



**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 June 7, 2013

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

Item 1: The Winery Restaurant & Wine Bar – Staff Approval – Administrative Substantial Conformance Review No. SA2013-006 (PA2013-097)  
3131 W. Coast Highway

Action: Approved

Council District 3

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

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



## COMMUNITY DEVELOPMENT DEPARTMENT

### PLANNING DIVISION

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## **COMMUNITY DEVELOPMENT DIRECTOR ACTION LETTER**

**APPLICATION:** Staff Approval – Administrative Substantial Conformance Review No. **SA2013-006** (PA2013-097)

**APPLICANT:** The Winery Restaurant & Wine Bar

**LOCATION:** 3131 W. Coast Highway  
The Winery Restaurant & Wine Bar

**LEGAL DESCRIPTION** Westerly Portion of Lot L, Tract 919

On **June 5, 2013**, the Community Development Director approved Staff Approval – Administrative Substantial Conformance Review No. SA2013-006. This approval is based on the findings and subject to the following conditions.

### **PROJECT SUMMARY**

The project involves the interior and exterior renovation of an existing eating and drinking establishment (restaurant).

### **ZONING DISTRICT/GENERAL PLAN**

**General Plan:** MU-W1 (Mixed-Use, Water Related)

**Zone:** MU-W1 (Mixed-Use, Water Related)

### **I. BACKGROUND**

The site was developed with a restaurant in the 1950s and in 1962, Use Permit No. 816 authorized alterations of the restaurant recognizing that the site did not provide all code required parking. In 1998, the Planning Director approved Planning Director's Use Permit (PDUP) No. 23 authorizing a minor expansion of the restaurant to facilitate improvements necessary for disabled access. PDUP No. 23 recognized the use as an eating and drinking establishment, or restaurant, with accessory bar areas and an outdoor patio on the second floor. The gross floor area of the building was approximately 10,546 square feet and the net public area including the outdoor patio was approximately 5,100 square feet. Twenty-four parking spaces in a nonconforming layout including 9 spaces in a tandem configuration were recognized by PDUP No. 23.

## **II. PROPOSED CHANGES**

The applicant proposes to completely renovate the existing building including making interior partition changes and exterior façade changes. An existing office area on the second floor will be expanded and converted to a private dining room. Portions of second floor roof will be reconstructed to accommodate higher ceilings while complying with applicable height limits. The existing second floor outdoor dining patio area will be enclosed and a new dining patio and architectural feature will be created. The building footprint will not change. The gross floor area currently is 10,546 and will remain unchanged. The net public area will increase from approximately 5,100 square feet to 6,107 square feet and the outdoor patio will increase from approximately 500 square feet to 645 square feet. The maximum occupancy is decreasing from 312 to 300 people and the number of seats is decreasing from 297 to 284 seats. The use of the property and building as an eating and drinking establishment, or restaurant, with accessory bar areas and an outdoor patio on the second floor will continue under a new operator. The use will not operate as a bar, cocktail lounge, or nightclub, as defined by the Zoning Code, or entertainment venue.

## **III. FINDINGS**

Pursuant to Section 20.54.070, the Community Development Director may authorize minor changes to an approved site plan, architecture, or the nature of the approved use, without a public hearing, and waive the requirement for a new use permit application provided the findings enumerated below are met.

### Finding:

*A. Are consistent with all applicable provisions of this Zoning Code.*

### Facts in Support of Finding:

1. The site is zoned MU-W1 and pursuant to Section 20.22.020, restaurants are allowed subject to obtaining a Conditional Use Permit. Use Permit No. 816 and Planning Director's Use Permit No. 23 have previously authorized a restaurant and parking reduction at the subject site.
2. The gross floor area of the building after modification will be 10,545 square feet and remains below the maximum allowable gross floor area (0.5 FAR) allowed by the MU-W1 zone district for the subject property. The property is 21,374 square feet allowing a maximum of 10,687 gross square feet of building area.
3. Section 20.38.060.B allows alterations or expansions to existing nonresidential structures that do not provide the minimum number required off-street parking spaces. When an addition is less than 10 percent of the gross floor area, parking for the expanded area must be provided. The gross floor area of the proposed project is not increasing. Parking for the existing eating and drinking establishment recognized by PDUP No. 23 were based upon the occupancy and seating capacity rather than the floor area or net public area; therefore, additional parking is not required even

though the net public area is increasing. Based on the existing and proposed seating plans, the maximum occupancy is decreasing and the number of seats is decreasing, thereby decreasing parking demands. Twenty-two of 24 existing parking spaces, including nine tandem spaces, will remain on site. Two parking spaces must be removed to accommodate disabled parking pursuant to the California Building Code. Section 20.40.010.A of the Municipal Code authorizes the Community Development Director to administratively reduce parking requirements to satisfy disabled parking requirements.

4. Changes to the height of the building are below the maximum allowable height allowed by the MU-W1 zoning district. The maximum allowable height for flat roofs including parapets is 26 feet and the peak of sloping roofs is 31 feet. Proposed roofs will be lower than roof parapets that will be 25 feet, 6 inches in height. An architectural feature will have a sloping roof with its peak no taller than 31 feet.
5. Exterior changes to the building as shown on the proposed elevations drawings show a high level of architectural detailing on each elevation. Building modulation is also being maintained. The resulting architecture is consistent with design guidelines proscribed within the Mariner's Mile Design Strategic Vision and Framework.
6. This approval requires the removal of the sea container currently used for storage purposes that has been on the property for several years. The use of sea containers for storage does not promote high quality design and its location blocks views of Newport Bay from Coast Highway. The continued presence and use of the sea container is not consistent with the Mariner's Mile Design Strategic Vision and Framework, and therefore, must be removed. Outdoor storage is allowed when consistent with Section 20.48.090 and Section 20.48.140 of the Municipal Code, and this finding does not preclude future outdoor storage areas when consistent with the Municipal Code.

Finding:

- B. Do not involve a feature of the project that was a basis for or subject of findings or exemptions in a negative declaration or Environmental Impact Report for the project.*

Facts in Support of Finding:

The existing eating and drinking establishment has not been the subject of past environmental review. The proposed changes qualify for an exemption from the California Environmental Quality Act pursuant to Section 15301 (Existing Facilities) and Section 15302 (Replacement or Reconstruction) since the project involves negligible or no expansion of the existing use.

Finding:

- C. Do not involve a feature of the project that was specifically addressed or was the subject of a condition(s) of approval for the project or that was a specific consideration by the applicable review authority in the project approval.*

Facts in Support of Finding:

Use Permit No. 816 does not have any conditions of approval; however, it does allow a restaurant without all code required parking. PDUP No. 23 recognized the continued restaurant use with accessory bar areas and an outdoor patio on the second floor while establishing a maximum seating of 312 people. A specific consideration of PDUP No. 23 was to ensure that expansion of the use such that it would not generate increased parking requirements. The proposed changes lower occupancy and seating despite an increase in the interior net public area. PDUP No. 23 also considered the need to provide disabled access to all portions of the restaurant and the existing docks. The proposed changes will provide disabled access consistent with the California Building Code and access to the existing docks will remain in its current location.

Finding:

- D. Do not result in an expansion or change in operational characteristics of the use.*

Facts in Support of Finding:

1. This approval authorizes the physical renovation of the existing building to continue the use of the building as an Eating and Drinking Establishment, or restaurant, with accessory bar areas and outdoor patio on the second floor. This authorization does not permit the establishment of a bar, cocktail lounge, nightclub or commercial recreational entertainment venue. Any future accessory live entertainment or dancing activities would be subject to required permitting (i.e., Live Entertainment Permit, Café Dance Permit, Operator License, or Use Permit Amendment).
2. The total enclosed gross floor area of the building is not increasing. Although the net public area is increasing, the maximum occupancy and seating is decreasing based upon the proposed floor plan and seating plans thereby decreasing parking demands.

**IV. DETERMINATION**

The proposed renovation of the Villa Nova Restaurant creating The Winery Restaurant & Wine Bar as shown on the proposed plans substantially conforms to Use Permit No. 816 and Planning Director's Use Permit No. 23 based upon the forgoing findings and subject to the following conditions of approval.

## **V. CONDITIONS OF APPROVAL**

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. The development shall be in substantial conformance with the approved plans dated **June 5, 2013**. (Except as modified by applicable conditions of approval.)
3. This approval may be modified or revoked by the City Council or the 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.
4. The applicant is required to obtain all applicable permits from the City 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.
5. Any change in operational characteristics, hours of operation, expansion in area, or other modification to the approved plans, shall require an amendment to the Use Permit or the processing of a new Use Permit.
6. This approval allows the continued operation of an Eating and Drinking Establishment, or restaurant, with accessory bar areas and does not authorize the use or operation of a bar, tavern, cocktail lounge, nightclub or commercial recreational entertainment venue. A Live Entertainment Permit, Cafe Dance Permit or Operator License shall be required prior to allowing live entertainment or dancing as an incidental and accessory activity.
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. Staff Approval No. 2013-006 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 and Section 20.93.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
9. 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.
10. Allowed hours of operations are between 8:00AM to 2:00AM.
11. No audible, outside paging system shall be utilized in conjunction with this establishment.

12. All trash shall be stored within the building or within dumpsters stored in the trash enclosure provided except when placed for pick-up by refuse collection agencies.
13. The restaurant operator shall ensure that the trash dumpsters and/or receptacles are emptied periodically and 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 Community Development Department. 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).
14. 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.
15. Washing of refuse containers, storage containers, kitchen equipment, kitchen mats, utensils, or any other similar items shall not be permitted unless conducted within an approved washout area that drains directly into the sewer system. Water shall not be used to clean exterior paved surfaces such as sidewalks, driveways, parking areas, etc. except to alleviate immediate safety or sanitation hazards and any such cleaning shall not be allowed to drain to any storm drain.
16. Outdoor storage is allowed when consistent with Section 20.48.090 and Section 20.48.140. The existing unpermitted shipping storage container shall be removed from the site prior to occupancy.
17. 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.
18. Full meal service shall be provided during all hours of operation.
19. Kitchen exhaust fans shall be installed/maintained in accordance with applicable Codes and must be compliant with regard to the control of smoke and odor pursuant to South Coast Air Quality Management District requirements.
20. All exits shall remain free of obstructions and available for ingress and egress at all times. The restaurant operator shall not permit occupancy of the building to exceed the maximum occupancy limit established by the California Building Code.
21. The restaurant shall comply with all operational standards listed in Subsection A of Section 20.48.030 of the Newport Beach Municipal Code.
22. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be a Type 47 in conjunction with the service of food as the principal use of the facility. Any proposed change to the alcoholic beverage license shall be subject to the review and approval of the City. No alcoholic beverages

shall be consumed on any property adjacent to the licensed premises under the control of the license.

23. 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 Winery Restaurant & Bar including, but not limited to, SA2012-006 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.

**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. For additional information on filing an appeal, contact the Planning Division at (949) 644-3200.

On behalf of Kimberly Brandt, AICP, Community Development Director

By:

A handwritten signature in blue ink that reads "JW Campbell". The signature is written in a cursive, flowing style.

James Campbell  
Principal Planner

Attachments: CD 1 Vicinity Map  
CD 2 Project Plans



# **Attachment No. CD 1**

Vicinity Map

## VICINITY MAP



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Staff Approval – Administrative Substantial Conformance  
Review No. SA2013-006  
PA2013-097

3131 W. Coast Highway

# **Attachment No. CD 2**

Project Plans















































