



**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 February 14, 2014

**ZONING ADMINISTRATOR ACTIONS
FEBRUARY 13, 2014**

- Item 1: Ochs Residence Modification Permit No. MD2013-017 (PA2013-197)
444 Isabella Terrace
- Action: Denied by Resolution No. ZA2014-005 Council District 6
- Item 2: Pirozzi Restaurant Minor Use Permit No. UP2014-001 (PA2013-249)
2929 East Coast Highway
- Action: Approved by Resolution No. ZA2014-006 Council District 6
- Item 3: 441 Old Newport Parking Modification Permit No. MD2013-023 (PA2013-228)
441 Old Newport Boulevard
- Action: Approved by Resolution No. ZA2014-007 Council District 2

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. Randy Parker, NBPD (*ABC License*)
Sgt. Chuck Freeman, NBPD (*Massage Therapy - ABC License*)

RESOLUTION NO. ZA2014-005

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH DENYING MODIFICATION PERMIT NO. MD2013-017 FOR A 10-PERCENT SETBACK ENCROACHMENT LOCATED AT 444 ISABELLA TERRACE (PA2013-197)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Scott Laidlaw, with respect to property located at 444 Isabella Terrace, and legally described as Lots 152 and 153 of Tract Number 1237, requesting approval of a modification permit.
2. The applicant proposes a modification permit for a new second-story cantilevered deck to encroach 18 inches into the required 15-foot front setback along Rivera Terrace.
3. The subject property is located within the Single-Unit Residential (R-1-6,000) Zoning District and the General Plan Land Use Element category is Single-Unit Residential (RS-D).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Single-Unit Residential Detached (0.0 - 5.9 DU/AC) (RSD-A).
5. A public hearing was held on February 13, 2014, 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.

Pursuant to Section 15270 of the California Environmental Quality Act (CEQA) Guidelines, projects which a public agency rejects or disapproves are not subject to CEQA review.

SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

- B. *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.*
- C. *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.*
- 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.*
- 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.*

In this particular case, staff believes not all findings can be made for the following reasons:

1. The subject property is located in the northernmost section of the Corona Highlands and has a required 15-foot front setback along Rivera Terrace. The interior lots are generally 60 feet in width and are characterized by a sloping double frontage with most vehicular access taken from the higher side of the property and decks with outdoor living areas situated at the lower side. The subject property is comprised of two, legal lots thereby doubling the lot width and making it one of the larger lots in the community. The majority of the area within the 15-foot front setback and a large area adjacent to it have been graded and covered by hardscape in conjunction with an in-ground pool. The outdoor living areas afforded to the property owner are comparable to those existing within the immediate vicinity.
2. The Corona Highlands community is characterized by an underlying slope that descends toward the ocean. The slope on the subject property is no different from that on other properties within the immediate vicinity.
3. The subject property was recently remodeled with a second-floor cantilevered deck that complies with the Zoning Code requirements. The deck was constructed in the same location where the proposed extension would take place. This presents an alternative that not only exists, but provides similar benefits to the property owner without necessitating a modification permit.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby denies Modification Permit No. MD2013-017.

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 13TH DAY OF FEBRUARY, 2014.



Brenda Wisneski, AICP, Zoning Administrator

RESOLUTION NO. ZA2014-006

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2014-001 TO ADD ALCOHOL SALES TO AN EXISTING FOOD SERVICE, EATING AND DRINKING ESTABLISHMENT LOCATED AT 2929 EAST COAST HIGHWAY (PA2013-249)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Alessandro Pirozzi, with respect to property located at 2929 East Coast Highway, and legally described as Parcel 1 of Re-subdivision Number 179, requesting approval of a minor use permit.
2. The applicant proposes to add a Type 47 (On-Sale General, Bona Fide Public Eating Place) Alcoholic Beverage Control (ABC) License to an existing food service, eating and drinking establishment. No late hours (after 11:00 p.m.) are proposed as part of this application.
3. The subject property is located within the Commercial Corridor (CC) Zoning District and the General Plan Land Use Element category is Corridor Commercial (CC).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Corridor Commercial - (0.0 - 0.75 FAR) (CC-B).
5. A public hearing was held on February 13, 2014 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 Title 14 of the California Code of Regulations (Section 15315, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 1 (Existing Facilities).
2. The Class 1 exemption includes the ongoing use of existing buildings where there is negligible or no expansion of use. Pirozzi Restaurant has been permitted to occupy a tenant space formerly occupied by a fast food restaurant (Kentucky Fried Chicken). The proposed project involves the addition of an ABC License to sell and serve alcohol.

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 the subject reporting district (RD 44) is 93% over the City average while the crime rates in the adjacent RDs are lower than the City average.
 2. Although the crime rate for RD 44 is higher than average for nearby RDs, the Police Department has reviewed the proposed operation and has no objection.
 3. RD 44 contains Corona del Mar State Beach and the Corona del Mar commercial corridor along East Coast Highway east of Avocado Avenue. This area has a high concentration of commercial establishments and restaurants. There are currently 27 Alcoholic Beverage Control (ABC) Licenses in this RD.
- ii. *The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*
 1. 2013 alcohol crime related statistics indicate a higher number of alcohol related calls, crimes and arrests in RD 44 when compared to other areas in the City. In particular, RD 44 had 85 alcohol related arrests.
- 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 a small-scale commercial center which was developed as a retail and service center. The nearest residential uses are located directly west of the subject building. The nearest park, Bayside Park, is located approximately 850 feet southwest. Other sensitive land uses above are not located within close proximity of the subject building.

iv. The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.

1. Several other establishments along Coast Highway currently have an active ABC license, most of which are bona fide eating and drinking establishments and are not defined as bars, lounges or nightclubs by the Zoning Code. The establishments within the immediate vicinity include Mayur Cuisine of India, Port Restaurant, Port Theater, and The Place.

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

1. The subject tenant space has historically been occupied by a fast food restaurant with a similar number of seats and business hours. There is no evidence that suggests this type of use has 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 Corridor Commercial (CC) which is to provide a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity.
2. The proposed food service use with the addition of alcohol sales and service is consistent with the CC designation as it is intended to provide a service not only to visitors traveling Coast Highway, but also to residents within the immediate neighborhood and surrounding area.
3. Eating and drinking establishments are common along East Coast Highway and are complementary to the surrounding commercial and residential uses.
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. 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 CC Zoning District classified as *Food Service, Alcohol, No Late Hours*, require the approval of a minor use permit. The property is located immediately east of a residential zoning district.
2. 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) occurs. The previous fast food use, Kentucky Fried Chicken (KFC), had a parking requirement of 29 parking spaces and the proposed restaurant has a maximum parking requirement of 13 parking spaces based on a one parking space per 30 square feet of net public area ratio; therefore, the proposed restaurant complies with Zoning Code Section 20.38.060.
3. 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

1. The commercial center was designed to be occupied by a mix of restaurants, retail and service uses. Pirozzi Restaurant will complement the existing uses and is a typical and expected type of use in similar commercial centers.
2. The operation of the restaurant will be restricted to the hours between 11:00 a.m. and 11:00 p.m., daily. These hours are consistent with the business hours of other restaurants and uses in the commercial center.
3. The proposed food service use is appropriate given the establishment will be located along East Coast Highway which provides convenient access to motorists, pedestrians, and bicyclists.
4. 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.
5. 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 a food service use. All improvements to the tenant space have been reviewed and permitted.
2. Original site plan approvals for the development of the shopping center included a review to ensure adequate public and emergency vehicle access, and that public services, and utilities are provided to the entire commercial 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, and safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding

1. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.
2. The food service, eating and drinking establishment will serve the surrounding community in a commercial center designed for such uses. The service of alcohol 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. UP2014-001, 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 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 13TH DAY OF FEBRUARY, 2014.



Brenda Wisneski, AICP, Zoning Administrator

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

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. This 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.
5. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require subsequent review and approval and may necessitate an amendment to this Minor Use Permit or the processing of a new use permit.
6. The hours of operation for the establishment shall be between 11:00 a.m. and 11:00 p.m., daily.
7. 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.
8. No outside paging system shall be utilized in conjunction with this establishment.
9. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
10. 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.

11. 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.
12. 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 (Water and Sewers), including all future amendments (including Water Quality related requirements).
13. 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 Minor Use Permit.
14. 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.
15. 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.
16. This approval shall expire and become void unless exercised within 24 months from the actual date of review and 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.
17. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Pirozzi Restaurant Minor Use Permit including, but not limited to, UP2014-001 (PA2013-249). 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.

POLICE DEPARTMENT

18. The approval of Minor Use Permit No. UP2014-001 does not permit Pirozzi Restaurant to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Municipal Code, unless the Planning Commission first approves a use permit.
19. Food service from the regular menu shall be available to patrons up to thirty (30) minutes before the scheduled closing time.
20. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
21. 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.
22. 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.
23. 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.
24. There shall be no live entertainment allowed on the premises.
25. There shall be no dancing allowed on the premises.
26. Strict adherence to maximum occupancy limits is required.

RESOLUTION NO. ZA2014-007

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MODIFICATION PERMIT NO. MD2013-023 TO ALLOW THE USE OF VEHICLE LIFTS AND TANDEM SPACES TO ACCOMMODATE A PORTION OF THE 56 REQUIRED PARKING SPACES FOR A MEDICAL OFFICE BUILDING LOCATED AT 441 OLD NEWPORT BOULEVARD (PA2013-228)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Ocean View Medical Investors, with respect to property located at 441 Old Newport Boulevard, and legally described as Parcel 1 of Parcel Map No. 80-719, in the City of Newport Beach, County of Orange, State of California, as shown on a map filed in Book 163, Pages 31 and 32 of Parcel Maps in the office of the Orange County Recorder requesting approval of a conditional use permit.
2. The subject property is located within the Office General (OG) Zoning District and the General Plan Land Use Element category is General Commercial Office (CO-G).
3. The applicant requests a modification permit request to utilize a combination of vehicle lifts, tandem parking spaces, surface parking spaces and valet parking to accommodate the 56 minimum required parking spaces for a proposed medical office use in an existing office building. A semi-enclosed carport structure is proposed to be located on the northerly property line and will have spaces for eleven vehicle lifts (22 parking spaces.) Valet parking will be provided during normal business hours to ensure effective use of the vehicles lifts and tandem spaces.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on February 13, 2014, 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 requirements of the California Environmental Quality Act Guidelines under Class 3 (New Construction or Conversion of Small Structures).
2. The Class 3 exemption allows for the construction of commercial buildings up to 10,000 square feet in size and for the construction of accessory structures. The project

consists of a semi-enclosed parking structure for 11 vehicles and has an overall footprint of approximately 2,200 square feet.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.050.E (Modification Permits – Required Findings) 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 existing office building was originally constructed in 1981 and the owner is nearing completion of interior and exterior alterations and renovations. 45 parking spaces are currently provided on site.
- A-2. Old Newport Boulevard is developed with a mix of commercial, office and service uses. Office buildings in the area are developed with a mix of surface parking lots and podium parking.
- A-3. The proposed carport structure will be screened from neighboring properties and Old Newport Boulevard by existing and new trees and shrubs. Additionally, the front façade of the parking structure has been designed to be architecturally compatible with the recently renovated office building.
- A-4. Valet and tandem parking arrangements for office, restaurant and commercial buildings is used at developments/businesses within the City. When operated according to an approved valet plan and by a professional valet service, valet parking has proven a proficient way to maximize parking efficiency and on-site parking demand.
- A-5. Access to the site and the off-site parking is from Old Newport Boulevard and has been determined to be adequate for the use and is compatible with the other commercial lots in the area.

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 existing office building and parking lot were originally developed in 1981. The existing surface parking lot design provides 45 parking spaces. Due to the lot size, width and depth, additional surface parking spaces cannot be provided.
- B-2 The additional parking requirements for a medical office use necessitates the need for additional parking.
- B-3 Although parking and retrieving vehicles from the lifts may take longer than if surface parking is used, employees of the offices will be required to utilize the lifts to help alleviate prolonged waiting time for customers and clients of the medical offices.

Finding:

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

Facts in Support of Finding:

- C-1 The available on-site area to provide parking has been maximized and can accommodate a maximum of 56 parking spaces while still providing some parking lot landscaping.
- C-2 The request meets the intent of the Code by providing the required number of parking spaces on-site without the need to use off-site parking spaces.

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 An alternate solution would be to construct a parking structure or subterranean parking. Both of those options would require a significant change to the scope of work and may result in a structure with undesirable build, bulk, or scale.
- D-2 No changes to ingress or egress from the site is proposed and the on-site circulation is not expected to be impacted by the uses of the eleven vehicle lifts and tandem valet parking.

Finding:

- E. *The granting of the modification would not be detrimental to public health, safety, or welfare, to the occupants of the property, nearby properties, the neighborhood, or the City, or result in a change in density or intensity that would be inconsistent with the provisions of this Zoning Code.*

Facts in Support of Finding:

- E-1 The parking lot has been reviewed for adequate access and circulation for use by employees, patrons and access by emergency vehicles.
- E-2 Prior to implementation of the proposed project and occupying the existing general office building with more than 20% of existing floor area with medical office floor a valet parking management plan is required to be reviewed and approved by the Public Works Department and Community Development.
- E-3 Conditions of approval have been included with this resolution to ensure fire services and utilities are protected in place.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Modification Permit No. MD2013-023, 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 13TH DAY OF FEBRUARY, 2014.

By:



Brenda Wisneski, AICP, 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 project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. This Modification Permit may be modified or revoked by the Zoning Administrator if determined that the proposed vehicle lifts, valet parking management plan, tandem parking 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. 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.
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 and valet parking management plan by either the current business owner, property owner or the leasing agent.
6. 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.
7. 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.
8. Trash pick-up for shall be scheduled outside of regular business hours because a required parking space blocks access to the trash enclosure.
9. The roof of the vehicle lift shall be concrete or another solid roof material, not the metal roof as depicted on the plans. The roof design and type of construction is subject to the review and approval by the Community Development Director prior to the issuance of building permits.

-
10. During regular business hours, employees of the office building are required to use the vehicle lifts unless the lifts are full upon their arrival.
 11. Prior to the issuance of certificates of occupancy for medical office uses exceeding 20 percent of the net floor area, the vehicle lifts shall be fully operational.
 12. Prior to the issuance of certificates of occupancy for medical office uses, a valet parking management plan must be approved by the Traffic Engineer and Community Development Director. The valet parking management plan shall include signage, pick-up/drop off location(s), hours of operation.
 13. The entire parking lots (surface spaces, tandem spaces, vehicle lift spaces) shall be valet parked during business hours unless self parking is requested by a customer for the surface parking spots.
 14. Annual monitoring reports shall be prepared and submitted to the City. The first report will be during 12 months after the commencement of use of the valet plan and vehicle lifts. The report shall include average daily parking demand and space occupancy and maintenance log that identifies how many days the vehicle lifts were not available due to maintenance issues.
 15. A landscaping plan shall be included in the construction drawings to show proper screening of the carport structure including evaluation of a larger landscape area in front of the vehicle lift adjacent to Old Newport Boulevard and assessment of the impacts of the solid plaster wall to the existing Ficus trees which shall be reviewed and approved by the Community Development Department and the City Urban Forester.
 16. In the future, if the building is converted to condominiums the valet parking management plans shall be part of the Conditions Covenants and Restrictions (CCRs).
 17. Should the carport structure become inoperable it shall be removed from the property and all eliminated parking spaces shall be replaced or the uses shall be reduced to occupy no more than 20 percent of net floor area with medical office within a one-year period.
 18. Prior to issuance of building permits, a materials and colors board shall be submitted to the Community Development Department for review and approval.
 19. 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.
 20. 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 441 Old Newport Parking Modification Permit including, but not limited to MD2013-023 (PA2013-228). 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/UTILITIES

1. All improvements shall be constructed as required by Ordinance and the Public Works Department.
2. Reconstruct all existing broken and/or otherwise damaged concrete sidewalk panels, driveway approaches and curb and gutter along the Old Newport Boulevard frontage.
3. All existing drainage facilities in the public right-of-way, including the existing curb drains along Old Newport Boulevard frontage shall be retrofitted to comply with the City's on-site non-storm runoff retention requirements.
4. An encroachment permit is required for all work activities within the public right-of-way.
5. 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.
6. All on-site drainage shall comply with the latest City Water Quality requirements.
7. Parking spaces and drive aisles shall be per City Standards STD-805-L-A and STD-805-L-B. unless otherwise shown on the approved plans to accommodate the vehicle lifts and tandem spaces.
8. The existing private trees along the Old Newport Boulevard frontage on 441 Old Newport Boulevard are overgrown into power lines and adjacent property. These trees shall be trimmed back behind the property line at all times or removed.
9. The hedge along the north property line of 441 Old Newport Boulevard is encroaching into the Old Newport Boulevard public right-of-way/sidewalk. This hedge shall be trimmed back behind the property line at all times.

10. The applicant is responsible for all upgrades to the City's utilities as required to fulfill the project's demand, if applicable.
11. New and existing fire services shall be protected by a City-approved double-check detector assembly and installed per STD-517-L.
12. New and existing commercial domestic water and landscaping meter(s) shall be protected by a City-approved reduced pressure backflow assembly and installed per STD-520-L-A.
13. All traffic signage shall comply with the current California Manual of Uniform Traffic Control Devices. All traffic striping shall comply with the current Caltrans standard plans.
14. Parking layout and circulation at 441 Old Newport Boulevard is subject to approval by the City Traffic Engineer prior to permit issuance for the medical use and parking lot.

BUILDING DIVISION

1. A geotechnical report is required at time of plan check submittal.
2. Exterior walls within 10 feet of the property line are required to have a one hour fire resistive rating.
3. A 30-inch high parapet wall is required for fire rated exterior walls.
4. Class A roof material is required for the carport structure.