



PLANNING COMMISSION AGENDA REPORT

VI.4.

MEETING DATE: SEPTEMBER 12, 2005

ITEM NUMBER:

**SUBJECT: APPEAL OF MINOR CONDITIONAL USE PERMIT ZA-05-23
CHRONIC CANTINA
1870 HARBOR BOULEVARD, SUITE 210**

DATE: SEPTEMBER 1, 2005

FOR FURTHER INFORMATION CONTACT: MEL LEE, AICP, SENIOR PLANNER (714) 754-5611

PROJECT DESCRIPTION

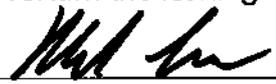
The applicant is appealing the Zoning Administrator's denial of a minor conditional use permit for a Mexican food cantina (Chronic Cantina) in the Triangle Square retail center. A minor conditional use permit is required because the applicant is proposing to serve alcoholic beverages past 11:00 p.m. and is proposing to deviate from shared parking requirements.

APPLICANT

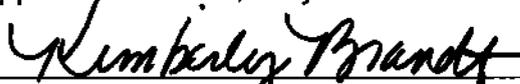
The applicants are Tim Johnson and Keith Scheinberg, representing the property owner, Triangle Square Investments.

RECOMMENDATION

Overturn the Zoning Administrator's denial and approve ZA-05-23, subject to conditions.



MEL LEE, AICP
Senior Planner



KIMBERLY BRANDT, AICP
Principal Planner

BACKGROUND

On June 9, 2005, the Zoning Administrator denied the minor conditional use permit for the proposed Mexican cantina because the Zoning Administrator felt the proposed use was not compatible with the uses in the surrounding area, and because there was no justification for the reduction in required parking.

The Zoning Administrator's decision was appealed by the applicant to the Planning Commission and scheduled for the meeting of July 25, 2005. At the meeting the applicant requested a continuance to allow more time to evaluate the parking issue. A copy of the July 25, 2005 staff report is attached for reference.

ANALYSIS

Parking

As indicated in the July 25, 2005 staff report, the applicant is proposing to enclose approximately 1,555 square feet of the common outdoor food court seating area; as a result, the number of parking spaces required by code increased over the number of parking provided within the center. Because the center was approved with a 15% parking reduction (1,256 parking spaces required; 1,064 spaces provided), the additional 39 parking spaces required for the proposed cantina could not be provided without converting a portion of the existing retail or restaurant area within the center to a use that requires less parking.

The operator/manager of Triangle Square, Charles Dunn Real Estate Services, is proposing to lease the 21,216 square-foot space formerly occupied by Niketown to a furniture store. Under code, furniture stores over 5,000 square feet in size require half the parking of a regular retail use (2 parking spaces per 1,000 square feet of floor area versus 4 spaces per 1,000 square feet of floor area). In the case of Niketown, this creates a surplus of 36 parking spaces. Additionally, the operator/manager of the retail center is proposing to convert approximately 5,000 square feet of floor area previously used by the basement market space for incidental storage. Because the incidental storage will not create an additional parking requirement, this creates an additional surplus of 17 parking spaces, or a total of 53 surplus spaces for the combined uses.

Because the 53 surplus parking spaces offsets the additional 39 parking spaces required for the cantina (which is actually 33 spaces when the previously approved 15% parking reduction is factored in), the portion of the minor conditional use permit dealing with the deviation from shared parking is no longer necessary and is withdrawn.

Hours of Use

As discussed in the July 25, 2005 staff report, a minor conditional use permit is required because the applicant is proposing to serve alcoholic beverages past 11:00 p.m. (2:00 a.m. closing time is proposed). Because the cantina is in proximity to Sutra Lounge and The Yardhouse, which also serve alcoholic beverages past 11:00 p.m., the Police Department determined that the proximity of the proposed cantina to the other

establishments in general, and Sutra Lounge in particular, could create noise, loitering, and security problems for customers and surrounding uses in the late evening/early morning hours.

There have been no Police or security issues related to the Yardhouse. With respect to Sutra Lounge, the operator has been working closely with staff to ensure that the establishment is operated in accordance with their minor conditional use permit. If problems with Sutra Lounge continue to persist, the operator has been advised that the City may seek action to modify and/or revoke their permit.

Based upon the new information provided by the operator/manager of the center with regard to parking, and staff's ongoing enforcement efforts with Sutra Lounge, the Planning Commission may overturn the Zoning Administrator's denial letter and approve ZA-05-23. If the Commission were to overturn the Zoning Administrator's decision and approve the proposed cantina, staff has included an additional condition of approval requiring the property manager to institute whatever operational measures necessary to minimize or eliminate any potential parking problems (condition number 21).

ALTERNATIVES

The Commission has the following alternatives:

1. Overturn the Zoning Administrator's denial and approve ZA-05-23 subject to the recommended conditions of approval; or
2. Uphold the Zoning Administrator's denial of ZA-05-23.

CONCLUSION

If the Planning Commission determines that the proposed use is compatible with the other uses in the center and any potential parking impacts will be minimized due to the proposed operational changes within the center, the Commission may overturn the Zoning Administrator's denial and approve ZA-05-23, subject to the recommended conditions of approval.

Attachments: Planning Commission Resolution
 Exhibit "A" Draft Findings
 Exhibit "B" Conditions of Approval
 Triangle Square Operator/Manager Lease Plans
 Planning Staff Report Dated July 25, 2005

cc: Deputy City Manager - Dev. Svs. Director
 Sr. Deputy City Attorney
 City Engineer
 Fire Protection Analyst
 Staff (4)
 File (2)

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Sirin Pojanasomboon
Operations Manger – Triangle Square
Charles Dunn Company
800 West Sixth Street, Suite 600
Los Angeles, CA 90017

File Name: 091205ZA0523Appeal	Date: 082605	Time: 3:30 p.m.
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A

RESOLUTION NO. PC-05-

**A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF COSTA MESA APPROVING MINOR CONDITIONAL
USE PERMIT NO. ZA-05-23**

THE PLANNING COMMISSION OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Tim Johnson and Keith Scheinberg, representing Triangle Square Investments, owner of the real property located at 1870 Harbor Boulevard, Suite 210, requesting approval of a minor conditional use permit for a Mexican food cantina serving alcoholic beverages past 11:00 p.m.; and

WHEREAS, the Zoning Administrator denied Minor Conditional Use Permit ZA-05-23 on June 9, 2005; and

WHEREAS, on June 16, 2005, Minor Conditional Use Permit ZA-05-23 was appealed to the Planning Commission; and

WHEREAS, a duly noticed public hearing was held by the Planning Commission on July 25, 2005, and continued to September 12, 2005.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", and subject to the conditions contained in Exhibit "B", the Planning Commission hereby **APPROVES** Minor Conditional Use Permit ZA-05-23 with respect to the property described above.

BE IT FURTHER RESOLVED that the Costa Mesa Planning Commission does hereby find and determine that adoption of this resolution is expressly predicated upon the activity as described in the staff report for Minor Conditional Use Permit ZA-05-23 and upon applicant's compliance with each and all of the conditions contained in Exhibit "B". 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.

PASSED AND ADOPTED this 12th day of September, 2005.

Chair, Costa Mesa
Planning Commission

EXHIBIT "A"

FINDINGS

- A. The information presented complies with Costa Mesa Municipal Code Section 13-29(g)(2) in that the proposed use is compatible with developments in the same general area. Specifically, based upon the new information provided by the operator/manager of the center with regard to parking, and staff's ongoing enforcement efforts within the center, the Planning Commission may overturn the Zoning Administrator's denial and approve ZA-05-23. Granting the conditional use permit will not be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity. Granting the minor conditional use permit will not allow a use, density or intensity that is not in accordance with the general plan designation for the property.
- B. The proposed use complies with Costa Mesa Municipal Code Section 13-29(e) because:
- The use is compatible and harmonious with uses on surrounding properties.
 - Safety and compatibility of the design of the building, landscaping, and other site features including functional aspects of the site development such as automobile and pedestrian circulation will remain unchanged.
 - The proposed use is consistent with the General Plan.
 - The planning application is for a project-specific case and does not establish a precedent for future development.
- C. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt from CEQA.
- D. The project is exempt from Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

EXHIBIT "B"**CONDITIONS OF APPROVAL (If Request is Approved)**

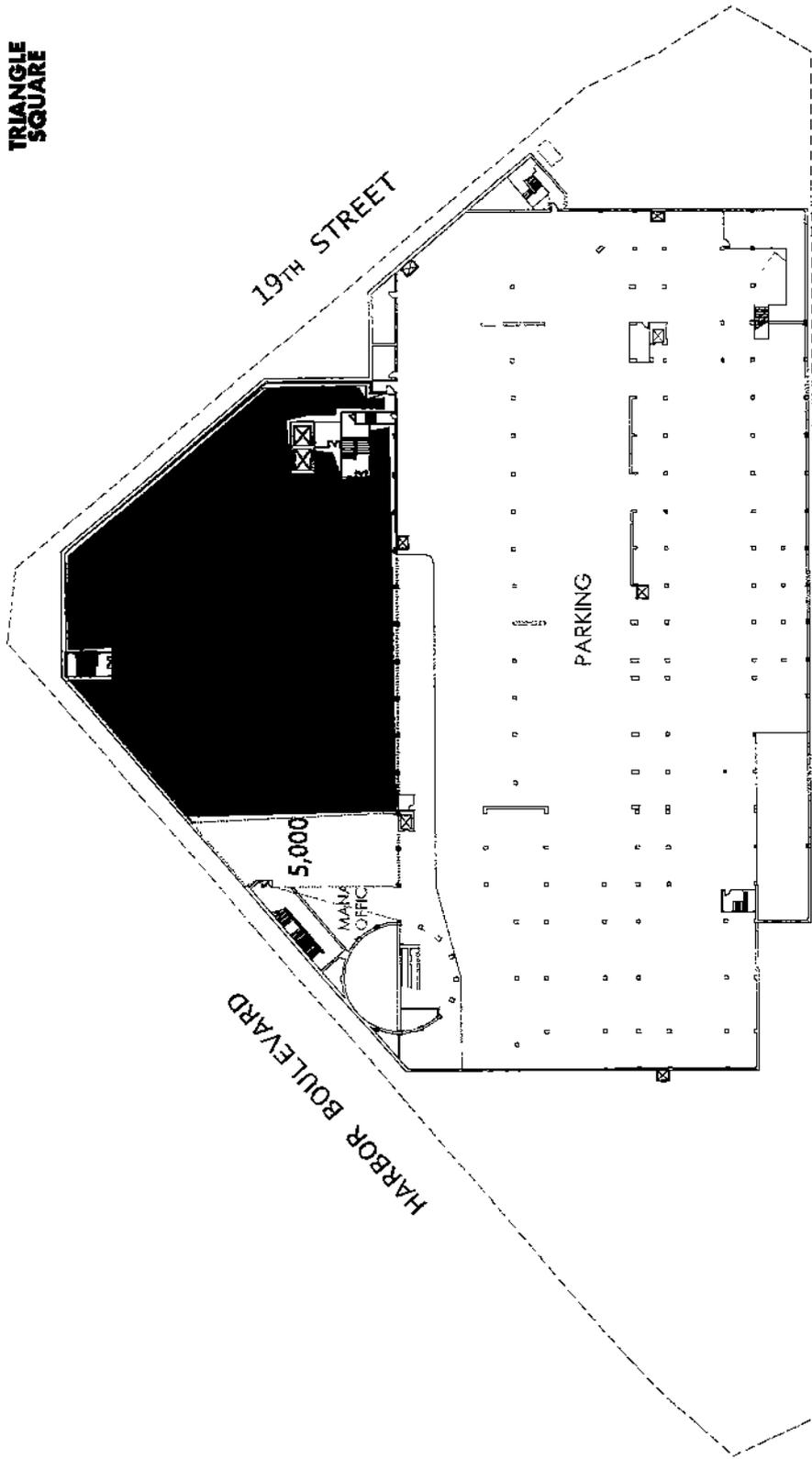
- Plng.
1. The minor conditional use permit herein approved shall be valid until revoked, but shall expire upon discontinuance of the activity authorized hereby for a period of 180 days or more. The conditional use permit may be referred to the Planning Commission for modification or revocation at any time if the conditions of approval have not been complied with, if the use is being operated in violation of applicable laws or ordinances, or if, in the opinion of the development services director or his designee, any of the findings upon which the approval was based are no longer applicable.
 2. A copy of the conditions of approval shall be kept on premises and presented to any authorized city official upon request. Applicant shall notify new business/property owners of conditions of approval upon transfer of business or ownership of land.
 3. The use shall be limited to the type of operation described in the staff report. Any change in the operational characteristics including, but not limited to, hours of operation or provision of live entertainment and/or dancing, will require approval of an amendment to the conditional use permit, subject to Planning Commission approval.
 4. 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.
 5. Live entertainment, amplified music and/or dancing is prohibited.
 6. 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.
 7. There shall be no room or designated area reserved for the exclusive use of designated persons or "private club members."
 8. The business 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 whatever security and operational measures are necessary to comply with this requirement.
 9. There shall be no sales of alcoholic beverages for off-site consumption.
 10. At all times the premises is open for business, the sale and service of alcoholic beverages shall be made only in conjunction with the sale and service of food.
 11. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food and meals during the same time period. The applicant shall at all times maintain records, which reflect separately the gross sales of food and gross sales of alcoholic beverages of the business. The records shall be kept no less frequently than on a quarterly basis and shall be made available to the Development Services Director or his designee on demand.

12. The restaurant shall remain a "bona fide public eating place" as defined by Section 23038 of the California Business and Professions Code.
13. Applicant shall secure the premises with appropriate security lighting and employee scrutiny of adjacent areas over which applicant has control, to prevent trash, graffiti, and loitering. Applicant shall further provide adequate lighting above the entrances to the premises sufficient in intensity to make visible the identity and actions of all persons entering and leaving the premises.
14. The applicant shall maintain free of litter of all areas of the premises over which applicant has control.
15. Any graffiti painted or marked upon the premises shall be removed or painted over within 48 hours of being applied.
16. All operational conditions and restrictions shall be complied with, regardless of operating hours, 24 hours a day, seven days a week.
17. The applicant shall contact the Planning Division to arrange a Planning inspection of the site prior to occupancy. This inspection is to confirm that the conditions of approval and code requirements have been satisfied.
18. The application will be reviewed annually by Planning Staff. Any problems or violations of the conditions of approval may require the application to be referred to the Planning Commission for modification or revocation.
19. Hours of operation shall be limited to 11:00 a.m. - 2:00 a.m., Tuesday through Saturday, and 11:00 a.m. - 12 midnight, Sunday.
20. The conditions of approval and ordinance or code provisions of ZA-05-23 shall be blueprinted on the face of the site plan as part of the plan check submittal package.
21. If parking shortages or other parking-related problems arise, the property manager/operator shall institute whatever operational measures necessary to minimize or eliminate the problem, including, but not limited to, converting a portion of the existing retail or restaurant areas within the center to uses that requires less parking.

MARKET LEVEL LEASE PLAN



* Not to Scale *



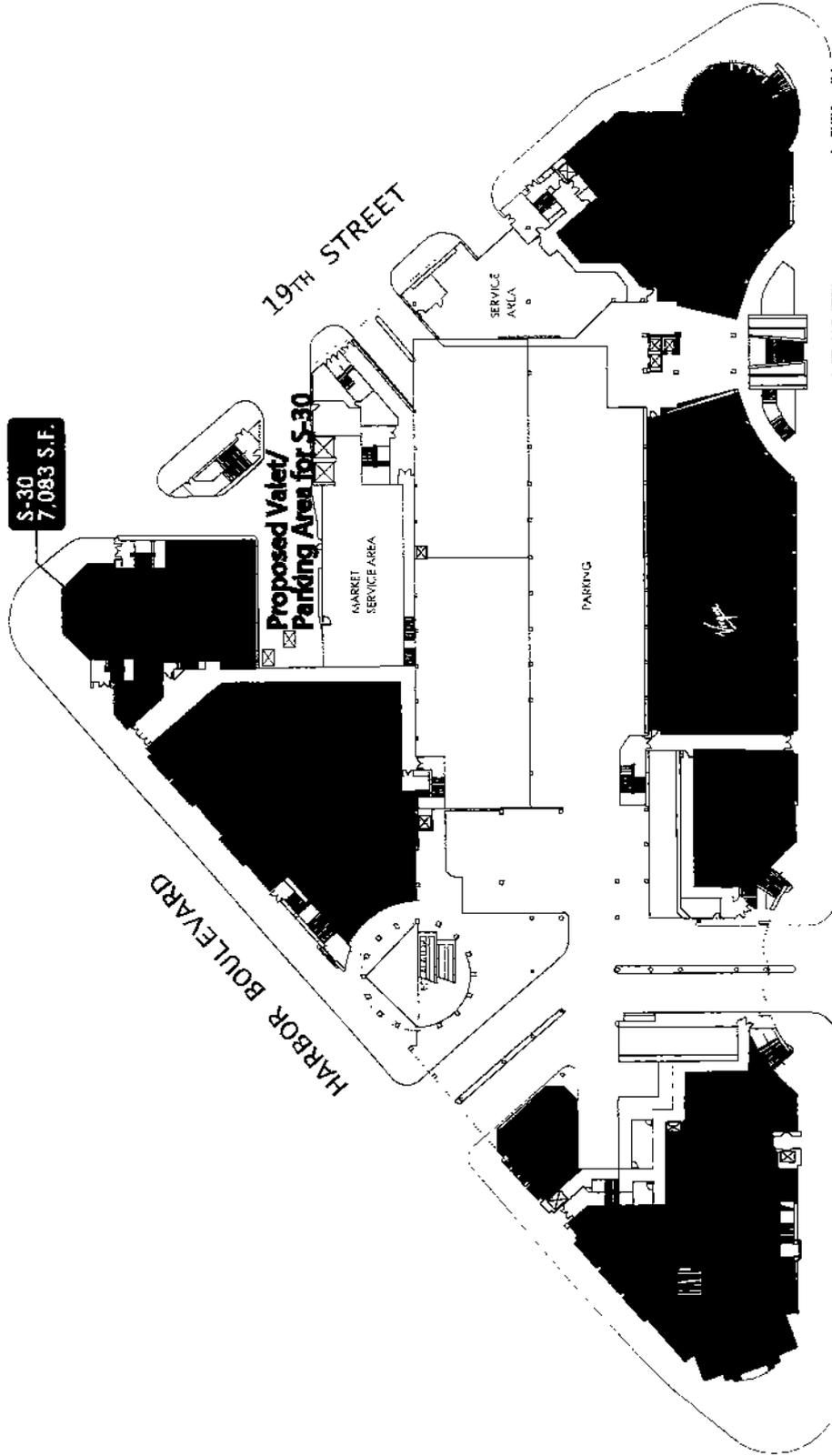
Storage
Retail

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Charles Dunn



STREET LEVEL LEASE PLAN



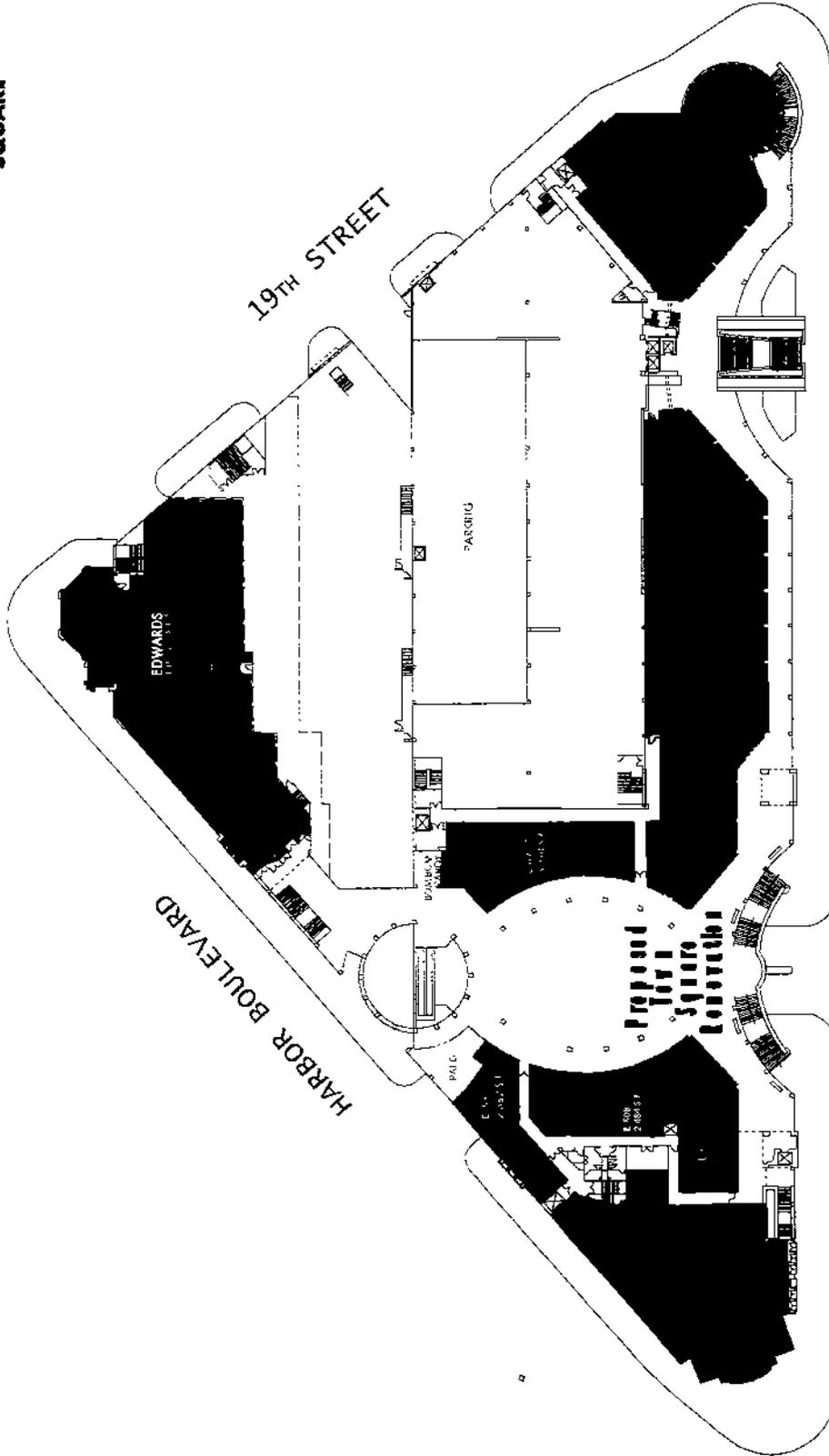
- Retail
- Storage
- Furniture
- Restaurant

NEWPORT BOULEVARD

Charles Dunn

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ENTERTAINMENT LEVEL LEASE PLAN



NEWPORT BOULEVARD

	Retail
	Restaurant
	Theater

Charles Dunn

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CITY OF COSTA MESA

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DEVELOPMENT SERVICES DEPARTMENT

**FOR ATTACHMENTS NOT INCLUDED IN THIS REPORT,
PLEASE CONTACT THE PLANNING DIV. AT (714)754-5245.**