



STAFF REPORT SAN CLEMENTE ZONING ADMINISTRATOR

Meeting Date: July 20, 2016

PLANNER: Christopher Wright, Associate Planner *CAW*

SUBJECT: Minor Conditional Use Permit (MCUP) 16-181, Staff Waiver of Minor Cultural Heritage Permit (SWMCHP) 16-242, Mr. Pete's Beer and Wine, a request to consider the sale of beer and wine for on-site consumption at an existing restaurant.

LOCATION: 420 South El Camino Real

ZONING/GP: Mixed Use 3.2 Zoning District and Architectural Overlay, and Affordable Housing Overlay (MU3.2-A-AH)

BACKGROUND:

- The applicant, David Levey of Mr. Pete's Burgers, operates a restaurant in a 1,850 square foot commercial building. The site is located at the southwest corner of South El Camino Real and Avenida Mateo. There are 20 parking spaces available on-site and adjacent lot. See Attachment 2 for a location map.
- The restaurant has operated since 1976. The ownership has changed several times over that time period.
- The restaurant operates from 7:00 a.m. to 9:00 p.m., Mondays through Fridays, and on Saturdays from 9:00 a.m. to 9:00 p.m.
- The applicant is requesting to sell beer and wine for consumption on-site indoors and within an outdoor patio area located between the restaurant and South El Camino Real. The outdoor area is proposed to have 16 seats with beer and wine service operating from 9:00 a.m. to 9:00 p.m., Mondays through Saturdays.
- The project includes exterior site changes to create a fenced outdoor patio area for beer wine service and consumption. The changes include the installation of black wrought-iron fencing, and the removal of a concrete walkway. The walkway is seldom used to enter-and-exit the building because it must be unsafely accessed from the drive-through aisle. The walkway is unnecessary because there is another path to the building's entrance. The project replaces the hardscape with drought-tolerant landscaping in an enlarged planter area in front of the patio. The fencing material is shown on Attachment 4.
- Zoning Ordinance Section 17.36.020, requires Zoning Administrator approval of a Minor Conditional Use Permit (MCUP) to allow restaurants to sell beer and wine for on-site consumption within the MU 3.2 Zoning District.

- Zoning Ordinance Section 17.16.110.B authorizes the City Planner to approve a staff waiver of a Minor Cultural Heritage Permit (SWMCHP) for exterior changes to nonresidential sites that are minor in nature, improve a structure's appearance, and architectural integrity, that are consistent with the City's Design Guidelines, and Architectural Overlay District policies. For this project, however, the SWMCHP is being processed concurrently with the MCUP, so the Zoning Administrator is the decision making authority per Zoning Section 17.12.090. The purpose of staff waivers is to shorten the review process of minor projects that maintain or improve quality of life, and are clearly consistent with the General Plan.
- In addition to a MCUP, a Type 41 license must be obtained from the California Department of Alcohol Beverage Control (ABC) to allow the service of beer and wine.
- The Orange County Sheriff's Department, City's Code Compliance Division, and ABC does not have concerns with the proposed beer and wine sales and on-site consumption.
- The Zoning Ordinance allows 16 outdoor seats on the property without the provision of additional parking spaces for restaurants with 32 or more indoor seats. The restaurant has 52 indoor seats.
- This proposal complies with the required MCUP findings for the following reasons:
 - The beer and wine sales and outdoor dining are land uses that are consistent with the type of permitted and intended uses in the zone.
 - The restaurant must comply with code requirements and conditions of approval to ensure the use is not detrimental to the public health, safety, and welfare. This includes but is not limited to Fire Code, California Building Code, Alcoholic Beverage Control, and the San Clemente Municipal Code. For example, employees must receive service training to avoid the sale of alcoholic beverages to minors for consumption (Condition No. 5). Also, conditions of approval allow the City to adjust operating hours and restrict outdoor activities, if operational changes are necessary to ensure compliance with the noise ordinance and maintain the public health, safety, and welfare of the area (Conditions No. 10, 11, and 12).
 - The outdoor patio is well-buffered from residential uses. The outdoor patio is 75 feet to the east of residential uses on the other (west) side of the restaurant building, located in the Residential Medium zoning district (RM) across from an alley that abuts the rear of the property.
 - The proposed use will occur in an outdoor patio area during operating hours, 9 a.m. to 9 p.m. when there is more traffic and business activity along South El Camino Real with higher ambient noise levels. With these site conditions, there is less potential for the outdoor dining area to impact adjacent properties. This is reflected in standards of the City Noise Ordinance that assumes higher ambient and allowed noise levels after 7 a.m. and before 10 p.m.
 - The beer and wine sales is an accessory use at a restaurant that has operated for several years without known compatibility issues.
 - The Orange County Sheriff's Department, City's Code Compliance Division, and ABC have no outstanding issues with the restaurant or concerns with the proposed accessory use.

- This proposal complies with the required SWMCHP findings because the height, materials, and design of the proposed exterior changes are consistent with requirements. The fencing material is black wrought-iron, which is recommended in the City Design Guidelines for Spanish architecture. The fencing is open and has a height that allows for pedestrian activities and the building to be more visible from the street, consistent with goals to encourage pedestrian activity and visitor serving commercial uses in the MU 3.2 zoning district.
- Staff has not received public comments on this application as of the date this report was prepared.

RECOMMENDATION

Based on the information in the staff report and subject to the required Findings and Conditions of Approval, staff recommends that the Zoning Administrator:

1. Determine the project is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, Class No. 1, "Existing Facilities; and
2. Approve Minor Conditional Use Permit (MCUP) 16-181, Staff Waiver of Minor Cultural Heritage Permit (SWMCHP) 16-242, Mr Pete's Beer and Wine.

Attachments

- 1) Resolution ZA 16-027
- 2) Location Map
- 3) Site photograph
- 4) Photograph of proposed fencing Plans

ATTACHMENT 1

RESOLUTION NO. ZA 16-027

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF SAN CLEMENTE, CALIFORNIA, TO APPROVE MINOR CONDITIONAL USE PERMIT 16-181, STAFF WAIVER OF MINOR CULTURAL HERITAGE PERMIT 16-242, MR PETE'S BEER AND WINE, A REQUEST FOR THE ON-SITE SALE AND CONSUMPTION OF BEER AND WINE AT AN EXISTING RESTAURANT INDOORS AND OUTDOORS, LOCATED AT 420 SOUTH EL CAMINO REAL

WHEREAS, on May 5, 2016, an application was submitted, and deemed complete on July 8, 2016, by David Levey on behalf of Mr Pete's, 420 S. El Camino Real, San Clemente, CA 92672; a request for Minor Conditional Use Permit (MCUP) 16-181, Staff Waiver of Minor Cultural Heritage Permit (SWMCHP) 16-242, to allow minor exterior changes to a commercial site and to allow beer and wine sales for on-site consumption at a restaurant. The beer and wine service is proposed to occur indoors and within an outdoor patio area in front of the commercial building on-site. The site is located in the Mixed Use 3.2 zoning district and Architectural Overlay (MU3.2-A) at 420 S. El Camino Real. The site's legal description is Lots 3, 4, and 5, Block 9 of Tract 779, and Assessor's Parcel Number 058-092-031; and

WHEREAS, the Planning Division processed and completed an initial environmental assessment for this project in accordance with the California Environmental Quality Act (CEQA). The Planning Division has determined that the project is categorically exempt from CEQA in accordance with CEQA Guidelines Section 15301 as a Class 1 exemption because the project is a ancillary use provided at an existing facility; and

WHEREAS, on June 16, 2016, and June 30, 2016, the City's Development Management Team reviewed the application for compliance with the General Plan, Zoning Ordinance, and other applicable requirements; and

WHEREAS, on July 20, 2016, the Zoning Administrator held a duly noticed public hearing on the subject application, and considered evidence presented by the applicant, City Staff, and other interested parties.

NOW, THEREFORE, the Zoning Administrator of the City of San Clemente hereby resolves as follows:

Section 1: CEQA Exemption. Based upon its review of the entire record, including the Staff Report, any public comments or testimony presented to the City Council, and the facts outlined below, the Zoning Administrator hereby finds and determines that the proposed project is categorically exempt from CEQA pursuant to State CEQA Guidelines section 15301 (Class 1: Existing Facilities).

The Class 1 exemption specifically exempts from further CEQA review the operation, repair, maintenance, and minor repair of existing public or private structures, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. This exemption covers, but is not limited to, interior or exterior alterations, additions to existing structures that will not result in an increase of more than 50 percent of the floor area of the structure before the addition, or 2,500 square feet, whichever is less. Here, the proposed project involves the addition of an ancillary use, beer and wine sales and consumption, a negligible expansion of use at an existing restaurant that does not increase the floor area of the structure. Thus, the project qualifies for the Class 1 exemption.

Furthermore, none of the exceptions to the use of the Class 1 categorical exemption identified in State CEQA Guidelines section 15300.2 apply. The project will not result in a cumulative impact from successive projects of the same type in the same place, over time, given the proposed use is consistent with General Plan policies and Zoning regulations, which were studied and addressed in the General Plan EIR. There are no unusual circumstances surrounding the project that result in a reasonable possibility of a significant effect on the environment. The project will not damage scenic resources, including trees, historic buildings, rock outcroppings, or similar resources. The project does not include any hazardous waste sites, and the project will not cause a substantial adverse change in the significance of a historical resource. Thus, the Class 1 exemption applies, and no further environmental review is required.

Section 2: MCUP Findings. With regard to MCUP 16-181, the Zoning Administrator hereby finds as follows:

- A. The proposed on-site sale and consumption of beer and wine at a bona fide restaurant is permitted within Mixed Use 3.2 (MU 3.2) zoning district pursuant to the approval of a Minor Conditional Use Permit (MCUP) and complies with all the applicable provisions of the Municipal Code, the San Clemente General Plan and the purpose and intent of the zone in which the accessory use is being proposed in that the on-site sale and consumption of beer and wine is consistent with the types of permitted and intended uses in the zone.
- B. The site is suitable for the type and intensity of the on-site sale of beer and wine in that:
 1. the alcoholic beverages will be purchased and consumed on-site in conjunction with the restaurant use indoors and within an enclosed outdoor patio area that fronts South El Camino Real. The outdoor patio is well-buffered from residential uses. The outdoor patio is 75 feet to the east of residential uses on the other (west) side of the restaurant building, located in the Residential Medium zoning district (RM) across from an alley that abuts the rear of the property.
 2. the proposed use will occur within an outdoor patio area during operating hours, 9 a.m. to 9 p.m., when there is more traffic and business activity along South El Camino Reals with higher ambient noise levels. With these site conditions,

there is less potential for the outdoor dining area to impact adjacent properties. This is reflected in standards of the City Noise Ordinance that assumes higher ambient and allowed noise levels after 7 a.m. and before 10 p.m. Nevertheless, should there be a compatibility issue, conditions of approval attached hereto as Exhibit A, allow the City to adjust operating hours and restrict outdoor activities, if operational changes are necessary to ensure compliance with the noise ordinance and maintain the public health, safety, and welfare of the area;

3. the beer and wine sales is an accessory use at a restaurant that has operated for several years without known compatibility issues; and
 4. the Orange County Sheriff's Department, City's Code Compliance Division, and California Department of Alcoholic Beverage Control (ABC) do not have outstanding issues with the restaurant or concerns with the request.
- 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 in that:
1. the restaurant must comply with all code requirements including but not limited to Fire Code, California Building Code, Alcoholic Beverage Control (ABC), and the San Clemente Municipal Code, including requirements for employees to receive service training to avoid the sale of alcoholic beverages to minors for consumption;
 2. the alcoholic beverages will be purchased and consumed on-site in conjunction with the restaurant use indoors and within an enclosed outdoor patio area that fronts South El Camino Real. The outdoor patio is well-buffered from residential uses. The outdoor patio is 75 feet to the east of residential uses on the other (west) side of the restaurant building, located in the Residential Medium zoning district (RM) across from an alley that abuts the rear of the property.
 3. the proposed use will occur within an outdoor patio area during operating hours, 9 a.m. to 9 p.m., when there is more traffic and business activity along South El Camino Reals with higher ambient noise levels. With these site conditions, there is less potential for the outdoor dining area to impact adjacent properties. This is reflected in standards of the City Noise Ordinance that assumes higher ambient and allowed noise levels after 7 a.m. and before 10 p.m. Nevertheless, should there be a compatibility issue, conditions of approval attached hereto as Exhibit A, allow the City to adjust operating hours and restrict outdoor activities, if operational changes are necessary to ensure compliance with the noise ordinance and maintain the public health, safety, and welfare of the area; and
 4. the beer and wine sales is an accessory use at a restaurant that has operated for several years without known compatibility issues; and

- D. The proposed use will not negatively impact surrounding land uses in that the sale and consumption of beer and wine has been conditioned to restrict the hours of operation of the service of beer and wine to maintain compatibility with the surrounding properties and must comply with the City's Noise Ordinance.

Section 3: WV MCHP Findings. With regard to WVMCHP 16-242, the Zoning Administrator hereby finds as follows:

- A. The architectural treatment of the project complies with the San Clemente General Plan in that the design and materials of the proposed exterior changes are consistent with General Plan policies and Architectural Overlay district requirements for projects to have a design and materials consistent with Spanish Architecture. The proposed guardrail is black wrought-iron, which is recommended in the City Design Guidelines for Spanish architecture; and
- B. The architectural treatment of the project complies with the Zoning Ordinance in areas including, but not limited to, height, setback color, etc., in that the height, materials, and design of the proposed exterior changes are consistent with Architectural Overlay and fencing requirements. The materials and design are consistent with Spanish architecture and the fencing is open and has a height that allows for pedestrian activities and the building to be visible from the street, consistent with goals to promote pedestrian activity and visitor serving commercial uses in the MU 3.2 zoning district, that extends the downtown activity center and Spanish architectural district, up to the Interstate-5 gateway;
- C. The architectural treatment of the project complies with the architectural guidelines in the City's Design Guidelines in that the design and materials of the proposed exterior changes are consistent with General Plan policies and Architectural Overlay district requirements for projects to have a design and materials consistent with Spanish Architecture. The proposed guardrail is black wrought-iron, which is recommended in the City Design Guidelines for Spanish architecture; and
- D. The general appearance of the proposal is in keeping with the character of the neighborhood in that the exterior changes are consistent with recommended materials and design in the City Design Guidelines for Architectural Overlay district; and
- E. The proposal is not detrimental to the orderly and harmonious development of the City in that the project improves the appearance of the site and neighborhood, consistent with architectural and zoning requirements and the General Plan; and
- F. The proposed project complies with the purpose and intent of the Architectural Overlay District as described in Subsection B above.

Section 4: The Zoning Administrator hereby determines the project is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301, Class No. 1, "Existing Facilities"; and hereby approves Minor Conditional Use Permit (MCUP) 16-181, Staff Waiver of Minor Cultural Heritage Permit (SWMCHP) 16-242, Mr Pete's Beer and Wine, subject to the above Findings, and the Conditions of Approval attached hereto as Exhibit A.

PASSED AND ADOPTED at a regular meeting of the Zoning Administrator of the City of San Clemente on July 20, 2016.

SAN CLEMENTE ZONING ADMINISTRATOR

James Pechous, Zoning Administrator

CONDITIONS OF APPROVAL*
MCUP 16-181/SWMCHP 16-242
MR PETE'S BEER AND WINE

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]* (PIng.)_____

2. Thirty days after project approval, the owner or designee shall submit written consent to all of these imposed conditions to the Community Development Director or designee. The owner or designee understands that the resolution will be of no force or effect unless such written consent is submitted to the City. *[Citation – City Attorney Legal Directive]* (PIng.)_____

3. The sale of beer and wine for on-site consumption shall be limited to indoor seating area between regular operating hours of 7:00 a.m. and 9:00 p.m. Monday through Friday, and 7:00 a.m. to 9:00 p.m. on Saturdays. Within the outdoor patio area, beer and wine service for on-site consumption shall be limited to operating hours between 9:00 a.m. to 9:00 p.m. Mondays through Saturdays. Any proposed change in the hours of operation shall require an amendment to this Minor Conditional Use Permit. *[Citation – Division 9 (Alcoholic Beverages), Section 25631 to 25633 of 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. For the exterior changes, SWMCHP 16-242 shall become null and void if the use is not commenced within one (1) year from the date of the approval thereof. Since the use requires the issuance of a building permit, the use shall not be deemed to have commenced until the date that the building permit is issued for the development. *[Citation - Section 17.12.150.A.1 of the SCMC]* (PIng.)_____

A use shall be deemed to have lapsed, and SWMCHP 16-242 shall be deemed to have expired, when a building permit has been issued and construction has not been completed and the building permit has expired in accordance with applicable sections of the California Building Code, as amended. *[Citation - Section 17.12.150.C.1 of the SCMC]* (PIng.)_____

7. For the beer and wine sales and consumption ancillary use, MCUP 16-136 shall become null and void if the use is not commenced within one (1) year from the date of the approval thereof. Since the use does not require the issuance of a building permit, the use shall not be deemed to have commenced until the date the use becomes operational. *[Citation - Section 17.12.150.A.1 of the SCMC]*(PIng.)_____

8. The owner or designee shall have the right to request an extension of MCUP 16-181/SW MCHP 16-242 if said request is made and filed with the Planning Division

prior to the expiration date as set forth herein. The request shall be subject to review and approval in compliance with Section 17.12.160 of the Zoning Ordinance. [Citation - Section 17.12.160 of the SCMC] (PIng.)_____

9. Pursuant to Section 17.12.150(C) of the Zoning Ordinance, the on-site sale and consumption of beer and wine shall be deemed to have lapsed, and MCUP 16-181 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.)_____

10. In the event that noise impacts neighboring properties, the tenant must soundproof the facility, or use other best management practices as determined by the City Planner, to eliminate the problem and comply with the City's noise ordinances. ■■ (PIng.) _____

11. The business owner shall use her/his best judgment and best management practices to ensure activities on the premises will be conducted in a manner that will not be disruptive to other commercial or residential neighbors. The property owner, applicant, or designee shall be responsible for immediately resolving any problems associated with the activity and/or issues of concern raised by neighbors. ■■ (PIng.)_____

12. If it is found that the permitted hours of operation are not appropriate to mitigate impacts on neighboring properties, at the discretion of the Police Department or Code Compliance, the permitted hours of operation may be revised. ■■ (PIng.) _____

13. A separate Building Permit is required for the accessible compliant gates and must be reviewed and approved for Building Code compliance 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.)_____

* All Conditions of Approval are standard, unless indicated as follows:

- Denotes modified standard Condition of Approval
- Denotes project specific Condition of Approval



LOCATION MAP

MCUP 16-181/SW MCHP 16-242
MR PETE'S BEER AND WINE
420 S. ECR







