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December 4, 2024

Via Email Only:

Melinda Whelan, Assistant Planner
City of Newport Beach
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**Re: REPLY AND RESPONSE IN SUPPORT OF Notice of Appeal of:
RESOLUTION NO. ZA2024-045
A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE
CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A
LIMITED TERM PERMIT AND COASTAL DEVELOPMENT
PERMIT TO ALLOW A TEMPORARY OUTDOOR DINING AREA
WITH LIVE ENTERTAINMENT LOCATED AT 3801 EAST COAST
HIGHWAY (PA2023-0202)**

TO THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH

Dear Commissioners:

Appellants Ken and Kim Catanzarite and Herb and Harriet Melmon hereby submit their Reply in Support of their Appeal of RESOLUTION NO. ZA2024-045. This Reply responds to the City of Newport Beach Planning Department ("Planning") Staff Report and the letter from Five Crowns ("Applicant").

I At the outset Planning and Applicant Have No Rebuttal and Therefore Concede The Following Identified Appeal Errors Any One of Which Mandate Outright Denial of the Temporary Permit Application ("Application").

- A. Planning Fails to Rebut that Its Planner Oscar Orozco In July 2023 Rightly Rejected Applicant's Contentions that it had Rights to Operate Events and Amplified Sound under the 1977 UP 1822. Planning by Orozco Rejected the Contentions and Instructed Five Crowns to Seek Amendment of UP 1822 at Exhibit C. Applicant does not seek Amendment. (See Appeal at Errors 1-3 Pages 1-5.) To the contrary Planning wrongly suggests that Five Crowns has not been subject to conditions of approval that specifically address the expanded outdoor patio – when in fact Mr. Orozco's Email demonstrates the contrary - the question was addressed and decisively determined to be an Amendment was required. Importantly, such an amendment would raise the need for additional parking for the increased patron count as referenced below and the need for a parking study.

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In July 2023, the City of Newport Beach after objections by residents including Appellant of non-permitted operations in the Five Crowns outdoor courtyard Mr. Orozco on behalf of the City summarily rejected Ryan Wilson's contentions that Five Crowns "Events" and "Amplified Sound" were permitted under UP 1822 finding **modification and amendment of UP 1822 was in fact necessary**. As an aside that was always Five Crowns answer when it met many objections - a false statement that its years old permit allowed such activity. The full email following Mr. Orozco's research appears below:

From: Orozco, Oscar
Sent: July 12, 2023 10:38 AM
To: Ryan Wilson
Cc: Brian Stone; Munoz, Jonathan
Subject: RE: Five Crowns Garden Operations Research

Follow Up Flag: Flag for follow up

Flag Status: Completed

Hi Ryan,

Thank you for your patience on my research on the discussion of the existing code and existing use permit for Five Crowns 3801 Coast Hwy. (UP1078 & **UP1822**).

As approved the existing use permit approved the restaurant use and does not allow for private events. In addition, the private events would have required a use permit per the zoning code in the 70s when the use permit was approved. **In order for the private events to be an allowed use, you will need to amend the existing use permit. Please let me know if you have any questions or would like to discuss the process for amending the use permit.** I am more than happy to help.

As a reminder, please work with code Enforcement to address the noise related code enforcement notice letter you've received.

Regards,

Oscar Orozco

Assistant Planner

Community Development Department

Office: 949-644-3219

100 Civic Center Drive, First Floor Bay

B, Newport Beach, California 92660

Bold emphasis added, See page 5 of Exhibit E.

As shown in the appeal as well as below Appellant's research confirms this precise point. Appellant at Exhibits H and I obtained through Quest requests the ordinances in place in 1977 and confirmed that outdoor amplified noise required a permit in 1977 at the time of the UP 1822 approval. No such outdoor amplified noise permit was ever obtained by Five Crowns which today requires each event using amplified sound obtain a permit with equipment restrictions and requires use to stop at 8:00 p.m. (See Exhibit B.)

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Applicant has not sought the amendment to UP 1822. There is and remains no basis for a temporary permit. Applicant must proceed with an amendment application which will require a parking study which Five Crowns cannot meet.

- B. Because Applicant has continued to operate post-COVID With Events and Amplified Sound which, in violation of the UP 1822, Expanded the Number of Patrons (Up to 75 patron increase), Hours of Operation until 10 pm and with Amplified Sound - All Prohibited by ETUP (Ex. "D") Applicant Does Not Qualify for the Temporary Permit. (See Appeal at Error #4 page 7.)

Disqualification of Applicant Was and Is Mandated by MC 20.52.040 E. b. and c. Because of the Admitted Unpermitted Conduct and Appeal Error #3 Described Activities.

20.52.040 E. Application Filing, Processing, and Review.

...

b. **Application Before Operation.** A complete application shall be filed with the Department at least **thirty (30) days before the date that the proposed limited duration use is scheduled to take place.**

c. **No Similar Activities for Thirty (30) Days.** The same or very similar limited duration use **shall not be allowed to operate on the same lot for at least thirty (30) days following termination of the previous use.**

Tellingly, both Planning and Applicant concede this point by failing to address it directly at all. Instead, there is an oblique reference to "operating without the benefit of a permit" as if this is positive when it is not- it is a Code violation that should be cited today to operate without the benefit of a permit- a Code violation that disqualifies Applicant from even submitting its "Application" for a Temporary Permit. Appellant has asked Code Enforcement to cite Applicant but they have outright refused claiming that Applicant has a permit while acknowledging the permit was appealed.

As Mr. Orozco said in July 2023 described a I.A. above, Applicant must apply to amend UP 1822. However, it will not and cannot do so because its 150 patron count limit with 20-30 employees required a 30 parking space waiver to get to its 87 parking spaces in 1977. Adding 75 patrons to the base 150 patrons with 200 plus Events it wants to now conduct is a 50% increase in patron count and 20% increase in Net Public Space (from 4,800 to 5,800) clearly material and prohibited without amendment to UP 1822.

- C. Planning and Applicant Concede that ETUP Limited the use to No Patron Count Increase, Hours of Operation limited to 9:00 pm, No Amplified Sound and Meeting Parking Standards. No evidence is presented to justify a Patron Count Increase from the UP 1822 limit of 150 by 75 persons to 225 or 50% or even 50 patrons to 200 and 33%, increased Net Public Area by 20% added 1,000 square feet, amplified Sound and demonstrated parking for these added persons and employees. (See Appeal at Error #5, pages 7-9.) Not less than 120 parking spaces will be required for the increased patron count against a limited and substandard

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size 87 tandem and triple parked lot, clearly 33 spaces it does not have. *There is no parking study to support the Temporary Permit.*

We all recall the purpose of the ETUP relief provided as a result of COVID. The 6' distancing was required between patrons so logically restaurants needed more area to spread their limited number of patrons around. The use of the increased by roughly 1,000 square feet into the full Five Crowns patio was *not to increase patron count*- in fact to the contrary the limitations of patron count continued. In fact the Applicant's ETUP approval found certain "facts" and imposed conditions of approval as follows as set out at Exhibit "D":

1. The operation authorized by this Emergency Temporary Use Permit and Emergency Coastal Development Permit **is temporary and only valid during the emergency order established by Emergency Ordinance No. 2020-005;**

...
5. The proposed operation **does not constitute an increase in the overall occupant load beyond what the existing Use Permit [UP 1822] and/or Certificate of Occupancy allow;**

6. An **adequate supply of parking is available** to serve the subject business and surrounding uses.

...
19. The proposed operation **does not extend any hours of operation beyond those currently permitted by Use Permit No. UP1078 and UP1822**

IV. CONDITIONS OF APPROVAL.

1. Only that specifically described above and depicted in the attached site plan is authorized, subject to the conditions set forth below. Any additional changes require separate review and may necessitate separate authorization from the Director. The expanded dining area shall be in substantial conformance with the site plan and seating layout provided in Attachment No. CD 4.

2. As long as this Emergency Temporary Use Permit is in effect, all NBMC provisions and any restrictions set forth in an applicable discretionary permit regulating uses, nonconforming uses, development standards, **parking and permit procedures** that regulate the use and development of private or public property operations

...
4. The expanded outdoor dining patio **shall not exceed 1,350 square feet.**

...
6. The **existing allowed hours of operation of the establishment shall not be extended. The hours of operation of the area modified as part of this Emergency Temporary Use Permit shall not extend beyond 9 p.m.**

7. **The use of amplified sound within the temporary area shall be prohibited.**

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8. All dining tables shall be separated from other dining tables and/or waiting areas by a minimum distance of seven (7) feet to ensure proper social distancing is maintained.

Cites to parking at 6 as facts and 2 as conditions added, bold emphasis added.

In sum, the ETUP did not allow the Applicant to use the added 1,000 square feet to increase its patron count from 150 persons by 75 to 225, did not allow increased hours of operation, nor amplified sound nor did it facilitate a yet further waiver of UP 1822's parking limitations (none required because no increase in patron count). As set out at I.A. and B. COVID ETUP was allowed to let patrons spread out, not to increase patron count or materially alter operations. Yet in an acknowledged violation of ET 1822 that is exactly what Applicant did, all without authority or an amendment to UP 1822 which after neighbors objected Planning's Oscar Orozco called him/it out to stop in July 2023 cited above. Planning now wants to sanction illegal conduct of Applicant which he was warned about in July of 2023 to stop and reward Five Crowns with a Temporary Permit which he has brazenly continued to operate without a permit. This and City's refusal to cite Applicant is inexcusable.

D. There is no dispute that in 1977 UP 1822 Limited the Outdoor Patio Dining area to only 348 square feet while 1,350 square feet was available. That limitation was *purposeful to limit of Net Public Area calculations as well as the imposed limitation of 150 patrons compared to available parking of 87 spaces, which included a 30 space waiver*. Shockingly, the Application is materially incomplete because it fails to include a parking study to support a permit temporary or otherwise for the required offstreet parking for the 33 added cars the proposed operations will generate where both Hazel Drive and Poppy Street objectively have no on street parking available.

In 1977 the findings and conditions of UP 1822's carefully crafted limitations justified the 30 parking space waivers to arrive at 87 parking spaces as illustrated in page 2 of Exhibit G, an excerpt of Exhibit C of the Appeal. The Net Public Space coincided precisely with the 150 patron limitation as well as employees based upon such limited parking.

Planning and the Applicant without any foundation, argue there were private events in 1977 forward. However, those events were indoors related to a piano bar, not bands and a disk jockey, and certainly not outside where crowd noise and exterior amplified sound are prohibited and subject limiting permit requirements. (See Exhibit B, H and I.) After all the patio was restricted to use of only 348 square feet, 7 tables and 28 patrons.

Clearly, there was no mistake in 1977, the limitations of the Outdoor Patio use brought Net Public Area to 4,800 square feet. The available added 1,000 square feet of patio was not allowed due to off street parking limitations and the requested waiver of 30 required spaces, allowing 150 patrons. In other words Five Crowns could not have more space in the patio in 1977 because then and now it did not and does not have sufficient parking for more.

The rule of thumb for parking requirements is 1 space for 2.3 persons. That results in 75 persons/2.3 persons per space = 32.6 required spaces rounded to 33 *additional required spaces to accommodate off street parking for 75 guests or patrons at each Event*. Notably, being

conservative this assumes no increase in employee count which of course is unlikely requiring more off street spaces. At present numerous Applicant employees park on Hazel drive taking up resident and guest parking. Note as well that with 150 patrons and 20-30 employees as a base case the existing parking of 87 spaces is already committed and itself required a waiver of 30 spaces.

Remarkably, Planning deficiently did not require a parking study to support this 38% increase for the 33 spaces or a required combined 87+33 or 120 off street spaces. Existing limited parking appears at page 2 of Exhibit G demonstrating double and triple parked valet spaces, itself forcing patrons to both travel and park on city streets. Appellant's position is there can be no Temporary Permit without a parking study to prove the added 33 spaces are provided, which as is clear from Exhibit G is impossible, absent building a two story parking garage. From UP 1822 in the 1977 approval:

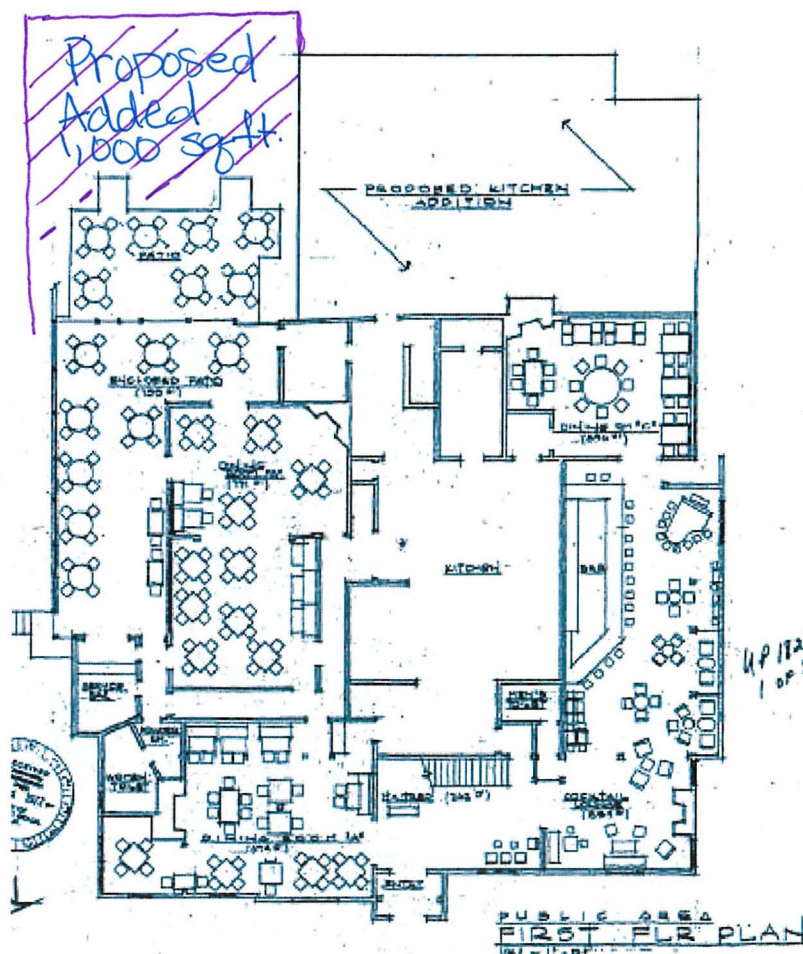
PUBLIC SPACE	
ROOM	SQ. FT.
PAINTED AREA	382
DINING RM 1st	674
DINING RM 2nd	771
DINING RM 3rd	218
COCKTAIL LOUNGE	684
ENCLOSURE RATIO	100
DINING RM 1st	600
DINING RM 2nd	160
TOTAL ROOM SPACE	4,482
PATIO	348
TOTAL OUTDOOR SPACE	4,830

Total - 4,800 sf

Add
Proposed 1,000 sf

Total Public Space 5,800

% Increase 20%



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Notwithstanding the above, Planning states “*Inconsistency with ETUP Conditions ... For example, temporary outdoor patios for restaurants were restricted to a closing time of 9:00 p.m. throughout the City and prohibited the use of live entertainment. However, in this case, unlike many other restaurants, the existing Use Permit (UP1822) is silent on hours of operation and live entertainment within the existing outdoor patio, so the general ETUP conditions **may have been more restrictive than the underlying use permit.**” *Underline and bold emphasis added.* As provided above this is not the case, there is no silence on the restrictions. To the contrary they were judiciously imposed allowing use of only the 348 square feet of outdoor patio, not the added 1,000 available which City concluded could not be used for restaurant operation for clear and unambiguous reasons:*

First, overall there was insufficient off street parking at only 87 spaces for more than 150 patrons and 20-30 staff. Allowing 348 square feet was therefore logically limited because of available parking. A parking study is required before any permit may be considered.

Second, there was no amplified sound permit obtained in 1977 or later precluding such use as discussed at I.E. below.

Without a parking study that demonstrates adequate parking for now 120 not 87 cars the Temporary Permit application must be denied.

- E. Applicant has never in its operations obtained the required Permit for Outdoor Sound-Amplifying Equipment under MC 10.26.050, 10.32.020 and 10.32.030 including predecessors since 1977. Moreover, the City’s Form Application prohibits amplified sound after 8:00 pm. (See Appeal Error #14, pages 14-16 and Exs. B, H and I.) Applicant continues to operate without a Sound Permit notwithstanding Appellant having raised the issue of the clear City Requirements which Planning now fails to address at all and erroneously claimed at hearing only applied to sound trucks, not true. Prior *indoor* events (piano bar is hardly an event) do not exempt the proposed outdoor events from strict compliance with the Municipal Code. Moreover, Planning previously claimed that other restaurants citing El Cholo and the Bungalow, were examples of outside amplified sound but that is also untrue since they operate under Temporary Permits that just like Applicant’s also prohibit amplified sound. In sum neither Planning nor Applicant demonstrated any Amplified Sound outside for a CDM restaurant. (See Exs. J and K.)

Planning has no rebuttal that a Sound permit is required limiting amplified sound with termination at 8 pm. Yet the proposed Temporary Permit purports to blanket approve amplified sound at the site until 10 pm with no permit and no operator and equipment restrictions simply generalized guidelines. Chapter 1-.26 Community Noise Control Section 1-.26.005 Declaration of Policy provides “A. In order to control unnecessary, excessive and annoying noise in the City of Newport Beach, it is declared to be the policy of the City to prohibit such noise generated from or by all sources as specified in this chapter.” Section **10.26.025 Exterior Noise Standards.**

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MC 10.26.050 Sound-Amplifying Equipment. Prohibits the use of:

"Loudspeakers, sound amplifiers, public address systems or similar devices used to amplify sounds shall be subject to the provisions of Chapter 10.32 of this title. Such sound-amplifying equipment shall not be construed to include electronic devices, including but not limited to, radios, tape players, tape recorders, compact disc players, electric keyboards, music synthesizers, record players or televisions, which are designed and operated for personal use, or used entirely within a building and are not designed or used to convey the human voice, music or any other sound to an audience outside such building, ... "

Underline and bold emphasis added, See Ex. I.

Planning suggests, without any documentary or factual support, that perhaps Five Crowns could have had Events and Amplified Sound earlier than 2020. The truth is, in order to have amplified sound outdoors since 1975 Five Crowns needed a sound permit issued as per the Municipal Code - no exceptions or exemptions are set out that would apply. Previously, the practical impact of 348 square feet is clearly self-limiting 7 tables and 4 persons total 28 persons total which is within the 150 patrons - the balance of the outdoor patio was not to be used - the space existed but was not allowed to be put into use- the intent cannot be more clear. Moreover, since 1975 outdoor Amplified Sound has been prohibited subject to the very same type of permitting requirements since 2020. Appellant's Exhibits H and I make clear, ordinances in effect in 1977 were obtained and MC Section 10.32.030 clearly provided:

MC10.32.050

...

D. ISSUANCE BY CITY MANAGER. The City Manager is authorized to issue a revocable permit for the use of sound amplifying equipment in connection with any special event which will take place in a commercial district when it is determined that the effects of such use will not unreasonably disturb the health, safety, and welfare of any person or persons residing within three hundred (300) feet of the area where the special event is to take place. (Ord. 1645 § 2, 1975: Ord. 1084 (part), 1964: 1948 Code § 4504).

Recognizing this as a major community concern, the City of Newport Beach has had these same ordinances since 1975 approximately 50 years of such restrictions requiring separate permits for good reason. Now Planning wants to exempt or excuse Applicant from the sound permit requirement. However, such permitting is well conceived and addresses each emitter [the disk jockey] not the event sponsor [Five Crowns]. The reason for permits cannot be more clear. The City Permit expressly provides a cutoff time of 8:00 p.m., clearly logical for sound in a residential area with young children going to sleep at 8-9 pm a mere 40 feet away. However, such permits require that every Event band or disk jockey obtain a permit that limits the sound emanating from his/her/its equipment. That will not be the case with Five Crowns, it proposes 200 Events a year with up to 74 patrons because 75 or more is limited to the weekends and holidays. Clearly the Ordinance in 1977 limited sound to those living within 300 feet, 352 Hazel is 40 feet, 344 Hazel is 70 feet, 354 is 140 feet and other residents are within the 300 feet.

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The Temporary Permit must also be denied since it cannot be an end around the separate permit requirements which restrict the amplified sound to 8:00 pm.

- F. El Cholo and the Bungalow, held out by Planning at both hearings and even now as justifying increased hours and Amplified Sound upon examination of their ETUPs confirms they, exactly like the Five Crowns ETUP had the same prohibitions, no increase in patron count, no amplified sound, limitation of 9:00 pm and adequate parking.

Appellant obtained the ETUPs for both El Cholo and the Bungalow through public records request. Exhibits J and K are the Limited Term Permits and both clearly provide, contrary to Planning's representation that there shall be "IV. CONDITIONS OF APPROVAL... 4. The use of amplified sound within the temporary area shall be prohibited." Of course the same conditions appear in Five Crowns ETUP as well. (See Exhibit E, J and K.)

II. RESPONSE TO STAFF REPORT

- A. Planning in describing Background Misstates the Historical Record conflating a piano bar inside the restaurant with large 75 person events outside with amplified music until 10 pm.

At "OVERVIEW 1. Background ... the approved plans for UP1822 included a piano bar consistent with the historical use of the restaurant and a 348-square-foot outdoor dining patio adjacent to an exterior garden area. The interior of the restaurant and the existing outdoor patio have historically been used for private events on the weekends, comparable to typical operations of similar types of restaurants."

Appellant Response: The Outdoor Patio area approved in 1977 was by design limited to 348 Square Feet accommodating 7 tables and 28 patrons to a limit of 150 total patrons, far too small for anything remotely described as the 75 person "Events" with "Amplified Music" Applicant now wants to promote. Attached as Exhibit G are 2 pages of the highlighted floor plan from 1977 (excerpted from Ex. C). Five Crowns proposes to add 75 or more persons in 1,000 added square feet. Recall that the total public space was limited to 4,800 square feet with 87 parking spaces served by a valet lot. The 4800 square feet accommodates 150 patrons and 20-30 employees and that required a 30 parking space waiver.

There is nothing historically that would justify departure from a required parking study before a Temporary Permit approval to support a 75 patron and related support employee increase of 50%. As above, *33 added spaces are required which Applicant does not have.*

- B. Planning failed to require a parking study to address the added 75 plus patrons and related employees coming to the proposed Five Crowns Events. Hazel and Poppy by simple observation and experience make clear there is no parking available on street and patrons street parking will displace residents and their guests as well as pose a safety problem with inexperienced drivers in a narrow travel way.

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Planning utterly fails to address the adequacy of parking. Applicant does the same. They do so because they know Five Crowns cannot meet any parking study requirement. In this case Hazel drive is a 20' curb-to-curb width one way street with parking on one side (8' parking and 12' travel way). Poppy is 25' curb-to-curb width street with parking on one side and two way traffic (8' parking and 17' travel way). Fairly stated Poppy is a problem street today with two way traffic in a narrow travel way which is clearly substandard. Anyone driving Hazel and Poppy knows there is simply no on street parking for this added burden placed by Applicant. Yet, Planning inexplicably did not require parking study. As above the rule of thumb is one parking space per 2.3 guests so a 75 guest event will require 33 parking spaces. These would be additional guests so there is simply no off street parking available in the 87 space lot for these added 33 vehicles. Applicant's lot is full with its 150 patrons and 20-30 employees. We presently have difficulty parking on Hazel because Five Crowns employees park multiple cars there and do nothing to discourage that use to save space in their lot.

Moreover, the parking lot itself is substandard today with 9' spaces (midline to midline) and double and triple parking - converting to 10' spaces with the same layout will result in 72 spaces- Five Crowns will not be able to amend UP1822 due to inadequate parking for 150 patrons and 30 employees let alone this proposed increase. A copy of the parking plan is set out at Exhibit G showing 29 spaces that are double parked and 8 triple parked to get to a total of 82 spaces. A waiver of 30 spaces was allowed in 1977 - none is addressed here nor could a further waiver be justified - certainly not without a competent and independent parking study which Applicant has not submitted for critical review.

Without an independent parking study subjected to critical analysis and review by Appellant's experts demonstrating there is adequate parking off street and which does not involve patrons or employees parking on Hazel or Poppy, the application must be denied.

- C. The Temporary Permit Places the burden of Policing Compliance with Light, Noise and Parking Limitations Entirely on the residents with no consequences. Code Enforcement has refused to issue citations to Applicant claiming that it has a permit when it does not and imposed testing limitations that are unreasonable.

Appellants' Expert Report #2 (See Appeal Error #13 pages 13-14 and Ex. F) from Mike Dickerson, INCE and Claire Pincock, INCE of MD Acoustics ("Dickerson") offered opinions regarding the updated 8/5/2024 RK Engineering Group Inc. ("RK") revised study of sound mitigation. Dickerson's overall opinion which the Resolution erroneously ignored follows:

"In our opinion, the impact of the live amplified music for events will still materially exceed the City of Newport Beach's 55 dBA daytime and 50 dBA nighttime noise standard as outlined in Chapter 10.26." This is demonstrated at the modeling results shown at Figure 3 Crowd + Single Speaker Noise prediction showing over 55 Db at impact locations 1-4 with the send and their floors at 352 Hazel severely impacted. RK's modeling did not include crowd noise and placed the amplification equipment in an area not historically used for Events as clearly shown in Figure 3. *Underline emphasis added.*

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Planning suggests only that the noise limitations will not result in a violation of the noise standards because of alleged limitations imposed under the RK modeling for Five Crowns. The problem with this is stated above by Dickerson, the testing failed to incorporate “crowd noise” and placed the speaker in an area away from where such speakers are placed in actual practice. Just adding crowd noise resulted in a violation in Dickerson’s model when RK reported none. Clearly, one is not having an event without a crowd, hence crowd noise by any objective standard had to be included when it selectively was not by RK. Moreover, having Five Crowns monitor with its expert RK is akin to the fox guarding the hen house. These are the same folks who operated without a permit including after the July 2023 Orozco notice letter they could not do so, and they continue to operate without any concern today.

Any approval must include independent third party monitoring measuring results independently and reporting to all interested parties the objective results including at 352 street level and on its third floor patio as well as other locations on Hazel Drive. Three readings of over the limits should result in immediate termination of the Temporary Permit requiring re-application after 30 days of no activity.

- D. Planning informs that the Applicant has “...realized a market for their operation to provide the expanded outdoor dining area with regular private events commonly found at these types of restaurants.” That is not true. As above El Cholo and the Bungalow do not have Events and Amplified Music outside. There is simply no example of such Events and Amplified Sound in Corona del Mar, we are all too close together for this type of activity.

To justify the Temporary Permit in this manner is improper. Obviously, Applicant would not undertake the activity if it did not involve a viable market. The problem here is 200 plus such live events with crowd noise, amplified sound, flashing lights, traffic and parking congestion comes at the price of the residents and community. The price is their quiet enjoyment.

- E. Applicant’s requested closing time of 10:00 p.m. and the use of live Amplified Sound is not justified on these facts. Moreover, Applicant cannot have Amplified Sounds after 8:00 p.m. and a separate permit for each event operator using sound equipment. A trial period is unwarranted for the reasons stated above.

Once again imposing upon the residents in vicinity of Five Crowns is improper. The purpose of an application and city review is to be certain the residents are not disturbed in their quiet enjoyment. Planning is turning the residents into guinea pigs to monitor whether they complain enough it appears rather than exercise controls over Five Crowns to not approve the application in the first place. We add that Orozco got it correct in July 2023 and why we are now engaged in this pointless and wasteful exercise remains to be seen.

- F. The Complaint History misrepresents the true facts because until July 2023 Five Crowns ignored residents complaints including by Appellants claiming it had a permit. After Appellants confirmed the permit did not allow the use Five Crowns claimed it did until it applied for the Temporary Permit no doubt after the Orozco denial letter. Code Enforcement has been uncooperative in the enforcement

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refusing to come to 352 Hazel unless they can take sound measurements from the third floor when the sound was 75 db on the front porch at the entry.

The residents are exhausted with complaining without any action. Code Enforcement refused to cite Five Crowns knowing it did not have a permit. Then Code Enforcement refused to take sound measurements from the front porch of 352 Hazel arguing that they must go through the house to the third floor deck. Preposterous, and nothing more than pushing off complaints which are now used in an effort to justify a Temporary Permit that is unjustifiable. There is no justification for Code Enforcement's refusal to take the measurements and cite Five Crowns. That is the reason complaint are down - because the City is unresponsive to the residents.

- G. Planning's "*Use of Expanded Patio Area - Hours, and Noise from Events and Live Entertainment* Private events are a common ancillary use of a restaurant such as Five Crowns. Use Permit No. UP1822 was approved in 1977 and did not condition the hours of operation or use of the patio for private events or live music." is untrue. UP1822 only involved 348 square feet and 28 patrons and there was never a Sound Permit obtained, as required under the applicable Municipal Code.

This is not true for the reasons stated above.

- H. Planning's "As previously stated, the expanded patio **area used for the private events was approved by the original ETUP**, and the Limited Term Permit is a request to allow the same expanded patio area for a temporary period." is also untrue in context. The ETUP made clear, no increase in patron numbers, no amplified sound, closing at 9:00 pm and a because no increase in patrons adequate parking. Nothing in the ETUP allows an increase in patrons, hours of operation or use of amplified sound.

Again this is not true for the reasons stated above.

- I. The proposed Design Features are inadequate because they fail to address Appellants superior and comprehensive expert report which provided reasons for the inadequacy of the Updated Noise Report which rigged its study by omitting crowd noise and placing the speaker in an area not consistent with historical use. The Dickerson study concludes that the mitigation, particularly the 3rd floor deck of 352 as well as the interior of the building will be impacted by sound in excess of the Municipal Code allowances for residential areas. Moreover, the Design Features do not mitigate the straight 'line of sight' sound travel over the wall and striking the second and third floors of 352 Hazel.

See also Exhibit F.

- J. Planning has simply picked the RK Updated Noise Report and while wholly contradicted and discredited by the objective testing analysis with the addition of crowd noise and proper placement of speakers in the Dickerson report and

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opinions. This is wholly improper, if there is a dispute then the proper procedure would be for the City to engage at Applicant's expense a third party sound assessment after setting out the real live expected conditions for a third opinion. It did not do so and just rushed to approve the Temporary Permit. Planning simply accepted the RK report because Five Crowns agreed to indemnify the City wholly if it approved the Temporary Permit. This raises a serious question as to the duties of the City to fairly evaluate such matters. The process used was wholly unfair and biased in favor of Applicant.

See also Exhibit F.

- K. Planning referred to its "Environmental Review The Class 1 exemption includes the ... permitting... of existing ... private structures, facilities ... involving negligible or no expansion of use." Appellant has demonstrated that the Class 1 exemption if not met because the Five Crowns Net Public Area is increased to 5,800 square feet a 21% increase in space and a 50% increase in patron count from 150 to 225 patrons all without any parking study for where the 33 cars will be parked off street as there is no parking on Hazel or Poppy.

For the reasons stated above Applicant proposes a 50% increase in patron count with 200 Events a year. Clearly this does not meet the "negligible or no expansion of use" standard and the exemption as such does not apply.

- L. Planning's claim that the residences on Hazel Drive are mixed use in an effort to justify the Temporary Permit is wholly misplaced. The Applicant must comply with the Municipal Code and fails to support its Temporary Permit request.

Appellate clearly demonstrates that this entire proposed expansion is since COVID and efforts to act as if the residents moved into a neighborhood with this ongoing is both baseless and insulting.

- J. Applicant's reference to a hearing before Steven Graham Pacifico simply shows the lack of attention City's staff has devoted to supporting its citations. Appellant's review of the available record of the hearing found that the City failed to authenticate its testing by calling the employee to administered the test to verify the results. Appellant knows the test results were over limit because we took the same readings. The City failed to offer a competent advocate and witness resulting in a loss that should never have occurred.

Applicant brought a lawyer and the City came unprepared. The result demonstrates the City's lack of attention it appears when it comes to citing Five Crowns.

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City of Newport Beach
December 4, 2024
Page 14

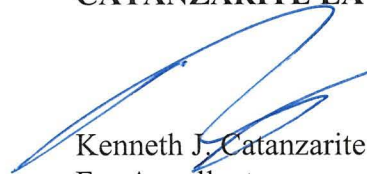
III CONCLUSION

For all the reasons stated in this appeal, the Applicant's request for a Temporary Permit must be denied. If the Planning Commission is inclined to consider a temporary permit then the same should be conditioned upon a cessation of operations until an independent traffic study justifying the increased parking requirement for the expanded Events with instructions that no on-street parking for patrons or staff be considered, a limitation that amplified sound must stop at 8:00 pm, that operations in the courtyard may continue without amplified sound until 9:00 p.m., that sound mitigation meet the observed conditions of the Dickerson opinions, that an independent monitor be engaged by the City to continuously monitor and make available to Appellant the sound activity at street level 352 Hazel and the third floor deck and in the event of three excess limit recordings the permit is terminated subject to an appellate procedure, no use of the pedestrian gate on Hazel and it be sealed, and that the temporary permit ends June 30, 2025 with no extensions because Applicant must file application to amend UP 1822.

Appellant reserves the right to supplement this submission through close of hearing.

Very truly yours,

CATANZARITE LAW CORPORATION



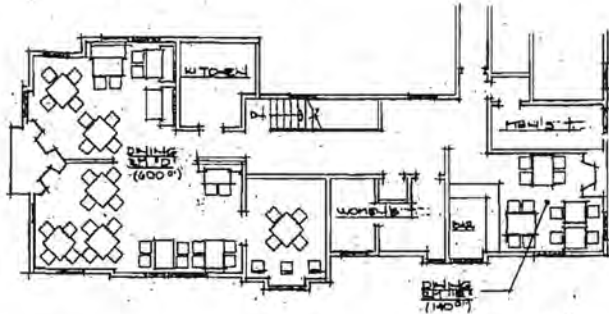
Kenneth J. Catanzarite
For Appellants

Attachments/Enclosures: as indicated.

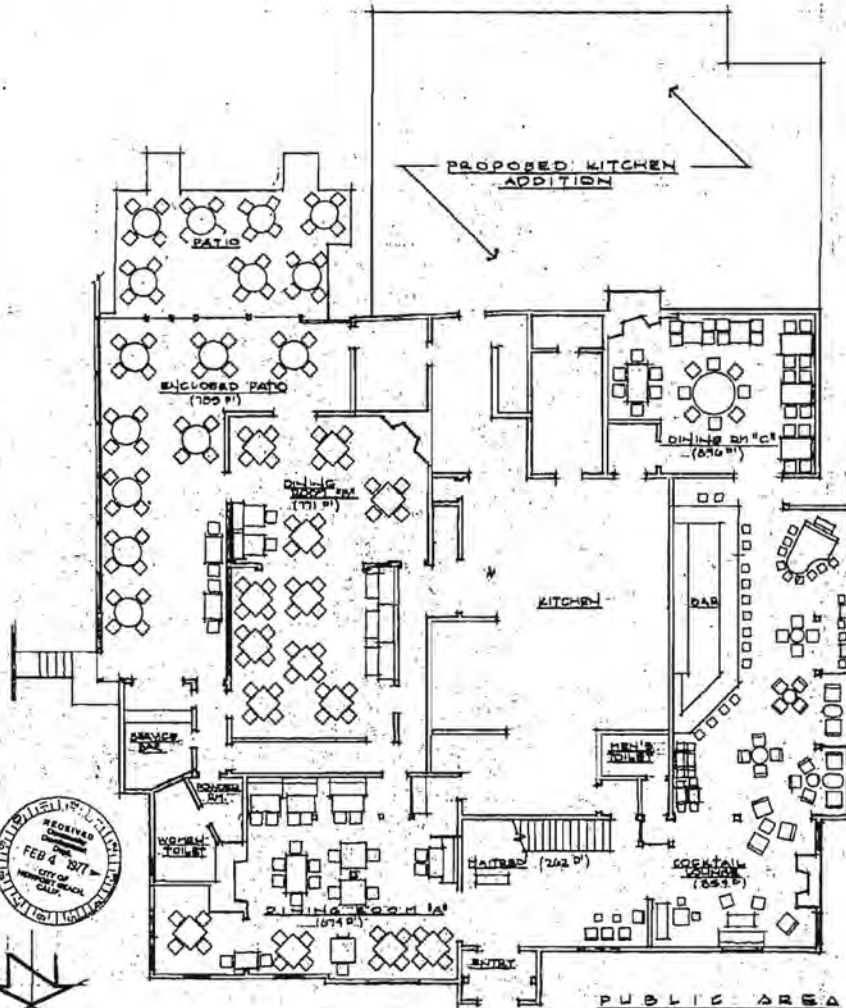
EXHIBIT "G"

PUBLIC SPACE

ROOM	SQ. FT.
HANDS AREA	202
DINING RM. 'A'	674
DINING RM. 'B'	171
DINING RM. 'C'	246
COCKTAIL LOUNGE	854
ENCLOSED PATIO	155
DINING RM. 'D'	1800
DINING RM. 'E'	140
TOTAL INDOOR SPACE	4,452
PATIO	348
TOTAL OUTDOOR SPACE	348



**PUBLIC AREA
SECOND FLR PLAN**
 Vol. 11-0-0



**PUBLIC AREA
FIRST FLR PLAN**
 Vol. 11-0-0

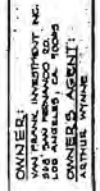
**FIVE CROWNS RESTAURANT
KITCHEN ADDITION**
 3801 E. PACIFIC COAST HWY - CORONA DEL MAR

**WILLIS K. HUTCHASON A.I.A.
ARCHITECT & ASSOCIATES**
 2338 MOUNTAIN AVENUE
 LOS ANGELES, CALIF. 90029
 213-458-8171

PP-1

**JOB 7520
DATE 1-20-77**

*UP 1822
1 OF 5*

[illegible]

4P 1822
205

EXIST HOME

QUEST. 1 PARKING LOT
SITE PLAN

City of Newport Beach

[illegible]

EXHIBIT “H”



November 19, 2024

Delivery Via Quest for Ticket No. 599397

Kenneth Catanzarite

**RE: CALIFORNIA PUBLIC RECORDS ACT REQUEST DATED NOVEMBER 12,
2024 NOTICE OF DETERMINATION**

The City of Newport Beach ("City") has received and reviewed your California Public Records Act request dated November 12, 2024. This response will serve as the City's notice of determination as to whether the request in whole or part seeks the production of non-exempt, non-privileged, disclosable public records in the possession of the City, pursuant to the California Public Records Act ("Act") (Gov. Code §§ 7920.000 *et seq.*).

Based on your request for:

Newport Beach Municipal Code Provisions in effect on March 1, 1977
concerning:

1. Outdoor amplified sound noise restrictions where adjacent to residential area.
 2. Outdoor restaurant closing time restrictions where adjacent to residential area.
- if there is a searchable code would appreciate a link to the Municipal Code in effect at that time.

All non-exempt, non-privileged, disclosable public records in possession of the City have been gathered and are attached to this notice hereto.

Additionally, please note that Ordinances, which are required to make changes to the City's Municipal Code, can be viewed and searched on the City's website. To aid in your research, I have located the below ordinances:

<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=35332&dbid=0&repo=CNB>

<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=35310&dbid=0&repo=CNB>

<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=35345&dbid=0&repo=CNB>

<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=35379&dbid=0&repo=CNB>

<https://ecms.newportbeachca.gov/WEB/DocView.aspx?id=35408&dbid=0&repo=CNB>

Pursuant to the Public Records Act, the City shall make the records promptly available to any person, electronically and free of charge, or upon payment of fees covering direct

Kenneth Catanzarite
November 19, 2024
Page 2

costs of duplication, or a statutory fee if applicable. The reimbursable costs associated with your request are calculated as follows: \$0.03 per page for photocopying records and/or \$0.49 per CD/DVD.

If you have any further questions, please contact this office.

Sincerely,

A handwritten signature in blue ink, reading "Cassandra Hawks", is written over a horizontal line.

Cassandra Hawks
Records Specialist

EXHIBIT “I”

SOUND AMPLIFYING EQUIPMENT 10.12.030

- (a) Name and home address of the applicant.
- (b) Business address of the applicant.
- (c) If the application is for the use of a sound truck, it shall contain the names of the legal and registered owners of the sound truck, and the year, make, and license number of the truck.
- (d) The address or location where the sound amplifying equipment is to be used; or, if the application is for a sound truck, then a general statement as to the section or sections of the City in which the sound truck will be used.
- (e) The name and address of the person who will have direct charge of the operation of the sound amplifying equipment or sound truck.
- (f) The purpose for which the sound amplifying equipment or sound truck will be used.
- (g) The proposed hours of operation of the sound amplifying system or sound truck.
- (h) The number of days of proposed operation of the sound amplifying equipment or sound truck.
- (i) A general description of the sound amplifying equipment to be used.
- (j) The maximum sound producing power of the sound amplifying equipment to be used, including:
 - 1. The wattage to be used.
 - 2. The volume in decibels of the sound which shall be produced.
 - 3. The approximate maximum distance sound will be projected from the sound amplifying equipment. (Ord. 1084 (part), 1964; 1949 Code § 4503).

10.12.050 Issuance of Permit. A. CITY COUNCIL ACTION. Upon receiving an application for a permit for the use of sound amplifying equipment or a sound truck for noncommercial purposes, the City Clerk shall place the matter on the agenda of the next regular meeting of the City Council following the filing of the application for consideration and shall notify the applicant of the date by registered mail, postage prepaid.

B. ISSUANCE. At the time of consideration, the City Council shall grant the applicant a revocable, nontransferable permit valid for a period not to exceed six (6) months, if it appears from the information contained in the application and such additional information as may be presented to the City Council that the proposed use of the sound amplifying equipment or sound truck is for a noncommercial purpose and that the proposed use will comply with the regulations contained in Section 10.12.060.

C. SPECIFICATION OF HOURS. In granting such permit, the City Council shall specify the hours during which the sound amplifying equipment or sound truck may be used after considering the needs of the applicant, the area or areas in which the sound will be emitted, and the effects of such use on the public health, safety and welfare.

D. ISSUANCE BY CITY MANAGER. The City Manager is authorized

10.32.055-10.32.070 OFFENSES AND NUISANCES

to issue a revocable permit for the use of sound amplifying equipment in connection with any special event which will take place in a commercial district when it is determined that the effects of such use will not unreasonably disturb the health, safety, and welfare of any person or persons residing within three hundred (300) feet of the area where the special event is to take place. (Ord. 1645 § 2, 1975; Ord. 1084 (part), 1964; 1949 Code § 4504).

10.32.055 Sound Amplification Equipment Prohibited on Public Beaches. A. Policy Statement.

The City Council makes the following findings:

(1) The public beaches adjacent to the waters of the Pacific Ocean and Newport Harbor are a unique recreational resource which the City holds in trust under a legislative grant from the State of California.

(2) These public beaches are intensively used for swimming, surfing and sunbathing by a diverse group of people which includes City residents, tourists and persons residing throughout Orange County and Southern California.

(3) The use of sound trucks and sound amplification equipment by groups and organizations who wish to hold concerts, meetings or public assemblies on or near these public beaches is disturbing to the vast majority of the people using the beaches for recreation and to local residents whose homes are in close proximity to the beaches.

B. No permit shall be issued for and no person shall use any sound truck or sound amplification equipment on any public beach. (Ord. 1691 § 1, 1976; Ord. 1361 § 1, 1970).

10.32.060 Regulations for Use. The noncommercial use of sound amplifying equipment and sound trucks in the City shall be subject to the following regulations:

(a) The only sounds permitted are music and human speech.
(b) Operations shall not be permitted on Sundays and legal holidays.
(c) Sound shall not be emitted within 100 yards of hospitals, churches, and the City Hall.

(d) The human speech and music amplified shall not be profane, lewd or slanderous.

(e) The volume of sound shall be controlled so that it will not be audible for a distance in excess of 150 feet from the sound amplifying equipment or sound truck, and so that the volume is not unreasonably loud, raucous, jarring, disturbing or a nuisance to persons within the range of audibility. (Ord. 1084 (part), 1964; 1949 Code § 4505).

10.32.070 Possession and Display of Permit. Any person operating the sound amplifying equipment or sound truck shall keep the permit granted in

SOUND AMPLIFYING EQUIPMENT

10.32.080-10.32.090

his possession at all times while operating the equipment or sound truck and shall promptly display the permit to any police officer of the City upon request. (Ord. 1084 (part), 1964; 1949 Code § 4506).

10.32.080 Revocation of Permit. The City Manager may revoke any permit issued pursuant to this chapter on any of the following grounds:

(a) The sound amplifying equipment or sound truck has been used contrary to the regulations contained in Section 10.32.060 or the terms of the permit.

(b) The applicant has made a misrepresentation of a material fact in the application.

(c) The sound amplifying equipment or sound truck is being used for the purpose of commercial advertising.

Notice of the revocation shall be given to the permit holder in writing. If the notice is personally served upon the permit holder, it shall be effective immediately upon service. If the notice of revocation is delivered by mailing, it shall be effective on the third day following the deposit of the notice in the United States mail. The permit holder may appeal the action of the City Manager to the City Council by filing a notice of appeal with the City Clerk within ten (10) days after the effective date of the revocation. If a notice of appeal is not filed within the ten-day period, the revocation shall become final. (Ord. 1084 (part), 1964; 1949 Code § 4507).

10.32.090 Exceptions. The provisions of this Chapter shall not apply to the use of sound trucks or sound amplifying equipment in conducting the following activities:

(a) Sporting and recreational activities conducted on public school property or in public parks when authorized by the public agency having control of such public park or school property.

(b) Water sport activities conducted on the waters of Newport Harbor which are conducted under the authority of any applicable City or Orange County Harbor District regulations.

(c) Activities conducted on property of churches or private clubs where the sound is confined within the boundaries of such property.

(d) Licensed sightseeing or excursion vessels operating on the waters of Newport Harbor.

(e) Public officials or employees while acting in the performance of their duties.

(f) Activities conducted within the boundaries of City licensed amusement centers where the sound is confined within the boundaries of such amusement centers. (Ord. 1361 § 2, 1970; Ord. 1084 (part), 1964; 1949 Code § 4502).

EXHIBIT “J”



CITY OF NEWPORT BEACH ZONING ADMINISTRATOR STAFF REPORT

November 10, 2021
Agenda Item No. 8

SUBJECT: The Bungalow Restaurant LLC (PA2021-191)
▪ Limited Term Permit No. XP2021-012
▪ Coastal Development Permit No. CD2021-041

SITE LOCATION: 2441 East Coast Highway

APPLICANT: The Bungalow Restaurant LLC

OWNER: 2443 East Coast Highway LLC

PLANNER: Joselyn Perez, Assistant Planner
949-644-3312, jperez@newportbeachca.gov

LAND USE AND ZONING

- **General Plan Land Use Plan Category:** CC (Corridor Commercial)
- **Zoning District:** CC (Commercial Corridor)
- **Coastal Land Use Plan Category:** CC-B (Corridor Commercial) – (0.0 - 0.75 FAR)
- **Coastal Zoning District:** CC (Commercial Corridor)

PROJECT SUMMARY

A limited term permit and coastal development permit to allow a 550-square-foot maximum expanded dining area for up to a one-year term (January 1, 2022 through December 31, 2022). An expanded outdoor dining area was previously authorized for The Bungalow Restaurant through Emergency Temporary Use Permit No. UP2020-065 (PA2020-144).

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) and Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment; and
- 3) Adopt Draft Zoning Administrator Resolution No. __ approving Limited Term Permit No. XP2021-012 and Coastal Development Permit No. CD2021-041 (Attachment No. ZA 1).

The Bungalow Restaurant LLC (PA2021-191)
Zoning Administrator, November 10, 2021
Page 2

DISCUSSION

- The applicant requests a limited term and coastal development permit to allow a 550-square-foot maximum expanded dining area for up to a one-year term (January 1, 2022 through December 31, 2022). The existing temporary outdoor dining area was originally authorized through Emergency Temporary Use Permit No. UP2020-065 (PA2020-144). Emergency Temporary Use Permits were issued by the Community Development Director in response to the COVID-19 pandemic and pursuant to Emergency Ordinance No. 2020-005
- The temporarily expanded outdoor dining area is located at the rear of the restaurant, within an existing on-site surface parking lot, and displaces a maximum of four parking stalls. The outdoor dining area is covered by tents and separated from vehicle traffic by substantial barriers.
- The Bungalow Restaurant provides only eight on-site parking spaces for patrons. Most of the parking for the restaurant is provided through use of off-site parking spaces as authorized by Use Permit No. UP1778. The temporary loss of four on-site parking stalls is not anticipated to negatively impact circulation, as there is adequate parking available near the restaurant. The locations of the off-site parking lots are shown on the Vicinity Map (Attachment No. ZA 2).
- The nearest residential use is located approximately 55 feet to the west of the property, across an alley. The temporarily expanded outdoor dining area has been conditioned to close by 10 p.m. (consistent with the closing time of the restaurant). No late hours are proposed (beyond 11 p.m.).
- The project has been reviewed by and is acceptable to the Building Division, Fire & Life Safety Division, and the Public Works Department. Conditions of Approval are included in the Draft Resolution (Attachment No. ZA 1) to help ensure this operation is not detrimental to the surrounding uses.
- The City is also undergoing an analysis of parking rates including rates related to food service and outdoor dining. Findings and recommendations of this study are anticipated by December 2021 and may be incorporated in a future use permit amendment for outdoor dining areas.

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 and Section 15303 under Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.

The Bungalow Restaurant LLC (PA2021-191)
Zoning Administrator, November 10, 2021
Page 3

The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The Class 3 exemption includes a store, motel, office, restaurant, or similar structure not involving the use of significant amounts of hazardous substances, not exceeding 2,500 square feet in floor area or 10,000 square feet in floor area in urbanized areas zoned for such use. The proposed scope of work is a maximum 550-square-foot expanded outdoor dining patio at an existing restaurant for a maximum of a one-year limited term and qualifies under the parameters of the Class 1 and Class 3 exemptions. There are no known exceptions listed in CEQA Guidelines Section 15300.2 that would invalidate the use of the Class 3 Exemption.

PUBLIC NOTICE

Notice of this application was published in the Daily Pilot, mailed to all owners and residential occupants 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. Administrative procedures for appeals are provided in the Newport Beach Municipal Code Chapter 20.64 and 21.64. A fee is not required to appeal any final action on a coastal development permit to the Planning Commission. The project site is not located within the appeal area of the coastal zone; therefore, final action by the City may not be appealed to the California Coastal Commission. For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

Prepared by:



Joselyn Perez
Assistant Planner

BMZ/jp

Attachments: ZA 1 Draft Resolution
 ZA 2 Vicinity Map

The Bungalow Restaurant LLC (PA2021-191)
Zoning Administrator, November 10, 2021
Page 4

- ZA 3 Emergency Temporary Use Permit Action Letter
- ZA 4 SCE Clearance Decals
- ZA 5 Project Plans

Attachment No. ZA 1

Draft Resolution

RESOLUTION NO. ZA2021-###

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING LIMITED TERM PERMIT NO. XP2021-012 AND COASTAL DEVELOPMENT PERMIT NO. CD2021-041 TO ALLOW A TEMPORARILY EXPANDED OUTDOOR DINING AREA LOCATED AT 2441 EAST COAST HIGHWAY (PA2021-191)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by The Bungalow Restaurant LLC (Applicant), with respect to property located at 2441 East Coast Highway, and legally described as Lot 5 and 6 of Block B, Tract No. 470 in the City of Newport Beach, Orange County, California, requesting approval of a limited term permit and a coastal development permit.
2. The Applicant requests a limited term and coastal development permit to allow a 550-square-foot maximum expanded dining area for up to a one (1)-year term (January 1, 2022 through December 31, 2022). The expanded dining area was previously authorized through Emergency Temporary Use Permit No. UP2020-065 (PA2020-144).
3. The subject property is categorized CC (Corridor Commercial) by the General Plan Land Use Element and is located within the CC (Commercial Corridor) Zoning District.
4. The subject property is located within the coastal zone. The Coastal Land Use Plan category is CC-B (Corridor Commercial – 0.0 - 0.75 FAR) and it is located within the CC (Commercial Corridor) Coastal Zoning district.
5. A public hearing was held on November 10, 2021, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) and Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The Class 3 exemption includes a store, motel, office, restaurant, or similar structure not

involving the use of significant amounts of hazardous substances, not exceeding 2,500 square feet in floor area or 10,000 square feet in floor area in urbanized areas zoned for such use. The proposed scope of work is a maximum 550-square-foot expanded outdoor dining patio at an existing restaurant for up to a one (1)-year limited term and qualifies under the parameters of the Class 1 and Class 3 exemptions.

3. The exceptions to the Class 3 Exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

Limited Term Permit

In accordance with Section 20.52.040(G) (Limited Term Permits) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

- A. *The operation of the limited duration use at the location proposed and within the time period specified would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the requested limited duration use;*

Facts in Support of Finding:

1. The limited term permit will allow an extended and expanded outdoor dining patio for up to a one (1)-year term while the City reconsiders its parking requirements related to food service (i.e., restaurant) uses. The existing restaurant is authorized through Use Permit No. UP1778 and its subsequent amendments and allows 1,596 square feet of indoor dining and 665 square-feet of outdoor dining.
2. The temporarily expanded dining area has not posed a hazard to the general welfare of persons residing in the area since it was placed during the COVID-19 pandemic in 2020 through an Emergency Temporary Use Permit. The operation of the expanded dining area is limited to up to a one (1)-year term beginning January 1, 2022, through December 31, 2022, and has been reviewed and conditioned to help preclude any detriment to the general welfare of the area.
3. Outdoor dining areas are common in the Corona del Mar commercial corridor, have been used at the subject property during similar hours in the past and the use has not proven detrimental. The existing hours of operation for outdoor dining at the restaurant are from 11 a.m. to 10 p.m., Monday through Friday and 9 a.m. through 10 p.m. on weekends and

holidays. The expanded outdoor dining area would close by 10 p.m., as required by Condition of Approval No. 4.

4. A condition of approval related to heaters is incorporated as Condition of Approval No. 25. The proposed dining area will also be covered with a tent and must comply with the fire requirements outlined in Condition of Approval No. 26.
5. The proposed operation is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).
6. The permitted use shall adhere to applicable State of California and Orange County Health Care Agency guidelines for the safe operation of the use. It is the responsibility of the permittee to implement and follow industry-specific guidance of the State of California and the Orange County Health Care Agency guidelines.
7. The permitted use must be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
8. The overall plan includes appropriate delineation of outdoor use spaces with physical barriers or markers.
9. The expanded dining area will not impede pedestrian coastal access since this is an inland property adjacent to East Coast Highway.

Finding:

- B. The subject lot is adequate in size and shape to accommodate the limited duration use without material detriment to the use and enjoyment of other properties located adjacent to and in the vicinity of the lot;*

Facts in Support of Finding:

1. The subject lot is approximately 8,123 square feet in size gently slopes up towards East Coast Highway. Public records indicate that the restaurant has been in operation since 1976, with outdoor dining initially added in 1996 and expanded in 2016. Based upon the site plan, there is adequate area to accommodate the expanded dining area without impacting pedestrian circulation and coastal access.
2. The property is located on the northeasterly corner of East Coast Highway and Carnation Avenue. Across East Coast Highway is a Chevron service station and residential uses beyond. To the east, across Carnation Avenue, is Avila's El Ranchito restaurant and other retail and personal services. A private parking lot is located immediately south of the subject property, and the site is bounded to the west by other commercial uses. The expanded outdoor dining area will not impede use and enjoyment of the properties in the area and will instead add to the ambiance and quaint character of Corona del Mar.

3. The temporarily expanded dining area occupies four (4) standard parking spaces. No traffic or site circulation issues have been experienced during the current operation and are, therefore, not anticipated.

Finding:

- C. The subject lot is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the limited duration use would or could reasonably be expected to generate;*

Facts in Support of Finding:

1. Vehicular access for the subject lot is from Carnation Avenue.
2. The restaurant provides only eight (8) on-site parking spaces for patrons. Most of the parking for the restaurant is provided through use of off-site parking spaces as authorized by Use Permit No. UP1778. The temporary loss of four (4) on-site parking stalls is not anticipated to negatively impact circulation as there is adequate parking available near the restaurant.
3. The City is also undergoing an analysis of parking rates including rates related to food service and outdoor dining. Findings and recommendations of this study are anticipated by December 2021 and may be incorporated in a future use permit amendment for outdoor dining areas.

Finding:

- D. Adequate temporary parking to accommodate vehicular traffic to be generated by the limited duration use would be available either on-site or at alternate locations acceptable to the Zoning Administrator; and*

Fact in Support of Finding:

1. The existing restaurant has operated at the subject property for decades. The existing on-site surface parking lot has historically provided only a fraction of parking to serve the restaurant with most of the parking being provided through an off-site parking agreement. The on-site surface lot is should accommodate the temporary use for up to a one (1)-year term without negatively impacting parking as patrons are able to park off-site.

Finding:

- E. The limited duration use is consistent with all applicable provisions of the General Plan, any applicable specific plan, the Municipal Code, and other City regulations.*

Facts in Support of Finding:

1. The General Plan land use category for this site is CC (Corridor Commercial). The CC Category is intended to provide a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity. The expanded outdoor dining use is accessory to the existing food service use with outdoor dining, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CC Category. Outdoor dining is a use that tends to foster additional pedestrian activity.
2. The site is located in the CC (Commercial Corridor) Zoning District. The CC District is intended to provide a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity. The CC District allows food service uses and the expanded dining area is a temporary use, authorized with a limited term permit.
3. The Limited Term Permit for expanded outdoor dining would complement and be consistent with the other commercial uses permitted within the CC District of Corona del Mar in that it provides amenities that support visitors to the area and provides a social gathering place for those who live and work in the neighborhood, consistent with General Plan Land Use Element Goal LU 2, below. Additional benefits include providing opportunities for the continuation of local businesses that generate sales tax and provide opportunities for employment, which is consistent with General Plan Land Use Element Policy LU 2.4 (Economic Development), also copied below:

Goal LU 2 *A living, active, and diverse environment that complements all lifestyles and enhances neighborhoods, without compromising the valued resources that make Newport Beach unique. It contains a diversity of uses that support the needs of residents, sustain and enhance the economy, provide job opportunities, serve visitors that enjoy the City's diverse recreational amenities, and protect its important environmental setting, resources, and quality of life.*

Policy LU 2.4 Economic Development *Accommodate uses that maintain or enhance Newport Beach's fiscal health and account for market demands, while maintaining and improving the quality of life for current and future residents. (Imp 1.1, 24.1)*

4. Council Policy D-9 recognizes the need to balance economic development objectives with protection of the environment and the health and safety of the community. The policy recognizes the need to provide effective and efficient structures for implementing economic programs, utilizing staffing to provide healthy, thriving businesses, and maintain a healthy economy while preserving the unique commercial villages in Newport Beach. The proposed limited term permit would support a local business and economic prosperity while maintaining the unique character of the Corona del Mar community.

Coastal Development Permit

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

Finding:

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

Facts in Support of Finding:

1. The project site is not located adjacent to a coastal view road, public access way, or Coastal Viewpoint as identified in the Coastal Land Use Plan. The nearest coastal viewpoint is approximately 1,300 feet southwest of the restaurant, at Begonia Park. There are no designated viewpoints immediately north of the restaurant or at a higher elevation than the restaurant. As currently developed, the restaurant is separated from Begonia Park by four (4) blocks of residential structures and Begonia Park is not visible from the restaurant. Additionally, the expanded outdoor dining area complies with all applicable Local Coastal Program (LCP) development standards and maintains an area consistent with the existing pattern of development in Corona del Mar. The project does not contain any unique features that could degrade the visual quality of the coastal zone.
2. The property is in the coastal zone and the proposed improvements require a coastal development permit in accordance with Newport Beach Municipal Code (NBMC) Section 21.52.035(C)(2) (Projects Exempt from Coastal Development Permit Requirements). The improvements constitute an increase of ten (10) percent or more of the internal floor area of an existing structure or a lesser improvement that has previously been undertaken pursuant to California Public Resources Code Section 30610(a). The expanded outdoor dining area and substantial barriers are minor, detached, structures. The location of these improvements does not pose a conflict to coastal resources, coastal access, or other adverse environmental effects.
3. Improvements are complementary to the area; the subject restaurant and adjacent neighbors have similar outdoor dining improvements within the walkways of Corona del Mar.
4. A substantial barrier is installed along the perimeter of the outdoor dining area. The barrier delineates the area dedicated for outdoor dining use and alcohol service from the surface parking lot. There are no existing City utilities within the expanded dining area.
5. Development authorized by this permit is not located in any environmentally sensitive habitat area and public access to the coast will not be blocked. Coastal access is increased by allowing commercial establishments to re-open allowing public to visit coastal areas and provides an added amenity for visitors. The proposed operation does not contain Environmentally Sensitive Habitat Areas (ESHA), wetlands, or sandy beach area.

6. Development authorized is not located in an area in which the California Coastal Commission retains direct permit review authority.
7. The proposed development will not result in the erection of any permanent structures valued at more than \$25,000.

Finding:

- G. Conforms with the public access and public recreation policies of Chapter 3 of the Coastal Act if the project is located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone.*

Fact in Support of Finding:

1. The project site is not located between the nearest public road and the sea or shoreline. Implementation Plan Section 21.30A.040 (Determination of Public Access/Recreation Impacts) requires that the provision of public access bear a reasonable relationship between the requirement and the project's impact and be proportional to the impact. In this case, the project is not located by the sea where lateral and vertical coastal access would be needed.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 under Class 1 (Existing Facilities) and Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment. The exceptions to the Class 3 Exemption under Section 15300.2 are not applicable.
2. The Zoning Administrator of the City of Newport Beach hereby approves Limited Term Permit No. XP2021-012 and Coastal Development Permit No. CD2021-041 subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning and Title 21 Local Coastal Implementation Plan, of the Newport Beach Municipal Code. The project site is not located within the appeal area of the coastal zone; therefore, final action by the City may not be appealed to the California Coastal Commission.

PASSED, APPROVED, AND ADOPTED THIS 10TH DAY OF NOVEMBER, 2021.

Jaime Murillo, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL

(Project-specific conditions are in italics)

Planning Division

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The approval of this Limited Term Permit and Coastal Development Permit shall be effective for up to a one (1)-year term January 1, 2022, to December 31, 2022. The Applicant shall be required to cease all permitted operations and remove any temporary improvements made to the outdoor spaces as part of this Limited Term Permit on or before December 31, 2022.
3. *The expanded dining area shall not exceed 550 square feet in area.*
4. *The existing allowed hours of operation of the establishment shall not be extended. The hours of operation of the expanded area as part of this approval shall not extend beyond 10 p.m.*
5. *There shall be no use of amplified sound.*
6. *The Applicant shall install and maintain a physical barrier between any area used and adjacent common pedestrian walkways in accordance with the requirements of the State Department of Alcoholic Beverage Control.*
7. The Applicant shall obtain and maintain authorization from the State Department of Alcoholic Beverage Control (ABC) for all areas where the sale, service or consumption of alcohol is under the control of the Applicant. The establishment shall abide by all applicable regulations of the State Department of Alcoholic Beverage Control.
8. The sale of alcohol "to go" to patrons that dine within the expanded outdoor patios shall be prohibited.
9. The establishment shall abide by all applicable Orange County Health Care Agency requirements.
10. The permittee shall provide adequate trash receptacles within the permitted patio shall and the operator shall provide for periodic and appropriate removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
11. The Community Development Director or designee may inspect the modified area at any time during normal business hours.

12. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
13. 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 approval.
14. This Limited Term Permit and Coastal Development Permit be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
15. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Limited Term Permit and Coastal Development Permit.
16. To the fullest extent permitted by law, Applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of this Limited Term Permit No. XP2021-012 and Coastal Development Permit No. CD2021-041 (PA2021-191) for The Bungalow Restaurant. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by Applicant, City, and/or the parties initiating or bringing such proceeding. The Applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The Applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Building Division

17. Any areas used for temporary commercial or institutional use shall be accessible to disabled persons.
 - a. A minimum 4-foot-wide accessible path to all functional area shall be provided.
 - b. Access to restrooms shall be provided at all times.
 - c. Accessible parking stalls shall not be used for seating areas when onsite parking is provided.
 - d. At least one (1) accessible seating area shall be provided.
 - e. Detectable warnings are required when pedestrian paths cross or are adjacent to a vehicular way where no physical barrier are provided to separate the two (2).

18. All exiting paths shall be a minimum 36 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.

Fire Department

19. Fire lane(s) shall be identified on the plan.
20. Parking, displays, seating or other obstacles that interfere with emergency vehicles and personnel shall not be permitted in fire lanes.
21. Vehicles are permitted to stop in fire lanes awaiting service or delivery provided that the driver remains inside the vehicle and the vehicle is ready to move immediately upon orders from emergency personnel.
22. All Fire Department devices (fire hydrants, fire department connections, water valves, etc.) shall have a 3-foot clearance in all directions.
23. Fire Department devices shall not be covered, blocked or otherwise hidden from plain view.
24. All building exits shall remain free and clear of any obstacles that would impede exiting from a building or suite and accessing the nearest public right-of-way.
25. Heat lamps or other heating elements shall comply with the following requirements in accordance with code section 3107.12 of the California Fire Code:
 - a. Propane and other fuel-based heating elements (including but not limited to flammable/combustible gas, liquid, or solid materials) shall not be used within tents or canopies.
 - b. Electric heaters must be ul listed for use within tents and/or canopies.
 - c. Propane and other fuel-based heating devices with blowers may be permitted, with the heating element located a minimum of 10 feet from the edge of the tent or canopy.
 - d. All heating equipment installations shall be approved for the fire code official.
26. Covered outdoor dining areas (separate or consolidated) shall comply with the following standards for tents larger than 400 square feet (two [2] or more walls) and/or canopies larger than 700 square feet (no walls or one [1] wall):
 - Post maximum occupant load.
 - Do not exceed posted occupant load inside the tent or canopy.
 - Visible and Mounted Fire Extinguishers with current service tags.
 - No Smoking Signs shall be installed.
 - Illuminated Exit Signs shall be installed.
 - Emergency Lighting shall be provided.
 - Exit doors are not to be blocked and are to remain accessible as exits while the tent is occupied.
 - All interior decorative fabrics or materials shall be flame resistant. Provide Certificates of Flame Resistance.

- If Propane is used, a permit is required: Cooking and heating equipment shall not be located within 10 feet of exits or combustible materials.
- LPG containers shall be located outside and be adequately protected and secured, and a permit will be required. Open flame or other devices emitting flame, such as candles, are not permitted inside or within 20 feet of the tent, canopy, or temporary membrane structure.
- Tents and canopies shall have the State Fire Marshal tag indicating fire resistance.
- Tents and canopies shall be designed and installed to withstand the elements of the weather and prevent collapsing through weights and ground anchorage.

Public Works Department

27. The Applicant shall install and maintain a substantial physical barrier (water-filled traffic barrier or K-rail between any area used and adjacent to any street, driveway, or parking area).
28. There shall be a minimum of 5 feet of space around all overhead facilities, such as poles, and 15 feet of space around all underground facilities, such as vault lids, manholes, vent pipes, pad-mounted transformers, etc.
29. Seating or structures below overhead conductors and/or under the 'drip line' shall be prohibited.
30. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.
31. Expanded outdoor dining areas shall adhere to the SCE clearance decal examples provided in Attachment No. ZA 4.

Attachment No. ZA 2

Vicinity Map

VICINITY MAP



Limited Term Permit No. XP2021-012 and
Coastal Development Permit No. CD2021-041
(PA2021-191)

2441 East Coast Highway

Attachment No. ZA 3

Emergency Temporary Use Permit
Action Letter



COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION
100 Civic Center Drive, P.O. Box 1768, Newport Beach, CA 92658-8915
949-644-3200
www.newportbeachca.gov

**COMMUNITY DEVELOPMENT DIRECTOR EMERGENCY
TEMPORARY USE PERMIT ACTION**

Subject: **The Bungalow ETUP and ECDP (PA2020-153)**
▪ Emergency Temporary Use Permit No. UP2020-065
▪ Emergency Coastal Development Permit No. CD2020-073

Site Location **2441 East Coast Highway**

Applicant **Louie Feinstein of Bungalow Restaurant, LLC**

Property Owner **2443 East Coast Highway, LLC**

On **July 23, 2020** the Community Development Director approved Emergency Temporary Use Permit No. UP2020-065 and Emergency Coastal Development Permit No. CD2020-073. This approval is based on the following findings and subject to the following conditions.

I. SUMMARY OF PROPOSED OPERATION

An emergency temporary use permit and emergency coastal development permit to allow a temporary outdoor dining area within an existing parking lot adjacent to The Bungalow restaurant. The temporarily expanded area will allow up to 14 tables with seating for up to 48 patrons. All tables will be separated by at least seven (7) feet to ensure appropriate social distancing is practiced. Six (6) parking spaces will be displaced as part of this request.

II. CEQA DETERMINATION

The proposed operation is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15269 (c) (the activity is necessary to prevent or mitigate an emergency), Section 15301 Class 1 (Existing Facilities), and Section 15303 Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3. Section 15269 allows specific actions necessary to prevent or mitigate an emergency. The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The Class 3 exemption includes a store, motel, office, restaurant, or similar structure not involving the use of significant amounts of hazardous substances, not exceeding 2,500 square feet in floor area or 10,000 square feet in floor area in urbanized areas zoned for such use. The project includes a temporary expansion of the outdoor dining area for an existing restaurant and is within the parameters noted for these exemptions and will not have a significant effect on the

The Bungalow ETUP and ECDP (PA2020-153)

July 23, 2020

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environment. There are no known exceptions listed in CEQA Guidelines Section 15300.2 that would invalidate the use of these exemptions.

III. EMERGENCY TEMPORARY USE PERMIT FINDINGS

In this case the Community Development Director has found that the temporary use would not create a hazard to the health, safety, or welfare of the community for the following reasons:

1. The operation authorized by this Emergency Temporary Use Permit and Emergency Coastal Development Permit is temporary and only valid during the emergency order established by Emergency Ordinance No. 2020-005.
2. The project, based upon the applicant's project description, approved site plan, and implementation of all conditions of approval, will be operated safely thereby helping reduce the spread of COVID-19. The proposed operation is necessary to provide adequate space to allow for appropriate social distancing.
3. The permitted use shall adhere to applicable State of California and Orange County Health Care Agency guidelines for the safe operation of the use. It is the responsibility of the permittee to implement and follow industry-specific guidance of the State of California and the Orange County Health Care Agency guidelines.
4. The proposed operation has been reviewed by and is acceptable to the Building Division, Fire & Life Safety Division, and the Public Works Department. Conditions of Approval are included to help ensure this operation is not detrimental.
5. The proposed operation does not constitute an increase in the overall occupant load beyond what the existing Use Permit and/or Certificate of Occupancy allow.
6. The proposed operation does not extend any hours of operation beyond those currently permitted and the temporary outdoor dining patio only operate until 10 p.m., daily.
7. The permitted use must be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
8. The plan includes appropriate delineation of outdoor use spaces with temporary physical barriers or markers.
9. The proposed operation is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).

EMERGENCY COASTAL DEVELOPMENT PERMIT FINDINGS

1. The COVID-19 global pandemic has created a National, State and Local emergency that is more fully described in Emergency Ordinance No. 2020-005.

The Bungalow ETUP and ECDP (PA2020-153)

July 23, 2020

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The COVID-19 outbreak is an emergency pursuant to Newport Beach Municipal Code (NBMC) Section 21.52.025 because immediate action is necessary to allow commercial business and institutional uses to re-open consistent with State and local public health guidelines designed to reduce the spread of COVID-19. If immediate action is not taken to properly regulate the re-opening of commercial business and institutional uses, the spread of COVID-19 will likely be more severe thereby exacerbating the existing public health emergency.

2. Development authorized is temporary and will only be in place during the described emergency consistent with Emergency Ordinance No. 2020-005. All development authorized by this permit must be removed after the state of emergency is lifted.
3. Development authorized by this permit is not located in any environmentally sensitive habitat area and public access to the coast will not be blocked. Coastal access is increased by allowing commercial establishments to re-open allowing public to once again visit the coastal areas.
4. Development authorized is not located in an area in which the California Coastal Commission retains direct permit review authority.

IV. CONDITIONS OF APPROVAL

1. Only that specifically described above and depicted in the attached site plan is authorized, subject to the conditions set forth below. Any additional changes require separate review and may necessitate separate authorization from the Director. The expanded outdoor dining area shall operate in substantial conformance with the site plan provided in Attachment No. CD 3.
2. As long as this Emergency Temporary Use Permit is in effect, all NBMC provisions and any restrictions set forth in an applicable discretionary permit regulating uses, nonconforming uses, development standards, parking requirements, and permit procedures that regulate the use and development of private or public property operations are suspended only to the extent that the these provisions or restrictions set forth in a discretionary permit conflict with the terms of this Emergency Temporary Use Permit.
3. The existing allowed hours of operation of the establishment shall not be extended. The hours of hours of operation of the area modified as part of this Emergency Temporary Use Permit shall not extend beyond 10 p.m., daily.
4. The use of amplified sound within the temporary area shall be prohibited.
5. All dining tables shall be separated from other dining tables and/or waiting areas by a minimum distance of seven (7) feet to ensure proper social distancing is maintained.

The Bungalow ETUP and ECDP (PA2020-153)

July 23, 2020

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6. The applicant shall obtain and maintain authorization from the State Department of Alcoholic Beverage Control (ABC) for all areas where the sale, service or consumption of alcohol is under the control of the applicant. The establishment shall abide by all applicable regulations of the State Department of Alcoholic Beverage Control.
7. All owners, managers, and employees selling and serving alcohol shall comply with all ABC guidelines and regulations and shall further take all measures necessary to prevent over-service of alcohol and/or disorderly conduct from patrons. Increased calls for Police Department service to the establishment or complaints made to the City will cause a review of operations and may result in a revocation of this Permit.
8. The sale of alcohol "to go" to patrons that dine within the restaurant or expanded outdoor patios shall be prohibited.
9. The establishment shall abide by all applicable Orange County Health Care Agency requirements.
10. Establishments that provide food service, shall abide by the COVID-19 Industry Guidance: Dine-In Restaurants provided by the California Department of Public Health and Department of Industrial Health.
11. The permittee shall provide adequate trash receptacles within the permitted patio shall and the operator shall provide for periodic and appropriate removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.

Building

12. Any areas used for temporary commercial or institutional use shall be accessible to disabled persons.
 - a. An accessible path to all functional area shall be provided.
 - b. Access to restrooms shall always be provided .
 - c. Accessible parking stalls shall not be used for seating areas when onsite parking is provided.
 - d. Detectable warnings are required when pedestrian paths cross or are adjacent to a vehicular way where no physical barrier are provided to separate the two.
13. All exiting paths shall be a minimum 36 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.
14. Accessible seating at tables or counters shall provide knee clearance of at least 27 inches high, 30 inches wide, and 19 inches deep.
15. The tops of dining surfaces and work surfaces shall be 28 inches to 34 inches above the finish floor.

July 23, 2020

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Fire

16. All building exits shall remain free and clear of any obstacles that would impede exiting from a building or suite and accessing the nearest public right-of-way.
17. The following are applicable to tents that are 400 square feet or more in area (with two walls) and canopies that are 700 square feet or more in area.
 - a. Post maximum occupant load.
 - b. Do not exceed posted occupant load inside the tent or canopy.
 - c. Visible and Mounted Fire Extinguishers with current service tags.
 - d. No Smoking Signs shall be installed.
 - e. Illuminated Exit Signs shall be installed.
 - f. Emergency Lighting shall be provided.
 - g. Exit doors are not to be blocked and are to remain accessible as exits while the tent is occupied.
 - h. All interior decorative fabrics or materials shall be flame resistant. Provide Certificates of Flame Resistance.
 - i. If Propane is used, a permit is required: Cooking and heating equipment shall not be located within 10 feet of exits or combustible materials.
 - j. LPG containers shall be located outside and be adequately protected and secured, and a permit will be required. Open flame or other devices emitting flame, such as candles, are not permitted inside or within 20 feet of the tent, canopy, or temporary membrane structure.
 - k. Tents and canopies shall have the State Fire Marshal tag indicating fire resistance.
 - l. Tents and canopies shall be designed and installed to withstand the elements of the weather and prevent collapsing through weights and ground anchorage.

Public Works

18. There shall be a minimum of 5 feet of space around all overhead facilities, such as poles, and 15 feet of space around all underground facilities, such as vault lids, manholes, vent pipes, pad-mounted transformers, etc.
19. Seating or structures below overhead conductors and/or under the 'drip line' shall be prohibited.
20. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.
21. Expanded outdoor dining areas shall adhere to the SCE clearance decal examples provided in Attachment No. CD 2.
22. The Community Development Director or designee may inspect the modified area at any time during normal business hours.

The Bungalow ETUP and ECDP (PA2020-153)

July 23, 2020

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23. The Community Development Director may immediately revoke this permit if the Director determines that there has been a violation of any condition of approval. Any revocation of an Emergency Temporary Use permit shall be deemed effective upon the posting of a notice of revocation at the site of the business granted the emergency temporary permit.
24. The Community Development Director may modify this Emergency Temporary Use Permit. The Director shall notify the applicant of any proposed modification and a decision to modify this permit shall be deemed effective upon the posting of a notice of modification at the site of the business granted the emergency temporary use permit
25. This temporary authorization shall expire fourteen (14) days after the emergency order established by Emergency Ordinance No. 2020-005 is terminated or repealed, or 60 days from the date of authorization, whichever is sooner. The Director may extend this approval for an additional 60 days for good cause.
26. Upon termination or repeal of Emergency Ordinance No. 2020-005, the Applicant shall immediately work to remove the temporary improvements in a timely manner and shall restore the expanded area back to its original use and improvements.
27. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of this Emergency Temporary Use Permit and Coastal Development Permit. 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.

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The Bungalow ETUP and ECDP (PA2020-153)

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V. APPEAL

This decision may be appealed by the applicant/permittee to the City Manager by notifying the City Manager of the appeal within three (3) calendar days of the decision. The City Manager shall have authority to sustain, reverse or modify the decision of the Community Development Director and the City Manager's decision shall be final.

On behalf of Seimone Jurjis, Community Development Director,


Benjamin M. Zdeba, AICP
Senior Planner

Attachments: CD 1 Filed Application
CD 2 SCE Clearance Decal Examples
CD 3 Site Plan Diagram

Applicant and Permit Recipient Acknowledgement and Agreement

I hereby acknowledge that I have received a copy of this permit and that I have read and understand the permit and all conditions. I hereby agree to operate the authorized use consistent with this permit including the project description, approved site plan diagram, findings, and conditions of approval. This is an approved and executed permit and it constitutes a contract between the City and Permittee for all purposes.

Applicant Name and Title

Signature

Date

The Bungalow ETUP and ECDP (PA2020-153)

July 23, 2020

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Attachment No. CD 1

Filed Application



Community Development Department Planning Permit Application

Planning Commission - December 5, 2024
Item No. 3c - Additional Materials Received
Five Crowns Temporary Outdoor Dining (PA2023-0202)

CITY OF NEWPORT BEACH
100 Civic Center Drive
Newport Beach, California 92660
949 644-3200

newportbeachca.gov/communitydevelopment

1. Check Permits Requested:

- | | | |
|--|--|---|
| <input type="checkbox"/> Approval-in-Concept - AIC # | <input type="checkbox"/> Lot Merger | <input type="checkbox"/> Staff Approval |
| <input type="checkbox"/> Coastal Development Permit | <input type="checkbox"/> Limited Term Permit - | <input type="checkbox"/> Tract Map |
| <input type="checkbox"/> Waiver for De Minimis Development | <input type="checkbox"/> Seasonal <input type="checkbox"/> < 90 day <input type="checkbox"/> > 90 days | <input type="checkbox"/> Traffic Study |
| <input type="checkbox"/> Coastal Residential Development | <input type="checkbox"/> Modification Permit | <input type="checkbox"/> Use Permit - <input type="checkbox"/> Minor <input type="checkbox"/> Conditional |
| <input type="checkbox"/> Condominium Conversion | <input type="checkbox"/> Off-Site Parking Agreement | <input type="checkbox"/> Amendment to existing Use Permit |
| <input type="checkbox"/> Comprehensive Sign Program | <input type="checkbox"/> Planned Community Development Plan | <input checked="" type="checkbox"/> Emergency Temp. Use Permit/CDP |
| <input type="checkbox"/> Development Agreement | <input type="checkbox"/> Planned Development Permit | <input type="checkbox"/> Variance |
| <input type="checkbox"/> Development Plan | <input type="checkbox"/> Site Development Review - <input type="checkbox"/> Major <input type="checkbox"/> Minor | <input type="checkbox"/> Amendment - <input type="checkbox"/> Code <input type="checkbox"/> PC <input type="checkbox"/> GP <input type="checkbox"/> LCP |
| <input type="checkbox"/> Lot Line Adjustment | <input type="checkbox"/> Parcel Map | <input type="checkbox"/> Other: |

2. Project Address(es)/Assessor's Parcel No(s)

2441 E COAST HWY

3. Project Description and Justification (Attach additional sheets if necessary):

IN RESTAURANT DINING CLOSED, PARKING LOT TENT

4. Applicant/Company Name

BUNGALOW RESTAURANT LLC

Mailing Address

2441 E COAST HWY

Suite/Unit

City

CORONA DEL MAR

State

CA

Zip

92625

Phone

310-709-8492

Fax

Email

LOUIE.FEINSTEIN@ADL.COM

5. Contact/Company Name

LOUIE FEINSTEIN

Mailing Address

2441 E COAST HWY

Suite/Unit

City

CORONA DEL MAR

State

CA

Zip

92625

Phone

310-709-8492

Fax

Email

LOUIE.FEINSTEIN@ADL.COM

6. Owner Name

SAME

Mailing Address

Suite/Unit

City

State

Zip

Phone

Fax

Email

7. Property Owner's Affidavit*: (I) (We)

depose and say that (I am) (we are) the owner(s) of the property (ies) involved in this application. (I) (We) further certify, under penalty of perjury, that the foregoing statements and answers herein contained and the information herewith submitted are in all respects true and correct to the best of (my) (our) knowledge and belief.

Signature(s):

[Signature]

Title:

Property Manager/owner

Date:

7/7/20

DD/MO/YEAR

Signature(s):

[Signature]

Title:

RESTAURANT OWNER

Date:

7/7/20

*May be signed by the lessee or by an authorized agent if written authorization from the owner of record is filed concurrently with the application. Please note, the owner(s)' signature for Parcel/Tract Map and Lot Line Adjustment Application must be notarized.

Agreement to Provide and Maintain Liability Insurance for Temporary Use of Public Property

Agreement to Indemnify defend and hold harmless the City of Newport Beach

Emergency Temporary Use Permit No. _____

Business/Permittee: BUNGALOW RESTAURANT

Address/Location: 2441 E COAST HWY CDM 92625

Unless otherwise indicated, I will obtain and maintain commercial general liability insurance on an "occurrence" basis, including completed products and completed operations, property damage, bodily injury and personal and advertising injury with a limit of not less than \$1,000,000 per occurrence. This insurance shall be endorsed to name the "City of Newport Beach, the City Council, its employees, and agents" as additional insureds, and provide that this insurance is primary and non-contributory with any other insurance or self-insurance available to the City. Permittees shall also maintain workers' compensation as required by the State of California with Statutory Limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the "City of Newport Beach, the City Council, its employees, and agents." If permittee maintains broader coverage and/or higher limits than the minimums provided in this Section, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the permittee. All policies shall be issued by an agent or representative of an insurance company licensed to do business in the State of California, which has one of the three highest or best ratings from the Alfred M. Best company. All insurance policies shall contain an endorsement obligating the insurance company to furnish the Community Development Director with at least thirty (30) days written notice in advance of the cancellation of the policy. I understand the City reserves the right to require a permittee to submit the requisite insurance documents for review at any time.

Permittees shall agree to defend, indemnify and hold harmless the City and its employees 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 the issuance of the emergency temporary use permit. 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, or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding..

An approved and executed permit constitutes a contract between the City and Permittee for all purposes.

On behalf of the business/permittee:

LOUIE FENWSTERMAN owner
Print Name and Title
[Signature]
Signature
7/7/20
Date

Project Description

- Install a 20 X 40 open air tent in back parking lot
- Bungalow restaurant has instituted all state and county mandated regulation insuring that our guests and team members are in a safe environment. Every two weeks the restaurant and patio are cleaned by ServPro a professional sanitation company. We follow all sanitation during operation with sanitizing all surfaces every 30 min. hand sanitizer stations are provided. Mask are required by guest and staff
- Hours of Operation- Daily 3pm-10pm
- Occupancy- Front patio- 7 tables 28 guests, downstairs patio- 10 tables, 36 guests, tent patio- 14 tables, 48 guests
- Valet parking has 50 spaces

60 SPACES OCCUPIED

Attachment No. CD 2

SCE Clearance Decal Examples

SOUTHERN CALIFORNIA EDISON TRANSMISSION AND DISTRIBUTION BUSINESS UNIT

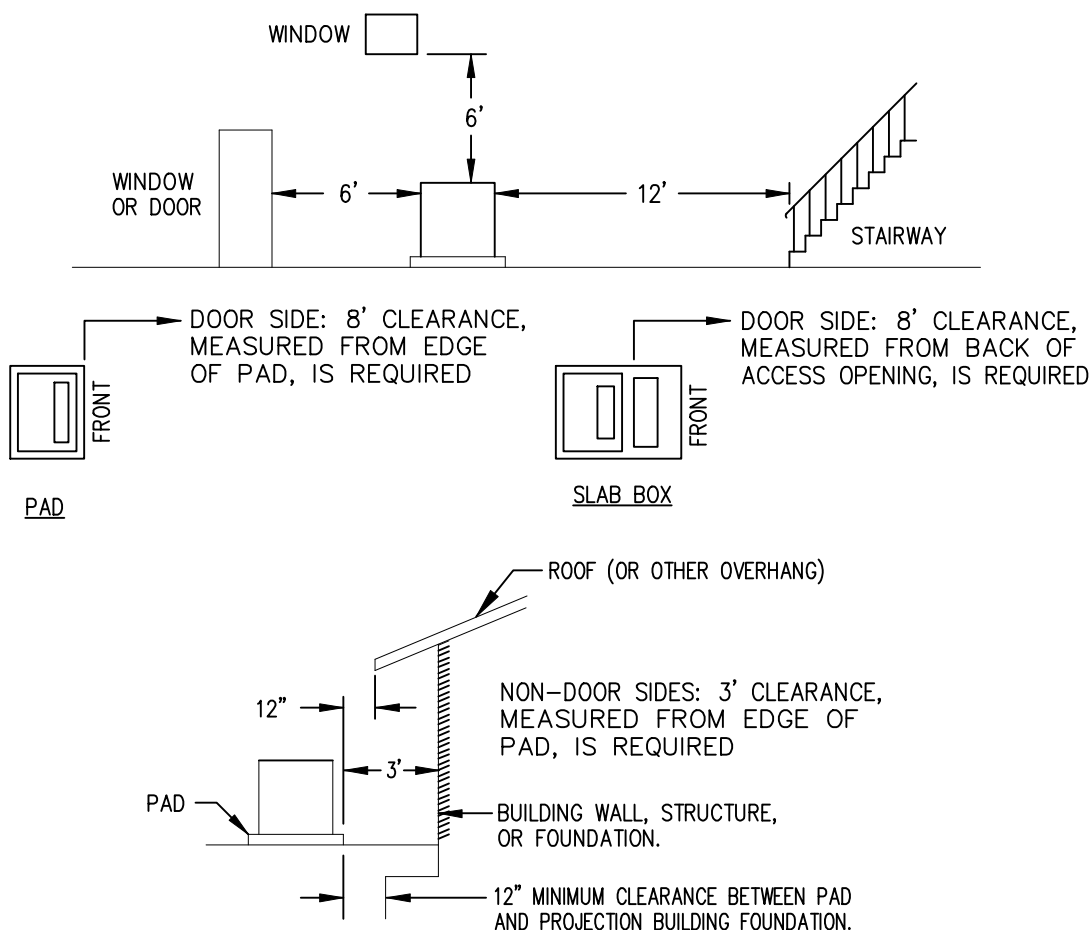
Approved Decals

June 8, 2020



D16: Rev. 05/28/20

MINIMUM CLEARANCES FOR PADMOUNTED TRANSFORMERS SEE DDS-3, 3-40



NOTES:

1. AN 8' MINIMUM CLEARANCE IS REQUIRED ON DOOR SIDE OF TRANSFORMER FOR OPERATION. THIS AREA MUST REMAIN CLEAR OF ALL OBSTRUCTIONS INCLUDING, BUT NOT LIMITED TO, SHRUBS, TREES, GATES, FENCES, WALLS, SIGNS AND POLES.
2. PAD-MOUNTED TRANSFORMERS SHALL NOT BE LOCATED IN FRONT OF DOORS, STAIRWAYS, BENEATH WINDOWS THAT CAN BE OPENED, OR WHERE THEY WILL OBSTRUCT THE VISION OF VEHICULAR TRAFFIC
3. PAD-MOUNTED TRANSFORMERS SHALL BE LOCATED AT LEAST THE MINIMUM DISTANCE AWAY FROM BUILDINGS OR OTHER STRUCTURES TO ENSURE ADEQUATE SPACE FOR OPERATING, TO MINIMIZE VIBRATION HUMS, AND TO MEET FIRE SAFETY REQUIREMENTS.
4. A CLEAR PASSAGEWAY OF 12 FEET MINIMUM SHALL BE AVAILABLE AT ALL TIMES, IMMEDIATELY ADJACENT TO ONE SIDE OF THE TRANSFORMER TO PROVIDE AN ACCESSIBLE ROADWAY FOR TRANSFORMER MAINTENANCE. THIS PASSAGEWAY SHALL BE DESIGNED TO MEET H-20 (20-TON) CONSTRUCTION.
5. TRANSFORMER STRUCTURES WILL NORMALLY BE INSTALLED ONLY IN NONTRAFFIC AREAS. TRANSFORMER PROTECTION IS REQUIRED WHEN COMPANY EQUIPMENT IS EXPOSED TO TRAFFIC. THIS PROTECTION MAY BE IN THE FORM OF BARRIERS, BARRICADES, OR CURB. A CURB MUST HAVE A MINIMUM HEIGHT OF 6 INCHES AND BE AT LEAST 6 INCHES THICK AND ITS FRONT FACE LOCATED 60 INCHES MINIMUM FROM THE EQUIPMENT FOUNDATION.

D54: Rev. 05/14/12

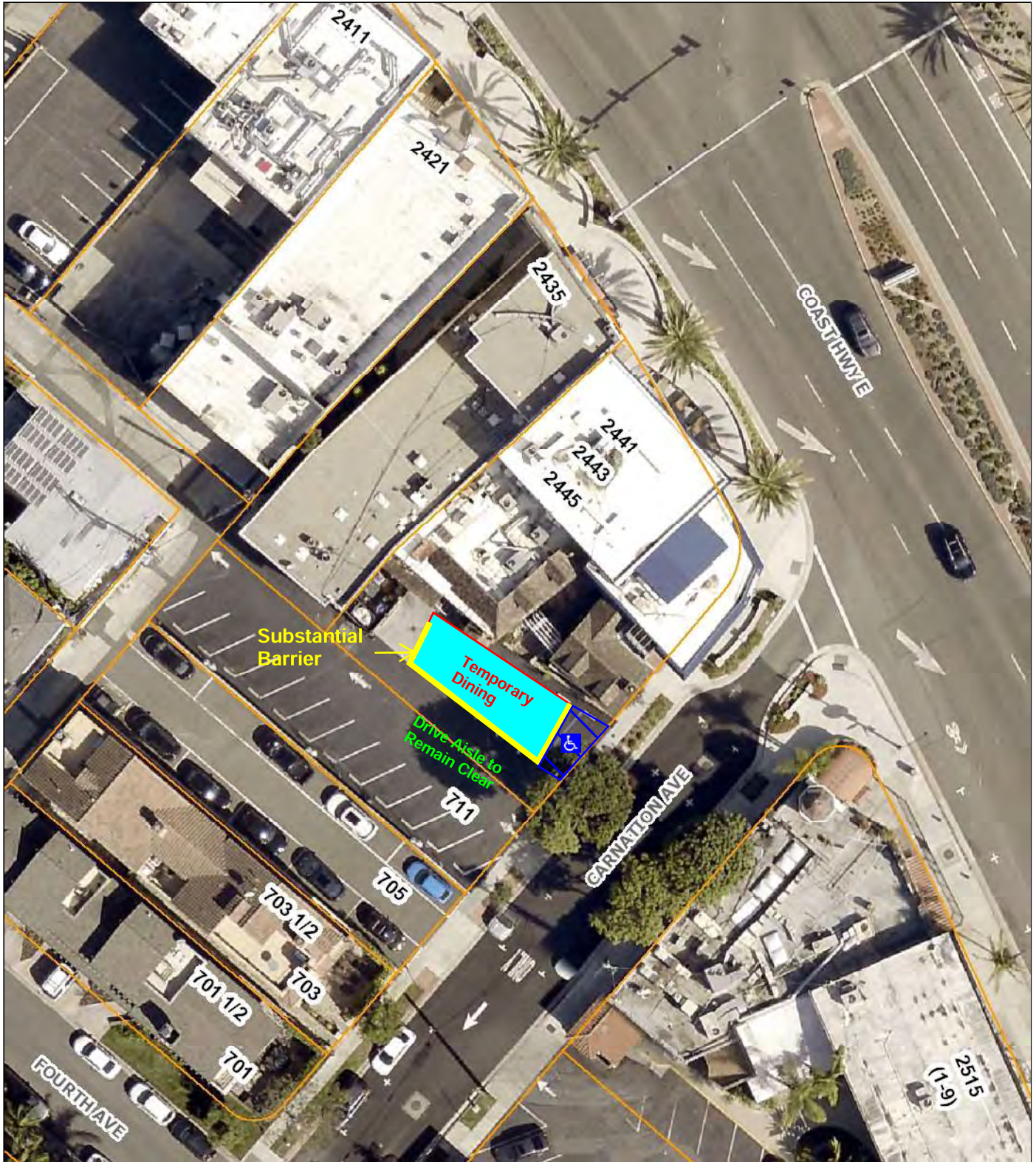
The Bungalow ETUP and ECDP (PA2020-153)

July 23, 2020

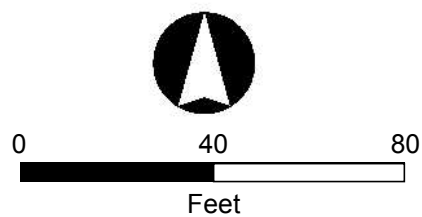
Page 2

Attachment No. CD 3

Site Plan Diagram



NBGiS
 NEWPORT BEACH



Disclaimer:
 Every reasonable effort has been made to assure the accuracy of the data provided, however, The City of Newport Beach and its employees and agents disclaim any and all responsibility from or relating to any results obtained in its use.

7/17/2020

Attachment No. ZA 4

SCE Clearance Decals

SOUTHERN CALIFORNIA EDISON TRANSMISSION AND DISTRIBUTION BUSINESS UNIT

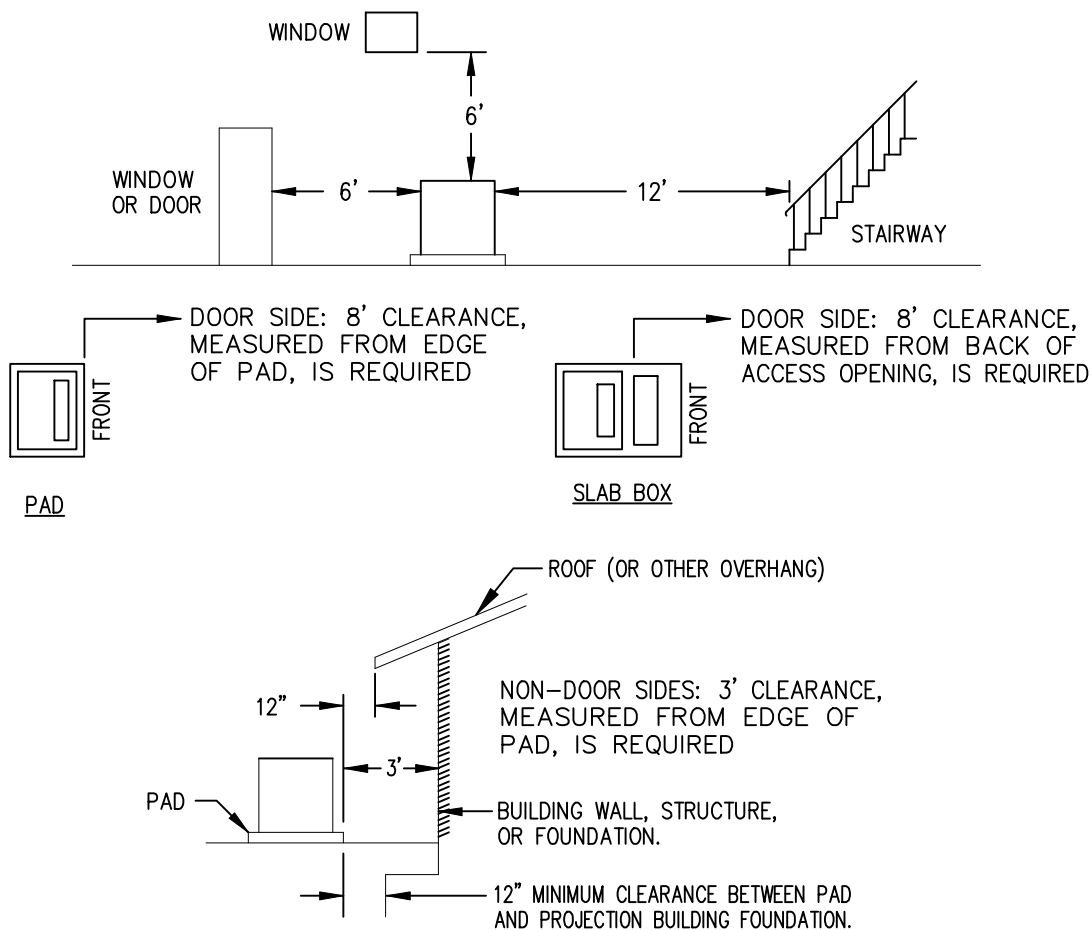
Approved Decals

June 8, 2020



D16: Rev. 05/28/20

MINIMUM CLEARANCES FOR PADMOUNTED TRANSFORMERS SEE DDS-3, 3-40



NOTES:

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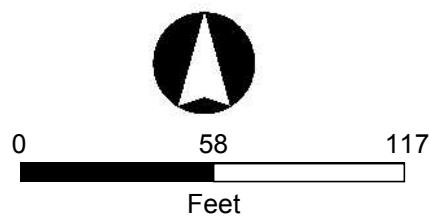
D54: Rev. 05/14/12

Attachment No. ZA 5

Project Plans



NBGiS
 NEWPORT BEACH



Disclaimer:
 Every reasonable effort has been made to assure the accuracy of the data provided, however, The City of Newport Beach and its employees and agents disclaim any and all responsibility from or relating to any results obtained in its use.

11/2/2021

From: Jackie Peters <jackie@theworkofart.com>
Sent: November 08, 2021 9:09 AM
To: Perez, Joselyn <JPerez@newportbeachca.gov>
Cc: Brenner, Joy <JBrenner@newportbeachca.gov>
Subject: Opposition to the Bungalow Increase of Capacity Permit

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Dear Ms. Perez

I am a 21-year homeowner residing on Begonia Ave., the street behind Bungalow restaurant. I am writing to oppose the Bungalow Increase in Capacity Permit.

A) The assertion that all Bungalow employees park in the Avocado structure is entirely false.

Daily, in the late afternoon, I witness persons parking in front of my home, getting out of their car, putting on either a white chef's coat or a black waiter's apron, and walking towards Bungalow. Restaurant workers parking in my neighborhood before their shift is the state of affairs on Begonia Ave. Relying on restaurant workers to comply and park four blocks away from their shift location is not working.

B) The giant, white, plastic "ICU" tent in Bungalow's parking lot in no way complements the neighborhood.

I can see Bungalow's giant, white, plastic "ICU" tent from my rooftop. It is an eyesore, a source of excessive noise and light late into the night.

The apparent reason Bungalow wants to extend its permit is that the giant, white, plastic "ICU" tent uses up Bungalow's existing parking lot space and they wish to use the neighborhood to fulfill their parking needs.

I strongly oppose the permit and implore my representatives to recognize that 2401 E.Coast Hwy is not used for employee parking, the surrounding neighborhood bears the negative impact, and the giant, white, plastic "ICU" tent is ugly.

Respectfully,
Jacqueline Peters

From: Judy Wagner <judykay@yahoo.com>
Sent: Tuesday, November 9, 2021 1:53 PM
To: Perez, Joselyn <JPerez@newportbeachca.gov>
Cc: Brenner, Joy <JBrenner@newportbeachca.gov>
Subject: Bungalow Temporary permit request

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

I'm against granting any sort of expansion, temporary or permanent, to The Bungalow restaurant.

The 'Facts' used to describe the potential impact of the expanded dining area on the neighborhood are false.

The Bungalow has never used 2101 E Coast Hwy for employee nor valet parking. They MAY lease spaces, I'm assuming that would have been verified before relying on it as fact for granting permits (if not, it should be), but they absolutely do NOT use any spaces in that garage. I've recorded two weekend nights at the parking garage with ZERO cars during prime dinner hours. I can also attest to restaurant employees parking on 4th Ave every-single-day of the week. I can also attest to Valet parking using our streets for parking.

Zoning analysis states that the expansion will not affect the local streets. However, this is untrue. A 25% expansion will bring 25% more huge diesel delivery trucks, and 25% more garbage pick-ups, 25% more staff, 25% more customer cars. Trucks are already prohibited on our local streets and yet zoning, the NBPD, and The bungalow have all refused to address the issue. There is current NB zoning prohibiting these trucks!!!

The Bungalow may have had some hardship from a falloff in dining receipts from 2020, but, a few factors have already alleviated their potential shortfall.

they received over \$800,000 in PPP loans that were forgiven.

They remained open for business during the state mandated dining closure.

Business is back to normal. On Father's day they had 400 reservations—this is in excess of

capacity limits outlined in the Covid related Temporary use Permit which states the outdoor dining permits do not increase the existing overall capacity.

Finally, not a single surrounding resident was interviewed by NB Zoning and yet the resolution states that there is not currently any disruption to the surrounding community.

I personally have called NBPD twelve times to report streets blocked by delivery trucks ks.

I personally have called NBPD because The Bungalow had outdoor amplified music which is specifically prohibited. One of these occasions was a DJ with amplified sound in the Emergency use tent!!!!

Knocking on a few doors would have been the responsible thing to do.

NB Zoning has not been responsible in protecting local residents from commercial disruption. This needs to stop. This requested Tent with no overall limit on increasing capacity will allow the Bungalow to continue to disrupt the surrounding community and only exacerbate the problem.

Judy Wagner
949-500-5799
701 1/2 Carnation Ave. CdM 92625

EXHIBIT "K"



CITY OF NEWPORT BEACH ZONING ADMINISTRATOR STAFF REPORT

December 16, 2021
Agenda Item No. 10

SUBJECT: El Cholo (PA2021-189)
▪ Limited Term Permit No. XP2021-008

SITE LOCATION: 3520 East Coast Highway

APPLICANT: El Cholo Corona del Mar

OWNER: Walter C. Boice

PLANNER: Liz Westmoreland, Associate Planner
949-644-3234, lwestmoreland@newportbeachca.gov

LAND USE AND ZONING

- **General Plan Land Use Plan Category:** CC (Corridor Commercial)
- **Zoning District:** CC (Commercial Corridor)

PROJECT SUMMARY

A request for a limited term and coastal development permit to allow a 520-square-foot maximum expanded dining area for up to a one-year term (January 1, 2022 through December 31, 2022). An expanded dining area was previously authorized through Emergency Temporary Use Permit (ETUP) No. UP2020-030 (PA2020-103) for El Cholo Corona del Mar.

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) and Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment; and
- 3) Adopt Draft Zoning Administrator Resolution No. _ approving Limited Term Permit No. XP2021-008 (Attachment No. ZA 1).

El Cholo (PA2021-189)
Zoning Administrator, December 16, 2021
Page 2

DISCUSSION

- A request for a limited term and coastal development permit to allow a 520 square-foot maximum expanded dining area for up to a one-year term (January 1, 2022 through December 31, 2022). An expanded dining area was previously authorized through Emergency Temporary Use Permit No. UP2020-030 (PA2020-103) for El Cholo Corona del Mar.
- The proposed outdoor dining area is located adjacent to the existing outdoor patio area approved under conditional use permit (UP1980A). The additional outdoor dining area is a logical extension of the existing patio area and is located on private property.
- A surface parking area is provided across the alley at the rear of the property. The expanded dining area will not impact any of the parking spaces within this lot. The existing food service use is located in a commercial corridor and proposes to operate all day and into the evening hours with peak hours when other retail and office uses on the property are typically not operating. Sufficient parking is provided on-site and no traffic issues are anticipated with the continued use of the expanded dining area. To date, no complaints regarding the availability of parking have been received.
- The City is also undergoing an analysis of parking rates including rates related to food service and outdoor dining. Findings and recommendations of this study are anticipated by December of 2021, and may inform a future conditional use permit amendment for outdoor dining areas.

ENVIRONMENTAL REVIEW

This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) and Section 15303 under Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.

The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The Class 3 exemption includes a store, motel, office, restaurant, or similar structure not involving the use of significant amounts of hazardous substances, not exceeding 2,500 square feet in floor area or 10,000 square feet in floor area in urbanized areas zoned for such use. The proposed scope of work is a maximum 520-square-foot expanded outdoor dining patio at an existing restaurant for a up to a one-year limited term and qualifies under the parameters of the Class 1 and Class 3 exemptions. There are no known exceptions

El Cholo (PA2021-189)
Zoning Administrator, December 16, 2021
Page 3

listed in CEQA Guidelines Section 15300.2 that would invalidate the use of these exemptions.

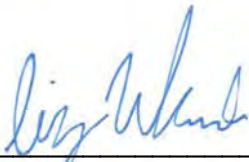
PUBLIC NOTICE

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. Administrative procedures for appeals are provided in the Newport Beach Municipal Code Chapter 20.64 For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

Prepared by:



Liz Westmoreland, Associate Planner

law

Attachments:	ZA 1	Draft Resolution
	ZA 2	Vicinity Map
	ZA 3	Emergency Temporary Use Permit Action Letter
	ZA 4	SCE Clearance Decals
	ZA 5	Project Plans

Attachment No. ZA 1

Draft Resolution

RESOLUTION NO. ZA2021-###

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING LIMITED TERM PERMIT NO. XP2021-008 TO ALLOW AN EXPANDED OUTDOOR DINING AREA LOCATED AT 3520 EAST COAST HIGHWAY (PA2021-189)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by El Cholo Corona Del Mar, with respect to property located at 3520 East Coast Highway, and legally described as Parcel 1 of Resubdivision 645 in the City of Newport Beach, Orange County, California, requesting approval of a limited term permit.
2. A request for a limited term to allow a 520-square-foot maximum expanded dining area for up to a one (1)-year term (January 1, 2022 through December 31, 2022). An expanded dining area was previously authorized through Emergency Temporary Use Permit No. UP2020-030 (PA2020-103) for El Cholo Corona del Mar.
3. The subject property is designated CC (Corridor Commercial) by the General Plan Land Use Element and is located within the CC (Commercial Corridor) Zoning District.
4. A public hearing was held on December 16, 2021, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code (NBMC). Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) and Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The Class 3 exemption includes a store, motel, office, restaurant, or similar structure not involving the use of significant amounts of hazardous substances, not exceeding 2,500 square feet in floor area or 10,000 square feet in floor area in urbanized areas zoned for such use. The proposed scope of work is a maximum 520-square-foot expanded outdoor dining patio at an existing restaurant for up to a one (1)-year limited term and qualifies under the parameters of the Class 1 and Class 3 exemptions.

3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

Limited Term Permit

In accordance with Section 20.52.040.G (Limited Term Permits) of the Newport Beach Municipal Code, the following findings and facts in support of such findings are set forth:

Finding:

- A. *The operation of the limited duration use at the location proposed and within the time period specified would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the requested limited duration use;*

Facts in Support of Finding:

1. The limited term permit will allow an extended and expanded outdoor dining patio for up to a one (1)-year term while the City reconsiders its parking requirements related to food service uses. The existing food service use is authorized through Use Permit No. UP1980A which allows 2,250 square feet of interior net public area and 1,026-square-foot outdoor net public area.
2. The proposed outdoor dining area is located adjacent to the existing outdoor patio area approved under UP1980A. The additional outdoor dining area is a logical extension of the existing patio area and is located on private property. The expanded patio is located within a driveway that connects Coast Highway to the alley in the rear of the property, which is not currently being utilized. Adequate barriers will be required to protect the expanded patio area from motorists on Coast Highway.
3. The expanded dining area has not posed a hazard to the general welfare of persons residing in the area since it was placed during the COVID-19 pandemic in 2020 through an Emergency Temporary Use Permit. The operation of the expanded dining area is limited to up to a one (1)-year beginning January 1, 2022, through December 31, 2022, and has been reviewed and conditioned to preclude any detriment to the general welfare of the area.
4. Outdoor dining areas are common in the Corona del Mar commercial corridor, have been used at the subject property during similar hours in the past and the use has not proven detrimental. The existing hours of operation for the restaurant are 11:30 a.m. through 9:00

p.m., daily. The expanded outdoor dining area would close by 9:00 p.m., Monday through Thursday, and by 10:00 p.m., Friday through Sunday, as required by Condition No. 4.

4. A condition of approval related to heaters is incorporated as Condition of Approval No. 26. If the proposed plan is modified to include a tent, then it must comply with the fire requirements outlined in Condition No. 27.
5. The proposed operation is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).
6. The permitted use shall adhere to applicable State of California and Orange County Health Care Agency guidelines for the safe operation of the use. It is the responsibility of the permittee to implement and follow industry-specific guidance of the State of California and the Orange County Health Care Agency guidelines.
7. The permitted use must be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
8. The overall plan includes appropriate delineation of outdoor use spaces with physical barriers or markers.

Finding:

- B. *The subject lot is adequate in size and shape to accommodate the limited duration use without material detriment to the use and enjoyment of other properties located adjacent to and in the vicinity of the lot;*

Facts in Support of Finding:

1. The subject lot is approximately 0.19 acre in size and is a gently sloping property adjacent to East Coast Highway. The existing food service use with outdoor dining has operated at this location since its original approval in 1980. Based upon the site plan, there is adequate area to accommodate the expanded dining area without impacting pedestrian circulation, since the expanded patio is located entirely on private property.
2. The lot is bounded by East Coast Highway to the west with residential properties inland to the east. To the north is an adjacent office/retail property within Commercial Corridor zoning district. To the south are additional restaurant (Rose Bakery) and retail properties within the Commercial Corridor zoning district. Existing food service uses with outdoor dining and retail tenants are located at this site. The expanded outdoor dining use will not impede use and enjoyment of the properties in the area and will instead add to the ambiance and quaint character of Corona del Mar.

Finding:

- C. The subject lot is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the limited duration use would or could reasonably be expected to generate;*

Facts in Support of Finding:

1. The subject lot is accessed from East Coast Highway and the alley in the rear of the property. A surface parking area is provided across the alley. The existing food service use, (El Cholo), is located in a commercial corridor area and proposes to operate all day and into the evening hours with peak hours when other retail and office uses on the property are typically not operating. Sufficient parking is provided on-site and no traffic issues are anticipated with the continued use of the expanded dining area.
2. The City is also undergoing an analysis of parking rates including rates related to food service and outdoor dining. Findings and recommendations of this study are anticipated by December of 2021, and may inform a future conditional use permit amendment for outdoor dining areas.

Finding:

- D. Adequate temporary parking to accommodate vehicular traffic to be generated by the limited duration use would be available either on-site or at alternate locations acceptable to the Zoning Administrator; and*

Facts in Support of Finding:

1. The existing food service use with outdoor dining has operated at the subject property since 1980. The existing surface parking lot has historically served as the primary parking supply for patrons. The surface lot is expected to adequately accommodate the temporary use for up to a one (1)-year term.
2. The expanded dining area is located inland of Coast Highway outside of the coastal zone and will not impede pedestrian access to or parking for the waterfront.

Finding:

- E. The limited duration use is consistent with all applicable provisions of the General Plan, any applicable specific plan, the Municipal Code, and other City regulations.*

Facts in Support of Finding:

1. The General Plan land use designation for this site is CC (Corridor Commercial). The CC designation is intended to provide a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity. The expanded outdoor dining use is accessory to the existing food service use with outdoor

dining, will be utilized for a limited duration on-site, and will not impede use of the site consistent with the CC designation. Outdoor dining is a use that tends to foster additional pedestrian activity.

2. The site is located in the CC (Commercial Corridor) Zoning District. The CC designation is intended to provide a range of neighborhood-serving retail and service uses along street frontages that are located and designed to foster pedestrian activity. The CC zoning district allows food service uses and the expanded dining area is a temporary use, authorized with a limited term permit.
3. The Limited Term Permit for expanded outdoor dining would complement and be consistent with the other commercial uses permitted within the CC Zoning District of Corona del Mar in that it provides amenities that support visitors to the area and provides a social gathering place for those who live and work in the neighborhood, consistent with General Plan Land Use Element Goal LU2, below. Additional benefits include providing opportunities for the continuation of local businesses that generate sales tax and provide opportunities for employment, which is consistent with General Plan Land Use Element Policy LU 2.4 (Economic Development), also copied below:

Goal LU 2 *A living, active, and diverse environment that complements all lifestyles and enhances neighborhoods, without compromising the valued resources that make Newport Beach unique. It contains a diversity of uses that support the needs of residents, sustain and enhance the economy, provide job opportunities, serve visitors that enjoy the City's diverse recreational amenities, and protect its important environmental setting, resources, and quality of life.*

Policy LU 2.4 Economic Development *Accommodate uses that maintain or enhance Newport Beach's fiscal health and account for market demands, while maintaining and improving the quality of life for current and future residents. (Imp 1.1, 24.1)*

4. Council Policy D-9 recognizes the need to balance economic development objectives with protection of the environment and the health and safety of the community. The policy recognizes the need to provide effective and efficient structures for implementing economic programs, utilizing staffing to provide healthy, thriving businesses, and maintain a healthy economy while preserving the unique commercial villages in Newport Beach. The proposed limited term permit would support a local business and economic prosperity while maintaining the unique character of the Corona del Mar community.
5. The site is not located within a specific plan area.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby finds this project is categorically exempt from the California Environmental Quality Act pursuant to Section

15301 under Class 1 (Existing Facilities) and Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.

2. The Zoning Administrator of the City of Newport Beach hereby approves Limited Term Permit No. XP2021-189 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.

PASSED, APPROVED, AND ADOPTED THIS 16TH DAY OF DECEMBER, 2021.

Jaime Murillo, Zoning Administrator

EXHIBIT "A"

CONDITIONS OF APPROVAL (*Project-specific conditions are in italics*)

Planning Division

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The approval of this Limited Term Permit shall be effective for up to a one (1)-year term January 1, 2022, to December 31, 2022. The applicant shall be required to cease all permitted operations and remove any temporary improvements made to the outdoor spaces as part of this Limited Term Permit on or before December 31, 2022.
3. *The expanded dining area shall not exceed 520 square feet in area.*
4. *The existing allowed hours of operation of the establishment shall not be extended. The hours of operation of the expanded area as part of this approval shall not extend beyond 9 p.m., Monday through Thursday, and shall close by 10:00 p.m., Friday through Sunday.*
5. *There shall be no use of amplified sound.*
6. *The applicant shall install and maintain a physical barrier between any area used and adjacent common pedestrian walkways in accordance with the requirements of the State Department of Alcoholic Beverage Control.*
7. The Applicant shall obtain and maintain authorization from the State Department of Alcoholic Beverage Control (ABC) for all areas where the sale, service or consumption of alcohol is under the control of the applicant. The establishment shall abide by all applicable regulations of the State Department of Alcoholic Beverage Control.
8. The sale of alcohol "to go" to patrons that dine within the expanded outdoor patios shall be prohibited.
9. The establishment shall abide by all applicable Orange County Health Care Agency requirements.
10. The permittee shall provide adequate trash receptacles within the permitted patio shall and the operator shall provide for periodic and appropriate removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
11. The Community Development Director or designee may inspect the modified area at any time during normal business hours.

12. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
13. 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 approval.
14. This Limited Term Permit be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
15. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Limited Term Permit.
16. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of this **Limited Term Permit No. XP2021-008 (PA2021-189) for El Cholo**. 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.

Building Division

17. Any areas used for temporary commercial or institutional use shall be accessible to disabled persons.
 - a. A minimum 4-foot-wide accessible path to all functional area shall be provided.
 - b. Access to restrooms shall be provided at all times.
 - c. Accessible parking stalls shall not be used for seating areas when onsite parking is provided.
 - d. At least one (1) accessible seating area shall be provided.
 - e. Detectable warnings are required when pedestrian paths cross or are adjacent to a vehicular way where no physical barrier are provided to separate the two (2).
18. All exiting paths shall be a minimum 36 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.

19. All tops of dining and work surfaces shall be 28 inches to 34 inches above the finish floor.

Fire Department

20. Fire lane(s) shall be identified on the plan.
21. Parking, displays, seating or other obstacles that interfere with emergency vehicles and personnel shall not be permitted in fire lanes.
22. Vehicles are permitted to stop in fire lanes awaiting service or delivery provided that the driver remains inside the vehicle and the vehicle is ready to move immediately upon orders from emergency personnel.
23. All Fire Department devices (fire hydrants, fire department connections, water valves, etc.) shall have a three-foot clearance in all directions.
24. Fire Department devices shall not be covered, blocked or otherwise hidden from plain view.
25. All building exits shall remain free and clear of any obstacles that would impede exiting from a building or suite and accessing the nearest public right-of-way.
26. Heat lamps or other heating elements shall comply with the following requirements in accordance with code section 3107.12 of the California Fire Code:
 - a. Propane and other fuel-based heating elements (including but not limited to flammable/combustible gas, liquid, or solid materials) shall not be used within tents or canopies.
 - b. Electric heaters must be UL listed for use within tents and/or canopies.
 - c. Propane and other fuel-based heating devices with blowers may be permitted, with the heating element located a minimum of 10 feet from the edge of the tent or canopy.
 - d. All heating equipment installations shall be approved for the fire code official.
27. Covered outdoor dining areas (separate or consolidated) shall comply with the following standards for tents larger than 400 square feet (2 or more walls) and/or canopies larger than 700 square feet (no walls or one (1) wall):
 - Post maximum occupant load.
 - Do not exceed posted occupant load inside the tent or canopy.
 - Visible and Mounted Fire Extinguishers with current service tags.
 - No Smoking Signs shall be installed.
 - Illuminated Exit Signs shall be installed.
 - Emergency Lighting shall be provided.
 - Exit doors are not to be blocked and are to remain accessible as exits while the tent is occupied.
 - All interior decorative fabrics or materials shall be flame resistant. Provide Certificates of Flame Resistance.

- If Propane is used, a permit is required: Cooking and heating equipment shall not be located within 10 feet of exits or combustible materials.
- LPG containers shall be located outside and be adequately protected and secured, and a permit will be required. Open flame or other devices emitting flame, such as candles, are not permitted inside or within 20 feet of the tent, canopy, or temporary membrane structure.
- Tents and canopies shall have the State Fire Marshall tag indicating fire resistance.
- Tents and canopies shall be designed and installed to withstand the elements of the weather and prevent collapsing through weights and ground anchorage.

Public Works Department

28. The Applicant shall install and maintain a substantial physical barrier (water-filled traffic barrier or K-rail between any area used and adjacent to any street, driveway, or parking area).
29. There shall be a minimum of 5 feet of space around all overhead facilities, such as poles, and 15 feet of space around all underground facilities, such as vault lids, manholes, vent pipes, pad-mounted transformers, etc.
30. Seating or structures below overhead conductors and/or under the 'drip line' shall be prohibited.
31. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.
32. Expanded outdoor dining areas shall adhere to the SCE clearance decal examples provided.

Attachment No. ZA 2

Vicinity Map

VICINITY MAP



Limited Term Permit No. XP2021-008
(PA2021-189)
3250 East Coast Highway

Attachment No. ZA 3

Emergency Temporary Use Permit Action Letter



COMMUNITY DEVELOPMENT DEPARTMENT

PLANNING DIVISION

100 Civic Center Drive, P.O. Box 1768, Newport Beach, CA 92658-8915
949-644-3200

www.newportbeachca.gov

COMMUNITY DEVELOPMENT DIRECTOR EMERGENCY TEMPORARY USE PERMIT ACTION

Subject: **El Cholo (PA2020-103)**
▪ Emergency Temporary Use Permit No. UP2020-030

Site Location **3520 East Coast Highway**

Applicant **El Cholo CdM, Inc.**

Property Owner **Walter C. Boice Family Trust**

On **June 10, 2020** the Community Development Director approved Emergency Temporary Use Permit No. UP2020-030. This approval is based on the following findings and subject to the following conditions.

I. SUMMARY OF PROPOSED MODIFIED OPERATION

The Applicant proposes to modify operations for the existing El Cholo restaurant to ensure the safety of its employees and patrons, as described in Attachment No. CD 2. The modified operations are summarized as follows:

1. Temporary placement of six (6) additional tables with four (4) seats each within an unused driveway abutting the existing building to the west. Each end of the driveway will be blocked off with large potted plants.
2. Alcohol will be sold and served to dine-in patrons in accordance with the requirements of the California Department of Alcoholic Beverage Control (ABC).
3. All tables will be placed such that they are at least seven (7) feet apart.

II. CEQA DETERMINATION

The proposed operation is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15269 (c) (the activity is necessary to prevent or mitigate an emergency), Section 15301 Class 1 (Existing Facilities) and Section 15303 Class 3 (New Construction or Conversion of Small Structures), respectively, of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment. Section 15269 allows specific actions necessary to prevent or mitigate an emergency. The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical

El Cholo (PA2020-103)

June 10, 2020

Page 2

features, involving negligible or no expansion of use. The Class 3 exemption includes a store, motel, office, restaurant, or similar structure not involving the use of significant amounts of hazardous substances, not exceeding 2,500 square feet in floor area or 10,000 square feet in floor area in urbanized areas zoned for such use. The permitted project meets these criteria and there are no known exceptions listed in CEQA Guidelines Section 15300.2 that would invalidate the use of these exemptions.

III. EMERGENCY TEMPORARY USE PERMIT FINDINGS

In this case the Community Development Director has found that the temporary use would not create a hazard to the health, safety or welfare of the community for the following reasons:

1. The operation authorized by this Emergency Temporary Use Permit is temporary and only valid during the emergency order established by Emergency Ordinance No. 2020-005.
2. The project, based upon the applicant's project description, approved site plan, and implementation of all conditions of approval, will be operated safely thereby helping reduce the spread of COVID-19.
3. The permitted use shall adhere to applicable State of California and Orange County Health Care Agency guidelines for the safe operation of the use. It is the responsibility of the permittee to implement and follow industry-specific guidance of the State of California and the Orange County Health Care Agency guidelines.
4. The permitted use must be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
5. The plan includes appropriate delineation of outdoor use spaces with temporary physical barriers or markers.
6. The proposed operation is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).
7. This Emergency Temporary Use Permit and Emergency Coastal Development Permit does not extend the allowed hours and days of operation beyond those currently permitted by any applicable City- or County-issued discretionary permit.
8. The proposed operation is necessary to provide adequate space to allow for appropriate social distancing to prevent further spread of COVID-19. The proposed site plan or use diagram provides adequate areas for patrons to practice social distancing to reduce the likelihood of spreading COVID-19.

El Cholo (PA2020-103)

June 10, 2020

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IV. CONDITIONS OF APPROVAL

1. Only that specifically described above and depicted in the attached site plan is authorized, subject to the conditions set forth below. Any additional changes require separate review and may necessitate separate authorization from the Director.
2. As long as this Emergency Temporary Use Permit is in effect, all NBMC provisions and any restrictions set forth in an applicable discretionary permit regulating uses, nonconforming uses, development standards, parking and permit procedures that regulate the use and development of private or public property operations are suspended only to the extent that the these provisions or restrictions set forth in a discretionary permit conflict with the terms of this Emergency Temporary Use Permit.
3. If the proposed operation is using any portion of the public right-of-way, the Applicant shall obtain and maintain liability insurance for not less than \$1,000,000 per occurrence and as specified by the City's Risk Manager. All liability insurance policies shall specifically include the City, the City Council, its employees, and agents as additional insureds and shall be issued by an agent or representative of an insurance company licensed to do business in the State of California, which has one of the three highest or best ratings from the Alfred M. Best company. All insurance policies shall contain an endorsement obligating the insurance company to furnish the Community Development Director with at least thirty (30) days written notice in advance of the cancellation of the policy.
4. The applicant shall place substantial barriers at the driveway entrances from Coast Highway and the alley to prevent vehicles from entering the temporary dining area.
5. The existing allowed hours of operation of the establishment shall not be extended. The area modified as part of this approval shall close by 9 p.m., Sunday through Thursday, and by 10 p.m. on Fridays and Saturdays.
6. The use of amplified sound within the temporary area shall be prohibited.
7. All dining tables shall be separated from other dining tables and/or waiting areas by a minimum of seven (7) feet to ensure proper social distancing is maintained.
8. The applicant shall obtain and maintain authorization from the State Department of Alcoholic Beverage Control (ABC) for all areas where the sale, service or consumption of alcohol is under the control of the applicant. The establishment shall abide by all applicable regulations of the ABC.
9. The sale of alcohol "to go" to patrons that dine within the restaurant or expanded outdoor patios shall be prohibited.
10. The establishment shall abide by all applicable Orange County Health Care Agency requirements.

El Cholo (PA2020-103)

June 10, 2020

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11. Establishments that provide food service, shall abide by the COVID-19 Industry Guidance: Dine-In Restaurants provided by the California Department of Public Health and Department of Industrial Health.
12. The permittee shall provide adequate trash receptacles within the permitted patio shall and the operator shall provide for periodic and appropriate removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
13. Any areas used for temporary commercial or institutional use shall be accessible to disabled persons as follows:
 - a. An accessible path to all functional area shall be provided.
 - b. Access to restrooms shall be provided at all times.
 - c. Accessible parking stalls shall not be used for seating areas when onsite parking is provided.
 - d. Accessible seating at tables or counters shall provide knee clearance of at least 27 inches high, 30 inches wide and 19 inches deep.
 - e. Detectable warnings are required when pedestrian paths cross or are adjacent to a vehicular way where no physical barrier are provided to separate the two.
14. All tops of dining and work surfaces shall be 28 inches to 34 inches above the finish floor.
15. All exiting paths shall be a minimum 36 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.
16. Fire lane(s) shall be identified on the plan and kept free and clear.
17. Parking, displays, seating or other obstacles that interfere with emergency vehicles and personnel shall not be permitted in fire lanes.
18. Vehicles are permitted to stop in fire lanes awaiting service or delivery provided that the driver remains inside the vehicle and the vehicle is ready to move immediately upon orders from emergency personnel.
19. All Fire Department devices (fire hydrants, fire department connections, water valves, etc.) shall have a three-foot clearance in all directions.
20. Fire Department devices shall not be covered, blocked or otherwise hidden from plain view.
21. All building exits shall remain free and clear of any obstacles that would impede exiting from a building or suite and accessing the nearest public right-of-way.
22. The Community Development Director or designee may inspect the modified area at any time during normal business hours.

El Cholo (PA2020-103)

June 10, 2020

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23. The Community Development Director may immediately revoke this permit if the Director determines that there has been a violation of any condition of approval. Any revocation of an Emergency Temporary Use permit shall be deemed effective upon the posting of a notice of revocation at the site of the business granted the emergency temporary permit.
24. The Community Development Director may modify this Emergency Temporary Use Permit. The Director shall notify the applicant of any proposed modification and a decision to modify this permit shall be deemed effective upon the posting of a notice of modification at the site of the business granted the emergency temporary use permit
25. This temporary authorization shall expire fourteen (14) days after the emergency order established by Emergency Ordinance No. 2020-005 is terminated or repealed.
26. Upon termination or repeal of Emergency Ordinance No. 2020-005, the Applicant shall immediately work to remove the temporary improvements in a timely manner and shall restore the expanded area back to its original use and improvements.
27. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of this Emergency Temporary Use Permit. 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.

El Cholo (PA2020-103)


June 10, 2020

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V. APPEAL

This decision may be appealed by the applicant/permittee to the City Manager by notifying the City Manager of the appeal within three (3) calendar days of the decision. The City Manager shall have authority to sustain, reverse or modify the decision of the Community Development Director and the City Manager's decision shall be final.

On behalf of Seimone Jurjis, Community Development Director,

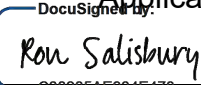


Benjamin M. Zdeba, AICP
Senior Planner

Attachments: CD 1 Filed Application
CD 2 Written Project Description
CD 3 Site Plan Diagram

Applicant and Permit Recipient Acknowledgement and Agreement

I hereby acknowledge that I have received a copy of this permit and that I have read and understand the permit and all conditions. I hereby agree to operate the authorized use consistent with this permit including the project description, approved site plan diagram, findings, and conditions of approval. This is an approved and executed permit and it constitutes a contract between the City and Permittee for all purposes.

Ron Salisbury	Ceo
<hr/>	
Applicant Name and Title	
	6/11/2020
<hr/>	<hr/>
Signature	Date

June 10, 2020

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Attachment No. CD 1

Filed Application



Community Development Department Planning Permit Application

RECEIVED
CITY OF
NEWPORT BEACH
DEVELOPMENT

Planning Commission December 5, 2024
Item No. 3c - Additional Materials Received
Five Crowns Temporary Outdoor Dining (1/4/2024)
100 Civic Center Drive
Newport Beach, California 92660
949 644-3200
newportbeachca.gov/communitydevelopment

JUN 08 2020

1. Check Permits Requested:

- | | | |
|--|--|---|
| <input type="checkbox"/> Approval-in-Concept - AIC # | <input type="checkbox"/> Lot Merger | <input type="checkbox"/> Staff Approval |
| <input type="checkbox"/> Coastal Development Permit | <input type="checkbox"/> Limited Term Permit - | <input type="checkbox"/> Tract Map |
| <input type="checkbox"/> Waiver for De Minimis Development | <input type="checkbox"/> Seasonal <input type="checkbox"/> < 90 day <input type="checkbox"/> > 90 days | <input type="checkbox"/> Traffic Study |
| <input type="checkbox"/> Coastal Residential Development | <input type="checkbox"/> Modification Permit | <input type="checkbox"/> Use Permit - <input type="checkbox"/> Minor <input type="checkbox"/> Conditional |
| <input type="checkbox"/> Condominium Conversion | <input type="checkbox"/> Off-Site Parking Agreement | <input type="checkbox"/> Amendment to existing Use Permit |
| <input type="checkbox"/> Comprehensive Sign Program | <input type="checkbox"/> Planned Community Development Plan | <input checked="" type="checkbox"/> Emergency Temp. Use Permit/CDP |
| <input type="checkbox"/> Development Agreement | <input type="checkbox"/> Planned Development Permit | <input type="checkbox"/> Variance |
| <input type="checkbox"/> Development Plan | <input type="checkbox"/> Site Development Review - <input type="checkbox"/> Major <input type="checkbox"/> Minor | <input type="checkbox"/> Amendment - <input type="checkbox"/> Code <input type="checkbox"/> PC <input type="checkbox"/> GP <input type="checkbox"/> LCP |
| <input type="checkbox"/> Lot Line Adjustment | <input type="checkbox"/> Parcel Map | <input type="checkbox"/> Other: |

2. Project Address(es)/Assessor's Parcel No(s)

3. Project Description and Justification (Attach additional sheets if necessary):

TEMP. USE - UNUSED DRIVEWAY TO SERVING AREA (FOOD + LIQUOR)

4. Applicant/Company Name ELCHOLO CDM INC

Mailing Address 3520 COAST HWY E Suite/Unit
City CORONA DEL MAR State CALIF Zip 92625
Phone 949 777 6137 Fax — Email CDM@ELCHOLO.COM

5. Contact/Company Name ELCHOLO

Mailing Address 3520 COAST HWY E. Suite/Unit
City CORONA DEL MAR State CALIF Zip 92625
Phone 949 777 6137 Fax — Email CDM@ELCHOLO.COM

6. Owner Name WALTER C BOICE Family Trust

Mailing Address 2816 E. Coast Hwy Suite/Unit 1
City Corona del mar State CAL Zip 92625
Phone 949 675 6700 Fax 949 675 3560 Email wboice@realonames.com

7. Property Owner's Affidavit*: (I) (We) WALTER C BOICE

depose and say that (I am) (we are) the owner(s) of the property (ies) involved in this application. (I) (We) further certify, under penalty of perjury, that the foregoing statements and answers herein contained and the information herewith submitted are in all respects true and correct to the best of (my) (our) knowledge and belief.

Signature(s): Title: TrusteeDate: 5/29/20

DD/MM/YEAR

Signature(s): Title: Date:

Attachment No. CD 2

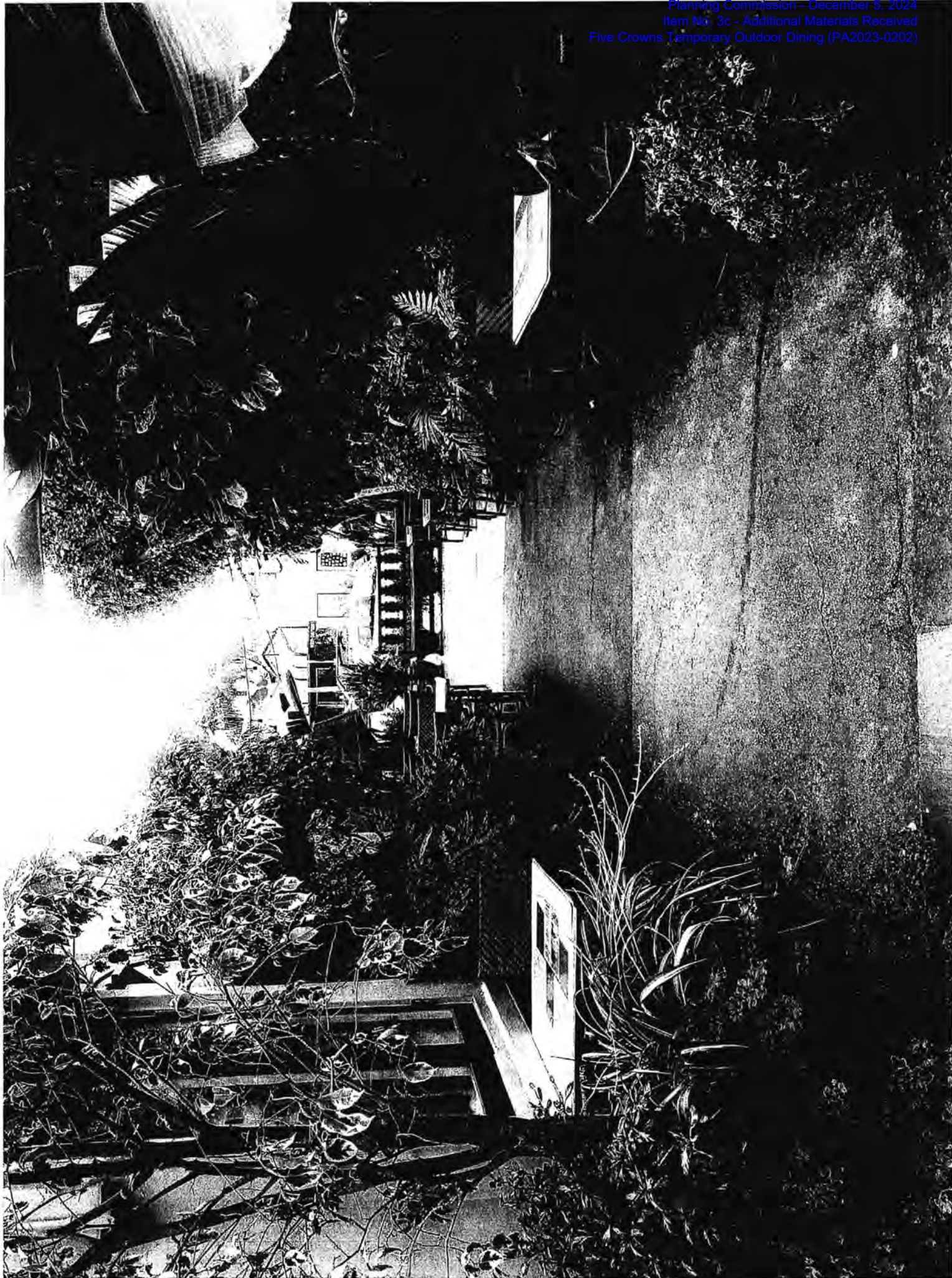
Written Project Description



PROJECT DESCRIPTION

- # adding barriers at each end and adding tables and chairs only
- # same procedures as are already being implemented at existing restaurant
- # 11:30 until 9. 10 on weekends
- # 6 4 top tables
- # same alcohol menu as currently served at existing restaurant
- # no curbside
- # none





June 10, 2020

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Attachment No. CD 3

Site Plan Diagram

Applicant to
Place Substantial
Potted Plants on
Private Property
at Alley

Applicant to
Place Substantial
Potted Plants on
Private Property
at Driveway

EXISTING
RESTAURANT

PCIT



City of Newport Beach
Temporary Use Permit Program

Date: 6-4-20

Site Plan

Business: EL RINOLD CDM

Address: 3520 E COAST HWY
CORONA DEL MAR

Business Owner's Signature:

Attachment No. ZA 4

SCE Clearance Decals

SOUTHERN CALIFORNIA EDISON TRANSMISSION AND DISTRIBUTION BUSINESS UNIT

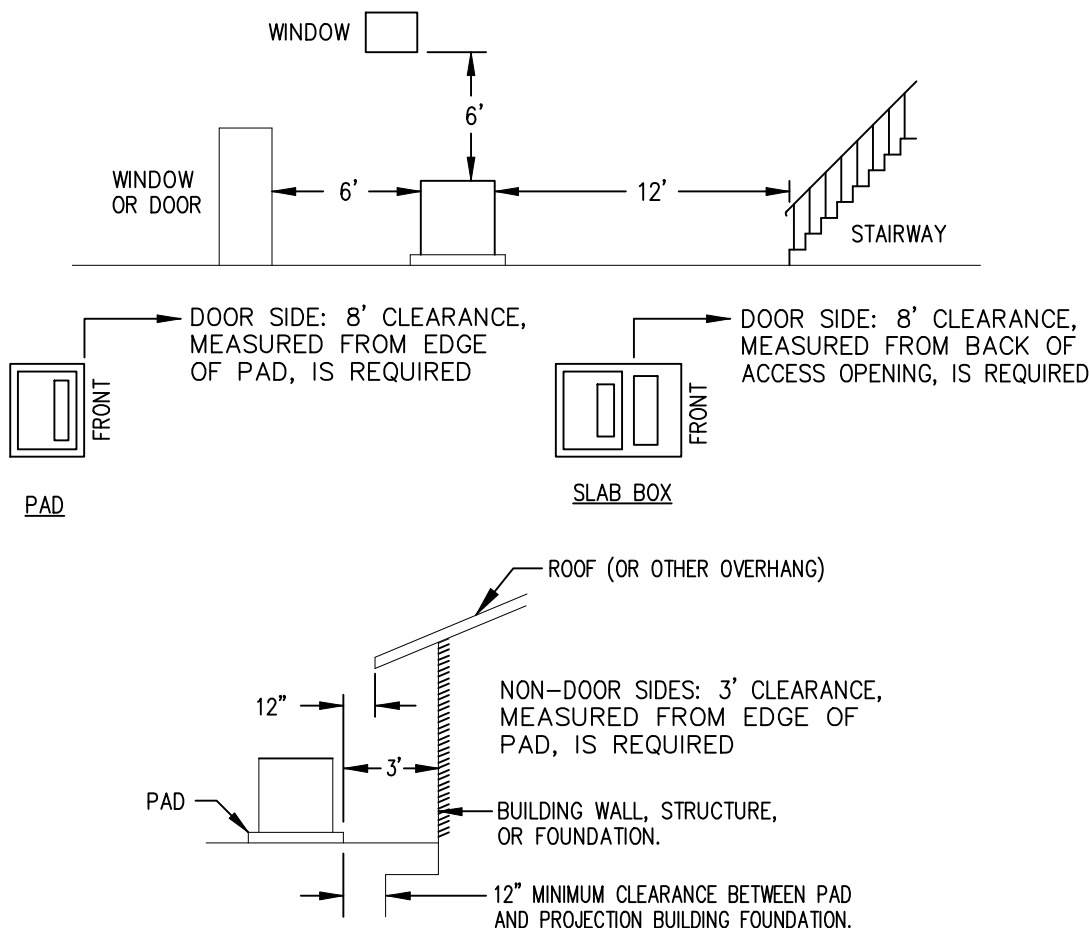
Approved Decals

June 8, 2020



D16: Rev. 05/28/20

MINIMUM CLEARANCES FOR PADMOUNTED TRANSFORMERS SEE DDS-3, 3-40

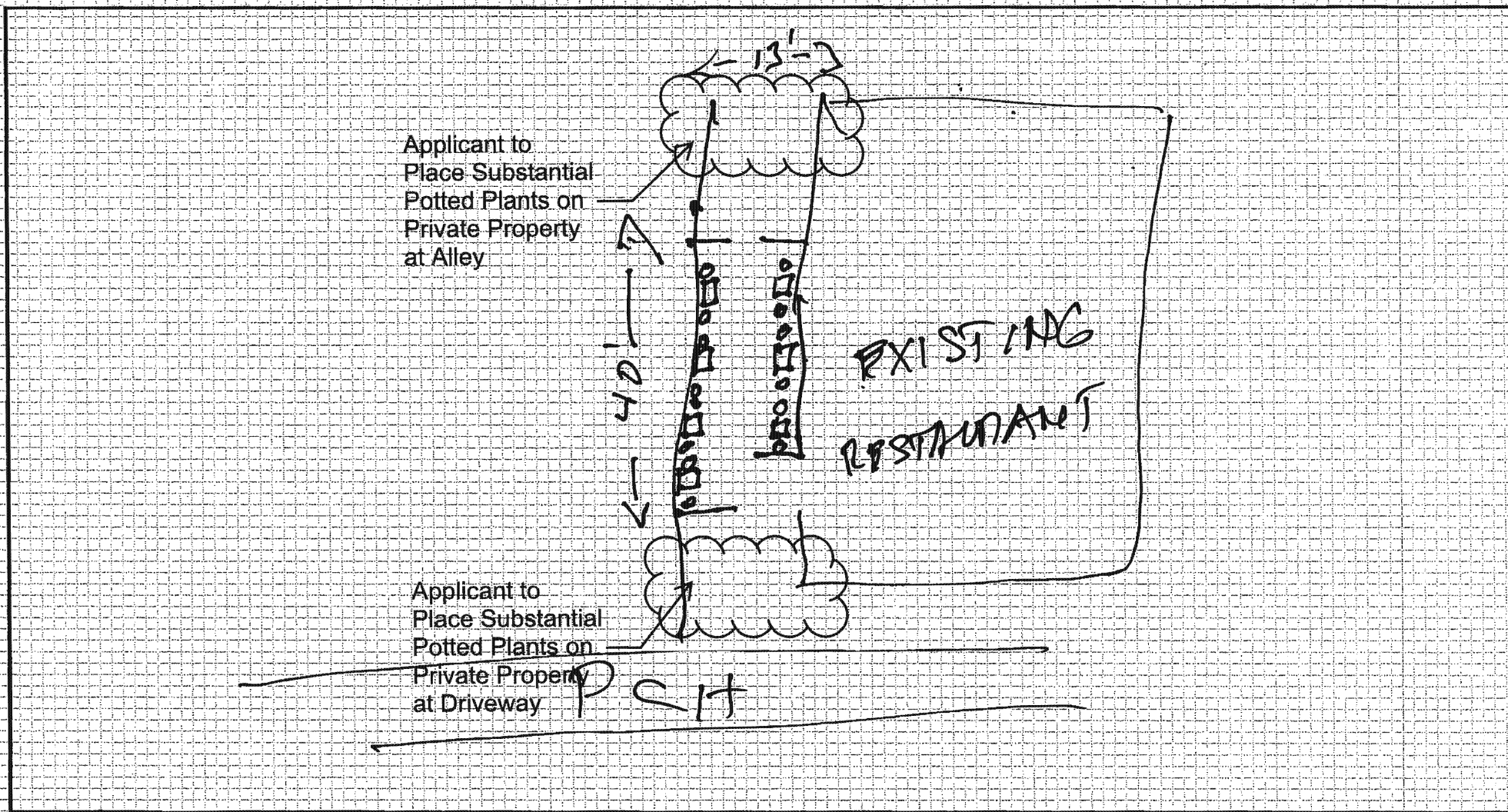


NOTES:

1. AN 8' MINIMUM CLEARANCE IS REQUIRED ON DOOR SIDE OF TRANSFORMER FOR OPERATION. THIS AREA MUST REMAIN CLEAR OF ALL OBSTRUCTIONS INCLUDING, BUT NOT LIMITED TO, SHRUBS, TREES, GATES, FENCES, WALLS, SIGNS AND POLES.
2. PAD-MOUNTED TRANSFORMERS SHALL NOT BE LOCATED IN FRONT OF DOORS, STAIRWAYS, BENEATH WINDOWS THAT CAN BE OPENED, OR WHERE THEY WILL OBSTRUCT THE VISION OF VEHICULAR TRAFFIC
3. PAD-MOUNTED TRANSFORMERS SHALL BE LOCATED AT LEAST THE MINIMUM DISTANCE AWAY FROM BUILDINGS OR OTHER STRUCTURES TO ENSURE ADEQUATE SPACE FOR OPERATING, TO MINIMIZE VIBRATION HUMS, AND TO MEET FIRE SAFETY REQUIREMENTS.
4. A CLEAR PASSAGEWAY OF 12 FEET MINIMUM SHALL BE AVAILABLE AT ALL TIMES, IMMEDIATELY ADJACENT TO ONE SIDE OF THE TRANSFORMER TO PROVIDE AN ACCESSIBLE ROADWAY FOR TRANSFORMER MAINTENANCE. THIS PASSAGEWAY SHALL BE DESIGNED TO MEET H-20 (20-TON) CONSTRUCTION.
5. TRANSFORMER STRUCTURES WILL NORMALLY BE INSTALLED ONLY IN NONTRAFFIC AREAS. TRANSFORMER PROTECTION IS REQUIRED WHEN COMPANY EQUIPMENT IS EXPOSED TO TRAFFIC. THIS PROTECTION MAY BE IN THE FORM OF BARRIERS, BARRICADES, OR CURB. A CURB MUST HAVE A MINIMUM HEIGHT OF 6 INCHES AND BE AT LEAST 6 INCHES THICK AND ITS FRONT FACE LOCATED 60 INCHES MINIMUM FROM THE EQUIPMENT FOUNDATION.

Attachment No. ZA 5

Project Plans



Site Plan



City of Newport Beach
 Temporary Use Permit Program

Date: 6-4-20

Business: EL CANTO CDM

Address: 3520 E COAST HWY
CORONA DEL MAR

Business Owner's Signature: