



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

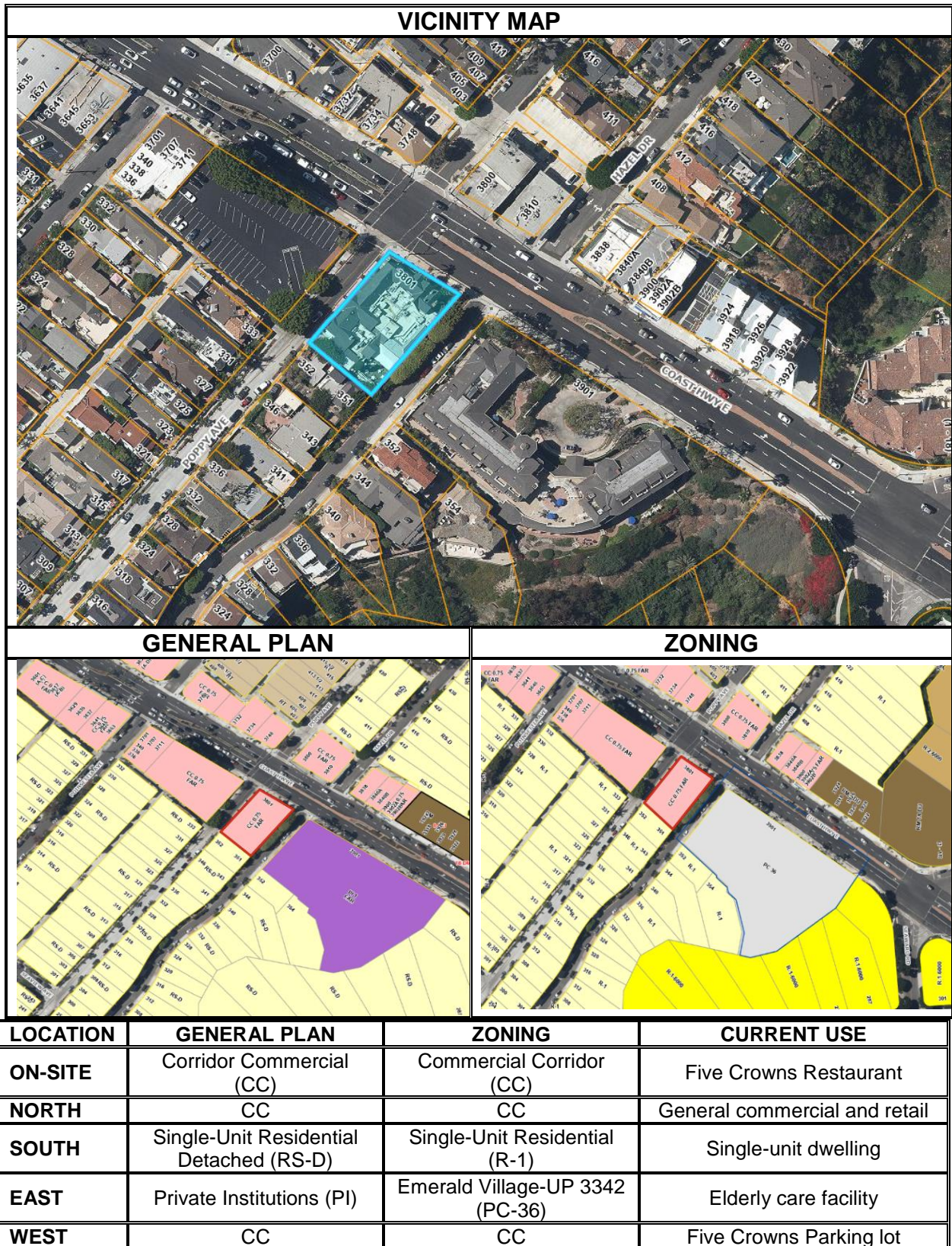
PROJECT SUMMARY

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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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

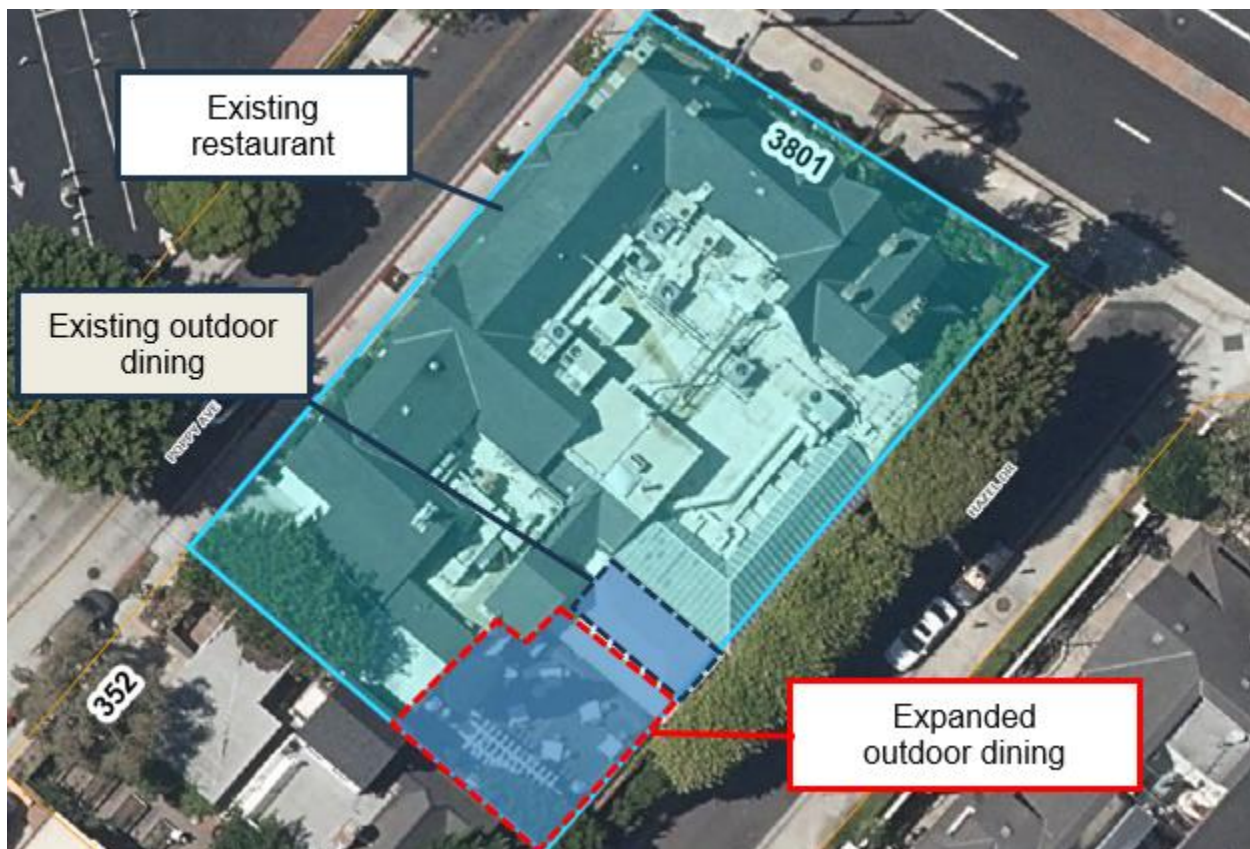
amendment to their conditional use permit to authorize a permanent expansion of the outdoor dining patio

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:


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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