

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

March 25, 2019

These meeting minutes represent an "action minute" format with a concise summary of the meeting. A video of the meeting may be viewed on the City's website at www.costamesaca.gov or purchased on DVD upon request.

Chair de Arakal called the meeting to order at 6:00 p.m.

Commissioner Zich led the Pledge of Allegiance.

ROLL CALL

Present: Chair Byron de Arakal
Vice Chair Jeffrey Harlan
Commissioner Kedarious Colbert
Commissioner Carla Navarro Woods
Commissioner Jon Zich

Staff: Barry Curtis, Director of Economic and Development Services
Jennifer Le, Assistant Director of Development Services
Tarquin Preziosi, Assistant City Attorney
Bart Mejia, City Engineer
Justin Arios, Assistant Planner
Johnwilly Aglupos, Assistant Planner
Julie Colgan, Recording Secretary

ANNOUNCEMENTS AND PRESENTATIONS:

None.

PUBLIC COMMENTS:

Ann Parker, Costa Mesa resident, stated concerns with a counseling facility on W. 19th Street and issues related to it.

PLANNING COMMISSIONER COMMENTS AND SUGGESTIONS:

Commissioner Navarro Woods spoke about an event she attended at UC Irvine where Master's degree students made presentations on revitalizing the Westside of Costa Mesa.

Chair de Arakal stated that he will be reaching out to Commissioner Navarro Woods about the UC Irvine event she attended because he was unable to go.

CONSENT CALENDAR: None

PUBLIC HEARINGS (00:05:25)

1. REVIEW OF THE ZONING ADMINISTRATOR'S DECISION TO APPROVE A MINOR CONDITIONAL USE PERMIT ZA-18-71 TO INSTALL A SMALL CELL FACILITY ON TOP OF A SOUTHERN CALIFORNIA EDISON STREETLIGHT POLE NEAR 833 CORTEZ STREET

Project Description: Zoning Application 18-71 is a request for a Minor Conditional Use Permit to install a small cell network on top of a Southern California Edison streetlight pole within 500 feet of a residential zone. The facility complies with the small cell design guidelines. It will require the removal and replacement of the existing pole and installation of an underground utility pull box for fiber and power to the new pole.

Environmental Determination: The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15303 (Class 3), New Construction.

No ex-parte communications to report.

Justin Arios, Assistant Planner, presented the staff report.

Commissioner Navarro Woods and Jennifer Le, Assistant Director of Development Services, discussed that staff looks at abutting residences when evaluating whether a small cell facility is in "horizontal direct view" in residential areas. Whether a facility is in direct view of an abutting residence is a consideration for determining the reviewing body for the application but it is not a requirement for the approval or denial of the application.

Commissioner Zich, Mr. Arios, Ms. Le, and Tarquin Preziosi, City Attorney, discussed the different criteria that staff looks at when deciding who will be the reviewing body for a small cell facility application; whether public correspondence would affect at which level the small cell facility application is reviewed; why the 500-foot distance from residentially-zone property is an important criteria; how small cell facility applications from multiple carriers in the same location are handled; the time limit an applicant has to install the small cell tower after its application is approved; who determines that this site is in compliance with the FCC regulations; whether staff is familiar with the lawsuits mentioned in a public correspondence; whether the applicant submitted a radio frequency (RF) electromagnetic energy report (RF Report); whether this location has been analyzed for RF exposure compliance; and who would be responsible to provide an RF analysis if a second story construction occurs adjacent to a small cell facility.

Chair de Arakal, Mr. Arios, and Ms. Le discussed that this application includes placing the above-ground power line through the utility box underground; what happens if the pole equipment does not meet FCC regulations; what changes will occur to the pole if the application is approved; and whether another cell phone carrier can add additional equipment to a pole that already contains a microsite.

PUBLIC COMMENTS

Franklin Orozco, applicant, stated he has read the conditions of approval and agrees to them. He also addressed some of the Commissioner's questions.

Commissioners and Mr. Orozco discussed the analysis of the maximum permissible RF exposure limits in the RF Report and that there are completed macro cell tower installations with similar heights in proximity to office and residential areas in the City; why this particular location was chosen; how many nodes in the City are needed to satisfy the communication gap; whether RF emissions are evaluated when two cell phone carriers colocate on the same light pole; and what the difference is in RF and electromagnetic radiation on a macro site versus a small cell site.

Chair de Arakal and Ms. Le discussed whether the minor conditional use permit for this application would be nullified if an adjacent second story addition with a direct view of the facility was approved and constructed.

Brian Estrada, Costa Mesa resident, asked what the comprehensive plan is for cell towers in the City; stated that he finds it hard to believe that the cell tower industry does not have a projection on how many cell towers are being proposed over the next few years; stated that the public should not be silenced by outdated Federal legislation on the RF issue; spoke on the public health concerns of long-term exposure to low level RF radiation; and the potential risk of prolonged living under cell towers.

Ashley Estrada, Costa Mesa resident, provided documents at the meeting; spoke on studies that showed the effects on fireman from small cell towers placed on fire stations and on cell phone towers that were placed near schools where children got cancer; stated that the signatures that she got on the petition to stop neighborhood cell phone towers was very easy to obtain; that the small cell tower only being ten percent less powerful than a macro cell tower does not seem like that much smaller; studies show that low frequency EMF is possibly carcinogenic (cancer-causing); and that there is a two-story house directly across from the proposed location.

David Lefstein, Costa Mesa resident, stated that there are 13 children that live within the area; and spoke on a national toxicology program study from February of this year showing that children's brains absorb two times more radiation; and stated concerns with how outdated the human exposure guidelines are that were adopted by the FCC in August 6, 1996.

Alexandra Martin, Southern California Edison, clarified how many small cell facility applications are currently being processed by Edison; how a street light pole is chosen; that cell phone carriers cover the cost of improvements; that poles are allocated on a first come-first served basis and whoever applies first will get the utility pole; no two carries are allowed on one utility pole; that a site will be canceled if there is inactivity on the utility pole application; and that the process for SCE approval is not a short one.

Ann Parker, Costa Mesa resident, thanked Commissioner Navarro Woods for pulling up this item; applauded the young families that came together and got involved with this item; stated the young families are well educated and did their homework and hopes the Commission listens to them and asked that the Commission not to be intimidated by AT&T and Edison and the young families, residents, and constituents should come first. She stated that Boeing 747 are safe right now. They keep telling us that everything is safe. That OxyContin was safe, this is safe, this is safe. She stated this is not safe and completely resents the Zoning Administrator who just passed this without letting everybody know or giving them a chance to speak. None of these cell phone things should be ever passed without coming before the Planning Commission because the surrounding residents have the right to know and she

knows because she lives near one of the first ones put up in the City without any notice to the residents by Jim Righeimer, Gary Jabara, and Mobilite Cell Phone on the corner of 20th Street and Tustin Avenue. People said "what are you so worried about?" She said do you read the studies, health studies, the City had no plan. She asked Vice Chair Harlan and Chair de Arakal if they recused themselves the first time when the initial vote the first time around for cell phone towers because of clients they had. Think of the money that the Edison Company is making off this. Of course they are going to get up here and tell you that it is completely safe. I do not believe it is safe. I believe it is the fire department. Did you know that right now in our City and almost everywhere in California that they are not allowed to put these on the fire department buildings because of what happened with the studies. Why does the Commission ignore the science? Why don't you listen to the residents? There are other places to put these things besides the telephone poles and the light poles. Put them on top of the commercial buildings. Let the local business people make some money instead of the Edison Company.

Commissioners and Mr. Preziosi discussed what would be the recourse for the applicant if the Commission overturned the Zoning Administrator's approval based on the record heard at this meeting on health and safety; and whether there is case law where a jurisdiction challenged FCC regulations as to the adequacy of the standards; and whether health and safety concerns or line of sight are reasonable findings for denial based on the review criteria that has been established by the City.

Commissioners and Ms. Le discussed whether the RF exposure compliance analysis that is required by the FCC is performed on the actual emanation from the specific installation and whether there are other cities that have a comprehensive master plan for the micro site towers.

The Chair closed the public hearing.

MOTION: Move that the Planning Commission uphold the Zoning Administrator's decision and approve Zoning Application 18-71, subject to conditions of approval; and find that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15303, Class 3, for New Construction.

Moved by Commissioner Navarro Woods, seconded by Commissioner Zich.

Commissioner Zich, Commissioner Colbert, Vice Chair Harlan, and Chair de Arakal spoke in support of the motion.

Chair de Arakal asked that the post-construction RF reports showing compliance with FCC regulations be posted online.

RESOLUTION PC-19-13 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA TO UPHOLD THE ZONING ADMINISTRATOR'S DECISION AND APPROVE MINOR CONDITIONAL USE PERMIT ZA-18-71 TO INSTALL A SMALL CELL FACILITY ON TOP OF A SOUTHERN CALIFORNIA EDISON STREETLIGHT POLE NEAR 833 CORTEZ STREET

The motion carried by the following roll call vote:

Ayes: de Arakal, Harlan, Navarro Woods, Zich, Colbert

Noes: None
Absent: None
Abstain: None

The Chair explained the appeal process.

2. PLANNING APPLICATION 19-04 FOR A CONDITIONAL USE PERMIT FOR A 1,497-SQUARE-FOOT CONVENIENCE STORE WITH THE SALE OF BEER AND WINE FOR OFF-SITE CONSUMPTION (TYPE 20 ABC LICENSE) AND A CONDITIONAL USE PERMIT FOR CONCURRENT SALE OF ALCOHOLIC BEVERAGES AND MOTOR VEHICLE FUEL LOCATED AT 2281 NEWPORT BOULEVARD

Project Description: Planning Application 19-04 is a request for a Conditional Use Permit for the construction of a new 1,497-square-foot convenience store at an existing gas station with the sale of beer and wine for off-site consumption in conjunction with a State Alcoholic Beverage Control (ABC) License (Type 20, Off-Sale Beer and Wine), and a Conditional Use Permit for the concurrent sale of alcoholic beverages and motor vehicle fuel.

Environmental Determination: The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15303 (Class 3), New Construction.

No ex-parte communications to report.

Justin Arios, Assistant Planner, presented the staff report.

Commissioners, Ms. Le, Barry Curtis, Economic and Development Services Director, and Mr. Arios discussed whether it is a normal process that the applicant would seek an ABC License from the state after they receive approval of the conditional use permit from the City; would ABC deny a license because the census tract already exceeds the number of licenses based on their established over-concentration ratio; what the crime reporting is in this district relative to the City average; how ABC License #4 and #5 in the census tract got approved when three are allowed; questioned the use allowed under ABC License #5 which is located in a residential home; whether the hours of operation are limited in the conditions of approval separate from limiting hours for the sale of alcohol; Condition of Approval No. 37 is a mandatory condition in the zoning code and cannot be revised; how staff incorporates the Police Department's position into staff's recommendation; whether staff used the Police Department's online app to view the number of calls for service for the proposed location; whether the entire conditional use permit becomes void if the Type 20 ABC License transfer within the same census tract (required per condition of approval) does not occur; that the zoning code requires convenience stores to obtain a conditional use permit regardless of whether they engage in the sale of alcohol beverages; the process of a liquor license transfer; that the City is notified by ABC when a new or transfer of a license occurs; and confirmed that the applicant can only secure a transfer of one of the five existing ABC Licenses that are within the same census tract to comply with the condition of approval.

PUBLIC COMMENTS

Joseph Karak, applicant, stated he has read the conditions of approval and agrees to all the conditions of approval except No.13.

Ann Parker, Costa Mesa resident, stated that she hopes the Commission does not own any 76 gas station stock or T-Mobile stock or AT&T stock or Edison stock because they should be recusing themselves. Spoke on the 99 Cent Store that was magically passed by the Zoning Administrator and Mayor Katrina Foley pulled it up because she was concerned that the residents were concerned because in that area on Harbor Boulevard there were already too many liquor stores/liquor licenses. Stated that she finds this application offensive and does not know why the staff is not catching it, besides the fact that this is a heroin heaven over here when you got the convenience stores and now you will have another convenience store half a block away --- they turn into heroin central not to mention the liquor. This one is going to have a bathroom. They neglected to go across the street. People walk, they also drive. There is a liquor store right across the street and it is not even mentioned here (staff report). What about Stater Brother's. They have everything you could possible want in Stater Brother's and there is also restaurants with liquor licenses along Newport Boulevard. She asked why are they not counted in this? I really resent the staff not counting this. It is exactly like the 99 Cent Store. They didn't go across the street on that one. Remember some of you were here so why are they not counting these other liquor licenses. This is coming right off the 55. This sounds like a recipe for disaster. Once again I resent the zoning people that do not count all the liquor licenses properly. Just like the sober living things. They don't count the actual houses. They are not counting the restaurants that have liquor licenses.

Alexandra Benson and Eddie Ballat (Costa Mesa business operator), stated concerns with the traffic, oversaturation of liquor stores, drug use, crime, stealing, littering, lack of storage for the products and asked whether there has been a traffic study for that location.

Mr. Karak responded to public comments.

Commissioner Zich and Bart Mejia, City Engineer, discussed that the drive approach location is proposed to change slightly and that the traffic flow would improve based on the proposed changes.

Commissioner Zich and Mr. Arios discussed that the map in the staff report showed the overconcentration of liquor licenses based on off-sale consumption licenses located within the same census tract according to ABC procedures, and that on-site restaurants and bars with on-sale consumption liquor licenses are not shown.

Commissioner Navarro Woods, Mr. Arios, and Ms. Le discussed that the number of fuel pumps will remain the same at the location and that state and City regulations limit alcohol sales between 10 p.m. and 8 a.m.

Vice Chair Harlan and Mr. Karak discussed whether he has approached any of the liquor license holders in the same census tract to transfer their ABC License to him.

Chair de Arakal and Mr. Karak discussed whether he would still build the convenience store if he could not obtain a Type 20 liquor license in order to sell alcohol at the location.

Ms. Le responded to Commissioner Navarro Woods question about the hours for alcohol sales and stated that Condition of Approval No. 11 addresses the hours for alcohol beverage sales and clarified that it is a discretionary condition that can be changed. She also clarified that Condition of Approval No. 37 cannot be changed by the Commission because it is a mandatory condition from the City's Zoning Code.

Chair de Arakal and Ms. Le discussed that the applicant could still build the convenience store (if the CUP was approved) whether or not he secures the Type 20 ABC License within the census tract.

Ms. Le answered a previous question about state regulations on the time that alcohol can be sold and stated that ABC prohibits the sale of alcohol between 2 a.m. and 6 a.m.

The Chair closed the public hearing.

MOTION: Move that the Planning Commission adopt a Resolution finding that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15303, Class 3, for New Construction; and approve Planning Application 19-04, subject to conditions of approval with the following modification:

Condition of Approval No. 11 to read: "Alcoholic beverage sales are prohibited between 10 PM and 6 AM (Type 20 ABC Licenses currently prohibit sales from 2 AM to 6 AM)".

Moved by Vice Chair Harlan, seconded by Chair de Arakal.

Chair de Arakal provided comments on the motion.

Commissioner Zich provided comments on criticism of the application and staff made during public comments.

Commissioner Navarro Woods spoke in opposition to the motion.

RESOLUTION PC-19-14 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA APPROVING CONDITIONAL USE PERMIT PA-19-04 FOR A 1,497-SQUARE-FOOT CONVENIENCE STORE WITH THE SALE OF BEER AND WINE FOR OFF-SITE CONSUMPTION (TYPE 20 ABC LICENSE) AND A CONDITIONAL USE PERMIT FOR CONCURRENT SALE OF ALCOHOLIC BEVERAGES AND MOTOR VEHICLE FUEL LOCATED AT 2281 NEWPORT BOULEVARD

The motion carried by the following roll call vote:

Ayes: de Arakal, Harlan, Zich, Colbert

Noes: Navarro Woods

Absent: None

Abstain: None

The Chair explained the appeal process.

3. PLANNING APPLICATION 19-07 IS A REQUEST FOR A CONDITIONAL USE PERMIT TO ESTABLISH A LUXURY AUTO STORAGE FACILITY WITH INDIVIDUAL PRIVATE LEASABLE STORAGE UNITS AND A CLUBHOUSE WITHIN AN EXISTING INDUSTRIAL BUILDING AT 3080 AIRWAY AVENUE

Project Description: Planning Application 19-07 is a request for a Conditional Use Permit to establish a luxury auto storage facility with individual private leasable storage units and a

clubhouse within an existing industrial building. Each individual storage unit would include a finished mezzanine.

Environmental Determination: The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15301 (Class 1), Existing Facilities.

No ex-parte communications to report.

Johnwilly Aglupos, Assistant Planner, presented the staff report.

Commissioners, Mr. Aglupos, Ms. Le, and Bart Mejia discussed that Condition of Approval No. 4 restricts using the auto storage units to conduct professional business and/or services; whether there will be limits to how much fuel can be in a stored vehicle; that the building has to be brought up to fire code; requirements that water discharge from car washing operations should not enter the storm drain system; that the intent of Condition of Approval No. 3 is to restrict a storage unit from being converted or used as a residential unit; that 32 units are being proposed; that each unit could have a wet bar; restrictions on serving or consuming alcohol on-site; whether there are other businesses in this zone that have a wet bar; limitation of the clubhouse use; and that the current application is not for a common interest development.

Chair de Arakal and Mr. Mejia discussed striking #2 and #3 in Engineering Condition of Approval No. 28 so it is consistent with Condition of Approval No. 5.

PUBLIC COMMENTS

Tony Principe, applicant, has read the conditions of approval and agrees to them including revised Condition of Approval No. 6 recommended by staff. He presented a slideshow on the proposed application.

Commissioners and Mr. Principe discussed whether there is an entity that manages the clubhouse; whether the rules governing the facility allow mechanical auto repair work; whether any improvements would be done to the landscaping; and that mobile car washing would occur only at a designated location on-site.

No public comments.

The Chair closed the public hearing.

MOTION: Move that the Planning Commission adopt a Resolution approving Planning Application 19-07, subject to conditions of approval and find that the project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301, Existing Facilities with the following modifications:

Condition of Approval No. 5 to read: "Car wash operators are required to contain the car washing water to prevent any discharge of water into the municipal waste water system and shall operate in the designated car wash area as noted on the site plan".

Condition of Approval No. 6 to read: "Any on-site events (excluding those events described in CoA No. 7) shall be limited to four times a year with a maximum attendance of 200 people. Such events may be subject to issuance of a special event

permit by the City per CMMC Section 9-205 through 9-208. No space within the building shall be rented out to the general public as a rentable event space”.

Engineering Condition of Approval No. 28 to read: “The applicant shall submit plans that show the location of the car wash and shall dispose vehicle washwater by Zero discharge, or closed-loop water recycling”.

Moved by Chair de Arakal, seconded by Vice Chair Harlan.

RESOLUTION PC-19-15 - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF COSTA MESA, CALIFORNIA APPROVING PLANNING APPLICATION 19-07 TO ESTABLISH A LUXURY AUTO STORAGE FACILITY WITH A CLUBHOUSE WITHIN AN EXISTING BUILDING AT 3080 AIRWAY AVENUE

The motion carried by the following roll call vote:

Ayes: de Arakal, Harlan, Navarro Woods, Zich, Colbert

Noes: None

Absent: None

Abstain: None

The Chair explained the appeal process.

DEPARTMENTAL REPORT(S)

1. Public Services Report – none.
2. Development Services Report – none.

CITY ATTORNEY’S OFFICE REPORT(S)

1. City Attorney – none.

ADJOURNMENT AT 9:14 PM

Submitted by:



BARRY CURTIS, SECRETARY
COSTA MESA PLANNING COMMISSION