RESOLUTION NO. ZA2021-051

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2021-026 TO DEMOLISH AN EXISTING SINGLE-FAMILY RESIDENCE AND CONSTRUCT A NEW THREE (3)-STORY SINGLE-FAMILY RESIDENCE AND ATTACHED THREE (3)-CAR GARAGE LOCATED AT 1615 EAST BAY AVENUE (PA2021-140)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Brandon Architects (Applicant), with respect to property located at 1615 East Bay Avenue and legally described as the westerly 30 feet of lots 8, 9, 10 & 11 in Block 25 of East Side Addition to the Balboa Tract, Lot 8 in Block “P” of the Bayfront Section of the Balboa Tract, and a portion of an abandoned street right of way, requesting approval of a coastal development permit.

2. The Applicant proposes to demolish an existing single-family residence and the construction of a new 4,171-square-foot, three (3)-story single-family residence with an attached 650-square-foot, three (3)-car garage. The project also includes the installation of landscaping, hardscaping, drainage, site walls, patio improvements, and a reinforced bulkhead cap for protection against coastal hazards. All improvements authorized by this CDP will be located on private property. The design complies with all applicable development standards and no deviations are requested.

3. The subject property is categorized RS-D (Single Unit Residential Detached) by the General Plan Land Use Element and is located within the R-1 (Single-Unit Residential) Zoning District.

4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-B (Single Unit Residential Detached) - (6.0 – 9.9 DU/AC) and it is located within the R-1 (Single-Unit Residential) Coastal Zone District.

5. A public hearing was held online on September 30, 2021, consistent with Governor’s Executive Orders N-08-21 and N-29-20 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 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 demolition of up to three (3) single-family residences and additions of up to 10,000 square feet to existing structures. The proposed project consists of the demolition of one single-family residence and the construction of a new 4,171-square-foot, three (3)-story single-family residence with an attached 650-square-foot, three (3)-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 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 5,232 square feet and the proposed floor area is 4,821 square feet.
   b. The proposed development provides the minimum required setbacks, which are 5 feet measured from the abandoned street right-of-way, 3 feet along each side property line and 5 feet along the rear property line abutting the alley.
   c. The highest guardrail is less than 24 feet from established grade (9.79 feet North American Vertical Datum of 1988 [NAVD 88]) and the highest ridge is no more than 29 feet from established grade, which comply with the maximum height requirements.
   d. The project includes garage parking for a total of three (3) vehicles, complying with the minimum three (3)-car garage parking requirement for single-family residences with more than 4,000 square feet of habitable floor area.
2. The neighborhood is predominantly developed with two (2)-story residences and an occasional three (3)-story, single-family residence. The proposed design, bulk, and scale of the development is consistent with applicable development standards of the zoning district and the expected future development of the neighborhood.

3. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by PMA Consulting, Inc. dated June 10, 2021, for the project. The report states that the current maximum bay water elevation is 7.7 feet based on the North American Vertical Datum of 1988 (NAVD 88) and it may exceed the current top of bulkhead elevation of 9.50 feet (NAVD 88) during high tide or storm events. The report analyzes future sea level rise scenarios assuming a 3-foot increase in the maximum water level over the next 75 years. The bay water level is estimated to reach approximately 10.7 feet (NAVD 88) in the year 2096 (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 report concludes that once the existing bulkhead is reinforced and raised per the report’s recommendations, flooding, wave runup, and erosion will not significantly impact this property over the proposed 75-year economic life of the development. As such, the project has been conditioned to raise the bulkhead to a height of 10.90 (NAVD 88) with a design adaptability of elevation of 14.4 feet (NAVD 88).

4. The top of slab for the first floor of the residence is proposed at an elevation of 9.37 feet (NAVD 88) which complies with the minimum 9.00 feet (NAVD 88) elevation standard.

5. Pursuant to NBMC Section 21.30.030(C)(3)(i)(iv), the property owner will be required to enter into an agreement with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction by coastal hazards (e.g., waves, erosion, and sea level rise). The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with NBMC Section 21.30.015(D)(3)(c). Both requirements are included as conditions of approval, Condition of Approval Numbers 5 and 6 respectively, and will need to be satisfied prior to final building inspection, and prior to the issuance of building permits, respectively.

6. The property is 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 abuts coastal waters. 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 NBMC Section 21.35.050, 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. dated June 11, 2021. 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. Condition of Approval Number 24 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 view road, public access way, or Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoint is approximately 3,168 feet away from the project site, at West Jetty View Park, and is not visible from the site. There is a public beach within the vicinity of the project site however the residence is not visible from that beach. The project's compliance with height and setback development standards will help prevent impacts to coastal views as the new residence will maintain a building envelope consistent with the existing neighborhood pattern of development. As a bayfront property, the north elevation of the new residence will be visible from the water. The proposed design uses architectural treatments which will enhance views from the water. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.

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-1 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 designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.

2. Vertical access to the bay is available on either side of the site at the H street and I Street-ends. Lateral access is available through the public alleyways and East Balboa Boulevard.
There is a public beach, approximately 2,112 feet east of the project site that provides further access opportunities. 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 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. 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.

2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2021-026, subject to the conditions set forth in Exhibit “A,” which is attached hereto and incorporated by reference.

3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 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.

PASSED, APPROVED, AND ADOPTED THIS 30TH DAY OF SEPTEMBER, 2021

[Signature]
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 of building permits for the new residence, the existing bulkhead shall be raised to provide a minimum elevation of 10.90 feet (NAVD 88), with a design adaptability of 14.4 feet (NAVD 88), in compliance with the City of Newport Beach Waterfront Project Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities.

3. The existing bulkhead shall be reinforced in accordance with the recommendations provided in the Coastal Hazards Report and Sea Level Rise Analysis prepared by PMA Consulting, Inc, dated June 10, 2021.

4. The Applicant shall obtain approval from the California Coastal Commission in order to raise and reinforce the bulkhead.

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 including the repair and maintenance, enhancement, reinforcement, or any other activity affecting the bulkhead, that results in any encroachment seaward of the authorized footprint of the bulkhead or other shoreline protective device. The agreement shall be binding against the property owners and successors and assigns.

6. Prior to the issuance of a building permit, the property owner shall 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.

7. 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.

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. This Coastal Development Permit does not authorize any development seaward of the private property.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.

16. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. Prior to issuance of building permits, the final 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.

24. 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.

25. 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.

26. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the NBMC. The maximum
noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

<table>
<thead>
<tr>
<th>Location</th>
<th>Interior</th>
<th>Exterior</th>
<th>Interior</th>
<th>Exterior</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Property</td>
<td>45dBA</td>
<td>55dBA</td>
<td>40dBA</td>
<td>50dBA</td>
</tr>
<tr>
<td>Residential Property located within 100 feet of a commercial property</td>
<td>45dBA</td>
<td>60dBA</td>
<td>45dBA</td>
<td>50dBA</td>
</tr>
<tr>
<td>Mixed Use Property</td>
<td>45dBA</td>
<td>60dBA</td>
<td>45dBA</td>
<td>50dBA</td>
</tr>
<tr>
<td>Commercial Property</td>
<td>N/A</td>
<td>65dBA</td>
<td>N/A</td>
<td>60dBA</td>
</tr>
</tbody>
</table>

27. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday. Noise-generating construction activities are not allowed on Saturdays, Sundays or Holidays.

28. 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.

29. 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.

30. This Coastal Development Permit No. CD2021-026 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.

31. 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 Schulman Residence including, but not limited to, Coastal Development Permit No. CD2021-026 (PA2021-140). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.