



PLANNING COMMISSION AGENDA REPORT

MEETING DATE: October 14, 2024

ITEM NUMBER: PH-3

**SUBJECT: CALL TO REVIEW ZONING ADMINISTRATOR APPROVAL OF A
MINOR CONDITIONAL USE PERMIT AND OUTDOOR DINING PERMIT
(PODA-24-0001 AND PMCP-24-0008) AT 814 WEST 19TH STREET
("WESTEND")**

**FROM: ECONOMIC AND DEVELOPMENT SERVICES DEPARTMENT/
PLANNING DIVISION**

PRESENTATION BY: JUSTIN ARIOS, ASSOCIATE PLANNER

**FOR FURTHER INFORMATION JUSTIN ARIOS
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RECOMMENDATION

Staff recommends the Planning Commission adopt a Resolution to:

1. Find that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15303 (Class 3) New Construction and Conversion of Small Structures; and
2. Uphold the Zoning Administrator conditional approval of Minor Conditional Use Permit and Outdoor Dining Permit (PODA-24-0001 and PMCP-24-0008) at 814 West 19th Street ("Westend") by adopting the attached Resolution.

APPLICANT OR AUTHORIZED AGENT

The authorized agent is Tyler Hertzke / Roland Barrera, representing the property owner, Monica Chang.

PLANNING APPLICATION SUMMARY

Location	814 West 19th Street	Application Number	PODA-24-0001 & PMCP-24-0008
Request	Zoning Applications PODA-24-0001 and PMCP-24-0008 request approvals of a Minor Conditional Use Permit and Outdoor Dining Permit to expand the existing Westend Restaurant's public service area outdoors within the front of the building and parking lot area, to allow sales of alcohol for onsite consumption after 11 p.m. and allow live entertainment and dancing more than 200 feet from a residential zone.		
CEQA	Exempt per CEQA Guidelines Section 15303 (New Construction or Conversion of Small Structures)		
Final Action	Zoning Administrator		

SUBJECT PROPERTY

Zoning District	C1 (Local Business District)
General Plan Land Use Designation	General Commercial
Lot Dimensions	35 FT x 107.5 FT
Lot Area	3,762.5 SF
List of Approved Plans / Land Use Entitlements	19 West Urban Plan
Existing Development	An existing 1,034-square-foot building with 101-square-foot front patio area and 296-square-foot rear patio occupied by a food and beverage establishment (Westend).

SURROUNDING PROPERTY

	Zoning District	General Plan Land Use Designation	Existing Development
North	MG (General Industrial)	Light Industrial	Industrial Uses
East	C1 (Local Business)	General Commercial	Commercial Uses
South <i>(Across W. 19th Street)</i>	C1 (Local Business)	General Commercial	Commercial Uses
West	C1 (Local Business)	General Commercial	Commercial Uses

Development Standard	Required / Allowed C1 Zone	Provided / Proposed
Building Height	2 stories / 30'	1 story / 16'
Setbacks		
Front	20'	10' 2" ¹
Side (left / right)	0' / 15'	0' / 12' ²
Rear	0'	30' 5"
Parking	4 spaces ³	1 spaces ⁴ 18 spaces <i>(with private off-site agreement)</i>

- 1 Existing, legal nonconforming front setback.
- 2 See staff report discussion regarding proposed outdoor dining area covers/structures encroachment [CMMC Section 13-48(a)(1)(k)].
- 3 Parking at 4 per 1,000 sq. ft. ratio for 1,034 sq. ft. building (outdoor dining area does not require additional parking (see Parking discussion below)
- 4 Proposed parking includes a bike rack credit of one space. Parking for the commercial use is legal non-conforming.

EXECUTIVE SUMMARY

On January 16, 2024, the City Council determined that outdoor dining promotes private and public economic interests, creates a community oriented and pedestrian friendly dining environment, and adopted ordinance modifications that encourage existing and new food and beverage serving establishments to offer outdoor dining.

On May 28, 2024, the City's Zoning Administrator approved a project to permit outdoor dining and construct a new outdoor patio structure, expand the hours of operation for service of alcoholic beverages, and to allow for live entertainment at an existing food and beverage establishment (Westend). A thorough description and analysis of the project request is included in the attached May 28, 2024, Zoning Administrator report (Attachment 3).

On May 30, 2024, Council Member Harper submitted an "application for review" of the approval to be considered by the Planning Commission. The Council Member was concerned specifically about "adequate parking for both the applicant and the surrounding businesses". (See Attachment 2.)

SETTING

The project site is located along the north side of West 19th Street between Federal Avenue and Placentia Avenue. The property is zoned C1 (Local Business District) and has a General Plan land use designation of "General Commercial". Pursuant to the CMMC, the C1 "District is intended to meet the local business needs of the community by providing a wide range of goods and services in a variety of locations throughout the City."

Physical on-site improvements include an existing 1,034-square-foot building with an approximate 175 square-foot front courtyard area. The property obtains access from a narrow on-site driveway that connects a three-car surface parking lot located at the rear of the property with West 19th Street. The project site is surrounded by commercially zoned properties to the south (across West 19th Street), east and west; and by industrially zoned properties to the north (along Placentia Avenue). Several existing eating and drinking establishments are located nearby and on both sides of the subject property.

Image 1 – Current Site Street View



BACKGROUND

The existing use, Westend, was approved administratively with a business license to replace an existing food and beverage serving establishment in 2017 (“Big Belly Deli”). The business license for Westend was originally approved as a coffee/café eatery with beer and wine, as well as antiques/retail. The approved hours of operation are from 6 a.m. to 11 p.m., with a maximum of 300 square feet of public seating area.

Appeal and Call to Review Procedures

Costa Mesa Municipal Code (CMMC) Title 2 Chapter IX stipulates the City’s appeal and review procedures. The CMMC allows any affected or interested person to appeal a project within specified periods and also allows City Council members to call projects up for review. In this case, the project approval included a seven-day appeal period. Since the Zoning Administrator approved the project, pursuant to the CMMC, the call to review decision shall be made by the Planning Commission.

The CMMC further indicates that the Planning Commission hearing is a de novo hearing in which the Planning Commission may consider the project in its entirety. Pursuant to the de novo hearing process, the Planning Commission may consider all aspects of the proposed project and is not required to limit the discussion to the issues in the “call to review” application. The CMMC also stipulates that the review hearing shall be based on any relevant evidence, submitted at the time of the prior decision and at the call for review hearing, findings, if any, and decision of the person or body whose decision is being appealed.

Pursuant to CMMC Chapter IX, Section 2-303(6), the applicant for the original decision shall have the burden of proof to support the granting of the approval action at the appeal.

ZONING ADMINISTRATOR APPROVAL

On May 28, 2024, the Zoning Administrator approved an entitlement at 814 West 19th Street (Westend) to permit outdoor dining and to construct a new outdoor patio structure, expand the hours of operation for service of alcoholic beverages, and to allow live entertainment. The approved hours of operation are Mondays through Fridays, 5 PM to 2 AM and Saturdays and Sundays from 2 PM to 2 AM. The project included an increase in the restaurant customer serving area of approximately 800 square feet (outdoor dining area only).

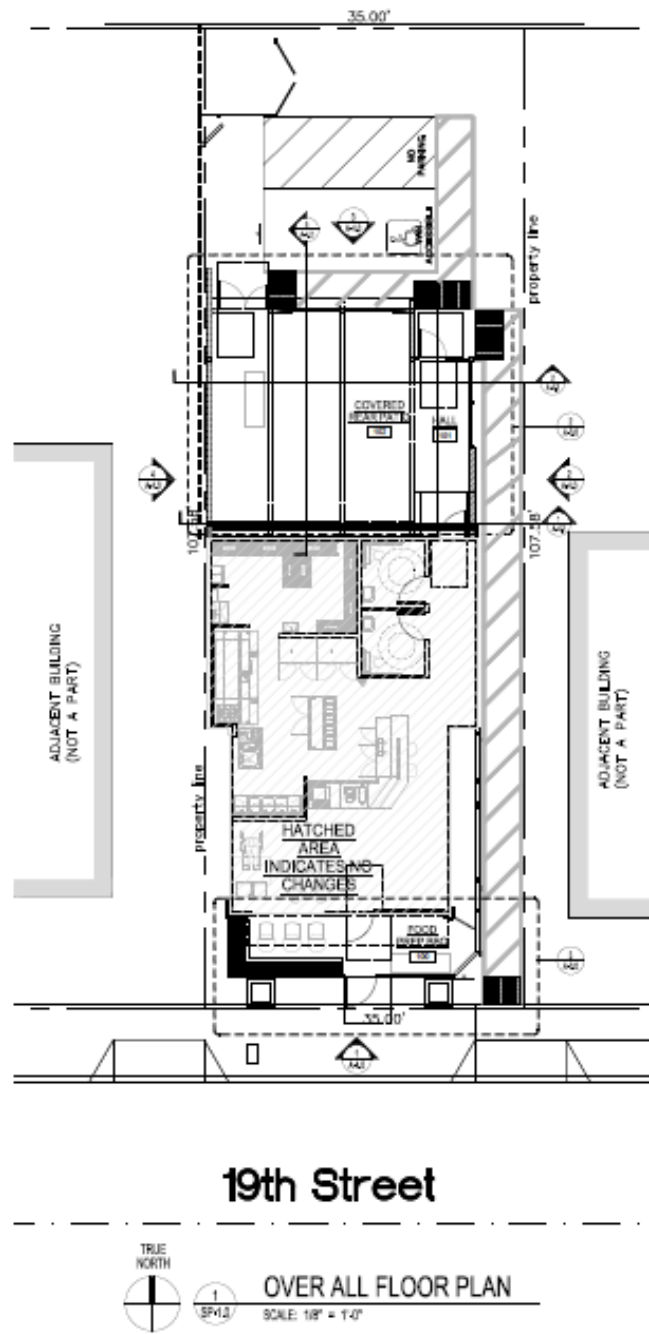
Minor Conditional Use Permit Required

The project entitlements require Zoning Administrator approval of a Minor Conditional Use Permit (MCUP) for the following aspects of the proposed project:

- Establishing an outdoor dining area within an existing parking area that results in more than a 50-percent increase of public indoor area [CMMC Table 13-47(b)];
- The removal of more than 25% of existing required parking [CMMC Table 13-47(b)];

- For an outdoor dining area cover/structure to encroach into a setback area [CMMC Section 13-48(a)(1)(k)];
- For sale of alcoholic beverages for on-site consumption after 11 p.m. located outside 200 feet of a residential zone [CMMC Table 13-47(b)]; and
- To provide live entertainment after 11 p.m. located outside 200 feet of a residential zone [CMMC Table 13-47(b)];

Exhibit 1 – Proposed Site/Floor Plan



Pursuant to the CMMC, the approval of an MCUP requires that the Zoning Administrator make three findings related to neighborhood compatibility, health and safety, and land use compatibility. The Zoning Administrator made the required MCUP findings as indicated below:

MCUP Finding No. 1 - *“The proposed development or use is substantially compatible with developments in the same general area and would not be materially detrimental to other properties within the area”.*

Zoning Administrator Finding: The proposed use is compatible and harmonious with developments in the same general area and would not be materially detrimental to other properties within the area. The use is located along a commercial corridor developed with other similar food and beverage establishments, operating under similar hours, with live entertainment and with outdoor dining. In addition, the use is surrounded by other commercial properties to the east, west and south, and industrial properties to the north. The nearest residential property is located approximately 265 feet from the subject property. The project is conditioned to operate in compliance with the City’s Noise Ordinance. The applicant also has an agreement with an adjacent industrial property to provide parking.

MCUP Finding No. 2 – *“Granting the conditional use permit or minor conditional use permit will not be materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood”.*

Zoning Administrator Finding: The proposed development complies with the City’s development standards and other requirements, such as ADA requirements. Compliance with the applicable Building, Fire Safety and Health Codes will also ensure that the project is not materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood. Additionally, the proposed outdoor dining areas have been conditioned to comply with the development standards for all outdoor dining areas per CMMC Section 13-48(a)(1) and the City’s noise ordinance. On-site security and additional parking will also be provided.

MCUP Finding No. 3 – *“Granting the conditional use permit or minor conditional use permit will not allow a use, density or intensity which is not in accordance with the general plan designation and any applicable specific plan for the property”.*

Zoning Administrator Finding: Granting the minor conditional use permit will not allow a use, density or intensity that is not in accordance with the General Plan designation. The site has a General Plan designation of General Commercial, which is intended to permit a wide range of commercial uses that serve both local and regional needs. Appropriate uses include smaller retail stores, theaters, restaurants, hotels and motels, and automobile sales and service establishments. As such, the proposed restaurant operations and use are anticipated by General Plan designation. Lastly, the City Council recently determined that outdoor dining

promotes private and public economic interests, creates a community oriented and pedestrian friendly dining environment, and adopted ordinance modifications that encourage existing and new food and beverage serving establishments to offer outdoor dining.

Project Parking Considerations and Conditions of Approval

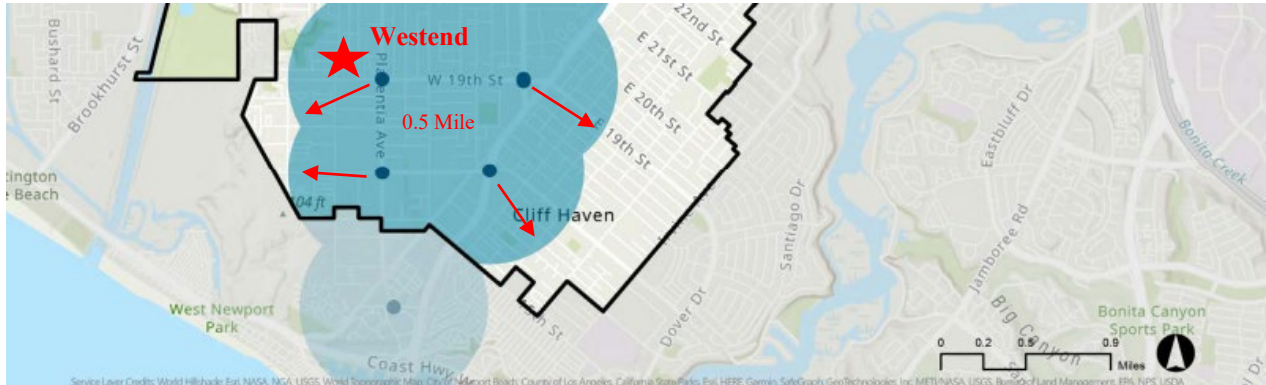
Pursuant to the City's Parking Ordinance, Section 13-89, "outdoor seating areas shall not be included in the floor area calculations for the purposes of determining the required parking". Therefore, the project does not require additional parking. In addition, the CMMC Table 13-47(b) allows with the approval of a Minor Conditional Use Permit for the removal of required parking for the development of outdoor dining areas. The applicant is proposing the removal of two of the three existing parking spaces in conjunction with the development of the rear outdoor dining area. Although not required, to compensate for the loss of these two parking spaces (pursuant to the CMMC), the applicant has a private agreement to utilize 17 parking spaces with the adjacent property owners of an industrial property located nearby at 1945 Placentia Avenue. These spaces are available in that the restaurant generally operates during offset hours of the existing industrial use (evenings and weekends).

In addition, the Zoning Administrator approval included Condition of Approval No. 15 which indicates the following:

"Outdoor dining areas shall not result in any customer parking offsite, (including in any adjacent commercial property parking areas, unless authorized by both property owners), with the exception of available public parking. Customer parking shall not park in adjacent residential areas or on residential streets. If parking shortages or other parking-related problems arise, the business operator shall institute appropriate operational measures necessary to minimize or eliminate the problem in a manner deemed appropriate by the Director of Economic and Development Services or designee, including, but not limited to, reducing operating hours of the business, reducing interior or exterior seating capacities, hiring an additional employee trained in traffic control to monitor parking lot use and assist with customer parking lot circulation, and/or requiring employees to bike, walk or take public transit".

Lastly, Assembly Bill 2097 (AB 2097) was signed into law by Governor Newsom and became effective on January 1, 2023. The primary objective of this legislation is to restrict local governments from imposing parking regulations on commercial and residential projects that are located within 0.5 miles of a "major transit location". AB 2097 defines major transit location as an existing rail or bus rapid transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods. Pursuant to the "Costa Mesa SCAG Data/Map Book" (see below Exhibit 2), the subject site is located within 0.5 miles of major transit location (bus route intersection) located east of the project site at the intersection of Placentia Avenue and West 19th Street, and therefore is exempted from required parking pursuant to State law.

Exhibit 2 – Costa Mesa SCAG Data/Map Book



Applicant Response to “Call for Review” Parking Concern

The applicant has reviewed the “call for review” application and believes that the proposed outdoor dining areas will not result in on-site or offsite parking impacts. According to the applicant, the project was adequately conditioned by the Zoning Administrator to restrict customers from parking on nearby private properties pursuant to Condition of Approval No. 15), and the applicant also suggests that with the recently obtained 17 offsite parking spaces that are located at 1945 Placentia Avenue, the restaurant would be served by more parking than without the project.

In addition, the applicant has indicated that the restaurant will provide security staff to monitor customers crossing the public right-of way from nearby businesses and request that that if they have parked at other nearby businesses that they relocate their vehicles to available street parking or at 1945 Placentia Avenue before entering the premises. The applicant has suggested to staff that this additional security guard monitoring could be included as a project condition of approval by the Planning Commission.

ENVIRONMENTAL DETERMINATION:

The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15303 (Class 3), New Construction and Conversion of Small Structures. This project site contains an existing commercial building that has been used for a restaurant use, and the application does not propose a change in use. The project is consistent with the applicable General Plan land use designation and policies as well as with the applicable zoning designation and regulations. Furthermore, none of the exceptions that bar the application of a categorical exemption pursuant to CEQA Guidelines Section 15300.2 applies. Specifically, the project would not result in a significant cumulative impact; would not have a significant effect on the environment due to unusual circumstances; would not result in damage to scenic resources; is not located on a hazardous site or location; and would not impact any historic resources.

ALTERNATIVES:

The Planning Commission may take the following actions:

1. Uphold the Zoning Administrator's decision and approve the project;
2. Approve the project, subject to conditions of approval such as adding specific conditions to avoid/reduce neighboring parking impacts; or
3. Reverse the Zoning Administrator's decision and deny the project.

LEGAL REVIEW:

The City Attorney has reviewed the draft resolution and has approved it as to form.

PUBLIC NOTICE:

Section 2-308 of the Costa Mesa Municipal Code requires that the notice of the hearing for an appeal or review shall be given in the same manner as any required notice for the hearing at which the decision subject to the appeal or review was made. In all cases for the hearing for an appeal or review, written notice of the date, time, and place shall be given to the original applicant, if any, any prior applicant for appeal regarding the same matter, and for appeals the person requesting the current appeal.

Mailed notice has been provided at least 10 days in advance of the hearing to the immediately adjacent residences (which were also originally notified of the Zoning Approval Administrator notice), and both the applicant and Councilmember Harper have been notified.

As of the date of this report, no written public comments have been received. Any public comments received prior to the October 14, 2024, Planning Commission meeting will be provided separately.

CONCLUSION:

The Planning Commission should consider the "call for review" request, and specifically consider the project impact to on/off-site parking. As noted in this staff report, the applicant's proposal is in compliance with the City's outdoor dining standards, including being exempted from the requirement of parking. In addition, the site is exempt from required parking based on its proximity to a major transit location pursuant to AB 2097. Further, the applicant has obtained permission for customer use of 17 offsite nearby parking spaces, and the project is conditioned (Condition No.15) to prevent customers from parking offsite, with the exception of available on-street and other public parking areas. Lastly, in response to the "call for review" the applicant has offered to require that restaurant staff security monitor customers crossing the public right-of way from nearby businesses and request that that if they have parked at other nearby businesses that they relocate their vehicles to available street parking or at 1945 Placentia Avenue before entering the premises.