

**CITY OF SAN CLEMENTE
MINUTES OF THE REGULAR
ZONING ADMINISTRATOR MEETING
September 18, 2013**

Staff Present: Jim Pechous, Amber Gregg, Cliff Jones, and Kimberly Maune

2. MINUTES

Minutes of the Zoning Administrator meeting of September 4, 2013 received and filed.

3. ORAL AND WRITTEN COMMUNICATION

None

4. PUBLIC HEARINGS

A. 115 East Avenida Cornelio – Minor Architectural Permit 13-288 – Dillon-Burberry Residence (Gregg)

A request to consider an addition to an existing legal, nonconforming, single-family residence located at 115 East Avenida Cornelio. The parcel is zoned Residential Single-Family (RL) and the legal description is Lot 11, Block 12, Tract 851, and Assessor's Parcel Number 690-402-19.

Associate Planner Amber Gregg summarized the staff report.

Mr. Pechous asked Ms. Gregg to summarize the findings required for approval of a Minor Architectural Permit. Ms. Gregg responded the required findings are that the project is in keeping with the general appearance of the existing neighborhood, the architectural treatment complies with the City's Design Guidelines, the project is not detrimental to the orderly and harmonious development of the City, and the architectural treatment complies with the development standards of the zone.

Mr. Pechous asked if the mass and scale of how this particular addition is situated on the site conforms to the mass and scale of the neighborhood. Ms. Gregg responded yes it does, it is actually setback further than a lot of the other homes on the block. Mr. Pechous and Ms. Gregg examined the plans and the site photos.

Dana Somsel was present. Ms. Somsel stated she is the designer/draftsperson for this project. This is just an addition to the front

so they may have a larger closet, a laundry room, a bathroom, a better foyer, and a nice size deck.

Patty Curto was present. Ms. Curto stated she lives at 106 E. Avenida Cornelio. She would like to know when the project is supposed to start. Ms. Gregg responded that after this hearing the project will go in for Building plan check, that is when the Building permits will be issued; this typically takes a couple of months.

Ms. Curto asked how many parking places the contractors will take up on the street. Ms. Somsel responded that she cannot answer that question; she does not know yet who will be doing the building. Ms. Curto suggested they arrive at 6:00 a.m. because by 7:00 a.m. there is no place to park.

Ms. Curto asked what kind of noise can they expect. Ms. Somsel responded there will be noise. Ms. Curto asked what hours will the building be taking place. Brent Panas, City Code Compliance Supervisor, was present. Mr. Pechous asked Mr. Panas to let everyone know what the Noise Ordinance regulations are for construction. Mr. Panas responded that construction hours are exempted from noise standards between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday and 8:00 a.m. to 6:00 p.m. on Saturday. No construction noises are allowed on Sunday.

Ms. Curto stated there is a ridiculous parking problem on their street. Next Thursday she is having 12 women at her house for an annual book club meeting. She didn't have it last year because of Hapa J's. There is such a problem with parking including people violating City codes by parking a double motor home on the street for three weeks, taking up two spaces, and a boat and a trailer in the same area on her side of the street. She wants it brought to everyone's attention that there's such a parking problem she is going to talk to the businesses that take up all of these parking places to see if they will be cooperative.

Ms. Somsel stated she will mention the parking problem to the project owner. They have an exceptional sized driveway. Ms. Curto is asking her immediate neighbors to try to park in their driveway for three hours the day of her meeting but the motor home, boat, and trailer are a problem. Ms. Somsel clarified she meant during construction. Ms. Curto stated that would be appreciated. Mr. Pechous stated the project owner does have the opportunity since they have such a large driveway. Ms. Curto stated she has a huge driveway and when she has had work done to her home no one has ever parked on the street, they have always parked in her driveway because she respects her neighbors.

LB(2)-2

Mr. Pechous thanked Ms. Curto for her input.

Mr. Pechous stated based on the staff report this item does fall within the required findings. It will be built within the confines of the existing building. Since it is up on a higher level it will not have any direct impact on the street. This particular type of addition does not generate additional traffic for this street. The project planner will work with the applicant to attempt to keep the construction vehicles off of the street during construction, although this will not be a condition of approval for this project.

Action: The Zoning Administrator approved Minor Architectural Permit 13-288, Dillon-Burberry Residence, subject to Resolution ZA 13-030 with attached Conditions of Approval.

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

B. 987 Avenida Vista Hermosa – Minor Architectural Permit 13-321 – San Clemente Sports Hall of Fame Tiles (Nicholas)

A request to consider the establishment of a San Clemente Sports Hall of Fame Tile Display and Murals at the San Clemente Aquatic Center maintenance building located at 987 Avenida Vista Hermosa within the Public (P) zoning designation of the Forster Ranch Specific Plan and within the Avenida Vista Hermosa Park Master Plan. The park is located within close proximity of the southwest corner of the La Pata and Avenida Vista Hermosa intersection and is a portion of Assessor's Parcel Number 124-081-64.

Associate Planner Amber Gregg summarized the staff report in the project planner's absence.

Mr. Pechous stated at the Design Review Subcommittee (DRSC) meeting the two side murals were not fully designed, the final design requires approval. Ms. Gregg stated that it is in the Conditions of Approval, the final design will be reviewed by the DRSC and final approval will be by the City Planner.

Applicant Tom Winks was present. Mr. Winks stated the design is underway right now and he believes it will be incredible. What they want to do is get the tiles they have already for this year up because they are getting a lot of public questions about why it is not installed yet. They understand the final design will have to come back for approval.

Mr. Pechous stated they will be phasing in, starting with the tiles they have now. Mr. Winks responded there are ten plus all of the surrounds. Mr. Pechous asked for clarification regarding the surrounds. Mr. Winks

responded surrounds for just the two niches, and then they will come back for the outside niches.

Ms. Gregg asked Mr. Winks how someone gets nominated for the Sports Hall of Fame. Mr. Winks responded they have a nominating committee, eight people and himself, who review all nominations submitted. They put it out to the public every year. It will go out in November of this year for next May.

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

Mr. Pechous stated this will be a great project. He thanked Mr. Winks and informed him of the ten day appeal period. These minutes will be reviewed by the City Council at their October 1 meeting. Mr. Pechous stated that the City Council has already approved this entire program, making a call-up of this item unlikely. Mr. Winks stated he will wait until after the appeal period to begin.

Action: The Zoning Administrator approved Minor Architectural Permit 13-321, San Clemente Sports Hall of Fame Tiles, subject to Resolution ZA 13-031 with attached Conditions of Approval.

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

C. 102 Avenida Cabrillo – Special Activities Permit 13-279 – Nomad’s Canteen (Jones)

A request to consider 14 special events that include live entertainment with amplified sound for the 2013 calendar year at Nomad’s Canteen located at 102 Avenida Cabrillo, the legal description being Lots 25 and 6, of Block 4, of Tract 779, Assessor’s Parcel Numbers 058-073-25 and 058-073-19.

Associate Planner Cliff Jones summarized the staff report. Mr. Jones stated the applicant requests Condition of Approval number 15 be removed as the establishment accommodates persons under 21, kids and families are anticipated to attend these special events; that condition applies to a 21 and over crowd.

Mr. Pechous asked what time the special events will end; Mr. Jones responded 10:00 p.m. Mr. Pechous asked for clarification regarding the number of security guards per guests on the outdoor deck.

Applicant Jeff Gourley, owner of Nomad’s Canteen, was present. Mr. Gourley stated there will be one security guard per 75 guests on the

6B(2)-4

outdoor deck. The outdoor deck will be used just to project the artwork or a surf movie on the outside.

Mr. Pechous stated with Special Activities Permits the City has the ability to close down events if things get out of hand. There is a condition prohibiting live music on the outdoor deck. He asked Mr. Gourley to describe the three events proposed on the outdoor deck.

Mr. Gourley stated if they are working with a surf company doing a promotion, they have raffles and giveaways on the inside and a band playing on the inside. A lot of the surf companies do new videos of surfing. They have a small video projector they place on a cart and it sits outside, they project the new surf film on the building. The events are all encompassing, some people are inside, and some people are outside. The surf movie is typically more for the kids who will watch it outside. It is essentially a surf type function.

Mr. Pechous asked about previous events similar to what Mr. Gourley described. Mr. Gourley responded they had a Special Activities Permit (SAP) previously and he was unaware they were not allowed to project on the wall outside. They have had events where they have projected a slide show, not a movie, featuring a photographer's slides.

Mr. Pechous asked Mr. Panas if he has attended any events at Nomad's; Mr. Panas responded no. Mr. Pechous asked about complaints from these events. Mr. Panas responded Code Compliance has not received any complaints regarding past Nomad's special activities. So far there have not been any problems because of Nomad's special activities.

Shannon Fox was present and stated she is the manager of Hotel San Clemente Apartments. Ms. Fox stated the hotel sits just south of Nomad's. Eighteen of their residents on the back side of the alley do face the front of Nomad's, which is the full facility and their deck. They have called the Sheriff's Department Code Enforcement several times on the activity from Nomad's.

Ms. Fox stated Nomad's patrons do not follow through with parking enforcement in the back area. Often their patrons will park in the hotel's residential parking structure. She has been very lenient not to tow. It is getting to the point where they need to enforce towing. Thursdays through Sundays are the louder evenings when the hotel has problems.

Ms. Fox stated Nomad's serves alcohol. Intoxicated patrons have vandalized the back end of the hotel's property, they have thrown up, and they have been sleeping in their cars. This activity did not happen before Nomad's came into existence. There are adjacent businesses such as

Nick's and The Cellar. These problems ramped up after Nomad's opened.

Ms. Fox stated as the manager of the apartment community she gets weekly complaints about Nomad's noise. She understands people wanting to have a good time; however, the noise that is coming from Nomad's does not cease at ten. The establishment is open a lot later than ten which gives them greater concern. They have quiet and peaceful hours between 10:00 p.m. and 6:00 a.m. for their residents. The hotel's residents cannot do anything about the noise that comes from Nomad's; but Nomad's can do something about their noise that the hotel's residents hear.

Ms. Fox stated the hotel's primary concern is the heavy activity that comes from these special events, the loud noise that comes from the events, and the patrons' behavior when they attend these events. They have no problem with having these special events; however, even on a typical nonevent night, which is usually a Thursday, the noise is loud. They do understand that this is a restaurant.

Ms. Fox stated they've written several complaint letters to the City. She is surprised the City did not receive the letters. They sent three different letters to the Sheriff's Department regarding the noise.

Ms. Fox stated that 14 events throughout the remainder of 2013 is a lot of events since it is so late in the calendar year. It is unacceptable to have 14 events during the remainder of the calendar year plus having the normal traffic and activities that go on.

Kathleen Ward, Planning Commissioner, was present. Ms. Ward asked if a Special Activities Permit is different than a Conditional Use Permit where the City isn't requiring the applicant to shut doors and windows to have live music. Mr. Pechous responded the applicant could be required to shut doors and windows. The SAP is different in the sense that the City has more regulatory power. If the events continue to impact neighbors, the Zoning Administrator can prevent additional events from occurring. If after the first event there are impacts to the whole neighborhood the City can increase the Conditions of Approval to try to mitigate the impacts of the next event. If that still doesn't work the end result is the City could revoke the rest of the events. This is a good way to start. Starting with the SAP allows the City to try things and to get things to work with the neighborhood and create something that is tested versus theoretical.

Mr. Pechous thanked everyone for their input. As Mr. Panas has said in the past, if the City doesn't know what is happening the City cannot fix the

6 B(2)-6

problem. The restaurant owner also needs to know about the problems so he can work on a solution.

Mr. Gourley stated the problems are indicative of what happens when there is mixed use. They have a restaurant and it makes noise. It doesn't sound to him like the problems are particularly tied to the special activities events, but to the normal activities. It is a catch 22 for everyone because obviously as a businessman he wants to create as much business as possible. When this is done it drives more people to their parking lot and to the public parking and to the entire area.

Mr. Gourley stated when they have had complaints, when the Sheriff has shown up, he has gone outside with the Sheriff. One complaint was that people were breaking bottles. Nomad's doesn't sell bottles. They have security who will not let anyone leave with their drink. When he went with the officer to the location where it was reported there were problems there was no broken glass or anything else. They do everything in their power to solve problems.

Mr. Gourley stated one of the hotel tenants came over at 4:00 p.m. saying they were trying to sleep. Even though it was only four in the afternoon they turned the music down. The complainant appeared to go away happy.

Mr. Gourley is sensitive to the problems. Nomad's does not sell hard alcohol. If there is vomiting and other raucous behavior he is not inclined to think it comes from Nomad's since they just serve beer and wine. There is that element that is around. They have more problems in the alley from the traffic coming from the triangle, as it is called, the three hard alcohol bars. They've not had a single issue with one of their own patrons. They've had several issues with patrons passing by from the triangle. They are willing to work with anyone. He is there personally during the big events. He will make sure they take care of anything that needs taken care of.

Ms. Ward expressed concern about the outside music. She stated that it sounds like security will be a huge part of this; Nomad's having a staff of security to control a mob. Mr. Gourley responded they always have security.

Mr. Jones stated the Conditions of Approval require three security guards onsite, inside the building, and for the exterior one security guard when outdoor events occur. The Conditions of Approval also require the windows and the doors to be closed.

6 B(2)-7

Mr. Gourley stated that noise does escape when people are coming and going and the doors are being opened and closed. This has been a learning process for them. They had rowdier bands in the beginning, which they no longer have. On the afternoon that he received the complaint at 4:00 p.m. they had a guy playing surf guitar.

Mr. Gourley stated the nature of the Hotel San Clemente Apartments building is it is a huge structure that is straight across from Nomad's. Whether it is just the restaurant noise or from a special activity, there is not much that can be done. It is the nature of living downtown. He has a decibel meter, he has taken decibel readings on nights after they close when nothing is going on, and he has taken readings during their events. The noise generated from the public parking lot far exceeds anything that Nomad's has ever generated. There are car alarms, slamming car doors, and talking.

Mr. Gourley stated it seems as if Nomad's is being targeted because they opened up in that location. The reality is when you live downtown and there is public parking all around and there are bars that are open until 2:00 a.m. there is traffic coming by. He knows issues exist, but he truly believes that they are not Nomad's patrons doing those things.

Mr. Pechous stated it is impossible to tell. There certainly are a number of issues which have probably occurred because Nomad's has been successful. There are more people there and as Ms. Fox noted there was definitely a ramp up after Nomad's opened, and that's because of their success, which is good. There's no complaint because Nomad's is successful; the City wants a successful and vibrant downtown.

Mr. Pechous stated what he is mostly concerned with as the Zoning Administrator is to apply consistency with what the City has done with other, similar circumstances. There is not going to be any outside music allowed whatsoever. It will be very important for Nomad's to keep the doors and windows closed at all times when there is live entertainment. This will be monitored very closely.

Mr. Pechous asked if the 14 events are from now until the end of the year. Mr. Jones responded that is correct; the ordinance only allows for the approval of 14 events within a calendar year. Mr. Pechous asked if there have been any events this calendar year. Mr. Gourley responded they had a SAP which expired; they had events during that SAP. Now they have been on hold trying to get this one. They are currently not having events. Their Thursday night is a crowd that shows up which is typically the younger crowd that are walking to the triangle and doing other things. This is not in any way tied to a special event or live music.

Mr. Pechous stated that 14 events held during the remainder of this calendar year is 14 events held in a very short span of time. If there have already been events this calendar year then those should be subtracted from the 14 events allowed.

Mr. Pechous asked Mr. Gourley if Nomad's needs all 14 events. Mr. Gourley responded he has requested to have three of the large, promotional events during the remainder of this calendar year. The remainder are for just having music. Prior to knowing the City requirements, they had music quite frequently. The indoor music has not been much of an issue as far as he knows. They've never had complaints except for the one quite some time ago from the hotel resident who complained at 4:00 p.m., they turned the music down, and then the one time the Sheriff's Department showed up. The Sheriff's Department said when they showed up that it didn't seem like the noise was too loud, they thought the City Ordinance was being met.

Mr. Pechous stated there is already dining allowed on the outdoor deck. He doesn't believe the sound from the surf video on the deck during events will be much different than the conversational voices of the diners. All special events entertainment must be shut down by 10:00 p.m.

Mr. Pechous asked for more of an explanation about the request to eliminate Condition of Approval number 15. Mr. Gourley stated Nomad's clientele is families and kids as well as buddies going out for a beer. They serve food up until midnight, they close at midnight. There is never a time Nomad's serves just beer and wine. According to Alcoholic Beverage Control (ABC) guidelines, they are not a 21 and older establishment, they are just like an Applebee's or any other restaurant. Right now food is over 50 percent of their overall sales volume. They are basically a restaurant.

Mr. Gourley stated when they have the special events a lot of the surf kids attend because they are getting the signed autographs from the pros and they are getting hats and the other giveaways. It is a family event. He thinks there is a misconception with the hotel that the events are what are causing the problems. The events have been few and far between and they are rapped up relatively early. The problems seem geared more to the success of, in particular, Thursday nights, which is one of their busiest nights when there are just a lot of people. They have added security and they are controlling it. They stop the service on the deck at 10:00 p.m. and they collect all drinks; patrons must either come inside or hand over their beer. They are sensitive to the noise, they know once people have a few drinks they may tend to talk too loud.

Mr. Pechous asked for clarification about closing the deck at 10:00 p.m. Mr. Gourley responded at 10:00 p.m. they do not serve to the deck any

4B(2)9

more. Mr. Pechous asked Mr. Gourley if he would be amenable to that being a Condition of Approval. Mr. Gourley responded yes, it is something that they have self regulated anyhow. Not only do they end the event but they do not serve on the deck after 10:00 p.m., there is no food service, they stop the waitress service, and at that point they do not allow people to even take their glasses out onto the deck.

Mr. Pechous stated he can see how people drinking and talking on the outdoor deck would be a problem for the neighbors after 10:00 p.m. That is a reasonable time to close the deck. This may help in the long term. At some point Nomad's may wish to request a Conditional Use Permit for live entertainment. As he stated earlier, the SAP process is a test case, trying to work everything out and be a good neighbor, a successful operation will only help Nomad's later on if they choose to apply for a Conditional Use Permit.

Mr. Gourley stated Nomad's wants to be a good neighbor. They have cleaned up the alley substantially, they've pushed the drug dealers at least a few blocks away, the graffiti has stopped quite a bit; they believe they have been a positive force. Again, it is a work in progress; they are only coming into their first year. Some nights when they first started, they didn't know when they were going to become successful. As soon as they have sleuthed out any problem they've solved the problem; at least in their eyes.

Mr. Gourley stated things have gotten progressively better. Their business model has changed from the beginning, to more restaurant, more family oriented. They have 32 beers on tap and in the beginning it was more almost night clubish. It has transformed to more of a restaurant situation now.

Mr. Pechous asked Mr. Panas, with the approval of the SAPs, how does the City monitor events to ensure the Conditions of Approval are followed. Mr. Panas responded it is based on complaints. When complaints are received they may decide to do an inspection on the next event, just to make sure. On the previous SAP, which expired December 31, 2012, they did not receive any complaints about any of Nomad's events. Complaints that may have been received by the Sheriff's Department are different; City Code Compliance exists separate from them. When the Sheriff's Department is called a lot of times Code Compliance is not notified that the Sheriff's Department went out and responded.

Mr. Panas stated he has received two phone call complaints. One was from a competitor in the area who was upset about the success of the business and another one was from he believes one of the residents of

the hotel complaining that restaurant patrons were coming onto the property at night and hanging out in the parking lot.

Mr. Pechous informed Ms. Fox that for a lot of her complaints it may be more efficient to go directly to City Code Compliance rather than the Sheriff's Department. Ms. Fox responded it would be. She has 43 residents who complain to her rather than Code Compliance. Mr. Panas stated that sometimes people get confused. The Sheriff's Department has their own Code Enforcement Division, sometimes people talk to them and not to City Code Compliance.

Mr. Pechous stated consistency is important and he asked Mr. Jones if all the same conditions of approval have been included in the resolution that are typically included with other entertainment uses in the downtown, for instance Duke's. Mr. Jones responded these conditions are consistent. Having the food and alcohol service on the outdoor deck end at 10:00 p.m. would be different; it is stricter than what is standard.

Mr. Pechous stated with all of the best practices included as conditions of approval he is satisfied with the indoor live entertainment. The activity on the outdoor deck area must adhere to what Mr. Gourley is saying they are doing. He directed staff to add a condition of approval stating that activity on the deck will cease at 10:00 p.m. He would like the first event monitored by a Code Compliance Officer to make sure the event is compatible with the community. Without experiencing an event there does not seem to be a way to determine this.

Ms. Fox stated the hotel would like to work with Nomad's. If Nomad's gave her a calendar of events she could alert the residents so they know about it. She understands that after 10:00 p.m. the deck will be cleared, which is going to eliminate a lot of the noise. She understands that once patrons leave Nomad's property Nomad's cannot do anything about what the patrons do. They are more than willing to work with Nomad's. Mr. Gourley responded he will give her a calendar of events and he reiterated that they have been working on quieting the outdoor deck.

Mr. Pechous encouraged Ms. Fox and Mr. Gourley to continue to dialogue. Mr. Gourley stated this is the first time they've ever spoken. The one complaint Nomad's had from the resident they took care of. If the residents or Ms. Fox let him know when there is a problem then he knows what is going on at the time and he can take action.

For clarification Mr. Jones stated that a condition of approval will be added stating: All events will end at 10:00 p.m. including indoor and outdoor. With regards to outdoor, food and alcohol service shall also cease at 10:00 p.m. during the special events.

6B(3)-11

Mr. Pechous stated the SAP will expire at 10:00 p.m. so the music will cease even on the inside. There will not be any live entertainment on the outdoor deck. There will be up to 14 events, and as indicated only three are going to include the outdoor event component. Mr. Gourley stated none of those three are presently scheduled because they were not sure of this approval. They do have some indoor activities scheduled pending this approval today.

Mr. Pechous thanked everyone for attending today and he thanked everyone for their input; hearing everyone's perspective helps the City to make an informed decision and to adjust the approval as necessary.

Mr. Pechous again encouraged the applicant to continue to dialogue with his neighbors at the Hotel San Clemente Apartments and also with other neighbors in the area. He directed Code Compliance staff to monitor the first event where there is outdoor activity so the City has feedback, if there are any problems the approval can be revisited at that time.

Action: The Zoning Administrator approved Special Activities Permit 13-279, Nomad's Canteen, subject to Resolution ZA 13-029 with attached Conditions of Approval with the added condition as stated above and condition number 15 will be removed.

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

5. **NEW BUSINESS** - None


6. **OLD BUSINESS** - None

ADJOURNMENT

The meeting adjourned at 3:55 p.m. to the regular Zoning Administrator meeting to be held on October 2, 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



Jim Pechous

6B(3)-12