



## STAFF REPORT SAN CLEMENTE PLANNING COMMISSION

Date: June 2, 2021

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**PLANNER:** Jonathan Lightfoot, Economic Development Officer

**SUBJECT:** **Amendment to Site Plan Permit (SPP) 19-203, 610-628 Camino De Los Mares; Plaza by the Sea Drive-Through**, a request to proceed with the development of the commercial drive through building entitled on May 20, 2020 at an existing commercial center at 610 - 628 Camino De Los Mares within a city Gateway and the Community Commercial 4 Zone (CC4). A dividing wall between Plaza by the Sea and neighboring Ocean View Plaza (638 Camino De Los Mares) is proposed to be *remain* although it was initially indicated to be removed. The requested amendment would strike Condition of Approval 7.17 resulting in no changes to the existing conditions near the dividing wall.

### **REQUIRED FINDINGS**

The following findings were required to approve the project. The approved Resolution (Attachment 1) provided an assessment of the project's compliance with these findings. The wall and reciprocal access were not referenced within the Resolution, and the findings can stand as previously approved.

***Site Plan Permit, Section 17.16.050(C), to allow the development of a new commercial building.***

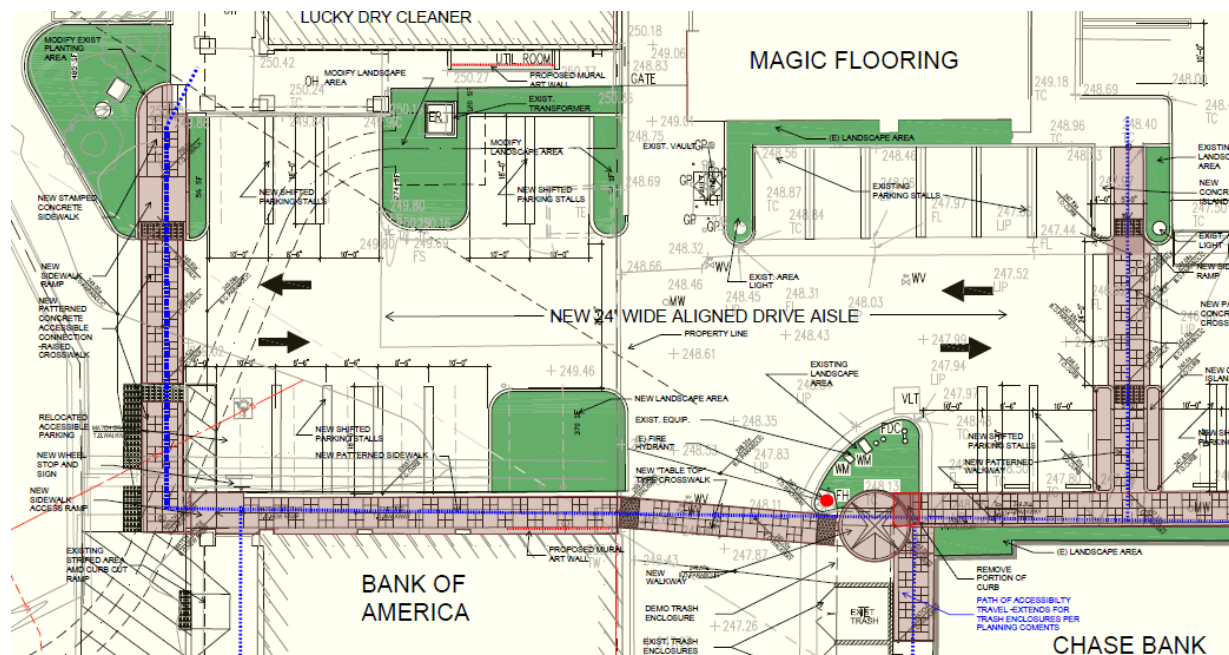
- a. The proposed development is permitted within the subject zone pursuant to the approval of a Site Plan Permit and complies with all the applicable provisions of this title, the goals, and objectives of the San Clemente General Plan, and the purpose and intent of the zone in which the development is being proposed.
- b. The site is suitable for the type and intensity of development that is proposed.
- c. The proposed development will not be detrimental to the public health, safety or welfare, or materially injurious to properties and improvements in the vicinity.
- d. The proposed development will not be unsightly or create disharmony with its locale and surroundings.
- e. The proposed development will minimize or eliminate adverse physical or visual effects which might otherwise result from unplanned or inappropriate development, design or location.

## **BACKGROUND:**

The project site encompasses 192,125 square-feet of gross area near the Camino De Los Mares off-ramp from the northbound I-5 freeway. The commercial center, referred to as Plaza by the Sea, contains 52,683 square-feet of single story commercial building space including a Stater Brothers grocery store. The General Plan, Urban Design Element, Figure UD-1 identifies the site as a freeway gateway. The site is within the Camino de Los Mares Focus Area and the Community Commercial 4 (CC4) zoning district. The center is adjacent to another retail center, Ocean View Plaza, both of which are now owned and managed by Brixmor. The vicinity map is included in Attachment 2.

On January 27, 2021, the applicant returned to the DRSC to review a modification to the area of the wall removal, which was supported by both staff and the DRSC as an insignificant amendment and an improvement above the prior-approved plans. The applicant's architect subsequently submitted plans which were approved. Their permits have been signed by staff.

**Figure 1: Prior-Approved Connection Area**



Simultaneously, the applicant has been in on-going discussions with an existing tenant at Plaza by the Sea. This tenant's lease (with a remaining life of 10+ years) gives them power to reject modifications to the site. While they approved the outparcel building's demo and rebuild, they have recently pushed back on Brixmor's plans for the wall removal. Due to their concerns of business bleed, the tenant sent a demand letter to Brixmor. After reviewing the letter and discussing with the tenant's attorneys, Brixmor's legal team urged their project planners to remove this element from the project.

Brixmor submitted their request to strike the wall removal from their project plans. Because this element was a specific condition of approval (7.17) and was a discussion point within the staff report and by Planning Commissioners, the City Planner determined that the modification was significant and should be referred to the Planning Commission.

## **PROJECT DESCRIPTION AND ANALYSIS**

The preference of staff and the property owner is to remove the wall and to proceed with the DRSC approved plans from January of 2021; however, the legal constraints of the applicant's lease agreement with their tenant limit their ability to move that design forward unilaterally to construction.

While the property owner did not want to provide their lease as a public record, they did allow staff to inspect the document. There are actually two documents that appear to preclude the property owner from removing the wall without the tenant's consent. The first is a Declaration of Restrictions and Grant of Easements dated November of 1975. The document acknowledges the agreement between the owner and the "Market" tenant and governs all "common areas." The common areas are identified essentially as all areas that are not occupied by buildings. The agreement denotes that neither party, owner or Market, may modify the common area without mutual consent. The second document is the lease, dated 1975, and with options in place until 2049. An excerpt states, "...no changes shall be made in said common area during the term of this lease, or any extension thereof, unless the prior approval of Tenant has been obtained." Staff concurs that the language appears to give the Market tenant power to veto site changes they do not approve.

### *Landscaping*

Significant landscape changes were approved for the site plan, including: additional screening of the parking lot from Camino De Los Mares; additional screening of the rear side of the site which is visible from the freeway with taller Sycamore; replacing various eucalyptus trees with shorter more decorative trees; providing shrub and ground cover in areas that were unplanted; and adding landscape islands within the parking lot.

The detailed landscape plans have been reviewed and approved by the City's consulting Landscape Architecture firm, Summers, Murphy & Partners (SMP).

In light of the proposed changes to the site plan, landscape plan revisions will be necessary. Staff will work with SMP to enforce existing conditions (vines as screening for trash enclosure) and adjust the planting plan as needed in this specific area of the site.

### ***Development Management Team***

The Development Management Team (DMT) was consulted regarding the proposed change. Engineering noted that the wall removal was viewed as a positive improvement for traffic circulation for the site which would prevent occasional extra traffic on Camino

De Los Mares by allowing customers to more easily move between the two shopping centers. However, the traffic analysis that reviewed the queueing and trip generation for the new drive through building did not rely on the wall-removal element in arriving at their summary conclusion: "...[T]he proposed drive-thru as designed with 200' of storage from drive-thru opening to service window is anticipated to operate with minimal to no impact."

### ***Noticing***

Public notices were distributed and posted per City and State requirements. Staff has not received any public comments regarding this item.

### **GENERAL PLAN CONSISTENCY**

General Plan Table LU-1 indicates that the intent for Community Commercial (CC) zones is to provide "More intense development of local serving retail commercial; personal service; professional office; medical offices, congregate care, and related uses; lodging; cultural uses and eating and drinking uses". The project site is outside of the Coastal Zone and does not require review or approval by the Coastal Commission.

### **ENVIRONMENTAL REVIEW/COMPLIANCE (CEQA)**

The Planning Division completed an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff recommends that the project be found Categorical Exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities) because the removal of the condition would result in the retention of an existing property line wall that divides the subject property from the neighboring commercial property ("Ocean View Plaza").

### **ALTERNATIVES**

The Planning Commission may take any of the following actions:

1. Approve the application(s).
2. Modify the conditions of approval to effect desired changes prior to approval.
3. Deny the application(s). If the Commission wishes to pursue this option, the hearing will need to be continued to allow the appropriate resolution(s) to be prepared and the Commission should state reasons why it cannot meet one or more of the required findings.

These actions may be appealed by the applicant to the City Council or be called up by the City Council for review and action.

## **RECOMMENDATION**

Based on the information in the staff report and subject to the required findings and conditions of approval, staff recommends that the Planning Commission:

1. Determine that the project be found Categorical Exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities) ; and
2. Approve Resolution 21-009, which strikes Condition of Approval 7.17 from Resolution PC 20-008.

### ***Attachments:***

1. Resolution No. PC 21-009  
Exhibit A – Revised Conditions of Approval
2. Location Map
3. Letter from Applicant
4. Plans

# ATTACHMENT 1

## RESOLUTION NO. PC 21-009

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, APPROVING SITE PLAN AMENDMENT 21-078, MODIFYING THE PREVIOUSLY APPROVED SITE PLAN PERMIT 19-203 FOR PLAZA BY THE SEA DRIVE-THROUGH, A REQUEST TO REMOVE CONDITION OF APPROVAL 7.17 FROM PC RESOLUTION 20-008 WHICH REQUIRED RECIPROCAL PEDESTRIAN AND VEHICULAR ACCESS BETWEEN PLAZA BY THE SEA AND THE ADJACENT OCEANVIEW PLAZA AS PART OF THE PREVIOUSLY APPROVED PROJECT TO DEVELOP A NEW SINGLE-STORY DRIVE-THROUGH COMMERCIAL BUILDING AT PLAZA BY THE SEA, 610-628 CAMINO DE LOS MARES

WHEREAS, on May 20, 2020, the Planning Commission of the City of San Clemente held a duly noticed public hearing on the subject application, considered written and oral comments, and facts and evidence presented by the applicant, City staff, and other interested parties.

WHEREAS, on May 6, 2021, Kyle Godat of Brixmor Plaza by the Sea LLC, of Sycamore Group LLC, 1525 Faraday Avenue, Suite 300, Carlsbad, CA 92008 submitted a letter requesting an amendment to the previously approved Site Plan Permit (SPP) 19-203 indicating a request to continue the approved project while removing Condition of Approval 7.17 regarding the the removal of an existing dividing wall between Plaza by the Sea and neighboring Ocean View Plaza (638 Camino De Los Mares) to allow reciprocal access. The site is within an existing commercial center at 610 - 628 Camino De Los Mares within a city Gateway and the Community Commercial 4 Zone (CC4). The site's legal description is Parcels 2 and 3, Page 9 of Book 675 and Assessor's Parcel Number 675-091-02; and

WHEREAS, the City Planner determined that the requested amendment constituted significant modifications with public impact or concern, due to the public interest in the wall removal and prior DRSC and Planning Commission discussion of this particular facet of the project, and therefore referred the amendment request to the Planning Commission per SCMC 17.12.180;

WHEREAS, in accordance with City and State requirements, notice of the public hearing was published in the *San Clemente Times* newspaper on May 20, 2021, posted at the project site, and mailed to all property owners within 300 feet of the subject parcel; and

WHEREAS, on June 2, 2021, the Planning Commission of the City of San Clemente held a duly noticed public hearing on the subject application, 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.**

Based upon its review of the entire record, including the Staff Report, any public comments or testimony presented to the City Council, and the facts outlined below, the City Council hereby finds and determines that the proposed project is categorically exempt from CEQA pursuant to State CEQA Guidelines 15301 (Existing Facilities) because the removal of the condition of approval would result in the retention of an existing property line wall that divides the subject property from the neighboring commercial property (“Ocean View Plaza”).

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 is the removal of a condition of approval that would have required the removal of a dividing wall between two commercial centers which would have created new reciprocal access. Removing the condition results in no change to the current site conditions, and will not increase the floor area of the structure by more than 50 percent of the existing floor area, or more than 2,500 square feet. The project does not increase or otherwise change the existing use of the site. Thus, the project qualifies for the Class 1 exemption.

**Section 3. Site Plan Permit Findings**

With respect to **Site Plan Amendment 21-009, amending Site Plan Permit (SPP) 19-203**, the Planning Commission finds as follows:

- A. The proposed development is permitted within the subject zone pursuant to the approval of a Site Plan Permit and complies with all the applicable provisions of the Zoning Ordinance, the goals, and objectives of the San Clemente General

Plan, and the purpose and intent of the zone in which the development is being proposed, in that:

1. The proposed project includes a café use with drive-through and amplified sound. The proposed commercial use with drive-through is a more intense development of local serving retail which, is the intent of the Community Commercial (CC) zones. This is reflected in the General Plan Land Use Designations Summary Table intentions column, “*Intense development of local serving retail commercial*”;
2. The project is consistent with Land Use policies 7.01 and 7.06 for the Camino De Los Mares Focus area which encourage the continued enhancement of commercial centers and the imposition of Spanish style architecture for new development;
3. The project improves the aesthetics of the site with high quality architecture and site improvements that reflect the City’s Spanish Village heritage. The design and materials follow “*basic principles of Spanish Colonial Revival (SCR) architecture*” in Design Guidelines Section II.C.2, as required in the General Plan’s Land Use and Urban Design Elements. The project has traditional SCR materials, such as single-barrel clay tile roof, smooth hand-troweled stucco, and metal details. This supports Land Use Policy LU-14.02, Architecture at Gateways and Urban Design Policy UD-2.01, Architecture/Design Quality;
4. The project meets development standards of the zone that define the intended scale and size of development in the neighborhood, including but not limited to, height, lot coverage, number of stories, density, and landscaping. The project proposes a single-story structure consistent with the surrounding commercial center. The project is consistent with design guidelines that call for varied rooflines, building articulation, and building offsets to reduce the apparent scale and bulk of buildings, consistent with Urban Design Policy UD-5.10, Scale and Massing;
5. The CC4 zone permits a higher density and FAR than being requested by the project. This means the traffic, air quality, noise, and other land use impacts of the project are below what was projected and mitigated in the environmental study for the General Plan build-out;
6. The project includes an attached outdoor dining area that is accessible through connective pedestrian pathways from the public right-of-way to the dining area. This is consistent with Urban Design Element Policy UD-5.01, Outdoor Spaces;
7. The proposed use meets parking requirements by providing the required number of on-site parking per the previously approved Minor Conditional Use Permit 18-481 allowing a shared parking strategy to utilize the parking ratios for restaurants and retail uses in the Central Business overlay



because the provided parking study demonstrated a surplus of on-site parking for the plaza; and

8. The project is not adjacent to any residential zones and the nearest residential dwelling unit is approximately 250 feet away from the proposed building.
- B. The site is suitable for the type and intensity of development that is proposed, in that:
1. The proposed project includes a café use with drive-through and amplified sound. The proposed commercial use with drive-through is a more intense development of local serving retail which is the intent of the Community Commercial (CC) zones. This is reflected in the General Plan Land Use Designations Summary Table intentions column, "*Intense development of local serving retail commercial*";
  2. The project is not adjacent to any residential zones and the nearest residential dwelling unit is approximately 250 feet away from the proposed building;
  3. The project meets development standards of the zone that define the intended scale and size of development in the neighborhood, including but not limited to, height, lot coverage, number of stories, density, and landscaping. The project proposes a single-story structure consistent with the surrounding commercial center. The project is consistent with design guidelines that call for varied rooflines, building articulation, and building offsets to reduce the apparent scale and bulk of buildings, consistent with Urban Design Policy UD-5.10, Scale and Massing;
  4. The CC4 zone permits a higher density and FAR than being requested by the project. This means the traffic, air quality, noise, and other land use impacts of the project are below what was projected and mitigated in the environmental study for the General Plan build-out;
  5. The proposed use must comply with conditions of approval and code requirements to maintain the public health, safety, and welfare of the area, such as the Fire Code, California Building Code, and the Municipal Code. Should there be noise complaints from residents, conditions of approval attached hereto as Exhibit A, allow the City to adjust operating hours and require soundproofing if changes are necessary to ensure compliance with the noise ordinance and maintain the public health, safety, and welfare of the area. The applicant is required to obtain permits and inspections to ensure the project and use operations comply with requirements;
  6. The proposed use meets parking requirements by providing the required number of on-site parking per the previously approved Minor Conditional Use Permit 18-481 allowing a shared parking strategy to utilize the parking

ratios for restaurants and retail uses in the Central Business overlay because the provided parking study demonstrated a surplus of on-site parking for the plaza;

7. The project is not adjacent to any residential zones and the nearest residential dwelling unit is approximately 250 feet away from the proposed building; and
- C. The proposed development will not be detrimental to the public health, safety or welfare, or materially injurious to properties and improvements in the vicinity, in that:
1. The project meets development standards of the zone that define the intended scale and size of development in the neighborhood, including but not limited to, height, lot coverage, number of stories, density, and landscaping. The project proposes a single-story structure consistent with the surrounding commercial center. The project is consistent with design guidelines that call for varied rooflines, building articulation, and building offsets to reduce the apparent scale and bulk of buildings, consistent with Urban Design Policy UD-5.10, Scale and Massing
  2. The CC4 zone permits a higher density and FAR than being requested by the project. This means the traffic, air quality, noise, and other land use impacts of the project are below what was projected and mitigated in the environmental study for the General Plan build-out;
  3. The project includes an attached outdoor dining area that is accessible through connective pedestrian pathways from the public right-of-way to the dining area. This is consistent with Urban Design Element Policy UD-5.01, Outdoor Spaces;
  4. The proposed use meets parking requirements by providing the required number of on-site parking per the previously approved Minor Conditional Use Permit 18-481 allowing a shared parking strategy to utilize the parking ratios for restaurants and retail uses in the Central Business overlay because the provided parking study demonstrated a surplus of on-site parking for the plaza;
  5. The proposed use must comply with conditions of approval and code requirements to maintain the public health, safety, and welfare of the area, such as the Fire Code, California Building Code, and the Municipal Code. Should there be noise complaints from residents, conditions of approval attached hereto as Exhibit A, allow the City to adjust operating hours and require soundproofing, if changes are necessary to ensure compliance with the noise ordinance and maintain the public health, safety, and welfare of the area. The applicant is required to obtain permits and inspections to ensure the project and use operations comply with requirements; and

6. The project is not adjacent to any residential zones and the nearest residential dwelling unit is approximately 250 feet away from the proposed building.
- D. The proposed development will not be unsightly or create disharmony with its locale and surroundings, in that:
1. The project is consistent with Land Use policies 7.01 and 7.06 for the Camino De Los Mares Focus area which encourage the continued enhancement of commercial centers and the imposition of Spanish style architecture for new development;
  2. The project improves the aesthetics of the site with high quality architecture and site improvements that reflect the City's Spanish Village heritage. The design and materials follow "*basic principles of Spanish Colonial Revival (SCR) architecture*" in Design Guidelines Section II.C.2, as required in the General Plan's Land Use and Urban Design Elements. The project has traditional SCR materials, such as single-barrel clay tile roof, smooth hand-troweled stucco, and metal details. This supports Land Use Policy LU-14.02, Architecture at Gateways and Urban Design Policy UD-2.01, Architecture/Design Quality;
  2. The project meets development standards of the zone that define the intended scale and size of development in the neighborhood, including but not limited to, height, lot coverage, number of stories, density, and landscaping. The project proposes a single-story structure consistent with the surrounding commercial center. The project is consistent with design guidelines that call for varied rooflines, building articulation, and building offsets to reduce the apparent scale and bulk of buildings, consistent with Urban Design Policy UD-5.10, Scale and Massing;
  3. The CC4 zone permits a higher density and FAR than being requested by the project. This means the traffic, air quality, noise, and other land use impacts of the project are below what was projected and mitigated in the environmental study for the General Plan build-out;
  4. The project includes an attached outdoor dining area that is accessible through connective pedestrian pathways from the public right-of-way to the dining area. This is consistent with Urban Design Element Policy UD-5.01, Outdoor Spaces;
  5. The building has varied rooflines with gable, hip, and flat roof elements. Although the zone has no setbacks, the proposed building has articulation and offsets with a large rear setback, and front setbacks to the entry. These massing offsets reduce the apparent scale and bulk of buildings for compatibility with surrounding properties;
  6. The proposed use meets parking requirements by providing the required number of on-site parking per the previously approved Minor Conditional Use

Permit 18-481 allowing a shared parking strategy to utilize the parking ratios for restaurants and retail uses in the Central Business overlay because the provided parking study demonstrated a surplus of on-site parking for the plaza;

7. The proposed use must comply with conditions of approval and code requirements to maintain the public health, safety, and welfare of the area, such as the Fire Code, California Building Code, and the Municipal Code. Should there be noise complaints from residents, conditions of approval attached hereto as Exhibit A, allow the City to adjust operating hours and require soundproofing, if changes are necessary to ensure compliance with the noise ordinance and maintain the public health, safety, and welfare of the area. The applicant is required to obtain permits and inspections to ensure the project and use operations comply with requirements; and
  9. The project is not adjacent to any residential zones and the nearest residential dwelling unit is approximately 250 feet away from the proposed building.
- E. The proposed development will minimize or eliminate adverse physical or visual effects which might otherwise result from unplanned or inappropriate development, design or location, in that:
1. The project improves the aesthetics of the site with high quality architecture and site improvements that reflect the City's Spanish Village heritage. The design and materials follow "*basic principles of Spanish Colonial Revival (SCR) architecture*" in Design Guidelines Section II.C.2, as required in the General Plan's Land Use and Urban Design Elements. The project has traditional SCR materials, such as single-barrel clay tile roof, smooth hand-troweled stucco, and metal details. This supports Land Use Policy LU-14.02, Architecture at Gateways and Urban Design Policy UD-2.01, Architecture/Design Quality;
  2. The project meets development standards of the zone that define the intended scale and size of development in the neighborhood, including but not limited to, height, lot coverage, number of stories, density, and landscaping. The project proposes a single-story structure consistent with the surrounding commercial center. The project is consistent with design guidelines that call for varied rooflines, building articulation, and building offsets to reduce the apparent scale and bulk of buildings, consistent with Urban Design Policy UD-5.10, Scale and Massing;
  3. The CC4 zone permits a higher density and FAR than being requested by the project. This means the traffic, air quality, noise, and other land use impacts of the project are below what was projected and mitigated in the environmental study for the General Plan build-out;
  4. The project includes an attached outdoor dining area that is accessible through connective pedestrian pathways from the public right-of-way to the

dining area. This is consistent with Urban Design Element Policy UD-5.01, Outdoor Spaces;

5. The building has varied rooflines with gable, hip, and flat roof elements. Although the zone has no setbacks, the proposed building has articulation and offsets with a large rear setback, and front setbacks to the entry. These massing offsets reduce the apparent scale and bulk of buildings for compatibility with surrounding properties;
6. The proposed use must comply with conditions of approval and code requirements to maintain the public health, safety, and welfare of the area, such as the Fire Code, California Building Code, and the Municipal Code. Should there be noise complaints from residents, conditions of approval attached hereto as Exhibit A, allow the City to adjust operating hours and require soundproofing, if changes are necessary to ensure compliance with the noise ordinance and maintain the public health, safety, and welfare of the area. The applicant is required to obtain permits and inspections to ensure the project and use operations comply with requirements;
8. The proposed use meets parking requirements by providing the required number of on-site parking per the previously approved Minor Conditional Use Permit 18-481 allowing a shared parking strategy to utilize the parking ratios for restaurants and retail uses in the Central Business overlay because the provided parking study demonstrated a surplus of on-site parking for the plaza;
9. The project is not adjacent to any residential zones and the nearest residential dwelling unit is approximately 250 feet away from the proposed building; and
10. The project provides landscaping consistent with Urban Design Policy 5.18 and the City's Design Guidelines, by providing drought-tolerant landscaping and increasing the number of trees at the site which aid in softening the development as viewed from both Camino De Los Mares and from the freeway and off-ramp.

### **Section 7. Planning Commission Approval.**

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 approves **Site Plan Amendment 21-078, amending Site Plan Permit (SPP) 19-203**, Plaza by the Sea Drive Through, subject to the Conditions of Approval set forth in Exhibit A.

PASSED AND ADOPTED at a regular meeting of the City of San Clemente Planning Commission on June 2, 2021.

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Chair

CERTIFICATION:

I HEREBY CERTIFY this Resolution was adopted at a regular meeting of the City of San Clemente Planning Commission on June 2, 2021, carried by the following roll call vote:

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

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Secretary of the Planning Commission

CONDITIONS OF APPROVAL  
SITE PLAN PERMIT (SPP) 19-203  
**(AS MODIFIED BY SITE PLAN AMENDMENT 21-078)**  
CONDITIONAL USE PERMIT (CUP) 19-205,  
ARCHITECTURAL PERMIT (AP) 19-204, AND  
AMENDED DISCRETIONARY SIGN PERMIT (AM DSP) 18-546,  
PLAZA BY THE SEA DRIVE THROUGH

**1.0 GENERAL CONDITIONS OF APPROVAL**

- |     |   |              |
|-----|---|--------------|
| 1.1 | Within 30 days of receipt of the signed conditions of approval, the applicant shall submit to the City Planner a signed acknowledgement concurring with all conditions of approval on a form to be provided by the City, unless an extension is granted by the City Planner.  | Planning     |
| 1.2 | The applicant shall defend, indemnify, and hold harmless the City of San Clemente and its officers, employees, and agents from and against any claim, action, proceeding, fines, damages, expenses, and attorneys' fees, against the City, its officers, employees, or agents to attack, set aside, void, or annul any approval or condition of approval of the City concerning this project, including but not limited to any approval or condition of approval of the City Council, Planning Commission, or City Planner. Applicant shall pay all costs. The City shall promptly notify the applicant of any claim, action, or proceeding concerning the project and the City shall cooperate fully in the defense of the matter. The City reserves the right, at its own option, to choose its own attorney to represent the City, its officers, employees, and agents in the defense of the matter. If the applicant fails to so defend the matter, the City shall have the right, at its own option, to do so and, if it does, the applicant shall promptly pay the City's full cost of the defense. | Planning     |
| 1.3 | Use and development of this property shall be in substantial conformance with the approved plans, material boards and other applicable information submitted with this application, and with these conditions of approval. Any modifications to the project shall be reviewed by the City Planner in accordance with Zoning Ordinance Section 17.12.180.  | Planning     |
| 1.4 | The applicant shall comply with all applicable current and future provisions of the San Clemente Municipal Code, adopted ordinances, and state laws.  | All          |
| 1.5 | Use of the subject property shall conform to all occupancy requirements, including posting of signs related to the maximum occupancy limitations.   | Code<br>Comp |

- |   |   |                    |
|---|---|--------------------|
| 1.6   | The entitlements approved herein shall be deemed to have expired if within three years of approval the project is not commenced, or the project permitted by the approved application has lapsed, as defined by Zoning Ordinance Section 17.12.150.   | Planning           |
| 1.7   | Within five business days of project approval, the applicant shall submit to the Planning Division a check made payable to the Orange County Clerk-Recorder in the amount of \$50 for filing the CEQA Notice.   | Planning           |
| 1.8   | The Applicant (including any property owners and managers, and their designees) shall use her/his best judgment and best management practices to ensure the commercial activities on the premises will be conducted in a manner that will not be disruptive to neighbors. The business owner/property owner shall be responsible for ensuring compliance with the San Clemente Municipal Code (SCMC), and all conditions of approval contained herein. The Applicant (including any property owners and managers, and their designees) hereby understands that noncompliance with regulations and conditions of approval, shall be immediate grounds for citation pursuant to SCMC Section 8.52.030(Y), which states, "It is declared a public nuisance for any person owning, leasing, occupying or having charge or possession of any premises in this City to maintain such premises in such manner that ... A structure, improvement, property, and/or land use is not in compliance with terms and/or conditions of any City of San Clemente issued permit or approval," and any subsequent revision of this section of the code. [Citation - Section 8.52.030(Y) of the SCMC] | Code<br>Comp<br>** |
| 1.9   | A change in the business license, including change in ownership or a future alteration of the site or floor plans, may require an amendment to the CUP. The City Planner shall determine whether such change warrants an amendment and whether the amendment shall return to a hearing to evaluate any potential impacts per Zoning Ordinance Section 17.12.180.  | Planning<br>**     |
| <b>3.0 PRIOR TO ISSUANCE OF GRADING PERMITS</b> |   |                    |
| 3.1   | The working drawings shall include within the first four pages a list of all conditions of approval included in this resolution.  | Planning           |
| 3.2   | The City Engineer shall determine that development of the site shall conform to general recommendations presented in the geotechnical studies, including specifications for site preparation, landslide treatment, treatment of cut and fill, slope stability, soils engineering, and surface and subsurface drainage, and  | Public<br>Works    |



recommendations for further study. (SCMC Chapter 15.36)

- 3.5 The applicant shall submit, and the City Engineer shall approve, a precise grading plan as required by the City Grading Manual and Ordinance. (SCMC Chapter 15.36) Public Works

### **Financial Security**

- 3.9 The applicant shall provide separate improvement surety, bonds, or irrevocable letters of credit, as determined by the City Engineer, for 100% of each estimated improvement cost, as prepared by a registered civil engineer as approved by City Engineer, for the following applicable items: grading improvements; frontage improvements; sidewalks; sewer lines; water lines; onsite storm drains; and erosion control. In addition, the owner shall provide separate labor and material surety for 100% of the above estimated improvement costs, as determined by the City Engineer or designee. (SCMC Chapter 15.36) Public Works

### **Improvements**

- 3.10 The applicant shall submit, and the City Engineer shall approve, frontage improvement plans. The applicant shall be responsible for the construction of all required frontage improvements as approved by the City Engineer including but not limited to the following: Public Works \*
- A. Sidewalk, including construction of compliant sidewalk around drive approach or other obstructions to meet current City standards (2% cross fall) when adequate right-of-way exists. Since the street right-of-way is approximately 10 feet behind the curb face, a sidewalk easement is not anticipated to be required to be granted to the City. It should be noted that the sidewalk easement was already obtained on this property for a recent separate discretionary application. Additionally, sidewalk improvements are being considered to be done along this frontage through a separate City funded project.
  - B. Contractor shall replace any damaged street improvements resulting from construction activities to the satisfaction of the City Inspector.
- (SCMC Chapter 15.36 and Sections 12.08.010, and 12.24.050)

### **Noise**

- 3.13 The applicant shall demonstrate to the satisfaction of the City Engineer that the following standards shall be satisfied:
- A. All construction vehicles or equipment, fixed or mobile, operated within 1,000 feet of a dwelling shall be equipped with

- operating and maintained mufflers.
  - B. All operations shall comply with Orange County Codified Ordinance Division 6 (Noise Control).
  - C. Stockpiling and/or vehicle-storage areas shall be located as far as practicable and out of view from dwellings.
- The City of San Clemente Noise Ordinance, limiting the hours of construction to between 7:00 a.m. and 6:00 p.m., shall be enforced. (SCMC Chapter 15.36)

**NPDES**

- 3.14 The applicant shall demonstrate to the satisfaction of the City Engineer or designee that the project meets all requirements of the San Diego Regional Water Quality Control Board National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer Permit, and Federal, State, County and City guidelines and regulations, in order to control pollutant run-off. (SCMC Chapter 13.40)
  
- 3.16 The applicant shall submit, and the City Engineer shall approve, a project binder containing the following documents:
  - A. If the project is greater than 1 acre, a Notice of Intent (NOI) for coverage under the General Construction Storm Water Permit must be filed with the State Water Resources Control Board (refer to [https://www.waterboards.ca.gov/water\\_issues/programs/storm\\_water/construction.html](https://www.waterboards.ca.gov/water_issues/programs/storm_water/construction.html) ) and a copy of the NOI, a WDID number and a copy of the Storm Water Pollution Prevention Plan (SWPPP) must be filed with the City;
  - B. If the site is determined to be a “Priority Project” (as defined by the San Diego Regional Water Quality Control Board Municipal Separate Storm Sewer Systems Permit – refer to the following web address at [https://www.waterboards.ca.gov/sandiego/water\\_issues/programs/stormwater/](https://www.waterboards.ca.gov/sandiego/water_issues/programs/stormwater/)), a final Water Quality Management Plan (WQMP) must be recorded with the Orange County Recorder’s Office and filed with the City; and
  - C. If a site is determined to be a “Non-Priority Project,” a final Non-Priority Project Checklist must be filed with the City. (SCMC Chapter 15.36)

**4.0 PRIOR TO ISSUANCE OF BUILDING PERMITS**

- 4.1 The working drawings shall include within the first four pages a list of all conditions of approval included in this resolution.

Planning

4.5 The applicant shall submit, and must obtain approval from the City's Consulting Landscape Architect, a detailed landscape and irrigation plan incorporating drought tolerant plants, prepared by a registered landscape architect, and in compliance with all pertinent requirements. (SCMC Section 17.68.020) Planning

4.12 If the project pertains to a Food Service Establishment (FSE), the applicant shall submit, and must obtain approval from the Utilities Director, plans depicting the Fats, Oils, and Greases (FOG) controls, with the plans and design approved by the Orange County Health Care Agency. Utilities

**5.0 PRIOR TO FINAL INSPECTION**

5.4 The applicant shall demonstrate to the satisfaction of the City Engineer and City Maintenance Manager that all street improvements have been completed and accepted and that any damage to new or existing street right-of-way during construction has been repaired/replaced. (SCMC Title 12) Public Works

**Landscaping**

5.5 The applicant shall submit, and must obtain approval from the City Planner, a letter from a registered landscape architect confirming that landscaping and irrigation have been installed in accordance with the approved plans. Planning  
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1. Final landscape plans submitted shall provide 15-gallon size shrubs around any utility enclosure, trash enclosure, and backflow preventer.
2. The applicant shall maintain the landscaping surrounding the trash enclosure, and provide for vine cover of the enclosure walls where feasible, in a manner that it provides coverage and encourages the vines to grow to provide screening.
3. The parking aisle end caps, currently an asphalt painted buffer, shall be converted into curbed landscaping areas with plant species to be approved by the City's consulting Landscape Architect.
4. The applicant shall incorporate additional evergreen trees at the rear of the property and coordinate with the City's Landscape Architect consultant on additional opportunities for vines to soften walls on the site as possible.

**Lighting**

5.7 The applicant shall submit, and must obtain approval from the City Planner, a letter from the preparer of the lighting plans confirming Planning

that all lighting has been installed in accordance with the approved plans, and that the lighting conforms to all standards set forth in the Municipal Code.

- 5.8 Prior to the issuance of Certificates of Occupancy, the owner or designee shall demonstrate to the satisfaction of the City Planner or designee that all exterior lighting is designed, arranged, directed or shielded per the approved plans, and in such a manner as to contain direct illumination on site, thereby preventing excess illumination onto adjoining site(s) and/or street(s). The existing exterior lighting on the rear and side elevations of the Stater Brothers building are currently not screened and produce glare. These fixtures shall be shielded or replaced with new fixtures that direct the lighting downward and within the parcel boundaries.
- Planning  
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### **Architecture**

- 5.10 All exterior details and materials shall be approved by the Planning Division prior to installation.
- Planning
- 5.11 Two-piece clay tile roofing shall be used with booster tiles on the edges and ridges and random mortar packing. The mortar shall be packed on 100 percent of the tiles in the first two rows of tiles and along any rake and ridgeline, and shall be packed on 25 percent of the tiles on the remaining field. Mortar packing shall serve as bird stops at the roof edges. The volume of mortar pack to achieve the appropriate thickness shall be equivalent to a 6 inch diameter sphere of mortar applied to each tile.
- Planning
- 5.12 Stucco walls shall consist of 'steel, hand trowel' (no machine application), smooth Mission finish and slight undulations (applied during brown coat) and bull-nosed corners and edges, including archways (applied during lathe), with no control/expansion joints.
- Planning
- 5.13 Windows shall be inset a minimum of 6" and primary entryways shall be inset a minimum of 12".
- Planning
- 5.14 Prior to issuance of any commercial building permits, the owner or designee shall submit for review and obtain approval of the Director of Community Development or designee plans indicating that the height of any roof mounted equipment shall not exceed the height of the parapet wall intended to screen the equipment, and the equipment will be painted in such a manner as to cause the equipment to blend with the roof when viewed from surrounding areas. Additional screening devices may be required in conjunction with tenant improvements if deemed necessary by the Director of Community Development.
- Planning

- 5.15 The construction drawings shall indicate a roof edge detail showing wrapped tile over the rake at the gable ends with stucco slaked to encapsulate the tile.
- 5.16 The applicant shall work with Planning staff to finalize the design for the custom wrought iron frame that surrounds the drive-up menu board to be consistent with a Spanish Colonial Revival theme.

**6.0 PRIOR TO RELEASE OF FINANCIAL SECURITY**

6.7 The waste debris enclosure shall be of appropriate size to accommodate bins for recyclable materials, organic waste (food and landscape trimmings) and trash. For residential projects, all waste bins must be substantially hidden from view from any public street or alley. (SCMC Chapter 8.28) Public Works

6.9 The applicant shall submit, and the City Engineer and City Planner shall approve, an agreement which designates responsibility for maintenance and irrigation of parkway trees, shrubs and ground cover within the public right-of-way. The City or designee shall be responsible for maintaining all medians within the public right-of-way, and shall prune and keep disease-free all parkway trees within the public right-of-way. The owner or designee, or the homeowners' association or designee, shall be responsible for watering all parkway trees, shrubs and ground cover within the public right-of-way, and shall trim and otherwise maintain parkway shrubs and ground cover. (Section 12.24 of the SCMC) Public Works  
Planning

**7.0 OPERATIONAL CONDITIONS OF APPROVAL**

7.16 In the event the City receives complaints regarding the noise of the drive through operation, the property owner and drive-through business tenant shall work with the City to implement changes to address noise complaints, which may include revising the hours of operation. The Community Development Director shall have the discretion to determine appropriate noise mitigation measures to be implemented. Planning  
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7.17 **REMOVED VIA PC RESOLUTION 21-009**  
~~The path of travel between Ocean View Plaza and Plaza by the Sea shall be maintained free of obstructions. The Applicant (including any property owners and managers, and their designees) shall be responsible and ensure that no boxes, gates, carts, product, machinery, trucks or otherwise impede or obstruct the newly installed path of travel, on the side of the building, serving to connecting the two (2) parcels. (Reciprocal pedestrian and vehicular access shall be maintained in perpetuity between the~~ Planning  
Code  
Comp  
\*\*

adjacent plazas.)

- |      |  |                       |
|------|--|-----------------------|
| 7.18 | All drive through queueing shall be contained on site. In the event on-site traffic circulation causes backup of vehicles onto Camino De Los Mares or the public sidewalk and causes unacceptable traffic congestion as determined by the City Engineer, the business owner shall meet with the City Engineer or designee and, if deemed necessary by the City Engineer, submit an amendment to this CUP with a management plan to address the circulation, parking, and/or traffic issues. The amendment shall be submitted within 60 days of receiving notice from the City identifying such issues. The business owner shall be responsible for implementing the traffic management plan, at their expense. The amendment shall be subject to Zoning Administrator review and approval. | Planning<br>Eng<br>** |
| 7.19 | The drive through menu shall be limited to quick service beverages and foods. Made to order meals should be directed to the indoor lobby only.   | Planning<br>**        |
| 7.20 | The business shall direct large drive through orders to a dedicated waiting stall to prevent backups in the queue.   | Planning<br>**        |
| 7.21 | The Applicant (including any property owners and managers, and their designees) shall ensure that discharge of washwater and other pollutants is prohibited from entering the storm drain system. Applicant must prevent pollutants (e.g. sediment, trash, food waste etc.) and any washwater used during cleanup from entering the storm drain system.  | Code<br>Comp<br>**    |
| 7.22 | The Applicant (including any property owners and managers, and their designees) shall have a manager on the premises at all times, and available to respond to issues raised by the Orange County Sheriff's Department, Orange County Fire Authority, or City of San Clemente Code Compliance, during the hours of operation.  | Code<br>Comp<br>**    |
| 7.23 | The Applicant (including any property owners and managers, and their designees) shall abide by all Orange County Health Care Department (OCHCA) requirements.  | Code<br>Comp<br>**    |
| 7.24 | The Applicant (including any property owners and managers, and their designees) understands and agrees that no temporary signage is part of this review, nor is any such signage approved or permitted by this permit. All temporary signage shall comply with Zoning Ordinance Table 17.84.030A & Section 17.84.030(H), and any applicable Master Sign Programs. Applicant understands and agrees that as a condition of approval of this permit that Applicant is aware of the City's temporary sign regulations and that compliance with those regulations is a term of the subject permit's  | Code<br>Comp<br>**    |

approval by the City. As such, any violation of the City's regulations related to window, banner, or temporary signs shall constitute a violation of SCMC Section 8.52.030(Y), as discussed in accompanying conditions of approval. [Citation - Section 17.16.240.D of the SCMC]

- 7.25 The Applicant (including any property owners and managers, and their designees) understands and agrees that in the event noise generated by the use approved by this permit impacts neighboring properties, the tenant must soundproof the facility, or use other best management practices as determined by the City Planner and/or City Building Official, to comply with the City's noise standards, as described in SCMC Chapter 8.48. Code Comp \*\*
  
- 7.26 The Applicant (including any property owners and managers, and their designees) shall be responsible for ensuring that no noise-generating maintenance activities on the subject property are conducted between the hours of ten (10:00) p.m. and seven (7:00) a.m. Such prohibited activities include, but are not limited to, dumping trash into outside trash bins, the use of parking lot sweepers, and the use of high-pressure washers. [Citation - Section 8.48.070(P) of the SCMC] Code Comp \*\*
  
- 7.27 The Applicant (including any property owners and managers, and their designees) shall be responsible for ensuring that no loud and excessive noise-generating activities on the subject property in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates and containers are conducted between the hours of ten (10:00) p.m. and seven (7:00) a.m. [Citation - Section 8.48.070(O) of the SCMC] Code Comp \*\*
  
- 7.28 The Applicant (including any property owners and managers, and their designees) shall be responsible for ensuring that overnight parking of vehicles, whether occupied or otherwise, does not occur, with the exception of those vehicles authorized to be on the premises for the purposes of commercial activity (such as cleaning and maintenance crews). Property owner shall be responsible for posting signs on the property that provide warnings to this effect, and shall take all necessary steps to enforce this prohibition, including providing private security to patrol the site on a regular and nightly basis. Code Comp \*\*
  
- 7.29 The Applicant (including any property owners and managers, and their designees) shall be responsible for addressing all issues arising from any person or persons trespassing on the subject property, whether in an automobile or not, without lawful business at the property, or when not authorized by the owner or manager of the premises. To address these issues, the property owner shall Code Comp \*\*

do either, or both, of the following: 1) Provide private security to patrol the site on a regular and daily basis and address violations as they arise; or 2) provide authorization to the Orange County Sheriff's Department for the purposes of entering the subject property to request that any person who is at the subject property, including, without limitation, all buildings, structures, parking lots, common areas, and private sidewalks, to leave the subject property when identified as a trespasser by the property owner's authorized representatives. [Citation - Section 9.04.010(B)(8&9) of the SCMC]

7.30 The applicant shall make provisions for the continuous and perpetual maintenance of on-site landscaping in an orderly, attractive and healthy condition consistent with SCMC 17.68.060 - Maintenance requirements. The indicated pedestrian furniture likewise shall be well-maintained.

Planning  
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\* Denotes modified standard Conditions of Approval

\*\* Denotes Project-Specific Conditions of Approval

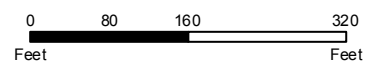




**City of San Clemente**

Project: Site Plan Amendment 21-078

Address: 610-628 Camino de los Mares



# ATTACHMENT

May 5, 2021

Mr. Jonathan Lightfoot  
Community Development Technician  
City of San Clemente Planning Division  
910 Calle Negocio, Suite 100  
San Clemente, CA 92673

Re: Site Plan Permit (SPP) 19-203, Architectural Permit (AP) 19-204, Conditional Use Permit (CUP) 19-205, Amended Discretionary Sign Permit (AM-DSP) 18-546, 610 Camino De Los Mares; Plaza by the Sea Drive-Through.

Dear Mr. Lightfoot,

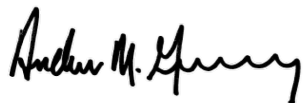
The purpose of this letter is to request removal of Condition 7.17 from the Conditions of Approval for the above referenced project.

There is a requirement in our existing tenant lease which requires Brixmor to receive tenant approval for any changes to the common areas. Brixmor sought and received tenant approvals for the new signage / monument program, façade remodel, landscape improvements, demolition of the vacant restaurant building and construction of the new multi-tenant drive-thru building. However, despite our best efforts, we did not receive consent to remove the wall between Oceanview Plaza and Plaza by the Sea.

In association with Brixmor's reinvestment in this center and at the City's request, Brixmor designed a vehicular/pedestrian connection from Plaza by the Sea to Ocean View Plaza. The connectivity is a condition associated with the new drive thru building and we cannot proceed with construction of the new building while this connectivity remains as a condition. In order to proceed with the new building and landscape enhancements, we respectfully request Condition 7.17 be removed in entirety.

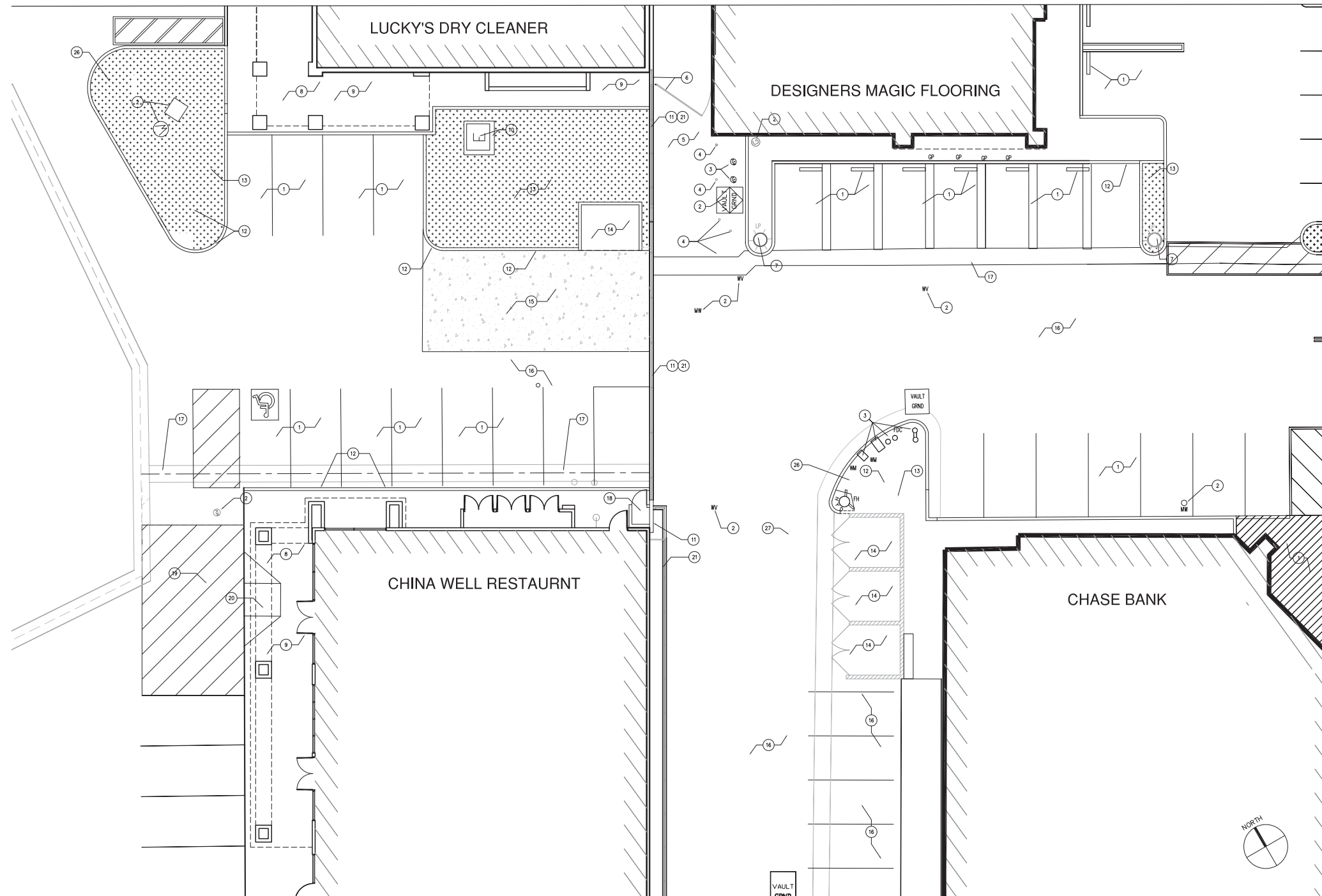
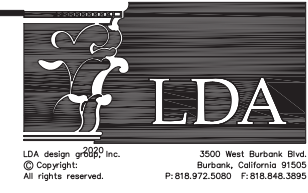
We appreciate your understanding and support in addressing this issue. Please do not hesitate to contact me to further discuss.

Sincerely,



Andrew M. Gracey  
Vice President of Development

# ATTACHMENT 4



EXISTING PARTIAL SITE PLAN



1/8" = 1'-0" 1

### REFERENCE NOTES:

1. EXISTING PARKING STRIPING AND WHEEL STOPS TO REMAIN
2. EXISTING SITE UTILITIES AND RELATED COVER PLATES TO REMAIN. SEE CIVIL DRAWINGS.
3. EXISTING FIRE DEPARTMENT RISER CONNECTION TO REMAIN.
4. EXISTING BOLLARDS TO REMAIN.
5. EXISTING TRADER JOE'S LOADING AREA
6. EXISTING TRADER JOE'S W.I. FENCE AND GATE ENCLOSURE TO REMAIN.
7. EXISTING LIGHTING POLE ON CONCRETE BASE TO REMAIN.
8. EXISTING COVERED WALKWAY TO REMAIN.
9. EXISTING CONCRETE WALKWAY TO REMAIN.
10. EXISTING ELECTRICAL TRANSFORMER ON CONCRETE PAD TO REMAIN
11. EXISTING CMU WALL
12. EXISTING CURB TO REMAIN
13. EXISTING LANDSCAPE TO REMAIN
14. EXISTING TRASH ENCLOSURE TO REMAIN
15. EXISTING CONCRETE PAVING TO REMAIN
16. EXISTING ASPHALT PAVEMENT
17. EXISTING DRAINAGE GUTTER TO REMAIN.
18. EXISTING RESTAURANT GREASE ENCLOSURE TO REMAIN
19. EXISTING PAINTED PAVEMENT STRIPING
20. EXISTING CURB CUT TO REMAIN
21. EXISTING WROUGHT IRON FENCE ON CMU WALL

CONTRACTOR SHALL BUILD ONLY FROM SETS STAMPED "CONSTRUCTION SET" HEREIN

| ISSUE DATE:           |                  |      |
|-----------------------|------------------|------|
| ISSUED FOR:           | DATE             |      |
| PLANNING RE-SUBMITTAL | 05,07,21         |      |
|                       |                  |      |
|                       |                  |      |
| No.                   | REVISION ISSUES: | DATE |
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**PHASE I**  
**PLAZA BY THE SEA**  
**610-628 CAMINO DE LOS MARES**

LANDLORD SITE WORK  
PLAZA BY THE SEA  
SAN CLEMENTE, CA 92673

|                 |                  |
|-----------------|------------------|
| PROJECT NUMBER: | <b>BX2001.00</b> |
| Drawn By:       | File Name        |
| RB              | BX2001_A0.4-A2.4 |
| Checked By:     | LT Scale         |
| DL              |                  |
| Project Mgr.:   | Scale:           |
| HD              | AS SHOWN         |

Title:  
**EXISTING ENLARGED SITE PLAN**

Sheet No.

# A1.2