

MINUTES
HUNTINGTON BEACH OFFICE OF THE ZONING ADMINISTRATOR
Room B-8 - Civic Center
2000 Main Street
Huntington Beach California

WEDNESDAY, NOVEMBER 10, 2009 - 1:30 P.M.

ZONING ADMINISTRATOR: Ricky Ramos

STAFF MEMBER: Ethan Edwards, Andrew Gonzales, Judy Demers, (recording secretary)

MINUTES: **NONE**

ORAL COMMUNICATION: **NONE**

ITEM 1: COASTAL DEVELOPMENT PERMIT NO. 2009-004/ CONDITIONAL USE PERMIT NO. 2009-020/ VARIANCE NO. 2009-004 (LARSON RESIDENCE)

APPLICANT: Jay Earl, Jay Earl Design
PROPERTY OWNER: Lory and Sharon Larson, 3761 Nimble Circle, Huntington Beach, CA 92649
REQUEST: **CDP:** To permit the demolition of an existing single-family dwelling and the construction of an approximately 6,508 sq. ft. single-family dwelling with a 1,131 sq. ft. attached garage; **CUP:** To permit an approximately 701 sq. ft. 3rd story deck; **VAR:** To permit the 3rd floor deck railing at a 1 ft. 9 in. setback from the exterior of the west elevation and 0 ft. setback from the exterior of the east elevation in lieu of a minimum 5 ft. required. This request includes a review and analysis for compliance with the Infill Lot Ordinance. The Infill Lot Ordinance encourages adjacent property owners to review proposed development for compatibility/ privacy issues, such as window alignments, building pad height, and floor plan layout.
LOCATION: 3761 Nimble Circle, 92649 (terminus of Nimble Circle – Trinidad Island)
PROJECT PLANNER: Andrew Gonzales

Andrew Gonzales, Associate Planner, displayed project plans and photographs and stated the purpose, location, zoning, and existing use of the subject site. Staff presented an overview of the proposed project and the suggested findings and conditions for approval and findings for denial as presented in the executive summary.

Mr. Gonzales stated that staff had not received any public comments.

Mr. Ramos stated that he had reviewed the file and findings for a similarly approved residence on Morningstar Circle.

THE PUBLIC HEARING WAS OPENED.

Jay Earl, applicant, stated that the proposed deck would be completely screened from adjacent properties and would not have any direct views onto adjoining properties. He believes this is consistent with the intent of the code.

Lory Larson, property owner, presented a drawing depicting how the second floor roof would screen the third floor deck and prevent any direct views onto adjacent properties. Mr. Larson also presented photos of residences with third story decks in the surrounding area and indicated that he could provide the addresses of the photographed properties if requested. He noted that the majority of the third story decks referenced were built within the last ten years.

Mr. Ramos asked Mr. Larson to identify special circumstances with the project site that should be considered in making the necessary findings to approve the deck.

Mr. Larson stated that there are only three properties in the Huntington Harbor area with similar lot configurations, which he believes constitutes a special circumstance. He indicated that the lot configuration allows for a third story deck without setbacks while maintaining the privacy of the adjoining neighbors. A discussion regarding properties that have similar decks took place.

Mr. Ramos explained that, although the applicant is able to meet the requirements for Variance Finding No. 4, he does not believe any special circumstances exist with the site, therefore, Finding Nos. 2 and 3 cannot be met.

Mr. Earl asked if variances are chiefly granted for residences that have special circumstances which create a disadvantage in comparison to other properties. Mr. Ramos confirmed this. Sharon Larson, property owner, stated that denying the variance would force the project to be redesigned which would put them at a disadvantage. Mr. Ramos stated that, in order to be granted the variance, the disadvantage is limited to unique physical characteristics of a lot that are beyond the owner's control as opposed to a self-created hardship resulting from a design the owner has chosen.

THE PUBLIC HEARING WAS CLOSED

Mr. Ramos explained that all variance findings must be met for approval and the applicant's request does not meet that requirement. Mr. Ramos stated that he was denying the request for a variance.

COASTAL DEVELOPMENT PERMIT NO. 2009-004 AND CONDITIONAL USE PERMIT NO. 2009-020 WERE APPROVED BY THE ZONING ADMINISTRATOR WITH THE FOLLOWING FINDINGS AND CONDITIONS OF APPROVAL. VARIANCE NO. 2009-004 WAS DENIED BY THE ZONING ADMINISTRATOR WITH THE FOLLOWING FINDINGS. STAFF STATED THAT THE ACTION TAKEN BY THE ZONING ADMINISTRATOR MAY BE APPEALED TO THE PLANNING COMMISSION WITHIN TEN (10) WORKING DAYS.

FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Zoning Administrator finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act

(CEQA) pursuant to section 15303 of the CEQA Guidelines, because the project is located within an urbanized residential zone and involves the construction of a new single family dwelling.

FINDINGS FOR APPROVAL - COASTAL DEVELOPMENT PERMIT NO. 2009-004:

1. Coastal Development Permit No. 2009-2004 for the demolition of an existing single-family dwelling and the construction of an approximately 6,508 sq. ft. single-family dwelling with a 1,131 sq. ft. attached garage conforms with the General Plan, including the Local Coastal Program land use designation of Residential Low-Density. The project is consistent with Coastal Element Policy C 1.1.1 to encourage development within, contiguous to or in close proximity to existing developed areas able to accommodate it. The proposed construction will occur on a developed site, contiguous to existing residential developments.
2. The project is consistent with the requirements of the CZ Overlay District, the base zoning district, as well as other applicable provisions of the Municipal Code. The project, as conditioned, complies with the maximum site coverage, maximum building height, minimum yard setbacks and minimum onsite parking.
3. At the time of occupancy the proposed development can be provided with infrastructure in a manner that is consistent with the Local Coastal Program. The proposed residence will be constructed on a previously developed site in an urbanized area with all the necessary services and infrastructure available, including water, sewer, and roadways.
4. The development conforms to the public access and public recreation policies of Chapter 3 of the California Coastal Act. The proposed residence will not impede public access, recreation, or views to coastal resources.

FINDINGS FOR APPROVAL - CONDITIONAL USE PERMIT NO. 2009-020:

1. Conditional Use Permit No. 2009-020 to permit an approximately 701 sq. ft. 3rd story deck will not be detrimental to the general welfare of persons working or residing in the vicinity or detrimental to the value of the property and improvements in the neighborhood. The location and orientation of the proposed 3rd floor deck will not impact privacy because the deck will be primarily orientated toward the street and harbor. The sides of the deck will be shielded by the 2nd floor roof which will prevent direct views onto adjacent residences. To further protect the privacy the deck will be setback more than 25 ft. from the nearest adjacent residence.
2. The 3rd story deck will be integrated into the two-story design of the residence which will be compatible with other two-story, single-family homes in the vicinity. The deck will be centrally located on top of the residence and screened from adjoining homes by a hipped roof. The deck will not provide additional mass and bulk to the residence as it will be open to the sky and provided with perimeter railing that allows for the transmission of light and visibility through the structure.
3. The proposed 3rd floor deck will comply with the provisions of the base district and other applicable provisions in Titles 20-25 of the Huntington Beach Zoning and Subdivision

Ordinance. The project complies with the maximum building height, maximum lot coverage, and minimum building setbacks. Rooftop decks above the second story are allowed in the base zoning district with approval of a conditional use permit. The proposed deck, as conditioned, will be setback at a minimum of 5 ft. from the second-story façade.

4. The granting of the conditional use permit will not adversely affect the General Plan. It is consistent with the Land Use Element designation of RL-7 (Residential Low Density—7 units per acre) on the subject property. In addition, it is consistent with the following policies of the General Plan pertaining to infill development:

Land Use Element

Policy - LU 9.2.1b: Use of building heights, grade elevations, orientation, and bulk that are compatible with the surrounding development;

Policy - LU 9.2.1d: Maintenance of privacy on abutting residences.

The proposed rooftop deck above the second story will be oriented toward the public right-of-ways with a substantial setback from the building's northerly and southerly exterior elevation, thus minimizing impacts to privacy on adjoining properties. The proposed deck will be architecturally integrated into the design of the house.

FINDINGS FOR DENIAL - VARIANCE NO. 2009-004:

1. The granting of Variance No. 2009-004 to permit the 3rd floor deck railing at a 1 ft. 9 in. setback from the exterior of the west elevation and 0 ft. setback from the exterior of the east elevation in lieu of a minimum 5 ft. required will constitute a grant of special privilege because the design of the project contains ample options to comply within the minimum requirements of the HBZSO.
2. The strict application of the zoning ordinance is not found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification. The subject property is similar in shape and size to other properties in the vicinity and does not contain any features dissimilar from other waterfront lots that serve as a disadvantage to meeting code. There are adequate options to comply with the minimum 5 ft. setback from the building exterior, and therefore no special circumstances exist to grant deviations from the third story design criteria.
3. The granting of a variance is not necessary to preserve the enjoyment of one or more substantial property rights. A code compliant single-family dwelling similar to one existing in the area can be built on the subject site without requiring a variance.

**CONDITIONS OF APPROVAL - COASTAL DEVELOPMENT PERMIT NO. 2009-004/
CONDITIONAL USE PERMIT NO. 2009-020:**

1. The site plan, floor plans, and elevations received and dated September 30, 2009, shall be the conceptually approved design with the following modifications:

- a. On the site plan (Sheet No. 1), depict the areas of landscape and hardscape within the required 15 ft. front yard setback area. In addition, identify on the development matrix the total area and percentage of landscaping within the area.
 - b. Modify the 3rd floor plan (Sheet No. 4) to depict the 3rd floor deck railing at a 5 ft. setback from the outermost exterior of the east and west elevation of the building. (HBZSO Sect. 210.06 (M))
2. Incorporating sustainable or "green" building practices into the design of the proposed structures and associated site improvements is highly encouraged. Sustainable building practices may include (but are not limited to) those recommended by the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Program certification (<http://www.usgbc.org/DisplayPage.aspx?CategoryID=19>) or Build It Green's Green Building Guidelines and Rating Systems (<http://www.builditgreen.org/index.cfm?fuseaction=guidelines>).

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.

ITEM 2: CONDITIONAL USE PERMIT NO. 2009-026 (ROCKIN CREPES)

APPLICANT: Martha Bennett, Rockin Crepes
 PROPERTY OWNER: Watt Management, 425 18th Street, Huntington Beach, CA 92648
 REQUEST: To permit the on-site sale and consumption of alcohol at an existing restaurant
 LOCATION: 8943 Atlanta Avenue, 92646 (northwest corner of Atlanta Avenue and Magnolia Street)
 PROJECT PLANNER: Ethan Edwards

Ethan Edwards, Associate Planner, displayed project plans and photographs and stated the purpose, location, zoning, and existing use of the subject site. Staff presented an overview of the proposed project and the suggested findings and conditions for approval as presented in the executive summary.

Mr. Edwards stated that staff received one public comment in opposition to the request, citing concerns with potential noise and public nuisances.

THE PUBLIC HEARING WAS OPENED.

Jim Copeland, resident, expressed concern with the proposed alcohol sales, citing the increased potential for excessive noise, traffic, and drunk drivers. He noted that the restaurant is located adjacent to a senior residential community near Edison High School. He expressed concern about potential underage drinking and noted that many local high school students congregate at nearby restaurants and shops.

Mr. Ramos stated that the City has a long standing history of allowing alcohol service in many restaurants. He noted that the Police Department is involved in the approval process and have placed conditions on the request which restricts the sale, service, and the consumption of alcohol to the interior of the restaurant and requires food service to be made available during the restaurant's operating hours. He stated that this will ensure that the establishment operates as a full service restaurant and not a bar.

Mr. Ramos explained that drunk driving and underage drinking are larger issues that are outside the control of the business owner, and he should not be penalized for that.

Mr. Ramos stated that he would approve the project as recommended by staff.

THERE WERE NO OTHER PERSONS PRESENT TO SPEAK FOR OR AGAINST THE REQUEST AND THE PUBLIC HEARING WAS CLOSED.

CONDITIONAL USE PERMIT NO. 2009-026 WAS APPROVED BY THE ZONING ADMINISTRATOR WITH THE FOLLOWING FINDINGS AND CONDITIONS OF APPROVAL. STAFF STATED THAT THE ACTION TAKEN BY THE ZONING ADMINISTRATOR MAY BE APPEALED TO THE PLANNING COMMISSION WITHIN TEN (10) CALENDAR DAYS.

FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Zoning Administrator finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15301 of the CEQA Guidelines, because the project consists of the minor modification to an existing use within an existing multi-tenant commercial shopping center.

FINDINGS FOR APPROVAL - CONDITIONAL USE PERMIT NO. 2009-026:

1. Conditional Use Permit No. 2009-026 to permit the sale of alcoholic beverages for onsite consumption at an existing restaurant will not be detrimental to the general welfare of persons working or residing in the vicinity or detrimental to the value of the property and improvements in the neighborhood. The proposed alcohol sales is not anticipated to generate additional noise, traffic, parking, or other impacts detrimental to surrounding property and inconsistent with the subject property's commercial zoning. Residential uses to the north of the subject site are buffered from the existing restaurant by mature landscaping, 6 ft. high property line fence, a 26 ft. wide drive aisle and the restaurant building. The restaurant storefront and entrance are oriented toward Atlanta Avenue, away from the residences. In addition, the sales and consumption of alcoholic beverages shall be contained within the restaurant, and shall be in conjunction with a bona fide eating establishment.

2. The conditional use permit will be compatible with surrounding uses because the on-site sale and consumption of alcoholic beverages will be ancillary to an existing restaurant use and will occur entirely within the interior of the building at an established commercial center containing similar and complimentary uses.
3. The proposed conditional use permit will comply with the provisions of the base district and other applicable provisions in Titles 20-25 of the Huntington Beach Zoning and Subdivision Ordinance and any specific condition required for the proposed use in the district in which it is located. The existing restaurant conforms to applicable site development requirements including required minimum setbacks and required onsite parking. The on-site sale and consumption of alcoholic beverages is permitted within the CG (Commercial General) zoning district with the approval of a conditional use permit.
4. The granting of the conditional use permit will not adversely affect the General Plan. It is consistent with the Land Use Element designation of CN – F1 (Commercial Neighborhood – 0.35 max. Floor Area Ratio) on the subject property. In addition, it is consistent with the following goals, objectives and policies of the General Plan:

Land Use Element

Objective - LU 10.1: Provide for the continuation of existing and the development of a diversity of retail and service commercial uses that are oriented to the needs of local residents, serve the surrounding region, and capitalize on Huntington Beach's recreational resources.

Economic Development Element

Policy - ED 2.4.3: Encourage the expansion of the range of goods and services provided in Huntington Beach to accommodate the needs of all residents in Huntington Beach and the market area.

The requested conditional use permit will accommodate an existing commercial development by allowing the addition of alcohol sales to a permitted land use (restaurant). The proposed use will market its services to local residents and residents in the surrounding region thereby expanding the service-based commercial opportunities in the City. It will be located in an existing shopping center, which includes service related uses.

CONDITIONS OF APPROVAL - CONDITIONAL USE PERMIT NO. 2009-026:

1. The site plan and floor plans received and dated August 26, 2009 shall be the conceptually approved design.
2. Prior to the sale of alcoholic beverages, a copy of the Alcoholic Beverage Control Board (ABC) license, along with any special conditions imposed by the ABC, shall be submitted to the Planning Department for the file. Any conditions that are more restrictive than those set forth in this approval shall be adhered to.
3. The use shall comply with the following:

- a. The sale, service, and consumption of alcoholic beverages shall be restricted to the interior of the business. (PD)
- b. Food service from the regular menu shall be available during all times the business is open to the public. (PD)

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.

THE MEETING WAS ADJOURNED AT 2:07 PM TO THE NEXT REGULARLY SCHEDULED MEETING ON TUESDAY, NOVEMBER 18, 2009, AT 1:30 PM.



Ricky Ramos
Zoning Administrator

RR:kdc