

January 18, 2018, Planning Commission Item 5 Comments

These comments on a Newport Beach Planning Commission [agenda](#) item are submitted by:
Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229).

Item No. 5. BALBOA THEATER RENOVATION (PA2017-152)

CDP Issues

This is the second application the Planning Commission has heard which (for construction to proceed) requires approval of a [Coastal Development Permit](#).

To the best of my knowledge, the Commission has still not been fully briefed on the responsibilities it has in that regard under the new [Title 21](#) (the [Local Coastal Program Implementation Plan](#)) of our Municipal Code.

For roughly 40 years, California has had a commitment to protect and where possible enhance (for the benefit of present and future generations) public views and resources, and public access to them, in the Coastal Zone. This is accomplished through the scrutiny of new development, and an assurance it is sized and sited so as minimize impacts, by approval, on behalf of the state, of CDP's.

The procedures and findings are similar to the more traditional zoning code approvals, but not the same.

The staff report mentions in passing (handwritten page 4) that similar plans for renovation of the Balboa Theater, including a rooftop deck (said at the time to be necessary for the Theater Foundation's fundraising functions), were not only approved locally in 2004 (as it turns out, as [Item 2](#) on the Planning Commission's September 23, 2004, agenda), but "*The project also received a Coastal Development Permit from the California Coastal Commission.*"

The CCC actually saw, and approved, the earlier development plans at least twice: once as CDP No. 5-05-235 in 2007 ([W15a-9-2007](#)) and, after that permit was extended once but allowed to expire, as CDP No. 5-11-073 in 2011 ([W6a-8-2011](#)).

Not yet being fully conversant with the details of [Coastal Act](#) approvals, it would seem wise for the Commission (and staff) to review those earlier CDP's so as to understand the issues CCC staff saw with the previous application.

Although City staff does not seem to see any coastal access issues with this application, Coastal Commission staff did, when they reviewed the very similar proposal in 2007/2011, and because of the potential for theater attendees to displace beach goers (who are a higher priority) from the Balboa Pier Parking lot the Coastal Commission imposed conditions (on the now long-expired former CDP) prohibiting summer weekend matinees and summer evening events starting before 7:30 p.m. on weekdays and 8:00 p.m. on weekends

The Planning Commission may at least want to consider imposing similar conditions to minimize this development's impact on public access to coastal-dependent uses (of which the theater itself, is not one).

Equally, or even more problematic, in 2007/2011 the CCC was able to approve development to 55 feet because, in the absence of a fully certified LCP, the 35 foot height limit promised in the City's Coastal Land Use Plan was regarded as only guidance, that did not have to be strictly adhered to.

However, the City now has a certified LCP and City staff incorrectly assumes the certified LCP Implementation Plan, like the Zoning Code from which much of it is copied, contains a 55 foot exception for "landmark buildings." It does not.

[Section 21.30.060](#) ("Height Limits and Exceptions") is very clear, in multiple places, that in the Shoreline Height Limitation Zone (where the Balboa Theater resides) the only authorization for development to go over 35 feet is for the Lido House Hotel, the Marina Park Lighthouse and boat cranes.

In particular, City staff relies on its claim of a height exception for landmark buildings in NBMC Sec. 21.30.060(D)(9), which indeed mirrors Sec. 20.30.060(D)(9). However, as indicated below, the opening sentence of Sec. 21.30.060(D) clearly precludes that exception's use "*within the Shoreline Height Limitation Zone.*"

It is thus unclear how staff can recommend the PC find development over 35 feet, at this site, to be in compliance with the LCP. Unless staff has some other explanation, the proposal is clearly not in compliance with the LCP and a CDP cannot be approved.

General Comments

Although this is described in the staff report as a "vacant theater," my understanding is it is really only the shell of a former theater building, with little remaining other than a façade (much-modified from the original). So we are talking not so much about preserving an historic landmark building as constructing an almost entirely new building paying homage to a former landmark of sorts at the site.

That distinction, and the property's long lapse as an active theater site, seem important in their bearing on the City's intentions in acting laws for the preservation of certain landmark buildings (and uses).

The renderings make it appear the applicant wants to rather arbitrarily add an over-height rooftop feature which, at least to me, looks very garish, "modern" and out of context with the historic aspect of the building.

Comments on Proposed Resolution of Approval

Fact 3.A.i.2 (on handwritten page 27) and **Fact 3.D.9** (on page 31) refer to the need for “an Operator License,” but there does not seem to be a condition requiring that.

Regarding the appropriateness of additional alcohol licenses in this area, **Fact 3.A.iii.1** on handwritten page 27 does not appear correct to me. Balboa “Village” markets itself as “Home of the Fun Zone” which by definition is intended to attract minors even many think most of the “fun” is now missing. And as the video arcades may fade, they have been replaced with the [Ocean Quest](#) off-shoot of Santa Ana’s Discovery Cube. Intended to attract and educate children, it would certainly seem a nearby use “similar to” a school.

Finding 3.A.v (handwritten page 28) is, I believe perennially misunderstood by the current Planning staff. The question is not whether this applicant, if granted an alcohol license has a potential to become objectionable, but whether the granting of this license is intended to alleviate an objectionable condition somewhere else. If there were facts in support of such a finding, they would presumably be a consideration *in favor* of granting the new license. But it sounds like a very rare circumstance that serving alcohol in one place would alleviate a problem created by serving it somewhere else, and it is certainly not the case here. In my opinion, the correct response to this Finding is almost always “inapplicable,” as it is here.

On handwritten pages 28 and 29, several General Plan policies are paraphrased (in italics) rather than quoted. In **Fact 3.B.2.d** (near top of page 29), the phrase “*at a minimum*” in General Plan Policy LU 6.13.5 is grossly misread, giving the impression the General Plan *requires* the expansion of non-conforming structures. The policy actually reads “*Permit existing commercial buildings that exceed the permitted development intensities to be renovated, upgraded, or reconstructed to their pre-existing intensity and, at a minimum, pre-existing number of parking spaces.*” I believe the placement of the word “and” means it is saying the renovated building can equal (but not exceed) the historic non-conforming use in building intensities, but it must supply *at least as much parking* as existed in the non-conforming configuration.

The promise that this project will “*not reduce* the amount of gross floor area” is rather the opposite of what one would want to see to ensure consistency with LU 6.13.5.

In view of this misreading, the rationale and authority for allowing an expansion of floor area from “6,747” square feet to 8,302 square feet may need explanation.

In **Facts 3.C.3 2** (on handwritten page 30) and **3.M.1.a** (on page 37), I am uncertain how the “existing” floor area of 6,747 square feet (reportedly greater than the lot area of 5,135 sf) has been computed. My understanding is that much, if not most, of the interior flooring was removed years ago. And curiously, when a similar proposal was considered by the PC as [Item 2](#) on its September 23, 2004, agenda, the “existing” floor area is listed as 7,695 square feet ([UP 2004-003](#)). It is unclear where the “6,747” or the “7,695” comes from, or what it represents, as may also be the case with the claim there were once 450 seats.

In **Fact 3.C.3** (near top of page 30), “450” is presumably intended to read “450 seats.”

In **Fact 3.C.4**, I gather the theater may have been *designed* for approximately 450 seats (as the findings seem to require, and may still have a stage?), but my understanding is it currently has *no* seats.

The Facts in support of Findings gloss over the fuzzily written requirement in the codes which make it sound like the use to be continued has to have been a use in existence in 2003, which is not the case here. In previous approvals this was glossed over with a claim the City always had active plans for use, if not the reality of them.

On handwritten pages 30 and 31, and throughout the Resolution, I would suggest “*12 a.m.*” should be replaced with “*12 midnight*” if that is what is desired. The two times a day the clock reads 12:00 are themselves neither “a.m.” nor “p.m.” They are between the two. At the very least, the use of “12 a.m.” for midnight, or noon, is [confusing](#).

Given this, it is not at all obvious if the ordinance saying “*Accessory uses in any landmark theater shall be conducted only between the hours of 8:00 a.m. and 12:00 a.m.*” was intended to refer to an ending hour of noon (allowing 4 hours of use a day, in the morning) or midnight (allowing 16 hours a day). The most plausible reading would seem to be the 4 hour one, so they don’t interfere with the theater operation, which is typically inactive in the morning – but I believe it is midnight that was intended, and it was intended to limit both the primary *and* accessory uses.

In **Fact 3.D.9**, “*and Operator License*” should read “*an Operator License*.”

Fact 3.D.10 refers to requirements, such as for a grease interceptor, that do not appear to be supported by any clear Conditions of Approval (although they might be inferred from requirements to comply with various codes?).

In **Fact 3.D.6**, “*the 1928*” should read “*1928*.” (the previous PC approval, in 2004, claimed it was built in 1927).

On page 36, at the end of **Fact 3.I.1**, there is no “Fact in Support of Finding iii-1 above.” The reference is presumably to “iii” (without the non-existent “-1”).

The **Fact in Support of Finding K** (page 37) is highly questionable. The increased height is being used to improve and provide access to the roof, turning it into a public space, which is clearly intended to increase the intensity of use of the landmark building. The finding does not appear to be asking if the project as a whole is of greater intensity than the historic project, but rather than added height is being used to add intensity, which it clearly is.

Fact in Support of Finding M.1.c is the fatal flaw in the City’s ability to approve a Coastal Development Permit for this proposal. Staff naively assumes Title 21 (the LCP-IP) is the same as Title 20 (Zoning Code). They are not. In particular, Title 21 contains no exception allowing height increases for “landmark buildings” in the Shoreline Height Limitation Zone. On the contrary the LCP-IP is quite adamant that “*Where the project is located in the Shoreline Height Limitation Zone, the project will not exceed thirty-five (35) feet.*” (NBMC [Sec. 21.30.060.C.3.d](#))

Staff claims to have found an exception to this is NBMC Sec. 21.30.060(D)(9), which indeed mirrors Sec. 20.30.060(D)(9), however the opening sentence of Sec. 21.30.060(D), the list of height exceptions, says “*Except as specified in subsections (D)(3), (14) and (15) of this section, the following apply everywhere other than within the Shoreline Height Limitation Zone.*” In other words, within the Shoreline Height Limitation Zone, the only exceptions are: “3. Boat Cranes,” “14. Marina Park Lighthouse Feature,” and “15. Lido House Hotel.” Much as the City may like there to be, there is, at present, simply no “9. Landmark Buildings” exception applicable in the Shoreline Zone.

The **Facts in Support of Finding 3.N** (handwritten page 39) seem inadequate to me. Construction activity at this site clearly has a potential to severely impact access and presumably needs to be mitigated. One would hope to see more particulars of what the promised construction management plan is required to do. Moreover, in the earlier CDP approvals from 2007 and 2011, the Coastal Commission staff found the hours of operation of this (nice, and visitor serving, but not coastal-dependent) use needed to be restricted to avoid impacts on parking for the truly coastal-dependent use of beach going.

Finding 3.P refers to 3.K which as previously indicated seems unsupportable, depending on how the intent of the Finding is read.

In **Decision 4.2**, the appeal under Title 21 is supposed to be filed with the City Clerk, not the Community Development Director, and the text does not make clear to the public if the Title 21 appeal can be made separately from a Title 20 one, or if they have to be made concurrently.

Regarding **Condition 5**, no hours of operation appear to be specified for the theater.

Condition 8 (handwritten page 41) seem ambiguous. Is concurrent occupancy of the theater and rooftop intended to be allowed when an event is *not* in progress? Whatever the intent, the words “*point in*” would not be missed, or alter the meaning, if deleted.

Regarding **Conditions 18-22** (and **55**), the plan on handwritten page 79 indicates a location for trash has not yet been determined.

In **Condition 38**, “*server using*” was probably meant to read “*server serving*.”

In **Condition 57**, “*steeped aisles*” was likely intended to read “*stepped aisles*.”

Regarding **Condition 73**, it is good to see the barriers to the outside dining spots will not be permanently attached to the sidewalk. It would be even better if there was an assurance they would be removed when not in actual use, and even better if no alcohol sales were allowed outside, in which case they wouldn’t be needed at all.

It is difficult to see how **Condition 81** (keeping fencing within private property lines) can be obeyed if the building fills the entire lot with no setbacks.

Ramirez, Brittany

From: Jim Mosher <jimmosher@yahoo.com>
Sent: Wednesday, January 17, 2018 4:56 PM
To: Planning Commissioners
Subject: PC Item 5 comments (Balboa Theater, 1/18/2018)
Attachments: 2018Jan18_PC_AgendaItem5_Comments_JimMosher.pdf

Dear Commissioners and staff,

Please find attached some written comments of Item 5 on tomorrow's Newport Beach Planning Commission agenda.

Yours sincerely,

Jim Mosher

Zdeba, Benjamin

From: John Glass <iamjohnglass@gmail.com>
Sent: Wednesday, January 17, 2018 9:07 AM
To: Zdeba, Benjamin
Subject: Local Playwright - Balboa Project

Hi Benjamin . . . I'm simply reaching out before tomorrow night's public meeting regarding the Balboa Theatre.

I've sent Linda S. several emails regarding this, and just wanted to express my interest and availability. I'm a local teacher and playwright, and through my youth play business I regularly produce youth plays at my school, and elsewhere. I would love to somehow incorporate this within the Balboa Theatre, or perhaps work with someone that does.

I also produce and direct college and adult plays in the area, and have worked with several local theaters. There is a real need for theatre outside of the local theatres in our area.

Thanks for your time! I know that it is early in the planning but just wanted to make myself available. I'm also a long-time paint contractor so this might be something to consider, for various painting needs in the theater.

Thanks again!

John Glass
251-463-8650, Newport Beach

Playwright/Teacher

(You may text if you prefer.)



January 17, 2018

Mr. Benjamin M. Zdeba, AICP
Associate Planner
Community Development Department
City of Newport Beach City Hall
100 Civic Center Drive
Newport Beach, CA 92660

RE: BALBOA THEATER SUPPORT – Project Proposal

Dear Mr. Zdeba:

Mastroianni Family Enterprises, Ltd, dba Jay's Catering Company, has been the premier caterer in Orange County for 50 years. We have extensive knowledge and experience in all aspects of Event Catering, from Corporate, Non-Profit, Social and most notably Venue Catering for weddings. In addition, we have established two Café/Bakery locations in Orange County, one in San Clemente and the other in San Juan Capistrano.

We have partnered with The LAB Holding, as an exclusive caterer for their event venue, The Casino San Clemente for over five years. In addition, we have built a Café/Bakery on their site within the Casino building for over four years. This combination of operating a Café/Bakery within an Event Venue has been very successful to the Community in San Clemente as well as the surrounding areas in Orange County.

Our Partnership with LAB Holdings as our landlord, has allowed us the unique opportunity to create this vision of an additional asset of a Café along with the exclusive catering for all of the events at The Casino San Clemente.

We have found our partnership to be mutually beneficial to both parties, and the reputation that has been created in the Community with the Café, Weddings and many Social and non-profit events has been very well received.

We would look forward to having the opportunity to be a part in their next venture at the Balboa Theater, as we feel they are certainly the right fit for this type of project, given their unique vision and their successful years of experience in the genre.

We would encourage your support for this approval process.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Breiter".

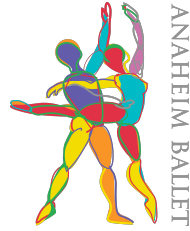
Barbara Breiter, CFO
Jay's Catering Company

phone
(714) 636-6045

email
INFO@JAYSCATERING.COM

web
JAYSCATERING.COM





Lawrence and Sarma Rosenberg
Founding Artistic Directors

January 17, 2018

Mr. Benjamin M. Zdeba, AICP
Associate Planner
Community Development Department
City of Newport Beach City Hall
100 Civic Center Dr.
Newport Beach, CA 92660

Dear Mr. Zdeba:

Anaheim City Council proclaimed Anaheim Ballet to be the resident ballet company and community outreach program for the City of Anaheim in August 1997. The company has been a leading arts organization in Orange County for the past 35 years (formerly Coast Ballet Theatre in San Juan Capistrano).

Mayor Tom Tait introduced us to Shaheen and Linda Sadeghi almost eight years ago. The mayor was familiar with The Lab Holding's master works in Costa Mesa, The LAB and The CAMP, and wanted us to meet the creative force behind those projects. He was understandably enthusiastic about the prospect of future Lab Holding projects in Anaheim.

Those projects came to fruition: The Packing House and Center Street Promenade. For Anaheim Ballet, both of those sites have become immediate "take-to's" for both local and international dancers that come to work with the Anaheim Ballet. They are innovative, they are tourist and community site magnets, and they are solvent.

The Sadeghi's interest in the arts is not new. Over the years, Anaheim Ballet has performed both indoors at the Packing House and outdoors at the Farmer's Park. Just imagine if Lab Holding had a flexible theater for performances by performing artists.

Our costumes are packed; we're ready to dance. We have complete confidence in Lab Holding's ability to restore, repurpose and re-dignify the beautiful Balboa Theater.

Please support the rebirth of the Balboa Theater through the approval process.

Sincerely,

Lawrence Rosenberg
Executive Director

714 490.6150 Company 714 520.0904 School 714 520.0914 Fax
280 E. Lincoln Ave. Anaheim, CA 92805
www.anaheimballet.org info@anaheimballet.org
Anaheim Ballet is a 501(c)3 not for profit organization, tax ID # 95-3645705

Ramirez, Brittany

Subject: FW: Balboa Theater - Letter of support
Attachments: Letter of Support.pdf

From: La French Touch [<mailto:frenchtouchcompany@gmail.com>]

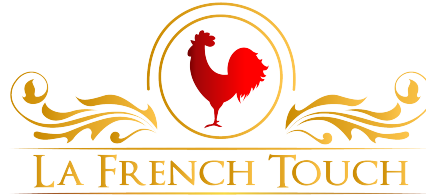
Sent: Thursday, January 18, 2018 2:36 PM

To: Zdeba, Benjamin <bzdeba@newportbeachca.gov>

Subject: Balboa Theater - Letter of support

Best regards

Armnius Jérôme
La French Touch
704 E balboa blvd
Newport Beach, CA, 92661
(424) 333-8767



Letter of support

Thursday January 18,

I, the undersigned, Mr. Armnius Jerome, owner of La French Touch, located at 704 E Balboa Blvd, Newport Beach, CA, 92661, hereby certify my support for the restoration project to the historic Balboa Theater.

Indeed, my team and I think it would be beneficial for the peninsula that such a project succeed.

We regularly discuss with our clientele, most of whom live on the peninsula, for this iconic place and we look forward to its reopening.

Finally, we think that after several years of closure, it is high time to give a new image to the FUN ZONE of Balboa.

Armnius Jerome
Owner
704 E Balboa Blvd
Newport Beach, CA, 92661
1(424)333-8767