



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

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION

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

SUBJECT: Report of actions taken by the Zoning Administrator, and/or Planning Division staff for the week ending December 14, 2012

**ZONING ADMINISTRATOR ACTIONS
DECEMBER 12, 2012**

- Item 1: Coffee Bean & Tea Leaf Minor Use Permit No. UP2012-027 (PA2012-153)
1128 Irvine Avenue
- Action: Approved by Resolution No. ZA2012-046 Council District 3
- Item 2: Reusing Lot Line Adjustment No. LA2012-006 (PA2012-124)
609 Vista Bonita
- Action: Withdrawn by Applicant Council District 4
- Item 3: Thai Body Works- Minor Permit No. UP2012-023 (PA2012-136)
3617 E. Coast Highway, Suite B
- Action: Approved by Resolution No. ZA2012-047 Council District 6

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

Wendy Joe, Community Services Officer NBPD *Massage Therapy*)
Sgt. Chuck Freeman, NBPD (*Massage Therapy - ABC License*)

RESOLUTION NO. ZA2012-046

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING MINOR USE PERMIT NO. UP2012-027 FOR COFFEE BEAN & TEA LEAF, A FOOD SERVICE, EATING AND DRINKING ESTABLISHMENT LOCATED AT 1128 IRVINE AVENUE (PA2012-153)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Andrew Eisenberger of Curt Pringle & Associates on behalf of International Coffee Bean & Tea Leaf, LLC, with respect to property located at 1128 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 allow a 1,200-square-foot eating and drinking establishment in the former Starbucks Coffee tenant space within the Westcliff Plaza Shopping Center. The proposed establishment includes interior seating for 24 patrons. Late hours and alcohol service are not proposed as part of this application.
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 12, 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 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 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), which is designed and operated as a neighborhood-serving shopping center.
2. The General Plan land use designation for the 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.
3. The proposed food service, eating and drinking establishment is consistent with the General Plan Neighborhood Commercial (CN) land use designation, as it is intended to serve a limited range of food and beverage products primarily to the residents of the adjacent neighborhoods.
4. 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 and the conditions of approval will ensure that the use is compatible with the adjacent residential areas.

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 560 square feet and has seating for a maximum of 24 customers. The establishment is located within the Westcliff Plaza shopping center. 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 14 parking spaces will be required ($560/40 = 14$). 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 the former Starbucks Coffee tenant 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 food beverages for sale and will provide seating for a maximum of 24 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 conditions of approval limit the hours of operation for the establishment is from 5:30 a.m. to 11:00 p.m., daily. These hours will be compatible with the other uses in the shopping center and are not considered to be late by definition of the Zoning Code.
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 the former Starbucks Coffee tenant 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. UP2012-027, 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.
3. This resolution supersedes Specialty Food Permit No. MD3981, which upon vesting of the rights authorized by this minor use permit shall become null and void.

PASSED, APPROVED AND ADOPTED THIS 12TH DAY OF DECEMBER, 2012.



Patrick J. Alford
Acting Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL**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 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. Minor Use Permit No. UP2012-027 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 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.
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 Use Permit.
8. The indoor net public area shall be limited to a maximum of 560 square feet and 24 seats.
9. 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 14 parking spaces.
10. A copy of this resolution shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
11. The hours of operation for the eating and drinking establishment are limited from 5:30 a.m. to 11:00 p.m., daily.

12. Live entertainment and dancing shall be prohibited as a part of the regular operation.
13. 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.
14. 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.
15. 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.
16. No outside paging system shall be utilized in conjunction with this establishment.
17. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes. 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.
18. 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.
19. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14 including all future amendments (including Water Quality related requirements).
20. 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.

21. 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.
22. 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 **Coffee Bean & Tea Leaf MUP** including, but not limited to **Minor Use Permit No. UP2012-027 (PA2012-153)** 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

23. 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.
24. 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.
25. 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.
26. The construction plans must meet all applicable State Disabilities Access requirements.
27. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
28. Complete sets of drawings including architectural, electrical, mechanical, and plumbing plans shall be required at plan check.
29. 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.

30. All exits shall remain free of obstructions and available for ingress and egress at all times.

Revenue Department Conditions

31. 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. ZA2012-047

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, APPROVING APPLICATION NO. UP2012-023 FOR A MINOR USE PERMIT TO ESTABLISH THE NUMBER OF PARKING SPACES REQUIRED FOR A PROPOSED 1,191-SQUARE-FOOT-MASSAGE FACILITY WITHIN AN EXISTING COMMERCIAL SUITE LOCATED AT 3617 EAST COAST HIGHWAY (PA2012-136).

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Three Naree Co. Inc dba Thai Body Works with respect to property located at 3617 East Coast Highway, Suite B and legally described as Lot 1 and Lot 2, Block AA, Tract 323 requesting approval of a Minor Use Permit.
2. A minor use permit to establish the number of parking spaces required for a proposed 1,191 square-foot massage facility in a suite previously occupied by a dry cleaning and shoe repair business within a commercial building located in Corona del Mar. Zoning Code Section 20.40 (Off-Street Parking) permits the establishment of the parking requirement for a massage facility with approval of a use permit. The proposed operation will consist of four therapy rooms. Four massage technicians, as independent contractors, certified by the California Massage Therapy Council (CAMTC), will provide the massage services. Each individual technician will schedule their client appointments and greet walk-in clients. A maximum of four massage technicians will be present at any one time. The proposed hours of operation will be 10:00 a.m. to 9:00 p.m., 7 days per week.
3. The subject property is located within the Commercial Corridor (CC) Zoning District and the General Plan Land Use Element category is Commercial Corridor (CC).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Corridor Commercial (CC-B).
5. A public hearing was held on December 12, 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 1 (Existing Facilities).
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 a currently vacant suite, previously occupied by a dry cleaner and shoe repair business, to a massage facility. The existing space will be remodeled with approval of a tenant improvement building permit. There is no expansion of the physical building and no additional parking will be required.

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 such 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 CC (Corridor Commercial), which is intended to provide a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity. The proposed massage use is a service use and is consistent with the land uses permitted within this land use designation. The location within a commercial building located at the corner of East Coast Highway and Orchid Avenue in Corona del Mar will provide residents and visitors within the neighborhood and vicinity an additional neighborhood service.
2. The subject property is not part of a specific plan area.

Finding:

B. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.

Facts in Support of Finding:

1. The proposed use is located in the CC (Commercial Corridor) Zoning District of the Newport Zoning Code. The intent of this district is to provide for a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity. The proposed massage use is consistent with the land uses permitted within this zoning district. The location within a commercial building at the corner of East Coast Highway and Orchid Avenue in Corona del Mar will provide residents and visitors within the neighborhood and vicinity an additional neighborhood service.
2. Zoning Code Chapter 20.40 (Off-Street Parking), Table 3-10 (Off-Street Parking Requirements) allows establishment of the parking requirement for a massage facility with approval of a conditional use permit. Pursuant to Zoning Code Section 20.50.020 (Authority for Land Use and Zoning Decisions), the Community Development Director has interpreted the code and has determined that approval of a minor use permit is appropriate, since the Zoning Code (Section 20.20.020: Commercial Zoning Districts Land Uses and Permit Requirements) states that approval of a minor use permit is required for a massage facility.
3. The Zoning Code states that approval of a minor use permit is required to allow a massage facility in the CC (Commercial Corridor) Zoning District. As a result of the passage of California Bill SB731, the City does not require discretionary approval for the new massage use, because all massage services are provided by technicians certified by the California Massage Therapy Council (CAMTC). Although the purpose is to establish the parking requirement for the massage use, conditions of approval that establish the operational characteristics of the massage use are included in Exhibit A.
4. The proposed use will be located within an existing commercial building. The commercial site is considered legal nonconforming (parking). Parking for the current uses on the site is calculated using a required ratio of one space per 250 gross square feet. Eighteen spaces are required ($4,316/250 = 18$ spaces) and 17 spaces are existing.
5. Pursuant to Section 20.38.060 (Nonconforming Parking), a nonconforming use in a nonresidential zoning district may be changed to a new use allowed in that zoning district without providing additional parking, provided no intensification or enlargement (e.g., increase in floor area, or lot area) occurs, and the new use requires a parking rate of no more than one space per 250 square feet of gross building area.
6. Although classified as a separate land use, a massage use is a service use with similar operating characteristics to other service uses, such as barber and beauty shops and tanning salons. The subject suite was formerly occupied by a dry cleaning and shoe repair business, which is also classified as a service use.

Service uses have a required parking ratio of one space per 250 square feet of gross floor area. Establishing the parking rate for the proposed massage use at one space per 250 gross square feet is reasonable given that there is space for four clients, it is a service use with similar operating characteristics as those of other service uses, and there is a high level of pedestrian activity in the Corona del Mar village.

7. The proposed project complies with the requirements of Section 20.38.060 (Nonconforming Parking) because the square footage of the existing suite will not be increased; the operational characteristics of the massage use as a service use will require the same number of parking spaces required for the previous occupant of the subject suite and for other uses with similar operating characteristics that are classified as service uses ($1,191/250 = 5$ spaces); and the new use will require a parking rate of no more than one space per 250 square feet of gross building area.

Finding:

C. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.

Facts in Support of Finding:

1. The proposed project involves interior alterations to convert an existing suite previously occupied by a dry cleaning and shoe repair business. The 17 existing parking spaces on site will be maintained.
2. The proposed operation will consist of four therapy rooms. Four massage technicians, as independent contractors, certified by the California Massage Therapy Council (CAMTC), will provide the massage services. Each individual technician will schedule their client appointments and greet walk-in clients. No designated receptionist will be provided. A maximum of four technicians will be present at any one time. The proposed hours of operation will be 10:00 a.m. to 9:00 p.m., 7 days per week.
3. The proposed massage use is a service use that will be complementary to the other uses in the commercial building, which include a hair salon, retail sales, and a take-out restaurant. Its operating characteristics are similar to other service uses such as barber and beauty shops, and tanning salons.
4. The proposed addition of a massage facility at this location does not present any conflicts with uses within the surrounding neighborhood and vicinity. It will provide a beneficial service for residents of the neighborhood and visitors to the area and will not require the provision of additional parking spaces on the site.
5. The proposed massage use will be located within a commercial building on a site located at the corner of East Coast Highway and Orchid Avenue in Corona

del Mar. It will serve clients by appointment and walk-in customers. Due to its corner location, opportunities for on-street parking will be available along Orchid Avenue and East Coast Highway in addition to the parking spaces provided on the site.

Finding:

D. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.

Facts in Support of Finding:

1. The proposed project will be located in a suite within an existing commercial building and will involve minor interior alterations of the suite. The design, size, location, and operating characteristics of the use are compatible with the existing uses on the site and within the surrounding area.
2. Adequate public and emergency vehicle access, public services, and utilities are provided on-site and are accessed from either Orchid Avenue, East Coast Highway, or the alley at the rear of the site.
3. The tenant improvements to the project site will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

Finding:

E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, 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 establish the permitted hours of operation, the maximum number of rooms allowed for massage services in the suite, and the maximum number of massage technicians allowed on site at any one time. These conditions will ensure that the proposed massage use will be compatible with the uses on site and within the surrounding neighborhood. These restrictions will also ensure that the proposed operation will not create an intensification of the previous use that would require additional parking spaces on the site.
2. Establishing the parking rate for the proposed massage use at one space per 250 gross square feet is reasonable given that there is space for four clients, it is a

service use with similar operating characteristics as those of other service uses, and there is a high level of pedestrian activity in the Corona del Mar village.

3. The proposed massage facility 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 without increasing the number of parking spaces required on the site.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves UP2012-023, 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 12th DAY OF DECEMBER, 2012.



Patrick J. Alford
Acting Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan and floor plans stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. The hours of operation for the massage facility shall be 10:00 a.m. to 9:00 p.m., 7 days per week.
3. The number of massage technicians operating at one time shall be limited to four, and each technician shall be certified by the California Massage Therapy Council (CAMTC). A maximum of four therapy rooms shall be permitted to provide the massage services.
4. Use Permit No. 2012-023 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
5. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
6. 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.
7. This Use Permit may be modified or revoked by the Zoning Administrator should they determine that the proposed 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.
8. Any change in operational characteristics, 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.
9. All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of Chapter 20.42 of the Newport Beach Municipal Code.
10. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.

11. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
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 **Thai Body Works** including, but not limited to **Minor Use Permit No. UP2012-023**. 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.