



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

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION
FROM: Kimberly Brandt, Community Development Director
Brenda Wisneski, Deputy Community Development Director
SUBJECT: Report of actions taken by the Zoning Administrator, and/or Planning Division staff for the week ending December 26, 2014

**ZONING ADMINISTRATOR ACTIONS
DECEMBER 23, 2014**

- Item 1: Il Barone Bottega Minor Use Permit No. UP2014-023 (PA2014-100)
4251 Martingale Way
Action: Approved by Resolution No. ZA2014-047 Council District 3
- Item 2: 2132 Seville Avenue Modification Permit No. MD2014-012 (PA2014-189)
2132 Seville Avenue
Action: Approved by Resolution No. ZA2014-048 Council District 1
- Item 3: Mozambique Peri Peri – Activity No. UP2014-047 (PA2014-182)
1332 Bison Avenue
Action: Approved by Resolution No. ZA2014-049 Council District 4
- Item 4: Camelback Telecom Update Minor Use Permit No. UP2014-020 (PA2014-075)
1155 Camelback Street
Action: Approved by Resolution No. ZA2014-050 Council District 4

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

- Item 1: 2801 Bayside Drive SA2014-026 (PA2014-183)
2801 Bayside Drive
Action: Approved Council District 6

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.

Lt. Dennis Birch, NBPD (*Telecom Permit*)
Det. Randy Parker & Det. John Thulin, NBPD (*ABC License*)
Det. Brad Miller, NBPD (*Massage Therapy - ABC License*)

RESOLUTION NO. ZA2014-047

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2014-023 FOR A TYPE 20 (OFF-SALE BEER AND WINE) AND TYPE 42 (ON-SALE PUBLIC PREMISE) ALCOHOLIC BEVERAGE CONTROL LICENSE LOCATED AT 4251 MARTINGALE WAY (PA2014-100)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Solo Noi, Inc., with respect to property located at 4251 Martingale Way, and legally described as Parcel 1 of Resubdivision No. 0395 being Lot 2 of Tract 7770, recorded in Book 299, Pages 15 & 16 of Miscellaneous Maps, records of Orange County, California, requesting approval of a minor use permit.
2. The applicant proposes a minor use permit to authorize a Type 20 (Off-Sale Beer and Wine) and a Type 42 (On-Sale Public Premise) alcoholic beverage license at a gourmet food shop. The conditional Type 42 license will allow the addition of tasting and pairing classes as an accessory use. No late hours (after 11:00 p.m.) are proposed.
3. The subject property is located within the General Commercial Site 6 sub-area of the PC-11 (Newport Place Planned Community) Zoning District and the General Plan Land Use Element category is MU-H2 (Mixed-Use Horizontal).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on December 23, 2014, in the Corona del Mar Conference Room (Bay E-First 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. The project is categorically exempt under Section 15301, of the California Environmental Quality Act (CEQA) Guidelines - Class 1 (Existing Facilities). The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use.
2. The proposed project involves the addition of beer and wine sales (accessory use) to an existing establishment. No other physical changes to the establishment are proposed. Therefore, the use qualifies for a categorical exemption under Class 1.

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 minor 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

1. The project has been reviewed and conditioned to ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code is maintained and that a healthy environment for residents and businesses is preserved. The addition of beer and wine is intended for the convenience of patrons wishing to partake in tasting and/or pairing classes taking place within the tenant space. Operational conditions of approval recommended by the Police Department relative to the service of beer and wine for tasting only will ensure compatibility with the surrounding uses and minimize related impacts.
2. Due to the high concentration of commercial land uses, the calls for service, number of arrests, and crime rate are greater than adjacent Reporting Districts; however, the Newport Beach Police Department does not consider the number significant given the type of development within this Reporting District.
3. The proposed use is not located in close proximity to residential development, day care centers, park and recreation facilities, places of religious assembly, and schools. The addition of a conditional Type 42 license, coupled with the limited hours of operation, is not considered or anticipated to be detrimental to the surrounding development. In accordance with the Section 20.48.030 (Alcohol Sales) of the Newport Beach Municipal Code, the Police Department has reviewed the minor use permit application and has added conditions to ensure that the design and security of the tasting/preparation areas within the existing retail store are properly addressed.
4. The provision of off-sale beer and wine in conjunction with beer and wine tasting and/or pairing classes to the designated area within the tenant space will not substantially change the operational characteristics. The use authorized by this permit is not a bar, tavern, cocktail lounge, nightclub or an establishment where live entertainment or dancing is provided. Prohibition of these uses or activities will minimize potential land use conflicts, nuisances and police intervention.
5. The restaurant is located within a commercial area that is occupied by a mixture of retail, service, and eating and drinking establishments.
6. There are three comparable establishments in the City, which provide wine tasting as an amenity to patrons. The beer and wine licenses requested are the same as those

obtained for said establishments and there is no evidence suggesting these uses have been detrimental to the neighborhood.

7. The gourmet shop is permitted in the PC-11 (Newport Place Planned Community) Zoning District. The off-sale and on-site consumption of beer and wine provides a public convenience by allowing the tasting of beer and wine for sale in addition to specialty food items offered for sale.

In accordance with Section 20.52.020.F (Conditional Use Permits and Minor Use Permits, 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

- B. The use is consistent with the General Plan and any applicable specific plan;*

Facts in Support of Finding

1. The property is designated MU-H2 (Mixed-Use Horizontal) by the Land Use Element of the General Plan. The MU-H2 designation applies to properties located in the Airport Area. It provides for a horizontal intermixing of uses that may include regional commercial office, multifamily residential, vertical mixed-use buildings, industrial, hotel rooms, and ancillary neighborhood commercial uses. The gourmet food shop is designated as a restaurant use with accessory wine tasting and is consistent with that designation.
2. The subject property is not part of a specific plan area.

Finding

- C. 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 gourmet food shop is consistent with the General Commercial Site 6 Sub-Area of the PC-11 (Newport Place Planned Community) Zoning District, which is intended to provide for areas appropriate for a range of retail, office, and service uses such as home and office furnishings, athletic clubs, nurseries, and home improvement stores. A gourmet food shop designated for restaurant use with off-sale beer and wine sales and on-site tastings is allowed upon the approval of a minor use permit by the Zoning Administrator.

2. The proposed off-sale beer and wine sales and associated tasting and/or pairing classes are considered accessory to the restaurant use. Sufficient parking is available in the parking pool to accommodate the establishment as a restaurant use with eight required parking spaces.
3. The proposed conditions of approval ensure that potential conflicts with surrounding land uses are minimized to the greatest extent possible or eliminated.

Finding

- D. 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. As conditioned, the tasting and/or pairing classes must occur during regular business hours and end by 10:00 p.m., daily.
2. The operational conditions of approval recommended by the Police Department relative to the sale of beer and wine will ensure compatibility with the surrounding uses and minimize related impacts. The project has been conditioned to ensure the welfare of the surrounding community so that the business remains a market with accessory dining and does not become a bar or tavern. The project has been conditioned so that no dancing or live entertainment will be permitted on the premises.
3. The restaurant is required to comply with the California Building Code and requirements of the Alcoholic Beverage Control Department to ensure the safety and welfare of customers and employees within the market.

Finding

- E. 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 project site is located within an existing multi-tenant commercial building.
2. Adequate public and emergency vehicle access, public services, and utilities are provided within the existing infrastructure.
4. The tenant improvement for a change of occupancy for the existing retail store and related food preparation area was reviewed for compliance with all Building, Public Works, and Fire Codes. Building permits will be required for the addition of the wine tasting area within the restaurant area.

4. All ordinances of the City and all conditions of approval will be complied with.

Finding

- F. *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 subjected to conditions of approval including limited hours of operation 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 nuisance areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.
2. As conditioned, the owners, managers and employees selling beer and wine shall undergo and successfully complete a certified training program in responsible methods and skills for selling beer and wine.
3. The addition of off-sale and on-sale beer and wine for the purpose of conducting tasting classes is accessory to the retail/restaurant use and the establishment is prohibited from becoming a bar, lounge, or nightclub.
4. As conditioned, the hours of operation from 7:00 a.m. to 10:00 p.m., daily will preclude nuisances to the nearby residential properties.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2014-023 (PA2014-100), 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 23RD DAY OF DECEMBER, 2014.



Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL**

1. The development shall be in substantial conformance with the approved site plan and floor plan dated with this date of approval. (Except as modified by applicable conditions of approval.)
2. This minor use permit may be modified or revoked by the Zoning Administrator upon a finding of failure to comply with the conditions set forth in Chapter 20.52 (Permit Review Procedures) of the Municipal Code, other applicable conditions, regulations governing beer and wine service, or 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. Any change in operational characteristics, hours of operation, expansion in area, or other modification to the approved plans as they relate to beer and wine sales, shall require an amendment to this minor use permit or the processing of a new use permit.
4. Minor Use Permit No. UP2014-023 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 (Time Limits and Extensions) of the Newport Beach Zoning Code, unless an extension is otherwise granted.
5. Should the beer and wine license be transferred, any future license holders, operators or assignees shall be notified of the conditions of this approval by either the current licensee, business operator, or the leasing company. Future licensees, operators or assignees shall submit, within 30 days of transfer of the beer and wine license, a letter to the Planning Division acknowledging their receipt and acceptance of the limitations, restrictions and conditions of approval of this minor use permit.
6. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
7. 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 minor use permit.
8. A building permit shall be obtained for all new improvements related to the tasting room including but not limited to a sliding partition door and new counter.
9. Prior to the issuance of building permits, Fair Share Traffic Fees shall be paid for the change from general commercial to restaurant use in accordance with Chapter 15.38 of the Newport Beach Municipal Code. The applicant shall be credited for the

- reduction in general commercial square footage and the remaining balance shall be charged or credited to the applicant.
10. The types of beer and wine license issued by the California Board of Alcoholic Beverage Control shall be a Type 20 (Off-sale Beer and Wine) and a Type 42 (On-Sale Beer and Wine for Public Premises) in conjunction with the principal retail/restaurant use.
 11. Individual servings of alcoholic beverages shall not exceed two ounces per glass or container. This condition shall not be construed as to prohibit a patron from sampling more than one glass and/or container of an alcoholic beverage for the purpose of comparative tasting(s).
 12. The hours of operation for the business shall be from 7:00 a.m. to 10:00 p.m., daily.
 13. The hours of operation for pairing and/or tasting shall be limited to the business hours for the establishment. Any increase in the hours of tasting and/or pairing classes shall be subject to the approval of an amendment to this minor use permit and may be subject to approval by the Zoning Administrator.
 14. The interior net public area shall be limited to 662 square feet in area with a maximum of fourteen (14) seats within the establishment.
 15. A total of eight parking spaces shall be required for the restaurant use.
 16. The operation of pairing and/or tasting classes shall include a maximum of 20 patrons. Any increase in this number is subject to subsequent review by the Planning Division.
 17. The beer and wine sales for the purpose of on-site tasting classes shall be limited to the rear retail sales room indicated on the approved floor plan. Any change in the operation of on-sale beer and wine sales or increase in the tasting area devoted to beer and wine sales for customers shall be subject to the approval of an amendment to this minor use permit issued by the Zoning Administrator.
 18. No exterior amplified music, public address speakers, outside paging system, loudspeaker, sound system, or other noise generating device shall be utilized.
 19. The operator shall take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the beer and wine outlet and adjacent properties during business hours, if directly related to the patrons of the subject beer and wine outlet. If the operator fails to discourage or correct nuisances, the Zoning Administrator may review, modify, or revoke this minor use permit in accordance with Chapter 20.54 (Permit Implementation, Time Limits, and Extensions) of the Zoning Code.
 20. The area outside of the establishment shall be maintained in a clean and orderly manner. 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. The operator of the use shall be responsible for the clean-up of all on-site and off-site trash, garbage and litter generated by the use.

21. All trash shall be stored within designated trash enclosures for the center.
22. 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 Il Barone Bottega Minor Use Permit including, but not limited to, Minor Use Permit No. UP2014-023 (PA2014-100). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Police Department Conditions

23. Approval does not permit Il Barone Bottega to operate as a bar, tavern, cocktail lounge, or nightclub as defined by the Municipal Code, unless the Planning Commission first approves a conditional use permit.
24. Alcohol service shall not be permitted at the exterior of the establishment. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
25. The 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.
26. There shall be no dancing and/or live entertainment allowed on the premises.
27. Strict adherence to maximum occupancy limits is required.
28. All owners, managers, and employees selling beer and wine shall undergo and successfully complete a certified training program in responsible methods and skills for selling beer and wine. 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.

29. A Special Event 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 beer and wine, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.

RESOLUTION NO. ZA2014-048

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MODIFICATION PERMIT NO. MD2014-012 TO ALLOW THE CONSTRUCTION OF A NEW TWO-CAR GARAGE WITH REDUCED INTERIOR DIMENSIONS LOCATED AT 2132 SEVILLE AVENUE (PA2014-189)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Mark Becker, on behalf of the property owner with respect to property located at 2132 Seville Avenue and legally described as Lot 95 of Tract 948, requesting approval of a modification permit.
2. The applicant proposes a modification permit to allow the construction of a new two-car garage with an interior dimension of 18 feet 6 inches in width by 19 feet in depth where the Code requires dimensions of 20 feet in width by 20 feet in depth be provided. The proposed new 3,102-square-foot home and attached 512-square-foot garage would comply with all other development standards.
3. The subject property is located within the R-1 (Single-Unit Residential) Zoning District and the General Plan Land Use Element category is RS-D (Single Unit Residential Detached).
4. The subject property is located within the coastal zone and is designated RSD-C (Single Unit Residential Detached 10.0 – 19.9 DU/AC).
5. A public hearing was held on December 23, 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 (CEQA) under Class 3 (New Construction or Conversion of Small Structures) of the Guidelines for CEQA.
2. This exemption includes one single-family residence, or a second dwelling unit in a residential zone. This proposed project is a new 3,102-square-foot single-family residence with an attached 512-square-foot garage in the R-1 (Single-Unit Residential) zone.

3. SECTION 3. REQUIRED FINDINGS.

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

Finding:

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

Facts in Support of Finding:

1. The existing development in the neighborhood is primarily characterized of two- and three-story single-unit dwellings developed on lots that are predominately rectangular in shape and measure approximately 35 feet wide by 70 feet deep with garage access from the alley at the rear of the lots.
2. Per the Zoning Code, dwellings located on lots that are between 30.1 to 40 feet in width are required to provide a two-car garage with minimum clear interior dimensions of 18 feet 6 inches in width by 19 feet in depth, which equates to an area of 351.5 square feet.
3. The proposed development maintains the predominant development pattern in the neighborhood by locating the garage toward the rear of the lot with a minimum clear width of 18 feet 6 inches and a depth of 19 feet. However, due to the triangular lot shape, the proposed design provides additional garage space totaling 510 square feet in area that can accommodate additional storage.

Finding:

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

Facts in Support of Finding:

1. The Zoning Code establishes varying garage sizes and side setback requirements based on the width of lot to address development constraints associated with narrower lots. Lots that are between 30.1 to 40 feet in width are required to provide a two-car garage with minimum clear interior dimensions of 18 feet 6 inches in width by 19 feet in depth and a minimum three foot setback. Lots wider than 40 feet require a two-car garage measuring 20 feet by 20 feet and minimum four-foot side setbacks.
2. The triangular shape of this lot measures 59.60 feet in the front and narrows to 23.54 feet at the rear of the property, but results in a lot width of 41 feet utilizing the methodology of the Zoning Code that states lot width is measured horizontally from side lot lines at a point midway between the front and rear lot lines. In this case, the narrow lot width at the

rear of the lot creates a practical hardship in providing a conforming 20-foot by 20-foot garage at the rear of the lot. As proposed, the design includes a larger garage at the rear of the lot, but maintains parking dimensions of 18 feet 6 inches by 19 feet, consistent with those dimensions required of the surrounding 35-foot-wide lots in the vicinity.

3. Due to the lot width of 41 feet, the resulting four-foot side setbacks that are required result in a disproportionately increased area of the lot restricted as setback than the surrounding 35-foot-wide lots subject to a three-foot side setbacks. For example, the subject 2,850-square-foot lot is allowed a maximum floor area of 3,970 square feet, resulting in a floor area to land area ratio of 1.39. The typical 35-foot-wide lot in the area (2,450 square feet) with three-foot side setbacks is permitted a maximum floor area of 3,712 square feet, resulting in a floor area to land area ratio of 1.52. Since the subject lot is already disproportionately affected by the lot width with regards to allowable floor area, requiring a 20-foot by 20-foot garage would further impact the living area of the proposed dwelling by requiring the garage to be located further toward the front of the house and creating a garage space substantially larger (540 square feet) than the minimum garage space (352 square feet) provided on neighboring lots.

Finding:

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

Facts in Support of Finding:

1. The triangular shape of lot that narrows to 23.54 feet is unique when compared to the surrounding 35-foot-wide rectangular lots that are typical in the area. Although a few other triangular lots do exist in the vicinity, those lots differ in that they widen toward the rear of the lots accommodating larger garages.
2. Although the lot technically maintains an average width of 41 feet, the narrowing lot width creates a constraint with designing the required 20-foot by 20-foot garage at the rear of the lot. Therefore, a reduced garage dimension of 18 feet 6 inches by 19 feet is necessary to maintain the development pattern with the garage located toward the rearmost portion of the lot as possible, consistent with that of the surrounding 35-foot wide lots with 18-feet-6-inch by 19-foot garages.

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. Providing a garage with dimensions of 18 feet 6 inches by 19 feet would not result in a detriment to surrounding owners or occupants since the minimum garage size of 18

feet 6 inches by 19 feet is the standard required of surrounding lots. However, unlike the surrounding lots, the proposed garage is actually larger in area (510 square feet versus 352 square feet) due to the constrained garage space located at the rear most portion of the lot that can be used for additional storage.

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.*

Fact in Support of Finding

1. Though the proposed minimum clear interior dimensions will be less than the minimum required by the Zoning Code, it provides sufficient area for use as a two-car garage with additional space to park a golf cart or additional storage. The proposed size of the garage is consistent with neighboring properties and will not be detrimental to the occupants of the property, nearby properties, neighborhood, or City.
2. The approval of this Modification Permit will comply with all other provisions of the R-1 Zoning District and will not result in a change in density or intensity that would be inconsistent with the provisions of the Zoning Code.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Modification Permit No. MD2014-012, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days after the adoption of this Resolution unless within such time an appeal is filed with the Community Development Director in accordance with the provisions of Title 20 (Planning and Zoning), of the Newport Beach Municipal Code.

PASSED, APPROVED AND ADOPTED THIS 23th DAY OF DECEMBER, 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. Modification Permit No. MD2014-012 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 (Time Limits and Extensions) 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. The Zoning Administrator may add to or modify the conditions of approval to this Modification Permit or revoke this Modification Permit upon a determination that the operation, which is the subject of this Modification Permit, causes injury, or is detrimental to the health, safety, peace, comfort, or general welfare of the community.
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. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless the 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 2132 Seville Avenue Modification Permit including, but not limited to, the Modification Permit No. MD2014-012 (PA2014-189). 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 the City's costs, attorneys' fees, and damages, which the 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. ZA2014-049

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2014-047 TO CHANGE THE ALCOHOL BEVERAGE CONTROL LICENSE FOR AN EXISTING EATING AND DRINKING ESTABLISHMENT FROM A TYPE 41 TO A TYPE 47 LOCATED AT 1332 BISON AVENUE (PA2014-182)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Zabenza Inc., with respect to property located at 1332 Bison Avenue, and legally described as Parcel 1 of Parcel Map No. 2001-140 requesting approval of an amendment to an existing use permit.
2. The applicant proposes to amend previously approved Use Permit No. UP2002-033 to change the Alcoholic Beverage Control (ABC) license at an existing eating and drinking establishment (Mozambique Peri Peri) from a Type 41 (On Sale Beer and Wine – Eating Place) to a Type 47 (On Sale General – Eating Place). Hours of operation will remain 10:00 am. to 11:00 p.m., daily. No late hours (after 11:00 p.m.) are proposed as part of this application.
3. The subject property is located within the Bonita Canyon Planned Community (PC 50) Zoning District and the General Plan Land Use Element category is General Commercial (CG).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on December 23, 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.

This action is covered by the general rule that the California Environmental Quality Act (CEQA) applies only to projects that have the potential for causing a significant effect on the environment (Section 15061.b.3 of the CEQA Guidelines). It can be seen with certainty that there is no possibility that changing the type of alcohol beverage control license at an existing eating and drinking establishment will have a significant effect on the environment. Therefore, this activity is not subject to CEQA

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 such findings 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 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 subject property is located in Reporting District 54 (RD 54). The Part One Crimes (Part One Crimes are the eight most serious crimes defined by the FBI Uniform Crime Report – homicide, rape, robbery, aggravated assault, burglary, larceny-theft, auto theft, and arson) crime rate in RD 54 is higher than adjacent Reporting Districts 51 and 52, but lower than Reporting District 36 and the City overall.
 2. Year to date, zero Part One Crimes have been reported at the subject property.
 3. The Police Department has reviewed the proposal, provided operating conditions of approval, and has no objection to the change in alcoholic beverage license type proposed.
- ii. The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*
1. The total number of alcohol-related calls for service, crimes, or arrests in RD 54 is higher than adjacent Reporting Districts 51 and 52, but lower than Reporting District 36 and significantly less than the City overall. The Police Department has reviewed the proposal and has no objection.
 2. Year to date, four calls for service representing less than one percent ($4/1,141 = 0.3$) of all calls for service in the Reporting District have been reported at the subject property. There have been no arrests or citations reported at the subject property.
- iii. The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.*

1. The site is developed with a commercial shopping center which is consistent with the General Plan designation, General Commercial. Properties within the shopping center consist of retail, service, and eating and drinking establishment uses. The property is not located within close proximity to any day care centers, hospitals, park and recreation facilities, places of worship, schools, or similar uses that attract minors. The nearest residential and recreational uses are buffered from the shopping center by MacArthur Boulevard and Bison Avenue. Eating and drinking establishments with incidental alcohol service have existed at the subject location since original construction of the shopping center in 2003 and the proposed change in Alcoholic Beverage Control license type is not anticipated to alter the operational characteristics of the use such that it becomes detrimental to the area.
- iv. The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.*
1. Multiple eating and drinking establishments within the shopping center including Wildfish Seafood Grille (Type 47), Islands (Type 47), Johnny's Real New York Pizza (Type 41), and Pei Wei (Type 41) sell alcoholic beverages. Mozambique Peri Peri currently operates with a Type 41 (On Sale Beer and Wine – Eating Place) license and has requested a change to a Type 47 (On-Sale General – Eating Place) license. There is no evidence suggesting this use has been detrimental to surrounding properties or the neighborhood.
- v. Whether or not the proposed amendment will resolve any current objectionable conditions.*
1. An eating and drinking establishment with alcohol service has operated at the subject location since 2003.
 2. The project has been reviewed and conditioned to ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code is maintained and that a healthy environment for residents and businesses is preserved. The service of alcohol is intended for the convenience of customers dining at the establishment. Operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol related impacts.
 3. The existing hours of operation of the establishment will minimize the potential effects on land use. The establishment closes by 11:00 p.m., daily, which will ensure the use does not become a late night bar, tavern, or nightclub.
 4. The establishment is located within an existing shopping center which is developed with other commercial uses. Changing the alcohol beverage control license will not alter the existing operation, but will complement the food service and provide a convenience to customers.

n accordance with Section 20.52.020 (Conditional Use Permits and Minor Use Permits) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

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

Facts in Support of Finding:

1. The General Plan designates the site as General Commercial (CG) which is intended to provide for a wide variety of commercial activities oriented primarily to serve citywide or regional needs.
2. The existing eating and drinking establishment is located within the Bluffs Shopping Center and serves those working, residing, or visiting the surrounding neighborhood, consistent with the CG land use designation.
3. The subject property is not a part of a specific plan area.

Finding:

C. The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code;

Facts in Support of Finding:

1. The site is located in Commercial Sub-Area 5 of the Bonita Canyon Planned Community (PC 50) Zoning District which was intended to provide for up to 55,000 square feet of commercial uses. Eating and drinking establishments are permitted uses subject to the approval of a use permit.
2. The existing eating and drinking establishment operates pursuant to Use Permit No. UP2002-033 which allowed the sale and service of food and beverage with incidental beer and wine sales, and established hours of operation between 10:00 a.m. and 11:00 p.m., daily.
3. The use will remain an eating and drinking establishment and the change in alcohol beverage control license will not alter or intensify the existing use. Further, there will be no change to the floor area or hours of operation.
4. The conditions of approval reflected in "Exhibit A" of this resolution ensure that potential conflicts with surrounding land uses are eliminated or minimized to the greatest extent possible.

Finding:

- D. 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. Eating and drinking establishments with the service of alcohol have operated at the shopping center since original construction in 2003 and have not proven detrimental to the area.
2. The principal use will remain an eating and drinking establishment and the change in license type will not alter the design, size, or operating characteristics of the facility.
3. The operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol related impacts. The project has been conditioned to ensure the welfare of the surrounding community and that the eating and drinking establishment does not become a bar or tavern. The establishment is required to comply with the requirements of the Alcoholic Beverage Control Department to ensure the safety and welfare of customers and employees of the establishment. The project has been conditioned so that no dancing or live entertainment will be permitted on the premises.

Finding:

- E. 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 existing eating and drinking establishment is located within an existing shopping center and has demonstrated that it is physically suitable in terms of design, location, shape, and size to support the use.
2. Adequate public and emergency vehicle access, public services, and utilities are provided for on-site.

Finding:

- F. 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 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 eating and drinking establishment will continue to service patrons of the shopping center, surrounding commercial buildings, and provide dining services as a public convenience to the surrounding neighborhood. The service of alcohol will continue to complement the principal use of the facility and provide an economic opportunity for the property owner to maintain a successful business in a way which best serves the community.
3. As conditioned, the owners, managers and employees selling alcohol are required to undergo and successfully complete a certified training program in responsible methods and skills for selling alcohol.
4. Residential uses do not exist within close proximity of 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. UP2014-047 (PA2014-182), 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.
3. This resolution supersedes Use Permit No. UP2002-033 (PA2002-159) approved November 15, 2002, which upon vesting of the rights authorized by Minor Use Permit No. UP2014-047 (PA2014-182), shall become null and void.

PASSED, APPROVED, AND ADOPTED THIS 23RD DAY OF DECEMBER, 2014.

By:



Brenda Wisneski, AICP, Zoning Administrator

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

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval. (Except as modified by applicable conditions of approval.)
2. The 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 Minor Use Permit.
3. 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.
4. The eating and drinking establishment as proposed will contain 1,968 gross square feet. Any change in operational characteristics, expansion in area, or other modification to the approved plans, may require an amendment to this Minor Use Permit or the processing of a new use permit.
5. Hours of operation shall be limited to between 10:00 a.m. and 11:00 p.m., daily. Any increase in the hours of operation shall be subject to the approval of an amendment to this Minor Use Permit or the processing of a new use permit.
6. All employees shall park on-site.
7. The reciprocal arrangement for ingress, egress and parking that applies to the subject property shall remain in effect for the duration of the eating and drinking establishment.
8. All mechanical equipment shall be screened from view of adjacent properties and adjacent public streets in accordance with Newport Beach Municipal Code Section 20.30.020 (Buffering and Screening), and shall be sound attenuated in accordance with Chapter 10.26 (Community Noise Control).
9. Grease interceptors shall be installed on all fixtures in the restaurant where grease may be introduced into the drainage systems, unless otherwise approved by the Building Division and Public Works Department. This condition does not preclude the shared use of a common area grease interceptor device, if determined adequate by the Building Division and Public Works Department.
10. The facility shall comply with the provisions of Chapter 14.30 (Fats, Oils and Grease Control) for commercial kitchen grease disposal.

11. Kitchen exhaust fans shall be designed to control smoke and odor to the satisfaction of the Building Division.
12. Should the alcoholic beverage control (ABC) license be transferred, any future license holders, operators or assignees shall be notified of the conditions of this approval by either the current licensee, business operator, or the leasing company. Future licensees, operators or assignees shall submit, within thirty (30) days of transfer of the ABC license, a letter to the Planning Division acknowledging their receipt and acceptance of the limitations, restrictions and conditions of approval of this minor use permit.
13. The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control (ABC) shall be a Type 47 (On-Sale General for Bona Fide Eating Place) in conjunction with the service of food.
14. The alcoholic beverage sales for the purpose of on-site consumption shall be limited to the designated dining areas indicated on the floor plan submitted with the application. Any change in the operation of on-sale alcoholic beverage sales or increase in the dining area devoted to alcohol sales for customers shall be subject to the approval of an amendment to this minor use permit issued by the Zoning Administrator.
15. Bar counters for the service of alcoholic beverages shall be prohibited.
16. The operator shall take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the alcoholic beverage outlet and adjacent properties during business hours. If the operator fails to discourage or correct nuisances, the Zoning Administrator may review, modify, or revoke this minor use permit in accordance with Chapter 20.96 of the Zoning Code.
17. A covered wash-out area for refuse containers and kitchen equipment shall be provided and the area shall drain directly into the sewer system, unless otherwise approved by the Building Division and Public Works Department.
18. 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.
19. 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.
20. 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).

21. 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 twenty (20) feet of the premises.
22. 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.
23. 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.
24. There shall be no live entertainment.
25. No outside paging system shall be utilized in conjunction with this establishment.
26. 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.
27. 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.
28. 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 Mozambique Peri Peri including, but not limited to Minor Use Permit No. UP2014-047 (PA2014-182). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Police Department Conditions

29. This approval does not permit the premises to operate as a bar, lounge, or nightclub as defined by the Newport Beach Municipal Code.
30. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
31. The applicant shall post and maintain professional quality signs measuring 12 inches by 12 inches with lettering no smaller than 2 inches in height that read, "No Alcoholic Beverages Beyond This Point" at all exits leading from the dining area.
32. The 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.
33. Dancing shall be prohibited, unless otherwise approved in conjunction with a Special Events Permit.
34. All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcohol 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 retail market 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.

RESOLUTION NO. ZA2014-050

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2014-020 FOR A TELECOMMUNICATIONS FACILITY LOCATED AT 1155 CAMELBACK STREET (PA2014-075)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Core Development Services on behalf of Sprint PCS, with respect to property located at 1155 Camelback Street, and legally described as Lot 7 of Tract No. 6680, requesting approval of a minor use permit.
2. The applicant proposes to mount two new panel antennas and two new remote radio units to an existing 80-foot-tall utility/transmission pole and replace existing ground-level support equipment. The proposed height of the facility will not change as part of this application.
3. The subject property is located within the North Ford Planned Community (PC 5) Zoning District and the General Plan Land Use Element category is Public Facilities (PF).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on December 23, 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. Class 3 allows construction of new, small facilities or structures and installation of small new equipment and facilities in small structures. Examples of this exemption include up to four commercial buildings totaling 10,000 square feet and accessory structures.
3. The proposed project involves the installation of two antennas, two remote radio units, and upgrades to existing support equipment which is consistent with the Class 3 exemption.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020 (Conditional Use Permits and Minor Use Permits) and Section 20.49.060.H.1 (Required Findings for Telecom Facilities) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Minor Use Permit

Finding:

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

Facts in Support of Finding:

1. The subject property is designated Public Facilities (PF) within the Land Use Element of the General Plan, which is intended to provide for public facilities, including public schools, cultural institutions, government facilities, libraries, community centers, public hospitals, and public utilities. Other uses may be permitted in accordance with the PF land use designation.
2. The proposed telecom facility is accessory to the electrical substation which is a utility, consistent with the PF designation.
3. The site is not in 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 20.49.040 (Telecom Facility Preferences and Prohibited Locations) of the Municipal Code, telecom facility uses are not prohibited in non-residential areas of planned community zoning districts.
2. The facility is designed such that it will not visually dominate the surrounding area. Proposed brackets, mounts, antennas, and associated equipment will be painted with subdued colors to match the pole and blend in with the visual backdrop of the utility station. Existing mature landscaping will assist in screening the facility from adjacent uses and Bison Avenue.
3. Support equipment, including cables and batteries for the facility, will be placed within an existing enclosure at the base of the pole and screened from view.
4. The proposed project has been reviewed and will comply with all applicable provisions of the Planned Community, Zoning Code, and 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. The principal use of the property is an electrical substation operated by Southern California Edison. The proposed upgrades to the existing pole-mounted facility are compatible with the principal use of the property.
2. The facility is located on property that abuts non-residential uses. The mini storage facility to the east, post office to the north, and church to the west are buffered from the proposed facility by existing landscaping, walls, and surface parking. Residential uses to the south across Bison Avenue are located approximately 250 feet away and sit at a higher elevation.
3. The size of the facility is not proposed to expand in height or diameter.
4. The proposed telecom facility will be unmanned, have no impact on the circulation system, and will not generate noise, odor, smoke, or any other adverse impacts to adjacent land uses.
5. The proposed facility will enhance coverage for commuters and residents of the area and provide wireless access to voice and data transmission services not currently available. The proposed facility will not result in any material changes to the character of the local community.

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 has demonstrated that it is physically suitable to support the existing facility. The addition of two antennas, two remote radio units, and support equipment at the base of the pole will not alter the site's ability to provide public and emergency vehicle access or public services and utilities.
2. The Public Works Department, Building Division, Police Department, and Fire Department have reviewed the project proposal and do not have any concerns regarding access, public services, or utilities provided to the existing development.

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 facility will only require periodic maintenance and will not generate any type of adverse impacts to the environment, such as noise, odor, smoke, etc.
2. The proposed facility will comply with the applicable rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC), thus ensuring public health and safety.
3. The proposed facility is not located in an area adjacent to a coastal view road or public coastal view point.
4. As conditioned, the proposed telecommunication facility in this location will not result in conditions that are materially detrimental to nearby property owners, residents, and businesses, nor to public health or safety.

Telecom Facilities

Finding:

- F. The proposed telecom facility is visually compatible with the surrounding neighborhood.*

Facts in Support of Finding:

1. The proposed antennas and remote radio units will be mounted to an existing 80-foot-tall utility/transmission pole that is located on property dedicated for the generation, transmission, and distribution of electricity.
2. The facility will remain visually compatible with existing transmission equipment on the property.
3. Surrounding uses are buffered from the facility by existing improvements and the proposed upgrades will not visually alter or dominate the surrounding neighborhood.

Finding:

- G. The proposed telecom facility complies with height, location and design standards, as provided in Chapter 20.49.*

Facts in Support of Finding:

1. Telecom facilities may be installed on utility poles that are for the purpose of carrying electricity, provided that the top of the proposed antennas do not extend above the top of the utility pole.
2. The proposed facility is mounted to a utility pole carrying electricity. The proposed antennas will extend to a point 55 feet above the finished grade which is below the top of the pole, consistent with the height of antennas currently mounted to the pole.
3. The facility is designed such that it will not visually dominate the surrounding area. Proposed brackets, mounts, antennas, and associated equipment will be painted with subdued colors to match the pole and blend in with the visual backdrop. Existing mature landscaping will assist in screening the facility from adjacent uses and Bison Avenue.
4. Support equipment including cables and batteries for the facility will be placed within an existing enclosure at the base of the pole and screened from view.

Finding:

- H. An alternative site(s) located further from a residential district, public park or public facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.*

Facts in Support of Finding:

1. The proposal is to upgrade an existing facility that is located on property with another existing carrier (Verizon). Alternative sites located further away from nearby residential uses and public facilities would limit the coverage objectives and not fulfill the needs addressed by the proposed upgrades.
2. Selecting an alternative site would result in an additional telecom facility within the area or require the elimination and relocation of the existing facility which limits Sprint from providing uninterrupted service to residential and business customers in the area.
3. The applicant has provided maps that demonstrate improved coverage within the vicinity and Highway 73 as a result of the proposed upgrades.

Finding:

- I. An alternative plan that would result in a higher preference facility class category for the proposed facility is not available or reasonably feasible and desirable under the circumstances.*

Facts in Support of Finding:

1. The proposal is to upgrade an existing class 2 (visible antennas) telecom facility mounted to an 80-foot tall utility pole.
2. An alternative plan resulting in a class 1 (stealth/screened) facility is not reasonably feasible or desirable given that screening elements would be visually incompatible with the surrounding backdrop and result in an installation that is out of scale with the surrounding area.
3. As conditioned, all antenna components, support equipment, brackets and mounts shall be colored to match the predominant visual background. Subdued colors and non-reflective materials shall be used to ensure compatibility with the surrounding area.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2014-020, subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective 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 23RD DAY OF DECEMBER, 2014.

BY:



Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL**

1. The development shall be in substantial conformance with the approved plot plan, antenna and equipment plans, elevations, and photographic simulations, except as noted in the following conditions.
2. The telecom facility approved by this permit shall comply with all applicable rules, regulations, and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).
3. The applicant is required to obtain all applicable permits from the City Building Division and Fire Department. Prior to the issuance of any building, mechanical, and/or electrical permits, architectural drawings and structural design plans shall be submitted to the City of Newport Beach for review and approval by the applicable departments. A copy of these conditions of approval shall be incorporated into the drawings approved for the issuance of permits.
4. The telecom facility shall comply with all regulations and requirements of the California Building Code, California Fire Code, California Mechanical Code, and California Electrical Code. All required permits shall be obtained prior to commencement of the construction.
5. The telecom facility approved by the permit shall comply with any easements, covenants, conditions, or restrictions on the underlying real property upon which the facility is located.
6. Anything not specifically approved by this permit is not permitted and must be addressed in a separate and subsequent telecom permit review.
7. All antenna components, support equipment, brackets and mounts shall be colored to match the predominant visual background. Subdued colors and non-reflective materials shall be used.
8. If any of the existing public improvements surrounding the site are damaged by the private work, new concrete sidewalk, curb and gutter, alley/street pavement, and other public improvements will be required by the City at the time of private construction completion. Said determination and the extent of the repair work shall be made at the discretion of the Public Works Inspector.
9. The storage of all project-related equipment during construction shall be on-site and outside the public right-of-way.
10. All work in the public rights-of-way shall follow City's Municipal Code Chapter 13.20.

11. The applicant shall not prevent the City of Newport Beach from having adequate spectrum capacity on the City's 800 MHz radio frequencies at any time.
12. The facility shall transmit at the approved frequency ranges established by the FCC. The applicant shall inform the City, in writing, of any proposed changes to the frequency range in order to prevent interference with the City's Public Safety radio equipment.
13. Should interference with the City's Public Safety radio equipment occur, use of the telecom facility authorized by this permit may be suspended until the radio frequency interference is corrected and verification of the compliance is reported.
14. The applicant recognizes that the frequencies used by the cellular facility located at 1155 Camelback Street are extremely close to the frequencies used by the City of Newport Beach for public safety. This proximity will require extraordinary "comprehensive advanced planning and frequency coordination" engineering measures to prevent interference, especially in the choice of frequencies and radio ancillary hardware. This is encouraged in the "Best Practices Guide" published by the Association of Public-Safety Communications Officials-International, Inc. (APCO), and as endorsed by the Federal Communications Commission (FCC).
15. The applicant shall provide a "single point of contact" in its Engineering and Maintenance Departments that is monitored 24 hours per day to ensure continuity on all interference issues, and to which interference problems may be reported. The name, telephone number, fax number, and e-mail address of that person shall be provided to the Community Development Department and Newport Beach Police Department's Support Services Commander prior to activation of the facility.
16. Appropriate information warning signs or plates shall be posted at the access locations and each transmitting antenna. In addition, contact information (e.g., a telephone number) shall be provided on the warning signs or plates. The location of the information warning signs or plates shall be depicted on the plans submitted for construction permits.
17. No advertising signage or identifying logos shall be displayed on the telecom facility except for small identification, address, warning, and similar information plates. A detail of the information plates depicting the language on the plate shall be included in the plans submitted for issuance of building permits.
18. The telecom facility shall not be lighted except as deemed necessary by the Newport Beach Police Department for security lighting. The night lighting shall be at the lowest intensity necessary for that purpose and such lighting shall be shielded so that direct rays do not shine on nearby properties. Prior to the final of building permits, the applicant shall schedule an evening inspection with the Code Enforcement Division to confirm compliance with this condition.

19. The operator of the telecom facility shall maintain the facility in a manner consistent with the original approval of the facility.
20. At all times, the operator shall ensure that its telecom facilities comply with the most current regulatory operations standards, and radio frequency emissions standards adopted by the FCC. The operator shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. Said information shall be made available by the operator upon request at the discretion of the Community Development Director.
21. Prior to final of building permits, the applicant shall schedule an inspection with the Planning Division to ensure materials and colors match existing architecture as illustrated in the approved photographic simulations and in conformance with Municipal Code Section 20.49.050, to the satisfaction of the Planning Division.
22. 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 the applicant, current property owner, or leasing agent.
23. The applicant shall ensure that lessee or other user(s) shall comply with the terms and conditions of this permit, and shall be responsible for the failure of any lessee or other users under the control of the applicant to comply.
24. Any operator who intends to abandon or discontinue use of a telecom facility must notify the Planning Division by certified mail no less than thirty (30) days prior to such action. The operator or property owner shall have ninety (90) days from the date of abandonment or discontinuance to reactivate use of the facility, transfer the rights to use the facility to another operator, or remove the telecom facility and restore the site.
25. The City reserves the right and jurisdiction to review and modify any telecom permit approved pursuant to Chapter 20.49 of the Newport Beach Municipal Code, including the conditions of approval, based on changed circumstances. The operator shall notify the Planning Division of any proposal to change the height or size of the facility; increase the size, shape, or number of antennas; change the facility's color, materials, or location on the site; or increase the signal output above the maximum permissible exposure (MPE) limits imposed by the radio frequency emissions guidelines of the FCC. Any changed circumstance shall require the operator to apply for a modification of the original telecom permit and obtain the modified telecom permit prior to implementing any change.
26. This Telecom Permit may be modified or revoked by the City Council should they determine that the facility or operator has violated any law regulating the telecom facility or has failed to comply with the requirements of Chapter 20.49 of the NBMC, or this Telecom Permit.

27. This approval shall expire unless exercised within twenty-four (24) months from the date of approval.

28. 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 Camelback Telecom Update including, but not limited to UP2014-020 (PA2014-075). 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.



COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION

100 Civic Center Drive, P.O. Box 1768, Newport Beach, CA 92658-8915
(949) 644-3200 Fax: (949) 644-3229

www.newportbeachca.gov

COMMUNITY DEVELOPMENT DIRECTOR ACTION LETTER

Application No. **Staff Approval No. SA2014-026 (PA2014-183)**
Applicant **Andrew Goetz**
Site Address **2801 Bayside Drive**
 2801 Bayside Drive Staff Approval
Legal Description **Lot 18, Excluding Portions, and Lot 20, Block 234, Tract 186**

On **December 23, 2014**, the Community Development Director approved Staff Approval No. SA2014-026 authorizing the demolition of a triplex in compliance with Zoning Code Chapter 20.34 (Conversion or Demolition of Affordable Housing). This approval is based on the following information and analysis.

ZONING DISTRICT/GENERAL PLAN

- **Zone:** R-2 (Two-unit Residential)
- **General Plan:** RT (Two-Unit Residential)

SUMMARY

A staff approval for determination of compliance with Zoning Code Chapter 20.34 and the Mello Act (Government Code Section 65590). The property owner proposes to demolish an existing triplex and construct a new duplex.

ANALYSIS

Pursuant to Zoning Code Section 20.34.020 (Review Authority), the Director shall make a determination as to the applicability of this chapter when a residential structure of three or more units is to be converted or demolished. If it is determined that any of the units are occupied by low- or moderate-income tenants, provisions for their replacement shall be provided, if feasible. If applicable, and based on the documentation provided in compliance with Section 20.34.060 (Determining Requirements for Replacement Units), the Director shall make determinations as to:

1. *How many units were occupied by low- and moderate-income persons or families;*
2. *Whether the conversion or demolition proposes to go from residential to nonresidential and if so whether the proposed new use is coastal dependent;*

3. *Whether a feasibility analysis is required to be prepared;*
4. *The feasible number of affordable units required to be replaced, if any; and*
5. *Whether the required replacement affordable units are to be located on site or off site.*

In this particular case, the property owner has provided documentation to demonstrate the units were not occupied by low- and moderate-income families or persons within one year of filing the subject application. The documentation demonstrates that all three units have been vacant for a period of at least one year. The residential units will not be converted to nonresidential uses, and given none of the units are and/or were occupied by low- and moderate-income families or persons, no further analysis is required.

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. For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

On behalf of Kimberly Brandt, AICP, Community Development Director

By:



Jason Van Patten
Planning Technician

JM/jvp

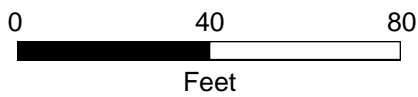
Attachments: CD 1 Vicinity Map
CD 2 Applicant's Project Description

Attachment No. CD 1

Vicinity Map



Newport
Beach
GIS



Disclaimer: Every reasonable effort has been made to assure the accuracy of the data provided, however, The City of Newport Beach and its employees and agents disclaim any and all responsibility from or relating to any results obtained in its use.

Imagery: 2009-2013 photos provided by Eagle Imaging www.eagleaerial.com

Attachment No. CD 2

Applicant's Project Description

Date: December 2nd 2014

To: Community Development Dept.

Re: Staff Approval No. SA2014-026 (PA2014-183)
2801 Bayside Drive, Corona Del Mar CA



To whom it may concern;

Below I have detailed out the information request by your department:

- A. Address of the Property: **2801 Bayside Drive, Corona Del Mar CA**
- B. Total number of Existing units: **3**
- C. Income of the tenants: **All units currently Vacant**
- D. **Square Footage and number of bedrooms per unit:**
 - a. Unit #1: 1bd, 1ba, ~650sqft
 - b. Unit #2: 3bd, 2ba, ~1100sqft
 - c. Unit #3: 1bd, 1ba, ~650sqft
 - d. 3-Car Garage (1st Level) ~620 sqft
- E. Names and address of current Tenants: **N/A (All units Vacant)**
- F. Tenant Family Size in each Unit: **N/A (All units Vacant)**
- G. **Information on any evictions within last year;**
 - a. **Purchased property on October 31st 2013. All units were vacant**
 - b. **All units currently vacant. Owner has no history of any prior tenants with previous owner.**
- H. **All Units have been vacant since November 2013.**

Should you have any questions or need additional information. Please contact me at 949-202-7280.

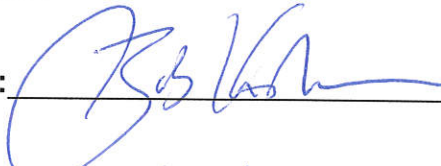
Babak Kashani
Owner/Member
RLBK Real Estate LLC.

In providing this information, I Babak Koshani hereby acknowledge and understand the requirements of the Mello Act (California Government Code Section 65590 et seq.) which provides that the conversion or demolition of existing residential dwelling units occupied by persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, shall not be authorized unless provision has been made for the replacement of those dwelling units with units for persons and families of low or moderate income. Replacement dwelling units shall be located within the same city or county as the dwelling units proposed to be converted or demolished.

I hereby state that none of the above-referenced dwelling units are occupied currently by a person or family of low or moderate income if the person that no person or family was evicted from any of the above-referenced dwelling units within one year prior to the filing of an application to convert or demolish the unit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 22nd December, 2014, at Laguna Niguel, California.

OWNER(S):



Babak Koshani

DATE: 12/22/14

[Owner's signature must be notarized]

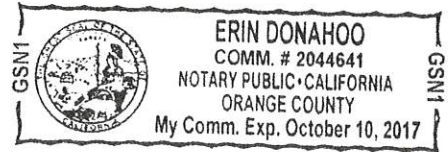
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DEVELOPMENT
CITY OF NEWPORT BEACH

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

On December 22, 2014, before me, Erin Donahoo, a Notary Public, personally appeared Babak Kashani, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Erin Donahoo
Notary Public

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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Notary Public