

RESOLUTION NO. 2024-xx

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA, TO UPHOLD THE PLANNING COMMISSION'S DECISION AND APPROVE 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/LANDSCAPE DEPTH; FOR A PROPERTY LOCATED AT 1595 OLD NEWPORT BOULEVARD

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY FINDS AND DECLARES AS FOLLOWS:

WHEREAS, Zoning Application 22-11, Development Review DRVR-23-0003, and Minor Modification PMND-23-0003 was filed by Jay Higgins, authorized agent for the property owner, requesting approval of the demolition of an existing 25,159-square-foot furniture store and the construction of a new 2,913-square-foot drive-through restaurant (Raising Cane's) with a drive-thru, and 1,303 square feet of outdoor patio area.:

WHEREAS, a duly noticed public hearing was held by the Planning Commission on February 12, 2024 with all persons having the opportunity to speak for and against the proposal, and the project was approved by the Planning Commission on a 4-2 vote;

WHEREAS, on February 20, 2024 Council Member Arlis Reynolds filed a request for the City Council review of the Planning Commission's decision;

WHEREAS, a duly noticed public hearing was held by the City Council on April 16, 2024 with all persons having the opportunity to speak for and against the appeal;

WHEREAS, pursuant to the California Environmental Quality Act (CEQA), the project is exempt from the provisions of CEQA per Section 15303 (Class 3) for New Construction and Conversion of Small Structures, and Section 15332 (Class 32) in-fill development projects;

WHEREAS, the CEQA categorical exemption for this project reflects the independent judgement of the City of Costa Mesa.

WHEREAS, the City Council has considered all public comments which have been received either in writing or at the public hearing.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES as follows:

BE IT RESOLVED that based on the evidence in the record and the findings contained in Exhibit A, the City Council hereby approves ZA-22-11, PDVR-23-003, PMND-23-003 with respect to the property described above.

BE IT FURTHER RESOLVED that the Costa Mesa City Council does hereby find and determine that adoption of this Resolution is expressly predicated upon the activity as described in the staff report for Zoning Application-22-11 and upon applicant's compliance with each and all of the conditions in Exhibit B, and compliance with all applicable federal, State, and local laws. Any approval granted by this resolution shall be subject to review, modification, or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval.

BE IT FURTHER RESOLVED that if any section, division, sentence, clause, phrase or portion of this resolution, or the document in the record in support of this resolution, are for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.

PASSED AND ADOPTED this 16th day of April, 2024.

John Stephens, Mayor

ATTEST:

APPROVED AS TO FORM:

Brenda Green, City Clerk

Kimberly Hall Barlow, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, BRENDA GREEN, City Clerk of the City of Costa Mesa, DO HEREBY CERTIFY that the above and foregoing is the original of Resolution No. 2024-XX and was duly passed and adopted by the City Council of the City of Costa Mesa at a regular meeting held on the 16th day of April 2024, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereby set my hand and affixed the seal of the City of Costa Mesa this 17th day of April 2024.

Brenda Green, City Clerk

EXHIBIT A

FINDINGS

- A. The proposed project complies with Costa Mesa Municipal Code Section 13-29(e) – Review Criteria in that:

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 is not expected to 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 Boulevard with a walkway 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 occur, 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 closure for the first year of operation (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 the staff 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.

- B. The proposed project complies with 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 described in the staff report.

- C. The proposed project complies with Costa Mesa Municipal Code Section 13-29(g)(6) – Minor Modification in that:

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.

EXHIBIT B

CONDITIONS OF APPROVAL

1. The use shall be limited to the type of operation as described in the staff report and conditions of approval. Any change in the operational characteristics of any use including, but not limited to, the hours of operation and additional services provided, shall require review by the Planning Division and may require an amendment subject to approval by the Zoning Administrator. The approved hours of operation are Sunday through Wednesday - 9 AM to 2 AM, and Thursday through Saturday - 9 AM to 3:30 AM.
2. The licensee shall not employ or use the services of any full- or part-time active or reserve peace officer currently employed by the City of Costa Mesa or any contiguous agency for security purposes.
3. The use shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The applicant and/or business owner shall institute appropriate security and operational measures are necessary to comply with this requirement.
4. The conditions of approval for ZA-22-11 shall be blueprinted on the face of the site plan as part of the plan check submittal package.
5. Odor control devices and techniques shall be incorporated to ensure that odors from the restaurant use are not detected outside the property.
6. If parking shortages or other parking-related problems arise, the operator shall institute appropriate operational measures necessary to minimize or eliminate the problem, including, but not limited to, reducing the operating hours of the restaurant and/or providing additional parking through a valet service or off-site parking (subject to review and approval as outlined in the Municipal Code).
7. Live entertainment and amplified music or sound shall be prohibited.
8. All physical elements (e.g., awnings, covers, furniture, umbrellas, etc.) related to the outdoor dining area that are visible from the public right-of-way shall be compatible with one another and with the overall character and design of the principal structure; as well as, kept in good condition.
9. The maximum occupancy, as determined by provisions of the Uniform Building Code or other applicable codes, shall be posted in public view within the premises, and it shall be the responsibility of management to ensure that this limit is not exceeded at any time. Occupant loads for the open patio area and the enclosed building area shall be calculated and posted separately
10. No modification of the approved building elevations including, but not limited to, changes that increase the building height, removal of building articulation, or a change of the finish materials(s), shall be made during construction without prior Planning Division written approval. Failure to obtain prior Planning Division approval of the modification could result in the requirement of the applicant to reprocess the modification through a discretionary review

process such as a minor design review or a variance, or in the requirement to modify the construction to reflect the approved plans.

11. No exterior roof access ladders, roof drain scuppers, or roof drain downspouts are permitted.
12. It is recommended that the project incorporate green building design and construction techniques where feasible. The applicant may contact the Building Safety Division at (714) 754-5273 for additional information.
13. The property owner or applicant shall install bike racks for patrons and employees on the site. The bicycle racks shall be decorative in design. This condition shall be completed prior to final occupancy/start of business, under the direction of the Planning and Building Divisions.
14. Transformers, backflow preventers, and any other approved above-ground utility improvement shall be located outside of the required street setback area and shall be screened from view, under direction of Planning staff. Any deviation from this requirement shall be subject to review and approval of the Development Services Director.
15. Outdoor electronic communication systems shall not be audible in adjacent residential areas.
16. The drive-through menu board shall have adjustable volume levels which would allow for lowering the volume during early morning and late evening hours when background traffic noise is also reduced.
17. During all hours of operation of the site, it shall comply with the City's Noise Ordinance.
18. During all hours of operation after 11:00 PM, the patio area will be closed to be sensitive to neighboring residential properties. The owner or business operator will be responsible for maintaining a quiet atmosphere outside of the building.
19. The trash enclosure shall not be moved without the approval of the Development Services Director.
20. The applicant shall implement measures to reduce vehicle queue and idling in the drive-thru lanes at peak times as needed. These measures could include manual order entry by a restaurant staff person outside, or requirements for certain customers to park their vehicles for curbside service.
21. This approval does not include the allowance for live entertainment. Live entertainment may only be permitted subject to the approval of a Conditional Use Permit by the City and issuance of a "public entertainment permit". Contact the Planning and Code Enforcement Divisions for application information.
22. The project shall comply with all applicable Federal, State, and local laws and guidelines including the South Coast Air Quality Management District. A copy of the applicable Costa Mesa Municipal Code requirements has been forwarded to the Applicant and, where applicable, the Authorized Agent, for reference.
23. While the facility is in operation, all doors and windows, including the drive-through window, shall be closed except when in use. .

24. During peak customer times an employee with a handheld tablet will direct customers into the drive-through lane and facilitate orders.
25. Outdoor activities are limited to drive-through operations and the outdoor patio area as shown on the approved plans.
26. All required parking areas and driveways shall be illuminated under the direction of the Planning Division. Lights used to illuminate parking areas shall be directed away from any adjoining premises located in any residential zone under the direction of the Planning Division.
27. Truck deliveries shall not occur anytime between the hours of 8:00 pm and 7:00 am.
28. Prior to issuance of building permits, applicant shall contact the US Postal Service with regard to location and design of mail delivery facilities. Such facilities shall be shown on the site plan, landscape plan, and/or floor plan.
29. Comply with all waste diversion requirements including food waste and green waste disposal as determined by the State of California
30. The subject property's ultimate finished grade level may not be filled/raised unless necessary to provide proper drainage, and in no case shall it be raised in excess of 30 inches above the finished grade of any abutting property. If additional fill dirt is needed to provide acceptable on-site storm water flow to a public street, an alternative means of accommodating that drainage shall be approved by the City's Building Official prior to issuance of any grading or building permits. Such alternatives may include subsurface tie-in to public storm water facilities, subsurface drainage collection systems and/or sumps with mechanical pump discharge in-lieu of gravity flow. If mechanical pump method is determined appropriate, said mechanical pump(s) shall continuously be maintained in working order. In any case, development of subject property shall preserve or improve the existing pattern of drainage on abutting properties.
31. Demolition permits for existing structure(s) shall be obtained and all work and inspections completed prior to final building inspections. Applicant is notified that written notice to the Air Quality Management District may be required ten (10) days prior to demolition.
32. Concrete wheel stops shall be installed 2' from the front edge of open parking spaces, or where applicable, landscape planters shall be increased 2' in depth to allow curbing to serve as a wheel stop.
33. The use shall be conducted, at all times, in a manner that will allow the quiet enjoyment of the surrounding neighborhood. The applicant and/or operator shall institute whatever security and operational measures are necessary to comply with this requirement.
34. A copy of the conditions of approval for this project must be kept on premises and presented to any authorized City official upon request. New business/property owners shall be notified of conditions of approval upon transfer of business or ownership of land.
35. Prior to the release of occupancy/utilities, the applicant shall contact the Planning Division to arrange a Planning inspection of the site. This inspection

is to confirm that the conditions of approval and code requirements have been satisfied.

36. An outdoor closed-circuit security camera system shall be installed to record views of the parking and outdoor dining area.
 37. The three (3) parking stalls located at the drive-through exit shall be used as employee parking to avoid impacts on customer circulation.
 38. If any section, division, sentence, clause, phrase or portion of this resolution is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.
 39. The applicant, the property owner and the operator (collectively referred to as "indemnitors") shall each jointly and severally defend, indemnify, and hold harmless the City, its elected and appointed officials, agents, officers and employees from any claim, legal action, or proceeding (collectively referred to as "proceeding") brought against the City, its elected and appointed officials, agents, officers or employees arising out of City's approval of the project, including but not limited to any proceeding under the California Environmental Quality Act. The indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and cost of suit, attorney's fees, and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the applicant, the City and/or the parties initiating or bringing such proceeding. This indemnity provision shall include the indemnitors' joint and several obligation to indemnify the City for all the City's costs, fees, and damages that the City incurs in enforcing the indemnification provisions set forth in this section.
- PC 40. Subject to the satisfaction of the Public Works Director or designee, the driveway providing access to the project site from Old Newport Boulevard shall be reduced in width from 36 feet to 26 feet consistent with Costa Mesa Standard Plan Drawing Number 514 .
- PC 41. As soon as reasonably possible after the restaurant approved by this resolution has been operational for one year, the City of Costa Mesa Planning Commission shall conduct a review to determine if the permitted business hours are correlated to any adverse nuisances and/or public safety conditions occurring within a 300-foot radius as measured from the project site's perimeter property lines.

CODE REQUIREMENTS

The following list of federal, state, and local laws applicable to the project has been compiled by staff for the applicant's reference. Any reference to "City" pertains to the City of Costa Mesa.

- PInG. 1. Approval of the planning/zoning application is valid for two (2) years from the effective date of this approval and will expire at the end of that period unless

applicant establishes the use by one of the following actions: 1) a building permit has been issued and construction has commenced, and a valid building permit has been maintained by making satisfactory progress as determined by the Building Official; 2) a certificate of occupancy has been issued; or 3) the use has been established and a business license has been issued. A time extension can be requested no less than thirty (30) days or more than sixty (60) days before the expiration date of the permit and submitted with the appropriate fee for review to the Planning Division. The Director of Development Services may extend the time for an approved permit or approval to be exercised up to 180 days subject to specific findings listed in Title 13, Section 13-29 (k) (6). Only one request for an extension of 180 days may be approved by the Director. Any subsequent extension requests shall be considered by the original approval authority.

2. Permits shall be obtained for all signs according to the provisions of the Costa Mesa Sign Ordinance. Permits shall be obtained for landscaping and will require plan check and review from the Planning department and must comply with all applicable CMMC landscaping requirements including but not limited to tree count, shrub count, front setback landscaping and any applicable water conservation measures.
3. Parking stalls shall be double-striped in accordance with City standards.
4. Any mechanical equipment such as air-conditioning equipment and duct work shall be screened from view in a manner approved by the Planning Division.
- Water 5. Plan check and permit are required from Mesa Water District. Additionally, plumbing plans supporting the 1.5-inch meter need to be provided. A new service and meter will be required to supply the landscaping independent of the domestic supply to the building. Fire protection plans will be required to support the existing 6-inch fire protection point of connection if not they will need to abandon and cap the service in the street. The existing entrance driveway is impacting the existing fire hydrant so that will be addressed during the plan check. Any work in the street will require a permit from Caltrans.
- Bldg. 6. Comply with the requirements of the following adopted codes: 2022 California Building Code, 2022 California Electrical Code, 2022 California Mechanical Code, 2022 California Plumbing Code, 2022 California Green Building Standards Code and 2022 California Energy Code (or the applicable adopted, California Building Code, California Electrical Code, California Mechanical Code, California Plumbing Code, California Green Building Standards and California Energy Code at the time of plan submittal or permit issuance) and California Code of Regulations also known as the California Building Standards Code, as amended by the City of Costa Mesa. Requirements for accessibility to sites, facilities, buildings and elements by individuals with disability shall comply with chapter 11B of the 2019 California Building Code. Provide a plan to the County of Orange Health Dept. for review and approval.
7. Prior to the Building Division issuing any demolition permit, the applicant shall contact South Coast Air Quality Management District located at:

21865 Copley Dr.
Diamond Bar, CA 91765-4178
Tel: 909-396-2000 or Visit their web site
<http://www.costamesaca.gov/modules/showdocument.aspx?documentid=23381>

The Building Division will not issue a demolition permit until an Identification number is provided by AQMD.

- Bus. Lic. 8. All contractors and subcontractors must have valid business licenses to do business in the City of Costa Mesa. Final inspections, final occupancy and utility releases will not be granted until all such licenses have been obtained.
- Fire 9. Comply with the requirements of the 2022 California Fire Code, including the reference standards, as adopted and amended by Costa Mesa Fire & Rescue.
- 10. All seating in the assembly area shall be fixed according to the approved building plans.
- 11. At the time of development submit for approval an Offsite Plan to the Engineering Division and Grading Plan to the Building Division that shows existing parkway improvements and the limits of work on the site. Construction Access approval must be obtained prior to Building or Engineering Permits being issued by the City of Costa Mesa. Pay Offsite Plan Check fee per Section 13-231 of the C.C.M.M.C. and an approved Offsite Plan shall be required prior to Engineering Permits being issued by the City of Costa Mesa.
- Eng. 12. Reconstruct existing driveway approaches per City of Costa Mesa standards to comply with A.D.A requirements.
- PD. 14. For the first year in operation an on-site security guard is required to patrol from 9PM to closing. This requirement may be extended beyond the first year should there be an increase in service calls in the area related to the business.
- PW 15. Fulfill mitigation of off-site traffic impacts at the time of issuance of Building Permit by submitting to the Transportation Division the required Traffic Impact Fee according to the prevailing schedule of charges adopted by the City Council. The Traffic Impact Fee is calculated based on the net trip generation of 847 trip ends for the proposed project and includes a credit for any previously existing use. At the current rate, the Traffic Impact Fee is estimated at \$199,139.00. NOTE: The Traffic Impact Fee will be recalculated at the time of issuance of the Building Permit based upon any changes in the prevailing schedule of charges adopted by the City Council and in effect at that time.
- 16. Provide operational mitigation during peak demand periods to avoid impacts to the adjacent row of parking and to ensure that no queuing occurs on the adjacent City street. This mitigation includes a parking lot monitor for assisting drive through customers and vehicles entering/exiting parking spaces as well as additional staff taking drive through customer orders.

17. Install red curb for a distance of 100 feet north of the proposed driveway and approximately eight (8) feet on the southside, between the proposed driveway and the closest existing driveway at the adjacent parcel.
18. Design and construct a crosswalk on the south leg of the intersection of the Old Newport Boulevard and East 16th St. The Crosswalk design shall include the creation of a bulb out / curb extension on the east end and ADA-compliant ramps for both ends of the crosswalk. The applicant must submit the plan for review and approval from the Transportation Services Division.
19. Comply with the requirements of the 2022 California Fire Code, including the reference standards, as adopted and amended by Costa Mesa Fire & Rescue.
20. Obtain an encroachment permit from the City of Costa Mesa, Engineering Division, at the time of development and then construct P.C.C. driveway approaches, sidewalks, curbs & gutters, curb ramps, etc., per City of Costa Mesa Standards as shown on the Offsite Plans. For driveways, locations and dimensions are subject to the approval of the Transportation Services Division.
21. In order to comply with the 2003 Drainage Area Management Plan (DAMP), the proposed project shall prepare a Water Quality Management Plan conforming to the Current National Pollution Discharge Elimination System (NPDES) and the Model WQMP, prepared by a Licensed Civil Engineer which shall be submitted to the Department of Public Works for review and approval.
 - a. A WQMP (Priority or Non-Priority) shall be maintained and updated as needed to satisfy the requirements of the adopted NPDES program. The plan shall ensure that the existing water quality measures for all improved phases of the project are adhered to.
 - b. Location of BMP's shall not be within the public right-of-way.
22. Sewer improvements shall meet the approval of the Costa Mesa Sanitary District; call (949) 631-1731 for information.
23. Dedicate easements (as needed) for public utilities. Final determination of any easement dedication will be per the City Engineer.
24. Survey monuments shall be preserved and referenced before construction, pursuant to Section 8771 of the Business and Profession Code