

Comments on November 28, 2012 Zoning Administrator Agenda Items

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Item B. Minutes Of November 14, 2012

Under “Item No. 4” on page 2, I believe the applicant’s business name (as reflected in most of their submissions in the agenda packet, as well as on the door of their business) is “**Orangetheory Fitness**” (first word all one word) rather than “**Orange Theory Fitness**”.

Item No. 2. Poppy Avenue Child Daycare - Minor Use Permit

In the staff report:

- Based on the public correspondence, it would seem the staff report could have been more clear that the proposed approval is for a maximum of 10 children, rather than 14.
- The boilerplate statement under “APPEAL PERIOD” on page 3 --

“An appeal may be filed with the Director of Community Development or City Clerk, as applicable...”

is potentially confusing to, and burdensome upon, the public, since it seemingly requires them to determine who is “applicable.” Although the language is copied from Section 20.64.030.B.1 of the Zoning Code, staff knows Zoning Administrator decisions can *only* be appealed to the Planning Commission, and Section 20.64.030.B.1.a says such appeals are to be filed with the Director of Community Development. Since the City Clerk will never be “applicable” to an appeal of a Zoning Administrator decision, it is confusing to suggest she might be.

- Also, the boilerplate suggests the Zoning Administrator *might*, under Title 19, be rendering decisions on tentative *tract* maps (as well as tentative *parcel* maps). This is not true: the Planning Commission is the original review authority for tract maps.
- All in all, rather than attempting to use one-size-fits all boilerplate, it would be a convenience to the public to simply state staff’s understanding of the appeal rules that apply to the case to which the report applies – as is done at the end of the Draft Resolution.

In the draft resolution:

- The statement under the title says “THE *PLANNING COMMISSION* OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS.” I assume this was meant to say “*Zoning Administrator*”?
- In Section 1, “**Statement of Facts 5**” erroneously suggests a hearing was held before the “*Planning Commission*”. I assume this was meant to say “*Zoning Administrator*”?
- The CEQA finding under Section 2 seems debatable. The request is clearly for an “*expansion of the existing use,*” and at some point such expansion must be more than “*negligible.*”
- In Section 3:
 - “**Finding A**” would seem to require further explanation. Even though it may be licensed, it is far from obvious that operation of a commercial day care center is consistent with a General Plan designation of “*Two Unit Residential—RT*”. Surely not all commercial/institutional uses are?
 - “**Facts in Support of Finding B.4**” (stating that the front cottage is both the site of the day care operation *and* the operators primary residence) leaves it unclear what the rear unit is used for.
 - “**Facts in Support of Finding D.2**” (that the small facility complied with Fire Regulations in 2000) leaves it less than obvious that an expanded facility would comply with current regulations.
 - The intent of “**Condition of Approval 3**” would be clearer if it said “*and neither unit shall be rented independently*” rather than “*and the rear unit shall not be rented independently.*” The draft language might allow the owner to live (and operate the day care) in the rear unit while renting the front unit.
 - Based on the staff report description of the operation, “**Condition of Approval 4**” (requiring access to the day care through the alley) seems unrealistic. If the day care and play areas are in the front unit, fronting Poppy, it seems natural parents will drop off and pick up their children there and the City will realistically have little means to discourage that on an on-going basis. The correspondence from the public appears to confirm this.
 - “**Condition of Approval 7**” should presumably leave to the Zoning Administrator (rather than the Community Development Director) any future decision to increase the size of the day care operation above the 10 authorized by the resolution. Allowing the Community Development Director to modify the publicly agreed to cap through a non-public process essentially renders meaningless the present hearing. In addition, it is inconsistent with **Condition 12** which would

seem to require a Zoning Administrator approved modification to the permit for “Any change in operational characteristics.”

Item No. 3. Sweet Lady Jane Bakery Minor Use Permit

In the staff report:

- Under “**Recommendation 2**” on page 1, there seems to be an extraneous “No.” after “UP2012-024” – or else something is missing.
- In the third bullet point on page 2 (handwritten page 3), the interpretation of Zoning Code Section 20.38.060 (Nonconforming Parking), erroneously referred to as a “Chapter,” seem debatable since the cited subsection (20.38.060.B) is prefaced by words saying it applies to “nonresidential structures,” not to structures in a “nonresidential zoning district.” According to the staff report this is, at least partially, a residential structure.
- With regard to the “APPEAL PERIOD” explanation on page 3 (handwritten page 4), the same comment applies as under Item 2, above.

In the draft resolution:

- In Section 1, “**Statement of Facts 5**” erroneously suggests a hearing was held before the “*Planning Commission*”. I assume this was meant to say “*Zoning Administrator*”?
- In Section 3, in “**Facts in Support of Finding B.4**,” *Chapter* 20.38.060 is, as noted above, actually *Section* 20.38.060.
- Even assuming Zoning Code Section 20.38.060 applies, I find questionable the implication of “**Facts in Support of Finding B.5**” that a parking calculation leads to a conclusion of “no intensification” of use, and that the change is therefore compliant with Section 20.38.060 (“**Facts in Support of Finding B.6**”). The Zoning Code defines “Intensity” as “*Relative measure of development impact as defined by physical and operational characteristics (e.g., number of dwelling units per acre, amount of parking required, amount of traffic generated, etc.)*,” and although the official amount of parking may be the same, I would think that a successful and attractive bakery (especially one simultaneously seating 20 patrons) is likely to generate more traffic than a palm reader. The bakery use is also likely to have more need for deliveries than the palm reader use, which would seem a problem with no dedicated parking. Does the bakery itself intend to have vehicles for making home deliveries, and if so, where would they park?
- “**Facts in Support of Finding C.4**” contains a couple of grammatical typos:
 - “located less than 500 feet ~~of~~ **from** a residential district”
 - “and is **at** a level below the alley”
- “**Facts in Support of Finding D.2**” (“Adequate public and emergency vehicle access, public services, and utilities are provided on-site and are accessed by way of the alley directly behind the site.”) seems confusing in view of the previous finding that the operation is at a level below the alley.
- Is there a typo in “**Condition of Approval 8**”? How does one “incorporate into the Building Division”?

- What does the requirement for 7 parking spaces in “**Condition of Approval 12**” mean? The staff report said the property is legally non-conforming with *no* parking, and that the no additional parking was required.
- “**Condition of Approval 35**” is incomplete. Presumably it is meant to say *the applicant* will reconstruct (and presumably at their expense?) .

Item No. 4. Capriotti’s Sandwich Shop Minor Use Permit

In the staff report:

- The statement on page 2 (handwritten page 3) that “*Although the requested hours of operation do not exceed 8:00 p.m., staff recommends allowing the establishment to operate between 7:00 a.m. and 11:00 p.m.*” seems odd. It is also unclear from the staff report why a Minor Use Permit and Zoning Administrator hearing is required. My understanding was non-alcohol serving food service establishments generally require this only if they are located within 500 feet of residential use, which is not the case here. Is it because of staff’s wish to extend the hours beyond those requested by the applicant, or because of the PC-11 text, or something else?
- With regard to the “APPEAL PERIOD” explanation on page 3 (handwritten page 4), the same comment applies as under Item 2, above.
- Under “**Recommendation 2**” on page 1, there seems to be an extraneous “No.” after “UP2012-024” – or else something is missing.

In the draft resolution:

- In Section 1, “**Statement of Facts 5**” erroneously suggests a hearing was held before the “*Planning Commission*”. I assume this was meant to say “*Zoning Administrator*”?
- In Section 2, the CEQA finding that there going from a vacant building to an occupied building is not an expansion of use seems debatable.
- In Section 4, “Decision 1” says “The *Planning Commission* of the City of Newport Beach hereby approves...” I assume this was meant to say “*Zoning Administrator*”?
- “**Condition of Approval 12**” (“The hours of operation for food service, eating and drinking establishment are limited from 7:00 a.m. to 11:00 p.m., daily.”) is unsupported by anything I can discover in the preceding findings or explanation of how the action is consistent with the required findings. “**Facts in Support of Finding C.1**” refers instead to consistency based on “*the requested hours of operation*” of “*10:00 a.m. to 8:00 p.m., Monday through Saturday and 11:00 a.m. to 7:00 p.m. on Sunday.*”