

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

September 12, 2005

The Planning Commission of the City of Costa Mesa, California, met in regular session at 6:30 p.m., September 12, 2005 at City Hall, 77 Fair Drive, Costa Mesa, California. The meeting was called to order by Chairman Perkins, followed by the Pledge of Allegiance to the Flag.

ROLL CALL:

Commissioners Present:

Chairman Bill Perkins

Vice Chair Donn Hall

Eleanor Egan, James Fisler, and Bruce Garlich

Also Present: Kimberly Brandt, Acting Secretary
Costa Mesa Planning Commission
Tom Duarte, Deputy City Attorney
Fariba Fazeli, City Engineer
Raja Sethuraman, Associate Engineer
Mel Lee, Senior Planner
Wendy Shih, Associate Planner

MINUTES:

The minutes for the meeting of August 22, 2005 were accepted as corrected.

PUBLIC COMMENTS:

None.

**PLANNING COMMISSION
COMMENTS/SUGGESTIONS:**

Commissioner Egan announced that the Bristol Street Mixed Use Committee has completed its work and there is a published plan that is coming forward in "draft" form. She said it was basically a good plan and she was looking forward to it coming before the Planning Commission.

Commissioner Garlich announced that on Saturday and Sunday, September 17th and 18th, the Costa Mesa Newport Harbor Lions Club will be grilling hot dogs and hamburgers at the train station during the lunch hour at Fairview Park. All proceeds will go to the Hurricane Relief Fund.

Commissioner Fisler thanked Mike Brumba who is with the Homeowners Association of Halecrest/Hall of Fame for being a judge with him and the Police Chief, for the "neighborhood chili cook-off." There were 25 entries that the judges managed to work their way through. He also thanked all the neighbors for attending.

Chairman Perkins shared a story, in remembrance, on the fourth anniversary of the 9/11/2001 tragedy concerning a man involved in a heroic effort to save lives.

CONSENT CALENDAR:

None.

PUBLIC HEARINGS:

VESTING TENTATIVE TRACT
MAP VTT-16821

Mozayeni

The Chair opened the public hearing for consideration of Vesting Tentative Tract Map VTT-16821 for Beachside Townhouses LLC/Al Mozayeni, for an airspace subdivision to facilitate the 26-unit residential project approved under PA-03-42, located at 2013-2029 Anaheim Avenue, in an R3 zone. Environmental determination: exempt.

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

Al Mozayeni, 18552 MacArthur Boulevard, Suite 102, Irvine, agreed to the conditions of approval.

No one else wished to speak and the Chair closed the public hear-

MOTION:
VTT-16821
Approved

ONE-YEAR EXTENSION OF
TIME FOR CONDITIONAL USE
PERMIT PA-01-03/PA-01-04

ing.

A motion was made by Commissioner Garlich, seconded by Vice Chair Perkins, and carried 5-0 to approve by adoption of Planning Commission Resolution PC-05-56, based on information and analysis in the Planning Division staff report, and findings in exhibit "A", subject to conditions in exhibit "B."

The Chair opened the public hearing for consideration of a one-year extension of time for Conditional Use Permit PA-01-03/PA-01-04 for Wesley Taylor, authorized agent for Beacon Bay Enterprises, Inc./Robins Properties and Nancy Mostaan, to allow motor vehicle sales with an administrative adjustment to deviate from front landscape setbacks for auto display purposes on the front half of a commercial property; and to allow outdoor storage of motor vehicles on the rear half, located at 2059 Harbor Boulevard, in a C2 zone. Environmental determination: exempt.

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

Mr. Lee said it is anticipated that the remediation will take another 12 to 18 months, and as a result, an additional extension in 2006 will be necessary for this project. Because the remediation is ongoing, staff is recommending that the time extension for the original development be granted the one-year extension of time.

In response to questions from the Chair and Commissioner Egan, relating to the anticipated length of time it would take for the remediation of this project, and what has been accomplished to this point, Mr. Lee briefly reiterated it is anticipated that the remaining remediation will take place during the next 12 to 18 months.

Yvonne Duhl, the applicant's representative, 3 San Joaquin Plaza, Newport Beach, agreed to the conditions of approval. She said both buyer and seller are very anxious to get the escrow closed on this property, which was opened in July of 2001. She said Mr. Robins cannot utilize the property and is paying rent on it in order to use the rear portion. She said Patrick Shea (owner), is equally anxious to get the escrow closed, but it is just a matter getting County and State approvals.

Tim Lewis, 2050 Charle Street, Costa Mesa, discussed the various properties around the site. He explained the process and jurisdictions for the contaminated stated of the site and some of the water in the ground. He said if the owner did not comply with the County's recommendations to clean it up, then it would be referred back to the State Board, which has the ultimate authority. Mr. Lewis also stated that homeless people have moved in there; there is no longer a lock on the fence; the screening he installed blows in the wind and the neighbors have to deal with it; and the fence posts are broken. Mr. Robins is doing an excellent job and "his landscaping" is beautiful.

In response to the statement regarding the area becoming a haven for the homeless, the Chair told Mr. Lewis to call the PD. Mr. Lewis responded that PD has been called, and they removed the people. The problem is that the fence is no longer contiguous and so the homeless can come every night if they want to because there is nothing to keep them out. The Chair told Mr. Lewis to ask PD to file a report and they will contact the owner and it will be taken care of. Mr. Lewis noted to the Chair that it would be a problem for him because he lives down the street from the site.

No one else wished to speak and the Chair closed the public hear-

MOTION
PA-01-03/04
Approved

ing.

A motion was made by Commissioner Fisler, seconded by Vice Chair Hall and carried 5-0 to approve a one-year extension of time for Conditional Use Permit PA-01-03 and PA-01-04 to expire on September 4, 2006, by adoption of Planning Commission Resolution PC-05-57, based on information and analysis in the Planning Division staff report, and findings in exhibit "A", subject to conditions in exhibit "B".

Commissioner Egan said the concern she expressed previously was that the applicant might be dragging his feet on remediation. It does not seem to be the case, and it appears that the applicant does not have control over the timing of the remediation.

APPEAL OF STAFF'S APPROVAL
OF DEVELOPMENT REVIEW
DR-05-05

Geyer/Richie

The Chair opened the public hearing for consideration of an appeal of staff's approval of Development Review DR-05-05 for Craig Richie, authorized agent for John Geyer to construct a 2,500 square-foot, single-story commercial building, located at 2314 Newport Boulevard 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 that Planning Commission uphold staff's approval of Development Review DR-05-05, by adoption of Planning Commission resolution, subject to conditions.

Glenford and Agnes Dwyer, representing their business, "Surround Sound" located at 2318 Newport Boulevard, Costa Mesa stated that their business is directly north of the subject property. Mrs. Dwyer outlined the following reasons why she and her husband oppose Development Review DR-05-05: (1) the business would be a traffic hazard on Newport Boulevard; (2) their driveway entry has been shortened from 18 feet wide to 10 feet wide, and it is a potential risk to lives and could cause costly property damages on their premises; (3) their right to safe, adequate, and fair access has been taken away; (4) the ability to conduct their normal course of business is now limited; and (5) their customers will not want to visit the showroom because of a loss in visibility and the difficulty in approaching the access and the ability to park; (6) the size of vehicles accessing the installation area may now be limited due to a reduction of 8 feet in width; and (7) there may be an increase in liability and the cost of insurance should accidents occur, including the possibility of law suits.

The Dwyers requested that the Planning Commission consider the following: (1) Grant a continuance of the development review to allow further study of the issues by all the relevant departments; (2) grant a signage exception and permit them to raise their sign (on both walls) to a height visible from 400 feet by motorists traveling on the right lane northbound on Newport Boulevard; and (3) confirm in writing that the rear public alley access will not be restricted or eliminated, similar to that granted to 2314 Newport Boulevard for Development Review DR-05-05.

In response to a question from the Chair regarding emergency service vehicles for Surround Sound, Ms. Shih stated that this project has been reviewed by all emergency staff, fire and transportation staff, and they have no objections to this design.

The Chair requested that Deputy City Attorney Tom Duarte clarify whether these are tenant-landlord issues rather than City regulated issues. Mr. Duarte felt these were more tenant-landlord issues.

The Chair said if the Commission were to go forward and grant a continuance as requested and the appellant wanted a parking study

conducted, were they asking the City to pay for it, or will the landlord, or the Dwyers pay for it. Mrs. Dwyer said this has not come up before and she would have to get together with the landlord to discuss it. However, she said a parking study might not solve the problem because there is nowhere to draw those parking spaces from.

Commissioner Egan asked the appellants to describe what the problem was with the service truck getting through the alley and into the property. Mr. Dwyer said driver attempted to come through the front in the beginning and the width was fine because he had a couple of inches on each side, however, when he tried to go through the back alley entrance, he could not make a right turn since Mr. Geyer fenced off his property; the gate no longer opens its full length, so the vehicle could not turn right. Commissioner Egan asked if a new gate could remedy it. Mr. Dwyer said it would work if they could move the building. He said the alley is so narrow it hinders the turning movement.

The Chair said he drove his Civic through there and felt it was pretty tight. Commissioner Egan stated that in case, there is no alley access. Mr. Dwyer said the property was sold with no easement. He said when they leased the building from the owner, they were told that there was a shared driveway, and now, there is none. Commissioner Egan said that staff did feel that the alley did provide an alternative access and apparently, for large vehicles it does not. Mr. Dwyer expressed concerns over UPS being able to deliver home theaters to them because the trucks will not fit.

Commissioner Garlich told Mr. Dwyer he was having trouble understanding whether the applicants intended use of the adjacent property is creating this alley/access problem, or if it already exists. Commissioner Garlich clarified that whether this project goes in or not, it won't change that. He said he was trying to understand the relationship between the alley access problem for over-sized vehicles and the application for the lot next door and how that relates to the Commission's jurisdiction in the matter. The fence prevents the gate from opening to its full capacity. Commissioner Garlich said the Commission could deny this application and that fact would not change. Mr. Dwyer agreed, and said the only way they would have access is if the fence was removed.

Mrs. Dwyer wished to clarify who is going to pay for the parking study with the Chair. She explained that they are not requesting a continuance on a parking situation. They asked for a continuance because of the building location, the fence, coping with a 10' wide driveway, their sign is being concealed by a taller and protruding building. Additionally, it is a dangerous situation in regards to access concerns with questions about safety issues.

The Chair said the City has determined that this project meets the code requirements. He said the appeal states opposition to the DR and a request for a continuance for further studies by the Planning Commission, transportation and circulation. He again said she had made mention in the beginning that she wanted a parking study, so he was just curious if she wanted some form of parking study and who would absorb the cost for that. She responded that the purpose was not for a parking study, but rather a review of the circulation, safety, and liability.

Commissioner Garlich questioned Ms. Shih as to whether there is anything she has heard this evening that would cause another look at this. He said the staff has studied and has reached conclusions, and asked if it is studied again, is there any reason to think those conclusions would change based on anything heard tonight that was not heard before. She deferred to Associate Engineer, Raja

Sethuraman with the City's Transportation Services Division.

Mr. Sethuraman stated that the Transportation Division reviewed this plan and went to the site a few times. There is no need for Transportation Services to require continuous access between the front and the rear portions of the building. It's unlikely that there will be significant issues with vehicles slowing to turn into this property; there are no issues with conditions on Newport Boulevard, or any other problems. They did mention to the appellant that the handicap parking juts out somewhat into the 10-foot aisle and he suggested that they relocate those spaces.

Commissioner Fisler asked what changes the appellant was looking for. Mr. Dwyer said they are not opposed to Mr. Geyer putting up a building. Their problem is there was no consideration given to their needs when this plan was approved. He said the building does not necessarily have to come that far forward to the sidewalk and that there is adequate space in the rear for the building. By bringing the building forward, it reduces the turn radius from Newport Boulevard. Mr. Dwyer said there are questions he would like answered such as: why does the building have to come forward all the way to the sidewalk when by code, it can have the same setback as all the buildings on Newport Boulevard in that vicinity of 3 to 4 buildings.

In response to a question from Commissioner Egan regarding alley access, Associate Engineer Raja Sethuraman said that on the alley there is 32 feet between the property line and the building. If a 20-foot gate is placed in the middle, it would swing inside the property, and would accommodate a large vehicle. Commissioner Egan asked if that 32 feet was sufficient to allow a gate hinged on the southerly property line to swing open wide enough for a large delivery truck. He said sure, they can even have double gates.

Commissioner Egan asked Mr. Duarte if the Commission has the authority to require a larger setback than the code required. He said if the applicant in this situation would agree, then that would be okay, but, as staff has indicated, they comply with all ordinances and all code requirements already. Commissioner Egan confirmed if the applicant does not agree, the Commission does not have the authority to require a larger setback.

Maggie Treversy, 1900 West Balboa Boulevard, Newport Beach, owner of the building which houses Surround Sound. The Chair stopped Ms. Treversey from speaking and apologized because he thought she was the applicant and promised that she could speak after the applicant.

Craig Richie, representing the applicant, 3500 South Greenville Street, Santa Ana, agreed to the conditions of approval. The presentation was on point and their only comment is that they would like the original staff approval to be supported. All items have been brought up and all code requirements are met.

Vice Chair Hall pointed out that the applicant has heard the problems expressed by the next-door neighbor as far as circulation is concerned. He said if some suggestions were made to the applicant as far as corner cutoffs or anything, to be in a neighborly way, would he be amenable to those things. He said his understanding for the client, is based on the litigation that was instituted, the answer is no.

Commissioner Garlich said he is concerned about the minor modification as stated on the summary which indicated that it was only allowing a 5% or 3-foot displacement of the building and then in fact, by code, it could be as much as 12 feet. The applicant stated that a great deal of cost in time and effort has been put into the site

plan as it stands; the site plan was based on the direct input of staff relative to the percentages required and dimensions. The setback distance allows for landscaping and allows for a distance from the residential property. At this time, he said they could even move the building closer to the street if they chose to do that; there are certain screening requirements for their utilities in the rear that may in fact, require them to move the building slightly forward.

Maggie Treversy, 1900 West Balboa Boulevard, Newport Beach, returned to the podium to finish her testimony. She stated that for the past 2 months her business has declined since no trucks can come in; only automobiles. She asked why the building has to be so protruded, and the response was a building that is 30 feet high has to be 60 feet back from the residential properties at the rear. She felt if he could lower his building a little so that adjacent neighbors have more access to come into the back of their businesses, that safety issue would not exist.

The Chair asked Mr. Richie if Mr. Geyer already has potential clients that need that size structure. Mr. Richie said no and John Geyer intervened and stated that was not necessarily true and introduced himself to the Commission as the applicant. In response to the Chair, he said there is a potential client and they need that size structure.

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

Vice Chair Hall commented that the construction at 2314 Newport Boulevard is within the property rights that we recognize in this country has every right to build what they desire there. In this case, their building, infringes on the operation of the building next door which has been that way for a long time. The developer is as stated, totally unwilling to do anything to accommodate the neighbors, which his right, and so here we approve a project that he sees no reason why the Commission shouldn't, that impacts and hurts the possibility of these people continuing to conduct business for their livelihoods and employees. The property loses its value tremendously and what we can do to alleviate these problems he said he has not figured out. As far as the gates in the rear, there are all forms of gates and they could open up to the full 32 feet without problem. The front access, the parking, and the curb, are a problem.

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

MOTION 1:
DR-05-05
Failed to carry

The Chair reopened the public hearing and made a motion to continue the item for 30 days in to revisit some of the issues, which was seconded by Vice Chair Hall and failed to carry 2-3 (Garlich, Egan and Fisler voted no)

During discussion on the motion, the Chair said he agreed with Vice Chair Hall's analysis. He said this is an incredible situation and he did not know if there was any way to fix the situation at 2318 and 2320, but he did believe there might be some additional areas in which the Commission can look. He said he is concerned about that alley access.

Commissioner Garlich said he could not support the motion because he believed the Commission has discussed all those issues and made a point of asking staff if they heard anything here tonight that would change the conclusions they reached on all the issues that were raised. Based on that, it seems a waste of everybody's time and money, and staff has done their work. He said he didn't hear the Chair offer any new evidence that would change the outcome. He said this would delay the inevitable and would continue to cost peo-

ple money on both sides.

Commissioner Egan said she agreed with Commissioner Garlich, because she did not see that anything is likely to be served by continuing this item. This lot split occurred in 1922 and would never be approved today. Legal counsel says we can't require the building to be moved because it conforms to all legal requirements.

Commissioner Fisler said he would have to go along with Commissioner Garlich and Commissioner Egan, and he wished it had worked out between the neighbors.

The Chair then called the motion (as shown above)

The Chair then closed the public hearing and the following motion was made.

MOTION 2:
DR-05-05
Approved

A motion was made by Commissioner Garlich, seconded by Commissioner Fisler and carried 5-0 to Approved Development Review DR-05-05, by adoption of Planning Commission Resolution PC-05-58, based on information and analysis in the Planning Division staff report, and findings in exhibit "A", subject to conditions in exhibit "B".

The Chair explained the appeal process.

BREAK:

The Chair called a recess and resumed the meeting at 8:18 p.m.

APPEAL OF ZONING
ADMINISTRATOR'S DENIAL OF
MINOR CONDITIONAL USE
PERMIT ZA-05-23

Triangle Square Invest-
ments/Johnson & Scheinberg

The Chair opened the public hearing for consideration of an appeal of the Zoning Administrator's denial of Minor Conditional Use Permit ZA-05-23 for Keith Scheinberg, authorized agent for Triangle Square Investment LLC, for a new Mexican restaurant (Chronic Cantina) requesting to serve alcoholic beverages past 11 p.m. (2 a.m. proposed) and to deviate from shared parking requirements, located at 1870 Harbor Blvd., Suite 210, in a PDC zone. Environmental determination: exempt.

Senior Planner Mel Lee reviewed the information in the staff report and gave a presentation. He said staff was recommending that the Planning Commission overturn the Zoning Administrator's denial and approved ZA-05-23, by adoption of Planning Commission resolution, subject to conditions.

Commissioner Egan asked if this project goes in, would it mean that a regular commercial use could not occupy the Niketown building? Mr. Lee responded that the Niketown space could be occupied by a retail furniture store, which requires less parking.

Vice Chair Hall inquired about the CUP for Sutra Lounge and if the adjustments Mr. Lee mentioned in his presentation. included revocation of the CUP for noncompliance of the conditions. Me. Lee explained that revocation of their CUP is an option that is available to staff if it should be necessary at some point.

Commissioner Garlich asked, if in the future, Triangle Square wanted to come back and propose a use for the Nike property, that was 4 per thousand, couldn't they file an application to do that and have a hearing and make a case to obtain approval to do that; and based on whatever the parking studies and data at that time showed, there could be a granting or a denial of that and if granted it could be the usual conditions of approval that would require, "should parking problems develop in the future," they would have to come back with an operational solution to deal with that, etc. Mr. Lee said he was correct on all points. Commissioner Garlich said he was merely establishing a mechanism, or scenario that it is not out of the question.

Keith Scheinberg, 2901 West Coast Highway, Newport Beach, agreed to the conditions of approval but had a question regarding

condition of approval #5. He said he was not worried about the live entertainment aspect of it but rather because the operation is planned with theme nights, such as “salsa night” or “Latin jazz night”, he wanted to make sure that if in the future, he wanted to apply for a permit to do that, they aren’t restricted. Mr. Lee said this condition prohibits them from obtaining such a permit from the Code Enforcement Division so they would not be able to apply. Commissioner Egan asked staff why is it there. Mr. Lee explained that as part of the initial application, there was no proposal for any sort of live entertainment or dancing and is why it was included as one of the standard conditions of approval.

The Chair said he made a call this afternoon and spoke to staff and they had told him that part of the issue that we were not concerned about regarding a couple of similar alcohol licenses next to each other was that one did not allow dancing, and that there may be a concern if there was dancing. It seems to attract more attention and attract more problems. In response to the Chair’s comment, Ms. Brandt advised the Chair that the application before the Commission is for the sale of alcoholic beverages after 11 p.m. The application did not include any provision for live entertainment, which would include dancing. She said this use could not be approved this evening with a deletion of that condition, in terms of live entertainment, because that in itself, requires a minor conditional use permit and implementation of the appropriate noticing requirement.

In response to a question from Vice Chair Hall regarding background music, which everyone has, Mr. Lee said it does not prohibit background music.

Commissioner Garlich said that in discussions he has had with Police Department personnel, and the area commander, one of the bigger problems they have with this general kind of business usually occurs at closing; they have problems in parking lots or where people are parked on streets, or in this particular case, out in the plaza. Since Sutra closes at 2 a.m., and the Yardhouse closes at 1:15 a.m., how would he feel about closing at 1:30 a.m. instead of 2 a.m. so that all these businesses where these problems tend to originate, aren’t all closing at the same time and creating a greater opportunity for some of these problems to exist? He said the Police Department seems to feel that would be helpful and he wondered how Mr. Scheinberg felt about it. Mr. Scheinberg said because they are operating as a bona fide restaurant, a lot of the patrons that leave Sutra at 1:30 they start making people leave, and because his restaurant is the only one still serving food at that hour, he wanted to be able to use that business to actually get people to eat food before they go home. He said the kitchen would be open the full time that the restaurant is open.

The Chair asked Mr. Scheinberg if he would be present to oversee the operations including a full staff with managers, etc. The Chair asked how he intended on getting patrons who’ve had a little bit to drink at 1:30 a.m. Mr. Scheinberg introduced Dan Biello, the other owner of “Chronic Tacos” which specializes in making food fast. Mr. Biello stated that he planned on running a limited kitchen after the midnight hour; basically, a taco bar which would enable him to close the kitchen and get the employees out on time. By running the taco bar, its not a plate service, it’s a very simple service like the tacos made at their taco shop. The Chair asked the owners to walk him through the need for a full liquor license. Mr. Scheinberg said he believed the best answer for that is people prefer to be outside and their restaurant is small; this is California and if someone wishes to have a margarita in a Mexican restaurant they should be able to get it.

Beth Refakas, 320 Magnolia Street, Costa Mesa, had concerns about this restaurant which she said is located in the highest crime area of the City and we're talking just about people having too much to drink, but the more serious crimes are going on down in that area so she would also be concerned about bottle service except, for beer and wine. She said the entertainment issue should be left in the conditions; she was worried about residents hearing the noise. She felt the staggered hours of closure was a good idea.

Bill Lenger, Vice President for Charles Dunn Company said his associate and Supervising Manager Romi Miura, was here to address specifics about improved security at Triangle Square. He said he was involved with Triangle Square in the first quarter of 2003 in June of 2004, he voluntarily left for a year's tour in Iraq and returned in June of this year and is now back again responsible for Triangle Square, among other centers, and Romi Miura has been responsible for the center for more than a year.

Ms. Miura said she is with Charles Dunn, 106 West 6th Street; Los Angeles, and she just wanted the Commission to know that they are working closely with the security staff and they have increased their security staff throughout the center to get traffic moving. Once the establishments close, they are trying to move people to their cars so they are not loitering, vandalizing, or fighting, and if Chronic Cantina is open for food, it may help calm some people with a little rest before they go. Incidents have decreased since security has been working with them. The Chair thanked Ms. Miura for her comments and concern. He said his concern *is* security. The Chair discussed his experiences with Sutra and their security.

There was further discussion by Ms. Miura on what they could do to alleviate some the Chair's security experiences. He said he has worked with this project for 5 years and just so she is aware, he has seen more than a dozen managers come and go.

Mr. Scheinberg still had reservations about condition of approval #5. Mr. Lee explained that the only thing they would be applying for is live entertainment in the future, which would be modifying the approval before the Commission this evening. Mr. Scheinberg also wished to express to the lady who spoke about the crime in this area, said he owned 2 homes in this area and as any business owner in this area would do, is make sure their business establish does not support or help add to those problems.

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

MOTION:
ZA-05-23
Approved

A motion was made by Vice Chair Hall, seconded by Commissioner Garlich and carried 4-1 (Perkins voted no) to overturn Zoning Administrator's denial and approved ZA-05-23 by adoption of Planning Commission Resolution PC-05-59 based on information and analysis in the Planning Division staff report and findings contained in exhibit "A", subject to conditions in exhibit "B".

During discussion on the motion, Commissioner Fisler said he supported the motion because he felt this restaurant would be a great addition to the City and especially to the struggling Triangle Square.

The Chair said he has trouble with the security of it and if he could take out the neighboring business that was discussed and put in this one, he would. He said a Type 47 next to a Type 47 is also a concern and the reason he would not support the motion. He said the hours of operation were not as much of a concern.

Vice Chair Hall said he would anticipate with the operation of the Chronic Cantina and the people involved here, that we will probably see them take over the space that Sutra occupies at the present time

in the future.

Commissioner Egan said she has to keep reminding herself that the only thing really before the Commission this evening is whether this restaurant is going to close at 11 p.m. or after. She has a concern about parking for the future, but that's for the Redevelopment Agency and not for the Commission at this point. She said she has no problem with their being open until 2 a.m., particularly with condition of approval #10 that requires them to serve food along with alcohol since they are a bona fide eating establishment.

Commissioner Garlich thanked Commissioner Egan for bringing the Commission back to what's on their agenda tonight and what the issue is, which does not include revoking the Sutra Lounge's conditional use permit.

The Chair explained the appeal process.

The Chair opened the public hearing for consideration of Planning Application PA-05-25 for David Young/HY297 Ogle Street LLC, to convert an existing 3-unit (rental) residential property to a common interest development (ownership), located at 297 Ogle Street, in an R3 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 by adoption of Planning Commission resolution, subject to conditions.

In response to a question from Commissioner Garlich regarding condition of approval #1 requiring vacation to be recorded prior to the parcel map recordation, and whether the property owner would have to take action so that it can happen, Ms. Shih stated the applicant will have to request the vacation of public right-of-way from the Engineering Division and must apply in a timely manner to allow the recordation of the vacation.

David Young, 1301 Dove Street, Newport Beach, agreed to the conditions of approval. He also confirmed that the vacation process has already begun and they have already sent the letter to the City Engineer.

Commissioner Egan said she was concerned that after renovation is done any exposed piping be protected and screened. She asked the applicant if he would be amenable to a condition to that effect. He said there is 1 water meter and 3 separate electric meters on the wall to the garage reasonably screened from the alleyway and it can't be seen from either of the public streets. Commissioner Egan said the Building Division may require them to be moved or protected for safety reasons but if not, would he be willing to agree to a condition requiring that they and the meters be screened. Mr. Young said they would have to first see exactly how to do that and what the cost would be. He felt he could not give her a specific answer at this time. She compromised in saying that at the very least, she would like them to be painted the same color as the walls will be, and he agreed.

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

A motion was made by Chair Perkins, seconded by Vice Chair Hall and carried 5-0 to approve by adoption of Planning Commission Resolution PC-05-60, based on information and analysis in the Planning Division staff report, and findings in exhibit "A", subject to conditions in exhibit "B".

The Chair explained the appeal process.

The Chair called a recess and the meeting resumed at 9:20 p.m.

PLANNING APPLICATION
PA-05-25

HY297 Ogle Street, LLC/Young

MOTION:
PA-05-25
Approved

BREAK:

REPORT OF THE DEVELOPMENT SVS. DEPARTMENT:

Planning Commission Acting Secretary Kimberly Brandt reviewed the status report on the second-story window at 543 West Wilson Street, Unit B3. She confirmed that there was no mistake in issuance of the building permit for the window and that it was a ministerial action by the Planning Division; there was no subsequent action that Planning Division could take. She said the Planning Division has no ability to rescind the building permit that was already issued and cannot be appealed. She said there is the opportunity as to how they can address these types of situations in the future. She said the Planning Commission can direct staff to look at the existing zoning code and residential design guidelines to see how we can address this type of situation in the future so that a discretionary review can be conducted for a new second-story window in an existing unit.

Guadalupe Rosete, 3141 Boston Way, Costa Mesa, stated that he was there to translate on behalf of his uncle (Rene Zecua). He translated for Mr. Zecua. He indicated he has lived in Costa Mesa for 17 years and is a U.S. citizen. He has concerns about the window and the impacts on his back yard. He also stated that the neighbor's back yard is encroaching and submitted a property survey.

The document was taken to Ms. Brandt for her review. Mr. Rosete closed by saying that was all for now and that it was up to the Commission if they want to help his uncle regarding this issue. He said the window faces the kitchen and bathroom and the back yard. The Chair suggested that Mr. Rosete call the number on the report to find out the results of Ms. Brandt's research.

Jack Wirtz stated that he owns the house at 2238 Miner Street and the window that was just put in, has a deleterious affect on the value of his property. He said he has a previous letter from the City stating they were going to have her put a blind there and that he believed it was just a suggestion. He said it was going to be installed and inspected sometime in June; nothings happened yet. He closed by saying you shouldn't have to hide in your own back yard.

Fred Davis, 2226 Miner Street, Costa Mesa, stated that after all this time nobody can speak for more than 3 minutes because they sat here all night listening to people go for hours. He drove 175 miles each way to get here and back. Mr. Wirtz (previous speaker) drove down from Crestline. He said the neighbors have all been trying for 3 months to get heard on this issue. He requested additional time to address the Commission. Commissioner Egan said there is precedent in this case in having someone represent a group of people.

MOTION:
543 West Wilson St.
Additional speaking time approved

A motion was made by Vice Chair Hall, seconded by Commissioner Egan, and carried 4-1 (Perkins voted no), to allow the speaker 10 to 12 minutes to speak.

Mr. Davis said he knows they have been told that nothing can be done tonight but they have also been told they can have their say. He challenged the letter that all the neighbors received saying that "there is no City code policy or guideline regarding the installation of windows." He did not know what constitutes a policy, but assumed its something done in the past to set a precedent. He said when this building started going up in the late 70's, Don Webb was the Development Director. Mr. Webb said the plan we approved has no windows on the backside; don't worry you won't have windows. He said that's a guideline, and a policy concerning this building. He said if the City has never gotten around to writing it down somewhere that shouldn't be the neighborhood's problem. He said the policy was established. He also said he wanted to question and challenge the same precedent included in the staff report of the

original plan. He said he knows the planning people saw an elevation, a drawing that showed there were no windows on the back of that building, he was told that and he believes it. He said on page 2 of the original report, the proposed development will not have a significant effect on the environment. He asked if the Commission honestly believed they would have made that statement if they anticipated there were going to be windows on the back of the building. He cited several examples from the original staff report for the project. He said Mr. Zecua is a human being. He works hard and comes over here and sits in this place for 3 months trying to get heard. These other folks are human beings and he is a human being – all who are impacted by the installation of this window. When this plan was approved he said he knows for a fact, that the people who approved it, did so with the understanding that there would be no windows on the back of that building. He asked if the Commission honestly believes they would have approved it otherwise and checked off those things he previously read from the original report. He said they have been working on this for 3 months and there are members of the staff who have earnestly tried to help the neighbors. They told us that they would require an outside set of immovable louvers be placed on the windows that would keep the people in that unit from viewing the back yards. A letter was written to the woman with window and she replied and caused us to believe she would try to do something. Then the lawyers came into the picture. The lady got a lawyer who told her she didn't have to do any of that. He told her she has a permit that says she can have window and a panoramic view of Miner Street if she wants. The City Attorney apparently instructed staff that they didn't make any mistake, after 3 different people on staff had admitted to him (Mr. Davis) that they had made mistakes. We have 2 witnesses that saw Ms. Tran spread out the permit plan on the hood of car and heard her say, "that's not what I approved." We had Ms. Bouwens-Killeen who told me "yes, there was a glitch", but we're going to try to mitigate it. It was an error. Now the neighbors have been told, after many spent a lot of time and energy on this and a few dollars something he learned during the study session this afternoon, that this is all just "smoke and mirrors"; nothing can be done. He said this Planning Commission was appointed by the elected officials of this City and at least two or three times tonight, he has heard the Commission being instructed that they can't do this and can't do that. He said he does believe that Kim Brandt is going to write up a suggested code change, if the Commission will go along with that. He also urged the Commission to ask the City Council to impose a moratorium on any more windows on that building until this code is adopted. He said the City seems to be inferring that our only hope of regress is to sue the City; sue the lady with the window; sue everybody in sight; keep the lawyers busy; and spend a lot of money. He said if they can't get the code changed any other way, they would start a petition to put it on the ballot so people don't look into your back yard. He said they are not going to back down; they have been had by a neighbor, and by the City, and they will not stand still for it. The same with many of the neighbors. Mr. Davis says he's about 3 or 4 doors down, but it doesn't bother him yet, but it would if something isn't done. He said this could be solved very easily if two things happen: (1) if the lady would be neighborly enough to voluntarily obscure her window, that would take care of the immediate problem, and (2) if the City would adopt a code change with a moratorium until it takes effect. These two simple things could resolve this. He said he knows the City can't force the lady to obscure her window but said he wished they would write her another letter.

Craig Hendershot, 2238 Miner Street, Costa Mesa, awoke one

morning and he saw his neighbor behind him who is a little under 5 feet from his back fence, putting a 4' by 10' header in the wall where it never had one before. Mr. Hendershot said he visited City Hall and went to plan check and asked for the permit number for the window for that address. He reviewed the plans with Ms. Tran. She indicated that she did not approve the window on the second floor. She also told him they would look into this and find out what happened. Later, she said they were going to put louvers over the windows. Now everyone is saying that this is a mistake. He felt if the Commission could pull the set of plans before they go into microfiche now, they could see the signature.

Commissioner Garlich stated that the back page of Ms. Bouwens-Killeen's report says, "additionally, although approval of the second floor window may have been an oversight on the part of the Planning Division, the building permit was not issued in error in terms of non compliance with any law or code requirement." He asked what it meant? Deputy City Attorney Tom Durate said it meant that the Building Division did not issue that permit in error.

Vice Chair Hall said the building that was referenced by the last speaker is of interest and he requested a copy of that plan and made a motion that it be distributed to all members of the Commission. Mr. Duarte said a motion was not necessary to request the plans. Vice Chair Hall then confirmed with Ms. Brandt that she would provide copies to the Commission in the next packet. He also asked Ms. Brandt about the letter in which Mrs. Vaughn agreed to louver the window by June 17th. He said it was then alluded to that the attorneys then got involved, and then everything changed. He asked her what it was that the attorneys said that stopped this procedure?

Ms. Brandt stated that June 17th was the date the Planning Division gave the property owner as a deadline to submit plans and show exactly what type of exterior treatment was going to be placed on the window. Instead of receiving a plan indicating treatment of the window, they Planning Division received a letter from Mrs. Vaughn's attorney stating that they did not feel they needed to put any exterior treatment on the window. At that point, the Planning Division forwarded the letter and file to the City Attorney's Office for review of the zoning code and residential design guidelines for an opinion. The City Attorney's office determined that the City's existing codes, policies, and regulations did not address this particular situation and that the Planning Division does not have any discretion over the size or location of that window.

MOTION:
543 West Wilson Street
Request to recommend a review for
consideration and resolution by the
City Council

A motion was made by Vice Chair Hall, seconded by Chair Perkins and carried 5-0 to recommend that this item be forwarded to City Council for their review and resolution.

Commissioner Egan said she wanted to get it clear on the record so that the City Council can take a look at this. As she understands the situation, the Commission is being told that although our design guidelines say you can't have a window interfering with the neighbor's privacy, on the second story, if it is new construction (either a totally new building, or a second-story addition), there is nothing to keep you from putting such a window in an existing building. She said the implication of that is, if you want to put in a second-story window in new construction, submit your plans without the window to start with, get them approved, get your building built, and then submit another plan to put in the window. She said if this is what we're facing, a code amendment is needed.

Commissioner Garlich said to add to that, Ms. Brandt is correct and they do not prohibit windows in second story additions, but they do establish certain conditions under which they can be there and they take into account setbacks, and various ways of providing for some measure of privacy. So there are provisions under which they are allowed and/or get allowed.

Vice Chair Hall said that from the picture he saw of this window, it looks like these residents on Miner Street could be standing at the back fence and reach over and touch the window—that's how close it is and that's how low it is.

The Chair said he appreciated Vice Chair Hall's passion for this issue and bringing it forward to Council and we'll see what it can do for the neighbors.

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

None.

ADJOURNMENT:

There being no further business, Chairman Perkins adjourned the meeting at 10:10 p.m. to the Planning Commission meeting of Monday, September 12, 2005.

Submitted by:

KIMBERLY BRANDT, ACTING SECRETARY
COSTA MESA PLANNING COMMISSION