

Attachment No. PC 1

Draft Resolution

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RESOLUTION NO. PC2025-015

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A COASTAL DEVELOPMENT PERMIT TO ALLOW THE DEMOLITION OF AN EXISTING SINGLE-UNIT DWELLING AND CONSTRUCTION OF A NEW SINGLE-UNIT DWELLING AND A VARIANCE FOR FLOOR AREA LIMIT AND SETBACK ENCROACHMENTS, INCLUDING THIRD FLOOR STEPBACKS, FOR THE PROPERTY LOCATED AT 2830 BAYVIEW DRIVE (PA2024-0057)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Brandon Architects (“Applicant”), on behalf of property owner Jason and Michelle Zenk (“Owner”), concerning property located at 2830 Bayview Drive, and legally described as the Southeasterly 59 feet of Lots 1, 3, 5, and 7, except the Northeasterly 10 feet of Lot 7 all in Block 134, Re-subdivision of Corona Del Mar, in the City of Newport Beach, County of Orange, State of California, as per map recorded in Book 4, Page 67 of Miscellaneous Maps, in the Office of the Orange County Recorder of said county (Property).
2. The Applicant requests a coastal development permit to demolish an existing single-unit dwelling and construct a new 5,413 square-foot, three-story, single-unit dwelling with a 707 square-foot, attached, three-car garage and 2,446 square-foot subterranean basement (“Project”). The Project also includes landscape, hardscape, drainage improvements, and site walls. The Applicant requests a variance from Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code (“NBMC”) to allow the following deviations to the proposed development:
 - a. Encroachment of 5 feet into the required 20-foot front setback along Heliotrope Avenue for the basement and first floor;
 - b. Encroachment of 6 feet into the required 10-foot rear setback for the basement, first, and second floor;
 - c. Encroachment of 15 feet into the required 35-foot front third-floor stepback;
 - d. Encroachment of 19 feet into the required 25-foot rear third-floor stepback; and
 - e. Exceed the gross floor area limit by 1,675 square feet.
3. The Property is categorized as Single Unit Residential Detached (RS-D) by the General Plan Land Use Element and is located within the Single-Unit Residential (R-1) Zoning District.

4. The Property is located within the Coastal Zone. The Coastal Land Use Plan category is Single Unit Residential Detached – 6.0–9.9 DU/AC (RSD-B) and the Coastal Zoning District is Single-Unit Residential (R-1).
5. The Property is located within the boundaries of the Categorical Exclusion Order, as amended in 2018 (CE-5-NPB-16-1-A1) by the California Coastal Commission, which allows single-unit development that conforms to all applicable development standards to be categorically excluded from obtaining a coastal development permit. However, as the Project does not conform to all development standards within Title 21 (Local Coastal Program Implementation Plan) of the NBMC; a coastal development permit is required.
6. A public hearing was held on November 21, 2024, in the Council Chambers at 100 Civic Center Drive, Newport Beach, California. A notice of the time, place, and purpose of the hearing was given in accordance with the California Government Code Section 54950 *et seq.* (“Ralph M. Brown Act”) and Chapters 20.62 and 21.62 (Public Hearings) of the NBMC. At the close of the hearing, the Planning Commission continued the item to a date uncertain to provide the Applicant with additional time to redesign the Project to address concerns related to the proposed setback encroachment along Heliotrope Avenue.
7. A public hearing was held on August 7, 2025, in the Council Chambers at 100 Civic Center Drive, Newport Beach, California. A notice of the time, place, and purpose of the hearing was given in accordance with the California Government Code Section 54950 *et seq.* (“Ralph M. Brown Act”) and Chapters 20.62 and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to and considered by the Planning Commission at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. The Project is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the California Code of Regulations, Title 14, Division 6, Chapter 3 (“CEQA Guidelines”), because it has no potential to have a significant effect on the environment.
2. Class 3 exempts the demolition of up to three single-unit dwellings and additions of up to 10,000 square feet to existing structures. The Project includes the demolition of one existing single-unit dwelling and construction of a new single-unit dwelling located within the Single-Unit Residential (R-1) Zoning District and the Single-Unit Residential (R-1) Coastal Zoning District. Therefore, the Class 3 exemption is applicable.
3. The exceptions to this categorical exemption under Section 15300.2 of the CEQA Guidelines 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.

Variance

In accordance with Section 20.52.090(F) (Variances – Findings and Decision) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

- A. *There are special or unique circumstances or conditions applicable to the subject property (e.g., location, shape, size, surroundings, topography, or other physical features) that do not apply generally to other properties in the vicinity under an identical zoning classification.*

Facts in Support of Finding:

1. The Property is rectangular and 110 feet wide by 59 feet deep. The Property is 6,497 square feet in size and slopes approximately 3.9% from the high side, towards the southern portion of the Property.
2. The Property has a unique orientation compared to the neighboring lots along Heliotrope Avenue. The Property and surrounding area were originally subdivided in 1906. This subdivision affected 10 lots on the eastern portion of Block 134, between Bayview Drive and Seaview Avenue. All 10 lots originally fronted Heliotrope Avenue to the east with alley access in the rear. After the original subdivision, two lots, including the Property, were reoriented to front Bayview Drive rather than Heliotrope Avenue and two single-unit dwellings were built over lots 1, 3, 5, and a portion of lot 7. According to County Assessor records, the existing residence on the Property was constructed in 1948, and prior to the Subdivision Map Act of 1974. Certificate of Compliance No. 2008-157 certifies that the Property has been legally created and complies with the Subdivision Map Act and was recorded with the Orange County Clerk Recorder in 2008.
3. The Property is located within the Corona del Mar re-subdivision where typical residential properties measure 30 feet wide by 118 feet deep and have vehicular access provided through an alley located in the rear. Pursuant to Table 2-2 (Development Standards for Single-Unit Residential Zoning Districts) of Section 20.18.030 (Residential Zoning Districts General Development Standards) of the NBMC, such properties are subject to a 20-foot front setback, a five-foot rear alley setback, and three-foot side setbacks. The Property is developed with an orientation known as a reverse corner lot orientation, with the reoriented lot perpendicular to and abutting the neighboring lots on Heliotrope Avenue. The neighboring lot at 2820 Bayview Drive is also developed with a reverse corner lot orientation. Despite this reorientation, Heliotrope Avenue is designated as the front of the lot, pursuant to Setback Map No. S-10B (Corona del Mar) of Section 20.80.040 (Setback Maps) of the NBMC.
4. A residence which abuts another residence to the rear requires a 10-foot rear setback, whereas a residence which abuts an alley only requires a 5-foot rear setback.

Additionally, the Property is subject to a 20-foot front setback along the entire 110-foot width, whereas a typical Corona del Mar lot is only subject to the 20-foot front setback along the 30-foot lot width. The front and rear setbacks along the 110-foot width of the Property create a disproportionately smaller buildable area and impacts the ability of the Property to be developed with a similar floor area ratio (“FAR”) to that of neighboring properties.

5. With a buildable area that is disproportionately shallow relative to width, the resulting building envelope is long and narrow. The limited lot depth, after applying the 20-foot front and 10-foot rear setbacks, results in a building pad that is only 29 feet deep. Required setback areas occupy approximately 54% of the Property’s lot area, whereas setbacks occupy only approximately 37% of a typical lot on Heliotrope Avenue. The neighboring property at 2820 Bayview Drive has the same reverse corner lot orientation as the Property, however it is considerably less impacted by setbacks. 2820 Bayview Drive is not identified on Setback Map No. S-10B (Corona del Mar) and instead takes its front setback from the narrower lot frontage along Bayview Drive, consistent with definition of a front setback area as provided in Section 20.30.110 (Setback Regulations and Exceptions) of the NBMC. As a result, setbacks only occupy approximately 38% of the lot area. Other properties in the neighborhood are also less impacted by setbacks, with setbacks generally occupying between 30% to 38% of each lot.
6. Section 20.48.180 (Residential Development Standards and Design Criteria) of the NBMC requires an additional 15-foot front and rear setbacks for enclosed areas and covered decks on the third floor. However, because the Property’s building pad is only 29 feet deep, the already constrained buildable area renders the Property physically unable to develop any enclosed floor area or covered decks on the third floor.
7. The unique lot orientation coupled with Title 20 (Planning and Zoning) development standards create a unique circumstance for the Property that does not generally apply to other properties in the vicinity within the same Single-Unit Residential (R-1) Zoning District.

Finding:

- B. *Strict compliance with Zoning Code requirements would deprive the subject property of privileges enjoyed by other properties in the vicinity and under an identical zoning classification.*

Facts in Support of Finding:

1. The strict application of development standards for the Property results in a buildable area (lot size minus required setbacks) of 2,963 square feet and a maximum allowable floor area (buildable area x 1.5) of 4,445 square feet. The buildable area and maximum allowable floor area are disproportionately smaller than that of other properties in the surrounding area.

2. Strict compliance with Title 20 (Planning and Zoning) of the NBMC development standards would deprive the Property of constructing a residence with a similar FAR to neighboring lots. The maximum allowable floor area of the Property yields a FAR of 0.68. Typical 118-foot by 30-foot lots in the Corona del Mar yield a maximum FAR of 0.95. The neighboring property at 2820 Bayview Drive, which has the same reverse corner lot orientation, has a maximum FAR of 0.92. The Property's maximum allowable FAR of 0.68 is approximately 28% less than what is allowed on lots with typical configuration and identical zoning classifications in the surrounding neighborhood. The Project proposes a maximum floor area of 6,120 square feet, which is a 1,675 square foot deviation. This increased floor area results in a FAR of 0.94, which is comparable to the FAR of other lots in the area which range from 0.92 to 1.13. Additionally, if Setback Map No. S-10B (Corona del Mar) did not require a 20-foot setback along Heliotrope Avenue, the property would otherwise have standard setbacks that result in a buildable area of 4,080 square feet and a maximum floor area limit of 6,120, which the project has been designed to comply with. The Project also includes a 2,340 square foot subterranean basement; however, footnote No. 5 of Table 2-2 (Development Standards for Single Unit Residential Districts) of Section 20.18.030 (Residential Zoning Districts General Development Standards) of the NBMC specifies that the floor area of a subterranean basement is not included in the calculation of gross floor area.
3. The Property is subject to a 20-foot front setback along Heliotrope Avenue, a 10-foot rear setback from the property line abutting 2820 Bayview Drive property, a 4-foot side setback along Bayview Drive, and a 4-foot side setback from the interior side property line abutting 235 Heliotrope Avenue. As discussed in Fact 5 in Support of Finding A, Section 20.30.110 (Setback Regulations and Exceptions) of the NBMC provides that the front setback area for a corner lot shall be the required distance parallel to the shortest property line adjoining the street; therefore, the Property's front setback area should be along Bayview Drive. However, Setback Map No. S-10B identifies the front setback area to be along Heliotrope Avenue for the entire block. The Project proposes a 15-foot setback along Bayview Drive, where the NBMC only requires a 4-foot side setback and mimics a traditional front setback for a corner lot.
4. The proposed orientation of the Project treats the designated front setback area along Heliotrope Avenue like a side setback. Despite functioning as a side setback, the Project still provides a 15-foot setback at ground level, with the second and third levels setback 20 feet. The Project proposes a 5-foot side setback from 235 Heliotrope Avenue, where only a 4-foot setback is required. The rear setback area abutting the neighboring property at 2820 Bayview Drive would now function as a side yard and the Project proposes a 4-foot setback consistent with the 4-foot side setback requirement.
5. Section 20.48.180 (Residential Development Standards and Design Criteria) of the NBMC requires residential designs to stepback any enclosed areas and covered decks on the third floors an additional 15 feet from the required front and rear setback lines and an additional 2 feet from the required side setback lines. These standards were developed with the intent of applying to standard lots that are typically long and narrow. However, because the property is only 59 feet deep, after applying the required 20-foot front and 10-rear setbacks, the building pad is only 29 feet deep. Applying the additional

15-foot front and rear setback renders the Property physically unable to develop any enclosed floor area or covered decks on the third floor.

6. A typical lot in Corona del Mar would provide a 15-foot third floor setback from the 20-foot required front setback for a total distance of 35 feet from the front property line, a 15-foot setback from the 5-foot required rear alley setback for a total distance of 20 feet from the rear property line, and a 2-foot setback from the 3-foot required side setbacks for a total distance of 5 feet from the side property lines. The Project provides a total of third floor setback of 20 feet from Heliotrope Avenue, 6 feet from the property line abutting 2820 Bayview Drive, 35 feet, from the side property line along Bayview Drive, and 45 feet, 4 inches from the interior side property line abutting 235 Heliotrope Avenue. This constitutes a 15-foot encroachment into the required front third floor setback as measured from Heliotrope Avenue and a 21-foot encroachment into the rear third floor setback. Though the enclosed third-floor floor area and covered deck encroach into the required front and rear third floor setbacks, the Project provides larger side setbacks that exceed what is typically required for the front and rear third floor setback because the Project has been designed with Bayview Drive as the front of the Property. With this design, the Project creates setbacks which concentrate the massing to the center of the residence, consistent with the purpose and intent of the third-floor setback requirements.

Finding:

- C. *Granting of the variance is necessary for the preservation and enjoyment of substantial property rights of the Applicant.*

Facts in Support of Finding:

1. All Facts in Support of Finding B are hereby incorporated by reference.
2. Fact in Support of Finding D.2 is hereby incorporated by reference.
3. The existing development encroaches 6 feet, 3 inches into the front setback along Heliotrope Avenue, 6 feet, 4 inches into the rear setback abutting to 2820 Bayview Drive, and 4 inches into the easterly side setback. Encroachments into the required setbacks have historically been allowed for the enjoyment of substantial property rights of the Property Owner, including Modification Permit No. MD2008-004 and Modification Permit No. MD3971.
4. Granting of the Variance allows the Applicant to construct a residence that has sufficient and appropriate setbacks, including third floor setbacks, with a similar FAR to surrounding residences.
5. The Property is 6,493 square feet in size and proposes a 6,120 square-foot single-unit dwelling, consistent with other corner lots in the area. The neighboring property at 2820 Bayview Drive is 6,195 square feet in size and has a maximum allowable floor area of 5,737 square feet. The property at 2960 Bayview is 9,415 square feet in size and has a

maximum allowable floor area of 10,044 square feet. The Variance will allow the Property to have an appropriately sized dwelling when compared to lots of similar size, shape, and location.

Finding:

D. Granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties in the vicinity and in the same zoning district.

Facts in Support of Finding:

1. Facts 2, 3, and 4 in Support of Finding B are hereby incorporated by reference.
2. Other properties within the Corona del Mar re-subdivision which have unique orientation and abut a residence to the rear instead of an alley have alternative setbacks approved. 3322 Seaview Avenue located five blocks east of the Property also abuts a residence at its rear instead of an alley and is subject to a 10-foot rear setback. Planning Application No. PA2011-116 was approved for that property to provide only a 5-foot rear setback due to the unique circumstance. 211 Orchid Avenue located seven blocks east of the Property has a unique orientation and abuts a residence at its rear instead of an alley. Planning Application No. PA2012-015 was approved for that property to provide a front setback that alternates from 10 to 20 feet and a rear setback that alternates from 4 to 7 feet.
3. The Property will provide a 15-foot setback along Bayview Drive and a 15-to-20-foot setback on Heliotrope Avenue which appropriately aligns with a typical front setback of other lots in the surrounding area which range from 10 to 20 feet.
4. Section 20.48.180 (Residential Development Standards and Design Criteria) of the NBMC allows a maximum of 15% of the buildable area to be enclosed floor area on the third floor. Though the Project proposes a deviation in the third-floor front and rear setbacks, the Project only proposes 366 square feet of enclosed floor area, which complies with the 444-square-foot third floor area limit.
5. In addition to enclosed floor area, Section 20.48.180 of the NBMC also limits the total combination of enclosed floor area and covered deck area on the third floor to a maximum of 50% of the buildable area. The Project proposes 178 square feet of covered deck area on the third floor for a total combined enclosed floor area and a covered deck area of 541 square feet, which complies with the 1,481-square-foot maximum.

Finding:

E. Granting of the variance will not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood.

Facts in Support of Finding:

1. Fact 2 and 3 in Support of Finding B is incorporated herein by reference.
2. The Project has been designed with articulation and modulation to soften the appearance of the residence along Heliotrope Avenue using a recessed door and windows, an open balcony on the second floor, and an open deck on the third floor. The Project has also been designed to comply with the 24-foot flat and 29-foot sloped height limit. Therefore, granting a Variance will not adversely impact public views or prove to be detrimental to the neighborhood.
3. Granting the Variance would not increase the density beyond what is planned for the area, should not result in additional traffic, parking, or demand for other services, and should not adversely impact any ocean view available from Bayview Drive.

Finding:

- F. Granting of the variance will not be in conflict with the intent and purpose of this section, this Zoning Code, the General Plan, or any applicable specific plan.*

Facts in Support of Finding:

1. Approval of the Variance will allow for the Property to be developed with setbacks that are consistent with other lots in the surrounding area.
2. The Variance would allow a maximum FAR consistent with neighboring lots within the same zoning designation.
3. The Project will comply with all other applicable development standards of the NBMC.
4. The Property is not located within a specific plan area.

Coastal Development Permit

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

Finding:

- G. Conforms to all applicable sections of the certified Local Coastal Program.*

Facts in Support of Finding:

1. The Property is located within the Coastal Zone. The Coastal Land Use Plan category is Single Unit Residential Detached – 6.0–9.9 DU/AC (RSD-B) and the Coastal Zoning District is Single-Unit Residential (R-1). The Project consists of the demolition of an existing single-unit dwelling and construction of a new single-unit dwelling.

2. The Property is located within an area predominantly developed with two- and three-story, single-unit dwellings. The proposed deviations in floor area and setbacks will allow for a development that is still compatible with the design, bulk, and scale of the existing and future neighborhood pattern of development.
3. The deviations in floor area and setbacks comply with Section 21.52.090 (Relief from Implementation Plan Development Standards) of the NBMC, which allows for a waiver or modification of certain standards of Title 21 (Local Coastal Program Implementation Plan) of the NBMC due to special circumstances, including a property's location, shape, size, surroundings, or other physical features. The requested setback encroachments are appropriate because of the disproportionately small building pad resulting from the reverse corner lot orientation. The requested increase in the maximum floor area allows the Project to be within a range of FARs consistent with other properties in the surrounding area and does not result in a structure that is out of character with the surrounding neighborhood.
4. With the granting of the requested Variance, the Project will comply with applicable residential development standards including, but not limited to, height, open volume, and parking.
 - a. The maximum floor area limitation granted by the Variance would be 6,120 square feet and the proposed floor area is 6,120 square feet.
 - b. As approved by this Variance, the Project's first floor will encroach 5 feet into the required 20-foot front setback along Heliotrope Avenue and 6 feet into the required 10-foot rear setback. The Project will comply with the required 4-foot side setbacks.
 - c. The highest guardrail/parapet is below 24 feet from the established grade and the highest ridge is 29 feet from the established grade. The Project therefore complies with all height requirements.
 - d. A minimum of 444.5 square feet of open volume area is required based on the buildable area of the Property and the Project provides 947 square feet of open volume area.
 - e. The Project will provide a three-car garage which complies with the minimum parking requirements for a single-unit dwelling over 4,000 square feet in floor area.
 - f. The Project proposes a minimum top of slab elevation of 97.73 feet based on the North American Vertical Datum of 1988 ("NAVD 88") which complies with the minimum 9.0-foot NAVD 88 top of slab elevation requirement.
6. The Property is not located within 200 feet of the water mean high tide line; therefore, a Coastal Hazards Report is not required for this Project. The Property does not have an existing bulkhead and is not directly abutting the shoreline.

7. The Property is in an area known for potential 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 before 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 before building permit issuance.

8. The Property is not located directly adjacent to a coastal view road as identified in the Coastal Land Use Plan; however, Bayview Drive is designated as Coastal View Road northeast of Goldenrod Avenue, which is one block from the Property. The Project proposes to increase the setback along Bayview Drive from the required 4-foot side setback to a 15-foot side setback. The Project has also been designed to comply with the 24-foot flat and 29-foot sloped height limit. Therefore, there are no anticipated impacts to coastal views along Bayside Drive. The Property is located in the vicinity of several coastal viewpoints along Ocean Boulevard; however, the viewpoints are in closer proximity to the bay and are not impacted by the Project. The Property is located approximately 1500 feet from Begonia Park which is designated as a coastal viewpoint by the Coastal Land Use Plan (“CLUP”). However, the Project is not visible from that location due to the distance and intervening structures. Therefore, the Project does not have the potential to degrade the visual quality of the Coastal Zone or result in significant adverse impacts on public views.

9. The Project’s proposed 1,752 square feet of landscaping complies with Section 21.30.075 (Landscaping) of the NBMC. Prior to issuance of building permits, the final landscape plans will be reviewed to verify compliance with the Newport Beach Water Efficient Landscape Ordinance (“WELO”).

Finding:

- H. *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 Property is located between the first public road and the sea. Section 21.30A.040 (Determination of Public Access/Recreation Impacts) of the NBMC requires that the provision of public access bears a reasonable relationship between the requirement and the Project’s impact in that it is proportional to the impact. In this case, the Project replaces an existing single-unit dwelling with a new single-unit dwelling. Therefore, the Project does not involve a change in land use, density, or intensity that will result in increased demand for public access and recreation opportunities.

2. The Property is located along Heliotrope Avenue, which is identified by the CLUP as having public beach access at its street end. The Project does not interfere with the existing nearby access to the beach, which will continue to be available.

3. The Project is closing an existing curb cut along Heliotrope Avenue and creating a new curb cut along Bayview Drive. The Project will not result in a net change in overall street parking that is available to the public.

In accordance with Section 21.52.090 (Relief from Implementation Plan Development Standards) of the NBMC, the Planning Commission may approve a waiver to a development standard of the Implementation Plan only after making all of the following findings:

Finding:

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

Facts in Support of Finding:

1. An alternative to this Project would be to construct a residence in accordance with the required 20-foot front setback along Heliotrope Avenue and the required 10-foot rear setback. However, this would reduce the Property's FAR to 0.68, which is between 24% and 34% lower than surrounding lots with typical orientation along Heliotrope Avenue. Additionally, the 10-foot rear setback would create a 14-foot separation between the neighboring structure, where 6 to 8 feet of separation is more typical in the surrounding area to provide for adequate light and air. Another alternative to this Project would be to utilize the standard setbacks that would apply if Setback Map No. S-10B did not illustrate a 20-foot front setback along Heliotrope Avenue, resulting in a 20-foot front setback along Bayview Drive, 4-foot side setback on Heliotrope Avenue, 4-foot side setback abutting 2820 Bayview Drive and a 10-foot rear setback abutting 235 Heliotrope Avenue. The 4-foot setback along Heliotrope Avenue would largely disrupt the typical 20-to-15-foot front setbacks found on Heliotrope Avenue. However, these setbacks would result in a maximum floor area limit of 6,120 square feet which the project has been designed to comply with. Both of these alternatives would not provide greater consistency with the Local Coastal Program.
2. The Property has been developed with an existing residence since 1948, is located within a developed neighborhood, and does not contain any coastal resources.

Finding:

- J. *The granting of the variance is necessary due to special circumstances applicable to the property, including location, shape, size, surroundings, topography, and/or other physical features, the strict application of the development standards otherwise*

applicable to the property denies the property owner privileges enjoyed by other property owners in the vicinity and in the same coastal zoning district.

Fact in Support of Finding:

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

Finding:

K. *The variance complies with the findings required to approval a coastal development permit in NBMC Section 21.52.015(F).*

Fact in Support of Finding:

Facts in Support of Findings G and H above are hereby incorporated by reference.

Finding:

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

Facts in Support of Finding:

1. The Property does not currently provide public access to the shore, coastal parks, trails, or coastal bluffs.
2. Facts in Support of Finding H above are hereby incorporated by reference.

Finding:

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

Fact in Support of Finding:

Facts in Support of Finding G and H above are hereby incorporated by reference.

Finding:

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

Fact in Support of Finding:

The Property is not identified as an environmentally sensitive area as shown on Map 4-1 of the

CLUP or as defined by NBMC Chapter 21.30B (Habitat Protection). Therefore, the Project does not have the potential to adversely affect coastal resources.

Finding:

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

Fact in Support of Finding:

Facts in Support of Finding G and H above are hereby incorporated by reference.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission 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.
2. The Planning Commission of the City of Newport Beach hereby approves the coastal development permit and variance, subject to the conditions outlined in Exhibit "A", which is attached hereto and incorporated herein 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 City Clerk in accordance with the provisions of Title 20 and Title 21 of the NBMC. The Property is located in the coastal zone and outside of the California Coastal Commission appeals jurisdiction; therefore, final action taken by the City may not be appealable to the California Coastal Commission.

PASSED, APPROVED, AND ADOPTED THIS 7TH DAY OF AUGUST 2025.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Tristan Harris, Chair

BY: _____
Jon Langford, Secretary

EXHIBIT “A”

CONDITIONS OF APPROVAL

(Project-specific conditions are in italics)

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. The Project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
3. The Applicant shall comply with all federal, state, and local laws. A material violation of any of those laws in connection with the use may cause the revocation of this Variance and Coastal Development Permit.
4. The Variance and Coastal Development Permit shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 and 21.54.060 (Time Limits and Extensions), unless an extension is otherwise granted by the Community Development Director.
5. This Variance and Coastal Development Permit may be modified or revoked by the Planning Commission should they determine 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.
6. *The Project shall maintain a 15-foot setback for the first floor and 20-foot setback for the second and third floor along Heliotrope Avenue, a 4-foot rear setback, a 15-foot side setback along Bayview Drive, a 5-foot side setback on the opposing side. Overhangs and other architectural features may encroach into these specified setbacks as provided on the Approved Plans.*
7. Any expansion in the area or other modification to the approved plans shall require subsequent review by the Planning Division and potential amendment to this approval or the processing of a new application.
8. A copy of the Resolution, including conditions of approval Exhibit “A” shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
9. *Prior to the issuance of a building permit, the Applicant shall submit a landscape and irrigation plan prepared by a licensed landscape architect. These plans shall incorporate*

drought tolerant and noninvasive plantings and water efficient irrigation practices, and the plans shall be approved by the Planning Division.

10. All landscape materials and irrigation systems shall be maintained by 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.
11. *The guardrail above the wall located in the front yard setback along Heliotrope Avenue shall be constructed of transparent material such as glass or an opaque material, such as decorative grillwork, wrought iron, latticework, or similar open material, so that at least 40% of the railing is open.*
12. 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.
13. 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.
14. 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.
15. 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.

16. 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.
17. Prior to the issuance of a building permit, the Applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
18. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or leasing agent.
19. Construction activities shall comply with Section 10.28.040 (Construction Activity – Noise Regulations) of the NBMC, 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.
20. To the fullest extent permitted by law, the Applicant shall indemnify, defend and hold harmless the City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any 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 **Zenk Residence including, but not limited to, a Variance and Coastal Development Permit filed as PA2024-0057**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorney’s fees, and other expenses incurred in connection with such claim, action, causes of action, suit, or proceeding whether incurred by the Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all the City’s costs, attorneys’ fees, and damages that which City incurs in enforcing the indemnification provisions outlined in this condition. The Applicant shall pay to the City upon demand any amount owed to the City under the indemnification requirements prescribed in this condition.

Building Division

21. The Applicant is required to obtain all applicable permits from the City’s Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements.
22. The Applicant shall employ the following best available control measures (BACMs) to reduce construction-related air quality impacts:

Dust Control

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

Emissions

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

Off-Site Impacts

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

Fill Placement

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

23. A list of “good housekeeping” practices will be incorporated into the long-term post-construction operation of the site to minimize the likelihood that pollutants will be used, stored, or spilled on the site that could impair water quality. These may include frequent parking area vacuum truck sweeping, removal of wastes or spills, limited use of harmful fertilizers or pesticides, and the diversion of stormwater away from potential sources of pollution (e.g., trash receptacles and parking structures). The Stage 2 WQMP shall list and describe all structural and non-structural BMPs. In addition, the WQMP must also identify the entity responsible for the long-term inspection, maintenance, and funding for all structural (and if applicable Treatment Control) BMPs.

Public Works Department

24. *The existing driveway along Heliotrope Avenue shall be removed per City Standard 165.*
25. *A new driveway shall be constructed along Bayview Drive frontage per City Standard 162.*

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26. *The existing street trees along Bayview Drive and Heliotrope Avenue shall be removed and replaced with one 36-inch box tree along the Bayview Avenue frontage and two 36-inch box street trees along the Heliotrope Avenue frontage.*
 27. *A new sewer cleanout on the existing sewer lateral shall be installed per City Standard 406.*
 28. All improvements shall be constructed as required by Ordinance and the Public Works Department.
 29. An encroachment permit shall be required for all work activities within the public right-of-way.
 30. *Existing broken and/or otherwise damaged concrete curb, gutter and sidewalk panels shall be reconstructed along the Bayview Drive and Heliotrope Avenue frontages.*
 31. All existing overhead utilities shall be undergrounded.
 32. *The existing decorative walkway along the Bayview Drive frontage shall be removed and replaced with drought tolerant landscaping.*
 33. All improvements shall comply with the City's sight distance requirement provided in City Standard 110-L.
 34. *An encroachment permit and encroachment agreement is required for the proposed decorative walkway along the Heliotrope Avenue frontage.*
 35. *New turf or drought tolerant landscaping shall be installed throughout the entire Bayview Drive and Heliotrope Avenue parkways.*
 36. *A new curb ramp shall be installed at the intersection of Bayview Drive and Heliotrope Avenue.*
 37. Remove the existing wall within the public right-of-way, any new walls shall be constructed entirely on private property.
 38. In case of damage done to public improvements surrounding the Property by the private construction, additional reconstruction within the public right-of-way can be required at the discretion of the Public Works Inspector.

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