

RESOLUTION NO. ZA2021-020

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2021-007 TO ALLOW FOR THE REMODEL AND ADDITION OF AN EXISTING SINGLE-FAMILY RESIDENCE WITH AN ATTACHED TWO (2)-CAR GARAGE AT 1410 WEST OCEAN FRONT. (PA2021-028)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Brion Jeannette Architecture (Applicant), with respect to property located at 1410 West Ocean Front, requesting approval of a coastal development permit (CDP). The lot at 1410 West Ocean Front is legally described as Lot 6 in Block 14 of Tract 234.
2. The applicant proposes a remodel and addition of an existing 3,478-square-foot, two (2)-story, single-family residence with an attached 506-square-foot, two (2)-car garage. The proposed addition and remodel would result in a 3,615-square-foot, three (3)-story, single-family residence with an attached 527-square-foot, two (2)-car garage. The project includes new landscape, hardscape, and site walls and will utilize existing drainage facilities within the confines of the private property. The design complies with all applicable development standards and no deviations are requested.
3. The subject property is designated RT (Two-Unit Residential) by the General Plan Land Use Element and is located within the R-2 (Two-Unit Residential) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RT-D (Two-Unit Residential – [20.0 - 29.9 DU/AC]) and the property is located within the R-2 (Two-Unit Residential) Coastal Zone District.
5. A public hearing was held online on April 15, 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 15301, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities), because it has no potential to have a significant effect on the environment.

2. Class 1 exempts additions to existing structures provided that the addition will not result in an increase of more than 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less. The proposed project consists of remodel and addition of an existing 3,478-square-foot, two (2)-story, single-family residence with an attached 506 square foot, two (2)-car garage. The proposed remodel and addition would result to a 3,615-square-foot, three (3)-story, single-family residence with an attached 527-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 (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 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 4,500 square feet and the proposed floor area is 4,142 square feet.
 - b. The proposed development will provide the minimum required setbacks, which are 10 feet along the front property line, 3 feet along each side property line, and 0 feet along the rear property line.
 - c. The highest ridge of the sloping roof is approximately 29 feet from established grade, which complies with the maximum height limitation of 29 feet for a sloping roof.
 - d. The project includes enclosed garage parking for two (2) vehicles, in compliance with the minimum parking requirement for single-family residences with less than 4,000 square feet of habitable floor area.
2. The neighborhood is predominantly developed with one (1)-, two (2)-, and three (3)-story, single- and two (2)-unit residences. The proposed design, bulk, and scale of the

development will be consistent with the existing neighborhood pattern of development and expected future development.

3. The existing residence fronts the Pacific Ocean, but is separated from the shoreline by a very wide sandy beach (approximately 560-foot separation). The project site is not protected by a bulkhead.
4. The project involves an addition and remodel to an existing single-family residence. The neighborhood is predominantly developed with one (1), two (2), and three (3)-story, single- and two (2)-unit residences. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development and expected future development consistent with applicable development standards.
5. The project site is located adjacent to the public beach and the public Ocean Front boardwalk. Due to the project location, an initial evaluation of the potential impact to the viewshed or the scenic and visual qualities of the coastal zone was conducted pursuant to NBMC Section 21.30.100 (Scenic and Visual Quality Protection). Expansive views of the Newport Pier, Balboa Pier, Pacific Ocean, and public beach are afforded from the public sidewalk along West Ocean Front. However, the subject property is located landward of the public vantage points and not between public vantage points and these view features. Therefore, the project will not impact existing, nor provide an opportunity to enhance, public views along these vantage points.
6. A project-specific Coastal Hazards and Wave Runup Report was prepared by GeoSoils, Inc., dated March 10, 2021. The maximum bay water elevation is 7.7 feet North American Vertical Datum of 1988 (NAVD 88). The report analyzes future sea level rise scenarios assuming a 2.95-foot increase in the maximum water level over the next 75 years (i.e. the life of the structure). Therefore, the sea level is estimated to reach approximately 10.9 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).
7. The finished floor elevation of the existing single-family residence is 12.34 feet (NAVD 88), which complies with the minimum 9.0-foot (NAVD 88) elevation standard. The Coastal Hazards Report concludes that the bay water elevation (currently 7.7 feet NAVD 88) will not exceed the proposed finished floor elevation around the single-family residence at 12.34 feet (NAVD 88) for the anticipated 75-year life of the structure. The patio finished surface is at 12.01 feet (NAVD 88) which will serve as adequate elevation for flood protection of the site and surrounding properties.
8. 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.

9. Pursuant to Newport Beach Municipal Code (NBMC) Section 21.30.030(C)(3)(i)(iv) – (Natural Landform and Shoreline Protection), 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) – (Waterfront - 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.
10. An Erosion Control Plan prepared by Toal Engineering, dated February 1, 2021, provides recommendations for temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation, and to minimize pollution of runoff derived by construction chemicals and materials.
11. The existing residence is set back approximately 560 feet from coastal waters. Due to the scope of work being an addition and remodel to an existing residence, a Water Quality and Hydrology Plan is not required.
12. The project design addresses water quality with a construction erosion control plan and a post construction drainage system that includes drainage and percolation features designed to retain dry weather and minor rain event run-off on-site. Any water not retained on-site is directed to the City's storm drain system.
13. New landscaping will be verified for compliance with NBMC Section 21.30.075 (Landscaping). A condition of approval is included that requires drought-tolerant, and prohibits invasive, species. Prior to issuance of the building permits, the final landscape plans will be reviewed to verify invasive species are not planted.

Finding:

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

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline; however, the project will not affect the public's ability to gain access to, use, and/or view the coast and nearby recreational facilities.
2. Vertical access to the bay and beach is available east of the site at the intersection of West Ocean Front and 14th Street, and west of the site at the intersection of West Ocean Front and 15th Street. Lateral access is available along an existing 14-foot wide public boardwalk

in front of the project site. The project does not include any features that would obstruct access along these routes.

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) 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. CD2021-007 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 15th DAY OF APRIL, 2021.



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. The proposed second floor balcony encroachment of 3'-6" shall be revised to encroach up to a maximum of 36" to be consistent with Sections 20.30.110.D.5 and 21.30.110.D.5 (Balconies Abutting East Ocean Front and West Ocean Front) of the Newport Beach Municipal Code.
3. *The finished floor and site improvements at West Ocean Front shall be 10.9 feet (NAVD88) minimum in accordance with the recommendations provided in the report prepared by GeoSoils, Inc. on March 10, 2021 and as identified in the approved plans.*
4. *Waiver of Future Protection for Properties with No Bulkheads – 21.30.015.E.5 Prior to final building permit inspection, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices to address the threat of damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards that may affect the property, or development of the property, today or in the future. The agreement shall be binding against the property owners and successors and assigns.*
5. *Acknowledgement of Hazards for Waterfront Development - 21.30.015.D.3(c) 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.*
6. 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.
7. Demolition beyond the approved scope of work requires planning division approval prior to commencement of work. Approval of revisions to project plans are not guaranteed. Any

changes in the current scope of work may require the entire structure to be demolished and redeveloped in conformance with the current Zoning Code Development Standards.

8. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
9. 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 or two short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
10. 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.
11. 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.
12. 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. Stock piles 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.
13. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
14. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.

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15. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
 16. 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.
 17. 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.
 18. *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.*
 19. *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.*
 20. 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.
 21. *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.*
 22. *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.*
 23. 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.
 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. CD2021-007 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 Cook Residence including, but not limited to, Coastal Development Permit No. CD2021-007 (PA2021-028). 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.