



**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, Hearing Officer, and/or Planning Division staff for the week ending December 16, 2011

**ZONING ADMINISTRATOR ACTIONS
DECEMBER 14, 2011**

Item 1: Pandor Bakery Minor Use Permit No. UP2011-031 (PA2011-186)
1126 Irvine Avenue, Westcliff Plaza Shopping Center

This item was approved: Council District 3
Zoning Administrator Resolution No. ZA 2011-001

**HEARING OFFICER ACTIONS
December 15, 2011**

Item 2: Abatement Period Extension Request – Dr. Frankenberger – Abatement Period
Extension No. PA2010-147
601 Irvine Avenue

This item was approved: Council District 2
Hearing Officer Resolution No. HO 2011-005

Item 3a: Abatement Period Extension Request - The Rawlins Family Trust - Abatement
Period Extension No. PA2011-032
1441 Superior Avenue

This item was approved: Council District 2
Hearing Officer Resolution No. HO 2011-006

Item 3b: Abatement Period Extension Request - The Rawlins Family Trust - Abatement
Period Extension No. PA2011-032
1455 "J" Superior Avenue

This item was approved: Council District 2
Hearing Officer Resolution No. HO 2011-007

Item 4: Abatement Period Extension Request – Lisa de Lorimier - Abatement Period
Extension No. PA2011-033
1455 Superior Avenue “G”

This item was approved:
Hearing Officer Resolution No. HO 2011-008

Council District 2

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.

RESOLUTION NO. ZA 2011-001

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING MINOR USE PERMIT NO. UP2011-031 FOR PANDOR BAKERY, A FOOD SERVICE, EATING AND DRINKING ESTABLISHMENT LOCATED AT 1126 IRVINE AVENUE (PA2011-186)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Tiffany Sepetjian, Pandor Bakery, with respect to property located at 1126 Irvine Avenue, and legally described as Tract 4824, Lot 3 requesting approval of a minor use permit.
2. The applicant proposes a minor use permit to convert 1,940 square feet of currently vacant retail space to a food service, eating and drinking establishment, which will have a net public area of 804 square feet and provide seating for a maximum of 30 customers. The establishment will be located within the Westcliff Plaza Shopping Center and the hours of operation will be between 7:00 a.m. and 11:00 p.m., daily.
3. The subject property is located within the Commercial Neighborhood (CN) Zoning District and the General Plan Land Use Element category is Commercial Neighborhood (CN).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on December 14, 2011 in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Adminstrator at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. The project has been reviewed, and it qualifies for a categorical exemption pursuant to Section 15301 of the California Environmental Quality Act under Class 1 (Existing Facilities) of the Implementing Guidelines of the California Environmental Quality Act.
2. The Class 1 exemption includes the ongoing use of existing buildings where there is negligible or no expansion of use. The proposed project involves interior alterations to convert currently vacant retail space to a food service, eating and drinking establishment. The existing space will be remodeled with approval of a tenant improvement building permit.

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 this site is CN (Neighborhood Commercial), which is intended to provide for areas appropriate for a limited range of retail and service uses developed in one or more distinct centers oriented to serve primarily the needs of and maintain compatibility with residential uses in the immediate area. The proposed project is a food service, eating and drinking establishment to be located within the Westcliff Plaza shopping center (northeast corner of Irvine Avenue and Westcliff Drive). This use is consistent with the General Plan Neighborhood Commercial (CN) land use designation, which allows food service, eating and drinking establishments as a commercial use.
2. This type of use is permitted in the Commercial Neighborhood (CN) land use designation, subject to approval of a minor use permit. The proposed establishment is located within the Westcliff Plaza shopping center and will be compatible with existing and future permitted land uses within the area.
3. 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 within the Commercial Neighborhood (CN) Zoning District of the Newport Beach Zoning Code. The intent of this district is to provide for areas appropriate for a limited range of retail and service uses developed in one or more distinct centers oriented to serve primarily the needs of and maintain compatibility with residential uses in the immediate area. The proposed food service, eating and drinking establishment is consistent with the land uses permitted within this zoning district.

2. Pursuant to Section 20.20.020 (Table 2-5 Allowed Uses and Permit Requirements), the proposed project requires approval of a minor use permit, because it is located within 500 feet of the residential zoning district located northeast of the subject site.
3. The proposed use complies with Section 20.48.090 (Eating and Drinking Establishments) relating to required operating standards, and conditions of approval are included in this approval to maintain those requirements.
4. Section 20.40.060 (Parking Requirements for Food Service Uses) establishes criteria to determine the parking requirements for uses from 1 parking space for every 30-50 square feet of net public area. The proposed project has a net public area of 804 square feet and has seating for a maximum of 30 customers. The establishment is located within the Westcliff Plaza shopping center. Staff determined that one (1) space for every 40 square feet of net public area is a reasonable number to require for the proposed use, given the project characteristics, parking supply, and mix of existing tenants located within the shopping center. Based on the net public area of the proposed establishment, a total of 21 parking spaces will be required ($804/40 = 20.1 = 21$). The Westcliff Plaza shopping center site has surplus parking spaces available to provide the parking spaces required to accommodate this parking rate and the proposed use.

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 interior alterations to convert currently vacant retail space within the Westcliff Plaza shopping center to a food service, eating and drinking establishment. The shopping center will still provide a surplus of parking spaces.
2. The proposed use will provide French bakery products for retail sale and provide seating for a maximum of 30 customers. The operational characteristics of the use are that of a food service, eating and drinking establishment, which is a typical use in these types of shopping centers.
3. The hours of operation of the establishment will be between 7:00 a.m. and 11:00 p.m., daily.
4. The proposed establishment will be located within a shopping center in a nonresidential zoning district. Although it is located less 500 feet of a residential district directly to the northeast (within approximately 100 feet), it is not facing the residential properties and is separated from them by a block wall,

landscaped area, and parking lot. The separation provides screening and protection from view and any noise generated by the establishment. The applicant is also required to control trash and litter around the subject property.

5. The applicant is required to obtain Health Department approval prior to opening for business, and comply with the California Building Code to ensure the safety and welfare of customers and employees within the establishment.

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 building and parking lot within the Westcliff Plaza shopping center have functioned satisfactorily with the current configuration. The proposed project, which includes interior alterations to convert currently vacant retail space to a food service, eating and drinking establishment will not negatively affect emergency access. The design, size, location, and operating characteristics of the use are compatible with the existing uses within the shopping center and the surrounding area.
2. Adequate public and emergency vehicle access, public services, and utilities are provided within the Westcliff Plaza shopping center and the surrounding area.
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 in the surrounding area.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Use Permit No. UP2011-031, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. Minor Use Permit applications do not become effective until 14 days following the date of action. Prior to the effective date, the applicant or any interested party may appeal the decision of the Zoning Administrator to the Planning Commission by submitting a written appeal application to the Community Development Director. For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

PASSED, APPROVED AND ADOPTED THIS 14TH DAY OF DECEMBER, 2011.

By: _____

Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

(Project-specific conditions are in italics)

Planning Division Conditions

1. The development shall be in substantial conformance with the approved site plan, floor plan(s) and building elevations dated with this date of approval. (Except as modified by applicable conditions of approval.)
2. This Minor Use Permit may be modified or revoked by the City Council, Planning Commission, or Zoning Administrator should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
3. Any change in operational characteristics, hours of operation, expansion in area, or other modification to the approved plans, shall require an amendment to this Use Permit or the processing of a new Use Permit.
4. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
5. Minor Use Permit No. UP2011-031 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 (Time Limits and Extensions) of the Newport Beach Zoning Code, unless an extension is otherwise granted.
6. Should this business be sold or otherwise come under different ownership, any future owners or assignees shall be notified in writing of the conditions of this approval by the current owner or leasing company.
7. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
8. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
9. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.

10. *Prior to the issuance of building permits, any applicable Fair Share Traffic Contribution Fees shall be paid in accordance with Chapter 15.38 of the Newport Beach Municipal Code.*
11. *The indoor net public area shall be limited to a maximum of 804 square feet and 30 seats.*
12. *The proposed food service, eating and drinking establishment, shall have a parking requirement of 1 space for every 40 square feet of net public area equaling a total of 21 parking spaces.*
13. A copy of this resolution shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
14. *The hours of operation for the eating and drinking establishment are limited from 7:00 a.m. to 11:00 p.m., daily.*
15. Live entertainment and dancing shall be prohibited as a part of the regular operation.
16. 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 Manager and Public Works Director in conjunction with the approval of an alternate drainage plan.
17. 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.
18. Any event or activity staged by an outside promoter or entity, where the applicant, operator, owner or his employees or representatives share in any profits, or pay any percentage or commission to a promoter or any other person based upon money collected as a door charge, cover charge or any other form of admission charge is prohibited.
19. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Community Development Director, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Community Development Director may order the diming of light sources or other remediation upon finding that the site is excessively illuminated.
20. The proprietor shall actively control any noise generated by the patrons of the facility.

21. The operator of the facility shall be responsible for the control of noise generated by the subject facility including, but not limited to, noise generated by patrons, food service operations, and mechanical equipment. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code.

	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
Location	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

22. No outside paging system shall be utilized in conjunction with this establishment.
23. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
24. All proposed signs shall conform to Title 20, Chapter 20.42 (Sign Standards) of the Newport Beach Municipal Code regulations or any sign program applicable to the property.
25. No temporary "sandwich" signs or similar temporary signs shall be permitted, either on-site or off-site, to advertise the restaurant.
26. Temporary signs shall be prohibited in the public right-of-way unless otherwise approved by the Public Works Department in conjunction with the issuance of an encroachment permit or encroachment agreement.
27. 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. The trash dumpsters shall have a top, which shall remain closed at all times, except when being loaded or while being collected by the refuse collection agency.

28. The size, design, and location of trash enclosures shall be subject to the review and approval of the Public Works and Planning Division prior to issuance of building permits.
29. 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.
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 debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
31. All graffiti shall be removed within 48 hours notification from the City.
32. 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).
33. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Community Development Director, and may require an amendment to this use permit.
34. 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.
35. Any changes to the existing parking lot design require review and approval from the Public Works Department.
36. 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 **Pandor** including, but not limited to **Use Permit No. 2011-031** and the determination that the project is exempt under the requirements of the California Environmental Quality Act. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Building Division and Fire Department Conditions

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. A building permit is required to allow the change in use to an eating and drinking establishment. The construction plans must comply with the most recent, City-adopted version of the California Building Code.
39. The applicant is required to obtain all applicable permits from the City Building and Fire Departments. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The facility shall be designed to meet exiting and fire protection requirements as specified by the California Building Code and shall be subject to review and approval by the Building Division.
40. The construction plans must meet all applicable State Disabilities Access requirements.
41. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
42. Complete sets of drawings including architectural, electrical, mechanical, and plumbing plans shall be required at plan check.
43. The rear doors of the facility shall remain closed at all times. The use of the rear door shall be limited to deliveries and employee use only. Ingress and egress by patrons is prohibited unless there is an emergency.
44. All exits shall remain free of obstructions and available for ingress and egress at all times.

Public Works Department Conditions

45. County Sanitation District fees shall be paid prior to the issuance of any building permits.
46. New and existing fire services, when required by the Fire Department, shall be protected by a University of Southern California approved double check detector assemble and installed per STD-517-L.
47. New and existing commercial water meter(s) shall be protected by a University of Southern California approved reduced pressure backflow assembly and installed per STD-520-L-A.
48. *Existing sewer lateral shall have a cleanout installed per STD-406-L. Cleanout shall be located within the existing sewer easement.*

Revenue Department Conditions

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

RESOLUTION NO. HO 2011- 005

**A RESOLUTION OF A HEARING OFFICER OF THE CITY
OF NEWPORT BEACH APPROVING THE ABATEMENT
EXTENSION PERIOD FOR THE PROPERTY LOCATED AT
601 IRVINE AVENUE (PA 2010-147)**

WHEREAS, Chapter 20.38.100 of the Newport Beach Municipal Code (NBMC) requires nonconforming nonresidential uses in residential zoning districts to be abated and terminated upon the expiration of time periods identified by the NBMC. Following the issuance of an Abatement Order, Chapter 20.38.100 provides that a property owner may request an extension of the abatement period in order, to amortize a property owner's investment in the property and avoid an unconstitutional taking of property; and

WHEREAS, an application was filed on behalf of Dr. Frankenberger, the property owner and tenant, with respect to property located at 601 Irvine Avenue, and legally described as a portion of Lot 18, Newport Heights Tract, requesting an extension of the abatement period specified by the Newport Beach Municipal Code (NBMC) Section 20.38.100, (Abatement Periods). If granted, the extension will allow the continued operation of an existing commercial use for ten years (December 15, 2021). The property is located in the R-1 Zoning District (Single-Unit Residential), where such nonresidential uses are not permitted; and

WHEREAS, a public hearing was held on December 15, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the NBMC and other applicable laws. Evidence, both written and oral, was presented and considered at this meeting; and

WHEREAS, the hearing was presided over by Hon. John C. Woolley, retired Judge (California Superior Court, Orange County), Hearing Officer for the City of Newport Beach; and

WHEREAS, the findings and considerations of Section 20.38.100 (D.4) of the NBMC and facts in support of the findings and considerations are as follows:

- 1. The length of the abatement period is not appropriate considering the owner's investment in the use;**

Facts in Support of Finding: The one year abatement period specified by the Municipal Code is not of sufficient duration to amortize the property owner's investment, especially since the dental office provides the primary income. The applicant indicates that a minimum abatement period of ten years (December 15, 2021) is necessary to recover his investment in the property and to avoid an unconstitutional taking of the owner's property.

2. The length of time the use was operating as a nonconforming use justifies the extension of the abatement period beyond the code specified one year.

Facts in Support of Finding: The building was constructed in 1948 as a mixed-use building. It has included a nonresidential use and dwelling unit since its original construction. The property was annexed to the city in 1956. The building and mixed-use have been nonconforming for the last 55 years. Therefore, an extension to the one-year abatement period is justified due to the significant length of time that the nonconforming use has been operating before becoming subject to abatement.

3. The existing structure is suitable for conversion to an alternate use, as an expansion of the existing residential unit.

Facts in Support of Finding: The current portion of the building occupied by the dentist office is suitable for an expansion of the existing residential use without extensive demolition, or major renovation. An expansion of the existing residential use would conform to current Municipal Code requirements pertaining to floor area and parking (two-car garage exists on site).

4. No harm to the public will result if the nonresidential use remains beyond the one year abatement period.

Facts in Support of Finding: The existing mixed-use was established 63 years ago, prior to annexation and has not proven to be incompatible or detrimental to the neighborhood. It is anticipated that the continued dental office use will not have any negative impact on the residential uses or school use in the vicinity.

5. The cost and feasibility of relocating the use to another site cannot be accommodated within the code specified one year abatement period.

Facts in Support of Finding: The relocation of the present use would be costly since there is no storefront unit or comparable building located in the vicinity. Consequently, relocation would result in a loss of clientele and could result in a prolonged loss of revenue as clientele is re-established in a new location. In addition, the costs associated with the improvements made to the interior of the structure to accommodate the dental office would also be lost or not fully recovered by relocation.

WHEREAS, this activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also

covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines. It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and therefore it is not subject to CEQA.

NOW THEREFORE, BE IT RESOLVED:

Section 1. The Hearing Officer of the City of Newport Beach hereby approves the requested Abatement Period Extension (PA2010-147), subject to the findings and considerations set forth above.

Section 2. The Abatement Period Extension for the property located at 601 Irvine Avenue, and legally described as a Portion of Lot 18, Newport Heights Tract, is hereby extended and will expire on December 15, 2021, at which time all nonresidential use of the property shall cease or the building be demolished, unless an additional extension of the abatement period is granted; or an appropriate change in the Zoning District, and the General Plan Land Use Designation are approved and adopted prior to that date; or a change to the Zoning Regulations pertaining to nonconforming uses or their abatement are approved and adopted prior to that date

Section 3. 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 City Clerk in accordance with the provisions of Title 20, Planning and Zoning, of the Newport Beach Municipal Code.

APPROVED AND ADOPTED THIS 15th DAY OF DECEMBER 2011.

By: 

Hon. John C. Woolley, retired Judge
(California Superior Court, Orange County)
Hearing Officer for the City of Newport Beach

ATTEST:


City Clerk

DEPUTY
CITY
CLERK



RESOLUTION NO. HO 2011- 006

**A RESOLUTION OF A HEARING OFFICER OF THE CITY
OF NEWPORT BEACH APPROVING THE ABATEMENT
EXTENSION PERIOD FOR THE PROPERTY LOCATED AT
1441 SUPERIOR AVENUE (PA 2011-032)**

WHEREAS, Chapter 20.38.100 of the Newport Beach Municipal Code (NBMC) requires nonconforming nonresidential uses in residential zoning districts to be abated and terminated upon the expiration of time periods identified by the NBMC. Following the issuance of an Abatement Order, Chapter 20.38.100 provides that a property owner may request an extension of the abatement period in order, to amortize a property owner's investment in the property and avoid an unconstitutional taking of property; and

WHEREAS, an application was filed on behalf of The Rawlins Family Trust, the owner of property located at 1441 Superior Avenue, and legally described as Portion of Lot 819, First Addition to Newport Mesa Tract, requesting an extension of the abatement period specified by the NBMC Section 20.38.100. If granted, the extension will allow the continued operation of existing commercial use for ten years from the date of the Hearing Officer's approval (December 15, 2021). The property is located in the RM (2420) Zoning District, where such nonresidential uses are not permitted; and

WHEREAS, a public hearing was held on December 15, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the NBMC and other applicable laws. Evidence, both written and oral, was presented and considered at this meeting; and

WHEREAS, the hearing was presided over by Hon. John C. Woolley, retired Judge (California Superior Court, Orange County), Hearing Officer for the City of Newport Beach; and

WHEREAS, the findings and considerations of Section 20.38.100 (C.4(c)) of the NBMC and facts in support of the findings and considerations are as follows:

- 1. The length of the abatement period is not appropriate considering the owner's investment in the use;**

Facts in Support of Finding: The one year abatement period specified by the Municipal Code is not of sufficient duration to amortize the property owner's investment. The information submitted by the applicant indicates that an extension of 10 years for the abatement of the current uses is necessary to avoid an unconstitutional taking of the applicant's property. Subsequently, the ten year period would allow the owner to transition the current tenants out of the building to accommodate the future project. An

extension period for the term of the lease is necessary to avoid economic hardship that will result if the owner is required to abate the use prior to expiration of the lease.

- 2. The length of time the use was operating prior to the date of nonconformity justifies the extension of the abatement period beyond the code specified one year.**

Facts in Support of Finding: The property became nonconforming with the General Plan in 2006, 5 years ago, when the City Council adopted Resolution No. 2006-76 approving the "General Plan Update". The existing structure and use conformed to the Land Use Element of the General Plan for the prior 47 years; or was nonconforming and not subject to abatement.

- 3. The existing structure is not suitable for conversion to an alternate use.**

Facts in Support of Finding: The building could be modified to accommodate other commercial or nonresidential uses. However, the current building is not suitable for conversion from the existing commercial use to a residential building without demolishing and building new, or major renovation to provide adequate living areas and residential parking.

- 4. No harm to the public will result if the nonresidential use remains beyond the one year abatement period.**

Facts in Support of Finding: The property is located in an area that is occupied by other nonresidential uses; including office, medical office (across the street) and a skilled nursing facility. It is anticipated that the continued commercial use of the subject property is compatible with the surrounding uses and will not have any negative impact or pose harm on the neighboring residential and nonresidential uses in the vicinity.

- 5. The cost and feasibility of relocating the use to another site cannot be accommodated within the one-year abatement period.**

Facts in Support of Finding: The applicant indicates that the relocation of the present nonresidential uses that occupy the building would be costly since there are limited numbers of comparable vacant storefront units or buildings within the vicinity. Consequently, relocation of the nonresidential tenants would result in a loss of long term rental income, especially since a new comprehensive residential or expansion of the skilled nursing facility or assisted living facility project is not proposed in the immediate future.

RESOLUTION NO. HO 2011- 007

**A RESOLUTION OF A HEARING OFFICER OF THE CITY
OF NEWPORT BEACH APPROVING THE ABATEMENT
EXTENSION PERIOD FOR THE PROPERTY LOCATED AT
1455 SUPERIOR AVENUE "J" (PA 2011-032)**

WHEREAS, Chapter 20.38.100 of the Newport Beach Municipal Code (NBMC) requires nonconforming nonresidential uses in residential zoning districts to be abated and terminated upon the expiration of time periods identified by the NBMC. Following the issuance of an Abatement Order, Chapter 20.38.100 provides that a property owner may request an extension of the abatement period in order, to amortize a property owner's investment in the property and avoid an unconstitutional taking of property; and

WHEREAS, an application was filed on behalf of The Rawlins Family Trust, the owner of property located at 1455 Superior Avenue "J", and legally described as Portion of Lot 918, First Addition to Newport Mesa Tract, requesting an extension of the abatement period specified by the NBMC Section 20.38.100. If granted, the extension will allow the continued operation of existing boat storage use to December 31, 2013. The property is located in the RM (2420) Zoning District, where such nonresidential uses are not permitted; and

WHEREAS, a public hearing was held on December 15, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the NBMC and other applicable laws. Evidence, both written and oral, was presented and considered at this meeting; and

WHEREAS, the hearing was presided over by Hon. John C. Woolley, retired Judge (California Superior Court, Orange County), Hearing Officer for the City of Newport Beach; and

WHEREAS, the findings and considerations of Section 20.38.100 (C.4(c)) of the NBMC and facts in support of the findings and considerations, and required conditions as apply to mitigate adverse impacts on the neighboring uses. as implementation of the approval are as follows:

1. **The length of the abatement period is not appropriate considering the owner's investment in the use;**

Facts in Support of Finding: The one year is not an adequate period of time to amortize the property owner's investment in the property, especially since the current lease has an expiration date of December 31, 2013.

- 2. The length of time the use was operating prior to the date of nonconformity justifies the extension of the abatement period beyond the code specified one year.**

Facts in Support of Finding: This property also became nonconforming with the General Plan in 2006, 5 years ago, when the City Council adopted Resolution No. 2006-76 approving the "General Plan Update". The existing use conformed to the Land Use Element of the General Plan for the prior 47 years; or was nonconforming and not subject to abatement. The use of the property for the storage of boats is a nonresidential use and therefore subject to abatement. The applicant's request to continue the nonresidential use of the parcel to honor the existing lease terms is appropriate in this case.

- 3. The existing structure is not suitable for conversion to an alternate use.**

Facts in Support of Finding: There is no structure on this property and is therefore suitable for the construction of a new residential project or expansion of the adjacent skilled nursing facility or the adjacent assisted living facility.

- 4. No harm to the public will result if the nonresidential use remains beyond the one year abatement period.**

Facts in Support of Finding: The property is located in an area that is occupied by other nonresidential uses; including office, medical office (across Superior Avenue) and a skilled nursing facility. It is anticipated that the continued boat storage use is not compatible with the adjacent residential uses that overlook the property. That abatement in consideration of the existing lease will eliminate the aesthetic impact on the neighboring residential units and protect the property owner from potential lawsuit that could be caused by abatement prior to expiration of the lease term. Additionally, as conditioned, the outdoor storage and hours of operation will be limited to boats and vehicles. All other storage items, including but not limited to parts and construction materials are to be removed within 45 days of this approval and hours of operation will limit noise impacts on the neighboring residential uses.

- 5. The cost and feasibility of relocating the use to another site cannot be accommodated within the one-year abatement period.**

Facts in Support of Finding: The applicant indicates that the relocation of the boat storage use prior to expiration of the current lease could be costly and would result in a loss of clientele, and could result in a prolonged loss of revenue to the property owner.

WHEREAS, this activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing

Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines. It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and therefore it is not subject to CEQA.

NOW THEREFORE, BE IT RESOLVED:

Section 1. The Hearing Officer of the City of Newport Beach hereby approves the requested Abatement Period Extension (PA2011-032), subject to the findings and considerations set forth above and subject to the conditions set forth in Exhibit A which is attached hereto and incorporated by reference.

Section 2. The Abatement Period Extension for the property located at 1455 Superior Avenue "J", and legally described as Portion of Lot 918, First Addition to Newport Mesa Tract, is hereby extended and will expire on December 31, 2013, at which time all nonresidential use of the property shall cease, unless an additional extension of the abatement period is granted; or an appropriate change in the Zoning District and the General Plan Land Use Designation are approved and adopted.

Section 3. 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 City Clerk in accordance with the provisions of Title 20, Planning and Zoning, of the Newport Beach Municipal Code.

APPROVED AND ADOPTED THIS 16TH DAY OF DECEMBER 2011.

By: 

Hon. John C. Woolley, retired Judge
(California Superior Court, Orange County)
Hearing Officer for the City of Newport Beach

ATTEST:


City Clerk


DEPUTY
CITY
CLERK



EXHIBIT “A”

CONDITIONS OF APPROVAL

1. The Abatement Period Extension for the property located at 1455 Superior Avenue “J”, and legally described as Portion of Lot 918, First Addition to Newport Mesa Tract, is hereby extended and will expire on December 31, 2013, at which time boat storage use of the property approved by this action shall cease.
2. That the outdoor storage shall be limited to boats and vehicles, and that all other storage items, including but not limited to parts and construction materials, shall be removed within 45 days of this approval to reduce the aesthetic impacts. The items to be removed shall be determined and subject to the discretion of the Community Development Director or appointed designee. This abatement extension approval does not authorize the use of the property as a commercial parking facility.
3. That the hours of operation of the boat storage facility shall be limited to between 8:00 a.m. to 8:00 p.m., daily; except that during the summer months (Daylight Savings Time), the closing hour shall be extended to 9:00 p.m.
4. This Abatement Period Extension may be modified or revoked by the Community Development Director should it be determined that the boat storage use 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.
5. The operator of the facility shall be responsible for the control of noise generated by the subject facility including, but not limited to, noise generated by employees and patrons, and mechanical equipment. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code.

	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
Location	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

6. 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 **Abatement Extension Application (PA2011-032), for the property located at 1455 Superior Avenue “J”**, and the determination that the project is exempt under the requirements of the California Environmental Quality Act. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys’ fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City’s costs, attorneys’ fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

WHEREAS, this activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines. It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and therefore it is not subject to CEQA.

NOW THEREFORE, BE IT RESOLVED:

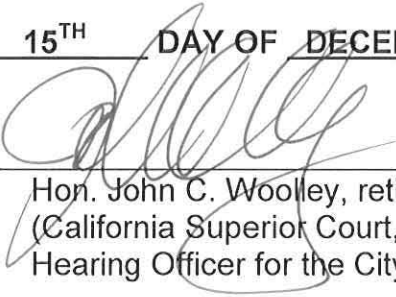
Section 1. The Hearing Officer of the City of Newport Beach hereby approves the requested Abatement Period Extension (PA2011-032), subject to the findings and considerations set forth above.

Section 2. The Abatement Period Extension for the property located at 1441 Superior Avenue, and legally described as Portion of Lot 819, First Addition to Newport Mesa Tract, is hereby extended and will expire on December 15, 2021, at which time all nonresidential use of the property shall cease or the building be demolished, unless an additional extension of the abatement period is granted; or an appropriate change in the Zoning District and the General Plan Land Use Designation are approved and adopted; or a change to the Zoning Regulations pertaining to nonconforming uses or their abatement are approved and adopted prior to that date.

Section 3. 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 City Clerk in accordance with the provisions of Title 20, Planning and Zoning, of the Newport Beach Municipal Code.

APPROVED AND ADOPTED THIS 15TH DAY OF DECEMBER 2011.

By:


Hon. John C. Woolley, retired Judge
(California Superior Court, Orange County)
Hearing Officer for the City of Newport Beach

ATTEST:


for City Clerk DEPUTY
CITY
CLERK



RESOLUTION NO. HO 2011- 008

**A RESOLUTION OF A HEARING OFFICER OF THE CITY
OF NEWPORT BEACH APPROVING THE ABATEMENT
EXTENSION PERIOD FOR THE PROPERTY LOCATED AT
1455 SUPERIOR AVENUE "G" (PA 2011-033)**

WHEREAS, Chapter 20.38.100 of the Newport Beach Municipal Code (NBMC) requires nonconforming nonresidential uses in residential zoning districts to be abated and terminated upon the expiration of time periods identified by the NBMC. Following the issuance of an Abatement Order, Chapter 20.38.100 provides that a property owner may request an extension of the abatement period in order, to amortize a property owner's investment in the property and avoid an unconstitutional taking of property; and

WHEREAS, an application was filed on behalf of The Rawlins Family Trust, the owner of property located at 1455 Superior Avenue "G", and legally described as Portion of Lot 818, First Addition to Newport Mesa Tract, requesting an extension of the abatement period specified by the NBMC Section 20.38.100. If granted, the extension will allow the continued operation of existing boat storage use to December 31, 2013. The property is located in the RM (2420) Zoning District, where such nonresidential uses are not permitted; and

WHEREAS, a public hearing was held on December 15, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the NBMC and other applicable laws. Evidence, both written and oral, was presented and considered at this meeting; and

WHEREAS, the hearing was presided over by Hon. John C. Woolley, retired Judge (California Superior Court, Orange County), Hearing Officer for the City of Newport Beach; and

WHEREAS, the findings and considerations of Section 20.38.100 (C.4(c)) of the NBMC and facts in support of the findings and considerations are as follows:

- 1. The length of the abatement period is not appropriate considering the owner's investment in the use;**

Facts in Support of Finding: The vacant lot is currently utilized as a boat storage facility with a lease term that will expire on August 31, 2013, including lease options. Staff recommends that the abatement extension to December 31, 2013 will accommodate the current lease term and will coincide with the lease term and boat storage facility on the adjacent parcel at 1455 Superior Avenue "J".

2. **The length of time the use was operating prior to the date of nonconformity justifies the extension of the abatement period beyond the code specified one year.**

Facts in Support of Finding: The property became nonconforming with the General Plan in 2006, 5 years ago, when the City Council adopted Resolution No. 2006-76 approving the “General Plan Update”. The existing use conformed to the Land Use Element of the General Plan for the prior 47 years; or was nonconforming and not subject to abatement. The use of the property for boat storage is a nonresidential use and therefore subject to abatement.

3. **The existing structure is not suitable for conversion to an alternate use.**

Facts in Support of Finding: There is no structure on this property and is therefore suitable for the construction of a new residential project or expansion of the adjacent skilled nursing facility or the adjacent assisted living facility.

4. **No harm to the public will result if the nonresidential use remains beyond the one year abatement period.**

Facts in Support of Finding: The property is located in an area that is occupied by other nonresidential uses; including office, medical office (across Superior Avenue) and a skilled nursing facility. It is anticipated that the continued boat storage use is not compatible with the adjacent residential uses that overlook the property. That abatement in consideration of the existing lease will eliminate the aesthetic impact on the neighboring residential units and protect the property owner from potential lawsuit that could be caused by abatement prior to expiration of the lease term. Additionally, as conditioned, the outdoor storage and hours of operation will be limited to boats and vehicles. All other storage items, including but not limited to parts and construction materials are to be removed within 45 days of this approval and hours of operation will limit noise impacts on the neighboring residential uses.

5. **The cost and feasibility of relocating the use to another site cannot be accommodated within the one-year abatement period.**

Facts in Support of Finding: The applicant indicates that the relocation of the present boat storage use would be costly since there is no other vacant land or parcel within the vicinity. Staff recommends extension of the abatement period to honor the existing lease obligations and that the boat storage and service use be abated after that. Since there are no structures or other physical improvements, the property owner's cost is minimal, with the exception of the loss of rental income.

WHEREAS, this activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines. It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and therefore it is not subject to CEQA.

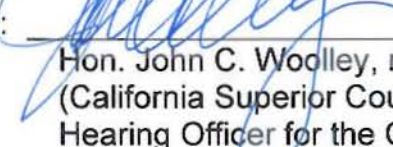
NOW THEREFORE, BE IT RESOLVED:

Section 1. The Hearing Officer of the City of Newport Beach hereby approves the requested Abatement Period Extension (PA2011-033), subject to the findings and considerations set forth above and subject to the conditions set forth in Exhibit A which is attached hereto and incorporated by reference.

Section 2. The Abatement Period Extension for the property located at 1455 Superior Avenue "G", and legally described as Portion of Lot 818, First Addition to Newport Mesa Tract, is hereby extended and will expire on December 31, 2013, at which time all nonresidential use of the property shall cease or the building be demolished, unless an additional extension of the abatement period is granted; or an appropriate change in the Zoning District and the General Plan Land Use Designation are approved and adopted; or a change to the Zoning Regulations pertaining to nonconforming uses or their abatement are approved and adopted prior to that date.

Section 3. 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 City Clerk in accordance with the provisions of Title 20, Planning and Zoning, of the Newport Beach Municipal Code.

APPROVED AND ADOPTED THIS 16TH **DAY OF** DECEMBER **2011.**

By: 
Hon. John C. Woolley, retired Judge
(California Superior Court, Orange County)
Hearing Officer for the City of Newport Beach

ATTEST:


Deputy
City
Clerk
City Clerk



EXHIBIT "A"

CONDITIONS OF APPROVAL

1. The Abatement Period Extension for the property located at 1455 Superior Avenue "G", and legally described as Portion of Lot 818, First Addition to Newport Mesa Tract, is hereby extended and will expire on December 31, 2013, at which time boat storage use of the property approved by this action shall cease.
2. That the outdoor storage shall be limited to boats and vehicles, and that all other storage items, including but not limited to parts and construction materials, shall be removed within 45 days of this approval to reduce the aesthetic impacts. The items to be removed shall be determined and subject to the discretion of the Community Development Director or appointed designee. This abatement extension approval does not authorize the use of the property as a commercial parking facility.
3. That the hours of operation of the boat storage facility shall be limited to between 8:00 a.m. to 8:00 p.m., daily; except that during the summer months (Daylight Savings Time), the closing hour shall be extended to 9:00 p.m.
4. This Abatement Period Extension may be modified or revoked by the Community Development Director should it be determined that the boat storage use 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.
5. The operator of the facility shall be responsible for the control of noise generated by the subject facility including, but not limited to, noise generated by employees and patrons, and mechanical equipment. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code.

	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
Location	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

6. 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 **Abatement Extension Application (PA2011-033)**, for the property located at **1455 Superior Avenue "G"**, and the determination that the project is exempt under the requirements of the California Environmental Quality Act. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.