

**MINUTES OF THE ADJOURNED REGULAR MEETING
OF THE CITY OF SAN CLEMENTE
PLANNING COMMISSION
October 18, 2017 @ 6:00 p.m.
City Council Chambers
100 Avenida Presidio
San Clemente, CA**

1. CALL TO ORDER

Chair Brown called the Adjourned Regular Meeting of the Planning Commission of the City of San Clemente to order at 6:05 p.m.

2. PLEDGE OF ALLEGIANCE

Commissioner Talley led the Pledge of Allegiance.

3. ROLL CALL

Commissioners Present: Jim Ruehlin, Michael Smith, Jason Talley, Zhen Wu; Chair pro tem Michael Blackwell, Vice Chair Barton Crandell, Chair Donald Brown

Commissioners Absent: None

Staff Present: Amber Gregg, City Planner
Vanessa Norwood, Contract Planner
Linda Vo, Assistant Planner
Cecelia Gallardo-Daly, Community Development Director
Matthew Richardson, Asst. City Attorney (Departed 7:40 p.m.)
Anthony Taylor, Special Counsel (Arrived 7:45 p.m.)
Eileen White, Recording Secretary

4. SPECIAL ORDERS OF BUSINESS

None

5. MINUTES

- A. Minutes from the Planning Commission Regular Study Session of October 4, 2017

IT WAS MOVED BY COMMISSIONER RUEHLIN, SECONDED BY COMMISSIONER SMITH, AND CARRIED 6-0-1, WITH COMMISSIONER TALLEY ABSTAINING, TO RECEIVE AND FILE THE MINUTES OF THE

PLANNING COMMISSION REGULAR STUDY SESSION OF OCTOBER 4, 2017, WITH THE FOLLOWING REVISION:

Page 2, under "Commission Comment" add the following bulleted item, "Suggested Option 2 would be appropriate for staff to pursue."

B. Minutes from the Planning Commission Regular Meeting October 4, 2017

IT WAS MOVED BY COMMISSIONER RUEHLIN, SECONDED BY VICE CHAIR CRANDELL, AND CARRIED 6-0-1, WITH COMMISSIONER TALLEY ABSTAINING, TO RECEIVE AND FILE THE MINUTES OF THE PLANNING COMMISSION REGULAR MEETING OF OCTOBER 4, 2017, AS SUBMITTED.

6. ORAL AND WRITTEN COMMUNICATION

None

7. CONSENT CALENDAR

None

8. PUBLIC HEARING

A. 230 Avenida Granada, Cultural Heritage Permit 16-304/Minor Conditional Use Permit 17-310, Alvarez Remodel (Norwood)

Public Hearing to consider a request for a remodel and addition to a single-family residence and to allow additional height for a proposed elevator tower located at 230 Avenida Granada in the Mixed-Use Zoning District and Architectural and Coastal Overlays (MU3.3-A-CZ). The site's legal description is Lot 44, Block 17 of Tract 779; and the Assessor's Parcel Number is 058-112-44.

Vanessa Norwood, Contract Planner, narrated a PowerPoint Presentation entitled, "Alvarez Addition, Conditional Use Permit 17-310, Cultural Heritage Permit 16-304," dated October 18, 2017. A copy of the Presentation is on file in Planning Division.

Michael Luna, architect representing the applicant, described existing constraints of the project site including the poor-quality of prior additions and drainage issues; noted that one purpose for utilizing a plate height measurement is to reduce the visual massing of exterior walls on a single plane; and described the elevator/tower installation. In response to questions, he described how the rooftop jacuzzi would drain, provided design details, agreed to consider adding a band of tile around the structure for additional visual interest and agreed with the suggestion that lowering the elevator tower a few inches would eliminate the need for a Minor Conditional Use Permit. He indicated the applicant would not

object to withdrawing the application for the Minor Conditional Use Permit and that he and the applicant would work with staff to lower the elevator tower three inches.

Chair Brown opened the public hearing, and there being no public testimony, closed the public hearing.

During discussion the Commissioners, either individually or in agreement, provided the following commentary:

- Suggested that lowering the elevator tower would reduce excess height and eliminate the need for a Minor Conditional Use Permit.
- Commented that although the use is allowed under the Zoning Code as proposed, the use is a single-family home, it would be less dense and add neighborhood interest if the design increased setbacks, added more landscaping, and/or deviated from the typical rectangular footprint typically used on constrained 40x100 foot lots in areas filled with mixed-use and multifamily structures; and further suggested the building design is accommodating site constraints that don't necessarily exist.
- Suggested that calculations based on plate height resulted in a taller structure than would be allowed; opined that reducing the building height would not necessarily eliminate the roof decks; suggested the roof deck be lowered by 2 and ½ half feet to meet the plate line height measurement.
- Voiced support for the project with a height reduction to eliminate the Minor Conditional Use Permit as it would then comply with all applicable codes.

IT WAS MOVED BY VICE CHAIR CRANDELL, SECONDED BY COMMISSIONER SMITH, AND CARRIED 5-2-0, WITH COMMISSIONER RUEHLIN AND COMMISSIONER WU OPPOSED, TO ADOPT RESOLUTION NO. PC 17-030, A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING CULTURAL HERITAGE PERMIT 16-304, AND ~~MINOR CONDITIONAL USE PERMIT 17-310, ALVAREZ REMODEL, A REQUEST TO ALLOW A REMODEL AND ADDITION TO A SINGLE-FAMILY RESIDENCE AND TO ALLOW ADDITIONAL HEIGHT FOR A PROPOSED ELEVATOR, LOCATED AT 230 AVENIDA GRANADA.~~

Amended as follows:

All references to Minor Conditional Use Permit 17-310 shall be struck from the Resolution and Conditions of Approval.

[DECISION FINAL. SUBJECT TO APPEAL OR CALL UP BY COUNCIL.]

B. 2340 S. El Camino Real 6 – Conditional Use Permit 17-159 – Mizokami Sports Therapy (Vo)

Public Hearing to consider a request to establish and operate a massage establishment located in an existing commercial building. In addition, the applicant requests an off-street parking agreement to bring the massage establishment into conformance with parking requirements. The off-site parking agreement would be with the City of San Clemente for the use of 5 public parking spaces located within 300 feet of the project site. The project is located in the Neighborhood Commercial Zoning district and the Affordable Housing Overlay (NC1.3-AH). The site's legal description is Parcel 2, of Page 29, of Assessor's Parcel Book 73; Assessor's Parcel Number is 060-032-07.

Linda Vo, Assistant Planner, narrated a PowerPoint Presentation entitled, "Mizokami Sports Therapy, Conditional Use Permit 17-159," dated October 18, 2017. A copy of the Presentation is on file in Planning Division.

Mark McGuire, representing the applicant, reviewed parking plans including spaces acquired through an off-site parking agreement with the City and an additional 7 spaces accessible to the business; confirmed with staff that the applicant will have the ability to offer weekend massages through individual appointments.

Chair Brown opened the public hearing.

James Glover, resident, spoke to benefits he, his wife, and other cancer patients have realized due to massages provided by the applicant and her staff.

Brad Malamud, attorney for appellant, has offices nearby and noted to date there has not been a parking shortage; suggested the project be approved without the proposed off-site parking agreement.

Chair Brown closed the public hearing.

IT WAS MOVED BY COMMISSIONER TALLEY, SECONDED BY CHAIR PRO TEM BLACKWELL, AND UNANIMOUSLY CARRIED TO ADOPT RESOLUTION NO. PC 17-022, A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT 7-159, MIZOKAMI SPORTS THERAPY, A REQUEST TO ESTABLISH AND OPERATE A MASSAGE ESTABLISHMENT AND ALLOW AN OFF-SITE PARKING AGREEMENT LOCATED AT 2340 SOUTH EL CAMINO REAL, SUITE 6.

[DECISION FINAL. SUBJECT TO APPEAL OR CALL UP BY COUNCIL.]

Break 7:40 to 7:48 p.m.

C. 101 West Avenida Vista Hermosa – Appeal 17-280 – Appeal of 18 Temporary Banner Permits for the Marblehead Outlet Commercial Center (Gregg)

Public Hearing to consider an Appeal filed by the Craig Reality Group concerning the City's denial of 18 temporary banner sign permits.

Commissioner Ruehlin announced he would be recusing himself from this and the next agenda item due to a public comment he made before he joined the Commission and left the meeting room. He did not return to the meeting.

Commissioner Smith recused himself from this and the next agenda item based on a comment he made in an email and left the meeting room. He did not return to the meeting.

Brad Malamud, attorney for appellant, asked Amber Gregg, City Planner, to recuse herself from speaking this evening due to potential bias as she is the Planning Commission Secretary. Additionally, he requested to be allowed to present a rebuttal before the Commission acted on the matter.

Anthony Taylor, Special Counsel, introduced himself to the Commission and offered assistance. He advised the applicant would have the opportunity to address remarks made by the City and public before the Commission acted on the matter.

Matt Silver, attorney for staff, advised City Planner Gregg is not a deciding body on this matter and has stepped down from the dais. She has not had any prior communication with the Commission regarding agenda items 8C or 8D. Her position as Commission Secretary does not have any bearing in the Commission's decision-making process.

Presentations:

Thomas Walling, Spach, Capaldi & Waggaman, LLP, representing Villa San Clemente, LLC, the applicants, provided a history of the temporary signage permit applications. In August 2017, the City denied the applicant's temporary on-site banner sign permit applications because the permits had already been on display for 120 days. The applicant is requesting the Planning Commission overturn the City's denial of the sign applicants for the following reasons:

1. The 120-day display limit is an unconstitutional restraint on free speech.
2. The City Council had previously determined that limits on temporary banner permits should be extended in circumstances where permanent sign applications have been submitted and are pending.
3. The City has violated the applicant's constitutional rights by impermissibly delaying processing the banner permit applications for nearly four months.

4. The City is estopped from denying the permit applications because it allows its own signs to remain posted more than 120 days in a calendar year.

Additionally, the City should maintain the status quo while the permanent sign permit is in process, and should not be allowed to fine or cite Villa San Clemente tenants for extending the banner signage past 120 days. There is a basic problem with the ordinance itself and it should be revised and fixed. The banner signs should be allowed to stay up until the permanent signs are approved by the City.

Amber Gregg, City Planner, and Matt Silver, counsel for staff, narrated a PowerPoint Presentation entitled, "Marblehead Temporary Banner Permits Appeal, dated October 18, 2017. A copy of the Presentation is available in Planning Division.

City Planner Gregg reviewed the history of the subject banners as well as the criteria for Temporary Banner Plans, quoting from SCMC Section 17.84.030 H (1)(f) that "in no case shall a business display a temporary banner for more than 120 days per calendar year." City staff and the Community Development Director could not approve the submitted applications because the business had already been approved to display temporary banners for 120 days in the 2017 calendar year. She noted in response to City Council direction in 1991 that the Planning Division review provisions for temporary signage, the number of days for temporary banner signage was increased from 30 to 120 days per year.

Counsel Matt Silver commented that the SCMC does not have provisions or a process for determination that can be made to allow exception to the 120-day limit as stated in the Municipal Code. He suggested the proper place to make a determination on this issue is in court, where legal arguments can be heard and the judge can make the decision. The Municipal Code is clear that "in no case" can a temporary banner be displayed for more than 120 days. The City cannot turn a blind eye to its own regulations.

Public Comment:

Chair Brown opened the public hearing; announced receipt of a letter dated October 18, 2017, from Spach, Capaldi & Waggaman, LLP opposed to the City's denial of the temporary on-site banner sign application which was delivered on the dais before the meeting.

Richard Boyer, resident, supported the staff recommendation to uphold the denial of the temporary banner sign applications because City residents support less visual clutter and the City Codes clearly limit display to 120 days a year, which the applicant has already exceeded.

Steve Knoblock, attorney for appellant, supported the applicant's appeal of staff's denial of temporary sign permits because the City currently allowed

hundreds of banner signs to be displayed without enforcing the 120-day limit, violating its own code, and the temporary banner signs should be allowed to remain in place until the applicant has approval for the permanent signage.

Chair Brown closed the public hearing.

Rebuttal:

Brad Malamud, attorney for appellant, stated that staff should have ruled sooner on the applicant's request for extensions of the temporary banner permits as the almost four-month delay is a violation of the administrative process; noted it was the City's fault the permanent signage application missed the CEQA deadline, not the applicant's; stated the applicant has a First Amendment Right to have the signage up; advised the City should do the right thing and allow them to generate business. Additionally, he noted the City benefits from sales tax revenues generated by the applicant's sales.

Steve Knoblock, attorney for appellant, commented that the CEQA process has been delayed due to requests from the City for additional information and consultants. He alleged it's the City's responsibility to complete the report and hire consultants if necessary.

Thomas Walling opined the City is preventing the business from speaking if they don't allow temporary signage and that businesses have the right to represent themselves. He suggested the intent of City Council direction in 1991 to revise the temporary banner regulations was to allow temporary signage to be displayed until permanent signage is installed. He charged that the Planning Division did not satisfy the intent of City Council's direction when it simply expanded the number of days allowed to be displayed from 30 to 120.

During discussion the Commissioners, either individually or in agreement, provided the following commentary:

- Suggested the issues of constitutionality was beyond the purview of this Commission and should be heard in a court of law.
- Commented that the City has no choice but to deny the application for banner signs to be displayed longer than 120 days based on the Municipal Code.
- Suggested City Council has more discretion to come up with a solution for temporary banner signage.

IT WAS MOVED BY CHAIR PRO TEM BLACKWELL, SECONDED BY COMMISSIONER WU, AND CARRIED 5-0-2, WITH COMMISSIONER RUEHLIN AND COMMISSIONER SMITH ABSTAINING, TO ADOPT RESOLUTION NO. PC 17-033, A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, DENYING

APPEAL 17-280, APPEAL OF DENIAL OF TEMPORARY BANNER PERMIT RENEWAL APPLICATION FOR OUTLETS AT SAN CLEMENTE LOCATED AT 101 WEST AVENIDA HERMOSA.

[DECISION FINAL. SUBJECT TO APPEAL OR CALL UP BY COUNCIL.]

D. 101 West Avenida Vista Hermosa – Appeal 17-276 - Appeal of the Marblehead Outlet Signs Master Sign Program (Gregg)

Public Hearing to consider an Appeal filed by the Craig Reality Group concerning the Community Development Director's decision that the proposed Master Sign Program application for freeway oriented signs requires a Sign Exception Permit.

Presentations:

Madison Spach, of Spach, Capaldi & Waggaman, LLP, representing Villa San Clemente, LLC, the applicants, narrated a handout entitled, "Appeal of action of Community Development Director, Villa San Clemente, LLC," dated October 18, 2017. Hard copies of the presentation were distributed to the Planning Commission. In August 2017, the Community Development Director notified Villa San Clemente that the Master Sign Permit (MSP) for Villa San Clemente was invalidated because it was "subject to" Sign Exception Permit (SEP) 06-402. SEP 06-402, approved by the City Council in 2007, was invalidated by the Superior Court in 2008 due to the City's failure to perform appropriate environmental review of the freeway-oriented signs and subsequently set aside by the City Council. SEP 06-402, before being invalidated, granted exceptions to freeway signage, including length of signage (1.5 square foot of signage per lineal foot instead of 1 foot). The applicant maintains that the Community Development Director does not have the authority to void the City Council-approved MSP. He requested the Commission overturn the Community Development Director's determination that the MSP is invalid and return the project to the same status it had before the email was sent.

City Planner Gregg narrated a PowerPoint Presentation entitled, "Appeal 17-276" dated October 18, 2017. A copy of the Presentation is on file in Planning Division.

Cecelia Gallardo-Daly, Community Development Director, noted the issue of freeway signage came about during a Design Review Subcommittee meeting, when the applicant stated that oversized freeway oriented signage was still a part of the existing MSP and entitled. She researched the 2007 and 2008 actions and determined that all the freeway-oriented signage for the project was rescinded when SEP 06-402 was invalidated. The applicant would need to apply for and the City Council would need to approve a new and separate SEP to allow freeway oriented signs to exceed SCMC Section 17.84.020 (D) mandate of one square foot of

signage per lineal foot of building frontage, façade, or adjacent building elevation. The provisions of the MSP for the Villa San Clemente signage that were not freeway oriented were maintained and are in place today.

Matt Silver, counsel for staff, discussed language in the writ ordered by the Superior Court. The writ does not indicate that a SEP is not required when an applicant wants an exception to the City's code, it states that the SEP is invalid because the environmental review was not adequate. If the Commission does not require an SEP for any new signage proposed that deviates from the Municipal Code language in effect at the time the project was approved, the Commission would potentially be afoul of the writ and go against the existing environmental documentation for the project.

Public Comment:

Chair Brown opened the public hearing; announced receipt of two letters on the dais this evening regarding this item. One dated October 18, 2017, from Spach, Capaldi & Waggaman, LLP opposed to the Community Development Director's determination to invalidate the project's MSP and one dated October 18, 2017, from Richard Boyer, resident, opining that the Court's invalidation of SEP 06-402, and City Council's subsequent action to rescind its approval, precludes the applicant from installing freeway signage.

Richard Boyer, resident, supported the Community Development Director's decision and provided a history of the applicant's freeway signage. In 2007 the City Council approved the freeway signage under pressure from the applicant and a lawsuit was filed by San Clemente Citizens for Integrity in Government ("Citizens") to challenge the approval. In 2008, the City was ordered to "set aside and void" its approval of a Sign Exception Permit for freeway oriented signage.

Chair Brown closed the public hearing.

City Planner Gregg explained that the City's Zoning Ordinance requires a MSP for any development with more than 4 signs. At the time of the approval, the City's Municipal Code had a process to allow freeway signage with an SEP. Additionally, an SEP is required if an applicant requests to install oversized signage. In 2007, the City Council approved the SEP along with the MSP. The Citizens took the City to court to challenge the approval, and the Court ordered the City to rescind its approval of the section of the SEP that pertained to freeway oriented signage, finding that the City did not complete an adequate environmental review for the freeway-oriented signage package. The MSP for the project's interior signs is still valid. A new SEP for freeway-oriented oversized signage was submitted in 2016. The applicant asserts that Villa

San Clemente has the right to install oversized signage based on the MSP and is challenging the City's determination that the Court and subsequent City Council's invalidation of the SEP also voided its right for oversized signage. The applicants are challenging the Community Development Director's authority to make this determination and asking the Commission to find that the determination is invalid and should be overturned.

Rebuttals:

Steve Knoblock, attorney for appellant, commented that the Court made the decision to invalidate the SEP due to inadequate environmental review, and the City Council, in invalidating the SEP, was responding to the Court's decision. The City did not appeal the Judge's decision, and Villa San Clemente was not a party to the suit.

Madison Spach clarified that Villa San Clemente is not asking for additional rights, but are asserting that the Development Agreement and MSP entitles them to 1.5 feet of signage per 1 linear foot of building façade. They are requesting that the Commission determine that the Community Development Director does not have the authority to make a determination on the project's original MSP and subsequent actions by the City Council.

During discussion the Commissioners, either individually or in agreement, provided the following commentary:

- Questioned the City Council's action in 2008 to rescind only the portions of the MSP that deal with freeway signage rather than the entire SEP.
- Stated that although the SEP is still in existence and was not struck down in its entirety, it has no purpose and no entitlements for freeway oriented signage for the project.
- Established from staff that the MSP is still valid, as well as a separate SEP that was granted to allow oversized interior signage for the project.
- Established from staff that language in the subject email indicating that the MSP was invalidated when SEP 06-402 was invalidated could have been clarified to state "MSP *as it relates to freeway signage*" so as not to give the applicant the impression that the Community Development Director was indicating that the entire MSP had been invalidated.

IT WAS MOVED BY COMMISSIONER TALLEY, SECONDED BY VICE CHAIR CRANDELL AND CARRIED 5-0-2, WITH COMMISSIONER RUEHLIN AND COMMISSIONER SMITH ABSTAINING, TO ADOPT RESOLUTION NO. PC 17-034, A RESOLUTION OF THE PLANNING

COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, DENYING APPEAL 17-276, APPEAL OF COMMUNITY DEVELOPMENT DIRECTOR'S DETERMINATION THAT A SIGN EXCEPTION PERMIT IS REQUIRED FOR A PENDING APPLICATION FOR OUTLETS AT SAN CLEMENTE TO EXCEED THE APPLICABLE CODE REQUIREMENT OF ONE SQUARE FOOT OF SIGNAGE PER LINEAR FOOT OF BUILDING FRONTAGE, LOCATED AT 101 WEST AVENIDA VISTA HERMOSA.

Amended as follows:

Page 1, resolution title amended to replace "DENYING APPEAL 17-276" WITH "AFFIRMING IN PART AND DENYING IN PART APPEAL 17-276"

Page 2, 3rd paragraph, delete the second "2017"

Page 3, 2nd paragraph, 1st sentence, replace "bindings" with "buildings"; replace "fac[ade]" with "façade"; 7th paragraph, insert "3 to 6" between "issues" and "submitted"; last paragraph, replace "denies Appeal 17-276" with "denies in part and affirms in part Appeal 17-276"

[DECISION FINAL. SUBJECT TO APPEAL OR CALL UP BY COUNCIL.]

9. NEW BUSINESS

None

10. OLD BUSINESS

None

11. REPORTS OF COMMISSIONERS/STAFF

- A. Tentative Future Agenda
- B. Zoning Administrator Minutes of 10-4-17
- C. Staff Waiver 17-318

Commissioner Talley announced he will not be present at the Commission's regular meeting of November 8, 2017.

Commissioner Wu announced he will not be present at the DRSC meeting of October 25, 2017; it was established that Vice Chair Crandell and Commissioner Blackwell will be attending the October 25, 2017, DRSC meeting.

12. ADJOURNMENT

IT WAS MOVED BY VICE CHAIR CRANDELL, SECONDED BY COMMISSIONER RUEHLIN, AND UNANIMOUSLY CARRIED TO ADJOURN

AT 10:38 P.M. TO THE REGULAR STUDY SESSION TO BE HELD AT 6:00 P.M. ON NOVEMBER 8, 2017, IN COUNCIL CHAMBERS AT CITY HALL LOCATED AT 100 AVENIDA PRESIDIO, SAN CLEMENTE, CA.

Respectfully submitted,

Donald Brown, Chair

Attest:

Amber Gregg, City Planner

DRAFT