



# **PLANNING COMMISSION AGENDA REPORT**

MEETING DATE: DECEMBER 11, 2023

ITEM NUMBER: PH-3

**SUBJECT: MINOR CONDITIONAL USE PERMIT APPLICATION ZA-22-11 FOR A DRIVE-THROUGH OPERATION AND A REDUCTION OF REQUIRED PARKING; DEVELOPMENT REVIEW (PDVR-23-0003) TO ALLOW THE DEMOLITION OF AN EXISTING 25,159-SQUARE-FOOT COMMERCIAL BUILDING AND TO CONSTRUCT A NEW 2,913-SQUARE-FOOT RAISING CANES RESTAURANT WITH 1,303-SQUARE-FEET OF COVERED OUTDOOR PATIO AREA; MINOR MODIFICATION PMND-23-0003 TO ALLOW FOR A DECREASE OF 20% IN REQUIRED FRONT YARD/LANDSCAPE SETBACK; FOR A PROPERTY LOCATED AT 1595 OLD NEWPORT BOULEVARD**

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

**PRESENTATION BY: CHRISTOPHER ALDANA, ASSISTANT PLANNER**

**FOR FURTHER INFORMATION CONTACT:** CHRISTOPHER ALDANA  
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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 Section 15332 (Class 32 In-fill Development Projects); and
2. Approve ZA-22-011, PDVR-23-0003, and PMND-23-0003 subject to conditions of approval.

## **APPLICANT OR AUTHORIZED AGENT:**

The Authorized Agent is Jay Higgins, on behalf of the Owner, Barry Von Hemert.

## **PLANNING APPLICATION SUMMARY**

Location:	1595 Newport Boulevard	Application Numbers:	ZA-22-11, PDVR-23-0003 and PMND-23-0003
Request:	A Minor Conditional Use Permit, Development Review, and Minor Modification, to allow the following: <ol style="list-style-type: none"> <li>(1) Minor Conditional Use Permit request for the reduction of seven code-required parking spaces and drive-through operations with minor design modifications;</li> <li>(2) Development review to allow the demolition of an existing 25,159-square-foot furniture store and to construct a new 2,913-square-foot Raising Cane's restaurant with 1,303-square-foot outdoor dining area; and</li> <li>(3) Minor Modification request to allow for a decrease of 20% in required front yard/landscape setback.</li> </ol>		

### **SUBJECT PROPERTY:**

### **SURROUNDING PROPERTY:**

Zone:	General Business District (C2)	North:	Local Business District (C1)
General Plan:	General Commercial (GC)	South:	C2
Lot Dimensions:	Irregular-shaped lot with approximate dimensions of 35 feet (along E 16 <sup>th</sup> to the north), 295.03 feet (east), 207.09 feet (south), and 295.20 feet (west)	East:	C2
Lot Area:	1.02 Acres	West:	C2
Existing Development:	Existing and currently vacant 25,159-square-foot furniture store		

## **DEVELOPMENT STANDARDS COMPARISON**

Development Standard	Required/Allowed MP Dev. Standard	Proposed/Provided
Building Height	30 ft.	19 ft. 11 in.
Setbacks:		
Front	20 ft.	16 ft.*
Side (left)	15 ft. on one side / 0 ft. on the other side	21ft. 7in.
Rear	0 ft.	115 ft.11 in.
Landscape Setback – front	20 ft.	16 ft. *
Parking	41 spaces	34 spaces**
Floor area ratio (FAR)	0.20	0.07
Drive-through Length	160 ft.	287 ft.
Drive-through Width	11 ft.	11ft/10ft***
*Minor Modification Request to allow for a decrease of 20% in required front yard depth and to project a maximum of 4' into the required landscape setback. **Proposed parking deviation of seven (7) Code-required spaces. ***Proposed 11' wide lane that converts into a two (2), 10' wide dual lane system		
CEQA Status	Exempt per CEQA Guidelines Section 15303 (Class 3 - New Construction and Conversion of Small Structures) and 15332 (Class 32 – Infill Development Projects)	

## **BACKGROUND**

The subject property is located at the southwest corner of Old Newport Boulevard and East 16th Street. Old Newport Boulevard is a frontage street that is located parallel to Newport Boulevard. The site is located within the “C2 - Commercial Business Zoning District” and has a “General Commercial” land use designation. The property directly abuts commercial properties in the C2 zone to the south and west, and C1 properties to the east and north which are located across E 16<sup>th</sup> Street and Old Newport Boulevard and Newport Boulevard, respectively. Raising Cane’s proposes to demolish the existing approximate 25,000 square-foot furniture building and construct a new 2,913-square-foot restaurant with drive-through services, outdoor seating, landscaping and a surface parking lot. Uses in the vicinity include light industrial operations such as automotive and motorcycle dealers and repair shops, boat repair/storage, and several retail uses. A 62-unit mobile home park (“The Sea Breeze Villas”) is located approximately one hundred feet to the east.

Raising Cane’s is fast-food restaurant chain with locations throughout the United States. The restaurant exclusively serves chicken products and sandwiches that are made fresh daily. The restaurant chain began operations in 1996, and in 2015, the restaurant chain opened its first California location at 3150 Harbor Blvd (PA-15-02). The subject project would be their second location in Costa Mesa.

## **ANALYSIS:**

The project proposes the construction and operation of a new, one-story, 2,913 square-foot restaurant with outdoor patio dining. The restaurant includes 828 square feet of interior dining and an additional 1,303 square feet of covered outdoor patio areas. Architectural finishes for the building are similar to the restaurant chain’s other locations and include earth-tone painted cement stucco, brick, and metal accents (see the below Exhibit 1 - Photo Simulation). No alcohol service is proposed.

**Exhibit 1 – Photo Simulation**



The proposed hours of operation are 9 AM to 2 PM Sunday through Wednesday, and 9 AM to 3:30 AM Thursday through Saturday. Pursuant to Costa Mesa Municipal Code (CMMC) Section 13-47 (Permitted and Conditionally Permitted Uses), restaurants located within 200 feet of a residential zone are subject to closure from 11:00 PM to

6:00 PM, unless modified through the issuance of a Minor Conditional Use Permit (MCUP). Although Sea Breeze Villa mobile home park is located within 200 feet of the proposed use, the mobile home park property is not zoned residential and therefore operation hour limitations are not applicable pursuant to this Code provision.

The maximum number of Raising Canes' staff on-site at any given time is expected to be 12 employees. According to the applicant, employee shifts are typically staffed with two on-site managers with the remaining staff being cashiers and food prep members. During peak times, an employee with a handheld tablet will direct customers into the drive-through to expedite service and assist vehicle queues/parking lot circulation.

The applicant proposes a surface parking lot with 34 parking spaces and a new 312-square-foot trash/recycling enclosure. Two parking spaces will be provided in compliance with accessibility requirements (one standard and one van-accessible spot). The project will provide both employee and customer bicycle parking. Pedestrian access to the site would be provided at the intersection of East 16th Street and Old Newport Blvd with a sidewalk leading to the restaurant patio area and restaurant entrance.

The applicant has provided a conceptual landscape plan as part of their CUP application that includes a variety of trees, shrubs and groundcover. The conceptual landscaping plan proposes 14,396 square feet of landscape area and includes 50 new trees. If approved, a detailed landscaping plan would be reviewed during the building plan check process for determining consistency with the City's minimum landscaping and irrigation requirements.

### ***Minor Conditional Use Permit Required***

Pursuant to the CMMC, eating and drinking establishments with more than 300 square feet of public area are permitted by right in the C2 Zoning District. However, the CMMC requires an MCUP for an eating and drinking establishment with a drive-through. In addition, the applicant is requesting a deviation from the City's drive-through standards relating to obstructing parking and minimum drive-through width. Pursuant to CMMC Section 13-50, the City's drive-through standards can be modified through the issuance of an MCUP. Lastly, the applicant is requesting approval for a reduction in parking requirements. Pursuant to CMMC Section 13-89.5, where it can be shown that the required parking for a nonresidential land use will exceed the demand of the actual use, the Zoning Administrator may, by MCUP, allow a reduction in the amount of required parking.

Although the proposed new restaurant and operations are subject to approval of an MCUP at the discretion of the City's Zoning Administrator, pursuant to CMMC Section 13-11, the Zoning Administrator can "forward any action to the Planning Commission for review". Based on the proposed project size and scope, the City's Zoning Administrator has decided to direct this project for Planning Commission consideration.

To obtain approval of an MCUP, an applicant must show that the proposed use is compatible with the City's applicable zoning and General Plan provisions/policies, and will not be detrimental to public health, safety, and welfare. The subject site is located within a commercial zone (C2 – General Business District) where commercial development is specifically allowed to include restaurants with drive throughs subject to a minor MCUP and specific standards and conditions of approval. As defined in the CMMC, “this 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.” Pursuant to the CMMC, the approval of an MCUP requires that specific findings be made related to neighborhood compatibility, health and safety, and land use compatibility. The analysis regarding MCUP findings is provided below in this report.

### MCUP to Deviate from Drive-through Standards

The project proposes a single-lane drive-through entrance which then diverges into two lanes after the customer vehicle ordering point (see Exhibit 2 – Site Circulation Plan).

**Exhibit 2 – Site Circulation Plan**



The below Table 1, provides a development standard summary of the proposed drive-through operations with the City's Drive-Through Standards:



**Table 1 – Project Compliance with CMMC Section 13-50  
(Development Standards for Drive-Through Operations)**

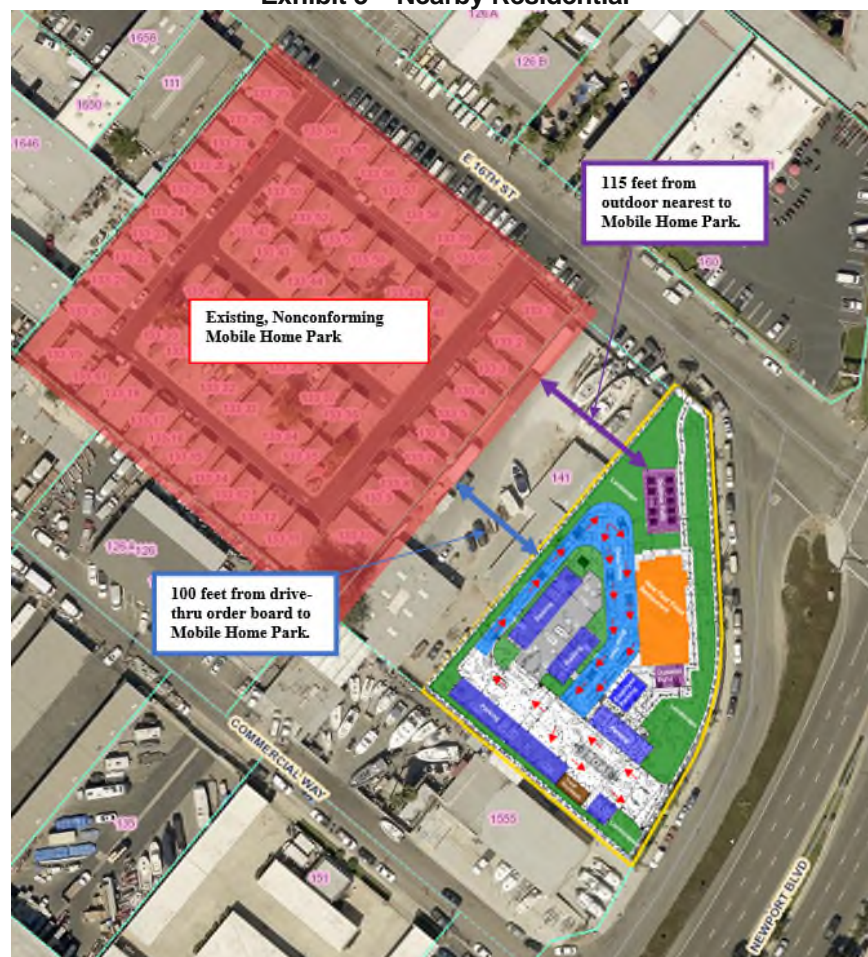
Performance Standard	Code Requirement	Project Complies?
<b>Unobstructed Drive-Through Access</b>	Drive-through lanes shall not obstruct the circulation routes necessary for ingress or egress from the property, parking areas (including back-out of parking spaces), and pedestrian walkways.	<b>No, Deviation requested.</b> Proposed drive-through lanes do not obstruct the circulation routes necessary to enter and exit the property, except for 3 parking stalls located at the drive-through exit. However, staff encourages the use of these stalls as employee parking spaces to avoid impacts on customer circulation and to alleviate parking demand in more desired parking lot areas for customers.
<b>Drive-Through Lane Width</b>	Each drive-through lane shall be striped, marked or otherwise distinctly delineated, and shall be a minimum of eleven (11) feet wide.	<b>No, Deviation requested.</b> The single drive-through lane at the entrance measures 11 feet wide. However, when it splits into two lanes the lane width decreases to 10 feet. The decreased width is justified, as Public Works does not see functional or operational issues with the request. The main purpose of the request is to adhere to the 20' building setback and minimum landscape distance for planting in other areas.
<b>Required Drive-Through Length</b>	On-site entrances to drive-through lanes shall be set back a minimum of twenty-five (25) feet from drive approaches from public or private streets or alleys.	<b>Yes.</b> The entrance to the drive-through lanes from the public driveway is 145 feet, as illustrated on the site plan.
<b>Setback for Drive-Through Entrance</b>	Each drive-through lane shall be a minimum of one hundred sixty (160) feet in length, unless modified by the zoning administrator. The length of the drive-through lane shall be measured from its entrance point to the pick-up window.	<b>Yes.</b> The drive-through lane from the entrance to the drive-through window is shown on the site plan at 287 feet, exceeding the minimum requirement.
<b>Stacking Area Distance from Outdoor Seating and Play Areas</b>	Vehicle stacking areas of drive-through lanes shall be a minimum distance of ten (10) feet from outdoor seating and play areas.	<b>Yes.</b> The site plan indicates the drive-through is located 10.7 feet from the patio and therefore exceeds the minimum requirement.
<b>Emission Control Plan</b>	Application for a minor conditional use permit shall include an operation statement indicating the physical improvements and operational measures proposed to minimize idling vehicle emissions.	<b>Yes.</b> Raising Cane's relies on a number of strategies to move customers through the drive-through quickly as well as minimize idling vehicle emissions. This includes, but is not limited to, a focused menu, tablet and mobile ordering, and pick-up and pay windows.
<b>Development Standards for Nearby Residential Zones</b>	Establishments within two hundred (200) feet of residentially-zoned property shall also be subject to the development standards contained in section <a href="#">13-49</a> . Development standards for establishments within two hundred feet of residentially-zoned property.	See discussion "Development Standards for Nearby Residential Zones" on the next page.

The single-lane drive-through width measures 11 feet and narrows to two 10-foot-wide lanes. Pursuant to CMMC Section 13-50(b), the minimum drive-through lane width is 11 feet and therefore the MCUP is specifically required for the proposed drive-through lane reduction to 10 feet. In addition, three parking spaces are proposed adjacent to the drive-through lane which would be used by employees who arrive early and thereby alleviate any potential for customer drive-through/parking back-up interference. Pursuant to CMMC Section 13-50(a), drive-through lanes shall not interfere with parking areas (including back-out of parking spaces), unless approved by an MCUP. The City's Transportation Division has reviewed the proposed drive-through operations and parking lot circulation, including proposed deviations in standards, and believes that the project will operate adequately as designed.

#### Development Standards for Nearby Residential Zones

A 62-unit mobile home park (Sea Breeze Villas) is located approximately 90 feet west of the project site. The mobile home park is located on a commercially zoned property and is considered legal nonconforming due to use. CMMC Section 13-49 contains specific development standards for restaurants located within 200 feet of a residential-zoned parcel. As previously indicated, these standards do not apply to the mobile home site because it is classified as a commercial zone.

**Exhibit 3 – Nearby Residential**



As further indicated below, despite the mobile home park's commercial zoning, the project will generally comply with CMMC Section 13-49 to ensure compatibility with the nearby residential use with the exception of operating hours:

- All exterior lighting will be shielded away from residential areas;
- No outdoor communication systems or amplified music will be used;
- Trash facilities are screened from view, located approximately 200 feet from residences, and designed to minimize odor and visual impacts;
- Outdoor seating is oriented away from residences. The nearest outdoor, covered patio area is proposed 115 feet from residences;
- Landscape between the residential site and the subject site will not be altered;
- Truck Deliveries will not occur between 8 PM and 7 AM; and
- The City's Police Department have recommended Resolution Condition of Approval No. 15, which requires on-site security from 9 P.M. to 3:30 A.M. daily for the first year of operation.

#### Noise Study

To attenuate noise (specifically in consideration of the mobile homes located near the project site), the City requested the applicant to conduct a noise analysis (included with this report as Attachment No. 7). As demonstrated in the acoustic analysis prepared by Kimley Horn on September 22, 2023, the proposed project, including consideration of the drive-through operations, is expected to operate in compliance with the CMMC noise standards, would not exceed the City's exterior or interior noise standards, and would not result in a perceptible noise increase at the nearest residential uses.

In addition, staff visited the Raising Canes operations on Harbor Boulevard during the weekday, lunch-hour operations to survey empirical noise conditions. During this site visit, staff specifically surveyed the noise impacts from the restaurant/drive-through operations onto the adjacent residential apartments ("The French Quarter Apartments"). The Harbor Boulevard Raising Canes restaurant is generally located within 100 feet of the nearest French Quarter residential unit. During the staff visit, staff did not witness any perceptible noise from the Raising Canes operations. Resolution Condition of Approval Number 16, has been included to assure that the drive-through menu board includes adjustable volume control which would allow for lowering the volume if necessary.

#### MCUP to Deviate from Required Parking

The City's off-street parking requirements are specified in CMMC Table 13-89 and requires a parking ratio of 10 spaces for every 1,000 square feet of restaurant gross floor area for the first 3,000 square feet, and 12 spaces for every 1,000 square feet of additional floor area, inclusive of outdoor dining areas. The application includes 2,913 square feet of interior floor area and 1,303 square feet of covered outdoor patio areas, and therefore pursuant to the CMMC Table 13-89 requires 45 parking spaces. The applicant is proposing to provide 34 vehicle parking spaces and one-bike rack for a total of 35 parking spaces (the CMMC allows for one bike rack to count towards one required vehicle parking space).



CMMC Section 13-89.5 permits with the approval of an MCUP a reduction in required parking when it can be demonstrated that the City's nonresidential parking standard will exceed the demand of the actual use. The applicant has submitted an engineered traffic and parking study that evaluated the actual parking utilization and concluded that the project as designed is anticipated to have a surplus of one parking space. To determine peak parking requirements, the Study evaluated empirical parking demand data from three local comparable Raising Canes restaurants located in the cities of Costa Mesa, Laguna Hills, and Orange. Data collection was taken at roughly five-minute intervals over an eight-hour window (11 AM to 7 PM) on a typical weekday (Thursday) and a weekend day (Saturday) in February 2023. The surveyed restaurants contained 31, 33, and 23 parking spaces respectively. However, the Orange site was excluded from this analysis, as it did not accurately reflect parking demand since customers were frequently observed utilizing parking from a nearby retail center.

During mid-day peak hours, the average parked vehicle count was 19 on weekdays and 17 on Saturdays. During PM peak hours, the parking demand reduced to 15 and 17 respectively. The maximum counts for vehicles parked during mid-day peak hours were 29 on weekdays and 30 on Saturdays, while PM peak hours saw a maximum of 27 and 31 vehicles respectively. By correlating this data with the square footage of the case study sites, the average and maximum parking rates (per thousand square feet) were calculated. This maximum rate was subsequently utilized to determine the expected parking demand for the proposed project. Pursuant to the Study, the proposed project is expected to necessitate a maximum of 33 parking spaces to satisfy anticipated demand, and therefore the project would provide a surplus of one parking space.

As conditioned, any change in operational characteristics, including but not limited to hours of operation or type of services provided, will require an amendment to the minor conditional use permit. If parking shortages or other parking-related problems develop, Condition of Approval No. 6 requires the business operator to institute appropriate operational measures necessary to minimize or eliminate the problem including, but not limited to, reducing the operating hours of the business. According to the applicant, each Raising Cane's restaurant administers its own traffic management plan prepared by a professional consultant to provide a phased drive-through queuing plan for peak and non-peak times.

#### Air Quality and Odors

An Air Quality Memorandum dated August 11, 2022, was prepared by Kimley Horn to evaluate the potential air quality impacts associated with construction. The Memorandum concludes that the proposed project would be below all applicable air quality required thresholds, would not conflict with the South Coast Air Quality Management District Air Quality Management Plan, or create objectionable odors.

#### Traffic, Circulation and Drive-through Queuing

Pursuant to CMMC Section 13-275 (Development Project Review Procedures), the project required a traffic study to be prepared because it is estimated to generate one-hundred (100) or more vehicle trips during a peak hour period. A Traffic and Parking

Study, prepared by Stantec has been completed that evaluates the project's effect on traffic conditions and local circulation. The Study also evaluated on-site and off-site circulation in relationship to potential impacts on the adjacent rights-of-way, and intersection level-of-service (see Attachment No. 8). The Study concludes that the project would not exceed the City's acceptable traffic levels, provides adequate parking, and the restaurant/drive-through operations will not interfere with nearby road traffic/circulation. The Public Works Department has reviewed the Study and agrees with its findings and conclusions.

In preparation of the Study, traffic and circulation empirical data were collected at three Raising Cane's locations, including the existing Costa Mesa location at 3150 Harbor Boulevard. A trip generation analysis was completed and concluded that the proposed restaurant would generate 1,051 total daily trips and a maximum of 161 peak hour trips. Additionally, the Study evaluated seven key intersections located nearby the project and concluded that with the additional traffic created by the project, all of the intersection would continue to operate with minimal delays at a level-of-service (LOS) "C" or better (see the Below Table 2).

**Table 2 - Intersection LOS Summary – Opening Year (2024) Cumulative Conditions**

Int #	Intersection Name	Opening Year (2024) Cumulative Conditions without Project						Opening Year (2024) Cumulative Conditions with Project					
		Weekday				Saturday		Weekday				Saturday	
		Mid-Day		PM		Mid-Day		Mid-Day		PM		Mid-day	
		Delay	LOS	Delay	LOS	Delay	LOS	Delay	LOS	Delay	LOS	Delay	LOS
1	Superior & 17th	23.0	C	23.5	C	19.5	B	23.0	C	23.7	C	19.5	B
2	Superior & E 16th	15.6	C	16.2	C	13.9	B	15.8	C	16.4	C	14.0	B
3	Old Newport W & E 16th	10.1	B	9.4	A	9.6	A	11.1	B	10.1	B	10.5	B
4	Newport & E 16th	17.9	B	18.0	B	18.9	B	19.5	B	20.4	C	22.0	C
5	Superior & W 16th/Industrial	26.1	C	28.9	C	25.8	C	26.2	C	29.2	C	26.1	C
6	Old Newport W & Industrial	11.3	B	10.4	B	10.0	B	12.9	B	12.3	B	11.1	B
7	Newport & Industrial	16.2	B	15.0	B	11.1	B	17.9	B	17.8	B	13.3	B
Note: Cumulative background conditions based on traffic counts collected in February 2023 and OCTAM growth projections LOS - Level of Service Delay - Average vehicle delay (seconds/vehicle) for movements subject to stopping													

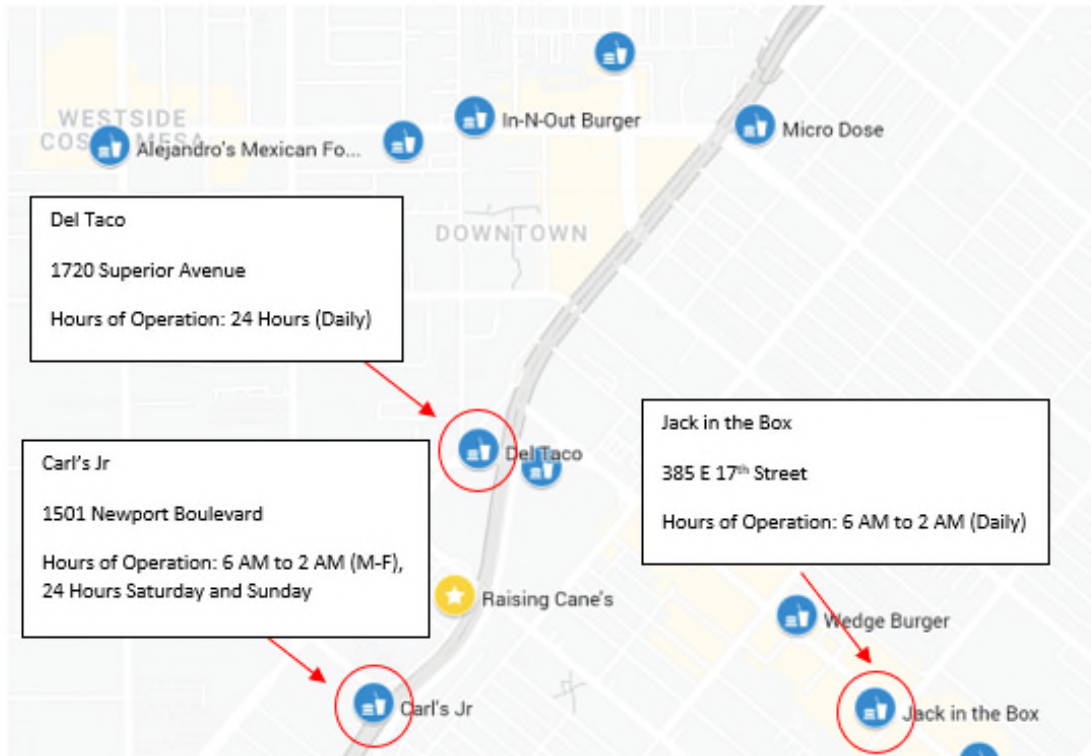
A queuing analysis for the proposed drive-through was also conducted to establish the project's maximum amount of vehicle demand. According to the Study, there is sufficient amount of dedicated drive-through space to accommodate the projected maximum demand of vehicles on-site, and without disturbing circulation on Old Newport Boulevard.

### Hours of Operation

The proposed hours of operation are from 9 AM to 2 PM Sunday through Wednesday, and from 9 AM to 3:30 AM Thursday through Saturday. Pursuant to Costa Mesa Municipal Code (CMMC) Section 13-47 (Permitted and Conditionally Permitted Uses), since the restaurant is not located within 200 feet of a residential zone, the CMMC does not prescribe a limitation on operating hours. However, if the Planning Commission

believes that the proposed hours of operations are not compatible with developments in the same general area and would be materially detrimental to other properties in the area, the Planning Commission could condition earlier closure hours.

#### **Exhibit 4 – Similar Establishments Hours of Operation Located Nearby**



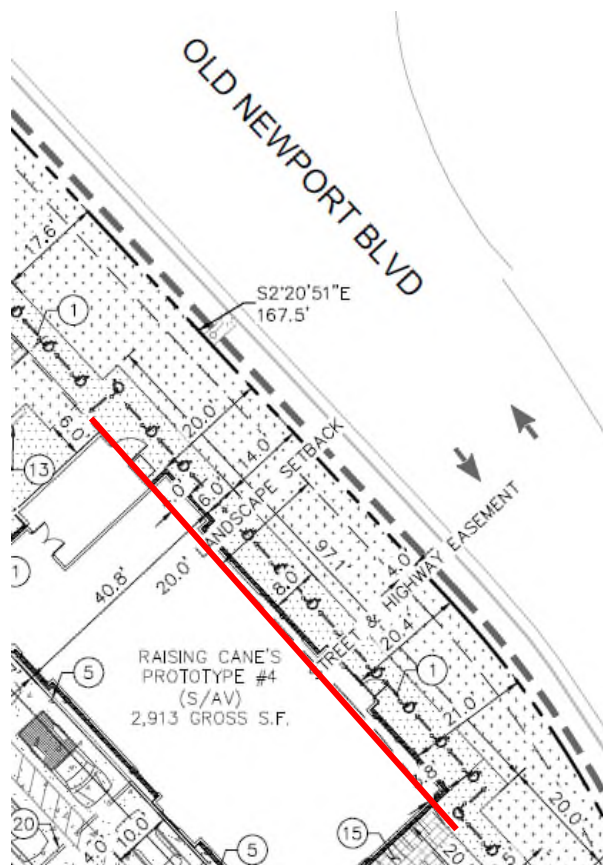
As indicated in Exhibit 4, several similar restaurant establishments are located within close proximity to the proposed Raising Cane's and operate during the early mornings and late evening hours. For example, “Del Taco” is located on Newport Boulevard to the north and is open 24 hours; “Carl’s Jr.” is located on Newport Boulevard and is open from 6 AM to 2 AM; and “Jack in the Box” is located on East 17<sup>th</sup> Street and also operates from 6 AM to 2 AM. Staff has consulted with the Costa Mesa Police Department in this regard to obtain their comments in regard to the proposed hours of operation. The City’s Police Department was not concerned with the proposed hours of operation; however, suggested that the restaurant provide on-site security after 9 P.M. to closure (daily) for the first year of operation.

#### **Minor Modification**

The applicant has requested approval a minor modification for the proposed building to project a maximum of four feet into the required 20-foot front and landscape setbacks. As shown in Exhibit 5, a small portion of the building is proposed to project into the setback (see the red line in Exhibit 5). Pursuant to CMMC Section 13-28 (j), a deviation from the required front setback can be approved a maximum of 20% of the required setback. Therefore, the proposed four-foot encroachment would comply with the City’s Minor Modification provisions. A Minor Modification is typically reviewed by the Planning

Division; however, since the project as a whole includes other entitlements required to be reviewed by the Planning Commission, the review authority for the encroachment request is the Planning Commission.

#### Exhibit 5 – Minor Modification Setback Encroachment



Pursuant to CMMC Section 13-29(g)(6), to approve a minor modification, the Planning Commission must make the following applicable findings:

- *The improvement will not be materially detrimental to the health, safety and general welfare of persons residing or working within the immediate vicinity of the project or to property and improvements within the neighborhood; and*
- *The improvement is compatible and enhances the architecture and design of the existing and anticipated development in the vicinity. This includes the site planning, land coverage, landscaping, appearance, scale of structures, open space and any other applicable features relative to a compatible and attractive development.*

As indicated above, the approval of the proposed minor modification requires that the Planning Commission make specific findings related to neighborhood compatibility, health



and safety, and architectural and site planning. The analysis regarding the required findings is provided below in the “Findings: section of this report.

## **GENERAL PLAN CONFORMANCE**

The Costa Mesa General Plan establishes the long-range planning and policy direction that guides change and preserves the qualities that define the community. The 2015-2035 General Plan sets forth the vision for Costa Mesa for the next two decades. This vision focuses on protecting and enhancing Costa Mesa’s diverse residential neighborhoods, accommodating an array of businesses that both serve local needs and attract regional and international spending, and providing cultural, educational, social, and recreational amenities that contribute to the quality of life in the community. Over the long term, General Plan implementation will ensure that development decisions and improvements to public and private infrastructure are consistent with the goals, objectives, and policies contained in this Plan. The following analysis evaluates the proposed project’s consistency with applicable policies and objectives of the 2015-2035 General Plan.

1. **Policy C-5.3:** “Encourage permitted General Plan land uses which generate high traffic volumes to be located near major transit and transportation corridors to minimize vehicle use, congestion, and delay”.

**Consistency:** The proposed restaurant (a high traffic volume use) is located adjacent to Newport Boulevard which is considered one of the City’s major transportation corridors, and is served by several bus routes with transit facilities located within walking distances.

2. **Policy C-5.14:** “Require developers of new building and redevelopment/reuse projects as part of the project development review process that are located along bus routes to pay a designated fair share of the cost of providing improved bus stop facilities and related street furniture or, where appropriate, dedicate land for improved bus stop facilities”.

**Consistency:** The proposed restaurant is located near Newport Boulevard and other City streets which offer several local/regional bus routes. Pursuant to the CMMC, the applicant is required to pay a Traffic Impact Fee that is estimated to be approximately \$200,000. This fee can be used to maintain or develop additional bus stop facilities where appropriate in the City.

3. **Policy C-6.12:** “Require that every new development project pay its share of costs associated with the mitigation of project generated impacts”.

**Consistency:** As indicated above, the applicant is required to pay a Traffic Impact Fee that is estimated to be approximately \$200,000. This fee is calculated to be consistent with a payment contribution to mitigate the project’s anticipated traffic impacts.

4. **Policy C-7B:** “Provide end-of-trip [bicycle] facilities that support the network”.

**Consistency:** The proposed project includes the installation of both short-term and long-term bicycle storage.

5. **Objective C-10A:** “Encourage more people to walk and bicycle by supporting programs that foster community support for bicycling and walking, and raise public awareness about active transportation”.

**Consistency:** Staff does not believe that the proposed restaurant with a drive-through that is primarily focused on vehicle trip demand is a land use that will foster community support for bicycling and walking, and raise public awareness about active transportation.

6. **Policy LU-1.1:** “*Provide for the development of a mix and balance of housing opportunities, commercial goods and services, and employment opportunities in consideration of the need of the business and residential segments of the community*”.

**Consistency:** The proposed new restaurant and improvements would re-invest and revitalize an underutilized property in Costa Mesa and provide new employment opportunities.

7. **Policy LU-2.6:** “*Encourage increased private market investment in declining or deteriorating neighborhoods*”.

**Consistency:** The proposed use would replace a commercial center that has been underutilized and/or vacant for many years. The proposed project applicant would invest significant amount of capital into the site to establish the use and project design.

8. **Policy LU-3.1:** “*Protect existing stabilized residential neighborhoods, including mobile home parks (and manufactured housing parks), from the encroachment of incompatible or potentially disruptive land uses and/or activities*”.

**Consistency:** The subject property is intended for commercial development and an existing retail furniture currently occupies the site. As described in this report, the project will not create perceptible noise or odor impacts to the nearest residential use and will provide a nearby dining option for these residents.

9. **Policy LU-6.10:** *“Encourage a broad range of business uses that provide employment at all income levels and that make a positive contribution to the City’s tax base”.*

**Consistency:** The proposed fast-food restaurant will provide employment opportunities for various levels of employee incomes, and is expected to generate increased tax revenues that would expand the City’s revenue base. This revenue can then be used for community services and infrastructure improvements that serve the community.

## **PLANNING APPLICATION REVIEW CRITERIA AND FINDINGS**

Pursuant to Title 13, Section 13-29(g), Findings, of the Costa Mesa Municipal Code, in order to approve the project, the Planning Commission must find that the evidence presented in the administrative record substantially meets specified findings as follows:

### ***Costa Mesa Municipal Code section 13-29 (e) Review Criteria -***

**“Compatible and harmonious relationship between the proposed building and site development, and use(s), and the building and site developments, and uses that exist or have been approved for the general neighborhood”.**

The proposed use is compatible and harmonious with developments in the same general area in that the restaurant would replace an existing commercial use that is generally surrounded by other commercial and industrial uses. The use as conditioned will not generate excessive noise, traffic, odors or other detrimental effects on the surrounding uses. Per Condition of Approval No. 34, the use shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. In addition, the applicant and/or business owner shall institute appropriate security and operational measures necessary to comply with this requirement.

**“Safety and compatibility of the design of buildings, parking area, landscaping, luminaries and other site features which may include functional aspects of the site development such as automobile and pedestrian circulation”.**

The project includes the development of a new building, parking areas and landscaping. Pedestrian access to the site is provided at the intersection of East 16th Street and Old Newport Blvd with a sidewalk leading to the restaurant patio area and the restaurant entrance. A traffic study was submitted with the project that determined the proposed drive-through lanes would accommodate the maximum anticipated vehicle queue and the restaurant operations would not result in a significant change in intersection LOS. Pursuant to Condition of Approval No. 6, if parking shortages or other parking-related problems arise, the operator must institute appropriate operational measures necessary to minimize or eliminate the problem. The Police Department has reviewed the proposed project and suggested

requiring on-site security guards from 9 P.M. to close (the applicant has agreed to provide this security).

**“Compliance with any performance standards as prescribed elsewhere in the Zoning Code”.**

The proposed project is in compliance with the Zoning Code and the project proposed deviations, as described in this report, are allowed subject to standards and findings.

**“Consistency with the general plan and any applicable specific plan”.**

The proposed commercial restaurant use is located on an existing commercial property that has a General Plan land use classification of “General Commercial”. The project site is located within the “19 West Plan Urban Plan”; however, the applicant is not applying for a Master Plan Mixed-Use development, so the design guidelines within the Urban Plan do not apply.

**“The planning application is for a project-specific case and is not to be construed to be setting a precedent for future development”.**

The application is for a project-specific case to construct a fast-food restaurant on an existing commercial lot. The project meets all applicable development standards and design guidelines for commercial structures in the C2 zoning district and is consistent with the general plan land use designation of “General Commercial”. The proposed development would not be precedent-setting as each application is reviewed on a case-by-case basis.

***Minor Conditional Use Permit Findings –***

The proposed project complies with the applicable Costa Mesa Municipal Code Section 13-29(g)(2) - Minor Conditional Use Permit in that:

**“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”.**

The proposed use is compatible and harmonious with developments in the same general area in that the restaurant would replace an existing commercial use that is surrounded by other commercially zoned properties. The use as conditioned will not generate excessive noise, odor, traffic or other detrimental effects on the surrounding uses. Per Condition of Approval No. 34, the use shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood.



**“Granting the 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”.**

The project proposes a new commercial use on an existing developed commercial property. The project has been reviewed for potential effects to public health, safety, traffic, parking, noise and odor. Specific analysis was also completed for potential effects to a nearby residential development and concluded that no significant impacts would result.

**“Granting the 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”.**

Granting the minor conditional use permit will not allow a use, density or intensity, which is not in accordance with the general plan designation and the applicable Urban Plan for the property. The project is a permitted use and, as conditioned, the drive-through restaurant will not generate noise, odor, traffic or parking effects unusual for a commercially zoned property. Lastly, the proposed project is consistent with applicable policies and objectives of the 2015-2035 General Plan as previously described in this report.

#### ***Minor Modification Findings -***

The proposed project complies with the applicable Costa Mesa Municipal Code Section 13-29(g)(6) – Minor Modification:

**“The improvement will not be materially detrimental to the health, safety and general welfare of persons residing or working within the immediate vicinity of the project or to property and improvements within the neighborhood”.**

The project proposes a minor modification for the new building to encroach into the 20-foot required front/landscape setback. The encroachment is limited to only a small portion of the building, and the encroachment does not result in a perceived shortage in landscaping or significant building mass along the street frontage. Therefore, the proposed encroachment would not result in detrimental effects to public health, safety, and general welfare.

**“The improvement is compatible and enhances the architecture and design of the existing and anticipated development in the vicinity. This includes the site planning, land coverage, landscaping, appearance, scale of structures, open space and any other applicable features relative to a compatible and attractive development”.**

The project design includes a new building and associated site improvements that enhances the existing and anticipated development in the vicinity. The project site planning, land coverage, landscaping, appearance, scale of structures and open space is not inhibited by the proposed minor modification encroachment.

## **ENVIRONMENTAL DETERMINATION**

The project is categorically exempted from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15303, Class 3, for new construction or conversion of small structures, and Section 15332, Class 32, for infill development projects. The project proposes to demolish an existing 25,159-square-foot furniture store and construct a new 2,913-square-foot drive-through restaurant with 1,303-square feet of outdoor dining area. The existing site is completely developed, disturbed and without environmental resources. The new commercial use will replace an existing commercial use. In addition, 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 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 has the following alternatives:

1. **Approve the project.** The Planning Commission may approve the project as proposed, subject to the standard conditions outlined in the attached Resolution.
2. **Approve the project with Conditions of Approval.** The Planning Commission may suggest specific Conditions of Approval that are necessary to alleviate concerns.
3. **Deny the project.** If the Planning Commission believes that there are insufficient facts to support the findings for approval, the Planning Commission must deny the application; provide facts in support of denial, and direct staff to incorporate the findings into a Resolution for denial. If the project is denied, the applicant could not submit substantially the same type of application for six months.

## **LEGAL REVIEW**

The draft resolution has been reviewed and approved as to form by the City Attorney's Office.

## **PUBLIC NOTICE**

Pursuant to Title 13, Section 13-29(d), of the Costa Mesa Municipal Code, three types of public notification have been completed no less than 10 days prior to the date of the public hearing:

1. **Mailed notice.** A public notice was mailed to all property owners and occupants within a 500-foot radius of the project sites. The required notice radius is measured from the external boundaries of the property. (See attached Notification Radius Map.)

2. **On-site posting.** A public notice was posted on the street frontage of the project sites.
3. **Newspaper publication.** A public notice was published once in the Daily Pilot newspaper.

As of the date of this report's publishing, public comments have been received and are included as Attachment 10. Any public comments received after publication and before the December 11, 2023 Planning Commission meeting will be provided separately to the Planning Commission.

## **CONCLUSION**

Staff believes that approval of this project is appropriate and consistent with previous restaurant projects granted by the Planning Commission located on the City's commercial corridors. As proposed and conditioned, the use would be consistent with other commercial uses in the C2 zone, the Zoning Code, and the City's General Plan. The required findings for the MCUP and Minor Modification can be made, as described above, and therefore, staff recommends approval of the Planning Application subject to conditions of approval.