

RESOLUTION NO. ZA2021-075

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING LIMITED TERM PERMIT NO. XP2021-030 AND COASTAL DEVELOPMENT PERMIT NO. CD2021-059 TO ALLOW AN EXPANDED OUTDOOR DINING AREA LOCATED AT 2325 EAST COAST HIGHWAY (PA2021-226)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Jordan Otterbein, representing Corona del Mar (CdM) Restaurant, with respect to property located at 2325 East Coast Highway, and legally described as Lot 2, Block A, Tract 470, being a Resubdivision of Blocks A, B, C, & K of Tract No. 323 as shown on a map thereof recorded in Miscellaneous Map, Book 14 Pages 40 and 41 records of Orange County, California, requesting approval of a limited term permit and a coastal development permit.
2. The applicant requests a limited term permit and coastal development permit to allow a 385-square-foot expanded dining area for up to a one (1)-year term (January 1, 2022 through December 31, 2022). A 575-square-foot, 30 seat expanded dining area was previously authorized through Emergency Temporary Use Permit No. UP2020-015 (PA2020-086) for Corona del Mar Restaurant. The proposed dining area will be reduced by 190 square feet from its current condition.
3. The subject property is designated CC (Corridor Commercial) by the General Plan Land Use Element and is located within the CC (Commercial Corridor) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is CC-B (Corridor Commercial – 0.0 - 0.75 FAR) and it is located within the CC (Commercial Corridor) Coastal Zoning district.
5. A public hearing was held on November 24, 2021, 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) and Section 15303 under Class 3 (New Construction or Conversion of Small Structures), 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 Class 3 exemption includes a store, motel, office, restaurant, or similar structure not involving the use of significant amounts of hazardous substances, not exceeding 2,500 square feet in floor area or 10,000 square feet in floor area in urbanized areas zoned for such use. The proposed scope of work is a maximum 385-square-foot expanded outdoor dining patio at an existing restaurant for up to a one (1)-year limited term and qualifies under the parameters of the Class 1 and Class 3 exemptions.
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.

Limited Term Permit

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 and expanded outdoor dining patio for up to a one (1)-year term while the City reconsiders its parking requirements related to food service uses. The existing food service use was established prior to the requirement for a use permit and Use Permit No. UP1179 allows on-sale alcoholic beverages and live entertainment (piano). The existing restaurant design includes 3,959 square feet of gross floor area and 1,243 square feet of interior net public area per Plan Check No. 1076-2018.
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 through an Emergency Temporary Use Permit. The operation of the expanded dining area is limited to up to a one (1)-year beginning January 1, 2022, through December 31, 2022, and has been reviewed and conditioned to preclude any detriment to the general welfare of the area.

3. Outdoor dining areas are common in the Corona del Mar commercial corridor, have been used at the subject property during similar hours in the past and the use has not proven detrimental. The existing hours of operation are not limited by their existing conditional use permit, UP1179. The expanded outdoor dining area would close by 9:00 p.m., daily.
4. A condition of approval related to heaters is incorporated as Condition of Approval No. 32. The proposed dining area will also be covered with a tent and must comply with the fire requirements outlined in Condition No. 33.
5. The proposed operation is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).
6. 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.
7. The permitted use must be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
8. The overall plan includes appropriate delineation of outdoor use spaces with physical barriers or markers. Substantial barriers (K-rail or water-filled barriers are required at either end of the drive aisle).
9. The expanded dining area will not impede pedestrian coastal access since this is an inland property adjacent to East Coast Highway.

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 0.12 acres in size and is a gently sloping property adjacent to East Coast Highway. The existing food service use has operated at this location prior to 1966. Based upon the site plan, there is adequate area to accommodate the expanded dining area without impacting pedestrian circulation and coastal access. Vehicles will be directed to access the site through the rear alley and adjacent surface parking lot at 710 Acacia Avenue.
2. The lot is bounded by East Coast Highway to the northeast with residential properties inland to the southwest. To the southeast and northwest are additional retail properties within the Commercial Corridor zoning district. The expanded outdoor dining use will not

impede use and enjoyment of the properties in the area and will instead add to the ambiance and quaint character of Corona del Mar.

3. The expanded dining area is located in an existing drive aisle and will not occupy existing parking spaces. Ongoing traffic and site circulation issues are not anticipated and the applicant must obtain an approved valet plan.

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;*

Facts in Support of Finding:

1. The subject lot is accessed from the rear alley off of Acacia Avenue. An adjacent off-site surface parking lot is provided to the rear at 710 Acacia Avenue. The expanded dining area will not occupy existing parking spaces. The existing food service use, Corona del Mar (CdM) Restaurant, is located in a commercial corridor area and proposes to operate all day and into the evening hours with peak hours when other retail and office uses in the area are typically not operating. Sufficient parking is provided and ongoing traffic and parking issues are not anticipated with the continued use of the expanded dining area. A valet plan approved by the Public Works Department is required for the restaurant to utilize valet services. Valet operations are not permitted on public streets.
2. The City is also undergoing an analysis of parking rates including rates related to food service and outdoor dining. Findings and recommendations of this study are anticipated by December of 2021, and may inform a future conditional use permit amendment for outdoor dining areas.

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 existing food service use with outdoor dining has operated at the subject property since prior to 1966. The commonly owned surface parking lot to the rear at 710 Acacia Avenue has historically served as the primary parking supply for patrons. The surface lot is expected to adequately accommodate the temporary use for up to a one (1)-year term.
2. The expanded dining area will not impede pedestrian access to the waterfront.

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 for this site is CC (Corridor Commercial). 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 expanded outdoor dining use is accessory to the existing food service use, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CC designation. Outdoor dining is a use that tends to foster additional pedestrian activity.
2. The site is located in the CC (Commercial Corridor) Zoning District. 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 CC zoning district allows food service uses and the expanded dining area is a temporary use, authorized with a limited term permit.
3. The Limited Term Permit for expanded outdoor dining would complement and be consistent with the other commercial uses permitted within the CC Zoning District of Corona del Mar in that it provides amenities that support 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 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)*

4. **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 community.

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

Coastal Development Permit

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

Finding:

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

Facts in Support of Finding:

1. The project site is not located adjacent to a coastal view road, public access way, or Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoint and coastal view roads are located along Ocean Boulevard and the site is not visible from this street. However, the expanded outdoor dining area complies with all applicable Local Coastal Program (LCP) development standards and maintains an area consistent with the existing pattern of development in Corona del Mar. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone.
2. The Property is located in the coastal zone and the proposed improvements require a coastal development permit in accordance with Newport Beach Municipal Code (NBMC) Section 21.52.035(C)(2) (Projects Exempt from Coastal Development Permit Requirements). The improvements constitute an increase of ten (10) percent or more of the internal floor area of an existing structure or a lesser improvement that has previously been undertaken pursuant to California Public Resources Code Section 30610(a). The expanded outdoor dining area and barrier within the public walkway are minor detached structures. The location of these improvements does not pose a conflict to coastal resources, coastal access, or other adverse environmental effects.
3. Improvements are complementary to the area; the subject restaurant and adjacent neighbors have similar outdoor dining improvements within the walkways of Corona del Mar.
4. The dining area planter barrier is installed within the existing driveway. Additional barriers will further delineate the area dedicated for outdoor dining use and alcohol service from the egress walkway. There are no existing City utilities within the expanded dining area.
5. Development authorized by this permit is not located in any environmentally sensitive habitat area (ESHA) and public access to the coast will not be blocked. Coastal access is increased by allowing the public to visit coastal areas and provides an added amenity

for visitors. The proposed operation does not contain ESHA, wetlands, or sandy beach area;

6. Development authorized is not located in an area in which the California Coastal Commission retains direct permit review authority.

Finding:

- G. *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.*

Fact in Support of Finding:

1. The project site is not located between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) 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 is not located by the sea where lateral and vertical coastal access would be needed.

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) and 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 Limited Term Permit No. XP2021-030 and Coastal Development Permit No. CD2021-059 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 and Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 24TH DAY OF NOVEMBER, 2021.



Jaime Murillo
Zoning Administrator

EXHIBIT “A”**CONDITIONS OF APPROVAL**

(Project-specific conditions are in italics)

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 and Coastal Development Permit shall be effective for up to a one (1)-year term from January 1, 2022, to December 31, 2022, unless an extension is granted by the Zoning Administrator in compliance with Municipal Code Sections 20.52.040.J (Extension of Limited Term Permit) and 21.54.060 (Time Limits and Extensions). 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 expanded dining area shall not exceed 385 square feet in area.*
4. *The existing allowed hours of operation of the establishment shall not be extended. The hours of hours of operation of the expanded area as part of this approval shall not extend beyond 9 p.m., daily.*
5. *A valet plan approved by the Public Works Department is required for the restaurant to utilize valet services. Valet operations are prohibited on public streets.*
6. *There shall be no use of amplified sound and/or live entertainment.*
7. *The applicant shall install and maintain a physical barrier (stanchion and rope) between any area used and adjacent common pedestrian walkways in accordance with the requirements of the State Department of Alcoholic Beverage Control.*
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 and Coastal Development 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 and Coastal Development 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 No. XP2021-030 and Coastal Development Permit No. CD2021-059 (PA2021-226) for Corona del Mar Restaurant**. 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.

Code Enforcement Division

18. The applicant shall cease valet operations unless an approved valet operations plan is approved by the Public Works Department.

Building Division

19. Any areas used for temporary commercial or institutional use shall be accessible to disabled persons.
- A minimum 4-foot-wide accessible path to all functional area shall be provided.
 - Access to restrooms shall be provided at all times.
 - Accessible parking stalls shall not be used for seating areas when onsite parking is provided.
 - At least one (1) accessible seating area shall be provided.
 - 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).
20. All exiting paths shall be a minimum 36 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.
21. Accessible seating at tables or counters shall provide knee clearance of at least 27 inches high, 30 inches wide, and 19 inches deep.
22. The tops of dining surfaces shall be 28 inches to 34 inches above the finished floor.
23. Exit signs shall direct occupants to egress through the alley to the public street (Acacia Avenue) when the outdoor dining area prevents direct exit.
24. The applicant shall obtain a separate building permit for installation of the covered tent/membrane structure prior to the effective date of this limited term permit (January 1, 2022).
25. The application shall provide additional information regarding the size and location of the tent. The tent area must comply with the California Building Code Section 3102, 3103, and 3105 as applicable.

Fire Department

26. Fire lane(s) shall be identified on the plan.
27. Parking, displays, seating or other obstacles that interfere with emergency vehicles and personnel shall not be permitted in fire lanes.
28. 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.

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29. All Fire Department devices (fire hydrants, fire department connections, water valves, etc.) shall have a three-foot clearance in all directions.
 30. Fire Department devices shall not be covered, blocked or otherwise hidden from plain view.
 31. 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.
 32. Heat lamps or other heating elements shall comply with the following requirements in accordance with code section 3107.12 of the California Fire Code:
 - a. 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.
 - b. Electric heaters must be ul listed for use within tents and/or canopies.
 - c. 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.
 - d. All heating equipment installations shall be approved for the fire code official.
 33. 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.
 - 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.

Public Works Department

34. The Applicant shall install and maintain a substantial physical barrier (water-filled traffic barrier or K-rail) at both ends of the closed drive aisle. Appropriate signage shall be placed at the driveway indicating that it is closed to vehicular traffic.
35. 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.
36. Seating or structures below overhead conductors and/or under the 'drip line' shall be prohibited.
37. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.
38. Expanded outdoor dining areas shall adhere to the SCE clearance decal examples provided in Attachment No. ZA 3.
39. The restaurant shall not utilize valet services unless a valet operations plan has been approved by the Public Works Department. Valet operations in the public right-of-way shall be prohibited.