

**CALIFORNIA COASTAL COMMISSION**

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# Th6a

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Staff: M.Vaughn – LB  
Staff Report: 1/20/22  
Hearing Date: 2/10/22

## **STAFF REPORT: CONSENT CALENDAR**

**Application No.:** 5-21-0129

**Applicant:** Bryan J. Ross

**Agent:** Tim Dillon

**Location:** 1602 No. El Camino Real, San Clemente, Orange County (APN No.: 692-371-13)

**Project Description:** Remodel of an existing 975 square foot, single story commercial structure including reducing commercial area by 48 square feet, and the addition of a 2,143 square foot single family residential unit at new 2<sup>nd</sup> & 3<sup>rd</sup> stories above, resulting in a three story, 32 feet high, 3,070 square foot mixed use structure with an attached, 297 square foot, single car garage and second residential parking space provided on the driveway (accessed from the alley) on a non-conforming (due to sub-standard size) 2,000 square foot lot.

**Staff Recommendation:** Approval with conditions.

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## **SUMMARY OF STAFF RECOMMENDATION**

The applicant proposes to remodel the existing 975 square foot, single story commercial structure including reducing the existing commercial area by 48 square feet to 927 square feet and adding a new 2,143 square foot single family residential unit at the new 2<sup>nd</sup> and 3<sup>rd</sup> floors above, resulting in a three story, 32 feet high, 3,070 square foot mixed

use structure with an attached, 297 square foot, single car garage and additional driveway parking space (in tandem alignment) on a 2,000 square foot lot. The reduction in existing commercial area allows two parking spaces to be accommodated on-site.

The subject site is located in the North Beach/North El Camino Real focus area of the city, described in the LUP as a unique, pedestrian friendly, community- and coastal visitor-oriented entertainment hub and recreation area. The subject site is located about 0.5 mile from the nearest public beach, North Beach, which is about a five-to-ten-minute walk. However, it is not located between the sea and the first public road.

The site is a 2,000 square foot lot, designated Mixed Use 2 with an Architectural-Visitor Serving Commercial District overlay (MU2/A-VSCD) in the certified Land Use Plan (LUP). The MU2/A-VSCD designation requires visitor serving commercial uses on the ground floor, while also allowing residential uses above. Mixed use development such as the proposed use is consistent with the MU2/A-VSCD designation. **Special Condition No. 2** requires that a visitor use be maintained on the ground floor at the site for the life of the development.

Two on-site parking spaces are proposed to serve the residence, consistent with typically applied parking standards. However, no on-site parking to serve the commercial portion of the development is proposed. The Commission often considers the provision of adequate parking as a means of promoting public access. However, the Commission also recognizes that promoting alternate means of transportation may also offer an important way to support public access. Using the City's parking ratio standard for commercial development (one space per 300 square feet of commercial area), the 948 square foot commercial space would generate a parking demand of just over three spaces. However, the substandard lot width/size preclude meeting the typically imposed parking standard.

The site is served by Orange County Transit Authority (OCTA), the City's free summer trolley program, and the nearby Metrolink station. OCTA Routes 1 and 91 stop in front of and directly across the street from the site. The free summer trolley also has stops in those locations and runs during the peak summer use period between Memorial Day weekend through the last Sunday in September. The Metrolink station is within a ten-minute walk from the site and provides transit from inland locations including Perris, San Bernadino, and Riverside.

To address the parking shortfall, the applicant is proposing a Transportation Demand Management Plan (TDMP) that includes a number of measures to promote alternate modes of transportation, with the goal of reducing the need for on-site parking to serve the commercial use. These measures include an annual contribution of \$2,250 to the City of San Clemente to promote multi-modal access; an employee education program to inform employees of public transit options, ridesharing, and bicycle infrastructure nearby; and, 100% reimbursement to all employees for the cost of public transportation incurred to travel to and from work. As required in the proposed TDMP, the employee public transit education, incentive and reimbursement program will be carried out via lease agreement for the commercial portion of the proposed structure. To protect public

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(Ross)

access and prevent impacts due to lack of parking, **Special Condition 1** requires the applicant to implement the TDMP as proposed.

To ensure that a ground floor visitor serving use remains on site and that the proposed TDMP is implemented for the life of the development, **Special Condition 3** requires the recordation of a deed restriction referencing all special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property.

The applicant is in agreement with the staff recommendation. The standard of review is the Chapter 3 policies of the Coastal Act.

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### **EXHIBITS**

**Exhibit 1: Vicinity Map and Project Site**

**Exhibit 2: Project Plans**

**Exhibit 3: Transportation Demand Management Plan (TDMP)**

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission approve the Coastal Development Permit applications included on the consent calendar in accordance with the staff recommendations.

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

### Resolution:

The Commission hereby approves the Coastal Development Permit No. 5-21-0129 for the proposed project and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## II. STANDARD CONDITIONS

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind

all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

#### 1. Conformance with Final Transportation Demand Management Program.

A. The permittee shall conform to the Transportation Demand Management Program (TDMP) received in the Coastal Commission's South Coast District office on 11/3/2021 and attached to this staff report as [Exhibit 3](#), including all of the following elements:

1. **Employee Education and Incentive Program** – The Applicant's lease for proposed tenants, all employees (of the downstairs) and residential tenants (for the upstairs) will be informed of public transit options, ridesharing and bicycle infrastructure nearby, with the aim of reducing the need for on-site parking at the project site to accommodate employees of the commercial space. Employees and residents will be encouraged to use public transportation, bicycling, walking, or a rideshare program to and from work. This education and incentive program will be included in the lease agreement for the project site.
2. **Reimbursement for Employee Public Transportation Expenses** – Applicant shall cause its downstairs commercial/retail tenant to reimburse all public transportation fares for its employees for travel to and from work. This will be implemented through the lease agreement for the downstairs space.
3. **Contribution toward City of San Clemente to fund multi-modal access** – Applicant shall contribute \$2,250/year annually to the City of San Clemente to fund multi-modal access to the North Beach/North El Camino Real focus area.

B. Any proposed changes to the approved Transportation Demand Management Program shall be reported to the Executive Director. No changes to the program shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

C. The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

## **2. Retention of Visitor Serving Use.**

**A.** By acceptance of this permit the permittee agrees, on behalf of itself and all successors and assigns, that the entire 927 square foot ground floor commercial area of the structure subject to this permit shall maintain a visitor serving use(s) for the life of the development. This restriction shall not apply to the 297 square foot, single car garage which shall be maintained to serve the single-family residence on-site.

**3. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) have executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

## **IV. FINDINGS AND DECLARATIONS**

### **A. PROJECT DESCRIPTION AND LOCATION**

The subject site is located at 1602 No. El Camino Real, in the City of San Clemente. The applicant proposes to remodel the existing 975 square foot commercial structure including reducing the commercial area by 48 square feet, to 927 square feet, and to add a 2,143 square foot single residential unit at new second and third stories above. The resultant structure will be a three story, 32 feet high, 3,070 square foot mixed use structure with an attached, 297 square foot, single car garage with an additional driveway parking space (in tandem alignment) The tandem spaces will serve the proposed residence.

The site is a 2,000 square foot lot, designated Mixed Use 2 (MU2) with an Architectural-Visitor Serving Commercial District overlay (A-VSCD) in the certified Land Use Plan (LUP). The MU2/A-VSCD designation requires VSCD uses on the ground floor, while also allowing residential uses above. Mixed use development such as the proposed use is consistent with the MU2/A-VSCD designation.

The subject site is located in the North Beach/North El Camino Real focus area of the city. The LUP describes the North Beach/North El Camino Real Focus Area as a unique, pedestrian friendly, community- and coastal visitor-oriented entertainment hub

and recreation area. The subject site is located about 0.5 mile from the nearest public beach, North Beach, which is about a five-to-ten-minute walk. However, it is not located between the sea and the first public road.

The LUP describes visitor serving uses to include hotels, motels, restaurants, music venues, entertainment attractions, retail, and specialty/artisan retail commercial uses. More specifically, the LUP defines (in Section 7.2 Definitions) “visitor serving land use as follows:

**“VISITOR SERVING LAND USE”** means visitor serving commercial and/or recreational land uses or facilities designed to enhance public opportunities for coastal recreation and generally includes but is not limited to beach areas, parks, hotels, motels, restaurants, music venues, entertainment attractions and specialty/artisan retail commercial uses.

Both the Coastal Act and the City’s certified LUP establish a higher priority for visitor serving and recreational uses over lesser priority uses such as residential, industrial or general commercial. The certified LUP land use designation requires that ground floor development within the MU2/A-VSCD designation to be visitor serving uses. Typically, land that is designated for visitor serving use is specifically identified for such use because its location and attributes especially lend itself to visitor opportunities. These locations may be near the beach, on a busy visitor access corridor, offer coastal view opportunities, and/or are located in an area known as a visitor destination.

The MU2/A-VSCD designation also recognizes the benefits of mixed-use development, with visitor serving uses below and residential uses above. The ground floor is the area most likely to be used by visitors as it is most visible and easily accessible. This juxtaposition of visitor commercial and residential uses can create an environment where residents are less reliant on vehicles to conduct routine activities such as shopping, dining and, in some cases, commuting to work. Also, when limited residential development is allowed within visitor serving areas it helps provide a base of support for the commercial development during the off-peak seasons, which in turn helps to support the continuance of those uses for visitors. The Commission has approved mixed use type development and zoning when and where appropriate and when adequate visitor serving uses are provided.

It is important to assure that a visitor serving use remains available at the site for the life of the development and that the ground floor commercial area not be converted to an extension of the residential use above or to another non-visitor serving use. Only with assurance of the continued presence of the visitor commercial use on the ground floor could the proposed development be found to be consistent with the higher priority use policies of the Coastal Act and certified LUP. **Special Condition No. 2** requires that a visitor use be maintained on the ground floor at the site for the life of the development. As conditioned, the Commission finds the proposed development is consistent with the Coastal Act and certified LUP regarding prioritizing visitor serving uses.

The proposed development will provide two on-site parking spaces for the proposed residence, consistent with the Commission's typically applied parking standard and with the City's (uncertified) Zoning Code parking standard. However, no on-site parking to serve the commercial portion of the development is proposed. Using the City's parking ratio standard for commercial development (one space per 300 square feet of commercial area), the 948 square foot commercial space would generate a parking demand of just over three spaces. The Commission often considers the provision of adequate parking as a means of promoting public access. However, the Commission also recognizes that promoting alternate means of transportation may also offer an important way to support public access.

In this case, however, the subject site is constrained due to the substandard lot size, including the narrow lot width. Current City standards require a minimum lot width of 60 feet, whereas the subject lot is only 20 feet wide. Likewise, the minimum lot area by current City standards is 6,000 square feet. The subject site is only 2,000 square feet. The existing commercial building was constructed in 1956 and the lot (Tract 821, Block 1, Lot 15) was subdivided by grant deed prior to the Subdivision Map Act, resulting in a substandard lot by current standards. In addition, the presence of a utility pole at the rear of the lot, near the alley, further constrains on-site parking options. Provision of a bicycle rack was considered, but due to the lot's constraints, could not be accommodated without interfering with the two proposed parking spaces or with the City's required minimum permeable, landscaped area. The constraints of the lot prevent providing all typically required parking spaces on site.

The site is served by Orange County Transit Authority (OCTA), the City's free summer trolley program, and the nearby Metrolink station. OCTA Routes 1 and 91 stop in front of and directly across the street from the site. The free summer trolley also has stops in those locations and runs during the peak summer use period between Memorial Day weekend through the last Sunday in September. The Metrolink station is within a ten-minute walk from the site and provides transit from inland locations including Perris, San Bernadino, and Riverside.

To address the parking shortfall, the applicant is proposing a Transportation Demand Management Plan (TDMP) that includes a number of measures to promote alternate modes of transportation. These measures include an annual contribution of \$2,250 to the City of San Clemente to promote multi-modal access; an employee education program to inform employees of public transit options, ridesharing, and bicycle infrastructure nearby; and, 100% reimbursement to all employees for the cost of public transportation incurred to travel to and from work. As required in the proposed TDMP, the employee public transit education, incentive and reimbursement program will be carried out via lease agreement for the commercial portion of the proposed structure. The goal of the proposed TDMP is reducing the need for on-site parking to serve the commercial use. To protect public access and prevent impacts due to lack of parking, **Special Condition 1** requires the applicant to implement the TDMP as proposed.

To ensure that a ground floor visitor serving use remain on site and that implementation of the proposed TDMP are maintained for the life of the development, **Special Condition 3** requires the recordation of a deed restriction referencing all special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property.

The subject site is located approximately one-half mile inland and is not located within a hazardous area. The proposed development is not expected to be subject to coastal hazards such as flooding, sea-level rise, coastal erosion or wave uprush over its anticipated 75-year life.

Although the City of San Clemente has a certified Land Use Plan (LUP), an Implementation Plan has not yet been certified. The Commission's standard of review for the proposed development is Chapter 3 policies of the Coastal Act and the City of San Clemente's certified LUP may be used for guidance.

## **B. DEVELOPMENT**

As proposed, the development is located within an existing developed area and is compatible with the character and scale of the surrounding area. Therefore, the Commission finds that the development conforms with Sections 30250, 30251, and 30252 of the Coastal Act.

## **C. ACCESS**

As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

## **D. DEED RESTRICTION**

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 3** requiring that the property owner record a deed restriction against the property, referencing all of the above special conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property. Thus, any prospective future owner will receive notice of the restrictions and/or obligations imposed on the use and enjoyment of the land. Therefore, the Commission finds that the proposed development, as conditioned, conforms to the Coastal Act by ensuring that any successors-in-interest have proper notice, recorded against the subject parcel, of the proposed development's required mitigation measures that mitigate the development's impacts on coastal resources.

## **E. LOCAL COASTAL PROGRAM**

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that

is in conformity with Chapter 3. The Commission certified the Land Use Plan (LUP) for the City of San Clemente on May 11, 1988. On August 2, 2019, a comprehensive update to the City's LUP was effectively certified by the Coastal Commission. The city is currently also working on submittal of an Implementation Plan to complete the LCP; however, at this time the city has no certified LCP.

As conditioned, the proposed development is consistent with the policies contained in the certified Land Use Plan regarding priority of visitor serving uses and public access and with the policies in Chapter 3 of the Coastal Act. Therefore, approval of the proposed development will not prejudice the City's ability to prepare a Local Coastal Program for San Clemente that is consistent with the Chapter 3 policies of the Coastal Act as required by Section 30604(a).

#### **F. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the approval, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). In order for the Commission's program to qualify for that certification, Section 21080.5(d)(2)(A) of CEQA required that the program be designed such that it would not approve any development as proposed if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment.

The City of San Clemente is the lead agency for purposes of CEQA compliance. As determined by the city, this project is categorically exempt from CEQA under Classes 3 and 5, per Sections 15303 and 15305. As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is consistent with the priority of use and public policies of the Coastal Act. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

## **APPENDIX A- SUBSTANTIVE FILE DOCUMENTS**

1. City of San Clemente LUP
2. CDP Application 5-21-0129 File