



COMMUNITY DEVELOPMENT DEPARTMENT

PLANNING DIVISION

3300 Newport Boulevard, Building C, Newport Beach, CA 92663

(949) 644-3200 Fax: (949) 644-3229

www.newportbeachca.gov

CITY OF NEWPORT BEACH ZONING ADMINISTRATOR STAFF REPORT

March 14, 2013

Agenda Item No. 2

SUBJECT: Johnny's Real New York Pizza - (PA2013-013)
1320 Bison Avenue
▪ Minor Use Permit No. UP2013-002

APPLICANT: John Younesi, Johnny's Real New York Pizza

PLANNER: Gregg Ramirez, Senior Planner
(949) 644-3219, gramirez@newportbeachca.gov

ZONING DISTRICT/GENERAL PLAN

- **Zone:** PC-50 (Bonita Canyon, Sub-Area 5, Commercial)
- **General Plan:** CG (General Commercial)

PROJECT SUMMARY

A minor use permit to allow a Type 41 (On-Sale Beer and Wine) Alcoholic Beverage Control License in conjunction with an allowed eating and drinking establishment previously approved by Use Permit No. UP2003-016. If approved, this Minor Use Permit would supersede Use Permit No. UP2003-016. Approval of this MUP is not required for the business to open and operate without alcoholic beverage service and tenant improvement building permits have been issued.

RECOMMENDATION

- 1) Conduct a public hearing; and
- 2) Adopt Draft Zoning Administrator Resolution No. _ approving Minor Use Permit No. UP2013-002 (Attachment No. ZA 1).

DISCUSSION

- The proposed restaurant is located in the Bluff's shopping center at the corner of MacArthur Boulevard and Bison Avenue.

- The gross floor area of the establishment is approximately 1,495 square feet, the interior net public area will be approximately 500 square feet and includes seating for 36. The requested hours of operation are from 11:00 a.m. to 10:00 p.m. Sunday to Thursday and 11:00 a.m. to 11:00 p.m. Friday and Saturday. However, the recommended hours of operation are 6:00 a.m. to 11:00 p.m., daily to provide this operator and future tenants flexibility should breakfast hours be requested in the future.
- The Bonita Canyon Planned Community regulations require review and approval of a use permit by the Planning Commission for eating and drinking establishments. However, Use Permit No. UP2003-089 (Attachment No. ZA 3) approved by the Planning Commission granted the Planning Director authority to approve up to ten (10) individual use permits within the shopping center with or without beer/wine sales. Johnny's Real New York Pizza will occupy an existing tenant space most recently occupied by Freshii and Carl's Jr. before that. Those previous tenants were allowed through the Planning Director's approval of Use Permit No. UP2003-016 (Attachment No. ZA 4) in accordance with UP2003-089. That approval did not allow the service of alcohol. The Zoning Code update changed the review authority for this level of use permit from the Planning Director to the Zoning Administrator therefore, approval of an MUP is required to allow for beer and wine service.
- Conditions of approval for Use Permit No. UP2003-089 require that subsequent approvals be in substantial conformance with that approval. The table below includes notable conditions of approval form UP2003-089 and indicates how the proposed project is in compliance.

UP2003-089 Conditions of Approval	Proposed Project
1. Prior to the issuance of a building permit for an individual use permit, the applicant will be required to prepare a security plan to the satisfaction of the Police Department.	Substantial Conformance. Security is provided by the landlord (The Irvine Company). The Police Department has determined a that a security plan for the proposed restaurant is not necessary
2. Individual use permits issued by the Planning Director shall be in substantial conformance with this Use Permit. The location of the individual use permits should generally conform to the locations depicted in the Lease Outline Drawing dated August 28, 2002.	Substantial Conformance. Project site in designated location as depicted in Lease Outline Drawing (See Attachment No. ZA 6)
3. Hours of operation shall be limited to between 6:00 am and midnight daily. Any increase in the hours of operation shall be subject to the approval by the Planning Commission.	Substantial Conformance. The Recommended Hours of operation are 6:00 a.m. to 11:00 p.m. daily. (Draft COA No. 10).
6. The principal purpose for the use permit is to permit eating and drinking establishments with the sale or service of food and beverage, with sale and service of beer and wine incidental to the food use during the	Substantial Conformance. Request is for an eating and dining establishment with Type 41 on-sale beer and wine sales. (Draft COA No. 11).

<p>specified restaurant hours of operation. The approval will also allow the use of outdoor dining areas in conjunction with the restaurant for food service. Beer and wine service within outdoor patio areas is permitted provided the Department of Alcoholic Beverage Control authorizes it.</p>	<p>No outdoor dining is proposed.</p>
<p>20. Individual eating and drinking establishments shall be no larger than 5,000 square feet. The total number of eating and drinking establishments authorized through this use permit shall not exceed ten (10). The total square footage of all eating and drinking establishments shall not exceed 19,809 square feet (exclusive of outdoor dining areas). Outdoor dining areas shall not exceed the amount authorized by Site Plan Review No. 2001-001.</p>	<p>Substantial Conformance. Proposed restaurant is approximately 1,505 square feet and is located in a suite occupied by a restaurant since the opening of the shopping center.</p>
<p>23. Bar counters for the service of alcoholic beverages shall be prohibited.</p>	<p>Substantial Conformance. There is a raised dining counter however, the layout of the employee workspace and equipment (pizza warmers, sneeze guards, cash registers and other appliances) is conducive of an eating and drinking establishment and not of a bar or lounge as defined by the zoning code. Combined with the 11pm closing hour and limit on percentage of alcohol sales, staff believes the intent of not allowing a late hours bar is achieved.</p>
<p>Other conditions of approval related to alcohol service, trash, deliveries, prohibition of live entrainment and dancing, etc.</p>	<p>Substantial Conformance. See draft ZA resolution.</p>

- The Police Department has reviewed the proposed application and has no objections to the request. The Police Department memorandum, crime and alcohol related statistics and RD map are attached (Attachment No. ZA 5).
- Staff believes allowing the service of beer and wine is compatible with existing and allowed uses within the Bluff's shopping center. Existing uses in the center reflect the type of restaurants, retail and service uses allowed by the PC regulations and typically expected by the public at shopping centers like the Bluffs.
- Parking is provided in the shared parking lot. The original shopping center approval site plan indicates that 469 spaces are required for the shopping center, including the subject tenant space, and 481 spaces are provided on-site.
- If approved, Minor Use Permit No. UP2013-002 (PA2013-013) will supersede Use Permit No. UP2003-016 (PA2003-102).

ENVIRONMENTAL REVIEW

The project has been reviewed, and it qualifies for a categorical exemption pursuant to Section 15301 of the California Environmental Quality Act under Class 1 (Existing Facilities) of the Implementing Guidelines of the California Environmental Quality Act. The Class 1 exemption includes the ongoing use of existing buildings where there is negligible or no expansion of use. The proposed project involves allowing beer and wine service at a bona fide eating and drinking establishment.

PUBLIC NOTICE

Notice of this application was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 10 days prior to the decision date, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

APPEAL PERIOD

An appeal may be filed with the Director of Community Development within fourteen (14) days following the date the action or decision was rendered pursuant to Chapter 20.64 of the Zoning Code. For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

Prepared by:



Gregg Ramirez
Senior Planner

Attachments:	ZA 1	Draft Resolution
	ZA 2	Vicinity Map
	ZA 3	Use Permit No. UP2003-089
	ZA 4	Use Permit No. UP2003-016
	ZA 5	Police Department Recommendation, statistics, RD Map
	ZA 6	Lease Outline Drawing - Restaurant Locations
	ZA 7	Applicant's Project Description and Project Plans

Attachment No. ZA 1

Draft Resolution

RESOLUTION NO. ZA2013-DRAFT

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2013-002 TO ALLOW AN EATING AND DRINKING ESTABLISHMENT, NO LATE HOURS WITH A TYPE 41 (ON-SALE BEER AND WINE) ALCOHOLIC BEVERAGE CONTROL LICENSE LOCATED AT 1320 BISON AVENUE (PA2013-013)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by John Younesi, with respect to property located at 1320 Bison Avenue, and legally described as Parcel 1 of Parcel Map 326-48 requesting approval of a minor use permit.
2. The applicant requests approval of a minor use permit to allow a Type 41 (On-Sale Beer and Wine) Alcoholic Beverage Control License (ABC) in conjunction with an eating and drinking establishment previously approved by Use Permit No. UP2003-016. The gross floor area of the establishment is 1,495 square feet with an interior net public area of approximately 500 square feet and 36 seats. The recommended hours of operation are 6:00 a.m. to 11:00 p.m., daily. If approved, this Minor Use Permit would supersede Use Permit No UP2003-016.
3. The subject property is located within the PC-50 (Bonita Canyon Planned Community) zoning district within Commercial Area 5 and has a General Plan land use designation of CG (General Commercial).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on March 14, 2013 in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. The project has been reviewed, and it qualifies for a categorical exemption pursuant to Section 15301 of the California Environmental Quality Act under Class 1 (Existing Facilities) of the Implementing Guidelines of the California Environmental Quality Act.
2. The Class 1 exemption includes the ongoing use of existing buildings where there is negligible or no expansion of use. The proposed project involves interior alterations to improve an existing commercial space to an eating and drinking establishment.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.48.030 (Alcohol Sales) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a use permit are set forth:

Finding

- A. *The use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales of the Zoning Code).*

Facts in Support of Finding

In finding that the proposed use is consistent with Section 20.48.030 (Alcohol Sales) of the Zoning Code, the following criteria must be considered:

- i. *The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.*
 1. The crime rate in RD 54 is 49% lower than the City average. The crime rate in the adjacent RD's is also lower than the City average.
- ii. *The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*
 1. 2012 alcohol crime related statistics indicate a lower number of alcohol related calls, crimes and arrests in RD 54 and surrounding RD's when compared to other areas in the City. In particular, RD 54 had 10 alcohol related arrests and one alcohol citation in 2012.
- iii. *The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.*
 1. The subject tenant space is located within the Bluff's Shopping Center which was developed as a retail and service center. The nearest residential uses are located across Bison Avenue to the south and MacArthur Boulevard to the west. Other sensitive land uses listed above are located a quarter mile or more away.
- iv. *The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.*
 1. Six (6) of the ten (10) eating and drinking establishments in the Bluff's shopping center currently have an active ABC license, all of which are bona fide eating and drinking establishments and non are defined as bar's, lounges or nightclubs by the zoning code. These establishments include Daphne's, Wasu Sushi, Mozambique, Pei Wei, Island's and Wildfish.

v. *Whether or not the proposed amendment will resolve any current objectionable conditions*

1. The subject tenant space has historically been occupied by restaurants with similar number of seats and business hours. There is no evidence that suggests these uses have created objectionable conditions.

In accordance with Section 20.52.020.F (Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a minor use permit are set forth:

Finding

- A. *The use is consistent with the General Plan and any applicable specific plan;*

Facts in Support of Finding

1. The General Plan designates this site CG (General Commercial) which is intended to provide for a wide variety of retail, service and other commercial uses. The proposed eating and drinking establishment with beer and wine service is consistent with this land use category.
2. The subject property is not part of a specific plan area.

Finding

- B. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code;*

Facts in Support of Finding

1. The site is located in the PC-50 (Bonita Canyon Planned Community) zoning district within Commercial Area 5. The Commercial Area 5 land use regulations identify eating and drinking establishments as allowed uses contingent upon approval of a use permit.
2. The shopping center site design was originally approved in 2001 (PA2001-085). The approval included building placement, landscaping, walls, vehicle and pedestrian circulation and parking.
3. The shopping center and mix of uses, including the subject tenant space, requires 469 parking spaces. According to City records, 481 parking spaces are provided on site.
4. The location, size, hours of operation and other physical and operational characteristics of the restaurant are in substantial conformance with Use Permit No. 2003-089.

Finding

- C. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;*

Facts in Support of Finding

1. The shopping center was designed to be occupied by a mix of restaurants, retail service uses. Johnny's New York Pizza will complement the existing uses and is a typical and expected type of use in shopping centers similar to the Bluffs.
2. The operation of the restaurant will be restricted to the hours between 6:00 a.m. and 11:00 p.m., daily. These hours are consistent with the business hours of other restaurants and uses in the shopping center.
3. The operational conditions of approval relative to the sale of alcoholic beverages will help ensure compatibility with the surrounding uses and minimize alcohol related impacts. The project has been conditioned to ensure that the business remains a restaurant and does not become a bar or tavern. Additionally, dancing or live entertainment is not permitted.

Finding

- D. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and*

Facts in Support of Finding

1. The restaurant will occupy a tenant space historically occupied by similar restaurant uses and only interior improvements are associated with Johnny's New York Pizza.
3. Original site plan approvals for the development of the shopping center included a review to ensure adequate public and emergency vehicle access, public services, and utilities are provided to the entire shopping center. The tenant improvement plans have been reviewed for compliance with applicable building and fire codes.

Finding

- E. *Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, a safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding

1. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent

possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.

2. The eating and drinking establishment will serve the surrounding community in a shopping center designed for such uses. The service of beer and wine is provided as a public convenience and is not uncommon in establishments of this type. Additionally, the service of alcohol will provide an economic opportunity for the property owner to maintain a successful business that is compatible with the surrounding community.
3. All owners, managers, and employees selling or serving alcohol will be required to complete a Responsible Beverage Service certification program.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2013-002, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the Director of Community Development in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.
3. This resolution supersedes Use Permit No. UP2003-016 (PA2003-102), which upon vesting of the rights authorized by Minor Use Permit No. UP2013-002 (PA2013-013), shall become null and void.

PASSED, APPROVED AND ADOPTED THIS 14th DAY OF MARCH, 2013.

Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"
CONDITIONS OF APPROVAL

Planning Division Conditions

1. This approval supersedes Use Permit No. UP2003-016 (PA2003-102).
2. The development shall be in substantial conformance with the approved site plan, floor plan(s) and building elevations dated with this date of approval. (Except as modified by applicable conditions of approval.)
3. This minor use permit may be modified or revoked by the Zoning Administrator 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.
4. Any change in operational characteristics, hours of operation, expansion in area, or other modification to the approved plans, may require an amendment to this minor use permit or the processing of a new use permit.
5. Minor Use Permit No. UP2013-002 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 (Time Limits and Extensions) of the Newport Beach Zoning Code, unless an extension is otherwise granted.
6. Should this business be sold or otherwise come under different ownership, any future owners or assignees shall be notified in writing of the conditions of this approval by the current owner or leasing company.
7. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
8. 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 Use Permit.
9. All employees shall park on-site.
10. The hours of operation for the restaurant shall be limited to the hours of 6:00 a.m. and 11:00 p.m., daily.
11. Alcohol service shall be limited to a Type 41 (On-Sale Beer and Wine) Alcoholic Beverage Control License.

12. The off-site delivery of alcoholic beverages is prohibited.
13. This approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Newport Beach Municipal Code.
14. Bar counters for the service of alcoholic beverages shall be prohibited.
15. There shall be no dancing and/or live entertainment allowed on the premises.
16. All proposed signs shall conform to Title 20, Chapter 20.42 (Sign Standards) of the Newport Beach Municipal Code regulations or any sign program applicable to the property.
17. No outside loudspeaker or paging system shall be permitted in conjunction with the proposed operation.
18. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
19. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Community Development Director, and may require an amendment to this Use Permit.
20. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
21. Trash generated by the establishment shall be adequately contained in sealed plastic bags to control odors prior to placement in the trash dumpster.
22. The operator of the food service use shall be responsible for the clean-up of all on-site and off-site trash, garbage, and litter generated by the use.
23. The applicant shall maintain the trash dumpsters or receptacles so as to control odors, which may include the provision of fully self-contained dumpsters or may include periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (Water Quality).
24. A Special Event Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of beer and wine, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
25. 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 Johnny's Real New York Pizza MUP including, but not limited to Minor Use Permit No. UP2013-002 (PA2013-013) and the determination that the project is exempt under the requirements of the California Environmental Quality Act. 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 and Fire Department Conditions

26. The applicant is required to obtain all applicable permits from the City Building and Fire Departments. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The facility shall be designed to meet exiting and fire protection requirements as specified by the California Building Code and shall be subject to review and approval by the Building Division.
27. The construction plans must meet all applicable State Disabilities Access requirements.
28. Approval from the Orange County Health Department is required.
29. All exits shall remain free of obstructions and available for ingress and egress at all times.

Revenue Department Conditions

30. A valid business license from the City of Newport Beach with sellers permit shall be required prior to start of business. Any contractors/subcontractors doing work at the subject site shall be required to obtain a valid business license from the City of Newport Beach prior to the commencement of any work on the subject site.

Police Department Conditions

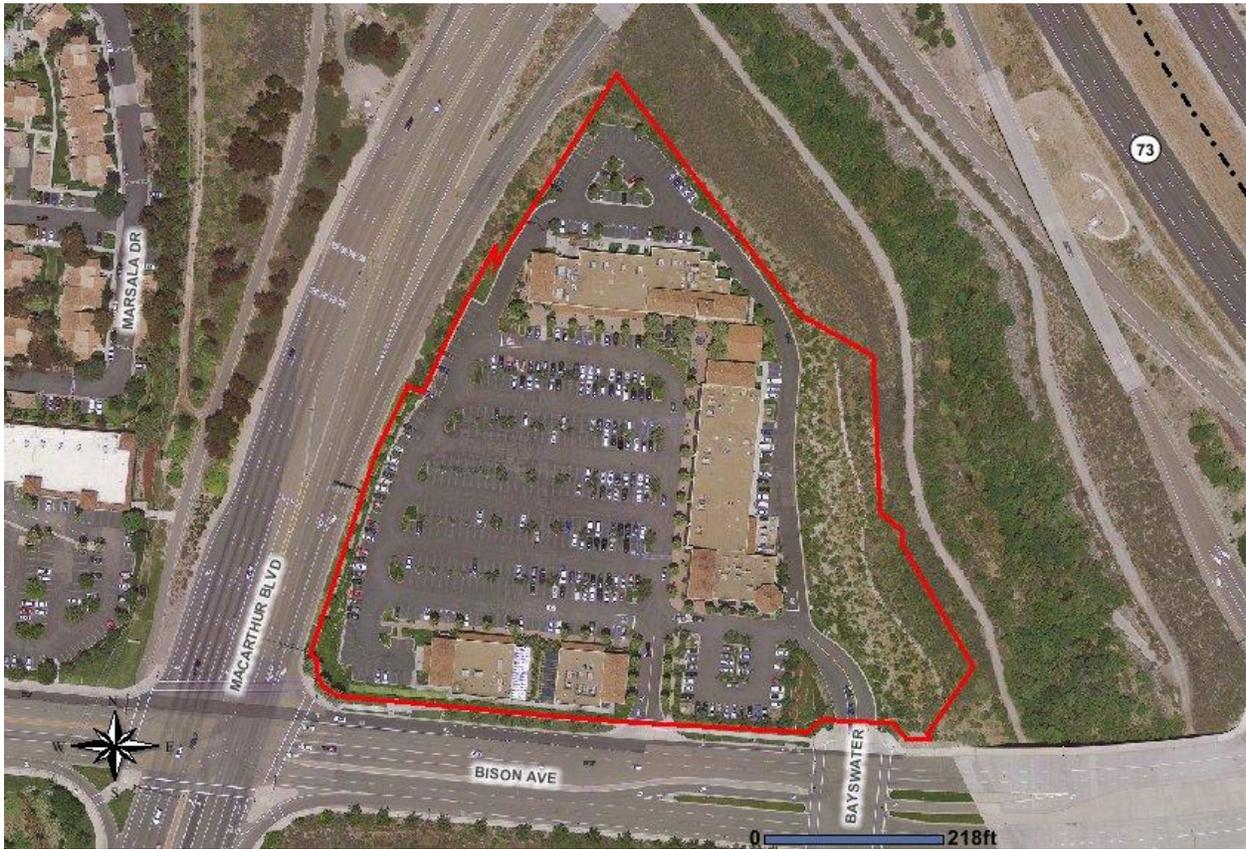
31. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the license.
32. Full menu food service shall be available for ordering at all times that the restaurant establishment is open for business.
33. No "happy hour" type of reduced price alcoholic beverage promotion is permitted except when served in conjunction with food ordered from the full service menu.

34. The sale and consumption of alcoholic beverages shall be restricted to and within the confines of the licensed premises and sales or delivery of alcoholic beverages through any exterior pass-out window is prohibited
35. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.
36. There shall be no on-site radio, television, video, film, or other electronic media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved special event permit issued by the City of Newport Beach.
37. The petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.
38. All owners, managers, and employees selling wine shall undergo and successfully complete a certified training program in responsible methods and skills for selling beer and wine. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The retail store shall comply with the requirements of this section within 180 days of the issuance of the certificate of occupancy. Records of each owner's, manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.

Attachment No. ZA 2

Vicinity Map

VICINITY MAP



Minor Use Permit No. UP2013-002
PA2013-013
Johnny's Real New York Pizza
Bluff's Shopping Center

Attachment No. ZA 3

Use Permit No. UP2003-089



CITY OF NEWPORT BEACH

PLANNING DEPARTMENT

Patricia L. Temple, Director

NOTICE OF FINAL APPROVAL

FILE COPY

DATE: June 6, 2003
TO: MPA, Inc.
FROM: Planning Director
SUBJECT: Use Permit No. 2002-020 (PA2003-089)

Please be advised that Use Permit No. 2002-020 (PA2003-089) was approved by the Planning Commission at its meeting of May 22, 2003, and became effective June 5, 2003. A copy of the amended findings and conditions is enclosed. Any deviation from the applications and plans on file in the Planning Department may require an amendment to the application(s) mentioned above for the project.

Applicant: MPA, Inc.

Location: 1300 Bison Avenue

Description: Request for an amendment to Use Permit No. 2002-020 to increase the number of Use Permits for eating and drinking establishments that the Planning Director can authorize from 7 to 10. Additionally, the applicant seeks to increase the total area occupied by the establishments by 115 sq. ft. The request also includes the potential sale of alcoholic beverages (beer and wine) for the 3 additional establishments.

Should you have any questions, please contact our office at (949) 644-3210.

Very truly yours,
PLANNING DEPARTMENT
Patricia L. Temple, Director

By *Ginger Varin*
Ginger Varin
Executive Secretary Planning Commission

Enclosure: Approved Resolution with Findings and Conditions of Approval
 Approved Planning Commission minutes with Final Findings and Conditions of Approval

cc: Property Owner (if not applicant)

Gvarin\PlanComm\ntcefftpc.doc

3300 Newport Boulevard · Post Office Box 1768 · Newport Beach, California 92658-8915
Telephone: (949) 644-3200 · Fax: (949) 644-3229 · www.city.newport-beach.ca.us

Conditions of Approval
Use Permit No. 2002-020
Planning Commission Approval 05/22/2003

- 1) Prior to the issuance of a building permit for an individual use permit, the applicant will be required to prepare a security plan to the satisfaction of the Police Department.
- 2) Individual use permits issued by the Planning Director shall be in substantial conformance with this Use Permit. The location of the individual use permits should generally conform to the locations depicted in the Lease Outline Drawing dated August 28, 2002. ~~Overall Lease Plan dated February 19, 2002.~~¹
- 3) Hours of operation shall be limited to between 6:00 am and midnight daily. Any increase in the hours of operation shall be subject to the approval by the Planning Commission.
- 4) There shall be no live entertainment.
- 5) No outside loudspeakers, or paging system shall be allowed. Tenants with exclusive outdoor dining areas may have speakers outside for background music. Music may be provided between 7:00AM and 10:00PM. All outdoor music shall terminate at 10:00 pm. Sound levels shall not exceed the decibel levels as outlined in the following table:

	Between the hours of 7:00 am and 10:00 pm		Between the hours of 10:00 pm and 7:00 am	
	<u>interior</u>	<u>exterior</u>	<u>interior</u>	<u>exterior</u>
Measured at the property line of commercially zoned property:	N/A	65 dBA	N/A	60 dBA
Measured at the property line of residentially zoned property:	N/A	60 dBA	N/A	50 dBA
Residential property:	45 dBA	55 dBA	40 dBA	50 dBA

- 6) The principal purpose for the use permit is to permit eating and drinking establishments with the sale or service of food and beverage, with sale and service of beer and wine incidental to the food use during the specified restaurant hours of operation. The approval will also allow the use of outdoor dining areas in conjunction with the restaurant for food service. Beer and wine service within outdoor patio areas is permitted provided the Department of Alcoholic Beverage Control authorizes it.

¹ Amended by the Planning Commission on May 22, 2003.

- 7) Roof coverings over the outdoor dining areas shall not have the effect of creating a permanent enclosure, unless a modification to this use permit is first approved by the Planning Commission.
- 8) No temporary "sandwich signs," balloons or similar temporary signs shall be permitted, either on-site or off-site, to advertise the food establishments, unless specifically permitted.
- 9) All employees shall park on-site.
- 10) All mechanical equipment shall be screened from view of adjacent properties and adjacent public streets, and shall be sound attenuated in accordance with Chapter 10.26 of the Newport Beach Municipal Code, Community Noise Control.
- 11) Grease interceptors shall be installed on all fixtures in the restaurant where grease may be introduced into the drainage systems, unless otherwise approved by the Building Department and the Public Works Department.
- 12) Kitchen exhaust fans shall be designed to control smoke and odor to the satisfaction of the Building Department.
- 13) Trash receptacles for patrons shall be conveniently located both inside and outside of the proposed facility, but shall not be located on or within any public property or right-of-way.
- 14) Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
- 15) The applicant shall maintain the trash dumpsters or receptacles so as to control odors, which may include the provision of fully self-contained dumpsters or may include periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Department. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (Water Quality).
- 16) The operators of the food service uses shall be responsible for the clean-up of all on-site and off-site trash, garbage and litter generated by each use.
- 17) Should this business 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 company.
- 18) Dancing shall be prohibited, unless an amendment to this use permit is first approved by the Planning Commission.
- 19) The Planning Commission may add to or modify conditions of approval to this use permit, or recommend to the City Council the revocation of this use permit, upon a determination

that the operation which is the subject of this user permit causes injury, or is detrimental to the health, safety, peace, morals, comfort or general welfare of the community.

- 20) Individual eating and drinking establishments shall be no larger than 5,000 square feet. The total number of eating and drinking establishments authorized through this use permit shall not exceed ten (10) ~~seven (7)~~. The total square footage of all eating and drinking establishments shall not exceed 19,809 ~~19,694~~ square feet (exclusive of outdoor dining areas). Outdoor dining areas shall not exceed the amount authorized by Site Plan Review No. 2001-001.²
- 21) Use Permit No. 2002-020 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted. Exercising this Use Permit is considered the issuance of any individual Use Permits by the Planning Director.
- 22) The applicant is required to obtain all applicable permits from the City Building and Fire Departments. The construction plans must comply with the most recent, City-adopted version of the Uniform Building Code including any local amendments. The construction plans must meet all applicable State Disabilities Access requirements. Adequate access and exiting must be approved by the Building Department, and approval from the Orange County Health Department is required prior to permit issuance.
- 23) Bar counters for the service of alcoholic beverages shall be prohibited.
- 24) All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body which the State may designate. The establishment shall comply with the requirements of this condition within 180 days of the issuance of the certificate of occupancy. Records of each owner's, manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.
- 25) Approval does not permit any individual Use Permit to operate as a bar, tavern, cocktail lounge or night club as defined by the Municipal Code, unless the Planning Commission first approves a Use Permit.
- 26) No "happy hour" type of reduced price alcoholic beverage promotion is permitted except when served in conjunction with food ordered from the full service menu.³

² Amended by the Planning Commission on May 22, 2003.

³ Added by the Planning Commission on May 22, 2003.

- 27) There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs that are clearly visible to the exterior shall constitute a violation of this condition. ⁴
- 28) Any event or activity staged by an outside promoter or entity, where the applicant, operator, owner or his employees or representatives share in any profits, or pay any percentage or commission to a promoter or any other person based upon money collected as a door charge, cover charge or any other form of admission charge, including minimum drink orders or sale of drinks is prohibited. ⁴
- 29) The quarterly gross sales of alcoholic beverages in the approved restaurants shall not exceed the gross sales of food during the same period. The licensee shall maintain records that reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand. ⁴
- 30) A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits. ⁴
- 31) The sale and consumption of alcoholic beverages shall be restricted to and within the confines of the licensed premises and sales or delivery of alcoholic beverages through any exterior pass-out window is prohibited. ⁴
- 32) Delivery of alcoholic beverages shall be prohibited. ⁴

⁴ Added by the Planning Commission on May 22, 2003.

Attachment No. ZA 4

Use Permit No. UP2003-016



CITY OF NEWPORT BEACH

USE PERMIT NO. UP2003-016

(PA2003-102)

PLANNING DEPARTMENT
3300 NEWPORT BOULEVARD
NEWPORT BEACH, CA 92658
(949) 644-3200; FAX (949) 644-3250

Staff Person: Javier S. Garcia, 644-3206
Appeal Period: 14 days after approval date

June 20, 2003

Carl's Jr. (John Tarlos, Tarlos 1 Associates)
17802 Mitchell N
Irvine, CA 92614

Application: Use Permit No. UP2003-016 (PA2003-102)

Applicant: Carl's Jr. (John Tarlos, Tarlos 1 Associates)

**Address of
Property Involved:** 1320 Bison Avenue

Legal Description: Parcel B of Parcel Map No. 2001-140

Request as Modified and Approved:

To establish an eating and drinking facility within the Bluffs Commercial Shopping Center. The new shopping center is currently under construction at the corner of MacArthur Boulevard and Bison Avenue. Adequate parking for the restaurant is planned. The establishment will occupy 1,505 square feet of the 20,000 square feet authorized by UP2002-020 (Amended). The operation of the facility does not include the sale or service of alcoholic beverages. The facility will not provide any area for exclusive outdoor dining. The property is located in the PC (Sub-area #5 of the Bonita Canyon Planned Community) District.

Director's Action: **Approved June 20, 2003**

In approving the application, the Planning Director analyzed issues regarding compliance with the approved use permit that established the limitation on the number or square footage of food use facilities on the subject property and the Bonita Canyon Planned Community District regulations. The detailed discussion can be found in the attached appendix. In consideration of those aspects, the Planning Director determined in this case that the proposal would not be detrimental to persons, property or improvements in the neighborhood. Additionally, the approved use permit would be consistent with the legislative intent of Title 20 of the Newport Beach Municipal Code based on the following findings:

FINDINGS:

1. The proposed location of the eating and drinking establishments with beer and wine sales, operated under the conditions of the attached approval, is consistent with the General Plan and the purpose of the district in which the site is located. In addition, the proposed location will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use. It will not be detrimental to the properties, improvements in the vicinity or to the general welfare of the city for the following reasons:
 - The restaurant uses will be located within a shopping center designated for such development. The Retail Service and Commercial designation of the General Plan allows eating and drinking establishments.
 - The shopping center does not abut sensitive land uses and is separated from other uses by roadways.
 - Provided parking (481 spaces) exceeds required parking (469 spaces).
 - The authorized uses are not bars, taverns, cocktail lounges, nightclubs or establishments where live entertainment, recreational entertainment or dancing is provided. The City has experienced land use conflicts, nuisance issues and police issues with these types of uses in the past. Avoidance of these uses will minimize potential land use conflicts, nuisances and policing issues.
2. The operational characteristics of the proposed use, including the hours of operation, are consistent with Municipal Code requirements. Any change in the operational characteristics, including a change in the hours of operation, would require an amendment to the Use Permit reviewed by the Planning Commission.
3. Environmental Impact Report No. 156 (previously certified for the Bonita Canyon Planned Community) has been determined to adequately address the construction of the shopping center approved on July 19, 2001 through Site Plan Review No. 2001-001. The shopping center project includes over 32,000 square feet of eating and drinking establishments. Therefore, EIR No. 156 adequately addresses the scope of this Use Permit. Also, applicable mitigation measures from the Bonita Canyon EIR were incorporated as project conditions of Site Plan Review No. 2001-001.

CONDITIONS:

1. As approved by the Planning Director, the project shall be in substantial conformance with the approved plot plan, floor plan, and elevations dated February 20, 2003.
2. Daily hours of operation shall be limited to between 6:00 a.m. and midnight. Any increase in the hours of operation shall be subject to the approval by the Planning Director. Any request for operating hours between midnight and 6:00 a.m. shall require approval by the Planning Commission.
3. There shall be no live entertainment.
4. No outside loudspeakers or paging system shall be allowed. Tenants with exclusive outdoor dining areas may have speakers outside for background music. Music may be provided between 7:00 a.m. and 10:00 p.m. All outdoor music shall terminate at 10:00 p.m. Sound levels shall not exceed the decibel levels as outlined in the following table:

	<u>Between the hours of</u> 7:00 am and 10:00 pm		<u>Between the hours of</u> 10:00 pm and 7:00 am	
	<u>interior</u>	<u>exterior</u>	<u>interior</u>	<u>exterior</u>
<u>Measured at the property line of</u> <u>commercially zoned property:</u>	N/A	65 dBA	N/A	60 dBA
<u>Measured at the property line of</u> <u>residentially zoned property:</u>	N/A	60 dBA	N/A	50 dBA
<u>Residential property:</u>	45 dBA	55 dBA	40 dBA	50 dBA

5. The principal purpose for the use permit is to allow for a fast-food eating and drinking establishment.
6. Unless specifically permitted, no temporary "sandwich signs," balloons or similar temporary signs shall be permitted, either on-site or off-site, to advertise the food establishments.
7. All employees shall park on-site.
8. All mechanical equipment shall be screened from view of adjacent properties and adjacent public streets, and shall be sound attenuated in accordance with Chapter 10.26 of the Newport Beach Municipal Code (Community Noise Control).
9. Unless approved by the Building and Public Works Departments, grease interceptors shall be installed on all fixtures in the restaurant where grease may be introduced into the drainage systems. If determined adequate by the Building and Utilities Departments, this condition does not preclude the shared use of a common area grease interceptor device.
10. Kitchen exhaust fans shall be designed to control smoke and odor to the satisfaction of the Building Department.
11. Trash receptacles for patrons shall be conveniently located both inside and outside of the proposed facility, but shall not be located on or within any public property or right-of-way.
12. With the exception of the required trash container enclosure, storage outside of the building in the front or at the rear of the property shall be prohibited.
13. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of fully self-contained dumpsters or may include periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Department. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
14. The operators of the food service uses shall be responsible for the clean-up of all on-site and off-site trash, garbage and litter generated by each use.
15. Should this business be sold or otherwise come under different ownership, the leasing company, business owner or property owner shall notify any future owners or assignees of the conditions of this approval.

16. Dancing shall be prohibited, unless an amendment to this use permit is approved by the Planning Commission.
17. The Planning Director or Planning Commission may add to or modify the conditions of approval for this use permit. In addition, they may recommend to the City Council the revocation of this use permit, upon a determination that the operation which is the subject of this use permit causes injury, or is detrimental to the health, safety, peace, morals, comfort or general welfare of the community.
18. The proposed eating and drinking establishment will contain approximately 1,505 square feet. Prior to issuance of building permits, a copy of the approved construction floor plan shall be submitted and made a part of this use permit file to establish the approved gross square footage of the tenant space. Any increase in the size of the restaurant after construction shall require an amendment to this use permit.
19. Use Permit No. 2003-016 shall expire if not exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted. Exercising this Use Permit is considered the issuance of any individual Use Permits by the Planning Director.
20. The applicant is required to obtain all applicable permits from the City Building and Fire Departments. The construction plans must comply with the most recent, City-adopted version of the Uniform Building Code including any local amendments. The construction plans must meet all applicable State Disabilities Access requirements. Adequate access and exiting must be approved by the Building Department, and approval from the Orange County Health Department is required prior to permit issuance.

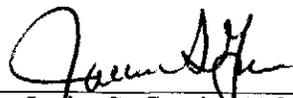
Standard City Requirements:

1. A covered wash-out area for refuse containers and kitchen equipment with minimum useable area dimensions of 36-inches wide, 36-inches deep and 72-inches high, shall be provided. The area shall drain directly into the sewer system, unless otherwise approved by the Building Director and Public Works Director in conjunction with the approval of an alternative drainage plan.
2. The reciprocal arrangement for ingress, egress and parking that applies to the subject property shall remain in effect for the duration of this food use.
3. The facility shall comply with the provisions of Chapter 14.30 of the Newport Beach Municipal Code for commercial kitchen grease disposal.
4. Unless approved otherwise by the Planning Director, deliveries and refuse collection for the facility shall be prohibited daily between the hours of 10:00 p.m. and 8:00 a.m., and may require an amendment to this use permit.
5. All trash shall be stored within either the building, in dumpsters kept in a trash enclosure (three walls and a gate), or otherwise screened from the view of neighboring properties. The exception being when placed for pick-up by refuse collection agencies. The trash dumpsters shall have a top which shall remain closed at all times, except when being loaded or while being collected by the refuse collection agency.

6. All signs shall conform to the provisions of the Bonita Canyon Planned Community District regulations and Chapter 20.67 of the Newport Beach Municipal Code, where applicable.
7. Temporary signs shall be prohibited in the public right-of-way, unless otherwise approved by the Public Works Department in conjunction with the issuance of an encroachment permit or encroachment agreement.

The decision of the Planning Director may be appealed by the applicant or any interested party to the Planning Commission within 14 days of the date of the decision. A filing fee of \$875.00 shall accompany any appeal filed.

PATRICIA L. TEMPLE, Planning Director

By 

Javier S. Garcia, AICP
Senior Planner

Attachments: Appendix
Vicinity Map
Detail Seating Plan
Site Plan and Floor Plan
Existing Parking Plan

cc:
property owner
The Irvine Company
567 San Nicolas Drive, Suite 208
Newport Beach, CA 92660

Code Enforcement Officer

APPENDIX

Compliance with Use Permit 2002-020

The proposed facility is one of a number of fast food restaurant facilities that has been approved for the subject shopping center. Use Permit 2002-020 allows up to 20,000 square feet of restaurant use within the shopping center property. The proposed 1,505 square foot area is located in Suite 300 H of the project site. Staff has reviewed the use permit application and has determined that the facility, as proposed, complies with the limitations and general requirements of Use Permit 2002-020.

Restroom Facilities

The proposed facility provides adequate public sanitation facilities. Any increase in the interior seating may require increase in the number of fixtures as required by the Newport Beach Municipal Code and in compliance with the provisions of the Health Code (Orange County). The applicant or restaurant manager/owner should verify the requirements with the Building Department prior to the increase of patron seating.

Restaurant Development Standards

Chapter 20.82.040 of the Municipal Code contains development standards for restaurants, as outlined below, to ensure that any proposed development will be compatible with adjoining properties and streets. The development standards include specific requirements for site development, building setbacks, parking and traffic circulation, walls surrounding the restaurant site, landscaping, exterior illumination, underground utilities, and supply and refuse storage. Section 20.82.040 D of the Municipal Code states that any of the above mentioned development standards for restaurants may be modified or waived if strict compliance is not necessary to achieve the purpose or intent of the standard.

Development Standards

	REQUIREMENT	PROPOSED
<i>Site:</i>	Site shall be of sufficient size and configuration to satisfy all requirements for off-street parking, setbacks, curb cuts, walls, landscaping and refuse storage as provided by Section 20.82.040 of the Municipal Code.	Complies. The site is 8.87 acres and has been found adequate for the construction of a 52,000 square foot shopping center with up to 32,150 square feet of restaurant uses (Site Plan Review No. 2001-001 approved 7/19/2001).
<i>Setbacks:</i>	The City may establish more restrictive setbacks if it is determined that it is necessary or desirable for the protection of the public health, safety or welfare or to insure the compatibility of uses on contiguous properties.	Complies. The proposed uses will be within a new shopping center, which provides the minimum of a 25-foot setback from all property lines. The site is also separated from nearby uses by MacArthur Blvd. and Bison Avenue. More restrictive setbacks are not necessary in staff's opinion.
<i>Off-Street Parking:</i>	Off-street parking in accordance with the provisions of Chapter 20.66 of the Municipal Code.	Complies. The site provides 481 parking spaces for all uses which exceeds the 469 spaces required. The 19,694 square foot limit for eating and drinking establishments will not impact the required parking total. Therefore, adequate parking will be provided in accordance with the Bonita Canyon PC Text.

	REQUIREMENT	PROPOSED
<i>Circulation:</i>	Parking areas and driveways to facilitate traffic and circulation of vehicles on and around the facility and to provide adequate sight clearances.	Complies. The traffic circulation has been reviewed by the City Traffic Engineer in conjunction with the approval of the original construction of the site.
<i>Walls:</i>	A solid masonry wall 6 feet high shall be erected on all interior property lines of the subject property. Walls three feet in height shall be erected between the on-site parking areas and the public right-of-way.	Waiver. The site has no interior lot lines as MacArthur Blvd., Bison Ave. and the San Joaquin Hills Transportation Corridor bound the site. It is proposed that by using landscape and earth berms, as opposed to walls, screening of parking areas will be accomplished. Staff recommends waiving the three-foot high wall requirement.
<i>Landscaping:</i>	10% of entire site, three-foot wide landscape area shall be provided to screen the parking area from the public right-of-way. A three-foot wide landscape area adjacent to the interior property lines shall be provided.	Complies. A conceptual landscaping plan was approved with the Site Plan Review application. The plan has 67% of the site landscaped with the majority of the landscaping in a wildlife mitigation area to the northeast of the center abutting the San Joaquin Transportation Corridor. Landscaping within the developed area exceeds 10% although the exact percentage is not known. The landscape plan includes the use of 24-inch box trees throughout the parking lot, and a 25-foot wide landscape strip along both street frontages.
<i>Lighting:</i>	Parking lot and site illumination height and intensity to minimize the reflection of lights to the streets and neighboring properties.	Complies. The proposed lighting plan was reviewed and approved with Site Plan Review No. 2001-001. No additional lighting is proposed in conjunction with the proposed food uses.
<i>Utilities</i>	All utilities required to be undergrounded.	Complies. Utilities are required to be underground pursuant to Site Plan Review No. 2001-001. No above ground utility connections are proposed.
<i>Supply Storage</i>	Supply storage to be contained within a building.	Complies. No outdoor storage of supplies is permitted.
<i>Refuse Storage</i>	Refuse storage outside of a building shall be hidden from view by a solid masonry wall six feet in height with self-locking gates.	Complies. Trash storage areas are located within three enclosed service areas located at the rear of the proposed shopping center. Additional storage is accommodated within the proposed buildings to accommodate the proposed restaurants.

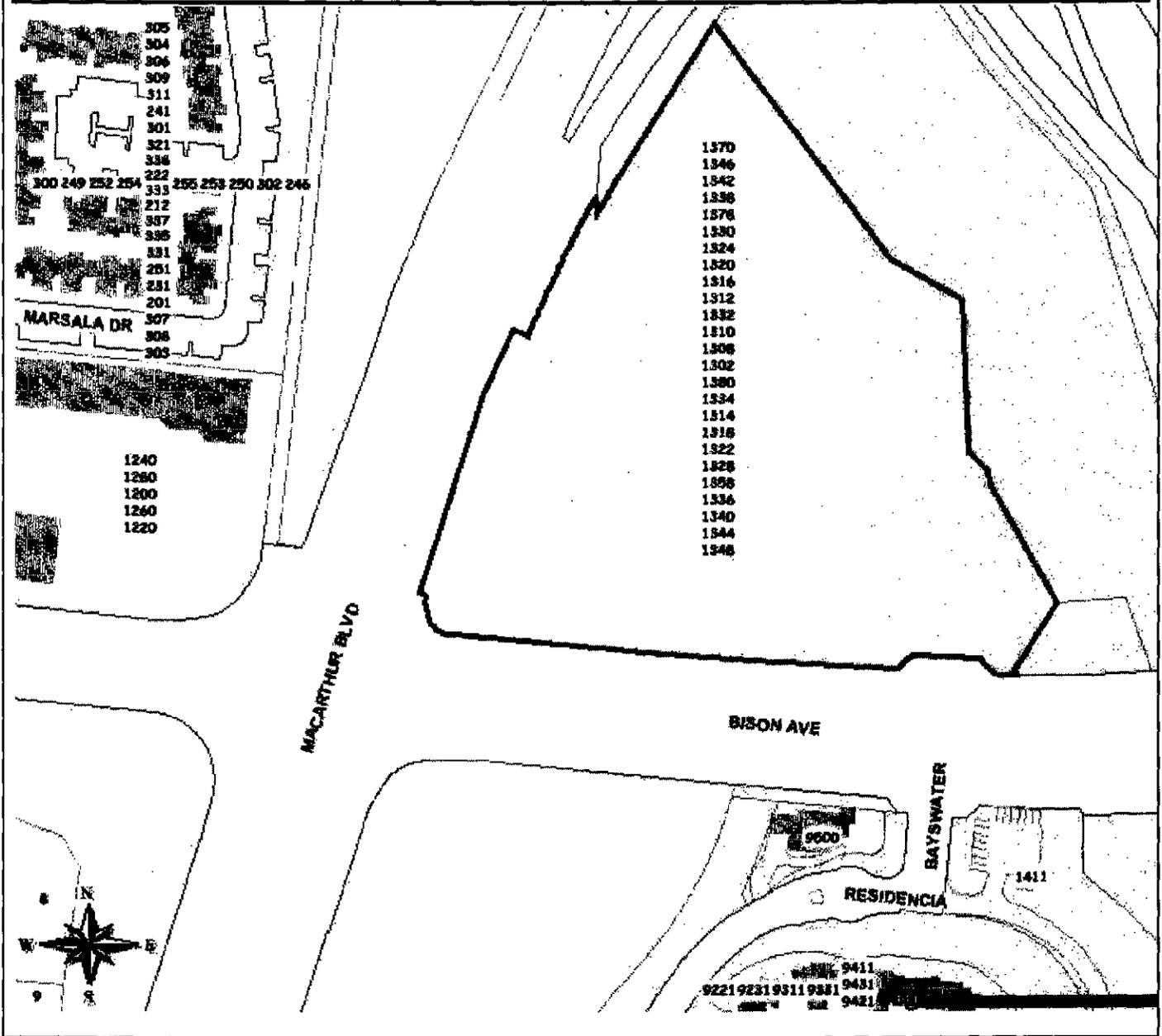
Fast Food Parking Requirement

In accordance with the provisions of the Bonita Canyon Planned Community District Regulations, parking for a restaurant use in the subject shopping center is based on one parking space for each 100 square feet of gross floor area. The subject facility with 1,505 square feet interior space requires 15.0 parking spaces.

The applicant has not included any exclusive outdoor dining area. Therefore, no additional parking is necessary for the project.

Staff has determined that the proposed use and the peak parking demand of the shopping center has been adequately addressed by the Environmental Document that was approved for the subject shopping center. Therefore, based on the district regulations and the parking characteristics of the use, adequate parking is provided on-site to serve all uses in the center.

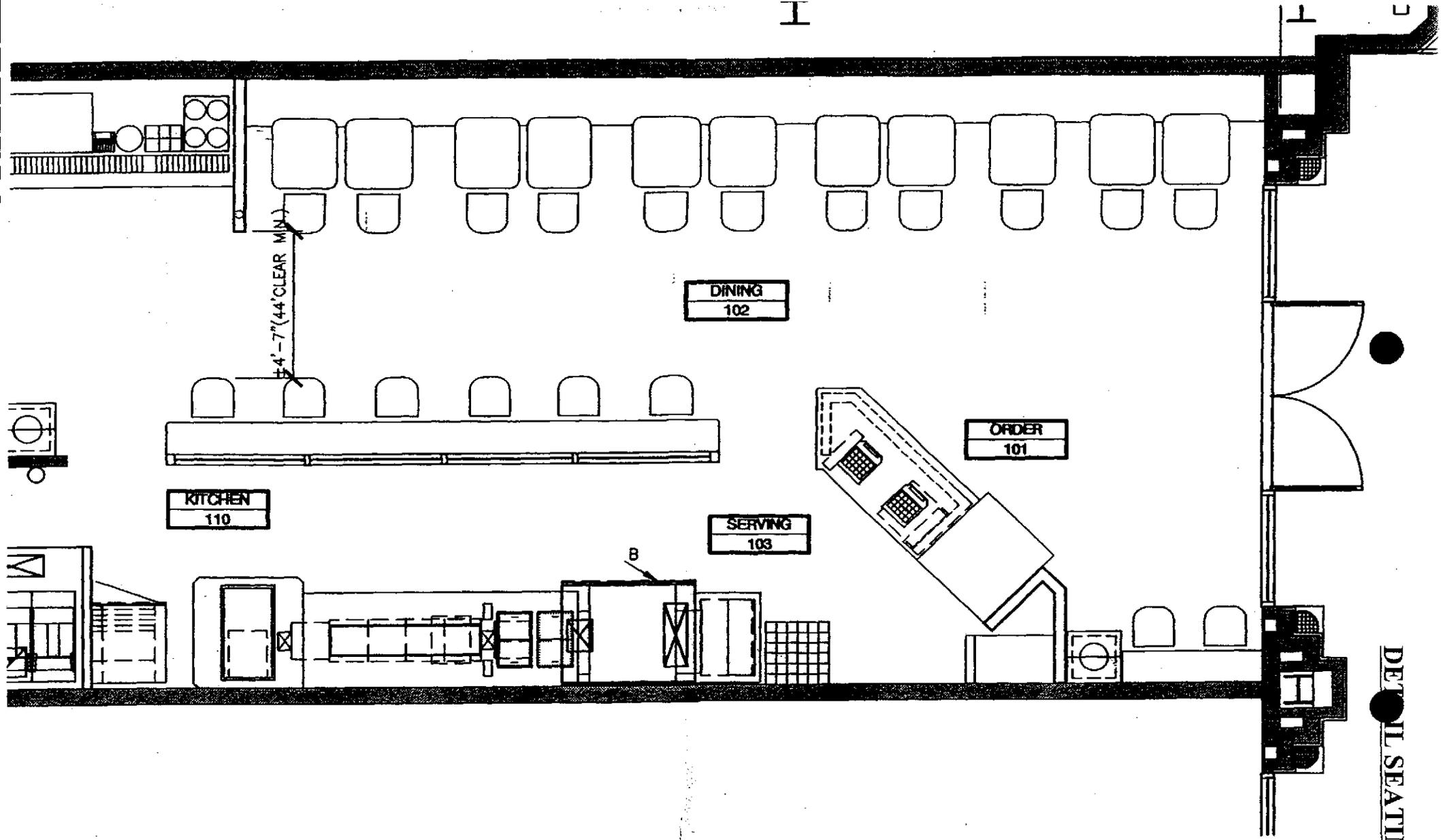
VICINITY MAP



**Use Permit UP2003-016
(PA2003-102)**

1320 Bison Avenue

I



DETAIL SEATING PLAN

Suite G

AREA TABULATION:

ORDER 101	80 SF
DINING 102	454 SF
CUSTOMER	= 534 SF
SERVING 103	87 SF
KITCHEN 110	257 SF
SCULLERY 109	145 SF



Attachment No. ZA 5

Police Department Recommendation,
statistics, RD Map

**City of Newport Beach
Police Department**

Memorandum

February 6, 2013

TO: Gregg Ramirez, Senior Planner

FROM: Detective Randy Parker

SUBJECT: Johnny's Real New York Pizza Restaurant, 1320 Bison Avenue,
Use Permit No. UP2013-002 (PA2013-013).

At your request, the Police Department has reviewed the project application for *Johnny's Real New York Pizza*, located at 1320 Bison Avenue, Newport Beach. Per the project description, the applicant is requesting a minor use permit for the on-site sale and consumption of alcoholic beverages (ABC License Type 41-On-Sale Beer and Wine) to a restaurant use previously approved by Use Permit No. 2003-016. A tenant improvement permit has been issued (Plan Check No. 2340-2012). The tenant space is 1489 square feet and seating for 36 is proposed. Proposed hours of operation are 11:00 a.m. to 10:00 p.m. Sunday thru Thursday and 11:00 a.m. to 11:00 p.m. Friday and Saturday. Planning staff is considering recommending an earlier opening hour and possibly an 11:00 p.m. closing hour seven days a week to provide flexibility for this tenant and potential future tenants. The tenant space was previously occupied by Freshi and Carl's Jr.

The applicant will apply for a Type 41 (On-Sale Beer and Wine) license with the Department of Alcoholic Beverage Control. The license will be conditioned appropriately to protect the health, safety and welfare of the community.

I have included a report by Crime Analyst Caroline Staub that provides detailed statistical information related to calls for service in and around the applicant's place of business. This report indicates that this new location is within an area where the number of crimes is at least 49% lower than the average of all reporting districts in the City. Additionally, this location is also within an RD that is over the Orange County per capita of ABC licenses.

Applicant History

Johnny's Real New York Pizza was established in 2011 in Corona Del Mar. The concept of owner John Younesi, a former New York resident who now resides in Newport Beach, is to bring true New York style pizza to Orange County. The owner, John Younesi currently owns and operates one other Johnny's Real New York Pizza located at 3756 E. Coast Highway in Corona Del Mar.

Recommendations

The Police Department has no objection to the operation as described by the applicant.

Signs and Displays

Any signs or displays would need to conform to City requirements. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs, which are clearly visible to the exterior, shall constitute a violation of this condition.

Hours of Operation

The proposed hours of operation are from 11:00 a.m. to 10:00 p.m. Sunday thru Thursday and 11:00 a.m. to 11:00 p.m. Friday and Saturday.

Security

The Police Department has no recommendations.

Employee Training

Require all owners, managers, and employees selling alcoholic beverages to undergo and successfully complete a certified training program in responsible methods and skills for serving and selling alcoholic beverages.

Additional Comments

For the purposes of this application, staff may also want to consider establishing conditions that would require a special event permit. A special event permit may be required for any event or promotional activity outside the normal operational characteristics of the proposed operation.

For example, events likely to attract large crowds, events for which an admission fee is charged, events that include any form of contract promoters, or any other activities as specified in the Newport Beach Municipal Code to require such permits.

Other Recommended Conditions

In addition, the Police Department has determined that the following conditions would be appropriate for the Conditional Use Permit for the business:

1. Approval does not permit Johnny's Real New York Pizza to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Municipal Code, unless the Planning Commission first approves a use permit.
2. Food service from the regular menu must be available to patrons up to thirty (30) minutes before the scheduled closing time.

3. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
4. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except when offered in conjunction with food ordered from the full service menu. There shall be no reduced price alcoholic beverage promotions after 9:00 p.m.
5. Petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.
6. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.
7. There shall be no on-site radio, television, video, film or other electronic media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved special event permit issued by the City of Newport Beach.
8. There shall be no live entertainment allowed on the premises.
9. There shall be no dancing allowed on the premises.
10. Strict adherence to maximum occupancy limits is required.
11. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.

If you have any questions, please contact Detective Randy Parker at (949) 644-3706.



Randy Parker, ABC/Vice/Intelligence
Detective Division



Dale Johnson, Captain
Detective Division Commander



Chief Jay R. Johnson

NEWPORT BEACH POLICE DEPARTMENT

Crime Analysis Unit

870 Santa Barbara Drive · Newport Beach · CA 92660 · 949-644-3791



CRIME AND ALCOHOL-RELATED STATISTICS - 2012

Subject:	Calls For Service	Crimes			Arrests				Citations	ABC Info	
		Part I Crimes	Part II Crimes	Crime Rate	All Arrests	DUI	Public Intoxication	Liquor Law	Alcohol Related	Active Licenses	License Per Capita
1320 Bison Avenue	2	1	0	not applicable	0	0	0	0	0	1	not applicable
Subject RD: RD54	568	31	47	602.76	20	7	3	0	1	8	643
Adjacent RD: RD36	2,151	82	98	1,289.31	61	16	7	0	7	2	3,180
Adjacent RD: RD38	747	11	28	264.55	18	9	2	0	1	1	4,158
Adjacent RD: RD51	1,141	46	48	790.51	34	9	3	2	5	0	0
Newport Beach	68,888	2,332	3,585	2,731.45	3,280	446	856	14	1,079	394	217
California	not available	1,128,845	not available	2,994.92	1,183,470	104,345	99,017	15,904	not available	44,536	836
National	not available	10,266,737	not available	3,294.93	12,408,899	1,215,077	534,218	500,648	not available	not applicable	not applicable

Summary for Johnny's Real New York Pizza at 1320 Bison Avenue (RD54)

In 2012, RD54 had a total of 78 reported crimes, compared to a city-wide reporting district average of 152 reported crimes. This reporting district is -74 crimes, or -49%, UNDER the city-wide average.

The number of active ABC licenses in this RD is 8, which equals a per capita ratio of one license for every 643 residents. Orange County averages one license for every 504 residents and California averages one license for every 836 residents. This location is within an RD that is UNDER the Orange County and OVER the California per capita averages of ABC licenses.

Notes:

Part I Crimes are the 8 most serious crimes as defined by the FBI Uniform Crime Report - Homicide, Rape, Robbery, Aggravated Assault, Burglary, Larceny-Theft, Auto Theft, and Arson.

This report reflects City of Newport Beach data for calendar year 2012, which is the most current data available.

California and National figures are based on the 2011 Uniform Crime Report, which is the most recent edition.

Crime Rate refers to the number of Part I Crimes per 100,000 people.

Number of Active ABC Licenses is the total of all types of licenses known to the NBPD as of the date of this document.

2/7/2013

Additional Information

Highest Volume Crime in RD54
Burglary/Theft From Motor Vehicle

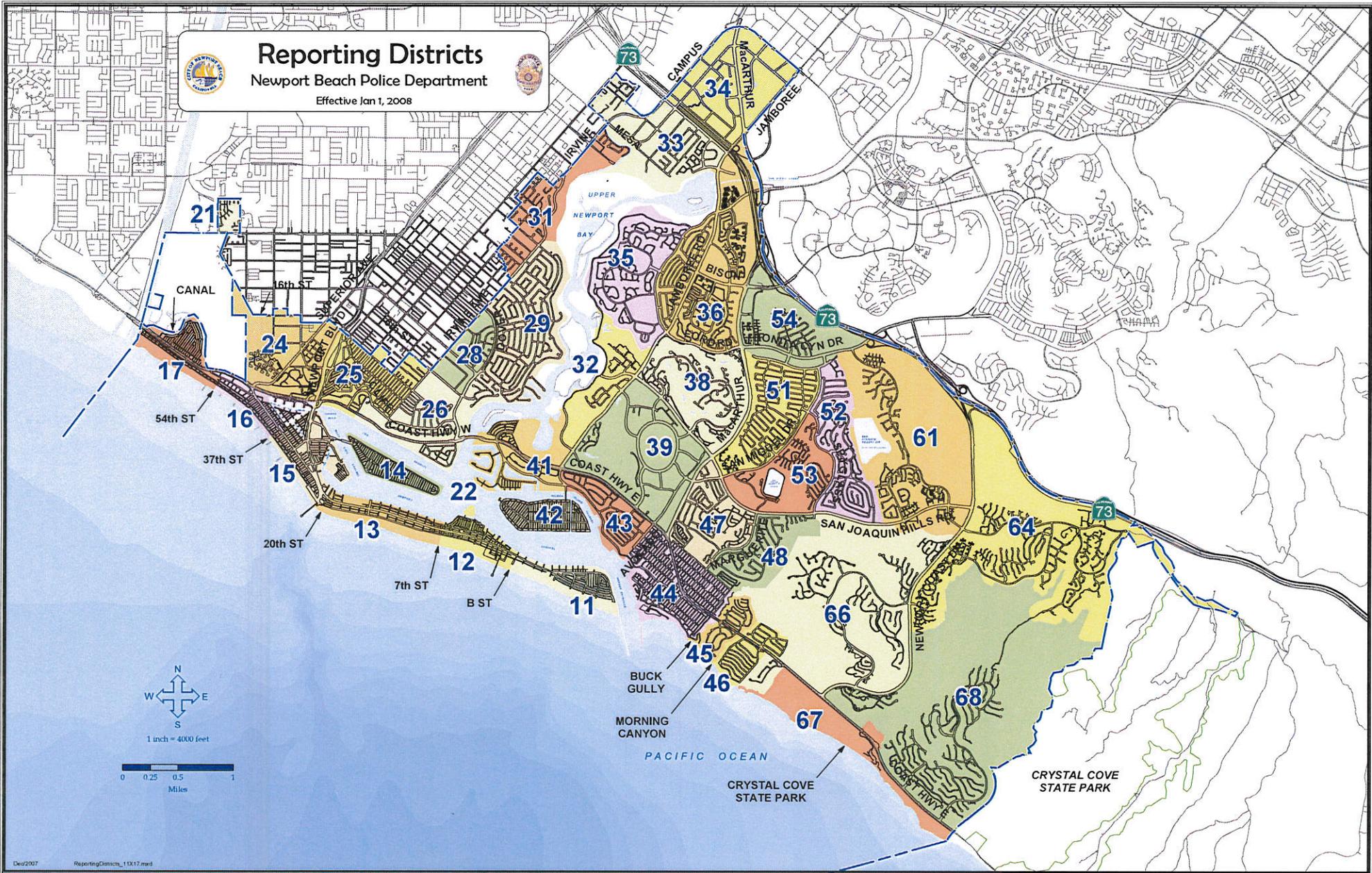
Highest Volume Crime in RD38
Burglary/Theft From Motor Vehicle

Highest Volume Crime in RD36
Burglary/Theft From Motor Vehicle

Highest Volume Crime in RD51
Burglary/Theft From Motor Vehicle

Calls for Service at 1320 Bison Avenue	
415	1
488R	1
Grand Total	1

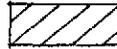
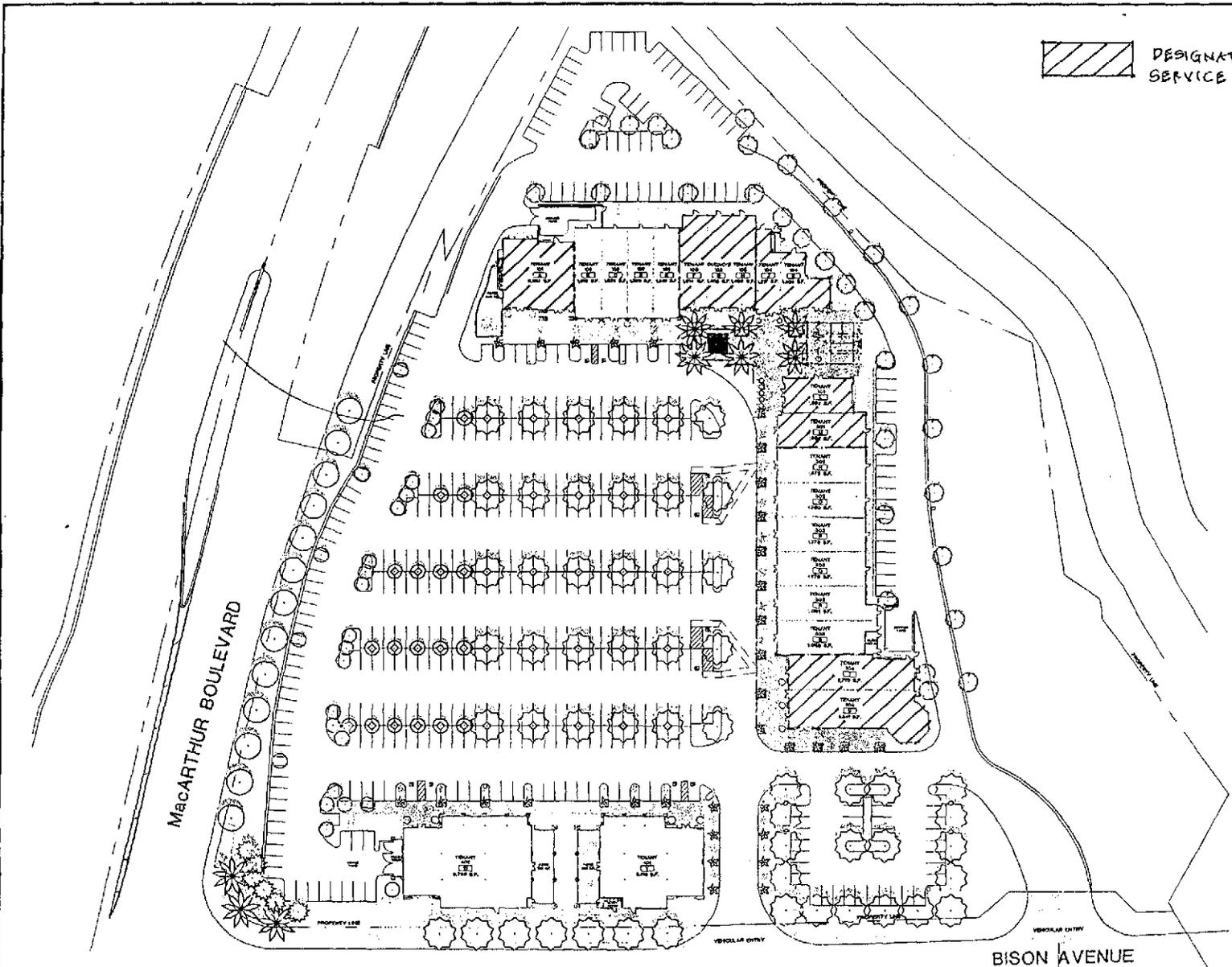
Reporting Districts
 Newport Beach Police Department
 Effective Jan 1, 2008



Dec2007 ReportingDistricts_11x17.mxd

Attachment No. ZA 6

Lease Outline Drawing - Restaurant
Locations



DESIGNATES USE PERMIT / QUICK SERVICE FOOD TENANT LOCATIONS

THIS IS A SCHEMATIC PLAN INTENDED ONLY TO SHOW THE GENERAL LAYOUT OF THE SHOPPING CENTER AND THE APPROXIMATE LOCATION OF THE PREMISES. LANDLORD, AT ANY TIME, MAY CHANGE THE SHAPE, SIZE, LOCATION, NUMBER AND EXTENT OF THE IMPROVEMENTS SHOWN HEREON, AS WELL AS ANY ADDITIONAL IMPROVEMENTS. LANDLORD MAY ELIMINATE, ADD OR RELOCATE ANY IMPROVEMENTS TO ANY PORTION OF THE SHOPPING CENTER, INCLUDING, WITHOUT LIMITATION, BUILDINGS, PARKING AREAS, ROADWAYS, CURB CUTS, TEMPORARY OR PERMANENT KIOSKS, DISPLAYS OR STANDS, AND MAY ADD LAND TO AND/OR WITHDRAW LAND FROM THE SHOPPING CENTER. PLAN NOT TO SCALE.

THIS PLAN IS FOR THE PURPOSE OF SITE LOCATION AND GENERAL ARRANGEMENT ONLY, INDICATING RELATIVE STORE LOCATIONS. IT IS NOT INTENDED AS AN INCUMENCE OR AS REPRESENTATION THAT THE IDENTITIES OF THE OCCUPANTS ARE NOW OR EVER WILL BE AS SET FORTH HEREIN. LANDLORD RESERVES THE RIGHT TO CHANGE THE IDENTITIES OF THE OCCUPANTS, VARY THE USERS, SIZES AND LOCATIONS AND CONFIGURATIONS OF BUILDINGS AND TO ADD OR ELIMINATE BUILDINGS AND IMPROVEMENTS.

SITE LEGEND:	
Site Area:	378,104 S.F.
Parking Required:	469 Spaces
Parking Provided:	475 Spaces
Building 100 GLA:	16,614 S.F.
Building 100 Patio SLA:	1,701 S.F.
Building 300 GLA:	21,869 S.F.
Building 400 GLA:	12,193 S.F.
Building 400 Patio GLA:	1,998 S.F.
Overall Patio GLA:	3,699 S.F.
Overall Building GLA:	50,682 S.F.
Overall GLA:	54,381 S.F.



Carlisle
Coatsworth
Architects, Inc.
2400
1000
1000
1000
1000

THE BLUFFS
NEWPORT BEACH, CA

1300 BISON AVENUE
NEWPORT BEACH
CALIFORNIA

LEASE
OUTLINE
DRAWING

08.28.02

LOD-1

SITE PLAN
SCALE: NONE



Attachment No. ZA 7

Applicant's Project Description and
Project Plans

APPLICANT: Johnny' Real New York Pizza - The Bluffs, LLC. dba "Johnny's Real New York Pizza"
REQUEST: Approval of Minor Use Permit Permitting a Type 41 On-Sale Beer & Wine Eating Place alcoholic beverage license (beer & wine) in Conjunction With The Operation of a Restaurant.
PROPOSED USE: Restaurant With On-Sale Service of Beer and Wine
ADDRESS: 1320 Bison Avenue, Newport Beach (The Bluffs Center), CA 92660

PROJECT NARRATIVE

The proposed project is for the approval of a Type 41 On-Sale Beer & Wine Eating Place alcoholic beverage license (beer and wine) privileges for a new restaurant to be located within the existing Bluffs shopping center. Johnny's Real New York Pizza, ("Johnny's") is opening a second location. The first being located on Coast Highway in Corona del Mar. The proposed use is for a bona fide restaurant with the sale of beer and wine. Johnny's is a quick casual family restaurant serving authentic New York style pizza and pasta along with other Italian inspired entrees, fresh salads and sides. The project site was previously used as "Freshii" a restaurant that did not serve alcoholic beverages.

This request is to permit the sale of beer and wine for on-sale consumption in conjunction with the operations of the restaurant. Service of beer and wine is made for the convenience of patrons dining at the restaurant. Any exterior improvements or changes, such as signage, will be consistent with City and Bluff Center requirements.

The subject property is located within The Bluffs Shopping Center, a large master planned shopping center. The site is bounded by other commercial, residential and office uses. The proposed restaurant will serve the local residents of the surrounding community and patrons of the shopping center.

The proposed restaurant will have a total area of approximately 1,498 square feet. There are 36 seats. No exclusive patio is attached to the subject premise. The proposed restaurant will be open seven (7) days a week. The proposed hours of operation are Sunday through Thursday 11:00 AM to 10:00 PM and Friday and Saturday 11:00 AM to 11:00 PM.

The project will employ approximately 5 employees that would be on-site at one time.

The surrounding land uses are as follows:

North: 73 Freeway.
South: Residential.
East: Office across the 73 Freeway.
West: Commercial.

APPLICANT: Johnny' Real New York Pizza - The Bluffs, LLC. dba "Johnny's Real New York Pizza"
REQUEST: Approval of Minor Use Permit Permitting a Type 41 On-Sale Beer & Wine Eating Place alcoholic beverage license (beer & wine) in Conjunction With The Operation of a Restaurant.
PROPOSED USE: Restaurant With On-Sale Service of Beer and Wine
ADDRESS: 1320 Bison Avenue, Newport Beach (The Bluffs Center), CA 92660

USE PERMIT APPLICATION JUSTIFICATION

The proposed project is for the approval of a Type 41 On-Sale Beer & Wine Eating Place alcoholic beverage license (beer and wine) privileges for a new restaurant to be located within the existing Bluff shopping center. The propose use is for a "Johnny's" restaurant. Johnny's is a quick casual family restaurant serving authentic New York style pizza and pasta along with other Italian inspired entrees, fresh salads and sides. The project site was previously used as a retail shop. The applicant proposes obtaining from the California Department of Alcoholic Beverage Control with a Type 41 On-Sale Beer & Wine Eating Place alcoholic beverage license. The proposed request meets the requirements set forth in the City of Newport Beach Municipal Code.

BURDEN OF PROOF:

- 1. The use is consistent with the General Plan and any applicable specific plan;**

Response: The proposed use as a restaurant with beer and wine is consistent with the Newport Beach General Plan and provisions of the Municipal Code for the location.

- 2. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code;**

Response: The proposed use as a restaurant with beer and wine is permitted in the zoning district and is subject to the all the regulations, conditions, policies or other requirements of the Municipal Code.

- 3. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;**

Response: The proposed use is not inconsistent with the adjacent uses and will not materially affect the surrounding community or environment. The proposed project is ideally suited for the Bluff Shopping Center and is not located near any residences. The approval of the request that serves the local community and tourism, will not adversely affect the public's health, safety, welfare nor will it jeopardize or endanger the public. It will not be detrimental to the use, valuation or enjoyment of surrounding property owners or residents.

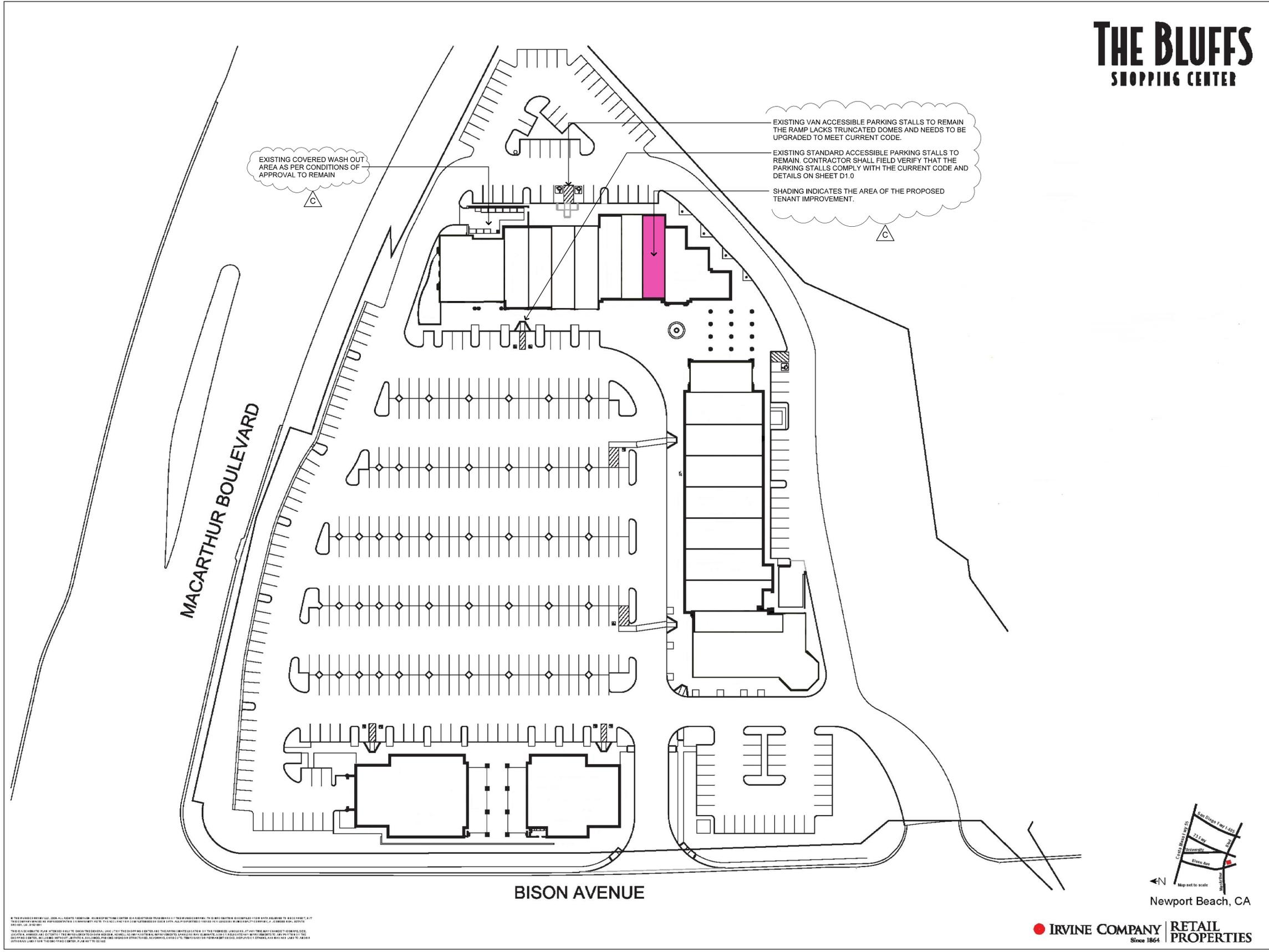
4. **The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and**

Response: The proposed site, an existing shopping center, is not inconsistent with the adjacent uses and will not materially affect the surrounding community or environment. The proposed site is ideally suited for the Fashion Island Shopping Center and is not located near any residences. The approval of the request that serves the local community and tourism, will not adversely affect the public's health, safety, welfare nor will it jeopardize or endanger the public. It will not be detrimental to the use, valuation or enjoyment of surrounding property owners or residents.

5. **Operation of the use at the location proposed would 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 of the proposed use.**

Response: The proposed use will contribute to the economic growth of the City as it will serve the local community and tourism. The proposed project will not adversely affect the public's health, safety, welfare nor will it jeopardize or endanger the public. It will not be detrimental to the use, valuation or enjoyment of surrounding property owners or residents.

C:\Data\CAD 15\Drawings\2012-39 1320 Bison - Johnny's Pizza\JohnnyPC01.aec



THE BLUFFS SHOPPING CENTER

R. A. JEHEBER
COMMERCIAL DESIGN, INC.
 410 32nd Street, Suite 202
 Newport Beach, California 92663
 949.723.4393 (rajeheber@gmail.com)

THIS DOCUMENT IS THE PROPERTY OF R. A. JEHEBER COMMERCIAL DESIGN, INC. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF R. A. JEHEBER COMMERCIAL DESIGN, INC. ANY UNAUTHORIZED REPRODUCTION OR TRANSMISSION OF THIS DOCUMENT IS STRICTLY PROHIBITED. R. A. JEHEBER COMMERCIAL DESIGN, INC. SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION CONTAINED HEREIN. THE USER OF THIS DOCUMENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

SHEET TITLE
SITE PLAN

TENANT IMPROVEMENT PLANS FOR:
JOHNNY'S
REAL NEW YORK PIZZA
 1320 BISON AVENUE
 NEWPORT BEACH, CALIFORNIA

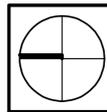
Plot Date
 1/8/2013 6:40 PM
 RAJ Project #
 2012-38

REVISIONS	
A	HEALTH DEPT. CORR. 12-06-2012
B	HEALTH DEPT. CORR. 12-31-2012
C	PLAN CHECK CORR. 01-08-2013

IRVINE COMPANY | **RETAIL PROPERTIES**
 Since 1864

SITE PLAN

NOT TO SCALE



Sheet
A0.2

ADDITIONAL
MATERIALS
RECEIVED

Item C.2. Johnny's Real New York Pizza (PA2013-013)

Handwritten page 9: It is unclear to me from the materials presented if the reference to "1320 Bison Avenue" in the title and Section 1.1 of the draft resolution adequate to identify the intended tenant space. Does each have a separate address? I suspect "Parcel 1 of Parcel Map 326-48" comprises a larger area.

Handwritten page 11, Finding A.v: The Zoning Code suggests this finding applies only to requests for an *amendment* of an existing alcohol-related permit, which would not seem to be the case here.

Handwritten page 12:

- Fact C.1: "...a mix of restaurants, **and** retail service uses. Johnny's **Real** New York Pizza ..."
- Fact C.2: I'm not sure approving more generous operating hours than those requested to provide flexibility to future tenants is desirable, since we don't know what the characteristics of those future tenants might be.

Handwritten page 15:

- Condition 16: Is there a wish to prohibit signs visible from outside advertising alcohol sales? Is this condition sufficient to accomplish that (i.e., is that already part of the Sign Standards)?

Handwritten page 16:

- Condition 31: "...under the control of the **license licensee**." (?)
- Condition 33: Was this intended to include the Police Department's recommendation of no reduced-price alcohol sales after 9 pm? It is also unclear to me how this condition is supposed to operate in connection with Condition 24 on handwritten page 15. Is a Special Event permit needed for promotions involving alcohol, even if they are within the normal operational characteristics and allowed by conditions?

Regarding the Police Recommendation (Attachment ZA 5):

On handwritten page 45, the Police acknowledge the Planning Division may recommend longer operating hours than those requested by the applicant, but it would not appear from handwritten page 46 that it is the applicant's hours they have evaluated and are commenting on. It is not clear to me they concur with or endorse the Planning Division's recommendation..

Item C.3. Westcliff Court Tea Room (PA2013-004)

Handwritten page 7, Section 2.1: The phrasing of the reference to "Section 15301 of the California Environmental Quality Act" is garbled. It is a section of the Implementing Guidelines in the California Code of Regulations, not of the CEQA.

Handwritten page 7, Section C.4: "... it is located less than 500 feet **of a from** residential **district districts** directly to the north and south ..."

Handwritten page 13, Condition 13: I don't believe all the dumpsters in Westcliff Court are in 3-sided gated enclosures. I don't know if the ones for this property are or aren't.