



**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 15, 2013

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**ZONING ADMINISTRATOR ACTIONS  
MARCH 14, 2013**

- Item 1: 121 34<sup>th</sup> Street Condominium Conversion No. CC2012-004 and Parcel Map No. NP2012-009 (PA2012-155)  
121 34th Street  
Action: Approved by Resolution No. ZA2013-0011 Council District 1
- Item 2: Johnny's Real New York Pizza Minor Use Permit No. UP2013-002(PA2013-013)  
1320 Bison Avenue  
Action: Approved by Resolution No. ZA2013-012 Council District 4
- Item 3: Westcliff Court Tea Room Minor Use Permit No. UP2013-001 (PA2013-004)  
1703 Westcliff Drive  
Action: Approved by Resolution No. ZA2013-013 Council District 3
- Item 4: Orange Coast Winery Minor Use Permit No. UP2013-003 (PA2013-016)  
3734 East Coast Highway  
Action: Approved by Resolution No. ZA2013-014 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.

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

## RESOLUTION NO. ZA2013-011

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING CONDOMINIUM CONVERSION NUMBER CC2012-004 AND TENTATIVE PARCEL MAP NUMBER NP2012-009 FOR A TWO-UNIT CONDOMINIUM DEVELOPMENT LOCATED AT 121 34TH STREET (PA2012-155)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Christopher Hall, Trustee of Kevin G. Hall Revocable Trust, with respect to property located at 121 34th Street, and legally described as Parcel 1 in the City of Newport Beach, County of Orange, State of California, as per Map filed in Book 67, Page 45 of Parcel Maps, in the office of the County Recorder of said county.
2. The applicant requests a condominium conversion in conjunction with a tentative parcel map to convert an existing duplex that was remodeled to condominium standards in 2011, to a two-unit condominium project.
3. The subject property is located within the R-2 (Two-Unit Residential) Zoning District and the General Plan Land Use Element category is RT (Two-Unit Residential).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is RT-E (Two-Unit Residential).
5. A public hearing was held on March 14, 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 1 (Existing Facilities) categorical exemption pursuant to Title 14 of the California Code of Regulations (Section 15315, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act).
2. The Class 1 exemption involves negligible or no expansion of an existing use. This classification includes the division of existing multiple-family or single-family residences into common-interest ownership, and subdivision of existing commercial or industrial buildings, where no physical changes occur which are not otherwise exempt.

3. The proposed project involves the conversion of an existing duplex into a two-unit condominium development.

### SECTION 3. REQUIRED FINDINGS.

#### *Condominium Conversion*

In accordance with Section 19.64.070 (Conversion of Rental Units to Ownership) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

#### Finding:

- A. *The minimum number, and the design and location of off-street parking spaces shall be provided in conformance with the provisions of Chapter 20.40 (Off-Street Parking), in effect at the time of approval of the conversion.*

#### Facts in Support of Finding:

- A-1. The existing duplex consists of 2,821 square feet, and contains two, single-car garages with two covered carports.
- A-2. The four spaces provided meet the code requirement (two per unit) specified in Chapter 20.40 (Off-Street Parking) of the Zoning Ordinance.

#### Finding:

- B. *Each dwelling unit within a building shall have a separate sewer connection to the City sewer.*

#### Facts in Support of Finding:

- B-1. The existing duplex was remodeled with two separate sewer connections to the City sewer.
- B-2. A special inspection completed by the Building Division on January 28, 2013, confirmed that each unit is served by its own sewer and piping.

#### Finding:

- C. *Each sewer lateral shall be retrofitted/fitted with a cleanout at the property line.*

#### Facts in Support of Finding:

- C-1. The existing duplex was remodeled with two separate sewer cleanouts located at the property line.

C-2. A special inspection completed by the Building Division on January 28, 2013, confirmed that each unit has an approved cleanout installed at the property line.

Finding:

D. *Each dwelling unit shall maintain a separate water meter and water meter connection.*

Facts in Support of Finding:

D-1. The existing duplex was remodeled with two separate water meters and water meter connections.

D-2. A special inspection completed by the Building Division on January 28, 2013, confirmed that each unit is served by its own water meter and piping.

Finding:

E. *The electrical service connection shall comply with the requirements of Chapter 15.32 of the NBMC.*

Facts in Support of Finding:

E-1. The existing duplex was remodeled with an electrical service connection that was at such time, determined to be in compliance with the requirements of Chapter 15.32.

Finding:

F. *The applicant for a condominium conversion shall request a special inspection from the Building Division for the purpose of identifying any building safety violations. The applicant shall correct all identified safety violations prior to approval of a final map for the condominium conversion.*

Facts in Support of Finding:

F-1. A special inspection was completed by the Building Division on January 28, 2013, and one safety violation was identified.

Finding:

G. *Permanent lot stakes and tags shall be installed at all lot corners by a licensed surveyor or civil engineer unless otherwise required by the City Engineer.*

Facts in Support of Finding:

G-1. As conditioned, the project will comply with this requirement prior to recordation of the final parcel map.

Finding:

- H. *For residential conversions, the project shall be consistent with the adopted goals and policies of the General Plan, particularly with regard to the balance and dispersion of housing types within the City.*

Facts in Support of Finding:

- H-1. The project site is designated as RT (Two-Unit Residential) by the Land Use Element of the General Plan, and RT-E (Two-Unit Residential) by the Coastal Land Use Plan (CLUP). The proposed two-unit project is consistent with the RT land use category and RT-E coastal land use category, which is intended to provide for a range of two-family dwelling units such as duplexes and townhomes.
- H-2. An existing two-unit duplex will be converted into a two-unit condominium project. The residential density on the site will remain the same.

Finding:

- I. *The establishment, maintenance or operation of the use or building applied for shall not, under circumstances of the particular case, be detrimental to the health, safety, peace, comfort and general welfare of person residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City.*

Facts in Support of Finding:

- I-1. The application of project conditions will ensure the health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood and the City.
- I-2. The proposed project to convert an existing duplex into two condominiums is located on a property site within the R-2 Zoning District which allows for two-units.
- I-3. Public improvements are required of the applicant per the Municipal Code and Subdivision Map Act.

*Tentative Parcel map*

The Zoning Administrator determined in this case, that the proposed parcel map is consistent with the legislative intent of Title 20 of the Newport Beach Municipal Code and is approved based on the following findings per Section 19.12.070 (Required Findings for Action on Tentative Maps) of Title 19 (Subdivision Code):

Finding:

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

Facts in Support of Finding:

- A-1. The proposed parcel map is for two-unit condominium purposes. The existing duplex was remodeled in 2011 to condominium standards. The residential density on the site (two-units) will remain the same. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the "Two-Unit Residential" General Plan Land Use designation.

- A-2 The proposed parcel map does not apply to any specific plan area.

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

- C-1. This project has been reviewed, and it has been determined that it qualifies for a Class 1 categorical exemption pursuant to Title 14 of the California Code of Regulations (Section 15315, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act). The Class 1 (Existing Facilities) exemption involves negligible or no expansion of an existing use. This classification includes the division of existing multiple-family or single-family residences into common-interest ownership, and subdivision of existing commercial or industrial buildings.

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

- F-1. The property is not subject to the Williamson Act because the subject property is not designated as an agricultural preserve and is less than 100 acres in area.
- F-2. The site developed for residential use lies in a residentially zoned area.

Finding:

- G. *That, in the case of a “land project” as defined in Section 11000.5 of the California Business and Professions Code: (1) There is an adopted specific plan for the area to be included within the land project; and (2) the decision making body finds that the proposed land project is consistent with the specific plan for the area.*

Facts in Support of Finding:

- G-1. The property is not a “land project” as defined in Section 11000.5 of the California Business and Professions Code because the existing subdivision does not contain 50 or more parcels.
- G-2. The project is not located within a specific plan area.

Finding:

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

Facts in Support of Finding:

- H-1. The proposed parcel map and improvements are subject to Title 24 of the California Building Code that requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Division enforces Title 24 compliance through the plan check and inspection process. The existing duplex was constructed in compliance with Title 24.

Finding:

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

Facts in Support of Finding:

- I-1. The proposed parcel map is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City’s share of the regional housing need. The residential density on the site will remain the same, which allows two units in the R-2 Zoning District. Therefore, the parcel map for condominium purposes will not affect the City in meeting its regional housing need.



Finding:

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

Facts in Support of Finding:

- J-1. Wastewater discharge into the existing sewer system will remain the same and does not violate Regional Water Quality Control Board (RWQCB) requirements.

Finding:

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

Facts in Support of Finding:


- K-1. The proposed parcel map is for two-unit condominium purposes. The proposed subdivision and improvements are consistent with the Coastal Land Use Plan designation RT-E (Two-Unit Residential).
- K-2. The subject property conforms with public access policies of Chapter Three of the Coastal Act because the new development maintains public access from the nearest public roadway to the shoreline and along the coast.
- K-3. Recreation policies contained within Chapter Three of the Coastal Act are not applicable to the subject property.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Condominium Conversion No. CC2012-004 and Tentative Parcel Map No. NP2012-009 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 14<sup>th</sup> DAY OF MARCH, 2013.**

  
Brenda Wisneski, AICP, Deputy Director

**EXHIBIT “A”**

CONDITIONS OF APPROVAL

1. A parcel map shall be recorded. The map shall be prepared on the California coordinate system (NAD88). Prior to recordation of the map, the surveyor/engineer preparing the map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The map to be submitted to the City of Newport Beach shall comply with the City’s CADD Standards. Scanned images will not be accepted.**
2. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. Monuments (1- inch iron pipe with tag) shall be set on each lot corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
3. As per California Fire Code Section 903.2.8, an automatic sprinkler system shall be installed throughout all new buildings in a Group R occupancy. Each unit will require separate utilities for the fire sprinklers.
4. Smoke alarms shall be installed outside of each separate dwelling unit sleeping area in the immediate vicinity of bedrooms, and on every level of a dwelling unit including basements.
5. All improvements shall be constructed as required by Ordinance and the Public Works Department.
6. The applicant shall reconstruct the existing broken and/or otherwise damaged concrete curb, gutter, sidewalk and alley panels along the 34th Street frontage. Limits of reconstruction are at the discretion of the Public Works inspector.
7. Additional public works improvements, including street and alley reconstruction work may be required at the discretion of the Public Works Inspector.
8. All existing overhead utility connections shall be placed underground.
9. All private, non-standard improvements within the 34th Street or alley public right-of-way shall be removed.
10. All above ground improvements shall stay clear of the alley setback.
11. Each dwelling unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade

box and cover. Water meters and sewer cleanouts shall be located within the public right-of-way.

12. Each unit shall be served with individual gas and electrical service connections and shall maintain separate utility meters.
13. Two-car parking, including one enclosed garage space, shall be maintained on site for each dwelling unit per requirements of the Zoning Code.
14. In compliance with the requirements of Chapter 9.04, Section 901.4.4, of the Newport Beach Municipal Code, approved street numbers or addresses shall be placed on all new and existing buildings in such a location that is plainly visible and legible from the street or road fronting the subject property. Said numbers shall be of non-combustible materials, shall contrast with the background, and shall be either internally or externally illuminated to be visible at night. Numbers shall be no less than 4 inches in height with a 1-inch- wide stroke.
15. An approved encroachment permit is required for all work activities within the public right-of-way.
16. A Public Works Department encroachment permit inspection is required before the Building Division permit final can be issued. At the time of Public Works Department inspection, if any of the existing public improvements surrounding the site are damaged, new concrete sidewalk, curb and gutter, and alley/street pavement will be required and 100 percent paid by the owner. Said determination and the extent of the repair work shall be made at the discretion of the Public Works Inspector.
17. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L.
18. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.
19. All on-site drainage shall comply with the latest City Water Quality requirements.
20. Prior to the recordation of the parcel map, the applicant shall apply for a building permit for description change of the subject project development from "duplex" to "condominium." **The development will not be condominiums until this permit is finalized.** The building permit for the new construction shall not be finalized until after recordation of the parcel map.
21. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.

22. 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.
23. Prior to the recordation of the parcel map, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
24. 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 121 34th Street Condominium Conversion and Parcel map including, but not limited to, Condominium Conversion No. CC2012-004 and Parcel map No. NP2012-009 (PA2012-155). 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.
25. The parcel map shall expire if the map has not been recorded within 24 months of the date of approval, unless an extension is granted by the Planning Director in accordance with the provisions of Section 19.16 of the Newport Beach Municipal Code.

## RESOLUTION NO. ZA2013-012

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2013-002 TO ALLOW AN EATING AND DRINKING ESTABLISHMENT, NO LATE HOURS WITH A TYPE 41 (ON-SALE BEER AND WINE) ALCOHOLIC BEVERAGE CONTROL LICENSE LOCATED AT 1320 BISON AVENUE (PA2013-013)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by John Younesi, with respect to property located at 1320 Bison Avenue, and legally described as Parcel 1 of Parcel Map 326-48 requesting approval of a minor use permit.
2. The applicant requests approval of a minor use permit to allow a Type 41 (On-Sale Beer and Wine) Alcoholic Beverage Control License (ABC) in conjunction with an eating and drinking establishment previously approved by Use Permit No. UP2003-016. The gross floor area of the establishment is 1,495 square feet with an interior net public area of approximately 500 square feet and 36 seats. The recommended hours of operation are 6:00 a.m. to 11:00 p.m., daily. If approved, this Minor Use Permit would supersede Use Permit No UP2003-016.
3. The subject property is located within the PC-50 (Bonita Canyon Planned Community) zoning district within Commercial Area 5 and has a General Plan land use designation of CG (General Commercial).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on March 14, 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. 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 improve an existing commercial space to an eating and drinking establishment.

### 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 crime rate in RD 54 is 49% lower than the City average. The crime rate in the adjacent RD's is also lower than the City average.
- ii. The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*
  1. 2012 alcohol crime related statistics indicate a lower number of alcohol related calls, crimes and arrests in RD 54 and surrounding RD's when compared to other areas in the City. In particular, RD 54 had 10 alcohol related arrests and one alcohol citation in 2012.
- 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 subject tenant space is located within the Bluff's Shopping Center which was developed as a retail and service center. The nearest residential uses are located across Bison Avenue to the south and MacArthur Boulevard to the west. Other sensitive land uses listed above are located a quarter mile or more away.
- iv. The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.*
  1. Six (6) of the ten (10) eating and drinking establishments in the Bluff's shopping center currently have an active ABC license, all of which are bona fide eating and drinking establishments and non are defined as bar's, lounges or nightclubs by the zoning code. These establishments include Daphne's, Wasu Sushi, Mozambique, Pei Wei, Island's and Wildfish.

v. *Whether or not the proposed amendment will resolve any current objectionable conditions*

1. The subject tenant space has historically been occupied by restaurants with similar number of seats and business hours. There is no evidence that suggests these uses have created objectionable conditions.

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 minor 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 designates this site CG (General Commercial) which is intended to provide for a wide variety of retail, service and other commercial uses. The proposed eating and drinking establishment with beer and wine service is consistent with this land use category.
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 site is located in the PC-50 (Bonita Canyon Planned Community) zoning district within Commercial Area 5. The Commercial Area 5 land use regulations identify eating and drinking establishments as allowed uses contingent upon approval of a use permit.
2. The shopping center site design was originally approved in 2001 (PA2001-085). The approval included building placement, landscaping, walls, vehicle and pedestrian circulation and parking.
3. The shopping center and mix of uses, including the subject tenant space, requires 469 parking spaces. According to City records, 481 parking spaces are provided on site.
4. The location, size, hours of operation and other physical and operational characteristics of the restaurant are in substantial conformance with Use Permit No. 2003-089.



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 shopping center was designed to be occupied by a mix of restaurants, retail and service uses. Johnny's Real New York Pizza will complement the existing uses and is a typical and expected type of use in shopping centers similar to the Bluffs.
2. The operation of the restaurant will be restricted to the hours between 6:00 a.m. and 11:00 p.m., daily. These hours are consistent with the business hours of other restaurants and uses in the shopping center.
3. The operational conditions of approval relative to the sale of alcoholic beverages will help ensure compatibility with the surrounding uses and minimize alcohol related impacts. The project has been conditioned to ensure that the business remains a restaurant and does not become a bar or tavern. Additionally, dancing or live entertainment is not permitted.

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; and*

Facts in Support of Finding

1. The restaurant will occupy a tenant space historically occupied by similar restaurant uses and only interior improvements are associated with Johnny's New York Pizza.
3. Original site plan approvals for the development of the shopping center included a review to ensure adequate public and emergency vehicle access, public services, and utilities are provided to the entire shopping center. The tenant improvement plans have been reviewed for compliance with applicable building and fire codes.

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 eating and drinking establishment will serve the surrounding community in a shopping center designed for such uses. The service of beer and wine is provided as a public convenience and is not uncommon in establishments of this type. Additionally, the service of alcohol will provide an economic opportunity for the property owner to maintain a successful business that is compatible with the surrounding community.
3. All owners, managers, and employees selling or serving alcohol will be required to complete a Responsible Beverage Service certification program.

**SECTION 4. DECISION.**

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2013-002, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 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. UP2003-016 (PA2003-102), which upon vesting of the rights authorized by Minor Use Permit No. UP2013-002 (PA2013-013), shall become null and void.

**PASSED, APPROVED AND ADOPTED THIS 14<sup>th</sup> DAY OF MARCH, 2013.**



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Brenda Wisneski, AICP, Zoning Administrator

**EXHIBIT "A"**  
**CONDITIONS OF APPROVAL**

Planning Division Conditions

1. This approval supersedes Use Permit No. UP2003-016 (PA2003-102).
2. 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.)
3. 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.
4. Any change in operational characteristics, hours of operation, expansion in area, or other modification to the approved plans, may require an amendment to this minor use permit or the processing of a new use permit.
5. Minor Use Permit No. UP2013-002 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 (Time Limits and Extensions) of the Newport Beach Zoning Code, unless an extension is otherwise granted.
6. Should this business be sold or otherwise come under different ownership, any future owners or assignees shall be notified in writing of the conditions of this approval by the current owner or leasing company.
7. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
8. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
9. All employees shall park on-site.
10. The hours of operation for the restaurant shall be limited to the hours of 6:00 a.m. and 11:00 p.m., daily.
11. Alcohol service shall be limited to a Type 41 (On-Sale Beer and Wine) Alcoholic Beverage Control License.
12. The off-site delivery of alcoholic beverages is prohibited.
13. This approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Newport Beach Municipal Code.

14. There shall be no dancing and/or live entertainment allowed on the premises.
15. All proposed signs shall conform to Title 20, Chapter 20.42 (Sign Standards) of the Newport Beach Municipal Code regulations or any sign program applicable to the property.
16. No outside loudspeaker or paging system shall be permitted in conjunction with the proposed operation.
17. 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.
18. 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.
19. 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.
20. Trash generated by the establishment shall be adequately contained in sealed plastic bags to control odors prior to placement in the trash dumpster.
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. The applicant shall maintain the trash dumpsters or receptacles so as to control odors, which may include the provision of fully self-contained dumpsters or may include 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 (Water Quality).
23. A Special Event 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, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
24. 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 Johnny's Real New York Pizza MUP including, but not limited to Minor Use Permit No. UP2013-002 (PA2013-013) 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

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

#### Revenue Department Conditions

29. 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.

#### Police Department Conditions

30. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the license.
31. Full menu food service shall be available for ordering at all times that the restaurant establishment is open for business.
32. No "happy hour" type of reduced price alcoholic beverage promotion is permitted except when served in conjunction with food ordered from the full service menu.
33. The sale and consumption of alcoholic beverages shall be restricted to and within the confines of the licensed premises and sales or delivery of alcoholic beverages through any exterior pass-out window is prohibited
34. 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.

35. There shall be no on-site radio, television, video, film, or other electronic media broadcasts, including recordings to be broadcasted at a later time, which include the service of alcoholic beverages, without first obtaining an approved special event permit issued by the City of Newport Beach.
36. The petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.
37. All owners, managers, and employees selling wine shall undergo and successfully complete a certified training program in responsible methods and skills for selling beer and wine. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The retail store 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.

## RESOLUTION NO. ZA2013-013

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP 2013-001 FOR THE WESTCLIFF COURT TEA ROOM, AN EATING AND DRINKING ESTABLISHMENT LOCATED AT 1703 WESTCLIFF DRIVE (PA2013-004)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Deborah Standley, with respect to property located at 1703 Westcliff Drive, and legally described as the Northwesterly 80 feet of Lot 7, Tract 4225 requesting approval of a minor use permit.
2. The applicant proposes a minor use permit to convert 1,000 square feet of an existing 1,300-square-foot commercial space to dining and kitchen facilities for the purpose of establishing a tea room (Eating and Drinking Establishment) with accessory retail of tea products. No late hours (after 11:00 p.m.) or alcohol sales are proposed as part of this application.
3. The subject property is located within the CG (Commercial General) Zoning District and the General Plan Land Use Element category is CG (General Commercial).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on March 14, 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. 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 improve an existing commercial space to an eating and drinking establishment with accessory retail sales.

### 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 Court retail and business office center (between Sherington Place and Westcliff Drive), which is designed and operated as a commercial center.
2. The General Plan land use designation for the site is CG (General Commercial), which is intended to provide for a wide variety of commercial activities oriented primarily to serve citywide or regional needs.
3. The proposed eating and drinking establishment is consistent with the General Plan General Commercial (CG) land use designation, as it is intended to serve a limited range of specialty food and beverage products to residents and visitors.
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 General (CG) Zoning District of the Newport Beach Zoning Code. The intent of this district is to provide for areas appropriate for a wide variety of commercial activities oriented primarily to serve Citywide or regional needs. The proposed eating and drinking establishment is consistent with the land uses permitted within this zoning district.
2. Pursuant to Section 20.20.020 (Table 2-5 Allowed Uses and Permit Requirements), the proposed project requires approval of a minor use permit, because it is located within 500 feet of the residential zoning districts located north and south 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 one (1) parking space for every 30-50 square feet of net public area. The proposed project has a net public area of 810 square feet and has seating for a maximum of 18 customers. The establishment will be located within the Westcliff Court commercial center. Staff believes one (1) space for every 50 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 commercial center. Based on the net public area of the proposed establishment, a total of 17 parking spaces will be required ( $810/50 = 16.2$ ). The Westcliff Court commercial center 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 an existing commercial space within Westcliff Court to an eating and drinking establishment. The commercial center will still provide a surplus of parking spaces.
2. The proposed use will provide tea products for sale and will offer food products for on-site consumption with seating for a maximum of 18 customers. The operational characteristics of the use are those of an eating and drinking establishment, which is a typical use in these types of commercial centers.
3. The conditions of approval limit the hours of operation for the establishment from 7:00 a.m. to 10:00 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 commercial center in a nonresidential zoning district. Although it is located less than 500 feet of a residential district directly to the north and south (within approximately 100 feet), the establishment is separated by a public right-of-way, landscaped area, and parking lot. The separation provides a buffer from potential 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 to 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 Westcliff Court have functioned satisfactorily with the current configuration. The proposed project, which includes interior alterations to convert an existing commercial space to an eating and drinking establishment will not negatively affect emergency access.
2. Adequate public and emergency vehicle access, public services, and utilities are provided within Westcliff Court 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 alike.

**SECTION 4. DECISION.**

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2013-001, 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 Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED AND ADOPTED THIS 14<sup>TH</sup> DAY OF MARCH, 2013.**



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Brenda Wisneski, AICP, Zoning Administrator

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

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. Use Permit No. UP2013-001 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.
3. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
4. 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.
5. This minor use permit may be modified or revoked by the Zoning Administrator if determined 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.
6. The hours of operation for the establishment shall be limited to 7:00 a.m. through 10:00 p.m., daily.
7. The interior net public area shall be limited to 810 square feet. (This sum includes the 210-square-foot retail sales area.)
8. A minimum of 17 parking spaces (1 parking space per 50 square feet of net public area) shall be provided within the commercial center for the establishment.
9. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require subsequent review and may require an amendment to this use permit or the processing of a new use permit.
10. 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.
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. No outside paging system shall be utilized in conjunction with this establishment.
13. All trash shall be stored within the building or within the existing 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.
14. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
15. 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.
16. 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 Director of Community Development, and may require an amendment to this Use Permit.
17. 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.
18. 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.
19. 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 Westcliff Court Tea Room MUP including, but not limited to, the Minor Use Permit No. UP2013-001 (PA2013-004). 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.

**Public Works Conditions**

20. All improvements shall be constructed as required by Ordinance and the Public Works Department.
21. Applicant shall reconstruct the existing and/or otherwise damaged concrete sidewalk panels, curb and gutter along the Westcliff Drive and Sherington Place frontages.
22. The existing street tree(s) along Westcliff Drive and Sherington Place shall be protected in place. Unauthorized tree removal(s) will trigger substantial penalties for all of the parties involved.
23. All new and existing sewer laterals shall have a sewer cleanout installed per City Standard STD-406-L with a traffic-grade box and cover. The new sewer cleanout shall be located within the public right-of-way.
24. All new and existing water services (i.e., domestic, irrigation, and fire) shall be protected by a City-approved backflow assembly per City Standards.
25. An encroachment permit is required for all work activities within the public right-of-way.
26. All improvements shall comply with the City's sight distance requirement pursuant to City Standard STD-110-L.
27. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.
28. All on-site drainage shall comply with the latest City Water Quality requirements.
29. Applicant is responsible for all upgrades to the City's utilities as required to fulfill the project's demand, when necessary.

**Fire Department Conditions**

30. A 2A 10BC fire extinguisher shall be placed in a conspicuous location.
31. Commercial cooking equipment that produces grease laden vapors shall be provided with a Type I Hood, and an automatic fire extinguishing system consisting of a wet chemical extinguishing system complying with UL 300.
32. Sprinkler modifications may be required with any changes made to the interior of the tenant space at the discretion of the Fire Department.

**Building Division Conditions**

33. 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.

## RESOLUTION NO. ZA2013-014

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2013-003 FOR ORANGE COAST WINERY, A RETAIL STORE SPECIALIZING IN WINE SALES AND ACCESSORY ON-SITE TASTING LOCATED AT 3734 EAST COAST HIGHWAY (PA2013-016)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by JR Walz of LSArchitects on behalf of Douglas Wiens of Wiens Family Cellars, with respect to property located at 3734 East Coast Highway, and legally described as Lot 4, Block 'W', of Tract 323 requesting approval of a minor use permit.
2. The applicant proposes to improve 1,440 square feet of commercial space to establish a retail store specializing in homegrown wine and wine-related products (Alcohol Sales (Off-Sale)). Also proposed is an accessory, on-site tasting area totaling 170 square feet with eight seats. Sale and on-site consumption of alcohol will be regulated by a Type 02 (Winegrowers) Alcoholic Beverage Control License. Late hours (after 11:00 p.m.) are not proposed as part of the applicant's request.
3. The subject property is located within the CC (Commercial Corridor) Zoning District and the General Plan Land Use Element category is CC (Corridor Commercial).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on March 14, 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. 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 improve an existing commercial space to a retail store with an accessory, on-site tasting area.



### SECTION 3. REQUIRED FINDINGS.

#### *Alcohol Sales (Off-Sale)*

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 retail store is located within Reporting District 44, wherein the number of crimes is higher than adjacent Reporting Districts and the City. RD 43 and 45 have a lower number of crimes as they are primarily residential with few commercial uses. Due to the high concentration of commercial land uses along East Coast Highway, 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 number 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 along East Coast Highway. 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 newly renovated commercial space.
- 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. Although the commercial building is directly adjacent to a residential district, the building is oriented towards and accessed from an entrance on East Coast Highway.

Additionally, rear alley access to the commercial units is a level below the alley elevation. The orientation and grade differential provide screening and protection from view and potential noise generated by the establishment.

2. The proposed use is not located in close proximity to 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. There are three comparable establishments on East Coast Highway (Vin Goat, Del Mar Wine and Spirits, and The Wine Gallery); however, they are not in close proximity to the proposed retail store. Del Mar Wine and Spirits is approximately 650 feet west of the proposed retail store and operates with a Type 21 (Off-Sale General) Alcoholic Beverage Control License. Vin Goat is approximately 1,200 feet west of the proposed retail store and operates with Types 20 (Off-Sale Beer and Wine) and 42 (On-Sale Beer and Wine) Alcoholic Beverage Control Licenses.
2. Other establishments selling alcoholic beverages for on-site consumption are located along East Coast Highway; however, these establishments operate as restaurants and are not comparable to the proposed retail store. Appropriate conditions of approval have been included to prevent the retail store from operating as an eating and drinking establishment, bar or lounge, etc.
3. The Police Department has reviewed the subject application and does not foresee an issue with the proposed location.

*v. Whether or not the proposed amendment will resolve any current objectionable conditions*

1. This is a new retail store; therefore, no objectionable conditions exist.

*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 proposed project is a retail store specializing in homegrown wine (Alcohol Sales (Off-sale)) and accessory wine tasting to be located within an existing, commercial building fronting East Coast Highway.

2. 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.
3. The proposed retail store is consistent with the General Plan Corridor Commercial (CC) land use designation, as it will not only serve the residents within the area, but will also serve visitors and commuters traveling on East Coast Highway. The proposed floor plan is designed such that there is a large window display to draw pedestrian traffic.
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 Corridor (CC) Zoning District of the Newport Beach Zoning Code. The intent of this district is to provide for areas appropriate to a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity. The proposed retail store and on-site, accessory tasting area are consistent with the land uses permitted within this zoning district as it will serve the adjacent neighborhoods.
2. The proposed use complies with Zoning Code Section 20.48.030 (Alcohol Sales) relating to required operating standards, and conditions of approval are included in this approval to maintain those requirements.
4. The existing mixed-use development is considered nonconforming due to parking and use. Pursuant to Zoning Code 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.
5. The currently vacant commercial space has been subject to a parking requirement of one parking space per 250 square feet of gross floor area. The proposed retail store will have an equal requirement to that of the previous use in compliance with Zoning Code Section 20.38.060.

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 improve an existing commercial space within a nonconforming mixed-use development to a retail store with an on-site, accessory tasting area. The operational characteristics of the use are that of a retail store, which is a common use in commercial buildings along East Coast Highway in Corona del Mar.
2. The hours of operation for the retail store and related accessory tasting have been limited by the conditions of approval such that they will not extend beyond 10:00 p.m.
3. The proposed establishment will be located within an existing nonconforming mixed-use building in a nonresidential zoning district. Although it is located adjacent to a residential district (within approximately 25 feet), it is not facing the residential properties and is a level below the alley elevation. The orientation and grade differential provide screening and protection from view and potential noise generated by the establishment. The applicant is also required to control trash and litter around the subject property.
4. 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 building has existed since the 1940s. The improvement of an existing commercial space will not negatively affect emergency access.
2. Adequate public and emergency vehicle access, public services, and utilities are provided on-site and are accessed by way of the alley directly behind 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, 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 retail store.
2. The restrictions on the hours and wine tasting operation will help prevent adverse pedestrian and traffic impacts for the surrounding residential and commercial uses.
3. The proposed retail store and on-site, accessory tasting area 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.
4. All owners, managers, and employees selling or serving wine will be required to complete a Responsible Beverage Service certification program.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2013-003, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 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 14<sup>TH</sup> DAY OF MARCH, 2013.**

  
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Brenda Wisneski, AICP, 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 if determined 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, may require an amendment to this minor use permit or the processing of a new use permit.
4. Minor Use Permit No. UP2013-003 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. This approval does not permit the premises to operate as a bar, tavern, cocktail lounge, nightclub, or eating and drinking establishment as defined by the Newport Beach Municipal Code.
9. There shall be no dancing and/or live entertainment allowed on the premises.
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 Alcoholic Beverage Control (ABC) License shall be limited to a Type 02 (Winegrower), Type 20 (Off-Sale Beer and Wine), or comparable license. Any

substantial change in the ABC License type shall require subsequent review and potential amendment to this minor use permit.

12. The tasting area shall be limited to 170 square feet and eight seats within the designated area. No tastings shall be conducted outside of the designated area. Tastings are limited to those allowed under a Type 02 (Winegrower) Alcoholic Beverage Control License only. Pours shall be limited to two ounces each.
13. Use of the outdoor courtyard area for consumption of products sold within the retail store is not permitted.
14. The hours of operation for the retail store and related, accessory wine tasting are limited from 7:00 a.m. to 10:00 p.m., daily.
15. All proposed signs shall conform to Title 20, Chapter 20.42 (Sign Standards) of the Newport Beach Municipal Code regulations or any sign program applicable to the property.
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. 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.
18. 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.
19. 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 Orange Coast Winery MUP including, but not limited to Minor Use Permit No. UP2013-003 (PA2013-016) 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.

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Building Division and Fire Department Conditions

20. 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.
21. The construction plans must meet all applicable State Disabilities Access requirements.
22. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
23. 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.
24. All exits shall remain free of obstructions and available for ingress and egress at all times.

Revenue Department Conditions

25. A valid business license from the City of Newport Beach with a 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.

Police Department Conditions

26. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed.
27. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the license.
28. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.
29. The petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.
30. All owners, managers, and employees selling wine shall undergo and successfully complete a certified training program in responsible methods and skills for selling beer and wine. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The retail store 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.

31. A Special Event 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, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.