

## **Attachment No. PC 5**

August 15, 2024 Zoning Administrator  
Hearing Minutes

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Applicant Diane Barsam, who is also the property owner, stated that she had reviewed the draft resolution and agrees with all the required conditions.

Zoning Administrator Zdeba opened the public hearing. Seeing that no one from the public wished to comment, the public hearing was closed.

**Action:** Approved as amended

**ITEM NO. 3      Five Crowns Limited Term Permit and Coastal Development Permit (PA2023-0202)**  
**Site Location: 3801 East Coast Highway      Council District 6**

Liz Westmoreland, Senior Planner, on behalf of Melinda Whelan, Assistant Planner, provided a brief project description stating the item was continued from the July 25 Zoning Administrator hearing and is a limited term permit for an expanded outdoor dining patio at the Five Crowns Restaurant. The continuance allowed staff and the applicant additional time to address comments related to noise, design features, and other project-related issues. The applicant provided an additional noise report that addressed comments made from the previous meeting and a response to comments document. A modification to Design Feature No. 6 was included to limit equipment that emits low frequency sound, while Design Feature No. 7 was modified to require staff to monitor sound with professional support.

Senior Planner Westmoreland addressed public comments that were received. The Catanzarite Law firm commented on behalf of adjacent property owners. These comments were related to concerns of adequacy of the noise study, use of limited term permits to authorize the use, amplified sound, etc. The comments included two videos. Senior Planner Westmoreland described the content of the videos for the record indicating that the recorder of the video was located either on the street on Hazel or on the residential sidewalk adjacent to Hazel with the gate to Five Crowns patio visible. In the video, music was emanating from the patio, voices of the patrons were audible, and the gate was ajar. She could not discern the sound level but could confirm that the noise was audible in the video. Flashing and colorful lights can be seen intermittently in the video; therefore, she added a condition of approval in relation to outdoor lighting prohibiting flashing lights trespassing on adjacent areas pursuant to NBMC 10.30.070 (Outdoor Lighting). A comment was made questioning the CEQA exemption and classification. She clarified the existing use of the property as a restaurant, not the existing outdoor patio.

Comments made by Jim Mosher were addressed and Senior Planner Westmoreland accepted the minor technical changes that were suggested for incorporation into the resolution. Comments were also made regarding a policy in the general plan. She responded that the policy still applies, although staff understands the concerns about dilution of implementation items over time.

Comments were also received on Section 10.28 of NBMC (Loud and Unreasonable Noise) in which the section applies to time, place and manner restrictions to noise. Senior Planner Westmoreland provided an example scenario where noise may not exceed sound levels but would still be considered unreasonable.

Senior Planner Westmoreland added a condition to limit the number of private events of over 75 people to four times a month. This was previously agreed to by the applicant and would reduce the amount of congestion and activity at the site.

Zoning Administrator Zdeba opened the public hearing.

Applicant Ryan Wilson, CEO and operator of Five Crowns Restaurant, stated that he had reviewed the draft resolution and agrees with all the required conditions.

Mr. Wilson asked for clarification about the additional light use requirement condition. Zoning Administrator Zdeba clarified that the condition is to emphasize what is already required in the zoning code of spotlights and strobe lights spilling onto adjacent properties.

Mr. Wilson recounted his meetings with neighboring residents during the continuance.

One member of the public, Jim Mosher, asked for clarification of the lapse of the emergency temporary use permit and reiterated the concern from Catanzarite's letter on no amplified sound from the emergency temporary use permit. He commented on the adequacy and clarity of the plans for the tent and patio, questioned the plan of the temporary use permit for the restaurant, and mentioned the code violations from the high levels of noise and how it would be enforceable. He commented on the residential use at 351 Hazel Avenue not being analyzed in the noise reports. Mr. Mosher spoke to the timing of processing a conditional use permit and stated that one had not been submitted online. He also discussed the timing requirement for a limited term permit and does not see the 30-day lapse of the temporary use permit for renewal.

A second member of the public, Brian Andreini, noted he was able to walk through the business with Mr. Wilson. He hoped there is a win-win for the neighbors and wants to see the business succeed while still preserving the noise levels in the neighborhood. Mr. Andreini stated that, if approved, he expects it is done so as a temporary use with a review and not grandfathered in. He also mentioned the appropriateness of a 9 p.m. time limit on the amplified sound and worried about the loud music noise from the restaurant.

A third member of the public, Ken Catanzarite, highlighted parts of his firm's letter and spoke about the impact of the use in the neighborhood. He questioned the violations of the restaurant and the current Use Permit restrictions including use of the outdoor patio of 350 square feet. He brought forth the violations during COVID-19 for the patio usage and the increased seating, questioned the CEQA exemption for the temporary use permit, and expressed concern with the restaurant being turned into an event venue, the overcrowding, and the noise issues. He questioned the ability to authorize a limited term permit, stated the repeat violations of the restaurant and questioned the City giving Five Crowns the right and use for the temporary use permit referencing NBMC Section 20.52.040(E). He mentioned that the Limited Term Permit should be sent to the Planning Commission and emphasized that it is not a temporary use. Mr. Catanzarite brought up the proposed hours of operation and the use of amplified sound along with its limitation and reiterated the use of the gate and how he would like it locked as a Condition of Approval. He stated another condition should be added to limit amplified sound to 8:00 p.m., discussed the independent study that he conducted from MD Acoustics on the sound decibels and their models, and noted the speaker sound levels on the second and third floors.

A fourth member of the public, Mike Dickerson, from MD Acoustics, spoke on behalf on Mr. Catanzarite's independent noise study that was conducted. He mentioned the comparison between their study and the study done by the restaurant's consultant. He stated that a single speaker could exceed the noise standards at Mr. Catanzarite's house. He questioned the type of sound system being used and why it wasn't specified in the report. He mentioned the limit should be set lower and the use of "C-weight" versus "A-weighted" low frequency noise. Mr. Dickerson questioned how live music is contained in the restaurant with the usage of a drum set and electric guitar music. He also expressed concerns related to inversion and increase sound in the winter. He feels that the current study is inadequate and needs more specification of the sound system.

Zoning Administrator Zdeba gave the applicant team an opportunity to respond to the public comments. Bryan Estrada, on behalf of the applicant from RK Engineering, discussed the multiple studies and field visits conducted, as well as the differences between their study and MD acoustics study. The notable differences were the ways the sound model was calibrated to reflect real world conditions and the field data involved. Mr. Estrada spoke on the proposed wall designs, the type of activity on the patio, and the noise levels. He mentioned the restrictions put in on the type of noise allowed and the design features that are part of the conditions of approval. He stated that the owner understands the changes he will need to make on the property. He mentioned that he reached out to Mike Dickerson from MD Acoustics and ensured a noise monitoring program will be implemented and he believes that the applicant can abide by Newport Beach Municipal Code. He also mentioned the noise on Coast Highway and that with the conditions put on the project, it will abide by the noise standards.

Mr. Wilson clarified the cost of the improvements exceeding \$300,000 and commented that the changes will enhance the restaurant.

Zoning Administrator Zdeba clarified with Mr. Wilson the temporary nature of the permit and made it very clear that it is not an amendment to the Use Permit. Zoning Administrator Zdeba emphasized that the Limited Term Permit is a trial and that the restaurant must comply with the City's noise ordinance. He added that any

violations from the Police Department or Code Enforcement will affect the chances of an extension of the Limited Term Permit or any request for a permanent configuration. Mr. Wilson affirmed his understanding for each of the clarifications Zoning Administrator Zdeba listed.

Zoning Administrator Zdeba modified a condition of approval to ensure the applicant understands the use is temporary and expires December 31, 2024, unless an extension is applied no less than 30 days from expiration of the permit and granted. Zoning Administrator Zdeba modified another condition of approval to further limit the hours of operation to no later than 9 p.m. (Monday-Thursday) and 10 p.m. (Friday-Sunday and federal holidays). Three additional conditions of approval were added: (1) that within 30 days of approval, a building permit should be applied for the design features; (2) the loading and deliveries for the expanded outdoor patio and restaurant should occur from Poppy Avenue; and (3) that the operator should take reasonable steps to discourage attendees from private events from loitering on Poppy Avenue or Hazel Drive. Mr. Wilson agreed to the additional condition of approvals.

Zoning Administrator Zdeba closed the public hearing.

Senior Planner Westmoreland confirmed that no application has been received for a permanent use, but additional analysis would be needed for that request. The findings are different for a use permit than a limited term permit. She commented on the condition that requires improving the gate to reduce sound and clarified the CEQA Class 1 categorical exemption for existing facilities allows for additions and the negligible expansion of use, which would be consistent with the proposed temporary outdoor patio.

Zoning Administrator Zdeba described the history of commercial zoning on East Coast Highway and the proximity of the commercial corridor to residential uses being the longstanding pattern in Corona del Mar. He mentioned that roughly 15 to 20 percent of businesses on the commercial corridor in CDM are restaurants. He expressed the idea that the ancillary use of private events at restaurants is not uncommon.

In addition, he highlighted the parking for the restaurant in comparison to Sherman Gardens, which is a larger facility but has less parking than Five Crowns.

Zoning Administrator Zdeba noted the genesis of emergency temporary use permits for outdoor patios during the COVID-19 pandemic and shared examples of applications for seasonal outdoor patios in the City, including the Bungalow Restaurant, which recently applied for a temporary outdoor patio. He also discussed state legislation that supports temporary authorization for alcohol sales and temporary use of outdoor patios. He underscored that the use is temporary and any extension is not guaranteed, even with the substantial investment Mr. Wilson noted.

Zoning Administrator Zdeba mentioned the areas of improvement for the restaurant and in the applicant's noise study. He acknowledged there are differences of opinion between RK Engineering and MD Acoustics. He reiterated the conditions of approval that are included to ensure that the RK Engineering noise report would be valid and compliance with the City Noise Standards is required. Any documentation of noise violations could affect the future use of the property.

He reiterated that no amendment is being made to the Use Permit and any amendments would go to the Planning Commission. He also stated that the Zoning Administrator has authority over Limited Term Permits. Given the substantial record that was presented by the applicant, additional materials, public comments, and added conditions of approval, Zoning Administrator Zdeba approved the Limited Term Permit as amended with the conditions of approval. He closed by saying that this item is appealable to the Planning Commission.

**Action:** Approved as amended

## **V. PUBLIC COMMENTS ON NON-AGENDA ITEMS**

None.

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