



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

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION

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

SUBJECT: Report of actions taken by the Zoning Administrator and/or Planning Division staff for the week ending March 1, 2013

**ZONING ADMINISTRATOR ACTIONS
FEBRUARY 28, 2013**

- Item 1: 4590 MacArthur Sign Modification - Modification Permit No. MD2013-001 (PA2013-002)
4590 MacArthur Boulevard
Action: Approved by Resolution No. ZA2013-007 Council District 3
- Item 2: Roll-It Sushi and Teriyaki Minor Use Permit No. UP2013-004 (PA2013-019)
4221 MacArthur Boulevard (B-5)e
Action: Approved by Resolution No. ZA2013-008 Council District 3
- Item 3: Fig & Olive Minor Use Permit No. UP2012-029 (PA2012-163)
151 Newport Center Drive
Action: Approved by Resolution No. ZA2013-009 Council District 5
- Item 4: Island Cinemas Monument Sign - Modification Permit No. MD2012-019 (PA2012-175)
101 Newport Center Drive
Action: Approved by Resolution No. ZA2013-010 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.

Det. Brian Haas, NBPD (*ABC License*)
Sgt. Chuck Freeman, NBPD (*Massage Therapy - ABC License*)

RESOLUTION NO. ZA2013-007

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MODIFICATION PERMIT NO. MD2013-001 FOR A PERMANENT WALL SIGN ON THE SECOND FLOOR FASCIA OF A MULTI-TENANT BUILDING LOCATED AT 4590 MACARTHUR BOULEVARD (PA2013-002)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Carey Sign Corporation, with respect to property located at 4590 MacArthur Boulevard, and legally described as Parcel 1 of Resubdivision Number 567 requesting approval of a Modification Permit.
2. The applicant requests approval for installation of a permanent tenant wall sign on the second floor fascia of a multi-tenancy office building where the Koll Center Planned Community text specifies that ground floor business uses shall be limited to placement of wall signs on the ground floor fascia and that placement above the ground floor is prohibited.
3. That the proposed sign will be consistent with the wall sign location approved in conjunction with Modification Permit No. 3963 on January 28, 1992, with the exception of the sign area, which was previously approved at 11 square feet. Since the new sign is significantly larger (approximately 30 square feet), a new approval of a Modification Permit is required.
4. The subject business office use is not located on the ground floor.
5. The subject property is located within Commercial Site A of the Koll Center Planned Community (PC 15) Zoning District, and the General Plan Land Use Element category is Mixed-Use Horizontal (MU-H2).
6. The subject property is not located within the coastal zone.
7. A public hearing was held on February 28, 2013 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.

1. The project has been reviewed, and qualifies for a Class 11 (Accessory Structures) categorical exemption pursuant to Title 14 of the California Code of Regulations (Section

15311, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act).

2. The Class 11 exemption allows construction, or placement of minor structures accessory to existing commercial, industrial, or institutional facilities, including but not limited to on-premise signs.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.050 (Modification Permits) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

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

Facts in Support of Finding:

- A-1. The neighborhood is situated within the Koll Center Planned Community and is developed with commercial properties.
- A-2. The requested modification will allow the applicant to install a permanent wall sign on the second floor fascia of the South elevation of an existing building fronting MacArthur Boulevard.
- A-3. The location on the upper fascia (second floor) is consistent with tenant signage within the Zoning District and in the general vicinity.
- A-4. The proposed sign area does not modify or exceed any other sign requirements established by the Koll Center Planned Community text.

Finding:

- B. *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:

- B-1. The sloped landscaping adjacent to the subject property presents a hindrance by precluding optimal visibility if signage is placed on the ground floor fascia.
- B-2. The sloped landscaping traverses the length of the lot creating a physical obstruction for identification by vehicles travelling northbound on MacArthur.

Finding:

- C. *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:

- C-1. Although the sign is visible if placed on the ground floor, line of sight from MacArthur Boulevard is impaired due to the lower elevation of the existing building relative to the right-of-way, and by the location of landscape trees which line the street frontage.
- C-2. The general purpose and intent of the Zoning Code as it pertains to signs is to provide each sign user with an opportunity for adequate identification while guarding against the excessive and confusing proliferation of signs.
- C-3. A strict application of the Koll Center Planned Community sign standards will result in a less than optimal identification as a result of unique physical and practical difficulties created by building orientation and vertical landscape elements.
- C-4. There is no feasible method to providing maximum visibility of the sign if placed on the ground floor fascia without imposing detriment to the surrounding neighborhood and mature landscaping.

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:

- D-1. Section 20.52.050 (Modification Permits) of the Zoning Code specifies that a Modification Permit may be granted to increase the allowed height, number, and area of signs.
- D-2. The granting of the Modification Permit would allow the applicant to place a wall sign on the second floor fascia instead of on the code required ground floor fascia.
- D-3. Although placement of the wall sign on the ground floor fascia is possible, it would hinder optimal visibility from MacArthur Boulevard.
- D-4. In order to improve visibility of the sign on the ground floor fascia, the existing building would need to be elevated, or the landscape berm and vertical plantings reduced.

D-5. Granting the modification would provide less detriment to the surrounding owners and occupants, the neighborhood, or the general public relative to any physical changes imposed on the site.

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.

Facts in Support of Finding:

E-1. The proposed change to allow signage on the second floor fascia is negligible as it only affects the regulations for sign location, and does not result in a change to the sign area or the number of signs allowed.

F-2. The signage as proposed will neither change the density or intensity of the existing commercial use nor affect the flow of light or air to adjoining residential properties.

E-3. The granting of the modification to provide relief is consistent with past approvals for placement of a sign above the ground floor fascia that have demonstrated no detriment to the public health, safety, or welfare of occupants of the property, nearby properties, the neighborhood, or the City.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Modification Permit No. MD2013-001, 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 28th DAY OF FEBRUARY, 2013.

By:



Brenda Wisneski, AICP, Deputy Director

EXHIBIT "A"**CONDITIONS OF APPROVAL**

1. The development shall be in substantial conformance with the approved plans stamped and dated with the date of this approval (Except as modified by applicable conditions of approval).
2. All proposed signs shall be in conformance with the approved Sign Standards for the project site and provisions of the Koll Center Planned Community text (Except as modified by applicable conditions of approval).
3. The sign approved in conjunction with this application shall be limited in overall area to 30 square feet, including future changes in tenant name. Modification Permit No. 3963 shall be rendered null and void upon the effective date of this approval.
4. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
5. A building permit shall be obtained prior to commencement of the construction.
6. This approval was based on the particulars of the individual case and does not in and of itself or in combination with other approvals in the vicinity or Citywide constitute a precedent for future approvals or decisions.
7. This Modification Permit may be modified or revoked by the City Council or Planning Commission 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.
8. 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.
9. 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 4590 MacArthur Boulevard Sign Modification including, but not limited to, Modification Permit No. MD2013-001 (PA2013-002). 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. ZA2013-008

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2013-004 FOR ROLL-IT SUSHI AND TERIYAKI, A FOOD SERVICE, EATING AND DRINKING ESTABLISHMENT WITH NO LATE HOURS LOCATED AT 4221 MACARTHUR BOULEVARD, SUITE B-5 (PA2013-019)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by James Kozono on behalf of Roll-It Sushi and Teriyaki, with respect to property located at 4221 MacArthur Boulevard, Suite B-5, and legally described as Parcel 1 as shown on a map filed in Book 45, Page 23 of Parcel Maps, in the Office of the County Recorder of Orange County, requesting approval of a minor use permit.
2. The applicant proposes a minor use permit to allow a 1,325-square-foot food service, eating and drinking establishment (Roll-It Sushi and Teriyaki) within a 12,351-square-foot commercial center (Newport Place Center). The proposed establishment includes 620 square feet of interior net public area and seating for 26 patrons. The recommended hours of operation are from 7:00 a.m. to 11:00 p.m., daily. No alcohol service is proposed as part of this application.
3. The subject property is located within General Commercial Site 8 of the PC-11 (Newport Place Planned Community) Zoning District and the General Plan Land Use Element category is MU-H2 (Mixed-Use Horizontal).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on February 28, 2013 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 Structures).
2. The proposed project involves a food service, eating and drinking establishment within a recently constructed restaurant tenant space. Therefore, the use qualifies for a categorical exemption under Class 1.

SECTION 3. REQUIRED FINDINGS.

Minor Use Permit

In accordance with Section 20.52.020.F (Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a use permit are set forth:

Finding

A. *The use is consistent with the General Plan and any applicable specific plan:*

Facts in Support of Finding

1. The General Plan land use designation for this site is MU-H2 (Mixed-Use Horizontal). The MU-H2 designation is intended to provide for a horizontal intermixing of uses that may include regional commercial office, multi-family residential, vertical mixed-use buildings, industrial, hotel rooms, and ancillary neighborhood commercial uses. The food service, restaurant can be expected to be found in this area and is complementary to the surrounding uses allowed by the MU-H2 land use designation.
2. Eating and drinking establishments are common in the vicinity along MacArthur Boulevard and are frequented by residents, visitors, and workers. The size, location, and operational characteristics of the establishment are compatible with the MU-H2 land use designation.
3. The subject property is not part of a specific plan area.

Finding

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

Facts in Support of Finding

1. The site is located within General Commercial Site 8 of the PC-11 (Newport Place Planned Community) Zoning District. The PC-11 zoning district is intended to provide for commercial and light industrial use because of its central location, ideal topography, availability to four freeways, accessibility to two railroads, and its relation to the Orange County Airport. The proposed food service, eating and drinking establishment is a neighborhood commercial use located on a commercially zoned property that is designed to serve the surrounding commercial and light industrial land uses. A food service, eating and drinking establishment is permitted within the PC-11 Zoning District with the approval of a minor use permit.
2. The proposed use will comply with all applicable development and parking standards including those specific to the food service, eating and drinking use classification. The 81 parking spaces provided for the shopping center are adequate for the mix of tenants.

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. Although the requested hours of operation are from 11:00 a.m. to 9:00 p.m., the recommended hours of operation are from 7:00 a.m. and 11:00 p.m., to allow for greater flexibility. There are no residential properties within the area. The 11:00 p.m. closing hour is compatible with the adjacent commercial uses.
2. Roll-It Sushi and Teriyaki will occupy a vacant tenant space at the southwest corner of the new shopping center, which was constructed earlier in 2012. The shopping center site design was previously reviewed and approved.
3. The project includes conditions of approval to ensure that potential conflicts are minimized to the greatest extent possible. The restaurant is oriented toward the parking lot and is not near any residential properties. The applicant is also required to control trash and litter around the subject property.
4. The surrounding area contains various business office, retail, and visitor commercial uses including restaurants and take-out eating establishments. The proposed establishment is compatible with the existing and permitted uses within the area, which are predominantly office uses at this time.
5. A restaurant at this size and scale will provide a convenient option to office workers and those passing through the area.

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 parking lot areas have been reviewed and approved by the City Traffic Engineer and provides adequate circulation and parking spaces for patrons.
2. This site has been reviewed by the Fire Department to ensure adequate public and emergency vehicle access is provided. Utilities have been provided within the renovated shopping center in compliance with all applicable requirements.
3. The project site is located within an existing retail building and the tenant space is designed and developed to accommodate a food service, eating and drinking establishment.

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

Finding

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

Facts in Support of Finding

1. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.
2. The food service, eating and drinking establishment will serve the surrounding business community. The proposed establishment will provide dining services to workers within the surrounding area and visitors.
3. The applicant is required to install a grease interceptor, 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.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2013-004 (PA2013-019), 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 28th DAY OF FEBRUARY, 2013.



Brenda Wisneski, AICP, Deputy Director

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 it be 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 Minor Use Permit or the processing of a new use permit.
4. Minor Use Permit No. UP2013-004 (PA2013-019) 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. A copy of the conditions of approval shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
9. 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 Use 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 Use Permit and shall highlight the approved elements such that they are readily discernible from other elements of the plans.
10. The establishment shall provide a maximum net public area of 620 square feet and 26 seats.

11. 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 16 parking spaces.
12. The hours of operation for food service, eating and drinking establishment are limited from 7:00 a.m. to 11:00 p.m., daily.
13. Live entertainment, dancing, and alcohol service shall be prohibited as a part of the regular business operation.
14. 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 Director and Public Works Director in conjunction with the approval of an alternate drainage plan.
15. 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). The proprietor shall actively control any noise generated by the patrons of the facility.
16. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
17. 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 Roll-It Sushi and Teriyaki including, but not limited to Use Permit No. UP2013-004 (PA2013-019) 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 and Fire Department Conditions

18. Public sanitation facilities shall be available to the general public (patrons) during regular business hours of the operation, unless otherwise approved by the Building Department.
19. 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 entrance, path of travel, restroom, dining room seating, and fire protection requirements as specified by the California Building Code and shall be subject to review and approval by the Building Department. Complete sets of drawings including architectural, electrical, mechanical, and plumbing plans shall be required at plan check.
20. The construction plans must meet all applicable State Disabilities Access requirements. An accessible path of travel and accessible bathroom shall be in compliance with CBC 2010 Chapter 11.
21. Detectable warnings shall be provided as required by access compliance.
22. Plumbing fixtures shall comply with the California Plumbing Code, 2010.
23. Grease interceptors shall be installed on all fixtures in the restaurant where grease may be introduced into the drainage systems, unless otherwise approved by the Building Division.
24. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
25. Prior to the issuance of building permits, a Type I hood shall be required if any cooking is conducted that produces grease laden vapors per C.F.C. Section 609.2, if required by the Fire Department.
26. Prior to the issuance of building permits, a wet chemical extinguishing system complying with UL300 will be required if cooking is conducted that produces grease laden vapors per C.F.C. Section 904, if required by the Fire Department.
27. Prior to the issuance of building permits, a portable fire extinguisher shall be provided and maintained per C.F.C. Section 904.11.5. A 2A 10BC shall be required for the serving area, if required by the Fire Department. A fire extinguisher with a class K rating shall be provided where a Type I hood is required and provided with a fire extinguishing system.
28. 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.
29. Prior to the issuance of building permits, an occupant load analysis shall be provided as required by the CBC for the purpose of existing or exit analysis.
30. Prior to issuance of building permits, an egress or exit analysis from the tenant space shall be provided. 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. ZA2013-009

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2012-029 TO ALLOW A TYPE 47 (ON SALE GENERAL) ALCOHOLIC BEVERAGE CONTROL LICENSE AT A NEW FOOD SERVICE, EATING AND DRINKING ESTABLISHMENT LOCATED AT 151 NEWPORT CENTER DRIVE (PA2012-163)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Bob Lisle, representing the Irvine Company, with respect to property located at 151 Newport Center Drive, and legally described as Parcel 2 of Lot Line Adjustment No. LA2012-005, recorded September 11, 2012 as Instrument No. 2012000528643 of official records, in the office of the County Recorder of the County of Orange, requesting approval of a minor use permit.
2. The applicant requests a minor use permit to allow a Type 47 (On Sale General) Alcoholic Beverage Control (ABC) license for Fig & Olive, a food service, eating and drinking establishment with late hours (after 11:00 p.m.), live entertainment, and an outdoor dining patio. The restaurant is under construction and will be located in Fashion Island at the site formerly occupied by Coco's, which was operated as a restaurant with alcohol beverage sales. The restaurant will be 9,299 gross square feet with a 2,293 square foot outdoor patio area. The hours of operation will be from 9:00 a.m. to 2:00 a.m., daily. Live entertainment in the form of live music during brunch hours between 9:00 a.m. and 3:00 p.m., Saturday and Sunday is requested. The recommended hours of operation for live entertainment during the evening hours are until 1:00 a.m., daily, with no other restrictions regarding the hours or type of live entertainment. Due to the late hours of operation (after 11:00 p.m.), approval of an Operator's License by the Newport Beach Police Department will be required.
3. The subject property is located within the Fashion Island Sub-Area 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 February 28, 2013 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 proposed project involves the addition of alcoholic beverages at a recently constructed restaurant with live entertainment and an outdoor dining patio. Therefore, both the interior use and outdoor dining patio qualify for a categorical exemption under Class 1.

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 use permit are set forth:

Finding

- A. *The use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales of the Zoning Code).*

Facts in Support of Finding

In finding that the proposed use is consistent with Section 20.48.030 (Alcohol Sales) of the Zoning Code, the following criteria must be considered:

- i. *The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.*
 1. The proposed establishment is located within Reporting District 39, wherein the number of crimes is higher than adjacent Reporting Districts and the City. RD 43, 44, and 47 have a lower number of crimes as they are primarily residential with few commercial uses. Due to the high concentration of commercial land uses in Fashion Island, the crime rate and shoplifting rate is 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.
- ii. *The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*
 1. Due to the high concentration of commercial land uses, the calls for service and number of arrests are greater than adjacent residential Reporting Districts. The Police Department does not consider the rate high because of the concentration of restaurants and commercial uses within Fashion Island and the surrounding North Newport Center. The Newport Beach Police Department has not previously reported any calls for service to the subject property since the proposed use is part of a new development project.

- iii. The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.*
1. The shopping center does not abut sensitive land uses and is separated from other uses by parking lots, roadways and other commercial uses. Residential uses are permitted in the northern sections of the PC-56 (North Newport Center Planned Community) Zoning District within Blocks 500, 600, 800, and San Joaquin Plaza. The proposed use is not located in close proximity to these residential districts, day care centers, park and recreation facilities, places of religious assembly, and schools.
- iv. The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.*
1. Muldoon's Irish Pub is located at 202 Newport Center Drive to the south of the project site at the intersection of Anacapa and Newport Center Drive. Muldoon's is authorized to operate until 2:00 a.m. and provides live entertainment, dancing, and Type 47 (On Sale General) and Type 68 (Portable Bar) alcohol licenses. Off-sale alcohol sales are located in the vicinity at Whole Foods, at 461 Newport Center Drive, within Fashion Island. Additionally, there are many comparable restaurant establishments with the Fashion Island Shopping Center. These include other pad restaurant tenants such as Roy's Hawaiian Fusion, Fleming's Steak House, and True Food Kitchen. The Type 47 (On Sale, General) alcohol license requested is the same as those obtained for said establishments and there is no evidence suggesting these uses have been detrimental to the neighborhood. However, Fig & Olive is the only location with late hours after 12:00 midnight within Fashion Island. While the proposed hours of operation are later, an adequate security plan per the Police Department is in place for the Fashion Island Shopping Center and conditions of approval are proposed to adequately manage the late hour component of the proposed restaurant.
- v. Whether or not the proposed amendment will resolve any current objectionable conditions*
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 customers dining at the restaurant. Operational conditions of approval relative to the sale of alcoholic beverages will help ensure compatibility with the surrounding uses and minimize alcohol related impacts.
 2. The restaurant use will be located within a shopping center designated to include such development. The Regional Commercial (CR) designation of the General Plan allows eating and drinking establishments. The service and consumption of alcohol at the proposed restaurant, pursuant to a Type 47 Alcoholic Beverage Control license under the conditions imposed by this Minor Use Permit that it will be operated and

maintained, complies with the provisions of the Zoning Code and the North Newport Center Planned Community District Regulations.

3. The restaurant pad is adjacent to a highly-traveled commercial area that is occupied by a mixture of office and retail uses. It is anticipated that the establishment will serve visitors and employees of the nearby businesses who stop and eat within the North Newport Center area. Adding alcohol service to the menu will compliment the food service and provide for the convenience of customers.
4. The proposed restaurant is located within a new restaurant pad building currently under construction and is designed as a restaurant that includes on-site service and consumption of alcoholic beverages.

Minor Use Permit

In accordance with Section 20.52.020.F (Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a 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 Land Use Element of the General Plan designates the project site as Regional Commercial (CR), which is intended to provide retail, entertainment, service, and supporting uses that serve local and regional residents. The proposed restaurant with alcoholic beverage sales and live entertainment is a use that serves local and regional residents and is consistent with land uses in the CR land use designation.

Finding

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

Facts in Support of Finding

1. The project is located in the Fashion Island Sub-Area of the PC-56 (North Newport Center Planned Community) Zoning District. Fashion Island is intended to be a regional retail and entertainment center and a day/evening destination with a wide variety of uses that will serve visitors, residents, and employees of the area. The restaurant with alcoholic beverage sales and live entertainment is a commercial use that serves visitors, residents, and employees in the area and, therefore, is consistent with the purposes of the North Newport Center Planned Community District for the Fashion Island Sub-Area.

2. Eating and Drinking Establishments are permitted uses within the Fashion Island Sub-Area of the North Newport Center Planned Community Zoning District. Pursuant to the Planned Community Text, live entertainment falls beneath the definition of "Commercial Recreation and Entertainment" which is a permitted use within the Fashion Island subarea. Pursuant to the Planned Community Text, the on-premise sale of alcohol in conjunction with an eating and drinking establishment requires a minor use permit.
3. The proposed outdoor dining area and the restaurant area are within the limits of the cumulative floor area allocated for Fashion Island.

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 Fashion Island Sub-Area permits a range of retail, dining, and commercial entertainment uses within the PC-56 (North Newport Center Planned Community) Zoning District. While the proposed establishment provides a component of late night dining services similar to a lounge, the use is compatible with surrounding permitted commercial uses in the vicinity and there are no sensitive land uses located nearby.
2. The proposed hours of operation are 9:00 a.m. to 2:00 a.m., daily. While the proposed hours of operation for Fig & Olive are later than the hours for other restaurants within Fashion Island, an adequate security plan is in place for the Fashion Island Shopping Center and conditions of approval are proposed to adequately manage the late hour component of the proposed restaurant.
3. Due to the late hours of operation (after 11:00 p.m.), approval of an Operator's License by the Newport Beach Police Department will be required. A copy of the Fashion Island Security Plan will be provided as part of the operator license process for the proposed business. An operator license required pursuant to NBMC Chapter 5.25 may be subject to additional and/or more restrictive conditions to regulate and control potential nuisances associated with the operation of the restaurant. The operator license will help ensure compatibility of the proposed business with the surrounding uses in the vicinity.
4. Live entertainment in the form of live music is requested during brunch hours between 9:00 a.m. and 3:00 p.m., Saturday and Sunday. The recommended hours of operation for live entertainment during the evening hours are until 1:00 a.m., daily, to encourage patrons to leave in compliance with the 2:00 a.m. closing hour.
5. The on-site consumption of alcoholic beverages will be incidental to the restaurant use. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food

during the same period, per the conditions of approval. Alcoholic beverage service will be under the supervision of LEAD-trained employees.

Finding

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

Facts in Support of Finding

1. The Fashion Island shopping center provides adequate parking and circulation within the surface parking lots and parking structures on site.
2. This site has been reviewed by the Fire Department to ensure adequate public and emergency vehicle access is provided. Utilities are provided with all applicable requirements.
3. The site has historically been developed and used as a restaurant location with alcohol service and the new building under construction is intended for the same use. The tenant space is designed and developed for an eating and drinking establishment.
4. 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

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 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 food service, eating and drinking establishment with alcohol service will serve visitors and the surrounding business community. The proposed establishment will provide alcohol service as a public convenience to visitors and workers within the surrounding area.

3. Fashion Island management has historically provided efficient on-site security and cooperates with the Newport Beach Police Department. The provision of an operator license will further enable the Police Department to regulate the operation of the proposed business.
4. The applicant is required to install a grease interceptor, 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.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2012-029 (PA2012-163), 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.
3. This resolution supersedes Use Permit No. UP1860, which upon vesting of the rights authorized by Minor Use Permit No. UP2012-029 (PA2012-163), shall become null and void.

PASSED, APPROVED AND ADOPTED THIS 28th DAY OF FEBRUARY, 2013.



Brenda Wisneski, AICP, Deputy Director

EXHIBIT "A"**CONDITIONS OF APPROVAL****Planning Division Conditions**

1. This approval supersedes Use Permit No. UP1860.
2. 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.)
3. Alcohol service shall be limited to a Type 47 (On Sale General) Alcoholic Beverage Control License.
4. The hours of operation shall be limited to between 9:00 a.m. to 2:00 a.m., daily.
5. Live entertainment shall be permitted at the subject property from 11:00 a.m. to 1:00 a.m., daily. There shall be no live entertainment allowed on the premises without first obtaining a Live Entertainment Permit from the City. Prior to the issuance of building permits for the change of occupancy, the applicant shall obtain a Live Entertainment Permit from the Revenue Division.
6. The operator as well as any future operators of the restaurant shall obtain an Operator License pursuant to Chapter 5.25 of the Municipal Code to ensure the business is operated in a safe manner. The Operator License may be subject to additional and/or more restrictive conditions to regulate and control potential late-hour nuisances associated with the operation of the theater.
7. Prior to the issuance of building permits, Fair Share Traffic Fees shall be paid for any additional gross floor area associated with the restaurant and mezzanine in accordance with Chapter 15.38 of the Newport Beach Municipal Code. The applicant shall be credited for square footage identified in the restaurant pad shell building under Plan Check No. 1365-2012 and the remaining balance shall be charged to the applicant.
8. Prior to the issuance of building permits, San Joaquin Transportation Corridor Fees shall be paid for any additional gross floor area associated with the restaurant and mezzanine. The applicant shall be credited for square footage identified in the restaurant pad shell building under Plan Check No. 1365-2012 and the remaining balance shall be charged to the applicant.
9. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Newport Beach Municipal Code, unless the Zoning Administrator first approves an amended minor use permit. This Minor Use Permit shall be terminated if the operation is no longer maintained as a "bona fide public eating place" as defined by the California Department of Alcoholic Beverage Control.

10. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
11. 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.
12. A Special Event Permit is required for any event or promotional activity outside the normal operational characteristics of this restaurant business that would attract large crowds, 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.
13. There shall be no dancing allowed on the premises.
14. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.
15. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
16. All owners, managers, and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The establishment shall comply with the requirements of this section within 180 days of the issuance of the certificate of occupancy. Records of each owner's, manager's, and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.
17. The operator of the restaurant facility shall be responsible for the control of noise generated by the subject facility. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code.
18. All mechanical equipment shall be screened from view of adjacent properties and adjacent public streets, and shall be sound attenuated in accordance with Chapter 10.26 of the Municipal Code, Community Noise Control.

19. 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.
20. 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).
21. The operator of the food service use shall be responsible for the clean-up of all on-site and off-site trash, garbage and litter generated by the use.
22. Storage outside of the building shall be prohibited, with the exception of the required trash container enclosure.
23. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter, and debris from the premises and on all abutting sidewalks within 20 feet of the premises. Graffiti shall be removed within 48 hours of written notice from the City.
24. The alcoholic beverage outlet operator shall take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, and areas surrounding the alcoholic beverage outlet and adjacent properties, if directly related to the patrons of the subject alcoholic beverage outlet.
25. All proposed signs shall be in conformance with the provisions of the PC-56 (North Newport Center Planned Community), Chapter 20.42 (Sign Standards) of the Newport Beach Municipal Code, or an approved Comprehensive Sign Program for the project site.
26. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this permit.
27. The Zoning Administrator may add to or modify conditions of approval to this Minor Use Permit, upon a determination that the operation which is subject of this Minor Use Permit causes injury, or is detrimental to the health, safety, peace, morals, comfort, or general welfare of the community.
28. Any changes in operational characteristics, hours of operation, expansion in area, or modification to the floor plan, shall require an amendment to this Minor Use Permit, unless otherwise approved by the Planning Division.

29. Should the business, subject to the Minor Use Permit conditioned herein, be sold or otherwise come under different ownership or a change in operators, any future owners, operators, or tenants shall be notified of the conditions of this approval by either the current business owner, property owner, or the leasing agent.
30. This Minor Use Permit shall expire unless exercised within twenty-four months from the date of approval as specified in Section 20.91.50 of the Newport Beach Municipal Code.
31. 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 Fig & Olive Minor Use Permit including, but not limited to, the Minor Use Permit No. UP2012-029 (PA2012-163). 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

32. 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.
33. A covered wash-out area (36 inches wide by 36 inches deep by 6 feet high) for refuse containers and kitchen equipment shall be provided and shall drain directly into the sewer system, unless otherwise approved by the Community Development Director and Public Works Director in conjunction with the approval of an alternative drainage plan. The washout area shall be specifically shown on the construction drawings submitted for building permits.
34. The facility shall comply with the provisions of Chapter 14.30 of the Municipal Code for commercial kitchen grease disposal, as determined by the Building Division and the Utilities Department.
35. The restaurant shall provide the number of plumbing fixtures to satisfy the requirements of Chapter 4 of the California Building Code, 2010.

36. Prior to issuance of building permits, an exit analysis shall be provided for the outdoor dining patio.
37. The site plan shall clearly identify the parking, path of travel, entrance, restrooms, fixed seating, and bar seating to comply with accessibility requirements.
38. 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.
39. The project shall comply with State Disabled Access requirements.
40. Approval is required by the Health Department.
41. 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.

RESOLUTION NO. ZA2013-010

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MD2012-019 FOR A SECOND THEATER MONUMENT SIGN LOCATED NEAR 101 NEWPORT CENTER DRIVE IN THE FASHION ISLAND SHOPPING CENTER (PA2012-175)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Irvine Company, with respect to the existing Island Cinemas located at 999 Newport Center Drive within the Fashion Island shopping center. Specifically, the application requests approval of a second theater monument sign located near 101 Newport Center Drive, on a parcel legally described as Parcel 1 of Lot Line Adjustment No. 2012-005. The proposed sign would be located along the perimeter of Fashion Island adjacent to Newport Center Drive, between San Miguel Drive and Anacapa Drive.
2. The applicant proposes to construct a second double-faced, monument sign in support of the existing movie theater located within Fashion Island. The sign would measure 16 feet 9 $\frac{3}{4}$ inches in height and 13 feet in width. Each sign face would measure 150 square feet in area, resulting in a total combined sign area of 300 square feet.
3. The subject property is located within the North Newport Center Planned Community (PC-56) Zoning District and the General Plan Land Use Element category is Regional Commercial (CR).
4. The subject property not located within the coastal zone.
5. A public hearing was held on February 28, 2013, 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 11 (Accessory Structures).
2. Class 11 includes construction or replacement of minor structures such as on-site signs accessory to existing commercial facilities. The proposed monument sign is incidental and accessory to the principal commercial use of the property and does not intensify or alter the use.

SECTION 3. REQUIRED FINDINGS.

The North Newport Center Planned Community (NNCPC) permits a maximum of one theater monument sign; therefore, the approval of a modification permit is required to allow an additional sign. In accordance with Section 20.52.050 of the Newport Beach Municipal Code, the following findings and facts in support of such findings 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:

- A-1. The subject property is located in the NNCPC zoning district and is designated CR by the Land Use Element of the General Plan. Within the NNCPC, the subject property is located within the Fashion Island sub-area, which is the primary retail hub within Newport Center and is developed with retail, dining, and commercial entertainment uses. Permitted uses include those in support of the existing retail, dining, and commercial entertainment uses. Fashion Island is intended to be a vibrant regional retail and entertainment center and a destination with a variety of uses that serve visitors, residents, and employees in the area. The existing movie theater and supporting signage is consistent with existing development within Fashion Island and Newport Center.
- A-2. The proposed sign is consistent with the maximum allowed height and area requirements for theater signs allowed within the NNCPC, which has been developed to ensure the size and scale of signage is compatible with surrounding development.
- A-3. The proposed sign will be constructed of similar materials and lettering as the existing Fashion Island monument signs located along Newport Center Drive.

Finding:

B. 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:

- B-1. Fashion Island is a regional shopping center located within the center of the Newport Center area. The movie theater is a destination use located within the center of the shopping center and is not visible from the surrounding parking lots and roadways.

- B-2. Newport Center Drive is a perimeter road that loops around the shopping center and is accessed from nine different streets leading into the Newport Center area. In addition, Fashion Island is accessed via multiple driveways and drive aisles off Newport Center Drive. The numerous driveways and access roads can be challenging to motorists in identifying their destination within Fashion Island.
- B-3. The modification is necessary to provide adequate theater signage and exposure to motorists, and to identify the location of the theater within the shopping center.

Finding:

C. 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:

- C-1. Due to the difficulty associated with the size and configuration of the shopping center and surrounding roadways, the addition of a second theater sign is necessary to provide adequate identification for the theater consistent with the purpose and intent of sign standards of the Zoning Code.
- C-2. The proposed sign would not result in an excessive number of theater signs because the existing theater sign is located at the opposite side of Fashion Island, approximately 3,200 feet away along Newport Center Drive.

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:

- D-1. Maintaining only one theater sign would not provide the benefit of increasing exposure to motorists or assist in the identification of the theater within Fashion Island.
- D-2. The shopping center is comprised of combination of parking structures, surface parking lots, and multiple commercial structures. Due to the amount of commercial retail space and location of parking, the two theater signs will provide greater convenience and visibility for visitors to the site, and would not result in a detriment to surrounding owners and occupants, the neighborhood, or to the general public.

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.

Facts in Support of Finding:

- E-1. The signage is for commercial uses in a commercial district and is not in or adjacent to a residential district
- E-2. The monument sign is not located adjacent to any driveways and will not interfere with sight distance for vehicles entering or exiting the property.
- E-3. The proposed monument sign is compatible with the other commercial monument signs within the NNCP.
- E-4. The sign area is limited to text identifying the name of the theater and the movies that are offered. No graphic displays are permitted to ensure the sign does not distract motorists and create safety hazards.
- E-5. The proposed monument sign will be constructed on private property adjacent to Newport Center Drive and will not change the density or intensity of the existing commercial shopping center.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves MD2012-019 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 28TH DAY OF FEBRUARY, 2013.

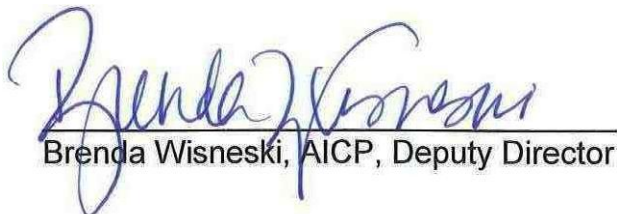

Brenda Wisneski, AICP, Deputy Director

EXHIBIT "A"**CONDITIONS OF APPROVAL**

1. The development shall be in substantial conformance with the approved site plan, details, and elevations, except as noted in the following conditions.
2. Sign copy and display shall be limited to text identifying the name of the theater and shows or movies that are offered, and shall not display images or graphics (except for theater logo).
3. The electronic sign copy shall be static/stationary. No rotating, flashing, blinking, scrolling, or animation is permitted.
4. The sign shall comply with the illumination requirements of Section 20.42.060.H (Illuminated Sign and Lights) and maintained in accordance with Section 20.42.170 (Maintenance Requirements) of the Newport Beach Municipal Code.
5. The monument sign shall maintain a minimum 2.5-foot setback from the back of sidewalk along Newport Center Drive. Landscape shrubs and/or hedges shall be planted around the base of the monument sign where it projects beyond the existing fence and hedge line perpendicular to the sign. Final landscaping plans shall be reviewed and approved by the Planning Division in conjunction with the issuance of a building permit for the monument sign.
6. A building permit shall be obtained prior to commencement of the construction and/or installation of the sign, and in accordance with the applicable Building Codes.
7. A copy of the resolution, including conditions of approval Exhibit "A," shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits for the monument sign, to identify this approval as the authority for location, size and placement.
8. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.
9. 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 **Island Cinemas Monument Sign including, but not limited to Modification Permit No. MD2012-019 (PA2012-175)** 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.