

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

November 28, 2005

The Planning Commission of the City of Costa Mesa, California, met in regular session at 6:30 p.m., November 28, 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
Eleanor Egan, James Fisler, and Bruce Garlich

Commissioners Absent:

Vice Chair Donn Hall

Also Present: Kimberly Brandt, Acting 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 November 14, 2005 were accepted as corrected.

PUBLIC COMMENTS:

Mike Berry, 2064 Meadowview Lane, Costa Mesa, said he had requested a month ago, the number of CUP's in Costa Mesa and repeated his request for that information (*see minutes for the Planning Commission meeting of September 26, 2005, under Public Comments, paragraph #2*). He also felt the 3R Committee was not doing it's job. The Chair asked Ms. Brandt if she would be sure to answer Mr. Berry's request and send him (the Chair) a copy. Ms. Brandt said she would respond to Mr. Berry and send a copy to the entire Commission. Commissioner Egan requested that Ms. Brandt explain the purpose of the CUP because Mr. Berry is under the impression that it's a permit to do something you are not supposed to do. Ms. Brandt explained that a conditional use permit (CUP) is a discretionary land use decision that City Council has delegated to the Planning Commission. Within the Zoning Code text, there is a Land Use Matrix, which indicates what land uses are permitted by right, those that require either a CUP, or a minor conditional use permit, or what land uses are prohibited. The Planning Commission has the review authority over conditional use permits and any of those decisions can be appealed to City Council.

**PLANNING COMMISSION
COMMENTS/SUGGESTIONS:**

The Commission had no reports, however, they wished Commissioner Donn Hall well.

PUBLIC HEARINGS:

PLANNING APPLICATION
PA-05-24

Mendez Automotive Services/Rodriguez

The Chair opened the public hearing for consideration of Planning Application PA-05-24 for Mark Rodriguez, authorized agent for Mendez Automotive Services, for a conditional use permit to allow the construction of a new gas station with a convenience store and a car wash tunnel, to replace an existing gas station with a convenience store and auto service building, with variances from street setback landscape requirements (20 feet required; 10 feet proposed along Bristol Street and 15 feet proposed along Paularino Avenue), for property located at 3048 Bristol Street in a C1 zone. Environmental determination: Negative Declaration.

Associate Planner Wendy Shih reviewed the information in the staff report and gave a presentation. She said staff was recommending denial of this application, by adoption of Planning Commission resolution.

There was discussion between the Chair and Ms. Shih regarding temporary environmental impacts, which included construction and the fact that this is a hazardous site for leaking fuel, and should the project

be approved, she said the applicant would be required to provide a closure letter from the Orange County Health Agency prior to issuance of building permits.

In response to Commissioner Fisler regarding the project status of legal nonconforming for 3067 Bristol Street (referencing a comparison chart on page 4 of the Planning Division staff report), Ms. Shih stated that it was a "remodel" of an existing building, and that the variance for a landscape setback was required because of a Transportation Services Division requirement for onsite circulation. There was no new construction for that site. On this site however, the applicant could not demolish anything because the nonconforming provision would allow only up to 50% of the market value and if 50% of the property is demolished or remodeled, it would have to comply with current standards. There was discussion between Commissioner Fisler, staff, and City Engineer Ernesto Munoz regarding the boundaries of the setback, property line, and in conjunction with the variance request.

Commissioner Garlich confirmed with Ms. Shih that if the carwash for the proposed site layout was deleted, the landscape setback requirements could be met for everything else the applicant wants to do on the site. Ms. Shih further explained that required landscaping is under "Code Requirements" and would be forwarded to the applicant if the project is approved and that there is a review process as part of the plan check submittal package.

Commissioner Garlich said he received a call from a Newport Beach Planning Commissioner who had concerns about large and unsightly equipment related to the underground storage tanks especially since Newport Beach recently experienced this for a new service station on Pacific Coast Highway (PCH) and Bayside. He asked if we had Code Requirements to address that? Ms. Shih explained that she has seen remediation equipment installed on existing gasoline stations and they are high and could go up to 10-15 feet and they are required to be placed at the rear of the property and properly screened.

There was discussion between the Chair and Ms. Shih regarding confirmation of information in the Negative Declaration referenced on pages 8 and 15 in relation to gas stations.

There was discussion between Commissioner Egan and City Engineer Ernesto Munoz regarding a Metropolitan Water District pipeline that runs under the subject property and all the way down the side of the street and whether it could be relocated because of its potential to constrain development along Bristol Street. Mr. Munoz said that as a matter of "process", the applicant would be required to contact every utility within the site and vicinity of the site to either obtain approval from these utilities and/or in the case of an easement, provide adequate access.

Commissioner Egan explained that while this project appears to be compatible with that easement, this whole area is probably going to be redeveloped in the next decade and wondered to what extent that easement would constrain future development.

Mr. Munoz responded that this is something that can be explored. Commissioner Egan suggested that it could perhaps be discussed at the upcoming study session that includes the Bristol Street Urban Plan.

There was discussion between Commissioner Garlich and Mr. Munoz regarding the setback where the variance was requested, and what portion of that setback belonged to the City, its exact determined location, and how much the applicant wanted to encroach.

Mark Rodriguez, authorized agent for the applicant, 331 Holgate Street, La Habra, agreed to the conditions of approval should the application be approved. At this time, Mr. Rodriguez submitted to Planning Commission, a project justification.

Mr. Rodriguez gave a presentation, which focused on the design element with two main objectives; whether the plan provides adequate site circulation, how the elements on site actually work to provide an upscale environment, and the process by which those things were achieved on the plans and in the rendering (conceptual).

Commissioner Garlich said when he met and discussed this project with the applicant's authorized agent, a letter accompanying the application said the site would be designed to consider all zoning and local development ordinances, and that the applicant's hand-written application said no variances were proposed. Commissioner Garlich said he believed the applicant did not realize he would need any variances but later discovered he had not met the landscape setback requirement. Mr. Rodriguez confirmed that is what happened. Commissioner Garlich asked Mr. Rodriguez had he known initially he would need a variance, would he have proposed something else, or would he have proposed this plan. Commissioner Garlich said with regard to the project justification, it should address the criteria for "findings" to grant a variance, but he could find none in this document. The applicant said he was not an expert on making findings, but his hope was that they could work on that with staff. Commissioner Garlich said it needed to be done this evening if the Commission is to approve the project.

In response to a question from Commissioner Garlich regarding the setbacks of the McDonald's Restaurant, a part of the Harbor Center Master Plan and the Starbuck's which is a part of the Costa Mesa Square Target Center. Ms. Brandt explained that these businesses are part of larger projects (i.e., Harbor and Target Centers). She explained the zoning code does allow outdoor seating areas for restaurants to encroach within the landscaped street setback areas with approval of a minor conditional use permit and these were looked at in conjunction with the overall approval. In some areas of the City, they actually encourage the placement of outdoor seating areas in order to make the street scene more active. In further response to Commissioner Garlich regarding the parking arrangements and stalls there, Ms. Brandt, said that without reviewing the site plan she could not answer to specifics. She said today's code does not allow compact parking spaces.

In response to a question from the Chair regarding a comment made by Mr. Rodriguez's about meeting the spirit of the code but not the letter, Mr. Rodriguez explained the project meets the spirit and intent of the landscaping code, as well as being compatible with other locations around town.

In response a question from the Chair regarding removal of the carwash from the plan and whether it would still require a variance, Ms. Shih explained that if the carwash was taken out of the plan and with the size of the canopy and the convenience store, and a shift of some of the structures, the landscape setbacks could be met without a variance.

In response to a question from the Chair regarding the need for a carwash, Mr. Rodriguez stated that although the lot size is not under minimum lot size for this site, it is exactly square; it is a fairly odd size in shape because most gas stations operate with a forward design and is usually longer than it is wide, even if it doesn't have a carwash. He said in this case, they need 160' minimum and would have preferred to have 165' to 175' but instead moved the buildings around into the best possible position to retain all the design elements. In further response to the Chair regarding removal of the carwash from the site plan, he agreed that things would fit without a problem, but there are factors to consider such as areas that would be too congested if not designed correctly.

There was discussion between the Chair and Mr. Rodriguez regarding similar businesses in the area and the differences between those and newer ones that offer more services and options to customers.

BREAK:

The Chair called a recess and the meeting resumed at 7:35 p.m.

Mario Mendez, 1965 Clancy Lane, Huntington Beach, stated that he is the president of Mendez Automotive Services and has been in this business for 25 years and at the Paularino address since 1988. He purchased the business in 1992 and last year, acquired the property and the facilities from Chevron. He said the need for *all* three services is essential to the business and the carwash can account for half the profit service in that location. He said he had investigated other options such as a fast food business, retail, etc. The easement makes things very difficult and its best use is a service station. He said the advantages to keeping it as a service station are: Chevron is responsible for cleanup on the site, which includes a written guarantee; they would also provide him with a closure letter from the County Health Care Agency before any other station could be built there. He said the fiber glass tanks, including all old plumbing and vent pipes would be removed and replaced with "state of the art" replacements and would be out-of-sight. He said there would be upscale architecture; all landscaping done by top quality professionals.

Mr. Mendez said if he is not allowed to build this station, everything would stay the same. The same tanks will be in the ground that have been there for 20 years. He would have to increase his automotive repair with more cars parked outside. He discussed why he would like to stay in the automotive service.

Commissioner Fisler confirmed with Mr. Mendez that Chevron would not pull the branding only because he did not have a carwash. A business associate of Mr. Mendez stated that the bank has to see the carwash on the plan because they are counting on that for the loan and just because Chevron does not require it does not mean its not essential.

Martin Millard, 2973 Harbor Boulevard; Mike Berry, 2064 Meadowview Lane; Beth Refakas, 320 Magnolia Street; Costa Mesa, made the following comments in opposition to the project: (1) This project is located just outside the SoBeca Urban Plan area on Bristol Street and is not the highest and best use for this location; (2) this is a good fast food location; (3) there are concerns regarding gas tanks next to water pipes; (4) concerns were raised about a debt service of \$35,000/month and there is not enough information to make a decision one way or the other; (5) the present rendering is fine, but what if the applicant cuts into the City's setback, what will it look like then; (6) this is new construction, if allowed, it should comply with all standards, including landscaping because it is a gateway entrance.

Commissioner Garlich, in response to comments from Mr. Millard disapproving of his meeting with the applicants, stated that it is standard practice for Commissioners, when request by the applicants, to discuss their projects with them so long as they do not do it in groups of more than two Commissioners so they do not violate the Brown Act; he said in this case, it was done here at City Hall, and Commissioner Egan was also present.

Commissioner Egan added that it is common for people to meet with applicants at City Hall. The purpose of these meetings from the Commission's point of view, is to find out in advance of the meeting, information and to ask questions; to let the applicant know what kinds of things he needs to be prepared to present at the meetings. If they acquire any information that is not part of the record, it is the Commission's obligation to disclose it.

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

Commissioner Garlich stated that as the Commission has looked at the project, it is attractive and the people who run it provide good service and run a good business, but it all comes down to the fact that financial considerations are not findings to justify variances. Either the applicant is giving up the carwash, or the City has to give up landscaping in

order to allow this project to happen and since he could not make that finding he made the following motion.

MOTION:
PA-05-24
Denied

A motion was made by Commissioner Garlich, seconded by Chair Perkins, and carried 4-0 (Hall absent) to deny by adoption of Planning Commission Resolution PC-05-78.

During discussion on the motion, Commissioner Egan said there is only one significant issue and that is that the purpose of a variance is to allow for the fact that when a regulation is adopted, there is no way to foresee every situation, and sometimes because of the location of a property, topography, or other situation, that if you apply the regulation to a property, it makes it impossible for the owner to use the property as its allowed to be used in the zoning code. She did not see that case here. She said this is a large parcel; there are many permitted uses, as well as conditional uses that can go there, and there is nothing peculiar about the topography, location, or anything else. Applying the 20' landscaping requirement will not deprive the property owner of the rights that similar owners in the area enjoy. She supported the motion to deny.

The Chair said he felt the same way.

Commissioner Garlich stated that Commissioner Egan brought up specifics regarding the shape of the lot. He said the aerial shot on page 15 of the staff report shows the applicant's lot diagonally across the street from the "76" lot and they are virtually the same shape; the only difference is the "76" station does not have a carwash.

Commissioner Fidler thanked the applicant for coming forward with a project that will enhance the aesthetics of that whole corridor. He was glad to see it there and felt it would give the City some increased tax dollars, but supported the motion to deny. He said he hoped the applicant could come up with a plan that makes financial sense and does not require a variance, because he would like to see this station upgraded and the applicant succeed.

The Chair explained the appeal process

PLANNING APPLICATION
PA-05-31

Dennis D'Alessio/Gray Family Tr.

The Chair opened the public hearing for consideration of Planning Application PA-05-31 for Dennis D'Alessio, authorized agent for Gray Family Trust, for a conditional use permit, to allow Orange Coast Jeep at 2524 Harbor Boulevard to park vehicles off-site, with a minor conditional use permit to allow outdoor boat and recreational vehicle storage, and a development review for a 600 square-foot storage building, located at 440 Fair Drive in a C1 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 with consideration of a modification to condition of approval #6.

In response to a question from Commissioner Egan, Mr. Lee stated that all business licenses are reviewed by Planning Staff before a license is issued, and can verify adequate parking at the time a particular business license is submitted for this property.

In response to a request from Commissioner Egan, Mr. Lee gave a report on recent Code Enforcements issues. Through an informal agreement between the two property owners, the property owner of the 440 Fair Drive property was allowing the Orange Coast Jeep employees to park on their property so it did not take away from the parking in the display areas for the vehicle inventory for their dealership. The jeep dealer had also been storing their excess vehicles on this property, which was also not in compliance with code. At one time, there were several boats and RV's that were being stored on the property, some of which were actually being lived in. Eventually, one case went to the

City Attorney's Office and it led to the applicant filing this application to legalize the uses.

In response to a question from Commissioner Egan regarding what is proposed to be stored in the storage building, Mr. Lee said currently stored in the tent structure are phone books and other publishing materials related to one of the office businesses in the 440 Fair Drive building and those same items would be stored in the permanent building.

Commissioner Egan asked Mr. Lee if he knew what caused the sudden increase in parking. Mr. Lee explained that the excess parking by the jeep dealership was the major problem. She asked if that had ceased and he said there was some excess inventory being stored on the property, which led to the drafting of condition of approval #10 on handwritten page 8 of the staff report.

In response to a question from the Chair regarding marking the parking spaces, Mr. Lee advised that condition of approval #10 references a portion of the parking area be designated for dealership employee parking, but it would not apply to the remainder of the parking area.

Richard D'Alessio, 309 16th Place, Costa Mesa, representing the owner of 440 Fair Drive, agreed to the conditions of approval and said he wished to address some of the questions that were raised.

In response to a question from Commissioner Egan regarding the reason for having the boat and RV on site, Mr. D'Alessio said their premier publication is the "Boater's Directory". He said the boat is used for events and fishing tournaments. He said the RV is used for exhibits, conventions, etc., which travels twice a month for a week or an extended weekend.

He said to address the question Commissioner Egan had regarding the massive increase in parking, is that, is that the building was 50% occupied when they took over and it is now full. However, they have instructed all employees, to park as far down as possible to allow for customer visits to the building.

Commissioner Fisler asked if Mr. D'Alessio also required the storage building. He said the tent keeps the weather off of books and it will be replaced with a permanent structure. In further response to Commissioner Fisler regarding how big his office is inside the building, he said they occupy 3 suites, which is about 7,000 square feet.

Sheldon Cohen, 732 Via Lido Nord, Newport Beach, Vice President and General Council for Orange Coast Jeep Chrysler, 2425 Harbor Boulevard (Gray Family Trust), wished to respond to Commissioner Egan's concerns regarding the parking of inventory and how to distinguish inventory from employee vehicles. He said new car inventory will not have license plates on the vehicles and should be relatively easy to see if they are storing vehicles. He assured the Commission they would not park new car inventory in that back area because its unsecured and not well lighted. They have adequate space on their own lot for new car inventory (Harbor Boulevard side). Commissioner Egan asked if Mr. Cohen could give the Commission the same assurance about not storing "used car inventory" at 440 Fair Drive. Mr. Cohen said vehicles taken in trade have been parked in the back, but on the Orange Coast side of the property, not on the 440 Fair Drive side. He said they have their own parking at the rear of 2524 Harbor Boulevard, and on occasion vehicles are parked that have been taken in trade for a short period of time. Mr. Sheldon said any space designated for employee parking only, will be for employee parking only. Commissioner Egan said she is concerned to see used cars stored on the parking area for 440 Fair Drive in the area she indicated. Both Mr. Cohen and Mr. D'Alessio said that would not happen.

Joe Barna, 2526 Carnegie Avenue, Costa Mesa, said he lives directly behind the Orange Coast Jeep dealership. He expressed concerns about the RV (and its use as a living space), noisy employees in the

back parking lot, car alarms, tow trucks, parts deliveries, and the use of a forklift.

Karen Barna, 2526 Carnegie Avenue, Costa Mesa, said the occupant of the motor home is a man who plays loud music and has parties in there until 2-4 a.m. The motor home, the boat, and the tent, are all very unsightly—when she walks out her front door, that's what she's greeted with. She reiterated her husband's testimony.

Mike Berry, 2064 Meadowview Lane, Costa Mesa, felt that this application states it is a parking area for the employees of the Orange Coast Jeep dealership, when in fact; it is an outdoor parking area for boats and RV's. He felt the applicants are just applying for a CUP so they won't be in violation anymore.

Beth Refakas, 320 Magnolia Street, Costa Mesa, felt the City was setting a bad precedent because there are many storage facilities available in the City for storing supplies; we just approved an RV storage place next to Home Depot and she saw no need for this.

The Chair asked the applicant to address living in the RV, loud parties, and noise. Mr. D'Alessio said there have been some noise issues and people getting into their cars and playing radios, but whether they are his employees or people who come to visit businesses at 440 Fair Drive, he did not know. He said he could not speak for the jeep dealership. He is going to reasphalt the lot; restripe it; the RV is necessary and if they were to store it somewhere else, it would cost them more money, and the same with the boat. Their solution was to hide it by placing it behind the new structure.

Mr. Cohen said that invariably, car alarms would go off. He said they are cognoscente of their neighbors and have recently gone to the use of walkie-talkies throughout the dealership to minimize paging. Its not 100% effective but they are trying to get there. He said new vehicles are offloaded on Harbor Boulevard, parked for the parts department and the trucks back up onto the premises off Harbor Boulevard. He said their employees do not lounge in the back parking area and if somebody has their radio on, it's probably an isolated incident. He said they are trying to be good neighbors and said he would give the residents on Carnegie his telephone number and if there is a situation; he is reachable.

Commissioner Garlich said with regard to Mr. D'Alessio's comments about the recreational vehicle, he never heard him say, that no one is living in it. Mr. D'Alessio stated no one was living in it. Commissioner Garlich asked if these residents are hallucinating, or is nobody living in it? Commissioner Garlich suggested that the storage area mentioned earlier behind Home Depot would be a real good solution.

The Chair asked if the applicant would be amenable to a condition requiring him to come back for a 90-day review. Deputy City Attorney Christian Bettenhausen stated that the Commission could make a condition that it come back in 90 days for review, and then Commission could bring it back and make changes at that time.

There was discussion between Commissioner Garlich and Mr. Bettenhausen regarding the necessity for a 90-day condition for review.

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

Commissioner Egan wanted to allow the employees parking as requested. She could not see approving storing an RV on this lot, or a boat, much less several of them. The storage building was another question because there is an office building right there and she did not see why the books and papers cannot be stored indoors. If additional storage is needed, there are many storage facilities all over the City.

A motion was made by Commissioner Egan, seconded by Commissioner Garlich and carried 3-1 (Fisler voted no, Hall absent) to approve off-site parking and construction of a 600 square-foot storage building,

MOTION
PA-05-31
Approved

and denied outdoor boat and recreational vehicle storage directing applicant that they be removed from the site, by adoption of Planning Commission Resolution PC-05-79, based on analysis and information contained in the Planning Division staff report, and findings contained in exhibit "A", subject to conditions in exhibit "B" with the following modifications:

Findings

B. The information presented substantially complies with Costa Mesa Municipal Code section 13-29(g)(2) in that the proposed use is substantially compatible with developments in the same general area. Granting the conditional use permit and minor conditional use permit will not be detrimental to the health, safety and general welfare of the public or other properties or improvements within the immediate vicinity. Specifically, the proposed off-site parking and outdoor storage, with the recommended...

Conditions of Approval

6. To insure adequate parking is available at all times on the property, no more than 9,700 square feet of building area be occupied by uses that require a parking ratio greater than 4 spaces/1,000 square feet of floor area uses shall be subject to the submittal of details, dimensions, parking lot plan and Planning Division approval.
7. No more than one (1) RV's and one boat or boats shall be stored on the property. The stores vehicles shall not be in a wrecked or dismantles condition and shall be screened from view of the street and shall be stored in the area adjacent to the proposed storage building per the approved site plan attached to the staff report.

8. *Delete.*

During discussion on the motion, Commissioner Garlich stated his concerns with the elimination of the storage building. He said it is a permissible use of the property. He felt phone books are heavy and not easily moved daily. At Commissioner Garlich's request to the Chair, Mr. D'Alessio returned to the podium to address the storage building. He stated that Mr. Garlich is correct in that they are 4 x 4 pallets of magazines and phone books which require moving in bulk and they are very cumbersome to have in the office and still retain the ability to move them on a daily basis. Commissioner Egan said she understood the use better.

In response to a question from Commissioner Fisler regarding the type of structure the building will be, and whether he is operating a forklift, Mr. D'Alessio stated that he did not know what the requirements are since Dennis is handling that part of it, but it will be a storage facility. There was discussion between Commissioner Fisler and Mr. D'Alessio as to where the forklift was stored.

The Chair asked Commissioner Egan if she would like to amend her motion and she said yes, if someone would propose one. Commissioner Garlich proposed an amendment to allow the storage building to be approved. Findings could remain as drafted by staff; a change in the resolution was made to delete the minor conditional use permit to legalize the outdoor boat and recreational RV storage. Conditions 6, 7, and 8 were modified as shown above in the motion. The second concurred.

The Chair supported the motion.

Commissioner Fisler said he would not support the motion because of the storage. He said he did not like the idea of building a storage shed on the site and agreed with City Council's decision, which overturned the Commissions' decision to allow a church tent for storage on site about a year ago to replace a storage container. Commissioner Garlich stated that in this case, the tent is not up to code and the storage building is allowable and would be applicable to code.

Commissioner Egan said her opposition to that other matter was based in part on the fact that it was a storage container.

The Chair explained the appeal process.

PLANNING APPLICATION
PA-05-37

Tri Harmony Properties/Ghobry

Planning Application PA-05-37 for Fadia Ghobry, authorized agent for Tri Harmony Properties, LLC, DBA Harbor Plaza, for a conditional use permit to allow a 1,100 square-foot liquor store; and a finding of public convenience or necessity finding for an off-sale liquor license to allow the sale of alcoholic beverages, located at 2790 Harbor Boulevard, Suites 101-102, 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 denial of this application, by adoption of Planning Commission resolution.

In response to Commissioner Garlich regarding any communication from the Police Department, Ms. Shih explained that the Police Department sent an informal communication to staff that there is no concern with this specific use. In response to another question from Commission Garlich regarding why the continuance was required, Ms. Shih said the applicant originally (in the description), described a "specialty retail store", but there are no specifics given, so the applicant requested a continuance to provide more information about the specific items they would be carrying to distinguish it from a traditional liquor store.

In response to a question from Commissioner Garlich regarding a supplemental memo from staff dated November 18, 2005 and how the petition was verified, Ms. Shih said she contacted Abby Samawi who provided the petition with her memo on page 40 of the staff report.

There was discussion between Commissioner Egan, Commissioner Garlich and Ms. Shih regarding the shifting of a license from one undue concentration of liquor licenses tract to another of the same.

Rod Jule, 2117 Elden Avenue, Costa Mesa, representing the applicant, agreed to the conditions of approval. Mr. Jule gave a two-part presentation. The first part of his presentation was the physical description of the project and the general make up of the merchandise. The second part was a technical discussion with regard to distances from schools and other uses; a discussion with regard to their petition, discussion of a letter from Orange Coast College, and letters of support.

Fadia Ghobry, 19631 Phoenix Lane, Huntington Beach, with Tri Harmony Properties, and authorized agent for the property owner said she had made some phone calls from the opposing petition and found that in some cases many people did not sign the petition nor did they have any idea about the subject matter.

Commissioner Egan asked the applicant (Mr. Aviz) if he would consider a beer and wine only license. Ms. Ghobry answered for him, saying that the applicant was going to buy a license for \$50,000 but they had a meeting with the City before they bought the license. Commissioner Egan said when the applicant moves on, that liquor license and the liquor store remain, and it can become a traditional liquor store. If it were a beer and wine license, it would be a different consideration for the Commission. Ms. Ghobry said the Type 21 license is better because there are certain other liquors they sell in the specialty store. The owner, Mr. John Aviz intervened to say the answer is no to a beer and wine license. He must sell expensive items and not just wine and beer. Commissioner Garlich felt that there is a measure of protection in this type of store in that it would be run as described in the staff report, and in that context, may keep it from becoming a traditional liquor store.

Commissioner Garlich made comments regarding the validity of petitions.

The Chair stated that this store is located not far from a high-crime area, Rod Jule said what's occurring on that property (Harbor Plaza), is that they have an onsite property manager who is there at the property, and the applicant would also work with staff.

In response to a question from Commissioner Garlich, Mr. Jule said one solution would be a semi-annual inspection by a certified planner to go through the interior of the store and certify that the business hasn't changed and will remain in tact as originally proposed. In response to Commissioner Garlich, Ms. Shih said typically, the project planner would review properties with CUP on an annual basis to assure the applicant is in compliance with the conditions.

John Parkyn, 20241 Aetna Street, Woodland Hills, representing the owners of the adjacent properties (2750 and 2730 Harbor Boulevard) stated concerns regarding public notice of the hearing and parking. He expressed concerns of customers parking in his lot and of signage.

Commissioner Garlich asked staff why property owners didn't get noticed because it is within the footage. Ms. Shih explained that all properties within a 500' radius (owners but not tenants) are mailed notices. The Chair asked staff to follow-up and find out what happened. Mr. Parkyn said he wanted to make it clear that the property has been under the same ownership for 37 years and the address is on record.

Commissioner Garlich said if we are talking about the sign ordinance, then it was possible this signage could be legal nonconforming and he encouraged Mr. Parkyn to visit the City and look into the code.

Mona Latif, 2700 Peterson Place said those letters were typed by her and others, and describe the different expressions of the people who support this store.

Ms. Latif said allowing more specialty stores is a convenient idea because she does not have to go stand in a long line to buy liquor and can find unique things to buy that are not easily found elsewhere.

Lena Ghobry, daughter of the authorized agent and applicant, and an OCC student said she and some of her friends took the petitions and made phone calls and they found that most of the people who signed thought they were signing for the specialty shop, rather than against it. She said she realizes this is a high-crime area, but any area next to a college is a high-crime area.

Mike Cashben, 52 Claremont, Newport Coast, said his family owned Harbor Beer and & Wine and later moved to liquor. . He said he did not know what's wrong with traditional liquor stores, although that's not what Mr. Aviz is opening. He said it is not easy for a liquor store-owner to run his business in some respects because the ABC is continually monitoring the business.

Rod Jule stated that the gentlemen has a positive business.

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

Commissioner Egan, referring to the condition which says this business shall be operated in the manner described in the application, should the owner move away and someone comes in and wants to operate a "traditional" liquor store, she asked what would happen. Deputy City Attorney Christian Bettenhausen said his understanding is that ABC does govern the license itself, but of course the CUP, which runs with the land, is the jurisdiction of the City. If conditions are placed on the CUP that will limit the ability of the business at that particular location, it will limit their ability to sell in accordance with the license that has been granted.

MOTION 1:
PA-05-37
Failed for lack of a second

The Chair made a motion to uphold staff's recommendation for denial; it was seconded by Commissioner Egan (later withdrawn-see below). The motion failed to carry for lack of a second.

During discussion on the motion, the Chair said the crime zone bothers him. He reviewed the Census Tract numbers, which he said showed too many licenses. He said he had a concern about high-school students being so close to a liquor store.

Commissioner Fidler said that this business is much like Beverages & More and when they approved that, there was no worry about a "traditional" liquor store. If they have a variation to their operational characteristics, including the hours, nature and variety of products sold, they would need an amendment to the permit.

Commissioner Garlich said he would not support the motion because the idea that this can become a traditional liquor store has now been twice refuted by the City Attorney's Office. He is also sensitive to the concern about the students on Peterson Place, however, he believes students will get beer some place else. He believed the City is protected by the CUP and the conditions that were discussed, and he would not support the motion to deny.

Commissioner Egan withdrew her second on the Chair's motion. She said she would feel differently if the Commission was either adding a new license to an area that already has over concentration, or if it came from an area that did not have over concentration to one that did; here, both are equally problem areas with over concentration and it shouldn't make a difference; a specialty retailer is an improvement, and therefore, despite the over concentration and the closeness of other purveyors of alcoholic beverages, she believed there is a public convenience involved.

MOTION:
PA-05-37
Approved

A motion was made by Commissioner Garlich, seconded by Commissioner Egan and carried 3-1 (Perkins vote no, Hall absent) to approve by adoption of Planning Commission Resolution PC-05-80, based on analysis and information contained in the Planning Division staff report, and findings contained in exhibit "A", subject to conditions in exhibit "B" with the following modifications:

Findings

- A. The information presented ~~does not comply~~ complies with Costa Mesa Municipal Code Section 13-29(g)(2) in that the proposed use is ~~not~~ compatible with developments in the same general area. Granting the conditional use permit will not be detrimental to the health, safety and general welfare of the public or other properties or improvements with the immediate vicinity. *Delete remainder of paragraph.*
- B. The proposed project ~~does not comply~~ complies with Costa Mesa Municipal Code Section 13-29(e) because:
- a. The proposed use is ~~not~~ compatible and harmonious with uses both on-site as well as those on surrounding properties.
 - b. The project is ~~not~~ consistent with the General Plan.
 - c. The planning application is for a project-specific case and does not establish a precedent for future development.
- D. and E. should be corrected to read C. and D. *Dialogue remains the same for both.*

Conditions of Approval

3. The use shall be limited to the type of operation described in the staff report and applicant's project description and product presentation, i.e., a high-end specialty retailer selling beer, wine, spirits, gourmet food, and related items. No sales of items related to a convenience or liquor store such as milk, medicine, newspapers, magazines, lottery tickets, tobacco, etc., shall be permitted. Any change in the operational...


The Chair explained the appeal process.

REPORT OF THE DEVELOPMENT SVS. DEPARTMENT: None.

REPORT OF THE CITY ATTORNEY'S OFFICE: None.

ADJOURNMENT: There being no further business, Chairman Perkins adjourned the meeting at 11:00 p.m. to the study session of Monday, December 5, 2005.

Submitted by:



KIMBERLY BRANDT, ACTING SECRETARY
COSTA MESA PLANNING COMMISSION