



# MINUTES

## HUNTINGTON BEACH PLANNING COMMISSION

TUESDAY, FEBRUARY 24, 2009

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

ROLL CALL:      *A*      *P*      *P*      *P*      *P*      *P*      *A*  
*Speaker, Mantini, Farley, Shier Burnett, Scandura, Livengood, Delgleize*

Commissioner Speaker was absent; Commissioner Delgleize arrived at 5:45 PM.

### AGENDA APPROVAL

**A MOTION WAS MADE BY SCANDURA, SECONDED BY FARLEY, TO MOVE PUBLIC COMMENTS AFTER ITEM NO. A-2 AND TO APPROVE THE PLANNING COMMISSION STUDY SESSION AGENDA OF FEBRUARY 24, 2009, BY THE FOLLOWING VOTE:**

**AYES:**            Farley, Shier Burnett, Scandura

**NOES:**            Livengood

**ABSENT:**        Speaker, Delgleize

**ABSTAIN:**       None

### MOTION APPROVED

**THE MINUTES WILL REFLECT ITEMS IN THEIR ORIGINAL ORDER.**

#### **A.    PROJECT REVIEW (FUTURE AGENDA ITEMS)**

- A-1.    CONDITIONAL USE PERMIT NO. 08-013/VARIANCE NO. 08-007 (APPEAL – BEACH PROMENADE AT BEACH BLVD. AND ATLANTA AVE.) – Tess Nguyen, Associate Planner**

Tess Nguyen, Associate Planner, gave a brief overview of the project.

Commissioner Livengood asked if the proposed building would be multi-story and Ms. Nguyen said that the applicant is proposing to expand the existing single-story buildings.

Ms. Nguyen noted that the Michael C. Adams Associates' appeal letter of Zoning Administrator's Approval of Conditional Use Permit No. 2008-013 and Variance No. 2008-007 is included in the staff report as Attachment No. 6.

Commissioner Scandura noted that a 25% increase in parking is proposed in conjunction with a proposed building expansion of 6%. Ms. Nguyen noted that the applicant has provided revised site plans.

Commissioner Scandura also noted that there are Zoning Administrator's Conditions of Approval that the applicant disagrees with. He said these include the proposed plaza/courtyard and walkway, the east setback from the property line and issues regarding encroachment onto the frontage road. Ms. Nguyen said that a list of all issues regarding the applicant's requests and staff's recommendations would be included in the staff report when this item comes before the Planning Commission at the public hearing on March 10, 2009.

Planning Manager Herb Fauland noted that the site is located in a redevelopment project area, and the applicant is proposing minor additions with a complete façade renovation. He said that this would represent an interim solution until a long range plan can be implemented for this site.

**A-2. CONDITIONAL USE PERMIT NO. 08-052 (BRETHREN CHRISTIAN CHURCH GYM AT 2141 STRATHMOOR LANE) - Rami Talleh, Senior Planner**

Rami Talleh, Senior Planner, gave a brief overview of the project. He advised that 44 letters from the public have been received regarding this project. He also noted that there are seven Late Communications, including a letter from the Environmental Board.

Commissioner Scandura recommended that the Planning Commission visit Ocean View School District's existing gymnasiums and Chair Shier Burnett asked staff to provide the addresses of those four gymnasiums.

Commissioner Livengood noted that he visited the site and the existing building is the same height as the proposed gymnasium.

Commissioner Farley asked staff to provide the Planning Commission with Brethren Christian School's existing Conditional Use Permit when this item comes before the Planning Commission at the public hearing on March 10, 2009.

**B. STUDY SESSION ITEMS - NONE**

**C. AGENDA REVIEW (UPDATE ON ALL AGENDA ITEMS) – Herb Fauland**

Herb Fauland, Planning Manager, reviewed the items for tonight's meeting. He advised that there are two Late Communications for Item No. B-1 and one Late Communication for Item No. B-2.

**D. PLANNING COMMISSION COMMITTEE REPORTS - NONE**

Commissioner Farley reported that the Design Review Board Special meeting has been rescheduled for February 26, 2009, and will review The Strand Carts and Kiosks project.

**E. PUBLIC COMMENTS**

Bill Holman, applicant, spoke in favor of Item No. SS A-1 (Beach Promenade). He thanked staff and the Planning Commission for their efforts. He also spoke regarding

the Michael C. Adams Associates' appeal letter of the Zoning Administrator's Approval of Conditional Use Permit No. 2008-013 and Variance No. 2008-007

Dave Guido, resident and member of the Environmental Board, spoke regarding Item No. SS A-1 (Beach Promenade), advising caution and citing concerns with design and aesthetics.

Mary Reardon, Surfside Homeowners Association, spoke regarding Item No. SS A-1 (Beach Promenade). She said she is in favor of neighborhood improvement, but has concerns regarding what she understood to be a proposal for a multi-story hotel.

Robin Taylor, Surfside Homeowners Association, spoke against Item No. SS A-1 (Beach Promenade), citing concerns with increased traffic and use of the frontage road.

Steve Stafford, resident, spoke against Item No. SS A-1 (Beach Promenade), citing concerns with public notification of upcoming projects and better handicapped access to such projects.

Kevin Coleman of NetDevCo (applicant) spoke in favor of Item No. SS A-2 (Brethren Christian Church Gym), and said that their landscaping proposal includes the use of native plants.

Stuart Miller, Black Bull Counsel, spoke in favor of Item No. B-1 (Black Bull) and said that he was available to answer questions.

#### **F. PLANNING COMMISSION COMMENTS**

Commissioner Livengood spoke regarding moving public comments ahead of Item No. A-2 on the Study Session Agenda. He noted that he voted against it because he believes that Study Session Agenda Items should remain in their original order.

Commissioner Scandura disagreed with Commissioner Livengood and said that he voted in favor of moving the public comments.

Director of Planning Scott Hess noted that he will research Study Session Agenda structure with Senior Deputy City Attorney Leonie Mulvihill and will respond to this at the Planning Commission Workshop scheduled for March 4, 2009.

**6:11 PM – RECESS FOR DINNER**

**7:00 P.M. – COUNCIL CHAMBERS**

#### **CALL PLANNING COMMISSION MEETING TO ORDER**

**PLEDGE OF ALLEGIANCE** – Led by Commissioner Farley

**ROLL CALL:**        *A*        *P*        *P*        *P*        *P*        *P*        *P*

***Speaker, Mantini, Farley, Shier Burnett, Scandura, Livengood, Delgleize***

Commissioner Speaker was absent.

## WELCOME NEWLY APPOINTED PLANNING COMMISSIONER JANIS MANTINI

Chairperson Shier Burnett welcomed newly appointed Planning Commissioner Mantini.

**A MOTION WAS MADE BY LIVENGOOD, SECONDED BY SCANDURA, TO APPROVE THE PLANNING COMMISSION AGENDA OF FEBRUARY 24, 2009, BY THE FOLLOWING VOTE:**

**AYES:** Mantini, Farley, Shier Burnett, Scandura, Livengood, Delgleize  
**NOES:** None  
**ABSENT:** Speaker  
**ABSTAIN:** None

### MOTION APPROVED

#### **A. ORAL COMMUNICATIONS**

Mike Betancourt, local business owner, spoke in favor of Item No. B-1 (Black Bull), saying he is in favor of the increased business this establishment brings to the city.

#### **B. PUBLIC HEARING ITEMS**

**B-1. REVOCATION OF CONDITIONAL USE PERMIT NO. 06-020/ENTITLEMENT PLAN AMENDMENT NO. 06-008 (BLACK BULL CHOPHOUSE – CONTINUED FROM THE NOVEMBER 12, 2008 MEETING) Applicant:** Michael C. Adams Associates **Request:** To consider the revocation of Conditional Use Permit (CUP) No. 06-020 and Entitlement Plan Amendment (EPA) No. 06-008, which permitted the establishment of a 6,290 sq. ft. restaurant with alcohol sales, live entertainment and dancing, up to four billiard tables and 1,000 sq. ft. outdoor dining area. The Planning Commission may revoke the CUP or amend the conditions of approval. **Location:** 300 Pacific Coast Highway, # 112 (south side of Walnut Avenue, between Main St. and Third St. – Pierside Pavilion, Downtown) **Project Planner:** Rami Talleh

**STAFF RECOMMENDATION:** Motion to: “Modify Conditional Use Permit No. 06-020/Entitlement Plan Amendment No. 06-008 with revised findings for approval and revised suggested conditions of approval pursuant to Condition No. 5 of Conditional Use Permit No. 06-020 approved on November 6, 2006.”

The Commission made the following disclosures:

- Commissioner Mantini had no disclosures.
- Vice Chair Farley has attended the study session and visited the site.
- Chair Shier Burnett has visited the site, attended the study session, spoke to staff and spoke to the Orange County Register.
- Commissioner Scandura has visited the site, has participated in former site entitlements, talked to the Police Department, talked to Cesar Pena (business owner), spoke to Black Bull staff and spoke to the Orange County Register.
- Commissioner Livengood has visited the site and has participated in former site entitlements.
- Commissioner Delgleize had no disclosures.

Rami Talleh, Senior Planner, gave the staff presentation and an overview of the project

Planning Manager Herb Fauland advised that there are two Late Communications for this item, one from the business owner's insurance agency and one from a local resident.

**THE PUBLIC HEARING WAS OPENED.**

Minerva Garrido, resident, spoke in favor of Item No. B-1, saying that she is a frequent patron of the Black Bull Chophouse.

Kam Kasmazi, security guard at the Black Bull, spoke in support of Item No. B-1.

Suzanne Hart, resident at 6<sup>th</sup> and Orange Streets, spoke against Item No. B-1, citing concerns with noise and traffic.

Jeff Smith, resident at the Pier Colony, spoke in opposition to Item No. B-1, citing concerns with use of the outside patio and noise.

Pam Cain, resident, spoke in favor of Item No. B-1, saying that she feels that Black Bull operates the same as any other downtown Huntington Beach restaurant/bar.

Genoa Hobson, resident and patron of the Black Bull Chophouse, spoke in favor of Item No. B-1.

Melissa Cortez, resident, spoke in support of Item No. B-1, saying that the Black Bull Chophouse offers a lot to the community and provides a good meeting place for family and friends.

Brian Smith, resident and patron of the Black Bull Chophouse, spoke in favor of Item No. B-1.

Sonia Pena, co-owner of the Black Bull Chophouse, spoke in favor of Item No. B-1, saying that it is a family restaurant and brings jobs to Huntington Beach.

Mark Miller, resident on Walnut Street and Pacific Coast Highway, spoke against Item No. B-1. He cited concerns with noise and patrons loitering outside the restaurant.

Leonard Lopez, resident and security guard at the Black Bull Chophouse, spoke in favor of Item No. B-1.

Janet Taylor, resident at the Pier Colony, spoke in opposition to Item No. B-1, citing concerns with noise and decreased property values.

Ted Frankiewicz, resident at the Pier Colony, spoke against Item No. B-1, citing issues with noise and decreased property values.

Chad Sorenson, resident, spoke in favor of Item No. B-1

Suzanna Haughy, resident, spoke in favor of Item No. B-1, saying that she feels that Black Bull operates the same as any other downtown Huntington Beach restaurant/bar.

Mike Adams of Michael C. Adams Associates, applicant, spoke in favor of Item No. B-1, noting that they are in agreement with the Fire and Police Department's requirements and will be happy to comply with noise mitigation requirements.

Michael Swift, manager at the Black Bull Chophouse, spoke in favor of Item No. B-1, saying that he feels that Black Bull operates the same as any other downtown Huntington Beach restaurant/bar.

Rusty Wood, security guard at the Black Bull Chophouse, spoke in support of Item No. B-1.

Gloria Escobar, employee at the Black Bull Chophouse, spoke in favor of Item No. B-1.

Alexis McGuinness, resident, spoke in favor of Item No. B-1.

Stuart Miller, Attorney for Ponderosa Chophouse dba Black Bull Chophouse, spoke in favor of Item No. B-1. He stated that he was available to answer questions regarding the February 12, 2009, settlement agreement negotiated between Black Bull Chophouse and the city.

Cesar Pena, owner of the Black Bull Chophouse, spoke in favor of Item No. B-1. He presented the Planning Commission with documentation which details the measures he has taken to cooperate with Fire and Police Departments' requirements, including adding security guards to his staff.

Chair Shier Burnett asked Mr. Pena about the noise mitigation measures, and Mr. Pena said that the interior walls are soundproofed with insulation and plywood and the patio is covered. Ms. Shier Burnett also asked about the outside entry line, and Mr. Pena said that he has two security guards patrolling that line.

Chair Livengood asked Mr. Pena if his patrons smoke while waiting in the outside line, and Mr. Pena said that he doesn't know.

Chair Shier Burnett spoke of a weblog invitation that had been provided to her. The invitation said that if a citizen showed up at tonight's meeting and spoke on behalf of the Black Bull Chophouse, Black Bull would provide them with a free drink. Mr. Pena said that he didn't know who posted or distributed the web invitation and it was not a valid offer.

Mr. Pena thanked the Planning Commission, the Police Department and staff for their time and efforts.

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

Chief of Police Ken Small noted that the Police Department's actions with the Black Bull Chophouse have been consistent with every other restaurant/bar in Huntington Beach and that the Police Department wants to work with the applicant.

Commissioner Farley asked if there have been any updates since Black Bull's entertainment permit was revoked in October of 2008. Chief Small said that no civil citations have been issued since then. Mr. Farley also asked if the residents' complaints and issues tend to be seasonal, and Chief Small said that noise issues and complaints are year round.

Chair Shier Burnett asked if there are other businesses at this location garnering this amount of complaints and calls for service, and Chief Small said no.

Fire Division Chief Bill Reardon noted that on July 26, 2008, the Black Bull Chophouse was found to be in violation of the Huntington Beach Fire Code due to significant overcrowding, with a door count of 649 persons, when the maximum occupant load was 348. On September 6, 2008, they were again in violation with a door count of 443 persons, when the maximum occupant load was 414.

Commissioner Scandura asked about noise mitigation measures and staff indicated that these are included in the revised conditions of approval for the Conditional Use Permit and Entitlement Plan Amendment.

Commissioner Livengood asked staff about staff report attachment 3.3, Item No. 17, which states, "There is a Huntington Beach Planning Commission hearing scheduled for February 2009 with regard to Black Bull's conditional use permit. In the event that the decision of the Planning Commission is in any respect adverse to Black Bull, Black Bull shall have the right to rescind this agreement in full by written notice to the City Attorney within ten days of the decision of the Planning Commission." Senior Deputy City Attorney Leonie Mulvihill said that the Planning Commission's decision tonight might lead to Black Bull's choosing to rescind their agreement.

Staff noted that the revised conditions of approval in the staff report require a six month review by the Planning Commission to verify compliance with the Huntington Beach Noise Ordinance.

Commissioner Livengood recommended that the Black Bull post a sign outside their front door which requests that patrons refrain from smoking.

Commissioner Delgleize said that she has concerns with noise mitigation measures.

Commissioner Farley concurred with Commissioner Delgleize, and said that regardless of the mitigation measures, he felt that the Black Bull would still be too noisy. He also thanked staff and the Police Department for their efforts on this project.

Chair Shier Burnett thanked staff and the Police Department for their efforts. She also said that she concurs with Commissioners Delgleize and Farley and continues to have concerns with noise.

Chief of Police Ken Small noted that the Black Bull Chophouse had continued restaurant and bar operations with a revoked entertainment permit.

Commissioner Scandura reported that he was in downtown Huntington Beach at 11:00 PM on a Saturday night. He noted that there were fourteen bars open within a two-block radius. He recommended that the applicant consider re-routing the outdoor waiting line, to mitigate noise and smoke. He also noted that the Black Bull's dance floor area needs to be clearly defined and recommended the installation of double-paned windows to mitigate noise. Business owner Cesar Pena said that he would be amenable to installing double-paned windows.

General discussion ensued regarding the Planning Commission's recommended changes to the revised Conditions of Approval for Conditional Use Permit No. 06-

020/Entitlement Plan Amendment No. 06-008 (staff report attachments 1.2, 1.3 and 1.4). The Planning Commission recommended deleting Item Nos. 1.a, 3.a, and 4.a. For Item No. 8, the Planning Commission recommended removing the words "within six (6) months of the issuance of Certificate of Occupancy" to be replaced by the words, "within six (6) months of the final inspection." The Planning Commission also recommended the addition of a condition of approval that a sign be posted on the exterior of the building "encouraging patrons to please refrain from smoking, if possible, and to please be courteous and keep the noise levels to a minimum." The Planning Commission also recommended the addition of a condition of approval requiring the restaurant door to the outdoor dining area be posted with a sign that states "Emergency Exit Only When Outdoor Dining Patio Is Closed."

**A MOTION WAS MADE BY LIVENGOOD, SECONDED BY SCANDURA, TO MODIFY CONDITIONAL USE PERMIT NO. 07-020/ENTITLEMENT PLAN AMENDMENT NO. 06-008 WITH REVISED FINDINGS AND REVISED CONDITIONS OF APPROVAL PURSUANT TO CONDITION NO. 5 OF CONDITIONAL USE PERMIT NO. 06-020, BY THE FOLLOWING VOTE:**

**AYES: Mantini, Farley, Shier Burnett, Scandura, Livengood, Delgleize**  
**NOES: None**  
**ABSENT: Speaker**  
**ABSTAIN: None**

**MOTION APPROVED**

**REVISED FINDINGS OF APPROVAL**

**CONDITIONAL USE PERMIT NO. 06-020**  
**ENTITLEMENT PLAN AMENDMENT NO. 06-008**

**REVISED 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 15301 of the CEQA Guidelines, which states that operation and minor alteration to existing structures involving negligible or no expansion are exempt from further environmental review.

**REVISED FINDINGS FOR APPROVAL – CONDITIONAL USE PERMIT NO. 06-020/**  
**ENTITLEMENT PLAN AMENDMENT NO. 06-008:**

1. Conditional Use Permit No. 06-20 for the establishment of a 6,290 sq. ft. restaurant with on-site alcohol sales, live entertainment and dancing, up to four billiard tables with shuffleboard, and a 1,000 sq. ft. two-phased outdoor dining area with alcohol, as conditioned, 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 adjacent residential uses to the east will be buffered from noise emanating from the restaurant by a 60 ft. wide pedestrian corridor. Furthermore, to reduce the potential noise impacts, the project is conditioned to install sound proofing material along the easterly business storefront. In addition, outside storage and any food preparation within the outdoor dining area located along the easterly side of the restaurant are prohibited. The restaurant will also be required to clearly mark and delineate the dance floor within the restaurant and be prohibited from clearing furniture to expand the dance floor in order to limit potential

overcrowding. The proposed uses with the revised conditions of approval will not create adverse noise or parking impacts to the surrounding businesses and residents.

2. The proposed restaurant with alcohol sales, dancing, live entertainment and outdoor dining will be compatible with surrounding uses. The uses will be required to comply with strict conditions of approval to assure that any potential impacts to the surrounding properties are minimized. In addition, the proposed uses are consistent with the mixed-use character of commercial developments in the downtown. The uses are subject to revised use restrictions within the outdoor dining area, noise regulations such as requiring that all doors and windows remain closed during live entertainment, noise attenuating improvements, and regulation on the hours of operation to ensure compatibility with surrounding businesses and residents.
3. The proposed restaurant 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 will be located. The proposed uses will comply with parking in the Downtown Parking Master Plan and will be accommodated by the existing parking supply in the existing parking structure. Furthermore, with the revised conditions of approval, the proposed improvements address potential noise impacts and will be in compliance with all the applicable Downtown Specific Plan and Huntington Beach Zoning and Subdivision Ordinance requirements. In addition, prior to construction of Phase Two of the outdoor dining area, the applicant will be required to submit a parking analysis demonstrating compliance with the Downtown Parking Master Plan. There is no physical expansion proposed as part of the request and the use will comply with all building occupancy/exiting requirements.
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 Mixed Use on the subject property including the following policies and objectives identified in the General Plan:

A. Land Use Element

Policy LU 7.1.1 Accommodate existing uses and new development in accordance with the Land Use and Density Schedules.

Objective LU 7.1 Accommodate the development of a balance of land uses that (a) provides for the housing, commercial, employment, cultural, entertainment, and recreation needs of existing and future residents, (b) provides employment opportunities for residents of the City and surrounding subregion, (c) captures visitor and tourist activity, and (d) provides open space and aesthetic relief from urban development.

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 restaurant with the revised conditions of approval will provide a new visitor-commercial venue within the Downtown that is consistent with the Land Use Density Schedules for the Downtown and is compatible with surrounding mixed-use development.

B. Coastal Element

Policy C 3.2.3 Encourage the provision of a variety of visitor-serving commercial establishments within the Coastal Zone, including but not limited to, shops, restaurants, hotels and motels, and day spas.

The restaurant with the revised conditions of approval will increase the commercial viability of Pierside Pavilion, allowing for its continued success within the Downtown. The proposed establishment will expand the available visitor-serving commercial uses within the Coastal Zone available to its patrons.

**REVISED CONDITIONS OF APPROVAL – CONDITIONAL USE PERMIT NO. 06-020/  
ENTITLEMENT PLAN AMENDMENT NO. 06-008:**

1. The site plan, and floor plan received and dated February 17, 2009, shall be the conceptually approved design with the following modification:
  - a. The restaurant's east elevation shall be sound proofed to demonstrate compliance with Section 8.40 of the Huntington Beach Municipal Code, *Noise Control*. **(Amended)**
  - b. The location of the 200 sq. ft. dance floor, any sound equipment, and DJ booth shall be depicted on the plans and shall not impede any required exit path. **(Amended)**
2. Within two weeks from approval, the following shall be completed and approved in compliance with modifications listed under Condition No. 1 **(Amended)**:
  - a. Revised floor plans shall be submitted to the Planning Department indicating the location of the 200 sq. ft. dance floor, any sound equipment, and DJ booth.
  - b. The 200 sq. ft. dance floor shall be clearly marked and delineated within the restaurant.
3. Within 30 days from approval, the following shall be completed and approved in compliance with modifications listed under Condition No. 1 **(Amended)**:
  - a. An acoustical analysis report shall accompany the construction drawings demonstrating that the improvements will effectively reduce noise emanating from the restaurant in compliance with Section 8.40 of the Huntington Beach Municipal Code, *Noise Control*.
  - b. Construction plans for sound proofing the restaurant's east elevation shall be submitted to the Building and Safety Department.
4. Within 30 days of issuance of Building Permits, the following shall be completed and approved in compliance with modifications listed under Condition No. 1 **(Amended)**:
  - a. Construction of the soundproofing on the east elevation shall be completed and finalized by the Building and Safety Department.
5. The use shall comply with the following:
  - a. All conditions of the Entertainment Permit issued by the Police Department shall be complied with.

- b. All ingress/egress to and from the outdoor dining area shall be provided from inside the restaurant. Exiting from the outdoor dining area to the adjacent paseo shall be prohibited except for emergency purposes only.
  - c. Lighting in the outdoor dining area shall be regulated and directed to prevent "spillage" onto adjacent properties.
  - d. The rear door providing access to the alley shall be closed at all times and used for emergency purposes only.
  - e. The preparation of any food shall be prohibited within the outdoor dining area. **(Amended)**
  - f. Interior restaurant furniture shall not be removed from any area to increase, or create additional dance floor space. **(Amended)**
  - g. The outdoor dining area shall not be used for outside storage except for the storage of outdoor dining furniture. The storage of outdoor dining furniture shall not obstruct any required exit path. **(Amended)**
  - h. The 200 sq. ft. dance floor shall be clearly marked and delineated within the restaurant. **(Amended)**
  - i. Signs shall be posted on the exterior of the building "encouraging patrons to please refrain from smoking, if possible, and to please be courteous and keep the noise levels to a minimum". **(Amended)**
6. The hours of operation for the business shall be limited to between 7:00 am and 1:30 am daily and the hours of operation for outdoor dining shall be limited to between 11:00 am and 9:00 pm Mon.-Thur. and between 11:00 am and 10:00 pm Fri.-Sun. The restaurant door to the outdoor dining area shall be posted with a sign that states "Emergency Exit Only When Outdoor Dining Patio Is Closed."
  7. Prior to construction of Phase Two of the outdoor dining area, adequate parking for the entire outdoor dining area shall be demonstrated or provided consistent with applicable code requirements.
  8. A review of the use shall be conducted by the Planning Commission within six (6) months of the final inspection to verify compliance with the Huntington Beach Noise Ordinance. At that time the Planning Commission may consider modifications to the conditions of approval to address noise issues. The business owner is encouraged to submit a noise study if noise complaints are received.

**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-2. NEGATIVE DECLARATION NO. 08-007/CONDITIONAL USE PERMIT NO. 08-020 (ARCO GAS STATION/CARWASH/CONVENIENCE STORE) Applicant:** Michael C. Adams Associates **Request: ND:** To analyze the potential environmental impacts associated with the implementation of the proposed project. **CUP:** To permit the development of an approximately 2,400 sq. ft., 24-hour convenience store, gas station, an approximately 960 sq. ft. automated carwash, and associated site improvements. The request also includes the onsite sale of alcoholic sealed/packaged beverages for offsite consumption. **Location:** 21452 Brookhurst Street, 92646 (northeast corner of Brookhurst Street and Hamilton Avenue) **Project Planner:** Andrew Gonzales

**STAFF RECOMMENDATION:** Motion to:

- A. "Approve Negative Declaration No. 08-007 with findings (Attachment No.1)"
- B. "Approve Conditional Use Permit No. 08-020 with modifications and findings and suggested conditions of approval (Attachment No.1)."

The Commission made the following disclosures:

- Commissioner Mantini had no disclosures.
- Vice Chair Farley has attended the study session and visited the site.
- Chair Shier Burnett has attended the study session and visited the site.
- Commissioner Scandura has visited the site, attended the study session and spoken to staff.
- Commissioner Livengood has visited the site, attended the study session and spoken to staff and the business owner.
- Commissioner Delgleize has attended the study session and visited the site.

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

Commissioner Delgleize asked if a left hand turn from Hamilton Avenue to enter the site is legal and Senior Traffic Engineer Darren Sam said yes.

Commissioner Livengood asked staff about condition of approval No. 4 on staff report attachment 1.5 and Mr. Sam said that this condition would be stricken.

Commissioner Scandura asked staff about condition of approval No. 1.b on staff report attachment 1.4 and Mr. Gonzales said that staff is recommending that this condition be removed.

Planning Manager Herb Fauland noted that staff is recommending a pitched roof design consistent with the City's Urban Design Guidelines.

**THE PUBLIC HEARING WAS OPENED.**

Mike Strange, applicant, Michael C. Adams and Associates, spoke in favor of Item No. B-2. He thanked staff for their efforts and said that the applicant is in agreement with the modified conditions of approval, with the exception of the canopy design. He further noted that the gas canopy condition of approval No. 1.b on staff report attachment 1.4 is being removed per staff's recommendation.

Peter Haddad, project architect, spoke in favor of Item No. B-2 and stated that he was available to answer question.

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

Commissioner Scandura said that he is in favor of the pitched roof design and would like to recommend a condition of approval be added regarding water conservation/recycling.

Commissioner Livengood spoke regarding condition of approval 2.d on staff report attachment 1.4, which requires the installation of a street light on Brookhurst Street. He noted that the cost on this would be approximately \$3,000-\$4,000. Mr. Sam noted that the installation of the street light is a Code Requirement.

Commissioner Livengood said that he thinks the conditions of approval are too costly, as they include traffic impact fees, the installation of a street light and staff's recommended pitched roof design.

**A MOTION WAS MADE BY FARLEY, SECONDED BY SCANDURA, TO APPROVE NEGATIVE DECLARATION NO. 08-007 WITH FINDINGS AND TO APPROVE CONDITIONAL USE PERMIT NO. 08-020 WITH MODIFICATIONS AND FINDINGS AND REVISED CONDITIONS OF APPROVAL, BY THE FOLLOWING VOTE:**

**AYES: Mantini, Farley, Shier Burnett, Scandura, Livengood, Delgleize**  
**NOES: None**  
**ABSENT: Speaker**  
**ABSTAIN: None**

**MOTION APPROVED**

## **FINDINGS AND CONDITIONS OF APPROVAL**

### **NEGATIVE DECLARATION NO. 08-007/ CONDITIONAL USE PERMIT NO. 08-020**

#### **FINDINGS FOR APPROVAL - NEGATIVE DECLARATION NO. 08-007 :**

1. The Negative Declaration No. 08-007 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 thirty (30) days. Comments received during the comment period were considered by the Planning Commission prior to action on the Negative Declaration and Conditional Use Permit No. 08-020.
2. Mitigation measures, incorporated into the attached conditions of approval, avoid or reduce the project's effects to a point where clearly no significant effect on the environment will occur.
3. There is no substantial evidence in light of the whole record before the Planning Commission that the project, as mitigated through the conditions of approval for Conditional Use Permit No. 08-020 will have a significant effect on the environment.

#### **FINDINGS FOR APPROVAL - CONDITIONAL USE PERMIT NO. 08-020:**

1. Conditional Use Permit No. 08-020 to construct a gas station consisting of six self-service pump stations, an approximately 2,400 sq. ft. 24-hour convenience store building, and an approximately 960 sq. ft. automated carwash, and associated site improvements in conjunction with the onsite sale of alcoholic sealed/packaged beverages for offsite consumption 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. A negative declaration was prepared which analyzed the project potential to generate detrimental impacts on surrounding properties. The study concluded that no significant impact will occur with respect to the proposed uses. The Negative Declaration is supported by environmental assessment, air quality and acoustical studies. The project will provide adequate parking, in accordance with applicable code requirements on site.
2. The conditional use permit will be compatible with surrounding uses because the project is consistent with the applicable General Plan Land Use and Zoning designations. The proposed project will modernize an existing gas and service station by providing additional services to the community which will include two additional self-service fuel pump stations, a convenience store, and automated carwash. The proposed buildings, as conditioned, will comply with the maximum height limit and minimum yard setbacks of the base zoning district. Nearby residences will be buffered from the project by a drive aisle, carport, 6 ft. block wall, and 25 ft. setback. Onsite circulation will be improved to ensure for safe and secure traffic flow for the proposed project and adjoining City lift station.
3. Conditional Use Permit No. 08-020, with incorporation of the conditions of approval, 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 including Commercial General permitted uses, minimum parking requirements, minimum yard 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. It is consistent with the Land Use Element designation of Commercial General (CG) on the subject property. In addition, it is consistent with the following goals and policies of the General Plan:

A. 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 resident.

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

Objective - LU 10.1.6: Require the commercial projects abutting residential properties adequately protect the residential use from the excessive or incompatible impacts of noise, light, vehicular traffic, visual character, and operational hazards.

Objective - 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 architectural treatment of buildings to minimize visual bulk and mass, using techniques such as modulation of building volumes and articulation of all elevations

The project is a redevelopment of an existing gas and service station with a new gas station, convenience store, and automated carwash. The additional uses will redevelop a site containing an outdated service station with a modern facility that caters to the needs of local residents. The project will not significantly impact the adjoining residential property to the east of the site. The entrance of the convenience store will be oriented toward Hamilton Avenue, away from nearby residential units. The residential uses to the west will be buffered from the gas station/carwash/convenience store by an approximately 100 ft. separation consisting of a drive aisle, carport, 6 ft. high block wall, and an approximately 25 ft. setback. The mechanical equipment associated with the carwash will be located inside the building; in addition, an exiting 6 ft. high common block wall and carport structure sited on the adjoining residential property will assist in attenuating noise generated from the carwash. Lighting will be designed to be directed onto the project site without any spillage onto adjacent properties.

B. Urban Design Element

Objective – UD 1.1: Identify and reinforce a distinctive architectural and environmental image for each district in Huntington Beach.

Policy – 1.2.1: Enhance the connections, where feasible between the public sidewalk and private commercial interior open spaces as described by the Land Use Element by using decorative paving materials.

The redevelopment of an existing gas and service station will modernize an outdated site with a gas station, convenience store, and automated carwash. The proposed design of the convenience store will incorporate distinctive architecture which includes variations to the roof height, insets and offsets in the building façade to create enhanced visual relief and break up of building mass, variations in exterior building treatment, and an enhanced building entrance. The gas canopy structure will be architecturally

enhanced with a pitched roof design and designed to be integrated with the convenience and automated carwash building. The project will incorporate a connection from the public sidewalk on Brookhurst Street by providing clear identifiable access to the convenience store and automated carwash building. As conditioned, the pedestrian connection will be provided with a decorative paving to distinguish from pedestrian and vehicular access ways.

C. Economic Development Element

Policies - 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 request will accommodate the redevelopment of an existing site with additional uses that will serve the needs of local residents and visitors to the City by providing additional commercial serving opportunities.

D. Noise Element

Policy N – 1.2.3: Require development, in all areas where the ambient noise level exceeds an Ldn of 60 dB(A), to conduct an acoustical analysis and incorporate special design measures in their construction, thereby, reducing interior noise levels to the 45 dB(a) Ldn level.

Policy N – 1.4.3: Require that the parking areas of all commercial and industrial land uses, which abut residential areas, to be buffered and shielded by walls, fences, or adequate landscaping.

A noise study provided for the project identifies that noise levels will not cumulatively contribute to an increase in levels above established thresholds. Noise will be attenuated through onsite improvements and existing structures adjacent to the site which include a perimeter block wall and carport structures. Additionally, noise emitting mechanical equipment will be enclosed within the building.

**CONDITIONS OF APPROVAL - CONDITIONAL USE PERMIT NO. 08-020:**

1. The site plan, floor plans, and elevations received and dated July 30, 2008, shall be the conceptually approved design with the following modifications:
  - a. Gas Canopy Option "A" shall be the approved design.
  - b. The drive approach along the north property line on Brookhurst Street shall be relocated 3 ft. to the south. In addition, a 3 ft. wide and 10 ft. long landscape planter shall be provided along the northerly property line.
  - c. Reduce the length of the parking stalls to 17 ft. and widen the walkway an additional 2 ft. for the parking stalls directly located to the south of the convenience store building.
  - d. The air and water pump depicted on the along the easterly property line adjacent to the easterly most drive aisle shall be relocated to an area adjacent to the proposed parking spaces. The final design shall be reviewed and approved by the Planning Department.
  - e. Decorative paving shall be provided for the 4 ft. wide pedestrian walkway serving as access from Brookhurst Street to the convenience store.

- f. The proposed bollards located at the ends of gas pump islands shall be replaced with decorative bollards compatible with the proposed building design.
  - g. The proposed single driveway on Hamilton Avenue (which will serve both the subject site and the City's lift station site) shall be relocated to the west approximately 10 ft. from the beginning of the curb return and shall be constructed as an ADA compliant driveway approach per Public Works Standard Plan No. 211 (**PW**).
  - h. Approximately 8 ft. of the southerly end of existing chain link fence and adjacent retaining wall, which serves as the property boundary between the subject site and the easterly parcel (APN 149-262-08), shall be removed to be even with the southerly border of said parcel so as to provide the required reciprocal driveway. Additional retaining wall may be required to be constructed, depending on the orientation and layout of the new reciprocal access driveway (**PW**).
2. A Precise Grading Plan shall include the following improvements on the plan:
- a. The existing driveway approach to the subject site and the existing driveway approach to the City's lift station site, both on Hamilton Avenue, shall be removed and replaced with one ADA compliant driveway approach per Public Works Standard Plan No. 211(**PW**).
  - b. The existing northerly driveway approach on Brookhurst Street shall removed and replaced with an ADA compliant driveway approach per Public Works Standard Plan No. 211(**PW**).
  - c. The existing southerly driveway approach on Brookhurst Street shall be removed and replaced with curb, gutter, and sidewalk per City Standard Plan Nos. 202 and 207 (**PW**).
  - d. A street light shall be installed on Brookhurst Street, south of the northerly driveway (**PW**).
  - e. Damaged curb, gutter and sidewalk along the Brookhurst Street frontage shall be removed and replaced per Public Works Standard Plan Nos. 202 and 207 (**PW**).
  - f. The existing natural gas line on the easterly wall (approximately 18-inches above ground) along the entire width of the property shall be undergrounded (**PW**).
  - g. The existing natural gas meter in the existing southeasterly landscape planter shall be removed and relocated so as not to interfere with the proposed shared driveway to Hamilton Avenue(**PW**).
3. A Project Water Quality Management Plan (WQMP) shall include the following:
- a. Wash down water and runoff from the surface area under the canopy covered fueling area shall be collected and drained into the on-site carwash clarifier (**PW**).
  - b. Runoff from the surface area within the trash enclosure area shall be collected and drained into the on-site sanitary sewer system (**PW**).
  - c. Surface drainage shall be treated on site by being directed through landscape before leaving property (**PW**).
  - d. At the exit of the carwash, a trench with grate shall be installed along the width of the drive-through to capture excess water and drain the water to the carwash clarifier (**PW**).
4. Carwash shall not drain to any storm drain system. Wash water from this area may be directed to the sanitary sewer (upon approval by the Orange County Sanitation District), through an engineered infiltration system, clarifier or to an equally effective alternative. Pre-treatment may also be required.

5. All existing signs which do not conform with Chapter 2330 – Signs of the HBZSO shall be removed or modified to conform.
6. 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.
7. A truck-tracking exhibit shall be provided which demonstrates that a WB-50 vehicle can enter the site, access the delivery areas, and leave the site without touching the required parking spaces and landscaped areas.
8. Applicant shall water jet then provide a color video recording of the existing sewer lateral pipe to verify the working condition of the sewer lateral. If the sewer does not pass Public Works inspection, a new sewer lateral shall be installed connecting to the main in the street. If the new sewer lateral is not constructed at the same location as the existing lateral, then the existing lateral shall be severed and capped at the main or chimney (**PW**).
9. Prior to final inspection or occupancy:
  - a. Install a phone in the freezer and cooler areas (**PD**).
  - b. Install a peep hole in the rear door (**PD**).
  - c. Install a one-way mirror on the office window (**PD**).
10. The use shall comply with the following:
  - a. The west and east doors should remain exit only (**PD**).
  - b. Include a camera in the carwash area so that employee(s) can monitor activity building (**PD**).
  - c. The beer coolers shall be located to the coolers closest to the cashier (**PD**).
  - d. The hours of operation for the automated carwash shall be limited to the hours of 7AM to 7PM.
  - e. To the maximum extent feasible, the automated carwash shall utilize water recycling and conservation measures to minimize water usage.
11. 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.

12. 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.

#### **C. CONSENT CALENDAR - NONE**

#### **D. NON-PUBLIC HEARING ITEMS - NONE**

#### **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**

Herb Fauland, Planning Manager - 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 Livengood reported on his upcoming tour of the Rainbow Disposal Plant on Thursday, February 26<sup>th</sup>, 2009, and invited the other members of the Planning Commission.

Commissioner Scandura welcomed new Planning Commissioner Janis Mantini.

Chairperson Shier Burnett also welcomed new Planning Commissioner Janis Mantini.

Commissioner Farley reported on his attendance at the City's Centennial Celebration held on February 17, 2009.

**ADJOURNMENT: Adjourned at 9:50 PM to the Planning Commission Workshop on March 4, 2009, at the Central Library, Maddy Room, and then to the next regularly scheduled meeting of March 10, 2009.**

APPROVED BY:

\_\_\_\_\_  
Scott Hess, Secretary

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Elizabeth Shier Burnett, Chairperson