RESOLUTION NO. PC2021-029


THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. On February 17, 1972, the Planning Commission of the City of Newport Beach (“City”) approved Use Permit No. UP1580 (“UP1580”) which authorized Union Oil to operate a service station, including vehicle repair, at 2201 East Coast Highway and legally described Lots 1, 2, and 3 of Tract 682, in the City of Newport Beach, County of Orange, State of California, as shown on a map recorded in Book 20 Page 19 of Miscellaneous Maps, in the Office of the County Recorder of said County (“Property”). The use has been in continuous operation since the approval of UP1580.

2. An application was filed by Hamid Kianipur (“Applicant”), with respect to the Property, requesting approval of a conditional use permit and coastal development permit.

3. The Applicant seeks a coastal development permit and conditional use permit to allow the remodel of an existing service repair station and convenience market, including the addition of 232 square feet, to operate solely as a convenience market. The Applicant requests deviations from minimum lot size, setbacks for the retail building and air/water dispenser, and minimum landscaping requirements pursuant to Section 20.48.210 (Service Stations) of the Newport Beach Municipal Code (“NBMC”); and a Type 20 (Off-Sale Beer and Wine) license with the Alcoholic Beverage Control (“ABC”) license (“Project”). The existing pump canopy, eight (8) fuel dispensers, and below-grade fuel infrastructure are to remain unchanged. The convenience market would operate from 6:00 a.m. to midnight, daily, with alcohol sales from 6:00 a.m. to 11:00 p.m., daily. If approved, accepted and implemented, this coastal development permit and conditional use permit would supersede and replace UP1580.

4. The Property is located within the CC (Commercial Corridor) Zoning District and the General Plan Land Use Element category is CC (Corridor Commercial).

5. The Coastal Land Use Plan category is CC-B (Corridor Commercial) (with a floor area ratio of 0.0 to 0.75) and is located within the CC (Commercial Corridor) Coastal Zoning District.
Since the Property is located within the coastal zone, a coastal development permit is required for the Project

6. The Planning Commission held a public hearing on October 7, 2021 in the Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the hearing was given in accordance with the California Government Code Section 54950 et seq. ("Ralph M. Brown Act"), Chapters 20.62 (Public Hearings) and 21.62 (Public Hearings) of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission 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 (Existing Facilities) exemption applies to additions to existing structures provided that the addition will not result in an increase of more than 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less. The Project consists of a remodel of an existing 1,763-square-foot convenience market, including the conversion of vehicle service bays to convenience market retail floor area and a 232-square-foot addition.

SECTION 3. REQUIRED FINDINGS.

Alcohol Sales

In accordance with Section 20.48.030(C)(3) (Alcohol Sales – Required Findings) of the 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).

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 located in Reporting District 44 (RD 44). Part One Crimes are the eight (8) most serious crimes defined by the FBI Uniform Crime Report – homicide, rape, robbery, aggravated assault, burglary, larceny-theft, auto theft, and arson. In 2020,
there were 103 Part One crimes in RD 44, which is more than nearby reporting districts RD 42 and RD 43, which are predominantly residential with some commercial areas. The Part One Crime Rate in RD 44 is lower than adjacent reporting district RD 39, which includes Newport Center but is higher than the Citywide average.

2. The Newport Beach Police Department (“NBPD”) has reviewed the Project, provided operating conditions of approval, and has no objection to the addition of the Type 20 alcoholic beverage license subject to all conditions of approval including limits on the hours for alcohol sales (6:00 a.m. to 11:00 p.m., daily).

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

      1. Alcohol-related arrests in RD 44 make up 17 percent of arrests in this reporting district, which is higher than adjacent reporting district RD 39, lower than adjacent reporting district RD 42, and the same as adjacent reporting district RD 43. The NBPD has reviewed the Project and believes it will not contribute to additional alcohol-related calls for service, crimes and arrests, and has no objection to the Applicant’s request.

      2. In 2020, there were 11 calls for service to the Property. Three (3) of those calls were traffic related and did not involve the business.

   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 Property is adjacent to a residential zoning district, and is approximately 800 feet from Old School Park, 1,000 feet from Community Church Congregational, and 1,700 feet from Harbor View Elementary School. The Property is not located within close proximity to any day care centers or hospitals. The Project is to be closed by midnight, with no alcohol sales after 11:00 p.m., and conditions are included to ensure compatibility with the surrounding uses.

      2. The area is characterized primarily by nearby residential and commercial uses and travelers along East Coast Highway and is intended to serve these customers. Nearby uses do not attract an inordinate number of minors.

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

      1. The Property is located in Census Tract 627.01, which has two (2) active off-sale ABC licenses and a population of approximately 2,800 residents. This represents a per capita ratio of one (1) license for every 1,400 residents. Orange County has a per capita ratio of one (1) license for every 1,597 residents. Since the area’s ratio exceeds the ratio of on-sale retail licenses to population in the County, the area is deemed to have an undue concentration of alcohol licenses.
2. There are two (2) off-sale ABC licenses within this census tract. Korker Liquor is located at the abutting Property, and Johndrow Vineyards, which is located in a residence and is restricted to providing internet sales only with no on-site customers. Adjacent Census Tract 627.02 has an additional six (6) off-sale ABC licenses.

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

1. A service station with convenience store has operated at the Property since 1972 with no operating issues. The current convenience store does not sell alcohol. No objectionable conditions are presently occurring at the Property, and this conditional use permit as conditioned is intended to avoid future objectionable conditions related to the service of alcohol.

2. The Project has been reviewed and conditioned to help ensure that the purpose and intent of Section 20.48.030 (Alcohol Sales) of the NBMC is maintained and that a healthy environment for businesses is preserved. The service of alcohol is intended for the convenience of customers living in and visiting the area. Operational conditions of approval recommended by the NBPD relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize alcohol-related impacts.

3. The hours of operation of the establishment will help reduce the potential effects on nearby land uses. The hours of operation of the convenience market will be limited to 6:00 a.m. to midnight, daily. The hours of gas delivery will be limited to 7:00 a.m. to 8:00 p.m., daily. Alcohol sales shall be limited to 6:00 a.m. to 11:00 p.m., daily. These hours of operation are proposed to mitigate impact to nearby residences. There are no restrictions proposed on hours of operation for fuel dispensing.

**Conditional 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 the findings for a 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 CC (Corridor Commercial) land use designation under the General Plan and Coastal Land Use Plan are 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 service station and convenience store, including alcohol sales, are consistent with this designation and will serve residents and visitors to the area as well as travelers along Coast Highway.
2. The Project is allowed a maximum floor area ratio of 0.75 pursuant to the General Plan Land Use Map (Figure LU14) or 10,389 square feet for the 13,853-square-foot Property. The proposed floor area is 1,995 square feet below the maximum allowed.

3. The Project is located adjacent to East Coast Highway and Avocado Avenue. East Coast Highway provides a primary transportation route through the City. The Project and existing service station site will provide services for visitors to the City as well as residents and employees of businesses located within the area.

4. The Property is not part of a specific plan area, therefore no findings of consistency with a specific plan is necessary.

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;

Fact in Support of Finding

1. The Property is located in the CC (Commercial Corridor) Zoning District. Fuel/service stations with convenience markets including alcohol sales are permitted uses within this land use designation with the approval of a conditional use permit.

2. The Project complies with the requirements of Title 20 (Planning and Zoning) of the NBMC. The Project is under 24 feet in height, below the maximum allowed height of 32 feet. The proposed building meets the CC (Commercial Corridor) zone setback standard which is 0 feet pursuant to NBMC Section 20.20.030 (Commercial Zoning Districts General Development Standards), Table 2.7 (Development Standards for Commercial Retail Zoning Districts). The Project provides 10 parking spaces meeting the minimum standard of one (1) space for every 200 gross square feet for service stations with convenience markets. The Project does not meet the minimum lot area, service station alley setback and landscaping standards, however, Section 20.48.210(T)(2) (Planning and Zoning, Standards for Specific Land Uses, Service Stations, Modification or Waiver of Standards) of the NBMC, allows for deviations when specific findings can be made. Facts to support the deviations are provided in Findings G, H, and I below and are incorporated herein by reference.

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 Property is located at the south corner of the intersection of East Coast Highway and Avocado Avenue. The Project is abutting residential properties to the south. The Property is surrounded by commercial properties to the north, east, and west. The
Property provides a convenient location for residents and employees of the neighboring areas as well as visitors to the City traveling on East Coast Highway to purchase fuel and convenience items. Conditions of approval are included to minimize, to the greatest extent possible, any impacts to the surrounding residential and commercial uses.

2. Although the Project does not provide the minimum land area required by Section 20.48.210 (Service Stations) of the NBMC, the Project is sited and designed to provide sufficient parking for the proposed use as well as safe and efficient vehicle and pedestrian circulation based on the review of the City’s Traffic Engineer.

3. The hours of operation of the convenience store are proposed to be from 6:00 a.m. to midnight, daily, with alcohol sales until 11:00 p.m. The existing Use Permit No. UP1580, does not limit hours of operation. The fuel dispensers will continue to be allowed to operate 24 hours a day if there is a demand for said services. The existing uses, including the fuel dispensers and convenience store, have not proven detrimental to the neighborhood or City. The Project includes conditions of approval to ensure that potential conflicts are minimized to the greatest extent possible.

4. The Applicant has submitted a lighting plan that shows compliance with Section 20.30.070 (Outdoor Lighting) of the NBMC, and no excessive lighting impact to the community and residential neighbors will be created.

5. The proposed convenience store faces away from abutting residences and has no windows and doors that face south toward residences.

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 Project is located at the intersection of East Coast Highway, designated a major road by the Master Plan of Streets and Highways, and Avocado Avenue. Vehicular access to the site is provided via three (3) existing driveways, two (2) adjacent to East Coast Highway and one (1) adjacent to Avocado Avenue. The Project is designed to provide adequate circulation and parking on-site for the service station and convenience market.

2. The Property is developed with the existing service station, vehicle repair bays, and convenience store. There is adequate public and emergency vehicle access, public services, and utilities, which are existing on the Property to accommodate the Project development.
3. The improvements to the Project will comply with all City of Newport Beach Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

4. Site vehicular access has been reviewed by the Public Works Department, which determined that the three (3) existing driveways are necessary for safe and efficient access and circulation onsite. The existing driveways and layout of the fuel dispensers, parking spaces, and proposed building provide adequate spaces for efficient vehicle circulation for the fuel delivery truck and customer vehicles.

5. All necessary utilities are presently provided to the Property and the Project is not anticipated to increase utility demands beyond what is currently provided or available to the site. No expansion of existing public utility systems is anticipated.

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, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.

Facts in Support of Finding

1. The existing service station, convenience store, and vehicle repair has been in operation since 1972 pursuant to Use Permit No. UP1580. The existing use has not proven detrimental to the area and has demonstrated that it is compatible with the neighboring residential uses.

2. The operational conditions of approval recommended by the NBPD relative to the sale of alcoholic beverages will ensure compatibility with the surrounding uses and minimize any impacts to the surrounding area which are related to the sale of alcohol from the convenience store.

3. Conditions of approval are included which will ensure that potential conflicts with the surrounding residential land uses are minimized to the greatest extent possible.

Modification of Service Station Standards

In accordance with Section 20.48.210(T)(2) (Service Stations, Modification or Waiver of Standards) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding

G. The strict compliance with the standards is not necessary to achieve the purpose and intent of this section.
Facts in Support of Finding

1. A total of 1,350 square feet, or 9.7 percent of the site area of landscaping is provided instead of the required 15 percent of the site area. The provided landscape is primarily located along the rights-of-way and the corner of East Coast Highway and Avocado Avenue for maximum visual impact, consistent with the NBMC’s intent to promote service station design that is compatible with surroundings, by buffering the Property with landscaping.

2. The Project provides an irregularly shaped planting area along the east side interior property line that does not meet the 5-foot minimum dimension. There is no perimeter landscaping provided along the south interior side property line abutting the alley. The Project is designed to provide sufficient parking circulation as determined by the City’s Traffic Engineer, and to leave the existing fueling stations unchanged. Landscape area is located primarily along the Avocado Avenue and East Coast Highway property lines to maximize visual impact. The highly visible landscape buffers the Property from the public right-of-way and is therefore consistent with the NBMC’s intent to promote service station design that is compatible with its surroundings.

3. The Project provides three (3) trees and 21 shrubs adjacent to the interior side property line abutting the alley where a minimum of four (4) trees and 13 shrubs are required. The existing convenience store is located adjacent to this side property line, leaving little space for landscaping. The Property provides the required number of trees and shrubs along the Avocado Avenue, East Coast Highway, and east interior side property lines.

4. The Property is 13,853 square feet in size, whereas a minimum 14,643 square feet is required to accommodate the Project (1,000 square feet of site area per fueling position and 3.33 square feet of site area per square foot for each square foot used for retail and/or food and beverage sales). The Project is sited to provide adequate parking and efficient vehicle circulation despite its size and is thereby consistent with the NBMC’s intent to promote service station design that includes adequate area for safe and efficient circulation.

5. The Project provides a 0-foot setback to the south side property line abutting the alley, where a 10-foot setback is required for the proposed convenience store building abutting an alley. The existing building and the proposed addition are located at the southeast corner of the Property to maximize vehicle maneuverability at the front of the site around fuel pumps and parking spaces to promote convenient and safe circulation. The eight (8) existing fuel dispensers are not proposed to change. The existing convenience market and vehicle repair bays have been located with a 0-foot setback to the south and east property lines since 1972 and have not proven to be a detriment to the surrounding area. Requiring a 10-foot setback would either reduce the depth of the convenience store, which would not be ideal for retail operations and would require substantial work to the existing building, or it would reduce vehicle maneuvering areas, negatively affecting circulation. The resulting setback area to the south would benefit the residential property to the south by creating more open space,
which may result in people congregating near residences with limited visibility to the business.

6. The Project provides a 4-foot setback to the rear property line abutting Korker Liquor for the air/water dispenser, whereas a 10-foot setback is required. The air/water dispenser is strategically located far from residential land uses to avoid potential noise impacts to residential neighbors. The air/water dispenser is located near proposed parking spaces for convenience to customers and to prevent interference with onsite circulation. The existing air/water dispenser is located in a similar location and has not proven to be a detriment to the surrounding area.

Finding

H. The project possesses compensating design and development features that offset impacts associated with modification or waiver of standards.

Facts in Support of Finding

1. The Project will enhance the appearance of the Property with updated and improved landscaping that is required to be consistent with the Zoning Code. The landscaping will provide improved screening and buffering from the public right-of-way. New landscaping will comply with the requirements of the Water Efficient Landscape Ordinance ("WELO") set forth in Chapter 14.17 (Water-Efficient Landscaping) of the NBMC, and will not include any invasive plants consistent with Title 21 ("Local Coastal Program Implementation Plan") of the Coastal Land Use Plan.

2. The Property will be developed with an expanded and enhanced convenience store building. The building will be one (1) story and 23 feet and 6 inches high, where the maximum height is 32 feet for flat roofs. The building architecture is designed to provide an attractive appearance that is compatible with the surrounding area with high quality materials and architectural treatments to prevent building monotony.

3. The layout of the Project provides for vehicle maneuverability around the existing fuel dispensers, which are to remain unchanged. The new parking layout will provide sufficient parking spaces and circulation to serve the expanded convenience store. The deviation from the side setback avoids creating a secluded setback area between the building and the alley that is not beneficial to safe or convenient operations of the service station.

Finding

I. The overall site plan and architectural design is consistent with the City of Newport Beach Design Guidelines: Automobile Service Stations and Washing.
Facts in Support of Finding

1. The design guidelines do not include any architectural theme. The proposed improvements to the building architecture will provide an attractive modern appearance that is compatible with and complementary to the existing pump canopy and surrounding area. The building elevations reflect architecturally treated wall surfaces to prevent monotony and they will provide visual interest.

2. The strong landscaping features, including four (4) trees at the corner at the intersection of East Coast Highway and Avocado Avenue anchors the corner and provides visual relief from the public right-of-way. Landscaping further enhances the design of the building and buffers the Property from the right-of-way.

3. The landscaping onsite will be improved to comply with the WELO. Irrigation will be updated to drip zone valves where possible to increase water efficiency and no invasive plant species will be planted.

Coastal Development Permit

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

Finding:

J. Conforms to all applicable sections of the certified Local Coastal Program (LCP).

Facts in Support of Finding:

1. The Property is located within the Commercial Corridor Coastal Zoning District. The Commercial Corridor Coastal Zoning District is intended to provide for areas appropriate for a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity. The Project is located at the intersection of East Coast Highway and Avocado Avenue and will provide services for residents of the surrounding area, employees of businesses located within the area, and visitors to the City or traveling through the City. Fuel/service stations and convenience stores are allowed uses within the CC Coastal Zoning District.

2. The Project complies with all applicable Commercial Corridor development standards, including, but not limited to, floor area ratio, parking requirements, and setbacks.
   
   a. The maximum floor area ratio allowable in the Commercial Corridor zone is 0.75, or 10,389 square feet for this 13,853-square-foot lot. The proposed floor area is 1,995 square feet, below the maximum allowed.

   b. Title 21 (Local Coastal Program Implementation Plan) of the NBMC allows for a 0-foot setback along property lines abutting streets and nonresidential properties.
The Project provides a setback of over 75 feet from East Coast Highway to the convenience market and a 5-foot setback to Avocado Avenue from the new trash enclosure serving the convenience store.

c. Title 21 (Local Coastal Program Implementation Plan) requires a minimum of one (1) parking space for every 200 square feet of gross floor area for service stations with a convenience market. In this case, 10 parking spaces are required and provided for the 1,995-square-foot convenience market.

Finding:

K. 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 Property is located in Corona del Mar and is not located between the nearest public road and the sea. 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 involves the remodel of an existing convenience market with vehicle service repair bays to be used as a convenience market only, including a 232-square-foot addition. Although the Project involves a change in intensity from the existing condition, service stations with convenience markets are allowed by right in the CC Coastal Zoning District and the development complies with all other applicable development standards including required parking. The Project is not anticipated to result in a significantly increased demand on public access and recreation opportunities. The Property is located approximately 2,200 feet from Newport Harbor and approximately a 2 mile drive from Corona del Mar State Beach, and does not provide any public access easements. The Project will provide goods and services to the general public supporting access to the coast.

2. The Property is not located adjacent to a coastal view road, public viewpoint, public park or beach, or public accessway, as identified in the City of Newport Beach Coastal Land Use Plan. Furthermore, an investigation of the Property and surrounding area did not identify any other public view opportunities. The Property may be located within the viewshed of distant public viewing areas. However, the Project is located on an inland lot that involves the remodel of an existing single-story building and a 232-square-foot addition that complies with development standards including height and setback requirements. The Property will be developed with an expanded and enhanced convenience store building. The building will be one (1) story and 23 feet and 6 inches high, where the maximum height is 32 feet for flat roofs. The building architecture is designed to provide an attractive appearance that is compatible with the surrounding area with high quality materials, unique colors, and architectural treatments to prevent building monotony. Therefore, the Project does not have the potential to degrade the visual quality of the coastal zone or result in significant adverse impacts to public views.
SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby finds this Project is categorically 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 Planning Commission of the City of Newport Beach hereby approves Conditional Use Permit No. UP2019-004 and Coastal Development Permit No. CD2019-005, including a waiver of some service station development standards, subject to the findings provided in this resolution and 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 or the City Clerk in accordance with the provisions of Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the NBMC.

4. This resolution supersedes Use Permit No. UP1580 as approved by the Planning Commission on February 17, 1972, which upon vesting of the rights authorized by this use permit, shall become null and void.

PASSED, APPROVED AND ADOPTED THIS 7TH DAY OF OCTOBER, 2021.

AYES: Ellmore, Klaustermeier, Koetting, Lowrey, Rosene, and Weigand

NOES: Kleiman

ABSTAIN: None

ABSENT: None

BY: Lee Lowrey, Chair

BY: Curtis Ellmore, Secretary
EXHIBIT “A”

CONDITIONS OF APPROVAL

Project-Specific Conditions in Italics

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. 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).

3. Prior to the issuance of building permits, Fair Share Traffic Fees shall be paid for the added floor area in accordance with NBMC Chapter 15.38 (Fair Share Traffic Contribution Ordinance).

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

5. Any change in operational characteristics, hours of operation, expansion in area, or other modification to the approved plans, shall require an amendment to this Use Permit or the processing of a new Use Permit.

6. 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.

7. All exits shall remain free of obstructions and available for ingress and egress at all times.

8. 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 (“NBMC”) to require such permits.

9. 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 NBMC Title 20 Planning and Zoning.
10. Should this business be sold or otherwise come under different ownership, any future owners or assignees shall be notified in writing of the conditions of this approval by the current owner or leasing company.

11. Exterior light sources shall be shielded from view and directed away from adjacent properties in compliance with NBMC Section 20.30.070 (Outdoor Lighting). Luminaries shall be of a low-level, indirect diffused type and shall not exceed a height of 20 feet above existing grade.

12. New signs or changes to existing signs shall comply with sign regulations required in NBMC Subsection 20.42.080(K)(3) (Service Station Signs), as well as City Standard 110-L to ensure adequate sight distance.

13. The Project shall comply with NBMC Chapter 14.17 (Water Efficient Landscaping). The Planning and Building Divisions shall approve the final landscape planting and sprinkler irrigation plans and specifications before issuance of a building permit.

14. All landscape materials, landscaped areas, and irrigation systems shall be installed and 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.

15. Prior to the final of building permits, the Applicant shall schedule an inspection by the Planning Division to confirm that all landscaping was installed in accordance with the approved plan.

16. The displays, shelving, etc. shall be positioned in such a way that the clerk can be seen from outside of the building.

17. The Applicant shall post and maintain a professional quality sign facing the premise’s parking lot reminding patrons to be respectful of residential neighbors.

18. The hours of operation of the convenience market shall be limited to 6:00 a.m. to 12:00 a.m., daily. The hours of gas delivery shall be limited to 7:00 a.m. to 8:00 p.m. Alcohol sales shall be limited to 6:00 a.m. to 9:00 p.m., daily.

19. Refrigeration units and non-refrigeration units containing alcohol for sale shall be locked at 9:00 p.m., daily.

20. Prior to issuance of building permits, plans shall be revised to reflect a less contemporary architectural design.

21. One year after implementation of UP2019-004, the Community Development Director shall review this Conditional Use Permit and may, in consultation with the Newport Beach
Police Department, extend hours of operation of alcohol sales to 6:00 a.m. to 11:00 p.m., daily.

22. The sale or service of single serving alcoholic beverages shall be prohibited.

23. Fueling stations shall be silent after 10:00 p.m., including the silencing of buttons and the prohibition of gas pump TV/LED advertising.

24. The outdoor storage of auto related parts or merchandise shall be prohibited on-site.

25. All employees shall park on-site at all times.

26. 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. No demolition or construction materials shall be stored on public property.

27. 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.

28. Best Management Practices (“BMPs”) and Good Housekeeping Practices (“GHPs”) shall be implemented prior to and throughout the duration of construction activity as designated in the Construction Erosion Control Plan.

29. 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.

30. Debris from demolition shall be removed from work areas each day and removed from the project site within twenty-four (24) hours of the completion of the project. Stockpiles 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.

31. 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.

32. **Prior to the issuance of building permits**, the Applicant shall submit a final drainage and grading plan. The plan shall be subject to the review and approval by the Building Division.

33. **Prior to the issuance of building permits**, a copy of the Resolution, including conditions of approval Exhibit “A” shall be incorporated into the Building Division and field sets of plans.

34. **Prior to issuance of building permits**, the Applicant shall submit to the Planning Division an additional copy of the approved architectural plans for inclusion in the Coastal Development file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to eleven (11) inches by seventeen (17) inches. The plans shall accurately depict the elements approved by this Coastal Development Permit.

35. **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.

36. 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.

37. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources.
The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
38. The noise generated by the proposed use shall comply with the provisions of Chapter 10.26 (Community Noise Control) and other applicable noise control requirements of the NBMC. 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>Location</td>
<td>Interior</td>
<td>Exterior</td>
</tr>
<tr>
<td>Residential Property</td>
<td>45dBA</td>
<td>55dBA</td>
</tr>
<tr>
<td>Residential Property located within 100 feet of a</td>
<td>45dBA</td>
<td>60dBA</td>
</tr>
<tr>
<td>commercial property</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mixed Use Property</td>
<td>45dBA</td>
<td>60dBA</td>
</tr>
<tr>
<td>Commercial Property</td>
<td>N/A</td>
<td>65dBA</td>
</tr>
</tbody>
</table>

39. Construction activities shall comply with Section 10.28.040 (Loud and Unreasonable Noise, Construction Activity – Noise Regulations) of the NBMC, 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. Pursuant to Section 10.28.045(B) of the NBMC (Real Property Maintenance – Noise Regulations), noise-generating construction activities are not allowed on Saturdays, Sundays or Holidays.

40. 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 Corona del Mar 76 Service Station Remodel including, but not limited to, Conditional Use Permit No. UP2019-004 and Coastal Development Permit No. CD2019-005 (PA2019-027). 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**

41. Carbon dioxide systems used in beverage dispensing applications shall comply with Section 5307.3 of the 2019 California Fire Code (CFC).
BUILDING DIVISION

42. Accessible path of travel shall be minimum four (4) feet wide, five (5) percent maximum slope in direction of travel, two (2) percent maximum cross slope.

43. Provide compliant curb ramp and detectable warning per California Building Code.

44. Building exterior walls shall comply with Chapters 5 and 6 of California Building Code.

PUBLIC WORKS DEPARTMENT

45. All improvements shall be constructed as required by Ordinance and the Public Works Department.

46. All improvements shall comply with the City’s sight distance requirement per City Standard STD-110-L including project driveway approaches and the East Coast Highway and Avocado Avenue intersection. Planting within the limited use area shall be limited to 24-inches in height maximum.

47. An encroachment permit is required for wall work activities within the public right-of-way.

48. Applicant shall be required to upgrade/reconstruct all non-compliant water services per City Standard.

49. Structural encroachment, including but not limited to, caissons, retaining walls and tiebacks are prohibited in the public right-of-way.

50. In case of damage done to public improvements surrounding the development site by the private construction, additional reconstruction within the public right-of-way could be required at the discretion of the Public Works Inspector.

51. Plug all unused portions of driveways per City Standard STD-165-L.

52. All driveways shall be constructed per City Standard STD-160-L-A. The driveway along Avocado Avenue shall be shifted southerly away from the signalized intersection of Easy Coast Highway and Avocado Avenue. Final location shall be reviewed and approved by the Public Works Department.

53. Parking layout shall comply with City Standard STD-805-L-A and STD-805-L-B. Parking stalls adjacent to walls or curbs shall be 9-foot-wide minimum.

54. Project shall provide signage and striping to reinforce the proposed one (1)-way circulation. Signage shall be consistent with the latest edition of the California Manual on Uniform Traffic Control Devices (CA MUTCD). Striping shall be consistent with the latest edition of the CALTRANS Standard Plans. Signage and striping shall be approved by the Public Works Department.

55. Delivery trucks, fueling trucks, and trash trucks are prohibited from backing up or staging within the public right of way.
56. The convenience store shall not include meals prepared to order, such as sandwiches, wraps, etc.

POLICE DEPARTMENT

57. 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.

58. 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. 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.

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

60. No alcoholic beverages shall be sold between the hours of 11:00 p.m. and 6:00 a.m.

61. Patrons shall be required to show valid identification to verify age at the point of sale for alcohol.

62. Alcoholic beverages in containers of 16 ounces or less shall not be sold by single container, but must be sold in manufacturer pre-packaged multi-unit quantities.

63. Wine shall not be sold in bottles or containers smaller than 750 milliliters.

64. No person under the age of 21 shall sell or deliver alcoholic beverages.

65. 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 that are clearly visible to the exterior shall constitute a violation of this condition.

66. 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.
67. The Applicant shall post and maintain a professional quality sign facing the premise's parking lot that reads:

   NO LOITERING, NO LITTERING,
   NO DRINKING OF ALCOHOL BEVERAGES
   VIOLATORS ARE SUBJECT TO ARREST

68. The operator of the 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.

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