November 14, 2019 Agenda Item No. 4

**SUBJECT:** Shokuh Patisserie (PA2019-180)

Minor Use Permit No. UP2019-047

SITE LOCATION: 1735 Westcliff Drive

**APPLICANT:** Ali Sharbaf Shoar

**OWNER:** Westcliff Court Limited Partners

**PLANNER:** Liane Schuller, Planning Consultant

949-644-3200, Ischuller@newportbeachca.gov

#### LAND USE AND ZONING

General Plan: CG (General Commercial)
 Zoning District: CG (Commercial General)

#### **PROJECT SUMMARY**

The applicant proposes a minor use permit to allow a take-out service, limited eating and drinking establishment (restaurant) within an existing commercial tenant space formerly occupied by a retail shoe store. The 904-square-foot restaurant would include 337 square feet of net public area and a maximum of six seats. No alcohol or late hours (after 11 p.m.) are proposed as a part of this application.

#### **RECOMMENDATION**

- 1) Conduct a public hearing;
- 2) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment; and
- 3) Adopt Draft Zoning Administrator Resolution No. \_ approving Minor Use Permit No. UP2019-047 (Attachment No. ZA 1).

#### **DISCUSSION**

- The proposed location is an existing tenant space within the Westcliff Court commercial center located between Westcliff Drive and Sherington Place, west of Dover Drive. The multi-tenant commercial center contains a variety of retail, service and restaurant uses, with a shared surface parking lot along both street frontages.
- The applicant requests a minor use permit to allow a bakery with take-out service and a maximum six seats. The business would operate seven days a week, between the hours of 7:30 a.m. and 5:30 p.m. Staff recommends allowing a closing time of 10 p.m. to allow for future flexibility. No late hours (after 11 p.m.) or alcohol service are proposed as part of this application.
- The General Plan land use designation for this site is CG (General Commercial).
   The CG designation is intended to provide for a wide variety of commercial activities oriented primarily to serve citywide or regional needs. The proposed bakery is consistent with this land use category.
- A take-out service, limited eating and drinking establishment (no alcohol, no late hours) with a maximum of six seats is permitted in the CG (Commercial General) zoning district. A minor use permit is required because the subject property is located within 500 feet of a residential zoning district.
- Pursuant to Newport Beach Municipal Code (NBMC) Section 20.40.040 (Off-Street Parking Spaces Required), the parking requirement for take-out service, limited restaurants is one parking space for each 250 square feet of gross floor area. The required parking for the proposed use is therefore consistent with the required parking for the retail business that previously occupied this tenant space. No increase in parking demand is proposed.
- The proposed take-out service, limited, eating and drinking establishment will add additional take-out options to the area.

#### **ENVIRONMENTAL REVIEW**

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, Chapter 3, because it has no potential to have a significant effect on the environment.

#### **PUBLIC NOTICE**

Notice of this application was published in the Daily Pilot, mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways), including the applicant, and posted on the subject property at least 10 days before the scheduled hearing, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website.

#### **APPEAL PERIOD**:

An appeal or call for review may be filed with the Director of Community Development within 14 days following the date of action. For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

Prepared by:

Liane Schuller

Planning Consultant

GR/ls

Attachments: ZA 1 Draft Resolution

ZA 2 Vicinity Map ZA 3 Project Plans

## Attachment No. ZA 1

**Draft Resolution** 

#### **RESOLUTION NO. ZA2019-###**

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2019-047 FOR A TAKE-OUT SERVICE, LIMITED, EATING AND DRINKING ESTABLISHMENT LOCATED AT 1735 WESTCLIFF DRIVE (PA2019-180)

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

#### SECTION 1. STATEMENT OF FACTS.

- 1. An application was filed by Shokuh Patisserie ("applicant") with respect to property located at 1735 Westcliff Drive, and legally described as Lot 6 and a portion of Lot 7 in Tract 4225, requesting approval of a minor use permit.
- 2. The applicant proposes a minor use permit to allow a take-out service, limited eating and drinking establishment (restaurant) within an existing commercial tenant space formerly occupied by a retail shoe store. The 904-square-foot restaurant will include 337 square feet of net public area and a maximum of six seats. No alcohol or late hours (after 11 p.m.) are proposed as a part of this application.
- 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.
- 5. A public hearing was held on November 14, 2019, in the Corona del Mar Conference Room (Bay E-1st floor) at 100 Civic Center Drive, Newport Beach. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

#### 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, Chapter 3, because it has no potential to have a significant effect on the environment.
- 2. This exemption authorizes minor alterations to existing structures involving negligible or no expansion of use. The proposed project involves alterations to the interior floor plan of an existing commercial space with no expansion in floor area.

#### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020 (Conditional Use Permits and Minor Use Permits) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

#### Finding:

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

#### Facts in Support of Finding:

- 1. The General Plan land use designation for this site is CG (General Commercial). The CG designation is intended to provide for a wide variety of commercial activities oriented primarily to serve citywide or regional needs. The proposed restaurant and bakery is consistent with this land use category.
- 2. The proposed take-out service, limited establishment would be complementary to the surrounding commercial uses.
- 3. The subject property is not part of a specific plan area.

#### Finding:

B. 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:

- A take-out service, limited eating and drinking establishment (no alcohol, no late hours) with a maximum of six seats is permitted in the CG (Commercial General) zoning district.
   A minor use permit is required because the subject property is located within 500 feet of a residential zoning district.
- 2. Pursuant to Newport Beach Municipal Code (NBMC) Section 20.40.040 (Off-Street Parking Spaces Required), the parking requirement for take-out service, limited restaurants is one parking space for each 250 square feet of gross floor area. The required parking for the proposed use is therefore consistent with the required parking for the retail business that previously occupied this tenant space.

#### Finding:

C. 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. Consistent with the retail parking rate, the proposed restaurant (take-out, limited) requires parking at a rate of one parking space for each 250 square feet of gross floor area; therefore, no additional parking is required.
- 2. The proposed establishment is complementary to the existing and allowed uses in the area, which consist of a variety of retail, service and restaurant uses.
- 3. As conditioned, the allowed hours of operation will be 7:30 a.m. to 10:00 p.m. daily. No late hours are proposed.

#### Finding:

D. 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 project site is located on Westcliff Drive in a commercial area with moderate vehicular traffic and pedestrian activity.
- 2. Adequate public access and all utilities are provided on site. Any additional utility needs will be required to be addressed at plan check.
- 3. The Fire Department reviewed the project and determined that adequate public and emergency vehicle access is provided.
- 4. Any proposed site and tenant improvements must comply with the Zoning Code and all Building, Public Works, and Fire Codes for permits to be issued.

#### Finding:

E. 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 proposed take-out service, limited eating and drinking establishment will add additional take-out options to the area.
- 3. The applicant is required to obtain approval from the Orange County Health Department prior to opening for business and comply with the California Building Code to ensure the safety and welfare of customers and employees within the establishment.
- 4. The proposed use includes no late hours, no alcohol service, and there is no increased parking demand. Based upon the Zoning Code requirements, the proposed use will not result in a detriment to the subject commercial site or surrounding community.

SECTION 4. DECISION.

#### NOW, THEREFORE, BE IT RESOLVED:

- 1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2019-047 (PA2019-180), subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
- 2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2019.

James Campbell, Zoning Administrator

#### **EXHIBIT "A"**

#### CONDITIONS OF APPROVAL

- 1. The development shall be in substantial conformance with the approved site plan and floor plans stamped and dated with the date of this approval, except as modified by applicable conditions of approval.
- 2. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Minor Use Permit.
- 3. 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.
- 4. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, Cityadopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements.
- 5. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
- 6. The hours of operation for the establishment shall be limited to 7:30 a.m. to 10:00 p.m. daily.
- 7. The sale of alcohol shall not be permitted.
- 8. A maximum of six seats is permitted. No additional seating, including outdoor seating, is permitted without further review and may require an amendment to this Minor Use Permit.
- 9. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Minor Use Permit or the processing of a new use permit.
- 10. A copy of the Resolution, including conditions of approval Exhibit "A," shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
- 11. 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 Minor Use Permit 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 11 inches by 17 inches. The plans shall accurately depict the elements approved by this Minor Use Permit and shall highlight the approved elements such that they are readily discernible from other elements of the plans.

- 12. Prior to issuance of building permits, the project plans shall identify if the building is protected with automatic fire sprinklers and/or a fire alarm system to the satisfaction of the City's Life Safety Services Division.
- 13. 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.
- 14. Trash receptacles for patrons shall be conveniently located outside of the establishment but not located on or within any public property or right-of-way.
- 15. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris, and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
- 16. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
- 17. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10 p.m. and 7 a.m., on weekdays and Saturdays, and between the hours of 10 p.m. and 9 a.m. on Sundays and federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this Minor Use Permit.
- 18. Storage outside of the building, in the front, or at the rear of the property shall be prohibited, with the exception of the required trash containers.
- 19. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of onsite media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permit.
- 20. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.

21. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Shokuh Patisserie including, but not limited to, Minor Use Permit No. UP2019-047 (PA2019-180). 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.

### **Attachment No. ZA 2**

Vicinity Map

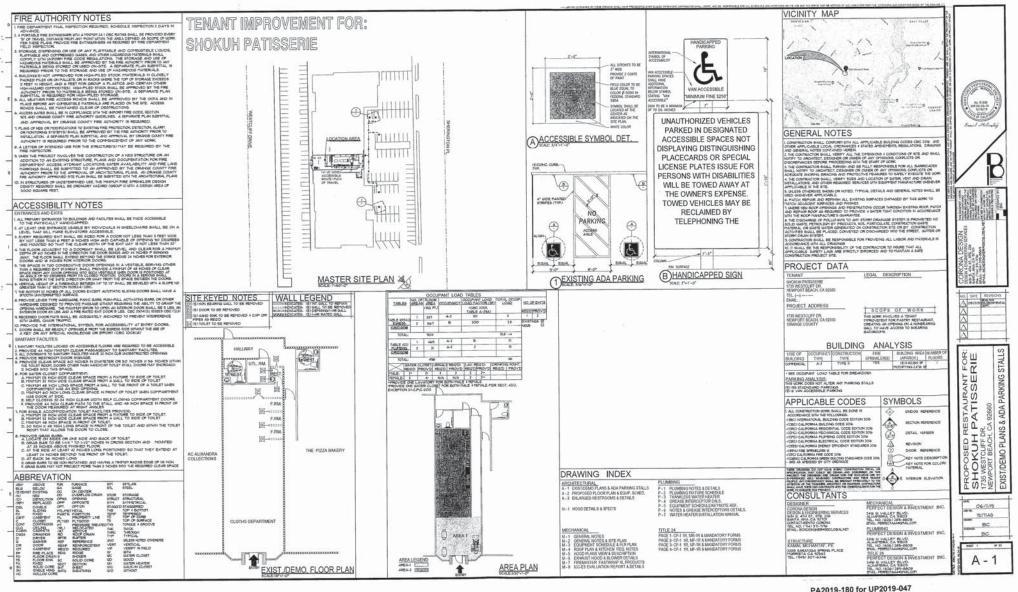
## **VICINITY MAP**



Minor Use Permit No. UP2019-047 PA2019-180

**1735 Westcliff Drive** 

# Attachment No. ZA 3 Project Plans



PA2019-180 for UP2019-047 1735 Westcliff Drive Shokuh Patisserie

