



City of Huntington Beach Planning & Building Department

STAFF REPORT

TO: Planning Commission
FROM: Scott Hess, AICP, Director of Planning and Building
BY: Ethan Edwards, AICP, Associate Planner *ee*
DATE: August 13, 2013

SUBJECT: ENTITLEMENT PLAN AMENDMENT NO. 13-002 (BJ'S RESTAURANT HOURS)

APPLICANT: Alcoholic Beverage Consulting Service, Mike Brewer, 26023 Jefferson Avenue, Suite D, Murrieta, CA 92562

BUSINESS

OWNER: BJ's Restaurants, Inc., Joan Leguay, 7755 Center Avenue, Suite 300, Huntington Beach, CA 92647

PROPERTY

OWNER: Robert Koury, 200 Main Street, Suite 206, Huntington Beach, CA 92648

LOCATION: 200 Main Street, Suites 101 & 102, 92648 (northeast corner of Main Street and Walnut Avenue)

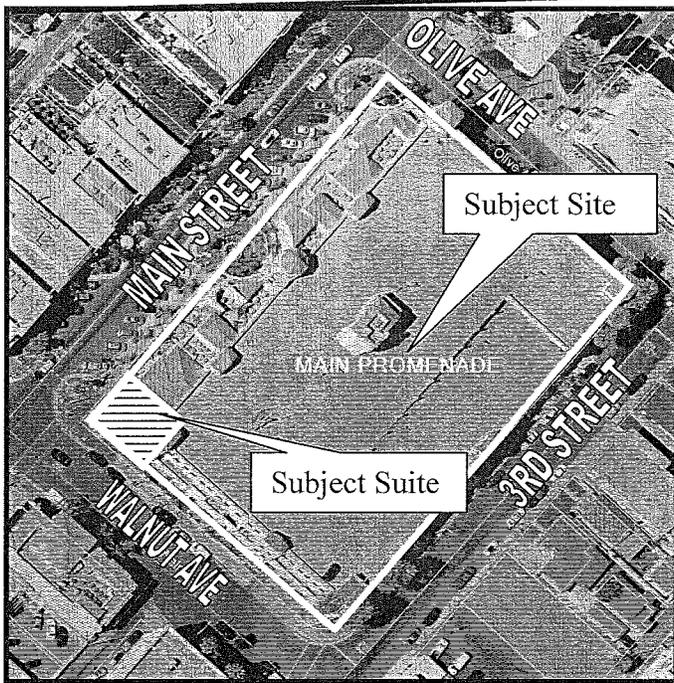
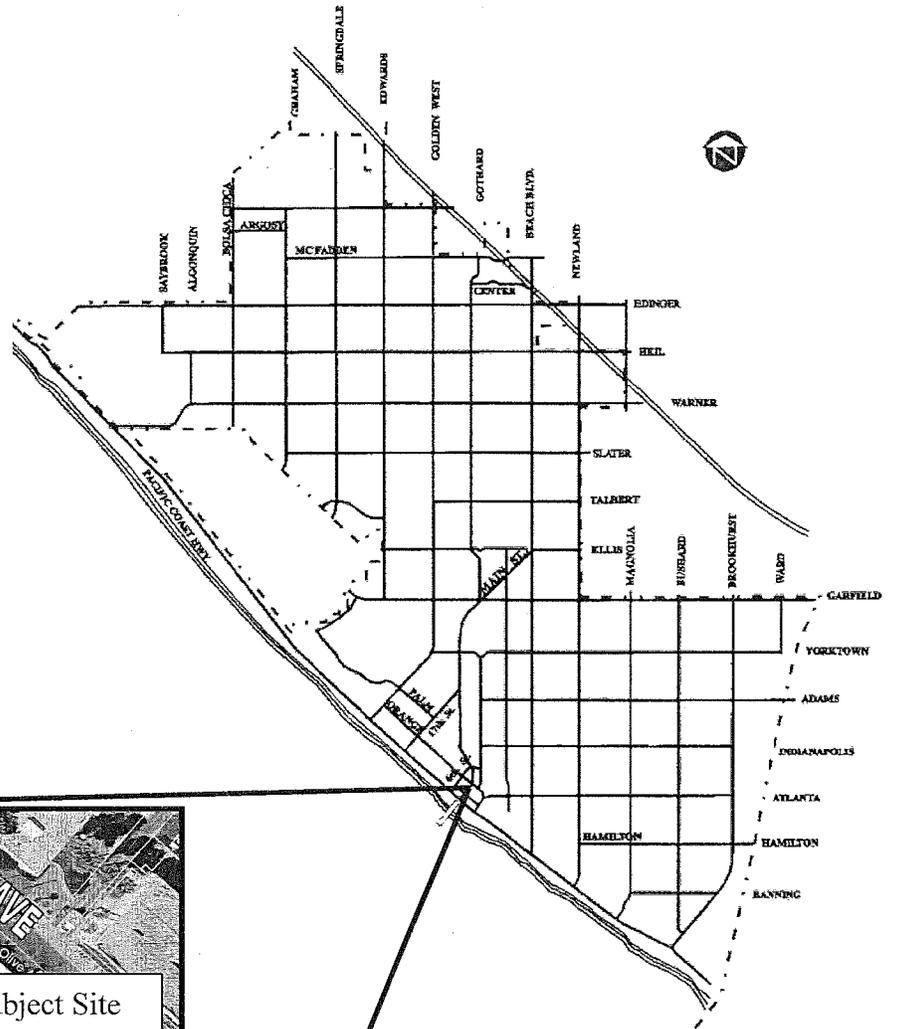
STATEMENT OF ISSUE:

- ◆ Entitlement Plan Amendment No. 13-002 request:
 - To amend Condition of Approval No. 8 of Conditional Use Permit No. 09-018 to permit the restaurant (including outdoor dining and alcohol service) to open at 8:00 AM instead of 11:00 AM, Monday through Friday. All other hours of operation and conditions of approval remain the same.
- ◆ Staff's Recommendation:
 - Approve Entitlement Plan Amendment No. 13-002 based upon the following:
 - Conformance with the goals and policies of the General Plan.
 - Compliance with the requirements of the Downtown Specific Plan and Huntington Beach Zoning and Subdivision Ordinance.

RECOMMENDATION:

Motion to:

- A. "Approve Entitlement Plan Amendment No. 13-002 with suggested findings and conditions of approval (Attachment No. 1)."



VICINITY MAP

**ENTITLEMENT PLAN AMENDMENT NO. 13-002
(BJ'S RESTAURANT HOURS – 200 MAIN STREET, SUITES 101 & 102)**

ALTERNATIVE ACTION(S):

The Planning Commission may take alternative actions such as:

- A. "Continue Entitlement Plan Amendment No. 13-002 and direct staff accordingly."
- B. "Deny Entitlement Plan Amendment No. 13-002 with findings for denial."

PROJECT PROPOSAL:

Entitlement Plan Amendment No. 13-002 represents a request to amend Condition of Approval No. 8 of Conditional Use Permit No. 09-018 to permit the restaurant (including outdoor dining and alcohol service) to open at 8:00 AM instead of 11:00 AM, Monday through Friday pursuant to HBZSO Section 241.18.A. All other hours of operation and conditions of approval remain the same.

Condition of Approval No. 8 of Conditional Use Permit No. 09-018 (Attachment No. 5) states, "The hours of operation for the restaurant including outdoor dining and alcohol service shall be between 11:00 AM and 12:00 AM (midnight), Monday through Thursday; between 11:00 AM and 1:00 AM Friday; between 8:00 AM and 1:00 AM Saturday; and 8:00 AM and 12:00 AM (midnight), Sunday." The table below compares the existing and proposed hours of operation.

DAYS OF WEEK	EXISTING HOURS	PROPOSED HOURS
Monday through Thursday	11 AM to 12 AM (midnight)	8 AM to 12 AM (midnight)
Friday	11 AM to 1 AM	8 AM to 1 AM
Saturday	8 AM to 1 AM	8 AM to 1 AM
Sunday	8 AM to 12 AM (midnight)	8 AM to 12 AM (midnight)

The existing restaurant occupies Suites 101 and 102 and is located within the Main Promenade building, a mixed use development consisting of commercial and parking facilities. The project proposes to amend the hours of operation which were approved by the Planning Commission via Conditional Use Permit No. 09-018 on September 9, 2009.

Background:

The City approved Conditional Use Permit No. 88-34 and Coastal Development Permit No. 88-27 to permit a 32,073 sq. ft. commercial building integrated with a 5-level parking structure (Main Promenade) on October 18, 1988. In addition, prior City actions for Suite 101 include: Conditional Use Permit No. 93-22 and Coastal Development Permit No. 93-12 to permit a restaurant with beer & wine approved on December 7, 1993; Conditional Use Permit No. 95-37 and Coastal Development Permit No. 95-12 to permit 272 sq. ft. of outdoor dining approved on February 13, 1996; and Conditional Use Permit No. 00-21 to permit outdoor dining with alcohol on private property for three suites (BJ's, Crabby Kenny's & Sunset Grill) and the expansion of BJ's outdoor dining area from 272 sq. ft. to 400 sq. ft. (permit to expand the outdoor dining area was never exercised) approved on June 22, 2000. Lastly, Conditional Use Permit No. 09-018 to permit a 986 sq. ft. expansion of the restaurant with alcohol sales, participation in the Downtown Parking In-Lieu Fee Program for 5 parking spaces, and to permit up to 400 sq. ft. of outdoor dining area with alcohol was approved on September 9, 2009. At that time, the City Council had not yet acted on any resolutions for Downtown Specific Plan area standard conditions of approval for restaurants with alcohol sales. Additionally, this application was received prior to the most recently

adopted resolution (Resolution No. 2013-24); therefore no new operating conditions of approval are applicable.

ISSUES:

Subject Property And Surrounding Land Use, Zoning And General Plan Designations:

LOCATION	GENERAL PLAN	ZONING	LAND USE
Subject Property:	M-30-d-sp-pd (Mixed Use - 30 Dwelling Units per Acre - Design Overlay - Specific Plan Overlay - Pedestrian Overlay)	SP-5/CZ (Downtown Specific Plan - District 1/Coastal Zone)	Commercial / Parking Facility
North (across Olive Avenue), East (across 3 rd Street), South (across Walnut Avenue), & West (across Main Street) of Subject Property:	M-30-d-sp-pd	SP-5/CZ	North: US Post Office/ Commercial East: Commercial/ Residential South & West: Commercial

General Plan Conformance:

The General Plan Land Use Map designation on the subject property is M-30-d-sp-pd (Mixed Use – 30 dwelling units/acre – specific plan overlay – pedestrian overlay). The proposed project is consistent with this designation and the goals, policies, and objectives of the City’s General Plan as follows:

A. Land Use Element

Goal LU 7: Achieve a diversity of land uses that sustain a City’s economic viability, while maintaining the City’s environmental resources and scale and character.

Policy LU 7.1.1 Accommodate existing uses and new development in accordance with the Land Use and Density Schedules.

Objective LU 7.1 Accommodate the development of a balance of land uses that (a) provides for the housing, commercial, employment, cultural, entertainment, and recreation needs of existing and future residents, (b) provides employment opportunities for residents of the City and surrounding subregion, (c) captures visitor and tourist activity, and (d) provides open space and aesthetic relief from urban development.

Goal LU 11 Achieve the development of projects that enable residents to live in proximity to their jobs, commercial services, and entertainment, and reduce the need for automobile use.

Policy LU 15.2.2 Require that uses in the Pedestrian Overlay District be sited and designed to enhance and stimulate pedestrian activity along the sidewalks. Assure that areas between building storefronts and public sidewalks are visually and physically accessible to pedestrians.

The existing restaurant is consistent with the Land Use Density Schedules for the Downtown and modifying the hours of operation increases the economic viability of the establishment by providing greater dining opportunities. This amendment allows for additional employment opportunities and

captures visitor and tourist activity within the downtown. The increased availability of the existing outdoor dining area will further stimulate pedestrian activity along Main Street. The site is located in a mixed-use district of the downtown area and within walking distance of several downtown-parking facilities as well as residential uses thus reducing the need for automobile use. The existing outdoor dining area is designed to provide the minimum code required eight-foot wide sidewalk to ensure that the area is physically accessible to pedestrians, consistent with the remainder of the second block of Main Street.

B. Coastal Element

Policy C 3.2.3 Encourage the provision of a variety of visitor-serving commercial establishments within the Coastal Zone, including but not limited to, shops, restaurants, hotels and motels, and day spas.

The proposed use will promote commercial establishments in the Downtown and will expand the available visitor-serving commercial uses within the Coastal Zone.

LCP / DTSP Main Street should be a lively, active commercial district at the street level. The first floor of developments along Main Street should be commercial, with open-air establishments encouraged.

The proposed amendment to the hours of operation increases the commercial viability of the existing restaurant by allowing for its continued success within the Downtown while expanding its available amenities to its patrons. The increased availability of the existing outdoor dining area will create a more lively pedestrian oriented use and is consistent with the other outdoor dining uses along Main Street.

Zoning Compliance:

This project is located in the SP5-CZ (Downtown Specific Plan – District 1, Coastal Zone) and complies with the requirements of that zone. No new construction or alterations to the existing restaurant are proposed.

Urban Design Guidelines Conformance: Not applicable.

Environmental Status:

The proposed project is categorically exempt pursuant to Class 1, Existing Facilities, Section 15301 of the California Environmental Quality Act which states that minor alterations and operation to existing structures are exempt from further environmental review.

Coastal Status:

The proposed project is within a non-appealable portion of the Coastal Zone and is exempt from a coastal development permit since only an amendment to the hours of operation is proposed.

Design Review Board: Not applicable.

Subdivision Committee: Not applicable.

Other Departments Concerns and Requirements:

The Departments of Police, Economic Development, and Planning and Building have reviewed the application. The Police Department responded in support of the request (Attachment No. 4) because the modification will not drastically affect business activity or increase the potential to create public nuisances, and that the emphasis will continue to be operating as a restaurant with alcohol sales and does not extend nighttime hours of operation. Planning staff concurs with the Police Department's comments.

Public Notification:

Legal notice was published in the Huntington Beach/Fountain Valley Independent on August 1, 2013, and notices were sent to property owners of record and tenants within a 500 ft. radius of the subject property, individuals/organizations requesting notification (Planning & Building Department's Notification Matrix), applicant, and interested parties. As of August 5, 2013, no communication supporting or opposing the request has been received.

Application Processing Dates:

<u>DATE OF COMPLETE APPLICATION:</u>	<u>MANDATORY PROCESSING DATE(S):</u>
July 11, 2013	September 9, 2013

Entitlement Plan Amendment No. 13-002 was filed on June 11, 2013 and deemed complete July 11, 2013. The application is scheduled for public hearing before the Planning Commission on August 13, 2013.

ANALYSIS:

Staff has determined that modifying the hours of operation will be compatible with surrounding uses because it is proposed in a specific plan area designated for mixed-use pedestrian-oriented activity and development. The restaurant is surrounded by commercial, office, and restaurant uses and therefore will be compatible to its surroundings.

Since Conditional Use Permit No. 09-018 was approved, the Planning and Building Department – Code Enforcement Division has not received any violations or complaints regarding the existing restaurant. Additionally, the Police Department has reviewed this request and supports the proposed modification because it does not modify closing or extend late night hours of operation. The restaurant will be required to comply with existing conditions of approval pertaining to nighttime hours of operation and alcohol service to assure that any potential impacts to the surrounding properties are minimized.

The restaurant is currently allowed to open at 8:00 AM on weekends. Allowing the restaurant to open earlier on weekdays is primarily intended to enhance dining opportunity and experience for patrons and will not negatively impact adjacent properties. Additionally, the use is subject to noise regulations to further ensure compatibility with surrounding properties. With the suggested conditions of approval, the amendment to the restaurant's hours of operation will not result in increased parking, safety, or noise issues, above that expected in a typical mixed-use environment. In general, the proposed amendment is consistent with scope and intent of the development in the downtown and supported by the General Plan and the Downtown Specific Plan. Accordingly, staff recommends approval of the request.

ATTACHMENTS:

1. Suggested Findings and Conditions of Approval – Entitlement Plan Amendment No. 13-002
2. Project Narrative received and dated August 5, 2013
3. Site plan, floor plan and elevations received and dated June 11, 2013 (for information purposes only)
4. Police Department Comments received and dated July 18, 2013
5. Planning Commission Notice of Action – CUP 09-018 dated September 10, 2009

SH:JJ:EE:kd

ATTACHMENT NO. 1

SUGGESTED FINDINGS AND CONDITIONS OF APPROVAL

ENTITLEMENT PLAN AMENDMENT NO. 13-002

SUGGESTED FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Planning Commission finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15301, Class 1, of the CEQA Guidelines, which states that operation and minor alteration to existing structures involving negligible or no expansion are exempt from further environmental review.

SUGGESTED FINDINGS FOR APPROVAL - ENTITLEMENT PLAN AMENDMENT NO. 13-002:

1. Entitlement Plan Amendment No. 13-002 to amend Condition of Approval No. 8 of Conditional Use Permit No. 09-018 to permit the restaurant (including outdoor dining and alcohol service) to open at 8:00 AM instead of 11:00 AM, Monday through Friday will not be detrimental to the general welfare of persons working or residing in the vicinity or detrimental to the value of the property and improvements in the neighborhood. As conditioned, the amendment to the restaurant's hours of operation will not result in increased parking, safety, or noise issues, above that expected in a typical mixed-use environment. The amendment is consistent with scope and intent of the development in the downtown and supported by the General Plan and the Downtown Specific Plan; and, the increased availability of the existing outdoor dining will enhance the use and provide enjoyment for patrons of the restaurant.
2. The proposed amendment will be compatible with surrounding uses because it is proposed in a Specific Plan area designated for mixed-use pedestrian-oriented development. The restaurant is surrounded by commercial, office, and restaurant uses and therefore will be compatible to its surroundings. The use will be required to comply with conditions of approval pertaining to hours of operation and alcohol consumption to assure that any potential impacts to the surrounding properties are minimized. The modified hours of operation will allow for additional outdoor dining opportunities and is primarily intended to enhance the dining experience for patrons, and will not negatively impact adjacent properties. Additionally, the use is subject to noise regulations to further ensure compatibility with surrounding properties.
3. The proposed amendment will comply with the provisions of the base district and other applicable provisions in Titles 20-25 of the Huntington Beach Zoning and Subdivision Ordinance and any specific condition required for the proposed use in the district in which it will be located. The proposed project as conditioned complies with the base district and other applicable provisions including parking. There is no physical expansion that includes additional floor area to the existing building as part of this request and the use will comply with all building occupancy/exiting requirements.

4. The granting of the conditional use permit will not adversely affect the General Plan. It is consistent with the Land Use Element designation of Mixed Use on the subject property. In addition, it is consistent with the following goals, policies, and objectives of the General Plan:

A. Land Use Element

Goal LU 7: Achieve a diversity of land uses that sustain a City's economic viability, while maintaining the City's environmental resources and scale and character.

Policy LU 7.1.1 Accommodate existing uses and new development in accordance with the Land Use and Density Schedules.

Objective LU 7.1 Accommodate the development of a balance of land uses that (a) provides for the housing, commercial, employment, cultural, entertainment, and recreation needs of existing and future residents, (b) provides employment opportunities for residents of the City and surrounding subregion, (c) captures visitor and tourist activity, and (d) provides open space and aesthetic relief from urban development.

Goal LU 11 Achieve the development of projects that enable residents to live in proximity to their jobs, commercial services, and entertainment, and reduce the need for automobile use.

Policy LU 15.2.2 Require that uses in the Pedestrian Overlay District be sited and designed to enhance and stimulate pedestrian activity along the sidewalks. Assure that areas between building storefronts and public sidewalks are visually and physically accessible to pedestrians.

The existing restaurant is consistent with the Land Use Density Schedules for the Downtown and modifying the hours of operation increases the economic viability of the establishment by providing greater dining opportunities. This amendment allows for additional employment opportunities and captures visitor and tourist activity within the downtown. The increased availability of the existing outdoor dining area will further stimulate pedestrian activity along Main Street. The site is located in a mixed-use district of the downtown area and within walking distance of several downtown-parking facilities as well as residential uses thus reducing the need for automobile use. The existing outdoor dining area is designed to provide the minimum code required eight-foot wide sidewalk to ensure that the area is physically accessible to pedestrians, consistent with the remainder of the second block of Main Street.

B. Coastal Element

Policy C 3.2.3 Encourage the provision of a variety of visitor-serving commercial establishments within the Coastal Zone, including but not limited to, shops, restaurants, hotels and motels, and day spas.

The proposed use will promote commercial establishments in the Downtown and will expand the available visitor-serving commercial uses within the Coastal Zone.

LCP / DTSP Main Street should be a lively, active commercial district at the street level. The first floor of developments along Main Street should be commercial, with open-air establishments encouraged.

The proposed amendment to the hours of operation increases the commercial viability of the existing restaurant by allowing for its continued success within the Downtown while expanding its available amenities to its patrons. The increased availability of the existing outdoor dining area will create a more lively pedestrian oriented use and is consistent with the other outdoor dining uses along Main Street.

SUGGESTED CONDITIONS OF APPROVAL – ENTITLEMENT PLAN AMENDMENT NO. 13-002:

1. The hours of operation for the restaurant including outdoor dining and alcohol service shall be limited to:

DAYS OF WEEK	HOURS OF OPERATION
Monday through Friday	8 AM to 12 AM (midnight)
Saturday	8 AM to 1 AM
Sunday	8 AM to 12 AM (midnight)

2. All conditions of approval required pursuant to Conditional Use Permit No. 09-018, with exception of Condition of Approval No. 8, shall remain valid.
3. EPA No. 13-002 shall become null and void unless exercised within two years of the date of final approval or such extension of time as may be granted by the Director pursuant to a written request submitted to the Planning and Building Department a minimum 30 days prior to the expiration date.

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney’s fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.

Alcoholic Beverage Consulting Service
California's Liquor Licensing Experts

August 5, 2013

City of Huntington Beach
Planning and Building Department
2000 Main St.
Huntington Beach CA 92648

RECEIVED

AUG 05 2013

Dept. of Planning
& Building

RE: BJS RESTAURANTS INC
200 Main St. # 101
HUNTINGTON BEACH, CA 92648

Dear Planner:

This communication constitutes a formal request of the licensee, BJ's Restaurant Inc., DBA BJ's Restaurant & Brewpub, for a modification of the current conditions as placed by the City of Huntington Beach. This condition was originally issued by the Department on September 10, 2009.

Consistently as one of the best restaurants in Huntington Beach, BJ's Restaurants also receive rave reviews from its most important critics, its customers. Comments such as these can be found on any restaurant review website: "Flawless, impeccable, fine dining;" "Stunning meal!" "The food was amazing as well as the service;" "I return again and again and again!" It is for these loyal customers, that BJ's Restaurant requests to change the current operating hours.

Currently customers view BJ's Restaurant as a "fun family" restaurant. It is primarily for them, that BJ's Restaurant wants these customers to continue to visit, and visit more often. To make this happen, BJ's restaurant would like to extend their current approved hours for the restaurant including outdoor dining and alcohol services of:

"11:00 AM and 12:00 AM (midnight), Monday through Thursday; between 11:00 AM and 1:00 AM, Friday; between 8:00 AM and 1:00 AM, Saturday; and 8:00 AM and 12:00 AM (midnight) Sunday."

BJ's respectfully requests the City of Huntington Beach to extend the business hours for sales, service, and consumption to:

"Monday through Thursday 8:00 AM and 1:00 AM (midnight); Friday from 8:00 AM 1:00 AM, and Saturday and Sunday between 8:00 AM and 12:00 AM (midnight). The change of hours has in no way changed the business character or mission and will not bring us any closer to any consideration points.

The location of BJ's restaurant in Huntington Beach is 200 Main St. Ste. 101 & 102, this area is the heart of down town Huntington Beach. The 100 year old main street offers an ambience with its own special flavor. BJ's Restaurant helps to add to the many

affiliated with License Locators, Inc. &  CALIFORNIA
BUSINESS ESCROW, INC.

26023 Jefferson Ave, Suite D, Murrieta, CA 92562
951-698-6868 / Fax: 951-600-2726 / www.calabc.com
a division of Brewer Consulting, Inc.

ATTACHMENT NO. 2.1

different eateries this iconic place of Huntington Beach with its hand crafted beers, sodas and food there is something to please even the pickiest of palates.

BJ's Restaurants Inc. has a strong tradition of being a responsible retailer of alcoholic beverages with over 20 licensed restaurants in California and additional locations throughout the nation. Managers, bartenders and trainers will be required to complete a ServSafe Responsible Alcohol Service Course offered through the National Restaurant Association, including the following: Alcohol Law, Responsible Alcohol Service, Recognizing and Preventing Intoxication, Checking Identification and Handling Difficult Situations. Servers will attend a two hour in-house training course, including the same information in an abbreviated format.

The modification of the operating hours for BJ's will be important for the restaurant to continue successfully. The public convenience is always served here, as customers cannot only bring the family for birthday parties, but bring employees as well as for corporate meetings. Both can relax with great food, in a friendly, family like atmosphere. With that BJ's Restaurant respectfully requests approval of the proposed new hours of operation.

Thank you for your assistance in this matter. Should you have any questions or require additional information, please call me at (951) 698.6868, extension 2.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeanette Carvajal', with a long horizontal stroke extending to the right.

Jeanette Carvajal
Alcoholic Beverage Consulting



HUNTINGTON BEACH POLICE DEPARTMENT

RECEIVED
JUL 18 2013
Dept. of Planning
& Building

PROJECT IMPLEMENTATION CODE REQUIREMENTS

DATE: JULY 18, 2013

PROJECT NAME: BJ'S RESTAURANT HOURS MODIFICATION

PLANNING APPLICATION NO. PLANNING APPLICATION NO. 13-085

ENTITLEMENTS: ENTITLEMENT PERMIT AMENDMENT NO. 13-002

DATE OF PLANS: JUNE 11, 2013

PROJECT LOCATION: 200 MAIN STREET, SUITES 101 & 102, HUNTINGTON BEACH (APN: 937-192-33)

PLAN REVIEWER: DETECTIVE THOBY ARCHER #1005

TELEPHONE/E-MAIL: 714/536-5994 TARCHER@HBPD.ORG

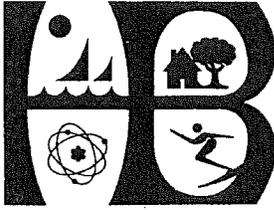
PROJECT DESCRIPTION: EPA: To amend condition of approval no. 8 of Conditional Use Permit No. 09-018 by modifying the existing hours of operation for an existing restaurant with outdoor dining and alcohol sales. No construction is proposed.

The following is a list of code requirements deemed applicable to the proposed project based on plans stated above. The list is intended to assist the applicant by identifying requirements which must be satisfied during the various stages of project permitting and implementation. A list of conditions of approval adopted by the Planning Commission in conjunction with the requested entitlement(s), if any, will also be provided upon final project approval. If you have any questions regarding these requirements, please contact the Plan Reviewer.

The proposed modification does not appear to significantly alter the businesses design and function as a restaurant.

The Police Department does not believe the modification of the business will drastically affect the business activity or increase the potential to create public nuisances, as the location's primary business and emphasis will continue to be operating as a restaurant with alcohol sales and the new proposed hours do not extend any further into the nighttime hours.

No other recommendations.



Huntington Beach Planning Commission

P.O. BOX 190

CALIFORNIA 92648

NOTICE OF ACTION

September 10, 2009

Jeff Bergsman
Team Design
221 Main Street "S"
Huntington Beach, CA 92648

SUBJECT: CONDITIONAL USE PERMIT NO. 09-018 (BJ'S RESTAURANT EXPANSION)

APPLICANT: Jeff Bergsma, Team Design

REQUEST: To permit a) an expansion of an existing restaurant with alcohol sales by occupying approximately 986 sq. ft. of the adjacent existing retail suite; b) to participate in the Downtown Parking In-Lieu Fee Program for 5 parking spaces; and c) to permit up to 400 sq. ft. of outdoor dining area with alcohol sales on private property.

PROPERTY OWNER: Robert Koury, 200 Main Street, Suite 206, Huntington Beach, CA 92648

LOCATION: 200 Main Street, Suites 101 and 102, 92648 (east side of Main Street, between Olive Avenue and Walnut Avenue – Main Promenade Building, Downtown)

DATE OF ACTION: September 9, 2009

On Wednesday, September 9, 2009, the Huntington Beach Planning Commission took action on your application, and your application was **conditionally approved**. Attached to this letter are the findings and conditions of approval.

Please be advised that the Planning Commission reviews the conceptual plan as a basic request for entitlement of the use applied for and there may be additional requirements prior to commencement of the project. It is recommended that you immediately pursue completion of the conditions of approval and address all requirements of the Huntington Beach Zoning and Subdivision Ordinance in order to expedite the processing/completion of your total application. The conceptual plan should not be construed as a precise plan, reflecting conformance to all Zoning and Subdivision Ordinance requirements.

Under the provisions of the Huntington Beach Zoning and Subdivision Ordinance, the action taken by the Planning Commission becomes final at the expiration of the appeal period. A person desiring to appeal the decision shall file a written notice of appeal to the City Clerk within ten (10) calendar days of the date of the Planning Commission's action. The notice of appeal

ATTACHMENT NO. 5.1

shall include the name and address of the appellant, the decision being appealed, and the grounds for the appeal. Said appeal must be accompanied by a filing fee of One Thousand, Five Hundred Forty-One Dollars (\$1,541.00) if the appeal is filed by a single family dwelling property owner appealing the decision on his own property and Two Thousand Three Hundred Seventy-Nine Dollars (\$2,379.00) if the appeal is filed by any other party. In your case, the last day for filing an appeal and paying the filing fee is September 18, 2009 at 5:00 PM.

Provisions of the Huntington Beach Zoning and Subdivision Ordinance are such that any application becomes null and void one (1) year after final approval, unless actual construction has started.

"Excepting those actions commenced pursuant the California Environmental Quality Act, you are hereby notified that you have 90 days to protest the imposition of the fees described in this Notice of Action. If you fail to file a written protest regarding any of the fees contained in this Notice, you will be legally barred from later challenging such action pursuant to Government Code §66020."

If you have any questions, please contact Ethan Edwards, the project planner, at ethan.edwards@surfcity-hb.org or (714) 536-5561 or the Planning Department Zoning Counter at (714) 536-5271.

Sincerely,

Scott Hess, Secretary
Planning Commission

By:



Herb Fauland, Planning Manager

SH:HF:EE:lw

Attachment: Findings and Conditions of Approval – CUP No. 09-018

- c: Honorable Mayor and City Council
- Chair and Planning Commission
- Fred Wilson, City Administrator
- Scott Hess, Director of Planning
- Bill Reardon, Division Chief/Fire Marshal
- Leonie Mulvihill, Senior Deputy City Attorney
- Steve Bogart, Senior Civil Engineer
- Gerald Caraig, Permit-Plan Check Manager
- Property Owner
- Project File

ATTACHMENT NO. 1

FINDINGS AND CONDITIONS OF APPROVAL

CONDITIONAL USE PERMIT NO. 09-018

FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Planning Commission finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15301, Class 1, of the CEQA Guidelines, which states that operation and minor alteration to existing structures involving negligible or no expansion are exempt from further environmental review.

FINDINGS FOR APPROVAL - CONDITIONAL USE PERMIT NO. 09-017:

1. Conditional Use Permit No. 09-018 to permit an approximately 986 sq. ft. expansion of an existing restaurant with alcohol sales by occupying the adjacent existing retail suite within District 5 – Mixed-Use, of the Downtown Specific Plan; to participate in the Downtown Parking In-Lieu Fee Program for 5 parking spaces; and, permit up to 400 sq. ft. outdoor dining area will not be detrimental to the general welfare of persons working or residing in the vicinity or detrimental to the value of the property and improvements in the neighborhood. The proposed project complies with parking requirements in the downtown via participation in the Parking In-Lieu Fee Program. In addition, the project is consistent with the future development potential identified for the subject building in the Downtown Parking Master Plan; and, expanded outdoor dining will enhance the use and provide enjoyment for patrons of the restaurant.
2. The proposed restaurant expansion with alcohol sales and outdoor dining will be compatible with surrounding uses because it is proposed in a Specific Plan area designated for mixed-use pedestrian-oriented development. The restaurant is surrounded by commercial, office, and restaurant uses and therefore will be compatible to its surroundings. The use will be required to comply with conditions of approval pertaining to hours of operation to assure that any potential impacts to the surrounding properties are minimized. The expanded outdoor dining area will be located within private property and is primarily intended to enhance the dining experience for patrons and will not negatively impact adjacent properties. Additionally, the use is subject to noise regulations to further ensure compatibility with surrounding properties.
3. The proposed expansion will comply with the provisions of the base district and other applicable provisions in Titles 20-25 of the Huntington Beach Zoning and Subdivision Ordinance and any specific condition required for the proposed use in the district in which it will be located. The proposed project as conditioned complies with the base district and other applicable provisions including parking. There is no physical expansion that includes additional floor area to the existing building as part of this request and the use will comply with all building occupancy/exiting requirements.
4. The granting of the conditional use permit will not adversely affect the General Plan. It is consistent with the Land Use Element designation of Mixed Use Vertical on the subject

property. In addition, it is consistent with the following goals, policies, and objectives of the General Plan:

A. Land Use Element

Goal LU 7: Achieve a diversity of land uses that sustain a City's economic viability, while maintaining the City's environmental resources and scale and character.

Policy LU 7.1.1 Accommodate existing uses and new development in accordance with the Land Use and Density Schedules.

Objective LU 7.1 Accommodate the development of a balance of land uses that (a) provides for the housing, commercial, employment, cultural, entertainment, and recreation needs of existing and future residents, (b) provides employment opportunities for residents of the City and surrounding subregion, (c) captures visitor and tourist activity, and (d) provides open space and aesthetic relief from urban development.

Goal LU 11 Achieve the development of projects that enable residents to live in proximity to their jobs, commercial services, and entertainment, and reduce the need for automobile use.

Policy LU 15.2.2 Require that uses in the Pedestrian Overlay District be sited and designed to enhance and stimulate pedestrian activity along the sidewalks. Assure that areas between building storefronts and public sidewalks are visually and physically accessible to pedestrians.

The proposed expansion of the existing restaurant is consistent with the Land Use Density Schedules for the Downtown and increases the economic viability of the establishment by providing a larger dining area to accommodate more patrons. This expansion allows for additional employment opportunities and captures visitor and tourist activity within the downtown; and, the increased outdoor dining will further stimulate pedestrian activity along Main Street. The site is located in a mixed-use district of the downtown area and within walking distance of several downtown-parking facilities as well as residential uses thus reducing the need for automobile use. The proposed outdoor dining area is designed to provide the minimum code required eight-foot wide sidewalk to ensure that the area is physically accessible to pedestrians which is consistent with the remainder of the second block of Main Street.

B. Coastal Element

Policy C 3.2.3 Encourage the provision of a variety of visitor-serving commercial establishments within the Coastal Zone, including but not limited to, shops, restaurants, hotels and motels, and day spas.

The proposed use will promote commercial establishments in the Downtown and will expand the available visitor-serving commercial uses within the Coastal Zone.

LCP / DTSP ~~Main Street should be a lively, active commercial district at the street level.~~
The first floor of developments along Main Street should be commercial, with open-air establishments encouraged.

The proposed expansion including outdoor dining area increases the commercial viability of the existing restaurant by allowing for its continued success within the Downtown while expanding its available amenities to its patrons. The expanded outdoor dining will create a more lively pedestrian oriented use and is consistent with the other outdoor dining uses along Main Street. The provision of meeting the parking requirement by participation in the In-Lieu Fee Parking Program will not impact the Downtown Parking Master Plan, Downtown Specific Plan, or coastal resources because it is found to be consistent with the adopted Coastal Element.

CONDITIONS OF APPROVAL - CONDITIONAL USE PERMIT NO. 09-018:

1. The site plan, floor plans, and elevations received and dated August 7, 2009 shall be the conceptually approved design with the following modifications:
 - a. Provide a Walnut Street elevation view to ensure that the proposed paint scheme continues and terminates at the existing entry to the stairwell. (DRB)
 - b. The existing globe lights and indirect lighting on the Main Street/Walnut Street (corner) elevation shall be removed. (DRB)
 - c. All existing patio railing shall be replaced with new railing as proposed. (DRB)
 - d. Depict all existing and proposed planter curb alignments. (DRB)
 - e. Depict the additional outdoor dining area to be covered with pavers to match existing. (DRB)
 - f. Depict a minimum 18" high solid shrub within the existing landscaped planter to prevent pedestrian trespassing. (DRB)
2. Prior to the installation of new signage, the glass block located on the building's façade shall be patched with stucco and painted to match existing. (DRB)
3. The final building permit(s) cannot be approved until the property owner has submitted an In-Lieu Parking Fee Participation Agreement to the Planning Department for the \$86,489.30 total in parking fees. The agreement shall be reviewed and approved by the City Attorney as to form and content and, when approved, shall be recorded in the Office of Orange County Recorder. The recorded agreement shall remain in effect for the term specified, except as modified or rescinded pursuant to the expressed written approval of the City of Huntington Beach.
 - a. The property owner shall be responsible to make the lump sum payment, first installment payment, and any subsequent installment payment. Initial payment shall be made prior to issuance of Certificate of Occupancy or Final Building Permit inspection. Subsequent installment payments shall be received prior to the anniversary date of the initial payment.
4. All areas where the sales, service, and consumption of alcoholic beverages will be permitted shall be sufficiently illuminated to permit the identification of patrons. (PD)
5. Alcoholic beverages shall be served in a distinctive container different from non-alcoholic beverages. (PD)
6. Live entertainment shall not be permitted unless a conditional use permit and an entertainment permit has been applied for and approved. (PD)

7. Food from the regular full menu shall be available up to one hour prior to the scheduled closing time. (PD)
8. The hours of operation for the restaurant including outdoor dining and alcohol service shall be between 11:00 AM and 12:00 AM (midnight), Monday through Thursday; between 11:00 AM and 1:00 AM, Friday; between 8:00 AM and 1:00 AM, Saturday; and, 8:00 AM and 12:00 AM (midnight), Sunday.
9. The development services departments (Building & Safety, Fire, Planning and Public Works) shall be responsible for ensuring compliance with all applicable code requirements and conditions of approval. The Director of Planning may approve minor amendments to plans and/or conditions of approval as appropriate based on changed circumstances, new information or other relevant factors. Any proposed plan/project revisions shall be called out on the plan sets submitted for building permits. Permits shall not be issued until the Development Services Departments have reviewed and approved the proposed changes for conformance with the intent of the Planning Commission's action. If the proposed changes are of a substantial nature, an amendment to the original entitlement reviewed by the Planning Commission may be required pursuant to the provisions of HBZSO Section 241.18.

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.