



CITY OF NEWPORT BEACH COMMUNITY DEVELOPMENT DEPARTMENT PLANNING DIVISION ACTION REPORT

TO: CITY COUNCIL, CITY MANAGER, AND PLANNING COMMISSION
FROM: Seimone Jurjis, Community Development Director
SUBJECT: Report of actions taken by the Zoning Administrator, and/or Planning Division staff for the week ending May 26, 2023.

ZONING ADMINISTRATOR ACTIONS MAY 25, 2023

- Item 1: Solis Residential Condominium Conversion and Tentative Parcel Map (PA2022-0312)
Site Address: 721 and 721 ½ Heliotrope Avenue
- | | | |
|---|------------------|---|
| Action: Approved by Resolution No. ZA2023-034 | Council District | 6 |
|---|------------------|---|
- Item 2: Rizko Residence Coastal Development Permit (PA2023-0043)
Site Address: 306 Via Lido Nord
- | | | |
|---|------------------|---|
| Action: Approved by Resolution No. ZA2023-035 | Council District | 1 |
|---|------------------|---|
- Item 3: Neiman Marcus BAR NM Minor Use Permit (PA2022-0250)
Site Address: 601 Newport Center Drive
- | | | |
|---|------------------|---|
| Action: Approved by Resolution No. ZA2023-036 | Council District | 5 |
|---|------------------|---|
- Item 4: The Place Outdoor Dining Limited Term Permit (PA2022-119)
Site Address: 2920 East Coast Highway
- | | | |
|---|------------------|---|
| Action: Approved by Resolution No. ZA2023-037 | Council District | 6 |
|---|------------------|---|

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

Item 1: Lido Island Snack Bar – Limited Term Permit (PA2023-0041)
Site Address: 701 Via Lido Soud

Action: Approved

Council District 1

APPEAL PERIOD: An appeal or call for review 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 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 (*Telecom - Massage – ABC License*)
Mark Short, Police Sergeant, NBPD (*Massage – ABC License*)

RESOLUTION NO. ZA2023-034

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A TENTATIVE PARCEL MAP AND CONDOMINIUM CONVERSION PERMIT FOR AN EXISTING TWO (2)-UNIT RESIDENTIAL DUPLEX LOCATED AT 721 AND 721 ½ HELIOTROPE AVENUE (PA2022-0312)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by RDM Surveying (Amber Miedema), concerning the property located at 721 and 721 ½ Heliotrope Avenue, and legally described as Lot 21, Block 734, of the Corona del Mar Tract requesting approval of a tentative parcel map and condominium conversion permit for condominium purposes.
2. The Applicant requests a tentative parcel map and condominium conversion permit to convert an existing duplex that was constructed in 2012 to condominiums. No waivers of Title 19 (Subdivisions) are proposed. The Tentative Parcel Map and condominium conversion permit would allow each unit to be sold individually.
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; therefore, a coastal development permit is not required.
5. A public hearing was held on May 25, 2023, online via Zoom. A notice of time, place, and purpose of the hearing was given in accordance with the NBMC. Evidence, both written and oral, was presented to and considered by, the Zoning Administrator at this hearing.

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, Division 6, 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 (4) 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 (2) years, and the parcel does not have an average slope greater than 20 percent. The project meets all identified criteria; therefore, it is eligible for the Class 15 Exemption.

SECTION 3. REQUIRED FINDINGS.

Tentative Parcel Map

In accordance with Section 19.12.070 (Required Findings for Action on Tentative Maps) of the NBMC, the following findings and facts in support of such findings are set forth:

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 (2)-unit residential condominium purposes for an existing duplex that was constructed in 2012. The proposed subdivision and improvements are consistent with the density of the R-2 Zoning District and the RT General Plan Land Use category.
2. The subject property 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 duplex because it is relatively flat and rectangular. A duplex was constructed in 2012 and will remain on-site. The lot is 30-feet wide, 118-feet deep, and 3,540-square-feet in area.
2. The subject property is accessible from both Fifth Avenue and the alley in the rear.
3. The site is adequately served by existing utilities, as it is an existing duplex and there is no proposed change in density.

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 property is located within a developed residential neighborhood that does not contain any sensitive vegetation or habitat on-site.
2. 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.

Finding:

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

Fact in Support of Finding:

1. The Tentative Parcel Map is for condominium purposes. All improvements associated with the project will comply with all 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 NBMC Section 19.28.010 (General Improvement Requirements) 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.

Fact in Support of Finding:

1. The Public Works Department has reviewed the proposed Tentative Parcel Map and determined that 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 existing development because no public easements are 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, lies in the R-2 Zoning District, which is intended for and 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.

Facts in Support of Finding:

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. Any future improvements will be subject to Title 24 of the California Building Code (CBC) that requires new construction meet minimum heating and cooling efficiency standards depending on location and climate. The City’s Building Division enforces Title 24 compliance through the plan check and inspection process. The existing duplex was constructed in 2012 in compliance with the heating and cooling design requirements required at that time. Any future construction would be subject to current CBC requirements.

2. The Building Division has reviewed the project and have found it to be acceptable. Pursuant to Section 66473.1(d) and 66475.3(5) of the Subdivision Map Act, condominium projects which consist of the subdivision of airspace in an existing building when no new structures are added are exempt from the requirements of this section.

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.*

Fact in Support of Finding:

1. The existing duplex is consistent with the R-2 Zoning District, which allows up to two (2) residential units on the property. Therefore, the Tentative Parcel Map for residential condominium purposes will not affect the City in meeting its regional housing needs.

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.*

Fact in Support of Finding:

1. The project wastewater is designed to discharge into the existing sewer system and 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 3 of the Coastal Act.*

Fact in Support of Finding:

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

Condominium Conversion

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

Finding

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

Facts in Support of Finding

1. The existing duplex provides one, two (2)-car garage and two (2) covered spaces, for a total of four (4) spaces (one covered and one garage space per unit).
2. The four (4) spaces provided meet the number (2 per unit), design (17 feet 6 inches by 19 feet), and location of parking spaces required per Chapter 20.40 (Off-Street Parking) of the Zoning Ordinance.

Finding

M. Each dwelling unit within a building shall have a separate sewer connection to the City sewer.

Fact in Support of Finding

1. The existing duplex was constructed with two separate sewer connections to the City sewer.

Finding

N. Each sewer lateral shall be retrofitted/fitted with a cleanout at the property line.

Fact in Support of Finding

1. As conditioned, the project will comply with this requirement prior to recordation of the final parcel map. The property will be retrofitted with a cleanout at the property line.

Finding

O. Each unit shall maintain a separate water meter and water meter connection.

Fact in Support of Finding

1. As conditioned, the project will comply with this requirement prior to recordation of the final parcel map.

P. The electrical service connection shall comply with the requirements of Chapter 15.32 (Underground Utilities) of the Newport Beach Municipal Code.

Fact in Support of Finding

1. The duplex was constructed with electrical service connections in compliance with the requirements of Chapter 15.32.

Finding

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

Fact in Support of Finding

1. Pursuant to Section 19.64.070 (F) of the NBMC, a special inspection was completed by the Building Inspector on May 16, 2023, for the purpose of identifying any building safety violations. No safety violations were observed, and the building inspection was approved by the Building Inspector on May 16, 2023.

Finding

R. Permanent lot stakes and tags shall be installed at all lot corners by a licensed surveyor or civil engineer unless otherwise required by the City Engineer.

Fact in Support of Finding

1. As conditioned, the project will comply with this requirement prior to recordation of the final parcel map.

Finding

S. For residential conversions, the project shall be consistent with the adopted goals and policies of the General Plan, particularly with regard to the balance and dispersion of housing types within the City.

Facts in Support of Finding

1. The General Plan does not include any specific goals for the dispersion of rental housing within the area. Housing Program 2.1.1 of the Housing Element of the

General Plan which restricts the conversion of rental units to condominiums in developments containing 15 or more units does not apply.

2. Although the conversion from rental to ownership will reduce the number of rental opportunities in the area, the elimination of two rental units will not create a detrimental impact to housing opportunities in the area or City, as two units represents a very small fraction of the City's supply of rental housing.

Finding

T. The establishment, maintenance or operation of the use or building applied for shall not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City.

Facts in Support of Finding

1. The use of the property will continue to be used for two-unit residential purposes and there is no evidence suggesting the use has been detrimental to the neighborhood or the general welfare of the City.
2. The proposed project is to convert an existing duplex into two condominiums on property located within the R-2 zoning district.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15315 under Class 15 (Minor Land Divisions) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves the Tentative Parcel Map and Condominium Conversion (PA2022-0312), subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. 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 NBMC Title 19 (Subdivisions).

PASSED, APPROVED, AND ADOPTED THIS 25TH DAY OF MAY 2023.



Benjamin M. Zueba, AICP, Zoning Administrator

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

1. The project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
2. After 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 description change permit is final.
3. Two-car parking, including one enclosed garage space and one covered or enclosed parking space, shall be provided on site for each dwelling unit pursuant to Section 20.40.040 of the NBMC. All parking spaces shall be maintained clear of obstructions for the parking of vehicles at all times.
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 Tentative Parcel map.
5. 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 19 (Subdivisions) of the NBMC.
6. To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of **Solis Residential Condominiums including, but not limited to Tentative Parcel Map and Condominium Conversion (PA2022-0312)**. 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.

Public Works Department

7. *Prior to the issuance of a description change permit, a Parcel Map shall be recorded. The Map shall be prepared on the California Coordinate System (North American Datum of 1983, NAD83). Before the 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 the 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, Sub-article 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.*
8. *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 18. Monuments (1-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.*
9. *All improvements shall be constructed as required by Ordinance and the Public Works Department.*
10. *An encroachment permit shall be required for all work activities within the public right-of-way.*
11. *Prior to recordation of the parcel map, the Applicant/Owner shall reconstruct the existing broken and/or otherwise damaged concrete curb and gutter along the Heliotrope Avenue frontage and Fifth Avenue frontage and alley panels along the alley frontage per City Standard.*
12. *The Applicant/Owner shall remove all private encroachments within the street rights-of-way along the project frontages that do not comply with City Council Policy L-6, including but not limited to, loose gravel. Obtain an encroachment agreement for all private improvements that comply with City Council Policy L-6, including but not limited to decorative walkways and artificial turf.*
13. *Each unit shall be served by its individual water service/meter and sewer lateral/cleanout. Each water meter and sewer cleanout shall be installed with a traffic-grade box and cover.*
14. *All existing overhead utilities shall be undergrounded.*
15. *Prior to recordation of the parcel map, the Applicant/Owner shall install a new 36-inch box street tree along the Heliotrope Avenue and two 36-inch box trees along the Fifth Avenue frontages.*

16. *Prior to recordation of the parcel map, the Owner shall dedicate a 10-foot radius corner cut-off for street purposes at the corner of Heliotrope Avenue and Fifth Avenue. All private improvements within the dedication area shall be removed.*
17. *Prior to the recordation of the parcel map, the Owner shall install an accessible compliant curb ramp at the Heliotrope Avenue and Fifth Avenue intersection.*
18. *All improvements shall comply with the City's sight distance requirement pursuant to City Standard Design 110.*
19. *In case of damage done to public improvements surrounding the development site by private construction, additional reconstruction within the public right-of-way shall be required at the discretion of the Public Works Inspector.*

RESOLUTION NO. ZA2023-035

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A COASTAL DEVELOPMENT PERMIT TO DEMOLISH AN EXISTING SINGLE-UNIT DWELLING AND CONSTRUCT A NEW TWO (2)-STORY SINGLE-UNIT DWELLING AND ATTACHED THREE (3)-CAR GARAGE LOCATED AT 306 VIA LIDO NORD (PA2023-0043)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Allie Schieble with Oatman Architects on behalf of the owners Joumana and Camille Rizko with respect to property located at 306 Via Lido Nord, and legally described as Lot 846 and the Northwesterly one-half of lot 845 of Tract 907, requesting approval of a coastal development permit.
2. The applicant requests a coastal development permit (CDP) to allow the demolition of an existing 4,515-square foot, two (2)-story, single-unit dwelling with an attached 746-square-foot, three (3)-car garage and construction of a new 4,346-square-foot, two (2)-story, single-unit dwelling with an attached 714-square-foot, three (3)-car garage. The project also includes a non-habitable 327-square-foot boat storage area between the proposed home and the existing seawall. The project includes landscape, hardscape, drainage, and accessory structures all within the confines of the property. The project complies with all development standards and no deviations are requested. All improvements authorized by this CDP will be located on private property.
3. The subject property is categorized Multiple Residential (RM) by the General Plan Land Use Element and is located within the Multiple Residential (RM) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Multiple Unit Residential (RM-E) – (30.0 – 39.9 DU/AC) and it is located within the Multiple Residential (RM) Coastal Zoning District.
5. A public hearing was held on May 25, 2023, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is categorically exempt pursuant to Title 14 of the California Code of Regulations Section 15303, Division 6, Chapter 3, Guidelines for Implementation of the California Environmental Quality Act (CEQA) under Class 3 (New Construction or Conversion of Small Structures), because it has no potential to have a significant effect on the environment.

2. Class 3 exempts the demolition and construction of up to three (3) single-family residences in urbanized areas. The proposed project consists of the demolition of an existing 4,515-square foot, two (2)-story, single-unit dwelling with an attached 746-square-foot, three (3)-car garage and construction of a new 4,346-square-foot, two (2)-story, single-unit dwelling with an attached 714-square-foot, three (3)-car garage.
3. There are no known exceptions listed in CEQA Guidelines Section 15300.2 that would invalidate the use of these exemption. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 21.52.015(F) (Coastal Development Permits, Findings and Decision) of the Newport Beach Municipal Code (NBMC), the following findings and facts in support of such findings are set forth:

Finding:

- A. Conforms to all applicable sections of the certified Local Coastal Program.

Facts in Support of Finding:

1. The proposed development complies with applicable residential development standards including, but not limited to, floor area limitation, setbacks, height, and parking.
 - a. The maximum floor area limitation is 5,568 square-feet. The Project includes 4,346 square feet of livable area and an attached 714-square-foot three (3)-car garage. The Multiple Residential (RM) zoning category excludes 200 square feet from the total gross floor area per required parking space devoted to enclosed parking. Therefore, the gross floor area is 4,460 square feet, which complies with the maximum floor area limitation.
 - b. The proposed development provides the minimum required setbacks, which are 0 feet along the front property line abutting Lido Channel, 4 feet along each side property line, and 4 feet along the second front property line property line abutting Via Lido Nord.
 - c. The highest flat roof or guardrail is below 24-feet from established grade and the highest ridge is no more than 29-feet from established grade. The proposed development complies with all height requirements.
 - d. The proposed development provides a three (3)-car garage, meeting the minimum three (3)-car garage requirement for a single-family residence with more than 4,000 square feet of habitable floor area.

- e. The proposed development complies with the minimum 9.0-foot North American Vertical Datum of 1988 (NAVD 88) top of slab elevation requirement for interior living areas of new structures.
2. The neighborhood is predominantly developed with two-story, single-unit, and two (2)-unit dwellings. The proposed design, bulk, and scale of the two-story single unit development is consistent with the existing neighborhood pattern of development.
3. The development fronts the Lido Channel and is protected by a retaining wall which serves as a seawall or shoreline protective device. A bulkhead conditions report was prepared by PMA Consulting, Inc. dated April 10, 2023. The report concluded that the existing seawall in conjunction with associated return walls and concrete stairs along the south property line is required to protect the principal structure and adjacent homes. The report states that the existing seawall appears to be in good condition without noticeable evidence of distress. According to the proposed plans, the existing seawall will be altered to accommodate a boat storage area underneath the deck between the proposed home and seawall. As part of the boat storage development, a new deepened footing for the seawall/retaining wall will be constructed underneath the bay facing wall of the new home. Once the seawall is altered in accordance with the report, no repair or replacement of the seawall, or additional shoreline protective devices are anticipated within the next 75 years.
4. A Coastal Hazards Report and Sea Level Rise Analysis was prepared by PMA Consulting, Inc. dated April 10, 2023. The current maximum bay water elevation is 7.7 feet (NAVD88). The report analyzes future sea level rise scenarios assuming a 3.2-foot increase in the maximum water level over the next 75 years (i.e., the life of the structure). The sea level is estimated to reach approximately 10.9 feet (NAVD88) - (the likely range for sea level rise over 75-year design life of the structure based on low risk aversion estimates for sea level rise provided by the State of California, Sea Level Rise Guidance: 2018 Update).
5. On March 23, 2021, the City Council approved updated Waterfront Project Design Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities. The guidelines require that any bulkhead structure permitted within the years 2021 through 2025 must have a minimum bulkhead elevation of 10.9 feet (NAVD88) with a design for adaptability elevation of 14.4 feet (NAVD88). The existing seawall elevation is 13.4 feet NAVD 88. PMA Consulting, Inc. has confirmed that the altered seawall design can be raised up to 14.4 feet (NAVD88) if needed and in compliance with the updated guidelines. In addition, a concrete stem wall with an elevation of 14.4 feet (NAVD88) can be constructed over the uppermost riser of the stairs along the south property line to protect the structure from future sea level rise.
6. The proposed finished floor elevation of the single-unit dwelling is 13.61 feet NAVD88, which complies with the minimum 9.00-foot NAVD88 elevation standard. The proposed finished floor elevation is also higher than the required minimum top of bulkhead elevation for future sea level rise.

7. The property is in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code (CBC) and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved prior to the issuance of a building permit. Permit issuance is also contingent on the inclusion of design mitigation identified in the investigations. Construction plans are reviewed for compliance with approved investigations and CBC prior to building permit issuance.
8. The property owner will also be required to acknowledge any hazards present at the site and unconditionally waive any claim to damage or liability against the decision authority, consistent with Newport Beach Municipal Code (NBMC) Section 21.30.015(D)(3)(c) – (Waterfront - Development Standards). The Acknowledgement of Coastal Hazards is included as a condition of approval that will need to be recorded prior to the issuance of building permits.
9. Pursuant to Newport Beach Municipal Code (NBMC) Section 21.30.030(C)(3)(i)(iv) - (Natural Landform and Shoreline Protection), the property owner will be required to enter into an agreement with the City waiving any potential right to protection to address situations in the future in which the development is threatened with damage or destruction by coastal hazards (e.g., waves, erosion, and sea level rise). The Waiver of Future Protection is included as a condition of approval that will need to be recorded prior to final building inspection.
10. The property is located adjacent to coastal waters. Pursuant to Section 21.35.030 (Construction Pollution Prevention Plan) of the NBMC, a Construction Pollution Prevention Plan (CPPP) is required to implement temporary Best Management Practices (BMPs) during construction to minimize erosion and sedimentation, and to minimize pollution of runoff, and coastal waters derived from construction chemicals and materials. A CPPP has been provided and construction plans and activities will be required to adhere to the CPPP.
11. Pursuant to NBMC Section 21.35.050 (Water Quality and Hydrology Plan), due to the proximity of the development to the shoreline and the development containing more than 75 percent of impervious surface area, a preliminary Water Quality and Hydrology Plan (WQHP) is required. A preliminary WQHP/WQMP was prepared by Toal Engineering, Inc. dated February 13, 2023. The WQHP/WQMP includes a polluted runoff and hydrologic site characterization, a sizing standard for BMPs, use of an LID approach to retain the design storm runoff volume on site, and documentation of the expected effectiveness of the proposed BMPs. The construction plans will be reviewed for compliance with the approved WQHP prior to building permit issuance.
12. Proposed landscaping complies with Implementation Plan Section 21.30.075. A condition of approval is included that requires drought-tolerant species. Before the issuance of building permits, the final landscape plans will be reviewed to verify invasive species are not planted.
13. The property is not located adjacent to a coastal view road, public access way, or coastal viewpoint as identified in the Coastal Land Use Plan (CLUP). The nearest coastal view road identified by the CLUP is West Coast Highway, which is approximately 1,000 feet

north of the property. The nearest coastal viewpoint is a small private park on the street end of Via Genoa, which is approximately 480 feet east of the property and not visible from the site. As currently developed, the property and other residences along Via Lido Nord are visible from the channel. However, the proposed single-unit dwelling complies with all applicable Local Coastal Program (LCP) development standards and maintains a building envelope consistent with the existing neighborhood pattern of development. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.

Finding:

- B. Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.

Facts in Support of Finding:

1. The project site is located between the nearest public road and the sea or shoreline. Section 21.30A.040 (Determination of Public Access/Recreation Impacts) of the NBMC requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project replaces an existing single-unit dwelling on an RM lot with a new single-unit dwelling. Therefore, the project does not involve a change in land use, density, or intensity that will result in increased demand for public access and recreation opportunities. Furthermore, the project is designed and sited (appropriate height, setbacks, etc.) so as not to block or impede existing public access opportunities.
2. Vertical access to Lido Channel exists throughout Lido Isle, with the closest vertical access point located at the street end of Strada Cordova, approximately 70 feet west of the site. Additionally, lateral access is available on the walkway and small beach in front of the site. The project does not include any features that would obstruct access along these routes.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves the Coastal Development Permit (PA2023-0043), subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. 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 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code (NBMC). Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 (Appeal to the Coastal Commission) of the City's certified LCP and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 25TH DAY OF MAY, 2023.



Benjamin M. Zueba, 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. Revisions to the approved plans may require an amendment to this Coastal Development Permit or the processing of a new Coastal Development Permit.
3. This Coastal Development Permit does not authorize any development bayward of the private property.
4. Coastal Development Permit No. PA2023-0043 shall expire unless exercised within 24 months from the date of approval as specified in Section 21.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code (NBMC), unless an extension is otherwise granted.
5. Prior to final building permit inspection, the existing outer seawall shall be maintained at a minimum elevation of 13.4 feet NAVD 88 with the capability to be raised up to 14.4 feet NAVD 88, in compliance with the City of Newport Beach Waterfront Project Guidelines and Standards, Harbor Design Criteria Commercial & Residential Facilities.
6. If sea level rises such that the boat storage between the principal structure and the existing outer seawall is no longer usable, then the boat storage area shall be filled in and enclosed.
7. Prior to the issuance of building permits, a Certificate of Compliance shall be submitted and recorded by the applicant.
8. Prior to the issuance of a building permit, the property owner shall submit a notarized signed letter acknowledging all hazards present at the site, assuming the risk of injury or damage from such hazards, unconditionally waiving any claims of damage against the City from such hazards, and to indemnify 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 development. The letter shall be scanned into the plan set prior to building permit issuance.
9. Prior to final building permit inspection, an agreement in a form approved by the City Attorney between the property owner and the City shall be executed and recorded waiving rights to the construction of future shoreline protection devices to address the threat of damage or destruction from waves, erosion, storm conditions, landslides, seismic activity, bluff retreat, sea level rise, or other natural hazards that may affect the property, or

development of the property, today or in the future. The agreement shall be binding against the property owners and successors and assigns.

10. Prior to issuance of building permits, the final WQHP/WQMP shall be reviewed and approved by the Building Division. Implementation shall comply with the approved CPPP and WQHP/WQMP and any changes could require separate review and approval by the Building Division.
11. Prior to the issuance of a building permit, the applicant shall submit a final construction pollution prevention plan (CPPP). The plan shall be subject to the review and approval by the Building Division.
12. Prior to the issuance of a building permit, the applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.
13. Prior to the issuance of a building permit, a copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans.
14. Prior to the issuance of building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
15. All construction activities shall occur within private property and the use of mechanized equipment is prohibited within the Bay and public property.
16. This approval does not authorize any new or existing improvements (including landscaping) on State tidelands, public beaches, or the public right-of-way.
17. No demolition or construction materials, equipment debris, or waste, shall be placed or stored in a location that would enter sensitive habitat, receiving waters, or a storm drain or result in impacts to environmentally sensitive habitat areas, streams, the beach, wetlands or their buffers. Furthermore, construction activities shall not block or obstruct any public walkway access.
18. The Applicant shall coordinate with the Public Works Department if any temporary blocking or obstructing of the adjacent public walkway is necessary. Lateral access must always be available.
19. The discharge of any hazardous materials into storm sewer systems or receiving waters shall be prohibited. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. A designated fueling and vehicle maintenance area with appropriate berms and protection to prevent spillage shall be provided as far away from storm drain systems or receiving waters as possible.
20. Debris from demolition shall be removed from work areas each day and removed from the project site within 24 hours of the completion of the project. Stock-piles and construction materials shall be covered, enclosed on all sites, not stored in contact with the soil, and located as far away as possible from drain inlets and any waterway.

21. Trash and debris shall be disposed in proper trash and recycling receptacles at the end of each construction day. Solid waste, including excess concrete, shall be disposed in adequate disposal facilities at a legal disposal site or recycled at a recycling facility.
22. Prior to the issuance of building permits, the applicant shall submit a final landscape and irrigation plan. These plans shall incorporate drought tolerant plantings, non-invasive plant species and water efficient irrigation design. The plans shall be approved by the Planning Division.
23. 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.
24. 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 Saturdays, Sundays or holidays.
25. 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 7:00AM 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

26. The applicant is responsible for compliance with the Migratory Bird Treaty Act (MBTA). In compliance with the MBTA, grading, brush removal, building demolition, tree trimming, and similar construction activities shall occur between August 16 and January 31, outside of the peak nesting period. If such activities must occur inside the peak nesting season from February 1 to August 15, compliance with the following is required to prevent the taking of Native Birds pursuant to MBTA:
 - A. The construction area shall be inspected for active nests. If birds are observed flying from a nest or sitting on a nest, it can be assumed that the nest is active. Construction activity within 300 feet of an active nest shall be delayed until the nest is no longer active. Continue to observe the nest until the chicks have left the nest and activity is no

longer observed. When the nest is no longer active, construction activity can continue in the nest area.

- B. It is a violation of state and federal law to kill or harm a native bird. To ensure compliance, consider hiring a biologist to assist with the survey for nesting birds, and to determine when it is safe to commence construction activities. If an active nest is found, one (1) or two (2) short follow-up surveys will be necessary to check on the nest and determine when the nest is no longer active.
27. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
28. 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 Coastal Development Permit.
29. This Coastal Development 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.
30. 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.
31. 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 **Rizko Residence including, but not limited to, Coastal Development Permit (PA2023-0043)**. 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.

Public Works Department

32. There shall be no structural encroachment within the four (4)-foot public utilities easement along Via Lido Nord.
33. The boat storage door shall not encroach or swing out into the public-right-of way.

RESOLUTION NO. ZA2023-036

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A MINOR USE PERMIT TO EXAND THE EXISTING TYPE 47 ALCOHOLIC BEVERAGE CONTROL (ABC) LICENSE TO ESTABLISH A MINI-BAR WITHIN NEIMAN MARCUS LOCATED AT 601 NEWPORT CENTER DRIVE (PA2022-0250)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by The Neiman-Marcus Group, Inc., with respect to property located at 601 Newport Center Drive, and legally described as Parcel 1 as shown on a map filed in Book 67, Pages 2 and 3 of Parcel Maps, in the Office of the County Recorder of said County requesting approval of a minor use permit.
2. The applicant requests a minor use permit to expand an existing Type 47 (On-Sale General – Eating Place) ABC license to add a free-standing mini bar (i.e., Eating and Drinking Establishment) to the first floor of Neiman Marcus. There is an existing eating and drinking establishment, Mariposa café, on the third floor of Neiman Marcus with a Type 47 ABC license, which would be expanded to allow alcohol service at a mini bar. The mini bar will serve beer, wine, and spirits as well as non-alcoholic beverages and food. The project involves minor tenant improvements to the existing retail space for an approximately 461-square-foot bar area with four tables and 12 chairs for customer seating. No late hours (i.e., after 11:00 p.m.) or live entertainment is proposed.
3. The subject property is designated Regional Commercial (CR) by the General Plan Land Use Element and is located within the North Newport Center Planned Community (PC-56) Zoning District.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on May 25, 2023 online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.

2. The Class 1 exemption authorizes minor alterations to existing structures involving negligible or no expansion of use. The project proposed a 461-square-foot mini-bar with minor tenant improvements on the first floor of an existing commercial building.

SECTION 3. REQUIRED FINDINGS.

Alcohol Sales

In accordance with Section 20.48.030 (Alcohol Sales) of the NBMC, the Zoning Administrator shall consider the following findings prior to the approval of a new or amended alcohol sales establishment:

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 Project is consistent with Section 20.48.030 (Alcohol Sales) of the NBMC, 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 property is in an area the Newport Beach Police Department (NBPD) has designated as Reporting District 39 (RD 39) which encompasses the Fashion Island mall and surrounding areas. The NBPD is required to report offenses of Part One Crimes (criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny, theft, and motor vehicle theft), combined with all arrests for other crimes, both felonies and misdemeanors (except traffic citations) to the Department of Alcoholic Beverage Control (ABC). RD 39 is reported as a high crime area as compared to adjacent reporting districts in the city, RD 38, RD 43, and RD 47. The RD's crime count is 261, which is 158 percent over the City-wide crime count average of 101. The highest volume of crime in this area is shoplifting and the highest volume of arrests in the area is DUI related. The higher crime rate is largely attributable to the concentration of commercial land uses and the high ratio of nonresidential to residential uses.
 2. Since RD 39 has a 20 percent greater number of reported crimes than the average number of reported crimes as determined from all crime reporting districts within the City, the area is found to have undue concentration. In comparison, neighboring RD 38 is 56 percent below the City-wide average, RD 43 is 64 percent below the City-wide average, and RD 47 is 62 percent below the City-wide average. Of the 38 RDs in Newport Beach, 11 are reported to ABC as high crime areas.

3. The NBPD has reviewed the project and has no objection to the expansion of the existing Type 47 ABC License subject to appropriate conditions of approval. The area is a planned entertainment district with few residences, making an application of this nature appropriate for the area. The project will be subject to appropriate conditions of approval and all NBPD recommended conditions of approval have been included in Exhibit “A” of this Resolution.

ii. The number of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.

Reporting District	Alcohol Related Arrests¹	Total Arrests
RD 39 (Project)	47	199
RD 38	7	27
RD 43	5	18
RD 47	6	33
Newport Beach	800	2,959

1. In RD 39, DUI, public intoxication, and liquor law violations make up roughly 24 percent of arrests. In comparison, the figure for neighboring RD 38 is roughly 26 percent, RD 43 is roughly 28 percent, and RD 47 is roughly 18 percent. These statistics reflect the City of Newport Beach’s data for 2021, which is the latest available data.
2. The NBPD has reviewed the application and has provided operational conditions of approval to help minimize any potential detrimental impacts. Condition of Approval No. 35 is included to ensure a security recording system is maintained and made available to police upon request.

iii. The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, place of worship, schools, other similar uses, and any uses that attract minors.

1. The proposed mini bar will be located on the first floor of Neiman Marcus within the Fashion Island Shopping Center. The area is separated from residential areas by parking lots, large roadways, and other commercial uses. The nearest residential neighborhood is over 1,000 feet away. There are no day care centers, hospitals, park and recreation facilities, places of worship, school, or other similar uses in the immediate vicinity. While some minors are expected to be present at the mall, the mall is intended to attract a variety of visitors and not specifically minors.
2. Residential uses are permitted in the northern sections of the PC-56 Zoning District within Blocks 500, 600, 800, and San Joaquin Plaza. However, the proposed project is not located in close proximity to these residential districts.

¹ Alcohol Related Arrests includes DUI (alcohol), public intoxication, and liquor law related arrests.

iv. *The proximity to other establishments selling alcoholic beverages for either off-site or on-site consumption.*

1. There are several other restaurants within the mall. These include Fleming's Steak House, True Food Kitchen, Back Bay Tavern at Whole Foods Market, and P.F. Chang's. Generally, these restaurants operate with either a Type 41 (On-Sale Beer and Wine) or a Type 47 (On-Sale General) ABC license. There is no evidence suggesting that these uses have been detrimental to the surrounding vicinity. Additionally, there is no evidence to suggest that the approval of this mini bar with alcohol services would create any new objectionable conditions.
2. The proposed mini bar will operate during the standard Neiman Marcus hours, which currently operates between 10 a.m. and 7 p.m. According to the NBPD, an adequate security plan is currently in place for Fashion Island and the property owner, The Irvine Company, employs uniformed security for the area which serves as an additional crime deterrent.

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

1. No objectionable conditions are presently occurring at the site.

Minor Use Permit

In accordance with Section 20.52.020(F) (Conditional Use Permits and Minor Use Permits – Findings and Decision) of the NBMC, 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 Land Use Element of the General Plan categorizes the project site as Regional Commercial (CR). The CR designation is intended to provide areas appropriate for retail, entertainment, service, and supporting uses that serve local and regional residents. Typically, these are integrated into a multi-tenant development that contains one or more "anchor" uses to attract customers. Fashion Island is the largest retail center in Newport Beach with multiple anchor tenants, including Neiman Marcus. A mini-bar with alcoholic beverage sales is supportive to the overall shopping center and is intended to serve both the residents and visitors to the city.
2. Land Use Element Policy LU 6.14.1 (Fashion Island ["CR" designation]) is intended to provide the opportunity for an additional anchor tenant, other retail, and/or entertainment and supporting uses that complement, are integrated with, and enhance the economic vitality of existing development. A maximum of 213,257 square feet of retail

development capacity specified by Table LU2 (Anomaly Locations) may be reallocated for other permitted uses in Newport Center, provided that the peak hour vehicle trips generated do not exceed those attributable to the underlying retail entitlement. The project does not propose any additional floor area and only includes minor tenant improvements to an existing area on the first floor. The addition of the mini-bar does not anticipate to generate additional vehicle trips, but is intended to enhance the shopping experience for visitors to Fashion Island.

3. 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 property is within the Fashion Island sub-area of the North Newport Center Planned Community (PC-56) Zoning District and is developed with retail, dining, and commercial entertainment uses. Permitted uses for Fashion Island include uses in support of the existing retail, dining, and commercial entertainment uses. Fashion Island is intended to be a vibrant regional retail and entertainment center, and a daytime and evening destination with a wide variety of uses that will serve visitors, residents, and employees of the area. A mini bar with alcoholic beverage sales in a retail store is consistent with the purposes of the Fashion Island Sub-Area of the PC-56 Zoning District.
2. Eating and drinking establishments are permitted uses within the Fashion Island Sub-Area of the PC-56 Zoning District. The addition of alcohol sales in conjunction with an eating and drinking establishment requires the approval of a minor use permit.
3. The mini bar is not intended to operate as a bar, lounge, or nightclub as defined in the Newport Beach Municipal Code, which defines this use as an establishment that sells or serves alcoholic beverages for consumption on the premises and is holding or applying for a public premises ABC license. PC-56 also defines bars and cocktail lounges as establishments engaged in selling or serving alcoholic beverages for consumption on the premises or establishments having any of the following characteristics: being licensed as a public premise by ABC or providing an area for serving alcoholic beverages that is operated during hours not corresponding to regular meal service hours. Food products sold or served incidentally to the sale or service of alcoholic beverages shall not be deemed as constituting regular food service. Public premise ABC licenses typically allow for consumption of alcoholic beverages on or off the premises, does not required food service, and does not allow minors (persons under 21 years of age) to enter and remain on the premises. Neiman Marcus currently has a Type 47 ABC License for the Mariposa café located on the third floor and the project proposes to expand the existing Type 47 ABC License. Minors are allowed to be on the premises.

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. The Fashion Island shopping mall is developed around an internal pedestrian network and surrounded by parking lots, providing little or no connectivity to adjoining office, entertainment, or residential areas. The shopping center is framed with a ring road that connects to a number of interior roadways. The proposed project is intended to support Neiman Marcus and provide an additional amenity for patrons to the shopping center.
2. The on-site consumption of alcoholic beverages will be incidental to retail establishment and consumption of alcohol must be kept within the delineated area of the mini bar area. Pursuant to Condition of Approval No. 27, the quarterly gross sales of the alcoholic beverages will not exceed the gross sales of food during the same period of the licensed business. The licensed business, Neiman Marcus, will meet this condition with the gross sales of food from the existing Mariposa café within the business.

Finding:

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

Facts in Support of Finding:

1. The Fashion Island shopping center features a shared parking pool provided through on-site surface parking lots and parking structures. The PC-56 Zoning District requires three (3) parking spaces per 1,000 square feet for the regional commercial land use. The proposed mini bar with alcohol service is an accessory to the existing retail establishment will not increase the demand for parking.
2. The project has been reviewed by the Life Safety Division (Fire Department) to ensure adequate public emergency vehicle access is provided. The Fashion Island shopping center is an existing development that is adequately served by utilities and can be accessed by emergency vehicles.
3. The project involves minor tenant improvements that will comply with all Building, Public Works, and Fire Codes. The operator is required to comply with all ordinances of the City and all conditions of approval.

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 approvals to help ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The NBPD has reviewed the project and Condition of Approval No. 26 is included to ensure the premise does not operate as a bar, tavern, cocktail lounge, or nightclub as defined by the NBMC.
2. The mini bar with alcohol service will serve as an amenity to local shoppers and visitors to Neiman Marcus and to Fashion Island. It promotes economic activity in the area that is consistent with the General Plan's intention to provide a variety of commercial uses.
3. The project 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 within the facility, adjacent properties, or surrounding public areas, sidewalks, or parking lots of the restaurant, during business hours, if directly related to the patrons of the establishment.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves the Minor Use Permit (PA2022-0250), subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
3. 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 25TH DAY OF MAY, 2023.



Benjamin M. Zieba, AICP, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

Planning Division

1. The development shall be in substantial conformance with the approved 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. *The hours of operation shall be between 10 a.m. and 7 p.m., daily.*
5. This Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
6. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require subsequent review and approval of the Planning Division.
7. 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.
8. 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.
9. 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 7:00AM 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

10. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
11. 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.
12. No outside paging system shall be utilized in conjunction with this establishment.
13. 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.
14. 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.
15. 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.
16. 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).
17. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 7:00 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.

18. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
19. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
20. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.
21. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of **Neiman Marcus BAR NM Minor Use Permit including, but not limited to, Minor Use Permit (PA2022-0250)**. 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

22. No umbrellas or other devices that may block fire sprinkler coverage shall be permitted.

Police Department

23. The Alcoholic Beverage Control License shall be limited to a Type 47 (On-Sale General – Eating Place). Any substantial change in the ABC license type shall require subsequent review and potential amendment of the Use Permit.
24. The applicant shall comply with all federal, state, and local laws, and all conditions of the Alcoholic Beverage License. Material violation of any of those laws or conditions in connection with the use is a violation and may be cause for revocation of the use permit.
25. All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages within 60 days of hire. The certified program must meet the

standards of the certifying/licensing body designated by the State of California. The establishment shall comply with the requirements of this section within 60 days of approval. 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.

26. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Newport Beach Municipal Code.
27. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.
28. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
29. Alcohol service and alcohol consumption must occur in the ABC licensed areas only.
30. Food service shall be made available to patrons during alcohol service.
31. 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.
32. Any event or activity staged by an outside promoter or entity, where the applicant, operator, owner or his employees or representatives share in any profits, or pay any percentage or commission to a promoter or any other person based upon money collected as a door charge, cover charge or any other form of admission charge is prohibited.
33. "VIP" passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order of the sale of drinks is prohibited (excluding charges for prix fixe meals).
34. Strict adherence to maximum occupancy limits is required.
35. The applicant shall maintain a security recording system with a 30-day retention and make those recording available to police upon request.
36. 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, and debris from the premises and on all abutting sidewalks within 20 feet of the premises. Graffiti shall be removed within 48 hours of written notice from the City.
37. The operator of the restaurant facility shall be responsible for the control of noise generated by the subject facility. 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.

Building Division

38. 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.

RESOLUTION NO. ZA2023-037

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A LIMITED TERM PERMIT TO ALLOW A TEMPORARY OUTDOOR DINING AREA LOCATED AT 2920 EAST COAST HIGHWAY (PA2022-119)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Mike Flamson of The Place, with respect to property located at 2920 East Coast Highway, and legally described as Lot 2, Block O, Tract 323 requesting approval of a limited term permit.
2. The applicant proposes a limited term permit to authorize a 500-square-foot outdoor dining area for up to a one-year term at The Place restaurant. Also proposed is a 400-square-foot canopy. The outdoor dining area will occupy two (2) of the three (3) on-site parking spaces.
3. The subject property is designated Corridor Commercial (CC) by the General Plan Land Use Element and is located within the Commercial Corridor (CC) Zoning District.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on May 25, 2023, online via Zoom. A notice of time, place and purpose of the hearing 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 hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15301 and under Class 1 (Existing Facilities), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. 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. The proposed scope of work is a maximum 500-square-foot outdoor dining patio at an existing restaurant for a limited term and qualifies under the parameters of the Class 1 exemption.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the

environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.040.G (Limited Term Permits) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

A. The operation of the limited duration use at the location proposed and within the time period specified 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 requested limited duration use;

Facts in Support of Finding:

1. The limited term permit will allow an extended outdoor dining patio until December 31, 2023.
2. The expanded dining area has not posed a hazard to the general welfare of persons residing in the area since it was placed during the COVID-19 pandemic in 2020. The operation of the expanded dining area is limited until December 31, 2023, and has been reviewed and conditioned to preclude any detriment to the general welfare of the area.
3. The proposed operation is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).
4. The permitted use shall adhere to applicable State of California and Orange County Health Care Agency guidelines for the safe operation of the use. It is the responsibility of the permittee to implement and follow industry-specific guidance of the State of California and the Orange County Health Care Agency guidelines.
5. The permitted use must be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
6. The overall plan includes appropriate delineation of outdoor use spaces with physical barriers or markers.

Finding:

B. The subject lot is adequate in size and shape to accommodate the limited duration use without material detriment to the use and enjoyment of other properties located adjacent to and in the vicinity of the lot;

Facts in Support of Finding:

1. The subject lot is approximately 0.08 acres in size and is adjacent to East Coast Highway. Based upon the site plan, there is adequate area to accommodate the temporary outdoor dining area without impacting pedestrian circulation and parking.
2. The lot frontage is on East Coast Highway and the use is within a shared building with other commercial uses. The existing food service use has existed at this site since the early 1980s. The expanded outdoor dining use will not impede use and enjoyment of the properties in the area.
3. The proposed outdoor area will occupy two (2) of three (3) onsite parking spaces. An accessible stall will be maintained on site.

Finding:

- C. The subject lot is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the limited duration use would or could reasonably be expected to generate;*

Fact in Support of Finding:

1. The parking for the lot will remain accessible from the alley.
2. The temporary outdoor dining will occupy two (2) parking spaces. The area contains substantial barriers to protect the area from the drive aisles and parking areas and will not encroach into the drive-aisles.

Finding:

- D. Adequate temporary parking to accommodate vehicular traffic to be generated by the limited duration use would be available either on-site or at alternate locations acceptable to the Zoning Administrator; and*

Facts in Support of Finding:

1. The temporary outdoor dining will occupy two (2) parking spaces with appropriate delineation and temporary substantial physical barricades. One (1) accessible parking space will be maintained for the restaurant use during the Limited Term Permit for the outdoor area.
2. The commercial corridor of Corona Del Mar provides public on-street parking along East Coast Highway. Additionally, The Place historically serves the surrounding neighborhood with a higher volume of bike and pedestrian traffic.

Finding:

E. The limited duration use is consistent with all applicable provisions of the General Plan, any applicable specific plan, the Municipal Code, and other City regulations.

Facts in Support of Finding:

1. The General Plan land use designation and Zoning designation for this site is CC (Commercial Corridor). The CC designation is intended to provide a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity. The temporary outdoor dining use is an accessory to the existing food service use with outdoor dining, will be utilized for a limited duration on-site, and will contribute to the neighborhood serving use.
2. The Limited Term Permit for expanded outdoor dining would complement and be consistent with the other commercial uses permitted within the Commercial Corridor in that it provides amenities that support the visitors to the area and provides a social gathering place for those who live and work in the neighborhood, consistent with General Plan Land Use Element Goal LU2, below. Additional benefits from the proposed amendment include providing opportunities for the continuation of local businesses that generate sales tax and provide opportunities for employment, which is consistent with General Plan Land Use Element Policy LU 2.4 (Economic Development), also copied below:

Goal LU 2 *A living, active, and diverse environment that complements all lifestyles and enhances neighborhoods, without compromising the valued resources that make Newport Beach unique. It contains a diversity of uses that support the needs of residents, sustain and enhance the economy, provide job opportunities, serve visitors that enjoy the City's diverse recreational amenities, and protect its important environmental setting, resources, and quality of life.*

Policy LU 2.4 Economic Development *Accommodate uses that maintain or enhance Newport Beach's fiscal health and account for market demands, while maintaining and improving the quality of life for current and future residents. (Imp 1.1, 24.1)*

3. Council Policy D-9 recognizes the need to balance economic development objectives with protection of the environment and the health and safety of the community. The policy recognizes the need to provide effective and efficient structures for implementing economic programs, utilizing staffing to provide healthy, thriving businesses, and maintain a healthy economy while preserving the unique commercial villages in Newport Beach. The proposed limited term permit would support a local business and economic prosperity while maintaining the unique character of the Corona del Mar.
4. The site is not located within a specific plan area.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 under Class 1 (Existing Facilities), California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Zoning Administrator of the City of Newport Beach hereby approves a limited term permit (PA2022-119), subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
3. 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 25TH DAY OF MAY 2023.



Benjamin M. Zueba, AICP, Zoning Administrator

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

1. The development shall be in substantial conformance with the approved site plan stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The approval of this Limited Term Permit shall be effective to December 31, 2023. The applicant shall be required to cease all permitted operations and remove any temporary improvements made to the outdoor spaces as part of this approval at the end of the effective period.
3. *The outdoor dining area shall not exceed 500 square feet and shall occupy no more than two (2) on-site parking spaces. One (1) accessible parking space shall be maintained clear and accessible for use at all times.*
4. *The existing allowed hours of operation of the establishment shall not be extended. The hours of operation of the temporary outdoor dining area as part of this approval shall not extend beyond 9 p.m., daily.*
5. *There shall be no use of amplified sound.*
6. *The applicant shall install and maintain a physical barrier between any area used and adjacent common pedestrian walkways in accordance with the requirements of the State Department of Alcoholic Beverage Control.*
7. *If the applicant wishes to establish a permanent outdoor dining patio, then the applicant shall apply for an amendment to the Use Permit, including a potential parking waiver, and shall further be prepared to make improvements to the patio area, if said amendment is approved.*
8. The Applicant shall obtain and maintain authorization from the State Department of Alcoholic Beverage Control (ABC) for all areas where the sale, service or consumption of alcohol is under the control of the applicant. The establishment shall abide by all applicable regulations of the State Department of Alcoholic Beverage Control.
9. The sale of alcohol "to go" to patrons that dine within the expanded outdoor patios shall be prohibited.
10. The establishment shall abide by all applicable Orange County Health Care Agency requirements.

11. The permittee shall provide adequate trash receptacles within the permitted patio shall and the operator shall provide for periodic and appropriate removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
12. The Community Development Director or designee may inspect the modified area at any time during normal business hours.
13. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
14. 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.
15. This Limited Term Permit 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.
16. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Limited Term Permit.
17. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of this **Limited Term Permit PA2022-119) for The Place Outdoor Dining**. 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

18. Fire lane(s) shall be identified on the plan.
19. Parking, displays, seating or other obstacles that interfere with emergency vehicles and personnel shall not be permitted in fire lanes.

-
20. Vehicles are permitted to stop in fire lanes awaiting service or delivery provided that the driver remains inside the vehicle and the vehicle is ready to move immediately upon orders from emergency personnel.
 21. All Fire Department devices (fire hydrants, fire department connections, water valves, etc.) shall have a three (3)-foot clearance in all directions.
 22. Fire Department devices shall not be covered, blocked or otherwise hidden from plain view.
 23. Heat Lamps or other heating elements shall comply with the following requirements in accordance with Code Section 3107.12 of the California Fire Code:
 - Propane and other fuel-based heating elements (including but not limited to flammable/combustible gas, liquid or solid materials) shall not be used within tents or canopies.
 - Electric Heaters must be UL Listed for use within tents/and or canopies.
 - Propane and other fuel-based Heating devices with blowers may be permitted, with the heating element located a minimum of 10 feet from the edge of the tent or canopy.
 - All heating equipment installations shall be approved for the fire code official.
 24. Covered outdoor dining areas (separate or consolidated) shall comply with the following standards for tents larger than 400 square feet (2 or more walls) and/or canopies larger than 700 square feet (no walls or one (1) wall):
 - Post maximum occupant load.
 - Do not exceed posted occupant load inside the tent or canopy.
 - Visible and Mounted Fire Extinguishers with current service tags.
 - No Smoking Signs shall be installed.
 - Illuminated Exit Signs shall be installed.
 - Emergency Lighting shall be provided.
 - Does not cover the exit path from the building rear door. Exit doors are not to be blocked and are to remain accessible as exits while the tent is occupied.
 - All interior decorative fabrics or materials shall be flame resistant. Provide Certificates of Flame Resistance.
 - If Propane is used, a permit is required: Cooking and heating equipment shall not be located within 10 feet of exits or combustible materials.
 - LPG containers shall be located outside and be adequately protected and secured, and a permit will be required. Open flame or other devices emitting flame, such as candles, are not permitted inside or within 20 feet of the tent, canopy, or temporary membrane structure.
 - Tents and canopies shall have the State Fire Marshall tag indicating fire resistance.
 - Tents and canopies shall be designed and installed to withstand the elements of the weather and prevent collapsing through weights and ground anchorage.

Building Division

25. Any areas used for temporary commercial or institutional use shall be accessible to disabled persons.
 - a. A minimum 4-foot-wide accessible path to all functional area shall be provided.
 - b. Access to restrooms shall be provided at all times.
 - c. Accessible parking stalls shall not be used for seating areas when onsite parking is provided.
 - d. At least one (1) accessible seating area shall be provided.
 - e. Detectable warnings are required when pedestrian paths cross or are adjacent to a vehicular way where no physical barrier are provided to separate the two (2).
 - f. All exiting paths shall be a minimum 48 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.
26. Provide not less than 5-percent accessible seating at tables and counters with knee clearance of at least 27-inches-high, 30-inches-wide, and 19-inches-deep.
27. The tops of dining surfaces and work surfaces shall be 28 inches to 34 inches above the finish floor.
28. All exiting paths shall be a minimum 48 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.
29. All building exits shall remain free and clear of any obstacles that would impede exiting from a building or suite and accessing the nearest public right-of-way.
30. Accessible routes, including under canopy(ies) and other overhead improvements shall maintain a minimum clear height of 80 inches.
31. All electrical distribution lines shall be in good working order and shall be protected from pedestrian and vehicular traffic and shall accommodate accessibility.

Public Works Department

32. *A substantial barricade (k-rail, water-filled barrier or other barrier, approved by the Public Works Department) shall be provided between the proposed outdoor dining area within the parking spaces and the alley. This barrier shall also be provided between the outdoor dining and any parking drive aisles and parking stalls. Efforts shall be made by the operator to provide an alternative design to the bare, exposed substantial barrier to soften the look and improve the aesthetic to the neighborhood while still meeting the minimum substantial barricade requirements. The operator shall provide the conceptual ideas to the Planning Division for review and approval by Planning and Public Works.*
33. *The dining area and substantial barricades shall not encroach into the existing drive aisle or alley right of way.*

34. There shall be a minimum of 5 feet of space around all overhead facilities, such as poles, and 15 feet of space around all underground facilities, such as vault lids, manholes, vent pipes, pad-mounted transformers, etc.
35. Seating or structures below overhead conductors and/or under the 'drip line' shall be prohibited.
36. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.
37. Outdoor dining areas shall adhere to the SCE Clearance Decal examples provided.



COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION
100 Civic Center Drive, P.O. Box 1768, Newport Beach, CA 92658-8915
949-644-3200
www.newportbeachca.gov

ZONING ADMINISTRATOR ACTION LETTER

Subject: Lido Island Snack Bar PA2023-0041
▪ Limited Term Permit

Site Location 701 Via Lido Soud

Applicant Cruizers Pizza Bar Grill

Legal Description Tract 907 Lots 20 to 25

On **May 26, 2023**, the Zoning Administrator approved a limited term permit to allow a temporary snack bar (hereafter the “snack bar”) in the patio area of the Lido Isle Yacht Club located at 701 Via Lido Soud for less than 90 days. The existing patio area will be used as a seating and waiting area for the snack bar. The snack bar will occupy the existing kitchen and sell quick-service foods such as pizza, burgers, hot dogs, chicken tenders, fries and soft pretzels. The snack bar will operate with a type 41 (On-Sale Beer and Wine) Alcoholic Beverage Control (ABC) license and will be permitted to operate from June 11, 2023, to September 9, 2023.

LAND USE AND ZONING

- **General Plan Land Use Plan Category:** PI (Private Institutions)
- **Zoning District :** PI (Private Institutions)
- **Coastal Land Use Plan Category:** PI-A (Private Institutions – 0.0-0.30 FAR)
- **Coastal Zoning District:** PI (Private Institutions)

I. FINDINGS

Pursuant to Section 20.52.040(G) (Limited Term Permits – Findings and Decision) of the Newport Beach Municipal Code (NBMC), the following findings and facts in support of those findings are set forth:

Finding:

- A. *This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act pursuant to Section 15311 under Class 11 (Accessory Structures)*

Facts in Support of Finding:

1. Class 11 exempts the placement and use of seasonal or temporary items such as lifeguard towers, mobile food units, portable restrooms, or similar items. The proposed temporary snack bar will occupy the existing outdoor patio space within the Lido Isle Yacht Club for a limited time period and will not change the operational nature of the existing yacht club use.
2. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

Finding:

- B. The operation of the limited duration use at the location proposed and within the time period specified 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 requested limited duration use;*

Facts in Support of Finding:

1. The Limited Term Permit will allow the snack bar to sell quick-service foods such as pizza, burgers, hot dogs, chicken tenders, fries and soft pretzels on-site for a limited duration of less than 90 days. In addition, the snack bar will operate with a Type 41 (On-Sale Beer and Wine) State Department of Alcoholic Beverage Control (ABC) license. Consumption of alcohol will be limited to the existing 893-square-foot patio area, which is enclosed by an existing 42-inch-tall metal and glass railing. A temporary ABC compliant barrier will be installed in the areas that are not currently closed off.
2. The operation of the snack bar is limited between the hours of 11 a.m. to 8 p.m., daily, to reduce the impact of noise and traffic to surrounding residents. The snack bar is allowed to be in operation between June 11, 2023, to September 9, 2023.
3. The proposed snack bar patio area is approximately 47-feet in width and 19-feet in depth, and is approximately 893-square-feet. The snack bar will occupy the existing patio area of the Lido Isle Yacht Club for a limited duration. Queuing customers will gather within the patio area immediately adjacent to a order window.
4. Conditions of approval require the area of the snack bar to be maintained daily for the removal of trash. All trash shall be stored within the building or within the on-site trash enclosures, screened from view of neighboring properties.

5. The Police Department, Public Works Department, Fire Department and Building division reviewed the project and do not have any concerns with the proposed limited term permit as conditioned.

Finding:

- C. *The subject lot is adequate in size and shape to accommodate the limited duration use without material detriment to the use and enjoyment of other properties located adjacent to and in the vicinity of the lot;*

Facts in Support of Finding:

1. The subject lot is rectangular in shape and approximately 19,000 square feet. Based on the site plan, there is adequate area to accommodate the proposed snack bar and existing uses. The snack bar will occupy the existing patio area of the Lido Isle Yacht Club for less than 90 days.
2. The lot is bound by Via Lido Soud to the north, 725 Via Lido Soud to the east, Via San Remo to the west, and the Newport Channel to the south. The adjacent right-of-ways (Via Lido Soud and Via San Remo) separate the lot from nearby residential properties within the R-1 (Single-Unit Residential) Zoning District to the north and west. Residential properties to the east are separated from the existing patio area, where the proposed snack bar will be located, by approximately 106-feet.

Finding:

- D. *The subject lot is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the limited duration use would or could reasonably be expected to generate;*

Fact in Support of Finding:

1. The subject lot is bound by Via Lido Soud to the north and Via San Remo to the west. The snack bar is located in the existing outdoor patio area of the Yacht Club and will not impede access to the beach and docks located along the southern side of the site. The existing club operates without parking and serves residents of and visitors to Lido Isle. On-street parking located adjacent to the site is adequate to serve the limited vehicular traffic expected to be generated by the proposed temporary use.

Finding:

- E. Adequate temporary parking to accommodate vehicular traffic to be generated by the limited duration use would be available either on-site or at alternate locations acceptable to the Zoning Administrator;*

Facts in Support of Finding:

1. The proposed limited-duration snack bar will create nominal additional parking demand since it is small in size and operate from 11 a.m. to 8 p.m., daily.
2. The snack bar is intended to serve residents and guests of Lido Isle and is therefore expected to primarily generate foot traffic. On-street parking located adjacent to the site is adequate to serve the limited vehicular traffic expected to be generated by the proposed temporary use.

Finding:

- F. The limited duration use is consistent with all applicable provisions of the General Plan, any applicable specific plan, the Municipal Code, and other City regulations.*

Facts in Support of Finding:

1. The General Plan land use category for this site is PI (Private Institutions). The PI category is intended to provide for privately owned facilities that serve the public, including places for religious assembly, private schools, health care, cultural institutions, museums, yacht clubs, congregate homes, and comparable facilities. The proposed use is accessory to the existing yacht club use, will be used for a limited duration on-site, and will not impede use of the site consistent with the PI category.
2. The site is located in the PI (Private Institutions) Zoning District. The PI designation is intended to provide for areas appropriate for privately owned facilities that serve the public, including places for assembly/meeting facilities (e.g., religious assembly), congregate care homes, cultural institutions, health care facilities, marinas, museums, private schools, yacht clubs, and comparable facilities. The proposed use is ancillary to the existing yacht club use, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the PI designation. The PI Zoning District allows temporary uses as specified within the Zoning Code and the proposed limited-duration use is consistent with this designation.
3. The site is located in the PI (Private Institutions) land use category of the Coastal Land Use Plan and is within the PI (Private Institutions) Coastal Zone District. The PI designation is intended to provide for areas appropriate for privately owned facilities that serve the public, including places for assembly/meeting facilities (e.g., religious

assembly), congregate care homes, cultural institutions, health care facilities, marinas, museums, private schools, yacht clubs, and comparable facilities. Table 21.26-1 of the NBMC indicates that temporary uses and accessory structures are allowed within the PI Coastal Zone District. As the project is the temporary use of the existing outdoor patio space for retail sales of quick-service foods, including alcohol sales, it is exempt from obtaining a coastal development permit consistent with Section 21.52.035 (Projects Exempt from Coastal Development Permit Requirements) of the NBMC. The project's operation is not within a sensitive area and is further not expected to prove detrimental to any coastal resources, including access and views.

4. The site is not located within a specific plan area.

II. CONDITIONS OF APPROVAL

1. The development shall be in substantial conformance with the approved site plan except as noted in the following conditions.
2. Anything not specifically approved by this Limited Term Permit is prohibited and must be addressed by a separate and subsequent review.
3. *The snack bar shall be located within the the patio area of the Lido Isle Yacht Club, as shown on the site plan (Attachment No. ZA 2).*
4. *The temporary snack bar is permitted on-site for a duration between June 11, 2023, to September 9, 2023. Operation of a snack bar outside of the dates specified is prohibited.*
5. *Operation of and access to the snack bar shall be limited to the hours of 11 a.m. to 8 p.m., daily.*
6. *The snack bar shall comply with the noise standards of Chapter 10.26 (Community Noise Control) of the City of Newport Beach Municipal Code. The maximum noise generated by the proposed use shall not exceed a noise level equal to the value of the noise standard plus 20 DBA for any period of time, as measured using A-weighted slow response. The Code Enforcement Officer may require additional sound testing and attenuation at his/her discretion to comply with the noise standards of the Municipal Code.*
7. *The snack bar and customer queuing shall not obstruct the public right-of-way. Patrons shall be prohibited from standing or waiting within the adjacent public right-of-way.*
8. *The snack bar shall not block any firefighting equipment such as fire hydrants, standpipe connections, or fire department connections.*
9. *There shall be no hazardous materials stored within the snack bar.*

10. *There shall be no trash stored within the snack bar or within the vicinity of the snack bar. All trash shall be stored within the church building or within dumpsters stored in the on-site trash enclosures, screened from view of neighboring properties.*
11. *The exterior of the snack bar shall be maintained free of trash, 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.*
12. *The snack bar shall be securely locked when not in use.*
13. *No objects (such as construction materials, etc.) shall be stored behind and/or in the vicinity of the snack bar.*
14. *All routes to the snack bar and service transactions shall be accessible.*
15. *Five percent of available seating or no less than one seat, whichever is greater, shall be accessible for patrons.*
16. The Limited Term Permit is for the operation of one temporary snack bar for the hours and dates specified only.
17. Should the snack bar become a detriment to the public health, comfort, convenience, safety, and general welfare of the peace and quiet of the neighboring properties and their inhabitants, this permit may be revoked.
18. *The Community Development Director may impose whatever reasonable conditions are deemed necessary to assure that the snack bar is compatible with adjoining uses and does not result in significant negative impacts to the health, safety, peace, comfort and the welfare of persons residing or working in the general vicinity.*

Police Department

19. The applicant shall comply with all federal, state, and local laws, and all conditions of the Alcoholic Beverage License. Material violation of any of those laws or conditions in connection with the use is a violation and may be cause for revocation of the use permit.
20. The approval is for a snack bar with on-sale alcoholic beverage service. The type of alcoholic beverage license issued by the California Department of Alcoholic Beverage Control shall be a Type 41 (On-Sale Beer and Wine) license, in conjunction with the snack stand as the principal use of the facility.
21. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.

22. No games or contests requiring or involving the consumption of alcoholic beverages shall be allowed.
23. A prepared food service menu shall be made available to patrons at all times.
24. No off-sales of alcohol shall be permitted.
25. All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages within 60 days of hire. This training must be updated every 3 years regardless of certificate expiration date. The certified program must meet the standards of the certifying/licensing body designated by the State of California. 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.
26. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall always maintain records, which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. These records shall be kept no less frequently than on a quarterly basis and shall be made available to the Police Department on demand.
27. To the fullest extent permitted by law, applicant shall indemnify, defend, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the **Lido Island Yacht Club Snack Bar** including, but not limited to, **Limited Term Permit No. PA2023-0041**. 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.

APPEAL PERIOD: An appeal or call for review 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 NBMC. For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

Prepared by:



Oscar Orozco
Assistant Planner

Approved by:



Benjamin M. Zieba, AICP, Zoning Administrator

CC/oo

- Attachments: ZA 1 Vicinity Map
 ZA 2 Project Description Letter
 ZA 3 Floor Plan

Attachment No. ZA 1

Vicinity Map

VICINITY MAP



Limited Term Permit
PA2023-0041

701 Via Lido Soud

Attachment No. ZA 2

Project Description Letter

Project Description and Justification Letter

Lido Island Snack Stand

Dates: June 6 - September 4 (90 days to fit within the Limited Term Permit Rules)

Hours: 11am - Sunset, daily.

Business Model: Snack-bar style order at the counter. We will be serving all the snack bar favorites, including pizza, burgers, hot dogs, chicken tenders, fries, soft pretzels, and more! Our plan is to apply for a beer and wine license so we can sell canned beer, seltzers, and wine. The snack stand will be open to residents of Lido Island and guests only.

Floor Plan: Please see the attached picture.

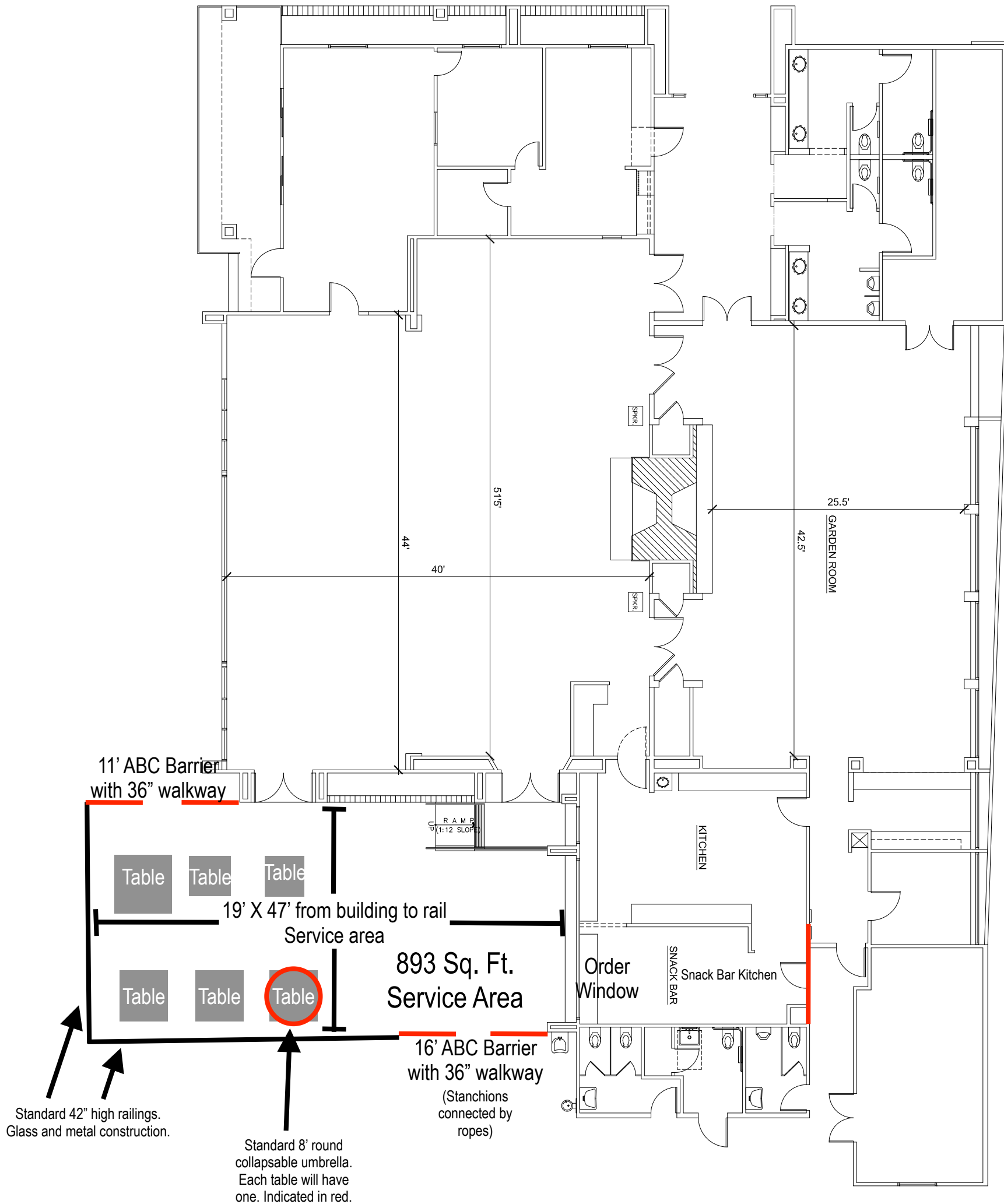
Area: the service area is 19' X 47" for a total of 893 sq. ft. This does not include the kitchen, but is just the area where guests will be seated and includes the area where they will wait in line to order.

Attachment No. ZA 3

Floor Plan

Floor Plan

701 Via Lido Soud
 Newport Beach, CA 92663
 Ownership information:
 Lido Isle Community Association
 C/O GrandManors
 Contact: Janine Stratton
 p. 949.673.6170
 email: Janine.Stratton@grandmanors.com



Scope of Work: Limited Term Permit to establish a snack bar at 701 Via Lido Soud, the snack bar will be serving pizza, burgers, hot dogs, chicken tenders, fries, soft pretzels, and more. The applicant intends to apply for a beer and wine license to sell beer, seltzers and wine.