



**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 July 4, 2014

**COMMUNITY DEVELOPMENT DIRECTOR
OR PLANNING DIVISION STAFF ACTIONS
(Non-Hearing Items)**

Item 1: Nesai Operator's License No. OL2013-004 (PA2013-203)
215 Riverside Avenue

Action: Approved

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.



OPERATOR LICENSE APPROVAL LETTER

POLICE DEPARTMENT
870 SANTA BARBARA DRIVE
NEWPORT BEACH, CA 92660
(949) 644-3681 FAX (949) 644-3794

Application No. **Operator License No. OL2013-004 (PA2013-203)**
Owner/Applicant **217 Riverside Avenue Merchants**
Location Name **Nesai Operator License**
Site Address **215 Riverside Avenue**
Legal Description **Lot D, Tract 919 including a portion of the abandoned street adjacent**

On **June 30, 2014**, the Chief of Police approved the following: An operator license to allow 217 Riverside Avenue Merchants to operate a food service restaurant, Nesai, with late hours, a Type 47 (On Sale General Eating Place) ABC alcohol license, and outdoor dining. The restaurant also has a parking management program in place that includes off-site parking at 2660 Avon Street, annual employee parking passes for use in the City municipal parking lot (Mariners Mile Lot), and valet parking. Conditional Use Permit No. UP2013-021 (PA2013-203) was approved by the City Council on June 24, 2014, to allow renovation of the existing restaurant, late hours of operation, the addition of an outdoor dining patio, and a parking management program. Due to the late hours of operation, approval of an Operator's License by the Newport Beach Police Department is required.

REQUIRED FINDINGS

The Chief of Police has made the following findings as required by NBMC 5.25.050(B):

Finding:

- A. *The business or enterprise is located in a zone permitting the proposed use under Title 20 of the NBMC, and is subject to such use permits as may be required.*

Facts in Support of Finding:

1. The restaurant is authorized for alcohol service at 215 Riverside Avenue through Conditional Use Permit No. UP2013-021 (PA2013-203). The proposed floor plan has been determined to be in substantial conformance to the floor plans approved by the conditional use permit.
2. A food service restaurant with alcohol service is a permitted use in the CG (Commercial General) zoning district through the approval of a conditional use permit.

2. Restaurant personnel at the entrance will be responsible for regulating the loitering, noise, elicit activity, and other objectionable conditions that may occur outside of the restaurant.
3. The business will be required to comply with the hours of operation as specified in the conditions of approval for the operator license.
4. The restaurant includes off-site parking located at 2660 Avon Street and the City Municipal Parking lot at 200 Tustin Avenue.
5. The operator license has been conditioned to require the applicant to work diligently with the City if any parking or circulation issues occur on-site. A valet parking plan is required to ensure adequate parking circulation between the subject property and the off-site lot at 2660 Avon Street.

CONDITIONS OF APPROVAL

In no case shall the conditions be inconsistent with, or less restrictive than, those required by any applicable use permit. The following operational conditions are reiterated from the Conditional Use Permit and the applicant shall comply with the conditions of approval of Conditional Use Permit No. UP2013-021 (PA2013-203).

10. The hours of operation for the interior of the restaurant shall be limited between 5:00 p.m. to 11:00 p.m., Monday through Thursday, 5:00 p.m. to 12:00 midnight Friday, 10:00 a.m. to 12:00 midnight Saturday, and 10:00 a.m. to 11:00 p.m. Sunday.
11. The restaurant shall be allowed a limited lunch time operation (11:00 a.m. to 5:00 p.m., Monday through Friday) which will include the chef's dining area and chef's dining patio only (764 square feet of "Net Public Area" only).
12. Service on the outdoor dining patio shall end by 10:00 p.m., daily. The outdoor dining patio shall be closed by 10:30p.m., daily.
15. The exterior windows and doors of the facility be closed after 10:00 p.m.
16. The height of the boundary wall of the accessory outdoor dining area shall be marked on the approved plans. Fences, walls, or similar barriers shall serve only to define the outdoor dining area and not constitute a permanent all weather enclosure. The installation of roof coverings in addition to the proposed cedar trellis shall not have the effect of creating a permanent enclosure. The use of any other type of overhead covering shall be subject to review and approval by the Community Development Director and may require an amendment to this permit.

17. The existing parking lot shall be maintained with approved traffic markers or painted white lines not less than four inches wide. All sixteen parking spaces on the site shall be accessible and useable for vehicular parking at all times. A directional sign shall be maintained designating that parking is available to the rear of the building.
19. The subject property shall comply with the approved Parking Management Program dated June 24, 2014, and any amendment to the Parking Management Program shall be subject to the approval of the Community Development Director.
20. An off-site parking agreement, approved as to form by the City Attorney's Office, shall be recorded prior to the issuance of building permits. The City, applicant, and property owner of 2660 Avon Street shall be a party to the agreement. The agreement shall guarantee that a minimum of six (6) parking spaces shall be provided at 2660 Avon Street (A portion of Lot 42 and all of Lot 43 of Tract 1133) for the duration of the restaurant use at 215 Riverside Avenue. In the event that the use of the off-street automobile parking spaces provided for in the agreement are lost for any reason, the applicant shall notify the Community Development Director 30 days prior to the loss of the parking spaces. Upon notification that the agreements for the required off-site parking has terminated, the Director shall establish a reasonable time in which one of the following shall occur: (a) Substitute parking is provided that is acceptable to the Director; (b) The size or capacity of the use is reduced in proportion to the parking spaces lost; (c) The applicant submits to the Director a new or amended Off-Site Parking Agreement, giving the applicant the use of at least the same number of parking spaces.
21. Restaurant employees shall park their automobiles in the "Mariners Mile" municipal lot. The applicant or operator of the facility shall purchase parking permits for ten employees on an annual basis for the Mariners Mile Lot, and shall direct employees to park in said parking lot.
22. Valet operations shall not impact the public right-of-way. Vehicle staging, drop off and pick-up shall occur on-site only and the valet pick-up and delivery station shall not be located in the public-right-of-way.
25. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
26. All lighting shall conform to the standards of Section 20.30.070 (Outdoor Lighting). The Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.

27. The operator of the facility shall be responsible for the control of noise generated by the subject facility including, but not limited to, noise generated by patrons, food service operations, and mechanical equipment. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. Pre-recorded music may be played in the tenant space, provided exterior noise levels outlined below are not exceeded. The noise generated by the proposed use shall comply with the provisions of Chapter 10.26 (Community Noise Control) of the Newport Beach Municipal Code.
28. That no outdoor sound system, loudspeakers, or paging system shall be permitted in conjunction with the restaurant facility.
32. All lighting shall conform to the standards of Section 20.48.140 (Outdoor Storage, Display, and Activities). 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.
33. 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, which shall remain closed at all times, except when being loaded or while being collected by the refuse collection agency.
34. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
35. Trash receptacles for patrons shall be conveniently located inside of the establishment. 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.
36. 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 Community Development Director, and may require an amendment to this Use Permit.
37. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance within the facility, adjacent properties, or surrounding public areas, sidewalks, or parking lots of the restaurant,

during business hours, if directly related to the patrons of the establishment surrounding residents.

41. The approval is only for the establishment of an eating and drinking establishment as defined by Title 20 of the Municipal Code, with the principal purpose for the sale or service of food and beverages with sale and service of alcoholic beverages incidental to the food use.
42. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be a Type 47 (On-Sale General) in conjunction with the service of food as the principal use of the facility. Any upgrade in the alcoholic beverage license shall be subject to the approval of an amendment to this application and may require the approval of the Planning Commission.
45. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge, or nightclub as defined by the Newport Beach Municipal Code.
46. Food service from the regular menu shall be available to patrons up to thirty (30) minutes before the scheduled closing time.
47. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
48. The operator of the establishment 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.
49. 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.
50. There shall be no on-site radio, televisions, 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.
51. There shall be no live entertainment or dancing allowed on the premises.
52. Strict adherence to maximum occupancy limits is required.
53. 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.

54. Any event or activity staged by an outside promoter or entity, where the applicant, operator, owner or his employees or representatives share in any profits, or pay any percentage or commission to a promoter or any other person based upon money collected as a door charge, cover charge or any other form of admission charge is prohibited.
55. All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The establishment shall comply with the requirements of this section within 180 days of the issuance of the certificate of occupancy. Records of each owner's, manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.

The Chief of Police has attached additional conditions and requirements to the license as necessary in order to make the foregoing findings. In no case shall the conditions be inconsistent with, or less restrictive than, those required by any applicable use permit.

1. The business shall comply with Title 20 (Zoning Code) and any other applicable provisions of the Newport Beach Municipal Code.
2. This Operator License may be modified or revoked by the Chief of Police should they determine that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
3. Operator License No. OL2013-004 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 (NBMC), unless an extension is otherwise granted.
4. Should the property be sold or otherwise come under different ownership, a new Operator License shall be required.
5. 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 **Nesai** including, but not limited to, the **Operator License No. OL2013-004 and Conditional Use Permit No. UP2013-021 (PA2013-203)**. 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.

OPERATOR LICENSE NONTRANSFERABLE

No operator license issued pursuant to this chapter shall be sold, transferred, or assigned by any license holder, or by operation of law, to any other person, group, partnership, corporation or any other entity, and any such sale, transfer or assignment, or attempted sale, transfer or assignment, shall be deemed to constitute a voluntary surrender of such license, and such license shall be, thereafter, null and void. A license held by an individual in a corporation or partnership is subject to the same rules of transferability as contained above. License shall be valid only for the exact location specified in the license.

PUBLIC NOTICE

Notice of this application was mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicant and posted on the subject property at least 21 days prior to the decision date, consistent with the provisions of the Municipal Code.

APPEAL PERIOD

The determination of the Chief of Police to deny or to place conditions upon the approval of an operator license shall be appealable by the applicant or any interested party. Such appeal shall be made in writing to the City Manager, within fifteen (15) days of the postmark date of the Chief of Police's notice of decision. For additional information on filing an appeal, contact the Planning Department at 949 644-3200.

REVOCAION, SUSPENSION OR MODIFICATION OF LICENSE FOR CAUSE

The Chief of Police may commence a process to revoke, suspend or modify an operator license issued under the provisions of this chapter should there be reasonable suspicion of any of the following:

- A. The licensee has ceased to meet the requirements for issuance of license;
- B. The applicant gave materially false, fraudulent or misleading information within the application;

C. Impacts emanating from the establishment for which the license was issued has substantially interfered with the peace and quiet of the neighborhood;

D. The licensed business or activity has operated in violation of any of the requirements of this chapter, the license as issued, or any condition thereof. The Chief of Police shall notify the operator of the commencement of such revocation, suspension or modification process and shall conduct an investigation to determine if, and to what degree, one or more of the foregoing has occurred. Upon completion of the investigation, the Chief of Police may add, delete or modify the license conditions. The Chief of Police shall notify the applicant regarding the determination of the operator license, on the outcome of the investigation, and the action taken. The applicant or any interested party may appeal a determination or an added or modified condition of approval to City Manager in the manner set forth in Section 5.25.050(C) and (D).

By: _____


Jay R. Johnson
CHIEF OF POLICE

Attachments:

- PD 1 Planning Commission Resolution approving Conditional Use Permit No. UP2013-021 (PA2013-203)
- PD 2 Project Description and Narrative Justification
- PD 3 Project Plans