



**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 June 15, 2012

**ZONING ADMINISTRATOR ACTIONS
JUNE 13, 2012**

- Item 1: Carnation Lot Line Adjustment No. LA2011-002 (PA2011-194)
412 & 412 ½ Carnation Avenue
Action: Approved by Resolution No. ZA2012-020 Council District 6
- Item 2: 717 Larkspur Avenue Parcel Map - Parcel Map No. NP2012-003 (PA2012-029)
717 Larkspur Avenue
Action: Approved by Resolution No. ZA2012-021 Council District 6
- Item 3: Whole Foods Market Minor Use Permit - Minor Use Permit No. UP2012-006
(PA2012-050)
415 Newport Center Drive
Action: Approved by Resolution No. ZA2012-022 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.

Brian Haas, NBPD (*ABC License*)
Sgt. Chuck Freeman, NBPD (*ABC License*)

RESOLUTION NO. ZA2012-020

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING LOT LINE ADJUSTMENT NO. LA2011-002 TO INCORPORATE 1,009-SQUARE-FOOT PORTION OF AN ABANDONED CARNATION AVENUE RIGHT-OF-WAY INTO THE ADJACENT R-2 PROPERTY LOCATED AT 412 AND 412 ½ CARNATION AVENUE (PA2011-194).

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Kurt Christiansen, with respect to property located at 412 and 412 ½ Carnation Avenue, and legally described as Parcel 2 Block 331 LLA2009-006 requesting approval of a lot line adjustment.
2. The applicant proposes a lot line adjustment for the purpose of incorporating an approximate 1,009-square-foot portion of abandoned Carnation Avenue right-of-way into the adjacent Two-Unit Residential (R-2) property. The lot line adjustment is required by the City Council approved Agreement for Purchase and Sale of Real Property of said portion of vacated right-of-way.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (R-2).
4. The subject property is located within the coastal zone in the Categorical Exclusion Zone. The Coastal Land Use Plan category is Two Unit Residential (RT-D)
5. A public hearing was held on May 23, 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. The public hearing was continued to the June 13, 2012, Zoning Administrator meeting at the request of the applicant.
6. A public hearing was held on June 13, 2012 in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. 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 Section 15305, of the California

Environmental Quality Act (CEQA) Guidelines - Class 5 (Minor Alterations in Land Use Limitations).

2. This project qualifies for a Class 5 exemption because it consists of minor alterations in land use limitations (lot line adjustments) in areas with an average slope of less than 20%, which do not result in any changes in land use or density.

SECTION 3. REQUIRED FINDINGS.

Lot Line Adjustment

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

Finding:

- A. *That the establishment, maintenance or operation of the use of the property or building will not, under the circumstances of this particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City for the following reasons.*

Facts in Support of Finding:

1. The two-unit residential use of the property is not changing and is consistent with the two-unit residential (R-2) zone.
2. With the additional area added to the lot, the lot remains consistent with the development pattern of the neighborhood.
3. Public improvements and infrastructure currently exist within the neighborhood; and the lot line adjustment, in and of itself, will not result in the need for additional improvements and/or facilities.

Finding:

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

Facts in Support of Finding:

1. A portion of the vacated right-of-way is being added to the adjacent 412 and 412 ½ Carnation Avenue parcel. Therefore, no additional parcels will result from the lot line adjustment.

Finding:

C. The parcel resulting from the lot line adjustment complies with all applicable zoning regulations and there will be no change in the land use, density, or intensity on the property.

Facts in Support of Finding:

1. The lot line adjustment is adding 1,009 square feet of vacated right-of-way and is not creating a new lot. The resulting lot size of approximately 5,791 square feet is consistent with the size of lots in the vicinity.
2. The lot line adjustment is consistent with applicable zoning regulations and the resultant parcel is not more nonconforming as to lot width, depth and area than the parcel that existed prior to the lot line adjustment.
3. The existing and allowed density of two-units does not change with the lot line adjustment.
4. There is no change in intensity as the added area can't be used to increase buildable area.

Finding:

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

Facts in Support of Finding:

1. The portion of the vacated right-of-way is adjacent to Carnation Avenue. Access to the subject parcel and to any adjacent parcels is from the alley which is not affected by the lot line adjustment.

Finding:

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

Facts in Support of Finding:

1. The portion of the vacated right-of-way is adjacent Carnation Avenue and therefore, the final configuration of the parcel will not result in the loss of direct vehicular access from the alley.

Finding:

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

Facts in Support of Finding:

1. The lot is not being reoriented and the final configuration of the parcels does not result in a requirement for revised setbacks.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Lot Line Adjustment LA2011-002, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective ten days after the adoption of this Resolution unless within such time an appeal is filed with the Director of Community Development in accordance with the provisions of Title 19 Subdivisions, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 13th DAY OF JUNE, 2012.



Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL****PUBLIC WORKS**

1. Property corners shall be monumented by a licensed Land Surveyor or registered Civil Engineer authorized to perform surveying by the State Board of Civil Engineers and Land Surveyors (Pre-1982 with numbers prior to 33,966). Surveyor or Civil Engineer to submit a "Corner Record" or "Record of Survey" to the County Surveyor.
2. The westerly property line shall be located 5 feet back from the existing Carnation Avenue right-of-way line to accommodate the existing 5-foot wide sidewalk located on the Carnation Avenue frontage.
3. The existing private improvements permitted through the encroachment agreement are allowed to remain.
4. No habitable structures or garages shall be allowed to be constructed on the vacated right-of-way area and this area shall be regulated as a front yard pursuant to the Zoning Code.
5. The square footage of the vacated right-of-way (approximately 1,009 square feet) cannot be used to increase the buildable area allowed on the subject parcel.
6. The City makes no guarantees or warrantee related to the stability of the slope on the subject parcel.
7. All Public Works Department plan check fees shall be paid prior to review of the lot line adjustment and grant deeds.
8. Prior to recordation of the lot line adjustment, grant deeds indicating the changes in titles of ownership should be submitted to the Public Works Department for review and approval.
9. The lot line adjustment and grant deeds reviewed and approved by the Public Works Department should be filed concurrently with the County Recorder and County Assessor's Offices.
10. Applicant shall comply with all the requirements identified in the Purchase and Sale of Real Property Agreement.

PLANNING

11. The 15-foot front yard setback shall be measured from the front lot line as legally described by Lot Line Adjustment No. LA2009-006, not the front lot line resulting from this approval.
12. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the **Carnation Lot Line Adjustment** including, but not limited to, **Lot Line Adjustment No. LA2011-002 (PA2011-194)**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition

RESOLUTION NO. ZA2012-021

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2012-003 FOR A PARCEL MAP FOR TWO-UNIT CONDOMINIUM PURPOSES (PA2012-029).

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Paul Craft on behalf of 717 Larkspur Ave, LLC, with respect to property located at 717 Larkspur Avenue, and legally described as Lot 17, Block 737 of the Corona del Mar Subdivision requesting approval of a Tentative Parcel Map.
2. No waivers of Title 19 (Subdivisions) development standards are proposed. An existing duplex was demolished and a new duplex is being constructed and will be condominiums with the tentative parcel map.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (RT).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on June 13, 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. The project has been reviewed, and it qualifies for a categorical exemption pursuant to Section 15315 of the California Environmental Quality Act under Class 15 (Minor Land Divisions) of the Implementing Guidelines of the California Environmental Quality Act.
2. The Class 15 exemption allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have an average slope greater than 20 percent. The proposed parcel map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

SECTION 3. REQUIRED FINDINGS.

The Zoning Administrator determined in this case that the proposed parcel map is consistent with the legislative intent of Title 20 of the Newport Beach Municipal Code and is approved based on the following findings per Section 19.12.070 of Title 19:

Finding

- A. *That the proposed map and the design or improvements of the subdivision are consistent with the General Plan and any applicable specific plan, and with applicable provisions of the Subdivision Map Act and this Subdivision Code.*

Facts in Support of Finding

1. The proposed Parcel Map is for two-unit condominium purposes. An existing duplex was demolished and is being replaced with a new duplex. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the General Plan Land Use Designation "Two Unit Residential".

Finding

- B. *That the site is physically suitable for the type and density of development.*

Facts in Support of Finding

1. The lot is regular in shape, has a slope of less than 20 percent, and is suitable for two-unit development.

Finding

- C. *That the design of the subdivision or the proposed improvements will not cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision-making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.*

Facts in Support of Finding

1. This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 15 (Minor Land Divisions) which allows the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local

standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have an average slope greater than 20 percent. The proposed parcel map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

Finding

- D. *That the design of the subdivision or the type of improvements is not likely to cause serious public health problems.*

Facts in Support of Finding

1. The proposed Parcel Map is for residential condominium purposes. All construction for the project will comply with all Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per Section 19.28.010 of the Municipal Code and Section 66411 of the Subdivision Map Act. All ordinances of the City and all Conditions of Approval will be complied with.

Finding

- E. *That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the decision-making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to easements previously acquired by the public. This finding shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.*

Facts in Support of Finding

1. The design of the development will not conflict with any easements acquired by the public at large for access through or use of property within the proposed development as there are no public easements that are located on the property.

Finding

- F. *That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.*

Facts in Support of Finding

1. The property is not subject to the Williamson Act since the subject property is not designated as an agricultural preserve and is less than 100 acres.

Finding

- G. *That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (a) there is an adopted specific plan for the area to be included within the land project; and (b) the decision-making body finds that the proposed land project is consistent with the specific plan for the area.*

Facts in Support of Finding

1. The property is not a "land project" as defined in Section 11000.5 of the California Business and Professions Code.
2. The project is not located within a specific plan area.

Finding

- H. *That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.*

Facts in Support of Finding

1. The proposed Parcel Map and improvements are subject to Title 24 of the California Building Code that requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Division enforces Title 24 compliance through the plan check and inspection process.

Finding

- I. *That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City's residents and available fiscal and environmental resources.*

Facts in Support of Finding

1. The allowed residential density on the site will remain the same, which allows two units in the R-2 Zoning District. Therefore, the parcel map for condominium purposes will not affect the City in meeting its regional housing need.

Finding

- J. *That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.*

Facts in Support of Finding

1. Wastewater discharge into the existing sewer system has been designed to comply with the Regional Water Quality Control Board (RWQCB) requirements.

Finding

- K. *For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of Chapter Three of the Coastal Act.*

Facts in Support of Finding

1. The subject property is not located within the Coastal Zone boundaries.

Finding

- L. *That public improvements will be required of the Applicant per the Municipal Code and the Subdivision Map Act.*

Facts in Support of Finding

1. The project has been conditioned to require public improvements including reconstructing existing broken or otherwise damaged sidewalks, curbs, and gutters.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Parcel Map No. NP2012-003, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective ten days after the adoption of this Resolution unless within such time an appeal is filed with the Director of Community Development in accordance with the provisions of Title 19 Subdivisions, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 13th DAY OF JUNE, 2012.



Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. A parcel Map shall be recorded. The Map shall be prepared on the California coordinate system (NAD88). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**
2. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (one inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
3. All improvements shall be constructed as required by Ordinance and the Public Works Department.
4. All existing overhead utilities shall be undergrounded in accordance with Section 19.28.090 of the Municipal Code.
5. All above ground improvements shall stay at a minimum 5-foot clear of the alley setback.
6. All existing private, non-standard improvements within the public right-of-way and/or extensions of private, non-standard improvements into the public right-of-way fronting the development site shall be removed.
7. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover. Water meter and the sewer cleanout shall be located within the Public right-of-way.
8. An encroachment permit is required for all work activities within the public right-of-way.
9. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.
10. All on-site drainage shall comply with the latest City Water Quality requirements.

11. A Public Works Department encroachment permit inspection is required before the Building Division permit final can be issued. At the time of Public Works Department inspection, if any of the existing public improvements surrounding the site is damaged, new concrete sidewalk, curb and gutter, and alley/street pavement will be required and 100% paid by the owner. Said determination and the extent of the repair work shall be made at the discretion of the Public Works Inspector.
12. Each dwelling unit shall be served with individual gas and electrical service connection and shall maintain separate meters for the utilities.
13. Two-car parking, including one enclosed garage space, shall be provided on site for each dwelling unit per requirements of the Zoning Code.
14. Disruption caused by construction work along roadways and by movement of construction vehicles shall be minimized by proper use of traffic control equipment and flagmen. Traffic control and transportation of equipment and materials shall be conducted in accordance with state and local requirements.
15. In compliance with the requirements of Chapter 9.04, Section 901.4.4, of the Newport Beach Municipal Code, approved street numbers or addresses shall be placed on all new and existing buildings in such a location that is plainly visible and legible from the street or road fronting the subject property. Said numbers shall be of non-combustible materials, shall contrast with the background, and shall be either internally or externally illuminated to be visible at night. Numbers shall be no less than four inches in height with a one-inch wide stroke. The Planning Division Plan Check designee shall verify the installation of the approved street number or addresses during the plan check process for the new or remodeled structure.
16. Subsequent to recordation of the Parcel Map, the applicant shall apply for a building permit for description change of the subject project development from "duplex" to "condominium." **The development will not be condominiums until this permit is finalized.** The building permit for the new construction shall not be finalized until after recordation of the Parcel Map.
17. 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 Larkspur Avenue Parcel Map including, but not limited to, the PA2012-029. 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.

18. This Parcel Map shall expire if the map has not been recorded within three years of the date of approval, unless an extension is granted by the Planning Director in accordance with the provisions of Section 19.16 of the Newport Beach Municipal Code.

RESOLUTION NO. ZA2012-022

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2012-006 TO ADD ON-SALE ALCOHOL SALES TO A MARKET LOCATED AT 415 NEWPORT CENTER DRIVE (PA2012-050).

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Valerie Sacks of Liquor License Specialists on behalf of Mrs. Gooch's Natural Food Markets, Inc. dba Whole Foods Market with respect to property located at 415 Newport Center Drive, and legally described as Parcel 2 of Lot Line Adjustment No. LA2008-004 requesting approval of a Minor Use Permit.
2. The applicant proposes to allow the establishment of a Type 47 (On-Sale General for Bona Fide Public Eating Place) Alcoholic Beverage Control (ABC) license for use in two designated dining areas within the new Whole Foods Market.
3. The subject property is located within the Fashion Island subarea of the PC-56 (North Newport Center Planned Community) Zoning District and the General Plan Land Use Element category is CR (Regional Commercial).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on June 13, 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 Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

This action is covered by the general rule that the California Environmental Quality Act (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 adding alcohol to an allowed restaurant will have a significant effect on the environment. Therefore, this activity is not subject to CEQA.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.48.030 (Alcohol Sales) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a minor 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

1. 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 patrons eating in designated dining areas within the market. Operational conditions of approval recommended by the Police Department relative to the sale of alcohol will ensure compatibility with the surrounding uses and minimize alcohol related impacts.
2. Due to the high concentration of commercial land uses, the calls for service and number of arrests are greater than adjacent residential Reporting Districts; however, the Newport Beach Police Department does not consider the number significant given the type of development within this Reporting District.
3. Fashion Island does not abut sensitive land uses and is separated from other uses by parking lots, roadways and other commercial uses. The proposed use is not located in close proximity to residential districts, day care centers, park and recreation facilities, places of religious assembly, and schools. In accordance with the Section 20.48.030 (Alcohol Sales) of the Newport Beach Municipal, the Police Department has reviewed the minor use permit application and has added conditions to ensure that the design and security of the restaurant areas within the market are properly addressed.
4. The provision of alcohol sales to the designated areas within the market will not substantially change the operational characteristics. The use authorized by this permit is not a bar, tavern, cocktail lounge, nightclub or an establishment where live entertainment or dancing is provided. The City has experienced land use conflicts, nuisance issues, and issues requiring police intervention with these types of activities in the past. Prohibition of these uses or activities will minimize potential land use conflicts, nuisances and police intervention.
5. There are several restaurants in the Fashion Island sub-area, which provide alcohol service as an amenity to visitors. The number of alcohol licenses and the type of alcohol service proposed is typical and expected to be found at a regional shopping center such as Fashion Island.
6. The market and included dining areas are permitted in the Fashion Island sub-area of the North Newport Center Planned Community. The on-site consumption of alcohol provides a public convenience by allowing the alcohol in addition to food items offered for sale.

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 minor use permit 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 property is designated “Regional Commercial” (CR) by the Land Use Element of the General Plan. The retail market use is consistent with that designation and is integrated as part of a retail multi-tenant commercial center.
2. The market is within the limits of the cumulative floor area allocated for the Fashion Island portion of the North Newport Center Planned Community.
3. The sit-down food and alcohol components of the market are compatible with the land uses found in Fashion Island.
4. The subject property is not 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 PC-56 (North Newport Center Planned Community, Fashion Island Sub-Area) zoning district allows restaurant uses by right and alcohol service upon the approval of a minor use permit by the Zoning Administrator. Fashion Island is intended to be a vibrant regional retail and entertainment center and a day/evening destination with a wide variety of businesses that serve visitors, residents and employees of the area. The proposed alcohol service at the designated dining areas within the market is compatible with other uses within Fashion Island.
2. The proposed conditions of approval ensure that all conflicts with surrounding land uses are minimized to the greatest extent possible or eliminated.

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 service of alcohol will be restricted to the hours between 11:00 a.m. and 10:00 p.m., daily.
2. There are no residential properties in the immediate vicinity of the market.

3. The operational conditions of approval recommended by the Police Department relative to the sale of alcohol 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 so that the business remains a market with accessory dining and does not become a bar or tavern. The project has been conditioned so that no dancing or live entertainment will be permitted on the premises.
4. The market is required to comply with the California Building Code and requirements of the Alcoholic Beverage Control Department to ensure the safety and welfare of customers and employees within the market.

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; and*

Facts in Support of Finding

1. The project site is located within an existing retail, market building. The dining areas within the market are designed and developed for food and beverage service and/or casual sit-down areas to consume food purchased at the market.
2. Adequate public and emergency vehicle access, public services, and utilities are provided within the existing infrastructure.
3. The tenant improvements 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

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

Facts in Support of Finding

1. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute nuisance areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the market.
2. The proposed alcohol service is provided as a public convenience to market patrons utilizing the designated dining areas within the market. The service of alcohol will

provide an economic opportunity to maintain a successful business at this location in a way which best serves the quality of life for the surrounding community.

3. As conditioned, the owners, managers and employees selling alcohol shall 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. UP2012-006, 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 Director of Community Development in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 13th DAY OF JUNE, 2012.



Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL**

1. The development shall be in substantial conformance with the approved site plan and floor plan 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 Zoning Administrator upon a finding of failure to comply with the conditions set forth in Chapter 20.82 of the Municipal Code, other applicable conditions and regulations governing alcohol service, or 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 as they relate to alcohol sales, unless determined to be in substantial conformance by the Community Development Director, shall require an amendment to this minor use permit or the processing of a new use permit.
4. Minor Use Permit No. UP2012-006 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.
5. Should the alcohol 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 30 days of transfer of the alcohol 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.
6. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
7. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this minor use permit.
8. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be a Type 47 (On-Sale General for Bona Fide Eating Place) in conjunction with the market as the principal use of the facility.
9. The hours of operation for sales, service and consumption of alcohol are limited from 11:00 a.m. to 10:00 p.m., daily. Any increase in the hours of operation shall be subject

- to the approval of an amendment to this minor use permit and may be subject to approval by the Zoning Administrator or Planning Commission.
10. The alcoholic beverage sales for the purpose of on-site consumptions 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.
 11. 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.
 12. The area outside of the retail market shall be maintained in a clean and orderly manner. 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. The operator of the retail market use shall be responsible for the clean-up of all on-site and off-site trash, garbage and litter generated by the use.
 13. All trash shall be stored within dumpsters inside the mall buildings.
 14. 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 Whole Foods Market Minor Use Permit including, but not limited to, Minor Use Permit No. UP2012-006 (PA2012-050). 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

15. This approval does not permit the premises to operate as a bar, tavern, cocktail lounge, or nightclub as defined by the Newport Beach Municipal Code.
16. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the license.
17. 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 areas to the market area.
18. 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.
19. A Live Entertainment Permit issued by the Revenue Division, in accordance with procedures set forth in Chapter 5 of the Municipal Code, shall be required to allow live entertainment as incidental and accessory to the primary uses of the facility as a restaurant/retail market.
20. Dancing shall be prohibited, unless otherwise approved in conjunction with a Special Events Permit.
21. No games or contests requiring or involving the consumption beer and wine shall be permitted.
22. All owners, managers and employees selling alcohol 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.
23. 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 alcohol 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.