

RESOLUTION NO. ZA2021-077

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2021-056 TO CONSTRUCT A NEW TWO (2)-STORY SINGLE-FAMILY RESIDENCE AND ATTACHED TWO (2)-CAR GARAGE LOCATED AT 522 VIA LIDO NORD (PA2021-215)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Anne Fox, MIG, Inc., with respect to property located at 522 Via Lido Nord, requesting approval of a coastal development permit.
2. The proposed site at 522 Via Lido Nord is legally described as Lot 502 of Tract No. 907 in the City of Newport Beach, Orange County, California.
3. The applicant proposes to construct a new single-family residence of 1,665 square feet including an attached 498-square-foot, two (2)-car garage. The structure would reach a height of approximately 24 feet and includes two (2) stories. The project includes reinforcing and raising the existing bulkhead. The project also includes additional appurtenances such as site walls, fences, patios, landscaping, and drainage devices. The design complies with all development standards including height, setbacks, and floor area limit, and no deviations are requested. The project will occupy the underlying legal Lot 502 which was previously developed with Lot 501 as 520 Via Lido Nord. The project will be assigned the new address 522 Via Lido Nord.
4. The subject property is designated 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.
5. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RSD-C (Single Unit Residential Detached 10.0-19.9 DU/AC) and it is located within the R-1 (Single-Unit Residential) Coastal Zoning District.
6. Implementation of CD2021-056 and CD2021-033, as conditioned, will result in no net loss of density.
7. A public hearing was scheduled on November 24, 2021 and continued to December 16, 2021. The public hearing was held online via Zoom. 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, Division 6, 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 construction of up to six (6) dwelling units in urbanized areas. The proposed project consists of the construction of a new 1,665-square-foot, single-family residence including an attached 498-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 3,658 square feet and the proposed floor area is 1,665 square feet.
 - b. The proposed development provides the minimum required setbacks, which are 4 feet along the front property line abutting Via Lido Nord, 3 feet along each side property line and 10 feet along the front property line abutting the Bay.
 - c. The highest guardrail and ridge are less than 24 feet from established grade (12.79 feet NAVD88), which complies with the maximum height requirements.

- d. The project includes garage parking for a total of two (2) vehicles, complying with the minimum two (2)-car garage parking requirements for single-family residences with less than 4,000 square feet of habitable floor area.
2. The neighborhood is predominantly developed with two (2)-story, single- and two (2)-family residences. The proposed design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development.
3. Coastal Hazards Report and Sea Level Rise Analysis was prepared by PMA Consulting, Inc. dated July 26, 2021, for the project. The current maximum bay water elevation is 7.7 NAVD88 (North American Vertical Datum of 1988 (NAVD88) and may exceed the existing 8.83 feet NAVD88 top of bulkhead elevation 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 (i.e. the life of the structure). Therefore, the sea level is estimated to reach approximately 10.7 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).
4. On March 23, 2021, the City Council approved updated Waterfront Project Design Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities. The guidelines require that any bulkhead structure permitted within the years 2021 through 2025 must have a minimum bulkhead elevation of 10.9 feet (NAVD 88) with a design for adaptability elevation of 14.4 feet (NAVD 88). The project has been conditioned to raise the bulkhead to an elevation of 11.19 feet (NAVD 88) per the proposed plans. PMA Consulting, Inc. has confirmed the bulkhead design can be raised up to 14.4 feet (NAVD 88) if needed and in compliance with the updated guidelines.
5. Once the existing seawall/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. The report concludes that the proposed project will be safe from flooding hazards for the next 75 years with the reinforced and raised bulkhead. Therefore, the project has been conditioned to raise the bulkhead to the 11.19 feet (NAVD88) per the approved plans.
6. The finished floor elevation of the proposed single-family residence is 12.61 feet (NAVD88), which complies with the minimum 9.00-foot (NAVD88) elevation standard. The Coastal Hazard Report concludes that the bay water elevation (currently 7.7 feet NAVD88) will not exceed the proposed finished floor for the anticipated 75-year life of the structure.
7. Pursuant to NBMC Section 21.30.030(C)(3)(i)(iv) – (Natural Landform and Shoreline Protection - Development Standards), 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) – (General Site Planning and Development Standards - Waterfront Development). 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.

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. The property is located adjacent to 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.
10. Pursuant to Municipal Code Section 21.35.050 (Water Quality and Management 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 (WQMP) is required. A preliminary WQMP was prepared on July 27, 2021 for the project by Forkert Engineering & Surveying, Inc. The WQMP includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, use of an Low Impact Development (LID) approach to retain the design storm runoff volume on site, and documentation of the expected effectiveness of the proposed BMPs.
11. 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.
12. 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 across the bay at Kings Road Park and the site is only slightly visible from the park. As currently developed, the existing property and other residences along the bay and Via Lido Nord are located within the view shed of the park and bay. However, the proposed single-family residence complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.
13. The front of the residence, which is visible from the bay, provides a large setback of 44 feet where the required setback is 10 feet. The proposed residence includes two (2) stories and reaches a maximum height of 24 feet, where three (3) stories and a maximum height of 29 feet is allowed per the NBMC. Lastly, the design includes modulation of volume throughout the structure and low front site walls that prevent the

appearance of the site being walled off from the bay. 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 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project replaces an existing single-family residence located on standard residential lot with a new single-family residence. The lot is zoned for multi-family, but the existing development is single family. 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 and lateral access to the bay and beach is available approximately 300 feet northwest of the property at the terminus of Via Koron, where there is access to the beach along the bay. Additional vertical access points to the water are located at the terminus of Via Orvieto. 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 (Conversion or Construction 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. CD2021-056, 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 16TH DAY OF DECEMBER, 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. 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.
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 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.
8. 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.

9. *The grade determination for the purposes of measuring height of accessory structures within the 10-foot front yard setback along the waterfront, authorized by Staff Approval No. SA2021-008 shall be based on the grade of 12.71 feet (NAVD88).*
10. *Prior to final of building permits, the existing seawall shall be reinforced and capped to 11.19 feet (NAVD 88) and capable to be raised up to 14.4 feet (NAVD 88), in compliance with the City of Newport Beach Waterfront Project Guidelines and Standards, Harbor Design Criteria Commercial and Residential Facilities in accordance with the recommendations provided in the Coastal Hazards Report and Bulkhead Conditions Report prepared by PMA Consulting, Inc., dated July 26, 2021.*
11. *Prior to the final building permit inspection for the dwelling at 522 Via Lido Nord, building permits for the new dwelling at 520 Via Lido Nord (CD2021-033) shall be issued and construction commenced to ensure no net loss of housing units through project implementation.*
12. 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.
13. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
14. This Coastal Development Permit does not authorize any development seaward of the private property.
15. 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.

16. 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.
17. 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.
18. 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.
19. 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.
20. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new coastal development permit.
21. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
22. 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.
23. This Coastal Development Permit may be modified or revoked by the Zoning Administrator if it is determined that the proposed uses or conditions under which it is being operated or maintained are 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.
24. 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.
25. Construction activities shall comply with Section 10.28.040 – (Construction Activity—Noise Regulations) 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.

26. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 – (Community Noise Control) and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
Location	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

27. Prior to the issuance of building permits, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
28. 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.
29. This Coastal Development Permit No. CD2021-056 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.
30. 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 Inter-Pro Property Corporation Residence including, but not limited to, Coastal Development Permit No. CD2021-056 (PA2021-215). 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.