



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

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION

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

SUBJECT: Report of actions taken by the Zoning Administrator, and/or Planning Division staff for the week ending December 27, 2013

**ZONING ADMINISTRATOR ACTIONS
DECEMBER 23, 2013**

- Item 1:** Macy's Sign Modification Permit No. MD2013-020 (PA2013-207)
101 Newport Center Drive
- Action: Approved by Resolution No. ZA2013-086 Council District 5
- Item 2:** Bari Studio Minor Use Permit No. UP2013-026 (PA2013-230)
2125 San Joaquin Hills Road
- Action: Approved by Resolution No. ZA2013-087 Council District 5

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

RESOLUTION NO. ZA2013-086

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MODIFICATION PERMIT NO. MD2013-020 FOR TWO ADDITIONAL WALL SIGNS LOCATED AT 101 NEWPORT CENTER DRIVE (PA2013-207)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Shawna Schaffner of CAA Planning, Inc., representing the property owner, The Irvine Company, with respect to property located at 101 Newport Center Drive, and legally described as Lot Q, Tract 6015 in the City of Newport Beach, County of Orange, California being a subdivision of portions of Blocks 55 and 93 of Irvine's subdivision per map thereof recorded in Book 1, Page 88 of Miscellaneous Record Maps, Records of Orange County, California, requesting approval of a modification permit.
2. The applicant proposes a modification permit to add two major tenant signs to existing wall signage for a total of four wall signs for Macy's within Fashion Island, where the North Newport Center Planned Community Development Plan allows one sign per building elevation in areas that are visible from the public right-of-way. Two wall signs will be located on the south building elevation and two will be located on the east building elevation. The wall sign on the south elevation will provide an overall sign height of 6 feet 9 3/4 inches (172 square feet in area) and the wall sign on the east elevation will provide an overall sign height of 6 feet 3/4 inches (126 square feet in area). Each wall sign will comply with the maximum 10-foot height limitation established by the North Newport Center Planned Community for major tenant signs.
3. The subject property is located within the Fashion Island Sub-Area of the PC-56 (North Newport Center) Zoning District and the General Plan Land Use Element category is CR (Regional Commercial).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on December 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. The item was continued to the December 23, 2013, Zoning Administrator hearing.
6. A public hearing was held on December 23, 2013, in the Corona del Mar Conference Room (Bay E-1st Floor) at 100 Civic Center Drive, Newport Beach. 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 qualifies for a Class 11 (Accessory Structures) categorical exemption pursuant to Title 14 of the California Code of Regulations (Section 15311, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act).
2. The proposed signs are incidental and accessory to the principal commercial use of the property and do not intensify or alter the use.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

- A-1. The subject property is located within the Fashion Island Sub-Area of the PC-56 (North Newport Center Planned Community) Zoning District and is developed with a 3-story department store, Macy's, that encompasses 1.76 acres of land and has two building frontages facing Newport Center Drive.
- A-2. The requested modification will allow the applicant to replace permanent wall signs at two sign locations. Only signs visible from the right-of-way are regulated in Fashion Island. Two wall signs are located above the entry to Macy's along the south and east building frontages. The existing 1-foot 6-inch wall signs above the entry are currently not regulated under the North Newport Center Planned Community because they are not visible from the adjacent right-of-way. The increased size and height of the signage at these locations will provide for added visibility in compliance with the letter/logo height limitations identified in the North Newport Center Planned Community.
- A-3. The location of the existing wall signage at the store entry locations is consistent with signage in this Zoning District and in the general vicinity. Fashion Island is the only regional shopping center in Newport Beach and the proposed signage will be appropriate in scale to the larger building facades within this center.
- A-4. The two additional major tenant signs are intended to call attention to the building entrances for pedestrians.

Finding:

- B. The granting of the modification is necessary due to the unique physical characteristic(s) of the property and/or structure, and/or characteristics of the use.*

Facts in Support of Finding:

- B-1. The building entrances are recessed and located behind pillars. The existing signage is smaller and not as readily visible to pedestrians. The larger scale signage will assist in wayfinding and call attention to the entrances.
- B-2. The parking lot that is adjacent to the building frontages is expansive, and the wall signs help to identify the store entrance to guests who have parked in this lot or are approaching along Newport Center Drive.
- B-3. Due to the location of and the height of the existing wall signs, an increase in letter height and sign area is appropriate to provide adequate site identification and visibility.

Finding:

- C. The granting of the modification is necessary due to practical difficulties associated with the property and that the strict application of the Zoning Code results in physical hardships that are inconsistent with the purpose and intent of the Zoning Code*

Facts in Support of Finding:

- C1. A strict application of the sign standards established by the North Newport Center Planned Community would limit each building frontage to one wall sign. This would result in a less than optimal identification as a result of the physical scale of the existing buildings.
- C2. The general purpose and intent of the North Newport Center Planned Community as it pertains to signs is to provide each sign user with an opportunity for adequate identification while guarding against the excessive and confusing proliferation of signs.
- C3. The sign copy location for the proposed wall signs has been designed to accent the wall. The entries are recessed and signs must be sized to provide adequate visibility from parking areas and walkways. Enlarging the letter size above the entries is consistent with the intent and purpose of the regional shopping center in providing accessibility and visibility to surrounding owners, occupants, and the general public.
- C4. Signage on-site is limited to the approved signs. The approved signs will therefore prevent a proliferation of signage on-site.

Finding:

- D. There are no alternatives to the modification permit that could provide similar benefits to the applicant with less potential detriment to surrounding owners and occupants, the neighborhood, or to the general public.*

Facts in Support of Finding:

- D-1 The alternative would be to maintain the existing sign configuration. The proposed signs will provide positive benefit to pedestrians to more easily identify the building entrances.
- D-2 Section 20.52.050 (Modification Permits) of the Zoning Code specifies that a modification permit may be granted to increase the allowed height, number, and area of signs. The size of the building warrants the increased size of the existing signs and will not detract from the building's exterior.
- D-3 All signs will be channel letters attached to existing walls and will be "halo" or back-lit, thereby eliminating any direct-illumination from the sign.
- D-4 The increased size of the wall signs will provide better visual direction for the public from the surrounding public roadways and from a greater distance without detracting from the development's overall aesthetic.

Finding

- E. The granting of the modification would not be detrimental to public health, safety, or welfare to the occupants of the property, nearby properties, the neighborhood, or the City, or result in a change in density or intensity that would be inconsistent with the provisions of this Zoning Code*
- E-1 Approval of the application to increase the size of wall signs does not change the density or intensity of use. The signs will provide for adequate wayfinding for customers and visitors to Fashion Island. Due to the size of the development and the street presence of the existing building, the presence of four wall signs, two per frontage, with new signage up to 6 feet 10 inches in height along the south elevation and 6 feet 3/4 inches in height along the east elevation will not adversely affect or be detrimental to persons, property, or improvements in the neighborhood.
- E-2 There are no residential properties adjoining the subject property.
- E-3 The granting of the modification to provide relief is consistent with past approvals for size and placement of signs at similar locations that have demonstrated no detriment to the public health, safety, or welfare of occupants of the property, nearby properties, the neighborhood, or the City.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Modification Permit No. MD2013-020, 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 14 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 23rd DAY OF DECEMBER, 2013.



Brenda Wisneski, AICP, Zoning Administrator

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

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 project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. 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.
4. The overall letter/logo height of the new wall sign on the south elevation shall be limited to 6 feet 10 inches in height and 172 square feet in area. The background shall be painted in a color to match the exterior building color.
5. The overall letter/logo height of the new wall sign on the east elevation shall be limited to 6 feet 3/4 inches in height and 126 square feet in area. The background shall be painted in a color to match the exterior building color.
6. This Modification 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 is materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
7. Any expansion in area, or other modification to the approved plans, shall require an amendment to this Modification Permit or the processing of a new modification permit.
8. 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.
9. Prior to issuance of building permits, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Modification Permit file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Modification Permit and shall highlight the approved elements such that they are readily discernible from other elements of the plans.

10. 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.
11. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.
12. To the fullest extent permitted by law, applicant shall indemnify, defend, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Macy's Sign Modification including, but not limited to, the Modification Permit No. MD2013-020 (PA2013-207). 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 Conditions

13. 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.

RESOLUTION NO. ZA2013-087

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2013-026 FOR A LARGE-SCALE HEALTH AND FITNESS FACILITY (BARI STUDIO) LOCATED AT 2125 SAN JOAQUIN HILLS ROAD (PA2013-230)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Bari Studio Newport Beach, Inc., with respect to property located at 2125 San Joaquin Hills Road, and legally described as Parcel 1 of Resubdivision No. 259 requesting approval of a minor use permit.
2. The applicant proposes a minor use permit to allow a 3,176-square-foot health and fitness facility in a vacant tenant space within a multi-tenant office building. The facility would have a maximum of 24 patrons and three employees. Required parking is provided within two parking areas for the building at a rate of one parking space per 200 square feet of gross floor area. The proposed hours of operation are from 6:00 a.m. to 8:00 p.m., daily.
3. The subject property is located within the Block 500 Newport Center Planned Community (PC-46) Zoning District and the General Plan Land Use Element category is Mixed-Use Horizontal (MU-H3).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on December 23, 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 pursuant to the State CEQA (California Environmental Quality Act) Guidelines under Class 1 (Existing Facilities).
2. This exemption allows for the operation, repair, maintenance and minor alteration of existing buildings. The proposed business is located within an existing building where only minor interior alterations are required to accommodate the new use.

SECTION 3. REQUIRED FINDINGS.

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

Finding

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

Facts in Support of Finding

1. The General Plan land use designation for this site is Mixed-Use Horizontal (MU-H3). The MU-H3 designation is intended to provide for the horizontal intermixing of regional commercial office, hotel, multi-family residential and ancillary commercial uses. The proposed large-scale health and fitness facility use is consistent with the MU-H3 designation as an ancillary commercial use.
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 Block 500 Newport Center Planned Community (PC-46) Zoning District. The PC-46 Zoning District is intended to permit the location of a combination of business and professional office uses, and light general commercial activities engaged in the sale of products to the general public. The proposed health and fitness facility is consistent with land uses permitted by the PC-46 Zoning District.
2. The proposed use will comply with all applicable development and parking standards.

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. Light general commercial uses such as health and fitness facilities are commonly located within office developments as an ancillary use that provides a service to both employees of the surrounding businesses as well as residents in the surrounding neighborhoods. The establishment will be compatible with the land uses permitted within the surrounding vicinity.

2. The proposed use will be located in a vacant tenant space within an existing multi-tenant office building.
3. The multi-tenant office building is adjacent to residential land uses located to the north within the Big Canyon Planned Community (PC-8) Zoning District; however, the project site is located along the eastern edge of the office development site, is oriented towards the parking lot away from the residential uses, and is separated from these uses by a roadway/parkway buffer.
4. The surrounding commercial uses along San Joaquin Hills Road and within Newport Center contain various business office, medical office and general commercial uses. The proposed health and fitness facility is compatible with the existing and permitted uses in the vicinity.
5. The hours of operation for the health and fitness facility will be from 6:00 a.m. to 8:00 p.m., daily.

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. Adequate circulation and code required parking are provided within the Block 500 Newport Center office site to accommodate the existing and proposed uses. The existing multi-tenant office building is 12,929 gross square feet and a total of 50 parking spaces are provided. The number of total parking required for the shopping center is 51; however, one parking space was lost in 2008 due to Americans with Disability Act (ADA) upgrades. Pursuant to Zoning Code Section 20.40.110.A (Adjustments to Off-Street Parking Requirements), the Director may reduce parking requirements when a parking lot is upgraded for ADA compliance.
2. Adequate public and emergency vehicle access, public services, and utilities are provided within the existing office development.
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 includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible.
2. The proposed use and hours of operation are compatible with existing uses within the Block 500 Newport Center office site.
3. A health and fitness facility of this size is a common retail/service use that can be expected within and nearby office developments such as the Block 500 Newport Center office site.
4. The proposed health and fitness facility will serve the surrounding business community as well as residents of the adjacent neighborhoods. This will provide an economic opportunity for the property owner to update tenant mixture to best serve the quality of life for the surrounding business and residential community.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2013-026, 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 14 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 23RD DAY OF DECEMBER, 2013.



Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

1. Minor Use Permit No. UP2012-026 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 of the Newport Beach Municipal Code, or an extension is otherwise granted.
2. The Zoning Administrator may add to or modify conditions of approval to this Minor Use Permit or revoke this Minor Use Permit upon a determination that the operation, which is the subject of this Minor Use Permit, causes injury, or is detrimental to the health, safety, peace, comfort, or general welfare of the community.
3. The project shall be in substantial conformance with the approved plot plan, floor plan, and elevations dated October 1, 2013.
4. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Minor Use Permit or the processing of a new use permit.
5. 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.
6. The project and all tenant improvements must comply with the most recent, City-adopted version of the California Building Code.
7. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use will be cause for revocation of this Permit.
8. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of this health and fitness facility 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.
9. The use shall be limited to a maximum of three employees and 24 patrons at any time during the business hours 6:00 a.m. to 9:00 p.m., daily.
10. The doors and windows shall remain closed at all times that the facility is open for business.
11. The operator of the facility shall be responsible for the control of noise generated by the subject use. Pre-recorded music may be played in the tenant space, provided exterior noise levels do not exceed the provisions of Chapter 10.26 of the Newport Beach Municipal Code.

12. Prior to implementation of the proposed operation, the applicant shall install noise-abating material to both the interior walls and ceiling of the tenant space which abuts any neighboring tenant space that may be adversely impacted by daytime operations of the facility. The proposed material shall be reviewed and approved by both the Planning and Building Departments for installation requirements.
13. Prior to issuance of building permits, the applicant shall submit to the Planning Department an additional copy of the approved architectural plans for inclusion in the use permit file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11-inches by 17-inches. The plans shall accurately depict the elements approved by this Planning Director's Use Permit and shall highlight the approved elements such that they are readily discernible from other elements of the plans.
14. 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 Bari Studio Minor Use Permit including, but not limited to, Minor Use Permit No. UP2013-026 (PA2013-230). 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.