



**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 September 13, 2013

**ZONING ADMINISTRATOR ACTIONS
SEPTEMBER 12, 2013**

- Item 1: Mitchell Residence Condominium Conversion No. CC2013-001
and Parcel Map No. NP2013-015 (PA2013-126)
512 and 512 ½ Avocado Avenue
- Action: Approved by Resolution No. ZA2013-052 Council District 6
- Item 2: Sessions Sandwiches - Minor Use Permit No. UP2013-012 (PA2013-142)
2823 Newport Boulevard
- Action: Approved by Resolution No. ZA2013-053 Council District 1

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.

RESOLUTION NO. ZA2013-052

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING CONDOMINIUM CONVERSION NO. CC2013-001 AND TENTATIVE PARCEL MAP NO. NP2013-015 FOR A TWO-UNIT CONDOMINIUM DEVELOPMENT LOCATED AT 512 AND 512 ½ AVOCADO AVENUE (PA2013-126)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Richard and Jeanne Mitchell, with respect to property located at 512 and 512 ½ Avocado Avenue, and legally described as Lot 28 of Tract 682, in the City of Newport Beach, as per map thereof recorded in Book 20, Page 19 of miscellaneous maps in the office of the County Recorder of said Orange County, requesting approval of a condominium conversion and parcel map.
2. The applicant proposes a condominium conversion and parcel map to convert an existing duplex into a condominium project. The code required two-car parking per unit is provided and no waivers of Title 19 development standards are proposed with this application.
3. The subject property is located within the RT (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-D (Two-Unit Residential).
5. A public hearing was held on September 12, 2013 in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities) and Class 15 (Minor Land Divisions)
2. The division of existing multiple family or single-family residences into common interest ownership is exempt under Class 1 of CEQA. The division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels is exempt when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have an average slope greater than 20 percent.

SECTION 3. REQUIRED FINDINGS.

Condominium Conversion

In accordance with Section 19.64.070 (Standards for Condominium Conversions) of the Newport Beach Municipal Code, the following 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 the Zoning Ordinance in effect at the time of approval of the conversion.*

Facts in Support of Finding

- A-1. The existing duplex consists of 3,521 square feet including two, single-car garages and two covered spaces.
- A-2. The four spaces provided meet the number of spaces required (2 per unit) per 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 duplex has two separate sewer connections to the City sewer.

Finding

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

Facts in Support of Finding

- C-1. The duplex has two separate sewer cleanouts located at the property line.

Finding

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

Facts in Support of Finding

- D-1. The duplex has two separate water meters and water meter connections.

Finding

- E. *The electrical service connection shall comply with the requirements of Chapter 15.32 (Underground Utilities) of the Newport Beach Municipal Code.*

Facts in Support of Finding

- E-1. The duplex complies 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 August 6, 2013, and no violations were 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 is consistent with the adopted goals and policies of the Land Use Element and other Elements of the General Plan and the Local Coastal Program Land Use Plan. The project site is designated as RT (Two-Unit Residential) by the Land Use Element of the General Plan and as RT-D (Two-Unit Residential) by the Coastal Land Use Plan (CLUP). The proposed project is consistent with the RT 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, remodeled two-unit dwelling rental 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 the circumstances of the particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City.

Facts in Support of Finding

- I-1. The application of the 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 is to convert an existing, remodeled duplex into two condominiums on property located within the R-2 zoning district.
- I-3. Public improvements will be required of the Applicant per the Municipal Code and the 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 and a Class 15 categorical exemption pursuant to Title 14 of the California Code of Regulations (Sections 15301 and 15315, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act). Under Class 1 (Existing Facilities), the division of existing multiple family or single-family residences into common interest ownership is exempt under Class 1 of CEQA. Under Class 15 (Minor Land Divisions), the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels is exempt when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous 2 years, and the parcel does not have an average slope greater than 20 percent.

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. The development 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, which is 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 previously 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-D (Two-Unit Residential).
- K-2. The subject property is not adjacent to coastal access points therefore, the coastal access and recreation policies do not apply.
- 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 Parcel Map No. NP2013-015 and Condominium Conversion No. CC2013-001 (PA2013-126), subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. The Condominium Conversion and Tentative Parcel Map 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 12th DAY OF SEPTEMBER, 2013.



Patrick Alford, Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL**

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. 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 Parcel Map and Condominium Conversion.
3. No more than two-dwelling units shall be permitted on the site.
4. In accordance with the provisions of Chapter 13 of the Newport Beach Municipal Code or other applicable section or chapter, additional street trees may be required and existing street trees shall be protected in place during construction of the subject project, unless otherwise approved by the General Services Department and the Public Works Department through an encroachment permit or agreement.
5. Two-car parking, including one enclosed garage space and one covered or enclosed parking space, shall be provided on site for each dwelling unit per requirements of the Zoning code. All parking spaces shall be maintained clear of obstructions for the parking of vehicles at all times.
6. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
7. 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.
8. 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 Condominium Conversion and Parcel Map including, but not limited to, Condominium Conversion No. CC2013-001 and Tentative Parcel Map No. NP2013-015 (PA2013-126). 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.

9. 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.

Building Division Conditions

10. The project shall comply with the CRC or CBC 2010 code for construction type, fire rating, egress requirements and sound attenuation.
11. The sprinkler system shall provide a separate riser, one for each dwelling unit.
12. Separate utilities and electrical, mechanical, and plumbing shall be provided for each dwelling unit.
13. Separate forced air units and air conditioning units shall be provided for each dwelling units. Sound attenuation will apply.
14. The dwelling units shall comply with fire separation and sound attenuation requirements.
15. 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.

Public Works Conditions

16. 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.**
17. 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.

18. All improvements shall be constructed as required by Ordinance and the Public Works Department.
19. Repair damaged concrete curbs along the Avocado Avenue frontage.
20. 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.
21. An encroachment permit is required for all work activities within the public right-of-way.
22. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L and Municipal Code Section 20.30.130.
23. 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.
24. All on-site drainage shall comply with the latest City Water Quality requirements.
25. All above ground improvements shall stay a minimum 5-foot clear within the alley setback, including planting. Standard concrete driveway shall replace the planter within the 5-foot alley setback.
26. 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.

RESOLUTION NO. ZA2013-053

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2013-012 FOR A FOOD SERVICE USE LOCATED AT 2823 NEWPORT BOULEVARD (PA2013-142)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Matt Meddock, with respect to property located at 2823 Newport Boulevard, and legally described as Lots 18, 19, 20, and 21 of subdivision of Block 227, Section "A" Newport Beach, as shown on a map recorded in Book 4 and Page 26 of Miscellaneous Maps, Records of Orange County requesting approval of a minor use permit.
2. The applicant proposes to convert an existing 3,307 square-foot retail space to a food service use. The proposal includes 523 square feet of interior net public area and seating for 31 patrons. Service of alcohol and late hours (after 11:00 p.m.) are not proposed.
3. The subject property is located within the Commercial Visitor-Serving (CV) Zoning District and the General Plan Land Use Element category is Visitor Serving Commercial (CV).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Visitor Serving Commercial (CV-A).
5. A public hearing was held on September 12, 2013, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 – (Existing Facilities).
2. This exemption authorizes minor alterations to existing structures involving negligible or no expansion of use. The proposed project involves alterations to the interior floor plan of an existing commercial space and related parking lot with no expansion in use.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020 (Conditional Use Permits and Minor Use Permits) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

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

Facts in Support of Finding:

- A-1. The General Plan designates the site as Visitor Serving Commercial (CV) which is intended to provide for accommodations, goods, and services to primarily serve visitors to the City of Newport Beach.
- A-2. The proposed food service use is consistent with the CV designation as it is intended to provide a service not only to visitors, but also to residents within the immediate neighborhood and surrounding area.
- A-3. Eating and drinking establishments are common in the vicinity along Newport Boulevard and are complimentary to the surrounding commercial and residential uses.
- A-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:

- B-1. Pursuant to Section 20.20.020 (Commercial Zoning Districts Land Uses and Permit Requirements, Table 2-5) of the Zoning Code, eating and drinking establishments located in the CV Zoning District that are within 500 feet of a residential zoning district, and classified as *Food Service, No Alcohol, No Late Hours*, require the approval of a minor use permit. The property is located approximately 100 feet from a residential zoning district.
- B-2. The existing tenant space is considered legal nonconforming due to parking because 11 parking spaces are provided onsite, where, based on a parking ratio for the previous use (retail) of one space per 250 gross square feet, a total of 14 spaces ($3,307/250 = 13.2$) are required. Pursuant to Chapter 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) occurs.
- B-3. Based on the characteristics of the proposed use with a combination of fixed-seating, bicycle parking, presence of walk up traffic, no live entertainment, and no late hours, a rate of one parking space per 40 square feet of net public area is appropriate. With this ratio, 14 spaces ($523/40 = 13.1$) would be required on site, and would therefore, not intensify the parking requirement above what was required (14 spaces) for the previous retail use, and does not result in an intensification of use.

B-4. As conditioned, the proposed project will comply with Zoning Code standards for eating and drinking establishments.

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:

C-1. The proposed food service use is appropriate given the establishment will be located between two streets which provide convenient access to motorists, pedestrians, and bicyclists.

C-2. The establishment is buffered from residential uses to the west by Newport Boulevard and the adjacent municipal parking lot.

C-3. The surrounding area contains various business office, retail, and visitor serving commercial uses including restaurants and take-out eating establishments. The proposed establishment is compatible with the existing and permitted uses within the area.

C-4. The proposed establishment will provide a service for residents of the neighborhood and visitors to the area and will not require the provision of additional parking spaces onsite.

C-5. The existing trash storage area is adequate to accommodate the proposed food service use and is conveniently located where materials can be deposited and collected, and does not impede the parking spaces. As conditioned, the height of the trash enclosure shall be increased to completely screen the trash dumpster, and a gate shall be installed that will be locked when not in use.

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:

D-1. The parking lot is proposed and conditioned to be reconfigured to provide adequate circulation and code compliant parking spaces.

D-2. This site has been reviewed by the Fire Department to ensure adequate public and emergency vehicle access is provided.

D-3. The proposed site improvements will comply with all Building, Public Works, 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, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

- E-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.
- E-2. 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.
- E-3. The proposed renovations to the existing commercial building and related parking lot will have a positive impact on the overall economic health of the community and may promote further revitalization of other commercial properties in the vicinity.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2013-012, subject to the conditions set forth in Exhibit A, which are attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20 (Planning and Zoning), of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 12TH DAY OF SEPTEMBER, 2013

Patrick J. Alford, 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. This Minor Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed use or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
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. UP2013-012 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 Minor Use Permit.
8. Live entertainment and dancing shall be prohibited as a part of the regular business operation.
9. The sale of alcoholic beverages shall be prohibited unless an amendment to this Minor Use Permit or other required application is first approved in accordance with the provisions of the Municipal Code.
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. Net public area shall be limited to 523 square feet.

12. The hours of operation for the food service use are limited to between 6:00 a.m. and 11:00 p.m. daily.
13. No outside paging system shall be utilized in conjunction with this establishment.
14. The applicant shall take reasonable steps to ensure that noise created by music and or video in the interior of the establishment does not impact surrounding residential land uses.
15. 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.
16. All trash shall be stored within the building or within dumpsters stored in the trash enclosure, or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies.
17. A gate shall be installed to enclose the existing trash enclosure and shall be locked when not in use.
18. The walls of the existing trash enclosure shall be increased in height so no portion of the trash dumpster is visible from the public right of way.
19. The trash dumpster within the trash enclosure shall be covered with a solid lid.
20. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
21. The 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.
22. 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.
23. 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.
24. 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.

25. 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 Sessions Sandwiches Minor Use Permit including, but not limited to, the UP2013-012 (PA2013-142). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Building and Fire Department Conditions

26. 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.
27. The construction plans must meet all applicable State Disabilities Access requirements.
28. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
29. All exits shall remain free of obstructions and available for ingress and egress at all times.
30. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.

Revenue Division Conditions

31. 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.

Public Works Department Conditions

32. All improvements shall be constructed as required by Ordinance and the Public Works Department.
33. The applicant shall reconstruct the existing broken and/or otherwise damaged concrete sidewalk panels, curb and gutter along the Newport Boulevard frontages.
34. An encroachment permit is required for all work activities within the public right-of-way.
35. All improvements shall comply with the City's sight distance requirement, pursuant to City Standard 110-L and Municipal Code section 20.30.130.
36. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way may be required at the discretion of the Public Works Inspector.
37. All on-site drainage shall comply with the latest City Water Quality requirements.
38. The existing water meter servicing the project site shall be protected with a reduced pressure backflow assembly and shall be sized to match the water meter.
39. Both driveway approaches/curb openings shall be modified to align with the new drive aisle alignment. The modified driveway approaches shall be installed per City standard.
40. The proposed bicycle parking located at the westerly side of the property shall be positioned to ensure that the bicycle rack and bicycles do not encroach into the public right-of-way.
41. The parking lot shall be reconfigured consistent with the approved site plan, including removal of the brick planter wall.