PLANNING COMMISSION AGENDA REPORT

II. 3

MEETING DATE: JULY 10, 2006 ITEM NUMBER

SUBJECT: APPEAL OF MINOR CONDITIONAL USE PERMIT ZA-06-18
1676 TUSTIN AVENUE (BEACH PIT BBQ)

DATE: JUNE 29, 2006

FOR FURTHER INFORMATION CONTACT: WENDY SHIH, ASSOCIATE PLANNER (714) 754-5136

BACKGROUND

The subject application is an appeal of Zoning Administrator's denial of an outdoor television behind the Beach Pit BBQ restaurant. It was rescheduled from the June 12, 2006, Planning Commission meeting because there was a lack of a quorum. The original staff report, recommendation, and updated resolution are attached.

WENDY SHIH
Associate Planner

R. MICHAEL ROBINSON, AICP
Asst. Development Services Director

Attachments:
- Planning Commission Agenda Report dated June 12, 2006
- Draft resolution including exhibits "A" and "B"
- Appeal Application Form
- Description/Justification Form
- Zoning Administrator's denial letter dated April 20, 2006 and Correspondence
- Zoning/Location map
- Plans

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

Mike Simonian
99 Linda Isle
Newport Beach, CA 92660

Tim Decinces
711 East 17th Street, B-12
Costa Mesa, CA 92627

Dorothy McNiff
1672 Tustin Avenue
Costa Mesa, CA 92626

File: 071006ZA0618	Date: 062006	Time: 10:30 a.m.

PLANNING COMMISSION AGENDA REPORT

VI. 1.

MEETING DATE: JUNE 12, 2006 ITEM NUMBER

SUBJECT: APPEAL OF MINOR CONDITIONAL USE PERMIT ZA-06-18
1676 TUSTIN AVENUE (BEACH PIT BBQ)

DATE: JUNE 1, 2006

FOR FURTHER INFORMATION CONTACT: WENDY SHIH, ASSOCIATE PLANNER (714) 754-5136

PROJECT DESCRIPTION

Appeal of Zoning Administrator's denial of an outdoor television behind the Beach Pit BBQ restaurant.

APPLICANT

The appellant is Tim DeCinces, representing the property owner Mike Simonian.

RECOMMENDATION

Uphold Zoning Administrator's denial of the proposal by adoption of Planning Commission resolution.

WENDY SHIH
Associate Planner

R. MICHAEL ROBINSON, AICP
Asst. Development Services Director

BACKGROUND

The subject property is located four lots south of East 17th Street, on the east side of Tustin Avenue. The property is located within the East 17th Street Specific Plan area and is zoned C1 (Local Business District) with a General Plan designation of General Commercial. The lot is surrounded by commercially zoned and developed properties to the north, west (across Tustin Avenue) and east. The properties to the south are zoned R1 (Single-Family Residential) and contain two, two-story dwelling units.

On August 8, 2005, Planning Commission approved a planning application (PA-05-16) to allow off-site and shared parking on the abutting property at 411 East 17th Street (Frazee Paint), to accommodate outdoor seating for Beach Pit BBQ restaurant located at the subject site, but denied the applicant's request for an outdoor television behind the restaurant. The Planning Commission's decision was appealed to the City Council and on September 6, 2005, City Council upheld Planning Commission's decision to approve the off-site parking and to deny the outdoor television. The minor conditional use permit (MCUP) for the outdoor television was denied because it was felt that the additional outdoor activity would create higher noise levels due to cheering or other forms of audience participation and interaction impacting residents to the south. Since the Zoning Code does not allow reapplication for substantially the same request within 6 months of the date of the denial, the applicant waited until March 2006 to reapply for the outdoor television.

On April 20, 2006, the Zoning Administrator denied the applicant's reapplication for an outdoor television behind the restaurant. On April 26, 2006, the applicant appealed the decision because he feels that having an outdoor television is consistent with the restaurant and zoning of the property and that their 9 p.m. closing time would mitigate any negative impacts on the neighbors.

DISCUSSION

According to the applicant, there will be no sound from the television and he proposes to have the television turned off at 9 p.m. A canopy has also been installed behind the restaurant, which screens this area from the residents. However, it is staff's opinion that despite the restrictions proposed by the applicant, the outdoor activity will still negatively impact the residential properties to the south, more so than a typical outdoor dining area. Per the findings in the previous denial, sporting events and videos are likely to encourage higher noise levels due to cheering or other forms of audience participation and interaction. Since the restaurant is a one-story structure, and the adjacent homes are two-story, the restaurant will not buffer the noise, making the homes susceptible to higher noise levels. The closest home is only approximately 30 feet away from the outdoor dining area. While the canopy does screen the outdoor seating area behind the restaurant from the residents to the south, it is staff's opinion that it will not substantially reduce potential noise levels to allow the quiet enjoyment of the surrounding neighborhood.

GENERAL PLAN CONFORMITY

The subject site has a General Plan designation of General Commercial. Although a restaurant use with outdoor seating is permitted at the subject location, the General Plan states "General Commercial areas should be insulated from the most sensitive land uses,

either through buffers of less sensitive uses or on-site mitigation techniques." Since the outdoor television would encourage higher noise levels and is only approximately 30 feet away from the closest residence, the proposed outdoor use is not consistent with the General Plan because it cannot be properly buffered from the residential properties.

ALTERNATIVES

If the Zoning Administrator's denial of the MCUP is upheld, the restaurant could continue to operate with the approved outdoor dining areas and off-site parking without an outdoor television.

If the Planning Commission overturns the Zoning Administrator's decision and makes the findings for approval of the MCUP, an outdoor television could be used in the rear dining area. A list of recommended conditions of approval is attached for Planning Commission consideration.

CONCLUSION

Sporting events and videos, even without sound, could encourage higher noise levels due to cheering or other forms of audience participation and interaction. Since the restaurant is a one-story structure, and the adjacent homes to the south are two-story, the restaurant will not buffer the noise, making the homes susceptible to higher noise levels. The proposed outdoor television would be located approximately 30 feet from a residence. Therefore, staff recommends that the MCUP denial be upheld.

Attachments:
- Draft resolution including exhibits "A" and "B"
- Appeal Application Form
- Description/Justification Form
- Zoning Administrator's denial letter dated April 20, 2006 and correspondence
- Zoning/Location map
- Plans

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

Mike Simonian
99 Linda Isle
Newport Beach, CA 92660

Tim Decinces
711 East 17th Street, B-12
Costa Mesa, CA 92627

Dorothy McNiff
1672 Tustin Avenue
Costa Mesa, CA 92627

RESOLUTION NO. PC-06-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA DENYING MINOR CONDITIONAL USE PERMIT ZA-06-18

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

WHEREAS, an application was filed by Tim Decinces, authorized agent for Mike Simonian, owner of real property located at 1676 Tustin Avenue, for a minor conditional use permit to allow an outdoor television (outdoor activities) behind the restaurant; and,

WHEREAS, on April 20, 2006, the Zoning Administrator denied Minor Conditional Use Permit ZA-06-18; and

WHEREAS, an appeal application was filed on April 26, 2006; and

WHEREAS, Planning Commission considered the appeal on July 10, 2006.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A," and subject to the conditions of approval contained within Exhibit "B," the Planning Commission hereby **DENIES** Minor Conditional Use Permit ZA-06-18 with respect to the property described above.

PASSED AND ADOPTED this 10th day of July 2006.

_____
Bill Perkins, Chair
Costa Mesa Planning Commission

STATE OF CALIFORNIA)
)ss
COUNTY OF ORANGE)

I, R. Michael Robinson, secretary to the Planning Commission of the City of Costa Mesa, do hereby certify that the foregoing Resolution was passed and adopted at a meeting of the City of Costa Mesa Planning Commission held on July 10, 2006, by the following votes:

AYES: COMMISSIONERS

NOES: COMMISSIONERS

ABSENT: COMMISSIONERS

ABSTAIN: COMMISSIONERS

_____
Secretary, Costa Mesa
Planning Commission

EXHIBIT "A"

FINDINGS

1. The information presented does not comply with Section 13-29(g)(2) of the Costa Mesa Municipal Code in that the proposed outdoor use is not compatible with developments in the same general area. Granting the minor conditional use permit will be materially detrimental to the health, safety and general welfare of the public and injurious to properties within the immediate neighborhood. Specifically, the property abuts residential properties to the south and the proposed outdoor television is located approximately 30 feet from a residence. Sporting events and videos, even without sound, would encourage higher noise levels due to cheering or other forms of audience participation and interaction. Since the restaurant is a one-story structure, and the adjacent homes are two-story, the restaurant will not buffer the noise, making the homes susceptible to higher noise levels. While the canopy provides screening of the rear outdoor dining area, it would not adequately reduce potential noise impacts as a result of the outdoor television.

2. The information presented does not substantially comply with Section 13-29 (e) of the Costa Mesa Municipal Code in that:

   a. The proposed outdoor use is not compatible and harmonious with residential uses in the immediate vicinity.

   b. Safety and compatibility of the design of the buildings, parking areas, landscaping, and other site features including functional aspects of the site development such as automobile and pedestrian circulation have been considered.

   c. The proposed outdoor use is not consistent with the General Plan because it is not properly buffered from the sensitive, residential uses to the south.

   d. The planning application is for a project-specific case and does not establish a precedent for future development.

3. 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 under Section 15301 for Existing Facilities.

4. 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 application approved)

Plng.

1. The outdoor television shall be on mute at all times and shall be turned off no later than 9 p.m. daily.
2. 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.
3. 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 minor 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.
4. A copy of the conditions of approval for the minor conditional use permit 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.

CITY OF COSTA MESA
P. O. Box 1200
Costa Mesa, CA 92628-1200

FEE: $670 PAID

APPLICATION FOR REVIEW, APPEAL OR REHEARING

Applicant Name Tim DeCinces

Address 711 E. 17th St, B-12 Costa Mesa, CA 92627

Phone (949) 574-0222 Representing*

REQUEST FOR: ☐ **REVIEW**** ☒ **APPEAL** ☐ **REHEARING**

Decision of which review, appeal or rehearing is requested: (give number of rezone, zone exception, ordinance, etc., if applicable, and the date of the decision, if known.) ZA-06-18

Decision by: Zoning Admin Reasons for requesting review, appeal or rehearing:

Appeal is consistent with our businesses located in the same zone and within 200' of residential. Not allowing our business a television puts us at a competitive disadvantage. ~~Further, our hours of operation insure that the television won't adversely effect the neighbors any~~ Further, our hours of operation end at 9PM which should help mitigate any negative impact on the neighbors.

Please schedule hearing for June I am out of the country from May 21-30.

Date: 4/26/06 Signature: [signature]

For office use only – do not write below this line

SCHEDULED FOR THE CITY COUNCIL/PLANNING COMMISSION MEETING OF:
If review, appeal or rehearing is for person or body other than City Council/Planning Commission, date of hearing of review, appeal or rehearing:

* If you are serving as the agent for another person, please identify the person you represent and provide proof of agency.
** Review may be requested only by City Council or City Council Member

CITY OF COSTA MESA PLANNING APPLICATION

PROJECT DESCRIPTION AND JUSTIFICATION

1. **Project Address:** 1676 Tustin Ave

2. **Fully describe your request:**
Minor Conditional Use Permit for a patio television.

3. **Justification:**

   A. **For a Conditional Use Permit or Minor Conditional Use Permit: On a separate sheet, describe how the proposed use is substantially compatible with uses permitted in the same general area and how the proposed use would not be materially detrimental to other properties in the same area.**
   See attached

   B. **For a variance or Administrative Adjustment: On a separate sheet, describe the property's special circumstances, including size, shape, topography, location or surroundings that deprive the property of privileges enjoyed by other properties in the vicinity under the identical zoning classification due to strict application of the Zoning Code.**

4. **This project is: (check where appropriate)**

   ___In a flood zone. ___In the Redevelopment Area.

   ___Subject to future street widening. ___In a Specific Plan Area.

   ___Includes a drive-through facility.
   (Special notice requirements, pursuant to GC Section 65091 (d))

5. **I have reviewed the HAZARDOUS WASTE AND SUBSTANCES SITES LIST reproduced on the rear of this page and have determined the project:**

   ___Is not included in the publication indicated above.

   ___Is included in the publication indicated above.

Signature _____ Date 3/3/6

Six months ago the Beach Pit BBQ was before the council for a CUP, along with the CUP we were requesting the use of a television in our back patio area. The council determined that because of the possible noise of the television, an open patio area, and no track record of the business the television was denied. At the conclusion of the hearing we were told that if we were still interested in the television in six months to reapply.

Now six months later we are looking for the approval of a television in the back patio. One may ask what has changed, well a couple of things. First we have been in business for six months with an outstanding track record. We have been actively involved in various community activities such as sponsoring youth sports teams, donating to all of the local schools in our area and hosting/underwriting numerous fundraisers at our restaurant, as well as local charities. The Beach Pit BBQ is also a member in good standing with the Costa Mesa Chamber of Commerce. The only complaints that we have had come from the same neighbor of which according to a memo written recently by Mr. Lamm we are really doing nothing wrong. Second we are still not planning on having any sound come from the television, it would be just for the enjoyment of the customers while they are waiting for their food. Lastly we have added a tarp/awning over the back patio to keep heat and noise in, which makes the television even less of a problem. This significantly reduces any noise and eliminates all visibility from our neighbors.

Further, there is significant precedence throughout the City of Costa Mesa to support our approval. There are numerous establishments that have televisions either permitted or non-permitted on their patio's which are located within 200 feet of residential property. On 17th Street alone both The Outback Steakhouse and the Little Knight operate televisions in an outdoor patio environment.

Finally, our hours of operation are such that the addition of a television on the patio should be insignificant to the enjoyment of neighbors property. While we have the right to be open until 11 PM, our hours of operation end at 9PM. We have no intention of changing these hours as a family restaurant. We are more than willing to agree in this minor conditional use permit not to use the television past 9 PM.

For all for these reasons we think that a television in the back patio is not going to be a problem. We have had no problems with city in the past six months and hope that we will be able to get the television approved without any delay.

CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

DEVELOPMENT SERVICES DEPARTMENT

April 20, 2006

Mike Simonian
99 Linda Isle
Newport Beach, CA 92660

RE: MINOR CONDITIONAL USE PERMIT ZA-06-18
OUTDOOR TELEVISION FOR BEACH PIT BBQ
1676 TUSTIN AVENUE, COSTA MESA

Dear Mr. Simonian:

Review of the minor conditional use permit (MCUP) for the above-referenced project has been completed. The application, as described in the attached project description, has been denied, based on the attached findings. The decision will become final at 5 p.m. on April 27, 2006, unless appealed by an affected party (including filing of the necessary application and payment of the appropriate fee) or by a member of the Planning Commission or City Council.

If you have any questions regarding this letter, please feel free to contact the project planner, Wendy Shih, at (714) 754-5136, between 1 p.m. and 5 p.m.

Sincerely,

R. MICHAEL ROBINSON, AICP
Zoning Administrator

Attachments: Project description
Findings

cc: Engineering
Fire Protection Analyst
Building Division

Tim DeCinces
711 E. 17th Str., B-12
Costa Mesa, CA 92627

Building Division (714) 754-5273 • Code Enforcement (714) 754-5623 • Planning Division (714) 754-5245
FAX (714) 754-4856 • TDD (714) 754-5244 • www.ci.costa-mesa.ca.us

BACKGROUND/PROJECT DESCRIPTION

- On August 8, 2005, Planning Commission approved a planning application (PA-05-16) to allow off-site parking and shared parking at 411 East 17th Street (Frazee Paint), to accommodate outdoor seating for Beach Pit BBQ restaurant located at the subject site, but denied the applicant's request for an outdoor television behind the restaurant.
- Outdoor activities (outdoor television) requires a MCUP, which is typically reviewed by the Zoning Administrator. However, since it was filed in conjunction with the conditional use permit, both requests were forwarded to the Planning Commission for review so that all aspects of the project could be considered together.
- The Planning Commission's decision was appealed to the City Council and on September 6, 2005, City Council upheld Planning Commission's decision to approve the off-site parking and deny the outdoor television.
- The MCUP for the outdoor television was denied because the property abuts residential properties to the south and it was felt that the additional outdoor activity would create higher noise levels due to cheering or other forms of audience participation and interaction.
- The Zoning Code does not allow reapplication for substantially the same request within 6 months of the date of the denial. Because it has been 6 months since the City Council denied the MCUP for an outdoor television, the applicant is reapplying for the same request.
- According to the applicant, there will be no sound from the television and he proposes to have the television turned off at 9 p.m. A canopy has also been installed behind the restaurant, which provides screening from the residents.
- It is staff's opinion that despite the restrictions proposed by the applicant, the outdoor activity will still negatively impact the residential properties to the south, more so than a typical outdoor dining area.
- Per the findings in the previous denial, sporting events and videos are likely to encourage higher noise levels due to cheering or other forms of audience participation and interaction. Since the restaurant is a one-story structure, and the adjacent homes are two-story, the restaurant will not buffer the noise, making the homes susceptible to higher noise levels. The closest home is only approximately 30 feet away from the outdoor dining area.
- While the canopy does screen the outdoor seating area behind the restaurant from the residents to the south, it will not substantially reduce potential noise levels to allow the quiet enjoyment of the surrounding neighborhood.
- The subject site is designated General Commercial on the General Plan. Although a restaurant use with outdoor seating is permitted at the subject location, the General Plan states "General Commercial areas should be insulated from the most sensitive land uses, either through buffers of less sensitive uses or on-site mitigation techniques." Since the outdoor television would encourage higher noise levels and is only approximately 30 feet away from the closest residence, the proposed outdoor use is not consistent with the

General Plan because it cannot be properly buffered from the residential properties.

FINDINGS

1. The information presented does not comply with Section 13-29(g)(2) of the Costa Mesa Municipal Code in that the proposed outdoor use is not compatible with developments in the same general area. Granting the minor conditional use permit will be materially detrimental to the health, safety and general welfare of the public and injurious to properties within the immediate neighborhood. Specifically, the property abuts residential properties to the south and the proposed outdoor television is located approximately 30 feet from a residence. Sporting events and videos, even without sound, would encourage higher noise levels due to cheering or other forms of audience participation and interaction. Since the restaurant is a one-story structure, and the adjacent homes are two-story, the restaurant will not buffer the noise, making the homes susceptible to higher noise levels. While the canopy provides screening of the rear outdoor dining area, it would not adequately reduce potential noise impacts as a result of the outdoor television.

2. The information presented does not substantially comply with Section 13-29 (e) of the Costa Mesa Municipal Code in that:

   a. The proposed outdoor use is not compatible and harmonious with residential uses in the immediate vicinity.

   b. Safety and compatibility of the design of the buildings, parking areas, landscaping, and other site features including functional aspects of the site development such as automobile and pedestrian circulation have been considered.

   c. The proposed outdoor use is not consistent with the General Plan because it is not properly buffered from the sensitive, residential uses to the south.

   d. The planning application is for a project-specific case and does not establish a precedent for future development.

2. 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 under Section 15301 for Existing Facilities.

3. The project is exempt from Chapter XII, Article 3 Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

CITY OF COSTA MESA

P.O. BOX 1200 • 77 FAIR DRIVE • CALIFORNIA 92628-1200

DEVELOPMENT SERVICES DEPARTMENT

FOR ATTACHMENTS NOT INCLUDED IN THIS REPORT,

PLEASE CONTACT THE PLANNING DIV. AT (714)754-5245.