

**CITY OF NEWPORT BEACH
COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION ACTION REPORT**

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION
FROM: Kimberly Brandt, Community Development Director
SUBJECT: Report of actions taken by the Zoning Administrator and/or Planning Division staff for the week ending October 28, 2011

**ACTIONS TAKEN BY THE COMMUNITY DEVELOPMENT DIRECTOR
OR PLANNING DIVISION STAFF**

Item 1: Gallos Christmas Trees - Limited Term Permit – Seasonal No. XP2011-007
(PA2011-181)
3928 E. Coast Highway

This item was approved on October 26, 2011

Council District 6

On behalf of Kimberly Brandt, Community Development Director



Patrick J. Alford, Planning Manager

APPEAL PERIOD: The applicant or any interested party may appeal the decision of the Community Development Director and division staff to the Planning Commission by submitting a written appeal application to the Community Development Director in accordance with the provisions of the Newport Beach Municipal Code. For additional information on filing an appeal, contact the Planning Division at 949 644-3200.



COMMUNITY DEVELOPMENT DEPARTMENT

PLANNING DIVISION

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ZONING ADMINISTRATOR ACTION LETTER

Application No. Limited Term Permit – Seasonal No. XP2011-007
(PA2011-181)

Applicant Eric Hanna

Site Address 3928 E. Coast Highway
Gallos Christmas Trees

Legal Description Tract No. 673, Block B, Lot 5657 & Lot 58 and a Portion of the
Abandoned Alley

On **October 26, 2011**, the Zoning Administrator approved the following: A Limited Term Permit application for a Christmas tree sales lot (Seasonal Sales) on a vacant lot. The property is located in the RM (Multi-Unit Residential) District. The Zoning Administrator's approval is based on the following findings and subject to the following conditions.

FINDINGS

1. **Finding:** This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 4 (Minor Alterations to Land).

Facts in Support of Finding:

- Class 4 exempts minor temporary uses of land having negligible or no permanent effects on the environment, including carnivals, sales of Christmas trees, etc.
2. **Finding:** The operation of the requested limited duration use at the location proposed and within the time period specified would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the requested limited duration use;

Facts in Support of Finding:

- The operation of the temporary Christmas tree sales lot has been reviewed and conditioned to preclude any detriment and to uphold the general welfare of the area.

- The lot has historically been used as a Christmas tree sales lot and has not proven detrimental.

3. **Finding:** The subject lot is adequate in size and shape to accommodate the limited duration use without material detriment to the use and enjoyment of other properties located adjacent to and in the vicinity of the lot;

Facts in Support of Finding:

- The subject lot is approximately 11,700 square feet in area and is adequate in size to accommodate the proposed tree display area, storage container, sales booth, sawhorse area, and tree storage area.
- All temporary structures and improvements will be erected on private property.

4. **Finding:** The subject lot is adequately served by streets or highways having sufficient width and improvements to accommodate the kind and quantity of traffic that the limited duration use would or could reasonably be expected to generate;

Facts in Support of Finding:

- Access and parking for the site will occur by way of the existing driveway and parking lot located at 3916 East Coast.

5. **Finding:** Adequate temporary parking to accommodate vehicular traffic to be generated by the limited duration use would be available either on-site or at alternate locations acceptable to the Zoning Administrator; and

Facts in Support of Finding:

- The Christmas tree sales lot is not anticipated to generate an excess of vehicular traffic.
- Adequate temporary parking will be provided by way of the ten (10) spaces located on subject lot and the seven (7) spaces located on the abutting parking lot at 3916 East Coast Highway.
- The take-out service, limited use (Gallos Italian Subs) located at 3900 East Coast Highway is adequately served by the three (3) spaces located onsite and will not be negatively impacted by the proposed limited duration use.

6. **Finding:** The limited duration use is consistent with all applicable provisions of the General Plan, any applicable specific plan, the Municipal Code, and other City regulations.

Facts in Support of Finding:

- The Christmas tree sales lot is conditioned such that it will comply with all applicable provisions of the General Plan, Municipal Code, and other City regulations.
- The subject lot is not located within any specific plan.

CONDITIONS

1. The limited duration use shall not commence operation prior to November 26, 2011 and shall be concluded before December 26, 2011.
2. All temporary structures shall be anchored and a building permit shall be secured for those structures as required by the Building Division.
3. The limited duration use shall only operate between the hours of 9:00 a.m. and 9:00 p.m., daily.
4. The operator of the limited duration use shall be responsible for the control of noise generated by the subject facility including, but not limited to, noise generated by patrons and equipment. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. If noise generation does not comply with the aforementioned provisions, the Community Development Director may require remediation measures which may include relocation of equipment.
5. Lighting shall be in compliance with applicable standards of the Zoning Code. Exterior on-site lighting shall be shielded and confined within site boundaries. No direct rays or glare are permitted to shine onto public streets or adjacent sites or create a public nuisance. "Walpak" type fixtures are not permitted. If in the opinion of the Community Development Director, existing illumination creates an unacceptable negative impact on surrounding land uses or sensitive habitat areas he or she may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
6. The site driveway access shall have adequate sight distance pursuant to City Standard STD-110-L.
7. The applicant shall ensure patron vehicles do not impact traffic flow on East Coast Highway.
8. The site shall be cleaned of debris, litter, or any other evidence of the limited duration use upon completion or removal of the use, and shall continue to be used in compliance with this Zoning Code. The site shall be adequately cleaned and inspected by Code Enforcement by midnight on December 31, 2011. Failure to do so will result in a forfeiture of a portion or the entirety of the \$500 deposit.

9. A valid business license with a sellers permit shall be secured prior to commencement of the limited duration use.
10. All signs shall be in compliance with Chapter 20.42 (Sign Standards) of the Newport Beach Municipal Code and the site is limited to three (3) temporary banner signs not to exceed 75 square feet each.
11. Signage shall be placed in a manner such that they do not impact views of drivers entering and exiting the site.
12. All proposed temporary structures and any site contents shall be located within the private property lines.
13. The applicant shall provide a minimum of two (2) 2A-10BC fire extinguishers to be mounted in a visible, unobstructed location at a height of three to five feet. Additional fire extinguishers may be necessary to provide additional coverage in certain areas or where access to an extinguisher from any point exceeds a 75-foot travel distance.
14. All flocking material shall be flame retardant.
15. Combustible ground covering greater than two inches in depth shall not be permitted unless approved by the Fire Department. Straw and other combustible ground covering shall be maintained in a damp or moist condition and/or be treated with an approved fire-retardant chemical.
16. Open flames such as, but not limited to, torches, candles, warming devices and other devices using a flame capable of igniting combustible materials shall not be used in or adjacent to tents or canopies. Open flames shall also not be used near or on combustible decorations or materials such as, but not limited to weeds, straw, hay and the like unless previously approved by the Fire Department.
17. Smoking shall not be permitted in tents or canopies or in adjacent areas where hay, straw, sawdust, Christmas trees, or other combustible materials are being used, displayed, or stored. "NO-SMOKING" signs shall be conspicuously posted throughout the lot and in the tent or canopy as well as all points of entry in such a manner that they are visible to all patrons who enter the premises.
18. All weeds, combustible vegetation, trash and combustible storage shall be removed from areas adjacent to and within 30 feet of tents and canopies.
19. The applicant shall contact the Fire Department and obtain necessary permitting if a tent or canopy is proposed on the lot. All tents or canopies shall be consistent with Fire Department Guideline A.03 – Tents and Temporary Membrane Structures.

20. The approval of the requested limited term permit is contingent upon compliance with applicable provisions of the Municipal Code and the successful granting of all required permits from any other department or governing agency.
21. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Gallos Christmas Trees including, but not limited to, the XP2011-007 (PA2011-181). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

APPEAL PERIOD: Limited Term Permit applications do not become effective until 14 days following the date of action. Prior to the effective date the applicant or any interested party may appeal the decision of the Zoning Administrator to the Planning Commission by submitting a written appeal application to the Community Development Director. For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

By: 

Jaime Murillo, Zoning Administrator

JM/bmz

Attachments: ZA 1 Vicinity Map
 ZA 2 Site Plan

Attachment No. ZA 1

Vicinity Map

VICINITY MAP



Limited Term Permit – Seasonal No. XP2011-007
PA2011-181

3928 E. Coast Highway

Attachment No. ZA 2

Site Plan

Gallo's Christmas Trees

PARKING LOT: GALLO'S

(POWER-PULLED FROM GALLO'S)

