

RESOLUTION NO. ZA2021-014

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING MINOR USE PERMIT NO. UP2021-003 TO ESTABLISH AND OPERATE A BOUTIQUE RETAIL WINE SHOP WITH A TYPE 20 ALCOHOLIC BEVERAGE CONTROL (ABC) LICENSE (OFF-SALE BEER & WINE) WITH NO TASTING OR FOOD ON-SITE LOCATED AT 501 30TH STREET (PA2021-003)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by DSH Industries, LLC (Applicant), with respect to property located at 501 30th Street, and legally described as Lot No. 1 of Tract No. 16292, requesting approval of a minor use permit.
2. The Applicant proposes to occupy an existing ground-floor nonresidential tenant space of a mixed-use building (residential above) with a boutique retail wine shop. No improvements are proposed to the space beyond cosmetic upgrades and display cases. The wine shop would operate with a new Type 20 ABC License (Off-Sale Beer & Wine). The Applicant would like to operate from 10 a.m. to 9 p.m., daily. There will be no on-site tastings and no food served.
3. The subject property is designated Mixed-Use Horizontal (MU-H4) by the General Plan Land Use Element and is located within the Mixed-Use Cannery Village and 15th Street (MU-CV/15TH ST) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is Mixed-Use Horizontal (MU-H) and it is located within the Mixed-Use Cannery Village and 15th Street (MU-CV/15TH ST) Coastal Zone District. The project is exempt from the requirements of a Coastal Development Permit (CDP) because there is no expansion in floor area and no additional parking is required; therefore, the proposed changes do not constitute any changes in land use that are anticipated to result in an intensification nor a deintensification of land use.
5. A public hearing was held online on March 11, 2021, observing restrictions due to the Declaration of a State Emergency and Proclamation of Local Emergency related to COVID-19. 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 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 proposal is to occupy an existing nonresidential tenant space with a new retail sales land use. There will be no significant improvements to the interior of the building and no expansion of floor area. Given there is no change to the amount of parking required, there is also no anticipated increase in intensity.

SECTION 3. REQUIRED FINDINGS.

Alcohol Sales

In accordance with Section 20.48.030 (Alcohol Sales) of the Newport Beach Municipal Code (NBMC), the following findings and facts in support of the findings for a use permit are set forth:

Finding

- A. *The use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code.*

Facts in Support of Finding

In finding that the proposed use is consistent with Section 20.48.030 (Alcohol Sales) of 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 crime rate in the subject reporting district (RD 15) as well as two (2) of the three (3) adjacent RDs (Reporting Districts) are over the City average. RD 15 contains the large commercial shopping center known as The Landing at 32nd Street and Balboa Boulevard and much of Via Lido and Balboa Boulevard. The purpose of the Zoning of these beach areas is to provide various commercial and retail uses to support the surrounding residential area, as well as the surrounding tourist destinations. Therefore, these beach areas with a higher concentration of commercial land uses tend to have a higher crime rate than adjacent RDs with more residential development.
 2. The Newport Beach Police Department (NBPD) reviewed the proposed project and has no objections given the limited operation and the conditions of approval contained in Exhibit "A."
- ii. *The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.*

1. Due to the high concentration of commercial land uses, the calls for service and number of arrests are greater than adjacent RDs. Additionally, this is the beach area that is considered one (1) of the most significant tourist areas of the City.
 2. The NBPD reviewed the proposed project and has no objections given the limited operation and the conditions of approval contained in Exhibit "A."
- iii. The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, places of worship, schools, other similar uses, and any uses that attract minors.*

The tenant space is located on the ground floor of a mixed-use building with residential above. The surrounding area is mixed-use with residential and various commercial services including offices, personal services, retail, and eating and drinking establishments of a similar nature. The residential uses are intermixed amongst these uses, mostly on second floors. The neighborhood is intended and designed for a mixing of residential and commercial uses. The nearest park, Lido Park, is approximately 600 feet northeast of the site. There is one (1) church more than 500 feet north. Other sensitive land uses above are not located within close proximity of the subject building.

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

1. Several other establishments along 32nd Street, Balboa Boulevard and Via Lido currently have active ABC Licenses, most of which are bona fide eating and drinking establishments and are not defined as bars, lounges or nightclubs by the NBMC. Approximately 200 feet west on the same block is ARC Butcher & Baker. Approximately 350 feet across 30th Street on the south corner of 30th Street and Newport Boulevard is Helmsman Ale House (formerly Newport Brewing Company). On the opposite corner is Porro Vita Juice store. North of Porro Vita along Newport Boulevard is Mama Ds. Across Newport Boulevard is Malarky's Irish Pub (the only bar in the vicinity). North of Malarky's is The Landing Shopping Center with Chipotle, Gina's Pizza, and Chihuahua Cervezeria.
 2. The proposed project is a unique operation that is conditioned to close at 9 p.m. with no allowance for food service or tastings on-site. There are appropriate conditions in place to prevent the retail establishment from operating as a restaurant, bar, or lounge. The proximity to food service establishments does not appear to create foreseeable concern.
- v. Whether or not the proposed amendment will resolve any current objectionable conditions*

There are no current objectionable conditions at this location.

Minor Use Permit

In accordance with Section 20.52.020(F) (Findings and Decision) of the NBMC, the following findings and facts in support of the findings for a minor use permit are set forth:

Finding

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

Facts in Support of Finding

1. The General Plan designates the site as Mixed Use Horizontal (MU-H4), which applies to areas where it is the intent to establish a cohesively developed district or neighborhood containing multi-unit residential dwelling units with clusters of mixed-use and/or commercial structures on interior lots of Cannery Village and 15th Street on Balboa Peninsula. The proposed use will occupy the ground-floor nonresidential tenant space of an existing mixed-use building that has a residential unit above.
2. The proposed use is consistent with the MU-H4 designation, as it is intended to provide a service not only to visitors, but also to residents within the immediate neighborhood and surrounding area.
3. Several mixed-use structures including office, personal service, and eating and drinking establishment uses exist nearby and are complementary to the surrounding commercial and residential uses.
4. 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 located in the Mixed-Use Cannery Village and 15th Street (MU-CV/15TH ST) Zoning District. The proposed boutique retail wine shop is considered an off-sale alcohol sales land use, which is allowed subject to the approval of a minor use permit (MUP) pursuant to Section 20.22.020 (Mixed-Use Zoning Districts Land Uses and Permit Requirements) of the NBMC.
1. Given the previous use of the nonresidential tenant space was retail sales/office, there is no change to the parking requirement and no additional parking is required.
2. All criteria outlined by Section 20.48.030 of the NBMC have been considered and are analyzed in the preceding section of this Resolution.

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 operation of the use will be restricted to the hours between 10 a.m. and 9 p.m., daily. These hours are consistent with the business hours of other uses in the commercial area and is limited to exist in harmony with the residential uses nearby.
2. The existing ground-floor nonresidential tenant space is located within an existing two (2)-story mixed-use building accessible from 30th Street and the alley at the rear, which provides convenient access to motorists, pedestrians, and bicyclists.
3. The surrounding area contains various, retail, business office and visitor-serving commercial uses including restaurants and take-out eating establishments. The proposed use will be compatible with and complementary to the existing and permitted uses within the area.
4. The operational conditions of approval relative to the sale of alcoholic beverages will help ensure compatibility with the surrounding uses and minimize alcohol-related impacts. The project has been conditioned to ensure that the business remains an off-sale alcohol land use and that it does not become a restaurant, bar or tavern.

Finding

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

Facts in Support of Finding

1. The proposed use will occupy an existing nonresidential tenant space, which has existed for nearly 20 years. There will be no material changes to the floor plan or alterations to the site that would compromise its suitability.
2. There are three (3) tandem parking spaces on-site, including two (2) for employees and one for a visitor to the tenant space. In addition, there is a fourth (4th) accessible space that is accessed from 30th Street. As conditioned, no more than two (2) employees will be on-site at any given time.
3. Original site plan approvals for the tenant space included a review to ensure adequate public and emergency vehicle access, and that public services, and utilities are provided. Any tenant improvement plans will be reviewed for compliance with applicable building and fire codes.

Finding

- F. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, and safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding

1. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The Applicant is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.
2. The establishment will serve the surrounding community in a commercial area designed for such uses. The sale of alcohol is provided as a public convenience for off-site consumption.
3. All owners, managers, and employees selling or serving alcohol will be required to complete a Responsible Beverage Service Certification Program.

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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 Minor Use Permit No. UP2021-003, 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 NBMC.

PASSED, APPROVED, AND ADOPTED THIS 11TH DAY OF MARCH, 2021.



Jaime Murillo
Zoning Administrator

EXHIBIT “A”**CONDITIONS OF APPROVAL**

(Project-specific conditions are in italics)

Planning Division

1. The development and operation shall be in substantial conformance with the approved floor plan and project description attached to the staff report 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 Minor Use Permit (MUP).
4. All proposed signs shall be in conformance with the approved Comprehensive Sign Program for the project site and provisions of Chapter 20.42 (Signs) of the NBMC.
5. This MUP 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. *The hours of operation shall be limited to between 10 a.m. and 9 p.m., daily.*
7. *There shall be no on-site tasting allowed at any time and food service of any kind is prohibited, including the on-site consumption of pre-packaged food items.*
8. *There shall be no more than two (2) employees on-site at any given time. All employees shall park in the spaces designated as “Employee Parking” on the approved site plan. The two spaces designated as “Visitor Parking” on the approved site plan shall always remain unobstructed and available to patrons.*
9. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require subsequent review and may require an amendment to this MUP or the processing of a new MUP.
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. 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.
12. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10 p.m. and 8 a.m. on weekdays and Saturdays and between the hours of 10 p.m. and 9 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this MUP.
13. 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.
14. 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 NBMC to require such permits.
15. 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 NBMC.
16. 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 ARC Bottle Shop including, but not limited to, Minor Use Permit No. UP2021-003 (PA2021-003). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Building Division

17. *Should the Applicant make any improvements to the tenant space that would require the issuance of a building permit, said building permit plans shall demonstrate compliance with the California Building Code (CBC) Chapter 11B with respect to accessibility.*

Police Department

18. The Alcoholic Beverage Control License shall be limited to a Type 20 (Off-Sale Beer & Wine). Any substantial change in the ABC license type shall require subsequent review and a potential amendment of the MUP.
19. This approval does not permit the establishment to operate as a food service eating and drinking establishment, bar, tavern, cocktail lounge or nightclub, as defined in the NBMC.
20. The consumption of alcoholic beverage at this location is prohibited.
21. The Applicant shall install and maintain a security recording system with a 30-day retention and shall make those recordings available to the NBPD upon request.
22. 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 three (3) years regardless of certificate expiration date. The certified training 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 and employee's successful completion of the require certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.