MINUTES
HUNTINGTON BEACH PLANNING COMMISSION

WEDNESDAY, NOVEMBER 12, 2008
HUNTINGTON BEACH CIVIC CENTER
2000 MAIN STREET, HUNTINGTON BEACH, CALIFORNIA 92648

5:15 P.M. - ROOM B-8 (CITY HALL LOWER LEVEL)

CALL PLANNING COMMISSION MEETING TO ORDER

	A	P	A	P	P	A	P
ROLL CALL:	*Farley,*	*Dwyer,*	*Shier Burnett,*	*Livengood,*	*Shaw,*	*Speaker,*	*Scandura*

Commissioner Farley arrived at 5:20 PM; Commissioners Shier Burnett and Speaker were absent.

AGENDA APPROVAL

A MOTION WAS MADE BY SHAW, SECONDED BY SCANDURA, TO APPROVE THE PLANNING COMMISSION STUDY SESSION AGENDA OF NOVEMBER 12, 2008, BY THE FOLLOWING VOTE:

AYES:	**Dwyer, Livengood, Shaw, Scandura**
NOES:	**None**
ABSENT:	**Farley, Shier Burnett, Speaker**
ABSTAIN:	**None**

MOTION APPROVED

A. PROJECT REVIEW (FUTURE AGENDA ITEMS)

A-1. CONDITIONAL USE PERMIT NO. 08-012 (PACIFIC VIEW/620 PACIFIC COAST HIGHWAY) – Rami Talleh, Senior Planner

Rami Talleh, Senior Planner, gave a brief overview of the project. He noted that the applicant has provided revised plans. The original plans (dated June 11, 2008) and the revised plans (dated October 7, 2008) have both been provided to the Planning Commission. The applicant's revised plans include a total square footage of 12,737, the elimination of one unit, and the elimination of the fourth floor deck (which eliminates the need for a variance). Mr. Talleh also reported that the prior common open space was 2,200 square feet (on the fourth floor) and the revised common open space is 500 square feet (on the third floor). He further noted that this project will come before the Planning Commission at the public hearing on December 9, 2008.

B. STUDY SESSION ITEMS – NONE

C. AGENDA REVIEW (UPDATE ON ALL AGENDA ITEMS)

Rami Talleh, Senior Planner, advised that there were two Late Communications for Item No. B-1 and four Late Communications for Item No. D-1.

Commissioner Dwyer asked Ms. Mulvihill if, due to his election to City Council, he should abstain from voting on items likely to be appealed to City Council. Ms. Mulvihill indicated that there is no definitive decision on this issue, but Commissioner Dwyer may recuse himself if he feels that there may be a possible conflict of interest.

Mr. Talleh advised that staff received clarification from the Police Department on the general noise complaints regarding Black Bull Chophouse. He stated that due to this additional information staff was now recommending that a date be set for a revocation hearing. He also noted that representatives from the Police Department would be in attendance at the non-public hearing portion of tonight's meeting.

D. PLANNING COMMISSION COMMITTEE REPORTS

D-1. NEIGHBORHOOD COMPATABILITY COMMITTEE REPORT – Commissioner Scandura

Commissioner Scandura gave a brief presentation on the findings and recommendations of the Neighborhood Compatibility Committee.

Commissioner Farley expressed concern that some of the suggested design guidelines contain features that would be incompatible with some of the older neighborhoods within the city. He also noted that the suggested guidelines would also eliminate certain classes of architecture.

Commissioner Farley asked if there were discussion on distinctions for neighborhoods with Home Owners Associations (HOAs) that already have guidelines in place. Commissioner Scandura indicated that the issue was discussed but did not get incorporated into the final recommendations. He noted that there would also be issues for neighborhoods that have Specific Plans, such as the downtown area.

Chair Livengood noted that some of the HOAs have somewhat undefined guidelines. He asked Commissioner Scandura to address the issues of Specific Plans and HOA guidelines in the committee recommendations.

Commissioner Farley indicated that there had been previous discussions on the possibility of turning neighborhoods into districts. Commissioner Scandura indicated that forming a district would require a majority of owners to agree and obtaining that majority would not be easy.

Commissioner Shaw stated that the goal of the committee was to gather general suggestions to forward to Council and that the primary concern is to alert Council that neighborhood compatibility is a problem. He stated that the committee put together various recommendations so that there would be options to choose from.

Commissioner Dwyer stated that he felt the best option was to amend the 50% rule to apply to more than 50% demolition and 50% expansion.

Chair Livengood stated that he thought eliminating the 'three or more homes' rule was important so that the standards applied to single family homes as well as multi-unit developments.

Chair Livengood asked Scott Hess, Director of Planning, for his opinion. Mr. Hess indicated that he agreed with many of the committee's suggestions but advised that some would prohibit certain types of architecture and some of the guidelines were very subjective. Mr. Hess briefly reviewed the current guidelines and approval process.

Mr. Hess noted that this item will come before the Planning Commission at the non-public hearing on December 9, 2008. It will then be the Planning Commission's purview to vote on these recommendations. If approved, then the recommendations will be forwarded to the City Council as a Minute Action.

E. PUBLIC COMMENTS

Karen Otis, applicant, spoke in favor of Item No. A-1, noting that while a variance was requested for common open space, the amount of private open space is two to three times the requirement for every unit. She also spoke regarding the changes made to the site plans.

F. PLANNING COMMISSION COMMENTS

6:10 PM – RECESS FOR DINNER

7:00 P.M. – COUNCIL CHAMBERS

CALL PLANNING COMMISSION MEETING TO ORDER

PLEDGE OF ALLEGIANCE – Led by Commissioner Dwyer

	P	P	P	P	P	P	P
ROLL CALL:	***Farley,***	***Dwyer,***	***Shier Burnett,***	***Livengood,***	***Shaw,***	***Speaker,***	***Scandura***

AGENDA APPROVAL

A MOTION WAS MADE BY SHAW, SECONDED BY DWYER, TO APPROVE THE PLANNING COMMISSION AGENDA OF NOVEMBER 12, 2008, BY THE FOLLOWING VOTE:

AYES: **Farley, Dwyer, Shier Burnett, Livengood, Shaw, Speaker, Scandura**
NOES: **None**
ABSENT: **None**
ABSTAIN: **None**

MOTION APPROVED

A. ORAL COMMUNICATIONS

Michael Adams, applicant, spoke for Item No. D-1, asking that the Commissioners consider continuing the item.

Jeff Smith, resident, spoke against Item No. D-1, citing concerns with noise, the use of the patio, and the effect on residents.

Richardson Gray, resident, spoke against Item No. D-1, citing concerns with noise, the effect on the residents' quality of life, and the possibility of diminished property values.

Cesar Pena, Black Bull Chophouse owner, spoke for Item No. D-1, stating that he was only made aware of the Police and Fire Departments' violations on October 21, 2008.

Mark Miller, resident, spoke against Item No. D-1, citing concerns with cigarette smoke inhalation and noise.

B. PUBLIC HEARING ITEMS

B-1. MITIGATED NEGATIVE DEVELOPMENT NO. 07-007/GENERAL PLAN AMENDMENT NO. 08-006/ZONING MAP AMENDMENT NO. 08-006/CONDITIONAL USE PERMIT NO. 08-032/VARIANCE NO. 08-008/TENTATIVE PARCEL MAP NO. 08-121 (CVS PHARMACY) Applicant:

Austin Rogers **Request:** **MND:** To analyze the potential environmental impacts associated with the implementation of the proposed project. **GPA:** To amend the General Plan Land Use Designation from the current P(RL) (Public – Residential Low Density) to the proposed CG-F1 (Commercial General – 0.35 Max Floor Area Ration) designation. **ZMA:** To amend the Zoning designation from the current PS (Public – Semipublic) to the proposed CG (Commercial General) designation. **CUP:** To develop and construct a 14,670 sq. ft. 24-hour drive-thru pharmacy and associated site improvements. **VAR:** To permit a 10-space parking reduction from 74 to 64 parking spaces. **TPM:** To subdivide a 1.5 acre parcel from a portion of the Golden West College site. **Location:** 15520 Goldenwest Street, 92647 (southeast corner of Goldenwest Street and McFadden Avenue) **Project Planner:** Tess Nguyen

STAFF RECOMMENDATION: Motion to:

A. "Approve Mitigated Negative Declaration No. 07-007 with suggested findings and mitigation measures (Attachment No. 1)."

B. "Approve General Plan Amendment No. 08-006 by approving the draft City Council Resolution (Attachment No. 2) and forward to the City Council for adoption."

C. "Approve Zoning Map Amendment No. 08-006 with findings for approval (Attachment No. 3) and forward the draft Ordinance (Attachment No. 4) to the City Council for adoption."

D. "Approve Conditional Use Permit No. 08-032, Variance No. 08-008, and Tentative Parcel Map No. 08-121 with findings and suggested conditions of approval (Attachment No. 5)."

The Commission made the following disclosures:

- Commissioner Farley visited the site and attended the Design Review Board meeting.
- Commissioner Dwyer visited the site.
- Vice Chair Shier Burnett attended the Study Session and visited the site.
- Chair Livengood visited the site.
- Commissioner Shaw visited the site and attended the Study Session.
- Commissioner Speaker visited the site.
- Commissioner Scandura visited the site and surrounding area.

Tess Nguyen, Associate Planner, gave the staff presentation and an overview of the project.

Commissioner Farley asked if the analysis for the Mitigated Negative Declaration took the drive-thru portion of the facility into the account and Ms. Nguyen confirmed that it was part of the traffic assessment. Commissioner Farley asked if vehicular idling was taken into account in the long term air quality impacts. Ms. Nguyen noted that the CEQA guidelines for retail do not differentiate between walk-in or drive-thru facilities.

Commissioner Farley asked if the shared driveway on Goldenwest Street would be widened. Staff stated that the driveway would be modified per ADA regulations but would not be significantly widened. Commissioner Farley inquired about restricting college parking. Staff indicated that there were no plans to do so. Commissioner Farley asked if student usage of the parking lot had been included in the traffic analysis. Darren Sam, Senior Traffic Engineer, indicated that the traffic analysis did not review onsite usage.

Vice-Chair Shier Burnett asked for clarification on ownership of the property. Ms. Nguyen indicated that the college district had control and ownership of the land.

Commissioner Dwyer asked if there were deed restrictions that would prohibit this development. Senior Planner Rami Talleh stated that staff would research the issue. Ms. Nguyen noted that the representatives from the Coast College District might be able to address that issue.

Chair Livengood asked staff if the location of the drive-thru was approved by the Police Department and Police Chief Ken Small indicated that the location was acceptable.

THE PUBLIC HEARING WAS OPENED.

Austin Rogers, applicant, spoke in favor of Item No.B-1.

Tom Wilhelm, developer, spoke in favor of Item No.B-1, saying that CVS considered the site a long term investment.

Albert Gasparian, Golden West College Athletic Director, spoke in favor of Item No. B-1, and asked that the marquee on Goldenwest Street and McFadden Avenue be allowed to remain, citing improved attendance at athletic and theatrical events.

Bill Kerwin of Coast Community College District spoke in favor of Item No.B-1, citing benefits to the community and funding benefits for the college.

Commissioner Dwyer asked about deed restrictions. Mr. Kerwin stated that he reviewed the paperwork and could find no deed restrictions.

John Kemp, resident, spoke against Item No.B-1, citing traffic and parking concerns.

Andrea Robinson, resident, spoke against Item No.B-1, citing traffic and noise concerns.

Dr. Les Mittleman, resident, spoke against Item No.B-1, stating that he felt that the land should be used for educational purposes only and was concerned with alcohol sales on college grounds.

WITH NO ONE ELSE PRESENT TO SPEAK, THE PUBLIC HEARING WAS CLOSED.

Commissioner Scandura asked Public Works staff if the vehicular accident rate at the corner of McFadden Avenue and Goldenwest Street was above average. Senior Traffic Engineer Darren Sam indicated that the accident rate was not included in the traffic analysis but stated that staff would research the issue.

Commissioner Speaker asked the applicant why the drive-thru operations were needed 24 hours a day. Mr. Wilhelm stated that it was intended for convenience but that if sales did not reflect a need then the hours would be changed accordingly.

Commissioner Dwyer asked if there were any provisions for the pumpkin patch. Mr. Kerwin indicated that the pumpkin patch and Christmas tree lot would be relocated somewhere else on the Golden West College property.

Commissioner Farley asked about the stacking limitations at the drive-thru. Ms. Nguyen stated that the drive-thru allowed for up to three cars to stack. Mr. Wilhelm stated that the two lanes would accommodate six cars altogether but indicated that the outer lane was restricted to drop-off traffic only. Commissioner Farley asked if the drive-thru stacking was included in the traffic analysis and Mr. Wilhelm stated that it was not.

Chair Livengood asked if limiting the drive-thru hours would be an issue for the applicant. Mr. Wilhelm stated that changing the hours would be acceptable.

Commissioner Dwyer recommended approving the Mitigated Negative Development No. 07-007 with a change to the hours of the drive-thru to 6am-10pm.

Commissioner Scandura asked if the process to change the hours would require the applicant to come before the Planning Commission again. Mr. Talleh indicated that any change to the Conditions of Approval set by the Planning Commission would require the approval of the Planning Commission.

Commissioner Farley stated that he would be voting against Item No.B-1 due to concerns with the shared driveway and the re-zoning of the land.

Commissioner Dwyer asked if signage could be added to the southern entrance and to the McFadden driveway stating that cross traffic is not allowed. Staff indicated this was not possible.

Vice- Chair Shier Burnett stated that she would be voting against Item No. B-1, stating that she felt the current use of the land was the highest and best use. She stated that she did not feel this would increase surrounding property values. She clarified that the issue was not with CVS Pharmacy but instead with re-zoning the land.

Commissioner Shaw stated that he would be voting against Item No. B-1 due to traffic concerns and concurring with Shier Burnett that this was not the best and highest use of the land. He stated that he did not feel the request was compatible with the current use of the land.

Chair Livengood stated that despite the traffic concerns he was in support of the request.

Commissioner Scandura stated that he was conflicted about the project but ultimately felt that the community would benefit from a pharmacy within walking distance and so would support the project.

Mr. Talleh stated that policies within the General Plan encourage combining driveways to serve more than one site. He stated that a suggested condition of approval from the Public Works Department requires the driveway to be wide enough to accommodate a WB40 truck.

Mr. Sam noted that no onsite traffic study was completed as the Public Works Department's concern was primarily the impact to public right-of-ways.

Mr. Kerwin indicated that the driveway in question was the least used entrance to the college along the Goldenwest corridor and the traffic at that entrance would be minimal. He indicated that the lease with CVS included provisions to mitigate any issues on the property. He stated that the College believes it to be a safe egress but would be willing to modify.

Commissioner Dwyer asked staff if striping in that area would alleviate stacking. Mr. Hess noted that there were several possible options for addressing any stacking issues. He stated that the Planning Commission could request that the applicant analyze the impact after the store is built to see if any mitigation is required.

Commissioner Farley stated that he did not feel it was sensible to approve the request and handle any traffic issues at a later date.

Commissioner Shaw agreed with Commissioner Farley's comments.

Commissioner Scandura stated that he did not feel that the entrance would have the necessary traffic to create a problem.

Chair Livengood suggested that he felt a condition of approval should be added requiring that the property owner submit a circulation plan for the property.

Mr. Kerwin noted that three other entrances to the college from Goldenwest Street are identical to the entrance in question.

Commissioner Scandura asked if anything in the current Conditions of Approval had a similar requirement for a circulation plan. Mr. Talleh stated that there are no conditions specific to this issue.

Mr. Gasparian stated that Golden West College could place three stop signs at that entrance to allow for better circulation. Commissioner Dwyer stated that he would support that idea.

A MOTION WAS MADE BY DWYER, SECONDED BY SPEAKER, TO APPROVE MITIGATED NEGATIVE DECLARATION NO. 07-007 WITH SUGGESTED FINDINGS AND MITIGATION MEASURES, BY THE FOLLOWING VOTE:

AYES: Dwyer, Livengood, Speaker, Scandura
NOES: Farley, Shier Burnett, Shaw
ABSENT: None
ABSTAIN: None

MOTION APPROVED

A MOTION WAS MADE BY SCANDURA, SECONDED BY SPEAKER, TO APPROVE GENERAL PLAN AMENDMENT NO. 08-006 BY APPROVING THE DRAFT CITY COUNCIL RESOLUTION AND FORWARD TO THE CITY COUNCIL FOR ADOPTION AND APPROVE ZONING MAP AMENDMENT NO. 08-006 WITH FINDINGS FOR APPROVAL AND FORWARD THE DRAFT ORDINANCE TO THE CITY COUNCIL FOR APPROVAL, BY THE FOLLOWING VOTE:

AYES: Dwyer, Livengood, Speaker, Scandura
NOES: Farley, Shier Burnett, Shaw
ABSENT: None
ABSTAIN: None

MOTION APPROVED

A MOTION WAS MADE BY DWYER, SECONDED BY SPEAKER, TO APPROVE CONDITIONAL USE PERMIT NO. 08-032, VARIANCE NO. 08-008, AND TENTATIVE PARCEL MAP NO. 08-121 WITH FINDINGS AND MODIFIED CONDITIONS OF APPROVAL, BY THE FOLLOWING VOTE:

AYES: Dwyer, Livengood, Speaker, Scandura
NOES: Farley, Shier Burnett, Shaw
ABSENT: None
ABSTAIN: None

MOTION APPROVED

FINDINGS FOR APPROVAL - MITIGATED NEGATIVE DECLARATION NO. 07-007

1. Mitigated Negative Declaration No. 07-007 has been prepared in compliance with Article 6 of the California Environmental Quality Act (CEQA) Guidelines. It was advertised and available for a public comment period of 30 days. Comments received during the comment period were considered by the Planning Commission prior to action on the Mitigated Negative Declaration No. 07-007.

2. Mitigation measures avoid or reduce the project's effects to a point where clearly no significant effect on the environment will occur. Mitigation measures address potential impacts to aesthetics, biological resources, and traffic and transportation. Mitigation

measures were generally designed to minimize impacts related to the removal and relocation of mature trees and inadequate parking capacity at the project site.

3. There is no substantial evidence in light of the whole record before the Planning Commission that the project, as mitigated through the attached mitigation measures, will have a significant effect on the environment. The proposed project will be a high quality development that takes into consideration the many existing mature trees onsite. The mature trees will be preserved or relocated based on the proper translocation procedures and specifications documented in the Arborist's Report to ensure their survival. In addition, the migratory species that may use portions of the site for nesting during breeding season will be protected through the limitation of the time of construction or vegetation removal. As for the reduction in the number of required parking spaces, a Parking Demand Study concludes that the provided parking would be sufficient for the parking demand of the proposed development and would not result in a parking deficiency.

FINDINGS FOR APPROVAL - CONDITIONAL USE PERMIT NO. 08-032:

1. Conditional Use Permit No. 08-032 for the establishment, maintenance and operation of the 14,670 square-foot 24-hour drive-thru CVS Pharmacy with 64 parking spaces 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 project meets all Zoning and Subdivision Ordinance standards with the exception of the variance for parking requirements. The proposed project is consistent with the land use/zoning designation applied to the property. The project will not generate noise, traffic, or other impacts which are inconsistent with the property's Commercial General's zoning designation or existing land uses in the surrounding neighborhood. In addition, the project will be designed to provide adequate setbacks, does not exceed building height, provide code required landscaping, and meets the goals and policies of the General Plan.

2. The conditional use permit will be compatible with surrounding uses because the project consists of the development of a commercial building on a commercially zoned property, south of existing commercial development of similar nature and intensity. The proposed project will be designed in a manner that is sensitive to surrounding uses, including orienting the loading and delivery service areas away from residential uses. In addition, the project will provide convenient and safe pedestrian linkages on-site and with the surrounding street system along with a building of high quality architectural design.

3. The proposed 14,670 square foot 24-hour drive-thru CVS Pharmacy with 64 parking spaces 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 would be located, except for the variance requesting a reduction in the parking requirements. The proposed development plan complies with the zoning development standards and land use provisions in the Commercial General zoning district by providing code required minimum setbacks, minimum landscaping, maximum building height, and maximum floor area ratio.

4. The granting of the conditional use permit will not adversely affect the General Plan. The project is consistent with the Land Use Element designation of CG-F1 (General Commercial—0.35 Floor Area Ratio) on the subject property. In addition, it is consistent with the goals and policies of the General Plan:

A. *Economic Development Element*

Goal ED 1: Provide economic opportunities for present and future Huntington Beach residents and businesses through employment and local fiscal stability.

Objective ED 1.1: Enhance the City's market potential in terms of retail, office, industrial, and visitor serving activity. This would allow Huntington Beach to provide for retail, office, and industrial opportunities that serve the current and projected population and enhance sales and occupancy tax revenue.

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 proposed project promotes development in accordance with Huntington Beach's Economic Development Element, as commercial development of the site will improve fiscal stability and provide economic opportunities for the City. New employment opportunities will be created both in the construction of the proposed development and in the long-term operations of the retail establishment. High-quality architecture and site design will enhance the long-term economic success of the proposed development and will further enhance Huntington Beach's economic prospects.

B. *Land Use Element*

Goal LU 7: Achieve a diversity of land uses that sustain the City's economic viability, while maintaining the City's environmental resources and scale and character.

Goal LU 10: Achieve the development of a range of commercial uses.

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, serve visitors to the City, and capitalize on Huntington Beach recreational resources.

Policy LU 10.1.4: Require that commercial buildings and sites be designed to achieve a high level of architectural and site layout quality.

Policy LU 10.1.12: Require that Commercial General uses be designed and developed to achieve a high level of quality, distinctive character, and compatibility with existing uses and development including the consideration of:

a. incorporation of site landscape, particularly along street frontages and in parking lots;

b. linkage of buildings by common architectural design, landscape and pedestrian systems, to avoid the appearance of independent free-standing structures surrounded by parking;

c. siting and design of structures to facilitate and encourage pedestrian activity;

d. siting of one or more buildings in proximity to the street frontage to convey a visual relationship to the street and sidewalks;

e. architectural treatment of buildings to minimize visual bulk and mass, using techniques such as the modulation of building volumes and articulation of all elevations; and

f. inclusion of consistent signage designed and integrated into the building's architectural character. (*I-LU 1, I-LU 4, I-LU 5, I-LU 7, I-LU 10, and I-LU 11*)

Goal LU 11: Achieve the development of projects that enable residents to live in proximity to their jobs, commercial services, and entertainment, and reduce the need for automobile use.
The retail use at the project site represents development which would support the needs and reflect market demand of City residents and visitors. The proposed development provides additional uses that would attract and complement existing uses along Goldenwest Street. Development of the commercial retail use will generate jobs for the community without substantially increasing the need for housing as most employees will come from the local area. In addition, the proposed project would help the City to achieve its goal of enhancing the community image of Huntington Beach through the design and construction of a high-quality development while still allowing for the market-driven commercial development. The design of the project promotes development of a commercial building that conveys a unified visual image and character. The City's Design Review Board has reviewed the proposed architecture, colors, and materials, and recommends approval of the design concept.

C. *Circulation Element*

Goal CE 1: Provide a balanced transportation system that supports the policies of the General Plan and facilitates the safe and efficient movement of people and goods throughout the City while providing a balance between economic development and the preservation of residential neighborhoods, and minimizing environmental impacts.

Goal CE 2: Provide a circulation system which supports existing, approved, and planned land uses throughout the City while maintaining a desired level of service on all streets and at all intersections.

Policy CE 2.1.1: Maintain a city-wide level of service (LOS) not to exceed LOS "D" for intersections during the peak hours.

Policy CE 2.1.2: Maintain a city-wide level of service (LOS) not to exceed LOS "C" for daily traffic, with the exception of Pacific Coast Highway south of Brookhurst Street.

Goal CE 5: Provide sufficient, well-designed, and convenient on- and off-street parking facilities throughout the City.

A traffic impact analysis has been completed by a traffic engineering firm to ensure a balanced transportation system that adequately mitigates the project's potential traffic impacts while still allowing for commercial development to be achieved. The developer will be required to contribute a fair-share payment toward traffic system improvements to mitigate the project's proportionate impacts to certain intersections and roadways.

FINDINGS FOR APPROVAL--VARIANCE NO. 08-008:

1. The granting of Variance No. 08-008 to permit a 10-space reduction in parking requirements will not constitute a grant of special privilege inconsistent with limitations upon other properties in the vicinity and under an identical zone classification. Deviations to the parking requirements have been previously granted for pharmacies with storage uses separate from the commercial/retail space when the deviation does not result in insufficient parking capacity. The gross floor area of the proposed project is 14,670 square feet, which would require 74 parking spaces in accordance to the HBZSO parking requirements, instead of the proposed 64 spaces for the development. Of the total floor area for the proposed project, 11,967 square feet will be utilized as commercial/retail space and 2,703 square feet will be utilized for storage purposes only. The required number of parking spaces for 11,967 square feet of commercial/retail area is 60 and the required number of parking spaces for the receiving and mezzanine storage areas, based on the storage/warehouse parking ratio of 1:1000, would be three. Because the receiving and storage areas would not be accessible to customers and therefore would not generate parking demand, the actual parking demand would be 63 spaces. To confirm this parking demand, a Parking Demand Study was prepared and found that the 64 parking spaces provided for the proposed pharmacy would be sufficient for the parking demand. Therefore, the variance for a parking reduction would not result in a parking deficiency or constitute a special privilege.

2. Because of special circumstances applicable to the subject property, such as location and surroundings, the strict application of the zoning ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification. The subject site is a vacant lot with many mature trees along the street frontage and surrounded by existing facilities on the Golden West College campus. The site layout of the proposed development is designed to maximize the use of the site and to preserve and relocate these mature trees.

3. The granting of a variance is necessary to preserve the enjoyment of one or more substantial property rights. The variance to reduce the parking requirements will enable the project to preserve and relocate the mature trees onsite and develop a high quality design that is sensitive and complimentary to surrounding uses.

4. The granting of the variance will not be materially detrimental to the public welfare or injurious to property in the same zone classification. The variance can be supported because the number of provided parking spaces would be sufficient to satisfy the parking demand of the proposed development. This conclusion is supported by a Parking Demand Study, prepared by Rick Engineering Company, of three comparable CVS Pharmacy sites near the proposed site. The Study concluded that the 64 parking spaces provided for the proposed CVS Pharmacy would be sufficient for the peak and daily parking demand.

5. The granting of the variance will not adversely affect the General Plan. It is consistent with the Land Use Element designation of CG-F1 (Commercial General—0.35 Floor Area Ratio) on the subject property because parking for the development will be provided to accommodate the actual demand and will not result in insufficient parking capacity.

FINDINGS FOR APPROVAL—TENTATIVE PARCEL MAP NO. 08-121:

1. Tentative Parcel Map No. 08-121 to subdivide a 1.5 acre site from a portion of the Golden West College site is consistent with the General Plan Land Use Element designation of CG-F1 (Commercial General—0.35 Floor Area Ratio) on the subject property. The proposed subdivision meets all development standards established in the HBZSO except for the variance for a 10-space parking reduction in the parking requirements.

2. The site is physically suitable for the type and density of development. The 1.5 acre project site is generally flat, rectangular, and provides the necessary area for development consistent with the intensity and density of the General Plan Land Use designation and the proposed Commercial General zoning district. Furthermore, the proposed development complies with the development standards regarding setbacks, building height, and landscaping of the Huntington Beach Zoning and Subdivision Ordinance.
3. The design of the subdivision or the proposed improvements will not cause serious health problems or substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. The site does not serve as habitat for fish or wildlife.

4. The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision unless alternative easements, for access or for use, will be provided. The tentative map provides all the necessary easements and access requirements of the City for the public and provides the necessary improvements. The improvements include dedications, curbs, gutters, sidewalks, and easements with reciprocal access between properties to adequately serve the site and adjacent properties.

MITIGATION MEASURES FOR ENVIRONMENTAL CONCERNS:

1. Nesting habitat for protected or sensitive species:

    a. Vegetation removal and construction shall occur between September 1 and January 31 whenever feasible.

    b. Prior to any construction or vegetation removal between February 15 and August 31, a nesting survey shall be conducted by a qualified biologist of all habitats within 500 feet of the construction area. Surveys shall be conducted no less than 14 days and no more than 30 days prior to commencement of construction activities and surveys will be conducted in accordance with California Department of Fish and Game (CDFG) protocol as applicable. If no active nests are identified on or within 500 feet of the construction site, no further mitigation is necessary. A copy of the pre-construction survey shall be submitted to the City of Huntington Beach. If an active nest of a MBTA protected species is identified onsite (per established thresholds), a 250-foot no-work buffer shall be maintained between the nest and construction activity. This buffer can be reduced in consultation with CDFG and/or U.S. Fish and Wildlife Service.

    c. Completion of the nesting cycle shall be determined by a qualified ornithologist or biologist.

2. The structure cannot be occupied and the final building permit(s) cannot be approved until the removed existing mature trees are replaced in accordance with the requirements of Chapter 232—Landscape Improvements.

3. For the trees to be relocated, the Arborist's Report shall be revised to include the following:

a. The trees shall be transplanted by a qualified tree service to be approved by the City of Huntington Beach Public Works Department.

b. The detailed specifications and procedures for the translocation of the identified trees as outlined by Darrell W. Simpson from Great Scott Tree Service Inc. in the letters dated June 4, 2008 and June 5, 2008.

c. The relocated trees shall be maintained and guaranteed to be alive and thriving after four years by a qualified tree service or arborist to be approved by the City of Huntington Beach Public Works Department. The trees shall be surveyed every six months for a period of four years as to their viability. The survey shall be submitted to the City Landscape Architect for review. In the event that any tree is not surviving, it shall be replaced with the same type and size of tree.

d. A letter from the developer stating that the recommendations of the Consulting Arborist will be followed.

4. The applicant shall submit a Parking Demand Study, prepared by a licensed Traffic Engineer, to confirm that the parking demand for the proposed project would not be greater than the number of spaces currently proposed. At a minimum, the study shall include a survey of the parking demand at three CVS Pharmacy locations in Orange County during peak hour weekday and weekend times. If the Parking Demand Study does not confirm a parking demand of no greater than 64 spaces, then the applicant should evaluate providing more parking spaces on site and/or reduce the building size accordingly.

CONDITIONS OF APPROVAL—CONDITIONAL USE PERMIT NO. 08-032/VARIANCE NO. 08-008/TENTATIVE PARCEL MAP NO. 08-121:

1. The site plan, floor plans, and elevations received and dated October 2, 2008 shall be the conceptually approved design with the following modifications:

   a. Bollards shall be installed at the entrance of the building to prevent vehicles from crashing through the front doors of the building. **(PD)**

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).

3. Prior to issuance of grading permits, the following shall be completed:

   a. At least 14 days prior to any grading activity, the applicant/developer shall provide notice in writing to property owners of record and tenants of properties within a 500-foot radius of the project site as noticed for the public hearing. The notice shall include a general description of planned grading activities and an estimated timeline for commencement and completion of work and a contact person name with phone number. Prior to issuance of the grading permit, a copy of the notice and list of recipients shall be submitted to the Planning Department. (PW)

b. A Precise Grading Plan shall include the following improvements on the plan:

1. Damaged curb, gutter and sidewalk along the project's Goldenwest Street and Mc Fadden Avenue frontages shall be removed and replaced per Public Works Standard Plan Nos. 202 and 207. (ZSO 230.84) **(PW)**

2. The existing driveway approach on Goldenwest Street shall be removed and replaced with an ADA compliant driveway approach per Public Works Standard Plan No. 211 for a commercial driveway approach. This driveway shall also provide for ingress of a standard WB-40 vehicle. (ZSO 230.84) **(PW)**

3. A new sewer lateral shall be installed connecting to the Midway City Sanitation District sewer main in McFadden Avenue. This sewer connection has previously been approved by the Midway City Sanitation District in a Will-Serve letter to Mr. Tom Wilhelm (the CVS Pharmacy owner representative) of KZ Holdings LLC, dated May 29, 2008. **(PW)**

c. Any necessary easements (for temporary construction, reciprocal access, etc.) for construction of the aforementioned driveway approach shall be coordinated with the Coast Community College District (Golden West College) and copies shall be provided to Planning and Public Works Departments. **(PW)**

d. The developer shall provide a Maintenance License Agreement for maintenance of all enhanced paving in public streets, pedestrian easements, sidewalk, parkway landscaping, and street furniture located behind public street curbs within the project site. Maintenance shall include but not be limited to all facets of landscape irrigation, planting, weed and pest control, any water quality features, trash clean up, repair, replacement and other items that may be shown and developed within the public right of way. The property owner shall be responsible for all costs related to the maintenance, and any fees required for water and electrical use. This agreement shall be in effect until the street improvements within the right of way dedication are completely installed. At that time the Maintenance License Agreement will become mute. **(PW)**

e. Prior to final inspection, the following shall be completed:

a. Surveillance cameras shall be installed at the entrance of the building and drive-thru area and recorded 24 hours a day, every day. Video tapes shall be retained form at least 30 days. **(PD)**

b. Three stop signs shall be installed in the drive aisles adjacent to the driveway on Goldenwest Street south of the project site.

f. The drive-thru pharmacy shall be open only between the hours of 6:00 AM and 10:00 PM, seven days a week.
The development services departments (Building & Safety, Fire, Planning and Public Works) shall be responsible for ensuring compliance with all applicable code requirements and conditions of approval. The Director of Planning may approve minor amendments to plans and/or conditions of approval as appropriate based on changed circumstances, new information or other relevant factors. Any proposed plan/project revisions shall be called out on the plan sets submitted for building permits. Permits shall not be issued until the Development Services Departments have reviewed and approved the proposed changes for conformance with the intent of the Planning

Commission's action. If the proposed changes are of a substantial nature, an amendment to the original entitlement reviewed by the Planning Commission may be required pursuant to the provisions of HBZSO Section 241.18.

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.

FINDINGS FOR APPROVAL—ZONING MAP AMENDMENT NO. 08-006:

1. Zoning Map Amendment No. 08-006 to change the zoning on a 1.5 acre parcel from PS (Public-Semipublic) to CG (Commercial General) is consistent with the objectives, policies, general land uses and programs specified in the General Plan as well as the proposed General Plan Amendment No. 08-006. The zoning map amendment will enable the property owner and applicant to carry out policies and objectives stated in the Economic Development Element of the General Plan by improving fiscal stability and providing economic opportunities for the City. The proposed commercial general zoning is consistent with the goals and policies of the Land Use Element of the General Plan by allowing the development of uses that would support the needs and reflect market demand of City residents and visitors.

2. In the case of a general land use provision, the Zoning Map Amendment is compatible with the uses authorized in, and the standards prescribed for, the zoning district for which it is proposed. The proposed land uses identified in the Commercial General land use designation is consistent with the General Plan as well as the proposed General Plan Amendment No. 08-006.

3. A community need is demonstrated for the change proposed. The proposed commercial general zoning provides the standards necessary to develop a high quality commercial land use complementing and enhancing surrounding land uses. The commercial designation will generate jobs for the community without substantially increasing the need for housing.

4. The adoption of the Commercial General zoning will be in conformity with public convenience, general welfare and good zoning practice. The Commercial General zoning designation is the appropriate zoning for the site because of its size, location, and separation from residential uses. It was prepared utilizing a comprehensive approach, involving public meetings and reviewing the proposed development in terms of existing development standards, design and architectural guidelines, and landscape requirements.

B-2. **APPEAL OF ZONING ADMINISTRATOR'S APPROVAL OF CONDITIONAL USE PERMIT NO. 08-030 (DEMESNE COMMERCIAL DEVELOPMENT)** **Applicant:** Jonathan Matson **Appellant:** John E. Hendershot, Jr. – Demesne Development Company **Request:** To permit the construction of an approximately 10,000 sq. ft. single-story multitenant commercial/retail building and associated site improvements. **Location:** 9500 Garfield Avenue, 92649 (southeast corner of Bushard Street and Garfield Avenue) **Project Planner:** Andrew Gonzales

STAFF RECOMMENDATION: Motion to: "Approve Conditional Use Permit No. 08-030 with findings and suggested conditions of approval (Attachment No. 1)."

The Commission made the following disclosures:

- Commissioner Farley visited the site.
- Commissioner Dwyer has visited the site and counted electrical poles.
- Vice Chair Shier Burnett visited the site and counted electrical poles.
- Chair Livengood acted on the Walgreens proposal.
- Commissioner Shaw – none.
- Commissioner Speaker visited the site and measured the walls.
- Commissioner Scandura visited the site twice, visited the adjacent property and drove down Bushard Street.

Andrew Gonzales, Associate Planner, gave the staff presentation and an overview of the project.

Commissioner Scandura asked if the applicant is in agreement with the first and last conditions on Attachment 6.22 and if the applicant was still willing to underground one pole as discussed in the Zoning Administrator Meeting minutes.

Vice-Chair Shier Burnett asked if utilities were undergrounded prior to the completion of the Walgreens project. Mr. Gonzales indicated that only the Community Antennae Television (CATV) lines and the telephones lines were undergrounded at that time. Vice-Chair Shier Burnett asked if it was then the policy to underground electrical lines. Staff could not confirm this. Vice-Chair Shier Burnett asked if the electrical pole past Garfield Avenue would need to be undergrounded. Steve Bogart, Principal Civil Engineer for the Public Works Department, stated that the line going across Garfield Avenue was believed to service this specific site and would be required to be undergrounded but the pole across the street would not be.

Commissioner Shaw asked for clarification as to why undergrounding is required for projects of this nature. Mr. Gonzales stated that undergrounded utilities are safer, easier to maintain, and do not interfere with landscaping. Commissioner Shaw asked if there was a threshold for requiring undergrounded utilities. Terri Elliott, Principal Civil Engineer for the Public Works Department, stated that new utilities are undergrounded but existing utilities are not addressed. She noted that the undergrounding is a Condition of Approval and not a code requirement but that undergrounded utilities are a goal in the General Plan.

Commissioner Dwyer asked when exactly this was included as part of the General Plan. Staff agreed to research the issue.

Commissioner Shaw expressed concern that projects are being appealed based on the undergrounding of utilities and felt the policy should be standardized for everyone.

Chair Livengood asked if the applicant intended to include metal in their design. Mr. Gonzales stated that this was the applicant's desire but the recommended condition was to replace that with masonry or wood.

Chair Livengood asked for the location of the trash enclosure. Mr. Gonzales stated that the enclosure was originally proposed to be at the southeast corner of the property and was currently proposed to be at the southeast corner of the building.

THE PUBLIC HEARING WAS OPENED.

John Hendershot, principal developer, spoke in favor of Item No. B-2, citing the financial hardship of undergrounding utilities. Chair Livengood asked if the applicant would still be willing to underground one electrical pole and Mr. Hendershot confirmed that the applicant would. Mr. Hendershot indicated that the cost of undergrounding utilities across Garfield Avenue would be prohibitive.

Mike Maali, resident, spoke against Item No. B-2, citing traffic, noise and light concerns. He noted that the wall separating the properties is eight feet high on the subject site side but due to differing elevation it is significantly less on his side.

Terry Dunne, resident, spoke against Item No. B-2, citing noise and light concerns. He expressed concerns about the height of the separating wall and the location of the trash enclosure.

Mr. Hendershot stated that the buffer area between the site and the residents is being expanded by five feet and the applicant would prefer to plant trees to create a green barrier in that areas as opposed to raising the dividing wall.

WITH NO ONE ELSE PRESENT TO SPEAK, THE PUBLIC HEARING WAS CLOSED.

Commissioner Dwyer asked if staff had determined when the undergrounding of utilities began to be encouraged. Mr. Bogart indicated that staff did not find an exact date. Commissioner Dwyer stated that he could not support forcing the applicant to pay the estimated fees to underground the utilities.

Commissioner Scandura agreed with Commissioner Dwyer's comments. He expressed concern as to the fairness of the practice. He stated that he would be amenable to including a condition to underground the one pole as previously discussed. He noted that on a previous project, Conditional Use Permit No. 2008-028 (Springdale Street Commercial Center – Makari Building), a fee had been charged instead of upholding the undergrounding condition.

Vice-Chair Shier Burnett noted that the General Plan states the need for undergrounding and that previous projects have been made to underground utilities. She stated that if the Planning Commission is opposed to this requirement, then the matter should be forwarded to the City Council.

Commissioner Speaker asked staff if the applicant would need to get permits from Fountain Valley in order to underground through Garfield Avenue. Mr. Bogart confirmed that the applicant would need to get an encroachment permit from Fountain Valley.

Commissioner Farley asked if the General Plan provision regarding the in-lieu fee was specific to subdivisions. Mr. Bogart confirmed that it was. Commissioner Farley agreed with Vice-Chair Shier Burnett that the undergrounding issue should be forwarded to the City Council if the Commission does not feel it is appropriate.

Chair Livengood asked staff where it is stated that undergrounding utilities is required for private property. He noted that the General Plan recommends undergrounding and does not specify who should bear the cost. Mr. Bogart noted that undergrounding is not a requirement but a staff recommendation.

Chair Livengood stressed that undergrounding is not mandated and stated that he felt that the Planning Commission's decision on Conditional Use Permit No. 2008-028 to charge a fee would be an appropriate alternative.

Commissioner Scandura noted that the General Plan is a set of goals and not a mandate. He also stated that the costs associated with undergrounding are exorbitant.

Commissioner Dwyer stated that the fees charged to the applicant on Conditional Use Permit No. 2008-028 were approximately $1.50 per square foot.

Commissioner Shaw stated that he did not support the Planning Commission's setting a dollar amount for fees in place of undergrounding utilities.

Commissioner Speaker agreed with Commissioner Shaw and stated that City Council should set the fees.

Commissioner Scandura asked staff if the Planning Commission set the fees for Conditional Use Permit No. 2008-028. Mr. Talleh confirmed this. Commissioner Scandura expressed concern that to waive fees on this item would be unfair.

Commissioner Shaw stated that it was not good policy to impose a fee. Commissioner Farley agreed with Commissioner Shaw.

Chair Livengood requested a condition to ensure the landscaping, in lieu of additional wall height, be provided.

Mr. Talleh suggested a condition requiring a landscaping plan be reviewed by the Planning Department and Public Works Department to ensure that adequate screening is provided for the residential uses to the east.

A MOTION WAS MADE BY SCANDURA, SECONDED BY DWYER, TO APPROVE CONDITIONAL USE PERMIT NO. 08-030 WITH FINDINGS AND MODIFIED CONDITIONS OF APPROVAL, BY THE FOLLOWING VOTE:

AYES:	**Farley, Dwyer, Livengood, Shaw, Speaker, Scandura**
NOES:	**Shier Burnett**
ABSENT:	**None**
ABSTAIN:	**None**

MOTION APPROVED

FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Planning Commission 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 proposed development consists of a new construction of a multi-tenant commercial building with 10,000 sq. ft. of floor area not involving significant amounts of hazardous materials on a site where public services and facilities area available and the surrounding area is not environmentally sensitive.

FINDINGS FOR APPROVAL - CONDITIONAL USE PERMIT NO. 2008-030:

1. Conditional Use Permit No. 2008-030 for the construction of an approximately 10,000 sq. ft., single-story multi-tenant commercial/retail building and associated site improvements 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 subject property is designated for commercial neighborhood development under the General Plan. The proposed project is consistent with the permitted uses and development standards within this designation. The structure will be setback approximately 72 ft. from the abutting residential properties to the east and 54 ft. from the residential properties to the south. The site will be sufficiently parked and will have minimal impacts on the adjacent properties.

2. The proposed neighborhood shopping center, as conditioned, will be compatible with surrounding uses and developments. The subject project will replace a former commercial building with a single-story, multitenant commercial/retail building. The building's design is conditioned to be more compatible with the surrounding area by incorporating additional façade recesses, architectural eyebrows, and contrasting materials on the building elevations to minimize the structure's mass/bulk and create visual interest along the street frontage. The placement of the structure will be at the northwest corner of the subject site thereby providing an adequate setback from residential uses to the east and south. In addition, a 10 ft. landscape buffer is provided along the easterly property line to screen the parking lot from adjoining residential uses.

3. The proposed development 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 development complies with the minimum required setbacks and on-site parking and complies with the maximum allowed floor area ratio and building height.

4. The granting of the conditional use permit will not adversely affect the General Plan. It is consistent with the following goals and policies of the General Plan:

LU10.1.4 Require that commercial buildings and sites be designed to achieve a high level of architectural and site layout quality.

LU10.1.12 Require that Commercial uses be designed and developed to achieve a high level of quality, distinctive character, and compatibility with existing uses and development including consideration of:

a. Siting and design of structures to facilitate and encourage pedestrian activity;

b. Siting of building to the street frontage to convey a visual relationship to the street and sidewalks;

c. Architectural treatment of buildings to minimize visual bulk and mass, using techniques such as modulation of building volumes and articulation of all evaluations.

UD 2.2.4 Require the undergrounding of utility lines.

U 5.1.2 Continue to underground above ground electrical transmission lines.

The proposed development is in compliance with the Urban Design Guidelines. The siting and design of the proposed structure allows for pedestrian connectivity between sidewalks and the subject site. The proposed architecture provides variations in roof heights and prominent unit entries and, as conditioned, incorporates quality materials in its design. Additionally, a condition to underground all onsite utility lines will aid to improve the visual character of the surrounding area.

CONDITIONS OF APPROVAL - CONDITIONAL USE PERMIT NO. 2008-030:

1. The site plan, floor plans, and elevations received and dated September 5, 2008, and preliminary landscape plan dated September 10, 2008, shall be the conceptually approved design with the following modifications:
    a. Relocate the proposed trash enclosure in an area adjacent to the southeast corner of the proposed building.
    b. The corrugated metal panels on the building elevations shall be omitted and replaced with either decorative masonry block or finished wood.
    c. Limit the number of metal sunshades variations to two designs.
    d. The uppermost portion of the north and south tower feature shall incorporate a continuous architectural eyebrow utilizing a variation of the sunshade designs, as determined by Condition 1(d), around all sides of the building wall.
    e. The north unit, adjacent to the corner of Garfield Avenue and Bushard Street, shall provide a 1 ft. recess in the areas located above the five windows panes. The recessed area shall match the unit store fronts depicted without exterior reveals.
2. Parking lot lights shall be shielded from adjacent residences to the east and automatically dimmed to minimal security level lighting one hour after the final business closing and shall be maintained at minimum security level at all times.
3. The developer shall ensure that no hardscape, electrical boxes, and similar items be located within the landscaped planter abutting the easterly perimeter wall.
4. The recessed areas within the east parking area shall be lighted through all hours of darkness. Landscaping within this area, except for trees, shall be limited to ground cover.

5. A landscaping plan shall be reviewed and approved by the Planning Department and Public works Department to ensure that trees of adequate width and height be incorporated to screen the residential uses to the east.

6. Prior to issuance of grading permits, the following shall be completed:

    a. The proposed curb opening and rectangular channel to convey the site's drainage offsite into the public curb and gutter system on Garfield Avenue shall address NPDES requirements for water quality Best Management Practices (BMP). The site's surface drainage shall not drain directly into the City's curb and gutter system without first being treated through a City approved water quality BMP. (**PW**)

    b. Provide a Precise Grading Plan identifying that the damaged curb, gutter and sidewalk along the Garfield Avenue and Bushard Street frontages shall be removed and replaced per Public Works Standard Plan Nos. 202 and 207. (**PW**)

7. Prior to submittal for building permits, one set of project plans, revised pursuant to Condition of Approval No. 1, shall be submitted for review, approval and inclusion in the entitlement file, to the Planning Department.

8. 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.

B-3. **ZONING TEXT AMENDMENT NO. 08-005 (AFFORDABLE HOUSING ORDINANCE REVISIONS) Applicant:** City of Huntington Beach **Request:** To amend Chapter 230 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) to modify the provisions for affordable housing. The proposed amendment would increase the size of projects that would be allowed to pay in-lieu fees; increase the required income levels for affordable housing; decrease the required affordability term and make other minor changes to existing provisions. **Location:** Citywide **Project Planner:** Mary Beth Broeren

STAFF RECOMMENDATION: Motion to: "Approve Zoning Text Amendment No. 08-005 with findings for approval (Attachment No. 1) and forward Draft Ordinance (Attachment No. 2) to the City Council for adoption."

The Commission made the following disclosures:

- Commissioner Farley attended the Study Session.
- Commissioner Dwyer attended the Study Session.
- Vice Chair Shier Burnett attended the Study Session.
- Chair Livengood attended the Study Session.
- Commissioner Shaw attended the Study Session.
- Commissioner Dwyer attended the Study Session.
- Commissioner Speaker attended the Study Session.
- Commissioner Scandura attended the Study Session.

Mary Beth Broeren, Planning Manager, gave the staff presentation and an overview of the project. She stated that a letter was received after the start of the meeting from the Chamber of Commerce with a list of recommended changes to the proposed Zoning Text Amendment. She indicated that staff, as well as the Ad Hoc Committee, had not had sufficient time to review these recommendations. She stated that staff was recommending continuing the item to a meeting date to be determined.

Commissioner Scandura stated that he was opposed to the recommendation to alter the for sale housing requirement from low income to moderate income. He expressed concern that this would make the housing in the city off limits to many professionals

Chair Livengood stated that he would prefer to continue the item to a date certain. Ms. Broeren indicated that the Ad Hoc Committee would likely meet in December and allow for staff to bring the item back to the Planning Commission in late January.

There was a general discussion on whether to open the public hearing.

STRAW VOTE #1
To continue Zoning Text Amendment No. 08-005 without opening the public hearing.

AYES:	**Farley, Shaw**
NOES:	**Shier-Burnett, Speaker, Scandura, Livengood**
ABSTAIN:	**Dwyer**
ABSENT:	**None**

MOTION FAILED

THE PUBLIC HEARING WAS OPENED.

Karen Jaekle, resident, spoke against Item No.B-3, citing concerns about eligibility.

Mike Adams, Chamber of Commerce, spoke for Item No.B-3, encouraging the continuance.

WITH NO ONE ELSE PRESENT TO SPEAK, THE PUBLIC HEARING WAS CLOSED.

A MOTION WAS MADE BY SHAW, SECONDED BY SCANDURA, TO CONTINUE ZONING TEXT AMENDMENT NO. 08-005 (AFFORDABLE HOUSING ORDINANCE REVISIONS) TO THE PUBLIC HEARING ON FEBRUARY 10, 2009, BY THE FOLLOWING VOTE:

AYES:	**Farley, Shier Burnett, Livengood, Shaw, Speaker, Scandura**
NOES:	**None**
ABSENT:	**None**
ABSTAIN:	**Dwyer**

MOTION APPROVED

C. CONSENT CALENDAR

C-1. PLANNING COMMISSION MINUTES DATED July 8, 2008

RECOMMENDED ACTION: Motion to "Approve the July 8, 2008, Planning Commission Minutes as submitted."

A MOTION WAS MADE BY SPEAKER, SECONDED BY FARLEY, TO APPROVE THE JULY 8, 2008 PLANNING COMMISSION MINUTES AS SUBMITTED, BY THE FOLLOWING VOTE:

AYES:	**Farley, Shier Burnett, Livengood, Shaw, Speaker, Scandura**
NOES:	**None**
ABSENT:	**Dwyer**
ABSTAIN:	**None**

MOTION APPROVED

C-2. PLANNING COMMISSION MINUTES DATED July 22, 2008

RECOMMENDED ACTION: Motion to "Approve the July 22, 2008, Planning Commission Minutes as submitted."

A MOTION WAS MADE BY SPEAKER, SECONDED BY SHIER BURNETT, TO APPROVE THE JULY 22, 2008 PLANNING COMMISSION MINUTES AS SUBMITTED, BY THE FOLLOWING VOTE:

AYES:	**Farley, Shier Burnett, Livengood, Speaker, Scandura**
NOES:	**None**
ABSENT:	**Dwyer**
ABSTAIN:	**Shaw**

MOTION APPROVED

D. NON-PUBLIC HEARING ITEMS

D-1. CONDITIONAL USE PERMIT NO. 06-020/ ENTITLEMENT PLAN AMENDMENT NO. 06-008 (SIX MONTH REVIEW- BLACK BULL RESTAURANT) – Applicant: Michael C. Adams Associates **Request:** A six month review of a previously approved 5,000 sq. ft. restaurant with alcohol sales, live entertainment and dancing, up to four billiard tables and 1,000 sq. ft. outdoor dining area. The review is to verify compliance with all conditions of approval of Conditional Use Permit No. 2006-020 and Entitlement Plan Amendment No. 06-008 approved by the City Council on November 6, 2006 and on February 20, 2007. **Location:** 300 Pacific Coast Highway, #112 (south side of Walnut Avenue, between Main St. and Third St.) **Project Planner:** Rami Talleh

STAFF RECOMMENDATION: Motion to: "Receive and direct staff to schedule a revocation hearing."

The Commission made the following disclosures:

- Commissioner Farley visited the site.
- Commissioner Dwyer abstains.
- Vice-Chair Shier Burnett visited the restaurant and walked the site.
- Chair Livengood was involved in the initial approval of the site and visited the site.
- Commissioner Shaw abstains.
- Commissioner Speaker visited the site.
- Commissioner Scandura was involved in the initial approval of the site.

Rami Talleh, Senior Planner, gave the staff presentation and an overview of the project. He noted that, due to notice from the Police and Fire Departments of several violations, further analysis, and review, staff is now recommending that a revocation hearing be scheduled.

Commissioner Scandura noted that during Oral Communications, owner Cesar Pena stated that he was not made aware of these violations until October 21, 2008 and asked Police Chief Small how the business was notified.

Chief Small stated that the Police Department supported the staff recommendation to schedule a revocation hearing and that it would not prohibit the owner from engaging in ongoing talks to address the issues. Chief Small further stated that there have been significant adverse impacts on nearby residents and that these issues were discussed with Mr. Pena's employees on several occasions and that any failure in communication was between Mr. Pena and his staff. Chief Small noted that Mr. Pena maintains another restaurant in the downtown area that operates under the same restrictions and requirements. Chief Small asked the Planning Commission to schedule a revocation hearing, stating that he felt the pending action would encourage Mr. Pena to adhere to the restrictions and conditions of his permit.

Chair Livengood asked staff if the revocation would go to City Council for a hearing. Leonie Mulvihill, Senior Deputy City Attorney, stated that the revocation hearing for the

Conditional Use Permit would go before the Planning Commission and that the revocation of the entertainment permit would go before City Council.

Commissioner Speaker stated that he was in agreement with Chief Small and noted that he would like the negotiations to be in writing and signed by Mr. Pena so that there is no room for confusion.

Commissioner Farley stated that he felt a public hearing was needed in order to properly assess the situation. He noted that many of the violations were concerns raised during the original permitting process.

Commissioner Scandura indicated that he was initially supportive of the restaurant but feels that the residents were unfairly impacted. He stated that he supported a revocation hearing.

Chair Livengood stated that he would support the revocation hearing.

A MOTION WAS MADE BY FARLEY, SECONDED BY SCANDURA, TO APPROVE SCHEDULING FOR REVOCATION OF CONDITIONAL USE PERMIT NO. 06-020/ ENTITLEMENT PLAN AMENDMENT NO. 06-008 (BLACK BULL RESTAURANT), BY THE FOLLOWING VOTE:

AYES:	**Farley, Shier Burnett, Livengood, Speaker, Scandura**
NOES:	**None**
ABSENT:	**None**
ABSTAIN:	**Dwyer, Shaw**

MOTION APPROVED

E. PLANNING ITEMS

E-1. CITY COUNCIL ACTIONS FROM PREVIOUS MEETING
Scott Hess, Director of Planning - reported on the items from the previous City Council meeting.

E-2. CITY COUNCIL ITEMS FOR NEXT MEETING
Scott Hess, Director of Planning – reported on the items scheduled for the next City Council meeting.

E-3. PLANNING COMMISSION ITEMS FOR NEXT MEETING
Rami Talleh, Senior Planner– reported on the items scheduled for the next Planning Commission meeting

F. PLANNING COMMISSION ITEMS

F-1. PLANNING COMMISSION REQUEST ITEMS – NONE

F-2. PLANNING COMMISSION COMMENTS

Commissioner Shaw thanked Commissioner Scandura for his work on the Neighborhood Compatibility Committee. He noted that the upcoming Environmental Board meeting would likely be his last as Commission liaison and stressed how important he felt the Board was.

Commissioner Speaker stated that he wanted the issue of undergrounding utilities to be brought before City Council.

Commissioner Scandura congratulated Commissioner Dwyer on his recent election to the City Council and thanked Commissioner Shaw for his work on the Commission. He noted that his father would be undergoing open heart surgery and asked that he be kept in the commission's thoughts.

Commissioner Farley congratulated Commissioner Dwyer on his election and commended all who voted.

Commissioner Dwyer stated that this would be his last meeting as commissioner. He thanked staff and his fellow commissioners for their work.

Vice-Chair Shier Burnett congratulated Commissioner Dwyer on his election and seconded Commissioner Speaker's request that the undergrounding issue be brought before City Council.

Chairman Livengood congratulated Commissioner Dwyer and thanked staff for their hard work on The Ripcurl and Village at Bella Terra projects.

ADJOURNMENT: Adjourned at 10:50 PM to the next regularly scheduled meeting of Tuesday, December 9, 2008.

NOTE: The City of Huntington Beach Planning Commission Meeting of November 25, 2008 has been CANCELLED.

APPROVED BY:

_____ _____

Scott Hess, Secretary Elizabeth Shier Burnett, Chairperson