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14. 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.
 15. 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.
 16. 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.
 17. 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.
 18. 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.
 19. Coastal Development Permit No. CD2017-040 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.
 20. 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 the Frieden Residence Site Alterations including, but not limited to Coastal Development Permit No. CD2017-040 (PA2017-092). 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.

Additional Conditions of Approval from Hearing

21. The applicant is required to obtain all applicable permits from the City's Building Division. The construction plans must comply with the most recent, City-adopted version of the California Building Code.
22. The applicant shall engage a Geotechnical Engineer to assist with preparation of plans to ensure bluff stability. The Geotechnical Engineer shall provide proof of soils and hillside stability to the satisfaction of the City's Building Official. Construction plans shall incorporate design recommendations and/or mitigations identified.
23. Construction activities shall comply with Section 10.28.040 of the NBMC, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7 a.m. and 6:30 p.m., Monday through Friday. Noise-generating construction activities are not allowed on Saturdays, Sundays or Holidays.
24. Prior to issuance of building permits, a final Construction Pollution Prevention Plan (CPPP) and Water Quality Management Plan (WQMP) shall be reviewed and approved by the Building Division. Implementation shall be in compliance with the approved CPPP and WQMP and any changes could require separate review and approval by the Building Division.
25. The applicant shall employ the following best available control measures ("BACMs") to reduce construction-related air quality impacts:

Dust Control

- Water all active construction areas at least twice daily.
- Cover all haul trucks or maintain at least two feet of freeboard.
- Pave or apply water four times daily to all unpaved parking or staging areas.
- Sweep or wash any site access points within two hours of any visible dirt deposits on any public roadway.
- Cover or water twice daily any on-site stockpiles of debris, dirt or other dusty material.
- Suspend all operations on any unpaved surface if winds exceed 25 mph.

Emissions

- Require 90-day low-NOx tune-ups for off road equipment.
- Limit allowable idling to 30 minutes for trucks and heavy equipment

Off-Site Impacts

- Encourage car pooling for construction workers.
- Limit lane closures to off-peak travel periods.
- Park construction vehicles off traveled roadways.
- Wet down or cover dirt hauled off-site.
- Sweep access points daily.
- Encourage receipt of materials during non-peak traffic hours.
- Sandbag construction sites for erosion control.

Fill Placement

- The number and type of equipment for dirt pushing will be limited on any day to ensure that SCAQMD significance thresholds are not exceeded.
- Maintain and utilize a continuous water application system during earth placement and compaction to achieve a 10 percent soil moisture content in the top six-inch surface layer, subject to review/discretion of the geotechnical engineer.