

To the west of the subject site is an existing fast-food drive-thru eating establishment, Del Taco, and an existing large retail store, Costco Wholesale. A driveway runs along the westerly property line of the subject site, which provides reciprocal access and parking to Del Taco and Costco Wholesale utilizing the existing driveways.

For a retail commercial use, under 40,000 square feet in gross floor area, the Municipal Code ("Code") requires a minimum of one (1) parking space per 200 square feet of gross floor area. Prior to the subdivision of the existing 30,000 square foot Office Depot tenant space, the Code required the existing Office Depot retail store to provide a minimum of 150 parking spaces. The existing site provides a total of 152 total parking spaces, which is a surplus of 2 parking spaces.

Following the subdivision of the existing 30,000 square foot tenant space, into two (2) tenant spaces, the Office Depot will occupy the 15,700 square foot tenant space, which requires a minimum of seventy-nine (79) parking spaces. For restaurant/eating establishment uses, the Code requires a minimum of one (1) parking space per 100 square feet of gross floor area. The proposed East Seafood Buffet restaurant, will occupy the newly created 14,300 square foot tenant space, which requires a minimum of 143 parking spaces. Thus, the total number of required parking spaces will be 222 based on Code for restaurant and retail land use parking rates.

Based on the existing 152 parking spaces currently available, the proposed development as initially proposed would be deficient by seventy-one (71) parking spaces (a 32% reduction). Municipal Code Section 9.18.140.060, Joint Use and Parking Management, states that when there is any reduction in parking beyond ten percent (10%), a parking management plan is required. However, said reduction may not exceed twenty-five (25%). Therefore, because the subject proposal exceeds the twenty-five (25%) threshold allowed by the Code, the Applicant has requested approval of a Variance, to deviate from the minimum number of required parking spaces.

A full discussion of the parking variance and traffic impact report is included in the July 16, 2015 Planning Commission Staff Report attached to this Report as Attachment 1.

Variance No. V-011-2015 was heard for the first time by the Planning Commission on June 18, 2015. Prior to that hearing, Costco Wholesale sent a letter to the City dated June 16, 2015 opposing the variance on the bases that the proposed reduction of parking would adversely affect Costco Wholesale's business operations and would violate a Reciprocal Easement Agreement (REA) that had been entered into between the former owner of the Office Depot property with Costco Wholesale and the former Redevelopment Agency on June 11, 1996. The Del Taco parcel is part of this REA. The Applicant requested to continue Variance No. V-011-2015 to the July 16, 2015

Planning Commission meeting in order to work with the adjacent property owners and address their concerns.

The Planning Commission held a continued public hearing on July 16, 2015. At the public hearing, a representative from Costco Wholesale appeared and submitted a letter opposing the requested Variance. Following conclusion of the Public Hearing, the Planning Commission voted 3-2 (Commissioners O'Neill and Mai absent) to direct Staff to prepare a Resolution of Denial of the requested Variance for its consideration at the August 6, 2015 meeting, based on the inability of the Commission to make the following required finding for approval of a variance:

"The granting of the requested Variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located."

The Commission's inability to make the above required finding for approval of the requested variance was based on the reasons stated by the Costco Wholesale representative and the reasons articulated by the Planning Commissioners at the meeting. Subsequent to the July 16th meeting, the Applicant's representative provided Staff with an email containing additional information and conditions the Applicant would be willing to accept if the Planning Commission would reconsider its decision to deny the Variance request. Staff was also advised that the Applicant and Costco Wholesale were engaged in negotiations that could potentially result in Costco Wholesale retracting its opposition.

At the August 6, 2015, Planning Commission meeting, Staff presented the Commission with a proposed Resolution of Denial per the Commission's July 16, 2015 direction, and the Planning Commission was advised that the Applicant was requesting a continuance so that the Public Hearing could be re-opened and additional information and/or a revised proposal addressing the previously raised concerns could be considered. Following discussion, the Planning Commission voted 6-0 (Commissioner Mai absent) to continue the case to a re-noticed date of the September 3, 2015 Planning Commission meeting in order to consider a revised proposal in regard to safety and parking concerns. Staff subsequently noticed a new Public Hearing for September 3, 2015.

At the September 3, 2015, Planning Commission meeting, Staff presented the Commission with a revised site plan, submitted by the applicant, which included modifications to the front and rear parking lot areas of the subject site, in order to increase the total number of available parking spaces, and also included proposed additional Conditions of Approval they believed would further mitigate parking and safety concerns previously raised by Planning Commissioners at the prior public hearings. In summary, per the applicant's revised proposal, the initial proposed parking deficiency had been reduced from a 32% reduction in parking to a 19.8%

reduction in parking through the addition of 26 new parking spaces. Additionally, to further address concerns about a shortage of parking and safety in the shopping center, the Applicant also agreed to additional Conditions of Approval requiring it to implement valet parking for the restaurant use during peak usage and to improve pedestrian safety through the installation of new pedestrian crossing signage and a flashing stop sign on-site. The Applicant represented that Costco Wholesale, who objected to the initial Variance request, may be in position to support the Applicant's revised Variance request. Furthermore, the Applicant represented that he had been in contact with Del Taco, and that all involved parties (the Applicant, Costco Wholesale, and Del Taco) have been working together towards a resolution and approval of an amendment to their REA which would allow the operation of the proposed buffet restaurant, per their private agreement. Finally, the Applicant noted to the Planning Commission that an agreement in writing was in place, between the Applicant and Costco Wholesale, ensuring that an amendment to the REA would be finalized and approved, by all involved private parties, prior to moving forward with the tenant improvement for the proposed East Seafood Buffet restaurant. No one from the public came forward to speak in favor of or in opposition to the applicant's request for the Variance. Following discussion, the Planning Commission voted 3-2 (Commissioner Mai and Commissioner Zamora absent) to adopt Resolution No. 5848-15 to approve Variance No. V-011-2015.

Appeal of the Denial of Variance No. V-011-2015

On September 23, 2015, the Appellant, the property owner of the Del Taco development parcels, filed an appeal of the Planning Commission's approval of the Variance. In support of the appeal, the Appellant submitted the attached September 22, 2015 letter. A copy of the Appellant's filed appeal form and the letter are included as Attachment 6 to this Staff Report. The Appellant is requesting that the City Council reconsider the Planning Commission's approval, and instead, deny the requested Variance.

On November 2, 2015, the Appellant submitted an additional letter, on behalf of Del Taco, which spoke in support of the Appeal to reverse the Planning Commission's approval of the parking variance. A copy of the letter is included as Attachment 7 to this Staff Report. The letter expresses opposition to Variance No. V-011-2015, and that approval of the requested Variance would have a significant negative economic impact to the business and to the availability of parking for Del Taco's existing restaurant, located just east of the subject property. Additionally, the letter states that Del Taco was never contacted by the Applicant to discuss the requested Variance prior to the September 3, 2015 Planning Commission meeting. In summary, Del Taco is requesting that the City Council reconsider the Planning Commission's approval, and instead, deny the requested Variance.

DISCUSSION

The basis for the Planning Commission's approval of the Variance are set forth in detail in Planning Commission Resolution No. 5848-15 (Attachment 4) and the proposed City Council Resolution (Attachment 7). In summary, based on the information provided at the September 3, 2015 meeting, the Planning Commission found that the weight of the evidence supported the required findings to approve the Variance request.

Depending on the City Council's prerogative, the record contains sufficient facts to support either approval or denial of the appeal of Variance No. V-011-2015. Accordingly, Staff has prepared for the City Council's consideration both: (1) a draft Resolution approving the appeal, overturning the Planning Commission's decision, and thereby denying V-011-2015 in full, on the basis that, even as revised and conditioned, the granting of a Variance allowing a 19.8% reduction in required parking spaces will be materially detrimental to the public welfare or result in injury to the property or improvements in the same vicinity and zone as the subject Site; and (2) a draft Resolution denying the appeal and thereby upholding the Planning Commission's decision to approve Variance No. V-011-2015 based on the finding of the Planning Commission at its September 3, 2015 meeting.

FINANCIAL IMPACT

None.

RECOMMENDATION

It is recommended that the City Council conduct a Public Hearing and either:

- Adopt the attached Resolution approving the appeal submitted by Mike Hennessey/Hennessey Group, and overturning the Planning Commission's decision to approve Variance No. V-011-2015, regarding a parking variance at 11100 and 11102 Garden Grove Boulevard, Garden Grove, thereby denying V-011-2015 in full; or
- Adopt the attached Resolution denying the appeal submitted by Mike Hennessey/Hennessey Group, and uphold the Planning Commission's decision to approve Variance No. V-011-2015, regarding a parking variance at 11100 and 11102 Garden Grove Boulevard, Garden Grove; or
- Provide further direction to Staff.

VARIANCE NO. V-011-2015
November 10, 2015
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KARL HILL
Acting Community Development Director



By: Chris Chung
Associate Planner

Attachment 1: Planning Commission Staff Report, for V-011-2015, dated July 16, 2015
Attachment 2: Planning Commission Staff Report, for V-011-2015, dated August 6, 2015
Attachment 3: Planning Commission Staff Report, for V-011-2015, dated September 3, 2015
Attachment 4: Planning Commission Resolution of Approval No. 5848-15 for V-011-2015
Attachment 5: Planning Commission Minute Excerpts of June 18, 2015, July 16, 2015, August 6, 2015, and September 3, 2015
Attachment 6: Appellant's appeal form and attachment (September 22, 2015 letter from legal counsel)
Attachment 7: Del Taco letter, submitted by the Appellant, dated October 28, 2015
Attachment 8: Draft City Council Resolution approving the appeal of V-011-2015
Attachment 9: Draft City Council Resolution denying the appeal of V-011-2015

Approved for Agenda listing



Scott C. Stiles
City Manager

COMMUNITY DEVELOPMENT DEPARTMENT PLANNING STAFF REPORT

AGENDA ITEM NO.: C.1.	SITE LOCATION: South side of Garden Grove Boulevard, west of Euclid Street, at 11100 and 11102 Garden Grove Boulevard
HEARING DATE: July 16, 2015	GENERAL PLAN: Civic Center Mixed Use
CASE NO.: Variance No. V-011-2015	ZONE: CC-3 (Civic Center Core)
APPLICANT: David Webber	CEQA DETERMINATION: Exempt
PROPERTY OWNER(S): Emerald Square II, LLC	APN: 099-105-40 & 42

REQUEST:

A request for Variance approval to deviate from the required number of parking spaces, Municipal Code Section 9.18.140.030 (Parking Spaces Required), to allow the operation of a new 14,300 square foot restaurant/eating establishment, East Seafood Buffet, at 11102 Garden Grove Boulevard.

BACKGROUND:

The subject (2) properties (with Assessor's Parcel Nos. 099-105-40 & 42) have a gross lot area of approximately 2.5 acres, making up an integrated development, and are developed with an existing approximately 30,000 square foot building. The properties are zoned CC-3 (Civic Center Core) and have General Plan Land Use Designations of Civic Center Mixed Use. The properties abut CC-3 zoned properties to the north, across Garden Grove Boulevard, south, east, and west.

The existing 30,000 square foot building is located in the center with parking lots located at the front, fronting along Garden Grove Boulevard, and at the rear, behind the building, to the south. The site provides a total of 152 parking spaces, of which eighty-four (84) parking spaces are located in the front parking lot area, and the remaining sixty-eight (68) parking spaces are located in the rear parking lot area.

The existing 30,000 square foot building, in its entirety, was previously occupied by Office Depot, which began its business in 1997 according to business license records. In April of 2015, a building permit was issued by the City of Garden Grove to allow the construction of a demising wall, splitting the existing 30,000 square foot tenant space into a 15,700 square foot tenant space and a 14,300 square foot tenant space. Office Depot has downsized its operation and is now occupying the

15,700 square foot tenant space, with the address of 11100 Garden Grove Boulevard. The proposed East Seafood Buffet restaurant will occupy the newly created 14,300 square foot tenant space, which has a new address of 11102 Garden Grove Boulevard.

To the west of the subject site is an existing fast-food drive-thru eating establishment, Del Taco, and an existing large retail store, Costco. A driveway runs along the westerly property line of the subject site, which provides reciprocal access and parking to Del Taco and Costco utilizing the existing driveways.

For a retail commercial use, under 40,000 square feet in gross floor area, the Municipal Code ("Code") requires a minimum of one (1) parking space per 200 square feet of gross floor area. Prior to the subdivision of the existing 30,000 square foot Office Depot tenant space, Code required the existing Office Depot retail store to provide a minimum of 150 parking spaces. The existing site provides a total of 152 total parking spaces, which is a surplus of two (2) parking spaces.

Following the subdivision of the existing 30,000 square foot tenant space, into two (2) tenant spaces, the Office Depot will occupy the 15,700 square foot tenant space, which requires a minimum of seventy-nine (79) parking spaces. For restaurant/eating establishment uses, Code requires a minimum of one (1) parking space per 100 square feet of gross floor area. The proposed East Seafood Buffet restaurant, will occupy the newly created 14,300 square foot tenant space, which requires a minimum of 143 parking spaces. Thus, the total number of required parking spaces will be 222 based on Code for restaurant and retail land use parking rates.

Based on the existing 152 parking spaces that are provided, the proposed development will be deficient by seventy-one (71) parking spaces, which is equal to a thirty-two percent (32%) reduction. Municipal Code Section 9.18.140.060, Joint Use and Parking Management, states that when there is any reduction in parking beyond ten percent (10%), a parking management plan is required. However, said reduction may not exceed twenty-five (25%). Therefore, because the subject proposal exceeds the twenty-five (25%) threshold allowed by Code, the applicant has requested approval of a Variance, to deviate from the minimum number of required parking spaces.

DISCUSSION:

In order for the proposed project to move forward as proposed, the applicant is requesting consideration of a Variance from Municipal Code Section 9.18.140.030 (Parking Spaces Required) in order to deviate from the minimum number of required parking spaces to allow the operation of a new 14,300 square foot restaurant/eating establishment, East Seafood Buffet, at 11102 Garden Grove Boulevard.

To support their Variance request, the applicant has submitted an observed parking analysis report and a traffic impact study, both prepared by licensed traffic engineers from RK Engineering Group, Inc. ("RK Engineering"). The following discussion will briefly summarize the analysis conducted and the findings made by RK Engineering.

OBSERVED PARKING ANALYSIS:

RK Engineering conducted an observed parking analysis for the subject site to determine the projected parking demand, for the proposed mixed (restaurant and retail) development by utilizing observed parking demand studies.

As previously mentioned, with the proposed restaurant, along with the downsized Office Depot tenant, there will be a proposed deficiency of seventy-one (71) parking spaces, equal to a thirty-two percent (32%) reduction in parking. Therefore, due to the deficiency, the number of parking spaces provided does not meet the parking requirements of the Code. The observed parking analysis report states that a "buffet-style restaurant", such as the proposed East Seafood Buffet restaurant, does not operate like a typical restaurant, because much of the square footage is required for the buffet customer queuing line. A review of the floor plan shows that the customer queuing line accounts for approximately 1,500 square feet. A strict interpretation of the Code, at a rate of one (1) parking space per 100 square feet, requires fifteen (15) parking spaces for this customer queuing area, alone.

To establish peak parking demand for the previously existing 30,000 square foot Office Depot tenant, RK Engineering obtained observed parking counts on a typical weekday and a typical weekend day, Friday and Saturday, respectively. The peak demand occurred on Saturday, where there were a total of seventy (70) parked cars on-site, which is approximately 46% of the total parking spaces supplied. Because there is reciprocal access between the Costco site and the Office Depot site, Staff notes that it is a common occurrence to find Costco customers parking on the Office Depot site. The observed parking analysis report notes that on Saturday, during the observed peak time, sixty-three (63) of the seventy (70) vehicle occupants who parked on the Office Depot site were observed walking to the Costco site. However, it should be noted, to be conservative, the visitors to Costco were not reduced from the total observed demand data. It should also be noted that the total observed parking demand for the Office Depot was based on its prior condition, when it occupied the entire 30,000 square foot building. This was a conservative approach, since the proposed Office Depot will have approximately half (15,700) of the square footage of the previous tenant space size.

To establish peak parking demand for the proposed East Seafood Buffet restaurant, RK Engineering performed an observed parking demand survey at an operating King Buffet restaurant, located in Los Angeles, which has the same floor plan layout and operational characteristics as the East Seafood Buffet restaurant. The existing

King Buffet, in Los Angeles, has a gross floor area of 11,200 square feet with a total of eighty (80) parking spaces provided on-site. During the observed peak hour, which was on a Friday and Saturday at 2:00 p.m., there were a total of fifty-eight (58) parked cars, which is approximately 72.5% of the total parking supplied. The projected parking demand for the proposed East Seafood Buffet is calculated based on the existing Los Angeles King Buffet observed demand. The existing Los Angeles location is approximately 11,200 square feet, and the proposed East Seafood Buffet, at 11102 Garden Grove Boulevard, is 14,300 square feet. The ratio of square footage was applied to the observed demand to determine an appropriate projected demand for the proposed East Seafood Buffet restaurant.

The observed demand for the Office Depot and the projected demand for the proposed East Seafood Buffet were added to determine the projected parking demand for the proposed mixed use development (East Seafood Buffet and Office Depot). On a typical weekday, the projected peak hour demand totals 140 parked vehicles. On a typical weekend day, the peak hour is projected to demand a total of 133 parked vehicles. Taking the worst case scenario, a weekday, the projected peak demand finds there will be a surplus of twelve (12) parking spaces, based on the 152 existing parking spaces available on-site.

Therefore, the projected parking demand determines that there would be a sufficient amount of parking spaces to accommodate the proposed East Seafood Buffet in conjunction with the Office Depot tenant. See Figure 1 below.

DAY	TOTAL NUMBER OF PARKING SPACES PROVIDED	PEAK PARKING TIME	PEAK PARKING DEMAND	NUMBER OF SURPLUS PARKING SPACES AT PEAK
Typical Weekday	152	2:00PM	140	12
Typical Weekend Day	152	2:00PM	133	19

Figure 1

As part of this observed parking analysis report, a trip generation analysis was conducted. Trip generation represents the amount of trips that are produced and attracted by a development. The report analyzed the expected number of trips generated by the proposed East Seafood Buffet restaurant, alone, excluding the expected number of trips generated by the Office Depot. The analysis concluded that the proposed restaurant is expected to generate more than fifty (50) p.m. (night) peak hour trips. Because the number of trips is expected to exceed fifty (50) peak hour trips, RK Engineering suggested that a traffic impact study be conducted and included as part of this application.

TRAFFIC IMPACT STUDY:

As previously mentioned, a traffic impact study was recommended by RK Engineering, in part due to the increased trip generation expected by the operation of the proposed East Seafood Buffet restaurant. Thus, a traffic impact study was conducted by RK Engineering to evaluate the proposed project, with respect to on-site and off-site traffic impacts, pursuant to the requirements and specifications of the City of Garden Grove. The purpose of the traffic impact study is to evaluate the proposed mixed development (East Seafood Buffet and Office Depot) from a traffic circulation standpoint and determine whether significant impacts may occur as a result of the project.

The study area, of the traffic impact study, included the following nearby three (3) offsite intersections:

1. Main Street (north/south) at Garden Grove Boulevard (east/west)
2. Project Access Driveway (the driveway located just west of the subject building, which provides primary access to the site) (north/south) at Garden Grove Boulevard (east/west)
3. Euclid Street (north/south) at Garden Grove Boulevard (east/west)

The objectives of the traffic impact study included: (1) documentation of existing traffic conditions in the vicinity of the site; (2) evaluation of existing plus project traffic conditions; (3) evaluation of traffic conditions, in 2016, with and without the project; and (4) determination of any on-site and off-site improvements deemed necessary as a result of impacts from the project.

The traffic impact study found, for existing traffic conditions, all study area intersections were operating at acceptable levels of service during peak hours (between 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m.). The traffic impact study also found that the proposed mixed development (East Seafood Buffet and Office Depot) is projected to generate two (2) fewer vehicles per hour during the a.m. peak hour and approximately eighty-eight (88) net new vehicles per hour during the p.m. peak hour.

Based on ICU (Intersection Capacity Utilization) calculations, the level of service ("LOS") of a signalized or unsignalized traffic intersection is given a letter grade of A, B, C, D, E or F. For example, a LOS intersection grade of "A", the highest grade, would mean that traffic flows freely and individual users are virtually unaffected by the presence of others in the traffic stream. A LOS intersection grade of "F", the worst grade, would signify that there is a forced or breakdown in traffic flow where the condition exists wherever the amount of traffic approaching a point exceeds the amount which can traverse that point. The acceptable LOS for intersections within the City of Garden Grove is "D" or better.

The intersection level of service analyses were performed for existing and future conditions. The results of the traffic impact study analyses indicate that the proposed project, even with the projected increase in trip generation, would have less than a significant impact at all study area intersections.

Based on the review and findings of the traffic impact study, Staff supports RK Engineering's conclusion that the proposed project can be accommodated with the following recommendations:

1. Ensure that the on-site circulation system is per the submitted detailed site plan.
2. Repaint the existing stop bar and the existing stop sign legend at the Project Access Driveway on Garden Grove Boulevard.
3. Provide on-site bicycle racks in easily accessible and highly visible locations to promote alternative modes of transportation.
4. Encourage management to display a poster/message board that promotes walking, bicycling, and public transit and provides information about these options within the neighborhood.
5. Encourage employees to use alternative modes of transportation, such as carpooling and public transit. Consider providing incentives for such usage.

VARIANCE:

Pursuant to State law and Garden Grove Municipal Code Section 9.32.030.D.6, in order to grant a property owner's request for a Variance, the Planning Commission must make each of the following five (5) findings:

1. That there are exceptional circumstances or conditions applicable to the property involved or to the intended use or development of the property that do not apply generally to other property in the same zone or neighborhood.
2. That such Variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone, but which is denied to the subject property.
3. That the granting of a Variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such zone or neighborhood in which the property is located.
4. That the granting of such Variance will not adversely affect the City's General Plan.

5. That approval of the Variance is subject to such conditions as will assure that it does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is situated.

In this case, Staff believes the weight of the evidence dictates that all five (5) required findings can be made.

1. There are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or classes of use in the same vicinity or zone.

The East Seafood Buffet restaurant will be part of a multi-tenant mixed use development, which will include a restaurant use and a retail use (Office Depot). Other sites in the same vicinity, as well as in similarly zoned properties with similar uses, do not have a mix of uses, but rather, have an existing commercial use on a stand-alone lot. Furthermore, there are very few properties in the City with similar commercial uses such as the subject Office Depot retail store and the proposed East Seafood Buffet restaurant, which have unique operational characteristics. RK Engineering noted that a "buffet-style restaurant", such as the proposed East Seafood Buffet restaurant, does not operate like a typical restaurant, because much of the square footage is required for the buffet customer queuing line. Also, the Office Depot sells a specific product and does not operate like a typical retail store. The subject site provides a total of 152 parking spaces. Based on Code requirements, the restaurant and retail use combined requires a total of 222 parking spaces, which results in a 32% parking deficiency. An observed parking analysis was conducted by RK Engineering. The existing 30,000 square foot Office Depot retail use was found to utilize just forty-six percent (46%) of the 152 available parking spaces on-site during their peak times. The existing Office Depot use did not generate a high parking demand when compared to other retail sites with similar uses. Additionally, the proposed project involves the Office Depot retail use downsizing its operation from 30,000 square feet to 15,700 square feet. However, the observed parking analysis took a conservative approach and applied the parking demand based on the original Office Depot tenant space size of 30,000 square feet. Even with the conservative approach, the observed parking analysis concluded that there would be a sufficient amount of parking spaces to accommodate the proposed East Seafood Buffet in conjunction with the Office Depot tenant, with an available surplus of parking spaces.

2. The Variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone, but which is denied to the property in question.

According to the observed parking analysis, the subject site's parking demand is currently less than 50% occupied as the existing Office Depot use does not

generate the high parking demand that is typically found in other retail shopping centers with similar uses. Additionally, there are other similar commercial properties in the immediate vicinity, within the same zone, or other similarly zoned properties throughout the City, that provide less parking than required by current Code requirements. Most of these properties were developed prior to current Code requirements, and were not required to provide the minimum number of on-site parking spaces as would be required today. However, to address any parking related issues, the observed parking analysis, conducted by licensed traffic engineers of RK Engineering, found that there would be a sufficient amount of parking spaces to accommodate the proposed East Seafood Buffet in conjunction with the Office Depot tenant, with an available surplus of parking spaces. Furthermore, a traffic impact study conducted by RK Engineering indicated that the proposed project would have no significant impacts to the nearby study area traffic intersections.

Accordingly, approval of the proposed Variance will not set a precedent and will allow the applicant to enjoy a substantial property right possessed by other property owners located in other similar commercial properties in the immediate vicinity, within the same zone, and other similarly zoned properties throughout the City.

3. The Variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located.

Based on Code requirements, the restaurant and retail use combined requires a total of 222 parking spaces, which results in a 32% parking deficiency. An observed parking analysis was conducted by RK Engineering. The existing 30,000 square foot Office Depot retail use was found to utilize just forty-six percent (46%) of the 152 available parking spaces on-site during peak hours. The existing Office Depot use did not generate a high parking demand when compared to other retail sites with similar uses. Additionally, the proposed project involves the Office Depot retail use downsizing its operation from 30,000 square feet to 15,700 square feet. However, the observed parking analysis took a conservative approach and applied the parking demand based on the original Office Depot tenant space size of 30,000 square feet. The Variance will allow a reduction in the number of on-site parking spaces. The reduction in the Code required parking will not adversely affect the surrounding properties, as even with the conservative approach, the observed parking analysis concluded that there would be a sufficient amount of parking spaces to accommodate the proposed East Seafood Buffet in conjunction with the Office Depot tenant. Furthermore, there will be available surplus of parking during both weekday and weekend peak times. Granting of the Variance will allow this site the same benefits as other similar commercial properties in the immediate vicinity, within the same zone, and other similarly zoned properties throughout the City, which do not provide the minimum number of required parking spaces based on

today's Code requirements. Approval of this Variance will allow the site to be improved, meet the intended use of the zone, and provide an additional amenity to the community as family-style sit-down restaurant. Provided that the project complies with the conditions of approval, the approval of the Variance will not create an adverse effect on the public welfare or to properties or improvements in such vicinity and zone in which the property is located.

4. The granting of the Variance will not adversely affect the General Plan.

The proposed use is consistent with the intent of the General Plan and the zoning classification as restaurants are permitted in the CC-3 (Civic Center Core) zone. The proposed Variance request will not cause an adverse effect on the City's General plan since the Municipal Code is a tool used to implement goals of the General Plan. The proposed East Seafood Buffet restaurant will improve a vacant tenant space, will complement the neighboring uses, and will further a goal of the General Plan to develop underutilized properties with a suitable development. The findings of the observed parking analysis and the traffic impact study ensure that Goal CIR-1 of the General Plan is met, which strives to provide a transportation system that maximizes freedom of movement and maintains a balance between mobility, safety, cost of efficiency of maintenance, and the quality of the City's environment. Therefore, the proposed project meets the spirit and intent of the Municipal Code and the General Plan.

5. Approval of the Variance is subject to such conditions as will assure that it does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is situated.

According to the observed parking analysis, the subject site's parking demand is currently less than 50% occupied as the existing Office Depot use does not generate the high parking demand that is typically found in other retail shopping centers with similar uses. Additionally, there are other similar commercial properties in the immediate vicinity, within the same zone, and other similarly zoned properties throughout the City, that provide less parking than required by current Code requirements. Most of these properties were developed prior to current Code requirements, and were not required to provide the minimum number of on-site parking spaces as would be required today. However, to address any parking related issues, the observed parking analysis, conducted by licensed traffic engineers of RK Engineering, found that there would be a sufficient amount of parking spaces to accommodate the proposed East Seafood Buffet in conjunction with the Office Depot tenant, with an available surplus of parking spaces. Furthermore, a traffic impact study conducted by RK Engineering indicated that the proposed project would have no significant impacts to the nearby study area traffic intersections. The Conditions of Approval require that a minimum of 152 parking spaces be provided at all times, require certain site improvements be made to

improve circulation and safety, require the applicant to take certain actions to encourage customers and employees to utilize alternative modes of transportation that will not impact on-site parking, and require implementation of an approved parking mitigation plan in the event actual parking or circulation problems nonetheless occur. Provided that the conditions are adhered to, approval of the subject Variance will not grant a special privilege that is inconsistent with the limitations upon other properties located within the vicinity or zone in which the subject property is situated. In addition, pursuant to Condition of Approval No. 2, the rights granted the applicant pursuant to Variance No. V-011-2015 shall continue in effect for only so long as the nature and character of the two uses operating in the 30,000 square foot building on the Site remain the same as at the time of approval the Variance. In the event the nature or character of either of the two uses occupying the building materially changes, Variance No. V-011-2015 shall cease to be effective or to grant the applicant any rights to continue to operate the described uses on the Site. Any future uses on the Site different from the current described uses will be required to comply with all then applicable standards of the Garden Grove Municipal Code, and the applicant may not rely on this Variance as a basis for satisfying the required number of parking spaces associated with such future uses.

RECOMMENDATION:

Staff recommends that the Planning Commission take the following action:

1. Adopt proposed Resolution No. 5848-15 approving Variance No. V-011-2015, subject to the recommended Conditions of Approval.



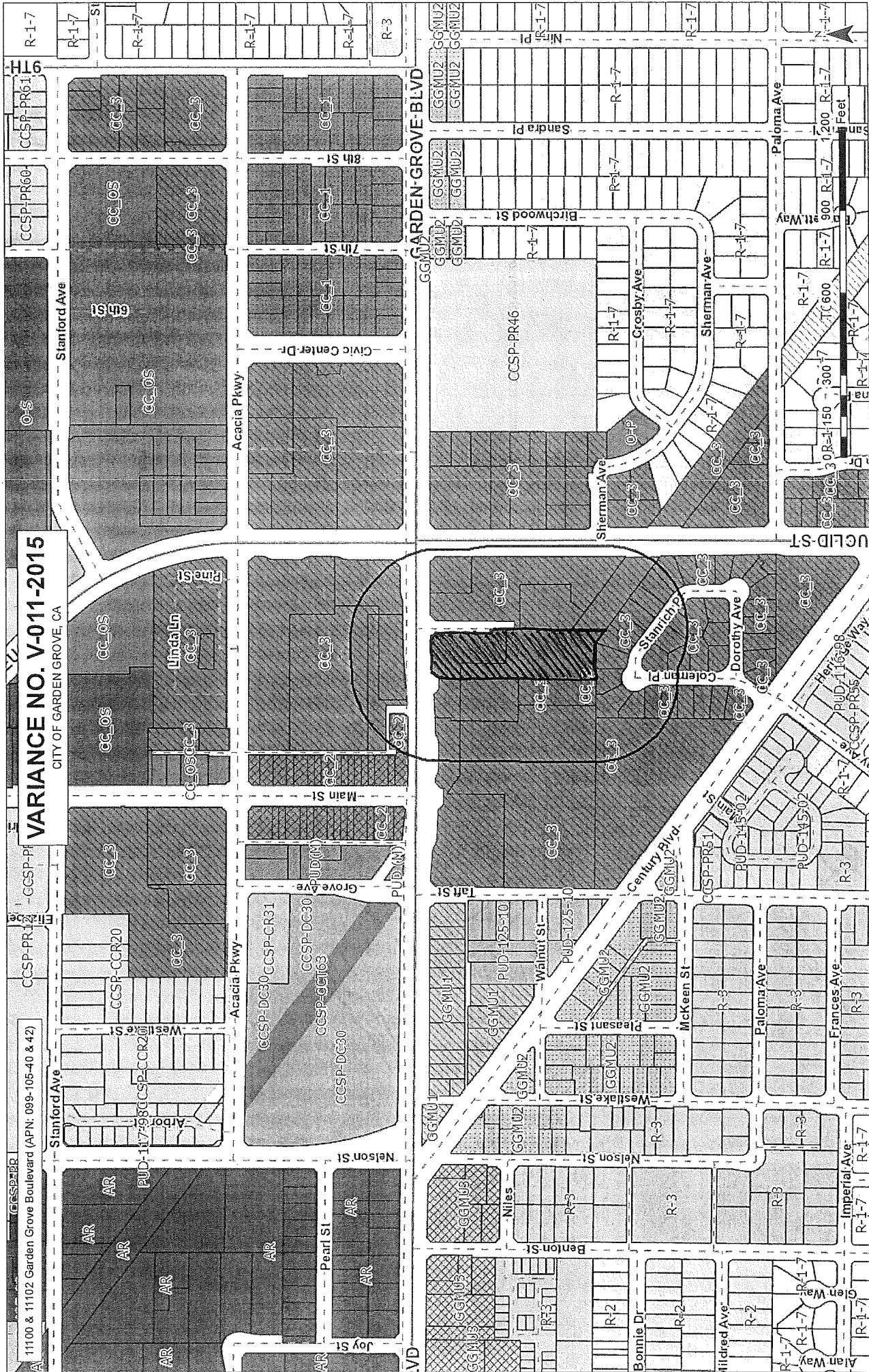
KARL HILL
Planning Services Manager



By: Chris Chung
Associate Planner

VARIANCE NO. V-011-2015

CITY OF GARDEN GROVE, CA

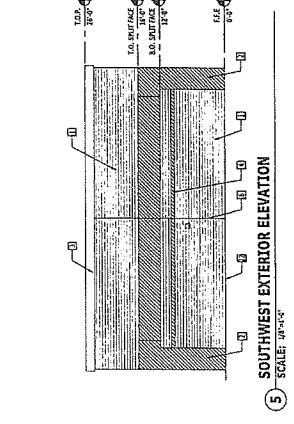
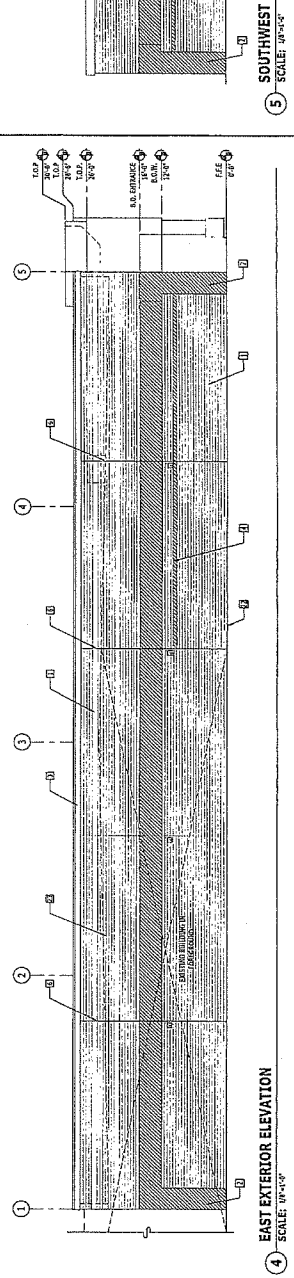
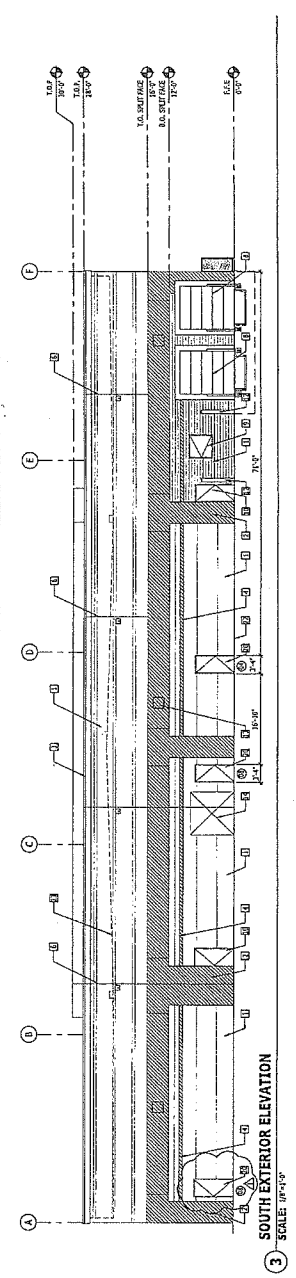
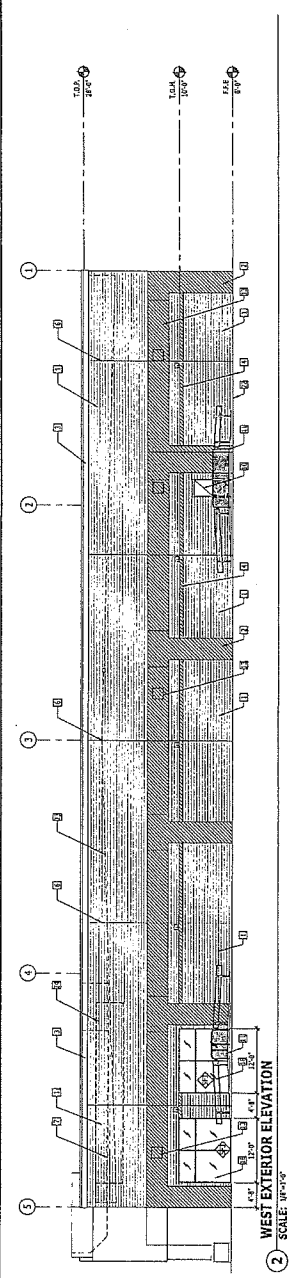
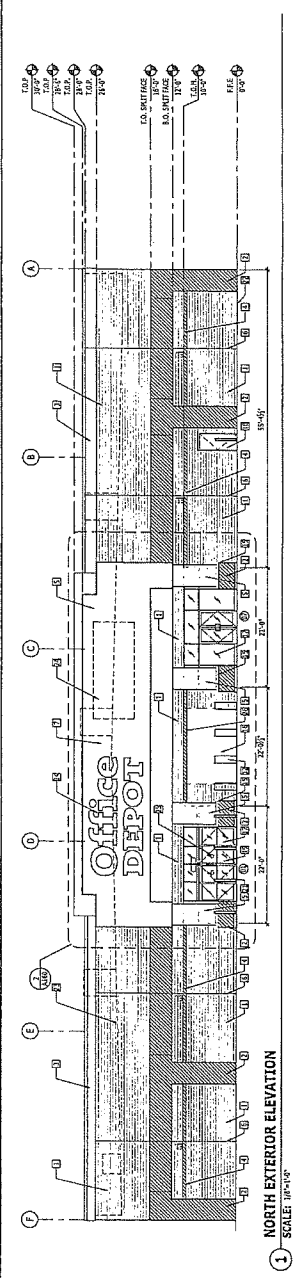


NO.	DESCRIPTION	DATE
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4	ISSUED FOR PERMIT	03.12.2015
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7	ISSUED FOR PERMIT	03.12.2015

SCALE	1/8"=1'-0"
DATE	03/12/2015
DRAWN BY	
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PROJECT	Office DEPOT
NO.	1
SHEET	10 OF 15
SCALE	1/8"=1'-0"

- ### ELEVATION NOTES
- 1. EXISTING CONCRETE FOUNDATION TO REMAIN. EXISTING WALLS TO REMAIN UNLESS INDICATED OTHERWISE.
 - 2. EXISTING 1" DIA. STEEL COLLARS TO REMAIN AT ALL EXISTING WALL LOCATIONS.
 - 3. EXISTING 2" DIA. STEEL COLLARS TO REMAIN AT ALL EXISTING WALL LOCATIONS.
 - 4. EXISTING 4" DIA. STEEL COLLARS TO REMAIN AT ALL EXISTING WALL LOCATIONS.
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- 1. INDICATES ROOM NUMBER, SEE SHEET 040.
 - 2. INDICATES WINDOW NUMBER, SEE SHEET 040.
 - 3. ALL CALLS SHALL BE TO THE CENTER OF THE MEMBER UNLESS OTHERWISE INDICATED.
 - 4. NEW FLOOR FINISH TO MATCH EXISTING.
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 - 52. NEW FLOOR FINISH TO MATCH EXISTING.





Direct Dial: (425) 427-3585
Facsimile: (425) 313-8105
Email: rjerabek@costco.com

June 16, 2015

VIA OVERNIGHT DELIVERY

City of Garden Grove
Planning Division
11222 Acacia Parkway
Garden Grove, CA 92840

RE: Variance No. V-011-2015 – Office Depot

To Whom It May Concern:

Costco Wholesale Corporation ("Costco") is the owner of property located 11000 Garden Grove Boulevard (the "Costco Property"). Costco has been operating at this location for over 20 years.

Costco received notice from the City of Garden Grove of a Public Hearing to be held on June 18, 2015 to consider a request by the owner of the neighboring Office Depot Property for a 71 parking stall variance relating to the proposed development of a 14,300 square foot restaurant and 15,718 square foot Office Depot (together the "Proposed Use").

Based upon the configuration of the Proposed Use, the parking area is segregated between the restaurant use (68 stalls) and the Office Depot use (83 stalls). The restaurant parking area will be under-parked by 75 parking stalls, based upon the restaurant parking requirement of 143 stalls for a 14,300 square foot restaurant.

Due to the layout between the Costco Property and the Office Depot Property, the Costco parking lot will become the default parking area for the proposed restaurant. This will materially and adversely impact Costco's business operations. Therefore, Costco objects to the proposed variance.

Please note that a Reciprocal Easement Agreement was entered into between the former owner of the Office Depot Property with Costco and the Garden Grove Agency for Community Development on June 11, 1996, which was recorded on August 26, 1996 under Orange County Recorder's number 19960436242 the ("REA"). Pursuant to Section 6.3 of the REA, the Office Depot Property is subject to a 5:1 retail parking requirement and a 10:1 restaurant parking requirement. Under the REA, the Proposed Use would require about 222 parking stalls. Since the Proposed Use only includes 151 parking stalls, the Proposed Use violates of the REA. Excerpts from the REA are attached for reference.

Based upon the foregoing, the City should deny the requested variance.

Very truly yours,
Costco Wholesale Corporation

A handwritten signature in black ink, appearing to read 'Rick Jerabek', with a stylized flourish extending to the right.

Rick Jerabek
Corporate Counsel

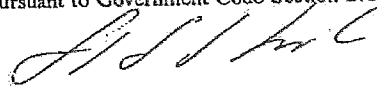
RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Garden Grove Agency
for Community Development
11222 Acacia Parkway
Garden Grove, California 92640
Attention: Agency Director

Recorded in the county of Orange, California
Gary L. Granville, Clerk/Recorder

) No Fee
) 19960436242 2:47pm 08/26/96
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This document is exempt from the payment of a recording fee
pursuant to Government Code Section 27383.



RECIPROCAL EASEMENT AGREEMENT

THIS RECIPROCAL EASEMENT AGREEMENT (the "REA") is entered into as of JUNE 11, 1996, by and among COSTCO WHOLESALE CORPORATION, INC., a Washington corporation (together with its successors and assigns, "Costco"), ZELMAN GARDEN GROVE MARKETPLACE, LLC, a Delaware limited liability company (together with its successors and assigns, "Zelman"), and the GARDEN GROVE AGENCY FOR COMMUNITY DEVELOPMENT, a public body, corporate and politic (together with its successors and assigns, the "Agency"), in connection with certain real property located in the City of Garden Grove, County of Orange, State of California (the "Center"), as shown on that certain map of the Center (the "Map of the Center") attached hereto as Exhibit "A" and as more particularly described in the Legal Description attached hereto as Exhibit "B," both incorporated herein by this reference.

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RECITALS

A. Agency and Costco have entered into that certain Disposition and Development Agreement, dated as of December 14, 1993 (the "Costco DDA"). Pursuant to the Costco DDA, the Agency has conveyed to Costco fee title to a certain portion of the Center (the "Costco Parcel"), and Costco has constructed and operated thereon a Costco discount warehouse store.

B. Agency and Zelman have entered into that certain Disposition and Development Agreement, as approved by the Agency on December 12, 1995 (the "Zelman DDA"). Pursuant to the Zelman DDA, the Agency has conveyed to Zelman a certain portion of the Center (the "Zelman Parcel"), and Zelman has agreed to construct certain improvements thereon suitable for retail sales.

C. Agency currently owns fee title to other portions of the Center (the "Agency Parcels"). The Agency intends that such property may be improved for purposes consistent with the terms hereof.

D. The Costco DDA and the Zelman DDA both require that this Declaration be executed and recorded in order to facilitate the creation of a single, unified retail shopping center on the Center.

E. The Center is located in the Garden Grove Community Center Redevelopment Project Area, as amended, in the City of Garden Grove.

F. The Agency has solicited the participation of the owners of certain real property located adjacent to the Center (the "Annexation Parcels"). The Agency desires that such property will be improved for purposes consistent with the terms hereof, and that such parcels will be part of the Center and will be subject to the terms of this REA at such time. However, the owners of the Annexation Parcels are not currently required to enter into this REA.

G. The Owners desire to enter into this REA for the purpose of:

(1) creating reciprocal easements over the Center in favor of each party hereto for ingress, egress and physical access of said parties and their Occupants and Permittees (both as hereinafter defined);

(2) establishing the respective rights and duties among the parties concerning the Common Area and access thereto;

(3) acknowledging the status of the development of the Property as of the date hereof.

H. The Owners intend that the owners of the Annexation Parcels will be given an opportunity to include the Annexation Parcels as part of the Center, subject to the terms of this REA, at such time as such Annexation Parcels are developed or redeveloped, provided that the Site Plan for such development or redevelopment is consistent with the requirements of this REA and is reasonably acceptable to the Owners, in accordance with Section 9 below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Definitions.** For the purposes of this REA, the following terms shall have the following definitions:

1.1 "**Agency**" means the Garden Grove Agency for Community Development, a public body, corporate and politic (together with its successors and assigns).

1.2 "**Agency Parcels**" means those other portions of the Center owned by the Agency as of the date of this REA, as depicted on the Map of the Center and described in the Legal Description.

1.3 "**Annexation Parcels**" means those parcels adjacent to the Center currently owned by parties other than Costco, Zelman or the Agency, as depicted on the Map of the Center

5. **Maintenance.** The Owner of the Costco Parcel shall maintain and operate the Costco Parcel and the Eastern Agency Parcel, including but not limited to the operation and maintenance of the structures, fixtures and personal property located thereon, in a first-class condition, comparable to the condition of similar well-maintained retail complexes similarly situated, and in accordance with the Maintenance Agreement entered into by and between the Agency and Costco pursuant to the Costco DDA. The Owner of the Zelman Parcel shall ~~maintain and operate the Zelman Parcel, including but not limited to the operation and~~ maintenance of all structures, fixtures and personal property located thereon, in a first-class condition, comparable to the condition of similar well-maintained retail complexes similarly situated, and in accordance with the Maintenance Agreement entered into by and between the Agency and Zelman pursuant to the Zelman DDA. The Owner of the Agency Parcels shall maintain and operate the Agency Parcels, including but not limited to the operation and maintenance of all structures, fixtures and personal property located thereon, in a first-class condition, and in accordance with any Maintenance Agreement which may be entered into by and between the Agency and the Owners of the Agency Parcels. Each Owner shall be required to adequately maintain and insure the common areas on its respective Parcel(s) at its sole cost and expense. No Owner shall be obligated to utilize any common area maintenance operator, and each Owner may maintain its own Parcel.

6. **Parking.**

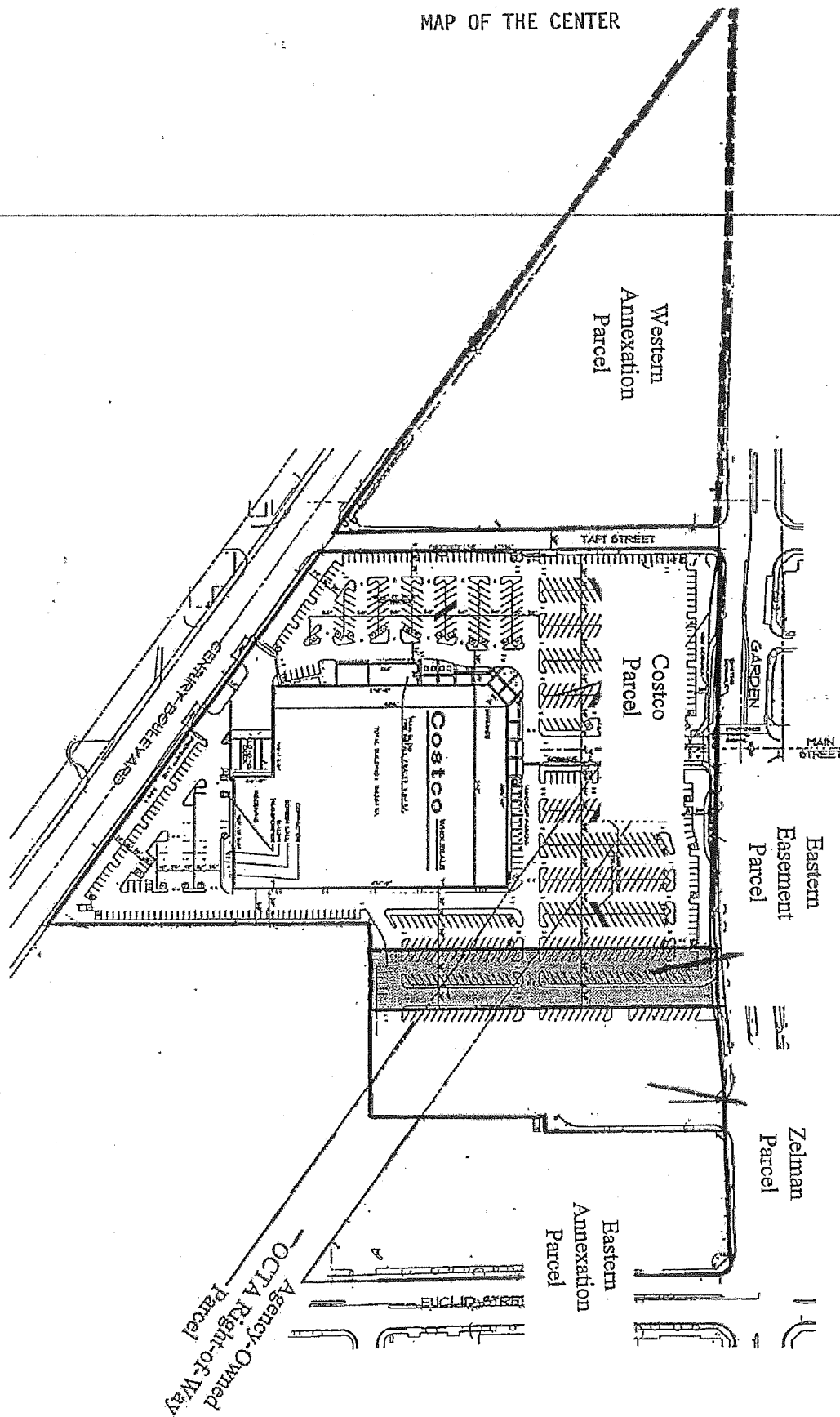
6.1 **Parking Generally.** There shall be no fees or charges for the use of any Center Parking Areas. There shall be no so-called "reserved" spaces for any user. All employees shall be required to park on their employers' own Parcels.

6.2 **Parking Requirements Calculated Separately.** Without limitation upon Section 6.3 below, and subject to Section 6.5 below, there shall be maintained at all times on the Parking Areas on the Costco Parcel and the Zelman Parcel and each of the other Parcels within the Center, respectively, a number of parking spaces at least equal to the number of spaces which would be legally required for the building sizes and uses on such parcel if such parcel were not benefitted by any parking rights over any other parcels and no variances or exemptions from legal requirements were applicable.

6.3 **Minimum Parking Ratios.** Without limitation upon Section 6.2 above, and subject to Section 6.5 below, there shall be maintained at all times in the Parking Areas on the Costco Parcel and the Zelman Parcel and each of the other Parcels within the Center, respectively, not less than the following number of parking spaces for each thousand square feet of Floor Area utilized for the following uses on such Parcel: (a) retail uses, 5:1; (b) restaurants and fast food, 10:1; (c) health spas, health clubs, gyms, exercise studios, dance studios, yoga or martial arts schools or similar facilities, 13 1/2:1; (d) theaters, playhouses, cinemas or movie theaters, 0.5 per seat; (e) hotels, motels or other lodging facilities, 1 per room plus 1 space per banquet seat and 10:1 for any restaurants within such facility; (f) all uses other than the foregoing uses (including, without limitation, other commercial or industrial uses) 5:1.

6.4 **Integrity of Parking Areas.** Christmas tree sales, shows, carnivals, fireworks booths or other uses which would occupy parking spaces shall not be permitted in the Common Area of the Center without the approval of the Owners and Major Tenants of the

EXHIBIT "A"
MAP OF THE CENTER



From: Josh McIntosh / DJ Gummo [mailto:djgummo@yahoo.com]

Sent: Tuesday, June 16, 2015 12:19 PM

To: Judy Moore; Lim; Mai, Vu; Kanzler, Andrew; Pak, Joe; Zamora, Linda; O'Neill, John; Paredes, Mark Anthony; Phat Bui; Bao Nguyen; Allan Roeder; Blackmun, Maureen;membership.ggna@gmail.com; Morino, Doug; Brennan, Nick; Nguoi Viet; Viet Bao; Chavez, Jennifer; Margolin, Connie; Kris Beard; Chris Phan; Maritza Pizarro; Korea Daily; Ted Apodaca; Tom Nixon; Teresa Pomeroy; Svetlana Moure; Susan Emery; Steve Jones; Pam Haddad; Melanie Valdes; Marina Romero; Lisa; Kathy Bailor; James H. Eggart; Greg Blodgett; GG Journal; Gail Desby; Denise Kehn; Danny Huynh; Bill Murray; Anaheim Bulletin; Ana Pulido

Subject: Re: Planning Commission Meeting Agenda for 6/18/15

Please be aware that I have an issue with the Variance NO. V-011-2015, David Webber's request to allow the operation of his new East Seafood Buffet at the former Office Depot. The idea of allowing this restaurant to deviate from the required number of parking spaces concerns me.

As a nearby resident, I witness the amount of vehicles entering and leaving the popular Costco store next door. Nearly every month we have a traffic accident or several of them, at the intersection of GG Blvd and Main St. Many of the accidents involve Costco customers not paying attention to signage here, requiring a right turn only, and they chose to drive straight across GG Blvd to Main St. It is known by locals as one of the most frustrating and dangerous intersections in the city due to the bad judgement of the Costco customers. The Costco would seem to have enough parking for the amount of customers yet they spill into the former Office Depot parking lot already and onto the surrounding streets. I feel that the parking situation will only be worse by allowing the new restaurant to deviate from providing an ample amount of parking spaces for their customers.

The traffic problem is not just at Main and GG Blvd though. The traffic congestion begins on the 22 Freeway towards the Euclid exit. It appears that every unskilled driver in the area goes to our Costco and they demonstrate their lack of driving skills, common sense and courtesy, all the way from the freeway to the store. I live walking distance to this Costco and have experienced this first hand for over 5 years. This Costco is a magnet for many of the worst drivers in the county. We do not need to make a bad situation any worse by deviating from what we require, based on a set of standards to keep order in the city.

I do not know the required amount of parking spaces required as they are not listed here in the agenda. I am stating that this seems to be an invitation for more traffic problems, congestion and will only be detrimental to the neighborhood which I live in. Perhaps an additional, overflow parking space can be arranged in the vacant lot at Southwest corner of GG Blvd and Euclid, which has been fenced in with no activity for years, other than for political signage posted. The fenced in corner is what I would deem **blighted**, as the green colored fence screen is often torn, covered with graffiti, and a there high amount of signage is attached to it throughout the year.

I would suggest that the Planning Commission enforce the required amount of parking spaces for this new development rather than contribute to nightmare which we call the Costco parking lot.

Sincerely,
Joshua Z McIntosh
714-458-8669 cell
djgummo@yahoo.com

From: Josh McIntosh / DJ Gummo [mailto:djgummo@yahoo.com]

Sent: Tuesday, June 16, 2015 12:48 PM

To: Judy Moore; Lim; Mai, Vu; Kanzler, Andrew; Pak, Joe; Zamora, Linda; O'Neill, John; Paredes, Mark Anthony; Phat Bui; Bao Nguyen; Allan Roeder; Blackmun, Maureen;membership.ggna@gmail.com; Morino, Doug; Brennan, Nick; Nguoi Viet; Viet Bao; Chavez, Jennifer; Margolin, Connie; Kris Beard; Chris Phan; Maritza Pizarro; Korea Daily; Ted Apodaca; Tom Nixon; Teresa Pomeroy; Svetlana Moure; Susan Emery; Steve Jones; Pam Haddad; Melanie Valdes; Marina Romero; Lisa; Kathy Bailor; James H. Eggart; Greg Blodgett; GG Journal; Gail Desby; Denise Kehn; Danny Huynh; Bill Murray; Anaheim Bulletin; Ana Pulido

Subject: Re: Planning Commission Meeting Agenda for 6/18/15

Whoops, I see the attached Staff Report and that this project is deficient by 71 parking spaces. This reaffirms my belief that allowing this variance will cause a burden on the surrounding area.

It was noted by staff in the parking analysis that on a Saturday, 63 of 70 cars parked in the Office Depot parking were observed going to the Costco. There it is.

Sincerely,
Joshua Z McIntosh

714-458-8669 cell
djgummo@yahoo.com

COMMUNITY DEVELOPMENT DEPARTMENT PLANNING STAFF REPORT

AGENDA ITEM NO.: C.1.	SITE LOCATION: South side of Garden Grove Boulevard, west of Euclid Street, at 11100 and 11102 Garden Grove Boulevard
HEARING DATE: August 6, 2015	GENERAL PLAN: Civic Center Mixed Use
CASE NO.: Variance No. V-011-2015	ZONE: CC-3 (Civic Center Core)
APPLICANT: David Webber	CEQA DETERMINATION: Exempt
PROPERTY OWNER(S): Emerald Square II, LLC	APN: 099-105-40 & 42

REQUEST:

For the Planning Commission to consider and act on a proposed Resolution denying the Applicant's request for Variance approval to deviate from the required number of parking spaces, Municipal Code Section 9.18.140.030 (Parking Spaces Required), to allow the operation of a new 14,300 square foot restaurant/eating establishment, East Seafood Buffet, at 11102 Garden Grove Boulevard.

DISCUSSION:

On July 16, 2015, following conclusion of the Public Hearing, the Planning Commission voted 3-2 (Commissioners O'Neill and Mai absent) to direct Staff to prepare a Resolution of Denial of the requested Variance for its consideration, based on the inability of the Commission to make the following required finding for approval of a variance, based on the reasons stated by Costco Wholesale and articulated by the Planning Commissioners at the meeting:

"The granting of the requested Variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located."

Staff has prepared the attached Resolution of Denial for the Planning Commission's consideration.

Subsequent to the July 16th meeting, the Applicant's representative provided Staff with an email containing additional information and conditions the Applicant would be willing to accept if the Planning Commission would reconsider its decision to deny the Variance request. A copy of this email is attached to this Report. The Public Hearing for this matter has been closed. Therefore, if the Planning Commission wishes to reconsider its action of July 16th and/or take further public testimony or evidence on this matter, a new Public Hearing will need to be scheduled and noticed.

RECOMMENDATION:

Staff recommends that the Planning Commission either:

1. Adopt the proposed Resolution denying Variance No. V-011-2015, and authorize the Chair to execute the Resolution; or
2. Provide further direction to Staff.



Karl Hill
Planning Services Manager



By: Chris Chung
Associate Planner

Parking Variance No. V-011-2015 Reconsideration Request

From : David W <david@rdscompany.com>

Fri, Jul 17, 2015 02:53 PM

Subject : Parking Variance No. V-011-2015 Reconsideration Request

To : chrisc@ci.garden-grove.ca.us, Karl Hill <karlh@ci.garden-grove.ca.us>

Cc : Graham Allchorn <GAllchorn@rmrginc.com>, joycechen99@yahoo.com

Hi Chris & Karl,

Per our conversation this morning Chris, the applicant would like staff to provide the planning commission with additional information and conditions that we would be willing to accept in order for the planning commission to reconsider the resolution for our Variance No. V-011-2015 being voted on at the August 6th, 2015 public hearing.

1. Per the email below, the Tenant is willing to provide managed valet parking during peak hours of restaurant activity. This would alleviate any further parking concerns on our site and would also help to police the overflow parking coming from the Costco property onto our site.
2. The property owner is willing to add pedestrian crossing signage and flashing stop signs at the two major exits of their property on to Garden Grove Blvd. indicating that there is pedestrian and bicycle traffic crossing the drive-aisle in those areas to provide additional visibility and measures to preserve public safety.
3. Please also advise the commission that per current code and zoning, our building can be re-tenanted with any reasonable retail use as allowed by current code & zoning by right at 5/1000 without any parking variance and no additional conditions for improvement. We have requested our variance as we would prefer to tenant our building as currently proposed with East Seafood Buffet and provide the improvements requested by staff with this approval rather than doing nothing as we think it makes it a better development both for us and for the city overall.

Please confirm receipt of this request and we will be in attendance at the hearing on 8/6/15 to answer any questions or to provide any further clarifications if requested by the planning commission for their reconsideration for an approval of our variance request.

Sincerely,

David T. Webber

Retail
Development
Solutions
5670 Wilshire Blvd. – Suite 1800

COMMUNITY DEVELOPMENT DEPARTMENT PLANNING STAFF REPORT

AGENDA ITEM NO.: C.1.	SITE LOCATION: South side of Garden Grove Boulevard, west of Euclid Street, at 11100 and 11102 Garden Grove Boulevard
HEARING DATE: September 3, 2015	GENERAL PLAN: Civic Center Mixed Use
CASE NO.: Variance No. V-011-2015	ZONE: CC-3 (Civic Center Core)
APPLICANT: David Webber	CEQA DETERMINATION: Exempt
PROPERTY OWNER(S): Emerald Square II, LLC	APN: 099-105-40 & 42

REQUEST:

For the Planning Commission to consider the Applicant's request for Variance approval to deviate from the required number of parking spaces, Municipal Code Section 9.18.140.030 (Parking Spaces Required), to allow the operation of a new 14,300 square foot restaurant/eating establishment, East Seafood Buffet, at 11102 Garden Grove Boulevard.

BACKGROUND:

On June 18, 2015, the applicant requested to continue Variance No. V-011-2015 to the July 16, 2015, Planning Commission meeting, in order to work with the adjacent property owner and address their concerns. The Planning Commission opened the public hearing. No speakers from the public came forward. Letters of opposition to the proposed Variance were submitted. The Planning Commission voted to continue the item to the July 16, 2015, Planning Commission meeting.

A continued public hearing was held on July 16, 2015. At the public hearing, Costco Wholesale appeared and submitted a letter opposing the requested Variance. Following conclusion of the Public Hearing, the Planning Commission voted 3-2 (Commissioners O'Neill and Mai absent) to direct Staff to prepare a Resolution of Denial of the requested Variance for its consideration at the August 6, 2015 meeting, based on the inability of the Commission to make the following required finding for approval of a variance, based on the reasons stated by Costco Wholesale and articulated by the Planning Commissioners at the meeting:

"The granting of the requested Variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located."

Subsequent to the July 16th meeting, the Applicant's representative provided Staff with an email containing additional information and conditions the Applicant would

be willing to accept if the Planning Commission would reconsider its decision to deny the Variance request. Staff was also advised that the Applicant and Costco were engaged in negotiations that could potentially result in Costco retracting its opposition.

At the August 6, 2015, Planning Commission meeting, Staff presented the Commission with a proposed Resolution of Denial per the Commission's July 16, 2015 direction, and the Planning Commission was advised that the Applicant was requesting a continuance so that the Public Hearing could be re-opened and additional information and/or a revised proposal addressing the previously raised concerns could be considered. Following discussion, the Planning Commission voted 6-0 (Commissioner Mai absent) to continue the case to a re-noticed date of the September 3, 2015, Planning Commission meeting in order to consider a revised proposal in regard to safety and parking concerns. Staff subsequently noticed a new Public Hearing for September 3, 2015.

DISCUSSION:

As noted in the original staff report for V-011-2015, dated July 16, 2015 (a copy has been attached to this report), the proposed 14,300 square foot restaurant, East Seafood Buffet, along with the downsized 15,700 square foot Office Depot retail store, requires a minimum of 222 parking spaces based on Code requirements; however, only 152 parking spaces are currently provided on the site. In its initial Variance request, the Applicant did not propose modifying the parking lot to add any parking spaces. Based on the existing 152 parking spaces that are currently provided, the proposed development would be deficient by seventy (70) parking spaces, which is equal to a thirty-two percent (32%) reduction. Planning Commission members previously expressed concerns that this was too large of a parking reduction.

In response, the Applicant has submitted a revised site plan, which includes modifications to the front and rear parking lot areas, of the subject site, in order to increase the total number of available parking spaces, and has proposed additional conditions of approval it believes will further mitigate parking and safety concerns.

PROPOSED REVISED SITE PLAN

The front parking area, facing Garden Grove Blvd., currently has 84 existing parking spaces – 31 compact parking spaces, 48 standard parking spaces, and 5 handicap parking spaces. Per the Applicant's proposed revised site plan, the front parking lot area would be modified to include a total of 87 parking spaces – 26 compact parking spaces, 55 standard parking spaces and 6 handicap parking spaces, per the submitted revised site plan. This would be an increase of three (3) total parking spaces in the front parking area. Additionally, all required drive aisle widths, sufficient vehicular circulation, and pedestrian access for this front parking lot area would be maintained.

The rear parking area, behind the subject building, currently has 68 existing parking spaces – 32 compact parking spaces, 45 standard parking spaces, and 1 handicap parking space. Per the Applicant's proposed revised site plan, the rear parking lot area would be modified to include a total of 91 parking spaces – 21 compact parking spaces and 70 standard parking spaces. This would be an increase of 23 parking spaces in the rear parking area. All required drive aisle widths, sufficient vehicular circulation, and pedestrian access for this rear parking lot area would be maintained. Additionally, per the revised site plan, sufficient truck maneuvering space for deliveries to the existing loading dock, as well as sufficient space for trash pick-ups to the existing trash/recycling disposal area, would be maintained.

In total, per the submitted revised site plan, the subject site would provide a *new* total of 178 parking spaces – 47 compact parking spaces, 125 standard parking spaces, and 6 handicap parking spaces, which is an increase of 26 parking spaces above the 152 existing parking spaces on-site. As a result, the initial 32% deficiency would be reduced to 19.8%.

The revised site plan also includes modifications to the existing landscaping on-site. For Surface Parking Lot Landscaping, the Municipal Code requires that a minimum of 10% of the total area of any surface parking lot shall be landscaped. For surface parking lots not visible from streets, the Municipal Code requires that a minimum of 5% of the total area of any surface parking lot shall be landscaped. Staff has reviewed the changes and finds that the revised site plan exceeds the minimum amount of landscaping required by Code for the front and rear parking lot areas, a minimum of 10% and 5%, respectively.

ADDITIONAL CONDITIONS OF APPROVAL

In order to further mitigate any potential parking issues that may arise, the Applicant has proposed a condition of approval that will require the applicant to implement a no-charge valet parking service to restaurant patrons, during periods of high parking demand including, but not limited to, hours between 12:00 p.m. to 3:00 p.m., on weekdays, and between 5:00 p.m. to 8:00 p.m., on weekend days (Friday, Saturday, Sunday) and holidays. All valet parking spaces will be located on the subject property. Additionally, the valet parking service will prioritize the use of parking spaces located in the rear parking lot area. The valet parking service will be utilized to increase the availability of parking on-site as well as to prevent any overflow and parking impacts to the adjacent properties.

To improve the safety of pedestrians, the applicant has proposed a condition of approval requiring it to install pedestrian crossing signage and flashing stop signs adjacent to the two (2) existing driveways which provide vehicular access to the subject site off Garden Grove Boulevard.

The proposed Conditions of Approval also incorporate the following Staff recommendations:

1. Ensure that the on-site circulation system is per the submitted detailed site plan.
2. Repaint the existing stop bar and the existing stop sign legend at the Project Access Driveway on Garden Grove Boulevard.
3. Provide on-site bicycle racks in easily accessible and highly visible locations to promote alternative modes of transportation.
4. Encourage management to display a poster/message board that promotes walking, bicycling, and public transit and provides information about these options within the neighborhood.
5. Encourage employees to use alternative modes of transportation, such as carpooling and public transit. Consider providing incentives for such usage.

STATUS OF AGREEMENT WITH COSTCO

On August 16, 2015, Staff was provided with a copy of letter from Costco Wholesale to the Applicant with an outline of conceptual terms of the conditions under which Costco would be prepared to support the Applicant's Variance request. These terms included amending the Reciprocal Easement and Access Agreement (REA) between the two property owners, the addition of parking spaces on the subject site, and implementation of valet parking for the restaurant. It is Staff's understanding that Costco and the Applicant have been continuing to negotiate a final agreement. As of the date this Staff Report was prepared, however, Staff is not aware that a final agreement between the parties has been reached. It is anticipated that additional information on the status of Costco's position on the Applicant's revised Variance request will be available at the September 3rd Public Hearing.

FINDINGS REQUIRED TO APPROVE VARIANCE:

Pursuant to State law and Garden Grove Municipal Code Section 9.32.030.D.6, in order to grant a property owner's request for a Variance, the Planning Commission must make each of the following five (5) findings:

1. That there are exceptional circumstances or conditions applicable to the property involved or to the intended use or development of the property that do not apply generally to other property in the same zone or neighborhood.
2. That such Variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone, but which is denied to the subject property.

3. That the granting of a Variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such zone or neighborhood in which the property is located.
4. That the granting of such Variance will not adversely affect the City's General Plan.
5. That approval of the Variance is subject to such conditions as will assure that it does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is situated.

SUMMARY / CONCLUSION

At its meeting of July 16, 2015, a majority of the Planning Commission members present voted in favor of denying a proposed Variance based on a parking deficiency of 70 spaces, or 32%. Since then, the Applicant has revised its request. The Applicant is now proposing to make improvements and modifications that would reduce the parking deficiency for which it is requesting a Variance to 44 spaces, or 19.8%.

To further address concerns about a shortage of parking and safety in the shopping center, the Applicant has also agreed to additional Conditions of Approval requiring it to implement valet parking for the restaurant use during peak usage and to install new pedestrian crossing signage and flashing stop signs at the driveway entrances from Garden Grove Boulevard.

In addition, based on representations by the Applicant, it is possible that Costco Wholesale, which objected to the initial Variance request, may now be in position to support the Applicant's revised Variance request.

Depending on the Planning Commission's prerogative, Staff believes the record contains sufficient facts to support either approval or denial of the Applicant's revised Variance request. Accordingly, Staff has prepared for the Commission's consideration both: (1) a draft Resolution denying the proposed revised Variance request on the basis that, even as revised and conditioned, the granting of a Variance allowing a 19.8% reduction in required parking spaces will be materially detrimental to the public welfare or result in injury to the property or improvements in the same vicinity and zone as the subject Site, and (2) a draft Resolution approving the proposed revised Variance request, subject to specified Conditions of Approval (including the additional Conditions of Approval discussed above).

RECOMMENDATION:

Staff recommends that the Planning Commission either:

1. Adopt the proposed Resolution approving Variance No. V-011-2015, and authorize the Chair to execute the Resolution; or
2. Adopt the proposed Resolution denying Variance No. V-011-2015, and authorize the Chair to execute the Resolution; or
3. Provide further direction to Staff.



Karl Hill
Planning Services Manager

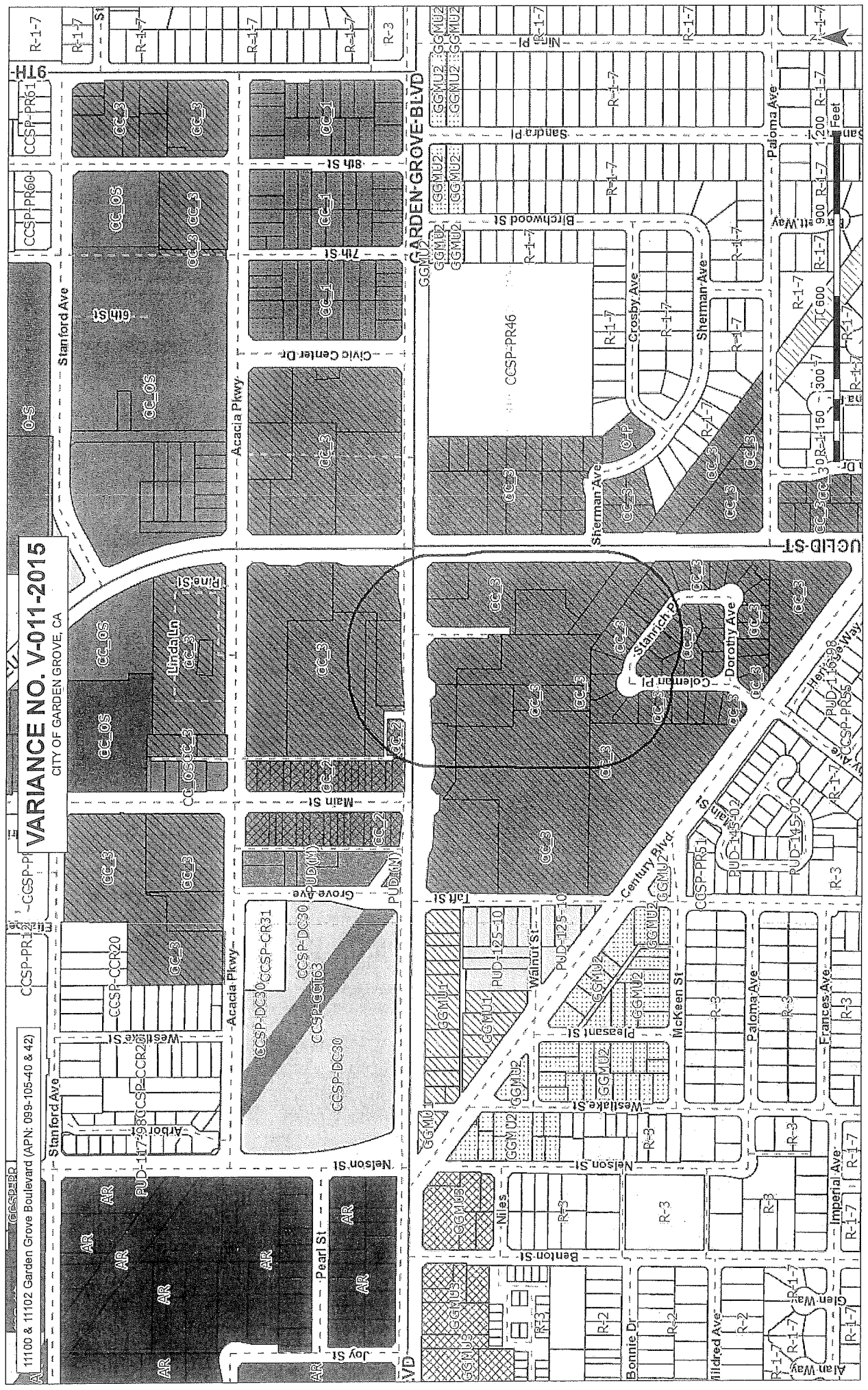


By: Chris Chung
Associate Planner

11100 & 11102 Garden Grove Boulevard (APN: 099-105-40 & 42)

VARIANCE NO. V-011-2015

CITY OF GARDEN GROVE, CA



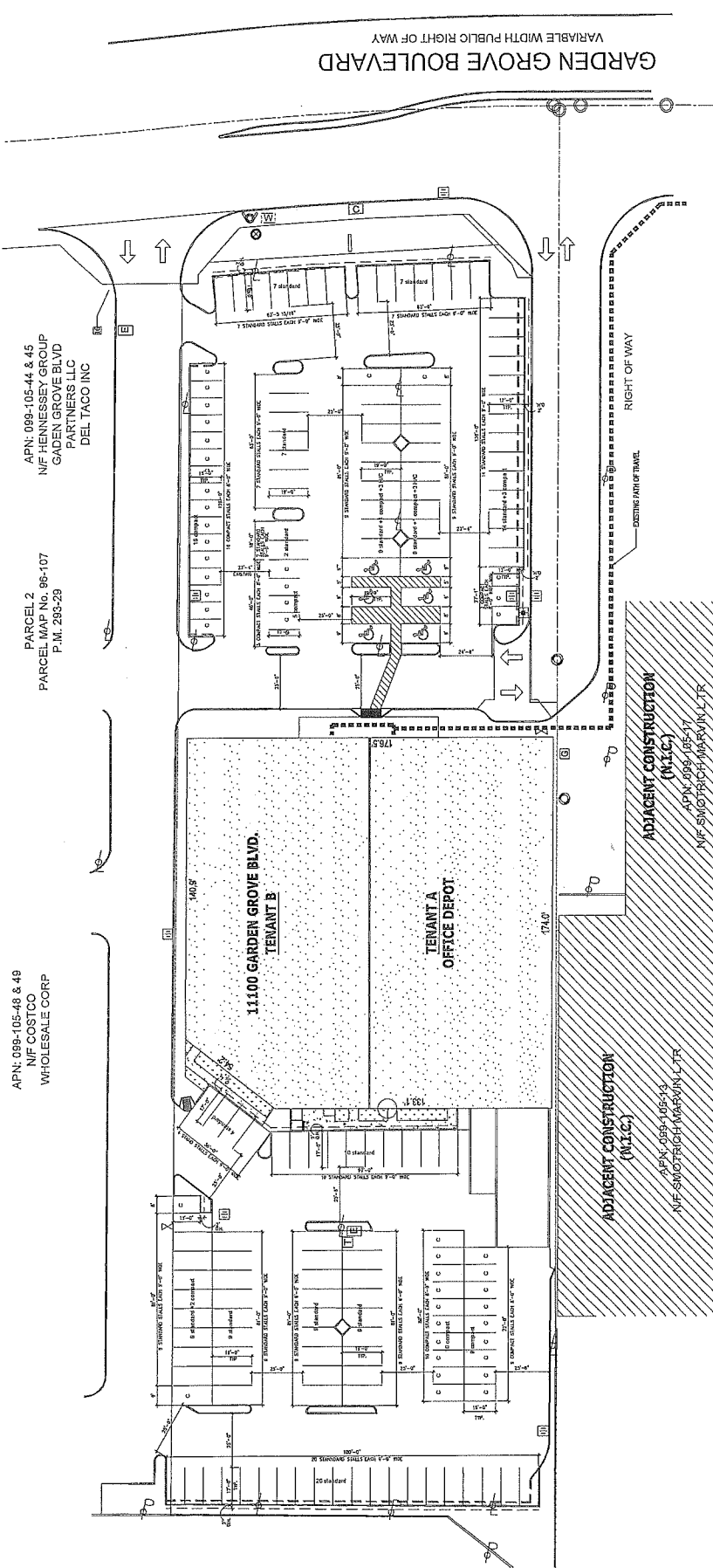
APN: 099-105-48 & 49
 NIF COSTCO
 WHOLESALE CORP

PARCEL 2
 PARCEL MAP NO. 96-107
 P.M. 2995-29

APN: 099-105-44 & 45
 NIF HENNESSEY GROUP
 GADEN GROVE BLVD
 PARTNERS LLC
 DEL TACO INC

Project Name:
**EMERALD SQUARE II,
 LLC**

PARKING LOT IMPROVEMENTS
 1100 GARDEN GROVE BLVD.
 GARDEN GROVE, CA 92843



GARDEN GROVE BOULEVARD
 VARIABLE WIDTH PUBLIC RIGHT OF WAY



GENERAL NOTE: PROTRUSION USED FOR ALLOWABLE AREA INCREASES PER
 CBC SECTION 962.2 SHALL BE PERMANENTLY MAINTAINED.

1 SITE PLAN
 SCALE: 1"=30'-0"

PARKING SUMMARY

- EXISTING PARKING:
 - STANDARD STALLS: 83 STALLS
 - COMPACT STALLS: 63 STALLS
 - COMPACT STALLS %: 41%
 - HANDICAPPED STALLS: 6 STALLS
- TOTAL EXISTING PARKING STALLS: 152 STALLS

- PROPOSED NEW PARKING LAYOUT:
 - STANDARD STALLS: 125 STALLS
 - COMPACT STALLS: 47 STALLS (16 STALL REDUCTION)
 - COMPACT STALLS %: 26% (15% REDUCTION)
 - HANDICAPPED STALLS: 6 STALLS
- TOTAL STALLS PER NEW PARKING LAYOUT: 178 STALLS (INCREASE OF 26 STALLS)

LANDSCAPE SUMMARY

- PROPOSED NEW LANDSCAPING IMPROVEMENTS:
 - FRONT DEVELOPABLE AREA: 36,241 S.F.
 - REAR DEVELOPABLE AREA: 32,835 S.F.
 - TOTAL DEVELOPABLE AREA: 69,076 S.F.
 - FRONT LANDSCAPING AREA: 3,904 S.F. OR 10.7%
 - REAR LANDSCAPING AREA: 3,346 S.F. OR 10.1%
 - TOTAL LANDSCAPING AREA: 7,250 S.F. OR 10.5%

TOTAL STALLS PER NEW PARKING LAYOUT: 178 STALLS (INCREASE OF 26 STALLS)

ADJACENT CONSTRUCTION (N.I.C.)
 APN: 099-105-13
 NIF SMOTRICH-MARVIN, L.P.

ADJACENT CONSTRUCTION (N.I.C.)
 APN: 099-105-13
 NIF SMOTRICH-MARVIN, L.P.

ADJACENT CONSTRUCTION (N.I.C.)
 APN: 099-105-17
 NIF SMOTRICH-MARVIN, L.P.

11100 GARDEN GROVE BLVD.
 TENANT B

TENANT A
 OFFICE DEPOT

RIGHT OF WAY
 EXISTING PATH OF TRAVEL

Sheet 1 of 2

SITE PLAN

Zimbra**chrisc@ci.garden-grove.ca.us**

Variance No. V-011-2015 King Buffet

From : Rick Jerabek <rjerabek@costco.com> Thu, Sep 03, 2015 04:00 PM
Subject : Variance No. V-011-2015 King Buffet
To : Chris Chung <chrisc@ci.garden-grove.ca.us>,
Graham Allchorn <GAllchorn@rmrginc.com>

Chris - I understand that a hearing will occur tonight before the Garden Grove Planning Commission on the King Buffet Variance.

Costco and the owner of the Office Depot parcel (Emerald Square II, LLC) reached a preliminary understanding on August 14th regarding the King Buffet restaurant. Since that time, we have been working on a Second Amendment to the Reciprocal Easement Agreement for the shopping center, which is a condition of Costco's approval. However, we have not yet completed the Second Amendment since there are one or more other parties that will also need to approve the Second Amendment.

Although the Second Amendment is not yet finalized, Costco will not oppose the variance at the hearing tonight, based upon assurances we have received from Emerald Square II that a Second Amendment to the Reciprocal Easement Agreement will be signed by all necessary parties and recorded before additional actions are taken to move forward with the proposed restaurant.

If you need any additional information, please let me know.

-Rick

Rick Jerabek, Corporate Counsel
COSTCO WHOLESALE

999 Lake Drive, Issaquah, WA 98027

Direct: (425) 427-3585 - Fax: (425) 313-8105 - rjerabek@costco.com

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RESOLUTION NO. 5848-15

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GARDEN GROVE APPROVING VARIANCE NO. V-011-2015, FOR PROPERTIES LOCATED AT THE SOUTH SIDE OF GARDEN GROVE BOULEVARD, WEST OF EUCLID STREET, AT 11100 AND 11102 GARDEN GROVE BOULEVARD, ASSESSOR'S PARCEL NOS. 099-105-40 AND 42.

BE IT RESOLVED that the Planning Commission of the City of Garden Grove, in regular session assembled on September 3, 2015, approves Variance No. V-011-2015.

BE IT FURTHER RESOLVED in the matter of Variance No. V-011-2015, the Planning Commission of the City of Garden Grove does hereby report as follows:

1. The subject case was initiated by David Webber on behalf of the property owner, Emerald Square II, LLC ("Applicant").
2. Applicant is requesting Variance approval to deviate from the required number of parking spaces, Municipal Code Section 9.18.140.030 (Parking Spaces Required), to allow the operation of a new 14,300 square foot restaurant/eating establishment, East Seafood Buffet, at 11102 Garden Grove Boulevard.
3. Pursuant to the California Environmental Quality Act ("CEQA"), the City of Garden Grove has determined that the proposed project is categorically exempt from CEQA pursuant to Section 15301 (Existing Facilities) and Section 15332 (In-Fill Development Projects) of the CEQA Guidelines (14 Cal. Code Regs., Section 15301 and Section 15332).
4. The property has a General Plan Land Use designation of Civic Center Mixed Use, and is currently zoned CC-3 (Civic Center Core).
5. The Applicant is requesting Variance approval to deviate from the required number of parking spaces, Municipal Code Section 9.18.140.030 (Parking Spaces Required), to allow the operation of a new 14,300 square foot restaurant/eating establishment, East Seafood Buffet, in a newly created tenant space with an address of 11102 Garden Grove Boulevard, in conjunction with the operation of an Office Depot retail establishment in a newly modified smaller tenant space with the address of 11100 Garden Grove Boulevard. The Garden Grove Municipal Code requires a minimum of 222 parking spaces for the combined proposed two uses on the subject Site. Currently, there are only 152 parking spaces on the subject Site, and it is not feasible to add an additional 70 parking spaces. Therefore, the Applicant has requested a Variance from the required number of on-site parking spaces required in order to allow for the proposed combination of uses on the subject Site.

6. In order to approve the Variance, all of the findings required by California Government Code Section 65906 and set forth in Garden Grove Municipal Code Section 9.32.030.D.6 must be made.
7. Existing land use, zoning, and General Plan designation of property in the vicinity of the subject property have been reviewed.
8. Report submitted by City staff was reviewed.
9. Pursuant to a legal notice, a public hearing was opened on June 18, 2015, and duly continued to, and held on, July 16, 2015, and all interested persons were given an opportunity to be heard. The public hearing was closed on July 16, 2015.
10. Following the conclusion of the public hearing on July 16, 2015, and after giving due and careful consideration to the matter, the Planning Commission voted to direct City staff to prepare a Resolution denying the Applicant's requested Variance and continued the item to the Planning Commission meeting of August 6, 2015.
11. At the August 6, 2015 Planning Commission meeting, the Planning Commission voted to direct City Staff to notice a new public hearing to allow it to consider additional information, conditions, and potential modifications to the Applicant's request.
12. Pursuant to a legal notice, another public hearing was held on September 3, 2015, and all interested persons were given an opportunity to be heard.
13. The Planning Commission gave due and careful consideration to the matter during its meetings of June 18, 2015, July 16, 2015, August 6, 2015, and September 3, 2015.

BE IT FURTHER RESOLVED, FOUND AND DETERMINED that the facts and reasons supporting the conclusion of the Planning Commission, as required under Municipal Code Section 9.32.030 are as follows:

FACTS:

The subject two (2) properties (with Assessor's Parcel Nos. 099-105-40 & 42) have a gross lot area of approximately 2.5 acres, making up an integrated development, and are developed with an existing, approximately 30,000 square foot, building. The properties are zoned CC-3 (Civic Center Core) and have General Plan Land Use Designations of Civic Center Mixed Use. The properties abut CC-3 zoned properties to the north, across Garden Grove Boulevard, south, east, and west.

The existing 30,000 square foot building is located in the center with parking lots located at the front, fronting along Garden Grove Boulevard, and at the rear, behind the building, to the south. The site currently provides a total of 152 parking spaces, of which eighty-four (84) parking spaces are located in the front parking lot area, and the remaining sixty-eight (68) parking spaces are located in the rear parking lot area.

Office Depot previously occupied the entire existing 30,000 square foot building. In April of 2015, a building permit was issued for the construction of a demising wall, splitting the existing 30,000 square foot tenant space into a 15,700 square foot tenant space and a 14,300 square foot tenant space. Office Depot has downsized its operation and is now occupying the 15,700 square foot tenant space, with the address of 11100 Garden Grove Boulevard. Subject to approval of the Variance, the proposed East Seafood Buffet restaurant would occupy the newly created 14,300 square foot tenant space, which has a new address of 11102 Garden Grove Boulevard.

The subject Site is functionally part of a larger shopping center. To the west of the subject Site is an existing fast-food drive-thru eating establishment, Del Taco, and an existing large retail store, Costco Wholesale. A driveway runs along the westerly property line of the subject Site, which provides reciprocal access to the Del Taco and Costco Properties utilizing the existing driveways. A Reciprocal Easement Agreement (REA) exists between the owners of three (3) sites, which provides for reciprocal access and shared parking between the subject Site, the Costco, and Del Taco Properties.

For a retail commercial use, under 40,000 square feet in gross floor area, the Municipal Code ("Code") requires a minimum of one (1) parking space per 200 square feet of gross floor area. Prior to the subdivision of the existing 30,000 square foot Office Depot tenant space, Code required the existing Office Depot retail store to provide a minimum of 150 parking spaces. The existing site currently provides a total of 152 total parking spaces, which is a surplus of two (2) parking spaces.

Following the subdivision of the existing 30,000 square foot tenant space into two (2) tenant spaces, the Office Depot will occupy the 15,700 square foot tenant space. Based on the Code requirement of a minimum of one (1) parking space per 200 square feet of gross floor area for retail uses, a minimum of seventy-nine (79) parking spaces would thus be required by Code for the reduced-sized Office Depot retail store ($15,700/200 = 78.5$). For restaurant/eating establishment uses in this location, the Garden Grove Municipal Code requires a minimum of one (1) parking space per 100 square feet of gross floor area – or double the amount required for retail uses. Thus, the proposed East Seafood Buffet restaurant, which would occupy the newly created 14,300 square foot tenant space, would require a minimum of 143 parking spaces ($14,300/100 = 143$). Therefore, based on Code for restaurant and retail land use parking rates, a total of 222 parking spaces ($79 + 143$) would be

required for the subject Site for the proposed combination of restaurant and retail uses on the Site.

Since only 152 parking spaces are currently provided on the Site, there are seventy (70) (or approximately thirty-two percent (32%)) fewer parking spaces provided on the Site than would typically be required by Code. The Applicant initially requested approval of a Variance to deviate from the minimum number of required parking spaces and to allow it to operate its proposed combination of retail and restaurant uses with only the existing 152 spaces provided. In support of its initial request, the Applicant submitted an observed parking analysis report and traffic impact study prepared by licensed traffic engineers from RK Engineering Group, Inc. ("RK Engineering"). The observed parking analysis report evaluated the parking demand projected to be generated by the proposed new restaurant use and existing Office Depot use and concluded that, due to the unique operating characteristics of these specific uses in combination, the existing 152 on-site parking spaces would be sufficient to accommodate the projected parking demand. The traffic study evaluated the potential impact on nearby intersections due to the increased vehicle trips anticipated to be generated as a result of operation of the proposed new restaurant use and concluded that the impacts on existing level of service at these intersections would not be significant.

Following the July 16, 2015 Planning Commission meeting, the Applicant modified its request to include a proposal to make improvements and modifications to the parking lot that would reduce the parking deficiency for which it is requesting a Variance to 44 spaces, or 19.8%, and proposed additional conditions of approval it believes will further mitigate parking and safety concerns.

The front parking area of the subject Site, facing Garden Grove Boulevard, currently has 84 existing parking spaces – 31 compact parking spaces, 48 standard parking spaces, and 5 handicap parking spaces. Per the Applicant's proposed revised site plan, the front parking lot area would be modified to include a total of 87 parking spaces – 26 compact parking spaces, 55 standard parking spaces and 6 handicap parking spaces, per the submitted revised site plan. This would be an increase of three (3) total parking spaces in the front parking area. Additionally, all required landscaping, drive aisle widths, sufficient vehicular circulation, and pedestrian access for this front parking lot area would be maintained.

The rear parking area, behind the subject building, currently has 68 existing parking spaces – 22 compact parking spaces, 45 standard parking spaces, and 1 handicap parking space. Per the Applicant's proposed revised site plan, the rear parking lot area would be modified to include a total of 91 parking spaces – 21 compact parking spaces and 70 standard parking spaces. This would be an increase of 23 parking spaces in the rear parking area. All required landscaping, drive aisle widths, sufficient vehicular circulation, and pedestrian access for this rear parking lot area would be maintained. Additionally, per the revised site plan, sufficient truck maneuvering space for deliveries to the existing loading dock, as well as sufficient

space for trash pick-ups to the existing trash/recycling disposal area, would be maintained.

In total, per the submitted revised site plan, the subject site would provide a *new* total of 178 parking spaces – 47 compact parking spaces, 125 standard parking spaces, and 6 handicap parking spaces, which is an increase of 26 parking spaces above the 152 existing parking spaces on-site. As a result, the Applicant is now requesting a Variance to deviate by 44 parking spaces, or 19.8%, from the number of parking spaces required by the Municipal Code.

To mitigate any potential parking issues that may arise, Conditions of Approval have been included:

- to prohibit changes in the nature, character, or operating characteristics of the proposed combination of uses on the Site;
- to require parking lot improvements and circulation be made and maintained per the detailed submitted site plan;
- to require specified traffic control and pedestrian safety improvements be made at access points to the Site;
- to require the provision of on-site bicycle racks in easily accessible and highly visible locations to promote alternative modes of transportation;
- to require the posting of signage that promotes walking, bicycling, and public transit and provides information about these options within the neighborhood;
- to require implementation of a plan to encourage employees to use alternative modes of transportation, such as carpooling and public transit;
- to require the implementation of a no-charge valet parking service for restaurant patrons during periods of high parking demand including, but not limited to, hours between 12:00 p.m. to 3:00 p.m., on weekdays, and between 5:00 p.m. to 8:00 p.m., on weekend days (Friday, Saturday, Sunday) and holidays; and
- To require the implementation of a City approved Mitigation Plan in the event the number of on-site parking spaces provided for operation of the seafood buffet restaurant, Office Depot retail establishment, or any future use on the Site becomes inadequate to accommodate the operation of these uses, and/or if the operation of such uses results in increased traffic or circulation problems.

FINDINGS AND REASONS:**VARIANCE:**

1. There are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or classes of use in the same vicinity or zone.

The East Seafood Buffet restaurant will be part of a multi-tenant mixed use development, which will include a restaurant use and a retail use (Office Depot). Other sites in the same vicinity, as well as in similarly zoned properties with similar uses, do not have a mix of uses, but rather, have an existing commercial use on a stand-alone lot. Furthermore, there are very few properties in the City with similar commercial uses such as the subject Office Depot retail store and the proposed East Seafood Buffet restaurant, which have unique operational characteristics. A "buffet-style restaurant", such as the proposed East Seafood Buffet restaurant, does not operate like a typical restaurant, because much of the square footage is required for the buffet customer queuing line. Also, the Office Depot sells a specific product and does not operate like a typical retail store. As demonstrated by the observed parking analysis conducted by RK Engineering, even when the Office Depot retail use occupied the entire 30,000 square feet of the building on the Site, it utilized just forty-six percent (46%) of the 152 available parking spaces on-site during their peak times. The existing Office Depot use did not generate a high parking demand when compared to other retail sites with similar uses. Additionally, the proposed project involves the Office Depot retail use downsizing its operation from 30,000 square feet to 15,700 square feet. However, the observed parking analysis took a conservative approach and applied the parking demand based on the original Office Depot tenant space size of 30,000 square feet. Even with the conservative approach, the observed parking analysis concluded that there would be a sufficient amount of parking spaces to accommodate the proposed East Seafood Buffet in conjunction with the Office Depot tenant, with an available surplus of parking spaces.

As a Condition of Approval of the Variance, the Applicant will be required to make improvements per the submitted revised site plan, which includes modifications to the front and rear parking lot areas, of the subject Site, in order to increase the total number of available parking spaces. In total, per the submitted revised site plan, the subject site will provide a *new* total of 178 parking spaces - 47 compact parking spaces, 125 standard parking spaces, and 6 handicap parking spaces, which is an increase of 26 parking spaces. The added spaces should be more than sufficient to accommodate the parking demand generated by the unique mix of uses proposed for the Site.

2. The Variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same vicinity and zone, but which is denied to the property in question.

There are other similar commercial properties in the immediate vicinity, within the same zone, or other similarly zoned properties throughout the City, that provide less parking than required by current Code requirements. Most of these properties were developed prior to current Code requirements, and were not required to provide the minimum number of on-site parking spaces as would be required today. Due to their unique operating characteristics, the peak parking demand from the combination of the proposed seafood buffet restaurant and Office Depot retail uses on the Site is projected to be significantly less than what the Municipal Code requires, and based on the parking analysis report submitted by the Applicant and other evidence presented at the Public Hearing, the proposed 178 parking spaces will be sufficient to satisfy this parking demand. Accordingly, it would be unfair to deny the property owner the right to use its property in the manner proposed based on the deficiency in the number of parking spaces provided from that technically required by the Municipal Code. Approval of the proposed Variance will not set a precedent and will allow the applicant to enjoy a substantial property right possessed by other property owners located in other similar commercial properties in the immediate vicinity, within the same zone, and other similarly zoned properties throughout the City.

3. The Variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located.

Due to their unique operating characteristics, the peak parking demand from the combination of the proposed seafood buffet restaurant and Office Depot retail uses on the Site is projected to be significantly less than what the Municipal Code requires, and based on the parking analysis report submitted by the Applicant and other evidence presented at the Public Hearing, the proposed 178 parking spaces to be provided will be sufficient to satisfy this parking demand. In addition, several Conditions of Approval have been included to ensure that adequate parking is maintained during times of peak parking demand, to mitigate potential circulation and pedestrian safety concerns from additional vehicles visiting the Site, and to prevent parking by customers of the uses on the subject Site from adversely affecting other uses within the integrated shopping center and general area.

Approval of this Variance will allow the site to be improved, meet the intended use of the zone, and provide an additional amenity to the community as a family-style sit-down restaurant. Provided that the project complies with the conditions of approval, the approval of the Variance will not

create an adverse effect on the public welfare or to properties or improvements in such vicinity and zone in which the property is located.

4. The granting of the Variance will not adversely affect the General Plan.

The proposed use is consistent with the intent of the General Plan and the zoning classification as restaurants are permitted in the CC-3 (Civic Center Core) zone. The proposed Variance request will not cause an adverse effect on the City's General plan since the Municipal Code is a tool used to implement goals of the General Plan. The proposed East Seafood Buffet restaurant will improve a vacant tenant space, will complement the neighboring uses, and will further a goal of the General Plan to develop underutilized properties with a suitable development. Based on the findings of the observed parking analysis and the traffic impact study, Goal CIR-1 of the General Plan, which strives to provide a transportation system that maximizes freedom of movement and maintains a balance between mobility, safety, cost of efficiency of maintenance, and the quality of the City's environment, will also be met.

5. Approval of the Variance is subject to such conditions as will assure that it does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is situated.

The Conditions of Approval require that a minimum of 178 parking spaces be provided at all times, require certain site improvements be made to improve circulation and safety, require the applicant to take certain actions to encourage customers and employees to utilize alternative modes of transportation that will not impact on-site parking, and require implementation of an approved parking mitigation plan in the event actual parking or circulation problems nonetheless occur. Provided that the conditions are adhered to, approval of the subject Variance will not grant a special privilege that is inconsistent with the limitations upon other properties located within the vicinity or zone in which the subject property is situated. In addition, pursuant to Condition of Approval No. 2, the rights granted the applicant pursuant to Variance No. V-011-2015 shall continue in effect for only so long as the nature and character of the two uses operating in the 30,000 square foot building on the Site remain the same as at the time of approval the Variance. In the event the nature or character of either of the two uses occupying the building materially changes, Variance No. V-011-2015 shall cease to be effective or to grant the applicant any rights to continue to operate the described uses on the Site. Any future uses on the Site different from the current described uses will be required to comply with all then applicable standards of the Garden Grove Municipal Code, and the applicant may not rely on this Variance as a basis for satisfying the required number of parking spaces associated with such future uses.

INCORPORATION OF FACTS AND FINDINGS SET FORTH IN STAFF REPORT

In addition to the foregoing, the Commission incorporates herein by this reference, the facts and findings set forth in the staff report.

BE IT FURTHER RESOLVED that the Planning Commission does conclude:

1. The Variance possesses characteristics that would indicate justification of the request in accordance with Municipal Code Section 9.32.030.
2. In order to fulfill the purpose and intent of the Municipal Code, and, thereby, promote the health, safety, and general welfare, the following conditions of approval, attached as "Exhibit A," shall apply to Variance No. V-011-2015.

Adopted this 3rd day of September, 2015

ATTEST: /s/ JOHN O'NEILL
CHAIR

/s/ JUDITH MOORE
SECRETARY

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, JUDITH MOORE, Secretary of the City of Garden Grove Planning Commission, do hereby certify that the foregoing Resolution was duly adopted by the Planning Commission of the City of Garden Grove, California, at a meeting held on September 3, 2015, by the following vote:

AYES: COMMISSIONERS: (3) KANZLER, PAK, PAREDES
NOES: COMMISSIONERS: (2) MARGOLIN, O'NEILL
ABSENT: COMMISSIONERS: (2) MAI, ZAMORA

/s/ JUDITH MOORE
SECRETARY

PLEASE NOTE: Any request for court review of this decision must be filed within 90 days of the date this decision was final (See Code of Civil Procedure Section 1094.6).

A decision becomes final if it is not timely appealed to the City Council. Appeal deadline is September 24, 2015.

EXHIBIT "A"

Variance No. V-011-2015

11100 and 11102 Garden Grove Boulevard

REVISED CONDITIONS OF APPROVAL

General Conditions

1. Each owner of the property shall execute, and the applicant shall record, a "Notice of Discretionary Permit Approval and Agreement with Conditions of Approval," as prepared by the City Attorney's Office, on the property within 30 days of approval. This Variance runs with the land and is binding upon the property owner, his/her/its heirs, assigns, and successors in interest. Notwithstanding the foregoing, approval of this Variance shall not be construed to address, affect, or waive the rights or obligations of the applicant or other property owners pursuant to any easement, reciprocal easement agreement or other agreement affecting the subject Site, which easements or agreements shall continue to be enforceable by the parties thereto in accordance with their terms, notwithstanding approval of this Variance.

2. All Conditions of Approval set forth herein shall be binding on and enforceable against each of the following, and whenever used herein, the term "applicant" shall mean and refer to each of the following: the project applicant, the developer of the project, the owner(s) and tenants(s) of the property, and each of their respective successors and assigns. All Conditions of Approval are required to be adhered to for the life of the project, regardless of property ownership. Except as otherwise expressly provided, any changes of the Conditions of Approval require approval by the Planning Commission. All Conditions of Approval herein shall apply to Variance No. V-011-2015. The rights granted the applicant pursuant to Variance No. V-011-2015 shall continue in effect for only so long as the nature and character of the uses operating in the 30,000 square foot building on the Site remain the same as at the time of approval the Variance. As of the date of approval of Variance No. V-011-2015, the building on the Site to which this Variance relates is occupied by (1) an Office Depot retail establishment in a 15,700 square foot tenant space and (2) a seafood buffet restaurant in a 14,300 square foot tenant space. Variance No. V-011-2015 was approved, in part, based on the operating characteristics of these two specific uses. In the event the nature or character of either of the two uses occupying the building (as described in the applicant's application, the June 18, 2015 and September 3, 2015 Planning Commission Staff Reports and accompanying materials, and the approving Resolution) materially changes, Variance No. V-011-2015 shall cease to be effective or to grant the applicant any rights to continue to operate the described uses on the Site. Any future uses on the Site different from the current described uses shall require compliance with all then

applicable standards of the Garden Grove Municipal Code, and the applicant may not rely on this Variance as a basis for satisfying the required number of parking spaces associated with such future uses.

3. Approval of this Variance shall not be construed to mean any waiver of applicable and appropriate zoning and other regulations; and wherein not otherwise specified, all requirements of the City of Garden Grove Municipal Code shall apply. Minor modifications to these Conditions of Approval which do not materially change the scope or intent of the project or the Planning Commission's approval may be approved by the Community Development Director, in his or her discretion. Proposed modifications to the project and/or these Conditions of Approval determined by the Community Development Director not to be minor in nature shall be subject to approval of new and/or amended land use entitlements by the applicable City hearing body.
4. If major modifications are made to the approved floor plan, site plan, or other related changes that result in the intensification of the project or create impacts that have not been previously addressed, the proper entitlements shall be obtained reflecting such changes.
5. All conditions of approval shall be implemented at the applicant's expense, except where specified in the individual condition.

Police Department

6. In the event security problems occur, and at the request of the Police Department, the permittee, at his own expense, shall provide a California licensed, uniformed security guard(s) on the premises during such hours as requested by the Police Department.
7. Any violations or noncompliance with the conditions of approval may result in the issuance of an Administrative Citation up to \$1,000 pursuant to GGMC 1.22.010(a).

Fire Department

8. The project shall comply with the requirements of the current applicable California Fire Code.

Public Works Engineering Division

9. The applicant shall be subject to Traffic Mitigation Fees and other duly adopted City fees, as applicable.

Public Works Water Services Division

10. Commercial food use of any type requires the installation of an approved grease interceptor, according to Garden Grove Sanitary District's Ordinance No. 6 (Fats, Oil and Grease Control Regulations Applicable to Food Service Establishments). In the event that an approved grease interceptor is not already installed, a properly sized grease interceptor shall be installed on the sewer lateral and be maintained by the property owner. There shall be a separate sanitary waste line that will connect to the sewer lateral downstream of the grease interceptor. All other waste lines shall be drained through the grease interceptor. Grease interceptor shall be located outside of the building and accessible for routine maintenance. Owner shall maintain comprehensive grease interceptor maintenance records and shall make them available to the City of Garden Grove upon demand.
11. Food grinders (garbage disposal devices) are prohibited per Ordinance 6 of the Garden Grove Sanitary District Code of Regulations. Any existing units are to be removed.

Community Development Department

12. The approved site plan and floor plan are an integral part of the decision approving this Variance. There shall be no additional changes in the design of the site plan or floor plan without the approval of the Community Development Department, Planning Division. Any additional changes in the approved floor plan, which have the effect of expanding or intensifying the present use, shall require obtaining the proper entitlement(s).
13. The applicant/property owner shall maintain a minimum of 178 parking spaces on the site, per the submitted revised site plan for Variance No. V-011-2015.
14. If the number of on-site parking spaces provided for operation of the seafood buffet restaurant, Office Depot retail establishment, or any future use on the Site becomes inadequate to accommodate the operation of these uses, and/or if the operation of such uses results in increased traffic or circulation problems, as determined in the reasonable discretion of the City's Traffic Engineer and/or Community Development Director, the applicant and/or property owner shall prepare a plan to mitigate the parking, traffic, and/or circulation issues identified by the City (the "Mitigation Plan"). The Mitigation Plan shall be approved by the City's Traffic Engineer and/or Community Development Director and shall include such solution or combination of solutions as are needed to adequately mitigate the identified issue(s). Such solutions may include, without limitation: reducing the hours of operation, limiting the number of customers within the establishment(s), limiting the number of seats and customer dining area within the restaurant establishment, instituting an off-site parking arrangement, and/or

- maintaining on-site parking control personnel. Any such Mitigation Plan approved by the City shall be enforceable by the City in the same manner as other Project Conditions of Approval. In addition, failure by the applicant to prepare an acceptable Mitigation Plan on a timely basis and/or to implement an approved Mitigation Plan shall be grounds for revoking the Variance.
15. The existing stop bar and the existing stop sign legend at the Project Access Driveway on Garden Grove Boulevard, located just west of the subject building, shall be repainted.
 16. Bicycle racks shall be provided on-site in easily accessible and highly visible locations to promote alternative modes of transportation. The bicycle racks shall accommodate a minimum of sixteen (16) bicycles.
 17. A poster/message board shall be displayed in a prominent/visible location adjacent to the entrance of the subject building that promotes walking, bicycling, and public transit and provides information about these options within the neighborhood.
 18. The operators of the subject businesses on-site shall implement a plan to encourage employees to use alternative modes of transportation, such as carpooling and public transit.
 19. No outside display of merchandise shall be permitted at any time.
 20. There shall be no pool tables, arcade and/or coin-operated games at any time, as outlined in City Code Sections 8.20.010 and 8.20.050, on the premises at any time.
 21. There shall be no customers or patrons in or about the premises when the establishments are closed
 22. No live entertainment, i.e., dancing, karaoke, live music, sport bar or disc-jockey entertainment, etc., including amplified music, shall be permitted on the premises of the proposed restaurant establishment.
 23. The loading area at the rear of the restaurant shall be kept free from all debris and trash. No outside storage shall be permitted in this area.
 24. The owner/developer shall provide adequate trash enclosures with receptacles to accommodate the uses on the site along with adequate pick-ups during the week. All trash enclosures shall match the color and material of the buildings or block wall on the site and be Code compliant. The trash bins shall be kept inside the trash enclosure, and the gates shall remain closed at all times except during disposal and pick-up. The trash shall be picked up as needed to accommodate the use; the owner/developer shall increase the number of pick-ups as required.

25. A prominent, permanent sign, stating "NO LOITERING IS ALLOWED ON OR IN FRONT OF THE PREMISES," shall be posted in a place that is clearly visible to patrons of the licensee. The sign lettering shall be four (4) to six (6) inches high with black letters on a white background. The sign shall be displayed near or at the entrance, and shall also be visible to the public.
26. There shall be no uses or activities of an adult-oriented nature permitted as outlined in City Code Section 9.08.070.
27. There shall be no deliveries to or from the premises between the hours of 10:00 p.m. and 8:00 a.m., seven days a week.
28. Litter shall be removed daily from the premises, including adjacent public sidewalks, and from all parking areas under the control of the licensee. These areas shall be swept or cleaned, either mechanically or manually, on a weekly basis, to control debris.
29. Graffiti shall be removed from the premises and all parking lots under the control of the applicant, property owner, and/or any tenant, within 120 hours of notification.
30. The applicant is advised that the establishment is subject to the provisions of State Labor Code Section 6404.5 (ref: State Law AB 13), which prohibits smoking inside the establishment as of January 1, 1995.
31. Any satellite dish antennas installed on the premises shall be screened, subject to approval by the Community Development Department, Planning Division. No advertising material shall be placed thereon.
32. Exterior advertisements displays or exterior wall advertisements shall not be allowed.
33. The applicant / property owner shall comply with the adopted City Noise Ordinance.
34. The building plans, including grading and development plans and all construction activity shall comply with the current editions of the California Building Regulations as found in the California Code of Regulations (CCR), Title 24, Parts 2 through 12 as adopted by the City of Garden Grove.
35. As a part of the finalized working drawings for Planning Division, Engineering Division and Building Plan Check, the developer shall submit a detailed and dimensioned plot plan, floor plans, exterior elevations, and landscape plans that reflect the conditions of approval.
36. All lighting structures shall be placed so as to confine direct rays to the subject property. All exterior lights shall be reviewed and approved by the

Planning Services Division. Lighting adjacent to residential properties shall be restricted to low, decorative type, wall-mounted lights, or ground lighting system. Lighting in the common and parking areas shall be directed, positioned or shielded in such manner so as not to unreasonably illuminate the window area of nearby residences. Parking area lighting shall be provided during the hours of darkness the establishment is open at a minimum of two-foot candles of light, and one-foot candle of light during all other hours of darkness.

37. No exterior piping, plumbing, roof top access ladders, or mechanical ductwork shall be permitted on any exterior facade and/or be visible from any public right-of-way or adjoining property.
38. Signs shall comply with the City of Garden Grove sign requirements. No more than 15% of the total window area and clear doors shall bear advertising or signs of any sort. No signs advertising alcoholic beverages shall be placed on the windows. Any opaque material applied to the store front, such as window shall count toward the maximum window coverage area.
39. Any modifications to existing signs or the installation of new signs shall require approval by the Community Development Department, Planning Services Division prior to issuance of a building permit.
40. Any and all correction notice(s) generated through the plan check and/or inspection process is/are hereby incorporated by reference as conditions of approval and shall be fully complied with by the owner, applicant and all agents thereof.
41. A copy of the resolution, including the conditions approving Variance No. V-011-2015, shall be kept on the premises at all times.
42. The permittee shall submit a signed letter acknowledging receipt of the decision approving Variance No. V-011-2015, and his/her agreement with all conditions of the approval.
43. The applicant shall, as a condition of project approval, at its sole expense, defend, indemnify and hold harmless the City, its officers, employees, agents and consultants from any claim, action, or proceeding against the City, its officers, agents, employees and/or consultants, which action (i) seeks to set aside, void, annul or otherwise challenge any approval by the City Council, Planning Commission, or other City decision-making body, or City staff action concerning Variance No. V-011-2015, or (ii) concerns any easement, reciprocal easement agreement, or other agreement affecting the Site. The applicant shall pay the City's defense costs, including attorney fees and all other litigation related expenses, and shall reimburse the City for court costs, which the City may be required to pay as a result of such defense. The

applicant shall further pay any adverse financial award, which may issue against the City including, but not limited to, any award of attorney fees to a party bringing such a claim, action, or proceeding. The City shall retain the right to select its counsel of choice in any action referred to herein.

44. The applicant shall implement a no-charge valet parking service to restaurant patrons, during periods of high parking demand including, but not limited to, hours between 12:00 p.m. to 3:00 p.m., on weekdays, and between 5:00 p.m. to 8:00 p.m., on weekend days (Friday, Saturday, Sunday) and holidays. All valet parking spaces shall be located on the subject property. Additionally, the valet parking service shall prioritize the use of parking spaces located in the rear parking lot area. The valet parking service shall be utilized to increase the availability of parking on-site as well as to prevent any overflow and parking impacts to the adjacent properties. The drop-off and pick-up location for the valet service, and the operation of such, shall be subject to the approval of the City.
45. The applicant shall install pedestrian crossing signage and flashing stop signs adjacent to the two (2) existing driveways which provide vehicular access to the subject site off Garden Grove Boulevard. The location and placement of said signage shall be subject to the approval of the City.

MINUTE EXCERPT

GARDEN GROVE PLANNING COMMISSION

PUBLIC HEARING – VARIANCE NO. V-011-2015. FOR PROPERTY LOCATED AT 11100 AND 11102 GARDEN GROVE BOULEVARD, SOUTH SIDE OF GARDEN GROVE BOULEVARD, WEST OF EUCLID STREET.

Applicant: David Webber
Date: June 18, 2015

Request: Variance approval to deviate from the required number of parking spaces, Municipal Code Section 9.18.140.030 (Parking Spaces Required), to allow the operation of a new 14,300 square foot restaurant/eating establishment, East Seafood Buffet, at 11102 Garden Grove Boulevard. The site is in the CC-3 (Civic Center Core) zone. This project is exempt pursuant to CEQA Section 15301 – Existing Facilities and Section 15332 – In-Fill Development Projects.

Action: Public Hearing opened. Speaker(s): None. Staff submitted revisions to the conditions of approval, Josh McIntosh submitted a letter with traffic concerns in Costco parking lot, and Costco submitted a letter of opposition.

Action: No action taken on the item. Motion to continue the open public hearing to the Thursday, July 16, 2015 regular Planning Commission Meeting at 7:00 p.m. approved.

Motion: Margolin Second: Zamora

Ayes: (5) Margolin, O’Neill, Pak, Paredes, Zamora
Noes: (0) None
Absent: (2) Kanzler, Mai

MINUTE EXCERPT

GARDEN GROVE PLANNING COMMISSION

CONTINUED PUBLIC HEARING – VARIANCE NO. V-011-2015. FOR PROPERTY LOCATED AT 11100 AND 11102 GARDEN GROVE BOULEVARD, SOUTH SIDE OF GARDEN GROVE BOULEVARD, WEST OF EUCLID STREET.

Applicant: David Webber
Date: July 16, 2015

Request: Variance approval to deviate from the required number of parking spaces, Municipal Code Section 9.18.140.030 (Parking Spaces Required), to allow the operation of a new 14,300 square foot restaurant/eating establishment, East Seafood Buffet, at 11102 Garden Grove Boulevard. The site is in the CC-3 (Civic Center Core) zone.

Action: Continued Public Hearing held. One letter of opposition submitted by Costco Wholesale and a second letter of opposition submitted by Josh McIntosh were entered into the record. Speaker(s): David Webber (Applicant), Xiu Fang Chen (Proposed Restaurant Owner), Gil Cozine (Costco Wholesale), Graham Allchorn (Red Mountain Retail Group on behalf of property owner), Tiffany Giordano (RK Engineering Group, Inc.). Commissioner Zamora advised the Commission that she had been contacted by three (3) members of the public, the owner of the Del Taco restaurant adjacent to the subject Site, Josh McIntosh, and another resident, each of whom expressed concerns regarding the proposed Variance. The Public Hearing was closed.

Action: A motion by Commissioner Pak to adopt a Resolution to approve the requested Variance was withdrawn by Commissioner Pak prior to being seconded.

Action: A motion to direct staff to prepare, for consideration by the Planning Commission at the next regular Planning Commission meeting, a Resolution of Denial of the requested Variance based on the inability of the Commission to make the following required Finding required for approval of the Variance for the reasons stated by Costco Wholesale and articulated by the Planning Commissioners at the meeting:

Required Finding: *The granting of the requested Variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located.*

Motion: Margolin Second: Zamora

Ayes: (3) Margolin, Paredes, Zamora
Noes: (2) Kanzler, Pak
Absent: (2) Mai, O'Neill

MINUTE EXCERPT

GARDEN GROVE PLANNING COMMISSION

ITEM FOR CONSIDERATION – VARIANCE NO. V-011-2015. FOR PROPERTY LOCATED AT 11100 AND 11102 GARDEN GROVE BOULEVARD, SOUTH SIDE OF GARDEN GROVE BOULEVARD, WEST OF EUCLID STREET.

Applicant: David Webber
Date: August 6, 2015

Request: For the Planning Commission to consider and act on a proposed Resolution denying the Applicant's request for Variance approval to deviate from the required number of parking spaces, Municipal Code Section 9.18.140.030 (Parking Spaces Required), to allow the operation of a new 14,300 square foot restaurant/eating establishment, East Seafood Buffet, at 11102 Garden Grove Boulevard. A Public Hearing was held on June 18, 2015 and July 16, 2015. On July 16, 2015, following conclusion of the Public Hearing, the Planning Commission voted to direct Staff to prepare a Resolution of Denial of the requested Variance for its consideration.

Action: A motion to continue the case to a re-noticed date of Thursday, September 3, 2015 Planning Commission meeting in order to consider a revised proposal in regard to safety and parking concerns.

Motion: Kanzler Second: Zamora

Ayes: (6) Kanzler, Margolin, O'Neill, Pak, Paredes, Zamora
Noes: (0) None
Absent: (1) Mai

MINUTE EXCERPT

GARDEN GROVE PLANNING COMMISSION

CONTINUED PUBLIC HEARING - VARIANCE NO. V-011-2015. FOR PROPERTY LOCATED AT 11102 GARDEN GROVE BOULEVARD, SOUTH SIDE OF GARDEN GROVE BOULEVARD, WEST OF EUCLID STREET.

Applicant: David Webber
Date: September 3, 2015

Request: Variance approval to deviate from the required number of parking spaces, Municipal Code Section 9.18.140.030 (Parking Spaces Required), and to reduce the required percentage of landscaping for surface parking lots, Municipal Code Section 9.18.140.070.b.1.a (Surface Parking Lot Landscaping), to allow the operation of a new 14,300 square foot restaurant/eating establishment, East Seafood Buffet. The site is in the CC-3 (Civic Center Core) zone. This project is exempt pursuant to CEQA Section 15301 - Existing Facilities and 15332 - In-Fill Development Projects.

Action: Public Hearing held. Speaker(s): David Webber. Rick Jerabek of Costco Wholesale submitted a letter in favor of the request.

Action: Resolution of Approval No. 5848-15 approved.

Motion: Kanzler Second: Pak

Ayes: (3) Kanzler, Pak, Paredes

Noes: (2) Margolin, O'Neill

Absent: (2) Mai, Zamora

APPEAL
REQUEST FOR CITY COUNCIL OR PLANNING COMMISSION PUBLIC HEARING

TO: City Clerk's Office, City of Garden Grove
11222 Acacia Parkway, Garden Grove, CA 92840
(714) 741-5040

Pursuant to Section 9.32.110 of the Municipal Code, I hereby appeal the decision of the **Planning Commission** / **Zoning Administrator** in Case No. Variance No. V-011-2015, and petition the **City Council** / **Planning Commission** for a Public Hearing to consider **approving** / **denying** / **modifying** the subject application for the following reasons:

Please see the attached letter.

RECEIVED
CITY CLERK'S OFFICE
GARDEN GROVE
CA

2015 SEP 23 P 3:11

Date: 9/22/2015 Appeal Fee (see reverse): \$100.00

Appellant: Michael Hennessey / Hennessey Group

Address: 17602 17th Street, Suite #102, Box 246

City & ZIP: Tustin, CA Phone No.: 714.771.7443

September 22, 2015

VIA HAND DELIVERY

Garden Grove City Council
11222 Acacia Parkway
Garden Grove, CA 92840

Re: **Appeal of Planning Commission Approval of Variance No V-011-2015**

Dear Mayor Nguyen and Honorable Members of the City Council:

This firm represents Hennessey Group, the owner of the property located at 11070 Garden Grove Boulevard ("Del Taco" parcel) in the City of Garden Grove (the "City"). The Del Taco parcel is one of the parcels in the shopping center located at 11100 and 11102 Garden Grove Boulevard, where David Webber/Emerald Square II (the "applicant") is proposing to operate a new 14,300 square foot restaurant, East Seafood Buffet, in a newly created tenant space that occupies half of the existing Office Depot retail store space, which itself will operate in a newly modified smaller tenant space (the "Project"). Hennessey Group is hereby appealing the Planning Commission's approval of Variance No. V-011-2015, which would allow reduced parking for the East Seafood Buffet/Office Depot properties. The reasons for the appeal are summarized as follows:

- Since the shopping center is subject to a Reciprocal Easement Agreement which governs shared parking at the shopping center, including the Del Taco parcel, and since the variance affects the parking rights that are regulated by the Reciprocal Easement Agreement, the City should have required Hennessey Group's consent to the parking reduction;
- The number and size of the parking spaces approved through the variance are inconsistent with the requirements of the Municipal Code;
- A variance is not legally permitted in this situation, as variances are only permitted where, because of "special circumstances applicable to the *property*, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives

Garden Grove City Council

Re: *Appeal of Planning Commission Approval of Variance No V-011-2015*

September 22, 2015

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such property of privileges enjoyed by other property in the vicinity and under identical zoning classification;"

- The City did not adequately make the required findings for a variance, as: (1) there are not unique or special circumstances applicable to the property, (2) the variance is not necessary for the preservation of a property right possessed by others in the same vicinity and zone, (3) the approval of a parking reduction would be detrimental to the Del Taco parcel, and (4) granting the variance would grant the applicant a special privilege inconsistent with the limitations placed on other properties in the vicinity and zone; and
- The hearing was not properly noticed. Hennessey Group, the property owner of record of the Del Taco parcel, did not receive proper notice of the hearing for the variance.

Each of these issues is discussed in further detail below. Hennessey Group hereby reserves its rights to supplement this appeal and add additional objections, as well as evidence, at a later date.

A. THE CITY SHOULD HAVE REQUIRED HENNESSEY GROUP'S CONSENT FOR THE PARKING REDUCTION.

As noted in the Planning Commission's resolution, a "Reciprocal Easement Agreement (REA) exists between [the applicants, Hennessey and Costco Wholesale, the third store within the shopping center], which provides for reciprocal access and shared parking between the subject Site, the Costco, and Del Taco." As a preliminary matter, the reduction in parking approved by the City directly violates the terms of the REA, specifically relating to the minimum parking ratios required for the Shopping Center. *See Reciprocal Easement Agreement, Sections 6.2 and 6.3.*

Moreover, as will be discussed in more detail below, approval of the parking variance would allow the applicant's parcels to be under-parked, which will likely lead customers of the Office Depot and Seafood Buffet to park on the Del Taco parcel, negatively impacting our client and potentially causing economic loss.

Accordingly, the City should have required Hennessey's (and Costco's) consent for the parking reduction. Given Costco's initial opposition to the variance, it was incumbent on the City to check with the owner of the Del Taco parcel, i.e., our client, who is well-known within the City, to ensure that Del Taco did not have similar objections.

Garden Grove City Council

Re: *Appeal of Planning Commission Approval of Variance No V-011-2015*

September 22, 2015

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B. THE CITY SHOULD NOT HAVE ISSUED A VARIANCE TO PERMIT A PARKING REDUCTION FOR THE PROJECT.

The City should not have issued a variance to permit a parking reduction for the Project. A variance is a special land use permit addressed in state planning law (California Government Code sect. 65000, et seq.) that allows a limited exception to a local agency's development standards.¹ Variances can be granted only if there are "special circumstances applicable to the *property*, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance deprives such property of privileges enjoyed by other property in the vicinity and under identical zoning classification" (in this case the CC-3 (Civic Center Core) zone). (Government Code § 65906; *emphasis added*.) In addition, in order to grant a variance, the local decision-making body must make findings that a hardship would exist if a variance were not granted and that granting it would not constitute a special privilege. (Curtin's California Land Use & Planning Law, 33rd edition, p. 572.)

The City's Municipal Code states that a variance may be granted only if "there are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or classes of use in the same vicinity or zone." (Municipal Code § 9.32.03.D.6.b.1.) Here, there are no exceptional or extraordinary circumstances applicable to the property or intended use. In its findings, the City cites "unique operational characteristics" as the basis for approving the variance. However, these operational characteristics are neither special nor unique to the subject *property*, and should not be considered hardships as a basis for making the required variance findings. Specifically, the findings state that "there are very few properties in the City with similar commercial uses such as the subject Office Depot retail store and the proposed East Seafood restaurant, which have unique operational characteristics. A 'buffet-style restaurant' ...does not operate like a typical restaurant, because much of the square footage is required for the buffet customer queuing line. Also, the Office Depot sells a specific product and does not operate like a typical retail store."

These operational characteristics do not create special circumstances applicable to the *property*. The fact that other property owners have not elected to develop office supply stores or buffet restaurants on their properties, both of which are permitted uses, does

¹ Approval of a variance allows the property owner "to use his property in a manner basically consistent with the established regulations with such minor variations as will place him in parity with other property owners in the same zone." (Longtin's California Land Use, 2nd edition, sect. 3.70[1], pp. 349-350.)

Garden Grove City Council

Re: *Appeal of Planning Commission Approval of Variance No V-011-2015*

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not create an exceptional or extraordinary circumstance. Moreover, the parking problem is not unique to the applicant – any other property in the vicinity and zone that wished to have these types of uses would be subject to the same parking standards. Should the applicant wish to operate a restaurant, just like all other restaurant operators in the City, it should be required to find a location with adequate parking.

Variations should be granted upon hardship and not because it would be more convenient for the applicant or because the applicant has created a “self-induced hardship.” Here, the applicant’s justification for reducing the project’s parking can be classified as a self-induced hardship because the applicant has decided he wants to operate a buffet restaurant on a lot without adequate parking for such use. The fact that the parcel was parked based upon retail standards is not a special or unique circumstance, nor does it limit the ability of the property to be developed in a manner consistent with the Code or other similar properties in the zone. Without the variance, the property can still be tenanted by a multitude of retail uses.

In addition, the physical design of the properties does not present a special circumstance or hardship. The subject properties have a gross lot area of approximately 2.5 acres, and are developed with an existing approximately 30,000 square foot building. The site currently provides adequate parking for 30,000 square feet of retail uses (152 total parking spaces, with 150 parking spaces required). The properties are zoned CC-3 (Civic Center Core), and are abutted by properties with the same zoning. The minimum lot size for properties zoned Civic Center Core is 15,000 square feet. The subject properties are well above the minimum lot size and dimensions. Moreover, the actual developable area of the property is also not constrained. Accordingly, the property itself is not unique, and the fact that the property does not have enough space to provide additional parking for a restaurant use is not unique. The property is similar to other properties in the zone, including the immediately adjacent properties.

Accordingly, a variance should not be granted to approve a parking reduction for this Project.

C. THE CITY FAILED TO PROVIDE SUFFICIENT EVIDENCE TO SUPPORT THE REQUIRED FINDINGS FOR A VARIANCE.

Substantial evidence must support the award of a variance in order to ensure that legislative requirements have been satisfied. *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11Ca.3d 506. Here, the Planning Commission’s findings

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fail to provide substantial evidence demonstrating that the variance criteria established in the Government Code as well as the Municipal Code has been met.

First, as discussed in Section C, above, a variance may not be granted unless the applicant's unique circumstances cause the applicant a unique hardship and create disparities between the applicant's property and other neighboring properties. Such circumstances are generally limited to physical conditions of the property. Here, the City did not adequately demonstrate that the subject property differed substantially and in relevant aspects from other parcels in the applicable zones. In making its findings, the City provided no evidence that the subject property was unique. Instead, it argued that the proposed retail and restaurant *uses* were unique. In attempting to make this finding, the City cites an "observed parking analysis conducted by RK Engineering" which demonstrated that the Office Depot did not generate a high parking demand when compared to other retail sites with similar uses, and that the proposed restaurant does not operate like a typical restaurant because of its buffet style. Even though the parking analysis concludes that there would be a sufficient amount of parking spaces to accommodate the applicant's uses because they do not operate like a "typical restaurant" and a "typical retail store", that does not create a unique circumstance, nor does it create a disparity between the applicant's property and surrounding properties. Accordingly, the required finding cannot be made.

Second, the variance is not necessary for the preservation of a substantial property right possessed by other property in the same vicinity and zone, but which is denied to the applicant. To the contrary, all of the properties in the same zone are subject to the same parking requirements. If any of those properties wanted to operate a new restaurant, they too would be required to comply with the City's parking standards and provide adequate parking for the restaurant use. If they could not comply with the City's parking standards, they would be required to reduce the size of their proposed projects.

Third, a variance may not be granted if it will adversely affect the interests of the public or the interests of other residents and property owners within the vicinity of the project. Here, the reduction of parking spaces (as well as the reduction of the *size* of the parking spaces within the applicant's properties) would undoubtedly encourage the applicant's patrons to park on the Del Taco parcel, depriving the Del Taco customers of parking adjacent to the Del Taco restaurant. This is underscored by the fact that the City is actually requiring the applicant to install pedestrian crossing signage and flashing stop signs at the existing driveways on the site. If the City did

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not anticipate any negative impact to the shopping center's other tenants, such mitigation would not have been needed.

Finally, granting the variance would grant the applicant a special privilege inconsistent with the limitations placed on other properties in the vicinity and zone. It would allow the applicant, whose *property* has no unique characteristics, to provide less than half of the additional required parking for the restaurant use, and to provide fewer standard parking spaces than required by the Code.

D. THE PROJECT'S PROPOSED PARKING PLAN VIOLATES THE MUNICIPAL CODE'S PARKING REQUIREMENTS.

The Project's Parking Plan violates the requirements of the Municipal Code. Section 9.18.140.040 of the Municipal Code specifies that "up to 20 percent of the required parking stalls may be compact spaces." Nevertheless, the applicant proposes over 26% of its parking stalls to be compact. In addition, the Code requires that compact spaces be consolidated into a specific area of the parking lot. However, it does not appear that the Parking Plan complies with this requirement. Finally, it is unclear whether the parking spaces proposed by the applicant meet the parking space size requirements set forth in the Municipal Code. The City fails to address these issues in the approval documents.

Although the City does not appear to have a formal mechanism whereby applicants can request parking reductions outside of its "Joint Use and Parking Management" procedures, the City should have required the preparation and approval of a Parking Management Plan for the Project because the reduction being requested by the applicant exceeds 10 percent. Instead, the applicant submitted an "Observed Parking Analysis" for the Project, which does not appear to meet the standards required by the Code for a Parking Management Plan as outlined in Code Section 9.18.140.060.D. An "Observed Parking Analysis" is unlikely to constitute substantial evidence to demonstrate that the Project's required parking should be reduced.

E. ENVIRONMENTAL ANALYSIS PURSUANT TO CEQA SHOULD HAVE BEEN REQUIRED FOR THE PROJECT.

In Resolution 5848-15, the Planning Commission made the determination that the Project is categorically exempt from CEQA pursuant to the Existing Facilities and Infill Development Project exemptions. However, due to the intensification of use anticipated by the Project, the Project arguably should not have been subject to an exemption as it is subject to "unusual circumstances."

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As readily admitted by the applicant, the proposed Project should not be compared to a traditional retail and restaurant development. First, it emphasizes that the existing Office Depot store did not generate high parking demand when compared to other retail sites with similar uses. Further, the applicant argues that the proposed buffet restaurant does not operate as a traditional restaurant. In that vein, the applicant's main argument is that because of its "unique operational characteristics," that the proposed Project should not be treated as a typical retail/restaurant mix. Accordingly, the Project should not be exempted from CEQA.

CEQA Guidelines Section 15300.2(c) provides, in full, that "[a] categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. In reviewing whether there is a "reasonable probability," the proper standard of review is whether there is a "fair argument" based on substantial evidence in the record that the identified unusual circumstance may cause significant environmental impacts. See *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 264.

The fair argument standard establishes a low threshold that is met when there is evidence in the record supporting a fair argument that unusual circumstance may cause significant environmental impacts. See *Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1067. Here, the applicant provided the evidence that an unusual circumstance exists. Under the fair argument standard, the City may not compare or weigh the evidence in order to decide which side has the better argument. Rather, the City's task is limited to the determination of whether "substantial evidence" exists to support a "fair argument" that environmental impacts may occur. See *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002. This standard has been met here. The applicant cannot have it both ways – if the operation of these two businesses is "unique" enough to warrant a variance, then it is likewise "unique" enough to qualify as an "unusual circumstance" under CEQA.

F. THE PLANNING COMMISSION HEARING WAS NOT PROPERLY NOTICED.

Finally, the Planning Commission's hearing on the variance was not properly noticed. The City's Municipal Code requires that notice of a hearing for a variance be "mailed or delivered...to the last known address of the owner or owners of the property located within not less than a three hundred foot radius...of the subject property, as indicated on the latest available assessment rolls in the City Hall." (Municipal Code § 9.32.060. B.1.) Hennessey Group, the property owner of record of the Del Taco parcel,

Garden Grove City Council

Re: *Appeal of Planning Commission Approval of Variance No V-011-2015*

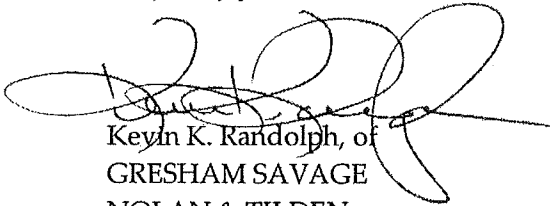
September 22, 2015

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did not receive proper notice of the hearing for the variance. Instead, it is our understanding that the City sent notice of the hearing to Del Taco's *corporate* headquarters, rather than to the office of the Hennessey Group (the record owner). This violates the City's noticing requirements. It was only *after the Planning Commission hearing* when the applicant contacted Hennessey on a related matter that our client learned that the City had approved a variance to permit reduced parking on the applicant's site. Therefore, Hennessey was deprived of its ability to be heard by the Planning Commission.

Based upon the arguments presented above, we respectfully request that the City Council deny the issuance of the variance for the Project.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Keyln K. Randolph', written over a horizontal line.

Keyln K. Randolph, of
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

KKR:LBK

SECURITY FEATURES INCLUDE TRUE WATER[®] PAPER, HEAT SENSITIVE ICON AND FOIL PHOTOGRAM

HENNESSEY GROUP
 17602 17th St. Suite 102 #246
 Tustin, CA 92780-7915

WELLS FARGO BANK, N.A.
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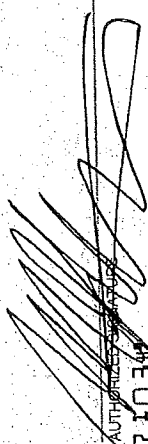
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9/22/2015

PAY TO THE ORDER OF City of Garden Grove \$ **100.00

One Hundred and 00/100***** DOLLARS

MEMO Variance No. V-011-2015
Appeal - Planning Commission Variance No. V-011-
001313 122000247 280047103


 AUTHORIZED SIGNATURE
 BY


 SECURITY FEATURES INCLUDED

28633/28029 (10/13) 850441

RECEIVED
CITY OF GARDEN GROVE

NOV 02 2015

COMMUNITY DEVELOPMENT
PLANNING SERVICES



October 28, 2015

City Council
City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA 92840

Re: Appeal of Planning Commission Approval of Variance No. V-011-2015

Dear Mayor Nguyen and Honorable Councilmembers:

Del Taco is writing to express its opposition to the Variance, No. V-011-2015, provided to the applicant, which is the subject of this appeal. Let us be clear, we have never been contacted by this applicant and our rights were never addressed or considered.

We operate our business, as we have for the last sixteen years in the City, on a parcel located in the shopping center in question. We have relied and continue to rely on the parking arrangements currently in place among the tenants. It is integral to our continued ability to do business profitably and provides a crucial part of our business operations in Garden Grove. If this variance is granted, our business will be severely impacted in a very negative way.

We were not given the benefit or courtesy of being contacted by the applicant so that we could weigh in on the request before it was heard by the Planning Commission or we would have expressed then, at the time of that hearing, what we are saying now in this letter. We suspect that the decision may well have been very different had we been given the chance to express our serious concerns. Our business will be negatively impacted in a way that we cannot sustain. We will be at a disadvantage to other tenants and, particularly, the applicant in the event this variance is granted. The variance is in their direct favor and at our direct expense. Our rights in the shopping center to ample and appropriate parking for our guests and customers will be changed – permanently. We will, moreover, be at disadvantage to other fast food restaurants in the City and surrounding area. That will negatively impact us, our employees, our landlord, and ultimately, the City itself.

We respectfully request that the appeal be granted, the variance approved by the Planning Commission be overturned, that we be treated fairly in this matter, and that our parking conditions, which we currently have and rely upon, be restored to us as they currently exist and the other tenants of the shopping center. Thank you.

Sincerely,

Jim Farley

Senior Asset Manager, Del Taco
25521 Commercentre Dr., Suite 200 • Lake Forest, CA 92630 • 949.462.9300
www.deltaco.com

GARDEN GROVE CITY COUNCIL

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE APPROVING THE APPEAL OF MIKE HENNESSEY/HENNESSEY GROUP, OVERTURNING THE PLANNING COMMISSION'S DECISION TO APPROVE VARIANCE NO. V-011-2015, AND THEREBY DENYING V-011-2015 IN FULL

WHEREAS, the subject case was initiated by David Webber ("Applicant");

WHEREAS, the Applicant is requesting approval of a Variance to deviate from the required number of parking spaces, Municipal Code Section 9.18.140.030 (Parking Spaces Required), to allow the operation of a new 14,300 square foot restaurant/eating establishment, East Seafood Buffet, at 11102 Garden Grove Boulevard. The subject site is located on the south side of Garden Grove Boulevard, west of Euclid Street, at 11100 and 11102 Garden Grove Boulevard, (Assessor's Parcel Nos. 099-105-40 & 42);

WHEREAS, pursuant to Resolution No. 5848-15, the Planning Commission, following a Public Hearing held on September 3, 2015, approved Variance No. V-011-2015;

WHEREAS, the Appellant, Mike Hennessey/Hennessey Group has appealed the Planning Commission's approval of Variance No. V-011-2015;

WHEREAS, pursuant to the California Environmental Quality Act ("CEQA"), the City of Garden Grove has determined that the proposed project is categorically exempt from CEQA pursuant to Section 15301 (Existing Facilities) and Section 15332 (In-Fill Development Projects) of the CEQA Guidelines (14 Cal. Code Regs., Section 15301 and Section 15332);

WHEREAS, pursuant to legal notice duly given, a Public Hearing was held by the City Council on November 10, 2015, and all interested persons were given an opportunity to be heard; and

WHEREAS, the City Council gave due and careful consideration to the matter during its meeting of November 10, 2015.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE HEREBY RESOLVES, DETERMINES, AND FINDS AS FOLLOWS:

SECTION 1. The above recitals are true and correct, and are incorporated herein by reference.

SECTION 2. A copy of Planning Commission Resolution No. 5848-15 is on file in the office of the City Clerk, was concurrently submitted in the agenda materials for the September 3, 2015, Public Hearing regarding Variance No. V-011-2015

(hereafter, "Variance"), and incorporated herein by reference with the same force and effect as if set forth in full.

SECTION 3. In order to approve the Variance, all of the findings required by California Government Code Section 65906 and set forth in Garden Grove Municipal Code Section 9.32.030.D.6 must be made. In this case, based on the totality of information provided, the City Council finds that for the following reasons the following required finding for approval of the requested Variance cannot be made:

Required Finding:

The granting of the requested Variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located.

Reasons Required Finding Cannot Be Made:

The Applicant is proposing to operate a restaurant in a portion of the 30,000 square foot building that was previously occupied entirely by an Office Depot retail use. The parking demand generated by the proposed restaurant use is anticipated to be significantly greater than the parking demand generated for a retail use in the same tenant space. As a result, the Applicant is requesting a variance to allow it to offer 44 (or 19.8%) fewer parking spaces on the subject Site than would otherwise be required by the Municipal Code for the combination of uses proposed.

The subject Site is functionally part of a larger shopping center with a Reciprocal Easement Agreement (REA) providing for reciprocal access and parking between the subject Site and the adjacent properties occupied by Costco Wholesale and Del Taco. As indicated by the testimony and evidence provided at the Public Hearing, observed parking and circulation challenges already exist in this shopping center. Because the proposed new restaurant use would generate more parking demand than the retail use that previously occupied the same tenant space, granting of the requested Variance to permit operation of the proposed restaurant will result in an overall reduction in available parking for the shopping center as a whole, thus potentially exacerbating the existing parking and circulation challenges in the shopping center.

Evidence was presented that granting of the requested Variance, which would allow for the operation of a restaurant use that has a higher parking demand than a retail use, would result in a reduction in the availability of parking for customers of other businesses within the shopping center, which would result in a loss of sales and harm to these businesses. Additionally, both the Appellant and Del Taco have expressed opposition to the approval of the requested Variance citing concerns relating to, but not limited to, loss of availability of parking spaces on their properties and negative economic impacts to the existing Del Taco restaurant. Significant loss of sales, reduction in property values, or other harm to these adjacent businesses would be contrary to the City's interests and detrimental to the overall public welfare. The evidence provided by the Applicant and/or in the record does not sufficiently

demonstrate that granting of the requested Variance to allow operation of the proposed combination of restaurant and retail uses on the Site without the addition of the parking spaces required by the Municipal Code will not adversely affect the neighboring properties or exacerbate the existing parking and circulation issues in the area, even with the Conditions of Approval proposed.

For these reasons, the City Council concludes that it is unable to affirmatively make the required finding that the granting of the requested Variance would not be materially detrimental to the public welfare or result in injury to the property or improvements in the same vicinity and zone as the subject Site.

RELIANCE ON THE RECORD

Unless otherwise provided, each and every one of the findings and conclusions in this Resolution are based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the requested Variance. The findings and conclusions constitute the independent findings and conclusions of the City Council in all respects and are fully and completely supported by substantial evidence in the record as a whole. Unless otherwise provided, all summaries of information in this Resolution are based on the substantial evidence in the record. The absence of any particular fact from any such summary is not an indication that a particular finding is not based in part on that fact.

SECTION 4. Based upon the foregoing findings, and upon the facts, findings and reasons set forth herein, the Appellant's appeal is hereby approved, the Planning Commission's decision is overturned, and Variance No. V-011-2015 is hereby denied.

GARDEN GROVE CITY COUNCIL

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DENYING THE APPEAL OF MIKE HENNESSEY/HENNESSEY GROUP AND UPHOLDING THE PLANNING COMMISSION'S DECISION TO APPROVE VARIANCE NO. V-011-2015

WHEREAS, the subject case was initiated by David Webber ("Applicant");

WHEREAS, the Applicant is requesting approval of a Variance to deviate from the required number of parking spaces, Municipal Code Section 9.18.140.030 (Parking Spaces Required), to allow the operation of a new 14,300 square foot restaurant/eating establishment, East Seafood Buffet, at 11102 Garden Grove Boulevard. The subject site is located on the south side of Garden Grove Boulevard, west of Euclid Street, at 11100 and 11102 Garden Grove Boulevard, (Assessor's Parcel Nos. 099-105-40 & 42);

WHEREAS, pursuant to Resolution No. 5848-15, the Planning Commission, following a Public Hearing held on September 3, 2015, approved Variance No. V-011-2015;

WHEREAS, the Appellant, Mike Hennessey/Hennessey Group has appealed the Planning Commission's approval of Variance No. V-011-2015;

WHEREAS, pursuant to the California Environmental Quality Act ("CEQA"), the City of Garden Grove has determined that the proposed project is categorically exempt from CEQA pursuant to Section 15301 (Existing Facilities) and Section 15332 (In-Fill Development Projects) of the CEQA Guidelines (14 Cal. Code Regs., Section 15301 and Section 15332);

WHEREAS, pursuant to legal notice duly given, a Public Hearing was held by the City Council on November 10, 2015, and all interested persons were given an opportunity to be heard; and

WHEREAS, the City Council gave due and careful consideration to the matter during its meeting of November 10, 2015.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE HEREBY RESOLVES, DETERMINES, AND FINDS AS FOLLOWS:

SECTION 1. The above recitals are true and correct, and are incorporated herein by reference.

SECTION 2. A copy of Planning Commission Resolution No. 5848-15 is on file in the office of the City Clerk, was concurrently submitted in the agenda materials for the September 3, 2015, Public Hearing regarding

Variance No. V-011-2015 (hereafter, "Variance"), and incorporated herein by reference with the same force and effect as if set forth in full.

SECTION 3. In order to approve the Variance, all of the findings required by California Government Code Section 65906 and set forth in Garden Grove Municipal Code Section 9.32.030.D.6 must be made. In this case, based on the totality of information provided, the City Council concurs with the findings of the Planning Commission and finds that for the facts, findings, and reasons set forth in Planning Commission Resolution No. 5848-15 and for the following reasons, the following required findings for approval of the Variance can be made:

1. Required Finding: That there are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or classes of use in the same vicinity or zone.

The East Seafood Buffet restaurant will be part of a multi-tenant mixed use development, which will include a restaurant use and a retail use (Office Depot). Other sites in the same vicinity, as well as in similarly zoned properties with similar uses, do not have a mix of uses, but rather, have an existing commercial use on a stand-alone lot. Furthermore, there are very few properties in the City with similar commercial uses such as the subject Office Depot retail store and the proposed East Seafood Buffet restaurant, which have unique operational characteristics. A "buffet-style restaurant", such as the proposed East Seafood Buffet restaurant, does not operate like a typical restaurant, because much of the square footage is required for the buffet customer queuing line. Also, the Office Depot sells a specific product and does not operate like a typical retail store. As demonstrated by the observed parking analysis conducted by RK Engineering, even when the Office Depot retail use occupied the entire 30,000 square feet of the building on the Site, it utilized just forty-six percent (46%) of the 152 available parking spaces on-site during their peak times. The existing Office Depot use did not generate a high parking demand when compared to other retail sites with similar uses. Additionally, the proposed project involves the Office Depot retail use downsizing its operation from 30,000 square feet to 15,700 square feet. However, the observed parking analysis took a conservative approach and applied the parking demand based on the original Office Depot tenant space size of 30,000 square feet. Even with the conservative approach, the observed parking analysis concluded that there would be a sufficient amount of parking spaces to accommodate the proposed East Seafood Buffet in conjunction with the Office Depot tenant, with an available surplus of parking spaces.

As a Condition of Approval of the Variance, the Applicant will be required to make improvements per the submitted revised site plan, which includes modifications to the front and rear parking lot areas, of the subject Site, in

order to increase the total number of available parking spaces. In total, per the submitted revised site plan, the subject site will provide a *new* total of 178 parking spaces – 47 compact parking spaces, 125 standard parking spaces, and 6 handicap parking spaces, which is an increase of 26 parking spaces. The added spaces should be more than sufficient to accommodate the parking demand generated by the unique mix of uses proposed for the Site.

2. Required Finding: That the Variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same vicinity and zone, but which is denied to the property in question.

There are other similar commercial properties in the immediate vicinity, within the same zone, or other similarly zoned properties throughout the City, that provide less parking than required by current Code requirements. Most of these properties were developed prior to current Code requirements, and were not required to provide the minimum number of on-site parking spaces as would be required today. Due to their unique operating characteristics, the peak parking demand from the combination of the proposed seafood buffet restaurant and Office Depot retail uses on the Site is projected to be significantly less than what the Municipal Code requires, and based on the parking analysis report submitted by the Applicant and other evidence presented at the Public Hearing, the proposed 178 parking spaces will be sufficient to satisfy this parking demand. Accordingly, it would be unfair to deny the property owner the right to use its property in the manner proposed based on the deficiency in the number of parking spaces provided from that technically required by the Municipal Code. Approval of the proposed Variance will not set a precedent and will allow the applicant to enjoy a substantial property right possessed by other property owners located in other similar commercial properties in the immediate vicinity, within the same zone, and other similarly zoned properties throughout the city.

3. Required Finding: The granting of the requested Variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located.

Due to their unique operating characteristics, the peak parking demand from the combination of the proposed East Seafood Buffet restaurant and Office Depot retail uses on the Site is projected to be significantly less than what the Municipal Code requires, and based on the parking analysis report submitted by the Applicant and other evidence presented at the Public Hearing, the proposed 178 parking spaces to be provided will be sufficient to satisfy this parking demand. In addition, several Conditions of Approval have been included to ensure that adequate parking is maintained during times of peak parking demand, to mitigate potential circulation and pedestrian safety

concerns from additional vehicles visiting the Site, and to prevent parking by customers of the uses on the subject Site from adversely affecting other uses within the integrated shopping center and general area.

Approval of this Variance will allow the site to be improved, meet the intended use of the zone, and provide an additional amenity to the community as a family-style sit-down restaurant. Provided that the project complies with the conditions of approval, the approval of the Variance will not create an adverse effect on the public welfare or to properties or improvements in such vicinity and zone in which the property is located.

4. Required Finding: The granting of the Variance will not adversely affect the comprehensive General Plan.

The proposed use is consistent with the intent of the General Plan and the zoning classification as restaurants are permitted in the CC-3 (Civic Center Core) zone. The proposed Variance request will not cause an adverse effect on the City's General Plan since the Municipal Code is a tool used to implement goals of the General Plan. The proposed East Seafood Buffet restaurant will improve a vacant tenant space, will complement the neighboring uses, and will further a goal of the General Plan to develop underutilized properties with a suitable development. Based on the findings of the observed parking analysis and the traffic impact study, Goal CIR-1 of the General Plan, which strives to provide a transportation system that maximizes freedom of movement and maintains a balance between mobility, safety, cost of efficiency of maintenance, and the quality of the City's environment, will also be met.

5. Required Finding: The granting of the Variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is situated.

The Conditions of Approval require that a minimum of 178 parking spaces be provided at all times, require certain site improvements be made to improve circulation and safety, require the applicant to take certain actions to encourage customers and employees to utilize alternative modes of transportation that will not impact on-site parking, and require implementation of an approved parking mitigation plan in the event actual parking or circulation problems nonetheless occur. Provided that the conditions are adhered to, approval of the subject Variance will not grant a special privilege that is inconsistent with the limitations upon other properties located within the vicinity or zone in which the subject property is situated. In addition, pursuant to Condition of Approval No. 2, the rights granted the applicant pursuant to Variance No. V-011-2015 shall continue in effect for only so long as the nature and character of the two uses operating in the 30,000 square foot building on the Site remain the same as at the time of

approval of the Variance. In the event the nature or character of either of the two uses occupying the building materially changes, Variance No. V-011-2015 shall cease to be effective or to grant the applicant any rights to continue to operate the described uses on the Site. Any future uses on the Site different from the current described uses will be required to comply with all then applicable standards of the Garden Grove Municipal Code, and the applicant may not rely on this Variance as a basis for satisfying the required number of parking spaces associated with such future uses.

SECTION 4. Based upon the foregoing findings, and upon the facts, findings and reasons set forth in Planning Commission Resolution No. 5848-15, the Appellant's appeal is hereby denied, the Planning Commission's decision is upheld, and Variance No. V-011-2015 is hereby approved.