



STAFF REPORT SAN CLEMENTE PLANNING COMMISSION

Date: April 16, 2014

PLANNER: Amber Gregg, Associate Planner 

SUBJECT: Conditional Use Permit 14-057 and Minor Architectural Permit 14-142, Ball Park Pizza, a request to consider a restaurant to serve alcohol indoor, and outdoor within a new enclosed patio. The project site is located at 831 Via Suerte, Suite 101 within the Commercial zoning district of the Talega Specific Plan. The legal description is Lot 4 of Tract 16936, Assessor's Parcel Number 701-372-01.

REQUIRED FINDINGS

Prior to approval of the proposed project, the below findings shall be made. The draft Resolution, provided as Attachment 1, and analysis section of this report provide an assessment of the project's compliance with these findings.

Conditional Use Permit, Restaurant with sale of alcohol, Section 17.16.060

- a. The proposed use is permitted within the subject zone pursuant to the approval of a Conditional Use Permit and complies with all the applicable provisions of Chapter 17 of the Zoning Ordinance, the General Plan, the Talega Specific Plan and the purpose and intent of the zone in which the use is being proposed.
- b. The site is suitable for the type and intensity of use that is proposed.
- c. The proposed use will not be detrimental to the public health, safety, or welfare, or materially injurious to properties and improvements in the vicinity.
- d. The proposed use will not negatively impact surrounding land uses.

Minor Architectural Permit, Minor exterior improvements to a commercial property, Section 17.16.100

- a. The architectural treatment of the project complies with the San Clemente General Plan.
- b. The architectural treatment of the project complies with any applicable specific plan and Zoning Ordinance in areas including, but not limited to, height, setback color, etc.
- c. The architectural treatment of the project complies with the architectural guidelines in the City's Design Guidelines.
- d. The general appearance of the proposal is in keeping with the character of the neighborhood.
- e. The proposal is not detrimental to the orderly and harmonious development of the City.

BACKGROUND

The applicant, Steve Zdrakas, is proposing to open a Ball Park Pizza in Talega Village Center, previously occupied by Enne Italian Restaurant. Enne had a CUP for indoor consumption of alcoholic beverages, but the permit expired due to inactivity. Mr. Zdrakas is requesting a type 41 license, on-site beer and wine for indoor and outdoor consumption.

Surrounding land uses include neighborhood serving commercial uses such as restaurants, coffee shop, grocery store and service uses. The nearest residence is approximately 500 feet away in a residential community to the north of Avenida Vista Hermosa.

This project was noticed according to City and State law and to date, staff has received no input from the public on this request.

PROJECT DESCRIPTION

This is a request to serve alcohol within an existing restaurant space and proposed outdoor patio. Proposed operating hours are 11:30a.m.-9:00p.m. daily. The seating capacity would be 95 seats, including the proposed patio seating. This is the same number of seats as the previous restaurant.

The new outdoor patio would be constructed of wrought iron and would be located along the western side of the restaurant. See Attachment 3 for a site plan. There are two stairways that access the open patio. Due to barrier requirements for serving alcohol, the stairway access would be cutoff by the railing. Staff considering removing the stairs, but this may effect future uses at that location.

PROJECT ANALYSIS

Conditional Use Permit

Section 504.C of the Talega Specific Plan requires Planning Commission approval of a CUP for the sale and consumption of alcohol with a restaurant use. Staff believes the request, as conditioned, meets required CUP findings for the following reasons:

1. The nearest house is 500 feet to the proposed patio which should not result in noise issues to the adjacent residential uses.
2. The proposed request is similar to Sun Dried Tomato, Arnoa Wine Bar, and Inka Mama's which are located within the Talega Village Center. The uses received approval of CUPs for the service of alcohol on outdoor patios with similar hours of operation. As an example, Sun Dried Tomato is approved for alcohol service on the outdoor patio to 10:00pm during the week and 11:00pm on weekends.
3. The primary use of the business would continue to be a restaurant with alcohol service as an ancillary use. The type 41 license issued by ABC, would ensure the business is operated as a restaurant and not a bar.

4. The proposed request does not increase the number of parking spaces.
5. Staff contacted the Alcoholic Beverage Control Board (ABC), Sheriffs Department, and the City's Code Compliance Division and none had concerns about the proposal.

Minor Architectural Permit

The applicant is proposing a patio on the west side of the restaurant, between the restaurant and a landscaped area. Zoning Ordinance section 17.16.100A requires the approval of a Minor Architectural Permit to allow exterior modifications to a commercial site. The applicant is proposing a wrought iron railing to enclose the patio. Two stairways would be closed off by a decorative gate and equipped with the required hardware. The design and materials of the fence and gates would be consistent with the railing design throughout the Talega Village Center. The railing design is also consistent with the Section IIC and IV.G of the City Design Guidelines because the proposed railings are wrought iron and are Spanish Colonial in design.

Exhibit 1 **Railing Design**



GENERAL PLAN CONSISTENCY

The proposed use is consistent with the Land Use Element of the City's General Plan. General Plan Policy LU-2.03. Neighborhood Compatibility. We require that commercial projects abutting residential neighborhoods be designed and operated to protect residents from the effects of noise, light, odors, vibration traffic, parking and other operational impacts. The proposed hours of service for alcohol and the distance from adjacent residential uses will ensure there are not negative effects.

ENVIRONMENTAL REVIEW

The Planning Division completed an Environmental Checklist for the above referenced project in accordance with the California Environmental Quality Act (CEQA). It was determined by staff that the project has been adequately addressed in previously prepared Final Supplemental Environmental Impact Report (FSEIR), certified December 2001, for Talega Specific Plan Amendment 98-05. The FSEIR incorporates by reference analysis and mitigation as addressed in previously prepared Final EIR 84-02 certified by the City of San Clemente in August, 1988, along with four addenda certified by the City in 1998 through 1999. The FSEIR (State Clearinghouse Number 99031048) addresses impacts of approved modifications to the General Plan and Talega Specific Plan, updates previous studies and provides new analysis or new mitigation measures as determined necessary. The proposed project is consistent with the General Plan and Specific Plan as amended by GPA and SPA 98-05 respectively.

ALTERNATIVES; IMPLICATIONS OF ALTERNATIVES

1. The Planning Commission can concur with staff and recommend approval of the proposed project.

This action would result in the approval of the proposed project and the applicant being allowed to sell beer and wine, and construct a new patio.

2. The Planning Commission can, at its discretion, add, modify or delete provisions of the proposed project or conditions.

This action would result in any modifications being incorporated into the proposed project and included in the conditions of approval, if needed. Potential changes could include the area of new patio, or modifying the hours of alcohol service on the patio.

3. The Planning Commission can recommend denial of the proposed project.

This action would result in the denial of the application. The applicant would be able to appeal to the City Council.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission approve Conditional Use Permit 14-057 and Minor Architectural Permit 14-142, Ball Park Pizza, subject to the attached Resolution and Conditions of Approval.

Attachments:

1. Resolution No. 14-012
Exhibit A - Conditions of Approval
2. Location Map
3. Site Plan
4. Photographs

RESOLUTION NO. PC 14-012

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT 14-057 AND MINOR ARCHITECTURAL PERMIT 14-142, BALL PARK PIZZA, A REQUEST TO ALLOW THE ON-SITE SALE OF BEER AND WINE AND THE CONSTRUCTION OF A NEW OUTDOOR PATIO LOCATED AT 831 VIA SUERTE SUITE 101

WHEREAS, on February 19, 2014 an application was submitted, and on March 31, 2014 completed by Steve Zdrakas, 514 E. Avenida San Juan, San Clemente, CA 92672, for a request to consider a Conditional Use Permit and Minor Architectural Permit to allow the on-site sale and consumption of alcohol and the construction of a new patio service of alcohol outdoors within a new enclosed patio; and

WHEREAS, the Planning Division completed an Environmental Checklist for the above referenced project in accordance with the California Environmental Quality Act (CEQA). It was determined by staff that the project has been adequately addressed in previously prepared Final Supplemental Environmental Impact Report (FSEIR), certified December 2001, for Talega Specific Plan Amendment 98-05. The FSEIR incorporates by reference analysis and mitigation as addressed in previously prepared Final EIR 84-02 certified by the City of San Clemente in August, 1988, along with four addenda certified by the City in 1998 through 1999. The FSEIR (State Clearinghouse Number 99031048) addresses impacts of approved modifications to the General Plan and Talega Specific Plan, updates previous studies and provides new analysis or new mitigation measures as determined necessary. The proposed project is consistent with the General Plan and Specific Plan as amended by GPA and SPA 98-05 respectively; and

WHEREAS, on April 16, 2014, the Planning Commission of the City of San Clemente held a duly noticed public hearing on the subject application and considered evidence presented by City staff, the project applicant and other interested parties.

NOW THEREFORE, the Planning Commission of the City of San Clemente hereby resolves as follows:

Section 1: Pursuant to CEQA and the CEQA Guidelines, a Final Subsequent Environmental Impact Report (FSEIR) was prepared and certified in December 2001, for the Talega Specific Plan as amended by SPA 98-05. After reviewing the previously certified FSEIR and addendums and the Initial Study on the present projects, the Planning Commission finds that the present proposal is within the scope of the program evaluated in the previously adopted environmental documents, which adequately describe the activity for the purposes of CEQA, that no additional significant environmental effects will result from the project, that no additional mitigation measures or alternatives are required, and that, per Section 15168 of the CEQA Guidelines, no additional environmental

documentation is required. All records pertaining to preparation, review and comment on the FSEIR and subsequent addendums are contained in the Planning Division of the City of San Clemente.

Section 2: The Planning Commission finds and determines as follows with regard to Conditional Use Permit 14-057:

- A. The proposed commercial use is permitted within the subject zone pursuant to the approval of a Conditional Use Permit and complies with all of the applicable provisions of the Talega Specific Plan as amended by SPA 98-05, the Talega Area Plan as amended by AM ARP 98-82, the goals and objectives of the San Clemente General Plan, and the purpose and intent of the zone in which the development is being proposed in that the proposed project provides a full service restaurant use that is consistent with the goals of creating a pedestrian-oriented, neighborhood serving community in the Talega Village Center.
- B. The site is suitable for the type and intensity of development that is proposed in that Planning Area H1 is designated for mixed use including commercial, open space, recreation and multi-family development, and a restaurant with alcohol and an outdoor patio is a permitted use in the land use designation.
- C. The proposed development, as conditioned, will not be detrimental to the public health, safety or welfare, or materially injurious to properties and improvements in the vicinity, in that the proposed service of alcoholic beverages is in conjunction with a full service restaurant and the applicant would be subject to all regulations of the California Department of Alcohol Beverage Control and conditions of approval.
- D. The proposed development, as conditioned, will not be unsightly or create disharmony with its locale and surroundings, and the general appearance of the patio would be consistent with other outdoor patios in the center and the hours of service will not operate past 9:00 pm and is located 500 feet from the nearest residential use.

Section 3: The Planning Commission finds and determines as follows with regard to Minor Architectural Permit 14-142:

- A. The architectural treatment of the project complies with the San Clemente General Plan in that design and color of the railings are consistent with the Design Guidelines for properties located in the Talega Specific Plan because they are a Spanish Colonial Revival design and consistent with the style of railings in the center.

- B. The project is located within the Talega Specific Plan and complies with the Design Guidelines. The project does meet these requirements because the railing design is consistent with the railings throughout the Talega Village Center.
- C. The architectural treatment of the proposed project complies with the City's Design Guidelines in that the proposed railings are a Spanish Colonial Revival design and are the same style as other railings in the Talega Village Center.
- D. The general appearance of the proposed railings are keeping with the character of the neighborhood being that the railings design and color is compatible with the architecture of the commercial center and are consistent with the Architectural Overlay design requirements.
- E. The proposal is not detrimental to the orderly and harmonious development of the City in that the railings design is consistent with the applicable Design Guidelines and will comply with all Building Code Requirements.

Section 4: The Planning Commission of the City of San Clemente hereby adopts a resolution approving Conditional Use Permit 14-057 and Minor Architectural Permit 14-142, Ball Park Pizza, subject to the above Findings, and the Conditions of Approval attached hereto as Exhibit A.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of San Clemente on April 16, 2014.

Chair

TO WIT:

I HEREBY CERTIFY that the foregoing resolution was duly adopted at a regular meeting of the Planning Commission of the City of San Clemente on April 16, 2014 and carried by the following roll call vote:

AYES:	COMMISSIONERS:
NOES:	COMMISSIONERS:
ABSTAIN:	COMMISSIONERS:
ABSENT:	COMMISSIONERS:

Secretary of the Planning Commission

EXHIBIT A

**CONDITIONS OF APPROVAL
AMENDMENT TO CONDITIONAL USE PERMIT 14-057 AND
MINOR ARCHITECTURAL PERMIT 14-142, BALL PARK PIZZA**

1. The applicant or the property owner or other holder of the right to the development entitlement(s) or permit(s) approved by the City for the project, if different from the applicant (herein, collectively, the "Indemnitor") shall indemnify, defend, and hold harmless the City of San Clemente and its elected city council, its appointed boards, commissions, and committees, and its officials, employees, and agents (herein, collectively, the "Indemnitees") from and against any and all claims, liabilities, losses, fines, penalties, and expenses, including without limitation litigation expenses and attorney's fees, arising out of either (i) the City's approval of the project, including without limitation any judicial or administrative proceeding initiated or maintained by any person or entity challenging the validity or enforceability of any City permit or approval relating to the project, any condition of approval imposed by City on such permit or approval, and any finding or determination made and any other action taken by any of the Indemnitees in conjunction with such permit or approval, including without limitation any action taken pursuant to the California Environmental Quality Act ("CEQA"), or (ii) the acts, omissions, or operations of the Indemnitor and the directors, officers, members, partners, employees, agents, contractors, and subcontractors of each person or entity comprising the Indemnitor with respect to the ownership, planning, design, construction, and maintenance of the project and the property for which the project is being approved. The City shall notify the Indemnitor of any claim, lawsuit, or other judicial or administrative proceeding (herein, an "Action") within the scope of this indemnity obligation and request that the Indemnitor defend such Action with legal counsel reasonably satisfactory to the City. If the Indemnitor fails to so defend the Action, the City shall have the right but not the obligation to do so and, if it does, the Indemnitor shall promptly pay the City's full cost thereof. Notwithstanding the foregoing, the indemnity obligation under clause (ii) of the first sentence of this condition shall not apply to the extent the claim arises out of the willful misconduct or the sole active negligence of the City. *[Citation – City Attorney Legal Directive/City Council Approval June 1, 2010]* (PIng.)_____

2. Thirty (30) days after project approval, the owner or designee shall submit written consent to all of these imposed conditions of approval to the Community Development Director or designee. *[Citation – City Attorney Legal Directive/City Council Approval June 1, 2010]* (PIng.)_____

3. The sale of beer and wine/alcohol for on-site consumption within the restaurant and outdoor patio and shall be limited to the hours of 11:30 a.m. to 9:00 p.m seven days a week. Any proposed change in the hours of operation shall require an amendment to this Conditional Use Permit. *[Citation – Division 9 (Alcoholic Beverages), Section 25631 to 25633of Business & Professions Code, State of California]* (PInG.)_____
4. The owner or designee shall obey all rules, regulations and conditions imposed upon the project through, but not limited to, the Alcoholic Beverage Commission (ABC) and relevant State laws. Revocation of, or sale of said ABC license to another person at another location, shall render any City approved CUP for alcohol service at the subject property null and void. Prior to any sale of the ABC license, the owner or designee shall notify the Community Development Department of the sale. *[Citation – Division 9 (Alcoholic Beverages), Business and Professions Code, State of California]* (PInG.)_____
5. The owner or designee shall be responsible for ensuring that all employees receive “Responsible Alcoholic Beverage Service” training as offered through programs established by the Orange County Health Care Agency and Alcoholic Beverage Control of the State of California. Evidence of such training and the training records of all employees shall be maintained on-site during business hours, and made available for inspection upon request. *[Citation - Section 17.16.070.K of the of the SCMC]* (PInG.)_____
6. The on-site sale and indoor and patio consumption of alcohol use shall be deemed to have lapsed, and CUP 14-057 and MAP 14-142 shall be deemed to have expired, ninety (90) days after the date the on-site sale and indoor and outdoor consumption of beer and wine ceases operation and/or the business closes at such location. *[Citation - Section 17.12.150(C) of the SCMC]* (PInG.)_____
7. This project is approved subject to the provisions of a Final Supplemental Environmental Impact Report (FSEIR) 98-05 (certified December 2001) and the mitigation measures adopted with FSEIR as the Mitigation Monitoring and Reporting Program, included by reference with these conditions of approval. ■■ (PInG.)_____
8. The project shall be develop in conformance with the site plan, floor plans, elevations, details, and any other applicable submittals approved by the Planning Commission subject to the Conditions of Approval.

Any deviation from the approved site plan, floor plans, elevations, details, or other approved submittal shall require that the owner or designee submit modified plans and any other applicable materials as required by the City for review and obtain

the approval of the City Planner or designee. If the City Planner or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain the approval of the Zoning Administrator.

[Citation - Section 17.12.180 of the SCMC] (PIng.)_____

9. Signage is not part of this review. Any signage for this proposed development shall require the owner or designee to submit for review and obtain approval of a Sign Permit or Master Sign Program in accordance with the City's Sign Ordinance.

[Citation - Section 17.16.240.D & 17.16.250.D of the SCMC] (PIng.)_____

10. Window and banner signage is not part of this review. Window or banner signage shall comply with Zoning Ordinance Table 17.84.030A & Section 17.84.030(H), and any applicable Master Sign Programs.

[Citation - Section 17.16.240.D of the SCMC] (Code Enforce.)_____ (PIng.)_____

11. Conditional Use Permit 14-057 and MAP 14-142 is also subject to any relevant conditions of approval associated with the development of the Talega Village Center as approved by City Council on May 2, 2006 with Resolution No. 06-27.

■■(PIng.) _____

12. Prior to the sale and consumption of any alcohol on the premises or within the limits of the property designated by CUP 14-057 and MAP 14-142, the owner or designee shall apply for, receive, and maintain a alcohol license issued by the California Department of Alcoholic Beverage Control for the service of alcohol.

■■(PIng.) _____

13. City of San Clemente code violations or law enforcement actions related to the establishment's operations, or failure to comply with these conditions of approval may subject CUP 14-057 and MAP 14-142 to modification or revocation.

■■(PIng.) _____

14. A separate Building Permit is required for any proposed tenant improvements. Plans to construct new building, add or alter the existing building configuration, change in use, add or alter structural, mechanical, electrical or plumbing features of the project must be reviewed and approved through a separate building plan check / permit process.

[S.C.M.C – Title 8 – Chapter 8.16- Fire Code, Title 15 Building Construction - Chapters 15.08, 15.12, 15.16, 15.20] (Bldg.)_____

15. Total maximum occupant load shall not exceed 49 for the facility including patrons inside the space, outside on the patio, and employees. Occupant load is limited due to available restroom fixtures in accordance with 2013 CPC Table 422.1, footnote 3.

[S.C.M.C – Title 8 – Chapter 8.16- Fire Code, Title 15 Building Construction - Chapters 15.08, 15.12, 15.16, 15.20] (Bldg.)_____

- * All Conditions of Approval are standard, unless indicated as follows:
 - Denotes modified standard Condition of Approval
 - Denotes project specific Condition of Approval



LOCATION MAP

CUP 14-057 and MAP 14-142, Ball Park Pizza
831 Via Suerte, Suite 101













