AGENDA ITEM: 4-A



Meeting Date: May 17, 2017

PLANNER:

Kirt A. Coury, Contract Planner

SUBJECT:

Minor Conditional Use Permit 16-423/Minor Architectural Permit 17-111 – Café Hermosa, a request to allow beer and wine consumption within a proposed outdoor enclosed patio seating area at a restaurant located within the Plaza Pacifica Shopping Center.

LOCATION:

979 Avenida Pico, Suite D

ZONING/GP:

Zoning: Mixed Use zoning within the Rancho San Clemente Specific

Plan

General Plan: Neighborhood Commercial (NC 1.2)

BACKGROUND:

 The applicant, Joe Madison of Café Hermosa, is completing permitted tenant improvements to establish a restaurant in a 1,500 square-foot suite within the Plaza Pacifica Shopping Center. The suite is adjacent to other restaurants located at the northwest corner of Avenida La Pata and Avenida Pico. See Attachment 2 for a location map. Figure 1 below is an image of the site.

Figure 1: View of front of Building in Plaza Pacifica Shopping Center



- A restaurant has operated in the suite for approximately 14 years. Sushi Sono, the last tenant, ended operations on July 25,2016, so the suite is currently vacant. In 2002, Sushi Sono starting selling beer and wine for consumption indoors under Minor Conditional Use Permit (MCUP) 02-094. The applicant, Café Hermosa, entered into a lease agreement in September, 2016 with Plaza Pacifica. It was determined, with review and input from the City Attorney, that the intent of the use to sell beer and wine for consumption indoors has carried forward with the applicant and the original MCUP is still valid.
- Cafe Hermosa will maintain the prior restaurant's hours of operation of 8:00 a.m. to 9:00 p.m. daily.
- The applicant requests permission to sell beer and wine for on-site consumption within a proposed outdoor patio area in front of the suite with 16 seats. The outdoor patio would have the same operating hours as the restaurant indoors.
- The outdoor patio is fenced with black wrought-iron to match the railing for an outdoor patio area of adjacent restaurant, Board and Brew, in the Shopping Center. The fencing material is identified on the attached plans.
- Zoning Ordinance Section 17.36.020(A)(7) requires a Minor Conditional Use Permit to expand the onsite alcohol consumption approval to the outdoor patio.
- Zoning Ordinance Section 17.16.100(2)(b) identifies that a Minor Architectural Permit (MAP) is required to allow the construction of a new accessory structure, such as a fence.
- No additional seating is required to allow the proposed use. The prior restaurant tenant had 36 indoor seats that required nine parking spaces. The applicant proposes 26 indoor seats and 16 outdoor seats for a total of 42 seats. According to Zoning Ordinance Table 17.28.205, Parking Requirements for Outdoor Dining Areas, restaurants with less than 32 indoor seats may have eight outdoor seats with no additional parking required. With this eight outdoor seat parking credit, parking spaces are required for the restaurant based on a total of 34 seats, which corresponds to nine parking spaces.
- 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 outdoor patio meets ABC requirements for outdoor alcohol consumption including an enclosure of the patio with a railing and gate.
- The Orange County Sheriff's Department, City's Code Compliance Division, and ABC do not have concerns with the outdoor beer and wine service.
- If the use of the patio becomes a source of problems due to noise or other issues, a condition of approval requires the business owner to work with City staff to mitigate any problems.
- This proposal complies with the required findings for approval based on the following:
 - The exterior changes are in character with outdoor patio fencing in the shopping center.
 - 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 beer and wine sales is an accessory use with no increase in seating.

- The prior tenant operated with indoor beer and wine sales for several years without known compatibility issues.
- The outdoor patio is well-buffered from residential uses. The outdoor patio is approximately 400 feet to the south of residential uses on the other (north) side of the commercial building, a slope, and Via Onda street that abuts the rear of the property. With these site conditions and the proposed operating hours, there is less potential for the outdoor dining area to have adverse noise impact on adjacent properties.
- 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 the Municipal Code, California Building and Fire Codes, and ABC licensing requirements. 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, and12).
- 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.
- The project is Categorically Exempt from the requirements of the California Environmental Quality Act pursuant to CEQA Guidelines Section 15301 (Class 1), and Section 15303 (Class 3). These exemptions apply to accessory structures and uses. The request meets this criteria because the project involves the construction of a fenced patio and establish an ancillary use for outdoor beer and wine service that does not increase parking requirements.
- At the time of completion of this staff report, no public input has been received.

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:

- Determine the project is Categorically Exempt from the requirements of the California Environmental Quality Act pursuant to CEQA Guidelines Section 15301 (Class 1: Existing Facilities) and Section 15303 (Class 3: New Small Structures); and
- 2. Approve Minor Conditional Use Permit (MCUP) 16-423 and Minor Architectural Permit (MAP) 17-111, Café Hermosa.

Attachments:

- Resolution # ZA 17-015
 Exhibit A Conditions of Approval
- 2. Location Map Plans and Building Photos

RESOLUTION NO. ZA 17-015

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF SAN CLEMENTE, CALIFORNIA, TO APPROVE MINOR CONDITIONAL USE PERMIT 16-423, AND MINOR ARCHITECTURAL PERMIT 17-111, CAFÉ HERMOSA, A REQUEST TO ALLOW THE CONSUMPTION OF BEER AND WINE ON A NEW OUTDOOR ENCLOSED PATIO LOCATED AT 979 AVENIDA PICO, SUITE D

WHEREAS, on November 28, 2016 an application was submitted by Joe Madison, and deemed complete on April 13, 2017, to request the sale of beer and wine for outdoor, on-site consumption for a restaurant located at 979 Avenida Pico Suite D, San Clemente, CA 92672, with a legal description being Lot 2 and portions of Lots 1, 3, and 4, of Tract 15883, Assessor's Parcel Number 688-131-22; and

WHEREAS, the Planning Division completed an initial environmental assessment of the above matter in accordance with California Environmental Quality Act (CEQA) and recommends that the Zoning Administrator determine this project Categorically Exempt from CEQA pursuant to CEQA Guidelines Section 15301 (Class 1: Existing Facilities) and Section 15303 (Class 3: New Small Structures). These exemptions apply to accessory structures and uses. The request meets this criteria because the project involves the construction of a fenced patio and establish an ancillary use for outdoor beer and wine service that does not increase parking requirements; and

WHEREAS, on December 15, 2016, and February 16, 2017, the City's Development Management Team reviewed the application for compliance with the General Plan, Zoning Ordinance, and other applicable requirements; and

WHEREAS, on May 17, 2017 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:

<u>Section 1. CEQA Exemption.</u> Based upon its review of the entire record, including the Staff Report, any public comments or testimony presented to the Zoning Administrator, 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) and Section 15303 (Class 3: New Small Structures).

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. No seating increase is proposed. Thus, the project qualifies for the Class 1 exemption.

The Class 3 exemption specifically exempts from further CEQA review the construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. Here, the proposed project involves the construction of an accessory structure including a patio and fence for an existing restaurant facility.

Furthermore, none of the exceptions to the use of the Class 1 and Class 3 categorical exemptions 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. There are no unusual circumstances surrounding the project that result in a reasonably 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 is not adjacent to a historic structure. Thus, the Class 1 and Class 3 exemptions apply, and no further environmental review is required.

Section 2: With regard to the Minor Conditional Use Permit (MCUP) 16-423 for outdoor on-site consumption of beer and wine, the Zoning Administrator finds as follows:

- 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 the San Clemente General Plan, the Zoning Ordinance, the Rancho San Clemente Specific Plan, and the purpose and intent of the zone in which the use is being proposed in that:
 - The outdoor consumption of beer and wine at a restaurant is permitted within the Rancho San Clemente Specific Plan 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;
 - 2. The proposed use complies with all the applicable provisions of the Municipal Code; and
 - 3. A restaurant has previously operated at this location. Café Hermosa is a new restaurant offering high-end food with a seasonal menu that includes a variety of dishes. The use is supported by General Plan Policy ED-2.03., Existing Businesses: "We give high priority to initiatives, investments, and the allocation of municipal resources that help businesses remain and prosper in San Clemente."

- B. The site is suitable for the type and intensity of the on-site sale of beer and wine in that:
 - The alcoholic beverages will be purchased and consumed on-site in conjunction with the restaurant use indoors and within an enclosed outdoor patio area. The business is located in an existing shopping center with other similar uses surrounding the location. The patio is buffered by the existing building, parking lot, and surrounding buildings which will reduce potential outdoor noise impacts. No live or amplified sound is proposed;
 - 2. The proposed use will occur within an outdoor patio area during operating hours, 8:00 a.m. to 9:00 p.m., Monday through Sunday. With the site conditions and hours of operation, 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 to the restaurant; 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 the development must comply with all code requirements including but not limited to Fire Code, California Building Code, Alcoholic Beverage Control, and the San Clemente Municipal Code. Additionally, the proposed use is ancillary to the primary restaurant establishment, and the project has been conditioned to ensure that the project complies with all applicable codes, and incorporates best management practices.
- 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 compliance with the City's Noise Ordinance. The existing restaurant will serve the local residents and workers of the surrounding community.

<u>Section 3:</u> With regard to the Minor Architectural Permit (MAP) 17-111 for construction and enclosure of an outdoor patio seating area, the Zoning Administrator finds as follows:

- A. The architectural treatment of the project complies with the San Clemente General Plan, in that the outdoor patio area is defined by fencing and provides sufficient area along the building for ingress and egress. Further, the outdoor patio meets all required accessibility path of travel and will not impede pedestrian use of the area or surrounding sidewalks. Therefore, the project supports the General Plan Land Use Policy LU-11.04, Outdoor Dining: "We encourage the development of outdoor dining and other similar uses which do not impede pedestrian use of the sidewalks."
- B. The architectural treatment of the project complies with the Zoning Ordinance including, but not limited to, height, setback, color, and the City's Design Guidelines, in that the project has a design and materials that are high quality. The building is in keeping with the character of the Plaza Pacifica Shopping Center in that the size, scale, massing, and architecture are similar to the existing fencing material approved with adjacent businesses.
- C. The architectural treatment of the project complies with the architectural guidelines in the City's Design Guidelines in that the project has a design, materials and massing consistent with "basic principles of Spanish Colonial Revival (SCR) architecture" per the City's General Design Guidelines II.C.2.
- D. The proposal is not detrimental to the orderly and harmonious development of the City in that:
 - 1. The project will be constructed in compliance with all required Building, Safety and Fire codes;
 - 2. The project is consistent with Urban Design Policy UD-3.01. Land Use Decisions: "We use urban design standards and tools to minimize adverse impacts on adjacent properties when considering land use and zoning requests." in that the project has a high quality, and attractive architectural materials and details that improves the aesthetic condition of the property and neighborhood and is consistent with the Plaza Pacifica Shopping Center"; and
 - 3. The project complies with development standards.

<u>Section 4:</u> Based on the foregoing recitals and findings above, and the written and oral comments, facts, and evidence presented, the City of San Clemente Zoning Administrator approves Minor Conditional Use Permit 16-423, and Minor Architectural Permit 17-111 Café Hermosa, subject to the above Findings, and the Conditions of Approval set forth in Exhibit A.

PASSED AND ADOPTED at a regular meeting of the Zoning Administrator of the City of San Clemente on May 17, 2017.

SAN CLEMENTE ZONING ADMINISTRATOR
Bill King, Zoning Administrator

CONDITIONS OF APPROVAL* MINOR CONDITIONAL USE PERMIT 16-423 MINOR ARCHITECTURAL PERMIT 17-111 CAFÉ HERMOSA 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] (Plng.)
- 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] (Plng.)
- 3. The sale of beer and wine for on-site consumption shall be limited to the operating hours of 8:00 a.m. and 9:00 p.m. daily. 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] (Plng.)

- 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]
- 6. MCUP 16-423 and MAP 17-111 shall become null and void if the use is not commenced within two (2) years 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] (Plng.)
- 7. The owner or designee shall have the right to request an extension of MCUP 16-423 and MAP 17-111 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] (Plng.)
- 8. Pursuant to Section 17.12.150(C) of the Zoning Ordinance, the on-site sale and consumption of alcohol use shall be deemed to have lapsed, and MCUP 16-423 and MAP 17-111 shall be deemed to have expired, ninety (90) days after the date the on-site sale and indoor consumption of beer and wine ceases operation and/or the business closes at such location. [Citation Section 17.12.150(C) of the SCMC] (Plng.)
- 9. 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.

■ (Plng.)____

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10.	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. [Plng.]
11.	The applicant shall utilize a black railing as approved on the plans to match the architecture and other railings existing adjacent to the suite.
12.	A separate Building Permit is required. 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.)
13.	Project has not been reviewed for Building Code compliance. Prior to issuance of building permits, code compliance will be reviewed during building plan check. [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.)
14.	Building permits shall not be issued unless the project complies with all applicable codes, ordinances, and statutes including, but not limited to, the Zoning Ordinance, Grading Code, Security Ordinance, Transportation Demand Ordinance, Water Quality Ordinance, Title 24 of the California Code of Regulations as adopted by the City including, but not limited to the California Administrative, Building Electrical, Plumbing, Mechanical, Energy, Green, and Fire Codes. [S.C.M.C – Title 8 – Chapter 8.16 – Fire Code, Title 15 Building and Construction Chapters 15.08, 15.12, 15.16, 15.20, 15.21, Title 16 Subdivisions, Title 17 Zoning]

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

 Denotes modified standard Condition of Approval

 Denotes project specific Condition of Approval

LOCATION MAP



979 Avenida Pico, Suite D













