



**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 October 17, 2014

**ZONING ADMINISTRATOR ACTIONS
OCTOBER 16, 2014**

- Item 1: Via Mentone Lot Line Adjustment No. LA2014-002 (PA2014-128)
214 Via Mentone
Action: Approved by Resolution No. ZA2014-036 Council District 1
- Item 2: Banzai Bowl Minor Use Permit No. UP2014-034 (PA2014-132)
114 22nd Street
Action: Approved by Resolution No. ZA2014-037 Council District 1
- Item 3: Lido Marina Village Lot Merger No. LM2014-002 (PA2014-136)
3505 Via Oporto and 3434, 3442 and 3444 Via Lido
Action: Approved by Resolution No. ZA2014-038 Council District 1
- Item 4: Bistro 24 Minor Use Permit No. UP2014-035 (PA2014-133)
800 Newport Center Drive, Suite 120, Block 800, North Newport Center
Action: Approved by Resolution No. ZA2014-039 Council District 5

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

RESOLUTION NO. ZA2014-036

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING LOT LINE ADJUSTMENT NO. LA2014-002 TO ADJUST BOUNDARIES OF PARCELS LOCATED AT 214 VIA MENTONE (PA2014-128)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Abell Helou Homes, with respect to property located at 214 Via Mentone, and legally described as Lots 569, 570 and the northeasterly one-half of Lot 571 of Tract No. 907 as per map recorded in Book 28, Pages 25 to 36 inclusive of Miscellaneous Maps in the Office of the County Recorder of Orange County, California requesting approval of a lot line adjustment.
2. The applicant proposes to adjust the underlying legal lot lines on a site consisting of two legal lots (Lots 569 and 570) and a portion of another lot (Lot 571). The applicant is requesting to remove the lot line between Lots 570 and a portion of Lot 571, and shift the lot line between Lots 569 and 570 west 7.5 feet to create two 37.5-foot-wide parcels for single-unit residential development. There will be no change in the number of legal building sites and the existing dwelling built across the property lines will be demolished.
3. The subject property is located within the Single-Unit Residential (R-1) 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-C).
5. A public hearing was held on October 16, 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 5 (Minor Alterations in Land Use Limitations).
2. The Class 5 exemption consists of minor alterations in land use limitations in areas with an average slope of less than 20 percent, which do not result in any changes in

land use or density, including but not limited to minor lot line adjustments not resulting in the creation of any new parcel. The proposed lot line adjustment will not change the number of existing legal building sites, will not result in any change in use or density, and is consistent with all of the requirements of the Class 5 exemption.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 19.76.020 (Procedures for Lot Line Adjustments) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

- A. *Approval of the lot line adjustment will 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, and further that the proposed lot line adjustment is consistent with the legislative intent of this title.*

Facts in Support of Finding:

1. The proposed boundary adjustment will not change the single-unit residential use of the lots involved and will maintain consistency with the General Plan Land Use Designation, Single-Unit Residential Detached (RS-D), which is intended for detached single-unit residential dwelling units on a single lot.
2. The lot line adjustment will not result in a development pattern which is inconsistent with the surrounding neighborhood as the request is to reapportion two (2) legal lots and a portion of another lot into two (2) separate parcels for future single-unit development, which is consistent with the General Plan Land Use Plan and zoning designation.
3. The proposed lot line adjustment is consistent with the purpose identified in Chapter 19.76 (Lot Line Adjustments) of the Newport Beach Municipal Code. The lot line adjustment constitutes a minor boundary adjustment involving two (2) full lots where the land taken from one (1) lot is added to the abutting lot and the existing boundary line of the half lot is removed. The original number of legal building sites will remain unchanged after the adjustment.
4. The subdivision is consistent with the General Plan, does not affect open space areas in the City, does not negatively impact surrounding land owners in as much as it affects an interior lot line between two (2) adjacent lots, and will not in itself be detrimental to the health, safety, peace, comfort, and general welfare of persons residing or working in the neighborhood.

Finding:

- B. *The number of parcels resulting from the lot line adjustment remains the same as before the lot line adjustment.*

Facts in Support of Finding:

1. The existing single-unit dwelling on the subject property was originally constructed across two (2) legal lots and half of another lot (Lot 569, 570, and half of 571 of Tract No. 907). The proposed lot line adjustment will remove the interior lot line between Lots 570 and a portion of 571 and will adjust the interior lot line between Lots 569 and 570. No additional lots will result from the adjustment and the number remains the same as before the lot line adjustment.

Finding:

- C. *The lot line adjustment is consistent with applicable zoning regulations except that nothing herein shall prohibit the approval of a lot line adjustment as long as none of the resultant parcels is more nonconforming as to lot width, depth and area than the parcels that existed prior to the lot line adjustment.*

Facts in Support of Finding:

1. The proposed boundary adjustment will take 660 square feet of land from Lot 570 and add to Lot 569. Lot 570 will gain 1,320 square feet from Lot 571. The resulting net area would be 3,330 square feet for the proposed Parcel 1 and 2. The proposed parcels are consistent with the original lot sizes in the vicinity which are typically 30 feet wide, 88 feet deep, and 2,640 square feet in area, but as large as 42.5 feet wide, 88 feet deep, and 3,740 square feet in area.
2. The proposed parcels with lot widths of 37.5 feet and depths of 88 feet are consistent with neighboring lots and comply with all applicable zoning regulations. The proposed parcels are not more nonconforming as to lot width, depth and area than the parcels that existed prior to the lot line adjustment and those in the vicinity; and there will be no change in allowed land uses, density, or intensity on the properties.

Finding:

- D. *Neither the lots as adjusted nor adjoining parcels will be deprived of legal access as a result of the lot line adjustment.*

Facts in Support of Finding:

1. The proposed boundary adjustment affects interior lot lines. Legal access to the subject property from Via Mentone and Strada Mentone are not affected by the lot line adjustment.

Finding:

- E. *That the final configuration of the parcels involved will not result in the loss of direct vehicular access from an adjacent alley for any of the parcels that are included in the lot line adjustment.*

Facts in Support of Finding:

1. The final configuration of the proposed parcels does not result in the loss of direct vehicular access from any street. Vehicular access to the existing property is taken from Via Mentone and the final configuration will not change this.

Finding:

- F. *That the final configuration of a reoriented lot does not result in any reduction of the street side setbacks as currently exist adjacent to a front yard of any adjacent key, unless such reduction is accomplished through a zone change to establish appropriate street side setbacks for the reoriented lot. The Planning Commission and City Council in approving the zone change application shall determine that the street side setbacks are appropriate, and are consistent and compatible with the surrounding pattern of development and existing adjacent setbacks.*

Facts in Support of Finding:

1. The final configuration of the proposed parcels does not result in a requirement for revised setbacks since the parcels are not proposed to be reoriented. The required setbacks applicable to lots in the R-1 Zoning District shall continue to apply to the adjusted lots per the Zoning Code, just as they applied to the previous configuration.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Lot Line Adjustment No. LA2014-002 (PA2014-128), 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 ten (10) days after the adoption of this Resolution unless within such time an appeal is filed with the Director of Community Development in accordance with the provisions of Title 19 Subdivisions, of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 16TH DAY OF OCTOBER, 2014.



Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL**

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. Prior to the release for recordation of the lot line adjustment, the applicant shall apply for a building permit to remove the existing single-unit dwelling, and all work fulfilling this requirement shall be completed and finalized by the Building Division.
3. Prior to issuance of the building permit for the second, new single-unit dwelling, Fair Share Fees consistent with the fee schedule in effect at the time of building permit issuance shall be paid for one (1) dwelling unit.
4. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department for construction or demolition. 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.
5. This approval shall expire and become void unless exercised within twenty-four (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.
6. 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 Via Mentone Lot Line Adjustment including, but not limited to, LA2014-002 (PA2014-128). 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. ZA2014-037

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2014-034 FOR A TAKE-OUT SERVICE, LIMITED EATING AND DRINKING ESTABLISHMENT LOCATED AT 114 22ND STREET (PA2014-132)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Carlos A. Garcia, with respect to property located at 114 22nd Street, and legally described as Lot 13, Block 21, Newport Beach Tract requesting approval of a Minor Use Permit.
2. The applicant requests a Minor Use Permit for a take-out service, limited eating and drinking establishment. The applicant proposes to convert the existing retail sales suite into a fruit bowl, smoothie, and juice bar. The proposed hours of operation are 7:00 a.m. to 8:00 p.m., daily.
3. The subject property is located within the Mixed-Use Water Related (MU-W2) Zoning District and the General Plan Land Use Element category is Mixed-Use Water Related (MU-W).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Mixed-Use Water Related (MU-W).
5. A public hearing was held on October 16, 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. Class 1 exempts minor alterations to existing facilities involving negligible expansion of use beyond that existing at the time of the lead agency's determination. The subject application is for a change of use within an existing commercial building.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020 of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

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

Facts in Support of Finding:

1. The General Plan land use designation for the site is Mixed-Use Water-Related (MU-W2), 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 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. The site is located within the Mixed-Use Water Related (MU-W2) Zoning District. This district applies to properties on or near the waterfront in which marine-related uses may be intermixed with general commercial uses, visitor-serving commercial uses, and residential dwelling units located on the upper floors. The proposed take-out service, limited use is consistent with the land uses allowed 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. The subject property is located within 500 feet of residential zoning districts, the closest of which is located on the opposite side of Balboa Boulevard on 21st Street to the east.

3. Pursuant to Zoning Code Section 20.40.040 (Off-Street Parking Spaces Required), take-out service, limited eating and drinking establishments are required to provide one parking space for every 250 square feet of gross floor area, which is the standard parking rate that applies to the previous retail sales use and the proposed use. The parking demand is not increasing and the proposed use is consistent with the parking requirements.
4. The proposed project is subject to and would operate in compliance with Section 20.48.090 (Eating and Drinking Establishments). No outdoor activities, late operations, alcohol sales, or outdoor dining are proposed as part of this application, but future changes would be required to be consistent with the Municipal Code.

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. Commercial and residential uses are allowed in the vicinity, including retail sales, personal service, restaurant, office, and residential uses. The subject property is located among other commercial and residential uses along Newport Boulevard, Balboa Boulevard, and 22nd Street.
2. The existing mixed-use building is not changing other than the proposed interior remodel for the subject suite as a result of this project. The existing building design, location, and size previously used for commercial uses have not proven detrimental to the nearby residential uses. The site is developed with a four-car tandem garage that provides two-car tandem parking for both the residential and commercial uses. Adequate trash storage facilities for the commercial tenant are provided in an enclosed area within the garage, thereby preventing any odor or related issues for the residential use above the first floor. The subject suite is 826 square feet in gross floor area with 164.5 square feet proposed as net public (customer serving) area.
3. The operational characteristics of the proposed establishment, including the limited hours of operation of 7:00 a.m. to 9:00 p.m., would be that of a typical take-out service eating and drinking establishment that would serve residents, visitors, and employees. The proposed use would not increase the parking demand, have late hours of operation, include alcohol sales, nor create any adverse noise impacts outside of the establishment. Therefore, the operating characteristics would be compatible with the allowed commercial and residential uses in the vicinity.

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 lot is 2,375 square feet in area (25' X 95'), rectangular in shape, located in a mixed-use area, and is developed with a mixed-use building and garage. The site has pedestrian access from the front along 22nd Street and vehicular access at the alley to the rear.
2. The site is developed with an existing mixed-use building that is not changing as a result of this project, other than the proposed interior remodel for the subject suite. The design, location, shape, and size have been suitable for the mixed-use structure and uses on-site, and would continue the existing provision of emergency vehicle access, public services, and utilities.
3. The Public Works Department, Building Division, and Fire Department have reviewed the application. The project is required to obtain all applicable permits from the City Building and Fire Departments and must comply with the most recent, City-adopted version of the California Building Code.

Finding:

E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding:

1. The proposed use is similar to and compatible with other commercial uses in the vicinity, and complements the retail sales and service uses in the immediate area. The use will serve nearby residents, employees, and visitors.
2. The proposed use would sell food and beverages for primarily off-site consumption with up to six (6) seats provided.
3. The proposed use would not increase the parking demand, not have late hours of operation, nor include alcohol sales.
4. The proposed use would not create any adverse noise impacts outside the establishment, and would be subject to the noise standards within the Municipal Code.
5. Adequate trash storage facilities for the commercial tenant are provided in an enclosed area within the garage, thereby preventing any odor or related issues for the residential use above the first floor.
6. Compliance with the Municipal Code and the attached conditions of approval is required and will further ensure that the proposed use will not be detrimental.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2014-034, 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 fourteen (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 16th DAY OF OCTOBER, 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 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 is materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
5. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Minor Use Permit or the processing of a new Minor Use Permit.
6. 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.
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. The hours of operation shall be limited to between 7:00 a.m. and 9:00 p.m., daily.
9. The project shall be limited to a maximum of six (6) seats.
10. No outside paging system shall be utilized in conjunction with this establishment.
11. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three (3) 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.

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12. 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.
 13. 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).
 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. 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 Minor Use Permit.
 16. This approval shall expire and become void unless exercised within twenty-four (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.
 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 Banzai Bowl Minor Use Permit including, but not limited to, Minor Use Permit No. UP2014-034. 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. ZA2014-038

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING LOT MERGER NO. LM2014-002, WAIVING THE PARCEL MAP REQUIREMENT, AND COMBINING FOUR PARCELS INTO TWO LOTS FOR PROPERTY LOCATED AT 3505 VIA OPORTO AND 3434, 3442, AND 3444 VIA LIDO (PA2014-136)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Tait & Associates, representing property owner, Lido Group Retail, LLC, with respect to property located at 3505 Via Oporto and 3434, 3442, and 3444 Via Lido, requesting approval of a lot merger. Parcel 1 is legally described as a portion of Lot 2 of Tract No. 1117, in the City of Newport Beach, County of Orange, State of California as per map recorded in Book 35, Page 48 together with Lot 9 of Tract No. 1235, recorded in Book 47, Page 24, both of Miscellaneous Maps, Records of the office of the County Recorder of Orange County, California. Parcel 2 is legally described as a portion of Lot 2 of Tract No. 1117, in the City of Newport Beach, County of Orange, State of California as per map recorded in Book 35, Page 48 together with all of Lot 1 of Tract No. 1235, recorded in Book 47, Page 24, both of Miscellaneous Maps, records of the office of the county recorder of said county.
2. The applicant proposes a lot merger application and a request to waive the parcel map requirement to combine four parcels into two lots for the continuation of non-residential development. The parcels to be merged are under common ownership located within Lido Marina Village.
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 October 16, 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 15 (Minor Land Divisions).
2. The Class 15 exemption includes the division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when the division is in conformance with the General Plan and zoning, no variances or exceptions are required, all services and access to the proposed parcels to local standards are available, the parcel was not involved in a division of a larger parcel within the previous two years, and the parcel does not have an average slope greater than 20 percent. This exemption includes a minor lot merger not resulting in the creation of any new parcel that complies with the conditions specified above.

SECTION 3. REQUIRED FINDINGS.

Merger of Continuous Lots

In accordance with Section 19.12.070.A (Required Findings for Approval) of the City of Newport Beach Municipal Code, the following finding and facts in support of such findings are set forth:

Finding:

- A. *Approval of the merger will not, under the circumstances of this 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, and further that the proposed lot merger is consistent with the legislative intent of Title 19.*

Facts in Support of Finding:

1. The subject lots are currently developed with two-story retail commercial buildings and a 5-level parking structure, which cross the interior property lines of Lot 1 of Tract 1235 with a portion of Lot 2 of Tract No. 1117 and Lot 9 of Tract 1235 with a portion of Lot 2 of Tract No. 1117. Per Section 19.04.035 of the Municipal Code (Development Across Property Lines), structures cannot be constructed across property lines. With the approval of the lot merger, renovation of the existing structures on-site can proceed in conformance with the Building Code. Once the parcels are merged, the buildings will comply with building separation requirements.
2. The project is similar to the development of other properties in Lido Marina Village, where individual nonresidential buildings have been built on each lot and modified over time; these developments have not been detrimental to the health, safety, peace, comfort or

general welfare of persons residing or working in the neighborhood or injurious to property and improvements in the neighborhood or the general welfare of the City.

3. Building alterations and improvements are required to comply with applicable Municipal Code regulations and policies.

Finding:

B. The lots to be merged are under common fee ownership at the time of the merger.

Facts in Support of Finding:

1. Lot 1 and 9 of Tract 1235 and the portions of Lot 2 of Tract No. 1117 are under common fee ownership by Lido Group Retail, LLC.

Finding:

C. The lots, as merged, will be consistent or will be more closely compatible with the applicable zoning regulations and will be consistent with other regulations relating to the subject property including, but not limited to, the General Plan and any applicable Coastal Plan or Specific Plan.

Facts in Support of Finding:

1. The merged lots will be consistent with the applicable MU-W2 district regulations and other regulations relating to the subject property. The resulting parcels will be 9,630 and 58,389 square feet in area, exceeding the minimum lot area requirements of 2,500 square feet, and no setback nonconformities would be directly created by the proposed merger.
2. The Land Use Element of the General Plan designates the subject site as MU-W2 (Mixed-Use Water Related), which applies to waterfront properties in which marine-related uses may be intermixed with general commercial, visitor-serving commercial and residential dwelling units on the upper floors. The lot merger will allow for the renovation of the existing retail buildings and parking structure on-site, consistent with the intent of the MU-W2 land use designation.
3. The existing buildings at 3442 Via Lido, 3444 Via Lido, and 3505 Via Oporto are nonconforming to the 0.5 floor area ratio (FAR) limit. Any future development of the merged lots will be required to be consistent with MU-W2 (Mixed-Use Water Related) standards, including floor area, parking, and setback requirements and other applicable codes, regulations, and policies.
4. The lots are located within the coastal zone and the current uses conform to the MU-W (Mixed-Use Water Related) land use designation.

Finding:

- D. *Neither the lots, as merged, nor adjoining parcels, will be deprived of legal access as a result of the merger.*

Facts in Support of Finding:

1. Neither of the merged parcels, nor the adjoining parcels, will be deprived of legal access as a result of the merger. Legal access is provided from Via Lido and Via Oporto and will remain unchanged.

Finding:

- E. *The lots, as merged, will be consistent with the surrounding pattern of development and will not create an excessively large lot that is not compatible with the surrounding development.*

Facts in Support of Finding:

1. Lido Village consists of lots of varying size. The proposed lot merger would remove the property lines on the subject property to permit the parcels as a single, unified site, and would not result in a development pattern, inconsistent with the existing development in Lido Marina Village.

Waiver of Parcel Map

In accordance with Section 19.08.030.A.3 (Waiver of Parcel Map Requirement) of the City of Newport Beach Municipal Code, the Zoning Administrator may approve a waiver of the parcel map requirement in cases where no more than three parcels are eliminated. The following finding and facts in support of such finding are set forth:

Finding:

- F. *That the proposed division of land complies with requirements as to area, improvement and design, flood water drainage control, appropriate improved public roads and property access, sanitary disposal facilities, water supply availability, environmental protection, and other applicable requirements of Title 19, the Zoning Code, the General Plan, and any applicable Coastal Plan or Specific Plan*

Facts in Support of Finding:

1. The proposed division of land complies with requirements related to area, improvement and design, flood water drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection and other applicable requirements of Title 19 and Title 20 of the Newport Beach Municipal Code and the General Plan.

2. The lots are currently developed. Approval of the proposed lot merger would remove the existing lot lines, and allow the property to be used as a single site for development. The lot merger in and of itself would not change the land use, density, and intensity. The proposed merged parcel would comply with all design standards and improvements required for new subdivisions by Title 19, the Zoning Code, and General Plan.
3. The proposed lot merger does not result in the elimination of more than three lots.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Lot Merger No. LM2014-002 (PA2014-136), 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 10 days after the adoption of this Resolution unless within such time an appeal is filed with the Director of Community Development in accordance with the provisions of Title 19 Subdivisions, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 16th DAY OF OCTOBER, 2014.



Brenda Wisneski, AICP, Zoning Administrator

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

1. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
2. 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.
3. Prior to the issuance of final building permits for construction to cross the existing interior lot line between the two lots proposed to be merged, recordation of the lot merger documents with the County Recorder shall be required. A hold harmless agreement shall remain in place for permits issued until the lot merger is recorded.
4. Lot Merger No. LM2014-002 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.
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 the Lido Marina Village Lot Merger including, but not limited to, Lot Merger No. LM2014-002 (PA2014-136). 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. ZA2014-039

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2014-035 FOR AN ACCESSORY EATING AND DRINKING ESTABLISHMENT WITH NO ALCOHOL SERVICE AND NO LATE HOURS OF OPERATION (AFTER 11:00 P.M.) LOCATED AT 800 NEWPORT CENTER DRIVE (PA2014-133)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Gensler, representing property owner, the Irvine Company, with respect to property located at 800 Newport Center Drive, requesting approval of a minor use permit. The property is legally described as Parcel 1 of Resubdivision No. 612 as recorded in Book 136, Page 22 of parcel maps of the County of Orange, California, being a division of a portion of Block 55 of Irvine's subdivision as shown on the map recorded in Book 1 Page 88 of Miscellaneous Record Maps, Records of Orange County, California.
2. The applicant requests a minor use permit to expand an existing 1,143-square-foot café by 471 square feet into an adjacent retail tenant space. The café will operate with 810 sq ft of net public area and 36 seats, where the existing approval authorizes 12 seats. No alcohol service, live entertainment, dancing, or late hours of operation (after 11:00 p.m.) are proposed. The existing café operates under Modification Permit No. MD3782.
3. The subject property is located within the Block 800 Sub-Area of the PC-56 (North Newport Center Planned Community) Zoning District and the General Plan Land Use Element category is CO-R (Regional Commercial Office).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on October 16, 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 15303, 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. The Class 3 exemption includes a store, motel, office, restaurant, or similar structure not involving significant amounts of hazardous substances and not exceeding 2,500 square feet in floor area. The proposed restaurant is less than 2,500 square feet. Therefore, the use qualifies for a categorical exemption under Class 3.

SECTION 3. REQUIRED FINDINGS.

Pursuant to the PC-56 (North Newport Center Planned Community) Zoning District, eating and drinking establishments require the approval of a minor use permit. The existing establishment operates pursuant to Modification Permit No. MD3782. The requested expansion of the café is considered a substantial change in operation that requires an amendment to the existing approval.

In accordance with Section 20.52.020.F (Conditional Use Permit, Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

- A. *The use is consistent with the General Plan and any applicable Specific Plan.*

Facts in Support of Finding:

1. The expanded eating and drinking establishment with no late hours and no alcohol service is consistent with the CO-R (Regional Commercial Office) land use designation of the General Plan. The CO-R designation is intended to provide for administrative and professional offices that serve local and regional markets with limited accessory retail, financial, service, and entertainment uses. Food Service uses are expected to be found in this area as an accessory and complementary use to the surrounding commercial office uses.
2. The project site is not located within 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. Eating and drinking establishments require the approval of a minor use permit within the PC-56 (North Newport Center Planned Community) Zoning District for Block 800. The café is intended to serve tenants within the Block 800 office development.
2. The proposed use will comply with all applicable development and parking standards including those specific to the eating and drinking use classification.

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. Bistro 24 will occupy the existing café tenant space and expand into an adjacent retail tenant space. Prior to the expansion, a café has operated in this location since 1990. The tenant space within the office complex has operated as an eating and drinking establishment in the past and demonstrated the location's capability of operating as a compatible use with other land uses in the vicinity.
2. The proposed hours of operation are from 6:00 a.m. to 7:00 p.m. Because the conditions of approval require that the café close by 7:00 p.m. daily and prohibit alcohol service, live entertainment, and dancing, disturbance to adjacent uses is not anticipated.
3. Adequate parking is provided for the restaurant during all hours of operation. A minimum of 12 parking spaces are available for the restaurant's use within the parking pool for Block 800.
4. The proposed use will not necessitate high levels of lighting or illumination and all outdoor lighting must conform to Newport Beach Municipal Code Section 20.30.070 (Outdoor Lighting).
5. Existing trash storage for the restaurant is provided within a trash enclosure within the parking area. The requested changes to the restaurant operation are not expected to result in an increase in trash collection activities.
6. This is an existing restaurant location that is compatible with other commercial uses in the area. The project includes conditions of approval to ensure that potential conflicts are minimized to the greatest extent possible.

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 project site is located within an existing office building and the tenant space is designed and developed for an eating and drinking establishment to serve tenants within the building. The design, size, location, and operating characteristics of the use are compatible with the surrounding neighborhood.
2. The existing parking lot and structure provides adequate circulation and parking spaces for patrons. Parking is in close proximity to the restaurant and does not create a traffic hazard in the surrounding area.
3. Adequate public and emergency vehicle access, public services, and utilities exist for the site.
4. The design of the improvements will comply with all Building, Public Works, and Fire Codes, and will be approved by the Orange County Health Department.

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, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

1. The renovation and expansion of the existing café will help the establishment serve as a support facility to office tenants located in Block 800. The establishment provides dining services as a public convenience to the surrounding development.
2. The project includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The limited hours for the cafe are appropriate for the area and sufficient parking is available in the area to accommodate the restaurant. 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.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2014-035 (PA2014-133), 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.
3. This resolution supersedes Modification Permit No. MD3782, which upon vesting of the rights authorized by this application, shall become null and void.

PASSED, APPROVED, AND ADOPTED THIS 16th DAY OF OCTOBER, 2014.



Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

PLANNING

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of Chapter 20.42 (Signs) of the Newport Beach Municipal Code.
3. Use Permit No. UP2014-035 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, unless an extension is otherwise granted.
4. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
5. 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.
6. 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 is materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
7. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Use Permit or the processing of a new Use Permit.
8. 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.
9. 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.
10. Prior to issuance of building permits, the applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Minor Use Permit file. The plans shall be identical to those approved by all City

departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Minor Use Permit and shall highlight the approved elements such that they are readily discernible from other elements of the plans.

11. The establishment shall provide a maximum of 36 interior seats.
12. The hours of operation for food service, eating and drinking establishment are limited from 6:00 a.m. to 7:00 p.m., daily.
13. A minimum of 12 parking spaces shall be available for the café at a rate of one space per three seats.
14. Live entertainment, dancing, and alcohol service shall be prohibited.
15. A covered wash-out area for refuse containers and kitchen equipment, with minimum useable area dimensions of 36-inches wide, 36-inches deep and 72-inches high, shall be provided, and the area shall drain directly into the sewer system, unless otherwise approved by the Building Director and Public Works Director in conjunction with the approval of an alternate drainage plan.
16. 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.
17. 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.
18. 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.
19. 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).

20. 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.
21. 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.
22. 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.
23. 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.
24. 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 Bistro 24 café including, but not limited to, UP2014-035 (PA2014-133). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Building Division Conditions

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. Public sanitation facilities shall be available to the general public (patrons) during regular business hours of the operation, unless otherwise approved by the Building Department.
27. All exits shall remain free of obstructions and available for ingress and egress at all times.

Public Works Conditions

28. The parking layout shall comply with City Standard STD-805-L-A and STD-805-L-B.
29. County Sanitation District fees shall be paid prior to the issuance of any building permits.