

Attachment No. PC 7

Five Crowns Response to Appeal Letter
dated October 22, 2024

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October 22, 2024

Delivered Via E-Mail: mwhelan@newportbeachca.gov

Melinda Whelan, Assistant Planner
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City of Newport Beach
100 Civic Center Drive, First Floor Bay B
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**RE: Applicant's Response to Appeal Filed Over Zoning Administrator's August 15, 2024
Approval of Limited Term Permit and Coastal Development Permit (PA2023-0202)**

Dear Assistant Planner Whelan:

As you know, I am an owner and the operator of the Five Crowns restaurant in Corona del Mar, which is located at 3801 East Coast Highway. On August 15, 2024, Zoning Administrator Benjamin M. Zdeba approved our request for a limited term permit and a coastal development permit to allow an existing temporary outdoor dining patio to remain for a limited term at the Five Crowns. On August 28, 2024, Ken and Kim Catanzarite ("Appellants") appealed this approval to the Planning Commission (and simultaneously filed a lawsuit against the Five Crowns and me personally based upon substantially the same "facts" included in their appeal). The "facts" cited by the Appellants in their appeal are meandering at times, misleading at best, mischaracterize the City of Newport Beach's Municipal Code ("NBMC"), and are not supported by the evidence presented at the Zoning Administrator's hearing. It goes without saying, but we think the Zoning Administrator got it right and we support his decision; consequently, the Appellant's appeal should be rejected.

In the Appellants' 175-page meandering appeal, there are a number of misstatements of fact and I would like to take the time to respond to some of the more egregious claims/false statements below to help set the record straight:

False Statement: "The Resolution's use of (NB)MC 20.52.040 Limited Term Permits does not apply to this Application."

Response: NBMC Section 20.52.040 governs "Limited Term Permits," which include requests for uses of limited duration...that would be compatible with adjacent and surrounding uses when conducted in compliance with this section." As stated in your August 15, 2024 Zoning Administrator Staff Report, "the applicant requests a limited term permit...to allow an existing temporary outdoor dining patio to remain

for a limited one-year term....” Contrary to the Appellant’s unsupported allegation, NBMC Section 20.52.040 on its face is the correct section to

govern the review and approval of this limited term permit application. Additionally, Resolution No. ZA2024-045 has 42 separate conditions of approval that are specifically crafted by City Staff to ensure the approved temporary outdoor dining patio is compatible with adjacent and surrounding uses, including, but not limited to, a condition requiring the construction of a sound attenuation wall.

False Statement: “UP 1822 Approved in 1977 Prohibits: 1. Use of the 1,000 Square Foot Outside Patio, 2. Use after 9 pm, 3. Events On the Outside Patio and 4. Amplified Music - it is a Misrepresentation of Fact for the Resolution to State or Suggest Otherwise. Applicant Must Seek a Modification of UP 1822 through Planning Commission and City Council.”

Response: Admittedly, there is a lot to unpack with this false statement, but we will take each misrepresentation in turn. Let’s start with the approval of Use Permit No. 1822 (“UP 1822”), when approving UP 1822 the Planning Commission specifically found in Finding No. 8 that this approval will not be “detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing and working in the neighborhood or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City.” The Planning Commission placed 14 conditions of approval on UP 1822 to ensure the operation of the Five Crowns would be compatible with surrounding uses and neighbors. Notably absent from these 14 conditions of approval is a prohibition on the use of an outside patio, a restriction on any use after 9:00 p.m., the holding of events on the outside patio, or the use of amplified music. Again, there is no mention of the outside patio in any of these 14 conditions of approval. And contrary to the Appellant’s unsupported statement about the need to modify UP 1822 to allow temporary outdoor dining, the City routinely issues limited term permits to restaurants to allow temporary outdoor dining, especially in light of the on-going effects of Covid-19. Furthermore, the City’s practice is consistent with State Law (AB 1217), which extended rules allowing outdoor dining to mitigate Covid-19 impacts.

False Statement: “The Zoning Administrator’s Review here is limited and required findings cannot be made to support the Resolution.”

Response: This allegation is a bit confusing, but the Appellant seems to be implying that the Zoning Administrator did not have the authority to make a decision on this application and instead was required to refer the application to the Planning Commission. In support of this allegation, the Appellants cite to NBMC Section 20.52.040(F), which provides the Zoning Administrator discretion to refer applications to the Planning Commission. Of course, the very reference to NBMC Section 20.52.040(F) shows the error in this allegation. This section places discretion in the Zoning Administrator to make a decision or to refer an application to the Planning Commission. Contrary to the Appellant’s allegation, this section does not require the Zoning Administrator to refer an application to the Planning Commission. In fact, as I recall, the Appellants brought this argument up during one of the Zoning Administrator’s hearings (as you know we had two hearings on this application), and the Zoning Administrator explained why he was retaining jurisdiction over the application. As to the lack of required findings, a simple review of Resolution No.

ZA2024-045 dispels this allegation, this resolution is full of well thought out and reasoned findings that support the Zoning Administrator's approval of the application.

False Statement: "Because there is no valid existing use CEQA exemptions do not apply."

Response: The Zoning Administrator correctly relied upon a categorical Class 1 CEQA exemption found in Section 15301 of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3. This categorical exemption "consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use." The Five Crowns has been owned by my family and in continuous operation since April 14, 1965. The building that houses the Five Crowns has existed since the 1930s. There is no basis for the Appellant's to allege there is no valid existing use at the site. Again, the Five Crowns has been a valid existing use for almost 60 years, and it will be around for the next 60 years.

False Statement: "Applicant's Sound Study Fails to Meet Reasonable Standards - Mitigation is Wholly Inadequate and Essentially Unenforceable- Sound Mitigation Proposed Still Exceeds 55 DB - a Sound Permit is Required for each Separate Event."

Response: On our own initiative and at great expense, we commissioned a sound study by RK Engineering Group, Inc. to ensure our proposed activities on the temporary outdoor patio comply with the NBMC. This sound study, which has been shared with the City and the Appellants concluded that, "the project can comply with the City of Newport Beach residential noise standard of 55.0 dBA Leq and 75 dBA Lmax with the implementation of...recommended mitigation measures." We have agreed to the mitigation measures and we have committed to go beyond the mitigation measures if it is determined in the future more sound mitigation is required. Our sound engineers even took the time to discuss the concerns expressed by the Appellants with their sound engineer, MD Acoustics, and our sound engineer followed up those discussions by preparing a robust and thorough written response to MD Acoustic's concerns (this response has been shared with the City and the Appellants). It's worth noting that the Appellants (and/or their tenants) have previously complained about the alleged sound coming from the Five Crowns and a hearing was held on this very issue by City Hearing Officer Steven Graham Pacifico on August 31, 2023. In rejecting the sound complaint, Hearing Officer Pacifico found that the sound complaint "did originate with a neighbor, who may be a parent of a small child that is disturbed by the noise from the restaurant. The Hearing Officer is certainly empathetic to the trials of raising a newborn, including the difficulties in having consistent sleep when a newborn is awoken by noise, but the standard is not a subjective standard for the noise complaint ordinance." Here as in 2023, the City's noise standards are not subjective, they are objective. The RK Engineering Group's sound study lays out a pathway for operation of the temporary outdoor patio within the confines of the City's rules. We are committed to complying with those rules by adopting the mitigation measures laid out in the RK sound study, the Appellant's allegations that sound violations will occur is subjective opinion and not based upon objective fact.

Thank you for allowing us the opportunity to submit this letter in support of our pending application. We appreciate your good work on this project and we look forward to the upcoming Planning Commission hearing where it is our hope the Planning Commission agrees that the

Zoning Administrator and City Staff did their job by upholding the previous approval and rejecting the Appellant's appeal.

Sincerely,

A handwritten signature in dark ink, appearing to read 'RW', with a long horizontal flourish extending to the right.

Ryan Wilson
CEO and Shareholder
Lawry's Restaurants, Inc.