



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

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION

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

SUBJECT: Report of actions taken by the Zoning Administrator, and/or Planning Division staff for the week ending June 13, 2014

---

**ZONING ADMINISTRATOR ACTIONS  
JUNE 12, 2014**

- Item 1: Birkett Condominium Conversion No. CC2014-003 (PA2014-071)  
712 and 712 ½ Orchid Avenue  
Action: Approved by Resolution No. ZA2014-017 Council District 6
- Item 2: De Sola Terrace Retaining Wall Modification Permit No. MD2014-003 (PA2014-040)  
444 De Sola Terrace  
Action: Approved by Resolution No. ZA2014-018 Council District 6
- Item 3: Pizza del Perro Negro Minor Use Permit No. UP2014-017 (PA2014-066)  
2233 W. Balboa Boulevard, Unit 102  
Action: Approved by Resolution No. ZA2014-019 Council District 1
- Item 4: Sancho's Tacos Minor Use Permit No. UP2014-013 (PA2014-058)  
3014 Balboa Boulevard  
Action: Approved by Resolution No. ZA2014-020 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.

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

## RESOLUTION NO. ZA2014-017

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING CONDOMINIUM CONVERSION NO. CC2014-003 FOR A TWO-UNIT DUPLEX LOCATED AT 712 AND 712 ½ ORCHID AVENUE (PA2014-071)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by David Birkett and Margarete Jordon, Property Owners, with respect to property located at 712 and 712 ½ Orchid Avenue, and legally described as Lot 1 of Parcel Map No. 2005-243 requesting approval of a condominium conversion.
2. The applicant proposes a condominium conversion to convert an existing duplex into a two-unit condominium project. No waivers of Title 19 development standards for condominium conversions are proposed with this application.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (RT).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on June 12, 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 under the requirements of the California Environmental Quality Act, Class 1 (Existing Facilities).
2. The Class 1 exemption involves negligible or no expansion of an existing use. This classification includes the division of existing multiple-family or single-family residences into common-interest ownership, and subdivision of existing commercial or industrial buildings, where no physical changes occur which are not otherwise exempt. The proposed project involves the conversion of an existing duplex into a two-unit condominium development.

#### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 19.64.070 (Standards for Condominium Conversion) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

- A. *The minimum number, and the design and location of off-street parking spaces shall be provided in conformance with the provisions of the Zoning Ordinance in effect at the time of approval of the conversion.*

Facts in Support of Finding:

- A-1. The existing duplex provides a single-car garage and a tandem carport space for each unit, for a total of four spaces.
- A-2. The four spaces provided meet the number of spaces required (2 per unit) pursuant to Section 20.40.040 (Off-Street Parking Spaces Required) and the design and location are in conformance with provisions of Chapter 20.40 (Off-Street Parking) of the Zoning Code.

Finding:

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

Facts in Support of Finding:

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

Finding:

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

Facts in Support of Finding:

- F-1. A special inspection was completed by the Building Division on May 22, 2014, and two safety violations were identified. Existing guardrails do not meet the minimum height requirement of 42 inches and carbon monoxide detectors were not provided on all floors.
- F-2. As conditioned, the project will not be condominiums until all safety violations have been corrected.

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 required, permanent lot stakes and tags were installed at all lot corners.

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 General Plan does not include any specific goals for the dispersion of rental housing within the area. Housing Program 2.1.1 of the Housing Element of the General Plan, which restricts the conversion of rental units to condominiums in developments containing 15 or more units, does not apply.
- H-2. Although the conversion from rental to ownership will reduce the number of rental opportunities in the area, the elimination of two rental units will not create a detrimental impact to housing opportunities in the area or City, as two units represents a very

small fraction of the City's supply of rental housing (estimated to be approximately 17,500 units).

Finding:

1. *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 proposed project is to convert an existing duplex into two condominiums on property located within the R-2 zoning district.
- I-2. The use of the property will continue to be for two-unit residential purposes and there is no evidence suggesting this use has been detrimental to the health, safety, peace, comfort, and welfare of those residing or working in 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 Condominium Conversion Application No. CC2014-003, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted 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 12<sup>th</sup> DAY OF JUNE, 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. No more than two dwelling units shall be permitted on the site.
4. 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.
5. Prior to the final of the building permit for the special inspection, the applicant shall resolve all building safety violations identified in the Condominium Conversion Inspection Report dated May 22, 2014.
6. 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.
7. 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 Birkett Condominium Conversion including, but not limited to, the CC2014-003 (PA2014-071). 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.

## RESOLUTION NO. ZA2014-018

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MODIFICATION PERMIT NO. MD2014-003 TO ALLOW A SOLID RETAINING WALL WITHIN THE FRONT SETBACK TO EXCEED THE 42-INCH HEIGHT LIMIT FOR PROPERTY LOCATED AT 444 DE SOLA TERRACE (PA2014-040)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Robert W. Hughes, with respect to property located at 444 De Sola Terrace, and legally described as Lot 115, Tract 1237, requesting approval of a Modification Permit.
2. The applicant requests a Modification Permit to allow a 5-foot high, solid retaining wall to exceed the 42-inch height limit within the front setback along Cabrillo Terrace. The proposed wall would serve as the Building Code-required pool protection fencing. The Zoning Code allows pool protection fencing to be 5 feet high within the front setback if it is at least 40 percent open (e.g., wrought iron or Plexiglas); however, the subject wall does not meet the 40 percent open standard.
3. The subject property is located within the Single-Unit Residential (R-1-6000) Zoning District and the General Plan Land Use Element category is Single-Unit Residential Detached (RS-D).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Single-Unit Residential Detached (RSD-A).
5. A public hearing was held on June 12, 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 3 (New Construction or Conversion of Small Structures).
2. Class 3 exempts the construction of limited numbers of new, small facilities or structures and the installation of small new equipment and facilities in small structures. Class 3 includes accessory structures including swimming pools and fences.

### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.050 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:

1. Several properties in the area have walls, tall landscaping and hedges, decks, and terraced yards within the front setback that are visible from the street. The proposed retaining wall for the pool would be compatible with the existing development.

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:

1. The 15-foot front setback area adjacent to Cabrillo Terrace slopes down with a steep slope thereby limiting the amount of usable yard area. By allowing the retaining wall to be 5 feet high and not 40 percent open, more usable yard space can be captured for the pool and patio, while still preserving the open yard area and maintaining the characteristics of the neighborhood.

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:

1. The subject property has two street frontages with required front setbacks, thereby limiting the location of pools, pool protection fencing, and related equipment.
2. Strict application of Zoning Code Chapter 20.30.030 (Fences, Hedges, Walls, and Retaining Walls) limits the height of fences in the front setback area to a maximum of 42 inches or five feet for pool protection fencing that is 40 percent open. Limiting the retaining wall height to 42 inches or requiring the wall to be 40 percent open would preclude the property owner from having a pool and patio in the front yard due to the location of the house, finished floor elevation of the house, size of the front setback area, and slope of the yard.



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:

1. The project site is topographically-constrained and alternatives to the increased height and solid design of the retaining wall would limit reasonable use of the yard and preclude the ability to construct a lap pool of sufficient length to be useful.
2. Moving the swimming pool closer to the house would result in a compliant wall; however, it would result in no patio and a less than three-foot path around the pool that could create an unsafe condition for use of the pool and patio.

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:

1. The proposed retaining wall would not result in change in density or intensity of development on the project site; the single-unit residence will have a building height and floor area that is consistent with the provisions of the Zoning Code.
2. The retaining wall would not affect the flow of air or light to adjoining residential properties and will not have any impact on noise, population density, traffic congestion, and other adverse environmental effects as these issues are typically not associated with the construction of accessory structures.
3. The proposed retaining wall would meet the Building-code required pool protection fencing requirements and will provide privacy and added safety for use of the swimming pool.
4. The proposed retaining wall would be located 18 inches from the property line and landscaping would be provided in this area to soften the view of the wall from the street.

SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Modification Permit No. MD2014-003, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted 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 12<sup>TH</sup> DAY OF JUNE, 2014.**



---

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. 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 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 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. 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 for the retaining wall.
6. 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.
7. 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.
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 Hughes Retaining Wall including, but not limited to, the Modification Permit No. MD2014-003. 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. Landscaping shall be provided along the base of the retaining wall to buffer the view from Cabrillo Terrace.

## RESOLUTION NO. ZA2014-019

### A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING USE PERMIT NO. UP2014-017 FOR A TAKE-OUT SERVICE, LIMITED EATING AND DRINKING ESTABLISHMENT USE (PIZZA DEL PERRO NEGRO) LOCATED AT 2233 WEST BALBOA BOULEVARD, SUITE 102 (PA2014-066)

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Tiffany Heremans on behalf of Pizza Del Perro Negro, with respect to property located at 2233 West Balboa Boulevard, Suite 102, and legally described as Lot 9, 10, 11, 12, 13, 14 and 15, in Block 22 of Newport Beach, as shown on map recorded in Book 3, Page 26, Miscellaneous Maps, Records of Orange County requesting approval of a minor use permit.
2. The applicant proposes to convert a 1,050-square-foot, currently vacant retail tenant space to a take-out service, limited eating and drinking establishment. The tenant space will include a kitchen, service counter area, restroom, and a customer seating area with a maximum of six seats. No late hours (after 11:00 p.m.) or alcohol sales are proposed.
3. The subject property is located within the MU-W2 (Mixed-Use Water Related) Zoning District and the General Plan Land Use Element category is MU-W2 (Mixed-Use Water Related).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is MU-W (Mixed-Use Water Related).
5. A public hearing was held on June 12, 2014, in the City Hall Council Chambers, 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

#### SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. 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 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.

#### *Minor Use Permit*

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

#### Finding

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

#### Facts in Support of Finding

1. The General Plan land use designation for the site is MU-W2 (Mixed-Use Water-Related), which applies to properties on or near the waterfront in which marine-related uses may be intermixed with general commercial, visitor-serving commercial and residential dwelling units on the upper floors.
2. The proposed take-out service, limited use is consistent with the MU-W2 land use designation as it is intended to provide a service to visitors and residents within the immediate area.
3. Eating and drinking establishments are common in the vicinity along West Balboa Boulevard and are complimentary 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. The site is located within the Mixed-Use Water Related (MU-W2) Zoning District of the Newport Beach Zoning Code. This district applies to properties on or near the waterfront in which marine-related uses may be intermixed with general commercial, visitor-serving commercial and residential dwelling units on the upper floors. The proposed take-out service, limited use is consistent with the land uses permitted within this zoning district, and the conditions of approval will ensure that the use is compatible with the adjacent residential areas.
2. Pursuant to Section 20.22.020 (Table 2-9 Allowed Uses and Permit Requirements), the proposed take-out service, limited use requires approval of a minor use permit when located within 500 feet of a residential zoning district.

3. Pursuant to Section 20.38.060 (Nonconforming Parking), a nonconforming use in a nonresidential zoning district may be changed to a new use allowed in that zoning district without providing additional parking, provided no intensification or enlargement (e.g., increase in floor area, or lot area) occurs. Take-out service, limited uses have a required parking ratio of one space per 250 square feet of gross floor area.
4. The proposed project complies with the requirements of Section 20.38.060 (Nonconforming Parking) because the square footage of the existing suite will not be increased and the take-out service, limited use requires the same number of parking spaces required for the currently vacant retail space ( $1,050/250 = 4$  spaces).

### Finding

- C. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

### Facts in Support of Finding

1. The proposed operation will consist of a kitchen, service counter area, restroom, and a customer waiting area. A maximum of three employees will be present at any one time. The proposed hours of operation will be 10:00 a.m. to 11:00 p.m., 7 days per week.
2. The proposed take-out service, limited use will be complementary to the other uses in the commercial building, which include retail stores and one eating and drinking establishment (Hula Dog).
3. The proposed take-out service, limited use establishment will provide a convenience for residents of the neighborhood and visitors to the area and will not require the provision of additional parking spaces on the site.
4. The proposed take-out service, limited use establishment is located close to the boardwalk and Newport Pier, will provide a service for residents of the neighborhood and visitors to the area, and will not require the provision of additional parking on-site due to the limited seating capacity and corner location on West Balboa Boulevard and 23<sup>rd</sup> Street on the Balboa Peninsula. Furthermore, its close proximity to the boardwalk is anticipated to yield walking and biking customers.

### Finding

- D. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding

1. The proposed project will be located in a tenant space within an existing commercial space of a mixed-use building and will involve improvements to the interior space. There are no proposed changes to the site or the exterior of the building.
2. Adequate public and emergency vehicle access, public services, and utilities are provided on-site and are accessed from 23<sup>rd</sup> Street, West Ocean Front Alley, or the alley at the rear of the site.
3. The tenant improvements to the project site will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

Finding

- E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, a safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding

1. The project has been reviewed and this approval includes conditions to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.
2. The restrictions on seating and net public area prevent adverse traffic impacts for the surrounding residential and commercial uses.
3. The proposed food service, eating and drinking establishment will help revitalize the project site and provide an economic opportunity for the property owner to update the tenant space, and provide additional services to the residents and visitors alike.
4. The applicant is required to obtain Health Department approval prior to opening for business, and comply with the California Building Code to ensure the safety and welfare of customers and employees within the establishment.



SECTION 4. DECISION.

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

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2014-017 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 following the date this Resolution was adopted unless within such time an appeal is filed with the Director of Community Development in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED AND ADOPTED THIS 12<sup>TH</sup> DAY OF JUNE, 2014.**



---

Brenda Wisneski, AICP, Zoning Administrator

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

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. Use Permit No. UP2014-017 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, unless an extension is otherwise granted.
3. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
4. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
5. This minor use permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
6. The hours of operation for the establishment shall be limited to 10:00 a.m. through 11:00 p.m., daily.
7. The sale of alcohol shall not be permitted.
8. The maximum number of seats allowed within the eating and drinking establishment shall be six (6). No outdoor seating is permitted unless an amendment to this use permit is acquired.
9. Live entertainment and dancing shall be prohibited as a part of the regular business operation.
10. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require subsequent review and may require an amendment to this use permit or the processing of a new use permit.
11. 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.

12. 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.
13. No outside paging system shall be utilized in conjunction with this establishment.
14. All trash shall be stored within the building or within the existing dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
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. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
17. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Director of Community Development, and may require an amendment to this Use Permit.
18. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
19. 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.
20. 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.
21. 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 Pizza Del Perro Negro MUP including, but not limited to, the Minor Use Permit No. UP2014-017 (PA2014-066). 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.

### **Fire Department Conditions**

22. Fire extinguishers shall be placed within 30 feet of the cooking appliances, per Fire Department standards.
23. Commercial cooking equipment that produces grease laden vapors shall be provided with a Type I Hood, and an automatic fire extinguishing system consisting of a wet chemical extinguishing system complying with UL 300.
24. Per the California Mechanical Code Section 510.1, ducts of hood systems shall not pass through firewalls or fire partitions. Ducts shall lead as directly as is practicable to the exterior of the building, so as not to unduly increase a fire hazard.

### **Building Division Conditions**

25. 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.
26. Accessible handicap parking space shall be upgraded to meet current code requirements.
27. Accessible seating shall be provided for disabled persons.
28. Installation of a grease interceptor shall be required.

### **Public Works Conditions**

29. Sewer cleanout shall be required on existing sewer lateral servicing this suite.

## RESOLUTION NO. ZA2014-020

### **A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2014-013 TO ADD ALCOHOL SALES TO AN EXISTING RESTAURANT ESTABLISHMENT LOCATED AT 3014 BALBOA BOULEVARD (PA2014-058)**

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

#### SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Donnie Lancaster, with respect to property located at 3104 Balboa Boulevard, and legally described Lake Tract, Lot 1, Block 130 Including a Portion of Section 28, Township 6, Range 10 Between the same & Railroad right-of-way except Easterly 10 ft & Southerly 25 ft, requesting approval of a minor use permit.
2. The applicant proposes to add a Type 41 (On-sale Beer and wine) Alcoholic Beverage Control (ABC) License to an existing food service, eating and drinking establishment. No late hours (after 11:00 p.m.) are proposed.
3. The subject property is located within the Commercial Neighborhood (CN) Zoning District and the General Plan Land Use Element category is Neighborhood Commercial (CN).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Neighborhood Commercial - (0.0 - 0.30 FAR).
5. A public hearing was held on June 12, 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. Sancho's Tacos is an existing food establishment. 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 15) as well as two of the three adjacent RDs (Reporting Districts) are over the City average. RD 15 contains the large commercial shopping center known as The Landing at 32<sup>nd</sup> Street and Balboa Boulevard and much of Via Lido and Balboa Boulevard. The purpose of the Zoning of these beach areas is to provide various commercial and retail uses to support the surrounding residential area as well as the surrounding tourist destinations. Therefore, these beach areas with a higher concentration of commercial land uses tend to have a higher crime rate than adjacent RDs.
- ii. *The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*
  1. Due to the high concentration of commercial land uses, the calls for service and number of arrests are greater than adjacent RDs. Additionally, this is the beach area that is considered one of the most significant tourist areas of the City.
- iii. *The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.*
  1. Although the commercial building is directly adjacent to a residential district, the building is located abutting a commercial shopping center developed as a commercial and retail area for the tourist area and surrounding residents. The nearest residential uses are located directly east of the subject property. The outdoor deck is facing Balboa Boulevard and the outdoor patio is on the westerly

side of the property abutting the shopping center. There are no parks nearby, however, the beach is approximately 480 feet west. 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 32<sup>nd</sup> Street, Balboa Boulevard and Via Lido currently have active ABC Licenses, 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 Gina's Pizza, The Crow Bar, Chipotle, and Rudy's.
2. Due to the type and operation of the restaurant which is conditioned to close at 9:00 p.m. with only 20 seats and that appropriate conditions are in place to prevent the restaurant from operating as a bar or lounge, the proximity to other establishments does not appear to create foreseeable concern.

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

1. The subject building has historically been occupied by a small restaurant with the same number of seats and hours of operation. There is no evidence that suggests this type of use has created objectionable conditions.

### Minor Use Permit

In accordance with Section 20.52.020.F (Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a 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 Neighborhood Commercial (CN) 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 addition of alcohol sales and service to the existing restaurant use is consistent with the CN designation as it is intended to provide a service not only to visitors, but also to residents within the immediate neighborhood and surrounding area.

3. Eating and drinking establishments are common along Balboa Boulevard and Newport Boulevard 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 CN Zoning District with no late hours and alcohol service, require the approval of a minor use permit. The property is located immediately west of a residential zoning district.
2. The existing parking and hours of operation will remain which are consistent with the existing Specialty Food Permit that the restaurant operates under.
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 area was designed to be occupied by a mix of restaurants, retail and service uses. The existing Sancho's Tacos restaurant complements the existing uses and is a typical and expected type of use in similar commercial centers.
2. The operation of the restaurant will continue to be restricted to the hours between 6:00 a.m. and 9:00 p.m., daily. These hours are consistent with the business hours of other restaurants and uses in the commercial area.
3. The surrounding area contains various, retail, business office 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.



4. 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 is currently in operation and the tenant space have been reviewed and permitted.
2. Original site plan approvals for the tenant space included a review to ensure adequate public and emergency vehicle access, and that public services, and utilities are provided. The tenant improvement plans were 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. UP2014-013, 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.
3. This resolution supersedes Specialty Food Permit No. 46, which upon vesting of the rights authorized by this Minor Use Permit, shall become null and void.

**PASSED, APPROVED AND ADOPTED THIS 12<sup>TH</sup> DAY OF JUNE, 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 6:00 a.m. and 9:00 p.m., daily including the outdoor patio areas.
7. Seating for no more than 20 patrons shall be permitted. Of the 20 seats, eight may be located within the designated outdoor seating areas.
8. The boundary of the outdoor seating areas shall be marked through the use of a minimum 36-inch-high rail. Fences, walls, or similar barriers shall serve only to define the outdoor dining area and not constitute a permanent all weather enclosure.
9. A minimum of two parking spaces shall be provided on-site and shall remain clear of obstructions at all times.
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. No outside paging system and no outside amplified music shall be utilized in conjunction with this establishment.

12. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (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.
13. 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.
14. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
15. 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).
16. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 8:00 a.m., daily, unless otherwise approved by the Director of Community Development, and may require an amendment to this Minor Use Permit.
17. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
18. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26, 10.28 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

Location	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

19. 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.

20. 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.
21. 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 Sancho's Tacos Minor Use Permit including, but not limited to, UP2014-013 (PA2014-058). 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**

22. Provide ADA access from the accessible parking area to the side patio seating.

### **POLICE DEPARTMENT**

23. The approval of Minor Use Permit No. UP2014-013 does not permit Sancho's Tacos 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.
24. Food service from the regular menu shall be available to patrons up to thirty (30) minutes before the scheduled closing time.
25. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
26. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed except when offered in conjunction with food ordered from the full service menu.
27. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.
28. 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.

29. 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.
30. 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.
31. There shall be no live entertainment allowed on the premises.
32. There shall be no dancing allowed on the premises.
33. Strict adherence to maximum occupancy limits is required.