



CITY OF NEWPORT BEACH PLANNING COMMISSION AGENDA

Council Chambers - 100 Civic Center Drive

Thursday, December 5, 2024 - 6:00 PM

Planning Commission Members:

Mark Rosene, Chair
Tristan Harris, Vice Chair
David Salene, Secretary
Brady Barto, Commissioner
Jonathan Langford, Commissioner
Lee Lowrey, Commissioner
Curtis Ellmore, Commissioner

Staff Members:

Seimone Jurjis, Assistant City Manager / Community Development Director
Jaime Murillo, Deputy Community Development Director
Brad Sommers, City Traffic Engineer
Jose Montoya, Deputy City Attorney
Clarivel Rodriguez, Administrative Assistant

NOTICE TO THE PUBLIC

Regular meetings of the Planning Commission are held on the Thursdays preceding second and fourth Tuesdays of each month at 6:30 p.m. The agendas, minutes, and staff reports are available on the City's website at: <http://www.newportbeachca.gov> and for public inspection in the Community Development Department, Planning Division located at 100 Civic Center Drive, during normal business hours.. If you have any questions or require copies of any of the staff reports or other documentation, please contact the Community Development Department, Planning Division staff at 949-644-3200.

This Commission is subject to the Ralph M. Brown Act. Among other things, the Brown Act requires that the Commission's agenda be posted at least 72 hours in advance of each meeting and that the public be allowed to comment on agenda items before the Commission and items not on the agenda but are within the subject matter jurisdiction of the Commission. The Commission may limit public comments to a reasonable amount of time, generally three (3) minutes per person. All testimony given before the Planning Commission is recorded.

Under the Levine Act, Section 84308 of the Government Code, a party to a proceeding before the City involving a license, permit, or other entitlement for use is required to disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding 12 months by the party or the party's agent to any elected or appointed officer of the City. If you have made a qualifying contribution, please ensure to make this disclosure on the record.

Please Note: You can submit your questions and comments in writing for the Planning Commission to consider by mailing or delivering them to the City of Newport Beach Planning Commission at 100 Civic Center Drive, Newport Beach CA, 92660. Alternatively, you can send them by electronic mail directly to Commissioners at planningcommission@newportbeachca.gov. Each Commissioner and staff will receive your message directly. Pursuant to Planning Commission procedures, please submit your written comments no later than 5:00 p.m. on Wednesday the day before the meeting in order to give Commissioners adequate time to review your submission.

It is the intention of the City of Newport Beach to comply with the Americans with Disabilities Act (ADA) in all respects. If, as an attendee or a participant of this meeting, you will need special assistance beyond what is normally provided, the City of Newport Beach will attempt to accommodate you in every reasonable manner. Please contact Clarivel Rodriguez in the Community Development Department prior to the meeting to inform us of your particular needs and to determine if accommodation is feasible (949-644-3232 or crodriguez@newportbeachca.gov).

APPEAL PERIOD: Use Permit, Variance, Site Plan Review, and Modification Permit applications do not become effective until 14 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. Tentative Tract Map, Tentative Parcel Map, Lot Merger, and Lot Line Adjustment applications do not become effective until 10 days following the date of approval, during which time an appeal may be filed with the City Clerk in accordance with the provisions of the Newport Beach Municipal Code. General Plan, Zoning, and Local Coastal Program Amendments are automatically forwarded to the City Council for final action.

I. **CALL TO ORDER**

II. **PLEDGE OF ALLEGIANCE**

III. **ROLL CALL**

IV. **PUBLIC COMMENTS**

Public comments are invited on non-agenda items generally considered to be within the subject matter jurisdiction of the Planning Commission. Speakers must limit comments to three (3) minutes. Before speaking, please state your name for the record and print your name on the blue forms provided at the podium.

V. **REQUEST FOR CONTINUANCES**

VI. **CONSENT ITEMS**

1. **MINUTES OF NOVEMBER 21, 2024**

Recommended Action: Approve and file.

[Draft Minutes of November 21, 2024](#)

VII. **PUBLIC HEARING ITEMS**

Speakers must limit comments to three (3) minutes on all items. Before speaking, please state your name for the record and print your name on the blue forms provided at the podium.

If in the future, you wish to challenge in court any of the matters on this agenda for which a public hearing is to be conducted, you may be limited to raising only those issues, which you (or someone else) raised orally at the public hearing or in written correspondence received by the City at or before the hearing

2. **UCHI SUSHI RESTAURANT (PA2024-0068)**

Site Location: 2510 and 2536 West Coast Highway

Summary:

A request for a conditional use permit and coastal development permit to convert 5,096-square-foot vacant suite to a new eating and drinking establishment (i.e., restaurant) with approximately 2,400 square feet of net public area (NPA) and a Type 47 (On-Sale General - Eating Place) Alcohol Beverage Control (ABC) License. The existing suite is currently vacant but was previously approved for use as a retail use (grocery store). The project also includes a request to use valet parking and locate a portion of the required 48 parking spaces off-site at 2436 West Coast Highway. The proposed hours of operation are between 5:00 p.m. and 11:00 p.m., daily. The project does not include a request for late hours or live entertainment.

Recommended Actions:

1. Conduct a public hearing;

2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, because it has not potential to have a significant effect on the environment; and

3. Adopt Resolution No. PC2024-026, approving the Conditional Use Permit and coastal development permit filed as PA2024-0068.

[Item No. 2 Staff Report](#)

[Attachment 1 - Draft Resolution with Findings and Conditions](#)

[Attachment 2 - Parking Evaluation by Urban Crossroads](#)

[Attachment 3 - NBPD Memo](#)

[Attachment 4 - Project Plans](#)

3. FIVE CROWNS APPEAL (PA2023-0202)

Site Location: 3801 East Coast Highway

Summary:

An appeal of the Zoning Administrator's August 15, 2024, decision to approve a limited term permit and coastal development permit to allow an existing temporary outdoor dining patio to remain for a limited term at Five Crowns Restaurant. The expanded 1,350-square-foot outdoor dining area including an 850-square-foot canopy was originally approved by an Emergency Temporary Use Permit (ETUP) in 2020 as a temporary addition to their existing outdoor dining. Although the ETUP expired, the temporary outdoor dining area has remained in use. The outdoor dining area will include live entertainment and will close by 10:00 p.m. A sound wall will be installed along the rear property lines along with other design features to reduce noise. The limited term permit and coastal development permit would allow the temporary use to remain until June 30, 2025, with a possible extension until December 31, 2025. A CDP is required because the property is within the Coastal Zone.

Recommended Actions:

1. Conduct a public hearing;

2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) Of the CEQA Guidelines, 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 Resolution No. PC2024-027, denying the appeal and upholding and affirming the Zoning Administrator's Approval of a Limited Term Permit for temporary outdoor dining filed as PA2023-0202.

[Item No. 3 Staff Report](#)

[Attachment 1 - Draft Resolution](#)

[Attachment 2 - Use Permit No. 1822](#)

[Attachment 3 - July 25, 2024, ZA Hearing Minutes](#)

[Attachment 4 - Updated Noise Report by RK Engineering dated August 5, 2024](#)

[Attachment 5 - August 15, 2024 ZA Hearing Minutes](#)

[Attachment 6 - Appeal Packet found Online](#)

[Attachment 7 - Five Crowns Response to Appeal Letter](#)

[Attachment 8 - Plans](#)

VIII. STAFF AND COMMISSIONER ITEMS

4. MOTION FOR RECONSIDERATION

5. REPORT BY THE COMMUNITY DEVELOPMENT DIRECTOR OR REQUEST FOR MATTERS WHICH A PLANNING COMMISSION MEMBER WOULD LIKE PLACED ON A FUTURE AGENDA

6. REQUESTS FOR EXCUSED ABSENCES

IX. ADJOURNMENT

**NEWPORT BEACH PLANNING COMMISSION MINUTES
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE
THURSDAY, NOVEMBER 21, 2024
REGULAR MEETING – 6:00 P.M.**

I. **CALL TO ORDER**– 6:00 p.m.

II. **PLEDGE OF ALLEGIANCE** - Secretary Salene

III. **ROLL CALL**

PRESENT: Chair Mark Rosene, Vice Chair Tristan Harris, Secretary David Salene, Commissioner Brady Barto, Commissioner Curtis Ellmore, Commissioner Jonathan Langford, and Commissioner Lee Lowrey (arrived at 6:08 p.m.)

ABSENT: None

Staff Present: Assistant City Manager/Community Development Department Director, Deputy Community Development Director Jaime Murillo, Assistant City Attorney Yolanda Summerhill, Police Investigator Wendy Joe, Assistant Planner Daniel Kopshever, Assistant Planner Jerry Arregui, Administrative Assistant Clarivel Rodriguez, and Department Assistant Savannah Martinez

IV. **PUBLIC COMMENTS** - None

V. **REQUEST FOR CONTINUANCES** - None

VI. **CONSENT ITEMS**

ITEM NO. 1 MINUTES OF OCTOBER 3, 2024

Recommended Action: Approve and file

Motion made by Commissioner Ellmore and seconded by Vice Chair Harris to approve the meeting minutes of October 3, 2024, as amended by Mr. Mosher.

AYES: Barto, Ellmore, Harris, Langford, Rosene, and Salene

NOES: None

ABSTAIN: None

ABSENT: Lowrey

VII. **PUBLIC HEARING ITEMS**

ITEM NO. 2 OLEA RESTAURANT EXPANSION (PA2024-0064)
Site Location: 2001 Westcliff Drive, Suite 100-101

Summary:

A conditional use permit (CUP) to expand an existing restaurant into an adjacent commercial suite. The expansion will add 750 square feet of area to provide additional seating, an additional restroom, a private dining room, and space for an unamplified player piano. The player piano does not meet the definition of live entertainment pursuant to Section 20.70 of Newport Beach Municipal Code (NBMC) and no dancing is proposed. The restaurant currently operates with late hours and a Type 47 (On Sale General – Eating Place) Alcoholic Beverage Control (ABC)

license. No change is proposed to the ABC License or to the hours of operation, which are from 10:00 a.m. to 12:00 a.m., daily. If approved, Use Permit No. UP2016-03 would be superseded, and the Applicant would be required to obtain an updated Operator's License pursuant to NBMC Section 5.25.020.

Recommended Actions:

1. Conduct a public hearing;
2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, because it has not potential to have a significant effect on the environment; and
3. Adopt Resolution No. PC2024-024, approving the Conditional Use Permit filed as PA2024-0064.

Assistant Planner Kopshever used a presentation to review the vicinity map, project location and description, floor plan, parking, findings, notable conditions, and recommended action.

No ex parte communications were disclosed by the Commissioners.

In reply to Chair Rosene's question, Sten Green, the applicant, indicated that 49 people can be accommodated in the side area and approximately 12 people in the private dining room as per Condition of Approval 42. Furthermore, he agreed to the conditions of approval. In response, Assistant City Manager Jurjis suggested amending Condition of Approval 42 to limit the occupancy load in compliance with the building code.

Chair Rosene opened the public hearing.

There were no public comments received.

Chair Rosene closed the public hearing.

Motion made by Vice Chair Harris and seconded by Secretary Salene to approve the item with the amendment to Condition of Approval 42.

AYES: Barto, Ellmore, Harris, Langford, Lowrey, Rosene, and Salene
NOES: None
ABSTAIN: None
ABSENT: None

ITEM NO. 3 ZENK RESIDENCE (PA2024-0057)
Site Location: 2830 Bayview Drive

Summary:

A request for a coastal development permit (CDP) to allow the demolition of an existing single-unit dwelling and construction of a new three-story, 5,275-square-foot, single-unit dwelling with a 682-square-foot, attached three-car garage and a 2,340-square-foot subterranean basement. The project also includes landscape, hardscape, drainage improvements, and site walls.

Due to the nonstandard lot configuration, the request also includes a variance from development standards of Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code (NBMC) to allow the following deviations:

- a) Exceed the gross floor area limit by approximately 1,513 square feet;
- b) Encroach 10 feet into the 20-foot front setback along Heliotrope Avenue;
- c) Encroach 6 feet into the 10-foot rear setback; and
- d) Encroach into the 15-foot front and rear third floor setbacks.

Recommended Actions:

1. Conduct a public hearing;
2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to 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 Resolution No. PC2024-025, approving the Coastal Development Permit and Variance filed as PA2024-0057.

Commissioner Ellmore recused himself due to real property interests within 1,000 feet of the subject property.

Assistant Planner Arregui used a presentation to review the project location and lot orientation, required setbacks, proposed project, required findings, variance request, zoning compliance, buildable area, setback variance continued, Bayview frontage alternative, required setbacks, façade modulation, floor area limit variance, third floor stepback variance, coastal views and access, public comments, and recommended action.

In reply to Secretary Salene's question, Assistant Planner Arregui relayed that the lot at 2820 was constructed in 1937 and the subject property in 1947, based on county records, and reviewed the current setback conditions for the subject property.

In reply to Vice Chair Harris' inquiry, Assistant Planner Arregui relayed that the parcels are recognized as legal because the construction and reconfiguration occurred before the enactment of the Subdivision Map Act when properties were allowed to cross property lines. Deputy Community Development Director Murillo stated that the City records a Certificate of Compliance to recognize parcels as legal lots that were configured before the Subdivision Map Act.

In reply to Commissioner Barto's inquiry, Deputy Community Development Director Murillo reviewed the history of the setback maps including the original name, introduction in the early 1940s, inclusions, and the conversion of Districting Maps to Setback Maps in 2010. Furthermore, to provide clarity of how the configurations were allowed, he utilized the presentation to review the required setback map, stated that Bayview Drive was treated as the front and possibly didn't apply Heliotrope Avenue as the side, the house was recognized as legal nonconforming for prior issued permits, and the front setback encroachment was addressed in prior issued permits and an over height deck exists within the front setback.

There were no exparte communications disclosed by the Commissioners.

Chair Rosene opened the public hearing.

Brandon Lindsay represented the applicant who noted that the subject property is a nonstandard lot, compared nearby properties, the FAR study, less buildable area, the consequences of keeping Heliotrope Avenue as the front yard orientation, front setbacks, and an intent to enrich the neighborhood. Furthermore, the applicant accepted the condition of approval.

Cheryl Fischer recommended the Commission uphold the existing building codes and deny the request to exceed the gross floor area limits. She clarified an error in the packet that 2820 Bayview Drive is facing Heliotrope Avenue and observes the setback.

Chair Rosene stated for the record that the Planning Commission has reviewed all the letters received.

Pam Smith, 245 Heliotrope Avenue, opposed the variance and recommended a compromise.

Becky Bethel opposed the variance and shared the impact to residents who live on the flower streets.

Charla La Ruzie, 2820 Ocean Boulevard, requested the Commission honor what the people want.

Jim Mosher questioned the zoning code that limits floor area ratio and considers setbacks for residential properties and suggested asking the City Council to change the setback map to reflect the correct setbacks.

Scott Christie opposed the variance.

Robert Stinger opposed the variance.

Frank Turney, 302 Heliotrope Avenue, supported the Commission upholding the ordinance.

Charlie Mogner opposed the variance and provided a handout.

Mr. Lindsay relayed that the views and angles were studied and submitted to the City as record, and the property is not a standard lot and the reason for the variance is to identify the best configuration, and the applicant wants harmony and what is deemed fair.

Assistant Planner Arregui clarified that the note in the staff report that stated the property faces Bayview Drive was meant to refer to the orientation of the lot and not the home and provided the definition of a front lot line. Furthermore, he stated that the basement is exempt from the floor area since it is a fully subterranean basement and 2960 Bayview Drive is a traditional double lot with the narrower side facing the street that it is on, resulting in the allowance for a larger home than the subject property.

Chair Rosene closed the public hearing.

Commissioner Langford thought the project is beautiful, a unique situation, and allowed to ask for variances. He noted that the City decided on this matter and the calculated risk the previous property owner took is not the Commission's responsibility to fix. He supported protecting setbacks in Corona del Mar.

Commissioner Barto concurred with Commissioner Langford. He expressed confusion about how this existing setback is a surprise and how the property owner can get rid of it without a compelling understanding of why.

Chair Rosene appreciated the FAR information, struggled making the necessary findings for a variance, thought the home would dominate the street scene on Heliotrope Avenue, disagreed with a 10-foot setback, noted the home exceeds the buildable square footage by 200 square feet utilizing the proposed setbacks, and thought the project would be an overbuild, not harmonious with the neighborhood, and implied special privilege.

Secretary Salene was conflicted by the matter, stated that the property owner bought the property knowing the setbacks, and thought the building would impact on the character of the community and overtake the street.

Vice Chair Harris shared the sentiments of the other Commissioners, thought the City made the decision on this matter in 2008 when they accepted the parcel lines, noted the unique property, and stated that he is likely to support a variance, and the accommodations are reasonable.

Commissioner Langford thought the 10-foot rear setback does not need to be that deep, so a variance into that setback could be supported.

Commissioner Barto thought there were arguments for some variances on this lot, the 10-foot rear setback does not seem necessary, and some of the setbacks on the front and rear on the third floor are also probably right for variances.

Chair Rosene reviewed the proposed variances along the property lines, struggled with the 10-foot setback on Heliotrope Avenue, thought the architect should return with alternatives, and did not support the variance.

Chair Rosene stated and Assistant City Attorney Summerhill concurred with two options for action: the applicant can request a continuance, or the Commission can approve or deny the application and variance.

Motion made by Chair Rosene to deny the application and variance. He then removed the motion, opened the public hearing, and asked the applicant if they would like to request a continuance to work with staff and the neighbors. The applicant requested a continuance and asked for direction from the Commission. As per Assistant City Attorney Summerhill, the public hearing remained open until a future time.

Assistant City Manager Jurjjs suggested the Commission provide guidance for the architect and would re-notice the item to come back in January 2025.

Guidance from the following Commissioners was provided:

Commissioner Barto expressed concern for the setbacks from Heliotrope Avenue and noted other variance components were reasonable beyond that.

Chair Rosene suggested the setback on Heliotrope Avenue be at least on the first floor, noted opportunities for a variance in the garage subterranean space, and proposed a livable space stepback in a wedding cake fashion to give a feeling for a larger setback on Heliotrope Avenue.

Secretary Salene thought Heliotrope Avenue is the main issue and a full 20-foot setback is not necessary, but a 10-foot setback may not be enough.

Commissioner Lowrey expressed concern about the setback on Heliotrope Avenue and asked for a modification.

Commissioner Langford thought the rear setback is not as important as protecting Heliotrope Avenue and proposed a modification to the third level.

Assistant City Attorney Summerhill stated that the Assistant City Manager will re-notice the item and no further action is required by the Planning Commission.

VIII. STAFF AND COMMISSIONER ITEMS

ITEM NO. 4 MOTION FOR RECONSIDERATION - None

ITEM NO. 5 REPORT BY THE COMMUNITY DEVELOPMENT DIRECTOR OR REQUEST FOR MATTERS WHICH A PLANNING COMMISSION MEMBER WOULD LIKE PLACED ON A FUTURE AGENDA

Deputy Community Development Director Murillo announced that the City is underway with the General Plan Update efforts and community meetings, online and interactive participation is included, and public comment is desired. He noted the next Planning Commission meeting on December 5.

ITEM NO. 6 REQUESTS FOR EXCUSED ABSENCES - None

IX. ADJOURNMENT – With no further discussion, Chair Rosene adjourned the meeting at 7:22 p.m.

The agenda for the November 21, 2024, Planning Commission meeting was posted on Thursday, November 14, 2024, at 3:45 p.m. in the Chambers binder, on the digital display board located inside the vestibule of the Council Chambers at 100 Civic Center Drive, and on the City’s website on Thursday, November 14, 2024, at 3:16 p.m.

Mark Rosene, Chair

David Salene, Secretary



CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT

December 5, 2024
Agenda Item No. 2

SUBJECT: Uchi Sushi Restaurant (PA2024-0068)
▪ Conditional Use Permit
▪ Coastal Development Permit

SITE LOCATION: 2510 West Coast Highway

APPLICANT: B.E. Architects

OWNER: 2510 West Coast Highway and 2436 West Coast Highway

PLANNER: Jenny Tran, Associate Planner
949-644-3212 or jtran@newportbeachca.gov

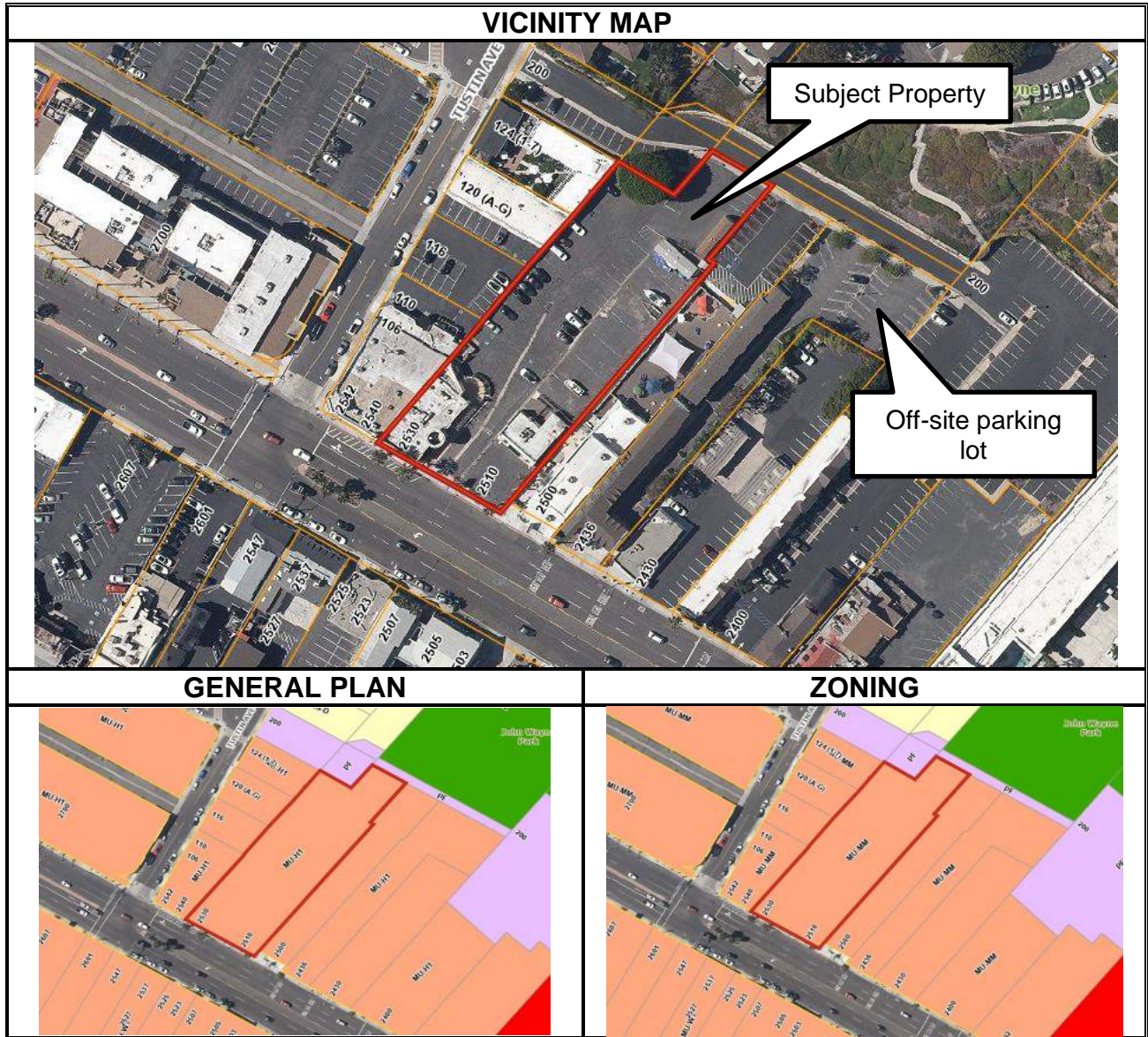
PROJECT SUMMARY

A request for a conditional use permit and coastal development permit to convert a 5,096 square-foot vacant suite to a new eating and drinking establishment (i.e., restaurant) with 2,400 square feet of net public area (NPA) and a Type 47 (On-Sale General – Eating Place) Alcohol Beverage Control (ABC) License. The existing vacant suite was previously approved for use as a retail use (grocery store). The project includes a request to use valet parking and locate a portion of the required 48 parking spaces off-site at 2436 West Coast Highway. The proposed hours of operation are between 5:00 p.m. and 11:00 p.m., daily. The project does not include a request for late hours (after 11:00 p.m.) or live entertainment.

RECOMMENDATION

- 1) Conduct a public hearing;
- 2) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment; and
- 3) Adopt Resolution No. PC2024-026 approving the conditional use permit and coastal development permit filed as PA2024-0068 (Attachment No. PC 1).

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LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	Mixed-Use Horizontal 1 (MU-H1)	Mixed-Use Mariners' Mile (MU-MM)	Mixed-use building (under construction)
NORTH	Single Unit Residential (RS-D) / Parks and Recreation (PR)	Single-Unit Residential (R-1) / Parks and Recreation (PR)	Single-unit residences and John Wayne Park
SOUTH	Mixed-Use Water 1 (MU-W1)	Mixed-Use Water (MU-W1)	Coast Highway and Boat tour agency / various commercial uses
EAST	MU-H1	MU-MM	Day care center/pre-school
WEST	MU-H1	MU-MM	Various commercial uses

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INTRODUCTION

Project Setting

The subject property is located within the Mariners' Mile Corridor on the inland side of Coast Highway and is approximately 0.98 acres. The property is bound by Avon Street to the north, West Coast Highway to the south, a day care center to the east, and various commercial uses to the west. The property was previously developed with a marine sales facility and is currently under construction with a new mixed-use development that includes 36 multi-unit residential units and a 5,096-square-foot commercial building.

Background

On February 18, 2021, the Planning Commission approved a Coastal Development Permit, Site Development Review, Tentative Parcel Map, Conditional Use Permit, and Affordable Housing Implementation Plan filed as PA2019-249. The approval authorized the demolition of an existing marine sales building and construction of a three-story mixed-use development for 35 residential dwelling units and an 11,266-square-foot boutique auto showroom that included a mezzanine and office. Subsequently, the project was called for review by the City Council and on July 27, 2021, the City Council upheld the Planning Commission's approval with a few modifications. The decision authorized a modification to increase the residential dwelling units to 36 units, reduce the commercial component of the project to 5,096 square feet, change the commercial use to office and eliminate the auto showroom. This also eliminated the need for a conditional use permit, as it was only required for the establishment of the auto showroom and the associated off-site parking component.

On March 9, 2023, the Planning Commission approved an amendment to the Coastal Development Permit and a Traffic Study filed as PA2022-101 to authorize the conversion of the office building to a retail use (i.e., grocery store).

The prior marine sales facility has since been demolished and a building permit has been issued (Permit No. X2022-0924) for the construction of the mixed-use development. The building permit was issued in February of 2024 and the property is currently under construction and anticipated for completion by 2026.

Project Description

The applicant requests approval of a conditional use permit and coastal development permit to convert the 5,096-square-foot commercial building to a fine-dining sushi restaurant. The restaurant will have both seated tables and bar dining areas. The request also includes a Type 47 ABC License for alcoholic beverages (beer, wine, and spirits) to be served in conjunction with the restaurant. The restaurant is proposed to operate during typical dinner hours between 5:00 p.m. and 11:00 p.m., daily. The project does not include a request for late hours (after 11:00 p.m.), live entertainment, or outdoor dining areas. Figure

1 below shows a partial site plan of the ground floor with the proposed restaurant and on-site parking spaces.

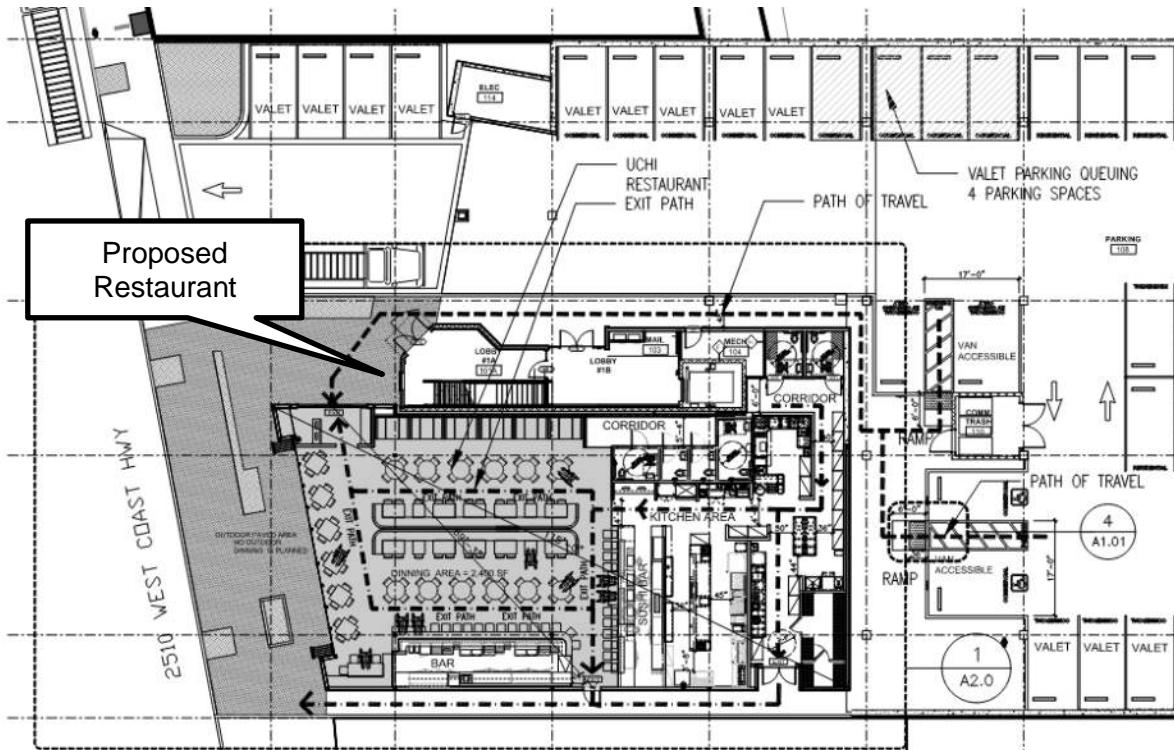


Figure 1: Partial site plan with proposed restaurant and on-site parking spaces.

Additionally, the project includes a request for a portion of the required parking spaces to be located off-site on a nearby property at 2436 West Coast Highway. A total of 48 parking spaces are required; 16 parking spaces will be located on-site and 32 parking spaces will be located off-site. All 48 parking spaces will be valet parked. Figure 2 below shows the location of the off-site parking lot as well as the access to and from the parking lot from the subject property via Avon Street.

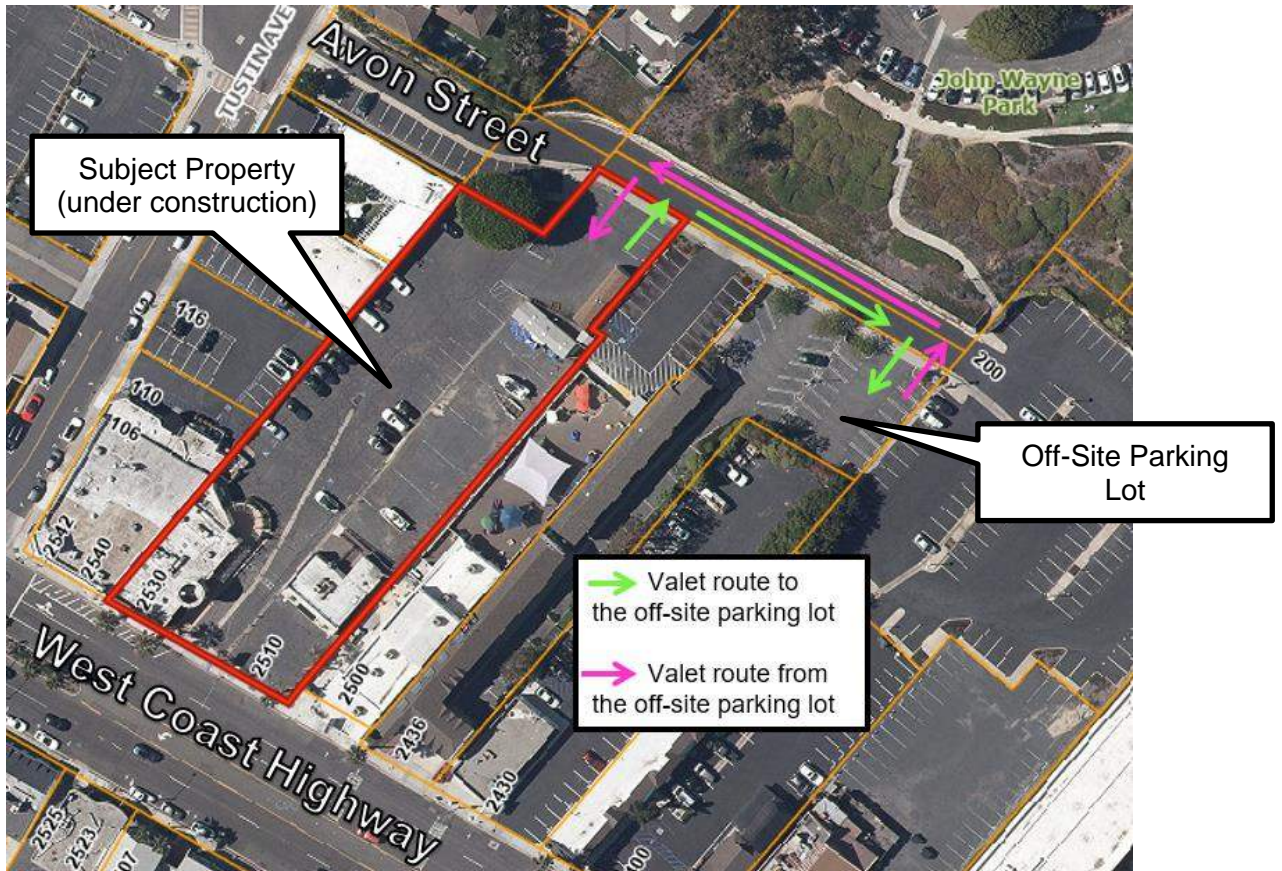


Figure 2: Access to the off-site parking lot from the subject property via Avon Street.

DISCUSSION

Analysis

General Plan

The General Plan Land Use Element designates the site as Mixed-Use Horizontal (MU-H1), which provides for a horizontal intermixing of uses. For properties located on the inland side of Coast Highway in the Mariners’ Mile Corridor, such as the subject property, the General Plan land use designation intends for marine-related and highway-oriented general commercial uses along the highway frontage of the property. The rear portions of properties may be developed with free-standing neighborhood-serving retail, multi-unit residential units, or mixed-use buildings that integrate residential with retail uses on the ground floor. The development under construction is consistent with the MU-H1 General Plan designation as the commercial building is located along the frontage of Coast Highway and the multi-unit residential units are located towards the rear of the property. The project proposes to convert the commercial building along the West Coast Highway frontage to a restaurant which is consistent with the MU-H1 designation.

Local Coastal Plan

The Coastal Land Use Plan (CLUP) designates the site as Mixed-Use – Horizontal (MU-H). The MU-H category is intended to provide for the development of areas for a horizontally distributed mixed of uses, which may include general or neighborhood commercial, commercial offices, multi-unit residential, visitor-serving, and marine-related uses, and/or buildings that vertically integrate residential with commercial uses. The mixed-use development that is under construction is consistent with the Local Coastal Plan designation. The proposed project to convert the commercial building to a restaurant is also consistent with this designation and will serve the surrounding neighborhood and visitors to the area.

Zoning Code

The property is within the Mixed-Use Mariners' Mile (MU-MM) Zoning District of the NBMC, which limits the Coast Highway frontage to nonresidential uses. The proposed restaurant is categorized as a Food Service (no late hours) land use and is allowed with approval of a minor use permit. However, the project also includes a request for a portion of the required parking to be provided off-site with a valet service which, pursuant to Section 20.40.100 (Off-Site Parking) of the NBMC, requires the approval of a conditional use permit.

Conditional Use Permit Findings

In accordance with Section 20.52.020(F) (Conditional Use Permits and Minor Use Permits – Findings and Decision) of the NBMC, the Planning Commission must also make the following findings for approval:

- 1. The use is consistent with the General Plan and any applicable Specific Plan;*
- 2. The use is allowed within the applicable zoning district and complies with all other applicable provisions of the Zoning Code and Municipal Code;*
- 3. The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;*
- 4. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and*
- 5. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

As previously discussed, the proposed restaurant is consistent with the purpose and intent of the MU-H1 General Plan Land Use designation. Restaurants with alcohol are common in this area and are complementary to the surrounding commercial and retail services. The restaurant will be oriented along the frontage of the property and away from the residential zoning district towards the rear of the property which is consistent with the General Plan Land Use Element and Zoning Code for this property and for the intended development for Mariners' Mile. The restaurant will provide a convenient commercial service for residents and visitors to the City.

The restaurant is intended to be a fine-dining restaurant that only operates during typical dinner hours between 5:00 p.m. and 11:00 p.m., daily. The project does not include late hours, live entertainment, or an outdoor dining area that could potentially create a nuisance or noise impacts for the residents of the multi-unit residential dwelling units on the property or the residential development behind the property.

Pursuant to Section 20.30.120 (Solid Waste and Recyclable Materials Storage) of the NBMC, the restaurant requires a minimum of 48 square-feet for the refuse enclosure area. A commercial refuse storage area that complies with this requirement is provided and screened from the rights-of-way and drive aisles.

Although Section 20.40.040 (Off-Street Parking Spaces Required) of the NBMC was recently amended to require one parking space per 100 square-feet of gross floor area for eating and drinking establishments, the property is within the Coastal Zone and required parking must comply with Title 21 (Local Coastal Program Implementation Plan) of the NBMC. Pursuant to Table 21.40-1 (Off-Street Parking Requirements) of Section 21.40.040 (Off-Street Parking Space Required), the restaurant use requires one parking space per a range of 30 to 50 square feet of net public area (NPA)¹. Pursuant to Section 21.40.060 (Parking Requirements for Food Service Uses) of the NBMC, the Planning Commission shall establish the off-street parking requirement for food service uses based upon consideration of the physical design characteristics, operational characteristics, and location of the establishment. A Parking Evaluation was prepared by Urban Crossroads dated October 2, 2024, to analyze the project's parking demand and program the valet operation (Attachment No. PC 2).

Based on the Parking Evaluation prepared by Urban Crossroads and the considerations listed above, a rate of one space per 50 square feet of NPA was determined to be appropriate for the proposed use. The restaurant has a total NPA of 2,400 square feet which requires 48 parking spaces. All 48 parking spaces are provided with 16 valet parking spaces on-site and 32 valet parking spaces off-site at 2436 West Coast Highway. The valet parking plan that was provided as part of the Parking Evaluation was reviewed

¹ Pursuant to Chapter 20.70 (Definitions), net public area means the total area used to serve customers, including customer sales and display areas, customer seating areas, service counters, and service queue and waiting areas, but excluding restrooms and offices, kitchens, storage and utility areas, and similar areas used by the employees of the establishment.

and approved by the Public Works Department and City Traffic Engineer. Additional discussion of the off-site parking is provided under the Off-Site Parking Findings below.

The fine-dining restaurant would generate fewer trips than the approved retail grocery store use as determined by the City Traffic Engineer and, therefore, a new Traffic Study is not required for the project.

Off-Site Parking Findings

In accordance with Section 20.40.100(B) (Off-Site Parking – Findings) of the NBMC, in order to approve a conditional use permit for an off-site parking facility, the following findings and facts in support of such findings are set forth:

- 1. The parking facility is located within a convenient distance to the use it is intended to serve;*
- 2. On-street parking is not being counted towards meeting parking requirements;*
- 3. Use of the parking facility will not create undue traffic hazards or impacts in the surrounding area; and*
- 4. The parking facility will be permanently available, marked, and maintained for the use it is intended to serve.*

To meet the required parking demand, the project proposes to use an off-site parking lot at 2436 West Coast Highway. Patrons will enter the site via the main driveway on West Coast Highway where valet staff will either direct vehicles to an available parking space on-site or to one of the four queueing spaces on-site. Once dropped off, valet staff will park the vehicles in one of the 16 on-site parking spaces or at the off-site parking lot that is accessed via Avon Street in the rear of the property. The property is approximately 60-feet away from the subject property and valet staff are able to easily walk to the off-site parking location to pick-up and drop-off vehicles for patrons of the restaurant.

The off-site parking lot serves a commercial office building during the daytime. The various commercial and office uses at 2436 West Coast Highway predominantly operate during daytime hours that end around 5:00 p.m. The restaurant will operate during typical dinner hours between 5:00 p.m. and 11:00 p.m., daily and the use of the parking spaces are not anticipated to overlap with the uses on the property. Condition of Approval No. 8 is included to ensure the hours of operation will not conflict with the office building. Additionally, the restaurant staff will use the on-site parking spaces first and once the on-site parking spaces are filled, vehicles will be parked on the off-site parking lot. The off-site parking lot has 38 striped parking spaces and 32 will be made available for the restaurant.

Although the project proposes to provide all required parking spaces (between the on-site and off-site parking spaces), the property is also within proximity to the Avon Parking Lot which provides additional public parking opportunities. West Coast Highway also has several locations for on-street parking within proximity of the property.

Condition of Approval No. 6 is included to ensure a parking agreement or covenant is recorded between the owner of operator of the Project and the off-site location to guarantee the availability of the required off-street parking spaces. Additionally, should the off-site parking spaces become unavailable, the condition will require the owner to provide substitute parking, reduce the size of the restaurant operation in proportion to the parking spaces lost, or obtain a parking reduction pursuant to Section 21.40.110 (Adjustments to Off-Street Parking Requirements) of the NBMC.

Coastal Development Permit Findings

The subject property is located within the Coastal Zone. As part of the previously approved project for the mixed-use development as well as the project to convert the office building to a grocery store, a coastal development permit and, subsequently an amendment to the coastal development permit were approved. The project proposes to convert the approved grocery store to a restaurant which would involve an increase in required parking and, therefore, is considered an intensification of use which requires approval of a coastal development permit. In accordance with Section 21.52.015(F) (Coastal Development Permits – Findings and Decisions) of the NBMC, the Planning Commission must almost make the following findings for approval:

- 1. Conforms to all applicable sections of the certified Local Coastal Program; and*
- 2. 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.*

As previously discussed, the conversion of a grocery store to a restaurant is consistent with the MU-H designation by the CLUP and MU-MM Coastal Zoning District. The property is on the inland side of the Mariners' Mile Corridor that is intended for commercial uses along the West Coast Highway frontage. Adequate parking for the project is provided both on-site and on an off-site location and the project will not create a loss of the existing on-street parking spaces along West Coast Highway or any public parking facilities in the surrounding area. The project does not anticipate significantly increasing the demand on public access and recreational opportunities nor will it impact any public access easements.

The mixed-use development is under construction and the project will occupy the commercial building. The project does not propose an increase in square footage or height that would impede public access or impact public views. A brief analysis of CLUP

policies which support the project is included in the draft resolution (Attachment No. PC 1).

Alcohol Sales Findings

The Applicant requests a Type 47 (On-Sale General – Eating Place) Alcohol Beverage Control (ABC) License in conjunction with the restaurant, which would allow the sale of beer, wine, and spirits. When reviewing the application to allow an eating or drinking establishment to sell, serve, or give away alcohol, Section 20.48.030 (Alcohol Sales) of the NBMC requires the Planning Commission to consider impacts to adjacent uses and proximity to existing alcohol sales, both for on-site and off-site consumption. The Planning Commission must find that:

- 1. The use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code.*

The purpose and intent of Section 20.48.030 (Alcohol Sales) of the NBMC is to maintain a healthy environment for residents and businesses by establishing a set of consistent standards for the safe operation of alcohol establishments. The project has been reviewed by the Newport Beach Police Department (NBPD) and conditioned to ensure that the purpose and intent of this section is maintained and that a healthy environment for residents and businesses is preserved. Alcohol service will be provided for the convenience of customers of the restaurant.

The NBPD prepared a Crime and Alcohol Related Statistics Report using the latest available data (2023) and a memorandum for the project (Attachment No. PC 3). The data is incorporated into the factors for consideration in the draft Resolution (Attachment No. PC 1). The subject property is in Reporting District 26 (RD 26). Based on the statistics provided by the NBPD, RD 26 had a total of 107 arrests in 2023 and zero of the arrests were associated with the subject property. Operational conditions of approval were recommended by the NBPD relative to the sale of alcoholic beverages that will ensure compatibility with the surrounding uses and minimize alcohol-related impacts.

All conditions of approval recommended by the NBPD are incorporated into Exhibit “A” of the attached Resolution.

Summary and Alternatives

In conclusion, the proposed project is consistent with the City’s goals and objectives of the General Plan. The restaurant will provide a service to the Mariners’ Mile Corridor, surrounding businesses, residents, and visitors to the City. Staff believes the findings for approval can be made to support the proposed project and the facts in support of the required findings are presented in the draft Resolution (Attachment No. PC 1). The following alternatives are available to the Planning Commission should they feel the facts are not in evidence of support for the project application:

1. The Planning Commission may suggest specific project modifications or operational changes that are necessary to alleviate concerns. If the changes are substantial, the item should be continued to a future meeting to allow redesign of the project; or
2. If the Planning Commission does not believe the facts in support of findings can be made, the Planning Commission may deny the application request.

Environmental Review

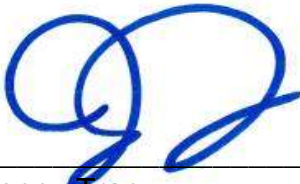
This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3 because it has no potential to have a significant effect on the environment.

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 proposed project involves the conversion of a permitted commercial building into a restaurant. No additions to the building are proposed as part of this project and therefore, the project qualifies for a categorical exemption under Class 1.

Public Notice

Notice of this hearing 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 meeting, 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.

Prepared by:



Jenny Tran
Associate Planner

Submitted by:



Jaime Murillo, AICP
Deputy Community Development Director

LAW/jt

ATTACHMENTS

- PC 1 Draft Resolution with Findings and Conditions
- PC 2 Parking Evaluation by Urban Crossroads dated October 2, 2024
- PC 3 Police Department Memorandum
- PC 4 Project Plans

Attachment No. PC 1

Draft Resolution and Findings and
Conditions

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RESOLUTION NO. PC2024-026

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPROVING A CONDITIONAL USE PERMIT AND COASTAL DEVELOPMENT PERMIT FOR AN EATING AND DRINKING ESTABLISHMENT WITH A TYPE 47 (ON-SALE GENERAL – EATING PLACE) ALCOHOL BEVERAGE CONTROL LICENSE AT 2510 WEST COAST HIGHWAY AND OFF-SITE PARKING AT 2436 WEST COAST HIGHWAY (PA2024-0068)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by B.E. Architects (“Applicant”) on behalf of 2510 W. Coast Hwy, LLC and 2510 W Coast Hwy Eat, LLC (“Owner”), with respect to property located at 2510 West Coast Highway, and legally described as Parcel 1 of Parcel Map No. 2023-168 (“Property”) requesting approval of a conditional use permit (“CUP”) and coastal development permit (“CDP”).
2. On July 27, 2021, the City Council approved a coastal development permit, site development review, tentative parcel map, and affordable housing implementation plan (PA2019-249) for a mixed-use development consisting of multi-family residential units and a commercial office.
3. The Planning Commission approved a CDP and traffic study (PA2022-101) on March 9, 2023, to modify the commercial component of the mixed-use development from an office to retail sales (i.e. grocery store).
4. The Applicant requests a CUP and CDP to convert a 5,096 square-foot vacant suite to a new eating and drinking establishment (“Restaurant”) with 2,400 square-feet of net public area (“NPA”) and a Type 47 (On-Sale General – Eating Place) Department of Alcohol Beverage Control (“ABC”) License (“Project”). The existing suite is currently vacant but was previously approved for retail use (grocery store). The Project includes a request to use valet parking and locate a portion of the required 48 parking spaces off-site at 2436 West Coast Highway. The proposed hours of operation are between 5:00 p.m. and 11:00 p.m., daily. The Project does not include a request for late hours or live entertainment.
5. The Property is categorized as Mixed-Use Horizontal 1 (MU-H1) by the General Plan Land Use Element and is located within the Mixed-Use Mariners’ Mile (MU-MM) Zoning District.
6. The Property is located within the coastal zone. The Coastal Land Use Plan (“CLUP”) category is Mixed-Use Horizontal (MU-H), and it is located within the Mixed-Use Mariners’ Mile (MU-MM) Coastal Zoning District.

7. A public hearing was held by the Planning Commission on December 5, 2024, in the Council Chambers at 100 Civic Center Drive, Newport Beach. A notice of the time, place, and purpose of the hearing was given in accordance with California Government Code Section 54950 *et seq.* (“Ralph M. Brown Act”) and Chapters 20.62 and 21.62 (Public Hearings) of the Newport Beach Municipal Code (“NBMC”). Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15301 under Class 1 (Existing Facilities) of the California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment (“CEQA Guidelines”).
2. The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, license, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing use. The Project is located on a site that has approved permits for a mixed-use development that includes multi-family residential units and a commercial building on the ground floor. The Project includes interior improvements to convert the commercial building to a restaurant and therefore qualifies for the Class 1 exemption.

SECTION 3. REQUIRED FINDINGS.

Alcohol Sales

In accordance with Section 20.48.030 (Alcohol Sales) of the NBMC, the following findings and facts in support of such findings are set forth:

Finding:

- A. *The use is consistent with the purpose and intent of Section 20.48.030 (Alcohol Sales) of the Zoning Code;*

Facts in Support of Finding:

In finding that the Project is consistent with Section 20.48.030 of the NBMC, the following criteria must be considered:

- i. *The crime rate in the reporting district and adjacent reporting districts as compared to other areas in the City.*
 1. The Property is in Reporting District 26 (“RD 26”). The Newport Beach Police Department (“NBPD”) is required to report offenses of criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny, theft, and motor vehicle theft, combined with all arrests for other crimes, both felonies and misdemeanors

(except traffic citations) to ABC. These figures make up the “Crime Count” for each reporting district. RD 26 is reported as a high crime area as compared to adjacent reporting districts in the City, including RD 25 and RD 41. The subject RD’s Crime Count is 189, which is 60% over the City-wide crime count average of 118. The highest volume of crime in this area is theft and the highest volume of arrests in the area are drug-related offenses.

2. Since RD 26 has a 20% greater number of reported crimes than the average number of reported crimes as determined from all crime reporting districts within the City, the area is found to have undue concentration. In comparison, neighboring RD 25 is 31% above the City-wide average, RD 28 is 132% above the average, and RD 41 is 3% below the average. Of the 38 reporting districts in Newport Beach, 12 are reported to ABC as high crime areas.
3. The NBPD has reviewed the Project and does not have any objection to the request to permit a restaurant with a Type 47 (On-Sale General – Eating Place) ABC License without late hours subject to appropriate conditions of approval. All NBPD recommended conditions of approval have been included in Exhibit “A” of this resolution.

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

Reporting District	Alcohol Related Arrests¹	Total Arrests
RD 26 (subject RD)	29	107
RD 25	21	83
RD 28	6	114
RD 41	20	58
Newport Beach	637	2,732

¹ Alcohol Related Arrests includes DUI (alcohol), public intoxication, and liquor law related arrests.

1. In RD 26, DUI (alcohol), public intoxication, and liquor law violations make up roughly 27% of arrests. In comparison, the figure for neighboring RD 25 is roughly 25%, RD 28 is roughly 5%, and RD 41 is roughly 34%. These statistics reflect the City of Newport Beach’s data for 2023, which is the latest available data.
2. RD 26 has a higher percentage of arrests than RD 28 but has similar percentages of arrests as the other neighboring reporting districts. Of the 107 alcohol related arrests in RD 26, no alcohol related arrests were attributed to the Property.

iii. The proximity of the establishment to residential zoning districts, day care centers, hospitals, park and recreation facilities, place of worship, schools, other similar uses, and any uses that attract minors.

1. The Property is currently being developed with a mixed-use development for multi-family residential and commercial use. The Property is adjacent to John Wayne Park and residential zoning districts towards the rear across Avon Street.

The Restaurant will be located at the front of the Property and is oriented towards West Coast Highway and away from the public park and residential neighborhood in the rear.

2. The Property is adjacent to a day care center/preschool to the east that operates in the daytime with typical hours between 8:00 a.m. and 5:00 p.m., Monday through Friday. The Restaurant will operate during dinner hours between 5:00 p.m. and 11:00 p.m., which will not overlap with the adjacent day care center/preschool. Additionally, the Restaurant will operate as a fine-dining restaurant with incidental alcohol services rather than a destination use for the consumption of alcohol.
3. The surrounding commercial uses on the inland side of West Coast Highway consist of various general commercial, retail, and restaurants and the Project will be compatible with the surrounding uses. The restaurant is intended to be a high-quality fine-dining Restaurant with alcohol services that would be complementary to the dinner services rather than a destination solely for alcohol services.
4. Restaurants with incidental alcohol services are common within this area of Mariners' Mile and the proposed Restaurant with an ABC license is not anticipated to detriment the area. The Project includes conditions of approval to minimize impacts to the surrounding land uses and ensure that the use remains compatible with the surrounding community.

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

1. The Property is located within census tract 634. This census tract has an approximate population of 4,776 residents with approximately 17 active on-sale alcohol licenses, which is a per capita ratio of one on-sale license for every 281 residents. The per capita ratio of on-sale alcohol licenses for Orange County is one license for every 822 residents. This location meets the legal criteria for undue concentration pertaining to alcohol establishments.
2. The closest establishments selling alcoholic beverages for on-site consumption are Sol Grill, located approximately 270-feet east of the Property, and GuacAmigos, located approximately 250-feet west of the Property.
3. Although the per capita ratio of on-sale alcohol licenses to residents is higher than the average in Orange County and the Property is proximate to establishments selling alcoholic beverages for on-site consumption, the operational conditions of approval recommended by the NBPD will ensure compatibility with the surrounding uses and minimize alcohol related impacts.

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

1. No objectionable conditions are presently occurring on the site.

Conditional Use Permit

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

Finding:

B. *The use is consistent with the General Plan and any applicable specific plan;*

Facts in Support of Finding:

1. The General Plan land use category for the Property is Mixed-Use Horizontal 1 (MU-H1), which is intended to provide for a horizontal mixing of uses. For properties located on the inland side of Coast Highway in the Mariners' Mile Corridor, such as this Property, the Coast Highway frontages shall be developed with marine-related and highway-oriented general commercial uses in accordance with Recreational and Marine Commercial (CM) and General Commercial (CG) land use designations. The Project is for a new restaurant on a Property that is currently being developed for both residential and commercial uses. This will provide an additional commercial service for on-site residents as well as residents and visitors to the City.

2. The Project is consistent with the following General Plan Land Use policies applicable to the Project:

- a. **Land Use Policy LU 2.4 (Economic Development).** *Accommodate use that maintain or enhance Newport Beach's fiscal health and account for market demands, while maintain and improving the quality of life for current and future residents.*

The Project will provide to the City a new fine-dining restaurant that will serve the neighborhood as well as residents and visitors to the City. Additionally, the Restaurant is part of a mixed-use development under construction that consists of multi-family residential units and a commercial building. The Restaurant will provide an opportunity for employment and serves as a nearby dinner option for future residents of the residential units.

- b. **Land Use Policy LU 5.3.6 (Parking Adequacy and Location).** *Require that adequate parking be provided and is conveniently located to serve tenants and customers. Set open parking lots back from public streets and pedestrian ways and screen with buildings, architectural walls, or dense landscaping.*

Although Section 20.40.040 (Off-Street Parking Spaces Required) of the NBMC has been updated with new parking standards, associated changes to Title 21 (Local Coastal Program Implementation Plan) have not been approved by the California Coastal Commission yet. Since the Property is located within the Coastal Zone, the existing parking requirements in Section 21.40.040 (Off-Street Parking Spaces Required) would still apply. Section 21.40.040 (Off-Street Parking Spaces Required) of the NBMC requires a parking rate of one parking space per 30-50 square feet of NPA for the Food Service land use (with or without alcohol, with or without late hours). The Project requires one parking space per 50 square feet of NPA for a restaurant with 2,400 square feet of NPA, or 48 parking spaces. The Project provides 48 valet parking spaces including 16 valet parking spaces on-site and 32 parking spaces off-site on a nearby property at 2436 West Coast Highway. Valet access to the off-site parking spaces is through Avon Street in the rear of the Property rather than through West Coast Highway.

- c. ***Land Use Policy LU 6.19.4 (Inland side of Coast Highway [designated as “MU-H1,” “CG(0.3),” and “CG(0.5)” Sub-Areas B and C]). Accommodate a mix of visitor- and local-serving retail commercial, residential, and public uses. On inland parcels, generally between Riverside Avenue and Tustin Avenue, priority should be placed on accommodating uses that serve upland residential neighborhoods such as grocery stores, specialty retail, small service office, restaurants, coffee shops, and similar uses.***

Although the Property is not between Riverside Avenue and Tustin Avenue, the Property is on the inland side of Coast Highway within proximity to Riverside Avenue and Tustin Avenue and proposes a new restaurant that is consistent with this Land Use policy.

- 3. The Property is not part of a specific plan.

Finding:

- C. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code;*

Facts in Support of Finding:

- 1. The Property is within the Mixed-Use Mariners’ Mile (MU-MM) Zoning District, which applies to properties located on the inland side of Coast Highway in the Mariners’ Mile Corridor. A Food Service land use without late hours that is within 500 feet of any residential zoning district requires approval of a minor use permit. However, the Project includes off-site parking and, pursuant to Section 20.40.100 (Off-Site Parking) of the NBMC, approval of a CUP is required to authorize parking that is not located on the same site it is intended to serve.

2. Fact 2 in support of Finding B is hereby incorporated by reference. Pursuant to Section 21.40.040 (Off-Street Parking Spaces Required) of the NBMC, a Food Service land use (with or without alcohol and with or without late hours) requires one parking space per every 30 to 50 square-feet of NPA. Pursuant to Section 21.40.060 (Parking Requirements for Food Service Uses) of the NBMC, the Planning Commission shall establish the off-street parking requirement for food service uses based upon consideration of the physical design characteristics, operational characteristics, and location of the establishment.
3. A Parking Evaluation was prepared by Urban Crossroads dated October 2, 2024, that included a parking management plan, valet operation plan, and justification for a parking requirement of one parking space per 50 square feet of NPA. The Parking Evaluation has been reviewed and approved by the Public Works Department and the City Traffic Engineer. The Parking Evaluation included parking surveys to evaluate parking needs of nearby high-quality sit-down restaurants such as Sol Grill located at 2400 West Coast Highway and The Winery located at 3131 West Coast Highway. The Parking Evaluation concluded that one space per 50 square feet of NPA was appropriate for the proposed use.
4. The Project will provide parking at a rate of one space per 50 square feet of NPA. The Project includes 48 valet-only parking spaces including 16 parking spaces onsite and 32 parking spaces off-site on a nearby property at 2436 West Coast Highway. This nearby property is developed with professional offices and other daytime commercial uses that typically end operations around 5:00 p.m. To ensure the tenants of 2436 West Coast Highway have time to exit the property, the valet plan requires that the 16 on-site parking spaces be filled first and, once the space are filled, vehicles can be parked at the off-site parking lot. A condition of approval is included for the Applicant to obtain a parking agreement for the off-site lot to ensure the long-term availability of parking for the Restaurant. Valet parking will be monitored by staff during the operational hours of the Restaurant. Based on the valet operation plan and the parking evaluation conducted by Urban Crossroads, adequate parking will be provided for the operation.
5. The Planning Commission previously approved a Traffic Study on March 9, 2023, for the Property to modify the commercial component from an office to retail sales use (i.e., grocery store). This Project will replace the proposed grocery store with a restaurant. A new Traffic Study is not required for the Project as the trip generation for a fine-dining restaurant is less than a grocery store. Conditions of approval from the previous approval of the Traffic Study would still apply.

Finding:

- D. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity;*

Facts in Support of Finding:

1. The Property is located on the inland side of West Coast Highway proximate to Tustin Avenue, within the Mariners' Mile Corridor, which includes a variety of commercial uses intermixed with residential dwelling units. The Project is part of a mixed-use development that consists of 36 residential dwelling units and a commercial building. The restaurant will remain complementary to the other uses along Mariners' Mile and will provide an additional commercial amenity for the residential development on-site as well as residents and visitors to the City.

2. The Property is under construction and the commercial building that the Project proposes to occupy is oriented towards West Coast Highway, facing away from the adjacent residential neighborhood. The surrounding properties within the Mixed-Use Mariners' Mile (MU-MM) Zoning District are developed with a range of commercial uses to serve nearby residential neighborhoods and visitors to the City. The residential zoning districts are located behind the Property towards the rear, separated from the site by Avon Street, and away from the commercial building in the front.

3. The hours of operation for the Restaurant are during typical dinner hours between 5:00 p.m. and 11:00 p.m., daily. The operational hours of the various commercial and office uses at 2436 West Coast Highway are typical daytime hours. The Project's limited dinner hours are compatible with the off-site lot and would reduce potential traffic.

Finding:

- E. The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities; and*

Facts in Support of Finding:

1. The Project includes on-site parking spaces as well as off-site parking spaces that are all operated through valet. The queueing area for the valet operation is accessible from West Coast Highway where patrons can park their vehicles in one of the four queueing spaces near the front of the Property. If the four queueing spaces are filled, patrons will be directed by valet staff to the nearest available on-site valet space. Once the 16 on-site parking spaces are filled, the valet will access the off-site parking spaces located at 2436 West Coast Highway via Avon Street in the rear.

2. The Restaurant will occupy a commercial building that is under construction and will be serviced by all necessary utilities. The building will be modified to accommodate the Project. The design, location, shape, size, and operational characteristics of the use are compatible with the existing commercial uses in the surrounding area.

3. Adequate public and emergency vehicle access is provided from West Coast Highway, and public services and utilities are provided on-site. The Project, including the proposed valet operation, has been reviewed by the Public Works Department, City Traffic

Engineer, and Fire Department to ensure adequate public and emergency vehicle access is provided and there are no concerns with the proposed use. Conditions of Approval No. 29 and 30 have been included to ensure the valet operation does not impact the surrounding area.

Finding:

F. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of person residing or working in the neighborhood of the proposed use.

Facts in Support of Finding:

1. The Restaurant will provide a service to the surrounding mixed-use area by providing dining as a public convenience to the surrounding businesses, residents, and visitors to the area. This will provide an economic opportunity for the Restaurant owner to operate while potentially revitalizing the Property.
2. The Project has been reviewed by the NBPD and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible. The operator is required to take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance related to litter and graffiti on the exterior of the building and noise generated by the subject facility.
3. As conditioned, all owners, managers, and employees selling alcohol are required to undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages within 60 days of hire. The certified program must meet the standards of the certifying/licensing body designated by the State of California and records of successful completion shall be maintained on the premises.

Off-site Parking

In accordance with Section 20.40.100(B) (Off-Site Parking – Findings) of the NBMC, in order to approve a conditional use permit for an off-site parking facility, the following findings and facts in support of such findings are set forth:

Finding:

G. The parking facility is located within a convenient distance to the use it is intended to serve;

Facts in Support of Finding:

1. The off-site parking lot is located approximately 60 feet away at 2436 West Coast Highway and is accessed by Avon Street in the rear of the Property.

2. The off-site parking lot will be provided via valet. Patrons to the Restaurant will park their cars on-site within the four queuing spaces towards the front of the Property and valet service staff will drive vehicles to the off-site parking lot and return vehicles to patrons on-site. Additionally, the off-site parking lot is close and convenient for valet staff to walk between the two properties.

Finding:

- H. *On-street parking is not being counted towards meeting parking requirements;*

Fact in Support of Finding:

1. The restaurant requires a total of 48 parking spaces with 16 valet parking spaces provided on-site, and 32 valet parking spaces provided off-site. Although on-street parking is available along West Coast Highway, the Project does not include a waiver of parking spaces nor does the valet operation rely on any on-street parking.

Finding:

- I. *Use of the parking facility will not create undue traffic hazards or impacts in the surrounding area; and*

Fact in Support of Finding:

1. The parking facility will be accessed via Avon Street towards the rear of the Property and is not anticipated to impact traffic on West Coast Highway. The parking facility will also be primarily accessed by valet service staff dropping vehicles off and returning vehicles to patrons of the Restaurant which will further minimize the amount of traffic along Avon Street.

Finding:

- J. *The parking facility will be permanently available, marked, and maintained for the use it is intended to serve.*

Facts in Support of Finding:

1. The off-site parking is located on a site with office suites that operate during typical daytime hours, and the parking lot consists of 38 striped parking spaces that are maintained for the office uses. Thirty-two of the 38 parking spaces on the property will be made available for the Project. The Project's hours of operation are between 5:00 p.m. and 11:00 p.m., daily, and are not anticipated to overlap with the hours of operation of the property's office uses.
2. Condition of Approval No. 6 is included to ensure a parking agreement or covenant is recorded between the owner of operator of the Project and the off-site location to guarantee the availability of the required off-street parking spaces. Additionally, should

the off-site parking spaces become unavailable, the condition will require the owner to provide substitute parking, reduce the size of the Restaurant operation in proportion to the parking spaces lost, or obtain a parking reduction pursuant to Section 21.40.110 (Adjustments to Off-Street Parking Requirements) of the NBMC.

Coastal Development Permit

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

Finding:

K. Conforms to all applicable sections of the certified Local Coastal Program; and

Facts in Support of Finding:

1. The CLUP designates the Property as Mixed-Use Horizontal (MU-H), and is intended to provide a horizontally distributed mix of uses, which may include general or neighborhood commercial, commercial offices, multifamily residential, visitor-serving and marine-related uses, and/or buildings that vertically integrate residential with commercial uses. The Project is consistent with the MU-H CLUP designation by developing a restaurant use along West Coast Highway with a previously approved multi-family residential building to the rear of the Property. The Project is consistent with the following CLUP policies applicable to the Project:

*a. **Policy LU 2.1.4-1.** For properties located on the inland side of Coast Highway in the Mariners' Mile Corridor that are designated as MU-H, (a) the Coast Highway frontages shall be developed for marine-related and highway oriented general commercial uses in accordance with CM and CG categories; and (b) portions of properties to the rear of the commercial frontage may be developed for free-standing neighborhood-serving retail, multi-family residential units, or mixed-use buildings that integrate residential with retail uses on the ground floor in accordance with the CN, RM , CV, or MU-V categories respectively.*

The Restaurant will front West Coast Highway with multi-family residential development towards the rear of the building. The Restaurant will serve as a commercial use oriented to serve neighbors, residents, and visitors to the City, consistent with the General Commercial (CG) land use category of the CLUP.

*b. **Policy LU 2.1.4-5.** Development shall be designed and planned to achieve high levels of architectural quality and compatibility among on-site and off-site uses. Adequate pedestrian, non-automobile and vehicular circulation and parking shall be provided.*

The Project provides the required parking through a valet operation plan that incorporates adequate vehicular circulation. Valet services will ensure efficient use of the parking spaces on-site and, additionally, will utilize Avon Street in the rear of the Property to access the off-site parking spaces at a nearby property. Adequate queueing areas on-site will ensure queueing doesn't extend onto Coast Highway.

*c. **Policy LU 2.3.1-1.** Permit visitor-serving retail and eating and drinking establishments in all commercially designated areas.*

The Property is intended for a mixed-use of commercial and residential development and the Project provides an eating and drinking establishment consistent with this policy.

2. The Property is in an area known for the potential of seismic activity and liquefaction. All projects are required to comply with the California Building Code ("CBC") and Building Division standards and policies. Geotechnical investigations specifically addressing liquefaction are required to be reviewed and approved before the issuance of building permits, which was completed as part of the building permit issuance for PA2019-249.
3. A preliminary Water Quality Management Plan ("WQMP") was approved by the City as part of the approval for the mixed-use development (PA2019-249). The WQMP concluded that implementation of the development would not result in potentially significant impacts to the drainage patterns on-site. Project storm water must comply with all applicable Municipal Separate Storm Systems ("MS4") requirements to ensure that impacts to surface and ground water quality do not occur. Water quality objectives will be achieved through the incorporation of Best Management Practices ("BMPs") identified in the preliminary WQMP during construction and post-project implementation. The Project to convert the previously approved grocery store to a restaurant does not affect the conclusions of the approved WQMP.
4. The Property has no native vegetation and/or habitat. The proposed tenant improvement to build out the Restaurant use would not impact the exterior of the Property. For this reason, no impacts to biological resources would occur.
5. The Project requires 48 parking spaces and adequate parking spaces will be provided between on-site and off-site parking lots. No on-street parking spaces on West Coast Highway will be eliminated and all parking circulation, including the valet parking, will occur on Avon Street instead of West Coast Highway. No coastal resources will be impacted as part of this Project.
6. The closest public viewpoint is adjacent and above the Property to the northeast at John Wayne Park. The inland location of the Property combined with the elevated and sloping location of the adjacent park minimizes impact to coastal views. The building that is under construction was designed to avoid impacts to public views. The Project does not involve exterior changes to the building that would increase the height, bulk, or massing and, therefore, will not impact coastal views.

7. The nearest coastal view road is West Coast Highway, which is located to the south, as designated in the CLUP. The Project is located entirely on private property and will not inhibit coastal views of the Bay from the highway since the Project will occupy a suite that is being constructed on the inland side of West Coast Highway. The architecture is designed to provide an attractive appearance that is compatible with the surrounding area with high quality materials, neutral colors, and architectural treatments to prevent building monotony. The Project does not change the previously approved design. Therefore, the Project does not have the potential to degrade the visual quality of the coastal zone or result in significant adverse impacts to public views.

Finding:

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

Facts in Support of Finding:

1. The Property is located in the Mariners' Mile Corridor on the inland side of West Coast Highway and is not located between the nearest public road and the sea. Section 21.30A.040 (Determination of Public Access/Recreation Impacts) of the NBMC, requires that the provision of public access bear a reasonable relationship between the requirement and the Project's impact and be proportional to the impact. The Project will occupy a vacant commercial suite, and the use complies with all applicable development standards including required parking. The Project is not anticipated to result in a significantly increased demand on public access and recreation opportunities. The Property is located on the inland side of West Coast Highway approximately 300 feet from Newport Harbor and does not impact any public access easements.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission the City of Newport Beach hereby finds this Project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because the Project has no potential to have a significant effect on the environment.
2. The Planning Commission of the City of Newport Beach hereby approves Conditional Use Permit and Coastal Development Permit (PA2024-0068), 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 is filed with the City Clerk in accordance

with the provisions of Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan), of the Newport Beach Municipal Code. 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 City Clerk in accordance with the provisions of Title 21, of the Newport Beach Municipal Code.

4. Final action taken by the City may be appealed to the Coastal Commission in compliance with Section 21.64.035 of the City's certified Local Coastal Program and Title 14 California Code of Regulations, Sections 13111 through 13120, and Section 30603 of the Coastal Act.

PASSED, APPROVED, AND ADOPTED THIS 5TH DAY OF DECEMBER, 2024.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Mark Rosene, Chair

BY: _____
David Salene, Secretary

EXHIBIT "A"**CONDITIONS OF APPROVAL**

(Project-specific conditions are in italics)

Planning Division

1. The development shall be in substantial conformance with the approved plans stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit and Coastal Development Permit.
4. *The Use Permit and Coastal Development Permit (PA2024-068) shall expire unless exercised within 24 months from the date of approval as specified in Section 20.54.060 (Time Limits and Extensions) of the Newport Beach Municipal Code, unless an extension is otherwise granted.*
5. *The Applicant shall maintain a minimum of 16 parking spaces on-site at 2510 West Coast Highway and a minimum of 32 parking spaces off-site at 2436 West Coast Highway for a total minimum of 48 parking spaces for customer and employee parking.*
6. *A parking agreement or covenant, in a form approved by the City Attorney and the Director that guarantees the availability of the required off-site parking at an approved off-site location shall be recorded with the County Recorder's Office against the subject property. The agreement or covenant shall require the owner or operator of the project to immediately notify the Director of any change of ownership or use of the property where the required off-site parking is located, or changes in the use or availability of the required off-site parking, or of any termination or default of the agreement between the parties. Upon notification that the private lease agreement for the required off-site parking has terminated or the required off-site parking is otherwise unavailable for the use authorized by this Conditional Use Permit (PA2024-0068), the Director shall establish a reasonable period of time in which one of the following shall occur. 1) Substitute parking acceptable to the Director, or 2) the size or intensity of use authorized by this Conditional Use Permit is reduced in proportion to the parking spaces lost, or 3) the owner or operator of the project must obtain a parking reduction pursuant to NBMC Section 20.40.110 and Section 21.40.110 (Adjustments to Off-Street Parking Requirements) rendering the required off-site parking unnecessary.*

7. *With the exception of Condition of Approval Nos. 8 and 19 of Planning Commission Resolution No. PC2023-013, all conditions of approval from Resolution No. PC2023-013 shall remain applicable to this Project.*
8. *The hours of operation shall be between 5:00 p.m. and 11:00 p.m., daily.*
9. This Use Permit and Coastal Development Permit may be modified or revoked by the Planning Commission should they determine 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.
10. Any change in operational characteristics, expansion in area, or other modification to the approved plans, may require an amendment to this Use Permit and Coastal Development Permit or the processing of a new permit.
11. A copy of the Resolution, including conditions of approval Exhibit "A" shall be incorporated into the Building Division and field sets of plans prior to issuance of the building permits.
12. All landscape materials and irrigation systems shall be maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
13. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
14. Prior to the issuance of building permits, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
15. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 (Community Noise Control) and other applicable noise control requirements of the Newport Beach Municipal Code.
16. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.

17. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities that produce noise to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday, and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not allowed on Sundays or Holidays.
18. No outside paging system shall be utilized in conjunction with this establishment.
19. All trash shall be stored within the building or within dumpsters stored in the trash enclosure (three walls and a self-latching gate) or otherwise screened from view of neighboring properties, except when placed for pick-up by refuse collection agencies. The trash enclosure shall have a decorative solid roof for aesthetic and screening purposes.
20. Trash receptacles for patrons shall be conveniently located both inside and outside of the establishment, however, not located on or within any public property or right-of-way.
21. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
22. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Planning Division. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
23. Deliveries and refuse collection for the facility shall be prohibited between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and Saturdays and between the hours of 10:00 p.m. and 9:00 a.m. on Sundays and Federal holidays, unless otherwise approved by the Director of Community Development, and may require an amendment to this Use Permit.
24. Storage outside of the building in the front or at the rear of the property shall be prohibited, with the exception of the required trash container enclosure.
25. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
26. 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 ***Uchi Sushi Restaurant including, but not limited to, Conditional Use Permit and Coastal Development Permit (PA2024-0068)***. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Fire Department

- 27. Fire lanes shall be a minimum of 20 feet in width and shall be identified in accordance with Newport Beach Fire Department (NBFD) Guideline C.02.

Building Division

- 28. The applicant is required to obtain all applicable permits from the City’s Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.

Public Works Department

- 29. *Valet operations and vehicle queueing shall be prohibited from impacting the public right-of-way including West Coast Highway and Avon Street. Valet parked vehicles shall be prohibited from parking in drive aisles.*
- 30. *The off-site valet parking lot shall only be used during the restaurant hours of operations and shall only be used when the business(es) located on the off-site parking lot are closed.*
- 31. *All deliveries shall occur on-site and shall be prohibited from impacting the public right-of-way including West Coast Highway and Avon Street.*

Police Department

- 32. The Alcoholic Beverage Control (ABC) License shall be limited to a Type 47 (On-Sale General – Eating Place). Any substantial change in the ABC license type shall require subsequent review and potential amendment of the Use Permit.

33. The Applicant shall comply with all federal, state, and local laws, and all conditions of the ABC License. Material violation of any of those laws or conditions in connection with the use is a violation and may be cause for revocation of the Use Permit.
34. All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages within 60 days of hire. The certified program must meet the standards of the certifying/licensing body designated by the State of California. The establishment shall comply with the requirements of this section within 60 days of approval. Records of each owner's manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.
35. The eating and drinking establishment shall close no later than 11:00 p.m., daily. Food or alcohol service after 11:00 p.m. is prohibited.
36. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the NBMC.
37. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
38. There shall be no live entertainment or dancing allowed on the premises.
39. No games or contests requiring or involving the consumption of alcoholic beverages shall be allowed.
40. Food service from the regular menu shall be made available to patrons until closing.
41. Petitioner shall not share any profits or pay any percentage or commission to a promoter, or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.
42. Any event or activity staged by an outside promoter or entity, where the Applicant, operator, owner or his employees or representatives share in any profits or pay any percentage or commission to a promoter, or any other person based upon money collected as a door charge, cover charge or any other form of admission charge is prohibited.
43. "VIP" passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order of the sale of drinks is prohibited (excluding charges for prix fixe meals).
44. Strict adherence to maximum occupancy limits is required.
45. The Applicant shall maintain a security recording system with a 30-day retention and make those recording available to police upon request.

46. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter, and debris from the premises and on all abutting sidewalks within 20 feet of the premises. Graffiti shall be removed within 48 hours of written notice from the City.
47. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
48. Strict adherence to maximum occupancy limit is required.

Attachment No. PC 2

Parking Evaluation by Urban Crossroads
dated October 2, 2024

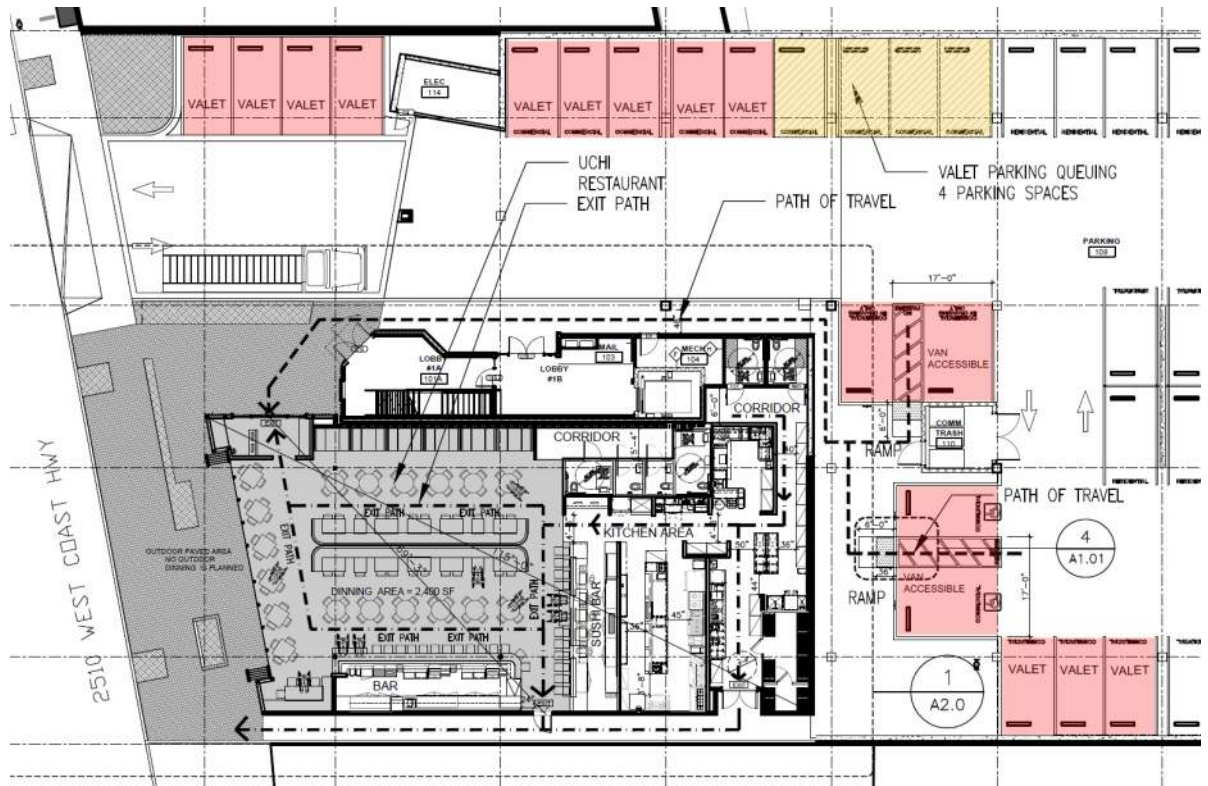
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DATE: October 2, 2024
TO: Mark Moshayedi, Space Investment Partners
FROM: Brendan Dugan/Robert Vu, Urban Crossroads
JOB NO: 15885-05 Parking Evaluation

UCHI SUSHI RESTAURANT PARKING EVALUATION

Urban Crossroads, Inc. is pleased to submit the following Parking Evaluation for the proposed Uchi Sushi Restaurant development (**Project**), which is located at 2510 West Coast Highway, in the City of Newport Beach, as shown on **Exhibit A**. A complete site plan is shown in **Attachment A**. This Parking Evaluation was developed to determine if the proposed Project provides adequate on-site parking supply to accommodate peak on-site vehicle parking demands.

EXHIBIT A: PRELIMINARY SITE PLAN



INTRODUCTION

The site is currently approved for a mixed-use development project consisting of a residential and commercial (grocery store) component. The Project is proposing to replace the grocery store with an Uchi sushi restaurant with a net public seating area of 2,400 SF. The Uchi restaurant will be located on the ground floor as shown on **Exhibit A**. The Project will designate 16 on-site valet standard spaces for commercial use (see **Exhibit A**) and an additional 32 valet standard parking spaces will be available off-site at 2436 West Coast Highway through a parking agreement (see **Exhibit B**). Only 32 of the 38 parking spaces in the off-site lot will be available for the restaurant use. All 48 parking spaces will be under a valet operation plan. The off-site parking arrangement is provided in **Attachment B** and the parking agreement is provided in **Attachment C**. The uses at 2436 West Coast Highway consist of daytime activities and will be inactive during the operational hours of the proposed Uchi restaurant (5:00pm to 11:00pm). The parking utilization at 2436 West Coast Highway will not overlap with the proposed Project. It should be noted that paid parking is available at Avon Lot 1, Avon Lot 2, and on-street parking within the vicinity of the Project site (see **Exhibit C**). The Project is located in the Coastal Zone and is subject to the Local Coastal Program Implementation Plan parking requirements.

EXHIBIT B: OFF-SITE PARKING

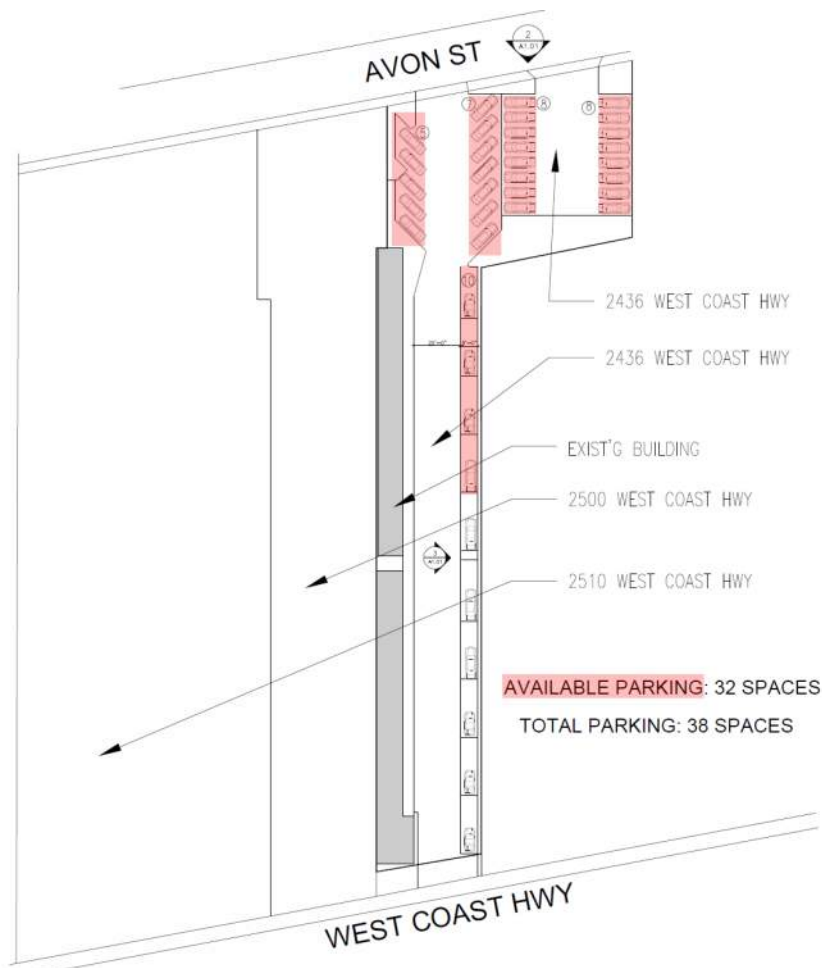
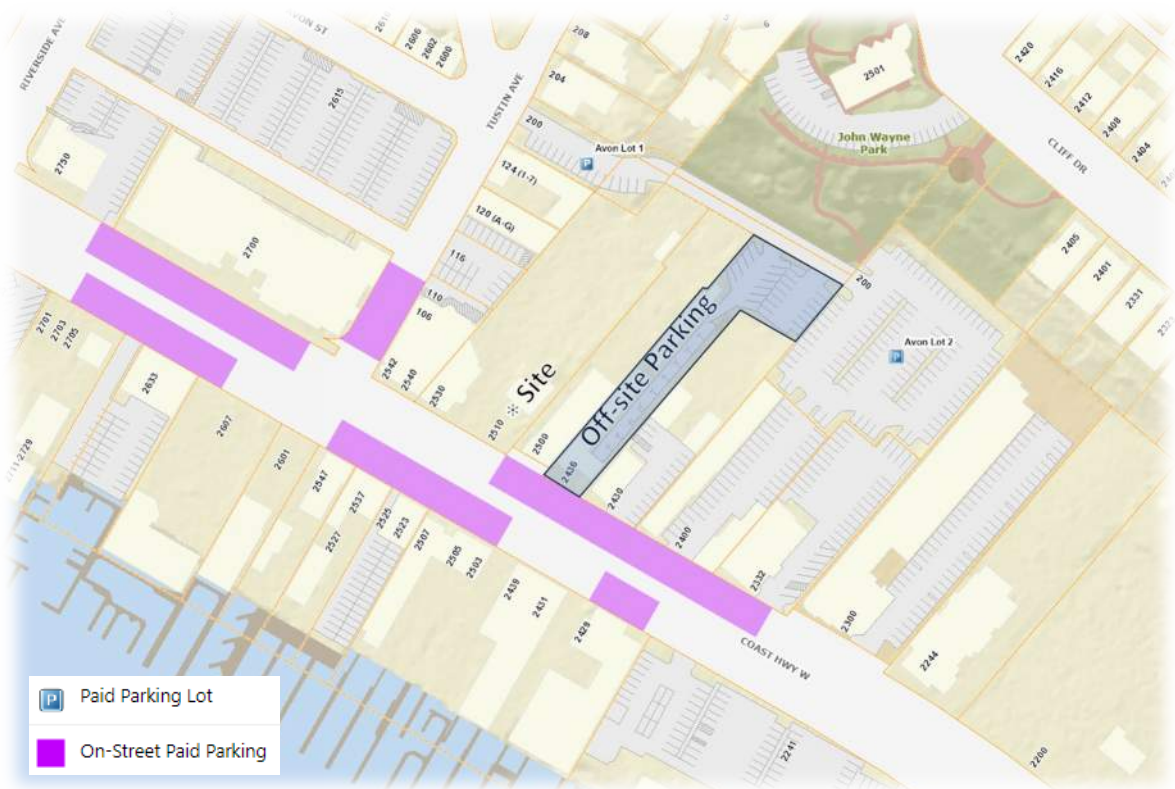


EXHIBIT C: PARKING AVAILABILITY



PARKING REQUIREMENTS

To demonstrate that adequate parking supply exists within the proposed development, this parking assessment provides a review of the City of Newport Beach "Local Coastal Program Implementation Plan" parking requirements. An estimate of the peak parking demands will be used for this analysis.

The following sections of the City of Newport Beach "Local Coastal Program Implementation Plan" (Chapter 21.40.040) describes the off-street parking requirements for the applicable land use:

- **Food Service with/without alcohol, with/without late hours.** 1 per 30-50 SF of net public area, including outdoor dining areas 25% of the interior net area or 1,000 SF, whichever is less.

Table 1 provides a summary of the applicable City of Newport Beach "Local Coastal Program Implementation Plan" parking requirements.

TABLE 1: CITY OF NEWPORT BEACH MUNICIPAL CODE PARKING REQUIREMENTS

Use	Description	Parking Rate
Food Service	1 per 30-50 SF net public area, including outdoor dining areas 25% of the interior net area or 1,000 SF, whichever is less	1 space per 30 – 50 SF

Based on the City of Newport Beach Municipal Code Off-Street Parking Requirements

In order to justify the parking rate of 1 space per 50 SF of net public area, Urban Crossroads conducted parking surveys to evaluate parking needs of nearby high quality sit-down restaurants: Sol Grill (2400 West Coast Highway) and The Winery (3131 West Coast Highway). Additional justification for the parking rate is provided under the [Uchi Sushi Restaurant Additional Parking Rate Justification](#) (Urban Crossroads, June 2024). The survey data is provided in **Attachment D**. **Table 2** shows a summary of the existing parking supply.

TABLE 2: PARKING RATE SUMMARY

Use ¹	SF (Public Area) ²	Parking Supply	Spaces per SF	Notes
Sol Grill	1,462 SF ³	34	1 per 43 SF	Shares parking with other businesses that are open during Sol Grill dinner hours
The Winery	5,462 SF	22	1 per 248 SF	Tandem parking with valet

¹ Source: Survey data collected at existing restaurants.

² The square footage is consistent with site plans provided by the City's Planning Department.

³ The square footage includes patio square footage.

A review of the parking supply provided at the two existing restaurants suggest that the parking rate of 1 space per 50 SF of net public area is reflective of high quality sit-down restaurants rather than the more intensive 1 space per 30 SF of net public area. Although the Sol Grill restaurant has an estimated 1 space per 43 SF, the restaurant shares parking with several other commercial uses that are open during Sol Grill operational hours and the parking rate is an overestimation. As such, the parking rate of 1 space per 50 SF of public area is utilized for the purpose of this analysis.

Using the City of Newport Beach Local Coastal Program Implementation Plan parking rates, it is possible to calculate the parking requirements for the proposed Uchi Sushi Restaurant, as shown on **Table 3**.

TABLE 3: PARKING SPACE REQUIREMENTS

Use	Quantity ¹	Parking Rate ²	Required Parking	Proposed Parking	Meets Requirement
Uchi Sushi	2,400 SF	1 space per 50 SF	48	48	Yes

¹ Based on the March 26, 2024 preliminary site plan, prepared by B.E. Architects.

² Based on the City of Newport Beach Municipal Code Local Coastal Program Implementation Plan Off-Street Parking Requirements.

EXISTING PARKING DEMAND

The parking surveys conducted on-site at Sol Grill (2400 West Coast Highway) and The Winery (3131 West Coast Highway) also evaluated the existing parking demand. The survey data is provided in **Attachment D**. The counts accounted for each parked vehicle every ½ hour during the dinnertime operating hours. The counts were conducted from 5:00 PM to 10:00 PM on Thursday, March 7, 2024 and on Saturday, March 9, 2024. There were no observations made in the field that would indicate atypical traffic conditions on the count dates such as poor weather. **Table 4** shows a summary of the parking peak demand data. The peak parking demand during the 2-day survey is a 95% occupancy. Based on the parking demand results, additional parking is available on-site at each respective restaurant.

TABLE 4: OBSERVED PARKING DEMAND

Uses ¹	Parking Spaces Supplied	Average Parking Demand	Peak Parking Demand ²	Peak % Occupied	Unoccupied Spaces
Sol Grill	34	29	30	88%	4
The Winery	22	20	21	95%	1

¹ Source: Parking demand counts conducted from 5:00 PM to 10:00 PM on Thursday, March 7, 2024 and on Saturday, March 9, 2024.

² Peak parking demand was generally observed on Saturday from 6:00 PM to 7:00 PM.

VALET OPERATION PLAN/PARKING MANAGEMENT PLAN

This section describes the valet operation plan/parking management plan for the proposed Project. Final valet plans must be reviewed by the Public Works Department. Details of the valet operation plan and parking management plan are listed below:

Valet Operation Plan

- Valet operations will be active 15 minutes before opening and will continue through the restaurant operational hours (4:45pm to 11:00pm).
- Vehicles shall not obstruct the fire lane or traveled way. Vehicle ingress and egress circulation shall not be impacted.
- Vehicles will not be permitted to stand, stop, or park along West Coast Highway, Avon Street, or the public right-of-way.
- All commercial spaces will be designated for valet use only.
- Incoming restaurant visitors will be directed to self-park in the valet parking queuing area (4 spaces). Valet services will re-park the vehicles in the designated on-site and off-site valet spaces. If the initial 4 valet queuing spaces are filled, visitors will be directed by valet services to the nearest available on-site valet space. Should the valet spaces approach capacity, the valet parking queuing area and spaces near the site entrance will be filled last.
- Visitors leaving the restaurant will request their vehicle from valet services. Available valet parking queuing area will also be utilized for pick up. Vehicles ready for pick up shall not obstruct the fire lane or traveled way.
- The off-site lot will not be open to the general public during the operational hours of the restaurant (5:00pm to 11:00pm) with exception of the daytime tenants. A buffer time will be permitted for daytime tenants to exit the lot while the restaurant occupancy begins to fill up. 6 of the 38 parking spaces in the off-site lot will not be available to be utilized for the restaurant and will remain for the office tenant's use. Vehicle ingress access from West Coast Highway will be prevented via temporary signage (i.e., valet parking only).
- Valet services will only utilize Avon Street as the access between the on-site and off-site lots. West Coast Highway will not be utilized for valet operations. Valet services will access the head-in spaces by reversing into the spaces and the parallel spaces via multi-point turn. The drive aisle has a 34 foot width which is sufficient space for a multi-point turn. The configuration of the off-site lot parking spaces will not be modified. Access through the off-site lot shall not be blocked.
- Staffing should be based on the restaurant's capacity and anticipated traffic. At a minimum, the staff will consist of 8-10 workers. Staff will be increased based on capacity and anticipated traffic. Clear signage should be placed near the restaurant's entrance to direct arriving customers. **Exhibit D** shows the path of valet access to the off-site location.

Parking Management Plan

- Parking for the restaurant and residential uses will not be shared.
- Residential parking will be monitored by the property manager to ensure that residents park in the designated residential areas. A placard, provided by the property manager, is to be placed on the windshield or dashboard in the vehicle. All residential spaces are open to vehicles with the placard and spaces with not be assigned. Guest or short-term parking for residential use is not available on-site. Unauthorized vehicles will be fined or removed from the premises.
- Valet parking will be monitored by valet services during the operational hours of the restaurant (5:00pm to 11:00pm).

EXHIBIT D: OFF-SITE PARKING ACCESS



CONCLUSIONS

The site is currently approved for a mixed-use development project consisting of a residential and commercial (grocery store) component. The Project is proposing to replace the grocery store

with an Uchi sushi restaurant with a net public seating area of 2,400 SF. A preliminary site plan is presented on **Exhibit A**. The Uchi Restaurant will be located on the ground floor. The Project will designate 16 on-site valet standard spaces for commercial use and an additional 32 valet standard parking spaces will be available off-site at 2436 West Coast Highway through a parking agreement. All 48 parking spaces will be under a valet operation plan. The uses at 2436 West Coast Highway consist of daytime activities and will be inactive during the operational hours of the proposed Uchi restaurant (5:00pm to 11:00pm). It should be noted that paid parking is available at Avon Lot 1, Avon Lot 2, and on-street parking within the vicinity of the Project site.

Based on the City of Newport Beach "Local Coastal Program Implementation Plan" parking requirements, the proposed mixed-use development will require a total of 48 parking stalls. Our evaluation indicates that the proposed parking supply of 48 spaces will meet Local Coastal Program Implementation Plan parking requirements. The total parking supply in conjunction with the valet operation plan/parking management plan is sufficient to support the proposed Project parking demands.

Should you have any questions or comments, please reach out to either Brendan Dugan at bdugan@urbanxroads.com or Robert Vu at rvu@urbanxroads.com.

Respectfully submitted,

URBAN CROSSROADS, INC.



Brendan Dugan, P.E.
Senior Associate



Robert Vu, P.E.
Senior Transportation Engineer

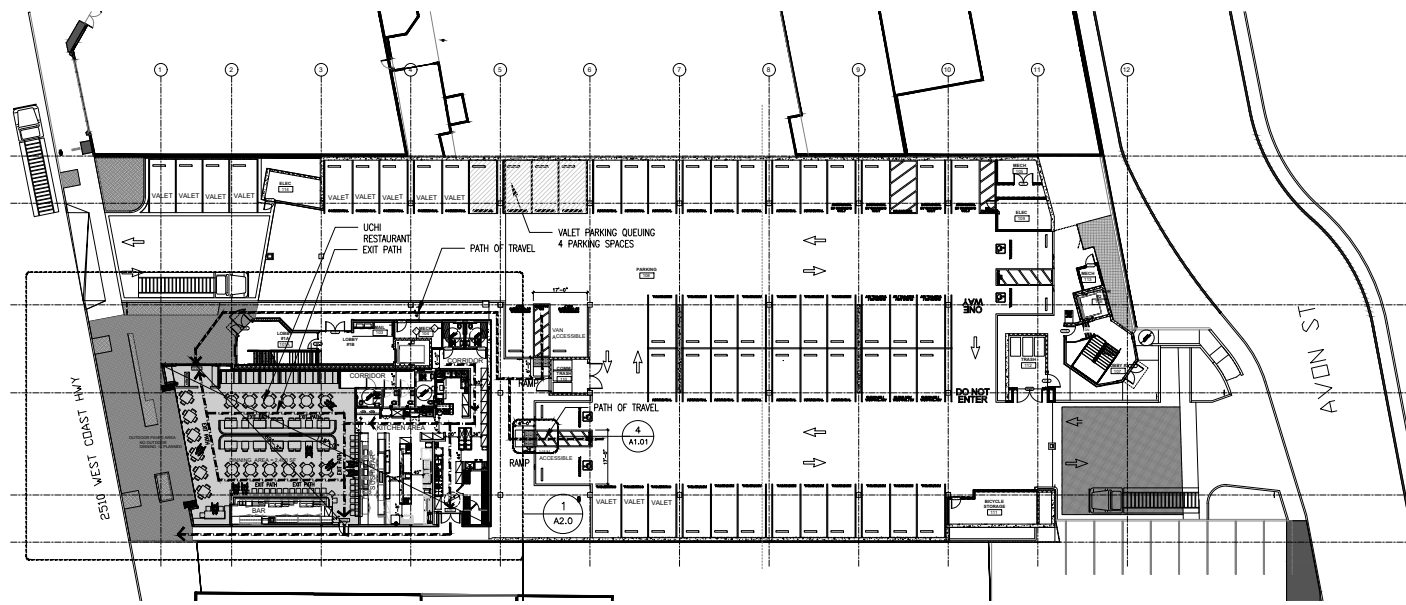
ATTACHMENT A: PRELIMINARY SITE PLAN

BUILDING DEPT NOTES & CONDITIONS

- 7. For each type of seating: Where dining surfaces are provided for consumption of food or drink, at least 5% of the seating spaces and standing spaces at the dining surfaces shall comply with built-in element requirements listed under Section 11B-902. (11B-226.1)
- 11. In sprinklered buildings, the minimum separation between exits shall be not less than 1/3 of the diagonal of the space or floor served. (CBC 1007.1.1 Exc. 2)
- 12. Exit access doors shall have panic hardware in assembly occupancy with occupant load >50. (CBC 1010.2.9)
- 13. Egress door shall be side hinge door per 1010.1.2 of CBC.

FIRE DEPT NOTES & CONDITIONS

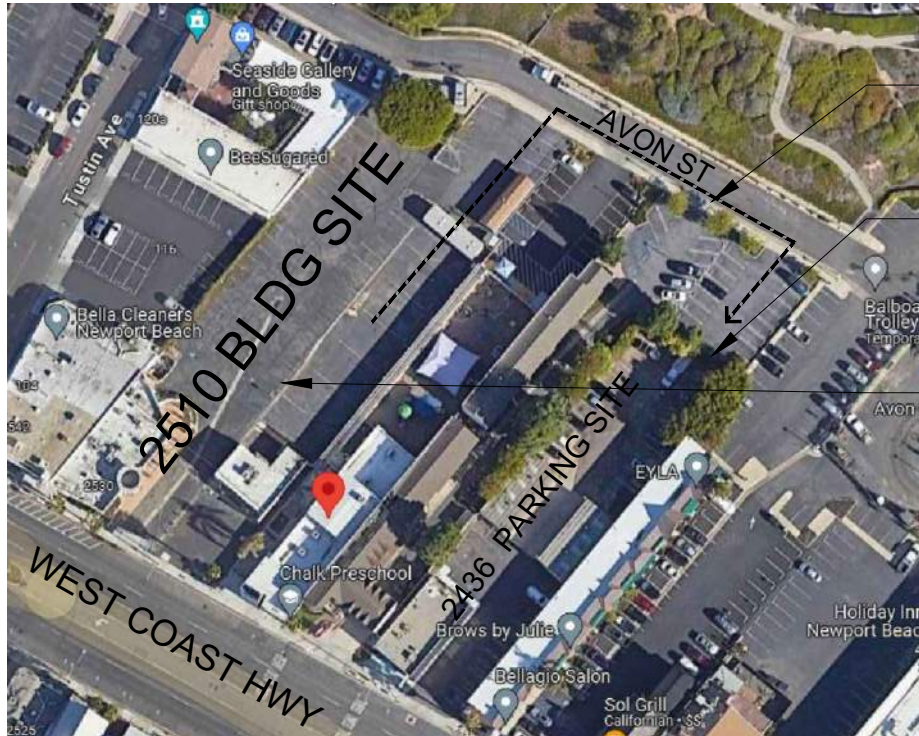
- 1) Applicant shall obtain a fire department operational permit for the Assembly use.
- 2) Provide occupant load analysis for the restaurant.
- 3) Provide exiting analysis for the restaurant.
- 4) Fire sprinklers shall be installed.
- 5) For occupant loads over 300 an automatic fire alarm with notification shall be installed.
- 6) Fixed suppression and type I hood shall be installed for cooking operations.
- 7) Fire extinguishers shall be installed per Chapter 9 of the California Fire Code
- 8) Liquid carbon dioxide beverage dispensing systems shall comply with either ventilation or gas detection requirements of section 5307.3 of the CFC.



FOR REFERENCE ONLY

2510 WEST COAST HWY SITE & FIRST FLOOR PLAN

1



PATH OF VALET PARKING DRIVE THRU AVON ST.

2436 WEST COAST HWY SITE OF OFF-SITE VALET PARKING FOR ADDITIONAL 32 PARKING SPACES
TOTAL PARKING : 38 AVAILABLE

2510 WEST COAST HWY SITE OF THE UCHI RESTAURANT PARKING FOR 20 VALET PARKING SPACES

VICINITY MAP

3

BUILDING 1ST FLOOR DATA

EXISTING APPROVED PLAN 0855-2022
FIRST FLOOR GROSS AREA: 6,107 SF
UCHI JAPANESE RESTAURANT WITH A TYPE 47 ALCOHOL LICENSE
UCHI RESTAURANT GROSS AREA: 4,963 SF
RESTAURANT NET SEATING AREA: 2,400 SF
NO OUTDOOR DINNING IS PLANNED

OCCUPANTS CALCULATION:
2,400 SF DINNING AREA: 15 SF/PERSON = 160 OCCUPANTS
1,035 SF KITCHEN AREA: 200 SF/PERSON = 5 OCCUPANTS
1,528 SF CORRIDOR & RESTROOMS = 0 OCCUPANTS
ACCESSIBLE DINNING: 160 OCCUPANTS X 0.05 = 8 SPACES
TOTAL OCCUPANTS: 165 OCCUPANTS
OCCUPANCY TYPE: A2

CONSTRUCTION TYPE: V-A FULLY SPRINKLERED
OCCUPANCY SEPARATION: 1 HR BETWEEN A2 (RESTAURANT) AND R2 (RESIDENTIAL)
1 HR SEPARATION IS PROVIDED BY THE PERMITTED PLANS.
OCCUPANCY SEPARATION: NONE BETWEEN A2 & S-2 (PARKING)

PLUMBING FIXTURES REQUIRED PER CPC TABLE 422.1
DINNING/DINING AT 30 SF PER OCCUPANT AT DINNING= 88 OCCUPANTS
KITCHEN AT 50 SF PER OCCUPANTS= 21
TOTAL OCCUPANTS: 109
PLUMBING FIXTURES W U L
55 MEN 2 1 1
55 WOMEN 3 1 1

TOTAL PLUMBING FIXTURES REQ'D:
WATER CLOSET: 5
URINAL: 1
LAVATORY: 2

TOTAL PLUMBING FIXTURES PROVIDED:
WATER CLOSET: 6
URINAL: 1
LAVATORY: 6

ALL RESTROOMS TO BE UNISEX
PARKING STALLS REQUIRED: 2,400 SF DINNING AREA : 50 SF = 48 SPACES
PARKING PROVIDED ON-SITE = 16 SPACES ALL VALET PARKING INCLUDES 2 ACCESSIBLE PARKING
PARKING SPACES PROVIDED OFF-SITE @ 2436 WEST COAST HWY = 32 VALET SPACES
PARKING SPACES AVAILABLE AT 2436 WEST COAST HWY: 38 SPACES
TOTAL PARKING PROVIDED FOR UCHI RESTAURANT:
48 VALET SPACES INCLUDES 2 ACCESSIBLE SPACE AT THE 2510 BUILDING SITE

PROJECT DATA

2



Revisions Date

Job Number

Drawn By

Checked By

Scale

Date 8-9-24

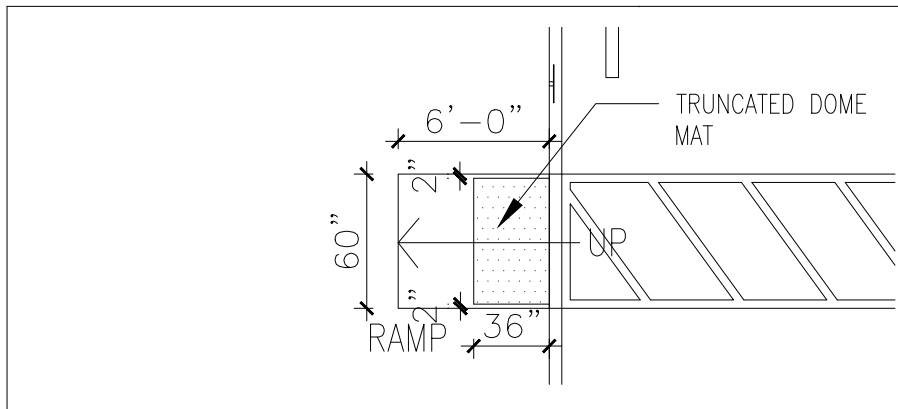
Sheet Title

SITE PLAN

OWNERSHIP AND USE OF DOCUMENTS
All drawings, specifications and notes shall remain the property of B.E. ARCHITECTS and shall not be reproduced, copied, or used in any way without the express written consent of B.E. ARCHITECTS. The user of these drawings shall be deemed to have accepted the responsibility for the accuracy and completeness of the information and to have agreed to indemnify B.E. ARCHITECTS from and against all claims, damages, losses, and expenses, including reasonable attorneys' fees, arising out of or from the use of these drawings, specifications and notes, whether or not such claims, damages, losses, and expenses are caused in whole or in part by the negligence of B.E. ARCHITECTS.

Sheet No. **A.1.0**

**ATTACHMENT B: OFF-SITE PARKING AT 2436 WEST COAST
HIGHWAY**



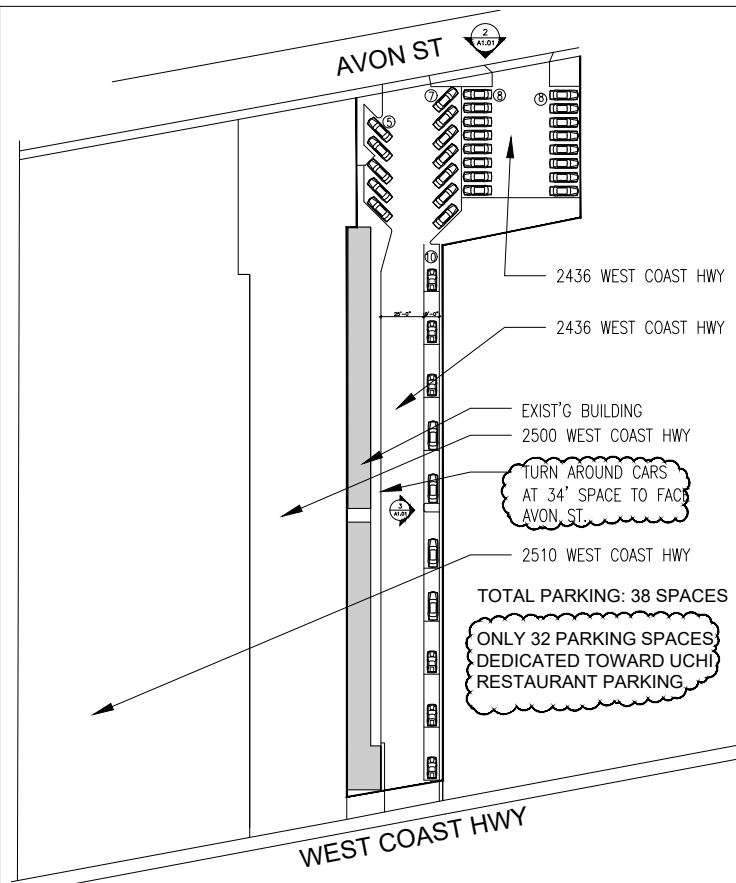
CURB RAMP AT ACCESSIBLE PARKING STALLS

4



OFF-SITE PARKING @ 2436 WEST COAST HWY

3



OFF-SITE PARKING @ 2436 WEST COAST HWY

1



OFF-SITE PARKING AT REAR 2436 WEST COAST HWY BUILDING

2

BE

B.E. ARCHITECTS

Architecture
Planning
Interior Design
845 20TH Street #208
Santa Monica, CA 90403
Telephone 949.290.3270

PROJECT:

TENANT IMPROVEMENT
UCHI RESTAURANT
2510 WEST COAST HWY
NEWPORT BEACH, CA 92663

PROPERTY OWNER:

SPACE INVESTMENT PARTNERS
2800 EAST COAST HWY
SUITE 240
CORONA DEL MAR, CA 92625



Revisions Date

Job Number _____

Drawn By _____

Checked By _____

Scale _____

Date 10-2-24

Sheet Title _____

DEMOLITION PLAN

OWNERSHIP AND USE OF DOCUMENTS

These documents are the property of B.E. ARCHITECTS, INC. and are loaned to you for your use only. They are not to be distributed, reproduced, or used for any other purpose without the written consent of B.E. ARCHITECTS, INC. All rights are reserved. © 2024 B.E. ARCHITECTS, INC. All rights reserved.

Sheet No.

A.1.01

ATTACHMENT C: OFF-SITE PARKING AGREEMENT

To whom it may concern,

This letter authorizes and acknowledges that Uchi Restaurant, located at 2510 West Coast Highway Newport Beach, CA, uses Thirty-Two, 32, parking spaces located at 2436 West Coast Highway for parking after 5:00pm Monday through Sunday.

Please feel free to reach out to me at 949-244-0331 with any questions.

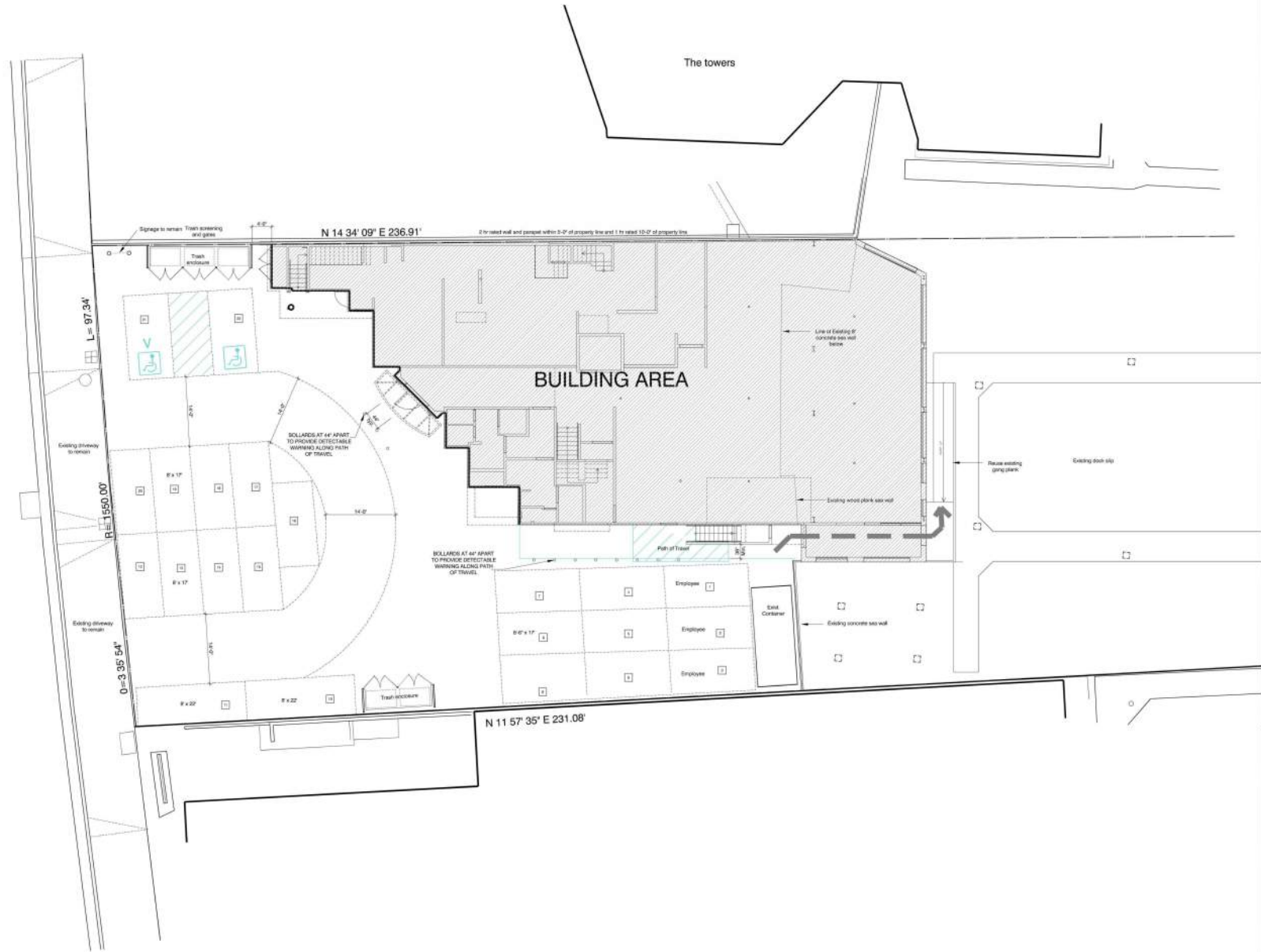
Best regards,

A handwritten signature in black ink, appearing to read "Pierce Stemler". The signature is fluid and cursive, with a large initial "P" and a stylized "S".

Pierce Stemler
Property Manager
2436 West Coast Hwy, Newport Beach
MSM Global Ventures, LLC

ATTACHMENT D: PARKING SURVEYS

Pacific Coast Highway



City of Newport Beach

SITE PLAN



1/8"=1'-0" 1

Plan Date: June 5, 2013

David A. Price
ARCHITECTS, INC.
25155 Calle Arroyo, Suite 200
Newport Beach, CA 92660
Tel: 949.441.1111
Fax: 949.441.1112



THE WINERY RESTAURANT

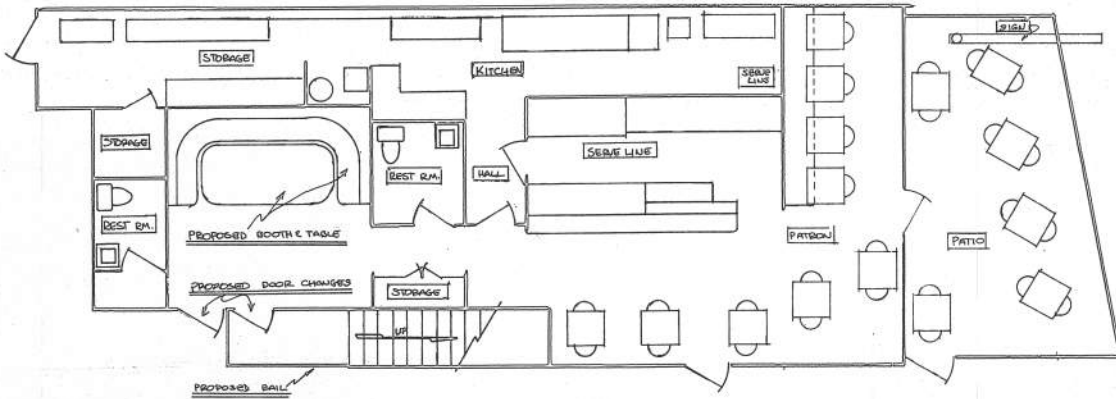
3131 W. Coast Hwy
Newport Beach, CA 92663

REV	DESCRIPTION	DATE

ISSUED TITLE
SITE PLAN

PROJECT NUMBER: 21022
DRAWN BY: DMW
PRINT DATE: 06.08.13

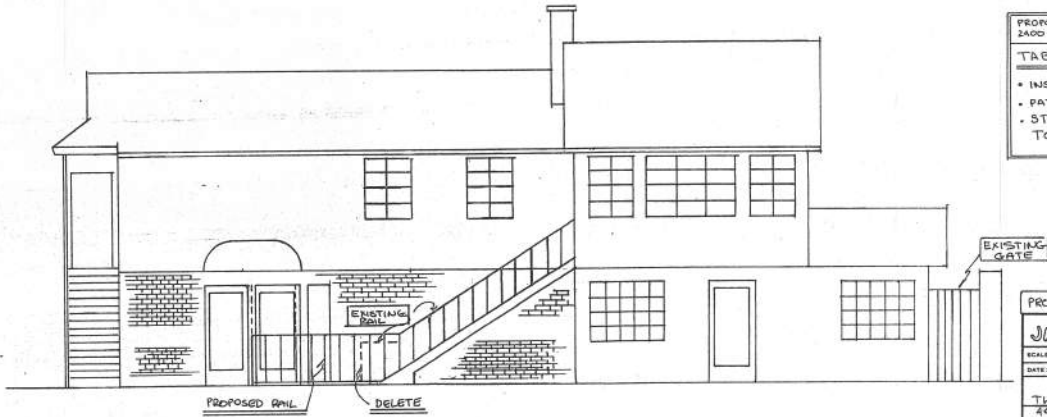
DRAWING NUMBER:
SP-1



PROPOSED 1ST FLOOR PLAN
2400 W. COAST HWY., NEWPORT BCH.

TABULATION: # AREA

- INSIDE PATRON 517 #
- PATIO 260 #
- STORAGE/SERVICE 470 #
- TOTAL 1277 #



PROPOSED 1ST FLOOR PLAN/ELEVATION

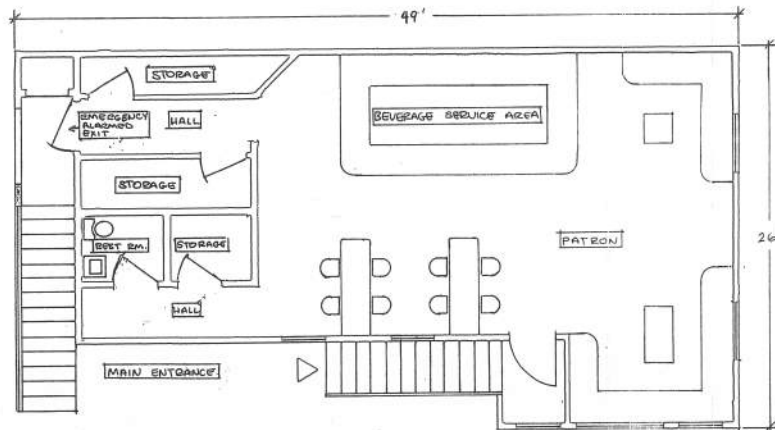
JACKSHRIMP 2400 W. COAST HWY.
NEWPORT BEACH CA 92663

SCALE: 3/4" = 1' APPROVED BY: DRAWN BY: T.G.

DATE: 3-14-95 REVIEWED:

THOM GALL & COMPANY
494 MAGADUA STREET
COSTA MESA CA 92627 DRAWING NUMBER
0002

18 & 24 PRINTED ON 30 LB. WEIGHT GRAPHIC



PROPOSED 2ND FLOOR PLAN
2400 W. COAST HWY., NEWPORT BCH.

TABULATION: # AREA

- PUBLIC OCCUPANCY 655 #
- STORAGE/SERVICE 245 #
- TOTAL 900 #



City of Newport Beach

DRAWN FOR:

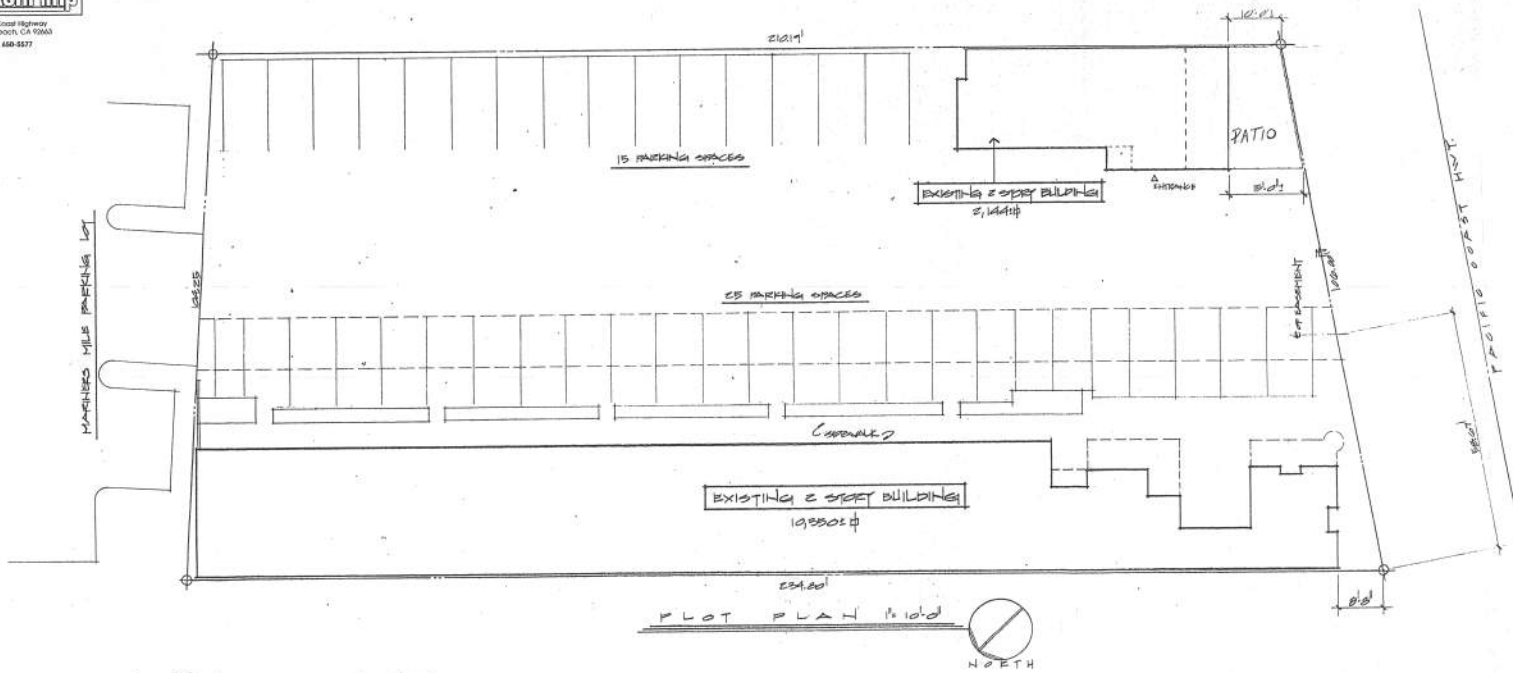
JACKSHRIMP 2400 W. COAST HWY.
NEWPORT BEACH CA 92663

SCALE: 3/4" = 1' APPROVED BY: DRAWN BY: T.G.

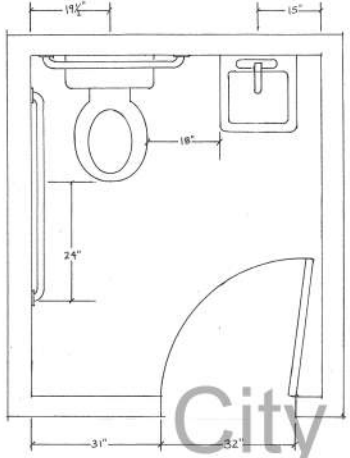
DATE: 3-14-95 REVIEWED:

THOM GALL & COMPANY
494 MAGADUA STREET
COSTA MESA CA 92627 DRAWING NUMBER
0002

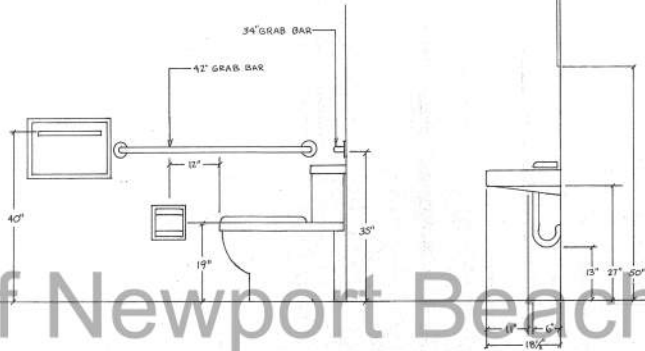
18 & 24 PRINTED ON 30 LB. WEIGHT GRAPHIC



PLOT PLAN 10/10/10



EXISTING HANDICAP RESTROOM



JACKshrimp		2400 W. COAST HWY NEWPORT BEACH CA 92663	
SCALE: 1" = 1'	DATE: 3-16-15	DESIGNED BY: T.G.	REVISED:
THOM GALL & COMPANY		PROJECT NO: 0003	
418 MAGNOLIA STREET COSTA MESA, CA 92627			

City of Newport Beach

Newport Beach

Sol Grill & The Winery

2400 & 3131 West Coast Highway, Newport Beach, CA 92663

Thursday, March 7, 2024

		Inventory	5:00 PM	5:30 PM	6:00 PM	6:30 PM	7:00 PM	7:30 PM	8:00 PM	8:30 PM	9:00 PM	9:30 PM	10:00 PM
Sol Grill 2400 West Coast Highway	Regular	32	27	22	24	24	19	18	12	10	9	8	4
	Handicap	2	0	0	0	1	0	0	0	0	0	0	0
	Subtotal	34	27	22	24	25	19	18	12	10	9	8	4

Total Occupancy	34	27	22	24	25	19	18	12	10	9	8	4
Total Percent		79%	65%	71%	74%	56%	53%	35%	29%	26%	24%	12%

		Inventory	5:00 PM	5:30 PM	6:00 PM	6:30 PM	7:00 PM	7:30 PM	8:00 PM	8:30 PM	9:00 PM	9:30 PM
The Winery 3131 West Coast Highway	Regular	22	3	6	13	13	17	16	16	16	14	4
	Handicap	2	0	1	2	2	2	2	1	2	1	0
	Subtotal	24	3	7	15	15	19	18	17	18	15	4

Total Occupancy	24	3	7	15	15	19	18	17	18	15	4
Total Percent		13%	29%	63%	63%	79%	75%	71%	75%	63%	17%

Newport Beach

Sol Grill & The Winery

2400 & 3131 West Coast Highway, Newport Beach, CA 92663

Saturday, March 9, 2024

		Inventory	5:00 PM	5:30 PM	6:00 PM	6:30 PM	7:00 PM	7:30 PM	8:00 PM	8:30 PM	9:00 PM	9:30 PM	10:00 PM
Sol Grill 2400 West Coast Highway	Regular	32	16	17	17	20	29	23	20	17	12	6	6
	Handicap	2	0	0	0	1	1	0	0	0	0	0	0
	Subtotal	34	16	17	17	21	30	23	20	17	12	6	6

Total Occupancy	34	16	17	17	21	30	23	20	17	12	6	6
Total Percent		47%	50%	50%	62%	88%	68%	59%	50%	35%	18%	18%

		Inventory	5:00 PM	5:30 PM	6:00 PM	6:30 PM	7:00 PM	7:30 PM	8:00 PM	8:30 PM	9:00 PM	9:30 PM	10:00 PM
The Winery 3131 West Coast Highway	Regular	22	9	10	16	19	18	16	16	15	12	12	16
	Handicap	2	2	1	2	2	2	2	2	2	1	1	0
	Subtotal	24	11	11	18	21	20	18	18	17	13	13	16

Total Occupancy	24	11	11	18	21	20	18	18	17	13	13	16
Total Percent		46%	46%	75%	88%	83%	75%	75%	71%	54%	54%	67%

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Attachment No. PC 3

Police Department Memorandum

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**NEWPORT BEACH POLICE DEPARTMENT
DETECTIVE DIVISION**

MEMORANDUM

TO: Jenny Tran, Assistant Planner
FROM: Wendy Joe, Police Civilian Investigator
DATE: September 4, 2024
SUBJECT: Uchi
2510 West Coast Highway
PA2024-0068

At your request, the Police Department has reviewed the project application for Uchi Restaurant located at 2510 West Coast Highway, Newport Beach. The applicant has requested a use permit for a new restaurant establishment with a Type 47 (On-Sale General) Alcoholic Beverage Control License. The restaurant will be open from 5:00 p.m. to 11:00 p.m. daily.

Statistical Data and Public Convenience or Necessity

Attached is a summary report which provides detailed statistical information related to alcohol establishments in and around the applicant's proposed place of business at 2510 West Coast Highway.

Business and Professions Code §23958.4 finds "undue concentration" for an applicant premises in two ways: 20% higher crime (with an alcohol nexus) in a Reporting District as compared to the City-wide average, or an over saturation of alcohol licenses in a census tract compared to the county.

Crime Statistics:

The Police Department divides the City into areas referred to as Reporting Districts. This allows the Police Department to compile statistical data, as well as better communicate officer locations while policing. The proposed applicant location is within Reporting District (RD) 26 which encompasses the Mariner's Mile area from Dover Drive to Tustin Avenue.

Per Business and Professions Code §23958.4, the Police Department is required to report offenses of criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny, theft, and motor vehicle theft (all Part I crimes), combined with all arrests for other crimes, both felonies and misdemeanors (except traffic citations) to the Department of Alcoholic Beverage Control (ABC). These figures make up the "Crime Count" which is indicated on the attached statistical data form.

This reporting district is reported to ABC as a high crime area as compared to other Reporting Districts in the City. The RD's Crime Count is 189, 60% over the City-wide crime count average of 118. Since this area has a 20% or greater number of reported crimes than the average number of reported crimes as determined from all crime reporting districts within the City, the area is found to have undue concentration. In comparison, neighboring RD 25 is 31% above the City-wide average, RD 28 is 132% above the City-wide average, and RD 41 is 3% below the average. Of 38 reporting districts in Newport Beach, we reported 12 to ABC as high crime areas.

The highest volume crime in this area is theft. The highest volume of arrests in the area are drug-related offenses.

DUI, Public Intoxication, and liquor law violations make up 27% of arrests in this reporting district. In comparison, the figure for neighboring RD 25 is 25%, RD 28 is 5% and RD 41 is 34%.

This location meets the legal criteria for undue concentration pertaining to crime (B&P §23958.4).

Alcohol License Statistics:

The applicant premise is located within census tract 634. This census tract has an approximate population of 4,776 residents with approximately 17 active on-sale alcohol licenses. That is a per capita ratio of 1 license for every 281 residents. Per the Business and Professions code, we compare this per capita ratio to Orange County's on-sale per capita ratio of 1 license for every 822 residents and conclude this area has undue concentration.

This location meets the legal criteria for undue concentration pertaining to alcohol licenses (B&P §23958.4).

Discussion and Recommendations

Due to the lack of late hours and the type of alcoholic beverage license requested, the Police Department has no concerns with the application provided the conditions below (or similar conditions) are imposed

1. The Alcoholic Beverage Control License shall be limited to a Type 47 (On-Sale General). Any substantial change in the ABC license type shall require subsequent review and potential amendment of the Use Permit.
2. The applicant shall comply with all federal, state, and local laws, and all conditions of the Alcoholic Beverage License. Material violation of any of those laws or conditions in connection with the use is a violation and may be cause for revocation of the use permit.
3. All owners, managers and employees selling alcoholic beverages shall undergo and successfully complete a certified training program in responsible methods and skills for selling alcoholic beverages within 60 days of hire. The certified program must meet the standards of the certifying/licensing body designated by the State of California. The establishment shall comply with the requirements of this section within 60 days of approval. Records of each owner's manager's and employee's successful completion of the required certified training program shall be maintained on the premises and shall be presented upon request by a representative of the City of Newport Beach.

4. The eating and drinking establishment shall close no later than 11:00 p.m., daily. Food or alcohol service after 11:00 p.m. is prohibited.
5. Approval does not permit the premises to operate as a bar, tavern, cocktail lounge or nightclub as defined by the Newport Beach Municipal Code.
6. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee.
7. There shall be no live entertainment or dancing allowed on the premises.
8. No games or contests requiring or involving the consumption of alcoholic beverages shall be allowed.
9. Food service from the regular menu shall be made available to patrons until closing.
10. Petitioner shall not share any profits or pay any percentage or commission to a promoter or any other person based upon monies collected as a door charge, cover charge, or any other form of admission charge, including minimum drink orders or the sale of drinks.
11. Any event or activity staged by an outside promoter or entity, where the applicant, operator, owner or his employees or representatives share in any profits, or pay any percentage or commission to a promoter or any other person based upon money collected as a door charge, cover charge or any other form of admission charge is prohibited.
12. "VIP" passes or other passes to enter the establishment, as well as door charges, cover charges, or any other form of admission charge, including minimum drink order of the sale of drinks is prohibited (excluding charges for prix fixe meals).
13. Strict adherence to maximum occupancy limits is required.
14. The applicant shall maintain a security recording system with a 30-day retention and make those recording available to police upon request.
15. The exterior of the business shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter, and debris from the premises and on all abutting sidewalks within 20 feet of the premises. Graffiti shall be removed within 48 hours of written notice from the City.
16. There shall be no exterior advertising or signs of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
17. Strict adherence to maximum occupancy limit is required.
18. The operator of the restaurant facility shall be responsible for the control of noise generated by the subject facility. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of

Uchi
PA2024-0068

the Newport Beach Municipal Code.

If you have any questions as to the content of this memorandum, please contact Investigator Wendy Joe at (949)644-3705 or wjoe@nbpd.org.



Wendy Joe
Police Civilian Investigator, Special Investigations Unit



NEWPORT BEACH POLICE DEPARTMENT

2023 CRIME AND ALCOHOL-RELATED STATISTICS

CHIEF JOSEPH L. CARTWRIGHT

Summary for Uchi at 2510 West Coast Hwy (RD26)

Subject:	DISPATCH EVENTS	REPORTED CRIMES				ARRESTS					CITATIONS
		GROUP A OFFENSES	GROUP B OFFENSES	CRIME RATE	HIGHEST VOLUME	ALL ARRESTS	DUI ALCOHOL	PUBLIC INTOXICATION	LIQUOR LAW	HIGHEST VOLUME	ALCOHOL RELATED
2510 West Coast Hwy	0	0	0	N/A	N/A	0	0	0	0	N/A	0
Subject RD: RD26	1,363	230	74	8,237.82	THEFT/LARCENY	107	19	10	0	NARCOTICS	3
Adjacent RD: RD25	1,192	172	58	10,430.56	THEFT/LARCENY	83	14	7	0	NARCOTICS	2
Adjacent RD: RD28	1,341	377	32	15,934.07	THEFT/LARCENY	114	6	0	0	NARCOTICS	2
Adjacent RD: RD41	906	104	43	3,702.39	THEFT/LARCENY	58	12	8	0	DUI	0
Newport Beach	40,526	5,102	1,439	5,885.07	THEFT/LARCENY	2,732	291	339	7	NARCOTICS	67

This report reflects City of Newport Beach data for 2022. The NIBRS Group A Offense category is made up of 49 offenses used to report crimes committed within a law enforcement agency's jurisdiction. NIBRS Group B Offenses are less serious offenses that require an arrest to be reportable. Crime Rate refers to the number of Group A Crimes per 100,000 people.

Subject:	ACTIVE RETAIL ABC LICENSES <small>as of 07/18/2023</small>							Subject:	ABC CRIME COUNT		
	Population	ON-SALE Licenses	ON-SALE License Per Capita	OFF-SALE Licenses	OFF-SALE License Per Capita	TOTAL RETAIL LICENSES	TOTAL RETAIL LICENSES PER CAPITA		CRIME COUNT	DIFF FROM AVG	%DIFF FROM AVG
2510 West Coast Hwy	N/A	0	N/A	0	N/A	0	N/A	2510 West Coast Hwy	0	N/A	N/A
Subject Census Tract: 634	4,776	17	281	0	0	17	281	Subject RD: RD26	189	+71	+60%
Adjacent Census Tract: 636.03	6,450	6	1,075	5	1,290	11	586	Adjacent RD: RD25	154	+36	+31%
Adjacent Census Tract: 630.1	6,698	8	837	2	3,349	10	670	Adjacent RD: RD28	274	+156	+132%
Adjacent Census Tract: 630.05	1,447	7	207	3	482	10	145	Adjacent RD: RD41	115	-3	-3%
Newport Beach	86,694	279	311	66	1,314	345	251	Newport Beach	4,502	RD Average = 118	
Orange County	3,186,989	3,876	822	1,842	1,730	5,718	557				

All Population figures taken from 2020 US Census. Per BP 23958.4, the "ABC Crime Count" includes offenses of criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny, theft, and motor vehicle theft, combined with all arrests for other crimes, both felonies and misdemeanors (except traffic citations).

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Attachment No. PC 4

Project Plans

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PROJECT:

TENANT IMPROVEMENT
UCHI RESTAURANT
2510 WEST COAST HWY
NEWPORT BEACH, CA 92663

PROPERTY OWNER:

SPACE INVESTMENT PARTNERS
2600 EAST COAST HWY
SUITE 240
CORONA DEL MAR, CA 92625

BUILDING DEPT NOTES & CONDITIONS

7. For each type of seating: Where dining surfaces are provided for consumption of food or drink, at least 5% of the seating spaces and standing spaces at the dining surfaces shall comply with built-in element requirements listed under Section 11B-902. (11B-226.1).

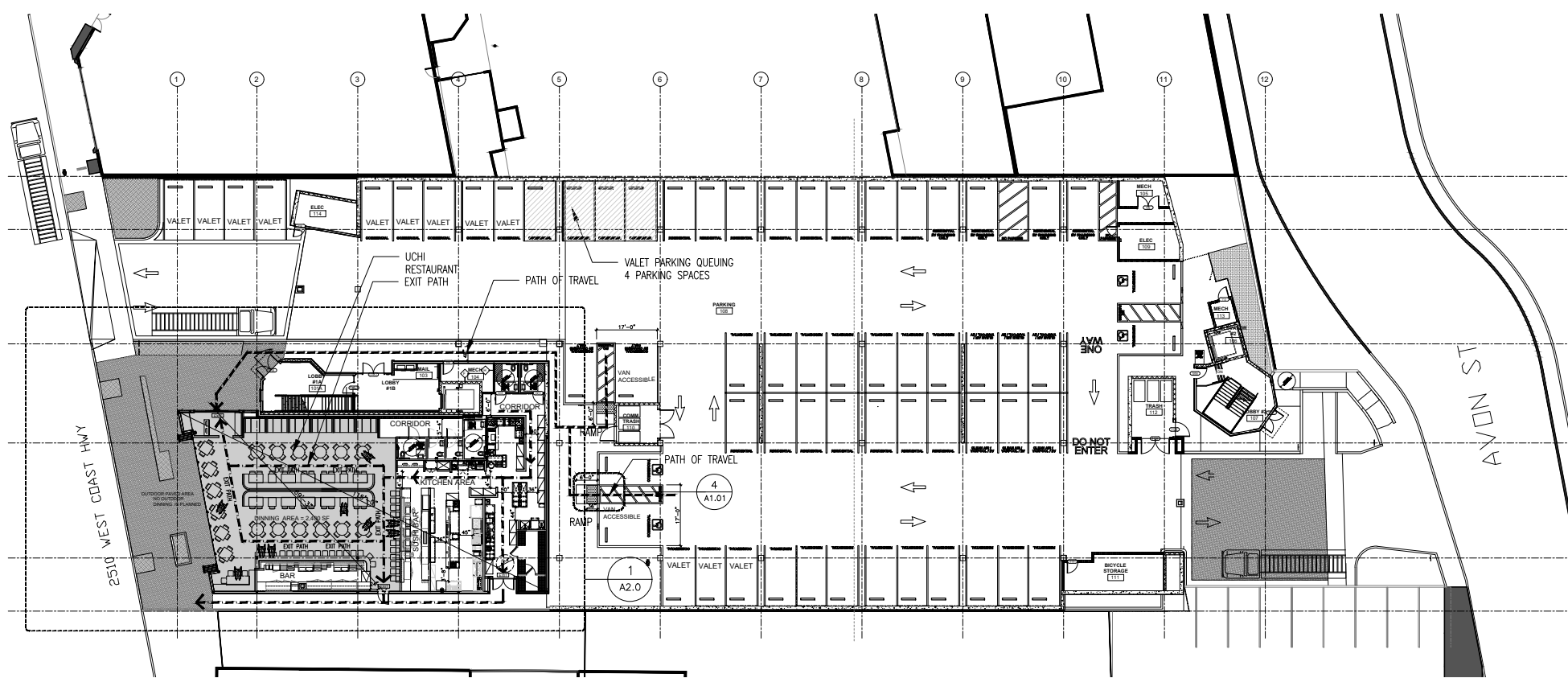
11. In sprinklered buildings, the minimum separation between exits shall be not less than 1/3 of the diagonal of the space or floor served. (CBC 1007.1.1 Exc. 2)

12. Exit access doors shall have panic hardware in assembly occupancy with occupant load >50. (CBC 1010.2.9)

13. Egress door shall be side hinge door per 1010.1.2 of CBC.

FIRE DEPT NOTES & CONDITIONS

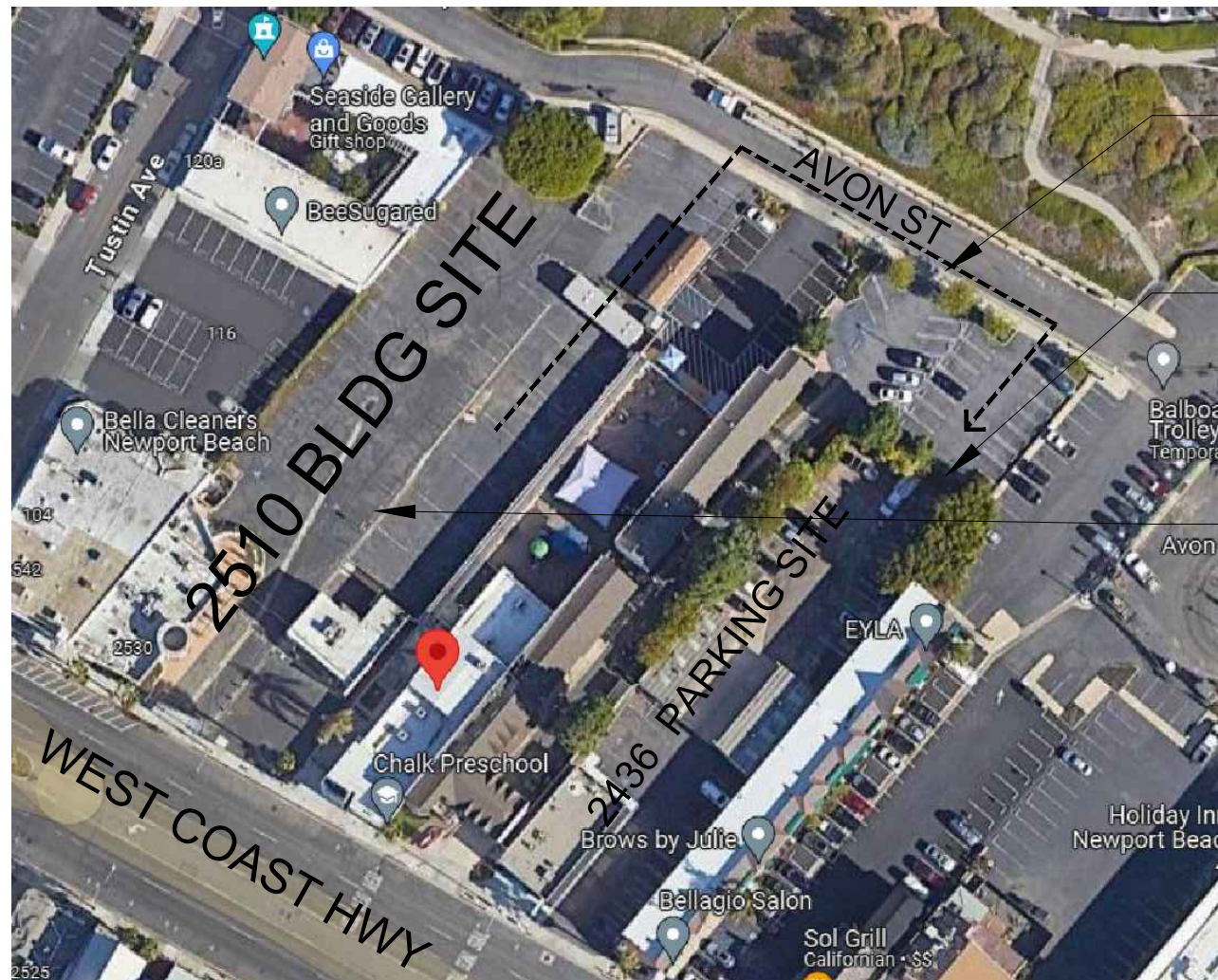
- 1) Applicant shall obtain a fire department operational permit for the Assembly use.
- 2) Provide occupant load analysis for the restaurant.
- 3) Provide exiting analysis for the restaurant.
- 4) Fire sprinklers shall be installed.
- 5) For occupant loads over 300 an automatic fire alarm with notification shall be installed.
- 6) Fixed suppression and type I hood shall be installed for cooking operations.
- 7) Fire extinguishers shall be installed per Chapter 9 of the California Fire Code
- 8) Liquid carbon dioxide beverage dispensing systems shall comply with either ventilation or gas detection requirements of section 5307.3 of the CFC.



FOR REFERENCE ONLY

2510 WEST COAST HWY SITE & FIRST FLOOR PLAN

1



PATH OF VALET PARKING DRIVE THRU AVON ST.

2436 WEST COAST HWY SITE OF OFF-SITE VALET PARKING FOR ADDITIONAL 32 PARKING SPACES
TOTAL PARKING : 38 AVAILABLE

2510 WEST COAST HWY SITE OF THE UCHI RESTAURANT PARKING FOR 20 VALET PARKING SPACES

VICINITY MAP

3

BUILDING 1ST FLOOR DATA

EXISTING APPROVED PLAN 0855-2022

FIRST FLOOR GROSS AREA: 6,107 SF

UCHI JAPANESE RESTAURANT WITH A TYPE 47 ALCOHOL LICENSE

UCHI RESTAURANT GROSS AREA: 4,963 SF
RESTAURANT NET SEATING AREA: 2,400 SF
NO OUTDOOR DINNING IS PLANNED

OCCUPANTS CALCULATION:

2,400 SF DINNING AREA: 15 SF/PERSON = 160 OCCUPANTS
1,035 SF KITCHEN AREA: 200 SF/PERSON = 5 OCCUPANTS
1,528 SF CORRIDOR & RESTROOMS = 0 OCCUPANTS

ACCESSIBLE DINNING: 160 OCCUPANTS X 0.05 = 8 SPACES

TOTAL OCCUPANTS: 165 OCCUPANTS

OCCUPANCY TYPE: A2

CONSTRUCTION TYPE V-A FULLY SPRINKERED

OCCUPANCY SEPARATION: 1 HR BETWEEN A2 (RESTAURANT) AND R2 (RESIDENTIAL)

1 HR SEPARATION IS PROVIDED BY THE PERMITTED PLANS.

OCCUPANCY SEPARATION: NONE BETWEEN A2 & S-2 (PARKING)

PLUMBING FIXTURES REQUIRED PER CPC TABLE 422.1

DINNING/DRINKING AT 30 SF PER OCCUPANT AT DINNING= 88 OCCUPANTS

KITCHEN AT 50 SF PER OCCUPANTS= 21

TOTAL OCCUPANTS: 109

PLUMBING FIXTURES

55 MEN

55 WOMEN

TOTAL PLUMBING FIXTURES REQ'D:

WATER CLOSET: 5

URINAL: 1

LAVATORY: 2

TOTAL PLUMBING FIXTURES PROVIDED:

WATER CLOSET: 6

URINAL: 1

LAVATORY: 6

ALL RESTROOMS TO BE UNISEX

PARKING STALLS REQUIRED: 2,400 SF DINNING AREA : 50 SF = 48 SPACES

PARKING PROVIDED ON-SITE = 16 SPACES ALL VALET PARKING INCLUDES 2 ACCESSIBLE PARKING

PARKING SPACES PROVIDED OFF-SITE @ 2436 WEST COAST HWY = 32 VALET SPACES

PARKING SPACES AVAILABLE AT 2436 WEST COAST HWY: 38 SPACES

TOTAL PARKING PROVIDED FOR UCHI RESTAURANT:

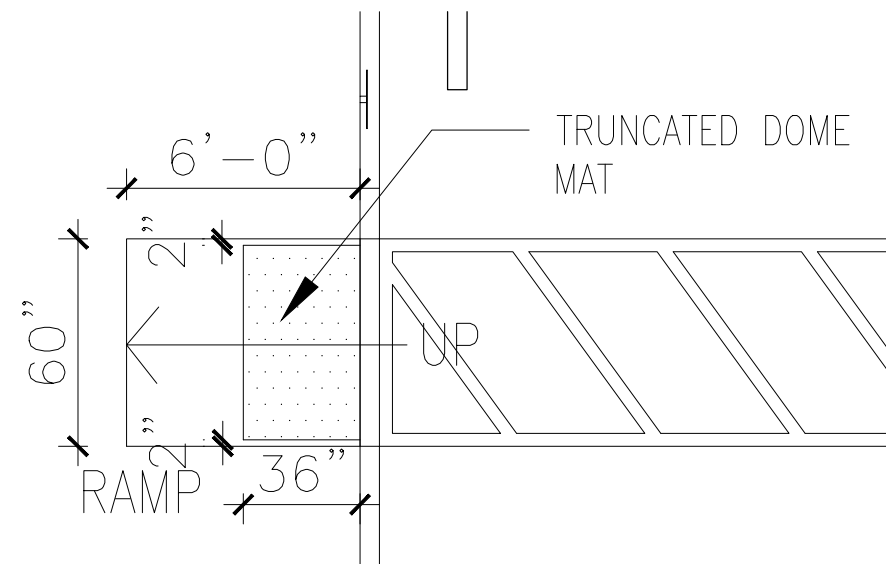
48 VALET SPACES INCLUDES 2 ACCESSIBLE SPACE AT THE 2510 BUILDING SITE



Revisions **Date**

Sheet No.

A.1.0



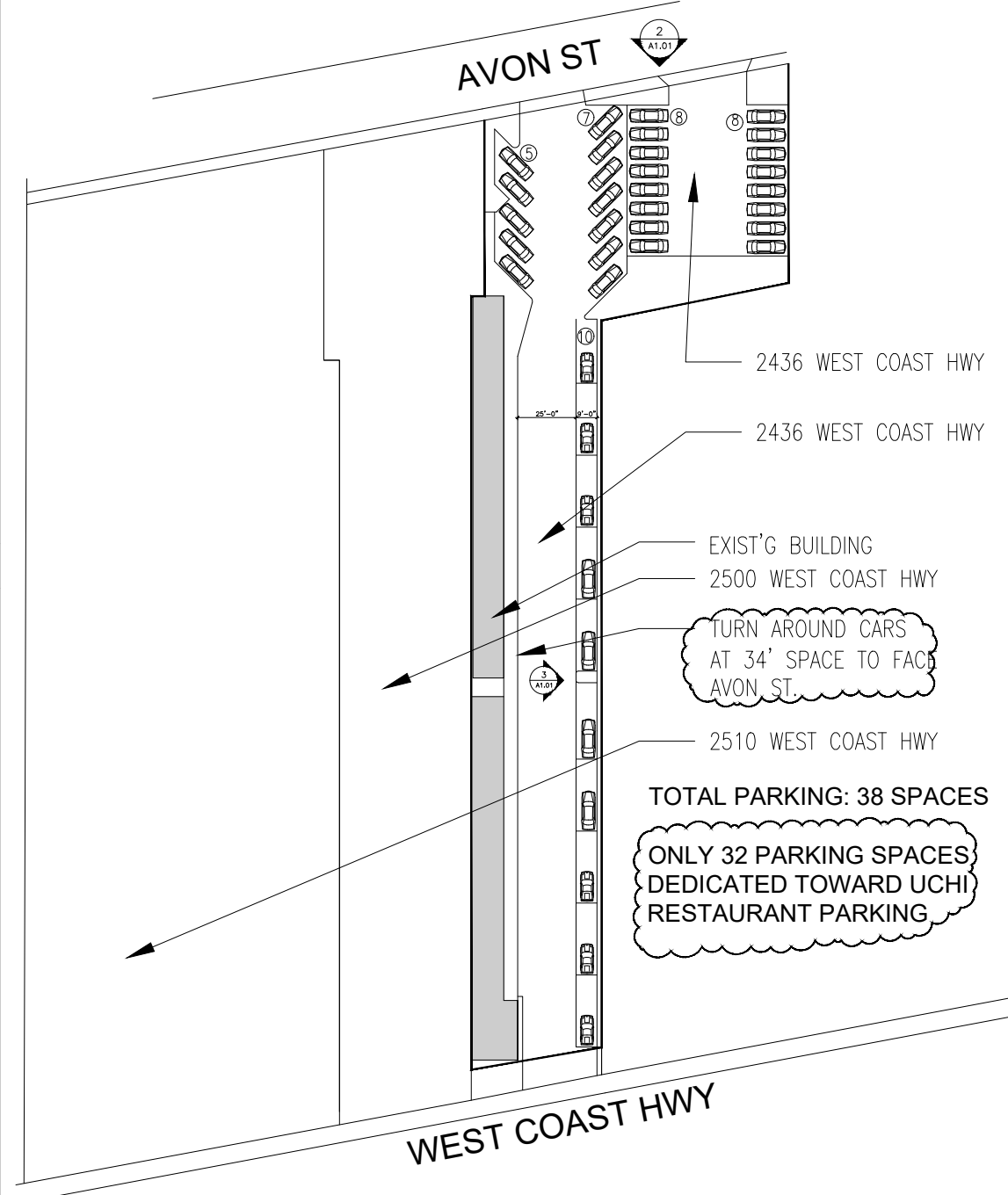
CURB RAMP AT ACCESSIBLE PARKING STALLS

4



OFF-SITE PARKING @ 2436 WEST COAST HWY

3



OFF-SITE PARKING @ 2436 WEST COAST HWY

1



OFF-SITE PARKING AT REAR 2436 WEST COAST HWY BUILDING

2

PROJECT:

TENANT IMPROVEMENT
UCHI RESTAURANT
2510 WEST COAST HWY
NEWPORT BEACH, CA 92663

PROPERTY OWNER:

SPACE INVESTMENT PARTNERS
2600 EAST COAST HWY
SUITE 240
CORONA DEL MAR, CA 92625



Revisions Date

Job Number

Drawn By

Checked By

Scale

Date 10-2-24

Sheet Title

DEMOLITION PLAN

OWNERSHIP AND USE OF DOCUMENTS
All Drawings, Specifications and copies thereof furnished by B.E. ARCHITECTS are and shall remain its property. They are to be used only with respect to this project and are not to be used on any other project. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of B.E. ARCHITECTS as publisher in derogation of other reserved rights.

Sheet No.



CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT

December 5, 2024
Agenda Item No. 3

SUBJECT: Five Crowns Temporary Outdoor Dining (PA2023-0202)
▪ Limited Term Permit (>90 Days)
▪ Coastal Development Permit

SITE LOCATION: 3801 East Coast Highway

APPLICANT: Ryan Wilson

OWNER: FPV II Partnership

PLANNER: Melinda Whelan, Assistant Planner
949-644-3221, mwhelan@newportbeachca.gov

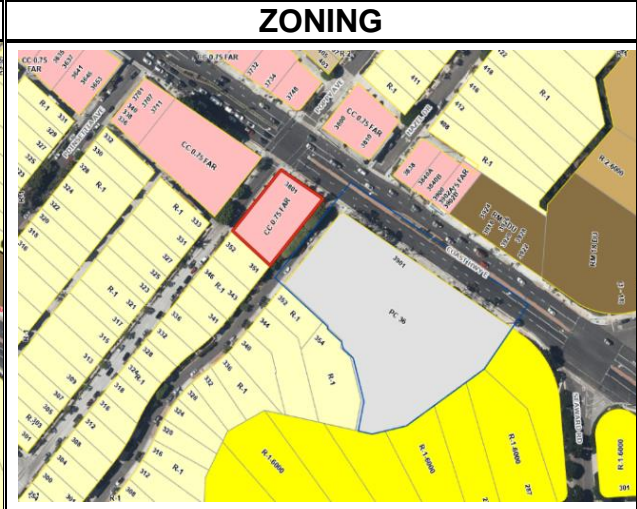
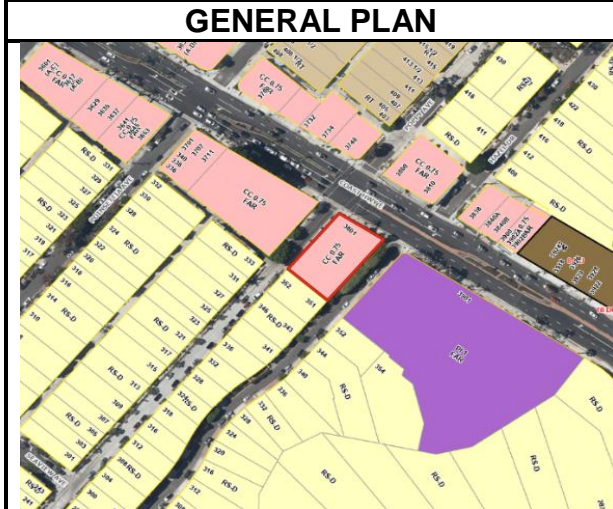
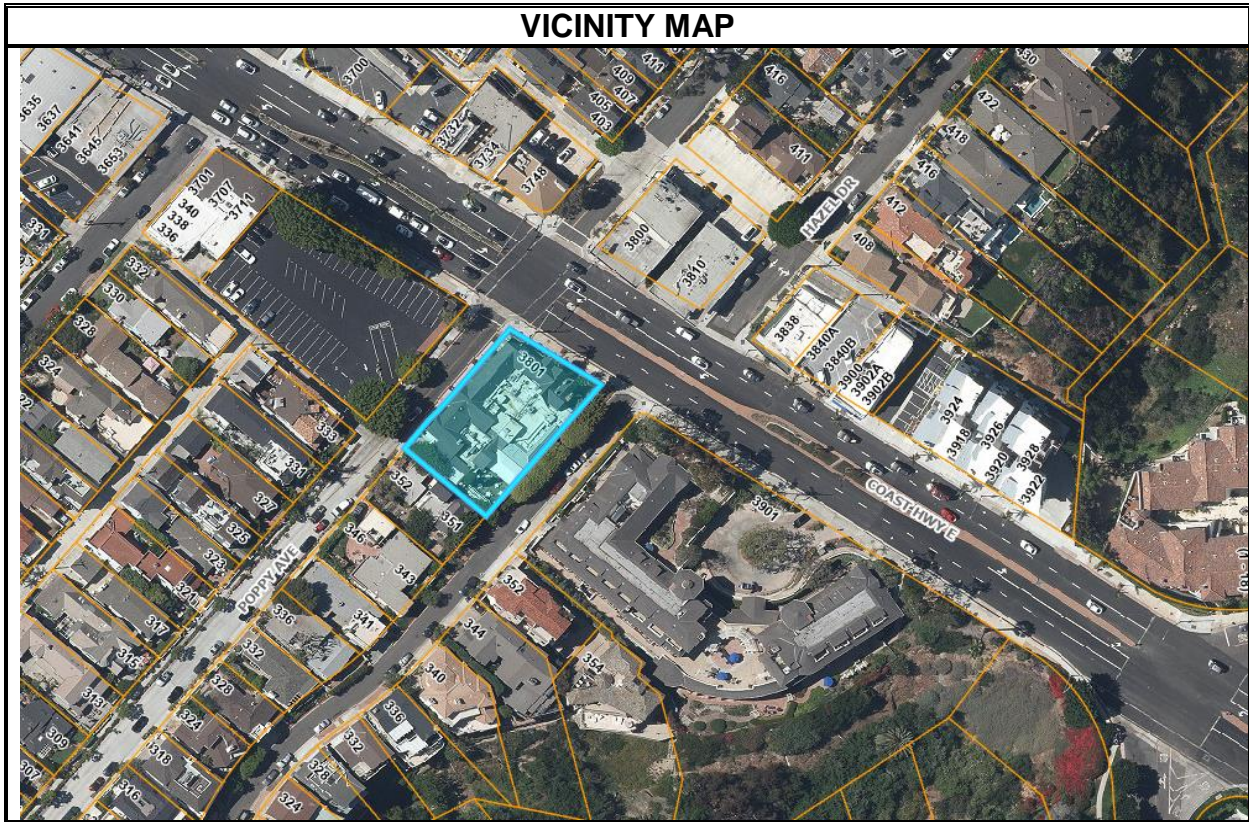
PROJECT SUMMARY

An appeal of the Zoning Administrator's August 15, 2024, decision to approve a Limited Term Permit and Coastal Development Permit to allow an existing temporary outdoor dining patio to remain for a limited term at Five Crowns Restaraunt. The expanded 1,350-square-foot outdoor dining area including a 850-square-foot canopy was originally approved by an Emergency Temporary Use Permit (ETUP) in 2020 as a temporary addition to their existing outdoor dining. Although the ETUP expired, the temporary outdoor dining area has remained in use. The outdoor dining area will include live entertainment and will close by 10:00 p.m. A sound wall will be installed along the rear property lines along with other design features to reduce noise. The Limited Term Permit and coastal development permit would allow the temporary use to remain until June 30, 2025, with a possible extension until December 31, 2025.

RECOMMENDATION

- 1) Conduct a public hearing;
- 2) Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, 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 Resolution No. PC2024-027 denying the appeal and upholding and affirming the Zoning Administrator's Approval of a Limited Term Permit for temporary outdoor dining filed as PA2023-0202 (Attachment No. PC 1).

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LOCATION	GENERAL PLAN	ZONING	CURRENT USE
ON-SITE	Corridor Commercial (CC)	Commercial Corridor (CC)	Five Crowns Restaurant
NORTH	CC	CC	General commercial and retail
SOUTH	Single-Unit Residential Detached (RS-D)	Single-Unit Residential (R-1)	Single-unit dwelling
EAST	Private Institutions (PI)	Emerald Village-UP 3342 (PC-36)	Elderly care facility
WEST	CC	CC	Five Crowns Parking lot

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INTRODUCTION

Project Setting

Five Crowns restaurant is located along East Coast Highway on the corner of Poppy Avenue and Hazel Avenue. South of the restaurant is an existing single-unit property under common ownership of the restaurant. Directly east, across Hazel Avenue is an elderly care facility, and south of the facility are single-unit dwellings abutting Evening Canyon. Directly west, across Poppy Avenue is an existing private parking lot serving the restaurant with 87 parking spaces. To the southwest along Poppy Avenue are existing single-unit dwellings.

Background

The restaurant has operated with alcohol service and a piano bar at the property since 1965. In 1977, the City Council approved Use Permit No. UP1822 (Attachment No. PC 2) to allow a two-story addition to the restaurant with no increase in net public area. The use permit established a parking requirement for the use and waived a portion of the off-street parking (33 spaces). The use permit also authorized off-site parking across Poppy Avenue with valet service. The valet service is required for all restaurant patrons and provides at least 87 parking spaces. UP1822 did not include conditions of approval that regulated the hours of operation, live entertainment, or outdoor dining area. However, 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.

In 2014, the Community Development Director authorized a tenant improvement and bar remodel within the existing restaurant with no addition of public area. The building permit plans for this project documented an existing 431-square-foot outdoor dining patio and memorialized the area as part of the original public area of the restaurant in 1977.

In 2020, an Emergency Temporary Use Permit (ETUP) and Emergency Coastal Development Permit (ECDP) (PA2020-227) were approved to allow an expanded 1,350-square-foot outdoor dining patio within an existing covered patio and garden area on-site; curbside pick-up operations within the off-site parking lot; three 30-square-foot banners advertising modified operations for a maximum 60-day-duration; and one 6-square-foot A-frame sign located within the right-of-way along Poppy Avenue in front of Five Crowns. The use of ETUPs and CDPs was a very common tool during the Covid-19 Pandemic to support businesses, especially restaurants. On September 6, 2021, the ETUP and ECDP expired, however the Applicant continued operating without the benefit of a permit. In November of 2023, the Applicant applied for a Limited Term Permit and Coastal Development permit to authorize the temporary use and to provide time to process an

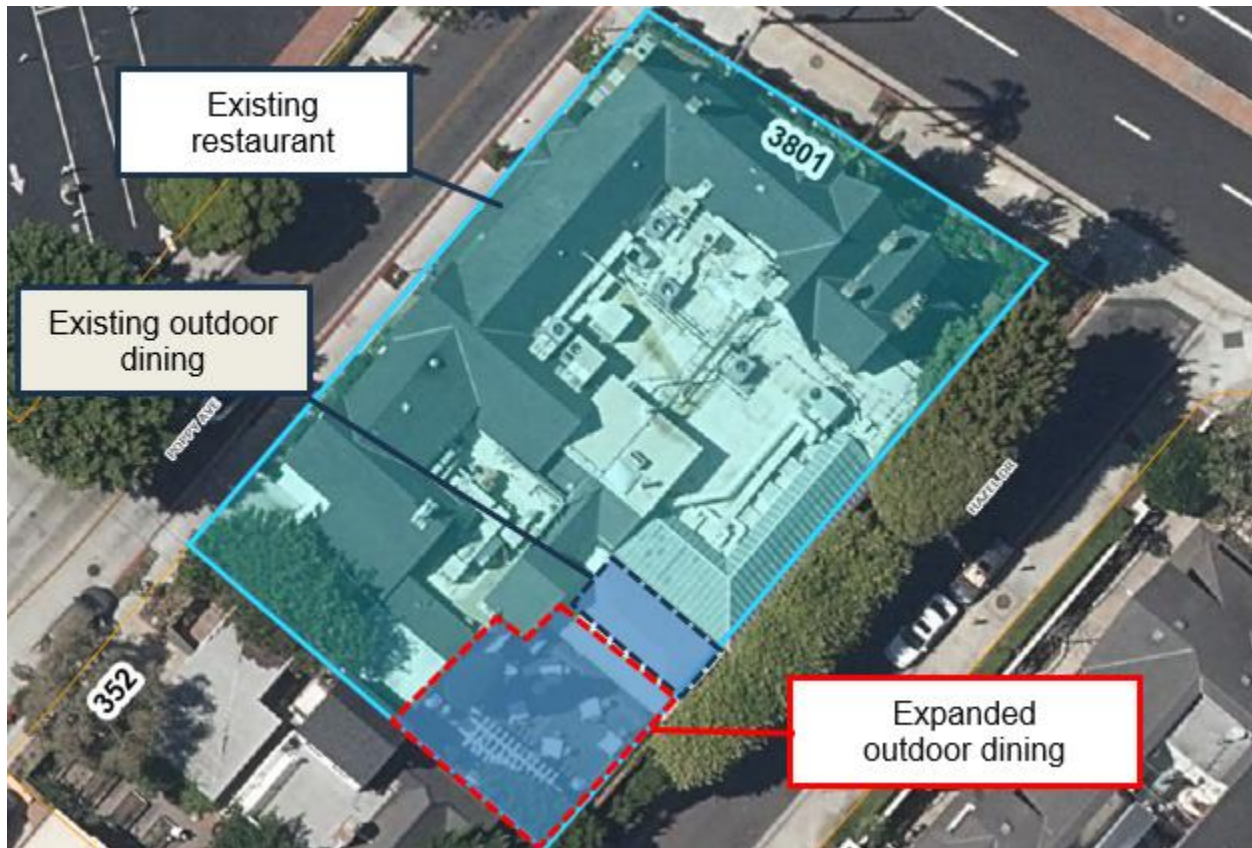
amendment to their conditional use permit to authorize a permanent expansion of the outdoor dining patio

Project Description

The applicant proposes to maintain an additional outdoor dining area that is a maximum of 1,350-square-feet including an 850-square-foot canopy until June 30, 2025. The expanded outdoor dining area will include live entertainment and close by 10:00 p.m., daily.

The restaurant has historically hosted private events with live entertainment inside the restaurant. Over the years, the private events have expanded to include use of the outdoor dining area and an open garden patio. However, the existing use permit for the restaurant, UP1822, does not specifically allow use of the outdoor dining area or open garden patio for private events, dining, or live entertainment. As shown in Figure 1, the proposed temporary outdoor dining area will occupy an existing open garden patio area adjacent to the permanent outdoor dining authorized under the original UP1822. Both the existing and proposed temporary dining patios will close by 10:00 p.m.

Figure 1: Location of Outdoor Patios



To adequately attenuate noise related to the expanded use of the patio in compliance with Newport Beach Municipal Code (NBMC), the project would require the construction of a soundwall and other design features.

Proposed Limited Term Permit Duration and Extensions

Staff recommends that the Limited Term Permit and coastal development permit expire on June 30, 2025, with one potential extension until December 31, 2025. The extension would be at the discretion of the Community Development Director. The Applicant originally applied for the Limited Term Permit and Coastal Development permit to operate the expanded outdoor dining area until December 31, 2024. However, due to the timing and scheduling of the public hearings and appeal for the project, if the project were approved, it would allow less than a month for the Applicant to implement the conditions of approval and operate. The proposed project includes conditions that involve the construction of improvements including a sound wall, therefore, it may take several months to obtain a building permit and complete construction of these improvements.

The proposed conditions of approval specifically prohibit additional extensions beyond December 31, 2025. Therefore, the Applicant would be required to apply for an amendment to their conditional use permit to maintain the patio with live entertainment on a permanent basis.

Project Review and Zoning Administrator Hearings

Based on the potential noise levels that could be generated by the use of the outdoor area, in particular the live entertainment, the Applicant was required to prepare a noise analysis. Prior to the first public hearing for the project, the applicant provided a noise report, "Five Crowns Restaurant Outdoor Dining Noise Analysis, City of Newport Beach" ([Original Noise Report](#)) dated June 13, 2024, by RK Engineering Group. Inc. The Original Noise Report described the design features necessary to allow outdoor dining with background music within the expanded patio area. The Original Noise Report did not specifically address the live entertainment component of the application.

On July 22, 2024, a few days prior to the first public hearing, a second noise report was provided, "Five Crowns Restaurant Private Event Noise Analysis, City of Newport Beach" ([Second Noise Report](#)) also dated June 13, 2024 by RK Engineering Group, Inc. The Second Noise Report specifically addressed noise from live entertainment associated with private events in the outdoor patio. The Second Noise Report recommended additional design features to reduce noise levels to comply with the NBMC standards.

Zoning Administrator Hearing – July 25, 2024

The project was heard by the Zoning Administrator on July 25, 2024. Prior to the public hearing, staff received several public comment letters from a nearby resident, Mr. Kenneth Catanzarite, documenting his concerns related to the proposal. Mr. Catanzarite also spoke during the public hearing, sharing concerns primarily related to the adequacy

of the noise reports and requested a continuance of the item for 30-days. As part of his comment letter, Mr. Catanzarite also provided an opposing response to the Applicant's noise studies, which was prepared by [MD Acoustics, dated July 24, 2024](#). The response identified concerns with the methodology in the RK Engineering Group Inc. reports and asserted that the noise levels would exceed City standards. There were other public comments related to noise, congestion on Hazel Drive, and Fire Marshal review of the patio.

In response to the concerns of the nearby residents, the Applicant agreed to limit the number of large events (i.e., over 75 people) to four times a month. When questioned, the Applicant also clarified that the number of attendees described on the restaurant's webpage (150-200 people) included use of the interior of the restaurant and that the outdoor patio could only comfortably accommodate 75 or fewer persons. At the close of the public hearing, the Zoning Administrator expressed concern regarding the late receipt of the Second Noise Report. The Zoning Administrator continued the item to the August 15th, 2024, hearing to allow the Applicant time to sort through the various noise issues and provide concrete parameters for the number of events per month. The minutes from the July 25, 2024, Zoning Administrator hearing are found in Attachment No. PC 3.

Zoning Administrator Hearing – August 15, 2024

The project was heard by the Zoning Administrator on August 15, 2024. The prior continuance allowed staff and the applicant additional time to address comments related to noise, design features, and other project-related concerns. The applicant provided an updated noise report dated August 5, 2024 (Updated Noise Report) that addressed comments made at the previous meeting and included a response to comments document, also dated August 5, 2024. In the Updated Noise Report, Design Feature No. 6 was added to limit equipment that emits low frequency sound, while Design Feature No. 7 was modified to require restaurant staff to monitor sound levels with professional support. Both the updated report and response to comments document are provided in Attachment No. PC 4

Several members of the public provided comments during the public hearing. The commenters expressed concerns regarding the adequacy of the noise study, use of limited term permits, amplified sound, noise impacts to neighborhood, and hours of operation. Additionally, Mike Dickerson, from MD Acoustics, spoke on behalf of Mr. Catanzarite. He compared the findings of his study, [MD Acoustics, dated August 14, 2024](#) and the study done by the applicant's consultant. He expressed concerns related to the adequacy of the report, including various technical aspects.

At the close of the public hearing, the Zoning Administrator approved the project with several additional conditions of approval to address concerns. The additional conditions included controlling exterior lighting, limiting the number of private events with attendance greater than 75 persons, a time limit on implementing the design features per the Updated Noise Report, limiting loading and deliveries to Poppy Avenue, and limiting loitering from private events.

The minutes from the August 15, 2024 hearing are found in Attachment No. PC 5. The Staff Reports and all correspondence from the Zoning Administrator hearings can be found at the following links:

- [July 25, 2024, Zoning Administrator Hearing](#)
- [August 15, 2024, Zoning Administrator Hearing](#)

Appeal of the Zoning Administrator Decision

On August 28, 2024, Kenneth and Kim Catanzarite, residents of 352 Hazel Drive, filed a timely appeal of the Zoning Administrator's decision, citing concerns related to the events within the outdoor patio and associated noise impacts to the surrounding residential neighborhood. The appeal packet is included as Attachment PC No. 6. The appeal cited the following factors of concern (as summarized):

- Processing the request as a temporary use versus an amendment to the original use permit (UP1822) and operating without a permit;
- History of complaints;
- Size, hours, and noise from the events and live entertainment;
- Inconsistency with conditions of the ETUP;
- Adequacy of noise study provide by RK Engineering, Inc.

An analysis of the appeal is provided in the Response to Appeal section of this report.

Conduct of Hearing

Pursuant to Section 20.64.030(C)(3) (Conduct of Hearing), a public hearing on an appeal is conducted "de novo," meaning that it is a new hearing. The prior decision of the Zoning Administrator to approve the Limited Term Permit and Coastal Development Permit (Resolution No. ZA2024-045) has no force or effect. The Planning Commission is not bound by the Zoning Administrator's prior decision.

DISCUSSION

General Plan and Zoning Code

The subject property is categorized as Corridor Commercial (CC) by the Land Use Element of the General Plan and designated identically in the Zoning Code. The CC land use category and Zoning Code 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 along East Coast Highway in Corona del Mar. The proposed temporary outdoor dining with events and live entertainment is considered temporary and an accessory use to the primary function as a restaurant. The temporary use requires the approval of a Limited Term Permit and there are no permanent

operational changes requested. An amendment to the existing Use Permit No. UP1822 would be required to permanently allow the expanded outdoor dining and events with live entertainment.

Local Coastal Plan

The subject property is categorized as Corridor Commercial (CC-B) coastal land use and Commercial Corridor (CC) coastal zoning district in the local coastal program. The temporary patio is located within an existing rear yard area on the existing restaurant property. 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. Additionally, the project does not contain any unique features that could degrade the visual quality of the coastal zone or impede public access. The temporary use requires the approval of a Coastal Development Permit and a detailed analysis of facts in support of findings are included in the draft resolution (Attachment No. PC 1).

Response to Appeal

The analysis below addresses the overarching concerns expressed by the appellant. The complete appeal packet is available as Attachment No. PC 6 to this report. Additionally, the applicant provided a separate response to the appeal, "Five Crowns Response to Appeal Letter 10.22.24" prepared by Ryan Wilson CEO and Shareholder of Lawry's Restaurants Inc. (PC Attachment No. PC 7).

Use of Limited Term Permit and Operating Without a Permit

The Limited Term Permit is the appropriate application to allow a temporary use, consistent with other restaurants and businesses within the City. It is common for restaurants to request the use of additional dining areas on a temporary, basis and this has been a regular occurrence since the Covid-19 pandemic. The applicant has been operating without the benefit of a permit since September 6, 2021, and has not been subject to conditions of approval that specifically address the expanded outdoor patio. The Limited Term Permit would allow the Applicant to operate for approximately six months with a possible extension by the Community Development Director for another six months, maximum. Unlike other limited term permits that allow extensions of temporary uses for up to two years, the project is conditioned to prohibit any further extensions. Any further operation would require an amendment to UP1822.

Inconsistency with ETUP Conditions

The ETUP approved in 2020 was part of a City-wide program to allow additional flexibility to businesses during the Covid-19 pandemic when interior operations were limited or even prohibited. These ETUPs were issued throughout the City for temporary outdoor dining areas and standard conditions of approval were applied consistently to all restaurants, regardless of the underlying use permit limitations or allowances. 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.

The existing restaurant has since realized a market for their operation to provide the expanded outdoor dining area with regular private events commonly found at these types of restaurants. The Applicant has requested a closing time of 10:00 p.m. and the use of live entertainment. Therefore, to evaluate the proposal, staff requested a noise analysis to support the closing time and live entertainment component of the use. The proposed Limited Term Permit conditions take into account the project’s location and specific operating characteristics, unlike the ETUPs. The Limited Term Permit is an opportunity for the Applicant to operate for a trial period and implement the project specific conditions of approval to demonstrate if the use is viable from a neighborhood compatibility standpoint.

History of Complaints

The Appellant expressed concerns regarding the history of noise complaints related to the property. Table 1 provides a summary of noise complaints that were filed with the City’s Code Enforcement Division since 2020.

Table 1: Code Enforcement Activity Since 2020

Date	Case Number	Description
8/4/20	I20-2460	Related to ETUP (PA2020-227)
7/13/21	I21-2192	Verbal warning issued for compliance with ETUP
5/26/23	I23-1671	Notice of Violation issued for loud and unreasonable noise
6/17/23	I23-1914	Citation issued for loud and unreasonable noise
8/31/23	Hearing Officer of Appeal Citation	Hearing Officer found there was insufficient evidence to support the issued citation. The decision acknowledged that as a restaurant property in a commercial corridor, the video evidence did not demonstrate noise that rises to the level of a violation of the NBMC Section 10.28.007 (Loud and Unreasonable Noise is Prohibited), and the citation was dismissed.
8/3/24	I24-3132	Music turned off before sound test could be conducted
8/16/24	I24-3599	Loud event, decibel rating measurement not confirmed
8/31/24	I24-4047	Loud event, decibel rating measurement not confirmed
9/14/24	I24-4489	Loud noise, reporting party denied access to officer to measure noise on private property.
9/21/24	I24-4664	Loud people, noise measured and exceeded limits. Notice of Violation issued for exterior noise standards.

The Code Enforcement history provided in Table 1 does demonstrate a potential need to implement noise mitigation for the restaurant during private events. However, there were

also long periods of time where no complaints were filed, including August 2021 through April 2023 and September 2023 through July 2024. The Limited Term Permit is temporary and will provide a trial period to allow the Operator to implement the recommended Design Features from the Updated Noise Report to mitigate noise (discussed in more depth below). Additionally, the existing Use Permit that governs the site does not include conditions limiting the hours of operation or use of the outdoor area. In contrast, the Limited Term Permit includes detailed conditions of approval to mitigate potential impacts to the neighborhood related to hours of operation, deliveries, and exterior lighting. These conditions implement controls on the restaurant operation that are not currently in place.

Additionally, staff contacted the City's Police Department regarding noise complaints for the property. In 2023, there were five calls for loud music. In 2024, there have been no calls for loud music.

Use of Expanded Patio Area - Hours, and Noise from Events and Live Entertainment

The Appellant expressed overall concern of the continued use of the expanded patio area related to the hours of operation, live entertainment, and associated noise impacts to the surrounding residential neighborhood.

The restaurant has been in operation for over 60 years and the existing structure was built in the 1930s. 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.

The private events use the expanded patio area that extends beyond the permanent outdoor dining area (431 square feet) for larger private events with live entertainment. 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. There are no additional areas of the property included in the Limited Term Permit request that were not included in the original ETUP.

The Limited Term Permit approved by the Zoning Administrator includes 42 conditions of approval including the requirement to construct a sound wall built to specific standards to mitigate sound impacts to the neighborhood. Hours of operation are limited to 10:00 p.m. within the patio and the number of large events (75 persons) are limited to four times a month to further reduce potential noise issues.

The Updated Noise Report (Attachment No. PC 4) states that the purpose of the noise study is to demonstrate that with implementation of recommended design features, the noise levels from the project would not exceed the City's standards. The Update Noise Report describes the City's interior and exterior noise standards and provides a complete list of Design Features that would adequately reduce noise levels emanating from the outdoor patio.

Pursuant to the Updated Noise Report, Design Features (DF-1 through DF-7) will be required as conditions of approval for the project. For example, Design Feature DF-1 requires the installation of a block wall along the rear property lines to adequately attenuate noise. The project includes a condition requiring the applicant to apply for a building permit within 30 days of project approval to construct the sound attenuation wall. The wall would be designed pursuant to the specifications in the Updated Noise Analysis.

Other Design Features identified in the Updated Noise Report include:

- DF-2 (new 10-foot-tall gate on Hazel Drive);
- DF-3 (acoustical paneling on covered patio);
- DF-4 (maintain dense shrubbery);
- DF-5 (speaker location requirements for private events);
- DF-6 (limiting low frequency sound); and
- DF-7 (follow-up analysis and monitoring of private events).

The Design Features would reduce noise to comply with the noise regulations of the NBMC during operation of the expanded outdoor dining and for private events with exterior live entertainment. Based on comments provided during the first public hearing, Design Feature DF-6 was added as a recommendation, and DF-7 was modified. DF-6 brings attention to the use of heavy bass equipment or other low frequency noise generators that tend to be more impactful, and DF-7 requires an ongoing noise monitoring program with professional assistance.

The Updated Noise Report evaluated noise impacts at a receptor on the third-floor balcony at 352 Hazel Drive, to demonstrate that the outdoor balcony noise levels will be attenuated below the City's Exterior Noise Standards. The Updated Noise Report also includes an evaluation of noise levels at the interior of the residential receptors, demonstrating that the interior noise levels will be attenuated below the City's Interior Noise Standards.

Adequacy of Noise Study

There are differences of opinion between RK Engineering and the Appellant's noise consultant, MD Acoustics. However, implementation of the proposed conditions of approval would verify the conclusions of the RK Engineering, Inc. Updated Noise Report. If the project does not comply with the City's noise standards even after implementation of the recommended noise mitigation measures, then the permit could be revoked or modified by the Planning Commission. Therefore, approval of the project does not relieve the applicant of their responsibility to comply with the City's noise standards. Additionally, any confirmed noise violations could affect the future authorizations, such as the allowance for a six-month extension or request to amend the conditional use permit to authorize permanent use of the expanded outdoor area.

Conclusion

Five Crowns was established in 1965 along the commercial corridor of East Coast Highway, which historically abuts the residential neighborhoods of Corona del Mar. Prior to Five Crowns, a restaurant called the Hurley Bell existed on the property since 1950. The restaurant has operated with interior live entertainment and operating hours until 10:00 p.m. since 1965. Historically, the indoor and outdoor area has been used for private events on the weekends and there is an existing outdoor dining patio that closes by 10:00 pm adjacent to the restaurant. The commercial corridor on East Coast Highway and the proximity of the commercial zoning to residential uses is a longstanding condition in Corona del Mar. Approximately 15 to 20% of businesses on the commercial corridor in CDM are restaurants. Furthermore, the ancillary use of private events at restaurants is not uncommon. Historically, the neighborhoods adjacent the commercial corridor are prone to certain impacts that are common in a mixed-use neighborhood, however, the commercial uses along East Coast Highway are a vital economic component of the Corona del Mar village.

Continuing operations of private events with exterior live entertainment within the expanded outdoor area will require a permanent solution through an amendment to the Use Permit. A condition of approval requires an amendment to UP1822 to allow the expanded patio on a permanent basis. If the use permit is not amended, then the Applicant would be required to cease operation of the expanded outdoor dining area with live entertainment and private events. The Limited Term Permit provides the applicant with an opportunity to implement conditions of approval to reduce noise and provides a trial run to determine if use of the expanded dining area is viable on a permanent basis.

Alternatives

The following alternatives are available to the Planning Commission should they feel the facts are not in evidence of support the project application:

1. The Planning Commission may suggest specific project modifications or operational changes to alleviate concerns such as limiting the hours of operation of the outdoor patio, reducing the number of patrons permitted within the outdoor patio, limiting the number of large events per month, or reducing the duration of the use.
2. If the Planning Commission does not believe the facts in support of findings can be made, the Planning Commission may deny the application request or direct the applicant to apply for a conditional use permit to request a permanent change to the outdoor dining.

Environmental Review

This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities), of the CEQA Guidelines, California Code of Regulations, Title 14, 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 1 exemption includes interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances as well as additions to existing structures of up to 10,000 square feet. The proposed scope of work includes the temporary use of an outdoor dining area of approximately 1,350-square-feet including an 850-square-foot tent canopy with exterior live entertainment at an existing restaurant. Therefore, the project qualifies under the parameters of the Class 1 exemption. There are no known exceptions listed in CEQA Guidelines Section 15300.2 that would invalidate the use of these exemptions.

Public Notice

Notice of this hearing was published in the Daily Pilot, mailed to all owners and 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 meeting, 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.

Prepared by:

Submitted by:



Melinda Whelan
Assistant Planner



Jaime Murillo, AICP
Deputy Community Development Director

LAW/msw

ATTACHMENTS

- PC 1 Draft Resolution
- PC 2 Use Permit No. 1822
- PC 3 July 25, 2024 Zoning Administrator Minutes
- PC 4 Updated Noise Report and Response to Comment Letter dated August 5, 2024 by RK Engineering, Inc.

- PC 5 August 15, 2024 Zoning Administrator Hearing Minutes
- PC 6 [Appeal Packet](#)
- PC 7 Five Crowns Response to Appeal Letter dated October 22, 2024
- PC 8 Plans

Attachment No. PC 1

Draft Resolution

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RESOLUTION NO. PC2024-027

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, UPHOLDING THE ZONING ADMINISTRATOR'S APPROVAL OF A LIMITED TERM PERMIT AND A COASTAL DEVELOPMENT PERMIT TO ALLOW A TEMPORARY OUTDOOR DINING AREA WITH LIVE ENTERTAINMENT LOCATED AT 3801 EAST COAST HIGHWAY (PA2023-0202)

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

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Ryan Wilson of Lawry's Restaurants Inc. ("Applicant"), concerning property located at 3801 East Coast Highway, and legally described as Parcel 1 of Resubdivision 523 ("Property").
2. Applicant requests a limited term permit and coastal development permit ("CDP") to allow an existing temporary outdoor dining patio to remain for a limited term at Five Crowns Restaurant ("Restaurant"). The expanded 1,350-square-foot dining area including an 850-square-foot canopy was originally approved by an Emergency Temporary Use Permit (ETUP) in 2020 as a temporary addition to the Restaurant's existing outdoor dining. Although the ETUP expired, the temporary outdoor dining area has remained in use. The outdoor dining area occupies existing open space behind the permanent outdoor dining. The outdoor dining area will include live entertainment and will close by 10:00 p.m. A sound wall will be installed along the rear property lines. The interior and exterior outdoor area have historically been used for private events on the weekends. The existing operating hours of the Restaurant will remain the same. The limited term permit and CDP would allow the temporary use to remain until June 30, 2025, with a possible extension until December 31, 2025 ("Project").
3. The Property is categorized as Corridor Commercial (CC) by the General Plan Land Use Element and is located within the Commercial Corridor (CC) Zoning District.
4. The Property is located within the coastal zone. The Coastal Land Use Plan category is Corridor Commercial (CC-B) (0.0-0.75 FAR) and it is located within the Commercial Corridor (CC) Coastal Zoning District.
5. Pursuant to Assembly Bill No. 1217, Gabriel (Business Pandemic Relief), temporary relief measures to suspend certain legal restrictions related to alcohol service, food service, and parking have been extended. As it relates to parking, a local jurisdiction that has not adopted an ordinance providing relief from parking restrictions for expanded outdoor dining areas is authorized to reduce the number of required parking spaces for existing uses by the number of spaces the local jurisdiction determines are needed to accommodate an expanded outdoor dining area.

6. A public hearing before the Zoning Administrator was held on July 25, 2024, online via Zoom. A notice of the time, place, and purpose of the hearing was given in accordance with Chapter 20.62 of the Newport Beach Municipal Code (“NBMC”). At the close of the public hearing, the Zoning Administrator continued the item to August 15, 2024, to give the applicant additional time to address concerns related to noise.
7. At the continued public hearing held on August 15, 2024, online via Zoom, evidence, both written and oral, was presented to and considered by, the Zoning Administrator.
8. At the conclusion of the hearing, the Zoning Administrator Adopted Resolution No. ZA2024-045 approving Limited Term Permit (PA2023-0202).
9. On August 28, 2024, Ken and Kim Catanzarite filed an appeal of the Zoning Administrator’s decision objecting to the approval of Limited Term Permit (PA2023-0202) based on noise impacts to the surrounding residential neighborhood as well as objections to processing the request as a limited term permit rather than a use permit and the continuous unpermitted use of the outdoor area for events with live entertainment.
10. A public hearing was held on December 5, 2024, in the City Council Chambers at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with California Government Code Section 54950 *et seq.* (“Ralph M. Brown Act”) and Chapters 20.62 and 21.62 of the NBMC. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This Project is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15301 under Class 1 (Existing Facilities), of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Class 1 (Existing Facilities) exemption 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 1 exemption includes interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances as well as additions to existing structures of up to 10,000 square feet. The Project’s scope of work includes the temporary use of an outdoor dining area of approximately 1,350-square-foot including an 850-square-foot tent canopy with exterior live entertainment at an existing restaurant.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The Project 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.

In accordance with Section 20.52.040.(G) (Limited Term Permits - Findings and Decision) of the NBMC, the findings and facts in support of such findings are set forth as follows:

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 Project will allow an additional outdoor dining area to remain at the rear of the Property until June 30, 2025. The existing restaurant is authorized through Use Permit No. UP1822 and includes approximately 431 square feet of permanent outdoor dining.
2. The additional outdoor dining area has not posed a hazard to the general welfare of residents in the area since it was placed during the COVID-19 pandemic in 2020. The operation of the expanded outdoor dining area is limited until June 30, 2025, and has been reviewed and conditioned to preclude any detriment to the general welfare of the area.
3. The Restaurant has been in operation since the 1950s with interior live entertainment and operating hours until 10:00 p.m. Historically, the indoor and outdoor area has been used for private events on the weekends. There is an existing outdoor dining patio that closes by 10:00 pm adjacent to the restaurant.
4. The Project is conditioned to be accessible to all persons, including those with disabilities, in accordance with the Americans with Disabilities Act (ADA).
5. The Project 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 Applicant to implement and follow industry-specific guidance of the State of California and the Orange County Health Care Agency guidelines.
6. The Project must be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
7. Limited Term Permit (PA2023-0202) is conditioned so there are no more than four “large” private events per month. For this purpose, large events are considered events with attendance greater than 75 persons.

8. Limited Term Permit (PA2023-0202) is conditioned so the temporary outdoor dining area as part of this approval shall not extend beyond 9 p.m., Monday through Thursday, and beyond 10 p.m., Friday through Sunday and Federal Holidays.
9. Limited Term Permit (PA2023-0202) is conditioned to control exterior lighting so that such lighting shall be shielded and confined within site boundaries. No direct rays or glare are permitted to shine onto public streets or adjacent sites or create a public nuisance. Flashing, revolving, or intermittent exterior lighting visible from any property line or street shall be prohibited.
10. Limited Term Permit (PA2023-0202) is conditioned to require a sound attenuation wall and other design features to attenuate noise, pursuant to the “Five Crowns Restaurant Private Event Noise Analysis City of Newport Beach” (Updated Noise Analysis) prepared by RK Engineering Group, Inc. dated August 5, 2024. The Project is conditioned to comply with all of the design features recommended by the Updated Noise Analysis. In addition to the sound wall, the Project shall provide the following design features (“Design Features”): DF-2 (New 10-foot-tall Gate on Hazel Drive), DF-3 (Acoustical Paneling on Covered Patio), DF-4 (Maintain Dense Shrubbery), DF-5 (Speaker Location Requirements for Private Events), DF-6 (Significant Restriction of Heavy Bass Equipment), and DF-7 (Follow-Up Analysis and Monitoring of Private Events). The Design Features would reduce noise to comply with the noise regulations of the NBMC during operation of the expanded outdoor dining area and for private events with exterior live entertainment.

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 Property is approximately 0.29-acre in size and is adjacent to East Coast Highway. Based upon the site plan, there is adequate area to accommodate the temporary outdoor dining area without impacting pedestrian circulation and parking as the dining area is within an enclosed rear yard.
2. The lot abuts East Coast Highway, and the restaurant is the sole use of the Property. The existing food service use has existed at this site since 1950. The additional outdoor dining use will not impede use and enjoyment of the properties in the area.
3. The additional outdoor dining area will occupy an existing outdoor area within the private property.
4. The Design Features recommended in the Updated Noise Analysis including a sound attenuation wall, a new 10-foot-tall gate on Hazel Drive, acoustical paneling on the covered patio, maintenance of dense shrubbery, limitations on the musical instruments

and equipment, and ongoing monitoring of the private events will be required as part of project implementation.

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;

Fact in Support of Finding:

1. The Restaurant parking is provided within a large off-site parking lot across Poppy Avenue. The parking lot is owned by the Restaurant and will remain accessible from Poppy Avenue for guests and employees of the business. The existing Use Permit No. UP1822 requires valet service for the restaurant parking, maximizing the number of parking spaces to at least 82 spaces.
2. The additional outdoor dining area occupies an existing open yard within the Restaurant property and does not impede access or traffic. The parking for the Restaurant is provided at an off-site lot across Poppy Avenue and is managed by valet service. Use of the outdoor dining area would be in conjunction with the existing restaurant and utilize the existing valet and off-site parking. Any private events associated with the restaurant would also use the off-site parking with valet. Therefore, the additional outdoor dining area does not impact traffic or parking.

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. Pursuant to Assembly Bill No. 1217, as it relates to parking, the City of Newport Beach has not adopted an ordinance that provides relief from parking restrictions for expanded outdoor dining areas. Therefore, the City is able to reduce the number of required parking spaces for the existing use to accommodate an expanded temporary outdoor dining area.
2. The Restaurant is served by an off-site parking lot across Poppy Avenue. Valet service is included for Restaurant patrons for this parking lot, providing at least 82 parking spaces. The size and location of the parking lot provides ample parking for the temporary expanded outdoor dining area.
3. The commercial corridor of Corona Del Mar provides public on-street parking along East Coast Highway. Additionally, the Restaurant historically serves the surrounding residential neighborhood with a higher volume of pedestrian traffic.

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 Property is categorized as Corridor Commercial (CC) by the General Plan Land Use Element and is located within the Commercial Corridor (CC) Zoning District. The Commercial Corridor 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 temporary 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 contribute to the neighborhood serving use.
2. Limited Term Permit (PA2023-0202) for the expanded outdoor dining would complement and be consistent with the other commercial uses permitted within the Commercial Corridor in that it provides amenities that support the 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) 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)*

3. 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 also 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. Limited Term Permit (PA2023-0202) would support local business and economic prosperity while maintaining the unique character of Corona del Mar.
4. The site is not located within a specific plan area.

Coastal Development Permit

In accordance with Section 21.52.015(F) (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 Property is located in the coastal zone and the proposed improvements require a CDP in accordance with NBMC Section 21.52.035C.2. (Projects Exempt from Coastal Development Permit Requirements). The improvements constitute a change in the intensity of the existing use by adding additional temporary dining opportunities at the site. The expanded outdoor dining area consists of minor detached structures including a canopy with dining tables and chairs. The location of these improvements within an existing rear yard of a restaurant does not pose a conflict to coastal resources, coastal access, or other adverse environmental effects.
2. The Project site is not located adjacent to a coastal view road or public access way. The site is located approximately 200 feet north of the Environmental Study Area, Buck Gully. However, the site is separated from Buck Gully by Hazel Drive and single-family dwellings. The Project site is approximately 1,400 feet from a public beach. The temporary patio is located within an existing rear yard area of the existing Restaurant. 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. Additionally, the Project does not contain any unique features that could degrade the visual quality of the coastal zone.
3. The Project is complementary to the area; the Restaurant and other restaurants in Corona del Mar have similar outdoor dining improvements. The additional temporary outdoor dining area will not be visible from surrounding areas or any public viewpoints, as the patio is in the rear of the property behind substantial foliage and proposed block wall. The closest coastal view road as designated by the Coastal Land Use Plan is at the intersection of Poppy Avenue and Ocean Boulevard approximately 1,200 feet southwest. The closest coastal viewpoint, as designated in the Local Coastal Land Use Plan, is at Inspiration Point and approximately 1,400 feet to the southwest.
4. There are no existing City utilities within the expanded outdoor dining area.
5. The Project is not located in an area in which the California Coastal Commission retains direct permit review or appeal authority.

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 Property is not located between the nearest public road and the sea or shoreline of any body of water located within the coastal zone. The Property is located approximately 1,400 feet from a public beach or harbor and is not located near a public access point designated by the Coastal Land Use Plan. The nearest vertical and lateral access point is approximately 1,300 feet away at Little Corona Beach and the outdoor patio would not obstruct access along these routes.
2. 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 temporarily expand, allowing the 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.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach hereby finds this Project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Planning Commission of the City of Newport Beach hereby upholds the Zoning Administrator's approval of Limited Term Permit and Coastal Development Permit filed as PA2023-0202, subject to the conditions outlined 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 City Clerk by the provisions of Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan) of the NBMC. Administrative procedures for appeals are provided in the Chapters 20.64 (Appeals) and 21.64 (Appeals) of the NBMC. The Project 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 5th DAY OF DECEMBER, 2024.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Mark Rosene, Chair

BY: _____
David Salene, Secretary

EXHIBIT "A"**CONDITIONS OF APPROVAL****Planning Division**

1. The Project shall be in substantial conformance with the approved site plan stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The Project is subject to all applicable City ordinances, policies, and standards unless specifically waived or modified by the conditions of approval.
3. *The Applicant understands this approval is temporary and this Limited Term Permit (PA2023-0202) and Coastal Development Permit shall be effective until June 30, 2025, with a possible extension through December 31, 2025. An extension of time is not guaranteed. The applicant shall be required to cease all permitted operations and remove any temporary improvements (not including the sound wall) made to the outdoor spaces as part of this approval on or before the end of the effective period. An amendment to Use Permit No. 1822, including a potential parking waiver and coastal development permit, would be required to retain the temporary outdoor dining area on a permanent basis. Issuance of a building permit for permanent structures (e.g. block wall) shall not be interpreted as an approval of the outdoor patio for live entertainment on a permanent basis.*
4. *The expanded outdoor dining area shall not exceed 1,350 square feet.*
5. *Live entertainment and private events within the outdoor area on the restaurant property (including the expanded temporary outdoor dining area) shall remain ancillary to the primary use of the site as a restaurant.*
6. *A sound attenuation wall shall be constructed pursuant to the details and conditions in the Updated Noise Analysis prepared by RK Engineering Group, Inc. dated August 5, 2024 (Five Crowns Restaurant Private Event Noise Analysis City of Newport Beach). The sound wall shall require the issuance of a building permit and may remain in place after the end of the effective period. In addition to the sound wall, Design Features DF-2 (New 10-foot-tall Gate on Hazel Drive), DF-3 (Acoustical Paneling on Covered Patio) and DF-4 (Maintain Dense Shrubbery), DF-5 (Speaker Location Requirements for Private Events), DF-6 (The use of heavy bass equipment, including drums, amplified bass guitars, and subwoofers will be significantly restricted including DJ sound filters and limiters); and DF-7 (Follow-Up Analysis and Monitoring) as found under Section 1.1 Project Design Features, shall be provided and maintained in good condition.*
7. *All Building and Fire permits shall be obtained for the canopy. Changes to the existing unpermitted canopy may be required to obtain the necessary permits.*

8. *The existing allowed hours of operation of the establishment shall not be extended. The hours of operation of the temporary outdoor dining area as part of this approval shall not extend beyond 9 p.m., Monday through Thursday, and beyond 10 p.m., Friday through Sunday and Federal Holidays.*
9. *Within 30-days of the effective date of this approval, the Applicant shall apply for a building permit for all design features, including the sound wall.*
10. *There shall be no more than four private events with attendance greater than 75 persons per month.*
11. *All loading and unloading for the Restaurant and its temporary expanded outdoor area shall occur from Poppy Avenue.*
12. *Immediately before the start and after the conclusion of any private events, the Applicant shall take reasonable steps to discourage attendees from loitering on Poppy Avenue or Hazel Drive.*
13. *Lighting shall be in compliance with applicable standards of the NBMC including Section 20.30.070 (Outdoor Lighting). Exterior on-site lighting shall be shielded and confined within site boundaries. No direct rays or glare are permitted to shine onto public streets or adjacent sites or create a public nuisance. Flashing, revolving, or intermittent exterior lighting visible from any property line or street shall be prohibited.*
14. 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.
15. 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.
16. The sale of alcohol "To-Go" to patrons that dine within the expanded outdoor patios shall be prohibited.
17. The establishment shall abide by all applicable Orange County Health Care Agency requirements.
18. The permittee shall provide adequate trash receptacles within the permitted patio 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 property.
19. The Community Development Director or its designee may inspect the modified area at any time during normal business hours.

20. The Project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
21. 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 Limited Term Permit (PA2023-0202).
22. This Limited Term Permit (PA2023-0202) may be modified or revoked by the Planning Commission if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the Property is operated or maintained so as to constitute a public nuisance.
23. 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.
24. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 (Community Noise Control), under Sections 10.26.025 (Exterior Noise Standards) and 10.26.030 (Interior Noise Standards), and other applicable noise control requirements of the NBMC.
25. Should the Property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or leasing agent.
26. No outside paging system shall be utilized in conjunction with this establishment.
27. The exterior of the business shall be always maintained free of litter and graffiti. The Applicant shall provide for daily removal of trash, litter debris, and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
28. A Special Events Permit is required for any event or promotional activity outside the normal operating characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages (not covered in the existing ABC License), include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
29. To the fullest extent permitted by law, the Applicant shall indemnify, defend and hold harmless the City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any 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 Five Crowns Temporary Outdoor Dining including, but not limited to, PA2023-0202 and the Coastal Development Permit. This indemnification

shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorney's fees, and other expenses incurred in connection with such claim, action, causes of action, suit, or proceeding whether incurred by the applicant, City, and/or the parties initiating or bringing the such proceeding. The Applicant shall indemnify the City for all the City's costs, attorneys' fees, and damages that which City incurs in enforcing the indemnification provisions outlined in this condition. The Applicant shall pay to the City upon demand any amount owed to the City under the indemnification requirements prescribed in this condition.

Fire Department

30. Heat Lamps or other heating elements shall comply with the following requirements in accordance with Section 3107.12 of the California Fire Code:
 - 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.
 - Electric Heaters must be Underwriters Laboratory (UL) Listed for use within tents/and or canopies.
 - Propane and other fuel-based heating devices with blowers may be permitted, with the heating element located at a minimum of 10 feet from the edge of the tent or canopy.
 - All heating equipment installations shall be approved per the Fire Code Official.

31. Covered outdoor dining areas (separate or consolidated) shall comply with the following standards for tents larger than 400 square feet (two or more walls) and/or canopies larger than 700 square feet (no walls or one 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.
 - Does not cover the exit path from the building rear door. 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.

Building Division

32. 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 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.
 - f. All exiting paths shall be a minimum 48 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.
33. Provide not less than 5% accessible seating at tables and counters with knee clearance of at least 27-inches-high, 30-inches-wide, and 19-inches-deep.
34. The tops of dining surfaces and work surfaces shall be 28 inches to 34 inches above the finish floor.
35. All exiting paths shall be a minimum 48 inches free and clear. All public walks and sidewalks shall be a minimum 48 inches free and clear.
36. 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.
37. Accessible routes, including under canopy(ies) and other overhead improvements shall maintain a minimum clear height of 80 inches.
38. All electrical distribution lines shall be in good working order and shall be protected from pedestrian and vehicular traffic and shall accommodate accessibility.

Public Works Department

39. There shall be a minimum of 5 feet of clearance around all overhead facilities, such as poles, and 15 feet of clearance around all underground facilities, such as vault lids, manholes, vent pipes, pad-mounted transformers, etc.
40. Seating or structures below overhead conductors and/or under the 'drip line' shall be prohibited.
41. Public eating/dining at tables shall not be situated on top of energized vault lids, energized underground structures, or next to vent pipes, etc.

Attachment No. PC 2

Use Permit No. 1822

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- SEELY

City of Newport Beach

March 3, 1977

ROLL CALL

INDEX

Item #10

USE PERMIT
NO. 1822

APPROVED
CONDI-
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Request to remodel and enlarge the existing kitchen, storage and supply areas of the Five Crowns Restaurant facility in the C-1 District. The proposed development also includes the construction of a roofed trash enclosure that encroaches to the rear property line (where the Ordinance requires a 5 foot rear yard setback when the rear of a C-1 lot abuts on a Residential District).

Location: Lots 1, 2, and 3, Block A of Tract 673, located at 3801 East Coast Highway on the southeast corner of East Coast Highway and Poppy Street in Corona del Mar.

Zone: C-1 and C-1-H

Applicant: The Five Crowns Restaurant, Newport Beach

Owner: Van-Frank Investments, Inc., Los Angeles

Staff advised that any motion to approve this use permit should also include a waiver of whatever number of parking spaces the Commission so desired to waive.

Public hearing was opened in connection with this matter.

Arthur Wynne, officer of the Five Crowns Restaurant, appeared before the Commission and concurred with the staff report and recommended conditions. With respect to the problem of parking in front of the "cottage" which has occurred in the past, he advised that the valets have been instructed not to use this area in the future.

Commissioner Hummel voiced concern with the width of the driveway leading into the garages on the adjacent property and questioned the possibility of requiring a reduction in the width in order to eliminate access to the side of said garages. Mr. Wynne advised that the property referred to was not under their control, however, he would contact the parent company to see what could be done.

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March 3, 1977

ROLL CALL

INDEX

Herbert Citron, President of Valet Parking Services, Inc., appeared before the Commission and advised of their instructions to the parking attendants for the Five Crowns Restaurant in order to eliminate parking problems which have existed in the past.

Roger Morin, 327 Poppy, appeared before the Commission in favor of the request and advised that the major concerns of the adjacent residents which were expressed at past public hearings have been met by Five Crowns and that the proposed remodeling would be an asset to the neighborhood.

There being no others desiring to appear and be heard, the public hearing was closed.

Motion

X Motion was made that Planning Commission make the following findings:

1. That the proposed use is consistent with the Land Use Element of the General Plan and is compatible with surrounding land uses.
2. The project will not have any significant environmental impact.
3. The Police Department has indicated that they do not contemplate any problems.
4. The existing work, washout, and storage areas are inadequate for the needs of the restaurant facility. The proposed development will greatly improve the restaurant operations, including the access of delivery and trash trucks to and from the site.
5. A waiver of a portion of the required off-street parking spaces is justifiable, since no additional seats or "net public area" are proposed in the restaurant complex.
6. The existing offstreet parking spaces for the restaurant use on a separate lot from the building site are justifiable for the following reasons:
 - a. The subject parking lot is directly across Poppy Avenue from the restaurant site.

- AGEE
- BALALIS
- COXAS
- FREDERICKSON
- HEATHER
- HUMMEL
- SEELY

City of Newport Beach

March 3, 1977

ROLL CALL

INDEX

- b. The existing development does not create undue traffic hazards in the surrounding area.
- c. The site is owned by the property owner of the restaurant property and will be maintained as an offstreet parking lot for the duration of the restaurant use on the adjoining property.

- 7. That the establishment, maintenance or operation of the use of the property or building will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort and general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City and further that the proposed modification is consistent with the legislative intent of Title 20 of this Code.
- 8. The approval of Use Permit No. 1822 will not, under the circumstances of this case be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing and working in the neighborhood or be detrimental or injurious to property and improvements in the neighborhood or the general welfare of the City.

and approve Use Permit No. 1822, subject to the following conditions:

- 1. That development shall be in substantial conformance with the approved plot plan, floor plans, and elevations.
- 2. That all mechanical equipment and trash areas shall be screened from adjoining properties and from adjoining streets.
- 3. That an offsite parking agreement shall be approved by the City Council, guaranteeing that a minimum of 87 parking spaces shall be maintained at the southwesterly corner of East Coast Highway and Poppy Avenue for the duration of the restaurant use on the adjoining property and that the remaining requirement of 33 spaces be waived.

March 3, 1977

ROLL CALL

INDEX

4. That valet parking personnel shall be maintained on the offsite parking lot at all times during the hours of operation of the restaurant facility.
5. That a washout area for trash containers shall be provided in such a manner as to allow direct drainage into the sewer system and not into the storm drains.
6. That there shall be no increase in the "net public area" of the restaurant facility in conjunction with the proposed development.
7. That a parcel map be filed.
8. That all improvements be constructed as required by Ordinance and the Public Works Department.
9. That no building permits be issued for structures within the abandoned alley area until vacation and abandonment proceedings can be completed for all or a portion of the public utility easement which was reserved when the alley was vacated and abandoned.
10. That the portion of the existing driveway approach not being used be closed up.
11. That the new driveway approach be constructed as shown on the site plan.
12. That all work in the public right-of-way be done under an encroachment permit obtained from the Public Works Department.
13. That the "heaved" sidewalk along East Coast Highway and Poppy Avenue be replaced.

Motion

X

The Motion was amended to add two conditions; that the employees be encouraged to park in the parking lot, and that the valet service in no way utilize the space in front of the "cottage" for valet parking.

In discussing the amendment, Commissioner Hummel commented on required parking for restaurants in general and felt that this restaurant should comply with the requirements and provide parking

AGEE
BALALIS
COXAS
FREDERICKSON
HEATHER
HUMMEL
SEELY

March 3, 1977

ROLL CALL

INDEX

for their employees off the street in order to eliminate parking problems in the adjacent residential neighborhood.

Commissioner Agee felt that additional parking requirements were unfair at this point because the remodeling was to the kitchen and trash areas only and because the restaurant was established prior to any parking requirements.

Following discussion, the two conditions were acted upon separately, as follows:

Ayes Absent X X X X X X

1. That the valet service shall not use the driveway apron in front of the "cottage", which adjoins the restaurant site to the south, for restaurant parking. (Amendment carried.)

Ayes Noes Absent X X X X X

2. That the employees be encouraged to park in the designated lots. (Amendment failed.)

Ayes Absent X X X X X X

The original motion was then voted on as amended and carried.

Item #11

Request to permit the construction of a duplex and related parking spaces on a lot with less than the required 2,400 square feet in the R-3 District. Further request to permit one of the required parking spaces to have a width of 8 feet (where the Ordinance requires minimum 9 foot wide spaces).

VARIANCE NO. 1061

APPROVED CONDITIONALLY

Location: Lot 18, Block 1, Newport Bay, located at 205 East Balboa Boulevard on the southerly side of East Balboa Boulevard, between Alvarado Street and Coronado Street on the Balboa Peninsula.

Zone: R-3

Applicant: Marinko Jerkunica, Laguna Beach

Owner: Same as Applicant

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Attachment No. PC 3

July 25, 2024 Zoning Administrator
Minutes

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single-unit dwelling. The project also includes landscaping and hardscape. The project site is located in the R-1 Zoning and Coastal Zoning District. The project is compliant with all development standards including floor area limits, setbacks, heights, and off-street parking. The proposed design, bulk, and scale of developments are consistent with the existing neighborhood pattern of development.

Assistant Planner Orozco added that the finished floor elevation of the project is 13.31 feet (NAVD88), which complies with the minimum 9-foot elevation standard. A construction pollution prevention plan is provided. The project does not involve a change in land use, density or intensity that would result in an increased demand on public access and recreation opportunities. The project site does not currently provide public access. Vertical and lateral access to the bay is available adjacent to the Bayshore Community at the Balboa Bay Club, immediately north of the Bayshore Community. The project site is not located adjacent to a coastal view road, public viewpoint, public park, or beach as identified in the Coastal Land Use Plan. The project is categorically exempt from CEQA under Class 1.

Assistant Planner Orozco addressed minor edits to the draft resolution to provide consistency across square footages listed.

Staff recommends approval of the Coastal Development Permit with Conditions of Approval from the draft resolution and the proposed revisions to the resolution.

Applicant Shelley Starr, who is 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. 4 **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, stated the request is for a limited term permit and coastal development permit to allow the continued use of a temporary outdoor dining patio with live entertainment. The Limited Term Permit would allow the use of an expanded dining area and live entertainment and events within the area. Senior Planner Westmoreland stated that although private events are discussed in the resolution and staff report, the Limited Term Permit is required to specifically address the use of the outdoor dining area and live entertainment within that expanded patio area. Limited term permits have been in use for temporary outdoor dining since COVID-19 and the related emergency orders. This is consistent with other limited term permits in this respect. The limited term permit would authorize the use of the area for about five months and expire in December 2024. The applicant would be able to request an extension; however, it would have to be granted through the Zoning Administrator if approved today. If the applicant would like to maintain it on a permanent basis, an amendment to the Conditional Use Permit would need to be approved by the Planning Commission.

Two noise analyses were provided to support the request. The noise reports include design features that would reduce the noise levels to comply with City standards. The project has been conditioned to comply with the design features including the construction of a sound wall around the rear patio area. These design features are generally enforceable as conditions because it is clear whether the improvements are installed or not. If the sound levels were to exceed City standards, the limited term permit and coastal development permit would not supersede the noise ordinance which requires compliance with the City decibel standards.

There are facts and findings in the resolution related to the Limited Term Permit and Coastal Development Permit for a temporary use. The off-site parking lot is large enough to support a temporary increase in the area where the patrons are dining. Senior Planner Westmoreland addressed the unique features of the project and the substantial parking pool the property has in comparison to other properties in Corona del Mar. She also

addressed AB1217 which provides cities with flexibility to authorize outdoor uses without providing additional parking on site.

Several emails and a comment letter were received from a resident with concerns related to the project. The City also received one verbal comment from a resident related to parking, which was addressed earlier in the presentation. Senior Planner Westmoreland gave an overview of the comments received which included concerns related to errors in the staff report, noise, errors in the noise study, CEQA exemption, design features, operating without a permit, outdoor patio, and comments on trash and other nuisances. A memorandum was prepared by staff earlier in the week with conditions of approval that should be added to the resolution.

Zoning Administrator Zdeba opened the public hearing.

CEO and operator of Five Crowns, Ryan Wilson, described the family history of Five Crowns and emphasized the commitment of being good stewards to the neighborhood while making continued investments into the facilities.

Michael Torres, applicant's representative, stated that he had reviewed the draft resolution and agrees with all the required conditions.

Zoning Administrator Zdeba asked for clarification on the frequency of private events at the restaurant and the 150-200 private events and weddings per year listed on their website. Mr. Wilson clarified that the number included events that are interior to the restaurant and there will not be 200 additional events in this outdoor space. In response to an inquiry from Zoning Administrator Zdeba, Mr. Wilson and Mr. Torres agreed that large private events of 75 people or more would be capped at four per month.

Zoning Administrator Zdeba also asked about an online brochure advertising private events and capacity for each part of the restaurant, including a full buyout accommodating 200 people. He mentioned the published noise study which assumed 60 guests with amplified sound for the purposes of the study model and asked to clarify the amount of people to be accommodated in the outdoor space. Mr. Torres clarified that it would not be possible to accommodate that many people on the outdoor patio. Zoning Administrator Zdeba asked about the timeline for construction of the sound wall if approval is granted. Mr. Wilson stated they are ready to submit permitting and would begin construction around mid-October.

In response to a question from Zoning Administrator Zdeba about parking, Mr. Wilson stated that valet is always available at night. Daytime events are up to the host as to if they want to offer valet; however, he confirmed he recommends valet parking for larger events. In response to the Zoning Administrator's comment on the brochure about volume level management during an event, Mr. Wilson clarified that they have been monitoring the sound levels more closely due to a citation that was issued and vacated in September 2023. He also shared that they changed the location of the noise source.

Zoning Administrator Zdeba asked the applicant's noise study engineer about the concerns raised by public correspondence related to the noise study. Bryan Estrada, representative from RK Engineering Group, responded to the comment letter and the discrepancy in what a private event and wedding might generate in terms of noise. Mr. Estrada clarified that the focus on the study is to provide guidelines for the project to comply with noise standards. To comply with the guidelines of the noise study, the project would need to construct a property line wall, place speakers in certain locations, and limit noise on the patio to specified levels. By complying with the restrictions and guidelines of the noise study, the project would comply with the City's noise standards.

One member of the public, Ken Catanzarite, expressed concerns regarding the applicant's noise study and specifically how the study did not address the second and third floor of the adjacent property. He mentioned a continuance was requested for more time to meet with the applicant and review the materials. Mr. Catanzarite stated there is room for misconduct with the operator's amplification equipment. Mr. Catanzarite also opposed the CEQA exemption for the project. He stated that there are no other businesses in CDM with large events. He stated that the project did not address the 8:00 p.m. limitation from the City's ordinance for amplified sound. He requested that if the project is approved that the events should be limited to four days a month, amplified sound limited to 8:00 p.m., no parking on Hazel Drive, no events with more than 60 people, and continuous

monitoring. Mr. Catanzarite reiterated his concerns regarding impacts to neighbors and emphasized his requested continuance for 30-days.

A second member of the public, Joan Oldfield, spoke and stated opposition to the noise study for the project. She has concerns regarding the level of the music, congestion on Hazel Drive, capacity on the patio, and supported the previous speaker's requested continuance.

A third member of the public, Kim Catanzarite, spoke and described her tenant's concerns with noise at her property coming from the restaurant, especially due to the kids on the property.

Mr. Torres addressed the public comments. He mentioned that outreach was performed by Mr. Wilson to the Catanzarites and Mr. Wilson is sensitive to the concerns of the public comment speakers. He referenced the costs that will be required to implement the noise mitigation measures and emphasized the applicant is committed to being good neighbors. They are available to address concerns to the public after the public hearing. Mr. Torres clarifies that there is an exemption for the project from NBMC 10.32.060 (Subsection E) for the 8:00 p.m. closing time.

Mr. Estrada stated that the sound study conducted was consistent with the industry standards for evaluating exterior noise.

Mr. Torres reiterated that the applicant is open to limiting the large events to four large events per month for 75 or more people. The applicant intends to process the permit applications and is committed to complying to the City Municipal Code.

Zoning Administrator Zdeba closed the public hearing.

Zoning Administrator Zdeba asked Senior Planner Westmoreland to clarify the CEQA exemptions and the inter-department review process with the Fire Marshal and Building Division.

Zoning Administrator Zdeba addressed the unique aspects of the land use, challenges of commercial uses near residential areas especially in Corona del Mar, and the temporary basis of the Limited Term Permit which would allow the use for about 5 months. He also addressed that there is no guarantee of an extension and that it would be based on the applicant's operating behavior. He clarified that the 8:00 p.m. cutoff for amplified sound applies to special event permits and is not part of land use entitlements.

Zoning Administrator Zdeba stated his concerns regarding the timing of the additional noise analysis being released the week of the meeting. He stated that there needs to be more refined analysis and rebuttal of the peer review provided by the commenter. Due to the late correspondence by both the applicant and the public, Zoning Administrator Zdeba opted to continue the item to the August 15, 2024, Zoning Administrator meeting to give the applicant two weeks to address the concerns raised by the public and to come back with concrete figures on the number of events and people per month. He reiterated that the application is for a temporary use, and while he wants the business to be successful, it is important to maintain land use compatibility.

Action: Continued to the August 15, 2024, Zoning Administrator meeting.

V. PUBLIC COMMENTS ON NON-AGENDA ITEMS

None.

VI. ADJOURNMENT

The hearing was adjourned at 10:51 a.m.

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Attachment No. PC 4

Updated Noise Report and Response to
Comment Letter dated August 5, 2024 by
RK Engineering, Inc.

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August 5, 2024

Mr. Ryan O'Melveny Wilson
FIVE CROWNS
3801 East Coast Highway
Corona Del Mar, CA 92625

**Subject: Five Crowns Restaurant Private Event Noise Analysis, City of
Newport Beach**

Dear Mr. Wilson:

1.0 Introduction

RK ENGINEERING GROUP, INC. (RK) is pleased to provide the following noise analysis for the Five Crowns Restaurant, located at 3801 East Coast Highway, in the City of Newport Beach.

The proposed project consists of a Limited Term Permit (LTP) application to enable the use of the restaurant's outdoor patio area (hereinafter referred to as "project"). The outdoor patio area is approximately 1,300 square feet and is enclosed by a 5-foot-high property line wall, with a portion of the wall fitted with glass panels on top. The patio features a 30-foot by 15-foot canvas patio cover and dense shrubs along a portion of the exterior wall to help shield it from the neighboring residential homes located along Hazel Drive. The project is proposing to install a new windscreen along the southeastern and southwestern outdoor patio boundaries, extending the height of the existing property line wall.

The project proposes to host private events in the outdoor patio area during daytime hours (7:00 a.m. to 10:00 p.m.). Private events may include weddings, banquets, and receptions with live or amplified music, DJs, and dancing.

The purpose of the RK Noise Analysis is to demonstrate that, with the implementation of the project design features, noise levels from the project will not exceed the City of Newport Beach noise standards at the adjacent residential properties. The Noise Analysis assumes all project design features will be implemented, as agreed to by the project.

Noise impacts from the proposed private events are modeled at the adjacent residential homes located southeast of the project site on the opposite side of Hazal Drive, approximately 40 feet from the project's existing property line wall.

A location map of the Five Crowns Restaurant, including receptor locations, is provided in Exhibit A. The LTP Outdoor Dining Plans (site plans) used for this analysis, provided by ROBINSON HILL ARCHITECTURE, INC., are provided in Exhibits B-1 and B-2. The assumptions used to model project-related noise are based on this LTP outdoor dining plan.

1.1 Project Design Features

The following design features will be integrated into the project design and have been used as assumptions for the noise impact analysis.

DF-1 The project will install additional barrier shielding and increased wall heights around the perimeter of the outdoor patio area. The proposed screening design and wall heights are shown in Exhibit B-2 (of the Noise Analysis). The barrier shielding will be at least 3.5 pounds per square foot of face area without decorative cutouts or line-of-sight openings between shielded areas. Any gaps will be filled with grout or caulking to avoid noise flanking. The noise control barrier may be constructed using one, or any combination of the following materials:

- Concrete Masonry Unit (CMU) block.
- Stucco veneer over wood framing (or foam core), or 1-inch-thick tongue and groove wood of sufficient weight per square foot.
- Outdoor rated acoustical paneling with sufficient weight per square foot.
- Transparent glass (5/8-inch-thick), acrylic, polycarbonate, or other transparent material with sufficient weight per square foot.

DF-2 For proper acoustical performance, the rear gate on Hazel Drive will be replaced with one that meets the necessary design requirements described above. The new barrier wall will enclose the space above the gate, up to 10 feet high, and the gate will have a positive seal, free of gaps on all sides, and remain shut during events except to allow emergency access.

- DF-3** The project will install outdoor acoustical paneling with sound absorptive materials along the ceiling of the covered patio area.
- DF-4** The project will maintain dense shrubbery and vegetation along the rear and side walls of the outdoor patio area to help shield neighbors to the south and southeast.
- DF-5** During a private event, all speakers will be located under the covered patio and will be located at least 5 feet away from the property line wall along Hazel Drive. Speakers will be placed no more than 5 feet above ground level and face towards the interior of the site.
- DF-6** The use of heavy bass equipment, including drums, amplified bass guitars, and subwoofers will be significantly restricted such that low frequency noise levels shall not be perceptible outside the property line. DJs will need to use equalizer filters, speaker limiters, or other means to attenuate low frequency noise and cap the maximum signal volume. Low frequency noise (i.e. bass noise) tends to propagate further distances and can penetrate through walls and windows more easily than higher frequencies. Therefore, the project will take special care to reduce low frequency noise levels to the surrounding community.
- DF-7** A noise monitoring program will be implemented during all private outdoor events. The project will engage a professional engineering firm that specializes in acoustics to help establish and train staff on how to effectively conduct noise measurements and run the noise monitoring program. The project will obtain and utilize certified type-2 sound level meters per the City of Newport Beach and ANSI specifications for noise measurements. Noise meters will be calibrated before each use and annual professional equipment certification and calibration will be performed. Based on this noise analysis, noise levels on the patio should not exceed 80.0 dBA Leq, when measured for a 15-minute period, or 100 dBA Lmax at any time.

2.0 City of Newport Beach Noise Standards

The City of Newport Beach establishes interior and exterior noise levels in Chapter 10.26 of the City’s Municipal Code, as described below.

2.1 Exterior Noise Standards

The following exterior noise standards are prescribed in the City of Newport Beach Municipal Code Section 10.26.025 – Exterior Noise Standards:

- A. The following noise standards, unless otherwise specifically indicated, shall apply to all property within a designated noise zone:

Table 1
Allowable Exterior Noise¹

Noise Zone	Type of Land Use	Allowable Exterior Noise Level (Equivalent Noise Level, Leq)	
		7:00 a.m. to 10:00 p.m.	10:00 p.m. to 7:00 a.m.
I	Single-, two-, or multiple-family residential	55 dBA	50 dBA
II	Commercial	65 dBA	60 dBA
III	Residential portions of mixed-use properties	60 dBA	50 dBA
IV	Industrial or manufacturing	70 dBA	70 dBA

¹ Source: City of Newport Beach Municipal Code Section 10.26.025 – Exterior Noise Standards.

If the ambient noise level exceeds the resulting standard, the ambient shall be the standard.

- B. It is unlawful for any person at any location within the incorporated area of the City to create any noise, or to allow the creation of any noise on property owned, leased, occupied or otherwise controlled by such person, which causes the noise level when measured on any other property, to exceed either of the following:

1. The noise standard for the applicable zone for any fifteen-minute period;

- 2. A maximum instantaneous noise level equal to the value of the noise standard plus twenty (20) dBA for any period of time (measured using A-weighted slow response).
- C. In the event the ambient noise level exceeds the noise standard, the maximum allowable noise level under said category shall be increased to reflect the maximum ambient noise level.
- D. The Noise Zone III standard shall apply to that portion of residential property falling within one hundred (100) feet of a commercial property, if the intruding noise originates from that commercial property.
- E. If the measurement location is on boundary between two different noise zones, the lower noise level standard applicable to the noise zone shall apply.

A copy of Municipal Code Chapter 10.26 is provided in Appendix A.

2.2 Interior Noise Standards

The following interior noise standards are prescribed in the City of Newport Beach Municipal Code Section 10.26.030 – Interior Noise Standards:

- A. The following noise standard, unless otherwise specifically indicated, shall apply to all residential property within all noise zones:

Table 2
Allowable Interior Noise¹

Noise Zone	Type of Land Use	Allowable Exterior Noise Level (Equivalent Noise Level, Leq)	
		7:00 a.m. to 10:00 p.m.	10:00 p.m. to 7:00 a.m.
I	Residential	45 dBA	40 dBA
III	Residential portions of mixed-use properties	45 dBA	40 dBA

¹ Source: City of Newport Beach Municipal Code Section 10.26.030 – Interior Noise Standards.

If the ambient noise level exceeds the resulting standard, the ambient shall be the standard.

- B. It shall be unlawful for any person at any location within the incorporated area of the City to create any noise or to allow the creation of any noise on property owned, leased, occupied or otherwise controlled by such a person which causes the noise level when measured on any other property, to exceed either of the following:
1. The noise standard for the applicable zone for any fifteen-minute period;
 2. A maximum instantaneous noise level equal to the value of the noise standard plus twenty (20) dBA for any period of time (measured using A-weighted slow response).
- C. In the event the ambient noise level exceeds the noise standard, the noise standard applicable to said category shall be increased to reflect the maximum ambient noise level.
- D. The Noise Zone III standard shall apply to that portion of residential property falling within one hundred (100) feet of a commercial property, if the intruding noise originates from that commercial property.
- E. If the measurement location is on a boundary between two different noise zones, the lower noise level standard applicable to the noise zone shall apply.

3.0 Noise Modeling Procedures and Criteria

3.1 Stationary Noise Source Modeling

Project-related noise impacts were analyzed using SoundPLAN™ 3-D noise modeling software. SoundPLAN™ is a standards-based program that incorporates more than twenty national and international noise modeling guidelines.

Projected noise levels in SoundPLAN™ are based on the following key parameters:

- Developing three-dimensional noise models of the project site and surrounding topography
- Predicting the noise levels at the selected community locations, and
- Comparing the predicted noise levels with the existing community ambient noise levels at the receptor locations.
- The noise model was validated based on the measured noise levels by RK.

The sides of buildings, walls, etc. were modeled as reflective surfaces and also as diffractive bodies. Most of the ground within the project site and adjacent areas are paved roads and residential yards and are modeled as a hard site (Ground Factor = 0). The Effective Flow Resistivity for field grass is the SoundPLAN default. The elevation profile for the project site is derived from Google Earth. Receptors are placed at 5 feet above ground level.

Sound Power and Sound Pressure Level

Sound power level is the acoustic energy emitted by a source which produces a sound pressure level at some distance. While the sound power level of a source is fixed, the sound pressure level depends upon the distance from the source and the acoustic characteristics of the area in which it is located.

SoundPLAN™ requires that the source noise level be input using a sound power level which must be back calculated based on a measured sound pressure level. The sound power level is calculated using SoundPLAN software by calibrating the source noise level to equal the sound pressure level at an equal distance from the source in which the referenced measurement was taken.

3.2 Maximum Allowable Private Event Noise Levels

Noise levels were modeled under a “Private Events” scenario. This scenario depicts the maximum noise levels permitted during outdoor private events.

Project-related noise was modeled under each scenario utilizing the referenced noise levels described in the sections below. The referenced noise levels were input into the SoundPLAN™ model and projected from the source to the receptor locations. The model projections take into account the noise attenuation effects from distance, local topography, ground effects, and physical barriers to arrive at the predicted noise levels at the receptor locations.

The proposed project will be required to regulate private event operations, and implement several project design features, to ensure noise levels do not exceed the City of Newport Beach noise standards. Based on this analysis, the following maximum allowable noise levels have been utilized to assess noise level impacts under the “Private Events” scenario.

Table 3
Maximum Allowable Noise Levels – “Private Events” Conditions¹

Source	Distance from Noise Source (feet)	Noise Levels (dBA)	
		Leq	Lmax
Outdoor Patio Noise (“Private Events” Scenario)	3.0	80.0	100.0

¹ The proposed project will implement an on-going noise monitoring program to determine the maximum noise levels for speakers and private events allowed on the patio. Based on this preliminary analysis, noise levels on the patio should not exceed 80.0 dBA Leq, when measured for a 15-minute period, or 100 dBA Lmax at any time, when measured 3 feet from the source.

3.3 Interior Noise Modeling

The interior noise level is the difference between the projected exterior noise level at the structure’s façade and the noise reduction provided by the structure itself. Typical building construction will provide a conservative 12 dBA noise level reduction with a “windows open” condition and a very conservative 20 dBA noise level reduction with “windows closed”. The interior noise level is estimated by subtracting the building shell design from the estimated exterior noise level.

It is assumed that the residential receptors adjacent to the project site are constructed to allow for “windows open” conditions. Hence, for the purposes of this analysis, interior noise at the adjacent receptors is assessed using a conservative 12 dBA noise level reduction.

The interior noise analysis is based on industry standards for building noise reduction established by the Federal Highway Administration (FHWA), the 2013 Caltrans Technical Noise Supplement to the Traffic Noise Analysis Protocol (TeNS), the California Office of Noise Control Catalog of STC and IIC Ratings for Wall and Floor/Ceiling Assemblies, and the California Building Standards Code, Title 24.

4.0 Noise Modeling Results

Noise impacts under the “Private Events” scenario are assessed at the property lines of the five (5) nearest residential homes to the project site. The project will be required to comply with the City of Newport Beach noise standards of 55.0 dBA Leq and 75.0 dBA Lmax.

4.1 Exterior Noise Levels - "Private Events" Scenario

Tables 3 and 4 show the projected exterior noise impacts at the adjacent residential property lines under the "Private Events" Scenario. As shown in the tables below, the project is not expected to exceed the City of Newport Beach daytime exterior noise standards of 55.0 dBA Leq and 75.0 dBA Lmax.

Appendix C provides the noise calculation sheets for the "Private Events" scenario, and the results are graphically illustrated in Exhibits C through F.

Table 4
Exterior Noise Levels at Receptors (dBA Leq) – "Private Events" Scenario

Receptor	Address	Project Noise Contribution (dBA Leq)	City of Newport Beach Noise Level Criteria (dBA Leq)	Noise Level Exceeds Standard (?)
1	3901 East Coast Hwy.	44.4	55.0	No
2	3901 East Coast Hwy.	53.6		No
3	352 Hazel Dr.	52.8		No
4	352 Hazel Dr. (3 rd Floor Balcony)	53.9		No
5	344 Hazel Dr.	48.8		No
6	340 Hazel Dr.	47.5		No

Table 5
Exterior Noise Levels at Receptors (dBA Lmax) – "Private Events" Scenario

Receptor	Address	Project Noise Contribution (dBA Lmax)	City of Newport Beach Noise Level Criteria (dBA Lmax)	Noise Level Exceeds Standard (?)
1	3901 East Coast Hwy.	64.4	75.0	No
2	3901 East Coast Hwy.	73.6		No
3	352 Hazel Dr.	72.8		No
4	352 Hazel Dr. (3 rd Floor Balcony)	74.5		No
5	344 Hazel Dr.	68.8		No
6	340 Hazel Dr.	67.5		No

4.2 Interior Noise Levels - "Private Events" Scenario

Tables 3 and 4 show the projected interior noise impacts at the adjacent residential receptors under the "Private Events" Scenario. As shown in the tables below, the project is not expected to exceed the City of Newport Beach daytime interior noise standards of 45.0 dBA Leq or 65.0 dBA Lmax.

Table 6
Interior Noise Levels at Receptors (dBA Leq) – "Private Events" Scenario

Receptor	Address	Interior Noise Level ¹	City of Newport Beach Noise Level Criteria (dBA Leq)	Noise Level Exceeds Standard (?)
1	3901 East Coast Hwy.	32.4	45.0	No
2	3901 East Coast Hwy.	41.6		No
3	352 Hazel Dr.	40.8		No
4	352 Hazel Dr. (3 rd Floor Balcony)	41.9		No
5	344 Hazel Dr.	36.8		No
6	340 Hazel Dr.	35.5		No

¹ Interior noise levels assume a "windows open" condition and a conservative reduction of 12 dB from exterior noise levels based on industry standards.

Table 7
Interior Noise Levels at Receptors (dBA Lmax) – "Private Events" Scenario

Receptor	Address	Interior Noise Level ¹	City of Newport Beach Noise Level Criteria (dBA Leq)	Noise Level Exceeds Standard (?)
1	3901 East Coast Hwy.	52.4	65.0	No
2	3901 East Coast Hwy.	61.6		No
3	352 Hazel Dr.	60.8		No
4	352 Hazel Dr. (3 rd Floor Balcony)	62.5		No
5	344 Hazel Dr.	56.8		No
6	340 Hazel Dr.	55.5		No

¹ Interior noise levels assume a "windows open" condition and a conservative reduction of 12 dB from exterior noise levels based on industry standards.

4.3 Summary of Results

Tables 3 through 7 show that, with the implementation of the design features described in Section 1.1, the proposed project will not exceed the City of Newport Beach noise standards under the "Private Events" scenario.

It should be noted that although the noise generated by private events is not expected to exceed the City's noise ordinance, noise levels may still be audible from the surrounding residential properties, which is not unusual.

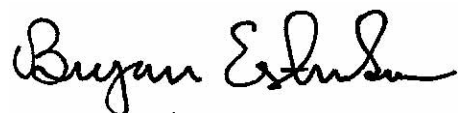
5.0 Conclusions

Based on the results of this analysis, noise levels associated with the private event operations at the Five Crowns Restaurant can comply with the City of Newport Beach residential noise standards of 55.0 dBA Leq and 75.0 dBA Lmax with the implementation of the design features described in Section 1.1 of this report.

RK is pleased to assist the FIVE CROWNS with this noise evaluation. If you have any questions regarding this study, please call us at (949) 474-0809.

Sincerely,

RK ENGINEERING GROUP, INC.



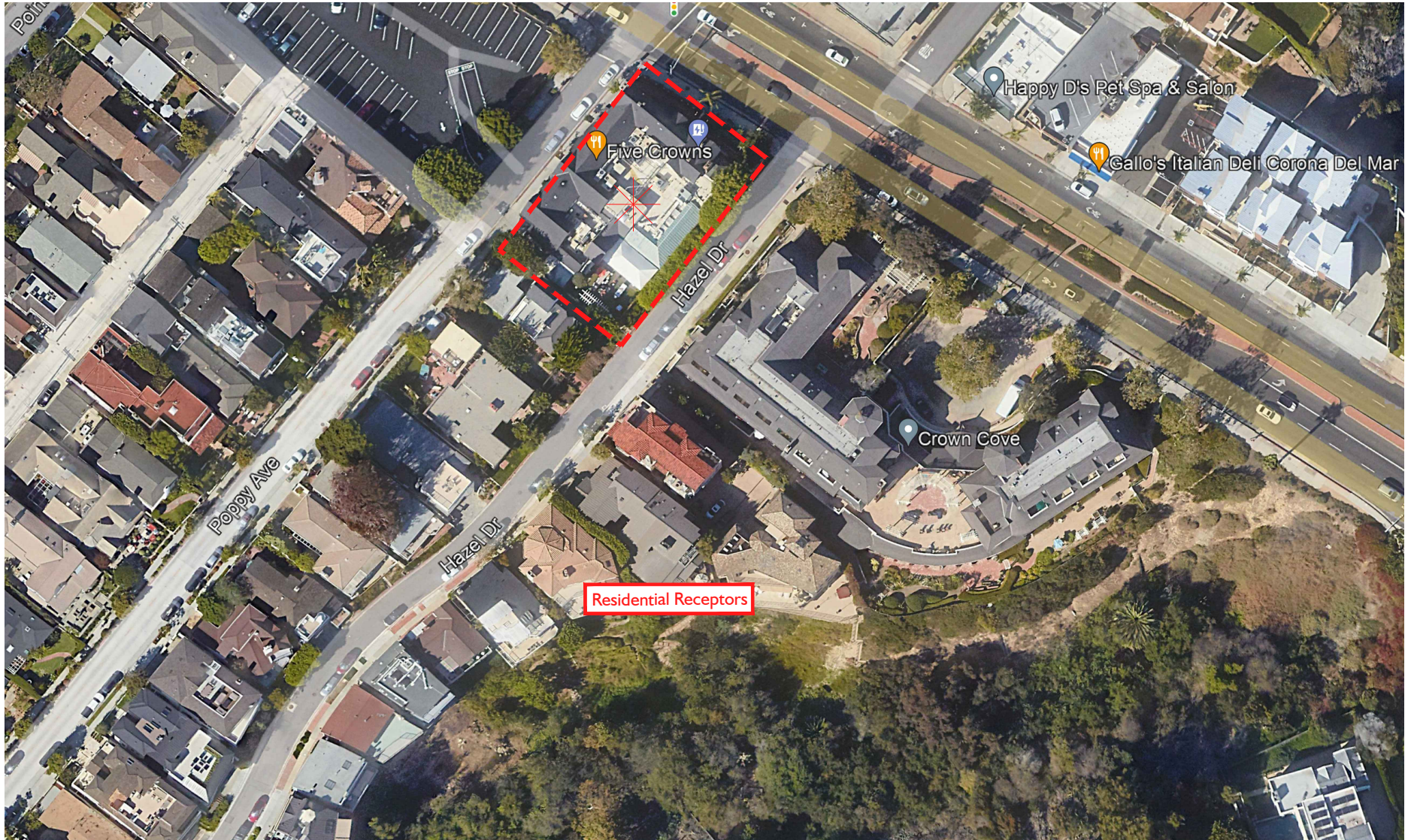
Bryan Estrada, AICP
Principal



Becca Morrison
Environmental Specialist

Attachments

Attachments



Legend:

- = Project Site Boundary
- * = Project Site



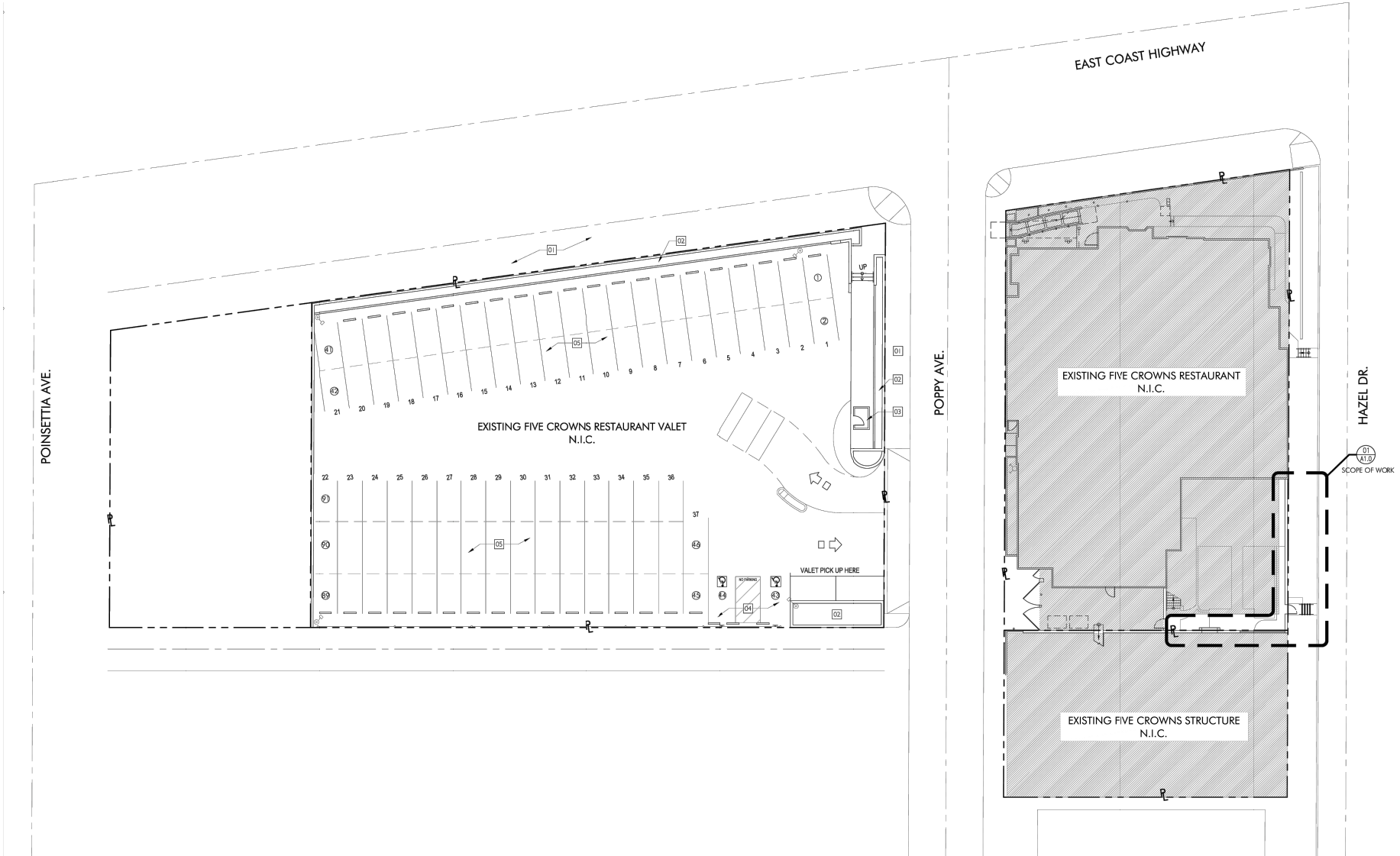
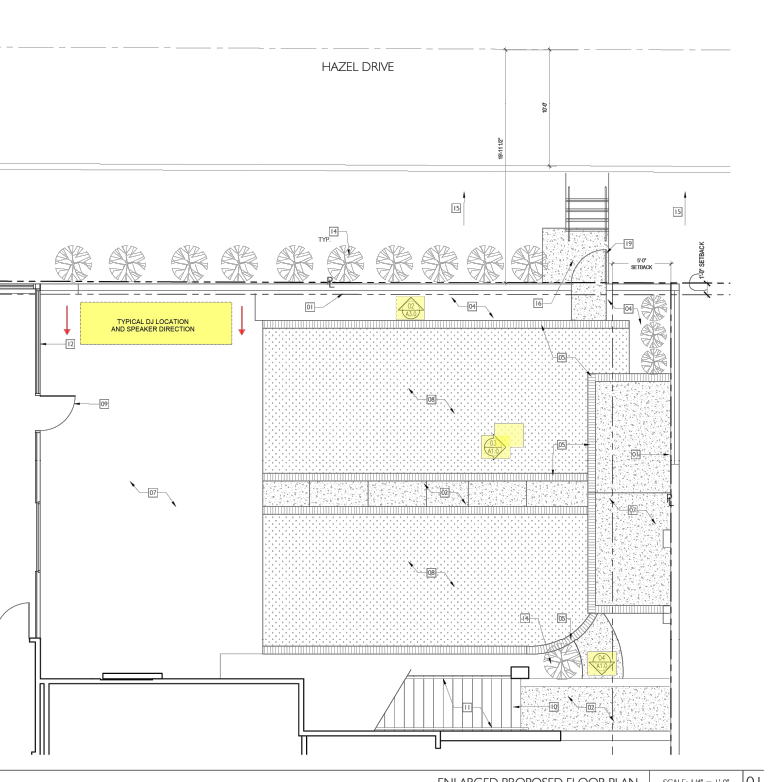
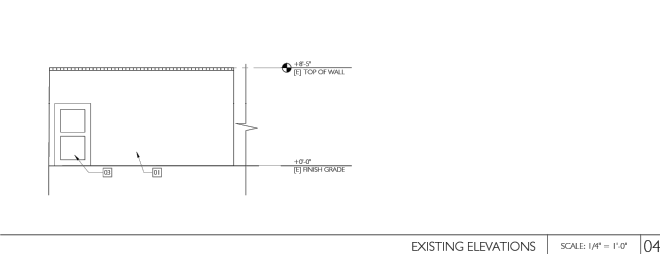
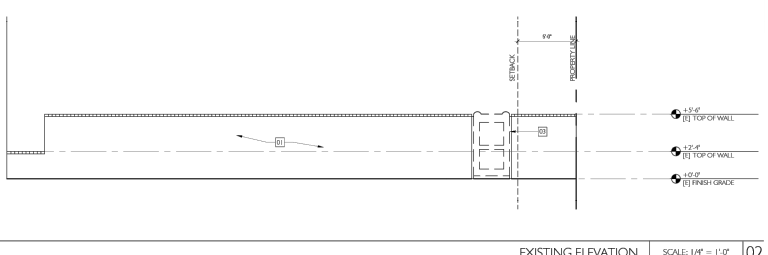
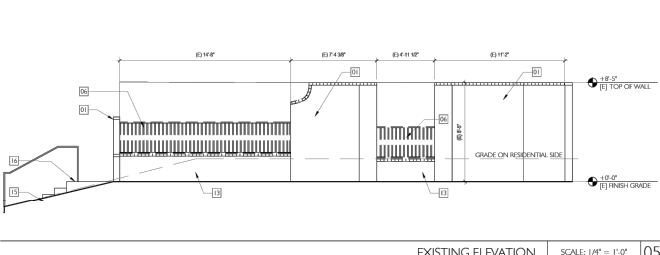
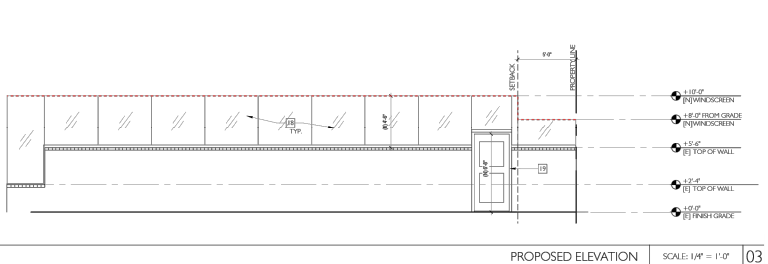
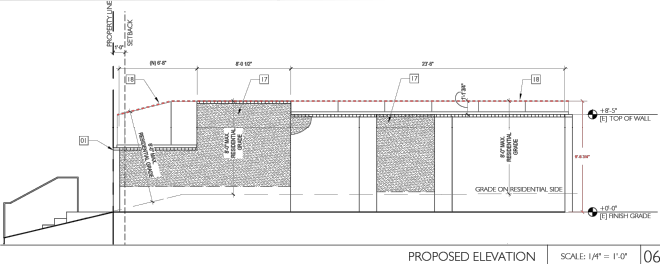
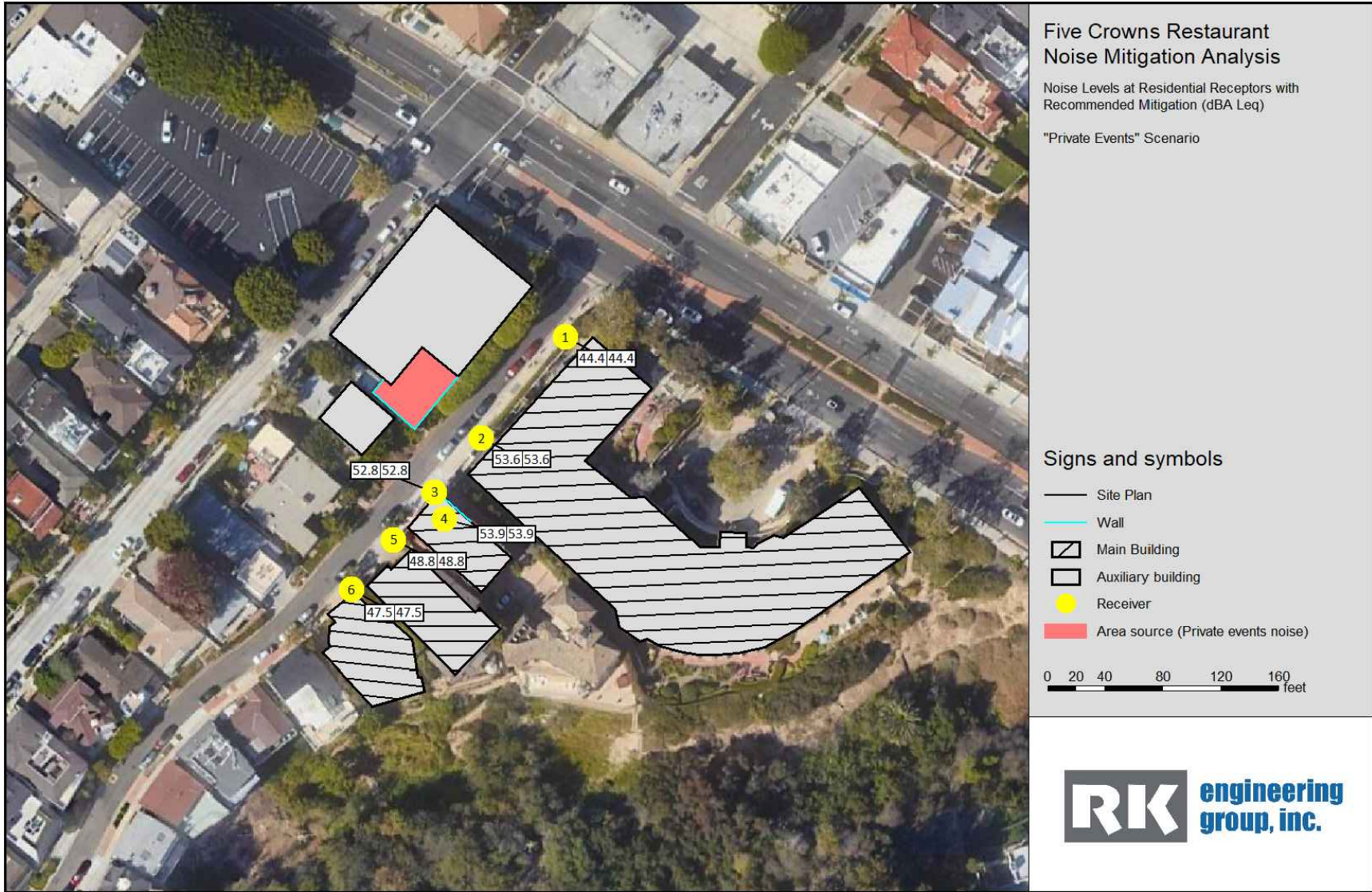


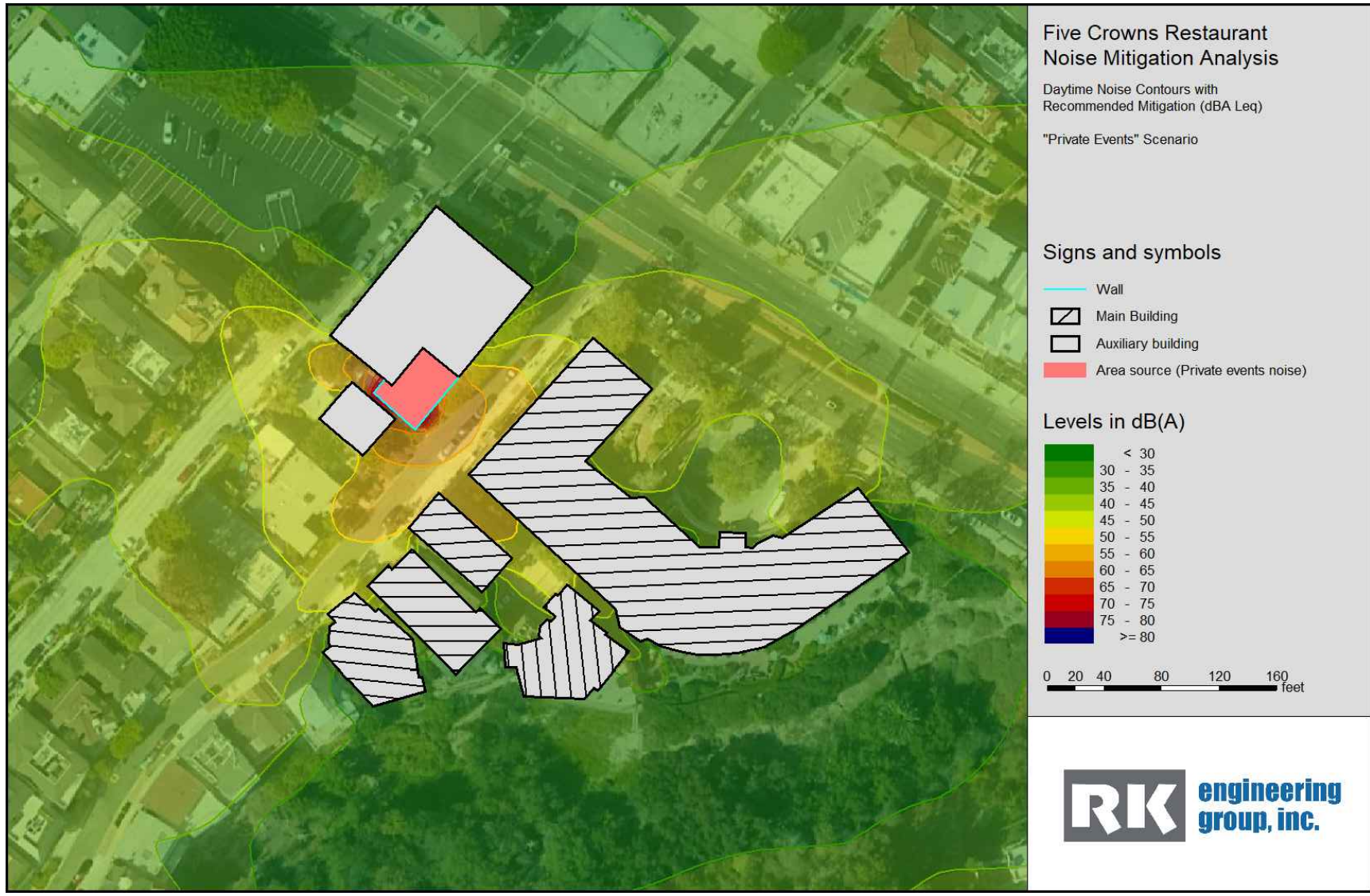
Exhibit B-2 Proposed Wall Heights



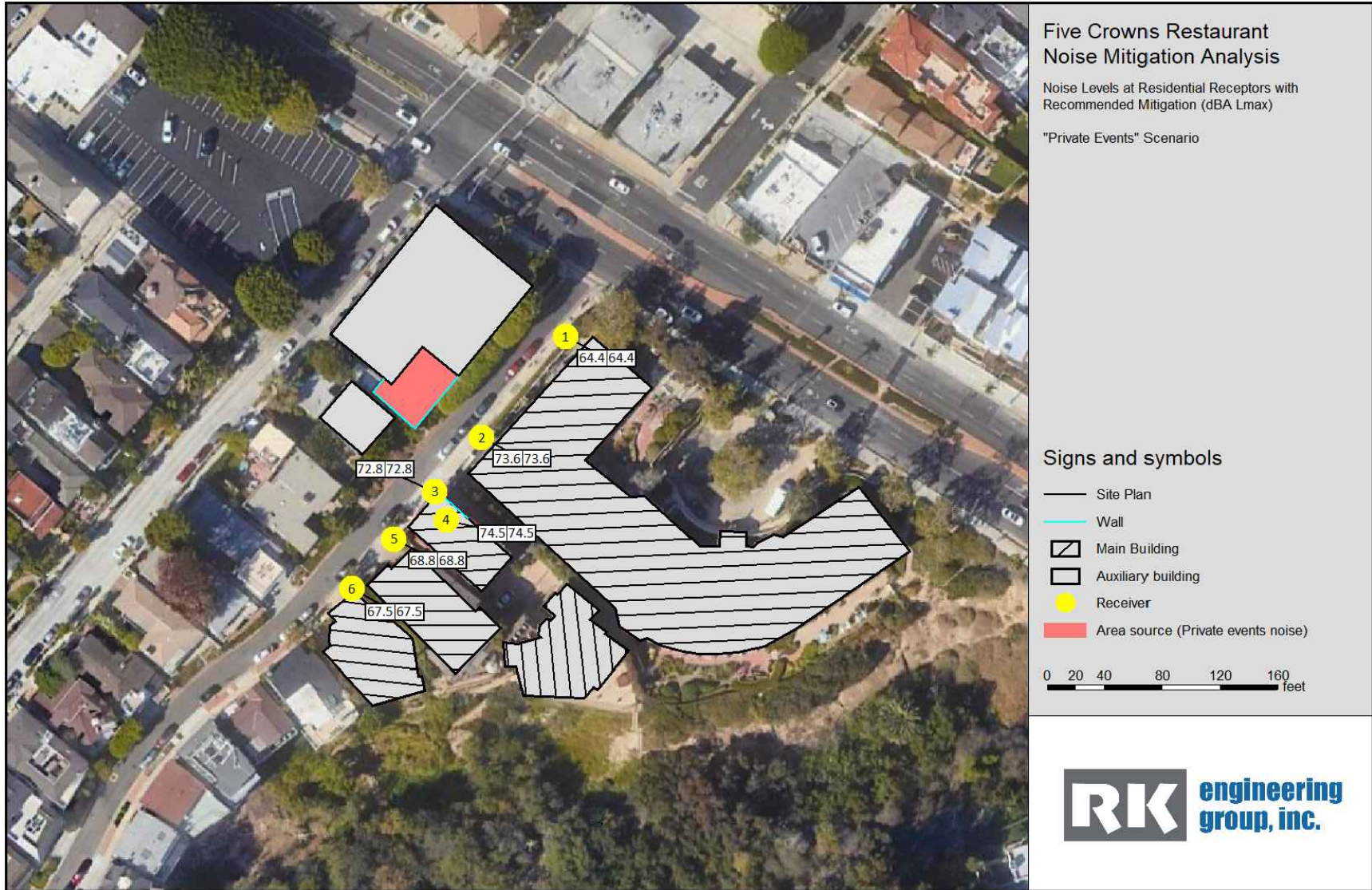
Operational Noise Levels (dBA Leq) - "Private Events" Scenario



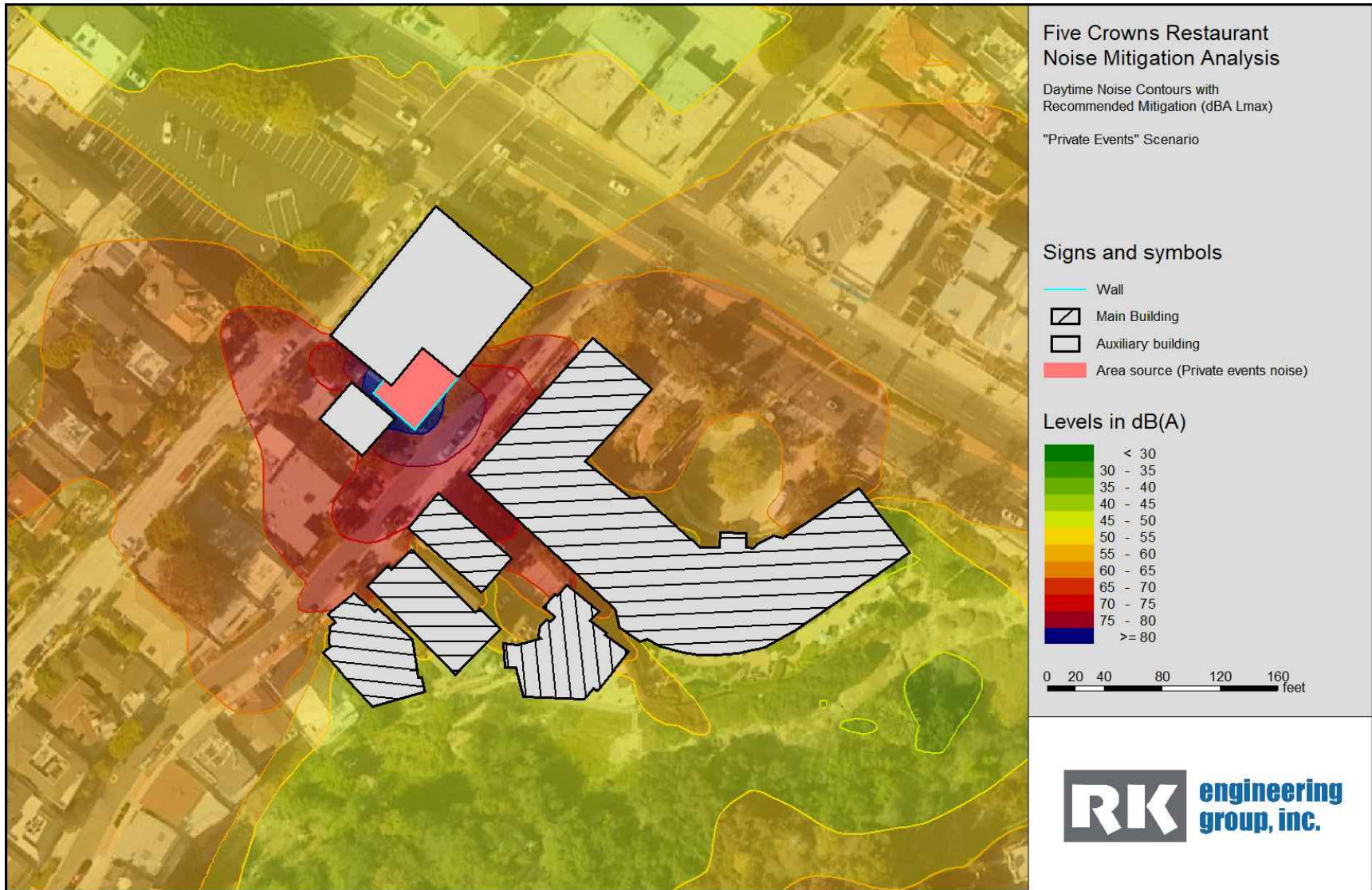
Operational Noise Contours (dBA Leq) - "Private Events" Scenario



Operational Noise Levels (dBA Lmax) - "Private Events" Scenario



Operational Noise Contours (dBA Lmax) - "Private Events" Scenario



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Appendix A

City of Newport Beach Municipal Code
Chapter 10.26 – Community Noise Control

Chapter 10.26 COMMUNITY NOISE CONTROL

Sections:

- 10.26.005 Declaration of Policy.**
- 10.26.010 Definitions.**
- 10.26.015 Decibel Measurement Criteria.**
- 10.26.020 Designated Noise Zones.**
- 10.26.025 Exterior Noise Standards.**
- 10.26.030 Interior Noise Standards.**
- 10.26.035 Exemptions.**
- 10.26.040 Schools, Day Care Centers, Churches, Libraries, Museums, Health Care Institutions—Special Provisions.**
- 10.26.045 Heating, Venting and Air Conditioning—Special Provisions.**
- 10.26.050 Sound-Amplifying Equipment.**
- 10.26.055 Noise Level Measurement.**
- 10.26.065 Proposed Developments.**
- 10.26.070 Prima Facie Violation.**
- 10.26.075 Violations.**
- 10.26.080 Violations—Additional Remedies—Injunctions.**
- 10.26.085 City Manager Waiver.**
- 10.26.090 Noise Abatement Programs.**
- 10.26.095 Manner of Enforcement.**
- 10.26.100 Severability.**
- 10.26.005 Declaration of Policy.**

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.

B. It is determined that certain noise levels are detrimental to the public health, welfare and safety and contrary to public interest, therefore, the City Council of the City of Newport Beach does ordain and declare that creating, maintaining, causing or allowing to be created, caused or maintained, any noise in a manner prohibited by, or not in conformity with, the provisions of this chapter, is a public nuisance and may be punished as a public nuisance. The ordinance codified in this chapter is effective thirty (30) days from adoption, however, all fixed noise sources existing at the date of adoption shall have ninety (90) days from the date of adoption to achieve compliance with this chapter. (Ord. 95-38 § 11 (part), 1995)

10.26.010 Definitions.

The following words, phrases and terms as used in this chapter shall have the meanings as indicated here:

“Agricultural property” means a parcel of real property which is undeveloped for any use other than agricultural purposes.

“Ambient noise level” means the all-encompassing noise level associated with a given environment, being a composite of sounds from all sources, excluding the alleged offensive noise, at the location and approximate time at which a comparison with the alleged offensive noise is to be made.

“A-weighted sound level” means the total sound level meter with a reference pressure of twenty (20) micropascals using the A-weighted network (scale) at slow response. The unit of measurement shall be defined as DBA.

“Code Enforcement Officer” means the Code Enforcement Officer of the City or his duly authorized deputy.

“Commercial property” means a parcel of real property which is used as either in part or in whole for commercial purposes.

“Cumulative period” means an additive period of time composed of individual time segments which may be continuous or interrupted.

“Decibel (Db)” means a unit which denotes the ratio between two quantities which are proportional to power: the number of decibels corresponding to the ratio of two amounts of power is ten times the logarithm to the base ten of this ratio.

“Dwelling unit” means any area within a structure on any parcel which:

1. Contains separate or independent living facilities for one or more persons, with an area or equipment for sleeping, sanitation and food preparation, and which has independent exterior access to ground level; or
2. Is being utilized for residential purposes by one or more persons separately or independently from occupants of other areas within the structure.

“Emergency machinery, vehicle, work or alarm” means any machinery, vehicle, work or alarm used, employed, performed or operated in an effort to protect, provide or restore safety conditions in the community or for the citizenry, or work by private or public utilities when restoring utility service.

“Equivalent, noise, level, leq.” means the sound level corresponding to a steady state noise level over a given measurement period with the same amount of acoustic energy as the actual time varying noise level. Also known as the energy average noise level during the measurement period. The measurement period shall be fifteen (15) minutes under the terms of this chapter.

“Fixed noise source” means a stationary device which creates sounds while fixed or motionless including but not limited to residential, agricultural, industrial and commercial machinery and equipment, pumps, fans, compressors, air conditioners and refrigeration equipment.

“Grading” means any excavating or filling of earth material or any combination thereof conducted at a site to prepare said site for construction or other improvements thereon.

“Health care institution” means any hospital, convalescent home or other similar facility excluding residential.

“Hertz (HZ)” means the unit which describes the frequency of a function periodic in time which is the reciprocal of the period.

“Impulsive noise” means a noise of short duration usually less than one second and of high intensity, with an abrupt onset and rapid decay.

“Industrial property” means a parcel of real property which is used either in part or in whole for manufacturing purposes.

“Intruding noise level” means the total sound level, in decibels, created, caused, maintained or originating from an alleged offensive source at a specified location while the alleged offensive source is in operation.

“Licensed” means the issuance of a formal license or permit by the appropriate jurisdictional authority, or where no permits or licenses are issued, the sanctioning of the activity by the jurisdiction as noted in public record.

“Major roadway” means any street, avenue, boulevard or highway used for motor vehicle traffic which is owned or controlled by a public government entity.

“Mobile noise source” means any noise source other than a fixed noise source.

“Person” means any individual, firm, partnership, association, corporation, company or organization of any kind, including public agencies.

“Residential property” means a parcel of real property which is used either in part or in whole for residential purposes, other than transient uses such as hotels and motels, and residential care facilities. Residential property includes the residential portion of mixed use properties.

“Simple tone noise” means a noise characterized by a predominant frequency or frequencies so that other frequencies cannot be readily distinguished. If measured, simple tone noise shall exist if the one-third octave band sound pressure levels in the band with the tone exceeds the arithmetic average of the sound pressure levels of the two continuous one-third octave bands as follows: five Db for frequencies of five hundred (500) Hertz (Hz) and above or, by fifteen (15) Db for frequencies less than or equal to one hundred twenty-three (123) Hz.

“Sound level meter” means an instrument meeting American National Standard Institute’s Standard S1.4-1971 or most recent revision thereof for Type 2 sound level meters or an instrument and the associated recording and analyzing equipment which will provide equivalent data.

“Sound pressure level” of a sound, in decibels, means twenty (20) times the logarithm to the base ten of the ratio of the pressure of the sound to a reference pressure which shall be explicitly stated.

“Vibration” means any movement of the earth, ground or other similar surface created by a temporal and spatial oscillation device or equipment located upon, affixed in conjunction with that surface. (Ord. 95-38 § 11 (part), 1995)

10.26.015 Decibel Measurement Criteria.

Any decibel measurement made pursuant to the provisions of this chapter shall be based on a reference sound pressure of twenty (20) micropascals as measured with a sound level meter using the A-weighted network (scale) at slow response. (Ord. 95-38 § 11 (part), 1995)

10.26.020 Designated Noise Zones.

The properties hereinafter described assigned to the following noise zones:

Noise Zone I	—	All single-, two- and multiple-family residential properties;
Noise Zone II	—	All commercial properties;
Noise Zone III	—	The residential portion of mixed-use properties;
Noise Zone IV	—	All manufacturing or industrial properties.

The actual use of the property shall be the determining factor in establishing whether a property is in Noise Zone I, II, III or IV provided that the actual use is a legal use in the City of Newport Beach. (Ord. 95-38 § 11 (part), 1995)

10.26.025 Exterior Noise Standards.

A. The following noise standards, unless otherwise specifically indicated, shall apply to all property with a designated noise zone:

NOISE ZONE	TYPE OF LAND USE	ALLOWABLE EXTERIOR NOISE LEVEL (Equivalent Noise Level, Leq)	
		7 a.m. to 10 p.m.	10 p.m. to 7 a.m.
I	Single-, two-or multiple-family residential	55 DBA	50 DBA
II	Commercial	65 DBA	60 DBA
III	Residential portions of mixed-use properties	60 DBA	50 DBA
IV	Industrial or manufacturing	70 DBA	70 DBA

If the ambient noise level exceeds the resulting standard, the ambient shall be the standard.

B. It is unlawful for any person at any location within the incorporated area of the City to create any noise, or to allow the creation of any noise on property owned, leased, occupied or otherwise controlled by such person, which causes the noise level when measured on any other property, to exceed either of the following:

1. The noise standard for the applicable zone for any fifteen-minute period;
2. A maximum instantaneous noise level equal to the value of the noise standard plus twenty (20) DBA for any period of time (measured using A-weighted slow response).

C. In the event the ambient noise level exceeds the noise standard, the maximum allowable noise level under said category shall be increased to reflect the maximum ambient noise level.

D. The Noise Zone III standard shall apply to that portion of residential property falling within one hundred (100) feet of a commercial property, if the intruding noise originates from that commercial property.

E. If the measurement location is on boundary between two different noise zones, the lower noise level standard applicable to the noise zone shall apply. (Ord. 95-53 § 1, 1995; Ord. 95-38 § 11 (part), 1995)

10.26.030 Interior Noise Standards.

A. The following noise standard, unless otherwise specifically indicated, shall apply to all residential property within all noise zones:

NOISE ZONE	TYPE OF LAND USE	ALLOWABLE INTERIOR NOISE LEVEL (Equivalent Noise Level, Leq)	
		7 a.m. to 10 p.m.	10 p.m. to 7 a.m.

I	Residential	45 DBA	40 DBA
III	Residential portions of mixed-use properties	45 DBA	40 DBA

If the ambient noise level exceeds the resulting standard, the ambient shall be the standard.

B. It shall be unlawful for any person at any location within the incorporated area of the City to create any noise or to allow the creation of any noise on property owned, leased, occupied or otherwise controlled by such a person which causes the noise level when measured on any other property, to exceed either of the following:

1. The noise standard for the applicable zone for any fifteen-minute period;
2. A maximum instantaneous noise level equal to the value of the noise standard plus twenty (20) DBA for any period of time (measured using A-weighted slow response).

C. In the event the ambient noise level exceeds the noise standard, the noise standard applicable to said category shall be increased to reflect the maximum ambient noise level.

D. The Noise Zone III standard shall apply to that portion of residential property falling within one hundred (100) feet of a commercial property, if the intruding noise originates from that commercial property.

E. If the measurement location is on a boundary between two different noise zones, the lower noise level standard applicable to the noise zone shall apply. (Ord. 95-53 § 2, 1995; Ord. 95-38 § 11 (part), 1995)

10.26.035 Exemptions.

The following activities shall be exempted from the provisions of this chapter:

A. Any activity conducted on public property, or on private property with the consent of the owner, by any public entity, or its officers, employees, representatives, agents, subcontractors, permittees, licensees, or lessees, which are consistent with, and in furtherance of, the governmental functions or services the public entity has authorized, or responsible, to perform, activities which are exempt from the provisions of this chapter include, without limitation, sporting and recreational activities which are sponsored or co-sponsored by the City of Newport Beach or the Newport Mesa Unified School District;

B. Occasional outdoor gatherings, public dances, show, sporting and entertainment events, provided said events are conducted pursuant to a permit or license issued by the appropriate jurisdiction relative to the staging of said events;

C. Any mechanical device, apparatus or equipment used, related to or connected with emergency machinery, vehicle, work or warning alarm or bell, provided the sounding of any bell or alarm on any building or motor vehicle shall terminate its operation within forty-five (45) minutes in any hour of its being activated;

- D. Noise sources associated with construction, repair, remodeling, demolition or grading of any real property. Such activities shall instead be subject to the provisions of Chapter [10.28](#) of this title;
- E. Noise sources associated with construction, repair, remodeling, demolition or grading of public rights-of-way or during authorized seismic surveys;
- F. All mechanical devices, apparatus or equipment associated with agriculture operations provided that:
1. Operations do not take place between eight p.m. and seven a.m. on weekdays, including Saturday, or at any time Sunday or a federal holiday, or
 2. Such operations and equipment are utilized for the protection or salvage of agricultural crops during periods of potential or actual frost damage or other adverse weather conditions, or
 3. Such operations and equipment are associated with agricultural pest control through pesticide application, provided the application is made in accordance with permits issued by or regulations enforced by the California Department of Agriculture;
- G. Noise sources associated with the maintenance of real property. Such activities shall instead be subject to the provisions of Chapter [10.28](#) of this title;
- H. Any activity to the extent regulation thereof has been preempted by state or federal law. NOTE: Preemption may include motor vehicle, aircraft in flight, and railroad noise regulations;
- I. Any noise sources associated with people and/or music associated with a party at a residential property. Such noise is difficult to measure under the terms of this chapter and instead shall be subject to the provisions of Chapters [10.28](#) and [10.58](#) of this title;
- J. Any noise sources associated with barking dogs or other intermittent noises made by animals on any property within the City of Newport Beach. Such noise is difficult to measure under the terms of this chapter and instead shall be subject to the provisions of Chapter [7.20](#) of this Code;
- K. Any noise sources associated with the operation of a permanently installed heating, venting and air conditioning (HVAC) equipment on a residential property permitted under the provisions of Section [10.26.045](#)(B) and (C);
- L. Any noise sources specifically identified and mitigated under the provisions of a use permit, modification permit, development agreement or planned community district development plan adopted prior to the date of adoption of this chapter. (Ord. 95-53 § 3, 1995; Ord. 95-38 § 11 (part), 1995)

10.26.040 Schools, Day Care Centers, Churches, Libraries, Museums, Health Care Institutions—Special Provisions.

It is unlawful for any person to create any noise which causes the noise level at any school, day care center, hospital or similar health care institution, church, library or museum while the same is in use, to exceed the noise

standards specified in Section [10.26.025](#) prescribed for the assigned Noise Zone I (residential uses). (Ord. 95-38 § 11 (part), 1995)

10.26.045 Heating, Venting and Air Conditioning—Special Provisions.

A. New HVAC Equipment. New permits for heating, venting and air conditioning (HVAC) equipment in or adjacent to residential areas shall be issued only where installations can be shown by computation, based on the sound rating of the proposed equipment, not to exceed an A-weighted sound pressure level of fifty (50) DBA or not to exceed an A-weighted sound pressure level of fifty-five (55) dBA and be installed with a timing device that will deactivate the equipment during the hours of ten p.m. to seven a.m. The method of computation used shall be that specified in “Standard Application of Sound Rated Outdoor Unitary Equipment,” Standard 275, Air conditioning and Refrigeration Institute, 1984 or latest revision thereof.

B. Existing HVAC Equipment.

1. HVAC equipment legally installed prior to April 22, 1981, shall be permitted to operate with an exterior noise limit of sixty-five (65) dBA until January 1, 1998.
2. HVAC equipment legally installed prior to April 22, 1981, shall be exempted from the interior noise level standard as specified in Section [10.26.030](#) of this chapter until January 1, 1998.
3. HVAC equipment legally installed after April 22, 1981, and prior to the date of adoption of this chapter shall not exceed a maximum exterior noise limit of fifty-five (55) dBA during the ninety-day compliance period set forth in Section [10.26.005](#).

C. In the event that HVAC equipment cannot meet the requirements set forth in this chapter, then the exterior noise limit for such equipment may be raised to sixty-five (65) dBA and exempted from the interior noise level standard as specified in Section [10.26.030](#) of this chapter, provided that the applicant obtains the written consent of all the owners of the affected properties. (Ord. 95-38 § 11 (part), 1995)

10.26.050 Sound-Amplifying Equipment.

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, or which are used in vehicles and heard only by occupants of the vehicle in which installed, which shall be subject to the provisions of Chapter [10.28](#) of this title. (Ord. 95-38 § 11 (part), 1995)

10.26.055 Noise Level Measurement.

A. The location selected for measuring exterior noise levels in a residential area shall be at any part of a private yard, patio, deck or balcony normally used for human activity and identified by the owner of the affected property as suspected of exceeding the noise level standard. This location may be the closest point in the private yard or

patio, or on the deck or balcony, to the noise source, but should not be located in nonhuman activity areas such as trash container storage areas, planter beds, above or contacting a property line fence, or other areas not normally used as part of the yard, patio, deck or balcony. The location selected for measuring exterior noise levels in a nonresidential area shall be at the closest point to the noise source. The measurement microphone height shall be five feet above finish elevation or, in the case of a deck or balcony, the measurement microphone height shall be five feet above the finished floor level.

B. The location selected for measuring interior noise levels shall be made within the affected residential unit. The measurements shall be made at a point at least four feet from the wall, ceiling or floor, or within the frame of a window opening, nearest the noise source. The measurements shall be made with windows in an open position. (Ord. 95-38 § 11 (part), 1995)

10.26.065 Proposed Developments.

Each department whose duty it is to review and approve new projects or changes to existing projects that result or may result in the creation of noise shall consult with the Code Enforcement Officer prior to any such approval. If at any time the Code Enforcement Officer has reason to believe that a standard, regulation, action, proposed standard, regulation or action of any department respecting noise does not conform to the provisions as specified in this chapter, the Code Enforcement Officer may request such department to consult with him on the advisability of revising such standard or regulation to obtain uniformity. (Ord. 95-38 § 11 (part), 1995)

10.26.070 Prima Facie Violation.

Any noise exceeding the noise level standard as specified in Section [10.26.025](#) and [10.26.030](#) of this chapter, shall be deemed to be prima facie evidence of a violation of the provisions of this chapter. (Ord. 95-38 § 11 (part), 1995)

10.26.075 Violations.

Any persons violating any of the provisions of this chapter shall be deemed guilty of an infraction. (Ord. 95-38 § 11 (part), 1995)

10.26.080 Violations—Additional Remedies—Injunctions.

A. As an additional remedy, the operation or maintenance of any device, instrument, vehicle or machinery in violation of any provisions of this chapter which operation or maintenance causes or creates sound levels exceeding the allowable standards as specified in this chapter shall be deemed and is declared to be a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

B. Any violation of this chapter is declared to be a public nuisance and may be abated in accordance with law. The expense of this chapter is declared to be public nuisance and may be by resolution of the City Council declared to be a lien against the property on which such nuisance is maintained, and such lien shall be made a personal obligation of the property owner. (Ord. 95-38 § 11 (part), 1995)

10.26.085 City Manager Waiver.

The City Manager is authorized to grant a temporary waiver to the provisions of this chapter for a period of time not to exceed thirty (30) days if such temporary waiver would be in the public interest and there is no feasible and prudent alternative to the activity, or the method of conducting the activity, for which the temporary waiver is sought. (Ord. 95-38 § 11 (part), 1995)

10.26.090 Noise Abatement Programs.

A. In circumstances which adopted community-wide noise standards and policies prove impractical in controlling noise generated from a specific source, the City Council may establish a noise abatement program which recognizes the characteristics of the noise source and affected property and which incorporates specialized mitigation measures.

B. Noise abatement programs shall set forth in detail the approved terms, conditions and requirements for achieving maximum compliance with noise standards and policies. Said terms, conditions and requirements may include, but shall not be limited to, limitations, restrictions, or prohibitions on operating hours, location of operations, and the types of equipment. (Ord. 95-38 § 11 (part), 1995)

10.26.095 Manner of Enforcement.

A. The City Code Enforcement Officer is directed to enforce the provisions of this chapter and may issue citations for any violation of the provisions of this chapter or violations of this chapter may be prosecuted or enforced in the same manner as other infractions pursuant to this Code; provided, however, that in the event of an initial violation of the provisions of this chapter, a written notice may be given to the alleged violator which specifies the time by which the condition shall be corrected.

B. No person shall interfere with, oppose or resist any authorized person charged with the enforcement of this chapter while such person is engaged in the performance of his/her duty.

C. In the event the alleged violator cannot be located in order to serve any notice, the notice shall be deemed to be given upon mailing such notice by registered or certified mail to the alleged violator at his last known address or at the place where the violation occurred in which event the specified time period for abating the violation or applying for a variance shall commence at the date of the day following the mailing of such notice. (Ord. 95-38 § 11 (part), 1995)

10.26.100 Severability.

If any provision, clause, sentence, or paragraph of this chapter, or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions of this chapter which can be given effect without the invalid provisions or application and, to this end, the provisions of this chapter are hereby declared to be severable. (Ord. 95-38 § 11 (part), 1995)

The Newport Beach Municipal Code is current through Ordinance 2023-6, passed May 23, 2023.

Disclaimer: The City Clerk's office has the official version of the Newport Beach Municipal Code. Users should contact the City Clerk's office for ordinances passed subsequent to the ordinance cited above.

City Website: <https://www.newportbeachca.gov/>

City Telephone: (949) 644-3005

[Code Publishing Company](#)

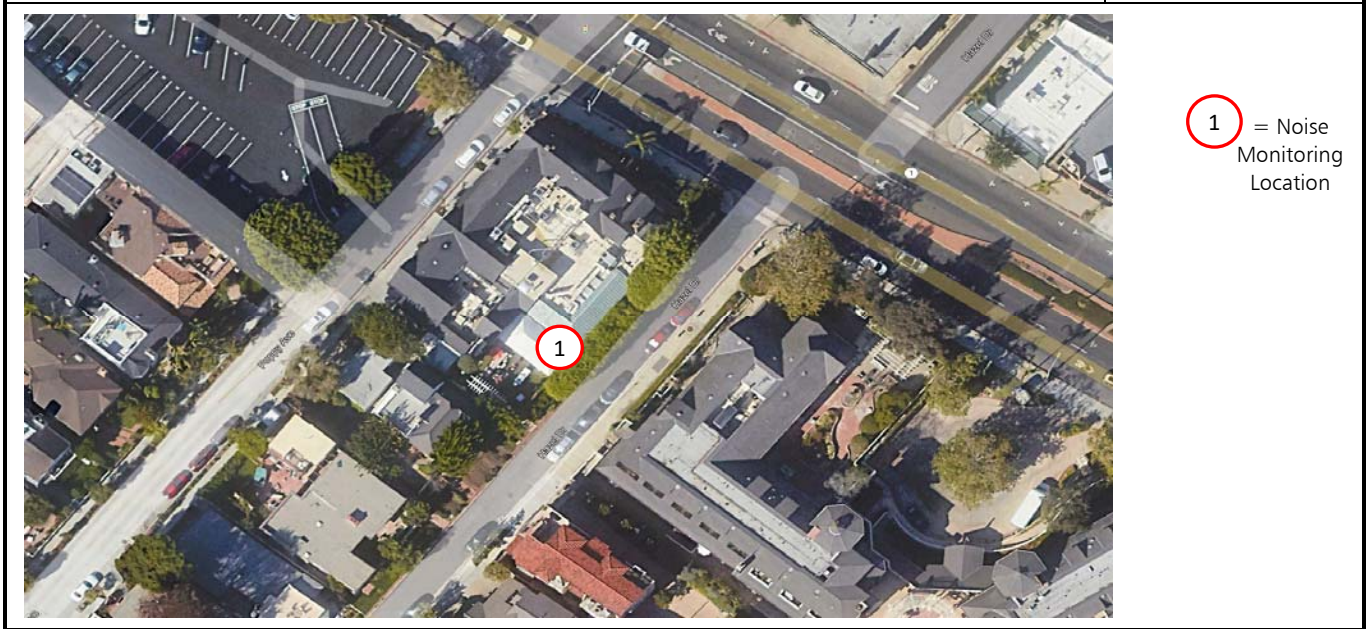
Appendix B

Field Sheets and Photographs

Field Sheet

Project: Five Crowns Restaurant Noise Mitigation Analysis		Engineer: B. Morrison		Date: 09/23/2023
				JN: 3118-2023-02
Measurement Address: 3801 East Coast Highway			City: Newport Beach, CA	
			Site No.: 1	
Sound Level Meter: Piccolo II Serial # 40042 P0222082204 P0222082205	Calibration Record:		Conditions:	
	Input, dB/	Time		
	1 114.0	2:39 p.m.	Temp (Deg. F.): High: 80; Low: 68	
	2 /	/	Windspeed: 9 m.p.h.	
	3 /	/	Direction: Varies	
	4 /	/	Skies: Clear	
	5 /	/		
Calibrator: BSWA Serial # 21387 500732				
Meter Settings:				
<input checked="" type="checkbox"/> A-WTD	<input type="checkbox"/> LINEAR	<input checked="" type="checkbox"/> SLOW	<input type="checkbox"/> 1/1 OCT	<input checked="" type="checkbox"/> _15_ MINUTE INTERVALS
<input type="checkbox"/> C-WTD	<input type="checkbox"/> IMPULSE	<input type="checkbox"/> FAST	<input type="checkbox"/> 1/3 OCT	<input checked="" type="checkbox"/> L(N) PERCENTILE VALUES

Notes: Noise measurements were taken at 15-minute intervals from 2:45 p.m. to 10:30 p.m. on September 23, 2023 during the setup and operation of an outdoor wedding event.	Measurement Type: <input type="checkbox"/> Long-term <input checked="" type="checkbox"/> Short-term
--	--



① = Noise Monitoring Location

Field Sheet - Photos (L-1)

Project: Five Crowns Restaurant Noise Mitigation Analysis	Engineer: B. Morrison	Date: 09/23/2023
		JN: 3118-2023-02
Measurement Address: Noise Monitoring Location 1 (L-1) was taken within the restaurant patio, approximately 3 feet from the DJ station and speakers.	City: Newport Beach, CA	Location No.: 1



Field Sheet - L-1 Data

Project: Five Crowns Restaurant Noise Mitigation Analysis	Engineer: B. Morrison	Date: 09/23/2023	
Measurement Address: Noise Monitoring Location 1 (L-1) was taken within the restaurant patio, approximately 3 feet from the DJ station and speakers.		JN: 3118-2023-02	Location No.: 1
		City: Newport Beach, CA	

Scenario	Start Time	Stop Time	Leq	Lmax	Lmin	L2	L8	L25	L50
L-1 (DJ Station)	2:45 PM	3:00 PM	62.7	73.9	49.4	70.0	66.9	63.4	60.5
	3:00 PM	3:15 PM	66.7	84.7	55.1	74.7	69.2	65.6	63.3
	3:15 PM	3:30 PM	65.7	84.9	51.6	74.3	66.2	62.2	60.7
	3:30 PM	3:45 PM	69.4	86.7	52.7	78.7	73.6	68.0	64.5
	3:45 PM	4:00 PM	68.2	83.8	53.7	77.1	72.5	67.8	62.6
	4:00 PM	4:15 PM	65.7	76.6	54.6	72.3	69.8	66.5	63.1
	4:15 PM	4:30 PM	78.3	88.6	54.1	85.3	84.0	80.1	67.4
	4:30 PM	4:45 PM	81.4	90.6	65.0	87.1	85.2	83.5	79.2
	4:45 PM	5:00 PM	77.0	85.9	65.5	81.0	79.4	78.0	76.7
	5:00 PM	5:15 PM	85.8	94.3	56.5	92.6	90.2	87.6	82.9
	5:15 PM	5:30 PM	88.5	106.0	52.1	97.0	94.2	86.3	84.2
	5:30 PM	5:45 PM	86.2	93.0	73.3	89.8	88.9	87.2	85.7
	5:45 PM	6:00 PM	86.1	93.4	73.2	89.0	88.2	87.3	85.8
	6:00 PM	6:15 PM	85.3	91.4	76.9	88.1	87.2	86.2	85.0
	6:15 PM	6:30 PM	84.8	90.8	68.4	88.0	86.9	85.7	84.6
	6:30 PM	6:45 PM	92.1	108.0	59.1	101.7	97.5	90.4	82.0
	6:45 PM	7:00 PM	82.4	88.8	63.3	87.3	86.0	83.7	81.6
	7:00 PM	7:15 PM	90.8	110.4	65.5	100.2	94.9	89.0	84.2
	7:15 PM	7:30 PM	87.4	102.4	70.0	96.8	92.2	86.0	80.6
	7:30 PM	7:45 PM	79.2	87.0	67.1	82.8	81.7	80.4	78.7
	7:45 PM	8:00 PM	77.9	85.4	66.4	81.6	80.3	78.8	77.5
	8:00 PM	8:15 PM	79.2	84.1	67.0	82.2	81.3	80.1	78.9
	8:15 PM	8:30 PM	91.7	104.4	65.4	98.3	95.4	93.7	88.0
	8:30 PM	8:45 PM	97.8	103.9	90.7	102.0	100.4	98.6	97.1
8:45 PM	9:00 PM	96.4	106.1	90.3	100.1	98.7	97.2	95.9	
9:00 PM	9:15 PM	93	101	82.7	97.6	96.3	94.3	92.1	
9:15 PM	9:30 PM	89.3	97	80.9	93.0	91.7	90.4	88.6	
9:30 PM	9:45 PM	89.6	98.4	78.7	94.0	92.1	90.5	88.7	
9:45 PM	10:00 PM	90.0	101.2	74.1	96.9	93.3	90.4	88.3	
10:00 PM	10:15 PM	78.5	90.4	63.1	86.7	83.0	78.6	75.0	



Appendix C

SoundPLAN™ Noise Calculations Worksheets

Contribution levels of the receivers

Source name	Traffic lane	Level	
		Day	Night
		dB(A)	
1	1.FI	44.4	44.4
Private Event Noise	-	44.4	44.4
2	1.FI	53.6	53.6
Private Event Noise	-	53.6	53.6
3	1.FI	52.8	52.8
Private Event Noise	-	52.8	52.8
3 (Balcony)	1.FI	53.9	53.9
Private Event Noise	-	53.9	53.9
4	1.FI	48.8	48.8
Private Event Noise	-	48.8	48.8
5	1.FI	47.5	47.5
Private Event Noise	-	47.5	47.5

Contribution levels of the receivers

Source name	Traffic lane	Level	
		Day	Night
		dB(A)	
1	1.FI	64.4	64.4
Private Event Noise	-	64.4	64.4
2	1.FI	73.6	73.6
Private Event Noise	-	73.6	73.6
3	1.FI	72.8	72.8
Private Event Noise	-	72.8	72.8
3 (Balcony)	1.FI	74.5	74.5
Private Event Noise	-	74.5	74.5
4	1.FI	68.8	68.8
Private Event Noise	-	68.8	68.8
5	1.FI	67.5	67.5
Private Event Noise	-	67.5	67.5

August 5, 2024

Mr. Ryan O'Melveny Wilson
FIVE CROWNS
3801 East Coast Highway
Corona Del Mar, CA 92625

**Subject: Response to Comment Letter - Five Crowns Restaurant Noise
Analysis, City of Newport Beach**

Dear Mr. Wilson:

RK Engineering Group, Inc. (RK) would like to provide the following response to the July 24, 2024, letter from the Catanzarite Law Corporation and their concerns regarding the Five Crowns Temporary Outdoor Dining Limited Term Permit. We appreciate the opportunity to address the concerns and provide clarification on the noise analyses prepared by RK.

RK has updated the Five Crowns Restaurant Private Event Noise Analysis (Noise Analysis) to address the concerns raised by Mr. Catanzarite and MD Acoustics. The latest updated report is now dated August 5, 2024.

The following responses to comments are provided:

- 1. Purpose of the RK Study:** The purpose of the RK Noise Analysis is to demonstrate that, with the implementation of the project design features, noise levels from the Five Crowns Limited Term Permit (project) will not exceed the City of Newport Beach noise standards at the adjacent residential properties.

RK has been involved with the Five Crowns project for more than a year and has conducted extensive analyses of the project's operations during this time. RK has performed multiple site visits and monitored noise levels on multiple occasions both on the project site and near adjacent residential homes. The Noise Analysis uses advanced 3D noise modeling software, which has been validated based on actual field measurements, the built environment, and topography, to predict noise levels within the surrounding community.

The assertion that the RK report underestimated noise levels is incorrect. The Noise Analysis depicts the maximum permissible noise levels that can be generated by the project to comply with the Newport Beach noise standards. The Noise Analysis assumes all project design features will be implemented, as agreed to by the project.

RK acknowledges that unregulated private events with live and amplified music have the potential to generate noise levels louder than the maximum permissible levels. However, the purpose of the Noise Analysis was not to analyze the loudest potential noise from a private event or loudspeaker, but rather to help design a project that will comply with the City of Newport Beach noise standards. To do this, the project has agreed to modify their operations and regulate its noise levels through extensive design features aimed at limiting noise. It is the modified and regulated noise levels which are analyzed in the Noise Analysis.

2. Design Features for Reducing Noise: The following updated list of project design features is now proposed and will be implemented by the project. Through the implementation of the design features, the project will comply with the City of Newport Beach Community Noise Control standards.

DF-1 The project will install additional barrier shielding and increased wall heights around the perimeter of the outdoor patio area. The proposed screening design and wall heights are shown in Exhibit B-2 (of the Noise Analysis). The barrier shielding will be at least 3.5 pounds per square foot of face area without decorative cutouts or line-of-sight openings between shielded areas. Any gaps will be filled with grout or caulking to avoid noise flanking. The noise control barrier may be constructed using one, or any combination of the following materials:

- Concrete Masonry Unit (CMU) block.
- Stucco veneer over wood framing (or foam core), or 1-inch-thick tongue and groove wood of sufficient weight per square foot.
- Outdoor rated acoustical paneling with sufficient weight per square foot.
- Transparent glass (5/8-inch-thick), acrylic, polycarbonate, or other transparent material with sufficient weight per square foot.

- DF-2** For proper acoustical performance, the rear gate on Hazel Drive will be replaced with one that meets the necessary design requirements described above. The new barrier wall will enclose the space above the gate, up to 10 feet high, and the gate will have a positive seal, free of gaps on all sides, and remain shut during events except to allow emergency access.
- DF-3** The project will install outdoor acoustical paneling with sound absorptive materials along the ceiling of the covered patio area.
- DF-4** The project will maintain dense shrubbery and vegetation along the rear and side walls of the outdoor patio area to help shield neighbors to the south and southeast.
- DF-5** During a private event, all speakers will be located under the covered patio and will be located at least 5 feet away from the property line wall along Hazel Drive. Speakers will be placed no more than 5 feet above ground level and face towards the interior of the site.
- DF-6** The use of heavy bass equipment, including drums, amplified bass guitars, and subwoofers will be significantly restricted such that low frequency noise levels shall not be perceptible outside the property line. DJs will need to use equalizer filters, speaker limiters, or other means to attenuate low frequency noise and cap the maximum signal volume. Low frequency noise (i.e. bass noise) tends to propagate further distances and can penetrate through walls and windows more easily than higher frequencies. Therefore, the project will take special care to reduce low frequency noise levels to the surrounding community.
- DF-7** A noise monitoring program will be implemented during all private outdoor events. The project will engage a professional engineering firm that specializes in acoustics to help establish and train staff on how to effectively conduct noise measurements and run the noise monitoring program. The project will obtain and utilize certified type-2 sound level meters per the City of Newport Beach and ANSI specifications for noise measurements. Noise meters will be calibrated before each use and annual professional equipment certification and calibration will be performed.

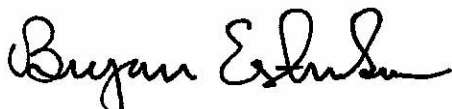
Based on this noise analysis, noise levels on the patio should not exceed 80.0 dBA Leq, when measured for a 15-minute period, or 100 dBA Lmax at any time.

3. **3rd Floor Balcony Noise Receptor:** The Noise Analysis has been updated to show the noise level impacts at a receptor on the 3rd-floor balcony at 352 Hazel Drive. Based on the results of the noise analysis, the outdoor balcony noise levels will be below the City of Newport Beach Noise Standards.
4. **Interior Noise Levels:** The Noise Analysis has been updated to show the estimated noise level impacts at the interiors of the residential receptors. Based on the results of the noise analysis, the interior noise levels will be below the City of Newport Beach Noise Standards.
5. **Occupancy Limits and Noise Levels:** The issue of limiting the number of guests at private events was raised as a means of controlling noise levels. However, it is important to note that the number of guests is not directly correlated to the amount of noise an event can generate. Noise is more significantly influenced by the use of amplified speakers, instruments, and the type of activity taking place. For example, a lively event with 20 people could generate more noise than an event with 100 people, depending on the volume of the music played and the types of activities. Therefore, by capping the maximum permissible noise levels, the project will ensure compliance with the noise standards, regardless of the number of attendees.

We hope this response clarifies our approach and further reinforces the noise mitigation measures the project will implement to reduce its noise levels. If you have any questions regarding this study, please do not hesitate to contact us at (949) 474-0809.

Sincerely,

RK ENGINEERING GROUP, INC.



Bryan Estrada, AICP
Principal

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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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Attachment No. PC 6

Appeal Packet

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Attachment No. PC 7

Five Crowns Response to Appeal Letter
dated October 22, 2024

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October 22, 2024

Delivered Via E-Mail: mwhelan@newportbeachca.gov

Melinda Whelan, Assistant Planner
Community Development Department
City of Newport Beach
100 Civic Center Drive, First Floor Bay B
Newport Beach, California 92660

RE: Applicant's Response to Appeal Filed Over Zoning Administrator's August 15, 2024 Approval of Limited Term Permit and Coastal Development Permit (PA2023-0202)

Dear Assistant Planner Whelan:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

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

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

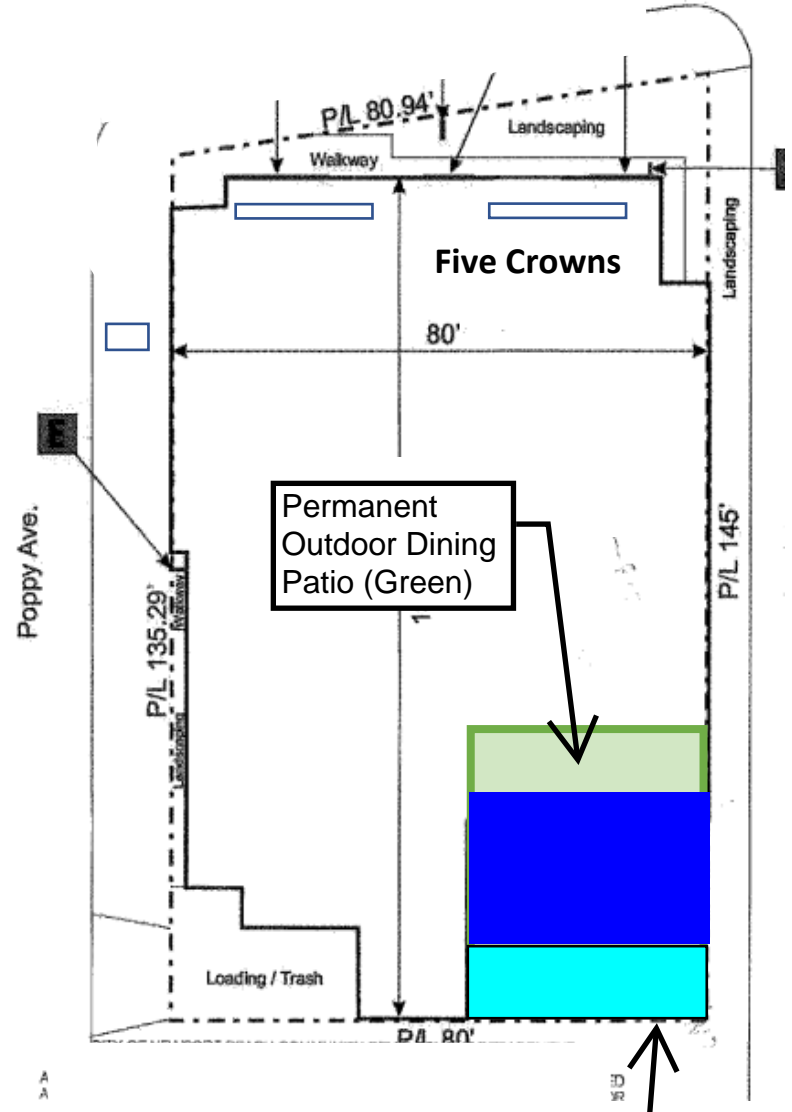
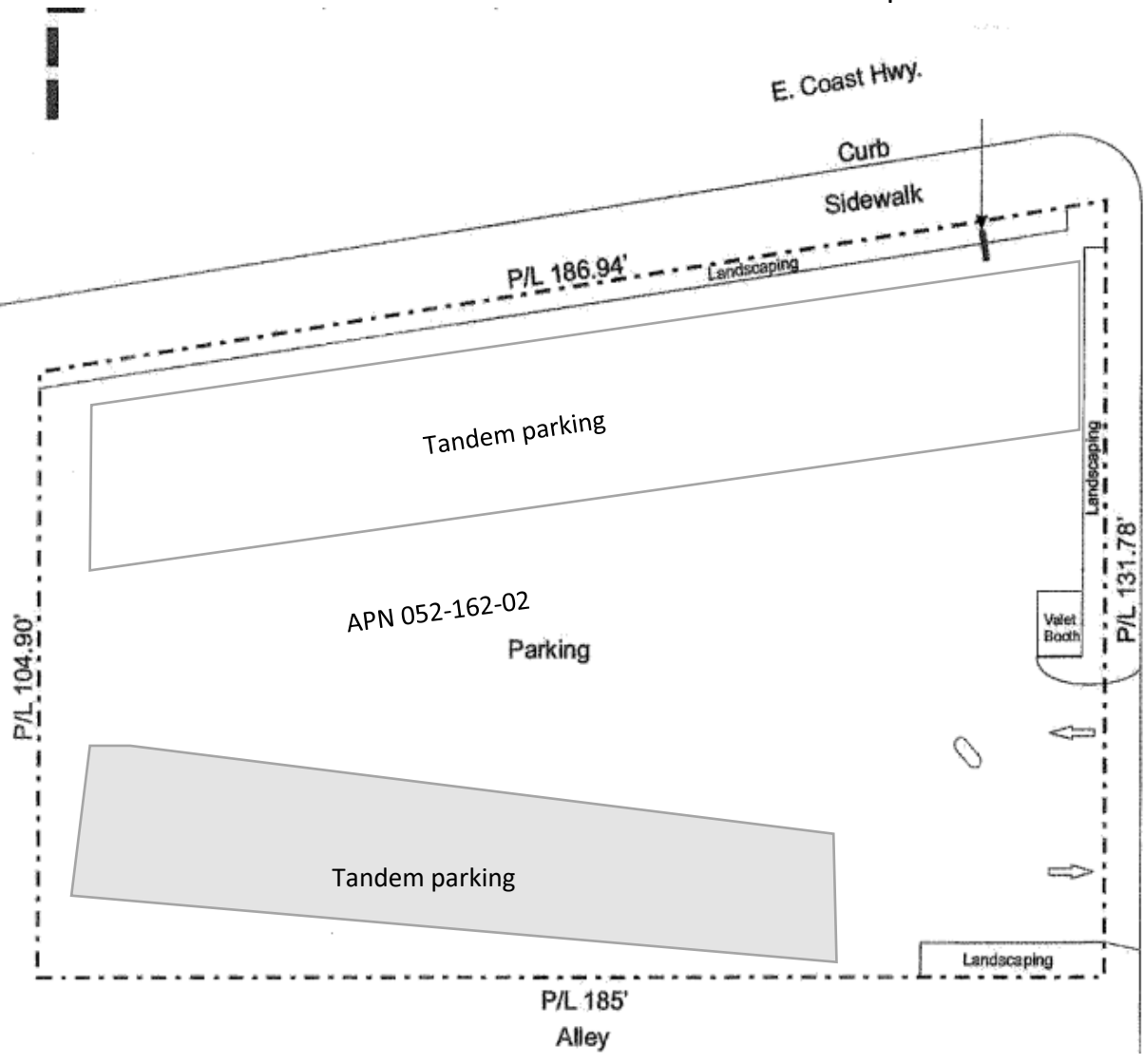
Attachment No. PC 8

Plans

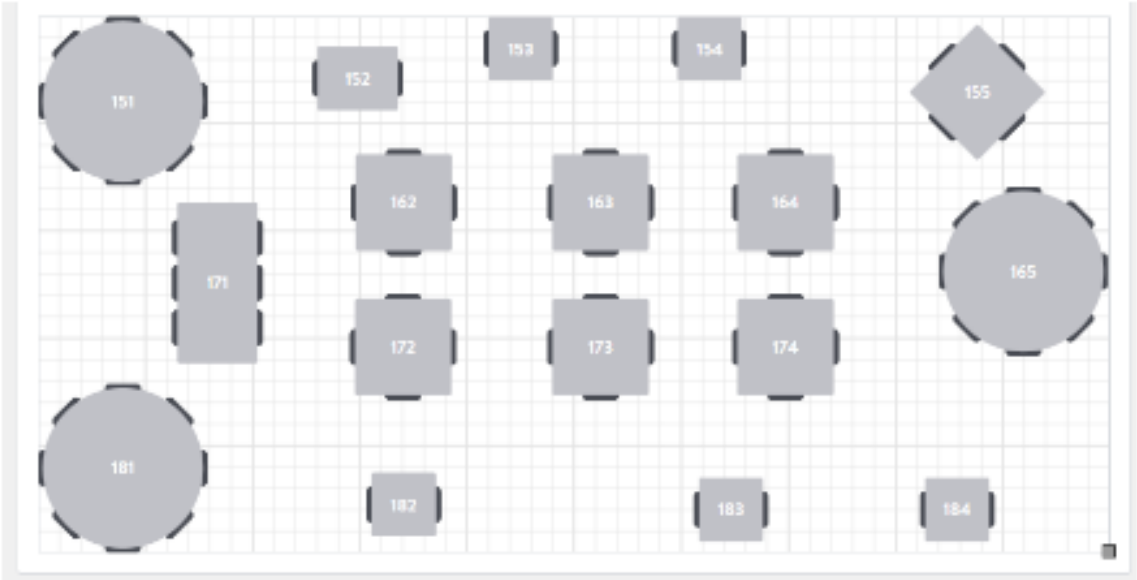
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Five Crowns
3801 East Coast Highway
 Temporary Outdoor Dining Area
 Limited Term Permit and Coastal Development Permit
 October 2023

Temporary Outdoor Dining Patio 1,350 sq.ft. expanded outdoor dining in existing patio/garden (68 seats, refer to seating layout) 850 sqft of the temporary patio is covered by a 28' x 30' x 25' high framed white tent canopy (dark blue). Remaining temporary patio area is uncovered (light blue)



Temporary Outdoor Dining Patio: 1,350 sqft.total.
 Covered: 850 sqft. (dark blue)
 Uncovered: 500 sqft (light blue)



Site Plan



**City of Newport Beach
Temporary Use Permit Program**

Date: 10/24/2023

Business: Five Crowns

**Address: 3801 E. Coast Highway, Corona del Mar, CA
92625**

Business Owner's Signature:

