



**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 April 13, 2012

**ZONING ADMINISTRATOR ACTIONS
APRIL 11, 2012**

Item 1: Nguyen Residence Parking Modification – Modification Permit No. MD2012-006
(PA2012-023)
129 24th Street

Action: Approved by Resolution No. ZA2012-017 Council District 1

**COMMUNITY DEVELOPMENT DIRECTOR
OR PLANNING DIVISION STAFF ACTIONS**

Item 2: Fountainhead Restaurant Inc., dba "Juliette" – Staff Approval No. SA2012-008
(PA2012-033)
1000 Bristol Street N, Suites 11 and 12

Action: Approved Council District 3

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. ZA2012-017

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MODIFICATION PERMIT NO. MD2012-006 FOR THE LOCATION OF REQUIRED PARKING LOCATED AT 129 24th STREET (PA2012-023)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Rod A. Jeheber on behalf of the property owner, with respect to property located at 129 24th Street, and legally described Lot 21, Block 24 of the Newport Beach City Tract requesting approval of a Modification Permit.
2. The applicant proposes to construct a new, single-family residence with one garage space and one carport space to satisfy the residential parking standard which requires two spaces within a garage.
3. The subject property is located within the Single-Unit Residential (R-1) Zoning District and the General Plan Land Use Element category is Single-Unit Residential Detached (RS-D).
4. The subject property is located within the coastal zone in the categorical exclusion zone. The Coastal Land Use Plan category is Single Unit Residential Detached - (20.0 - 20.9 DU/AC) (RSD-D).
5. A public hearing was held on April 11, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 3 (New Construction or Conversion of Small Structures).
2. Class 3 provides for the construction and location of new, small structures including one single-family residence in a residential zoning district.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

A. The requested modification will be compatible with existing development in the neighborhood.

Facts in Support of Finding:

1. The neighborhood is developed with single- and two-family residences with vehicular access from the alley.
2. The requested modification will allow the applicant to maintain vehicular access from the alley and provide two-car parking for the new single-family residence.
3. The proposed carport will be adjacent to the interior lot line and will not be visible from Balboa Boulevard.
4. As conditioned, the carport area will count towards the maximum floor area limit for the property to prevent an advantage by granting an alternative location for parking.

Finding:

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

Facts in Support of Finding:

1. The narrow lot dimensions present a practical difficulty and preclude the construction of a two-car garage with the required minimum clear interior width.
2. Although a two-car tandem garage is feasible, the required depth of 35 feet would result in a first floor that is constrained and unusually narrow.
3. Although granting the modification would allow deviation from the required parking standards, two usable parking spaces would be maintained for the single-family residence; thus, the purpose and intent of the Zoning Code is upheld.

Finding:

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

Facts in Support of Finding:

1. The buildable width of the lot narrows from 17 feet, 9 ½ inches to 14 feet, 2 inches. Section 20.40.090 (Parking Standards for Residential Uses) of the Zoning Code requires a two-car garage with a minimum clear interior width of 17 feet, 6 inches.

2. There is no feasible method of providing the minimum clear interior width without encroaching into a required side setback area. The granting of the modification will allow the applicant to provide the required parking in a manner that is least obtrusive to the adjacent neighbor and as seen from Balboa Boulevard.

Finding:

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

Facts in Support of Finding:

1. Section 20.52.050 (Modification Permits) of the Zoning Code specifies that a Modification Permit may be granted to allow relief from a development standard including deviations from the size, access, and/or location of parking spaces.
2. The granting of the Modification Permit allows the applicant to use one partially covered carport space in place of one enclosed garage space to satisfy the parking requirement for a single-family residence.
3. Although a two-car tandem garage is feasible for the property, its construction would create a first floor area that is constrained and unusually narrow.
4. In order to construct a two-car garage with the required clear interior width, the applicant would need to pursue a variance for encroachments into the required side setback. The encroachments would locate the garage walls either closer to the neighboring property or closer to Balboa Boulevard which could prove detrimental.

Finding

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

Fact in Support of Finding

1. The existing development on the property is a single-family residence and the proposed development is a single-family residence. As such, there is no change to the density or intensity.
2. The granting of the modification would provide relief from the residential parking requirement of a two-car garage, but would maintain the required two spaces and would preclude any detriment on nearby properties.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves PA2012-023 for MD2012-006, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 11th DAY OF APRIL, 2012.



Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. This approval shall expire unless exercised within 24 months from the approval date, as specified in Section 20.93.050 (A) of the Newport Beach Municipal Code. Prior to the expiration date of this approval, an extension may be approved in accordance with Section 20.93.050 (B) of the Newport Beach Municipal Code. Requests for an extension must be in writing.
3. The area of the covered carport shall be included in the square footage calculations and shall count towards the maximum floor area limitation of the property.
4. A copy of the resolution with conditions of approval shall be incorporated into the Building Division and field sets of plans prior to the issuance of building permits.
5. Prior to issuance of building permits, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Modification Permit file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11-inches by 17-inches. The plans shall accurately depict the elements approved by this Modification Permit and shall highlight the approved elements such that they are readily discernible from other elements of the plans.
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 Nguyen Residence Parking Mod including, but not limited to, the PA2012-023 for MD2012-006. 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.



COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION

3300 Newport Boulevard, Building C, Newport Beach, CA 92663
(949) 644-3200 Fax: (949) 644-3229
www.newportbeachca.gov

**COMMUNITY DEVELOPMENT DIRECTOR ACTION
LETTER**

Application No. Staff Approval No. SA2012-008 (PA2012-033)

Applicant Fountainhead Restaurant Inc., dba "Juliette"

Site Address 1000 Bristol Street N, Suites 11 and 12

Legal Description P Bk 81 Pg 43 Par 2

On **April 13, 2012**, the Community Development Director determined that the proposed alterations to an existing eating and drinking establishment are in substantial conformance with Use Permit No. 1838 (amended), which was granted in August 1993. This approval will allow the addition of a retail component to the existing restaurant by expansion into an adjoining tenant space. The property is located in the PC-11 (Newport Place Planned Community) Zoning District.

I. Project Description & Proposed Changes

Suite 11 is occupied by an existing full-service eating and drinking establishment with a Type 47 license issued by the Department of Alcoholic Beverage Control (ABC). The use permit allows a maximum net public area of 1,670 square feet, comprised of a 1,190-square-foot interior dining area, and a 480-square-foot outdoor dining area. Suite 12 is an existing take-out service restaurant that is retail in nature.

The applicant proposes to maintain the existing configuration of the floor area of Suite 11, with the exception of a portion of the dining area that is proposed to be converted to a bar/counter top for the service of food and beverages. The applicant also proposes to maintain the general configuration of the floor plans for Suite 12. The expansion area will be utilized for retail sales only, and dry storage and office space provided for the overall operations of the restaurant. No patron seating or dining is proposed or requested in this area. The only other physical changes will be doorway openings between the adjoining suites to allow passage by patrons and employees. The proposed hours of operations are 8:30 a.m. to 9:00 p.m. Sunday through Thursday, and 8:30 a.m. to 10:00 p.m. Friday and Saturday.

The proposed alterations to the floor plans would provide the existing restaurant with an adjoining retail space, but would not result in an increase to the net public area of the restaurant.

II. Background

Suite 11: Use Permit No. 1838 was approved by the Planning Commission in August 1977 to allow the establishment of a restaurant facility with incidental on-sale beer and wine. A minimum of one parking space for each 40 square feet of net public area was required. The staff report indicated the hours of operation would be from 11:00 a.m. to 9:00 p.m. daily, although no conditions of approval were adopted establishing the hours.

In August 1991, the City signed an ABC zoning affidavit for an upgrade of licensed privileges from the Type 41 License (beer and wine) to allow a Type 47 License (full liquor), with a note stating “no changes in the operational characteristics.”

In August 1993, the Planning Commission approved an amendment to Use Permit No. 1838 to allow an expansion of the existing restaurant with the addition of a 480-square-foot outdoor dining area adjacent to the existing restaurant facility comprised of 1,190 square feet of net public area (resulting in a total of 1,670 square feet of net public area). The Planning Commission waived the requirement for the provision of additional parking spaces, and established a condition of approval requiring a minimum of 30 parking spaces for the restaurant facility at all times. The hours of operations discussed in this staff report were 11:00 a.m. to 11:00 p.m. daily, and the applicant indicated the restaurant “may stay open later on Friday and Saturday nights.” However, no conditions of approval were adopted establishing the limited hours of operations.

Suite 12: Use Permit No. UP2010-030 was approved by the Planning Director in November 2010 to allow the conversion of an existing 1,160-gross-square-foot retail space to a take-out service, limited restaurant. The restaurant offers meals prepared and packaged off-site for take-out and limited on-site consumption, and provides nutritional counseling. The approved hours of operations are 8:00 a.m. to 10:00 p.m. daily. A total of five parking spaces are required, consistent with the parking requirement for retail or office use of one space for each 250 square feet of gross floor area.

III. Findings

Pursuant to Section 20.54.070, the Community Development Director may authorize minor changes to an approved site plan, architecture, or the nature of the approved use, without a public hearing, and waive the requirement for a new use permit application. This staff approval is based on the following findings and facts in support of the findings.

- a. *The changes are consistent with all applicable provisions of this Zoning Code.*
- b. *The changes do not involve a feature of the project that was a basis for or subject of findings or exemptions in a negative declaration or Environmental Impact Report for the project.*
- c. *The changes do not involve a feature of the project that was specifically addressed or was the subject of a condition(s) of approval for the project or that*

was a specific consideration by the applicable review authority in the project approval.

- d. *The changes do not result in an expansion or change in operational characteristics of the use.*

Facts in Support of the Findings:

- Restaurants are a permitted use in General Commercial Site 3 of the Newport Place Planned Community District, subject to approval of a use permit. Both suites have received approval of a use permit. The proposed changes are consistent with the operational characteristics approved by Use Permit No. 1838 (amended) and Use Permit No. UP2010-030.
- The combining of the spaces with doorway openings to access the retail component in conjunction with an existing restaurant do not result in a substantial change because the net public area will not increase, and additional off-street parking will not be required. Adequate off-street parking is provided (30 spaces, or one space for every 40 square feet of net public area required for the dining portion, and 5 spaces required for the retail, storage and office portion), as required by Use Permit No. 1838 (amended) and Use Permit No. UP2010-030.
- The hours of operation are not identified by conditions of approval in Use Permit No. 1838 (amended). However, the hours proposed by the applicant are similar with the operating hours historically maintained by the existing restaurant operator, and do not represent a "late hours operation" as defined by the Zoning Code.
- The previously approved projects were determined to be categorically exempt from the requirements of the California Environmental Quality Act under Class 1, Existing Facilities, and were not subject to a negative declaration or Environment Impact Report.
- The proposed minor changes do not involve a feature that was specifically addressed in staff reports or minutes prepared for Use Permit No. 1838 (amended) or the staff action report issued for Use Permit No. UP2010-030.
- The change to a portion of the dining area to a bar/counter top is minor in nature, and does not represent a substantial change in the operational characteristics of the existing restaurant, as full menu service will be provided at the bar/counter top at all times.
- Although the retail, storage and office space of Suite 12 will have internal access to the restaurant, the use of the space will remain retail in nature, as reviewed and approved by Use Permit No. UP2010-030.

IV. Determination

This staff approval has been reviewed and the determination has been made that the proposed changes to the existing eating and drinking establishment are in substantial conformance with the original approval actions.

V. Conditions

Upon completion of the proposed alterations to the suites, the approval granted by Use Permit No. UP2010-030 is superseded by this approval, and will no longer be valid. All previous conditions of approval of Use Permit No. 1838 (amended) shall remain in full force and effect, with the addition of the following conditions:

1. The hours of operation shall be limited to 8:00 a.m. through 11:00 p.m., daily. Any increase in the hours of operation shall be subject to the approval of a use permit.
2. The space in Suite 12 shall be utilized for retail, storage and office purposes only; no patron seating or dining shall be permitted in this area.
3. No on-sale alcoholic beverage service shall be permitted in the retail portion of the restaurant facility, unless otherwise approved by the ABC.
4. A total of five off-street parking spaces shall be provided for the retail, office and storage space in Suite 12, and will be included in the parking requirement for the expanded facility.
5. The Community Development Director may add to or modify conditions to this staff approval, or revoke this staff approval upon determination that the operations, which is the subject of this staff approval, causes injury, or is detrimental to the health, safety, piece, conform or general welfare of the community.
6. This staff approval shall expire unless exercised within 24 months from the end of the appeal period, in accordance with Section 20.54.060 of the Newport Beach Municipal Code.
7. To the fullest extent permitted by law, the 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 staff approval of the "Juliette" eating and drinking establishment including, but not limited to, Staff Approval SA2012-008 (PA2012-033). 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.

APPEAL PERIOD: An appeal may be filed with the Director of Community Development or the 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.

On behalf of Kimberly Brandt, AICP
Community Development Director

By: 
Janet Johnson Brown
Associate Planner

GR-JG/jjb

Attachments: Vicinity Map
Applicant's Project Description
Project Plans

VICINITY MAP



Staff Approval No. SA2012-008
PA2012-033

1000 Bristol Street N, Suites 11 & 12



Planning Permit Application

Community Development Department
Planning Division
3300 Newport Boulevard, Newport Beach, CA 92663
(949)644-3204 Telephone | (949)644-3229 Facsimile
www.newportbeachca.gov

PA2012-033- for SA2012-008
1000 Bristol Street N, Suite 11 & 12
Fountainhead Restaurant Inc., dba Juliette

1. Check Permits Requested:

- | | | |
|--|--|---|
| <input type="checkbox"/> Coastal Residential Development | <input type="checkbox"/> Modification Permit | <input type="checkbox"/> Tract Map |
| <input type="checkbox"/> Condominium Conversion | <input type="checkbox"/> Off-Site Parking Agreement | <input type="checkbox"/> Traffic Study |
| <input type="checkbox"/> Comprehensive Sign Program | <input type="checkbox"/> Planned Community Development Plan | <input type="checkbox"/> Use Permit - <input type="checkbox"/> Minor <input type="checkbox"/> Conditional |
| <input type="checkbox"/> Development Agreement | <input type="checkbox"/> Planned Development Permit | <input type="checkbox"/> Variance |
| <input type="checkbox"/> Development Plan | <input type="checkbox"/> Site Development Review - <input type="checkbox"/> Major <input type="checkbox"/> Minor | <input type="checkbox"/> Amendment - <input type="checkbox"/> Code <input type="checkbox"/> PC <input type="checkbox"/> GP <input type="checkbox"/> LCP |
| <input type="checkbox"/> Lot Line Adjustment | <input type="checkbox"/> Parcel Map | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Lot Merger | <input checked="" type="checkbox"/> Staff Approval | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Limited Term Permit - | | |
| <input type="checkbox"/> Seasonal | | |
| <input type="checkbox"/> Less than 90 day | | |
| <input type="checkbox"/> Greater than 90 days | | |

2. Project Address(es)/Assessor's Parcel No(s): 1000 Bristol St. N. Ste. 11 & 12

3. Project Description and Justification (Attach additional sheets if necessary): To connect adjoining space Site 12 (currently Fit Food and already Health Dept. approved) to current Fit Food Traditions by Pascal space, Suite 11. No additional seating will be added. see Addendum #1

4. Applicant Name(s): Fountainhead Restaurant, Inc. DBA: Juliette

Address: 1000 Bristol St. N. Ste. 11 & 12

City/State/Zip: Newport Beach, CA 92660

Phone: 714.280.5404 Fax: _____ Email: john@hughes4homes.us

5. Contact: John Hughes

Address: 1919 N. Heliotrope Dr.

City/State/Zip: Santa Ana, CA 92706

Phone: 714.280.5404 Fax: _____ Email: john@hughes4homes.us

6. Property Owner Name(s): L.S.W. Ltd

Address: 11603 Emerald Bay

City/State/Zip: Laguna Beach, CA 92651

Phone: 949-497-5407 Fax: 949-49376-2197 Email: Kimberly@wolosanco.com

7. Property Owner's Affidavit*:

(I) (We) L.S.W. Ltd. depose and say that (I am) (we are) the owner(s) of the property (ies) involved in this application. (I) (We) further certify, under penalty of perjury, that the foregoing statements and answers herein contained and the information herewith submitted are in all respects true and correct to the best of (my) (our) knowledge and belief.

Signature(s): Alan Wolosanco Date: 3/20/12

*May be signed by the lessee or by an authorized agent if written authorization from the owner of record is filed concurrently with the application. Please note, the owner(s)' signature for Parcel/Tract Map and Lot Line Adjustment Application must be notarized.

Addendum #1

Referencing the Tradition by Pascal(Suite 11) space being connected to the adjoining Fit Food Space(Suite 12) located at:

1000 Bristol Street North
Newport Beach, CA 92660

The only additions planned for the Fit Food space, are openings to connect the two spaces. There are no plans to do anything but paint, wood finishes and some shelving to the current retail space. Everything, is already Health Department for the space next door and we have no plans to change any of it.

The space satisfies the required areas for the Health Department that are currently lacking at the Tradition by Pascal space. These include:

- An ADA restroom
- A required mop sink room
- A desperately needed office space
- A front counseling room will be utilized as a locked liquor storage area.
- A dry storage area large enough to meet the 48 linear feet of dry storage required by the Health Department. Only dry storage will be kept in this area. There will be no food items stored in the new space.

The front retail area, will remain retail only. There will be no additional seating allowed in this area.

Regards,

John Hughes
CEO/Fountainhead Restaurant, Inc
DBA "Juliette"
1000 Bristol St. N., Ste. 11
Newport Beach, CA 92660

PA2012-033- for SA2012-008
1000 Bristol Street N, Suite 11 & 12
Fountainhead Restaurant Inc., dba Juliette

Addendum #2

We request to retain the outdoor seating space allowing for food and alcohol service approved 8/1993 use permit#1838 for the 480 square feet of patio space at the former Tradition by Pascal space at 1000 Bristol St. North Ste. 11, Newport Beach, CA 92660. Below is the diagram of the approved space.



