



**CITY OF NEWPORT BEACH
COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION ACTION REPORT**

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION

FROM: Kimberly Brandt, Community Development Director
Brenda Wisneski, Deputy Community Development Director

SUBJECT: Report of actions taken by the Zoning Administrator, and/or Planning Division staff for the week ending March 13, 2015

**ZONING ADMINISTRATOR ACTIONS
MARCH 12, 2015**

- Item 1: Verizon Wireless Telecommunications Facility Use Permit No. UP2014-048 (PA2014-208)
4302 Ford Road
- Action: Approved by Resolution No. ZA2015-010 Council District 5
- Item 2: Lido Live Comprehensive Sign Program No. CS2015-001 and Modification Permit No. MD2015-001 (PA2015-011)
3459 Via Lido
- Action: Approved by Resolution No. ZA2015-009 Council District 1
- Item 3: Big Canyon Lot Line Adjustment No. LA2014-003 (PA2014-222)
10 Big Canyon Drive and 11 Rue Biarritz
- Action: Approved by Resolution No. ZA2015-011 Council District 5
- Item 4: Lemon and Honey Day Spa Minor Use Permit No. UP2015-005 (PA2015-014)
4101 Birch Street, Suite 130
- Action: Approved by Resolution No. ZA2015-012 Council District 4

APPEAL PERIOD: An appeal may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

Lt. Dennis Birch, NBPD (*Telecom Permit*)
Wendy Joe, Civilian Investigator, NBPD (*Massage Therapy – ABC License*)
Sgt. Brad Miller, NBPD (*Massage Therapy - ABC License*)

RESOLUTION NO. ZA2015-010

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2014-048 FOR A WIRELESS TELECOMMUNICATIONS FACILITY LOCATED AT 4302 FORD ROAD (PA2014-208)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Jacobs Engineering on behalf of Verizon Wireless, with respect to property located at 4302 Ford Road, and described as a portion of Lot 1 in the City of Newport Beach, County of Orange, as shown on a map filed in Book 65, Page 4 of Parcel Maps in the Office of the County Recorder and Lot 2 of Tract 16760, requesting approval of a minor use permit for a new wireless telecommunications facility (WTF).
2. The applicant proposes a new WTF on an existing building used as a switch center by AT&T. The project involves the installation of twelve (12) panel antennas, twelve (12) RRU's, eight (8) raycaps, and a microwave dish all wall-mounted on the building's façade below the roof of the existing building, five (5) outdoor equipment cabinets, three (3) GPS antennas, and an emergency generator within a 375-square-foot equipment enclosure.
3. The subject property is located within the PF (Public Facilities) Zoning District and the General Plan Land Use Element category of the property is Public Facilities (PF).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on March 12, 2015, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. 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. This project has been determined to be categorically exempt pursuant to Title 14 of the California Code of Regulations (Section 15303, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 3 (New Construction or Conversion of Small Structures).
2. Class 3 allows construction of new, small facilities or structures and installation of small new equipment and facilities in small structures. Examples of this exemption include up to four (4) commercial buildings totaling 10,000 square feet and accessory structures.

3. The proposed project involves the installation of 12 new panel antennas, 12 RRU's, 8 raycaps, and a microwave dish all wall mounted on the building's exterior façade below the roof of the existing building, 5 outdoor equipment cabinets, 3 GPS antennas, and an emergency generator within a 375-square-foot equipment enclosure.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020 (Conditional Use Permits and Minor Use Permits) and Section 20.49.060.H.1 (Required Findings for Telecom Facilities) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Minor Use Permit

Finding:

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

Facts in Support of Finding:

1. The subject property is designated Public Facilities (PF) within the Land Use Element of the General Plan, which is intended to provide for public facilities, including public schools, cultural institutions, government facilities, libraries, community centers, public hospitals, and public utilities. Other uses may be permitted in accordance with the PF land use designation.
2. The proposed WTF is accessory to the existing telephone switch building, which is a utility consistent with the PF designation.
3. The site is not in 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 zoned PF (Public Facilities) and Section 20.26.020 allows WTFs pursuant to Chapter 20.49 of the Zoning Code. The proposed WTF is defined as a Class 2 facility by Section 20.49.030(G) based upon the fact that the antennas will be visible. Section 20.49.060(D) requires a Minor Use Permit for new Class 2 facilities. Section 20.49.040 (Telecom Facility Preferences and Prohibited Locations) of the Zoning Code identifies certain prohibited locations and the proposed facility is not a prohibited location.
2. Section 20.49.040(A) prioritizes wireless telecommunication facilities as follows: 1) collocation of a new facility at an existing facility; 2) Class 1 (Stealth/Screened); 3)

Class 2 (Visible Antennas) and Class 3 (Public Right-of-Way); and Class 4 (Freestanding Structure). The proposal allows a new carrier at the site currently occupied by several other carriers meeting the City's highest priority preference despite having visible antennas that would be a lower priority. Visible antennas are acceptable in this case given the proposed design and screening elements identified in the plans, findings, and conditions of approval.

3. The facility is designed such that it will not visually dominate the surrounding area. Proposed brackets, mounts, and associated equipment match other carriers existing equipment presently on the exterior of the building. All antennas will be mounted on the building exterior and not extend above the roof and will be painted to match the color of the existing building. The vertical antennas partially mimic and complement existing vertical elements of the exterior of the building. Any future increase in the height of the proposed antennas above the roof of the building would defeat the concealment elements of the proposed design and would be considered a substantial change in the context of § 6409 of the Spectrum Act (codified at 47 U.S.C. 1455).
4. Support equipment will be located in a 375 square foot area that will be located at the northwest corner of the site and will be surrounded by a standard 8-foot high chain link fence. Existing landscaping along Bonita Canyon Road and Ford Road provides some screening from Bonita Canyon Sports Park and abutting public streets; however, the equipment would be visible from these public vantage points. As a result, permanent screening elements need to be added to the chain link fencing and additional landscape maintenance and new landscaping needs to be added to the west of the proposed enclosure to ensure proper screening consistent with Chapter 20.49 of the Zoning Code.
5. With construction as shown on the plans and visual simulations with the implementation of the conditions of approval, the proposed WTF will comply with screening requirements of the Zoning Code.

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 principal use of the property is a telephone company switch facility owned and operated by AT&T. Other wireless telecommunication carriers have installed facilities at the site and the proposed facility is compatible with existing equipment.
2. Bonita Canyon Sports Park is located to the east and west of the site. Bonita Canyon Drive abuts the site to the north and Ford Road abuts the site to the south. The existing building and proposed WTF is effectively screened by mature landscaping.
3. See statements B-3 and B-4 in support of this finding.

4. The proposed telecom facility will be unmanned, have no impact on the circulation system, and will not generate noise, odor, smoke, or any other adverse impacts to adjacent land uses.
5. The proposed facility will enhance coverage and capacity for commuters and residents of the area by providing wireless access to voice and data transmission services. The proposed facility will not result in any material changes to the character of the local community.

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.*

Facts in Support of Finding:

1. The project site is approximately 2.8 acres and developed with a telephone company switch building used by AT&T. Several other telecommunications carriers have developed wireless telecommunications facilities at the site. The site is well screened by existing landscaping along Bonita Canyon Road and Ford Road.
2. The proposed telecom facility will be unmanned, have no impact on the circulation system, and will not generate noise, odor, smoke, or any other adverse impacts to adjacent land uses.
3. The Public Works Department, Building Division, Police Department, and Fire Department have reviewed the project proposal and do not have any concerns regarding access, public services, or utilities provided to the existing development.

Finding:

- E. 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.*

Facts in Support of Finding:

1. See statements B-1, B-2, B-3, and B-4 in support of this finding.
2. The proposed facility will only require periodic maintenance and will not generate any type of adverse impacts to the environment, such as noise, odor, smoke, etc.

3. The proposed facility will comply with the applicable rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC), thus ensuring public health and safety.
4. The proposed facility is not located in an area adjacent to a coastal view road or public coastal view point.
5. The proposed wireless telecommunications facility will be effectively screened based upon the design and location with the incorporation of the conditions of approval. As a result, the proposed telecommunication facility at this location will not result in conditions that are materially detrimental to nearby property owners, residents, and businesses, nor to public health or safety.

Telecom Facilities

Finding:

- F. The proposed telecom facility is visually compatible with the surrounding neighborhood.*

Facts in Support of Finding:

1. The proposed facility is screened as required by Chapter 20.49 of the Zoning Code. See statements B-2, B-3, and B-4 in support of this finding.
2. Conditions of approval require additional screening elements for the proposed equipment enclosure.

Finding:

- G. The proposed telecom facility complies with height, location and design standards, as provided in Chapter 20.49.*

Facts in Support of Finding:

1. The antennas will be no higher than the height of the existing building.
2. See statements B-1, B-2, B-3, and B-4 in support of this finding.

Finding:

- H. An alternative site(s) located further from a residential district, public park or public facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.*

Facts in Support of Finding:

1. The proposal adds a new carrier to an existing facility that accommodates several other carriers meeting the City's highest priority preference pursuant to Section 20.19.040(A) despite having visible antennas that are a lower priority. Visible antennas are acceptable in this case given the proposed design and screening elements identified in the plans, findings, and conditions of approval.
2. Alternative sites located further away from Bonita Canyon Sports Park or nearby residential uses would limit the coverage objectives and not fulfill the need demonstrated by Verizon to enhance coverage and capacity. The applicant has provided maps that demonstrate improved coverage within the immediate vicinity.
3. Selecting an alternative site nearby would result in an additional telecom facility within a nearby public right-of-way (a Class 3 facility) or a new free standing structure (a Class 4 facility) both being lower priority locations than the proposed project pursuant to Section 20.49.040(A) to provide service to Verizon customers' increasing demands.

Finding:

- 1. An alternative plan that would result in a higher preference facility class category for the proposed facility is not available or reasonably feasible and desirable under the circumstances.*

Facts in Support of Finding:

1. The proposal allows a new carrier at the site currently occupied by several other carriers meeting the City's highest priority preference despite having visible antennas that are a lower priority. Visible antennas are acceptable in this case given the proposed design and screening elements identified in the plans, findings, and conditions of approval.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2014-048 (PA2014-208), 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 (14) days following the date this Resolution was adopted unless within such time an appeal is filed with the Community Development Director in accordance with the provisions of Title 20 (Planning and Zoning), of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 12TH DAY OF MARCH, 2015.

BY:



Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL**

1. The development shall be in substantial conformance with the approved plot plan, antenna and equipment plans, elevations, and photographic simulations, except as noted in the following conditions.
2. The telecom facility approved by this permit shall comply with all applicable rules, regulations, and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).
3. The applicant is required to obtain all applicable permits from the City Building Division and Fire Department. Prior to the issuance of any building, mechanical, and/or electrical permits, architectural drawings and structural design plans shall be submitted to the City of Newport Beach for review and approval by the applicable departments. A copy of these conditions of approval shall be incorporated into the drawings approved for the issuance of permits.
4. The telecom facility shall comply with all regulations and requirements of the California Building Code, California Fire Code, California Mechanical Code, and California Electrical Code. All required permits shall be obtained prior to commencement of the construction.
5. The telecom facility approved by the permit shall comply with any easements, covenants, conditions, or restrictions on the underlying real property upon which the facility is located.
6. The operator of the telecom facility shall maintain the facility in a manner consistent with the original approval of the facility and all conditions of approval. Anything not specifically approved by this permit is not permitted and must be addressed in a separate and subsequent review.
7. Proposed brackets, mounts, and associated equipment affixed to the exterior of the building shall match, to the extent possible, other carriers' existing equipment screens. All antennas mounted on the building exterior shall not extend above the roof and shall be painted to match the color of the existing building. If the building is painted in the future, the antennas shall be painted to match the new color. Any future increase in the height of the proposed antennas above the roof of the building would defeat the concealment elements of the proposed design and would be considered a substantial change in the context of § 6409 of the Spectrum Act (codified at 47 U.S.C. 1455).
8. deleted
9. Prior to the issuance of a building permit, the applicant shall submit a landscape and irrigation plan prepared by a licensed landscape architect. The plans shall be limited to an area within approximately 15 feet westerly of the proposed equipment enclosure

where additional screening plants in the form of shrubs, hedge or small trees can be planted to provide added screening of the facility. The existing large tree directly west of the proposed equipment enclosure shall be properly pruned, or if necessary, removed and replaced with a fast growing tree that will provide similar screening in the future. These plans shall incorporate drought tolerant plantings and water efficient irrigation practices, and the plans shall be approved by the Planning Division prior to installation. All planting areas shall be provided with a permanent underground automatic sprinkler irrigation system of a design suitable for the type and arrangement of the plant materials selected. All plantings and maintenance required shall be completed prior to final inspection by the Building Inspector.

10. All landscape materials and landscaped areas shall be installed and maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
11. If any of the existing public improvements surrounding the site are damaged by the private work, new concrete sidewalk, curb and gutter, alley/street pavement, and other public improvements will be required by the City at the time of private construction completion. Said determination and the extent of the repair work shall be made at the discretion of the Public Works Inspector.
12. The storage of all project-related equipment during construction shall be on-site and outside the public right-of-way.
13. All work (if any) in the public rights-of-way shall follow City's Municipal Code Chapter 13.20.
14. The applicant shall not prevent the City of Newport Beach from having adequate spectrum capacity on the City's 800 MHz radio frequencies at any time. Should interference with the City's Public Safety radio equipment occur, use of the telecom facility authorized by this permit may be suspended until the radio frequency interference is corrected and verification of the compliance is reported.
15. The facility shall transmit at the approved frequency ranges established by the FCC. The applicant shall inform the City, in writing, of any proposed changes to the frequency range in order to prevent interference with the City's Public Safety radio equipment.
16. The applicant recognizes that the frequencies used by the facility are extremely close to the frequencies used by the City of Newport Beach for public safety. This proximity will require extraordinary "comprehensive advanced planning and frequency coordination" engineering measures to prevent interference, especially in the choice of frequencies and radio ancillary hardware. This is encouraged in the "Best Practices Guide" published by the Association of Public-Safety Communications Officials-International, Inc. (APCO), and as endorsed by the Federal Communications Commission (FCC).

17. The applicant shall provide a "single point of contact" in its Engineering and Maintenance Departments that is monitored 24 hours per day to ensure continuity on all interference issues, and to which interference problems may be reported. The name, telephone number, fax number, and e-mail address of that person shall be provided to the Community Development Department and Newport Beach Police Department's Support Services Commander prior to activation of the facility.
18. Appropriate information warning signs or plates shall be posted at the access locations and each transmitting antenna. In addition, contact information (e.g., a telephone number) shall be provided on the warning signs or plates. The location of the information warning signs or plates shall be depicted on the plans submitted for construction permits.
19. No advertising signage or identifying logos shall be displayed on the telecom facility except for small identification, address, warning, and similar information plates. A detail of the information plates depicting the language on the plate shall be included in the plans submitted for issuance of building permits.
20. The telecom facility shall not be lighted except as deemed necessary by the Newport Beach Police Department for security lighting. The night lighting shall be at the lowest intensity necessary for that purpose and such lighting shall be shielded so that direct rays do not shine on nearby properties. Prior to the final of building permits, the applicant shall schedule an evening inspection with the Code Enforcement Division to confirm compliance with this condition.
21. At all times, the operator shall ensure that its telecom facilities comply with the most current regulatory operations standards, and radio frequency emissions standards adopted by the FCC. The operator shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. Said information shall be made available by the operator upon request at the discretion of the Community Development Director.
22. Prior to final of building permits, the applicant shall schedule an inspection with the Planning Division to ensure that landscaping and screening elements are installed and that materials and colors match existing architecture as illustrated in the approved photographic simulations and in conformance with Municipal Code Section 20.49.050, to the satisfaction of the Planning Division.
23. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by the applicant, current property owner, or leasing agent.
24. The applicant shall ensure that lessee or other user(s) shall comply with the terms and conditions of this permit, and shall be responsible for the failure of any lessee or other users under the control of the applicant to comply.

25. Any operator who intends to abandon or discontinue use of a telecom facility must notify the Planning Division by certified mail no less than thirty (30) days prior to such action. The operator or property owner shall have ninety (90) days from the date of abandonment or discontinuance to reactivate use of the facility, transfer the rights to use the facility to another operator, or remove the telecom facility and restore the site.
26. The City reserves the right and jurisdiction to review and modify any telecom permit approved pursuant to Chapter 20.49 of the Newport Beach Municipal Code, including the conditions of approval, based on changed circumstances. The operator shall notify the Planning Division of any proposal to change the height or size of the facility; increase the size, shape, or number of antennas; change the facility's color, materials, or location on the site; or increase the signal output above the maximum permissible exposure (MPE) limits imposed by the radio frequency emissions guidelines of the FCC. Any changed circumstance shall require the operator to apply for a modification of the original telecom permit and obtain the modified permit prior to implementing any change.
27. This Minor Use Permit may be modified or revoked by the City should they determine that the facility or operator has violated any law regulating the telecom facility or has failed to comply with the requirements of Chapter 20.49 of the NBMC, or this permit.
28. This approval shall expire unless exercised within twenty-four (24) months from the date of approval.
29. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs, and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Verizon Wireless Telecommunications Facility including, but not limited to UP2014-048 (PA2014-208). 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.

RESOLUTION NO. ZA2015-009

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING COMPREHENSIVE SIGN PROGRAM NO. CS2015-001 AND MODIFICATION PERMIT NO. MD2015-001 FOR THE LIDO LIVE SIGNS LOCATED AT 3459 VIA LIDO (PA2015-011)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Lido Partners, with respect to property located at 3459 Via Lido, and legally described as Parcel 1 of Resubdivision 0516 requesting approval of a Comprehensive Sign Program and Modification Permit.
2. The applicant proposes a Comprehensive Sign Program to authorize signage for an existing theater, including two marquees and one wall sign, and a Modification Permit to allow the signs to deviate from the maximum allowed size.
3. The subject property is located within the Commercial General (CG) Zoning District and the General Plan Land Use Element category is General Commercial (CG).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is General Commercial (CG-B).
5. A public hearing was held on March 12, 2015, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. 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. This project has been determined to be categorically exempt pursuant to Title 14 of the California Code of Regulations (Section 15311, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 11 (Accessory Structures).
2. Class 11 exempts minor structures accessory to existing commercial facilities, including signs. The proposed signs are incidental and accessory to the principal commercial use of the property and do not intensify or alter the use.

SECTION 3. REQUIRED FINDINGS.

Comprehensive Sign Program

In accordance with Section 20.42.120 (Comprehensive Sign Program Standards) of the Newport Beach Municipal Code, the following standards and facts in support of such standards are set forth:

Standard:

- A. *The proposed sign program shall comply with the purpose and intent of this Chapter [Chapter 20.42], any adopted sign design guidelines and the overall purpose and intent of this Section [Section 20.42.120].*

Facts in Support of Standard:

1. The proposed Comprehensive Sign Program complies with the purpose and intent of Newport Beach Municipal Code Chapter 20.42 (Sign Standards) because it provides the theater with adequate identification while guarding against an excessive sign proliferation. The Comprehensive Sign Program preserves and enhances community appearance by regulating the type, size, location, quantity, and illumination of signs.
2. The purpose of a comprehensive sign program is to integrate all of a project's signs. A comprehensive sign program provides a means for the flexible application of sign regulations for projects that require multiple signs in order to provide incentive and latitude in the design and display of signs, and to achieve, not circumvent, the purpose of Chapter 20.42. A comprehensive sign program can authorize marquee signs and design features not otherwise allowed by Chapter 20.42 for theater or cinema uses. This approval integrates all of the signs for the theater while meeting the purpose and intent of Chapter 20.42.
3. The proposed primary signs will provide for tenant identification on elevations viewed from Via Lido where the architectural design of the building suggests placement of a sign. The wall sign is proposed to identify the tenant and is located on an architectural feature above the building entrance and has a vertical and horizontal sign element; the horizontal sign is an existing sign. Both marquees will identify upcoming movies and events. The first marquee is the existing marquee over the theater entrance and no changes to this marquee would occur. A second marquee is proposed to identify both the tenant and upcoming movies and events, located on the rear of the building, which is visible from the parking lot and pedestrian walkway between the theater building and the adjacent Griffith Building. All proposed signs will employ a consistent design compatible with the art deco theme of the theater and will fit with the overall scale of the building and its relationship to Via Lido and adjacent buildings.
4. The Comprehensive Sign Program is consistent with the Citywide Sign Design Guidelines because the proposed signs are designed to be compatible with the building design in terms of scale, size, and materials. The proposed signs are designed to

effectively communicate a commercial message without creating sign clutter through the use of legible text that contrasts with the background. The location and size of the signs do not dominate, but rather are consistent with the proportions of the façade on which they are located. Again, the proposed signs complement the art deco architectural design of the building.

5. The Comprehensive Sign Program is consistent with the Lido Village Design Guidelines, which encourage signage to be appropriately scaled to the building, to be readable by both pedestrians and drivers approaching the site, and to not obscure important architectural features. The proposed signs are consistent because the signs are appropriately scaled to the building and do not obscure important architectural features. The marquee signs include a permanent mounting method and do not include flashing lights.

Standard:

- B. *The proposed signs shall enhance the overall development, be in harmony with, and relate visually to other signs included in the Comprehensive Sign Program, to the structures and/or developments they identify, and to surrounding development when applicable.*

Facts in Support of Standard:

1. The theater is located on a site developed with multiple tenants and buildings. The City has approved several sign programs to regulate the signs for the West Marine building and other buildings on-site. The number and location of signs will not contribute to an overabundance of signage that will have a detrimental effect on the neighborhood.
2. All proposed signage will integrate well with the character and architectural style of the building by maintaining complementary sign location, size, color, and materials. The building paint colors include beige, teal, and black, and the proposed signs are black, white, teal, and other complementary colors. The proposed signs complement the art deco architectural design of the building.

Standard:

- C. *The sign program shall address all signs, including permanent, temporary, and exempt signs.*

Facts in Support of Standard:

1. The proposed Comprehensive Sign Program addresses all signage for the theater. Temporary and exempt signs not specifically addressed in the sign program shall be regulated by the provisions of Chapter 20.42 (Sign Standards) of the Zoning Code.

Standard:

- D. *The sign program shall accommodate future revisions that may be required because of changes in use or tenants.*

Facts in Support of Standard:

1. The Comprehensive Sign Program has been designed to be effective for the theater use that occupies the building.
2. The Comprehensive Sign Program establishes allowed type, number, location, and area of signage with flexibility to accommodate any existing and future tenants. Signs for a use other than a theater or cinema would not include a marquee; however, the Comprehensive Sign Program would allow for wall signs for new uses consistent with the approval.
3. It is not anticipated that future revisions to the Comprehensive Sign Program will be necessary to accommodate changes in tenants or uses. However, the Community Development Director may approve minor revisions to the Comprehensive Sign Program if the intent of the original approval is not affected.

Standard:

- E. *The program shall comply with the standards of this Chapter, except that deviations are allowed with regard to sign area, total number, location, and/or height of signs to the extent that the Comprehensive Sign Program will enhance the overall development and will more fully accomplish the purposes and intent of this Chapter.*

Facts in Support of Standard:

1. The Comprehensive Sign Program allows for deviations with regards to the type, number, and location of wall signs. The approval conforms to intent of Chapter 20.42, and enhances the overall development by integrating all of the project's signs with the building design into a unified architectural statement.
2. The proposed Comprehensive Sign Program is consistent with Chapter 20.42, and is being processed concurrently with a Modification Permit consistent with Zoning Code Section 20.52.050 to allow the letter size, sign height, and sign area to be larger than the standard Zoning Code limitations.
3. The number, location, type, and size of signs are reasonable in order to provide adequate identification of the theater from the street and parking lot and to allow for marquee signs to show upcoming movies and events.

Standard:

- F. The Approval of a Comprehensive Sign Program shall not authorize the use of signs prohibited by this Chapter [Chapter 20.42].*

Facts in Support of Standard:

1. The Comprehensive Sign Program does not authorize the use of prohibited signs. Changeable copy signs are allowed as a component of a marquee sign for a theater or cinema through approval of a Comprehensive Sign Program.

Standard:

- G. Review and approval of a Comprehensive Sign Program shall not consider the signs' proposed message content.*

Facts in Support of Standard:

1. The content of the signs was not considered and the proposed Comprehensive Sign Program does not contain any regulations regarding sign message content.

Modification Permit

In accordance with Section 20.52.050.E (Required Findings) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a Modification Permit are set forth:

Finding

- H. The requested modification will be compatible with existing development in the neighborhood.*

Facts in Support of Finding

1. The subject property is located in the Commercial General Zoning District with commercial uses opposite Via Lido located in a mixed-use zoning district. The increase in letter height, sign height, and sign area is compatible with the neighborhood because the adjacent street and parking lot provide adequate separation from the proposed signs to existing development. The proposed signs are not out of proportion with existing development in the neighborhood.
2. The marquee and horizontal sign above the theater entrance are existing and no changes would occur to these signs. The addition of a second wall sign and marquee sign is a minor change.
3. The existing building entrance is at an angle to Via Lido and the primary frontage wall sign will only be visible from the northwest of the building. The existing building to the

west is two stories and other buildings in the area have large walls signs. Therefore, the proposed signs will be compatible with the commercial development in the area.

4. The proposed signs do not constitute or contribute to a significant proliferation of signs which would be inconsistent with the neighborhood character.

Finding

- I. The granting of the modification is necessary due to the unique physical characteristic(s) of the property and/or structure, and/or characteristics of the use.*

Facts in Support of Finding

1. The subject property is developed with multiple-tenant commercial buildings and two surface parking lots. The subject building is located on the Via Lido lot frontage with a walkway and two-story commercial building directly to the west. The existing marquee is 312 square feet, which is 237 square feet above the 75 square-foot maximum size. The existing wall sign letters are a maximum of 4 feet 6 inches, which is 18 inches above the 36-inch maximum letter/logo height. The increased size of the sign and letter height is necessary due to the lot shape, street frontage, building shape, and building orientation. The primary sign will be visible from Via Lido and from southbound Newport Boulevard and the secondary frontage sign will be visible from the parking lot behind the building and from northbound Newport Boulevard, which will help guide people to the destination from streets.
2. The second marquee sign text area complies with the 75-square-foot limitation; however the overall sign size including decorative elements is 105 square feet. Due to the unique building design with a primary frontage on Via Lido and a secondary frontage facing a parking lot, location of the walkway, limited visibility due to surrounding development, art deco architectural theme, and the theater use of the building, the increased sign area is warranted and it will identify the tenant from the parking lot and pedestrian walkway.

Finding

- J. The granting of the modification is necessary due to practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code.*

Facts in Support of Finding

1. The purpose and intent of the sign regulations is to provide users adequate identification while preserving and enhancing the community's appearance by regulating the type, size, location, quality, design, character, scale, color, illumination, and maintenance of signs. The sign regulations also encourage the design of signs that are complementary to the buildings and uses to which they relate and that are harmonious with their surroundings. Approval of the location, size, and number of the

proposed signs is necessary due to the size, design, location, circulation, and parking within the subject site.

2. The marquee sign on the north elevation facing Via Lido is approximately 312 square feet in order to integrate with the existing building and surroundings, and to provide legible signage to pedestrians and motorists traveling on Via Lido and Newport Boulevard. The marquee sign facing the parking lot is approximately 105 square feet with up to 75 square feet dedicated to a changeable sign text. The larger size is necessary due to the limited visibility of the secondary frontage and large separation of the theater from the rear of the building to the southern and western property lines.

Finding

- K. *There are no alternatives to the Modification Permit that could provide similar benefits to the applicant with less potential detriment to surrounding owners and occupants, the neighborhood, or to the general public.*

Facts in Support of Finding

1. A wall sign and marquee sign that exceed the size limits within Chapter 20.42 are located on the primary frontage. The alternative to the Modification Permit would be to maintain the existing nonconforming sign configuration and not have a sign visible from the parking lot. However, the proposed change to the wall sign and second marquee will provide a benefit to pedestrians and visitors to the site by providing increased visibility from the street and parking area.
2. Section 20.42.060 allows a maximum letter/logo height of 36 inches. Section 20.42.070 allows a maximum sign area of 1.5 times the tenant frontage or 75 square feet maximum. Due to the design of the building frontage, the increased letter/logo height for the wall sign and size of the marquee is necessary to provide identification for the subject property. There are no alternatives that would provide adequate visibility from the nearby streets and the parking lot to the rear given the existing building design and orientation. Wall signage compliant with sign regulations would not allow for the design of effective signage that would be legible for pedestrians and motorists traveling along the adjacent streets. The proposed signage is necessary due to the size of the site and orientation of the building.

Finding

- L. *The granting of the modification would not be detrimental to public health, safety, or welfare to the occupants of the property, nearby properties, the neighborhood, or the City, or result in a change in density or intensity that would be inconsistent with the provisions of this Zoning Code.*

Facts in Support of Finding

1. The signs will be constructed on private property and will not change the intensity of the existing commercial use, affect the flow of light or air to adjoining properties, nor interfere with traffic visibility.
2. The proposed signage will not obstruct public views from adjacent roadways or parks because there are no public views through or across the subject property. The proposed primary frontage signs may be visible from Newport Boulevard, which is designated in the Coastal Land Use Plan as a Coastal View Road; however, the proposed signs are not anticipated to negatively impact public views.
3. Compliance with the Municipal Code and the attached conditions of approval is required and will further ensure that the proposed use will not be detrimental.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Comprehensive Sign Program No. CS2015-001 and Modification Permit No. 2015-001, subject to the conditions set forth in Exhibit A and parameters denoted in Exhibit B, which are attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 12TH DAY OF MARCH, 2015.



Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL**

1. All proposed signs shall be in substantial conformance with the approved plans, Comprehensive Sign Program Matrix Table (Exhibit "B"), and provisions of Chapter 20.42 (Sign Standards) of the Newport Beach Municipal Code, unless otherwise indicated in the following conditions.
2. The digital marquee sign shall not be animated. The sign display shall be static and not actively scroll. The sign display shall not change more than once every ten (10) minutes. The changeable copy shall be limited to text and logos only.
3. A building permit shall be obtained prior to commencement of installation of the signs.
4. A copy of this letter shall be incorporated into the plan check sets of plans prior to issuance of building or sign permits.
5. Signs shall be maintained in a clean and orderly condition.
6. All illuminated wall signs shall be shut off between 12:00 a.m. and 6:00 a.m., daily.
7. Illuminated signs shall be regulated in accordance with the provisions of Section 20.42.060 of the Newport Beach Municipal Code. If, in the opinion of the Community Development Director, existing illumination creates an unacceptable negative impact on surrounding land uses or sensitive habitat areas the Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
8. All work performed near or within the public right-of-way shall be reviewed and approved by the Public Works Department under an encroachment permit/agreement if required.
9. Any future revisions or changes to the signs approved by this Comprehensive Sign Program due to a change in the use or tenants of the building shall be reviewed and approved by the Planning Division, so long as the sign size, copy configuration, and number of signs authorized by this approval does not substantially change or increase. The mandatory reduction or elimination of signs shall be exercised as necessary. Revisions that would substantially deviate from the original approval shall require approval of a new/revised comprehensive sign program by the Zoning Administrator.
10. The Zoning Administrator may add to or modify conditions of this approval, or revoke this approval upon a determination that any sign that is authorized by this approval has been altered beyond the parameters of the authorization and therefore beyond the justification.

11. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

12. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Lido Live Signs including, but not limited to, Comprehensive Sign Program No. CS2015-001 and Modification Permit No. MD2015-001 (PA2015-011). 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.

EXHIBIT “B”

SIGN PROGRAM MATRIX

Sign Type	Primary Frontage (Via Lido) Sign Regulations	Secondary Frontage (Parking Lot) Sign Regulations
Wall	Maximum number of signs: 2 (two) Maximum area: 75 square feet total for both signs Maximum letter/logo height: 36 inches for a vertical sign and 54 inches for a horizontal sign	Maximum number of signs: 1 (one) Maximum area: 1.5 square feet per linear foot of tenant frontage or maximum area of 75 square feet, whichever is less Maximum letter/logo height: 36 inches
Marquee	Maximum number of signs: 1 (one) Maximum area: 312 square feet Maximum letter/logo height: 36 inches	A marquee is allowed in lieu of a wall sign. Maximum number of signs: 0 (zero) or 1 (one) Maximum area: 75 square feet for text area and 105 square feet for the entire sign area. Maximum letter/logo height: 36 inches
Temporary	Shall be regulated by the provisions of Chapter 20.42.090 (Standards for Temporary Signs)	
Exempt	Shall be regulated by the provisions of Chapter 20.42.100 B (Exemptions to sign permit requirement)	

NOTE: Minor changes in sign type, location, and sizes specified in this matrix may be approved by the Community Development Director.

RESOLUTION NO. ZA2015-011

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING LOT LINE ADJUSTMENT NO. LA2014-003 TO ADJUST THE BOUNDARIES OF PARCELS LOCATED AT 10 BIG CANYON DRIVE AND 11 RUE BIARRITZ (PA2014-222)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Big Canyon Country Club, with respect to property located at 10 Big Canyon Drive and 11 Rue Biarritz, and legally described as Parcel 1 of Parcel Map No. 2008-111 and Lot 21 of Tract No. 780, respectively, requesting approval of a lot line adjustment.
2. The applicant proposes to adjust the boundary between two contiguous parcels located in Big Canyon. Land taken from 10 Big Canyon Drive will be added to 11 Rue Biarritz. There will be no change in the number of parcels, and will not result in a change to the allowed density.
3. The property at 10 Big Canyon Drive is located within Low Density Residential Area 9A of the Big Canyon Planned Community (PC 8) Zoning District and the General Plan Land Use Element category is Single-Unit Residential Detached (RS-D). The property at 11 Rue Biarritz is located within Low Medium Density Residential Area 7 of the PC 8 Zoning District and the General Plan Land Use Element category is Single-Unit Residential Attached (RS-A).
4. The subject properties are not located within the coastal zone.
5. A public hearing was held on March 12, 2015, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. 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 qualifies for a Class 5 (Minor Alterations in Land Use Limitations) categorical exemption pursuant to Title 14 of the California Code of Regulations (Section 15315, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act).
2. The Class 1 exemption consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion

of use. The proposed boundary adjustment affects the interior lot line between two properties and is for the purpose of accommodating existing deck improvements entirely on 11 Rue Biarritz. There will be no change to the existing dwelling, deck improvements, or topography.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 19.76.020 (Procedures for Lot Line Adjustments) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

- A. *Approval of the lot line adjustment will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City, and further that the proposed lot line adjustment is consistent with the legislative intent of this title.*

Facts in Support of Finding:

1. The proposed boundary adjustment will not change the single-unit residential use of each property. The General Plan Land Use Designations, Single-Unit Residential Detached (RS-D), which is intended for detached single-family residential dwelling units, and Single-Unit Residential Attached (RS-A), which is intended for attached single-unit residential dwelling units, will be maintained for each respective parcel.
2. The proposed boundary adjustment will not result in a development pattern which is inconsistent with the surrounding neighborhood. Each of the resulting parcels will continue to allow for single-unit development, which is consistent with the existing General Plan Land Use and zoning designations.
3. The proposed boundary adjustment is consistent with the purpose identified in Chapter 19.76 (Lot Line Adjustments) of the Newport Beach Municipal Code. The lot line adjustment constitutes a minor boundary adjustment involving two adjacent lots where land taken from one lot is added to an adjacent lot. The original number of lots will remain unchanged after the adjustment.
4. The subdivision is consistent with the General Plan, does not affect open space areas in the City, does not negatively impact surrounding land owners, and will not in itself be detrimental to the health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood, because the adjustment affects an interior lot line between two adjacent lots.

Finding:

- B. *The number of parcels resulting from the lot line adjustment remains the same as before the lot line adjustment.*

Facts in Support of Finding:

1. The proposed boundary adjustment will shift the interior lot line between two adjacent lots to the west. No additional lots will result from the adjustment and the number remains the same as before the lot line adjustment.

Finding:

- C. *The lot line adjustment is consistent with applicable zoning regulations except that nothing herein shall prohibit the approval of a lot line adjustment as long as none of the resultant parcels is more nonconforming as to lot width, depth and area than the parcels that existed prior to the lot line adjustment.*

Facts in Support of Finding:

1. Parcel 1 of Parcel Map No. 2008-111 (10 Big Canyon Drive) and Lot 21 of Tract No. 7801 (11 Rue Biarritz) are located within Low Density Residential Site 9A and Low Medium Density Residential Site 7, respectively, which are intended primarily to provide for single-unit dwellings. The proposed lot line adjustment will not change the intended use of the lots affected.
2. The proposed boundary adjustment will reallocate 562 square feet of land from Parcel 1 of Parcel Map No. 2008-111 (10 Big Canyon Drive) to Lot 21 of Tract No. 7801 (11 Rue Biarritz). The resulting net area would be 81,405 square feet for the proposed Parcel 1 and 7,933 square feet for the proposed Parcel 2.
3. Properties in Site 9A (10 Big Canyon Drive) of the PC 8 Zoning District are required to provide a minimum lot area of 8,000 square feet for each dwelling unit. Cluster or attached units in Site 7 (11 Rue Biarritz) of the PC 8 Zoning District are required to provide a minimum lot area of 2,400 square feet for each dwelling unit with an average area of 4,000 square feet provided for all developed areas. In this case, the proposed Parcel 1 (10 Big Canyon Drive) is compliant in size with an area of 81,405 square feet and the proposed Parcel 2 (11 Rue Biarritz) is compliant in size with an area of 7,933 square feet.
4. The proposed parcels comply with all applicable regulations of the Big Canyon Planned Community Development Plan, are not more nonconforming as to lot width, depth and area than the parcel that existed prior to the lot line adjustment, and will not result in a change in allowed land uses, density, or intensity on the properties.

Finding:

- D. *Neither the lots as adjusted nor adjoining parcels will be deprived of legal access as a result of the lot line adjustment.*

Facts in Support of Finding:

1. The proposed boundary adjustment affects the interior lot line between two adjacent lots. Legal access to the subject properties from Big Canyon Drive and Rue Biarritz are not affected by the lot line adjustment.

Finding:

- E. *That the final configuration of the parcels involved will not result in the loss of direct vehicular access from an adjacent alley for any of the parcels that are included in the lot line adjustment.*

Facts in Support of Finding:

1. Vehicular access to the existing properties is taken from Big Canyon Drive and Rue Biarritz and the final configuration will not change.

Finding:

- F. *That the final configuration of a reoriented lot does not result in any reduction of the street side setbacks as currently exist adjacent to a front yard of any adjacent key, unless such reduction is accomplished through a zone change to establish appropriate street side setbacks for the reoriented lot. The Planning Commission and City Council in approving the zone change application shall determine that the street side setbacks are appropriate, and are consistent and compatible with the surrounding pattern of development and existing adjacent setbacks.*

Facts in Support of Finding:

1. The final configuration of the proposed parcels does not result in a requirement for revised setbacks since the parcels are not proposed to be reoriented. The required setbacks applicable to lots in the PC 8 Zoning District shall continue to apply to the adjusted lots per the Planned Community Development Plan.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Lot Line Adjustment No. LA2014-003, 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 10 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 19 Subdivisions, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 12TH DAY OF MARCH, 2015.

By:



Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.
3. To the fullest extent permitted by law, 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 and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Big Canyon Lot Line Adjustment including, but not limited to, Lot Line Adjustment No. LA2014-003 (PA2014-222). 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 the City's costs, attorneys' fees, and damages which the 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.

RESOLUTION NO. ZA2015-012

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2015-005 FOR A DAY SPA (PERSONAL SERVICES, RESTRICTED) LOCATED AT 4101 BIRCH STREET, SUITE 103 (PA2015-014)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Edward Zepfel and Rebekah Diemert on behalf of the property owner, with respect to property located at 4101 Birch Street, and legally described as Lot 43 in Tract No. 3201 requesting approval of a minor use permit.
2. The applicant proposes a day spa (Personal Services, Restricted) within a currently vacant 1,078-square-foot tenant space on the ground floor of an existing 9,968-square-foot two-story office building and has requested to waive location restrictions contained in Section 20.48.120 (Massage Establishments and Services) of the Zoning Code. The proposed operation will consist of three treatment rooms offering a combination of facial, waxing, and ancillary massage services.
3. The subject property is located within the Office Airport (OA) Zoning District and the General Plan Land Use Element category is Airport Office and Supporting Uses (AO).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on March 12, 2015, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. 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. This project has been determined to be categorically exempt pursuant to Title 14 of the California Code of Regulations (Section 15315, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 1 (Existing Facilities).
2. This Class 1 exemption authorizes minor alterations to existing structures involving negligible or no expansion of use. The proposed project involves the conversion of a vacant office space to a day spa and does not involve any alterations to the existing floor plan.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020 (Conditional Use Permits and Minor Use Permits) of the Newport Beach Municipal Code, the following findings and facts in support of such findings 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 property is designated Airport Office and Supporting Uses (AO) within the Land Use Element of the General Plan which is intended to provide for the development of properties adjoining John Wayne Airport for uses that support or benefit from airport operations. These may include professional offices, aviation retail, automobile rental, sales, and service, hotels, and ancillary retail, restaurant, and service uses.
2. The proposed day spa offering ancillary massage is consistent with the AO designation as it will provide services that support or may benefit from John Wayne Airport.
3. The property is not located in 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 property is located within the Office Airport (OA) Zoning District which is intended to provide for areas appropriate for the development of properties adjoining John Wayne Airport for uses that support or benefit from airport operations.
2. The principal use of the tenant space will be for a day spa offering facial and waxing services with ancillary massage services. Pursuant to Zoning Code Chapter 20.70 (Definitions), a day spa is classified as a Personal Services, Restricted land use which may be permitted within the OA Zoning District subject to the approval of a minor use permit.
3. The existing 9,968-square-foot building is required to provide 42 parking spaces on site at an office rate of 1 space for every 250 square feet of floor area ($9,968 / 250 = 40$). Two of the required spaces are associated with two previously approved limited auto sales offices, each required to provide a single vehicle display area by the Department of Motor Vehicles (DMV). Given 44 spaces exist on site, there remains a two space surplus.

4. The parking requirement for a Personal Services, Restricted use is the same standard required of an office use (1 space per 250 square feet). Therefore, the proposed conversion of a vacant office space to a day spa does not result in an intensification of use and no additional parking is required.
5. As conditioned, the proposed use will comply with all other applicable provisions of the Zoning Code and Municipal Code.

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 proposed day spa will occupy a 1,078-square-foot tenant space on the ground floor of an existing two-story office building. The operation will consist of three treatment rooms offering a combination of facial, waxing, and ancillary massage services.
2. Based on operational characteristics, the use is not considered an independent massage facility. Ancillary massage offered in conjunction with facial and waxing services constitute a small portion of the overall floor area (approximately 13 percent), thereby limiting any potential blight or deterioration to the surrounding area.
3. The project site and surrounding area consist of a mixture of nonresidential uses including office, auto services, personal services general, retail, and eating and drinking establishments which serve residents and visitors to the City of Newport Beach. The proposed day spa will provide a service that supports or may benefit from airport operations, consistent with existing and permitted uses in the area.
4. The proposed day spa will not require the provision of additional parking onsite.
5. As conditioned, the allowed hours of operation are 8:00 a.m. to 9:00 p.m., daily, limiting any potential late night/early morning land use conflicts with nearby properties.

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.*

Facts in Support of Finding:

1. The existing two-story office building and surface parking lot were constructed in 1979 and have since demonstrated that the current configuration with access taken from Birch Street is physically suitable to accommodate multiple uses.

2. Adequate public and emergency vehicle access, public services, and utilities are provided on the property and the proposed day spa will not change this.

Finding:

- E. 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.*

Facts in Support of Finding:

1. The use is intended to serve residents and visitors to the City of Newport Beach.
2. The day spa has been conditioned with hours of operation that will minimize any potential detriment to the area.
3. The proposal has been reviewed by the Building and Code Enforcement Divisions, Public Works, Fire, and Police Departments, and recommended conditions of approval have been included to limit any detriment to the City or general welfare of persons visiting or working in the surrounding neighborhood.

In accordance with Section 20.48.120.B (Massage Establishments and Services – Waiver of Location Restrictions) 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:

- F. The proposed use will not be contrary to the public interest or injurious to nearby properties, and that the spirit and intent of this section will be observed.*

Facts in Supporting of Finding:

1. The intent of the section is to promote the operation of legitimate massage services and to prevent problems of blight and deterioration, which accompany and are brought about by large numbers of massage establishments that may act as fronts for prostitution and other illegal activity.
2. Although the proposed day spa with ancillary massage services is located within 500 feet of another establishment offering massage (4020 Birch Street, Royal Thai Massage and Day Spa), both are located within managed, multi-tenant commercial office building in areas that are well maintained.
3. The proposed use is a day spa offering facial and waxing services along with ancillary massage. The intended operation will not contribute to a deterioration of the area due

to conditions of approval which prevent the establishment from evolving into an independent massage, limiting any concerns regarding blight.

Finding:

- G. *The proposed use will not enlarge or encourage the development of an urban blight area.*

Facts in Supporting of Finding:

1. The proposed use is located in a single tenant space within a managed, multi-tenant commercial office building which will prevent problems and discourage the development of blight. The subject property is not located within a blighted area, is well maintained, and is intended to provide a service that supports or benefits from the nearby airport.

Finding:

- H. *The proposed use will not adversely affect a religious institution, school, park, or playground.*

Facts in Supporting of Finding:

1. The proposed use is located adjacent to nonresidential uses. There are no public or private schools, parks, playgrounds, or religious institutions within 500 feet of the subject property.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2015-005, 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 14 days following the date this Resolution was adopted unless within such time an appeal is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 12TH DAY OF MARCH, 2015.

By:



Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL**

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. The hours of operation shall be limited to between 8:00 a.m. and 9:00 p.m., daily.
3. The applicant is required to obtain an Operator's Permit from the Newport Beach Police Department in compliance with Chapter 5.50 (Massage Establishments) of the Newport Beach Municipal Code prior to start of business.
4. The applicant is required to obtain a valid business license from the City's Revenue Division prior to the start of business.
5. The operation of an independent massage business is not permitted unless an amendment to this Minor Use Permit or a new Use Permit is first approved.
6. All proposed signs shall be in conformance with provisions of Chapter 20.42 (Signs) of the Newport Beach Municipal Code.
7. 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 Minor Use Permit.
8. This Minor Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
9. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Minor Use Permit or the processing of a new Use Permit.
10. 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.
11. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department.
12. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.

13. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
14. 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.
15. 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.
16. 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.
17. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.
18. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Lemon and Honey Day Spa including, but not limited to, the UP2015-005 (PA2015-014). 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.