

**REGULAR MEETING OF THE CITY OF  
COSTA MESA PLANNING COMMISSION**

**August 8, 2005**

The Planning Commission of the City of Costa Mesa, California, met in regular session at 6:30 p.m., August 8, 2005 at City Hall, 77 Fair Drive, Costa Mesa, California. The meeting was called to order by Vice Chair Hall, followed by the Pledge of Allegiance to the Flag.

**ROLL CALL:**

Commissioners Present:

Vice Chair Donn Hall

Eleanor Egan, James Fisler, and Bruce Garlich

Commissioners Absent:

Chair Bill Perkins

Also Present: R. Michael Robinson, Secretary

Costa Mesa Planning Commission

Christian Bettenhausen, Deputy City Attorney

Ernesto Munoz, City Engineer

Mel Lee, Senior Planner

Wendy Shih, Associate Planner

**MINUTES:**

The minutes for the meeting of July 25, 2005 were accepted as distributed.

**PUBLIC COMMENTS:**

None.

**PLANNING COMMISSION  
COMMENTS/SUGGESTIONS:**

Commissioner Fisler announced that the dedication of the skateboard park would be held on Tuesday, August 23, 2005 from 4 p.m. to 6 p.m. at TeWinkle Park. He also announced that City Council just passed a Residential Remodeling Incentive Program. He said this means that if a home is at least 5 years of age, the owner can proceed without paying for a building permit for certain eligible remodels and repairs, including changing out water heaters, central air conditioning and heating, electrical, stucco, fencing, pools, spas, etc. He advised that it is a great time for the community to save money on permits and help beautify their neighborhoods.

**CONSENT CALENDAR:**

On a motion made by Commissioner Garlich, seconded by Commissioner Egan and carried 4-0 (Perkins absent), the following item on the Consent Calendar received the action below.

VACATION EXCESS PUBLIC  
RIGHT-OF-WAY

Vacation of excess right-of-way for 1629 Superior Avenue. Environmental determination: exempt.

City

Adopted Planning Commission Resolution PC-05-50, finding that the proposed excess of public right-of-way is in conformity with the City of Costa Mesa 2000 General Plan.

**PUBLIC HEARINGS:**

PLANNING APPLICATION  
PA-05-16

Simonian-Caldwell/DeCinces

The Chair opened the public hearing for consideration of Planning Application for Tim DeCinces, authorized agent for Mike Simonian and Jane Caldwell, for a conditional use permit to allow off-site parking at 411 East 17<sup>th</sup> Street for the Beach Pit BBQ Restaurant (so the restaurant may have outdoor patio seating); with minor conditional use permits to deviate from shared parking at 411 East 17<sup>th</sup> Street and to allow outdoor activities (a television behind the restaurant), at 1676 Tustin Avenue in a C1 zone. Environmental determination: exempt.

Associate Planner Wendy Shih reviewed the information in the staff report and gave a presentation. She said staff was recommending approval of the conditional use permit and minor conditional use permit for off-site parking, and denial of the minor conditional use permit to allow outdoor activities (television behind the restaurant), by adoption of Planning Commission resolution, subject to conditions.

Tim DeCinces, 402 Kings Road, Newport Beach, agreed to the conditions of approval. In response to a question from Commis-

sioner Fisler, Mr. DeCinces said he was in agreement with the conditions of approval, but did not agree with staff's recommendation to deny the outdoor television request.

In response to a question from Commissioner Garlich regarding how the smoke was controlled on the smoker for their BBQ needs, Mr. DeCinces explained that the unit is designed to contain all the smoke for the cooking process taking up to 12 hours at a time depending on the thickness of the meat. Unlike other kitchen equipment that emits heat, it is designed to retain it with an evacuation button that will hold it before it the doors open. It is vented; the smoke when it does exit will rise straight up and out of the top and would occur only once or twice a day, depending on their needs for the restaurant. Vice Chair Hall asked if the smoke could be filtered to eliminate the exhaust gases, Mr. DeCinces said that at sometime, those gases would have to leave the cooking apparatus and he assumed it could not be filtered. In response to a question from Commissioner Egan regarding the possibility of a charcoal filtration system to absorb the odors and gases from the smoker so they would not be released into the atmosphere, Mr. DeCinces said he had not looked into it, but would be willing to look into it for the patrons and the City.

Grant McNiff, 1672 Tustin Avenue, Costa Mesa, explained that he is located on the southerly property and two of the bedrooms in his home are adjacent to the patio area Mr. DeCinces is planning to use for teen parties. He said the rear patio has a seating arrangement for 46 people in the rear yard where the television will go and that the adjacent cat hospital has a wall height of 14' to 18' feet. He also stated that there was a couple with 2 children who were talking out in the parking lot last evening when they arrived home and he could hear their voices because the noise goes across into his bedroom on the second story at the back of the restaurant. He did not believe 17 parking spaces would be adequate for 86 guests at the restaurant. In response to questions from Mr. McNiff, Vice Chair Hall explained that should the restaurant lose their parking behind Frazee Paint, they would have to give up some, if not all, of the outdoor seating. In response to Mr. McNiff's questions concerning the project, Commissioner Garlich explained that at the back of the chambers there are staff reports available for the public, which contain the parking study on page 14. Commissioner Garlich also pointed out that condition of approval #1 states that if parking becomes a problem then operational changes must be made to accommodate that. Mr. McNiff said at this time of year it is warm, and they do not have air-conditioning and are dependent upon being able to open their windows, as is the case in this neighborhood. He said the noise and music from the Pierce Street Annex between Santa Ana Avenue and Tustin Avenue, even though it's a long way from the subject project, could be heard throughout the neighborhood. In this case, we are talking about a television set, particularly sports specials that generate a lot of noise going up against the concrete wall and bounces off the cat hospital wall and then goes into their bedroom.

Dorothy McNiff, 1672 Tustin Avenue, Costa Mesa, directly adjacent to the Beach Pit Barbeque, stated that the property contained a nonconforming single-family residence when it was rezoned C1 many years ago. She said they have not known anything else and it is difficult to imagine it is now a restaurant with outdoor seating for 70 people. She asked for the hours of operation. Commissioner Garlich stated that they are Monday through Friday, 11 a.m. to 9 p.m. and 10 a.m. to 9 p.m. on Saturday and Sunday. Mrs. McNiff stated that it is her understanding the City has encouraged taxpayers to improve their property. She said she and her husband have complied and painted and landscaped their property spending thou-

sands of dollars. She felt the Planning Division staff has been indifferent to their complaints and do not care about their lack of privacy and the quiet enjoyment of their property.

Martin J. Stacel, a 16-year resident of 421 Cambridge Circle, residing adjacent to the proposed project, said he and his wife and two children are the ones Mr. McNiff pointed out as being on the property last night when he and his wife arrived home. He said they visited the site and discussed it in preparation for this public hearing. He said they live in the cul-de-sac located behind the restaurant and he discussed the same impacts as Mr. and Mrs. McNiff expressed previously. He said the impacts to this local neighborhood are already apparent from other bars and businesses.

Jay Gades, 311 West Wilson, Costa Mesa, a seven-year resident of Costa Mesa, stated he would like to see the Commission grant the requests made by the applicant. He felt there was a need to have a restaurant in the area that could provide enough seating for people in groups of 20 or so in an accommodating family dining setting.

Delores Ames, 1671 Tustin Avenue, Costa Mesa, across the street from the Beach Pit Barbeque, had concerns about the toxicity of the smoke. She said she did not understand how a restaurant could be built on this site with only 7 parking spaces with hopes of obtaining additional parking behind the restaurant. She questioned that before they started building, did they not have to have a certain number of parking spaces approved. She described the history of inadequate parking in this center and noted that the parking lots are full by 8 a.m. with employee parking. Regarding the television set, she said the restaurant has been set up for two television sets that will be placed very high on the wall. Further, she said with this type of establishment, it usually precedes the advent of games and lots of noise (afternoons and evenings; all year long). Ms. Ames stated that she was absolutely against this project and it was unfortunate the restaurant is already there.

In response to Ms. Ames' question regarding adequate parking, Vice Chair Hall explained that if the applicant does not obtain the necessary parking for the number of patrons they want, they cannot have the space allocated for those people; parking has to be there before they can use the space. In response to her question concerning the ability to build a restaurant with only 7 parking spaces, Ms. Shih explained that the restaurant has customer-seating area that is less than 300 square feet and per the parking code, then the parking required is a minimum of 6 parking spaces on site, which they have. Ms. James confirmed with Ms. Shih that this is for the "indoor part of the restaurant." The application calls for additional parking due to the outdoor seating request.

Mr. DeCinces returned to the podium to address the issues. He said Mr. McNiff made reference to deliveries at 8 a.m. He said no deliveries would be made at that hour because they are not open and there is no conflict. He said he was not sure where Mr. McNiff obtained the seating count for the restaurant and stated that they have been storing all their furniture in the back and it is not just their back area seating in that storage; they have worked with staff enough to know the number of seating arrangements available; there are 22 inside seats, 35 back yard seats, and 24 front yard seats. He said regarding Mrs. McNiff's point about seeing that property six years ago, it was zoned C1 at the time they purchased their own property next to it, so if they weren't properly informed, they should have been. He said on one of many attempts they have made to develop a working relationship with the residential neighbors; a major concern they shared was the traffic impact of the restaurant. They shared with them that the restaurant had potential to access off 17<sup>th</sup> and the neighbors seemed excited about

that. He felt clearly they were all here to discuss parking for this property this evening. He also clarified, that they are not trying to obtain a variance, but rather a conditional use permit. He said with regard to the noise to the cat hospital, they are planning to install thick plantings up against that wall that will hopefully absorb some of the noise generated by the concrete block wall. He said, inevitably, there would be noise when you live near commercial. He said he did appreciate the comments regarding the Pierce Street Annex and others. He noted that is exactly what they are *not* going to be. He believed there is a group of those establishments on 17<sup>th</sup> Street, and in this case, the hours and design of operation state that they are in no way a “bar” or “nightclub” and made this point in their ABC application; they have agreed never to obtain a “hard liquor license” and will only serve beer and wine. He said they look forward to standing behind what they’ve said and what they have developed in being a family restaurant. He said hopefully, the entire community and some of the folks who have spoken against this project would grow to appreciate the restaurant and like it.

In response to a question from Vice Chair Hall referencing Commissioner Egan’s comments and concerns regarding the smoke and odor from the equipment should it become an issue, would the applicant be willing to look into some method of eliminating the odor, etc., if this project is approved, Mr. DeCinces said his operations manager, Rob Goodwin, would find a way to work this out. Vice Chair Hall advised Mr. DeCinces that if this item is approved, he hoped that he would continue to work faithfully to accommodate his neighbors.

No one else wished to speak, and the Vice Chair closed the public hearing.

Commissioner Fisler commented that this restaurant is legal and the Commission is here to discuss the parking and the television. He felt the parking would be adequate behind the paint store, but he did not believe the television should be allowed.

MOTION:  
PA-05-16  
Approved staff’s recommendation

A motion was made by Commissioner Garlich, seconded by Commissioner Fisler and carried 4-0 (Perkins absent), to approve the conditional use permit and minor conditional use permit for off-site parking, and deviation from shared parking; and denied the minor conditional use permit to allow outdoor activities (television behind the restaurant), by adoption of Planning Commission Resolution PC-05-51, based on analysis and information in the Planning Division staff report, public testimony, and findings contained in exhibit “A”, subject to conditions in exhibit “B.”

During discussion on the motion, Commissioner Garlich stated that dealing with commercial property that abuts residential is always hard. He said due to the fact that this is a commercially-zoned property, it could be operating as a restaurant because the indoor operation alone is a permitted use and requires no public hearing or notice. The Commission is dealing with the outside seating and the parking, and he believed the conditions do the best job in addressing not only the parking requirements, but also other issues regarding noise, etc. He said the Frazee Painting parking lot would go along way toward mitigating the parking and access issues on Tustin Avenue. He agreed that staff’s recommendation regarding the television, is more of a concern about the noise of the patrons during such times as the Super Bowl, or other games and it is appropriate to deny that aspect of the request.

Commissioner Egan agreed with Commissioner Garlich and said the problem arises from the fact that a residential neighborhood stops and a commercial neighborhood begins and there is no way to avoid adverse impacts. She believed that without the additional

parking, this business could work as a combination of the small indoor seating and a lot of takeout. She said they do have adequate parking and it takes care of the outdoor seating area. She said as reluctant as she is to tell the neighbors they are going to have to live with it, it's a commercial use and permitted on that site. All the Commission is doing, as pointed out by Commissioner Garlich, is making sure the parking situation is adequate, and she believes that it is.

In response to a question from Vice Chair Hall, Mr. Robinson confirmed that this site is applicable to the City's noise ordinance regarding noise at the residential property line.

The Chair explained the appeal process.

The Chair opened the public hearing for consideration of Planning Application PA-05-23 for Dee Dever, authorized agent for John McCray, for a conditional use permit to operate a private school serving autistic children, grades 5<sup>th</sup> through 12<sup>th</sup>, in an industrial building, located at 3199 A2 Airport Loop Drive, in an MP zone. Environmental determination: exempt

Senior Planner Mel Lee reviewed the information in the staff report and gave a presentation. He said staff was recommending approval by adoption of Planning Commission resolution, subject to conditions.

Commissioner Egan inquired as to whether the proposed school has a contract to the Newport-Mesa Unified School District, Mr. Lee said he did not know a contract had been formally signed but he said the applicant is prepared to provide that information.

Dee Dever, 22431 Antonio Drive, Rancho Santa Margarita, agreed to the conditions of approval. Mr. Dever, in response to a previous question from Commissioner Egan regarding contractual obligations with Newport-Mesa Unified School District, stated that he is in possession of such a letter from Ms. Laura Arnold, the school's psychologist. He said there should be no difficulty in signing the contract with them and moving forward with the project.

In response to a question from Commissioner Egan regarding a school with no playground, play area, etc., Mr. Dever explained that this is a non-traditional school for autistic children, so there is not a "recess time" per say. It is a school for older children with autism; the idea here is that it will be individualized on a one-to-one basis in the "20 minutes nontraditional." He said you will see things like Yoga, stretching calisthenics, balancing nutrition, working with students' doctors, etc.; and, they will be going on daily outings and weekly field trips, etc.

Annie McCray Pauley, whose father is the owner of the building where this school will be located, said she also has a child with special needs. She said most of the therapies and services available in this area are in south county or north county (Fountain Valley and above). There is a discernable lack of these facilities in the Costa Mesa and Newport Beach area.

The Vice Chair stated that there was one letter in opposition to the project from another occupant in the area.

No one else wished to speak and the Vice Chair closed the public hearing.

A motion was made by Commissioner Fisler, seconded by Commissioner Egan and carried 4-0 (Perkins absent), to approve by adoption of Planning Commission Resolution PC-05-52, based on analysis and information contained in the Planning Division staff report, and findings in exhibit "A", subject to conditions in exhibit "B."

PLANNING APPLICATION  
PA-05-23

McCray/Dever

MOTION:  
PA-05-23  
Approved

Commissioner Egan commented that there is a tremendous need for facilities to serve autistic children and she brought up the issue of exercise because she knows that kids with autism frequently need physical exercise even more than the average person because sometimes they have an upper-body weakness and they need extra exercise, rather than less. She said she did not want to see those kids get less than the best.

The Chair explained the appeal process.

**REPORT OF THE DEVELOPMENT SVS. DEPARTMENT:**

Planning Commission Secretary, R. Michael Robinson, advised the public that he wished to build on the comments of Commissioner Fisler regarding the Residential Remodeling Incentive Program (RRIP). He explained there are information pamphlets available at the second-floor public counter; there is also a link on the City's website under the program name (above), for initial information on the program; a page for frequently asked questions; a page with list of local architects and designers that might be available to provide design services. He said there would also be series of 4 evening workshops falling on the last 4 Thursdays between 5:30 p.m. and 6:30 p.m. in conference room 1A. Information is also available on the City's website calendar for September as follows: (1) Re-roofing; (2) Masonry Walls and Fences; (3) Water Heaters; and (4) Room Additions and Alterations.

**REPORT OF THE CITY ATTORNEY'S OFFICE:**

None.

**ADJOURNMENT:**

There being no further business, Vice Chair Hall adjourned the meeting at 7:38 p.m. to the Planning Commission meeting of Monday, August 22, 2005.

Submitted by:

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R. MICHAEL ROBINSON, SECRETARY  
COSTA MESA PLANNING COMMISSION