



**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 16, 2016

**ZONING ADMINISTRATOR ACTIONS
DECEMBER 15, 2016**

- Item 1: 424 Larkspur Avenue Condominiums Tentative Parcel Map No. NP2016-021 (PA2016-181)
Site Address: 424 Larkspur Avenue
Action: Approved Council District 6
- Item 2: Taormina Mixed-Use Minor Site Development Review No. SD2016-008 (PA2016-177)
Site Address: 424 31st Street
Action: Approved Council District 1
- Item 3: Soul Shine OC Minor Use Permit No. UP2016-040 (PA2016-145)
Site Address: 425 Old Newport Boulevard, Suite D
Action: Approved Council District 2
- Item 4: Burger Boss Minor Use Permit No. UP2016-047 (PA2016-191)
Site Address: 6800 W Coast Highway
Action: Approved Council District 2

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

Wendy Joe, Civilian Investigator, NBPD (*Massage Therapy – ABC License*)
Sgt. Brad Miller, NBPD (*Massage Therapy - ABC License*)

RESOLUTION NO. ZA2016-067

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING TENTATIVE PARCEL MAP NO. NP2016-021 FOR TWO-UNIT CONDOMINIUM PURPOSES LOCATED AT 424 LARKSPUR AVENUE (PA2016-181)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Tonya Sampson Nicholson with respect to property located at 424 Larkspur Avenue and legally described as Lot 20 in Block 438 of Corona Del Mar, requesting approval of a tentative parcel map.
2. The applicant proposes a tentative parcel map for two-unit condominium purposes. An existing duplex was demolished and will be replaced with a new two-unit duplex, currently under construction. The Tentative Parcel Map would allow each unit to be sold individually. No waiver of Title 19 (Subdivisions) development standards are proposed with this application.
3. The subject property is located within the Two-Unit Residential (R-2) Zoning District and the General Plan Land Use Element category is Two-Unit Residential (RT).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on December 15, 2016 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 is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Class 15 exemption allows 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 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. The Tentative Parcel Map is for condominium purposes and is consistent with all of the requirements of the Class 15 exemption.

SECTION 3. REQUIRED FINDINGS.

The Zoning Administrator determined in this case that the Tentative Parcel Map is consistent with the legislative intent of Title 20 (Planning and Zoning) of the Newport Beach Municipal Code and is approved based on the following findings per Section 19.12.070 (Required Findings for Action on Tentative Maps) of Title 19:

Finding:

A. That the proposed map and the design or improvements of the subdivision are consistent with the General Plan and any applicable specific plan, and with applicable provisions of the Subdivision Map Act and this Subdivision Code.

Facts in Support of Finding:

1. The Tentative Parcel Map is for two-unit residential condominium purposes. A duplex was demolished and will be replaced with a new two-unit duplex. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the RT General Plan Land Use Designation.
2. The Tentative Parcel Map is not located within a specific plan area.

Finding:

B. That the site is physically suitable for the type and density of development.

Facts in Support of Finding:

1. The lot is physically suitable for a two-unit development because it is regular in shape and is relatively flat.
2. The subject property is accessible from Larkspur Avenue and an alley at the rear, and is adequately served by existing utilities.

Finding:

C. That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage nor substantially and avoidably injure fish or wildlife or their habitat. However, notwithstanding the foregoing, the decision making body may nevertheless approve such a subdivision if an environmental impact report was prepared for the project and a finding was made pursuant to Section 21081 of the California Environmental Quality Act that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.

Facts in Support of Finding:

1. The site was previously developed with a duplex, which has been demolished and will be replaced with a duplex.
2. The property is located in an urbanized area that does not contain any sensitive vegetation or habitat.
3. The project is categorically exempt under Section 15315 (Article 19 or Chapter 3), of the California Environmental Quality Act (CEQA) Guidelines – Class 15 (Minor Land Alterations).

Finding:

D. That the design of the subdivision or the type of improvements is not likely to cause serious public health problems.

Facts in Support of Finding:

1. The Tentative Parcel Map is for residential condominium purposes. All improvements associated with the project will comply with required Building, Public Works, and Fire Codes, which are in place to prevent serious public health problems. Public improvements will be required of the developer per Section 19.28.010 (General Improvement Requirements) of the Municipal code and Section 66411 (Local agencies to regulate and control design of subdivisions) of the Subdivision Map Act. All ordinances of the City and all Conditions of Approval will be complied with.

Finding:

E. That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision. In this connection, the decision making body may approve a map if it finds that alternate easements, for access or for use, will be provided and that these easements will be substantially equivalent to ones previously acquired by the public. This finding shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to the City Council to determine that the public at large has acquired easements for access through or use of property within a subdivision.

Facts in Support of Finding:

1. The design of the development will not conflict with easements acquired by the public at large, for access through, or use of property within the proposed development, because there are no public easements located on the property.

Finding:

F. That, subject to the detailed provisions of Section 66474.4 of the Subdivision Map Act, if the land is subject to a contract entered into pursuant to the California Land Conservation Act of 1965 (Williamson Act), the resulting parcels following a subdivision of the land would not be too small to sustain their agricultural use or the subdivision will result in residential development incidental to the commercial agricultural use of the land.

Facts in Support of Finding:

1. The property is not subject to the Williamson Act because, the subject property is not designated as an agricultural preserve and is less than 100 acres in area.
2. The site, developed for residential use, is located within a Zoning District that permits residential uses.

Finding:

G. That, in the case of a "land project" as defined in Section 11000.5 of the California Business and Professions Code: (1) there is an adopted specific plan for the area to be included within the land project; and (2) the decision making body finds that the proposed land project is consistent with the specific plan for the area.

1. California Business and Professions Code Section 11000.5 has been repealed by the Legislature. However, this project site is not considered a "land project" as previously defined in Section 11000.5 of the California Business and Professions Code because the project site does not contain 50 or more parcels of land.
2. The project is not located within a specific plan area.

Finding:

H. That solar access and passive heating and cooling design requirements have been satisfied in accordance with Sections 66473.1 and 66475.3 of the Subdivision Map Act.

Facts in Support of Finding:

1. The Tentative Parcel Map and any future improvements are subject to Title 24 of the California Building Code that requires new construction to meet minimum heating and cooling efficiency standards depending on location and climate. The Newport Beach Building Division enforces Title 24 compliance through the plan check and inspection process.

Finding:

- I. That the subdivision is consistent with Section 66412.3 of the Subdivision Map Act and Section 65584 of the California Government Code regarding the City's share of the regional housing need and that it balances the housing needs of the region against the public service needs of the City's residents and available fiscal and environmental resources.*

Facts in Support of Finding:

1. The proposed two-unit duplex is consistent with the R-2 Zoning District which allows two (2) residential units on the property. Therefore, the Tentative Parcel Map for the proposed condominiums will not affect the City in meeting its regional housing need.

Finding:

- J. That the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board.*

Facts in Support of Finding:

1. The new two-unit duplex will be designed so that wastewater discharge into the existing sewer system complies with the Regional Water Quality Control Board (RWQCB) requirements.

Finding:

- K. For subdivisions lying partly or wholly within the Coastal Zone, that the subdivision conforms with the certified Local Coastal Program and, where applicable, with public access and recreation policies of chapter three of the Coastal Act.*

Facts in Support of Finding:

1. The subject property is not located within the Coastal Zone.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Tentative Parcel Map No. NP2016-021 (PA2016-021), 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 or call for review 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 15th DAY OF DECEMBER, 2016.



Patrick J. Alford, 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. Subsequent to the recordation of the Parcel Map, the applicant shall apply for a building permit for a description change of the subject project development from "duplex" to "condominium." **The development will not be condominiums until this permit is finalized.** The building permit for the new construction shall not be finalized until after recordation of the Parcel Map.
3. 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.
4. 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 424 Larkspur Condominiums including, but not limited to, Tentative Parcel Map No. NP2016-021 (PA2016-181). 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.
5. A parcel map shall be recorded. The Map shall be prepared on the California coordinate system (NAD88). Prior to recordation of the Map, the surveyor/engineer preparing the Map shall submit to the County Surveyor and the City of Newport Beach a digital-graphic file of said map in a manner described in Section 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle 18. **The Map to be submitted to the City of Newport Beach shall comply with the City's CADD Standards. Scanned images will not be accepted.**
6. Prior to recordation of the parcel map, the surveyor/engineer preparing the map shall tie the boundary of the map into the Horizontal Control System established by the County Surveyor in a manner described in Sections 7-9-330 and 7-9-337 of the Orange County Subdivision Code and Orange County Subdivision Manual, Subarticle

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18. Monuments (one inch iron pipe with tag) shall be set On Each Lot Corner unless otherwise approved by the Subdivision Engineer. Monuments shall be protected in place if installed prior to completion of construction project.
7. All improvements shall be constructed as required by Ordinance and the Public Works Department.
8. Reconstruct the existing broken and/or otherwise damaged concrete sidewalk panels, curb and gutter along the Larkspur Avenue frontage.
9. All existing overhead utilities shall be undergrounded.
10. No above-ground improvements shall be installed within the 5-foot alley setback.
11. All existing private, non-standard improvements within the public right-of-way and/or extensions of private, non-standard improvements into the public right-of-way fronting the development site shall be removed.
12. Each unit shall be served by its individual water meter and sewer lateral and cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover. Water meter and the sewer cleanout shall be located within the public right-of-way.
13. An encroachment permit is required for all work activities within the public right-of-way.
14. All improvements shall comply with the City's sight distance requirement. See City Standard 110-L and Municipal Code Section 20.30.130.
15. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.
16. All on-site drainage shall comply with the latest City Water Quality requirements.
17. All unused water services to be abandoned shall be capped at the main (corporation stop) and all unused sewer laterals to be abandoned shall be capped at property line. If the sewer lateral to be abandoned has an existing cleanout, abandonment shall include removal of the cleanout riser, the 4TT box and the wye. Sewer lateral shall then be capped where the wye used to be.
18. Per Chapter 13 of the City Municipal Code, one (1) 36-inch box street tree shall be planted along the Larkspur Avenue frontage. Tree species shall be per Council Policy G-6.
19. Plant new low-growing ground cover within the parkway along the Larkspur Avenue right-of-way.

RESOLUTION NO. ZA2016-068

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR SITE DEVELOPMENT REVIEW NO. SD2016-008 FOR A MIXED-USE DEVELOPMENT LOCATED AT 424 31st STREET (PA2016-177)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Stephen L. Ball Architect, Inc. with respect to property located at 424 31st Street, and legally described as Lot 19 of Block 331 of Lancasters Addition, requesting approval of a Minor Site Development Review.
2. The applicant requests a Minor Site Development Review to demolish an existing single-story office building and construct a three-story, mixed-use development. The proposal includes 745 square feet of commercial space at the ground floor and a 2,378 square-foot single-family residential unit on the second and third floors. The development also includes a 400 square-foot, two-car tandem garage for the residential use and three uncovered parking spaces for the commercial use.
3. The subject property is located within the MU-CV/15 Street (Mixed-Use Cannery Village and 15 Street) Zoning District and the General Plan Land Use Element category is Mixed Use Horizontal 4 (MU-H4).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is MU-H (Mixed Use Horizontal).
5. A public hearing was held on December 15, 2016, 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. The project is categorically exempt under Section 15303 of the State CEQA (California Environmental Quality Act) Guidelines – Classes 3 (New Construction or Conversion of Small Structures). The Class 3 exemption applies to apartments, duplexes, and similar structures designed for not more than six dwelling units in urbanized areas. The proposed construction of a mixed-use development is consistent with all requirements of the Class 3 exemption.
2. The Zoning Administrator finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate

that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

SECTION 3. REQUIRED FINDINGS.

Site Development Review

In accordance with Section 20.52.080.F (Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

A. *Allowed within the subject zoning district.*

Facts in Support of Finding:

1. The subject property is located within the MU-CV/15 Street Zoning District, which allows multi-unit dwelling units, nonresidential uses and/or mixed-use (commercial/residential) structures; where the ground floor is restricted to nonresidential uses along the street frontage. Residential uses and overnight accommodations are allowed above the ground floor and to the rear of uses along the street frontage. Mixed uses or nonresidential structures are required on lots at street intersections. The proposed development is a mixed-use development with commercial use on the ground floor, residential use on the second and third floors, and is allowed within the subject-zoning district.

Finding:

B. *In compliance with all of the applicable criteria identified subsection [20.52.080](C)(2)(c):*

- a. Compliance with this Section, the General Plan, the Zoning Code, any applicable specific plan, and other applicable criteria and policies related to the use or structure;
- b. The efficient arrangement of structures on the site and the harmonious relationship of the structures to one another and to other adjacent development; and whether the relationship is based on standards of good design;
- c. The compatibility in terms of bulk, scale, and aesthetic treatment of structures on the site and adjacent developments and public areas;
- d. The adequacy, efficiency, and safety of pedestrian and vehicular access, including drive aisles, driveways, and parking and loading spaces;
- e. The adequacy and efficiency of landscaping and open space areas and the use of water efficient plant and irrigation materials; and
- f. The protection of significant views from public right(s)-of-way and compliance with Section 20.30.100 (Public View Protections).

Facts in Support of Finding:

1. The Land Use Element of the General Plan designates the subject property as Mixed Use Horizontal 4 (MU-H4), which is intended to provide for multi-family residential, general or neighborhood commercial, and/or mixed-use structure; where the ground floor shall be restricted to nonresidential uses along the street frontage and the rear and upper floor uses for residential, including senior residential units and overnight accommodations. Mixed-use or commercial buildings shall be required on parcels at street intersections. The mixed-use development shall have floor area to land area (FAR) ratio of 1.5; where a minimum FAR ratio of 0.25 and maximum 0.5 shall be used for retail uses and a maximum of 1.0 for residential. The proposed development is consistent with the General Plan designation in that:
 - a. The proposed development is designed as a mixed-use structure where there is no internal connection or access provided between the nonresidential use on the ground floor and residential use area on floors above.
 - b. The proposed development has 0.27 FAR for commercial uses; and 1.00 FAR for residential uses totaling 1.27 FAR for a mixed-use development consistent with the MU-H4 land use category.

2. The proposed development complies with the MU-CV/15 Street Zoning District development standards of FAR, building setbacks, public and private open spaces, building height, and parking in that:
 - a. The proposed development has 0.27 floor area ratio (FAR) for commercial use and 1.00 FAR for residential use. The commercial FAR meets the minimum 0.25 FAR and is less than the maximum 0.50 FAR. The residential FAR. Together, the proposed project has 1.27 FAR for mixed-use development.
 - b. The proposed development complies with the required setbacks of 0 feet for the front, 10 feet for the rear and 0 feet for each side.
 - c. The proposed development consists of a 3-story building at 31 feet in height which is in compliance with the 26/31 height allowance.
 - d. The proposed development provides a total of 108 square feet of common open space, where a minimum of 75 square feet is required for each residential unit; and a total of 1,598 square feet of private open space where a minimum of 139 square feet (5% of gross floor area) is required for each residential unit.
 - e. A total of five parking spaces are provided. Two spaces would be within a 400 square-foot tandem garage accessed from the alley. Three uncovered parking spaces will also be provided, two accessed from the alley and one disabled parking space would be accessed from 31th Street. Parking for the proposed development complies with the parking requirements of two enclosed parking spaces for the single-residential unit and three guest/customer parking spaces

for the commercial component at a ratio of one space for every 250 square feet of gross floor area.

3. The proposed site layout provides efficient vehicular access from 31st Street and an existing alleyway by providing direct vehicular access from the alley and the street. Adequate pedestrian access and path of travel to the building will be provided from the street and alleyway. The existing street driveway will be repositioned slightly with no loss of street parking spaces. The Public Works Department has reviewed and approved the site plan, proposed improvements including the repositioned driveway from 31st Street, and parking configuration subject to the conditions of approval.
4. The subject property is not located at or near a public view point or corridor as identified in the General Plan Figure NR3 (Coastal Views); and therefore, is in compliance with Section 20.30.100 (Public View Protections).

Finding:

- C. *Not 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 development.*

Facts in Support of Finding:

1. The proposed development complies with all Building, Public Works, and Fire Codes. The project complies with all City ordinances and conditions of approval. Verification is ensured through the review of construction plans prior to the issuance of building permits and the construction/inspection process.
2. The project has been conditioned to ensure that potential conflicts with surrounding land uses are minimized to the extent possible to maintain a healthy environment for both businesses and residents.
3. The proposed project includes two enclosed parking spaces for the residential unit and three open parking spaces for the nonresidential use, which comply with the parking requirements for mixed-use, pursuant to the Municipal Code Section 20.40.040 (Off-Street Parking).
4. The proposed project design includes more than the minimum required private open spaces for the residential unit as required by the MU-CV/15 Street Zoning District Mixed-Use zoning district.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Site Development Review No. SD2016-008, 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 or call for review 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 15th OF DECEMBER 2016.



Patrick Alford, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

(Project-specific conditions are in italics)

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. *Minor Site Development Review No. SD2016-008 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.*
3. *The development shall consist of a 3-story, single building at 31 feet in height, and a FAR of 1.27 (745 square feet for commercial and 2,378 square feet for residential):*
4. *A total of five parking spaces which consisted of a two-car tandem garage and three uncovered parking spaces shall be provided and maintained at all time.*
5. *The applicant shall prepare a written disclosure statement prior to sale, lease, or rental of a residential unit in the proposed mixed-use development consistent with Section 20.48.130.H (Notification to Owners and Tenants) of the Municipal Code.*
6. *The applicant shall record a deed notification with the County Recorder's Office, the form and content of which shall be satisfactory to the City Attorney for a residential unit in a mixed use project consistent with Section 20.48.130. I (Deed Notification).*
7. *The finished first floor elevation for interior living areas (commercial area on the ground floor) shall be raised to at least 9.00 (NAVD 88) as the proposed development is located in a low-lying area prone to flooding.*
8. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
9. 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.
10. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Site Development Review or the processing of a new Site Development Review.
11. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans prior to issuance of building permits.

12. 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 Site Development Review 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 Site Development Review and shall highlight the approved elements such that they are readily discernible from other elements of the plans.
13. *Prior to issuance of building permits, approval from the California Coastal Commission (CCC) shall be required; however, when the City of Newport has a fully certified Local Coastal Program (LCP) and has the authority to issue coastal development permits (CDP), approval by the City of Newport Beach shall be required. A copy of the CDP or City approval shall be incorporated into the final approved plans.*
14. Prior to the issuance of building permits, the applicant shall submit a landscape and irrigation plan prepared by a licensed landscape architect for the entire development. These landscape plans shall incorporate drought tolerant plantings and water efficient irrigation practices, and the plans shall be approved by the Planning Division.
15. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
16. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
17. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
18. All noise generated by the proposed development shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

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

19. 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.
20. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
21. All trash shall be stored within the designated areas as approved by Community Development Department and screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies.
22. 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).
23. Storage outside of the building, in the front, side or at the rear of the property shall be prohibited.
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 Taormina Mixed-Use Development including, but not limited to Site Development Review No. SD2016-008. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Fire Department Conditions

25. As per California Fire Code Section 903.2.8, an automatic fire sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

Building Division Conditions

26. 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.
27. The applicant shall employ the following best available control measures ("BACMs") to reduce construction-related air quality impacts:

Dust Control

- Water all active construction areas at least twice daily.
- Cover all haul trucks or maintain at least two feet of freeboard.
- Pave or apply water four times daily to all unpaved parking or staging areas.
- Sweep or wash any site access points within two hours of any visible dirt deposits on any public roadway.
- Cover or water twice daily any on-site stockpiles of debris, dirt or other dusty material.
- Suspend all operations on any unpaved surface if winds exceed 25 mph.

Emissions

- Require 90-day low-NOx tune-ups for off road equipment.
- Limit allowable idling to 30 minutes for trucks and heavy equipment

Off-Site Impacts

- Encourage carpooling for construction workers.
- Limit lane closures to off-peak travel periods.
- Park construction vehicles off traveled roadways.
- Wet down or cover dirt hauled off-site.
- Sweep access points daily.
- Encourage receipt of materials during non-peak traffic hours.
- Sandbag construction sites for erosion control.

Fill Placement

- The number and type of equipment for dirt pushing will be limited on any day to ensure that SCAQMD significance thresholds are not exceeded.
- Maintain and utilize a continuous water application system during earth placement and compaction to achieve a 10 percent soil moisture content in the top six-inch surface layer, subject to review/discretion of the geotechnical engineer.

28. Prior to the issuance of grading permits, a Geotechnical Report shall be submitted for the review and approval by the Building Division.

29. Prior to issuance of grading permits, the applicant shall prepare and submit a Water Quality Management Plan (WQMP) for the proposed project, subject to the approval of the Building Division, Code and Water Quality Enforcement Division. The WQMP shall provide appropriate Best Management Practices (BMPs) to ensure that no violations of water quality standards or waste discharge requirements occur.
30. Prior to the issuance of grading permits, a Hydrology Plan shall be submitted for the review and approval by the Building Division.

Public Works Conditions

31. All improvements shall be constructed as required by Ordinance and the Public Works Department.
32. An encroachment permit shall be required for all work activities within the public right-of-way.
33. The applicant shall be responsible for the reconstruction of the existing broken and/or otherwise damaged concrete curb, gutter and sidewalk along the 31st Street and any existing broken and/or otherwise damaged concrete panels in the alley.
34. All existing overhead utilities serving the project site shall be undergrounded.
35. The residential unit and commercial component shall be served by separate water services/meters and sewer laterals/cleanouts. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover.
36. Additional reconstruction within the public right-of-way shall be required at the discretion of the Public Works Inspector if it is determined that damage has been done to public improvements surrounding the development site by the private construction.
37. The existing driveway shall be removed per City Standard STD-165-L.
38. A new driveway approach shall be constructed per City Standard STD-162-L and there shall be no loss of on-street parking spaces.
39. The applicant shall provide a 4-foot ADA-compliant pedestrian path around the proposed new driveway approach. This shall require a pedestrian easement within private property to be granted to the City of Newport Beach.
40. The proposed project shall be designed to comply with the City sight distance standard STD-110-L.
41. The rear alley setback shall be clear of all aboveground improvements.

RESOLUTION NO. ZA2016-069

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2016-040 FOR A DAY SPA WHICH INCLUDES MASSAGE, ACUPUNCTURE, AND MEDICAL NAIL SERVICES LOCATED AT 425 OLD NEWPORT BOULEVARD, SUITE D (PA2016-145)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Soul Shine OC, with respect to property located at 425 Old Newport Boulevard, Suite D, and legally described as Lot 16 and a portion of Lot 17 of Block 9 of Tract 27, requesting approval of a minor use permit.
2. The applicant proposes to establish a day spa (Personal Services, Restricted). The spa will offer various spa services including massage, acupuncture, and medical nail services. The tenant space is 714 square feet and includes a reception area, office, four (4) treatment rooms and a break room.
3. The subject property is located within the Office General (OG) Zoning District and the General Plan Land Use Element category is General Commercial Office (CO-G).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on December 15, 2016 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 15301, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 1 (Existing Facilities) of the Guidelines for CEQA.
2. The Class 1 exemption authorizes minor alterations to existing structures involving negligible or no expansion of use. The proposed project involves the allowance of massage services and does not result in an intensification of use, parking, or expansion in floor area.

SECTION 3. REQUIRED FINDINGS.

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 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 property is designated General Commercial Office (CO-G) in the Land Use Element of the General Plan. This designation is intended to provide for administrative, professional, and medical offices with limited accessory retail and service uses.
2. The proposed day spa is consistent with the CO-G designation as it will provide services that support the surrounding neighborhood as well as visitors to the area.
3. 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 the Zoning Code and the Municipal Code.

Facts in Support of Finding:

1. The subject property is located in the Office General (OG) Zoning District, which is intended to provide for administrative, professional, and medical offices with limited accessory retail and service uses.
2. Pursuant to Table 2-4 of Zoning Code Chapter 20.20.020 (Commercial Zoning Districts Land Uses and Permit Requirements), a day spa (Personal Services, Restricted) is a service use that may be permitted in the OG Zoning District subject to the approval of a minor use permit. Acupuncture and massage services are also permitted subject to the approval of a minor use permit.
3. Pursuant to Table 3-10 of 20.40.040 (Off-Street Parking Spaces Required), a massage establishment has a parking rate of one (1) space for every 200 square feet of gross floor area. The proposed day spa is 714 square feet. Other uses within the building include a 2,875-square-foot medical office, which has a parking rate of one (1) space for every 200 square feet, and a 718-square-foot acupuncturist office, which has a parking rate of one (1) space for every 250 square feet of gross floor area. Therefore, a total of 21 parking spaces are required

for the uses on site. Currently, 23 parking spaces are provided, resulting in a surplus of two (2) parking spaces.

Finding:

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

Facts in Support of Finding:

1. The proposed day spa will occupy a 714-square-foot tenant space in an existing one-story commercial building. The operation will consist of four (4) treatment rooms, a reception area, an office, and a break room, all of which are included in the existing commercial space.
2. The day spa offers acupuncture, massage, and medical nail treatment. The proposed hours of operation for the day spa are Monday through Friday, 9:00 a.m. to 6:00 p.m. The clients for all uses within the day spa are by appointment only. The facility has proposed hours of operation that are compatible with the allowed uses in the vicinity, as there will not be any late hours which would contribute to noise in the area.
3. The project site and surrounding area consist of a mixture of professional and medical offices, as well as retail and service uses which serve residents and visitors in the surrounding area. The proposed day spa will provide a service that supports residents and visitors, consistent with the existing uses in the area.

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 subject property is located on Old Newport Boulevard, between Hospital Road and Orange Avenue. The property contains one single-story building with three tenant spaces. The site is accessible from Old Newport Boulevard. The parking lot provides a surplus of parking and is conveniently located for patrons and employees.
2. Adequate public and emergency vehicle access, public services, and utilities are provided on the property and the proposed massage establishment will not change this.

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 day spa has been conditioned with hours of operation that will minimize any potential detriment to the area.
2. The day spa will provide additional services to the residents and visitors in the surrounding area.
3. The proposal has been reviewed by the Building and Code Enforcement Divisions, Public Works, Fire, and Police Departments, and recommended conditions of approval have been included to limit any detriment to the City or general welfare of persons visiting or working in the surrounding neighborhood.

In accordance with Section 20.48.120.B (Massage Establishments and Services – Waiver of Location Restrictions) of the Newport Beach Municipal Code, the following findings and facts in support of such findings for a Minor Use Permit are set forth:

Finding:

F. The proposed use will not be contrary to the public interest or injurious to nearby properties, and that the spirit and intent of this section will be observed.

Facts in Supporting of Finding:

1. The intent of the section is to promote the operation of legitimate massage services and to prevent problems of blight and deterioration, which accompany and are brought about by large numbers of massage establishments that may act as fronts for prostitution and other illegal activity.
2. Although the proposed day spa with massage services is located within 500 feet of other establishments offering massage, the day spa is located in a separate development and is sufficiently separated from the other massage services. The day spa offers various spa services and does not operate exclusively as a massage establishment.
3. There will be no late hours of operation, as the proposed hours for all services within the day spa are 9:00 a.m. to 6:00 p.m., Monday through Friday.
4. A condition of approval is included to ensure the applicant will obtain an Operator's Permit from the Newport Beach Police Department in compliance with Chapter

5.50 (Massage Establishments) of the Newport Beach Municipal Code prior to continuation of the business.

Finding:

G. The proposed use will not enlarge or encourage the development of an urban blight area.

Facts in Supporting of Finding:

1. The proposed use is located in a single tenant space within a managed, multi-tenant commercial building which will prevent problems and discourage the development of blight. The subject property is not located within a blighted area, is well maintained, and is intended to provide a service that supports the surrounding residents and visitors to Newport Beach.

Finding:

H. The proposed use will not adversely affect a religious institution, school, park, or playground.

Facts in Supporting of Finding:

1. The proposed use is located adjacent to nonresidential and residential uses. There are no public or private schools, parks, playgrounds, or religious institutions within 500 feet of the subject property.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2016-040, 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 or call for review 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 15th DAY OF DECEMBER, 2016.



Patrick J. Alford, Zoning Administrator

EXHIBIT "A"**CONDITIONS OF APPROVAL**

1. The development shall be in substantial conformance with the approved site plan and floor plans 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 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 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. Strict adherence to Newport Beach Municipal Code 5.50 must be upheld.
8. The applicant business must apply for and obtain an Operator's Permit from the Chief of Police, and keep said permit in good standing.
9. All employees of the applicant business who conduct massage on or off premises must be certified by the CAMTC (physicians, physical therapists, and chiropractors exempt).
10. As outlined in Newport Beach Municipal Code 5.50.030, the business must maintain requirements of operation, and submit to inspections by officers of the Police Department.
11. The owner, operator, or responsible manager's contact information for the massage establishment shall be provided to the City of Newport Beach Code Enforcement Division.

12. The names of employees shall be posted upon entry and contact information and list of state certifications shall be provided upon request. A current list of employees shall be kept onsite and maintained at all times.
13. All windows shall remain visible and transparent in nature. Window signage shall comply with the City of Newport Beach Municipal Code.
14. The facility shall be maintained in a safe and sanitary condition.
15. No alcohol shall be served or offered onsite.
16. Violations of the Penal Code may invoke revocation of this permit.
17. The hours of operation shall be limited between 9:00 a.m. to 6:00 p.m., daily.
18. All employees shall park on-site.
19. A maximum of two massage therapists shall be on-site at any one time.
20. A maximum of two rooms shall be used for massage therapy.
21. All signs shall conform to the provisions of Chapter 20.42 of the Municipal Code.
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 either the current business owner, property owner or the leasing agent.
23. 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.
24. 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.
25. 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 Soul Shine OC Minor Use Permit including, but not limited to, Minor Use Permit No. UP2016-040 (PA2016-145). 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. ZA2016-070

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2016-047 FOR A FOOD SERVICE, EATING AND DRINKING ESTABLISHMENT LOCATED AT 6800 WEST COAST HIGHWAY (PA2016-191)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by MME, LLC, with respect to property located at 6800 West Coast Highway, and legally described as Lot 4 and Portion of Lot 3, Block 8, of the Seashore Colony Tract, requesting approval of a minor use permit.
2. The applicant proposes a minor use permit to change an existing fast food (take-out service), eating and drinking establishment to a new food service, eating and drinking establishment and expand into the adjacent commercial suite. The resulting floor area would be approximately 2,000 gross square feet with approximately 953 square feet of interior net public area and 419 square feet of exterior net public area. No late hours (after 11:00 p.m.) or alcohol service is requested as part of this application.
3. The subject property is located within the Commercial Visitor-Serving (CV) Zoning District and the General Plan Land Use Element category is Visitor Serving Commercial (CV).
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Visitor Serving Commercial (CV-A).
5. A public hearing was held on December 15, 2016 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 15301, Article 19 of Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 1 (Existing Facilities). The Class 1 exemption includes the ongoing use of existing buildings where there is negligible or no expansion of use.
2. In this case, the project involves the remodel and alteration of an existing commercial building with a tattoo parlor and fast food restaurant into a single food service restaurant. No new floor area or intensification of parking would result.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020.F (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:

- A. *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 Visitor Serving Commercial (CV), which is intended to provide for accommodations, goods, and services intended to primarily serve visitors to the City. The food service establishment is consistent with this land use designation, as the use will serve visitors and residents living in the immediate neighborhood and surrounding area.
2. 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 property is located in the Commercial Visitor-Serving (CV) Zoning District. Food service, eating and drinking establishments, with no alcohol service and no late hours, are a permitted use subject to the approval of a minor use permit pursuant to Newport Beach Municipal Code Section 20.20.020 (Commercial Zoning Districts Land Uses and Permit Requirements).
2. The property is nonconforming due to having no parking available on-site; however, the proposed use results in a nine-space reduction of required parking from the previous uses. The existing fast food (take-out service) establishment operates pursuant to Use Permit No. UP1776, which required 1 space per 50 square feet of restaurant area (1,550 square feet) plus 1 space per employee (four employees), for a total of 35 spaces. Four spaces were provided on-site and 31 spaces were waived. The existing tattoo parlor (723 square feet) is considered a personal-service use and requires parking at a rate of 1 space per 250 square feet of gross floor area, or 3 spaces. The uses combined require a total of 38 parking spaces for the building. The four spaces provided on-site were previously accessible via West Coast Highway, but were eliminated with the widening of the highway.

The proposed food service, eating and drinking establishment requires parking at a rate of 1 space per 30 – 50 square feet of net public area as determined by the use

permit (up to 25-percent of the interior net public area is excluded). Based on the size of the establishment, proposed number of seats, no late hours, no alcohol, and the walkability to the establishment from surrounding residents and beach visitors in the area, staff has determined the required parking ratio of 1 space per 40 square feet of net public area is appropriate. The interior net public area is 953 square feet and the exterior net public area is 419 square feet; excluding the 25-percent exterior net public area parking credit of 238.25 square feet, the total net public area of the establishment for parking calculation purposes is 1,133.75 square feet, resulting in a total parking requirement of 29 spaces. Therefore, no additional parking is required.

3. As conditioned, the proposed establishment will comply with Zoning Code standards for eating and drinking establishments.

Finding:

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

Facts in Support of Finding:

1. The restaurant entrance and outdoor dining is oriented toward West Coast Highway in a manner that shields the restaurant activity from the residential uses toward the north.
2. The proposed food service use is appropriate given the establishment was previously used for restaurant use and is accessible from two streets (West Coast Highway and Orange Street), which provides convenient access to motorists, pedestrians, and bicyclists.
3. Surrounding properties consist of residences inland of the highway and nonresidential uses fronting the highway, including retail, veterinary/boarding, and eating and drinking establishments. The proposed establishment is compatible with the existing and permitted uses in the area.
4. As conditioned, the hours of operation will remain between 6 a.m. to 10 p.m., daily, which will minimize any disturbance to residents residing near the property. These hours are consistent with the hours of operation of the existing fast food use.
5. A new trash enclosure is proposed with a solid roof and gates to screen refuse and provide a convenient location where materials can be deposited and collected.

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 Fire Department reviewed the site to ensure adequate public and emergency vehicle access is provided.
2. Any proposed site improvements will comply with the Zoning Code and all Building, Public Works, and Fire Codes.
3. Although no parking is provided on-site, the project is located on West Coast Highway, a commercial corridor through West Newport and has heavy vehicular and pedestrian activity. On-street parking is provided along West Coast Highway and Orange Street. In addition, the restaurant benefits from high visitor foot traffic in the area and close proximity to the Newport Shores and West Newport communities.

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 food service, eating and drinking establishment will occupy space in an existing commercial building used for fast food and a tattoo parlor, which have not proven to be detrimental to the occupants of the property or nearby properties.
2. 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.
3. The applicant is required to obtain Health Department approval prior to opening for business, and comply with the California Building Code to ensure the safety and welfare of customers and employees in the establishment.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Use Permit No. UP2016-047, 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 or call for review 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. UP1976, approved by the Planning Commission on January 8, 1976, and Outdoor Dining Permit No. OD64, approved by the Planning Director on December 21, 2001, which upon vesting of the rights authorized by this Use Permit No. UP2016-047, shall become null and void.

PASSED, APPROVED, AND ADOPTED THIS 15TH DAY OF DECEMBER 2016.



Patrick J. Alford, 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 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. The 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.
4. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to the Minor Use Permit or the processing of a new use permit.
5. A copy of the Resolution, including conditions of approval (Exhibit "A") shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
6. The interior net public area shall not exceed 953 square feet and the exterior net public area shall not exceed 419 square feet.
7. The sale of alcoholic beverages shall be prohibited unless an amendment to the Minor Use Permit or other required application is first approved in accordance with the provisions of the Municipal Code.
8. The hours of operation for the establishment shall be limited to between the hours of 6:00 a.m. and 10:00 p.m., daily.
9. A valid business license from the City of Newport Beach with a sellers permit shall be required prior to start of business. Any contractors/subcontractors doing work at the subject site shall be required to obtain a valid business license from the City of Newport Beach prior to the commencement of any work on the subject site.
10. Prior to issuance of Building Permits, a fair share fee shall be assessed pursuant to Municipal Code Section 15.38 and paid by the applicant.
11. Prior to the issuance of a building permit, State Department of Transportation (Caltrans) approval shall be required for all encroachments/projections into West Coast Highway, including the area around the traffic signal poles.

12. No excavation within the public right-of-way is permitted as part of this project.
13. Broken/damaged panels within the alley along the project alley frontage shall be reconstructed per City Standard.
14. Broken/damaged sidewalk, curb and gutter along West Coast Highway and Orange Street shall be reconstructed.
15. Sewer clean outs shall be installed per City Standard STD-406-L on all active existing sewer laterals that service the site. All used sewer laterals shall be capped at the property line.
16. Reducer Pressure Principle Backflow Prevention Assembly shall be installed on all active domestic water services per City Standard STD-520-L. All unused water service shall be abandoned at the main (corporation stop).
17. The maximum overhead projection into the Orange Street right-of-way is 18 inches.
18. All proposed signs shall conform to Title 20, Chapter 20.42 (Sign Standards) of the Newport Beach Municipal Code regulations or any sign program applicable to the property.
19. No outside paging system shall be utilized in conjunction with this establishment.
20. Employees of the restaurant shall not use the alley or the northerly side setback area as a break area or smoking area.
21. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

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

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 either the current business owner, property owner or the leasing agent.
23. 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.

24. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities to between the hours of 7 a.m. and 6:30 p.m., Monday through Friday and 8 a.m. and 6 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
25. Strict adherence to maximum occupancy limits is required.
26. All trash shall be stored in the building or in 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.
27. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment; however, not located on or in any public property or right-of-way.
28. 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.
29. 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).
30. Trash shall be disposed within 30 minutes after actual closing time, daily.
31. 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 Official and Public Works Director in conjunction with the approval of an alternate drainage plan.
32. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10 p.m. and 7 a.m. on weekdays and Saturdays, and between the hours of 10:00 p.m. and 9:00 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this Use Permit.
33. 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.

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34. 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.
 35. Bicycle parking shall be provided on-site and shall be positioned to ensure that the bicycle rack and bicycles do not encroach into the public right-of-way.
 36. 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.
 37. 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 Burger Boss including, but not limited to, UP2016-047 (PA2016-191). 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.