

**CITY OF SAN CLEMENTE  
MINUTES OF THE REGULAR  
ZONING ADMINISTRATOR MEETING  
February 6, 2013**

Staff Present: James Holloway, Sean Nicholas, Amber Gregg, Adam Atamian, Adam Clements, and Kimberly Maune

**2. MINUTES**

Minutes of the Zoning Administrator meeting of January 23, 2013 received and filed.

**3. ORAL AND WRITTEN COMMUNICATION**

None

**4. PUBLIC HEARINGS**

**A. 555 N. El Camino Real Suite D – Amendment to Conditional Use Permit 01-178 – Iva Lee’s Restaurant (Nicholas/Clements)**

A request to consider an indoor 935 square foot expansion into an adjacent vacant unit for an existing restaurant that serves a full range of alcohol and live entertainment at 555 North El Camino Real Suite D within the Neighborhood Commercial (NC2) zoning district. The legal description is Lots 1-7, and 13-15, of Block 2, of Tract 793, Assessor’s Parcel Number 057-144-23.

Planning Intern Adam Clements summarized the staff report.

Applicant Eric Wagoner from Iva Lee’s Restaurant was present. Mr. Wagoner stated staff did a good job presenting all of the details of the proposed expansion. Iva Lee’s is looking forward to having more room for their dining customers here in San Clemente.

There were no members of the public present to address this item.

Since this is an amendment, Mr. Holloway asked if all of the Conditions of Approval of the previous approval have been satisfied and is Iva Lee’s in good standing. Mr. Nicholas responded yes, staff verified this as this request was being processed, especially regarding the outdoor dining area. A Condition of Approval was added stating that prior to the Certificate of Occupancy being issued staff will verify again that all of the Conditions of Approval have been met for the previous approvals.

Mr. Holloway stated that the staff report and the presentation were very succinct. One of the main issues is parking. Suite D, the expansion area, has four parking spaces assigned to it. Suite C, the catering office, operates at different hours than the restaurant. An additional five spaces will be added by expanding the shared parking agreement with Denault's which also has off peak hours from the operational hours of the restaurant, which is the whole point of shared parking, to make everything more efficient.

Mr. Holloway thanked Mr. Wagoner for working with staff and expressed congratulations on the growing success of the restaurant. Mr. Wagoner stated that Iva Lee's opened in June of 2002 and they appreciate everyone's support.

Action: The Zoning Administrator approved Amendment to Conditional Use Permit 01-178, Iva Lee's Restaurant, subject to Resolution ZA 13-006 with attached Conditions of Approval.

**ACTION SUBJECT TO APPEAL TO OR CALL-UP BY CITY COUNCIL.**

**B. 122 Avenida Victoria – Minor Cultural Heritage Permit 12-322 – Miller Apartment Remodel (Gregg)**

A request to consider a Spanish Colonial Revival façade remodel of a five-unit apartment complex located at 122 Avenida Victoria. The project is located in the Mixed Use zoning district and Central Business district and Architectural Overlays. The legal description is lots 27 and 28 of Block 7, Tract 779 and Assessor's Parcel Number 058-083-39.

Associate Planner Amber Gregg summarized the staff report.

Applicant Glen Erbe with GECC Construction Company, Inc., the general contractor for the project, was present. Mr. Erbe stated they walked along Avenida Del Mar observing the wood windows there. By far the majority of them have deteriorated to where there is dry rot or wood rot. That is a concern of theirs and why they are requesting fiberglass windows. They believe fiberglass will endure time and weathering and will require much lower maintenance than wood. They have selected Milgard windows, which are designed to look like wood, and have a remarkable resemblance to a wood product. They are paintable so they will fit into any color scheme.

Laurie Pilz also with GECC was present. Ms. Pilz stated that a person would have to be very knowledgeable to be able to distinguish between a wood window and a fiberglass window. These fiberglass windows come with a flange that wood windows do not. The flange makes the window more resistant to water

intrusion problems. She and Mr. Erbe have both worked as expert witnesses in construction defect litigation, and one of the main problems is windows that allow water into buildings. This is a safeguard to not have that problem as time goes by, avoiding higher maintenance costs especially in this coastal environment. There is also an ecological advantage; fiberglass is more environmentally friendly since fewer trees will be cut down. Financially, fiberglass is better for the client. There are many reasons why they are requesting to use fiberglass windows.

Mr. Holloway asked for four bullet points on the advantages of fiberglass windows. Mr. Erbe responded:

- Lessens chances of water intrusion which increases chances of litigation.
- Health issues because water intrusion unseen in a wall cavity produces bio-organic growth.
- Less ongoing maintenance because the cost to maintain wood is astronomical compared to fiberglass which only requires painting.
- Costs much less than wood and is more environmentally friendly.

Mr. Holloway stated there are micro and macro ecological advantages. He asked staff, in terms of aesthetics, if this is a major or a minor consideration; Ms. Gregg responded minor.

Mr. Holloway asked Ms. Pilz if she has certification to be an expert in construction defect. Ms. Pilz responded yes and stated that she and Mr. Erbe are expert witnesses in construction defect cases and they have a lot of experience in litigation. Most of the litigation is based on windows; a lot of the litigation has been water intrusion because of windows.

Art Day, a member of the public, was present and stated he isn't related to the project. Mr. Day is a developer from the mountains so he is used to harsh environments. San Clemente is considered a harsh environment because of the proximity to the ocean. In his opinion, the fiberglass window is far superior to wood in every respect. Aesthetically there is absolutely no visual difference. The only way to tell the difference is to tap on it. It looks like wood when it is painted. They are a terrific product.

Mr. Holloway stated Ms. Gregg included the City's window policy as Attachment 5 to the staff report. Attachment 5 is the City's window policy written by the City Planner, Jim Pechous. Mr. Holloway asked if the Zoning Administrator has the discretion and the authority to make this type of policy decision. Ms. Gregg responded yes because the policy states that the City Planner has that authority and the Zoning Administrator has more authority than the City Planner.

Ms. Gregg added that this project is located in the Architectural Overlay and story poles are not required for this project since it is not more than two stories tall. Mr. Holloway added this project is essentially a remodel with a 116 square foot addition.

Mr. Holloway reiterated the reason story poles are not required. This project is in a residential zone in the Architectural Overlay and it is over four units. Because there is no expansion of the structure and it is not three stories, story poles are not required.

Mr. Holloway stated the pictures included with the staff report depict the project very well. This is a great looking project and it will be an excellent addition to the neighborhood.

Mr. Holloway thanked everyone for their testimony today. This has been a topic of discussion that the City Council has been very interested in.

Mr. Holloway thanked the applicants for working with staff and informed them of the ten day appeal period.

Action: The Zoning Administrator approved Minor Cultural Heritage Permit 12-322, Miller Apartment Remodel, subject to Resolution ZA 13-005 with attached Conditions of Approval, including the approval of all of the windows to be fiberglass.

**ACTION SUBJECT TO APPEAL TO OR CALL-UP BY CITY COUNCIL.**

**C. 111 South Alameda Lane – Minor Cultural Heritage Permit 12-356 – Day Apartment Complex (Atamian)**

A request to consider a minor exterior alteration to an apartment building abutting a historic structure, located at 111 South Alameda Lane. The project is located in the Residential High zoning district of the Pier Bowl Specific Plan and Architectural Overlay. The legal description is lots 6 and 7, of Block 10, of Tract 785 and Assessor's Parcel Number 692-023-06.

Assistant Planner Adam Atamian summarized the staff report.

Dave Bennett of Dave Bennett Construction, Inc. was present and stated he is the contractor for Art Day, the property owner. Mr. Bennett thanked Mr. Atamian for all of his hard work and stated that he is very thorough and very easy to work with, which he found refreshing. Mr. Bennett stated there's a safety factor to the proposed project. Part of the design of the handrail is

necessary for safety reasons. The current handrail is mounted square steel tubing that is lag bolted in to the top of the deck; therefore it rusts and becomes dangerous quickly. The bolts can wiggle loose. They are proposing a face mounted system that bolts through the fascia and the rim joists of the structure, which is much more secure. The modular design of the system allows them to remove the components as they fade and have them repainted or replaced should there be subsequent damage. He believes the safety, as well as the visual factor, is really a big consideration for them. Safety was the owner's number one consideration regarding the design of the handrail, safety and maintenance.

Mr. Holloway stated this project raises some important issues that have been discussed for quite some time. He believes the Design Guidelines in the Architectural Overlay are complex. Rehabbing architecture from the 1950s or 1960s to look completely Spanish is a good thing. Not everyone is going to do that, perhaps they do not have the budget or the interest in doing that. He is not in favor of trying to take a 1950s or 1960s building and incrementally move it towards Spanish architecture; he believes that is a mistake.

Mr. Holloway stated the review of a project in an Architectural Overlay has a place; the City does not want something that is shockingly different and conflicts with the Spanish Colonial style. He is in favor of the color palette the applicant has selected. There is a building on Rosa that is just outside the Architectural Overlay that is florescent green, and there are other buildings between two different Architectural Overlays that are purple. Everyone will have a different opinion on design and aesthetics; he doesn't think we need to move 1950s or 1960s buildings incrementally towards Spanish Colonial. Either make it a really great Spanish Colonial or let it be what it is and address maintenance and safety issues.

Mr. Holloway stated it is important to continue to review, approve, and work with applicants on buildings that are not going to become Spanish Colonial so they do not conflict and detract from the overall Spanish Colonial theme. There are some examples of projects just outside the Architectural Overlays where that has happened.

Mr. Holloway appreciates the work of the Design Review Subcommittee, and the staff; he appreciates the findings that staff provided which clearly indicate that the Zoning Administrator has the authority to make this decision. He finds it to be consistent with the Design Guidelines, even though he may have a different opinion about the intent of the Design Guidelines than other people.

There were no members of the public present to address this item.

Mr. Holloway thanked Mr. Bennett and Mr. Day for working with staff and for the kind words about staff. He thanked Mr. Day for his testimony during the previous item. He informed them of the ten day appeal period.

Owner Art Day and Mr. Bennett thanked Mr. Holloway. Mr. Bennett stated that their biggest point of contention is that it isn't possible to transform this building into Spanish Colonial without extensive remodeling. The owner's intention was to improve the looks of the building and to address the safety issues. He appreciates the Zoning Administrator's understanding and staff working with them.

Mr. Holloway stated that the City does not want to discourage, through our process, aesthetic and safety improvements by becoming inflexible regarding design.

Mr. Day stated when he bought this building it was in tear down condition. He spent approximately \$50,000 with Michael Luna exploring a redevelopment of this property. The conditions would have reduced the square footage by 25 to 30 percent, making it economically infeasible. Mr. Day stated the Guidelines actually inhibit new development; people like him that can afford to do a project like this won't pursue it because they are going to lose so much square footage and it just doesn't make any sense. He believes that a team approach to meeting the Guidelines with the City and the property owners would be a lot more beneficial to meeting those goals. To him it seems like it has been an adversarial process. He has spent approximately \$20,000 getting to this point in repainting and extra work that he could have applied to the building rather than the processing.

Mr. Day stated that Mr. Holloway's comments are well taken. There are a lot of similar vintage buildings and people are out there in the middle of the night painting so they don't get caught doing something they are not supposed to do. As a consequence his building has been neglected for many, many years because no one wants to go through a simple process of getting it maintained. He believes anyone would agree that a very well maintained building with features on it like what they are trying to do enhances the overall neighborhood. He wants to be proud of his building; he does not want to be embarrassed to show up at his own building. He thinks the City could amend its process or think about the other side of the process to work together with owners in the district to discuss options and make the process easy and bring about compatibility.

Mr. Holloway stated he appreciates Mr. Day's comments. He believes this discussion will provide somewhat of a catalyst for that type of interplay.

Mr. Bennett stated that in speaking with a couple of the local contractors and asking them when he began this project what steps would he need to take, there was a general feeling that he shouldn't approach the permitting process. It is different where he works. They welcome him into the process and they help him through the problems that he encounters. As Mr. Day mentioned, at the beginning it did feel a little adversarial. When Mr. Atamian came in things changed. Mr. Atamian encouraged him to take the next steps, which was nice. The general consensus on the street as a contractor is this City is inflexible. He doesn't feel the same way.

Mr. Holloway thanked Mr. Bennett for his comments and stated that sometimes the image on the street is hard to change. The Building Code book is much thicker now than in the past, it is a tough process for a number of reasons. This City has a Coastal Zone and Architectural Overlay Zone; it is challenging. The City has people like Mr. Atamian to be an advocate. Mr. Holloway is appreciative of Mr. Atamian's work with Mr. Bennett and he hopes that Mr. Bennett will spread the word that the application process is not as difficult as its reputation makes it seem.

Action: The Zoning Administrator approved Minor Cultural Heritage Permit 12-356, Day Apartment Complex, subject to Resolution ZA 13-004 with attached Conditions of Approval.

**ACTION SUBJECT TO APPEAL TO OR CALL-UP BY CITY COUNCIL.**

**5. NEW BUSINESS**

None

**6. OLD BUSINESS**

None

**ADJOURNMENT**

The meeting adjourned at 3:45 p.m. to the regular Zoning Administrator meeting to be held on February 20, 2013 at 3:00 p.m., at the Community Development Department, Conference Room A, located at 910 Calle Negocio, Suite 100, San Clemente, California.

Respectfully submitted,

SAN CLEMENTE ZONING ADMINISTRATOR

  
James Holloway