

**NEWPORT BEACH PLANNING COMMISSION MINUTES
CITY COUNCIL CHAMBERS – 100 CIVIC CENTER DRIVE
THURSDAY, MARCH 21, 2019
REGULAR MEETING – 6:30 P.M.**

I. CALL TO ORDER – The meeting was called to order at 6:30 p.m.

II. PLEDGE OF ALLEGIANCE – Chair Zak

III. ROLL CALL

PRESENT: Chair Peter Zak, Vice Chair Erik Weigand, Secretary Lee Lowrey, Commissioner Curtis Ellmore, Commissioner Kory Kramer

ABSENT: Commissioner Lauren Kleiman, Commissioner Peter Koetting

Staff Present: Community Development Director Seimone Jurjis, Deputy Community Development Director Jim Campbell, Assistant City Attorney Yolanda Summerhill, City Traffic Engineer Tony Brine, Associate Planner Chelsea Crager, Assistant Planner Liz Westmoreland, Planning Technician Patrick Achis, Administrative Support Technician Amanda Lee

IV. PUBLIC COMMENTS

None

V. REQUEST FOR CONTINUANCES

None

[The Planning Commission heard Item Number 2 before Item Number 1.]

VI. CONSENT ITEMS

ITEM NO. 1 MINUTES OF MARCH 7, 2019

Recommended Action: Approve and file

Chair Zak announced that Commissioners Ellmore, Lowrey and he will abstain from voting on the minutes as they were not present for the March 7 meeting.

Motion made by Chair Zak and seconded by Vice Chair Weigand to continue the minutes for the March 7, 2019, meeting.

AYES: Zak, Weigand, Lowrey, Ellmore, Kramer

NOES: None

ABSTAIN: None

ABSENT: Kleiman, Koetting

VII. PUBLIC HEARING ITEMS

ITEM NO. 2 Mesa Drive Townhomes (PA2017-218)

Site Location: 20462 Santa Ana Avenue and 1501 Mesa Drive

Summary:

Demolition of two existing single-family residences and the construction of a new eight-unit residential condominium development. The development would consist of two separate buildings, containing four units each. Each unit will consist of four stories (including a roof deck) with an attached two-car garage. Guest parking and common open space is included. A tract map is requested to merge the two existing lots and allow for each of the eight units to be sold individually as condominiums.

Recommended Action:

1. Conduct a public hearing;
2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15332 under Class 32 (In-Fill Development) of the CEQA Guidelines because it has no potential to have a significant effect on the environment; and
3. Adopt Resolution No. PC2019-008 approving Major Site Development Review SD2017-008 and Tentative Tract Map No. NT2017-003.

Assistant Planner Liz Westmoreland reported the project is located at the corner of Santa Ana Avenue and Mesa Drive and borders the City of Costa Mesa and the County of Orange. The project is located within the Multi-Unit Residential (RM) General Plan land use category, which allows for the construction of up to 13 dwelling units, and within the Multi-Unit Residential Detached (RMD) zoning district, which is a unique zoning district isolated to this area of the City. The City annexed the property in 2008 and adopted the County's zoning for the property. When adopted, the zoning allowed attached units. With the update of the Zoning Code in 2010, an error removed the allowance for attached units; however, most of the development in the area consists of attached units.

Assistant Planner Liz Westmoreland further noted the project site currently contains two single-family residences. The adjacent Santa Ana Cottages project will contain seven condominium units and will reach the same maximum height as the proposed project. Existing large hedges and walls that encroach into the front yard setback and impede visibility at the intersection will be removed, and the project will comply with Zoning Code standards including the traffic visibility triangle. The two parcels contain three driveways, two off Santa Ana Avenue and one off Mesa Drive. The project will have one driveway in the center of the site that provides access to Santa Ana Avenue. Each unit will have a two-car garage, which the Municipal Code requires to be maintained free and clear of any obstructions. An area for trash and other types of storage is located outside the garage dimensions. Four guest parking spaces will be located at the rear of the property. The project provides open space and adequate areas for turning around. Two main levels of living space are located above the garage. The fourth floor contains a media or bonus room and two private roof decks for the individual use of the units. The project is subject to development fees including fair share traffic fees, Transit Corridor Agency (TCA) traffic fees, and park fees.

Assistant Planner Liz Westmoreland further indicated the project is consistent with all development standards contained within the Zoning Code, including height, setbacks, and floor area. The project provides adequate code-required parking. The Zoning District does not have a requirement for open space; however, the proposed open space complies with RM zoning requirements for open space. The main frontage of the property is along Mesa Drive. The frontage has substantial building articulation and architectural treatment. Public Works has reviewed and approved the design for the driveway and sidewalk improvements. At the fourth floor, the applicant has pulled back the building to provide rooftop decks and visual relief. The project will be developed approximately 3 feet lower than the existing grade of the adjacent sidewalk that facilitates the inclusion of the fourth floor. Three public comments support the project, and two public comments oppose the project generally related to environmental issues, traffic and signal concerns, density and compatibility, and outreach with the City of Costa Mesa.

Assistant Planner Liz Westmoreland further stated the project complies with the requirements of the Class 32 California Environmental Quality Act exemption for in-fill development as it is replacing a residential use with another residential use consistent with the General Plan. Staff does not anticipate any environmental impacts related to air quality or noise, as compliance with standard regulations would be sufficient. The City's Traffic Engineer contacted the City of Costa Mesa to evaluate traffic safety concerns about the intersection. Ms. Westmoreland referred to the City Traffic Engineer for further information regarding the intersection. The project is compatible with the general area, in particular the RMD zone and adjacent Santa Ana Heights, as many condominium and apartment developments are located in the corridor. Staff recommends approval of the project.

In reply to Vice Chair Weigand's inquiries, Assistant Planner Westmoreland advised that the Fire Department reviewed the plans and did not object to the building overhangs at the driveway. The Fire Department reviewed the driveway to determine if there was adequate space for fire access. Community Development Director Jurjis indicated the clearance for vehicles at the overhangs is approximately 8 feet 2 inches, which is the minimum clearance for projects of this type in the area and the standard for parking structures.

Commissioners reported no ex parte communications.

Chair Zak opened the public hearing.

Anastasios Nikolaou, applicant/owner, related that most projects in the corridor have driveways in the center of the lot. He attempted to set back the mass of the buildings from Mesa Drive. With the first floor located below grade, passersby will see primarily the second and third floors. Based on comments from neighbors and comments about the Santa Ana Cottages projects, he utilized quality materials such as Hardie board, metal shingles, and smooth stucco. Removing the hedges and walls will increase visibility of traffic for vehicles exiting the site. The neighbors like the project.

Jim Mosher believed the four-story buildings are not compatible with the neighborhood. Public comments that the project should blend with the neighborhood are correct. He inquired about the adequacy of drainage for the site and egress from the fourth floor in the event of a fire. With more units on the site, more cars will be entering the street near the intersection. The project is clearly not consistent with the Zoning Code requirement for detached multifamily units. He did not understand why the annexed property is not part of the Santa Ana Heights specific plan.

Berkley Egenes expressed concern about traffic and safety at the intersection. He opposed any development at the intersection until something could be done to increase safety at the intersection. Potentially 20 cars will be added to the busiest street in Costa Mesa/Newport Beach. Three different speed zones exist for traffic approaching the intersection. The project design is aesthetically pleasing.

Malcolm Wentz expressed concern about the height of the project. He questioned whether four stories would set a precedent for the City. Rooftop decks are not open space. Adding 16 cars to the street at busy times is an accident waiting to happen. The project needs to be smaller.

Chair Zak closed the public hearing.

In reply to Vice Chair Weigand's and Chair Zak's questions, City Traffic Engineer Tony Brine related that the streets around the intersection are controlled by the City of Costa Mesa. The traffic signal is controlled by the County of Orange. Costa Mesa is working on a sidewalk project at the intersection and has no plans for additional projects. The border between Newport Beach and Costa Mesa is essentially the property line of the project site. The City has not discussed improvements at the intersection with the City of Costa Mesa. He did not know whether the golf course is located within the City of Costa Mesa or the County of Orange. The proposed driveway will be in the approximate location of an existing driveway, but it will be twice as wide as the existing driveway. The project will generate a net of approximately 40 additional daily trips, which is not considered an impact. He did not see anything related to access to the project site that would cause an issue.

Commissioner Kramer understood the "D" in RMD does not mean detached. Both attached and detached structures are located within the RMD zone. The project conforms with the Zoning Code. Assistant Planner Westmoreland added that the prior Zoning Code allowed attached and detached units. Development standards do not provide guidance as to the detached nature of structures. The Planning Commission and City Council utilized staff's interpretation of the RMD zone to approve the previous Santa Ana Cottages project that includes attached units.

In answer to Chair Zak's queries, Assistant Planner Westmoreland advised that Public Works, the City's geotechnical expert, and the Building Division have reviewed the project to ensure it will comply with drainage requirements. Additional studies and a will-serve letter from various agencies serving the site will be needed for the project. A preliminary Water Quality Management Plan (WQMP) for the site has been reviewed and found the site has adequate drainage via pavers and grass.

In response to Vice Chair Weigand's inquiries, Assistant Planner Westmoreland reported both rooftop decks are accessible via the media or bonus room. City Traffic Engineer Brine indicated cars exiting the property can legally turn either left or right onto Santa Ana. Because the driveway is near the intersection, a left turn will require driver judgment.

Commissioner Kramer noted Finding A (1) refers to multiunit residential detached. Multiple uses of RMD within the staff report is confusing. The Zoning Code has not been amended to rectify the erroneous omission of attached units. On its face, the Zoning Code does not allow attached units in this area. Deputy Community Development

Director Campbell clarified that the "D" in RMD stands for detached. When the City annexed the property from the County of Orange in 2008, the property had an RMD designation, but it was for both attached and detached units. Many attached units were built in the RMD zone under the County's jurisdiction. When updating the Zoning Code in 2010, staff erroneously included the word detached in the title of the zone. Technically, the project is inconsistent with the description of the RMD zone. As part of the team that updated the Zoning Code in 2010, Deputy Community Development Director Campbell stated the 2010 update was not intended to restrict the RMD zone to detached units. The project may be inconsistent with the existing Zoning Code, but the language of the Zoning Code contains an error. Staff does not feel the issue is a significant impediment to approving the project. In reply to Commissioner Kramer's questions, Deputy Community Development Director Campbell indicated the Code has not been amended because of the priority of other work. As resources permit, staff is updating the Zoning Code for a variety of issues as they arise.

Chair Zak understood the error made in updating the Zoning Code, but the project is inconsistent with the Zoning Code as written. Approval of the Santa Ana Cottages project is not sufficient justification for approving this project.

In answer to Vice Chair Weigand's query, Assistant Planner Westmoreland indicated the Santa Ana Cottages project consisted of attached units.

In reply to Commissioner Lowrey's inquiry, Community Development Director Jurjis advised that an amendment to the Zoning Code likely would not be placed on the Council's agenda within three months.

In response to Chair Zak's question, Assistant City Attorney Yolanda Summerhill reported the Planning Commission can direct staff to modify the Zoning Code. The timing of the amendment with the issuance of a building permit is unknown, but staff can ensure the modification to the code is properly implemented.

Chair Zak reopened the public hearing.

In answer to Chair Zak's inquiries, Mr. Nikolaou advised that he accepts the proposed conditions of approval and could accept an additional condition of approval requiring amendment of the Zoning Code prior to issuance of a building permit.

Community Development Director Jurjis explained that the Planning Commission should direct staff to process an amendment to the Zoning Code rather than add a condition of approval. Assistant City Attorney Summerhill clarified that conditions of approval are requirements for the applicant. In this case, staff would be responsible for having the Code amended. The direction to staff should state the ordinance amending the Zoning Code is to be implemented prior to the issuance of a building permit for the project.

In reply to Commissioner Kramer's queries, Deputy Community Development Director Campbell related that staff will present several Zoning Code errors to the City Council in April in order to initiate Zoning Code amendments. The RMD zone revision may be included with other revisions.

Chair Zak closed the public hearing.

In response to Vice Chair Weigand's questions, City Traffic Engineer Brine reported he did not inquire about the City of Costa Mesa's approval of the project. Costa Mesa's Traffic Engineer indicated a total of four accidents has occurred at the intersection over the prior three years. Four accidents at one intersection over a three-year period is not unusual. The accident history and the sidewalk project were the topics of his conversation with Costa Mesa's Traffic Engineer. He did not know whether approval of the project fell within the City of Costa Mesa's purview. He is willing to work with the City of Costa Mesa to evaluate improvements at the intersection.

Vice Chair Weigand was not comfortable approving the project until the City of Costa Mesa approved the project because, while the property was within the City of Newport Beach, the residents were traveling on City of Costa Mesa streets. He hesitated to approve the project when cars exiting the property, which is on the corner, can legally make a left turn across traffic. City Traffic Engineer Brine clarified that visibility at the intersection will be improved with the setback of the building and the removal of the shrubs and walls.

In answer to Commissioners' queries, Assistant Planner Westmoreland explained that building height is measured from the grade that exists prior to construction. The grade for the purpose of height measurement is determined

by an average of the elevation of the four corners of the proposed structure. The maximum height is 33 feet if the roof slope is at least 3:12 pitch, which the project proposes. Because of the lowering of the grade by approximately 3 feet, the structures can accommodate four stories and comply with the maximum height requirement. The maximum height for the site is 33 feet per the Zoning Code. Chair Zak added that the structures' pads will be 3 feet below grade. If the structures were constructed at grade, the building heights would be 36 feet, which is 3 feet over the height limit. Assistant Planner Westmoreland clarified that building height is measured from the average of the existing grade. If the buildings are constructed 3 feet below grade, the site can accommodate 36-foot tall buildings. The height regulation for flat elements such as railings, parapets, and flat roofs is lower than a building height limit. The traditional roof slope for most homes is a 3 and 12 pitch, and the maximum height in the zone is 33 feet. The grade existing prior to construction is used to measure a building's height.

Deputy Community Development Director Campbell added that Assistant Planner Westmoreland described the standard practice for lots throughout Newport Beach. Excavating a site to provide higher ceilings or another story is not uncommon. Assistant Planner Westmoreland advised that the staff report contains the primary development standards for the RMD zone. Development standards regulate the overall height of buildings rather than the number of stories. The applicant is proposing four stories within a building height of 36 feet, but it is 33 feet high as measured from the existing grade. The plans show approximately 8-foot ceilings within several floors of the units. The City does not have standards for ceiling heights beyond building code requirements. Deputy Community Development Director Campbell stated a three-story at-grade building with higher ceiling heights would have the identical building mass and virtually the same appearance as the proposed structures.

Commissioner Kramer appreciated the applicant's strategy to maximize the unit count on the parcel by combining the two parcels. He was concerned about the building height and the number of stories, but he could make the findings for the project.

Motion made by Commissioner Kramer and seconded by Commissioner Ellmore to find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15332 under Class 32 (In-Fill Development) of the CEQA Guidelines; to adopt Resolution No. PC2019-008 approving Major Site Development Review SD2017-008 and Tentative Tract Map No. NT2017-003; and to direct staff to prepare an amendment to the Zoning Code rectifying the error in the RMD zone.

Substitute Motion made by Vice Chair Weigand to deny the project based on Finding C.2 regarding hazards to persons residing or working in the neighborhood.

Substitute Motion failed for lack of a second.

Chair Zak had similar concerns to Commissioner Kramer, but liked many elements of the project, including the aesthetics. The ceiling heights will likely be a challenge to marketing the units. He did not like the four-story product, but the project complies with development standards and he can make all the findings.

AYES: Zak, Lowrey, Ellmore, Kramer
NOES: Weigand
ABSTAIN: None
ABSENT: Kleiman, Koetting

ITEM NO. 3 E Art Gallery Appeal (PA2018-177)
Site Location: 2721 East Coast Highway

Summary:

Based on new information provided to them, the City Council requested the Planning Commission reconsider Minor Use Permit Application No. UP2018-014. The application is for the approval to operate a tattoo studio (Personal Services, Restricted land use) in an art gallery within an existing 513 square foot commercial space. Proposed hours of operation are 10:00 a.m. to 8:00 p.m., daily.

Recommended Action:

1. Conduct a public hearing;

2. Find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) of the CEQA Guidelines because it has no potential to have a significant effect on the environment; and,
3. Adopt Resolution No. PC2019-009 approving Minor Use Permit No. UP2018-014.

Chair Zak announced the City Council requested the Planning Commission reconsider the project after the City Council received Melinda Luthin's letter that provided new information. Because Chair Zak was not present for the Planning Commission's hearing regarding the item, he has reviewed the staff report, recording, and minutes for the hearing.

Commissioner Ellmore advised that he also has reviewed the recording and minutes for the prior Planning Commission hearing.

Associate Planner Chelsea Crager reported a minor use permit is required for the tattoo service aspect of the business. The application was originally submitted on July 30, 2018. On December 6, 2018, the Planning Commission denied the application, and the applicant appealed the decision on December 20, 2018. On February 26, the City Council heard the appeal and referred the application to the Planning Commission for reconsideration based on new information provided in Ms. Luthin's letter. The location is a 513-square-foot suite. The proposed hours of operation are 10:00 a.m. to 8:00 p.m. Two tattoo artists will work by appointment only with no walk-in appointments. The space will also function as an art gallery with art instruction and classes. The zoning for the location is Commercial Corridor (CC). Much of the surrounding area is zoned R-2 (Two-Unit Residential). The Zoning Code considers tattoo uses as personal service, restricted use. State law regulates tattoo uses through the California Safe Body Art Act, which is enforced by the County of Orange. Federal law considers tattooing as a form of free expression that is protected by the First Amendment. Restricted personal service establishments may need to be dispersed from other similar uses to minimize adverse impacts. Ms. Luthin's letter raised concerns about the identities of the applicant and appellant; the inaccuracy of the project plans; concerns of the gallery being an adult-oriented business; the structure conforming with requirements of the zone; and the applicant's ability to comply with health regulations. The applicant and appellant are Savaanah Gallegos/E Art Gallery. The applicant proposes live models, who will be drawn or painted; however, the applicant does not propose the use of nude models. As a result, the gallery would not be considered an adult model studio as that term is defined by the Municipal Code. Staff has added a condition of approval prohibiting an adult model studio. Staff visited the site and found that the square footage stated in the original application was inaccurate. The applicant submitted revised plans showing an accurate square footage of 513 square feet. Staff does not believe the applicant intended to mislead the City. County records indicate the structure was built in the 1940s. The structure does not conform with floor area requirements, and the site does not provide on-site parking. Staff believes the structure is legal nonconforming in both respects. A use that requires parking at the retail rate of one space per 250 square feet of space can go into the site with no discretionary review. Examples of uses that require a retail rate of parking are small fitness studios, barbershops, and retail uses. The County will conduct an inspection of the premises and, if the applicant were unable to comply with requirements, the County will not issue a body art facility permit. Staff believes the applicant will be able to comply with County health regulations for tattoo uses with minor alterations. Staff believes sufficient facts exist to support the findings for approval. Currently, five permitted tattoo studios are operating in the City. At 4 miles, Agape Art Collective is the tattoo use closest to the proposed site.

In response to Commissioner Ellmore's inquiries, Associate Planner Crager advised that County regulations for tattoo uses include hot water at a specific temperature, nonpermeable walls and floors, sharps disposal, and the separation of uses within a suite, among other requirements. The County conducts an inspection for compliance with regulations. The applicant has not proposed any signage; however, any signage would need to comply with provisions of the Zoning Code. The City cannot regulate the content of signage.

In reply to Commissioner Lowrey's questions, Assistant City Attorney Summerhill explained that the City cannot inhibit a Constitutionally-protected right. The Planning Commission is limited to imposing time, place, and manner restrictions. Because the government provides more protections for firearms, she was not comfortable answering questions about uses involving firearms.

In answer to Vice Chair Weigand's queries, Associate Planner Crager indicated the studio space has windows that face into the building. Window signage is subject to regulations. The applicant may wish to place signage above the walkway leading to the gallery.

Vice Chair Weigand disclosed that he has spoken with the applicant. Chair Zak and Commissioners Kramer, Ellmore, and Lowrey disclosed no ex parte communications.

Chair Zak opened the public hearing.

Savaanah Gallegos, applicant, stated operational characteristics of the gallery have not been altered. She is seeking a minor use permit to operate only the body art aspect of her business. Focusing on the tattoo aspect has caused many people to falsely assume she is opening an average tattoo parlor. E Art Gallery will be similar to a private showroom and will offer minimal art classes and body art services limited to tattoos, all of which will be conducted on separate occasions. E Art Gallery, LLC was registered with the Secretary of State on March 14, 2019. Since April 2018, the studio has been utilized as a creative space for painting and drawing and as storage for art supplies. No art created or manufactured at the location has been sold. Soon she will obtain a business license in order to sell art. The studio will be used primarily as a creative space. While working on commissioned art, she will not conduct body art, teach an art class, or hold an art studio. Private and invitation-only art shows will be held for private collectors to view displayed art. She will obtain a special event permit as required for events. Three-hour, live, figurative drawing classes for up to seven students will be held monthly. Nudity will not be permitted during live figurative drawing classes; therefore, an adult-oriented business permit is not needed. One-on-one art classes suitable for younger people will be offered once or twice a month separate from drawing classes. No body art appointments will be conducted during art classes. Ms. Gallegos agreed to a condition of approval prohibiting body art appointments during art classes. Body art stations are portable and will be placed in storage during art classes. To comply with health regulations, a privacy partition will divide the areas. Body art appointments will be minimal. Hours of operation will 10:00 a.m. to 8:00 p.m. daily, privately, and by appointment only. The final appointment of the day will be no later than 7:00 p.m. The studio will not offer piercing services. Walk-in customers will be turned away respectfully and asked to schedule an appointment at a later date. An interval of 30 minutes will be scheduled between appointments. A maximum of two artists will conduct body art at any one time. Clients are not allowed to attend appointments with others; therefore, loitering will not be an issue. The California Safe Body Art Act does not prohibit children from being present during body art appointments. E Art Gallery will not allow unattended children in the facility unless parents have consented to a one-on-one art session. She, Edgar Aguirre, and E Art Gallery have been registered with the Orange County Health Department since June 2018. The California Safe Body Art Act does not contain a standard for ceilings but requires a ceiling in a facility. The walls in the facility are painted with a commercial-grade, non-absorbent paint. The facility is not required to have a separate toilet if a common toilet is available. The sink inside the facility is not required to have its own water heater but is required to provide water at 120 degrees Fahrenheit. Only single-use, pre-sterilized sharps and tools will be used and will be disposed through a licensed waste hauler. The size of the studio is 513 square feet. Cosmetic, dental, hair, nails, and massage parlors are located around the studio. In the appeal statement, she mentioned tattooing is protected under the First Amendment because she has rights as an American citizen who wants to open a business. Body art is zoned for Corona del Mar.

In reply to Chair Zak's question, Ms. Gallegos accepted the proposed conditions of approval.

In answer to Vice Chair Weigand's query, Associate Planner Crager reported the Planning Commission did not modify the conditions of approval provided at the December 6 hearing. Staff has added some conditions of approval to those provided at the December 6 hearing.

In response to Commissioner Lowrey's inquiries, Ms. Gallegos explained that sharps used during a body art session will be placed inside a biohazard receptacle. When the receptacle is filled to one-third capacity, a licensed waste hauler will remove the receptacle and dispose of the contents. The waste hauler will enter the studio to access the receptacle.

Karen Carlson remarked that parking in the area is congested, and the gallery will increase parking congestion. The space is too small for the use. Using the common bathroom, having the windows blacked out, and having children in art classes do not make sense for the Corona del Mar community.

Jim Mosher concurred with staff's comment that the City cannot control the content of signage. He expressed concern about the possibility of Ms. Gallegos having to pay a fee for a second appeal should the Planning Commission deny the application.

In response to Vice Chair Weigand's inquiry, Community Development Director Jurjis advised that staff typically refunds the appeal fee if an appeal is upheld.

Melinda Luthin noted the original application contained a three-sentence, one-paragraph description of the project. The only person who can be an applicant is the owner unless the owner has authorized a representative to act on his behalf. The file does not contain such an authorization. Mr. Brown confirmed to Ms. Luthin that he did not authorize Ms. Gallegos to be his acting agent. Staff reported the building is legal nonconforming. The applicant and/or staff is responsible for presenting evidence to the Planning Commission that the building is legal. A nonconforming structure is illegal unless there is proof that the structure is legal. City records from 1983 and 1984 specifically indicate the site did provide on-site parking, and someone wanted to replace parking with new construction. The records do not indicate a permit was granted for new construction. Therefore, the structure is illegal. Staff stated parking should be based on the most restrictive of the three uses proposed. However, the Municipal Code clearly states parking is based on the sum of all uses. The zoning clearance, the building permit, and the signage permit should have been submitted and heard at the same time. The existing signage located at the courtyard is not legal. The staff report reaches conclusions without facts. If the Planning Commission does not have the facts, it cannot approve the application. Ms. Gallegos has advertised her business on several websites. Ms. Gallegos has held art classes without a business license.

Ernie Caponera supported the granting of a minor use permit. Parking will be utilized whether by clients of the gallery or other businesses. Ms. Gallegos' art may be provocative, but it is beautiful.

Chair Zak closed the public hearing.

Vice Chair Weigand remarked that the stereotype for tattoos has changed. He appreciated the applicant's interest in adhering to the City's requirements for tattoo parlors. The gallery will likely operate as other businesses operate.

Motion made by Vice Chair Weigand and seconded by Commissioner Kramer to find this project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 51301 (Existing Facilities) of the CEQA Guidelines; and to adopt Resolution No. PC2019-009 approving Minor Use Permit No. UP2018-014.

Commissioner Kramer advised that the lack of tattoo businesses in Corona del Mar does not mean that this type of use is not compatible with the neighborhood. The conditions of approval are quite strict and involve multiple jurisdictions. The hours of operation are reasonable. The conditions of approval are consistent with those imposed on Agape Art Collective. The application complies with the criteria of the Code and the General Plan.

AYES: Zak, Weigand, Ellmore, Kramer
NOES: Lowrey
ABSTAIN: None
ABSENT: Kleiman, Koetting

In answer to Vice Chair Weigand's question, Community Development Director Jurjis indicated staff will look into refunding the appeal fee to the applicant.

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.

Community Development Director Jurjis reported the next General Plan Update Steering Committee meeting is scheduled for April 3. The Planning Commission's April 4 hearing is canceled. The agenda for the April 18 hearing will include the Vivante Senior Living project.

ITEM NO. 6 REQUESTS FOR EXCUSED ABSENCES

None

IX. ADJOURNMENT – 8:12 p.m.

The agenda for the March 21, 2019, Planning Commission meeting was posted on Friday, March 15, 2019, at 3:00 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 Friday, March 15, 2019, at 3:31 p.m.

Peter Zak, Chairman

Lee Lowrey, Secretary

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