



**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 27, 2015

**ZONING ADMINISTRATOR ACTIONS
MARCH 26, 2015**

- Item 1: Mayur Indian Cuisine Minor Use Permit No. UP2015-002 (PA2015-004)
2931 E. Coast Highway
- Action: Approved by Resolution No. ZA2015-013 Council District 6
- Item 2: Damasq Café Minor Use Permit No. UP2015-004 (PA2015-007)
3601 E. Coast Highway
- Action: Approved by Resolution No. ZA2015-014 Council District 1
- Item 3: Xanadu Café Minor Use Permit No. UP2015-007 (PA2015-021)
100 W. Coast Highway, Suite 104
- Action: Approved by Resolution No. ZA2015-015 Council District 3
- Item 4: Roger's Gardens Café Minor Use Permit No. UP2014-002 (PA2014-210)
2301 San Joaquin Hills Road
- Action: Approved by Resolution No. ZA2015-016 Council District 5

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.

Wendy Joe, Civilian Investigator, NBPD (*Massage Therapy – ABC License*)
Det. Randy Parker & Det. Dave Mock, NBPD (*ABC License*)
Sgt. Brad Miller, NBPD (*Massage Therapy - ABC License*)

RESOLUTION NO. ZA2015-013

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2015-002 TO CHANGE THE ALCOHOL BEVERAGE CONTROL LICENSE FOR AN EXISTING EATING AND DRINKING ESTABLISHMENT FROM A TYPE 41 TO A TYPE 47 LOCATED AT 2931 E. COAST HIGHWAY (PA2015-004)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Henna Anisa Kapoor & Anju K. Sami, with respect to property located at 2931 E. Coast Highway, and legally described as Resubdivision 0179 Parcel 1 Block G requesting approval of an amendment to an existing use permit.
2. The applicant proposes to amend previously approved Use Permit No. UP3009A-II to change the Alcoholic Beverage Control (ABC) license at an existing eating and drinking establishment (Mayur Indian Cuisine) from a Type 41 (On Sale Beer and Wine – Eating Place) to a Type 47 (On Sale General – Eating Place). No changes to the existing operation are proposed including no late hours.
3. The subject property is located within the Commercial Corridor (CC) Zoning District and the General Plan Land Use Element category is Corridor Commercial (CC).
4. The subject property is located within the coastal zone and designated as Corridor Commercial (CC-B) - (0.0 - 0.75 FAR).
5. A public hearing was held on March 26, 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 it qualifies for a categorical exemption pursuant to Section 15301 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 no alterations to the existing restaurant with the only change to improve the restaurant with a Type 47 ABC license to replace the existing Type 41 ABC license.

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 such findings 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 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 subject property is located in Reporting District 44 (RD 44). The Part One Crimes (Part One Crimes are the eight most serious crimes defined by the FBI Uniform Crime Report – homicide, rape, robbery, aggravated assault, burglary, larceny-theft, auto theft, and arson) crime rate in RD 44 is higher than adjacent Reporting Districts 43, 45, 47 but lower than the City overall.
 2. Year to date, zero Part One Crimes have been reported at the subject property.
 3. The Police Department has reviewed the proposal, provided operating conditions of approval, and has no objection to the change in alcoholic beverage license type proposed.
- ii. The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*
1. The total number of alcohol-related calls for service, crimes, or arrests in RD 44 is higher than adjacent Reporting Districts 43, 45, and 47 but less than the City overall. The Police Department has reviewed the proposal and has no objection.
 2. Year to date, one call for service representing less than one percent of all calls for service in the Reporting District have been reported at the subject property. The one call for service resulted in one arrest for public intoxication.
- 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 site is developed within a small-scale commercial shopping center along East Coast Highway in Corona Del Mar which is consistent with the General Plan

designation, Corridor Commercial. The shopping center consists of retail, service, and eating and drinking establishment uses. The property is not located within close proximity to any day care centers, hospitals, park and recreation facilities, places of worship, schools, or similar uses that attract minors. The nature of the Commercial Corridor area is to provide goods and services including eating and drinking establishments designed to foster pedestrian activity from the surrounding residential and commercial neighborhood. The nearest residential uses are behind the shopping center site which is consistent with the design of the Corona del Mar Commercial Corridor area. Eating and drinking establishments with incidental alcohol service have existed at the subject location since 1982 and the proposed change in Alcoholic Beverage Control license type is not anticipated to alter the operational characteristics of the use such that it becomes detrimental to the area.

iv. The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.

1. The small-scale shopping center is occupied by one other establishment that sells alcohol, Pirozzi Restaurant (Type 47). There is no evidence suggesting this use has been detrimental to surrounding properties or the neighborhood.

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

1. An eating and drinking establishment with alcohol service has operated at the subject location since 1982.

2. The project has been reviewed and conditioned to ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code is maintained and that a healthy environment for residents and businesses is preserved. The service of alcohol is intended for the convenience of customers dining at the establishment. Operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol related impacts.

3. The existing hours of operation of the establishment will minimize the potential effects on land use. The establishment closes by 11:00 p.m., daily, which will ensure the use does not become a late night bar, tavern, or nightclub.

4. The establishment is located within an existing small-scale shopping center which is developed with other commercial uses. Changing the alcohol beverage control license will not alter the existing operation, but will complement the food service and provide a convenience to customers.

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:

B. The use is consistent with the General Plan and any applicable specific plan;

Facts in Support of Finding:

1. The General Plan designates the site as Corridor Commercial (CC) which is intended to provide a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity.
2. The existing eating and drinking establishment is located within the Commercial Corridor of Corona del Mar serves those working, residing, or visiting the surrounding neighborhood, consistent with the CC land use designation.
3. The subject property is not a part of a specific plan area.

Finding:

C. 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 Commercial Corridor (CC) Zoning District which was intended to provide commercial uses. Eating and drinking establishments are permitted uses subject to the approval of a use permit.
2. The existing eating and drinking establishment operates pursuant to Use Permit No. UP3009A-II which allowed the sale and service of food and beverage with incidental beer and wine sales, and hours of operation that are permitted to extend to 11:00 p.m. daily.
3. The use will remain an eating and drinking establishment and the change in alcohol beverage control license will not alter or intensify the existing use. Further, there will be no change to the floor area including the existing net public area and seats or the hours of operation.

Finding:

D. 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. Eating and drinking establishments with the service of alcohol have operated at the location since 1982 and have not proven detrimental to the area.
2. The principal use will remain an eating and drinking establishment and the change in license type will not alter the design, size, or operating characteristics of the facility.
3. The operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol related impacts. The project has been conditioned to ensure the welfare of the surrounding community and that the eating and drinking establishment does not become a bar or tavern. The establishment is required to comply with the requirements of the Alcoholic Beverage Control Department to ensure the safety and welfare of customers and employees of the establishment. The project has been conditioned so that no dancing or live entertainment will be permitted on the premises.
4. The conditions of approval reflected in "Exhibit A" of this resolution ensure that potential conflicts with surrounding land uses are eliminated or minimized to the greatest extent possible.

Finding:

- E. 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 eating and drinking establishment is located within an existing small-scale shopping center and has demonstrated that it is physically suitable in terms of design, location, shape, and size to support the use.
2. Adequate public and emergency vehicle access, public services, and utilities are provided for on-site.

Finding:

- F. 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 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.

5. The eating and drinking establishment will continue to service the neighborhood by providing dining services as a public convenience to the surrounding residential neighborhood as well as visitors which is the intent of the Commercial Corridor area. The service of alcohol will continue to complement the principal use of the facility and provide an economic opportunity for the property owner to maintain a successful business in a way which best serves the community.

3. As conditioned, the owners, managers and employees selling alcohol are required to undergo and successfully complete a certified training program in responsible methods and skills for selling alcohol.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2015-002 (PA2015-004), 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.

3. This resolution supersedes Use Permit No. UP3009 A-II, which upon vesting of the rights authorized by Minor Use Permit No. UP2015-002 (PA2015-004), shall become null and void

PASSED, APPROVED, AND ADOPTED THIS 26th DAY OF MARCH, 2015.

By:



Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL****PLANNING**

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 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.
3. 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.
4. Any change in operational characteristics, 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. Hours of operation shall be limited to a closing hour of 11:00 p.m., daily. Any increase in the closing hour of operation shall be subject to the approval of an amendment to this Minor Use Permit or the processing of a new use permit.
6. All employees shall park on-site.
7. A minimum one parking space for each 48 square feet of "net public area" shall be provided on-site.
8. All mechanical equipment shall be screened from view of adjacent properties and adjacent public streets in accordance with Newport Beach Municipal Code Section 20.30.020 (Buffering and Screening), and shall be sound attenuated in accordance with Chapter 10.26 (Community Noise Control).
9. The facility shall comply with the provisions of Chapter 14.30 (Fats, Oils and Grease Control) for commercial kitchen grease disposal. A grease interceptor shall be installed, unless otherwise approved by the Building Division. Any changes to the facility or use, including menu changes or the addition of cooking facilities, that may result in the introduction of grease or similar byproducts shall be reviewed for conformance with Chapter 14.30 and may at that time require the installation of a grease interceptor.

10. Kitchen exhaust fans shall be designed to control smoke and odor to the satisfaction of the Building Division.
11. Should the alcoholic beverage control (ABC) license be transferred, any future license holders, operators or assignees shall be notified of the conditions of this approval by either the current licensee, business operator, or the leasing company. Future licensees, operators or assignees shall submit, within thirty (30) days of transfer of the ABC license, a letter to the Planning Division acknowledging their receipt and acceptance of the limitations, restrictions and conditions of approval of this minor use permit.
12. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control (ABC) shall be a Type 47 (On-Sale General) in conjunction with the service of food.
13. The alcoholic beverage sales for the purpose of on-site consumption shall be limited to the designated dining areas indicated on the floor plan submitted with the application. Any change in the operation of on-sale alcoholic beverage sales or increase in the dining area devoted to alcohol sales for customers shall be subject to the approval of an amendment to this minor use permit issued by the Zoning Administrator.
14. Bar counters for the service of alcoholic beverages shall be prohibited.
15. The operator shall take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the alcoholic beverage outlet and adjacent properties during business hours. If the operator fails to discourage or correct nuisances, the Zoning Administrator may review, modify, or revoke this minor use permit in accordance with Chapter 20.96 of the Zoning Code.
16. A covered wash-out area for refuse containers and kitchen equipment shall be provided and the area shall drain directly into the sewer system, unless otherwise approved by the Building Division and Public Works Department.
17. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
18. 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.
19. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or 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 (including Water Quality related requirements).

20. 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 twenty (20) feet of the premises.
21. 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 Director of Community Development, and may require an amendment to this Use Permit.
22. 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.
23. There shall be no live entertainment.
24. No outside paging system shall be utilized in conjunction with this establishment.
25. 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.
26. This approval shall expire and become void unless exercised within twenty-four (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.
27. 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 Mayur Indian Cuisine including, but not limited to Minor Use Permit No. UP2015-002 (PA2015-004). 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.

Police Department Conditions

28. This approval does not permit the premises to operate as a bar, lounge, or nightclub as defined by the Newport Beach Municipal Code.
29. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the license.
30. The applicant shall post and maintain professional quality signs measuring 12 inches by 12 inches with lettering no smaller than 2 inches in height that read, "No Alcoholic Beverages Beyond This Point" at all exits leading from the dining area.
31. 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.
32. Dancing shall be prohibited, unless otherwise approved in conjunction with a Special Events Permit.
33. Food service from the regular menu must be available to patrons up to thirty (30) minutes before the scheduled closing time.
34. 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.
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. Strict adherence to maximum occupancy limits is required.
38. All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcohol 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 retail market 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.

RESOLUTION NO. ZA2015-014

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2015-004 FOR A TAKE-OUT SERVICE, LIMITED EATING AND DRINKING ESTABLISHMENT LOCATED AT 3601 E. COAST HIGHWAY (PA2015-007)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Jamal Diab, with respect to property located at 3601 E. Coast Highway, and legally described as Lot 1 and Lot 2, Block AA in Tract No. 323 requesting approval of a Minor Use Permit.
2. The applicant proposes to convert an 850-square-foot existing commercial retail space into a take-out service, limited eating and drinking establishment.
3. The subject property is located within the Commercial Corridor (CC) Zoning District and the General Plan Land Use Element category is Corridor Commercial (CC).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Corridor Commercial (CC-B) - (0.0 - 0.75 FAR).
5. A public hearing was held on March 26, 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 it qualifies for a categorical exemption pursuant to Section 15301 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.

Minor Use Permit

In accordance with Section 20.52.020.F 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 General Plan and any applicable specific plan.*

Facts in Support of Finding

1. The General Plan land use designation for the site is CC (Corridor Commercial), which applies to properties to provide a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity.
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 Commercial Corridor (CC) Zoning District which was intended to provide commercial uses. The proposed eating and drinking establishment – take-out service, limited use is consistent with the land uses permitted within this zoning district and the conditions of approval will ensure that the use is compatible with the adjacent residential areas.
2. Pursuant to Section 20.22.020 (Table 2-5 Allowed Uses and Permit Requirements), the proposed project requires approval of a minor use permit.
3. Pursuant to Section 20.38.060 (Nonconforming Parking), a nonconforming use in a nonresidential zoning district may be changed to a new use allowed in that zoning district without providing additional parking, provided no intensification or enlargement (e.g., increase in floor area, or lot area) occurs, and the new use requires a parking rate of no more than one space per 250 square feet of gross building area. Eating and drinking establishment – take-out service, limited use have a required parking ratio of one space per 250 square feet of gross floor area.
4. The proposed project complies with the requirements of Section 20.38.060 (Nonconforming Parking) because the square footage of the existing suite will not be increased; the eating and drinking establishment – take-out service, limited use requires the same number of parking spaces required for the existing retail space ($850/250 = 4$ spaces).

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 project involves improvements to an existing retail space to construct kitchen facilities for the new establishment. The 17 existing parking spaces on site will be maintained.
2. The proposed operation will consist of a kitchen, storage area, customer service area with a counter, and a restroom. A maximum of five employees will be present at any one time. The proposed hours of operation will be 10:00 a.m. to 10:00 p.m., seven days per week.
3. The proposed eating and drinking establishment – take-out service, limited use will be complementary to the other uses in the commercial building, which include retail stores, a hair and nail salon and an eating and drinking establishment.
4. The proposed eating and drinking establishment – take-out service, limited use will provide a convenience for residents of the neighborhood and visitors to the area and will not require the provision of additional parking spaces on the site.
5. The proposed eating and drinking establishment – take-out service, limited use will be located within an existing commercial space of a commercial building on a site located along the Commercial Corridor of Corona del Mar. Due to its location along Coast Highway, opportunities for on-street parking will be available. Furthermore, this area is known to yield walking and biking customers.

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 proposed project will be located in an existing commercial tenant space and will involve improvements of the space to construct kitchen facilities. There are no proposed changes to the site or the exterior of the building.
2. Adequate public and emergency vehicle access, public services, and utilities are provided on-site and are accessed from East Coast Highway, Orchid Avenue or the alley at the rear of the site.

3. The tenant improvements to the project site will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

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 this approval includes conditions 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 restrictions on seating and net public area prevent adverse traffic impacts for the surrounding residential and commercial uses.
3. The proposed food service, eating and drinking establishment will help revitalize the project site and provide an economic opportunity for the property owner to update the tenant space, and provide additional services to the residents and visitors alike.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Application No. UP2015-004, 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 26th DAY OF MARCH, 2015.



Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL****PLANNING**

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. Use Permit No. UP2015-004 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
3. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
4. 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.
5. 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.
6. The hours of operation for the establishment shall be limited to 10:00 a.m. through 11:00 p.m., daily.
7. The sale of alcohol shall not be permitted.
8. The maximum number of seats allowed within the eating and drinking establishment shall be six (6). No outdoor seating is permitted unless an amendment to this use permit is acquired.
9. Seventeen (17) parking spaces shall be provided on-site for shared use by the commercial building including Damasq Cafe.
10. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require subsequent review and may require an amendment to this use permit or the processing of a new use permit.
11. 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.

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. No outside paging system shall be utilized in conjunction with this establishment.
14. All trash shall be stored within the building or within the existing dumpsters stored in the trash enclosure. The trash enclosure shall comply with Zoning Code Section 20.30.120 including three walls, a self-latching gate and a decorative solid roof for aesthetic and screening purposes.
15. 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.
16. 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.
17. 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 Director of Community Development, and may require an amendment to this Use Permit.
18. 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.
19. 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.
20. 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 Damasq Café MUP including, but not limited to Minor Use Permit No. UP2015-004 (PA2015-007). 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.

Fire Department Conditions

21. A 2A 10BC fire extinguisher shall be placed in a conspicuous location.
22. Commercial cooking equipment that produces grease laden vapors shall be provided with a Type I Hood pursuant to C.F.C Sec. 904.2.1, and an automatic fire extinguishing system consisting of a wet chemical extinguishing system complying with C.F.C Sec.904.5.

Building Division Conditions

23. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.

RESOLUTION NO. ZA2015-015

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2015-004 FOR A FOOD SERVICE, EATING AND DRINKING ESTABLISHMENT LOCATED AT 100 W. COAST HIGHWAY (PA2015-021)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Xanadu Bakery Newport Beach LLC., with respect to property located at 100 W. Coast Highway, and legally described as PCL 1, Parcel Map 2010-133 requesting approval of a Minor Use Permit.
2. The applicant proposes a food service, eating and drinking establishment within a 1,456-square-foot vacant commercial space located within the Mariner's Pointe shopping center. The proposal includes 16 seats within a 484-square-foot interior dining area and 12 seats within a 121-square-foot outdoor dining area. No late hours (after 11:00 p.m.) or alcohol sales are proposed as part of this application.
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 not located within the coastal zone.
5. A public hearing was held on March 26, 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 it qualifies for a categorical exemption pursuant to Section 15301 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.
3. A Mitigated Negative Declaration (SCH No. No. 2011041038) was prepared for the development of the shopping center in accordance with the implementing guidelines of the California Environmental Quality Act (CEQA) and approved by the City Council on August 9, 2011.

SECTION 3. REQUIRED FINDINGS.

Minor Use Permit

In accordance with Section 20.52.020.F 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 General Plan and any applicable specific plan.*

Facts in Support of Finding

1. The General Plan land use designation for the site is CG (General Commercial) which is intended to provide for a wide variety of commercial activities oriented primarily to serve citywide or regional needs. The proposed use is consistent with this designation.
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 within the CG (Commercial General) Zoning District which is intended to provide for areas appropriate for a wide variety of commercial activities oriented primarily to serve citywide or regional needs. The proposed eating and drinking establishment use is consistent with the land uses permitted within this zoning district and the conditions of approval will ensure that the use is compatible with the adjacent residential areas.
2. Pursuant to Section 20.22.020 (Table 2-5 Allowed Uses and Permit Requirements), the proposed project requires approval of a minor use permit.
3. Required parking for the Mariner's Pointe was previously determined based on documentation and a number of assumptions, including: 1) the Shared Parking Analysis prepared by LSA Associates, Inc., dated July 22, 2011; 2) a limitation that the maximum New Public Area (NPA) for eating and drinking uses be limited to 5,210 square feet; and 3) the proposed floor area for eating and drinking uses will be occupied by fine dining establishments with very low turnover with a parking demand of 1 space 50 square feet of NPA. Pursuant to Condition No. 7 of City Council Resolution No. 2011-86, any changes to the assumed tenant mix or changes in the type of food use that would increase parking demands may require

the preparation of a new shared parking analysis approved by the Community Development Department to ensure adequate parking is provided on site to support the peak parking demands.

4. An *Updated Shared Parking Analysis – Mariner’s Pointe*, dated March 25, 2015, has been prepared and approved by the Community Development Department to evaluate the on-site parking supply versus the demand that will occur for parking throughout the day based on the current anticipated mix of uses and operational characteristics, including the proposed café and bakery. Given the characteristics of the use, a parking demand of 1 space per 40 square feet of floor area is appropriate due to the higher turnover of customers expected. The updated shared parking analysis indicates that because of the different peak hours of operation of the assumed mix of tenants, not all of the uses within the project will require their full allotment of parking spaces at the same time. The analysis indicates that the total parking required has two separate peaks: 1) one peak during the early afternoon with a total demand for 117 parking spaces at 1:00 p.m.; and 2) a second peak in the early evening with a total demand of 134 parking spaces at 6:00 p.m. Therefore, the project is anticipated to provide a surplus of nine spaces based on the shared parking analysis.
5. Section 20.40.040 of the Zoning Code includes a provision that excludes a portion of outdoor dining area (equal to 25 percent of the interior NPA) from the required parking calculations. The proposed outdoor dining area is 121 square feet which is equal to 25 percent of the net public area.

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 project involves improvements within an existing commercial suite to construct kitchen facilities for the new establishment.
2. The proposed operation will consist of a kitchen, storage area, preparation and work space, customer service area with a counter, restroom, interior and exterior seating area. A maximum of six employees will be present at any one time. The proposed hours of operation will be 6:00 a.m. to 5:00 p.m., daily.
3. The proposed eating and drinking establishment will be complementary to the other uses in the Mariner’s Pointe shopping center, which will include retail stores, food services, and other commercial uses. It contributes to making the shopping center a viable commercial node for the neighborhood and visitors.

4. The proposed eating and drinking establishment will provide a convenience for residents of the neighborhood and visitors to the area and provides adequate parking within the parking structure on-site.

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 proposed project will be located in a space within a recently built commercial building and will involve improvements of the space to construct kitchen facilities. There are no proposed changes to the site or the exterior façade of the building.
2. As conditioned, the food service will be designed with an exhaust system installed with a pollution control unit to filter and control odors. Temporary refrigerated trash storage may also be required to control odors associated with food wastes.
3. Adequate public and emergency vehicle access, public services, and utilities are provided on-site and are accessed from W. Coast Highway and Dover Drive.
4. The tenant improvements to the project site will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

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 this approval includes conditions 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 restrictions on net public area and compliance with the approved parking management plan for the site will prevent adverse traffic and parking impacts for the surrounding residential and commercial uses.
3. The proposed food service, eating and drinking establishment will help the new commercial building establish as a shopping center and serve residents and visitors alike.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Application No. UP2015-007, 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 26th DAY OF MARCH, 2015.



Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL****PLANNING**

1. The development shall be in substantial conformance with the approved site plan, floor plans including seating plan, and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. Use Permit No. UP2015-007 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
3. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
4. Prior to implementation of this use permit, all revisions for the shell of the commercial building regarding the subject tenant space shall be permitted and completed.
5. 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.
6. 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.
7. The hours of operation for the establishment shall be limited to 6:00 a.m. through 10:00 p.m., daily.
8. The sale of alcohol shall not be permitted.
9. The maximum net public area shall be 484 square feet.
10. The outdoor dining shall not exceed 121 square feet (25 percent of the net public area) and shall remain entirely on private property with no encroachment into the public-right-of-way.
11. Parking shall be provided at a rate of one (1) space for each 40 square feet of net public area and shall comply with the approved parking management plan in effect for the site. Any change to this would require an amendment to this use permit.
12. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require subsequent review and may require an amendment to this use permit or the processing of a new use permit.

13. Temporary refrigerated trash storage shall be provided to control odors associated with food waste, unless otherwise approved by the Community Development Director.
14. Kitchen exhaust fans shall be installed and maintained in accordance with the Uniform Mechanical Code.
15. The exhaust systems for the food use shall be installed with pollution control units to filter and control odors and shall be located entirely within the structure, except for a required vent that may be located on the roof in a location approved by the Planning Division.
16. 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.
17. 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.
18. No outside paging system shall be utilized in conjunction with this establishment.
19. All trash shall be stored within the building or within the existing dumpsters stored in the trash enclosure. The trash enclosure shall comply with Zoning Code Section 20.30.120 including three walls, a self-latching gate and a decorative solid roof for aesthetic and screening purposes.
20. 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.
21. 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.
22. 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 Director of Community Development, and may require an amendment to this use permit.
23. 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.
24. 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.

25. Prior to the issuance of the building permit, fair share fees shall be paid for the change in use from general commercial to food service.
26. 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 Xanadu Café MUP including, but not limited to, the Minor Use Permit No. UP2015-007 (PA2015-021). 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.

Fire Department Conditions

27. Pursuant Fire Code Section 609.2, a Type 1 hood shall be installed at or above all commercial cooking appliances and domestic cooking appliances used for commercial purposes that produce grease vapors. Type 1 hood shall require separate review and permit by the Building Division and Fire Department.
28. Pursuant to C.F.C. Section 904.2.1, required commercial kitchen exhaust hood and duct system required by Section 609 shall have a Type 1 hood and shall be protected with a wet-chemical extinguishing system as pursuant to C.F.C. Sec. 904.5.

Building Division Conditions

29. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements.
30. Provide wheel chair accessible access to all areas of the tenant space, including kitchen and storage areas.
31. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
32. Implementation of the food service use requires fire sprinklers per the Municipal Code.

RESOLUTION NO. ZA2015-016

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2014-049 FOR AN EATING AND DRINKING ESTABLISHMENT WITH NO LATE HOURS AND WITH ALCOHOL SALES LOCATED AT 2301 SAN JOAQUIN HILLS ROAD (PA2014-210)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Gavin Herbert Jr. of Roger's Gardens with respect to property located at 2301 San Joaquin Hills Road, and legally described as Parcel 1 of Parcel Map 79-718 (CNB Resubdivision 630), requesting approval of a Minor Use Permit.
2. The applicant requests approval of a Minor Use Permit application for a Food Service (no late hours) eating and drinking establishment with alcohol sales (Type 47 ABC License – On-Sale General). The request includes the construction of an approximately 1,660 square foot kitchen/serving building including an approximately 944 square foot basement. The proposed dining area consists of a partially enclosed bar/lounge area and exterior patio seating with a combined total of 108 seats. The restaurant is intended to be a complementary use to the established nursery and retail use. Parking will be provided in the existing parking lots. The proposed hours of operation are from 10:00 a.m. to 10:00 p.m. Sunday-Thursday and 10:00 a.m. to 11:00 p.m. Friday and Saturday.
3. The subject property is located within the Commercial General (CG) Zoning District and General Plan Land Use Element category is General Commercial (CG).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on March 26, 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 is 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. The Class 3 exemption applies to up to four (4) commercial buildings in urbanized areas not exceeding 10,000 square feet in floor area on sites zoned for such use, if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive. The subject property is zoned for retail and service commercial uses and the proposed project does not involve significant amounts of hazardous substances and all necessary public services and facilities are provided. The proposed project is consistent with this exemption and involves the development of one (1) commercial building with a total of 2,610 square feet, accessory trellis and shade structures, and minor parking lot changes within an urbanized area.

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 such 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 proposed establishment is located within Reporting District 47, wherein the number of crimes is lower than the two (2) most adjacent RDs (39 and 51) and slightly higher than one (1) adjacent RD (53). RD 47 has a lower crime rate than the City average.
- ii. The number of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*
- 1. The crime statistics are summarized in the table below:

Location	Calls for Service	Part I Crimes	Part II Crimes	DUI Arrests	Public Intoxication Arrests
RD47	988	15	13	1	1
RD39	5,581	167	191	23	15
RD51	917	31	26	5	1
RD53	601	15	12	1	0

2. The subject property is located in Reporting District 47 which is primarily residential. However, the site is located at the intersection of MacArthur Boulevard and San Joaquin Hills Road, which is adjacent to the easterly side of Fashion Island/Newport Center (RD39). The high concentration of commercial, retail and restaurant land uses in RD 39 result in a higher than average number of calls for service and crimes. Since RD 47 is primarily residential, there are a corresponding lower number of calls for service and arrests. The Newport Beach Police Department reported a total of sixteen (16) calls for service to the subject property in 2014.

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 proposed use is located adjacent to Harbor Pointe, a single-unit residential development. The nearest homes are approximately 150 feet to the west of the proposed restaurant and seating areas. The existing Roger's Gardens parking lot and 6-foot existing block wall would provide buffering and separation between the residences and the restaurant. The proposed use is not located in close proximity to day care centers, places of religious assembly, and schools. The nearest park is the Civic Center Park located across MacArthur Boulevard.

iv. The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.

1. Several comparable restaurant establishments are located within the Fashion Island Shopping Center, including restaurant tenants such as Roy's Hawaiian Fusion, Fleming's Steakhouse and True Food Kitchen. In the adjacent Harbor View Center, Fresh Brothers Pizza offers beer and wine and Gelson's supermarket sells beer, wine and spirits. Conditions of approval are proposed to adequately manage the late hours and alcohol sales components of the proposed project.

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

1. The proposed project is for a new restaurant as a complementary use to Roger's Gardens, so there are currently no objectionable conditions related to alcohol service. Operational conditions of approval relative to the sale of alcoholic beverages will help ensure compatibility with the surrounding uses and minimize alcohol-related impacts.

In accordance with Section 20.52.020 of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

B. The use is consistent with the General Plan and any applicable specific plan.

Facts in Support of Finding:

1. The Land Use Element of the General Plan designates the project site as General Commercial (CG), which is intended to provide a wide variety of commercial needs. The proposed restaurant with alcohol sales that will share the site with the existing Roger's Gardens nursery is a use that serves residents and visitors and is consistent with land uses allowed by the CG use designation.
2. The subject property is not located within a Specific Plan area.

Finding:

- C. *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 project is located in the Commercial General (CG) Zoning District which is intended to provide areas for a wide variety of commercial activities.
2. Eating and Drinking Establishments (No Late Hours) with alcohol service are allowed uses within the Commercial General (CG) Zoning District, subject to the approval of a Minor Use Permit.
3. The design complies with all applicable development standards including setbacks, building height and floor area ratio.
4. Required parking is provided consistent with zoning code requirements and parking requirements established by Use Permit No. UP3648.

Finding:

- D. *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 establishment provides a complementary dining use to the established Roger's Gardens nursery and retail use. The project provides the required number of parking spaces and is not proposing late hours (after 11:00 p.m.).
2. The establishment would occupy a new restaurant building adjacent to the westerly parking lot. The seating consists of partially enclosed and open air dining areas. The kitchen building, accessory trellis and shade structures, parking lot and property line block wall will provide separation and buffering between the restaurant and neighboring residences.

3. The operational characteristics of the proposed establishment would be that of a typical full service restaurant that would serve residents, visitors, shoppers, and employees in the area.
4. The operational conditions of approval will help ensure compatibility with the surrounding uses and minimize alcohol-related impacts. No dancing or live entertainment is proposed. The 10:00 p.m. weekday and 11:00 p.m. weekend closing hours would help ensure the establishment does not become a late night bar, tavern, or nightclub.

Finding:

- E. 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 provides adequate parking and circulation within the existing parking lots on site. The design, location, shape, and size have proven suitable for the existing nursery and retail uses on-site. Adequate public and emergency vehicle access, public services, and utilities are provided within the existing property and the proposed project will not negatively affect emergency access.
2. The kitchen and service building and dining areas have been designed for a restaurant use with sufficient means of ingress and egress.
3. The Public Works Department, Building Division, and Fire Department have reviewed the application and the project is required to comply with all applicable codes and regulations.

Finding:

- F. 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 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 related to the operation of the restaurant.

2. The Police Department has reviewed the project and has no objection to the operation as described by the applicant. The Police Department believes that with the conditions of approval, the proposed project will not have a negative impact on the community and police services.
3. Compliance with the Municipal Code standards related to noise, lighting and other performance standards will help ensure that the proposed use will be compatible with the surrounding area.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2014-049, 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 after the adoption of this Resolution 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 26TH 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, building elevations and colored artist renderings stamped and dated with the date of this approval, except as modified by applicable conditions of approval.
2. 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 permit.
3. The Zoning Administrator may add to or modify conditions of approval to this Minor Use Permit, upon a determination that the operation which is the subject of this Minor Use Permit causes injury, or is detrimental to the health, safety, peace, comfort, or general welfare of the community.
4. Any changes in operational characteristics, hours of operation, expansion in area, or modification to the floor plan, shall require an amendment to this Minor Use Permit, unless otherwise approved by the Planning Division.
5. Should the business, subject to the Minor Use Permit conditioned herein, be sold or otherwise come under different ownership or a change in operators, any future owners, operators, or tenants shall be notified of the conditions of this approval by either the current business owner, property owner, or the leasing agent.
6. A copy of this approval letter shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
7. Use Permit No. UP2014-049 conditions of approval apply only to the boundaries of the restaurant/lounge building and seating areas as depicted on the approved plans. The conditions of approval do not apply to the allowed nursery and retail uses located outside the subject area.
8. The applicant shall require employees to park at a designated private off-site location during peak business periods, and offer a shuttle to assist in the use of the lot, as needed.
9. The hours of operation shall be limited to between 10:00 a.m. and 10:00 p.m. Sunday-Thursday and 10:00 a.m. to 11:00 p.m. Friday and Saturday.
10. The restaurant and bar/lounge are limited to a combined maximum of 108 seats with a maximum of twenty-two (22) in the bar/lounge.
11. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all

applicable State Disabilities Access requirements. Complete sets of drawings including architectural, electrical, mechanical, and plumbing plans shall be required at plan check.

12. All improvements shall be constructed as required by Ordinance and the Public Works Department.
13. An encroachment permit is required for all work conducted in the public right-of-way.
14. A new sewer cleanout shall be installed per City Standard #406-L on the existing sewer lateral.
15. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Newport Beach Municipal Code, unless the Zoning Administrator first approves an amended Minor Use Permit.
16. Food service from the regular menu shall be available to patrons up to thirty (30) minutes before the scheduled closing time.
17. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
18. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except when served in conjunction with food ordered from the full service menu. There shall be no reduced price alcoholic beverage promotions after 9:00 p.m.
19. 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.
20. 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.
21. There shall be no live entertainment allowed on the premises.
22. There shall be no dancing allowed on the premises.
23. Strict adherence to the maximum occupancy limits shall be required.
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 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.

25. A Special Event Permit is required for any event or promotional activity outside the normal operational characteristics of this restaurant business that would attract large crowds, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
26. Prior to the issuance of building permits, Fair Share Traffic Fees shall be paid for the restaurant in accordance with Chapter 15.38 of the Newport Beach Municipal Code.
27. Prior to the issuance of building permits, Transportation Corridor Agency (TCA) fees shall be paid.
28. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three (3) walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
29. 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.
30. 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, and debris from the premises and on all abutting sidewalks within twenty (20) feet of the premises. Graffiti shall be removed within forty-eight (48) hours of written notice from the City.
31. The operator shall take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, and areas surrounding the alcoholic beverage outlet and adjacent properties, if directly related to the operation of the restaurant.
32. All proposed signs shall be in conformance with applicable provisions of Chapter 20.42 (Signs) of the Newport Beach Municipal Code.
33. All lighting shall conform to the standards of Section 20.30.070 (Outdoor Lighting). The Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated. If outdoor lighting is proposed, the applicant shall submit a photometric survey as part of the plan check to verify illumination complies with the Zoning Code standards.
34. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities to

between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.

35. 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 Minor Use Permit.
36. Prior to the issuance of building permits, approval from the Orange County Health Department is required.
37. Public sanitation facilities shall be available to the general public (patrons) during regular business hours of the operation, unless otherwise approved by the Building Division.
38. If required, a grease interceptor shall be installed prior to the establishment opening for business to the satisfaction of the Building Division.
39. 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, and the area shall drain directly into the sewer system, unless otherwise approved by the Building Official and Public Works Director in conjunction with the approval of an alternate drainage plan.
40. The applicant shall provide a Type I hood with a kitchen suppression system for cooking equipment.
41. Kitchen exhaust fans shall be installed/maintained in accordance with the California Mechanical Code. A permit from the South Coast Air Quality Management District shall be obtained for the control of smoke and odor.
42. Portable propane heaters shall be prohibited on the outdoor patio unless otherwise approved by the Fire Department. Natural gas or electric heaters are allowed if installed per their listing and the California Electrical or Plumbing Code unless otherwise approved by the Fire Department.
43. A fire suppression system will be required for cooking which involves the production of grease laden vapors.
44. Due to the size of the basement, the project shall comply with Newport Beach Fire Department Guideline and Standards D.05 (Public Radio System Coverage) and California Fire Code Section 510 by providing a bidirectional amplification system (BDA).
45. Minor Use Permit No. UP2014-049 shall expire unless exercised within twenty-four (24) months from the date of approval as specified in Section 20.54.60 of the Newport Beach Municipal Code.

46. 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 Roger's Gardens Minor Use Permit including, but not limited to Minor Use Permit No. UP2014-049. 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.