





Minutes

Planning Commission November 21, 2011 City of Orange Monday 7:00 p.m.

PRESENT: Commissioners Buttress, Gladson, Grangoff, and Steiner

ABSENT: Commissioner Merino

STAFF

PRESENT: Leslie Aranda Roseberry, Planning Manager

Chad Ortlieb, Senior Planner

Dan Ryan, Historic Preservation Planner Gary Sheatz, Assistant City Attorney Sandi Dimick, Recording Secretary

ADMINISTRATIVE SESSION

Chair Steiner opened the Administration Session of the Planning Commission Meeting at 6:50 p.m. He stated on Item No. 3.2, it appeared to be for a Zone Change only and there was no project before them, he asked if that was correct?

Planning Manager Leslie Aranda Roseberry stated that was correct; there was no project. The item was being brought before the Planning Commission for a Zone Change and they expected that there may be members of the public present to speak.

Commissioner Buttress stated the Planning Commission would be making a decision based on what was before them, which was the Zone Change, and not a future project. Ms. Aranda Roseberry stated that was correct.

Chair Steiner stated any future project would be brought forth at a separate time with all of the necessary reviews. Ms. Aranda Roseberry stated depending what a proposed future project was; it would go through the proper approvals and approving bodies.

Commissioner Buttress stated the site would have specific permitted uses.

Chair Steiner asked who would be presenting the item. Senior Planner Chad Ortlieb stated he was the Staff Planner for the Zone Change.

Chair Steiner asked if there was any further information from Staff on Gabbi's or the Bruery. Ms. Aranda Roseberry stated there was no further information.

Chair Steiner stated he would read the appeal process at the beginning of the meeting. He stated the consent calendar contained two items and he asked if those should be voted on separately. Ms. Aranda Roseberry stated the Commission could take a vote on the entirety of the consent calendar, or the items could be voted on separately. Commissioner Gladson stated she had been a member of the Design Review Committee





when the Serrano Woods project had gone through and she would need to be recused from the second consent item. Assistant City Attorney Gary Sheatz stated if the item was not opened for discussion she could remain on the dais and record an abstention for that item.

Mr. Ortlieb stated on the Serrano Woods item there was a potential address error. The address had been noted as 2050 in all of their documentation and he believed the address of 2060 had also been referred to. He was not certain what address the applicant relied on, the 2050 or the 2060 address. If the Commission would be approving the consent item for Serrano Woods, a notation of using either address could be noted during a motion to clarify any errors.

Mr. Ortlieb stated for the OC Dance item he had received 1 additional inquiry via an email which had been forwarded to the Commissioners. The party sending the email had concerns on an issue that a condition had not existed for. The concern was that there would be dancing in the back alley of the dance studio. An additional condition could be added to address the public's concern.

On the Zone Change request, it might be the intent of the members of the public to refer to a previous application request. He would address that in his presentation as he felt that was the basis of public concerns. Chair Steiner stated the Zone Change was not a public hearing. Commissioner Buttress stated it was a public hearing for the Zone Change.

Ms. Aranda Roseberry stated at the last meeting they had spoken about the Administrative Session and a question had been asked as to when the Administrative Sessions of the Planning Commission had started. After some digging and speaking to those who had been with the City a while, she had found that the Administrative Sessions were a part of the Planning Commission meetings in the 1980s and in full swing by 1988. They had started as an informal discussion period and then to a more formalized session when people began to look at the Brown Act, and they had been as long as 1 hour.

Chair Steiner stated he would want the Administrative Sessions to continue, as a brief period, prior to the regular session. Commissioner Gladson stated they could have some flexibility in that if an agenda was a bit more complicated or there needed to be additional clarification, they could begin the session earlier. Commissioner Buttress stated they could keep the sessions at 6:45 p.m. with the shorter agendas which allowed time for a review of the agenda. Commissioner Grangoff asked, in order to include the public, could the Administrative Session be held on the dais? Mr. Sheatz stated it would be logistically difficult to hold the meeting on the dais and have the same give and take with Staff as they currently were able to do. It was important that the applicants knew that they could attend the Administrative Session of the meeting and it was a bit intimidating to people who walked into the Administrative Session and felt that it was a closed meeting. The Administrative Session information was posted and included on the agenda. Commissioner Buttress suggested that it could be added to the top of the agenda with a note that public was welcome and she agreed it would be difficult to hold the Administrative Session of the meeting on the dais.





Chair Steiner stated he would be presenting the resolution for Assistant Community Development Director Ed Knight and he asked if the Planning Commission would also be adopting the resolution. Ms. Aranda Roseberry stated yes.

Mr. Sheatz stated in regards to the ethics training, in the past the City of Orange had presented it to the Commissioners and he was not certain, due to staffing, if that would be the case again. The training needed to be completed by February 2012 and he understood it was available on-line. He would check into that and wanted to remind the Commissioners that it was approaching. Commissioner Buttress asked Mr. Sheatz if he would send them an email with the available websites for the training. Mr. Sheatz stated he would send them the necessary information.

There was no further discussion.

Administrative Session adjourned @ 7:04p.m.

PUBLIC PARTICIPATION: None

REGULAR SESSION:

Chair Steiner opened the regular Session of the Planning Commission Meeting with a review of the City's appeal process, followed by the presentation to Assistant Community Development Director Ed Knight.

(1) Presentation by Chair Steiner:

Adopt Planning Commission Resolution No. 24-11, expressing appreciation to Edward M. Knight for 5 years of dedicated and loyal service to the City of Orange Planning Commission as the official Staff representative.

Commissioner Buttress made a motion to Adopt PC Resolution No. 24-11.

SECOND: Commissioner Gladson

AYES: Commissioners Buttress, Gladson, Grangoff and Steiner

NOES: None ABSTAIN: None ABSENT: None

MOTION CARRIED

Chair Steiner stated Assistant Community Development Director Ed Knight had provided a tremendous amount of service to the City of Orange and was very instrumental in some very specific projects, one being the General Plan Amendment and also the Santiago Hills project, along with a variety of other important projects. Chair Steiner read from the resolution and thanked Mr. Knight for his exceptional public service.





Mr. Knight stated it had been a great pleasure to have worked with the Commissioners over the years and it had been a great pleasure and a great privilege to have worked for the City of Orange. The Commissioners thanked Mr. Knight for his service.

Consent Calendar:

- (2) APPROVAL OF MINUTES FROM THE REGULAR SCHEDULED MEETING OF NOVEMBER 7, 2011
- (3) GPA 2010-0002; ZC 1257-10; CUP 2803-10; MJSP 0639-10; TPM 0027-10; MND 1824-10; DRC 4504-10 SERRANO WOODS AFFORDABLE HOUSING AGREEMENT

Chair Steiner stated on the Serrano Woods item, it would be noted to allow either address 2050 or 2060 to be used.

Commissioner Grangoff made a motion to approve the minutes from the regular scheduled Planning Commission Meeting of November 7, 2011 as written, and to adopt and approve GPA 2010-2002; ZC 1257-10; CUP 2803-10; MJSP 0639-10; TPS 0027-10; and DRC 4504-10-Serrano Woods affordable housing agreement, subject to the conditions contained in the Staff Report.

Commissioner Gladson stated she had participated in the discussion for Item No. 3, Serrano Woods, while serving on the Design Review Committee and therefore would record an abstention on the vote for that item.

SECOND: Commissioner Buttress

AYES: Commissioners Buttress, Gladson, Grangoff and Steiner

NOES: None

ABSTAIN: Commissioner Gladson (on item No. 3 only)

ABSENT: Commissioner Merino

MOTION CARRIED





NEW HEARING:

(4) CONDITIONAL USE PERMIT NO. 2805-10 – OC DANCE STUDIO

The applicant proposes to establish a dance and fitness studio in a 2,860 square feet tenant space in a 70,460 square foot commercial center with 282 parking spaces, which are currently 67 spaces deficient. Evening classes (5:30 pm to 9:30 pm) would be limited to no more than 20 persons and day classes (10:00 am to 4:00 pm) would be limited to no more than 11 persons by appointment, including instructors. A Conditional Use Permit is required for the school use and for the code, alternative parking standards proposed.

LOCATION: 1132 E. Katella Avenue, #A-18

NOTE: The proposed project is categorically exempt from the provisions

of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15301 (Class 1 – Existing Facilities) because the project proposes to occupy an existing building with a new

tenant.

RECOMMENDED ACTION:

Adopt Planning Commission Resolution No. 26-11 approving the establishment of a dance studio with up to 20 students and up to two instructors on site for evening instruction and for up to 11 persons on site for day classes with a shared use parking arrangement in the commercial center.

Senior Planner Chad Ortlieb presented a project overview consistent with the Staff Report.

Chair Steiner opened the Public Hearing and stated an email from a resident, Jean Shirley, had been received and her primary concern was noise.

Commissioner Buttress stated Condition No. 11 addressed one of the concerns that Ms. Shirley had noted in her email.

Chair Steiner invited the applicant to address the Commission.

Keith Gardner, address on file, stated they agreed with Staff's conclusion and he was available for any questions.

Chair Steiner asked if he was comfortable with the 13 Conditions of Approval.

Mr. Gardner stated yes.

Chair Steiner asked if Mr. Gardner wanted to speak to the concerns that Ms. Shirley had.





Commissioner Buttress stated one of the requests made by Ms. Shirley was that the back doors of the dance studio remain closed so there would not be noise to the residential area, and that was covered in Condition No. 11. There was also a concern about using the back alley for dancing and she asked if there would be plans for dancing in the alley?

Mr. Gardner stated no.

Commissioner Buttress stated Ms. Shirley had noted a concern that she would not want any noise coming from the front or back doors of the dance studio.

Commissioner Gladson asked why the dance studio went in without the required permits.

Mr. Gardner stated he was not involved with the dance studio at that time.

Commissioner Gladson stated on limitation of the number of students, was the applicant comfortable with the numbers in the Conditions of Approval, as it appeared to be very tight?

Mr. Gardner stated those were the numbers they had worked on with Staff and they were comfortable with the student limitation numbers as proposed.

Chair Steiner closed the hearing for public comment and brought the item back to the Commission for further discussion or action.

Commissioner Gladson made a motion to adopt PC Resolution 26-11, approving CUP No. 2805-10-OC Dance Studio, subject to the conditions contained in the Staff Report; noting the item was categorically exempt from CEQA and amending Condition No. 11 to add the wording: the back door of the establishment shall remain closed at all times and equipped with panic hardware, etc.

SECOND: Commissioner Buttress

AYES: Commissioners Buttress, Gladson, Grangoff and Steiner

NOES: None ABSTAIN: None

ABSENT: Commissioner Merino

MOTION CARRIED





(5) **ZONE CHANGE 1262-11 – 238 S. FLOWER STREET**

The applicant proposes to change the current Limited Business (C-1) zoning of the subject site to Residential Multiple Family (R-3) which would make the property consistent with the Low Medium Density Residential 6-15 du/ac (LMDR) General Plan Land Use Designation of the site. The requested Zone Change is for financial planning purposes only and no development is proposed in association with the Zone Change at this time.

LOCATION: 238 S. Flower Street

NOTE: Final Program Environmental Impact Report (EIR) No. 1815-09

for the Comprehensive General Plan Update was certified on March 9, 2010 and prepared in accordance with the California Environmental Quality Act. CEQA Guidelines Section 15168 (c) allows the use of a previously certified Program EIR to cover

"later activities" subject to the following findings:

The project would not have effects that were not examined in the Program EIR; and no new significant impacts (or a substantial increase in the severity of an impact) would occur and no new

mitigation measures are required.

Because the land use assumptions of Program EIR No. 1815-09 included the site's existing Low Medium Density Residential 6 to 15 (LMDR) General Plan Land Use Designation, impacts for future potential density increases on the site have been evaluated in

the EIR.

RECOMMENDED ACTION:

Adopt Planning Commission Resolution No. 27-11 recommending City Council approval to change the zone of 78,408 square feet of property from Limited Business (C-1) to Residential Multiple Family (R-3).

Senior Planner Chad Ortlieb presented the Zone Change overview, subject to the conditions contained in the Staff Report.

Chair Steiner opened the public hearing and stated he had a question for the Assistant City Attorney, Gary Sheatz. He stated that he wanted to disclose that through a Superior Court appointment, he was part of an oversight committee and one of the establishments that the committee reviewed was New Alternatives, and he asked if that would present a conflict of interest as New Alternatives was located at the site of the Zone Change that was before them?





Mr. Sheatz stated they could take a brief recess or he could ask Chair Steiner if he had derived any financial income whatsoever from the project's applicant or New Alternatives?

Chair Steiner stated he had not.

Mr. Sheatz stated there would be no financial conflict. He then asked Chair Steiner if he had a common law conflict, meaning would he be able to be fair and impartial, to be non-biased in favor or against in order to hear the item that was before the Planning Commission.

Chair Steiner stated he would.

Mr. Sheatz stated Chair Steiner could remain on the dais for the presentation.

Chair Steiner opened the public hearing and asked if there had been any further communication received on the item. There was nothing further. He invited the applicant to address the Commission.

Stephanie Hoeschele, address on file, stated she was the applicant's representative, as her father, the owner, was 77 and ill and he could not speak and the other property owner was also ill. The owners had no intention of currently doing anything with the property. The purpose of the Zone Change would be to put the property in order with the City's General Plan. A request was to put the property in order as both owners were older and ill. The owners needed a plan B in case there was the need to vacate and the Zone Change would provide for an easier potential sale of the property if that need should arise.

Chair Steiner opened the hearing for public comment.

Mary DuFrane, address on file, stated she had been there 25-27 years. Her thinking on the proposal was that they had a strong moral obligation to the children that resided at the property in question. Their needs needed to be met by the City and the neighbors. She felt the Zone Change was a way to get in there to change the zoning and build alternate structures or residences and the children would lose out. The children had been a real pleasure; during the summer they were heard laughing while out playing basketball. The children had never given her any trouble at all. She understood that it had been specified that the Zone Change was due to a legal issue, but she thought the potential for the children to lose a healthy place to live was very serious.

Tim Smith, address on file, stated he had lived there for 52 years and had seen all the properties develop around him. The previous property owner wanted to sub-divide the property, very likely a new owner would ask for the same thing. Surrounding New Alternatives were single family residences. There were apartment complexes on the south side and he had been to a public hearing for the storage units to ensure that they had not gotten a monster back there. He just found out last week that they had a church in the neighborhood, he found that very interesting as he never received a notice and he





believed he lived within 300 yards of the church. He was getting a lot of development around his neighborhood. Their single family homes were being surrounded, unfortunately, by a lot of crime. His area was probably one of the top crime areas in the City, they had a gang problem and it was right next to New Alternatives. It was due to the density, the buildings were going from one story to two story and there were more people in a small space. On the east side of the City there were single family homes being built on the hill to overlook a wonderful area, but on the west side they were being forgotten. The City was thinking about the circle, but let's not forget about the west. He wanted the zoning to remain the same, he was happy with that and the site was a convalescent home before the kids. The problem was that the owner wanted a Zone Change, for no particular reason, but financial. When someone passed on, the property could be sold and they could make a lot of money and the residents in the surrounding area would be forgotten. The C-1 was fine, it fit New Alternatives and it was a great facility.

Chair Steiner stated he was in receipt of communication from a number of residents in the area and their concerns were parking, crime rate, privacy, traffic, property value, and visual impact and comments similar to those that were brought forth by Mr. Smith.

Chair Steiner closed the hearing for public comment and brought the item back to the Commission for further discussion or action.

Commissioner Grangoff asked the applicant if the current resident, New Alternatives, had a lease and if so, how long the lease was for?

Ms. Hoeschele stated the current resident had a month to month lease, with a 6 month required notice.

Chair Steiner stated if the current resident wished to terminate the lease; it could be done with a 6 month notice at the resident's request.

Commissioner Gladson asked Staff if it was known how the property had received a commercial zone designation. Her thought was that the General Plan called for a low to medium density and that the current zoning was out of whack with that, and would they be down zoning the property?

Mr. Ortlieb stated he could not provide an answer currently on how the inconsistency of zoning for the property in question had occurred. The City had an obligation to have the zoning and General Plan consistent at some point in time. With a commercial designation in that area vs. the General Plan designation being a higher density residential designation, the General Plan would be the defining document and zoning would fall in line with that. The applicant was actually ahead of Staff in correcting the inconsistency.

Commissioner Buttress stated if the applicant had not submitted their application, then Staff would have brought the Zone Change request before the Planning Commission at a later date?





Mr. Ortlieb stated that was correct, and it may have been presented as a stand alone area or bundled with other changes.

Chair Steiner stated with all the information he had reviewed, the issues were those that had been the case in 1990, and they were issues that would be dealt with through public hearings with the Planning Commission and the City Council, with mitigation measures and the concerns of the public fully vetted at that time. With the Zone Change before them, they were speaking to a very narrow recommendation, and it was a matter of taking the subject property and create a consistency with the General Plan. There was no project before them. When and if a project should be presented, all the protections would be available to the residents of Orange, through the Municipal Codes and Zoning laws and so forth, with a forum to allow concerns to be heard. The concerns that were voiced 20 years ago were those that were heard currently with projects that came before the Planning Commission and they were in a situation with the Zone Change before them that gave them limited action. They could not speculate about issues in the future and he could provide reassurance to the public that all the protections and transparency would be available at that time.

Commissioner Buttress asked Staff when the General Plan was updated.

Mr. Ortlieb stated within the last two years.

Commissioner Buttress stated at that time there were public hearings on the General Plan itself and when the designation for the Zone Change that was before them was being presented it would have allowed for the general public to express their concerns and request that the low-medium density designation not be adopted.

Mr. Ortlieb stated when the change to the designation for the property had been presented as part of the General Plan, there would have been public hearings held and the opportunity for public input.

Chair Steiner asked Staff if there were any comments regarding his statement?

Mr. Ortlieb stated Staff concurred with Chair Steiner's remarks.

Commissioner Grangoff made a motion to adopt PC Resolution No. 27-11, recommending approval to the City Council of Zone Change No. 1262-11-238 S. Flower Street, subject to the conditions contained in the Staff Report.

SECOND: Commissioner Gladson

AYES: Commissioners Buttress, Gladson, Grangoff and Steiner

NOES: None ABSTAIN: None

ABSENT: Commissioner Merino

MOTION CARRIED





(6) CONDITIONAL USE PERMIT NO. 2827-11 AND DESIGN REVIEW COMMITTEE NO. 4542-11 – ED PATRICK (GABBI'S MEXICAN RESTAURANT)

The applicant is requesting to amend an existing Alcoholic Beverage Control Type 47 (On-Sale General – Eating Place) license to include service on an expanded new front patio of approximately 100 square feet in area. The applicant currently has on-site consumption of alcohol for the guests of the eating establishment. Planning Commission review includes a new outdoor dining area on the front façade.

LOCATION: 141 S. Glassell Street

NOTE: The proposed project is categorically exempt from the provisions

of the California Environmental Quality Act (CEQA) per State CEQA Guidelines Section 15301 (Class 1 – Existing Facilities) because the project includes the minor alterations of a private structure with a small expansion of an outdoor patio for dining and Section 15331 (Class 31 – Historical Resource Restoration and Rehabilitation) that consists of projects limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or construction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings.

RECOMMENDED ACTION:

Adopt Planning Commission Resolution No. 29-11 approving the expansion of Alcoholic Beverage Control Type 47 (On-Sale General for a Bona Fide Eating Place) License for an expanded outdoor patio and to allow exterior improvements.

Historic Preservation Planner Dan Ryan presented a project overview consistent with the Staff Report.

Chair Steiner opened the public hearing and asked if there had been any additional communication received? There was none. Chair Steiner invited the applicant to address the Commission.

Leason Pomeroy, address on file, stated he wanted to re-explain what Mr. Ryan had presented. Currently and as the building was designed, the ABC fence was in line with the face of the building and the tenant leased the space in front of the fence to place additional tables in the space. He had noticed that the restaurant across the street had enclosed a portion of the sidewalk and it was then determined that the area that he had been leasing was actually part of the restaurant property. They would not be increasing the seating at all, but allowing the tables that were currently on the sidewalk to be within the fenced area to allow alcoholic beverages to be served to those additional seats. The





design of the fence was approved by the Design Review Committee and the idea and design of the fence harkened back to an historic reference of the open air market that had existed at the site in 1924. The site had a folding type gate and they had picked up on that historic reference.

Commissioner Gladson asked how the gate opened.

Mr. Pomeroy stated it swung inward.

Ed Patrick, address on file, stated it would swing outward per Fire Code requirements.

Commissioner Gladson stated she had understood that the DRC had asked for a two gate option and wondered what the applicant had thought of that condition?

Mr. Pomeroy stated the only condition for the fence or gate that he recalled was that there should be 2" square posts at the corners.

Commissioner Buttress stated it had been made as a suggestion.

Commissioner Gladson stated there had been a suggestion that there be possibly 2 returns on 2 gates and she was not certain what that had meant.

Mr. Pomeroy stated he understood it to mean that the fence would turn inward and be on either side of the tables; as it was a suggestion they were not obligated to incorporate that design. He would consider it.

Commissioner Gladson stated she had gone to the site over the weekend to review the area and primarily to understand the circulation. Having been to the restaurant, it was rather tight and she noticed in the public right-of-way, there were heaters and benches. Mr. Ryan had stated that those would not be needed anymore.

Mr. Patrick stated the heaters would be moved to the inside fenced area and the benches were out of the way.

Commissioner Gladson asked if their patrons used the benches to sit on while they waited for a table.

Mr. Patrick stated primarily they were restaurant patrons, but he had seen other people use the benches to sit on.

Commissioner Gladson stated she wanted to find out if there was an interest in moving things around inside the restaurant to re-orient some of their things and create less of an impact on the pedestrian walkway.

Mr. Pomeroy stated the restaurant was very popular and it was not necessarily furniture that would be in the way, but people. It was a nice problem to have.





Commissioner Gladson stated on Saturday she had stopped by and there were some people in front of Muff's, the antique store just to the north of the restaurant, who were finding a place to smoke and she wanted to know if that was common?

Mr. Patrick stated patrons who wanted to smoke would go down the street a bit, and there were people who were not coming to the restaurant that also smoked in that area.

Commissioner Gladson stated the plans that they had received in their packets were conceptual and she asked if the applicant would continue to work on the floor plan, to include how the customers would move in and out of the restaurant and where the tables would be moved to be most efficient; a layout that would not have the hostess station in the public right-of-way?

Mr. Patrick stated that would be moved to the inside.

Commissioner Gladson stated the plans currently had no hostess station and seating right up to the gate.

Mr. Patrick stated the hostess station was currently on their property and the fence would go out further.

Chair Steiner stated there were 34 Conditions of Approval along with the additional DRC conditions. He asked if there was anyone that took opposition to the proposal. There was no comment.

Chair Steiner closed the hearing to public comment and brought the item back to the Commission for further discussion or a motion.

Commissioner Buttress made a motion to adopt PC Resolution No. 29-11, approving CUP No. 2827-11, DRC No. 4542-11-Ed Patrick (Gabbi's Mexican Restaurant), subject to the conditions contained in the Staff Report, noting the item was categorically exempt from CEQA.

Commissioner Gladson stated she would be happy to second the motion, if the maker of the motion would agree to add language to Condition No. 5, specifically to add that the hostess station and items that were in the public right-of-way would no longer be any spill over in the public right-of-way; she wanted to make a request for that with the Commission's support.

Chair Steiner asked Commissioner Gladson to identify the condition she wanted to amend?

Commissioner Gladson stated it was Condition No. 5, but she was not certain if that was the most appropriate place for the additional language. She was proposing to modify that condition and it was the DRC's condition that spoke about. The patio layout would meet Public Works' requirements for sidewalk layout. She wanted to propose that all existing





benches, heaters, hostess stand shall be removed and additional spill over tables would not occur at any time in the public right-of-way.

Chair Steiner asked the applicant if he was agreeable to the modified condition.

Mr. Patrick stated he was fine with the change.

Commissioner Grangoff stated he was fine with it, if the applicant was o.k. with it. He was not in support of adding additional conditions.

Chair Steiner stated he understood from the applicants that the additional condition would not hinder their business. If that was not the case, the applicant needed to state that.

Commissioner Buttress asked the applicant to advise the Commission if that was not the case? She stated she had wanted information on the benches that they had spoke to, and she had seen people sitting on them that were not waiting to go into the restaurant and she had thought the benches were City benches.

Mr. Patrick stated the benches had not hindered any walkway. He had placed the benches there for people to sit and relax while waiting for a table. If it was an issue, he could find a way around it. If the Commissioners visited the site, they would not see the benches as a problem.

Commissioner Grangoff stated his concern would be that if the condition was added and the benches were moved a certain way, the applicant might be violating a condition.

Commissioner Gladson stated perhaps Staff could clarify what the City's rule was on objects in the public right-of-way.

Mr. Patrick stated if they looked directly across from the restaurant, there was a nice City owned bench.

Commissioner Gladson stated that was part of the urban design.

Mr. Ryan stated there was 14' of clearance and approximately 5' where the curb went out at an angle and the place where the benches were currently placed was out of the walkway and had more than 5' of clearance.

Planning Manager Leslie Aranda Roseberry stated it sounded to her that the question was whether or not privately owned street furniture could be placed in the public right-of-way. She was not certain if Mr. Ryan had an answer to the question, and she had not had the answer. She asked Assistant City Attorney Gary Sheatz if he had further input.

Mr. Sheatz stated it was all over in the Plaza area and they would address that issue pursuant to an outdoor dining permit and there was a mechanism and a possible way around the issue, if there was a need, to apply for a permit through Public Works.





Mr. Patrick stated he currently had a permit.

Commissioner Buttress stated the more they discussed the issue the less she agreed with adding another condition and it appeared the applicant had already addressed the issue and therefore a condition would not be necessary.

Commissioner Gladson stated the way the drawings were laid out the property line was in the area that the tables now sat. When she had visited the site, the spillover was in front of that, which was City property. She had not had a problem with activating a public street and in Old Towne that was what the City wanted. She wanted to make sure there was enough room for maneuverability; they needed to do both things. She wanted to ensure that individuals in wheelchairs, or people pushing strollers or going in the opposite direction would not have trouble navigating the area, in both the evening and day time hours. She was not too worried about the benches, but was concerned with the heaters and hostess stand; and with spill over to the adjacent property. She wanted to ensure safety. She wanted to nail down that they would have adequate pedestrian space.

Commissioner Buttress stated if she understood the applicant correctly, he had already stated that the heaters and other furniture would be behind the fence or inside. They would be enclosing their space.

Mr. Patrick stated they would not be going out into the public right-of-way.

Commissioner Gladson asked if Commissioner Buttress would be interested in modifying her motion, if she dropped the benches from her modified condition.

Commissioner Buttress stated if she was hearing and understanding the applicant, what Commissioner Gladson had wanted to add was something the applicant had already agreed to. She also understood that Commissioner Gladson wanted something in writing and she asked the applicant if he was comfortable with that. They would be conditioning the heaters and hostess station to be out of the public right-of-way.

Mr. Patrick stated they were already out of the public right-of-way.

Chair Steiner stated they had all of the information on tape, however, he would want the condition re-stated.

Commissioner Gladson stated she would just delete the word "benches" in her attempt to add language to Condition No. 5; which would be all existing heaters, the hostess station and the spill over tables shall be removed in perpetuity.

Commissioner Buttress asked the applicant if everything they had was already on their property.

Mr. Patrick stated yes, that was correct.





Commissioner Gladson stated the picture showed tables and chairs in the walkway.

Mr. Patrick stated the arrangement in the photo she referred to was an application that was approved by the City's outdoor dining; it was Dan Jensen's' property and he had sent a letter including photos of their tables which were on private property, not City property. He had insurance that covered that property as well.

Commissioner Buttress stated it appeared that everything was fine the way it was, and that no additions to the conditions should be made. The applicant had met the requirements.

Commissioner Gladson withdrew her second to the motion.

SECOND: Commissioner Grangoff

AYES: Commissioners Buttress, Gladson, Grangoff and Steiner

NOES: None ABSTAIN: None

ABSENT: Commissioner Merino

MOTION CARRIED





(7) CONDITIONAL USE PERMIT NO. 2832-11 AND DESIGN REVIEW COMMITTEE NO. 4558-11 – THE BRUERY

The applicant is requesting Alcoholic Beverage Control Type 42 (On-Sale Beer and Wine – Public Premises) and Type 20 (Off-Sale Beer and Wine) Licenses to include service on an expanded new rear patio of approximately 528 square feet in area. Planning Commission review includes new outdoor dining area on the rear façade. The uncovered patio and enclosed area will have seating for 33 patrons.

LOCATION: 141-143 N. Glassell Street

NOTE: The proposed project is categorically exempt from the provisions

of the California Environmental Quality Act (CEQA) per State CEQA Guidelines Section 15301 (Class 1 – Existing Facilities) because the project includes the minor alterations of a private

structure with a small expansion of an outdoor dining patio.

RECOMMENDED ACTION:

Adopt Planning Commission Resolution No. 28-11 allowing Alcoholic Beverage Control Type 42 and Type 20 Licenses on an expanded new rear patio of approximately 528 square feet and allowing outdoor patio improvements.

Historic Preservation Planner Dan Ryan presented a project overview consistent with the Staff Report.

Chair Steiner asked Mr. Ryan if the resolution they would be making included a motion that would include Items 5 through Items 11 that the Commissioners had received via memo.

Mr. Ryan stated yes.

Chair Steiner opened the public hearing and asked if there had been any additional communication received? There was none. Chair Steiner stated that there were several speakers for public comment and he reviewed the procedure for addressing the Commission, he then invited the applicant to address the Commission.

Mike Rue, address on file, stated he was the president of the company and he wanted to familiarize them with their business. It was a family owned business and although the beer was brewed in Placentia, their roots were in Orange. He and his wife raised their three sons in Orange; they went to Orange grammar schools and the nearby Catholic high school. They went to Church in Orange. His son, Pat Rue, had gotten into the beer business by making beer in his own garage while attending law school. On graduation day, his son Pat, said that he had not wanted to be a lawyer, but wanted to brew beer instead. They made their investments in the City of Orange and they also made their charitable investments in Orange. When they were interested in starting a retail store in





Orange, they could not find a location and located in Placentia. When the Frog's Breath space opened up, they vacated the lease in Placentia with the opportunity to move to Orange. Their nitch was in the higher end of the craft beer industry. He presented a craft beer from their business vs. a 6 pack of Budweiser, and stated to make a point, the lowest price point for the beer they brewed was \$10.00 in a champagne bottle of 25.5 ounces compared to a retail beer that could be purchased at a liquor store or market. They would not find Coors, Budweiser, or Miller at their stores. Folks who wanted to drink those other beers would not be their customers. They competed with some bigger players, such as BevMo and Total Wine and frankly, the other businesses he mentioned had lower margins, easier access and better parking than The Bruery had.

In order to attract customers, they offered an education and an experience. It was important that they listened to their customers and after 4 months of business, their customers had made their wishes clear, first they commented that the serving area was too small. On Thursday, Friday and Saturday evenings they could not satisfy their customer demands as their serving area was only 200 square feet. Secondly, they asked us to stop forcing them to have a tasting flight; repeat customers came in and wanted a full pour of their favorite beer, the kind they could get at other tasting rooms in Orange County. Lastly, they wanted more food offerings. These were the reasons that they were before the Planning Commission. They had a Type 20 and Type 42 ABC License, and they were not asking for any new licensing. They were in full agreement with the proposed resolution and conditions. He had one clarification that they would want to make, which was a revision to one of the conditions and also that the CUP 2832-11 replaced the two existing CUPs No. 2591-06 and 2539-05. The condition that they wanted to revise was Condition No. 30, and Mr. Ryan alluded to that condition in his presentation. It was a condition requested by the Orange Police Department that would limit the business to serve only a single serving of beer or wine, a single glass that was referred to as a full pour; however, they were not limiting the number of tasting flights they could serve. They also wanted to limit the beer size to a 12 ounce pour.

The Bruery was requesting a change that would be more in line with the other tasting rooms that existed in Orange County. Under the current conditions and the proposed conditions, they had the most restrictive in Orange County. The request was to allow no limit on the number of pours of wine or beer and they would be guided by the requirements of the ABC Licensing guidelines for how much they could serve and who they could serve to. For beer, they would also want to serve a 1 pint pour for those beers with fewer than a 13% alcohol content.

Mr. Rue stated they had 3 reasons why they felt the modification to the conditions were important to their business. Reason 1 was the proposed condition created an operational nightmare for them. It would require the servers to keep track of who had one beer and when they had finished that, with a server who had 4-5 tables that they were responsible for and imagining the tables had 4-6 people at each table and 2 people ordered beers, the other 4 ordered tasting flights and for a server to keep track of that would be very difficult. The other problem they had was a patron could walk in, sit down, order a beer, pay and walk out, only to walk back in, sit down and order another beer, which would be





viewed as a separate visit. It also made no sense to offer unlimited tasting flights; and they were not asking for a limit, but the Orange Police Department was requesting no limit on tasting flights but placing a limit on the number of full beers per customer that could be served. He had not understood that request and he was certain his customers would not understand. Lastly, he understood the Police Department's concern that they had not wanted any more bars in the Old Towne area of Orange, and he fully appreciated that, but he believed that the added provision would be overkill. There was plenty of protection with the Conditions and restrictions already in place. Condition No. 4 and 18 limited the service area to 200 square feet, in adding outdoor space it would be 25% of their total space and a bar would not survive with that amount of serving space. Condition No. 5 prohibited the addition of a fixed bar and they had not had a bar. Condition No. 17 limited the hours of operation. Condition No. 16 required that they provide food service. Condition No. 29 would not allow a happy hour, pitchers, schooners or carafes of wine. Condition No. 37 prohibited live entertainment and Condition No. 38 prohibited pool tables or coin operated games. None of which they wanted and most of the conditions were for things that were found in a bar. They had come up with some suggested language; he passed out a page of information to the Commissioners, with a revised condition for their review. He appreciated the time and efforts the City Staff had put into their matter and he requested the Commission concur with their recommendation and approve the CUP with the changes they requested.

Chair Steiner opened the hearing for public comment.

Richard Dobson, address on file, stated he was a resident since 1984 and he was in support of The Bruery and the revised CUP. He agreed with the presentation made and the alterations to the Conditions of Approval and that some of the conditions requested by the Police Department would not be followed. The Bruery was a special place and he had been to the site in Placentia and Orange. It was a special experience and it was not a bar. People who had accompanied him had commented that it would be nice to have a glass of beer and not be limited to a flight of beers that they might not want or have the time for. He was in support of the CUP.

Dan Diaz, address on file, stated he was a resident of Orange all of his life. The Bruery was a wonderful experience and people went there who had not wanted a bar experience. It was an educational experience every time he went in; the Staff was courteous, educated and helpful. It was a wonderful addition to the City of Orange, and there had not been any trouble there. The site had not attracted the type of people who created trouble. To see an opportunity for a business to expand was a great opportunity for all of them. It was a business that welcomed locals and he felt very comfortable there, for being a high end craft beer place, he had not felt like an idiot walking in. He had not known anything about beer 2 years ago; he just had not drank beer. To go through The Bruery experience was very special, it was a treat. He hoped they could agree on the things that had been presented.

Dan Bridges, address on file, stated he lived in Orange since 1991 and he was a frequent visitor to the Provisions store in Orange and the tasting room in Placentia. He would visit





the Provisions store 2-3 times a week for their quality of beer and the rarity of beer that rotated through their inventory. A beer that they had to sell and was available for tasting might be in a very limited supply or it could not be supplied to other establishments in the area. There might be craft beer not only from Southern California, but also from the East Coast that sent limited supplies of specialty beers. It was an opportunity to taste a beer that he would not have had the opportunity to taste at any other time. There had been several occasions when he enjoyed a taste on a tasting flight, and would have liked to enjoy a full glass but was not able to and he felt he was being short changed. There was no limit to the number of tastings, but at 2 ounces at a time, it was annoying. He was at the Bruery for maybe a ½ to 1 hour and then he could go about the rest of his day. The concerns about becoming a bar and the negative aspects that went with it would not be found at a higher end craft type tasting room. He knew from experience that the tastings from The Bruery or other Southern California breweries attracted people unlike those that went to a bar to get completely inebriated.

Shawn Stewart, address on file, stated he was present to show his support for The Bruery and being in a wheelchair, it was difficult for him to maneuver in the store and he welcomed the addition of the outdoor patio tasting area. It was not a bar atmosphere and something that was not found elsewhere.

Colin Burns, address on file, stated he was in support of The Bruery, a classy upscale establishment. It had a great staff, the people were social and fun and they were there to talk about good beers, to sample good quality craft beer and they would not find any trouble makers at The Bruery. It was a family owned business and he had known the Rues for many years and they were stand up people. They cared about the community, about making a good product and they cared about the business. The business owners would be doing it the right way and during the short time the business had been there, they had proved an asset to the community and he was in complete support of their application and the modification to the conditions. He urged the Commissioners to approve it.

Lisa Perez, address on file, stated she was a resident and homeowner in the City of Orange. She supported the Rue family and The Bruery in their craft brewing and the changes they were seeking to their business. The business was always held to the highest standards and she supported them.

Jack Selman, address on file, stated he was the landlord and in dealing with The Bruery they had been a great tenant. They followed the rules and were a stand up group. The Police Department's idea was to prevent crime; and they were assuming someone would drink too much. It had not made sense as currently someone could have 1 beer at The Bruery, then go next door and have several more and having a limit on the number of beers would not prevent someone who had the intent of getting inebriated and causing trouble to do so. It had not seemed fair that all the other restaurants in the area had no limit on beer services and it seemed odd to place a limit on their beer service as it was a tasting room which was obviously lesser of a problem.





Allan Burns, address on file, stated he was proud to have been the City's interim attorney in 1996-1997. He thanked the Commission and the City Council for what they had done to revitalize the downtown area; it was wonderful. His family had been friends with the Rue family for 20 years and they were wonderful people. It was a family business and his daughter, who was an Orange resident, worked at The Bruery. The business provided quite a bit of employment and there were several employees sitting in the back row of the Council Chambers. They were nice people. It was not a beer bar, but a craft beer sensation. The Bruery was international; he had sat in the establishment and had a patron from Belgium asking about importing beer over there. Beer was the new wine. Patrons who went to The Bruery went there to sip and not guzzle beer. He supported The Bruery and the fewer restrictions in their ability to serve food and alcoholic beverages. The Rues were responsible people who were at the top of their business and would not cause the City any problems. He would love to have food and beer there on his lunch swing. He thanked the Commission.

Craig Bayer, address on file, stated he supported The Bruery and his comments mirrored those of the speakers before him. He wanted to add that The Bruery was nationally recognized and Patrick Rue had won several medals on a national level and they were fortunate to have the craft beer industry brought to Orange.

Bryce Loy, address on file, stated he lived in Orange for the last year and The Bruery was one of the reasons they moved to Orange as they had aesthetically loved the area. He had decided not to drink alcohol due to the negative connotations associated with a typical bar. The Bruery had taught him responsibility, and it taught him that quality over quantity was extremely important. He found with large quantities of alcohol, it diluted one's palette and he stopped drinking once he became inebriated because he lost his palette. What he loved about The Bruery was the wide array of flavors that they could bring to him. It was difficult to order a flight of 5 beers and he might just like two of the beers which he might want more of, but was forced to drink 5 separate beers, he might not want the other 3, but he had to pay for it. The Bruery attracted a responsible crowd. He supported them.

Chair Steiner asked if there was anyone that wished to speak in opposition of the item before them. There was no one.

Chair Steiner invited Mr. Rue back to discuss further, with Staff's assistance, as he was having difficulty in modifying Condition No. 30 as requested because his Condition No. 30 was not the same and he needed to sort that out. He wanted to offer assurance that the recommendation by Staff clearly would replace the existing CUPs with the new CUP. He wanted to verify that the significant issue for the applicant was not limiting the number of pours and that there were restrictions that would be guided by the ABC licensing. He asked what the alcohol content stipulation was on the 1 pint beer request.

Mr. Rue stated a pint was 16.9 ounces, which was 4.9 ounces more than the 12 ounce pour proposed by the Police Department. The Police Department proposed that the 12 ounce pour would apply to beers under 13% alcohol by volume and beer over 13% or





more would be limited to a 6 ounce pour and he was in agreement with the 6 ounce pour. The Police Department also had a limit request on wine of one 12 ounce pour and they would never do that, he felt they had intended that to be one 6 ounce pour and he had changed that in his suggested language.

Chair Steiner read from the applicant's requested language change on Condition No. 30 and noted the additions and the language that was submitted to be stricken from the condition. The Commissioners reviewed their copy of the requested language change. He asked Mr. Rue if the changes submitted were all the changes they were requesting.

Mr. Rue stated that was correct.

Chair Steiner asked Mr. Ryan if he had any feelings that had evolved in hearing the applicant's request and any clarification why the condition was not Condition No. 30 in their documentation.

Mr. Ryan stated there were the Design Review items added that may have changed the numbering. He would defer the questions regarding his input on the condition to the Orange Police Department representative, as it was their condition.

Mr. Rue stated it had initially been Condition No. 24.

Commissioner Gladson stated the draft resolution had not contained the DRC conditions.

Orange Police Department representative, Sgt Dave Nichols stated the concern that the Police Department had was that the original request was for a Type 42 license and that the business was a beer and wine tasting location. There was also a provision that the site could not become a bar or tavern. Those were the original conditions that were approved for the location. The idea now was that the applicant had patrons that were requesting a beer; they understood the concern and wanted the applicant to have a successful business, however, that condition of having one beer of 12 ounces per customer per visit would somewhat allow their customers to have a beer. The establishment was not a bonafide eating establishment, it was a Type 42. One of the original conditions was that they offer food, but there was not a condition that the site would be a bonafide eating establishment. In that respect, the Police Department's concern was that patrons would go to The Bruery and order two, three, four or five 16.9 ounce glasses of beer with no provision that they needed to order food with their beverage. In relation to that, they were maintaining the parameters that the site was operating as a beer and wine tasting location and not an eating establishment.

Mr. Rue stated one of the Conditions of Approval, which was not permitted under ABC licensing, was Item No. 16 - food service with a complete menu must be available during beer and wine tasting and until closing time on each day they were open for operation. They were fine with that; technically a Type 42 ABC License would not require any food service at all. They would continue with the food service they had and expand their food offerings if they were successful with their request. The Police Department would like





their business to behave in the manner of a typical tasting room; they went through the effort to identify like businesses with Type 20 and Type 42 licenses and sold alcohol, offered tastings and had some amount of food that they served and they found 8 other operations.

Five of those operations were allowed to have whole pours without limitations and they served 1 pint beers and 6 ounces of wine without restrictions. The other 3 sites were allowed to serve tasting flights only, but patrons were allowed to purchase an entire bottle of beer or wine and drink it on site. They were asking to be allowed to operate as other tasting rooms in Orange County. The other sites that were allowed full pours without limitations were one in Rancho Santa Margarita, two in Irvine, two in Newport Beach, one in Fullerton, one in Laguna Niguel and one in Huntington Beach; those were what they thought tasting rooms were. It was a new thing and he felt the Police Department had not run into their type of business before and they were different than they had experienced in the past.

Chair Steiner asked if he had the opportunity to discuss the condition with the Police Department.

Mr. Rue stated yes on numerous occasions. He had wanted to arrive at an understanding and a meeting of minds with the Police Department prior to their presentation before the Planning Commission. On the issue before them, and they were very cooperative and compromised with a give and take on various issues, but on the one issue a line was drawn in the sand and he was told they would be recommending the condition that was included in the proposal and it would be up to the Planning Commission to adopt and make the decision. He had told the Police Department that he felt they were making a mistake and the condition would not be viable for their business model.

Chair Steiner asked if it would not be viable in order for the business to operate.

Mr. Rue stated it would not be viable in what the Police Department was proposing.

Commissioner Gladson asked Mr. Rue if there was a thought for the business to function as a restaurant.

Mr. Rue stated if they could all trot on over to The Bruery they would understand that there was not room to run a bonafide eating establishment and the ABC licensing made it clear that they would need to serve soups, sandwiches, salads and desserts and non-alcoholic beverages; what they would want to add in the way of food choices would not constitute a bonafide eating establishment.

Commissioner Gladson stated across the street from the Bruery there was a Type 48 business, O'Hara's. One of the concerns of the general public was that the proposed business not turn into a problem site, and why she wondered if they considered the restaurant idea. From a land use perspective, it was easier to control as folks were eating more than just crackers and having more of a meal. That had been her concern with other





applications.

Mr. Rue stated he had not wanted to repeat what he had stated earlier, but it was important to realize, unlike O'Hara's that were able to devote 100% of their space to the bar business, The Bruery was limited to 200 square feet for tasting.

Commissioner Gladson stated they were asking for additional outdoor space.

Mr. Rue stated they were still limited to 25% of their building space and during certain parts of the year the patio would not get much use.

Sgt. Nichols stated without the conditions as requested by the Orange Police Department and modified as per the applicant's request, it would eliminate the Police Department from having any restrictions over any type of amounts being poured at that location. It was his only concern.

Mr. Rue stated they already had that right, as long as they served it 2 ounces at a time they could serve any amount of beer or wine.

Commissioner Grangoff made a motion to adopt PC Resolution No. 28-11, approving CUP No. 2832-11 and DRC No. 4558-11-The Bruery, subject to the conditions contained in the Staff Report with the modification to Condition No. 30 as submitted by the applicant.

Commissioner Gladson stated she had a hard time making the findings, the legal findings, granting the CUP with the change in language as proposed by the applicant concerning the pours. She was concerned about the sensitive receptors that were located near the facility, being the church and residential uses; one of those being as close as 75' from the business. She could support the use with the recommended condition as submitted in the draft resolution with the language as proposed by Staff with the limited pours. She had a hard time not doing that as she would be concerned with the negative impact to the surrounding sensitive receptors, specifically the church and residential uses on Orange. She had not had a problem with an expansion for the business and allowing more that just a taste and the business was wonderful. It was a land use call and if the maker of the motion would change that portion of his recommendation she would be able to support the motion. She could not support it as it stood and with the findings they needed to make in terms of the CUP.

Chair Steiner stated they had heard a lot of CUPs for eating establishments in the Old Towne and Plaza area and it had been a miraculous change in the area and the sensitive receptors had always been there and had been looked at in consideration, however, there had not been a limitation to the various eating establishments for a variety of reasons. Generally the Police Department clearly supported the applications and they had a great deal of respect for the Police Department and their recommendations. They also reviewed the history of the business operator and the responsibilities they assumed in running a business, he was interested in ensuring the business before them was successful





in the economic times they were facing and therefore he would support and second Commissioner Grangoff's motion with the modification to the condition as requested by the applicant. Recognizing that they were unrestrained as the Police Department had mentioned, but also understanding it was a CUP which could be revoked at any time if compliance was not followed, and with that assurance and the track record that had been brought forth, he would support The Bruery's proposal with the revision of Condition No. 30 as stated in Commissioner Grangoff's motion.

Commissioner Buttress stated it was a rather interesting position to be in and she supported private enterprise, she actually was very impressed with everyone who spoke before them on the item in support of the business's request. When they saw her vote, she was putting her vote into a family who had raised a family in Orange, and she respected the Orange Police Department a great deal, and she would vote in favor of the proposal. It was a wonderful industry that was being brought to the City of Orange and she would hope that her trust in the applicant to do what they had proposed would be taken to heart. It was an important component in maintaining the business.

SECOND: Commissioner Steiner

AYES: Commissioners Buttress, Grangoff and Steiner

NOES: Commissioner Gladson

ABSTAIN: None

ABSENT: Commissioner Merino

MOTION CARRIED

(8) ADJOURNMENT:

Adjournment to the next regular Planning Commission Meeting scheduled for Monday December 5, 2011.

Commissioner Buttress made a motion for adjournment to the next regular scheduled meeting of the Planning Commission on December 5, 2011.

SECOND: Commissioner Grangoff

AYES: Commissioners Buttress, Gladson, Grangoff and Steiner

NOES: None ABSTAIN: None

ABSENT: Commissioner Merino

MOTION CARRIED

Meeting Adjourned @ 9:14 p.m.