RESOLUTION NO. ZA2022-036

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING COASTAL DEVELOPMENT PERMIT NO. CD2021-078 FOR THE DEMOLITION OF AN EXISTING DUPLEX AND THE CONSTRUCTION OF A NEW THREE (3)-STORY, 2,894-SQUARE-FOOT, SINGLE-FAMILY RESIDENCE WITH AN ATTACHED 267-SQUARE-FOOT JUNIOR ACCESSORY DWELLING UNIT AND A 403-SQUARE-FOOT ATTACHED TWO (2)-CAR GARAGE LOCATED AT 4003 AND 4003 ½ MARCUS AVENUE (PA2021-300)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Steve and Vinnie Haag (Applicant), with respect to property located at 4003 and 4003 ½ Marcus Avenue, and legally described as Lot 2 of Block 340, requesting approval of a coastal development permit.

2. The Applicant proposes the demolition of an existing duplex and the construction of a new three (3)-story, 2,894-square-foot, single-family residence with an attached 267-square-foot junior accessory dwelling unit (JADU) and an attached 403-square-foot, two (2)-car garage. The project also includes the raising and reinforcing of an existing bulkhead for protection against coastal hazards. All improvements are located on private property and also includes appurtenances such as walls, fences, patios, hardscape, drainage devices, and landscaping.

3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two Unit Residential (RT). The R-2 Zoning District permits single- and two (2)-unit residential dwellings.

4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Two Unit Residential (RT-D) (20.0 – 29.9 DU/AC) and the Coastal Zoning District is Two-Unit Residential (R-2).

5. A public hearing was held on May 12, 2022, 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 construction of limited numbers of new, small structures, including one (1) single-family residence and an attached JADU. The proposed project is a new single-family residence with an attached JADU located in the R-2 Coastal Zoning District.

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(F) (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 3,648 square feet and the proposed floor area is 3,564 square feet.
   b. The proposed development complies with the required setbacks, which are 20 feet abutting the bay, 4 feet abutting Marcus Avenue, and 3 feet along each side property line.
   c. The highest guardrail/parapet is below 24 feet from established grade and the highest ridge is 29 feet from established grade. The proposed development complies with all height requirements.
   d. The proposed development provides a two (2)-car garage, complying with the minimum garage requirement for a single-family residence. The proposed JADU does not require additional parking.
   e. The maximum floor area for a one (1)-bedroom JADU is 500 square feet and the proposed ADU is 267 square feet.
f. The proposed development complies with the minimum 9.0-foot based on the North American Vertical Datum of 1988 (NAVD 88) top of slab elevation requirement for interior living areas of new structures. Additionally, since the property is located in the AO1 Flood Zone, a minimum 10.0-foot NAVD 88 top of slab is required. The project proposes a 10.0-foot NAVD 88 top of slab, which complies with the flood zone requirements.

2. The project proposes to demolish the existing duplex on-site to construct a single-family residence and attached JADU. As a result, the project complies with the Housing Crisis Act of 2019 and Senate Bill 8 (Skinner) because it does not result in the loss of residential density. The State Department of Housing and Community Development (HCD) has verified with the City in an email dated March 23, 2022, that an ADU is considered a housing unit under Government Code Section 66300 provisions to replace existing units. The Property Owner has certified that the units are not "protected" units under Section 66330 Subdivision (d)(2). The project is consistent with the General Plan, Local Coastal Program, and Zoning designations that allow the single-family and accessory dwelling unit land uses. Under Coastal Land Use Plan Table 2.1.1-1, the Two Unit Residential (RT) category is intended to provide primarily for two (2)-family residential development such as duplexes or townhomes. Implementation Program (IP) Table 21.18-1 shows “Single-Unit Dwellings – Detached” and “Accessory Dwelling Units” as allowed uses in the R-2 Coastal Zoning District. Therefore, the project of a single-family residence and accessory dwelling unit to replace the existing duplex is consistent with the R-2 zoning and land use designations and does not result in a loss of residential density.

3. The neighborhood is predominantly developed with two (2)- and three (3)-story single- and multi-unit residences. The proposed three (3)-story structure’s design, bulk, and scale of the development is consistent with the existing neighborhood pattern of development and expected future development.

4. The finish floor elevation of the proposed dwelling is 10.0 feet (NAVD 88), which complies with the minimum 10.0-foot (NAVD 88) elevation standard of the AO1 Flood Zone.

5. A Coastal Hazards Report were prepared by PMA Consulting, Inc. on November 30, 2021. The project site directly abuts the Newport Bay and thus may be subject to coastal hazards such as flooding, runup, and erosion. The report concludes that the highest high tide elevation (currently 7.7 feet NAVD 88) will not exceed 10.9 feet (NAVD 88) using the low-risk aversion projected sea level rise (3.2-foot increase) over the 75-year design life of the structure based on estimates for sea level rise provided by the State of California Sea-Level Rise Guidance 2018. The estimated sea level rise over the next 75 years, using the Medium-High Risk Aversion, is potentially 6 feet (13.7 feet NAVD 88). If the proposed seawall is not found to be adequate for the actual sea level rise over the next 75 years, the seawall assembly allows the increase of height to 14.4 feet (NAVD 88) without further seaward encroachment. Additionally, the site has not historically been subject to any wave overtopping, nor is overtopping waters over the next 75 years expected to reach the subject site, even under extreme conditions. Based
on the data provided, the study concludes that coastal hazards will not impact the property over the next 75 years, as the proposed project has minimal risk from flooding.

6. The project site is protected by an existing bulkhead. A bulkhead conditions report was prepared for the project by PMA Consulting, Inc., dated November 30, 2021. The report concludes that once the existing bulkhead is reinforced 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.

7. Pursuant to Municipal Code Section 21.35.050 (Water Quality and Hydrology Plan), due to the proximity of the development to the shoreline and the development containing more than 2,500 square feet of impervious surface area, a Water Quality Management Plan (WQMP) is required. A WQMP prepared by Thomas Ruiz, Civil Engineer, dated December 9, 2021, has been submitted and will be reviewed by the City’s Geologist Engineer. The WQMP includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, use of a LID approach to retain the design storm runoff volume on site, and documentation of the expected effectiveness of the proposed BMPs.

8. Pursuant to NBMC Section 21.30.030(C)(3)(i)(iv) of the NBMC, 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). These requirements are included as Conditions of Approval Numbers 4 and 5, and will need to be satisfied prior to final building inspection, and prior to the issuance of building permits, respectively.

9. 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 the CBC prior to building permit issuance.

10. The project site is not located adjacent to a coastal view road, or public accessway, as identified in the Coastal Land Use Plan. The project is located approximately 300 feet from Newport Island Park, which is identified as a Public View Point by the Coastal Land Use Plan. Additionally, the project may be located within the viewshed of other distant public viewing areas. Site evaluation revealed that the proposed three (3)-story design is consistent with the existing neighborhood pattern of development and will not affect the existing views afforded from the surrounding streets. The project will replace an existing duplex with a new single-family residence and attached JADU that complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. 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.
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 on the Balboa Peninsula between the nearest public road and the sea. 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 duplex with a new single-family residence and attached JADU. 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 so as not to block or impede existing public access opportunities.


3. The project site is located between Channel Place and 40th Street, which are identified by the Coastal Land Use Plan as public beach access locations. The project does not interfere with the existing nearby access to the beach. Vertical access to the bay is available at the street ends of Channel Place and 40th Street. Lateral access is not available near the project site.

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 and that the exceptions to the Class 3 Exemption do not apply.

2. The Zoning Administrator of the City of Newport Beach hereby approves Coastal Development Permit No. CD2021-078, 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 (NBMC). 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 12TH DAY OF MAY, 2022.

Jaime Murillo
Zoning Administrator
EXHIBIT “A”

CONDITIONS OF APPROVAL

Planning Division

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

3. Coastal Development Permit No. CD2021-078 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 NBMC, unless an extension is otherwise granted.

4. 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. 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.

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.

7. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.

8. All proposed accessory structures located within setback areas shall comply with applicable height limits consistent with Section 20.30.040 (Fences, Hedges, Walls, and Retaining Walls) of the NBMC.
9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. The Applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of Native Birds pursuant to MBTA:

A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no longer observed. When the nest is no longer active, construction activity can continue in the nest area.

B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one (1) or two (2) short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
15. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.

16. All principal structures shall be waterproofed to a minimum height of 14.4 feet NAVD 88.

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 permit, the Applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.

20. 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 either the current business owner, property owner, or the leasing agent.

21. 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 Haag Residence including, but not limited to, Coastal Development Permit No. CD2021-078 (PA2021-300). 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.

Building Division

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

23. 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.
24. **Prior to issuance of the building permits**, a copy of the Resolution, including conditions of approval Exhibit “A” shall be incorporated into the Building Division and field sets of plans.

25. **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.

26. **Prior to issuance of building permits**, the Applicant shall submit a soils report which include recommendations for construction on liquefiable soils. Additionally, the building foundation shall comply with the minimum requirements of the City of Newport Beach Building Code Policy CBC 1803.5.11-12.

27. The project shall comply with all applicable standards of Flood Zone AO1 in NBMC Section 15.50 and 15.05.100.