RESOLUTION NO. ZA2022-046

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING MINOR USE PERMIT NO. UP2021-036 FOR AN AMENDMENT TO UPGRADE AN EXISTING TYPE 41 (ON-SALE BEER AND WINE – EATING PLACE) ALCOHOLIC BEVERAGE CONTROL (ABC) LICENSE TO A TYPE 47 (ON-SALE GENERAL – EATING PLACE) ABC LICENSE AT AN EXISTING CAFÉ LOCATED AT 100 WEST COAST HIGHWAY, SUITE 104 (PA2021-220)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by R&R Rafaei, LLC (Applicant), with respect to property located at 100 West Coast Highway, and legally described as PCL 1, Parcel Map 2010-133 requesting approval of an amendment to a Minor Use Permit.

2. The Applicant requests to amend a minor use permit to upgrade the existing Type 41 (Beer and Wine - Eating Place) Alcoholic Beverage Control (ABC) License to a Type 47 (On-Sale General - Eating Place) ABC License at the existing Xanadu Café. No change to floor area, hours of operation, or seating is proposed with the amendment. There are no proposed changes to the floor plan and the hours of operation would remain 6 a.m. to 10 p.m., daily. If approved, this amendment will supersede Minor Use Permit Nos. UP2015-007 (PA2015-021) - (for the existing café) and UP2016-042 (PA2016-174) - (addition of Type 41 ABC License). All conditions of approval will be consolidated and incorporated into this amendment.

3. The subject property is located within the Commercial General (CG) Zoning District and the General Plan Land Use Element category is General Commercial (CG).

4. The subject property is not located within the coastal zone; therefore, a coastal development permit is not required.

5. A public hearing was held on June 30, 2022, 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 includes the ongoing use of existing buildings where there is negligible or no expansion of use. The proposed project involves the upgrade of the existing ABC License for the café with no other alterations or changes.

3. Furthermore, a Mitigated Negative Declaration (SCH No. No. 2011041038) was prepared for the development of the shopping center in accordance with the implementing guidelines of the California Environmental Quality Act (CEQA) and approved by the City Council on August 9, 2011.

SECTION 3. REQUIRED FINDINGS.

Alcohol Sales

In accordance with Section 20.48.030 (Alcohol Sales) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

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

Facts in Support of Finding:

In finding that the proposed use is consistent with Section 20.48.030 of the 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 subject property is in Reporting District 26 (RD 26). The Newport Beach Police Department (NBPD) is required to report offenses of Part One Crimes combined with all arrests for other crimes, both felonies and misdemeanors (except traffic citations) to the ABC. Part One Crimes are the eight (8) most serious crimes defined by the FBI Uniform Crime Report – criminal homicide, rape, robbery, aggravated assault, burglary, larceny-theft, auto theft, and arson. The crime rate average in RD 26 is higher than adjacent RD 41 and the City-wide Reporting District Average, but lower than adjacent RD 25 and RD 28. Adjacent RD 41 is predominantly residential properties compared to the subject RD 26 which includes most of the commercial properties in Mariners Mile, a highly traveled and visited area by residents and tourists. The area is found to have undue concentration, as it has 30 percent over the citywide average crime count. The highest volume crime is “simple assault” and the highest volume arrest is “drug related offenses.”

2. The NBPD has reviewed the proposal, provided recommended operational conditions of approval and had no objection to the project. The operation of the establishment includes the approved floor plan with no separate bar counter or area and an earlier closing hour of 10 p.m.
ii. The numbers of alcohol-related calls for service, crimes, or arrests in the reporting district and in adjacent reporting districts.

1. The subject RD 26 has the second lowest number of total arrests compared to the adjacent Reporting Districts and 36 percent of the arrests were alcohol related. RD 26 and adjacent RD 25 have the highest amongst the adjacent Reporting Districts due to DUI arrests. RD 26 includes most of the commercial properties in Mariners Mile and the portion of West Coast Highway which is a heavily traveled road for visitors accessing the coastal destinations of water-front restaurants, boating and marine activities. The NBPD memo indicates this location has not been a burden on police resources in terms of calls for service.

2. In 2021, there were fifteen (15) dispatch events coded to this location and in 2022, to date there has been one (1) dispatch event but none of the calls appear to be directly related to the existing café or alcohol.

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

1. The existing food service, eating and drinking establishment (Xanadu Café) is within Mariners Pointe Shopping Center along West Coast Highway and is consistent with the Commercial General land use category. The shopping center consists of retail, service, and other eating and drinking establishment uses. The subject property is located approximately 200 feet across Dover Drive from Lower Castaways Park. However, the café is oriented further away with its main entrance and outdoor dining within the commercial corridor along West Coast Highway which is approximately 450 feet from the park. Environmental Nature Center Preschool and Newport Harbor Lutheran Church and School are over a ¼-mile north of the café on Dover Drive. The nature of the commercial area along Coast Highway is to provide goods and services including eating and drinking establishments designed to foster visitor and resident activity from travelers down Coast Highway and residents nearby. The nearest residential uses are behind the shopping center site along Kings Road and across Coast Highway in the gated community of Bay Shores. Eating and drinking establishments with incidental alcohol service are common in the General Commercial area on Coast Highway and the proposed change in alcohol license type is not anticipated to alter the operational characteristics of the use such that it becomes detrimental to the area.

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

1. Currently there is one (1) establishment (Sushi Li) within the shopping center that includes a Type 47 ABC License and no late hours. The next closest establishment is Pizzeria Mozza at 800 West Coast Highway approximately 900 feet west of the center. There is no evidence suggesting these uses have been detrimental to surrounding properties or the neighborhood.
v. Whether or not the proposed amendment will resolve any current objectionable conditions.

1. An eating and drinking establishment have operated at the subject property since 2015 with no operating issues or complaints related to alcohol.

2. The project has been reviewed and conditioned to ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the NBMC is maintained and that a healthy environment for residents and businesses is preserved. The service of alcohol is intended for the convenience of customers dining at the establishment. Operational conditions of approval recommended by the Police Department relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol related impacts.

3. The existing hours of operation for the establishment will minimize the potential effects on land use. The establishment closes by 10 p.m., daily, which will help to ensure the use does not become a late-night bar, tavern, or nightclub.

4. The establishment is located within an existing shopping center which is developed with other commercial uses and has an existing alcoholic beverage control license. Upgrading the license is not expected to alter the existing operation and will complement the food service while providing a convenience to customers.

Minor Use Permit

In accordance with Section 20.52.020(F) (Conditional Use Permits and Minor Use Permits) 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 General Plan designates the site as General Commercial (GC), which is intended to provide a variety of commercial uses.

2. The existing eating and drinking establishment is located within a shopping center in the commercial area along West Coast Highway, which provides goods and services to visitors and residents alike, consistent with the CG land use designation.

3. The subject property is not a part of a specific plan area.
Finding:

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

Facts in Support of Finding:

1. The site is in the Commercial General (CG) Zoning District and is intended to provide commercial uses. Eating and drinking establishments are permitted uses subject to the approval of a use permit.

2. The existing eating and drinking establishment operate pursuant to Minor Use Permit No. UP2015-007 (PA2015-021), which allowed the existing café with interior and exterior seating, and hours of operation from 6 a.m. to 10 p.m. daily. It also operates pursuant to Minor Use Permit No. UP2016-042 (PA2016-174), which allowed the Type 41 (On-Sale Beer and Wine) ABC License. The requested upgrade of the ABC license requires approval of an amendment to the Minor Use Permit. This resolution will consolidate the approvals for the café into one (1) minor use permit.

3. The use will remain an eating and drinking establishment and the upgrade of the alcohol beverage control license will not alter or intensify the existing use. Further, there will be no change to the floor area including the existing net public area and seats or the hours of operation.

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 upgrade of the ABC license in conjunction with the included conditions of approval will not change the operating characteristics of the existing café.

2. The café will remain complementary to the other uses in the Mariner’s Pointe shopping center, which will include retail stores, food services, and other commercial uses. It will contribute to making the shopping center a viable commercial node for the neighborhood and visitors.

3. The café will continue to provide a convenience for residents of the neighborhood and visitors to the area with adequate parking within the parking structure on-site.
Finding:

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

Facts in Support of Finding:

1. The existing café within the shopping center has proven to be physically suitable in terms of design, location, shape, and size to support the use. The physical characteristics of the site are not changing with the upgrade of the ABC license.

2. Adequate public and emergency vehicle access, public services, and utilities are provided for on-site.

3. The existing café is located along an existing walkway adjacent West Coast Highway that is Caltrans-right-of-way. The café is conditioned to be maintained entirely on private property with no encroachments into the Caltrans-right-of-way.

Finding:

F. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding:

1. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks and areas surrounding the subject property and adjacent properties during business hours, if directly related to the patrons of the establishment.

2. The café will continue to service the neighborhood by providing dining services as a public convenience to the surrounding residential neighborhood as well as visitors which is the intent of the commercial area. The service of alcohol will continue to complement the principal use of the facility and provide an economic opportunity for the property owner to maintain a successful business in a way which best serves the community.

3. The operator has corrected the previous violations of providing smoking lounge services on the menu at the premises. There is a condition of approval included to prohibit any smoking lounge services at the café.
4. As conditioned, the owners, managers and employees selling alcohol are required to undergo and successfully complete a certified training program in responsible methods and skills for selling alcohol.

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. UP2021-036 (PA2021-220), 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.

4. This resolution supersedes Zoning Administrator Resolution Nos. ZA2016-066 (PA2016-174) and ZA2015-015 (PA2015-021), which upon vesting of the rights authorized by this Minor Use Permit No. UP2021-036 (PA2021-220), shall become null and void.

PASSED, APPROVED, AND ADOPTED THIS 30th DAY OF JUNE, 2022.

Jaime Murillo
Zoning Administrator
EXHIBIT “A”

CONDITIONS OF APPROVAL

Planning Division

1. The development shall be in substantial conformance with the approved site plan, floor plans including seating plan, outdoor dining area stamped and dated with the date of this approval.

2. This Resolution approves Minor Use Permit No. UP2021-036 (PA2021-220), amending and superseding the existing Minor Use Permit No. UP2016-042 (PA2016-174). This Minor Use Permit will also supersede existing Minor Use Permit No. UP2015-007 (PA2015-021). All appropriate conditions of approval for the café are included and shall be abided by.

3. The hours of operation for the establishment shall be limited to 6 a.m. through 10 p.m., daily.

4. The maximum interior net public area shall be 484 square feet.

5. The outdoor dining shall not exceed 121 square feet (25 percent of the net public area) and shall remain entirely on private property with no encroachment into the public right-of-way or the Caltrans right-of-way. The design and materials of the new ABC barrier shall be reviewed and approved by the Planning Division prior to installation. An inspection shall be scheduled with the Planning Division to confirm the location of the outdoor dining and that the required ABC barrier is entirely on the private property to match the approved plans.

6. The establishment shall not provide any services that constitute a “smoking lounge” as defined by Chapter 20.70 (Definitions) of the NBMC. This shall include, but not be limited to the menu of the café including tobacco or tobacco like substances for smoking by patrons on the premises.

7. Use Permit No. UP2021-036 (PA2021-220) shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 (Time Limits and Extensions) of the NBMC, unless an extension is otherwise granted.

8. Parking shall be provided at a rate of one (1) space for each 40 square feet of net public area and shall comply with the approved parking management plan in effect for the site. Any change to this would require an amendment to this use permit.

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 use permit or the processing of a new use permit.
10. Temporary refrigerated trash storage shall be provided to control odors associated with food waste, unless otherwise approved by the Community Development Director.

11. Kitchen exhaust fans shall be installed and maintained in accordance with the Uniform Mechanical Code.

12. The exhaust systems for the food use shall be installed with pollution control units to filter and control odors and shall be located entirely within the structure, except for a required vent that may be located on the roof in a location approved by the Planning Division.

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 Minor Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.

16. 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.

17. No outside paging system shall be utilized in conjunction with this establishment.

18. 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:

<table>
<thead>
<tr>
<th>Location</th>
<th>Between the hours of 7:00AM and 10:00PM</th>
<th>Between the hours of 10:00PM and 7:00AM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Property</td>
<td>Interior 55dBA</td>
<td>Interior 40dBA</td>
</tr>
<tr>
<td>Residential Property located within 100 feet of a commercial property</td>
<td>45dBA 60dBA</td>
<td>45dBA 50dBA</td>
</tr>
<tr>
<td>Mixed Use Property</td>
<td>45dBA 60dBA</td>
<td>45dBA 50dBA</td>
</tr>
<tr>
<td>Commercial Property</td>
<td>N/A 65dBA</td>
<td>N/A 60dBA</td>
</tr>
</tbody>
</table>

19. All trash shall be stored within the building or within the existing dumpsters stored in the trash enclosure. The trash enclosure shall comply with Zoning Code Section
20.30.120 including three (3) walls, a self-latching gate and a decorative solid roof for aesthetic and screening purposes.

20. 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.

21. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.

22. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10 p.m. and 8 a.m., daily, unless otherwise approved by the Director of Community Development, and may require an amendment to this use permit.

23. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.

24. 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 onsite media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.

25. To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney’s fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City’s approval of the Xanadu Café Minor Use Permit Amendment including, but not limited to, Minor Use Permit No. UP2021-036 (PA2021-220). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys’ fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City’s costs, attorneys’ fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.
Police Department

26. The ABC 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.

27. The Applicant shall comply with all federal, state, and local laws, and all conditions of the ABC 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.

28. 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. The certified program must meet the standards of the California Coordinating Council on Responsible Beverage Service or other certifying/licensing body, which the State may designate. The establishment shall comply with the requirements of this section within 180 days of the issuance of the certificate of occupancy. Records of each owner’s, manager’s, and employee’s successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.

29. The Applicant shall maintain a security recording system with a 30-day retention and make those recording available to police upon request.

30. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge, or nightclub as defined by the NBMC.

31. There shall be no live entertainment or dancing allowed on the premises.

32. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.

33. 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.

34. No games or contests requiring or involving the consumption of alcoholic beverages shall be allowed.

35. 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.

36. Food service from the regular menu must be made available to patrons until 30 minutes prior to closing.
37. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The license 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.

38. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.

39. Strict adherence to maximum occupancy limit is required.

40. “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).

41. The outdoor dining patio shall be separated from the public right-of-way with a solid decorative barrier (subject to ADA compliance) around the perimeter of the consumption area to meet the minimum requirements of ABC and shall not be located beyond private property.

42. The Applicant shall post and maintain professional quality signs measuring 12 inches by 12 inches with lettering no smaller than two (2) inches in height that read, “No alcoholic Beverages Beyond This Point” at all premises exits.