

These minutes were approved by the Zoning Administrator 8-27-2019

**CITY OF SAN CLEMENTE  
MINUTES OF THE REGULAR MEETING  
OF THE ZONING ADMINISTRATOR  
AUGUST 22, 2019**

**1. CALL TO ORDER**

The Regular Meeting of the City of San Clemente Zoning Administrator was called to order on August 22, 2019 at 3:07 p.m. in Conference Room A of the Community Development Department, located at 910 Calle Negocio, San Clemente, California, by Zoning Administrator (ZA) Cecilia Gallardo-Daly.

Staff Present: Cecilia Gallardo-Daly, Zoning Administrator; Katie Crockett, Associate Planner; Kyle Webber, Community Development Technician; Lisa Acosta, Office Specialist I

**2. MINUTES**

- A. The minutes of the Zoning Administrator meeting of July 18, 2019 were received and filed.

**3. ORAL AND WRITTEN COMMUNICATION**

Larry Culbertson, San Clemente Historical Society, is concerned with the City's public hearing and notification process stating Section 17.21.100 of the Municipal Code does not do what it purports, resulting in many meetings being unknown to the public. He suggests the City notify abutting property owners as soon as a project is submitted to carry out the purpose of ensuring public awareness and help facilitate public discussion and debate.

**4. PUBLIC HEARINGS**

- A. **98 Avenida Del Mar – Minor Conditional Use Permit 19-097/Minor Cultural Heritage Permit 19-098 – West of Artifex** – Continued from July 18, 2019 (Crockett)

A request to allow: 1) a stand alone tasting room for the sale of beer with indoor and outdoor seating; 2) exterior building modifications; and 3) six parking waivers, in the Mixed Use 3.0 Zone and Architectural and Central Business Overlays.

Associate Planner, Katie Crockett, summarized the staff report.

ZA Gallardo-Daly asked staff to explain the Walk Score as an accepted methodology used to measure walkability.

Staff explained the Walk Score is one metric used to analyze walking routes to nearby amenities. Points are awarded based on the distance to amenities in each category. Amenities within .25 mile are given maximum points. A Walk Score also measures pedestrian friendliness by analyzing population density and road metrics such as block length and intersection density.

ZA Gallardo-Daly noted for the record that on August 20, 2019 at 11:00 a.m. she had a meeting with Michael Kaupp and Donald Prime, co-owners of the building adjacent to the proposed project, to discuss the Artifex application. In this meeting, Mr. Kaupp and Mr. Prime raised concerns with the Land Use, noise, parking waivers, and the process for establishing the Land Use Interpretation.

Applicants, Tom Cordato and Nicholas Cordato, were present and available for questions.

ZA Gallardo-Daly opened the public hearing.

Michael Kaupp, resident, expressed concern with the process of the Interpretation, and the impacts of noise, parking, and impacts to residential and the historic preservation efforts. The following are his notes verbatim at the request of Mr. Kaupp:

- Process:  
There is growing agreement that this Interpretation is major, not minor, and therefore should have gone to the Planning Commission for study and determination. Given that this is a new use with potential impacts to the Downtown, as well as setting precedents with unknown unintended consequences, this clearly seems to be a major interpretation and of great interest and concern to the public. Per a conversation with our former City Planner, this is a new use and therefore a land-use issue and state law indicates this would be under the Planning Commission Purview. The only reason that this is being processed by the Zoning Administrator is because the City Planner described this as a Minor issue. Minor meaning with little potential impact and not of great concern or interest to the public.
- Noise:  
This proposed use should not qualify for outdoor bonus seating given to legitimate restaurants serving food. In fact, this proposal should not be allowed to have outdoor seating even if it were fully parked. We have historically been very diligent to mitigate interior noise from existing bars in town, using efforts to contain the noise inside the establishment. This figuratively and literally opens the door to excessive outdoor noise that we have fought so hard to keep inside. All in an effort to protect the public and neighboring businesses and residences from unwanted noise

pollution. These are very noisy establishments. At the previous Zoning Administrator meeting, chaired by Adam Atamian, Acting Zoning Administrator, Mr. Atamian stated several times during the meeting that he has frequented Artifex in the business park along with a number of other similar establishment and found them all to be extremely noisy. His remarks referencing this high level of noise did not make it into the minutes of that meeting, so I contacted him and he stated that he was totally fine with me getting on the record that these were in fact his statements. Don Prime informed me that he has gone to Artifex twice and it was very difficult to even hear the people sitting on the patio across the table from him. The first time he visited Artifex it was not at their pick time the second was closer to peak He stated that upon arrival, when exiting his car approximately 30 or more feet from the patio area, the noise seemed very loud and most likely above established community standards.

- Impact to residential, roughly 18 feet from apartment bedroom windows: There are 8 apartments contiguous to this proposed project, two of the apartments are approximately 18 feet away. One bedroom is directly aligned with the proposed patio. I can imagine that the noise would be untenable for one and possibly three of these apartments.
- Impact to Historic preservation efforts: Over the last 25 years I have engaged in preserving and protecting the two historic buildings at 104 and 106 Avenida Del Mar, contiguous to the proposed project, coupled together they are known as the Stanford Court Building. They are both mixed-use, one built in 1926 and the other in 1927. Restoration of defining features and replacement and removal of details applied to the two buildings over the years that at the time were thought to reflect current styles has been ongoing. It has been a 25- year project of passion and dedication to preservation of two of San Clemente's prominent mixed-use buildings. These two original buildings from the very beginning of the founders era are the embodiment and foundation of the early understanding of the value of mixed- use in a downtown. The proposed project not only threatens the use of the residential portion so important to the downtown but also would become a potential insurmountable road block to continued historic preservation. Having completed a successful renovation of the facade facing Del Mar, my plan has been as a next step to begin to uncover and bring back to life the facade facing the alley. On the second story there exist two patios that were walled off from public view long before I owned the building. My goal is to open these patios up to light and air and bring back more closely the original design of that area of the building. This would enhance the undulation of that facade and reintroduce wrought iron railing details and lighting, which would also bring more light to the area along with more eyes on the street, to quote Jane Jacobs. According to Jane Jacobs in her well known book "Death and Life of Great American City," residential in a downtown or city neighborhood is paramount with respect to safety. If I

were to restore these original patios open to public views and enjoyment and bring back that facade to its original state, my fear is that this area of the building would become untenable for families living there due to noise coming from the proposed project. Thereby potentially ending the historic restoration efforts for these two prominent structures.

Donald Prime, resident, is concerned with parking, and impacts to residential and the historic preservation efforts. The following are his notes verbatim at the request of Mr. Prime:

- Parking waivers: Planning Staff involved in the 2018 Parking Study told me that the City Council initially objected to any change in the policy regarding waivers. They agreed to add the term "when appropriate" as below. From Parking Study: "In consultation with the Planning Commission, there is support of adding 'where appropriate' in the waiver policy, to allow the City to consider projects that revitalize Downtown area in need of investment, support historic preservation, or implement other city goals, where there is surplus public parking available during peak period." There is not a surplus of public parking in the vicinity, however that's defined. The 2018 Parking Study shows that the utilization rates for both Upper and Middle Del Mar are 95%. Anything over 90% is at "maximum effective capacity." Even though Staff's new parking analysis uses a radius around the project larger than has ever been used before (700 feet) to define vicinity, the data shows 93%, 96% and 95% utilization at the three peak times. Under these circumstances, what is the justification for granting parking waivers here? Staff told me waivers in Downtown should be approached with idea that the Downtown needs something that can only be accomplished by granting the waivers. What's the important goal here? This corner is probably the busiest in all of Downtown, with South of Nick's, Baskin-Robbins and Lavender Lounge. It isn't an area that "needs revitalization." The new phrasing was not meant to allow carte blanche granting of waivers but to allow for an important use that perhaps couldn't provide adequate parking (eg., additional library space or police station) or development of a site difficult to develop without waivers (eg., a historic building). Staff said it should be the hardest to get waivers in the 100 block of Del Mar because of impacted parking and no project should be to the detriment of the Downtown, even if it meets certain City goals. This project will be detrimental to the Downtown because it will greatly impact parking and traffic (20-30 cars circling around trying to find spaces) and detrimental to the historic structure immediately next door. Michael Kaupp will speak on that. Just last year Zov's was required to allow public parking in their private parking lot in exchange for 3 parking waivers. Lot had previously been leased by City but the agreement did away with lease and payment by City to open lot to public.
- Utilization rates: At the first Zoning Administrator meeting the Acting Zoning Administrator asked that parking resources be looked at in 300

foot radius. That has been the tradition for many years and we contend, therefore, that you should use 300 feet when evaluating this project. In Staff's use of 700 foot radius, that circle just nips the southeast corner of lot 7D and yet you include the entire lot in your total. That lot has the largest number of open spaces at any of the "peak times" and will skew the data. Staff report cites the total open spaces but neglects the fact that your own "new" data shows 93%, 96% and 95% utilization at peak times. That is not the required "surplus of public parking available during peak period."

- Visitor-serving goal: All restaurants and most retail are visitor serving. Therefore, that shouldn't be used as a criteria to grant waivers or you'd have to grant them to all proposed "visitor serving" businesses that apply.
- Peak time: Years ago, the Downtown transitioned from daytime peak time to nighttime. With the decline of retail and more successful restaurants in the Downtown, it strains credulity that we've now gone back to daytime peak. Anyone who visits Downtown in the evening knows how hard it is to park. Parking should have been looked at during peak hours of this applicant's business. The peak hours for Artifex in the business park appear to be 6-7 PM on Thursday, 5-8 PM on Friday. Peak hours on Del Mar will certainly be evening. 7 PM should have been looked at as peak time of this business because that is when the parking impact will be greatest.
- Precedent: Defining this business as a "restaurant" seems misleading at best and would set a very bad precedent. It will allow other bars to sell small packages of peanuts/pretzels and apply to be classified as restaurants, with a right to outdoor seating. How would the City justify denying those? Does Planning really feel that is what the community wants – bars with outdoor seating?

Larry Culbertson, resident, is concerned with the intensity of usage and the potential negative impacts of the parking and noise on the surrounding residences and historic resources. Mr. Culbertson added that the Design Review Subcommittee recommended the Zoning Administrator refer the project to the Planning Commission and recommend the City Planner consider this a major Interpretation subject to the Planning Commission review.

Nick Cordato, co-applicant, stated the current location of Artifex is a tasting room inside a brewery with a lot of stainless steel, high ceilings, concrete floors, open areas with pumps going and is loud all the time. The proposed location of the tasting room is approximately 950 square feet will have lower ceilings, noise will be contained inside and any sound will go out towards Avenida Del Mar which will be no louder than a car or motorcycle going down the street. Additionally, Artifex does not encourage patrons to drive to their facilities. They encourage patrons to walk, ride bikes, Lyft, or use of the Trolley.

Tom Cordato, co-applicant, stated every beach city he has been in within Southern California has incurred tremendous growth in the last 48-50 years and unfortunately, some cities have not been able to deal with the rising number of people moving into the areas and the parking situations. Anyone who resides in a downtown area with business and residential areas, should expect additional traffic and noise.

ZA Gallardo-Daly closed the public hearing.

ZA Gallardo-Daly stated multiple issues raised at today's hearing including Land Use and Land Use Interpretation, noise, parking, traffic, and intensity of the use. The Land Use and Land Use Interpretation are not part of her findings. The City Planner made the Interpretation that this is a restaurant serving beverages as a tasting room.

ZA Gallardo-Daly asked the applicant to clarify what happens to the business plan if with 5 parking waivers rather than 6.

Tom Cordato explained 6 parking waivers would allow for 44 indoors seats with 16 patio seats. 5 parking waivers would allow 40 indoor seats with 16 patio seats. They would be able to accommodate this change.

ZA Gallardo-Daly made the following statements:

- Acknowledged that some of the areas of concern raised by the ZA at the last meeting have been addressed, including an affidavit provided by the property owner authorizing Artifex to apply for parking waivers on the owner's behalf, and an alternative analysis for determining public parking availability, and verification of the peak occupancy for parking.
- With regard to the use at this location and its compatibility, particularly the outdoor seating for patrons of the tasting room, there are other sidewalk or outdoor seating areas for restaurants along Avenida Del Mar. These establishments also serve alcohol.
- Operationally, the business will have a decorative wood and metal railing that will serve as a barrier for the outdoor seating between the business and the sidewalk, similar to other businesses on Avenida Del Mar. There is a condition to add landscape with dense shrubs and plantings to the outdoor seating area.
- Conditions of approval have been included in the draft permit to address noise, including closing the outdoor seating area by 10pm and closing the windows along the alley by 8pm in response to concerns raised about the 2nd floor residential units in close proximity to the subject site. These conditions have been added to minimize exterior noise levels.
- Operationally, the business proposes food availability and retail sales of the beverages available for tasting.

- The parking waiver analysis is based on the latest Downtown Parking Study completed in August 2018 and approved by the City Council in April 2019.
- There have been 59 parking waivers issued to date. That is approximately 30% of the 180 waiver cap in the Zoning Ordinance.
- The proposed parking waivers support additional restaurant seating and the availability of seating is a contributor toward having a successful restaurant location.
- The outdoor seating contributes to the pedestrian environment and adds to the public life of Del Mar and it creates walk appeal. From a Planning perspective, the factors that entice people to walk in a place is the presence of other people and that's what outdoor seating provides.
- There is adequate parking supply in the downtown area to support parking waivers. The analysis shows the availability of 15 parking spaces within public parking lots during the peak time within the focus area which is a radius of 700' of the subject site. There is also likely on-street parking available, but that was not included in the analysis.
- What is reasonable, is to grant a waiver for 5 parking spaces. By utilizing 5 of the 15 public spaces available, that leaves 2/3 of the spaces still available for public parking. The 5 parking waivers will also reduce occupancy of the tenant space and further limit impacts to the adjacent residential which has been identified as a concern in this hearing.
- The proposed project implements important policies for Downtown in the General Plan. It would establish a high quality public space, enhance community character through the improvements proposed within the public right-of-way, and the proposed building improvements enhance the distinctive visual character of Downtown. The added windows along the building's alley side are consistent with the Paseo Plan which calls for adding visual interest to alleys to improve multi-modal connectivity. The proposed project implements the Designs Guidelines for Downtown, which suggest providing continuous visual interest and enhanced pedestrian activity between alleys, parking lots and Downtown businesses.

ZA Gallardo-Daly approved the Minor Conditional Use Permit (MCUP) 19-097 for indoor and outdoor service of beer based on the following findings: The proposed use is permitted within the subject zone pursuant to the approval of a Minor Conditional Use Permit. Restaurants with the sale of beer are a permitted use in the MU3.0 zoning district subject to the approval of a MCUP and the proposed use is consistent with Interpretation 19-149 for stand alone beer tasting rooms where an MCUP is required. Additionally, restaurants that serve alcohol are a visitor-serving use, as required in the Central Business (CB) overlay. Restaurants serving alcohol are a pedestrian-oriented, visitor-serving commercial use encouraged in the CB overlay and MU3.0 zoning district and the General Plan Del Mar/T-zone focus area. This is reflected in the purpose of the CB overlay identified in the Zoning Ordinance, to facilitate visitor serving uses

and pedestrian activity along sidewalks and throughout the area for the purposes of coastal visitor-serving commercial, recreational, dining, and lodging uses. The General Plan Land Use Element establishes the following goal for the Del Mar/T-zone focus area and Downtown Core: Preserving and where appropriate, improving the Del Mar/T-zone so that it serves as the symbolic, functional, historic and physical center of the City; emphasizing its use as a pedestrian-oriented commercial and residential village providing for the needs of residents and visitors. The project is consistent with this goal in that it is a pedestrian-oriented business. The outdoor patio area adds to the walkability and village-like character of Downtown. The site is suitable for the type and intensity of the use. The tasting room can be accommodated within the indoor and outdoor space identified. The proposed use will not be detrimental to the public health, safety, or welfare. The use is conditioned to comply with all the code requirements to maintain the public health, safety, and welfare of the area, such as the Fire Code, California Building Code, Alcohol Beverage Control licensing requirements, and the Municipal Code. The project has also been conditioned limiting hours of operation, and there is a separation between the outdoor patio and the sidewalk with the decorative railing. In the event of a compatibility issue, there are conditions of approval that allow the City to adjust any operating hours and require any changes if necessary. The proposed use will not negatively impact surrounding land uses. Noises and hours of operations for the tasting room have been addressed in the conditions of approval to be compatible with surrounding uses with five parking waivers that reduces occupancy and seating for the proposed project.

ZA Gallardo-Daly approved the Minor Conditional Use Permit (MCUP) 19-097, to permit an outdoor dining area based on the following findings: The outdoor dining area contributes to the village/pedestrian ambiance of the City, consistent with the City's General Plan. The outdoor dining area consists of open wrought iron railing consistent with Design Guidelines. The actual area of encroachment into the public right-of-way has been identified as approximately 49 square feet. The outdoor patio enhances the restaurant atmosphere by providing an option for patrons wishing to be seated outdoors and enjoy the Downtown atmosphere. The outdoor dining area complies with the standards of San Clemente Municipal Code Section 17.28.205 (Outdoor Dining Areas). The applicant has applied for and the City has reviewed a Minor Cultural Heritage Permit for the exterior modifications related to the outdoor dining area. The conditions of approval require the outdoor patio will close at 10:00 p.m. to limit noise impacts to the adjacent residences. Pedestrian use of the right-of-way will not be obstructed. The outdoor dining area does not require additional parking, nor does it encroach into any parking space. Any visual, noise, traffic, accessibility, and parking impacts associated with the outdoor dining area have been reduced to an acceptable level with respect to the conditions of approval. There are limits on hours of operation. The outdoor patio will be closed at 10:00p.m., and the windows along the alley will be closed at 8:00 p.m. Five parking waivers have been approved to limit occupancy. The area of encroachment is less than 50-



feet. The sidewalks public use is not restricted by the proposed project. The adjacent public sidewalk is approximately 12-feet in width and can adequately accommodate pedestrian traffic and accessibility needs. The Building Official has determined the portion of the sidewalk parallel to the outdoor dining area wrought iron fence maintains an appropriate and compliant width for pedestrian uses at this location. The space in between the outdoor dining area and an adjacent bench and other service structures is approximately 12 feet so the right-of-way is not restricted and the dining area is adequately separated from the public right-of-way. Pedestrian traffic volumes and accessibility are not inhibited by the proposed tasting room. Street trees, utilities, fire equipment and similar items are not adversely impacted by the proposed use. There is adequate distance between the outdoor dining area and street trees, utilities, and fire equipment as determined by Public Works. Public parking is not adversely impacted. The outdoor dining area does not encroach into public parking. The patio is limited in terms of outdoor seats and does not require additional parking spaces. Ample parking is available through on-street parking spaces, private parking in the designated lot, and public parking lots in Downtown within walking distance from the restaurant.

ZA Gallardo-Daly approved the Minor Cultural Heritage Permit (MCHP) 19-098, allowing exterior modifications including the addition of an outdoor dining area based on the following findings: The architectural treatment of the project complies with the San Clemente General Plan. The project's size, scale, architecture, setbacks, and materials are consistent with design guidelines. The project maintains the use of smooth white stucco, and adds wood windows and doors and the railing surrounding the proposed outdoor dining area is a traditional wrought iron and wood. The architectural treatment of the project complies with the Zoning Code in areas including, but not limited to height, setback, and color. Height and setbacks for the primary structure are not affected by the project. The Zoning Code permits outdoor dining areas in the public right-of-way provided they do not impede pedestrians, affect public fixtures, or reduce parking. The project complies with the requirements of the Zoning Code in that a 12 foot sidewalk is maintained and no additional parking is required for the outdoor dining area. The Engineering Division has determined that public safety is maintained even with the patio abutting an alley with the safety bollard shown on the plans. The architectural treatment of the project complies with the architectural guidelines in the City's Design Guidelines. The project incorporates Spanish Colonial Revival elements including smooth white stucco, wood windows and doors with divided lites, and wrought iron and wood railings. The project incorporates an outdoor patio, consistent with the City's Design Guidelines which state that projects should "Incorporate defined outdoor spaces into the building and site designs of all new development in the City." The project provides a transparent storefront consistent with the design guidelines which state that views should be provided into restaurants to encourage pedestrian activity. The project maintains a 12-foot sidewalk, consistent with the City's Design Guidelines. The general appearance of the

proposal is in keeping with the character of the neighborhood. The proposal does not significantly affect the overall structure. Modifications made help to bring the project into conformance with other Spanish Colonial Revival architecture in the neighborhood, and required in the Architectural Overlay. The addition of an outdoor dining area is in character with the neighborhood, and other dining establishments in the downtown area and specifically on Avenida Del Mar, have outdoor dining, which is also consistent with the goals and policies of the General Plan and the CB overlay. The project is not detrimental to the orderly and harmonious development of the City. The project meets minimum development standards of the Zoning Ordinance. The Engineering Division has determined that the location of the outdoor dining area abutting an alley, is not detrimental to public health, safety and welfare. The project incorporates required ADA improvements to enhance the accessibility of the site. The proposed project preserves and strengthens the pedestrian-orientation of the district and/or San Clemente's historic identity as a Spanish Village. The project is a pedestrian oriented, visitor-serving use, designed to enhance pedestrian activity in the downtown area. The project is located in an existing addition to a historic structure. The modifications proposed do not negatively effect any character-defining features of the historic building.

The Secretary of the Interior Standards state that additions to historic structures should be clearly differentiated from the historic resource. While similar finishes to the historic structure are used such as smooth white stucco and wood doors and windows, the project does maintain a separate roof parapet to clearly distinguish the addition from the historic structure. The proposed project complies with the purpose and intent of the Architectural Overlay District replacing windows and storefront with wood windows and doors with divided lites, consistent with the architecture of the historic building. The project is a pedestrian oriented, visitor-serving use, designed to enhance pedestrian activity along sidewalks.

ZA Gallardo-Daly would like to modify the permit to grant only 5 parking waivers, and add a condition stating the signage in the private parking lots be updated accordingly to allow parking for Artifex (and any future business benefitting from the parking waivers granted for Artifex) patrons.

The project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15301 (Class 1: Existing Facilities).

Action: The Zoning Administrator approved and adopted Resolution ZA 19-009, Minor Conditional Use Permit 19-097/Minor Cultural Heritage Permit 19-098 – West of Artifex, subject to the Conditions of Approval with the following modifications:

- Modify permit to grant five parking waivers.

- Added Condition of Approval to read: The on-site parking in adjacent private lots shall be made available to Artifex (and any future business benefitting from the parking waivers granted for Artifex) patrons. The parking signage at these lots shall be updated accordingly prior to building permit final for the tenant improvements and shall be maintained as long as the parking waivers are utilized for this property.

**B. 222 Avenida Princesa – Minor Architectural Permit 19-227 – Sass Residence (Webber)**

A request to consider a 948 square foot first floor addition to an existing 1,196 square foot single-family residence with a nonconforming garage with a setback less than 4-feet from the side property line. The residence is located in the Residential Low Zone and Coastal Zone Overlay District, and in the Coastal Exclusion Zone per Exclusion Order No. E-82-1.

Community Development Technician, Kyle Webber, summarized the staff report and added he has received no public comments related to this project.

The applicant was not present nor available for questions.

ZA Gallardo-Daly opened the public hearing, and there being no one desiring to speak to this issue, closed the public hearing.

ZA Gallardo-Daly approved the project based on the following findings: The architectural treatment of the project complies with the San Clemente General Plan in respect to size, scale, architecture, setbacks, and materials. The project improves the aesthetic condition of the property. The architectural treatment of the project complies with the Zoning Code in respect to the height and setback. The project maintains the one-story scale of the residence which is in character and compatible with adjacent properties. The architectural treatment of the project complies with the architectural guidelines and is sensitive to the area which it is located. The general appearance of the proposal is in keeping with the character of the neighborhood. The proposed project is not detrimental to the orderly and harmonious development of the City.

The project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15301 (Class 1: Existing Facilities).

Action: The Zoning Administrator approved and adopted Resolution ZA 19-011, Minor Architectural Permit 19-227, Sass Residence, subject to the Conditions of Approval.

**5. NEW BUSINESS**

None

6. **OLD BUSINESS**

None

7. **ADJOURNMENT**

The meeting adjourned at 4:28 p.m. to the Regular Meeting of the Zoning Administrator which will be held Thursday, September 5, 2019 at 3:00 p.m., at the Community Development Department, Conference Room A, located at 910 Calle Negocio, Suite 100, San Clemente, California.

Respectfully submitted,

SAN CLEMENTE ZONING ADMINISTRATOR



Cecilia Gallardo-Daly, Zoning Administrator