



# PLANNING COMMISSION AGENDA REPORT

VI. 2

MEETING DATE: MAY 11, 2009

ITEM NUMBER:

SUBJECT: ZONING APPLICATION ZA-09-12  
IN 'N OUT BURGER  
3211 HARBOR BOULEVARD

DATE: APRIL 30, 2009

FOR FURTHER INFORMATION CONTACT: WILLA BOUWENS-KILLEEN, AICP  
PRINCIPAL PLANNER  
(714) 754-5153

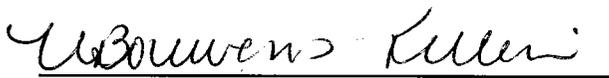
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## PROJECT DESCRIPTION

Planning Commission review of ZA-09-12, a minor conditional use permit for a new In 'n Out Burger, was continued from the April 27, 2009, Planning Commission meeting.

## RECOMMENDATION

Uphold the Zoning Administrator's approval of the project.

  
WILLA BOUWENS-KILLEEN, AICP  
Principal Planner

  
KHANH NGUYEN  
Acting Asst. Development Services Director

**BACKGROUND/ANALYSIS**

At the April 27, 2009 meeting, Planning Commission opened a public hearing to allow an attendee to speak on this item since he will be unable to attend the May 11<sup>th</sup> meeting. The speaker expressed concerns with possible traffic conflicts because of the popularity of In 'n Out Burger.

Although the replacement of Kaplan's restaurant by In 'n Out did not generate enough additional traffic to warrant the requirement of a full traffic study, the City's Transportation Services Division requested and received a traffic impact assessment to ensure that traffic entering and exiting the site as well as proposed on-site circulation would not adversely impact the site or the adjacent intersection and streets. Based on this assessment, Transportation Services determined that the circulation proposed by the applicant was acceptable.

The remainder of the analysis and the alternatives and recommendation remain unchanged from the staff report prepared for the meeting of April 27, 2009. The original staff report is attached and is also available on line:

<http://www.ci.costa-mesa.ca.us/council/planning/2009-04-27/042709ReviewZA0912.pdf>

- Attachments:
- 1. Draft Planning Commission Resolutions
  - 2. Traffic circulation report
  - 3. Staff report for the meeting of April 27, 2009

cc:

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

John Puente  
13502 Hamburger Lane  
Baldwin Park, CA 91706

June O'Connor  
P.O. Box 1942  
Newport Beach, CA 92649

File: 051109ZA0912	Date: 043009	Time: 8:30 a.m.
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**RESOLUTION NO. PC-09-**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY  
OF COSTA MESA APPROVING ZONING APPLICATION ZA-09-12**

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

WHEREAS, an application was filed by John Puente authorized agent for property owner June O'Connor, with respect to the real property located at 3211 Harbor Boulevard, requesting a minor conditional use permit for an approximately 3,200 sq.ft. drive-through restaurant with outdoor seating; an administrative adjustment to allow a 17-foot deep landscaped setback along Gisler Avenue; and a 16-foot deep landscaped setback along a portion of Harbor Boulevard in the C1 zone; and

WHEREAS, Planning Commission Chair James Righeimer requested a review of ZA-09-12 on April 13, 2009; and

WHEREAS, a duly noticed public hearing was held by the Planning Commission on April 27, 2009 and May 11, 2009.

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 upholds the Zoning Administrator's approval and **APPROVES** Zoning Application ZA-09-12 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 Zoning Application ZA-09-12 and upon applicant's compliance with each and all of the conditions contained in Exhibit "B", as well as with compliance of 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.

**PASSED AND ADOPTED this 11<sup>th</sup> day of May, 2009.**

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James Righeimer, Chair  
Costa Mesa Planning Commission



**EXHIBIT "A"**

**FINDINGS (If approved)**

- A. The information presented substantially complies with Costa Mesa Municipal Code section 13-29(g)(2) in that the proposed drive-through restaurant with outdoor seating is substantially compatible with developments in the same general area. 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. Specifically, with the exception of the proposed administrative adjustment and minor modification for reduced setback landscaped area and the placement of outdoor seating within 10 feet of the drive-through lane, the proposed project satisfies all applicable development standards. The closest residential properties are 189 feet to the northwest and a motel separates the residences and the proposed use. Additionally, no alcoholic beverages will be served or sold from this site and the use will provide a service to motel patrons. Although two of the five outdoor tables will be less than 10 feet from the drive-through lane, the two seats will be at the entry of the approximately 240-foot long drive-through lane, which could reduce the time cars idle next to the seats. Additionally, the majority of the seating is provided inside the building. Granting the conditional use permit will not allow a use, density or intensity which is not in accordance with the general plan designation for the property.
- B. The information presented substantially complies with section 13-29(g)(1) of the Costa Mesa Municipal Code in that special circumstances applicable to the property exist to justify granting of the administrative adjustment from landscaped setback requirements along Gisler Avenue, as modified by the Zoning Administrator. Strict application of the zoning ordinance would deprive the property owner of privileges enjoyed by owners of other property in the vicinity under identical zoning classification. Specifically, existing drive aisles and parking on the two abutting properties affect the design of the landscaping along this street frontage. The deviation shall be subject to such conditions so as to assure that approval of the administrative adjustment from setback requirements would not constitute a grant of special privilege inconsistent with limitation upon other properties in the vicinity and zone in which the property is situated. Granting the variance will not allow a use, density, or intensity, which is not in accordance with the general plan designation and specific plan for the property.
- C. The information presented substantially complies with section 13-29(g)(6) of the Costa Mesa Municipal Code in that the maximum 4-foot reduction in the landscape setback along Harbor Boulevard 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. Specifically, this reduction is the result of a future right turn pocket that will begin on this property and continue to the Gisler intersection. The

remainder of the setback is provided as required, and additional planter area will be provided behind this future turn pocket, which will off-set some of the reduction. Lastly, the building is setback approximately 45 feet from Harbor Boulevard.

- D. 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 15302.
- E. The project, as condition, is consistent with Chapter XII, Article 3, Transportation System Management of Title 13 of the Costa Mesa Municipal Code in that the development project's traffic impacts will be mitigated by the payment of traffic impact fees.

**EXHIBIT "B"**

**CONDITIONS OF APPROVAL**

- Plng. 1. Incorporate the two-foot bumper overhang of parking spaces into abutting on-site landscaped areas.
2. Incorporate Low Impact Development (LID) design techniques into all landscape areas, under the direction of Planning and Public Services staff.
3. Upon the effective date of approval of the minor conditional use permit, applicant shall immediately begin working with the Transportation Services Division and Cal Trans to replace the chain link fence along the off ramp with a combination wrought iron with pilaster supports or other fence/barrier acceptable to both the City and Cal Trans, and to landscape the area between the property line and V ditch consistent with abutting on-site landscape. The off-site fencing and landscaping plan shall be submitted for review and approval to the Planning Division. Issuance of the certificate of occupancy shall not be withheld pending the completion of this condition; however, the applicant shall provide documentation of the progress and estimated time of completion of this condition prior to release of the certificate of occupancy.
4. As feasible, reduce the width of the three access driveways as close as possible to a 20-foot minimum width.
5. Increase the depth of the easternmost landscape planter along Gisler Avenue to a minimum 17 feet.
6. Provide landscaping along the east property line where it abuts landscaping on the gas station property.
7. 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 stormwater 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 stormwater 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.
8. A copy of the conditions of approval for the 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.
9. The conditions of approval and ordinance or code provisions of Zoning

Application ZA-09-12 shall be blueprinted on the face of the site plan as part of the plan check submittal package.

10. The applicant shall contact the Planning Division to arrange Planning inspection of the site prior to the release of occupancy. This inspection is to confirm that the conditions of approval and code requirements have been satisfied.
11. 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.
12. The restaurant 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, sale of alcoholic beverages or provision of entertainment, will require approval of an amendment to the minor conditional use permit, subject to either Zoning Administrator or Planning Commission approval.
13. 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.
14. Transformers, backflow preventers, and any other above-ground utility improvements, shall be located outside of the required street setback area and shall be screened from view, under the direction of Planning staff.
15. Hours of operation for customer service are limited to 6 a.m. to 1 a.m. Monday through Thursday and 6 a.m. to 1:30 a.m. Friday, Saturday, and Sunday.
16. On-site controls (i.e., cones and employees) shall be instituted during peak operating times to minimize idling vehicle emissions.
17. No exterior roof access ladders, roof drain scuppers, or roof drain downspouts shall be permitted.
18. Truck deliveries shall not occur between 8 p.m. and 4 a.m.
- Eng. 19. During construction, maintain the public right-of-way in a "wet-down" condition to prevent excessive dust and promptly remove any spillage from the public right-of-way by sweeping or sprinkling.
- Trans 20. Install a sign at the exit of the drive-through lane directing drivers to exit Gisler Avenue to access the I-405 Freeway. A similar sign shall be located facing eastbound drivers as they enter the aisle leading to Harbor Boulevard.

**RESOLUTION NO. PC-09-**

**A RESOLUTION OF THE PLANNING COMMISSION OF  
THE CITY OF COSTA MESA DENYING ZA-09-12**

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

WHEREAS, an application was filed by John Puente authorized agent for property owner June O'Connor, with respect to the real property located at 3211 Harbor Boulevard, requesting a minor conditional use permit for an approximately 3,200 sq.ft. drive-through restaurant with outdoor seating; an administrative adjustment to allow a 17-foot deep landscaped setback along Gisler Avenue and a 16-foot deep landscaped setback along a portion of Harbor Boulevard in a C1 zone; and

WHEREAS, Planning Commission Chair James Righeimer requested a review of ZA-09-12 on April 13, 2009; and

WHEREAS, a duly noticed public hearing was held by the Planning Commission on April 27, 2009 and May 11, 2009.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A", the Planning Commission hereby reverses the Zoning Administrator's decision and **DENIES** Zoning Application ZA-09-12 with respect to the property described above.

**PASSED AND ADOPTED this 11<sup>th</sup> day of May, 2009.**

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James Righeimer, Chair  
Costa Mesa Planning Commission

**EXHIBIT "A"**

**FINDINGS (If denied)**

- A. The information presented does not substantially comply with Costa Mesa Municipal Code section 13-29(g)(2) in that the proposed drive-through restaurant with outdoor seating is not substantially compatible with developments in the same general area. Granting the conditional use permit will be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity.
- B. The information presented does not substantially comply with section 13-29(g)(1) of the Costa Mesa Municipal Code in that special circumstances are not applicable to the property exist to justify granting of the administrative adjustment from landscaped setback requirements along Gisler Avenue. Strict application of the zoning ordinance would not deprive the property owner of privileges enjoyed by owners of other property in the vicinity under the identical zoning classification.
- C. The information presented does not substantially comply with section 13-29(g)(6) of the Costa Mesa Municipal Code in that the maximum 4-foot reduction in the landscape setback along Harbor Boulevard will 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.
- D. The Costa Mesa Planning Commission has denied ZA-09-12. Pursuant to Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270(a), CEQA does not apply to this project because it has been rejected and will not be carried out.



# **CITY OF COSTA MESA**

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

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DEVELOPMENT SERVICES DEPARTMENT

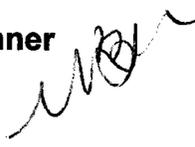
**FOR ATTACHMENTS NOT INCLUDED IN THIS REPORT,  
PLEASE CONTACT THE PLANNING DIV. AT (714)754-5245.**

VI.2a.  
ZA-09-12

# City of Costa Mesa

## Inter Office Memorandum

**TO:** Planning Commission

**FROM:** Willa Bouwens-Killeen, AICP, Principal Planner 

**DATE:** May 7, 2009

**SUBJECT:** ZA-09-12 – IN 'N OUT BURGER  
RESPONSE TO LETTER FROM CHARLENE ASHENDORF  
\*SUPPLEMENTAL MEMO\*

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Charlene Ashendorf, a property owner on Montana Avenue in Costa Mesa, asked for some additional information in a letter to James Righeimer dated April 29, 2009. A summary of the questions and Planning staff's response are as follows:

1. What is the projected length of time for construction of the project, including demolition of the existing building?

Once building permits are obtained, typical demolition and construction time is four months.

2. What are the proposed delivery times for food service?

Condition of approval number 18 prohibits truck deliveries between 8 p.m. and 4 a.m.

3. Are the drive-through hours consistent with those approved for McDonalds and Burger King?

Mc Donald's hours are from 5:30 a.m. to midnight. Burger King's hours are from 7 a.m. to midnight Sunday, 6 a.m. to midnight Monday through Wednesday, and 6 a.m. to 2 a.m. Thursday through Saturday. In 'n Out's proposed hours are from 10:30 a.m. to 1 a.m. Monday through Thursday and 10:30 a.m. to 1:30 a.m. Friday through Sunday. (The condition allows them to open at 6 a.m. should they wish to in the future, consistent with what Code permits for restaurants.)

In' n Out is separated from the residences by a distance of approximately 189 feet and a motel; Burger King abuts residential property and McDonald's is separated from the closest residences by only a street.

4. Will signage be visible to residents?

Although a 65-foot sign height was approved by the Zoning Administrator for one of the signs, the sign is approximately 495 feet away from residentially zoned property with visibility blocked by existing trees and buildings.

5. How will impacts of a drive-through establishment on use and safety be mitigated?

The City's Transportation Services Division requested and received a traffic impact assessment to ensure that traffic entering and existing the site as well as proposed on-site circulation would not adversely impact the site or the adjacent intersection and streets. Based on this assessment, Transportation Services determined that the circulation proposed by the applicant was acceptable.

6. How will Vagabond Motel's concerns regarding lighting, noise, and commotion be mitigated?

Impacts should be minimal since only 6 of the 133 rooms of the motel face the project site. Furthermore, motels are commercial uses.

cc:                   Acting Development Services Director  
                        Acting Asst. Development Services Director  
                        Senior Deputy City Attorney  
                        City Engineer  
                        Fire Protection Analyst  
                        Staff (4)  
                        File (2)

Charlene Ashendorf  
3210 Montana Avenue  
Costa Mesa, CA 92626

John Puente  
13502 Hamburger Lane  
Baldwin Park, CA 91706

June O'Connor  
P.O. Box 1942  
Newport Beach, CA 92649

File: 051109ZA0912SuppMemo	Date: 050709	Time: 8:15 a.m.
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MAY - 4 2009

April 29, 2009

Mr. James Righeimer, Chair  
City of Costa Mesa Planning Commission  
77 Fair Drive  
Costa Mesa, CA 92627

RE: In 'N Out Burger 3211 Harbor Boulevard, Costa Mesa, CA

Dear Chair Righeimer and Planning Commissioners:

I appreciate the opportunity to voice my concerns regarding the In 'N Out Burger Zoning Application.

Harbor Boulevard at the 405 Freeway is an entry to our city. As you drive under the freeway overpass you can almost "see" the Welcome to Costa Mesa sign. For years a dilapidated and abandoned restaurant has served as an eyesore to greet visitors and residents.

As we begin the application process that examines the appropriate planning of this site, which includes In 'N Out Burger, several items come to mind that I hope the commission will consider in the process and respond to:

- 1) If approved, what is the projected length of time for demolition and construction leading to opening of restaurant?
- 2) Sound from the 405 continues to have an impact on the quality of life for local residents, can you explain the proposed delivery times for food service?
- 3) Are the drive through hours that will impact our neighborhood with hours of operation to 1:00 and 1:30 AM in keeping with that of the local McDonald's and Burger King?
- 4) On-site controls for idling and traffic during peak hours have proven ineffective at other local In 'N Out establishments such as the one located in Santa Ana on Bristol.
- 5) Will the signage be visible to residents throughout the state streets? Signs and sign ordinance compliance are of important to maintaining the integrity of our residential neighborhood.
- 6) Considering the pedestrian traffic for parents and students on Gisler, especially for those who walk to Harbor for bus transportation, safety will be a major concern.
- 7) Keeping in mind that Gisler is heavily trafficked in the evenings and on weekends for sports related activities, a drive through establishment will definitely impact use and safety. How will this be addressed?
- 8) Concerns voiced by Vagabond Motel regarding lighting, noise and commotion should be taken into consideration, how will they be mitigated?

Thank you for your service to Costa Mesa. I look forward to hearing from you.

*Charlene M. Ashendorf*  
Charlene M. Ashendorf  
3210 Montana Ave., Costa Mesa  
cmash@ashendorf.com

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From: Bob Wright [mailto:bob@rossiproperties.com]  
Sent: Tuesday, April 28, 2009 12:10 PM  
To: PLANNING COMMISSION  
Cc: Bob Wright  
Subject: Proposed In 'n Out location

I have lived in the area of Harbor and Gisler for over 30 years. Having just now read about the proposed In 'n Out at that location, I am very opposed to the idea.

I have nothing against In 'n Out and I'm not opposed to growth, however that is a horrible location for such a site. The corner of Gisler and Harbor is congested on a normal day. The traffic lights entering Harbor and the Freeway from Gisler are very confusing to people not familiar with the area. I see illegal turns and cars running the stop lights almost daily. I am sure the intersection is high on the city's accident list.

I would love to see something positive done with the old Kaplan's site, but I don't think this is a good choice.

Sincerely,  
Bob Wright  
California St.  
Costa Mesa



VI.243  
ZA-09-12  
ZA-09-13

# City of Costa Mesa

## TELEPHONE RECORD

**Date:** April 28, 2009

**Name:** Mark (last name inaudible)

**Address:**

**Voice Mail Message Received by:** Corrie Viera, Administrative Secretary

**COMMENTS:** (Use Back or Attach Additional Sheets as Necessary)

I am a registered voter of Costa Mesa and I want to voice my support for an IN-N-OUT Burger Restaurant at the Kaplan's location. It is a great idea, and is good for the City.

With a proper job done by the Planning Commission, concerns of traffic backing up on Harbor Boulevard can be mitigated with a good plan.

I urge the Planning Commission to vote yes.



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[www.jdproperty.com](http://www.jdproperty.com)

VI. 2x3  
ZA-09-12  
ZA-09-13

**Received**  
City of Costa Mesa  
Development Services Department

MAY - 4 2009

April 30, 2009

Planning Commission  
CITY OF COSTA MESA  
77 Fair Drive, 2<sup>nd</sup> Floor  
Costa Mesa, CA 92626

RE: In-N-Out Burger proposed location  
Harbor & Giesler, Costa Mesa  
May 11, 2009 Meeting

Dear Planning Commission,

I am against allowing In-N-Out Burger to locate a drive thru at the above mentioned location due to severe traffic congestion caused by their custom cooking to order. I have seen several In-N-Out Burger locations with long waiting lines that spill out into public streets. This location butts up to a public park and school, which further enhances a danger to the children caused by the congestion. This location is immediately adjacent to the 405 exit and entrance which further complicates the traffic pattern.

Laguna Hills has a "sit down only" In-N-Out Burger at El Toro Road and Ave Carlotta, right off of the 5 Freeway. A sit down only In-N-Out Burger like Laguna Hills would probably work.

In conclusion, there could be no "finding" for any variances or conditional uses for a drive thru restaurant at this location.

Sincerely,

Joseph DeCarlo, CPM, CCIM, CRE  
[joe@jdproperty.com](mailto:joe@jdproperty.com)  
Ext. 210

JD/kn





VI.2  
ZA-09-12

# City of Costa Mesa

## TELEPHONE RECORD

**Date:** May 6, 2009

**Name:** Jason Piazza

**Address:**

**Voice Mail Message Received by:** Corrie Viera, Administrative Secretary

**COMMENTS:** (Use Back or Attach Additional Sheets as Necessary)

I am calling regarding the minor conditional use permit for the IN-N-OUT Burger Restaurant with a drive-through at Harbor Boulevard and Gisler Avenue. I guess it has been approved.

I missed the public hearing, but I would have come in strong protest, especially for a drive-through. I am not sure who did the traffic research, but it is absolutely the worst corner for an IN-N-OUT drive-through.

The big issue is parking. There is no where to park. IN-N-OUT will not get enough parking.

It looks like this item has been approved and will move forward. This is an awful idea.

I have lived in the Mesa Verde North area for 18-20 years and Harbor/Gisler is too congested of a corner. There is no reason to have a drive-through in that location.