



STAFF REPORT SAN CLEMENTE PLANNING COMMISSION

Meeting Date: June 21, 2017

PLANNER: Amber Gregg, City Planner 

SUBJECT: Temporary Banner Permit 17-194, Appeal of Denial of Temporary Banner Permit Applications for the Marblehead Outlets

BACKGROUND

The sole issue to be addressed on this appeal is whether the Director of Community Development's decision to deny the subject temporary banner permit applications was correct under San Clemente's Municipal Code Section 17.84.030H.

The issuance of a temporary banner permit is a ministerial act; the application for such permit is administratively reviewed by staff to determine if it is compliant with the City's Municipal Code. If an application does not meet the requirements of the Municipal Code, the permit is not issued.

On April 28, 2017, Nancy May on behalf of Villa San Clemente LLC ("applicant") submitted 18 applications for temporary banner permits for the San Clemente Outlets ("Outlets"). Staff reviewed the applications, and they did not meet the requirements of the Municipal Code and therefore, could not be approved. The applicant is appealing this decision. Per the Municipal Code, decisions by the City Planner or Community Development Director can be appealed to the Planning Commission, which is why this appeal is before you.

Municipal Code Section 17.84.030H states the following for temporary banner signs:

Temporary Banner Signs. Temporary Banner Signs shall be allowed for businesses city-wide, excluding home-occupations.

1. Temporary Banner Sign Criteria.

- a. Each business shall be permitted a maximum of one temporary banner sign per business at any given time.
- b. The temporary banner sign cannot exceed 64 square feet. A temporary banner sign will not count towards a business's total sign area allowance.
- c. The temporary banner sign shall be placed on-site and flush on the building. These banners are prohibited in the following locations: city right-of-way, free-standing walls, fences or other areas or fixtures not part of the business's primary structure; other locations as determined by the City Planner to be inconsistent with the intent of this section. No portion of the

temporary banner sign shall be free-hanging and all corners of the banner shall be secured to the building.

- d. Temporary banner signs shall be constructed of cloth, canvas, fabric, plastic or other similar durable material.
- e. The temporary banner sign shall be maintained in good condition, free of any defects, including cracking, torn or ripped material, or faded copy.
- f. Each business may have up to four banner permits per calendar year. Renewals of banner permits are allowed, but in no case shall a business display a temporary banner for more than 120 days per calendar year. A minimum of 14 days between permits is required, except upon renewal of an existing banner permit. Banners may be replaced during the authorized period so long as they are the same or smaller size and installed in the approved location. These provisions are to ensure temporary banner signs are not used as permanent display or in-lieu of permanent signs for the business.

(emphasis added.)

At issue is the interpretation of the phrase, “business’s primary structure,” and “building” in Section 1.c.

APPEAL

On May 8, 2017, the applicant filed an appeal stating the following, “Appeal of denial of 12 temporary on-site banner sign permit applications and rescission of 6 temporary on-site banner sign permits for businesses at Outlets of San Clemente based upon improper denial of permit applications, abuse of discretion, selective enforcement, and other grounds. Provisional appeal of additional 18 renewal permit applications taken under advisement by Staff, submitted to the City on or About April 28, 2017.”

Although the appeal attempts to raise various issues with the City’s denial, the only issue the Planning Commission is reviewing is whether the denial of the 18 requested temporary banner permits was correct under the City’s Municipal Code. The complete appeal filed is provided under Attachment 3.

ANALYSIS OF KEY ISSUE ON APPEAL

As stated above under Section 1.f on temporary banner signs, each business may have up to four (4) banner permits per calendar year. Renewals of banner permits are allowed, but in no case shall a business display a temporary banner for more than 120 days per calendar year. This means that every January 1st the ability to apply for four (4), 30-day temporary banners restarts. Per Section 1.c, a banner must be placed on the business’s primary structure.

Prior to the subject application, the applicant previously applied and received approval for the existing 18 banners for the following time periods:

1. August 2016-December 2016 (four, 30-day permits for 2016)
2. January 2017-April 2017 (four, 30-day permits for 2017)

Thus, the applicant capped out on the 120-day allowance this year for those banners. Seemingly to avoid this cap, on April 28, 2017, the applicant submitted 18 temporary banner permit applications **for the same banners issued previously, but applied for by different tenants**. For example, since the Guess store had already applied for all four temporary banner permits for 2017, the Eddie Bauer store applied for a temporary banner permit that would depict the "Guess" logo. And that banner was to be placed on a wall of the Guess store's building, not a wall of the Eddie Bauer store's building.

However, the temporary banner criterion requires that a banner be placed on the business's primary structure; in other words, on its primary building. For example, businesses located in building 19 can place a temporary banner on building 19, but they cannot place one on building 21 because building 21 is not part of their primary structure.

The City's Municipal Code provides the following definitions for primary building and primary structure in Section 17.88.030:

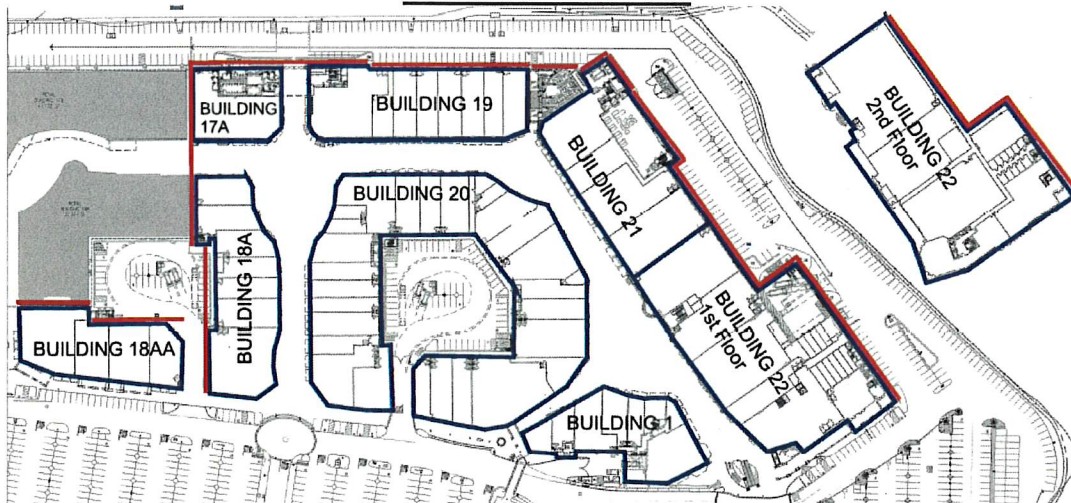
Primary Building- "Primary building" means a building within which the principal use or principal occupancy of a lot is conducted.

Primary Structure- "Structure, Primary." See definition of "Building, Primary."

Based on the Municipal Code, primary structure and primary building are one in the same. However, in this appeal, the applicant argues that a primary structure is different than a primary building. The applicant interprets a primary structure to be the foundation of the entire development and not the primary building, although this interpretation is contrary to the provisions of the Municipal Code.

Per the Outlets' building permit, the development is made up of several attached contiguous buildings on one lot. See Exhibit 1 below.

Exhibit 1- Site Plan



And in the case of the subject banner applications, none of the businesses that applied for the banners were located in the same building on which the banners were to be placed. See Exhibit 2 below.

Exhibit 2- Location of Signs

Temporary Banner Sign Permits (Submitted 4-28-17)

Business Store	Store Location		Banner located on
	Building No.	Proposed Banner	Building No.
Rockwell's	22	Tommy Hilfiger	17A
Luxury Mall	18A	H&M	22
Crocs	19	Columbia	21
Eddie Bauer	21	Guess	19
Zales	18A	Outlets (Bass org. applied)	19
Crossover Health	22	Vans	19
Owl Fish	20	Cole Haan	18A
Sun Diego	20	Calvin Klein	18A
Zumiez	20	Panera Bread	18AA
Papaya	20	Converse	22
Carter's	20	Starbucks (Luggage Factory org. applied)	19
Van Heusen	20	Levi's (Opearl org applied)	19
Jockey	20	Blaze Pizza (Hanes org. applied)	19
Clarks	20	Nautica	18A
Loft	20	Tilly's	21
Perfumia	20	Puma	18AA
Asics	20	Nike	22
Grayse	20	Skechers	19

The inability to meet the criteria in Section 1.c. is why staff could not approve the 18 submitted temporary banner permit applications. It should be noted that staff made an error and initially approved six temporary banners permits that were applied for on April 20, 2017. After discovering that the six banners were not issued to businesses in the same primary structure, staff notified the applicant and rescinded the approvals.

OTHER ISSUES NOTED IN THE APPEAL SUBMITTAL

Each of the other issues the applicant raises are outside the scope of this appeal. Under San Clemente Municipal Code Section 17.12.140 E, the scope of review considers the "issues raised on appeal," and the body hearing the appeal may "review new evidence and ... consider all elements of the appealed action." And here, the issue raised on appeal is the City's denial of the subject temporary banner permit applications. And the elements of the appealed action are: the City's interpretation of the relevant Municipal Code provisions and its application of those Municipal Code provisions to the subject temporary banner permit applications in denying them. The other issues raised fall far outside this scope.

Nonetheless, to the extent the above analysis does not cover these issues, we address these other extraneous issues briefly here to assuage any concerns about their impact on this appeal.

First, the Planning Commission is specifically empowered under San Clemente Municipal Code Section 17.12.140 to review decisions of the Community Development Director, and the Code provides the procedures for such appeal. Concerns about alleged bias of the Planning Commission, as opposed to an independent hearing officer, or the process afforded in the appeal, such as due process or discovery procedures, are ultimately irrelevant to the Planning Commission's authority to consider the appeal now.

Second, the City's alleged "selective enforcement" of its Municipal Code on temporary signs against other businesses has no bearing on the City's interpretation of the Municipal Code in denying the subject temporary sign permits, the sole elements of the appealed action being considered here. How the City enforced its Municipal Code provisions vis-à-vis other temporary banner permit applications, having different factual circumstances, has no relation to how the City considered and applied the relevant Municipal Code provisions to the subject applications here.

Third, whether the City's decision to deny applicant's applications for temporary banner permits violates the applicant's constitutional rights falls far outside the issues that the Planning Commission is empowered to consider—the City's interpretation of the relevant Municipal Code provisions and if it correctly applied the Code provisions to the subject applications. Moreover, the City did not violate the applicant's First or Fourteenth Amendment rights, namely, freedom of speech or equal protection rights, since the applicant was permitted to have its temporary signage, but simply met the 120-day cap for the banners it wishes to continue displaying. This cap applies equally to all banners, regardless of message, and all applicants. The City did not impose on any of the applicant's constitutional rights. On the other hand, the applicant tried to improperly circumvent the City's signage codes by applying through other businesses for the same banner signs; applicant cannot ignore its wrongful acts in the face of the City's lawful Municipal Codes and application of those Codes to the present applications.

Fourth, the City's rescission of six permits was not retaliatory. As noted above, approving those permits was a mistake. Once the City learned that the six banners it had approved permits for were issued to businesses who were not using the banners on the primary structure they are located in, it then rescinded the permits since such use is in violation of the City's Municipal Code.

Fifth, whether *permanent signage* was permitted or considered has no bearing on whether *temporary signage* was permissible and properly allowed under the circumstances discussed above. In determining whether to approve the applicant's temporary banner permit application, the only consideration is the City's Municipal Code provisions on temporary banner signs.

Sixth, as noted above the Planning Commission may consider "new evidence" on this appeal related to the City's interpretation and application of the City's Municipal Code in denying the subject temporary banner permit applications. Evidence outside of these

actions is not to be considered. Evidence about the City's denial necessarily arose when the City made its decision; any purported information arising *after* the City made its decision, or even after the hearing on this appeal takes place, would not and could not be evidence in this case. Thus, the applicant's concern that new information will be provided after the hearing on this appeal is unfounded and mere speculation.

And ultimately, this appeal is not the forum to raise each of these issues above or others that the applicant may attempt to raise at the hearing.

ENVIRONMENTAL REVIEW

The proposed appeal is not categorized as a project under CEQA and therefore is not subject to environmental review.

ALTERNATIVES; IMPLICATIONS OF ALTERNATIVES

1. The Planning Commission can concur with staff and deny the 18 temporary banner permits.

This action would result in the denial of the appeal, and the applicant could appeal the Planning Commission's decision to the City Council.

2. The Planning Commission can agree with portions of the appeal.

The Planning Commission can disagree with staff's interpretation of the Municipal Code regarding banner location and provide clarification or direction to staff. This action would result in modifications being incorporated accordingly.

3. The Planning Commission can approve the appeal for the temporary banner permits.

This action would result in the applicant being able to obtain the temporary banner permits and the banners would be able to remain.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission deny the appeal of the temporary banner permits.

Attachments:

1. Resolution
2. Location Map
3. Appeal filed by the applicant
4. Site Plan showing primary buildings on site
5. Photographs

ATTACHMENT 1

RESOLUTION NO. PC 17-018

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, DENYING TEMPORARY BANNER PERMIT 17-194, APPEAL OF DENIAL OF TEMPORARY BANNER PERMIT APPLICATIONS FOR OUTLETS AT SAN CLEMENTE LOCATED AT 101 WEST AVENIDA VISTA HERMOSA

WHEREAS, on April 28, 2017, eighteen Temporary Banner Permit applications were submitted by Nancy May, of 101 West Avenida Vista Hermosa, San Clemente, CA 92672, requesting banner permits for 18 businesses to place banners on various buildings at the Outlets of San Clemente. The Outlets of San Clemente site is located in the Commercial land use designation of the Marblehead Coastal Specific at 101 West Avenida Vista Hermosa. The site's legal description is Tract 8817, Lot 327, and Assessor's Parcel Number (APN) 691-442-13; and

WHEREAS, staff reviewed the permit applications and could not approve the permits because they did not comply with San Clemente Municipal Code Section 17.84.090H, 1.c. because none of the businesses that applied for the banners were located in the same building or structure on which the banners were to be placed; and

WHEREAS, on May 8, 2017, Villa San Clemente LLC, by and through Nancy May on behalf of Craig Reality Group, Manager of Villa San Clemente LLC, submitted a notice of appeal stating "Appeal of denial of 12 temporary on-site banner sign permit applications and rescission of 6 temporary on-site banner sign permits for businesses at Outlets of San Clemente based upon improper denial of permit applications, abuse of discretion, selective enforcement, and other grounds. Provisional appeal of additional 18 renewal permit applications taken under advisement by Staff, submitted to the City on or About April 28, 2017." ("Appeal 17-194"); and

WHEREAS, the proposed appeal is not categorized as a project under California Environmental Quality Act (CEQA) and therefore is not subject to environmental review; and

WHEREAS, on June 21, 2017, the Planning Commission of the City of San Clemente held a duly noticed public hearing on the subject applications, considered written and oral comments, and facts and evidence presented by the applicant, City staff, and other interested parties.

NOW, THEREFORE, The Planning Commission of the City of San Clemente does hereby resolve as follows:

Section 1. Incorporation of Recitals.

The Planning Commission hereby finds that all of the facts in the Recitals are true and correct and are incorporated and adopted as findings of the Planning Commission as fully set forth in this resolution.

Section 2. CEQA Findings.

The proposed appeal is not categorized as a project under CEQA and therefore is not subject to environmental review.

Section 3. Appeal Findings

With respect to Appeal 17-194, the Planning Commission finds as follows:

1. San Clemente Municipal Code Section 17.84.030H,1.c. requires the following for temporary banner signs:

The temporary banner sign shall be placed on-site and flush on the building. These banners are prohibited in the following locations: city right-of-way, free-standing walls, fences or other areas or fixtures not part of the business's primary structure; other locations as determined by the City Planner to be inconsistent with the intent of this section."

Applications for temporary banner signs that do not meet the criteria of this Section cannot be approved.

2. San Clemente Municipal Code Section 17.88.030 defines "primary building" and "primary structure" as follows:

Primary Building- "Primary building" means a building within which the principal use or principal occupancy of a lot is conducted.

Primary Structure- "Structure, Primary." See definition of "Building, Primary."

Based on the Municipal Code's definition, a primary structure and a primary building are one in the same.

3. Because the subject permit applications do not meet the criteria that a banner be placed on a business's primary structure, *i.e.*, primary building, they do not comply with San Clemente Municipal Code Section 17.84.030H, 1.c. and cannot be approved.
4. Additionally, approval of the subject permit applications would allow temporary banners to be displayed beyond the 120-day cap provided in San Clemente Municipal Code Section 17.84.030H, 1.f. since the banners at issue were previously approved for temporary banner permits for 120 days. Such approval would not be consistent with the purpose and intent of San Clemente Municipal Code Section 17.84.030H.

- 5. The remaining issues submitted in the notice of appeal are outside of the scope of this appeal and are not under the purview of this reviewing body.

Section 4. Planning Commission Denial

Based on the foregoing recitals and findings above, and the written and oral comments, facts, and evidence presented, the City of San Clemente Planning Commission denies TBP 17-194, Appeal of Denial of Temporary Banner Permit Applications for the Outlets at San Clemente, subject to the above Findings.

PASSED AND ADOPTED at a regular meeting of the City of San Clemente Planning Commission on June 21, 2017.

Chair

CERTIFICATION:

I HEREBY CERTIFY this Resolution was adopted at a regular meeting of the City of San Clemente Planning Commission on June 21, 2017, carried by the following roll call vote:

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

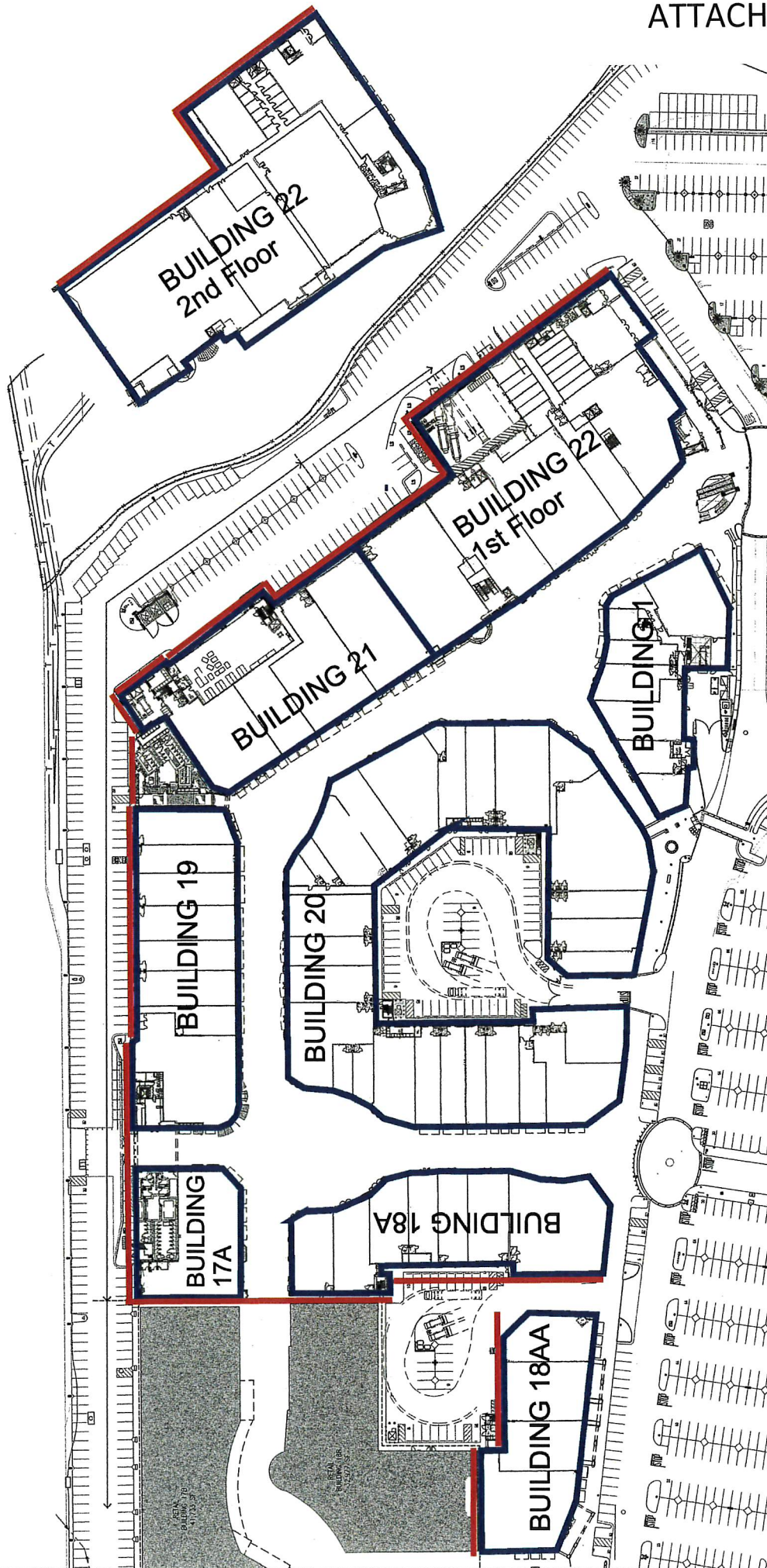
Secretary of the Planning Commission



LOCATION MAP

Marblehead Outlets Development
101 Avenida Vista Hermosa





— Permitted Façade for Temporary Banner Signs

