



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

TO: CITY COUNCIL, CITY MANAGER, AND PLANNING COMMISSION
FROM: Seimone Jurjis, Community Development Director
SUBJECT: Report of actions taken by the Zoning Administrator, and/or Planning Division staff for the week ending May 5, 2023.

**COMMUNITY DEVELOPMENT DIRECTOR
OR PLANNING DIVISION STAFF ACTIONS**
(Non-Hearing Items)

Item 1: The Village Inn Temporary Outdoor Dining Patio Limited Term Permit (PA2022-0313)
Site Address: 123 Marine Avenue

Action: Approved

Council District 5

APPEAL PERIOD: An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.



COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION
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ZONING ADMINISTRATOR ACTION LETTER

Subject: The Village Inn Temporary Outdoor Dining Patio (PA2022-0313)
▪ Limited Term Permit

Site Location 123 Marine Avenue

Applicant Dan Miller, Village Inn

Legal Description Lot 14 of Block 1

On **May 4, 2023**, the Zoning Administrator approved a limited term permit to allow a temporary outdoor dining patio (“temporary patio”) within the front yard area of the property at 123 Marine Avenue (“Property”), which shares common ownership with the owners of the Village Inn restaurant property. The temporary patio is approximately 1,200 square feet with 5 tables and 26 total seats. As approved, it will be in place for less than 90 days and is permitted to operate from May 25, 2023 to August 21, 2023. The Zoning Administrator’s approval is based on the following findings and is subject to all conditions of approval thereafter.

LAND USE AND ZONING

- **General Plan Land Use Plan Category:** RT (Two Unit Residential)
- **Zoning District :** R-BI (Two-Unit Residential, Balboa Island)
- **Coastal Land Use Plan Category:** RT-E (Two Unit Residential – (30.0 – 39.9 DU/AC)
- **Coastal Zoning District:** R-BI (Two-Unit Residential, Balboa Island)

I. FINDINGS

Finding:

- A. *This project has been reviewed, and it has been determined that it is categorically exempt from the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities) and Class 3 (New Construction or Conversion of Small Structures);*

Fact in Support of Finding:

1. The Class 1 exemption includes the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The Class 3 exemption includes a store, motel, office,

restaurant, or similar structure not involving the use of significant amounts of hazardous substances, not exceeding 2,500 square feet in floor area or 10,000 square feet in floor area in urbanized areas zoned for such use. The project includes an approximately 1,200-square-foot outdoor dining patio area expansion to an existing restaurant and is within the parameters noted for these exemptions and will not have a significant effect on the environment. There are no known exceptions listed in CEQA Guidelines Section 15300.2 that would invalidate the use of these exemptions.

Finding:

- B. The operation of the limited duration use at the location proposed and within the time period specified would not be detrimental to the harmonious and orderly growth of the City, nor endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, safety, or general welfare of persons residing or working in the neighborhood of the requested limited duration use;*

Facts in Support of Finding:

1. The Limited Term Permit will allow the temporary patio on a residential lot owned in common with the Village Inn restaurant, for less than 90 days, as conditioned (from May 25, 2023 to August 21, 2023). The temporary patio would serve as additional outdoor seating for restaurant guests and is fully located on private property.
2. The operation of the temporary patio is limited to the hours between 10 a.m. and 9 p.m., daily. This limited operation serves to reduce the impact of noise and traffic for surrounding residents.
3. The temporary patio is approximately 1,200 square feet with 26 seats and is located within the front yard of the Property. An existing residence is located towards the rear of the lot, adjacent to the alley. There is an existing property line fence and landscaped area are between the temporary patio and the neighboring residence, which serve as a physical barrier that contains the operation and buffers visibility. Other than seating for patrons, ambient lighting, heat lamps, and shade awnings, there are no temporary or permanent structures that are proposed to be constructed for the purpose of the temporary patio.
4. The proposed operation of the temporary patio includes alcohol service. As conditioned, the temporary patio shall be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
5. The Property is adjacent to the Village Inn restaurant to the north and additional residences to the south, to the east across Marine Avenue, and to the west across the alley in the rear. Conditions of approval require that the temporary patio be maintained daily for the removal of trash. All trash shall be stored within the trash enclosures of the Village Inn restaurant, screened from view of neighboring properties.

6. An identical temporary patio was previously permitted through Emergency Temporary Use Permit No. UP2020-080 and Emergency Coastal Development Permit No. CD2020-084, which allowed for the patio to operate between July 14, 2020 and September of 2021. Code Enforcement has reviewed the proposed temporary patio and provided conditions of approval. Additionally, Code Enforcement confirmed that the previous allowance of the patio operated daily without incident.
7. The restaurant operates with Use Permit No. UP2016-012. As conditioned, all applicable conditions of approval from UP2016-012 shall be adhered to for this temporary patio, unless otherwise modified by the conditions of approval contained herein. No live entertainment, exterior amplified music, sound systems, televisions, paging systems, etc. shall be permitted within the temporary patio.

Finding:

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

Facts in Support of Finding:

1. The Property is approximately 2,550 square feet and is developed with a two-story, single-unit residence located on the rear portion. Based on the site plan, there is adequate area in the front of the Property for the proposed temporary patio.
2. The Property is improved with an existing wood fence and gate along the front property line and includes large trees and landscaping along the side property line adjacent to the neighboring residence at 121 Marine Avenue. These elements provide some visual screening of the patio from surrounding residences in the neighborhood. Additionally, the temporary patio is not visible from the alley, as the existing residence in the rear of the Property also serves as a noise barrier and visual screen.
3. Facts 2 and 7 in support of Finding B are hereby incorporated as reference.

Finding:

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

Fact in Support of Finding:

1. The Property is located on Balboa Island, near the corner of Marine Avenue and Park Avenue. Since the Property is developed as a single-unit residence with alley access, vehicular access to the Property is available for residential occupants through the garage adjacent to the alley. Since the temporary patio is intended as additional

dining area for the Village Inn restaurant, street parking is available on both Marine and Park Avenues for patrons of the restaurant. Additionally, there is a bicycle rack located in front of the restaurant on Marine Avenue which provides additional transportation options for patrons of the restaurant. The temporary patio will temporarily occupy the Property for less than 90 days.

Finding:

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

Fact in Support of Finding:

1. The temporary patio is not expected to generate a significant amount of vehicular traffic, as it is intended to provide an additional outdoor dining option for patrons of the Village Inn during the summer season. The Property is located on Balboa Island, which is one of the most densely-populated neighborhoods in the County and pedestrian and bicycle travel is prominent year-round. A parking study conducted by the City in 2008 recognized parking limitations during peak periods. However, patrons of the restaurant are known to be local residents or vacation visitors who walk or bike. Additionally, street parking is available within the neighborhood, especially on Marine and Park Avenues. A large bicycle rack is also located in front of the restaurant on Marine Avenue.
2. An identical temporary patio was previously permitted through Emergency Temporary Use Permit No. UP2020-080 and Emergency Coastal Development Permit No. CD2020-084, which allowed for the patio to operate between July 14, 2020 and September of 2021. During this time, there were no complaints made to Code Enforcement regarding any parking or traffic issues.

Finding:

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

Facts in Support of Finding:

1. The General Plan land use category for this site is RT (Two Unit Residential) and is located in the R-BI (Two-Unit Residential, Balboa Island) Zoning District. These designations apply to a range of two-unit residential dwellings, such as duplexes and townhomes. The Village Inn restaurant is located in the adjacent property at 127 Marine Avenue, which is designated as MU-W2 (Mixed-Use Water 2) and located within the MU-W2 (Mixed-Use Water) Zoning District. These designations are intended to provide for commercial development on or near the bay in a manner that will encourage the continuation of coastal-dependent and coastal-related uses. The proposed temporary patio serves as additional dining space for the Village Inn

restaurant, which is a use that is consistent with the mixed-use designation. While the temporary patio for the restaurant would be located on a residentially designated property, temporary uses are permitted with the approval of a limited term permit pursuant to Table 2-1 (Allowed Uses and Permit Requirements) in Section 20.18.020 (Residential Zoning Districts Land Uses and Permit Requirements) of the NBMC.

2. The Property is located within the Coastal Zone. However, a coastal development permit is not required as the proposed temporary patio is: (1) for a limited duration of less than 90 days; (2) does not increase the floor area or height of the existing residence on-site or the adjacent restaurant; and (3) does not include the construction of any temporary or permanent structures. Additionally, the temporary patio is located on private property and will not impact the public use of roadways or parking areas, or otherwise impact public use or access to coastal waters.
3. The Property is not located within a specific plan area.

II. CONDITIONS OF APPROVAL

1. *All conditions of approval from Use Permit No. UP2016-012 shall be adhered to unless specifically modified by the following set of conditions.*
2. The development shall be in substantial conformance with the approved site plan except as noted in the following conditions.
3. Anything not specifically approved by this limited term permit is prohibited and must be addressed by a separate and subsequent review.
4. *Smoking shall be prohibited in the temporary patio area.*
5. *The exterior of the temporary patio shall be maintained free of trash, litter, and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris, and graffiti from the premises and on all abutting sidewalks within 10 feet of the premises.*
6. *There shall be no trash receptacles located at the Property (123 Marine Avenue). All trash shall be disposed of in the screened trash enclosure of the Village Inn restaurant.*
7. *All lighting for the temporary patio shall be shielded or positioned to not create glare onto adjacent properties.*
8. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, in the opinion of the Director of Community Development, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.

9. *The temporary patio is permitted at the Property for a duration between May 25, and August 21, 2023 (89 days). Operation of the temporary patio outside of this duration is prohibited. Subsequent to the expiration of this Limited Term Permit, the applicant shall remove the patio, clean, and restore the site to previous conditions within 30 days after expiration.*
10. *Hours of operation of the temporary patio shall be between 10 a.m. and 9 p.m., daily.*
11. *No temporary or permanent structures, other than the placement of tables and chairs as shown on the approved site plan, shall be constructed or placed within the temporary patio. Temporary heat lamps, shade awnings, and lighting shall be permitted.*
12. The temporary patio shall be operated in compliance with applicable State Department of Alcoholic Beverage Control (ABC) requirements.
13. *There shall be no food preparation within the temporary patio. All food shall be prepared within the Village Inn restaurant.*
14. A Special Events Permit is required for any event or promotional activity outside the normal operating characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the NBMC to require such permits.
15. No outside paging system shall be utilized in conjunction with this establishment.
16. *All doors and windows of the Village Inn restaurant shall be closed prior to the commencement of live entertainment within the restaurant. No live entertainment is permitted within the temporary patio.*
17. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the NBMC. The maximum noise shall be limited to no more than depicted below for the specified periods unless the ambient noise level is higher:

Location	Between the hours of 7:00 AM and 10:00 PM		Between the hours of 10:00 PM and 7:00 AM	
	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

18. *The temporary patio shall not obstruct the public right-of-way. Patrons shall be prohibited from standing or waiting within the public right-of-way on Marine Avenue.*
19. *Storage outside of the temporary patio in the front or at the rear of the Property shall be prohibited.*
20. *Should the temporary patio become a detriment to the public health, comfort, convenience, safety, and general welfare of the peace and quiet of the neighboring properties and their inhabitants, this permit may be revoked.*
21. *The Community Development Director may impose whatever reasonable conditions are deemed necessary to assure that the temporary patio is compatible with adjoining uses and does not result in significant negative impacts to the health, safety, peace, comfort and the welfare of persons residing or working in the general vicinity.*
22. *The temporary patio shall provide five (5) percent (minimum of one) accessible seating for each type of seating.*
23. An accessible path shall be provided to the temporary patio.
24. *The tops of dining surfaces and work surfaces shall be between 28 and 34 inches above the finished floor.*
25. *All exiting paths shall be a minimum 48 inches free and clear.*
26. All building exits shall remain free and clear of any obstacle that would impede exiting from a building or suite and accessing the nearest public right of way.
27. To the fullest extent permitted by law, applicant shall indemnify, defend, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the **Village Inn Outdoor Dining Patio** including, but not limited to, **Limited Term Permit No. PA2022-0313**. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

APPEAL PERIOD: An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code. For additional information on filing an appeal, contact the Planning Division at 949-644-3200.

Prepared by:

Approved by:



David Lee, Senior Planner
JM/dl



Benjamin M. Zieba, AICP, Zoning Administrator

Attachments: ZA 1 Vicinity Map
 ZA 2 Applicant's Project Description
 ZA 3 Site Plan

Attachment No. ZA 1

Vicinity Map

VICINITY MAP



Limited Term Permit
(PA2022-0313)

123 Marine Avenue

Attachment No. ZA 2

Applicant's Project Description

PROJECT DESCRIPTION AND JUSTIFICATION
Temporary Patio Dining on Adjacent Residential Property
123/127 Marine Avenue, Balboa Island
The Village Inn

Project Setting

The Village Inn Restaurant, 127 Marine Avenue, is located at the southwest corner of Marine Avenue and Park Avenue on Balboa Island. The lot is approximately 4,252 square feet (SF) in area. The Village Inn currently operates from 10:00 AM to 12:00 AM daily and has many walk-in customers from Balboa Island. The property is designated MU-W2, Mixed-Use Water Related, by the City's General Plan and is zoned MU-W2, Mixed-Use Water Related.

Immediately adjacent to the Village Inn is 123 Marine Avenue, also owned by the property owner, with an apartment, and an open space (garden) area which was used for dining throughout the COVID emergency order without incident. The site is designated RT, Two-Unit Residential, by the City's General Plan and is zoned R-BI (Balboa Island).

Project Description

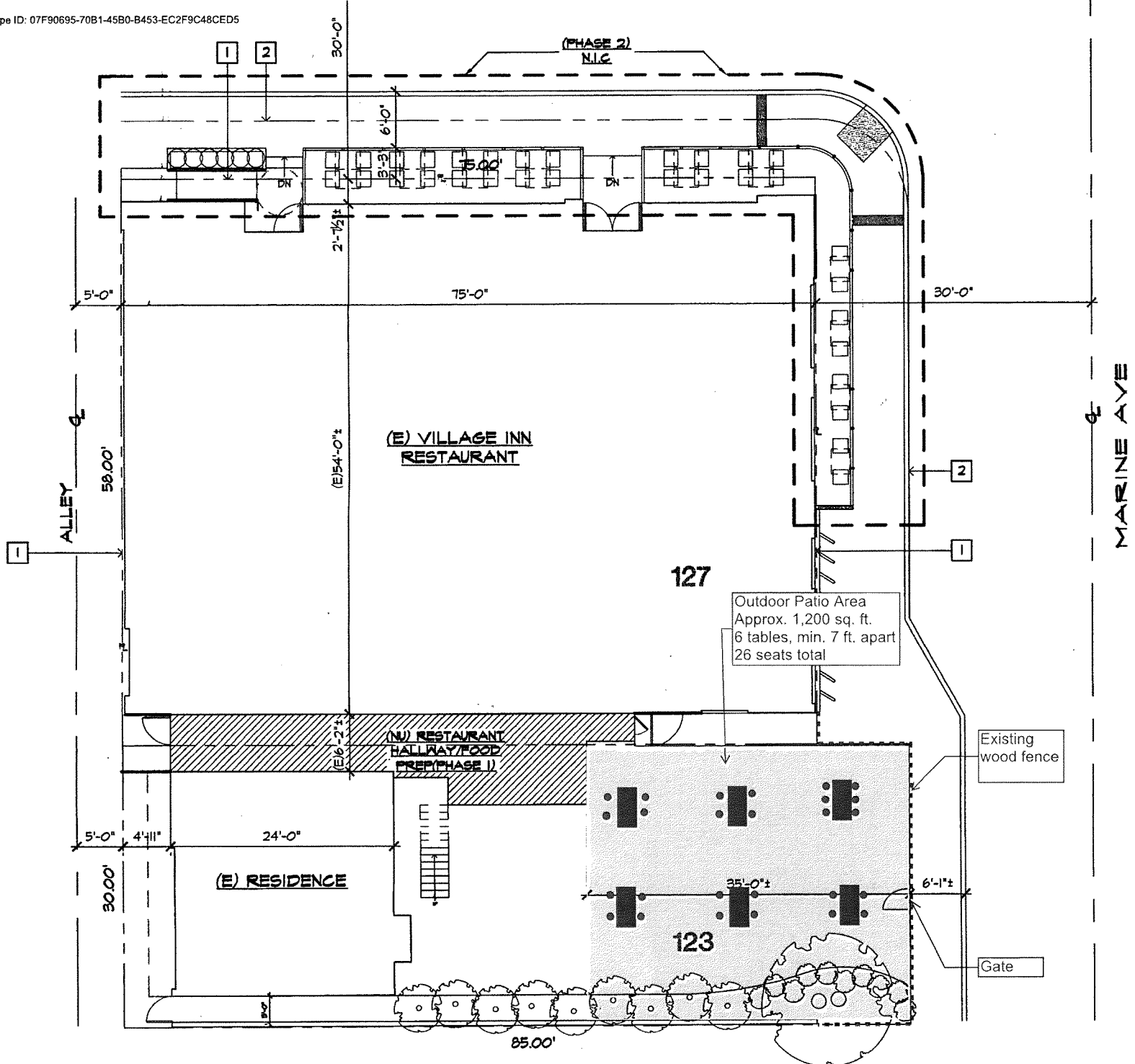
The applicant is requesting a limited term permit from May 25, 2023 to August 21, 2023 (89 days) of the garden patio located on 123 Marine Avenue. The patio hours of operation would be offered to guests from 10am to 10pm daily during this period. There would be a total of 26 seats added as noted in the plans. The garden is accessible directly through the Village Inn so as not to infringe on the public right-of-way, and would be operated and maintained by Village Inn staff and management. Marine and Park Avenue on Balboa Island support parking for the restaurant and this use.

Use Permit Justification and Findings

- (1) The operation will be maintained on private property adjacent to the Village Inn. The operation will flow directly from the Village Inn maintaining public convenience without hazards in the public right-of-way. The hours of operation will control use and maintain the general welfare of the community and employees.
- (2) The lot is of adequate size to maintain the number of seats requested providing adequate walkways and emergency exit through the rear fence as needed.
- (3) The lot is served by Marine Avenue and Park Avenue which will reasonably accommodate the traffic flow with minimal impact on current activity.
- (4) Marine and Park Avenue currently maintain parking for The Village Inn and would adequately provide for the limited number of seats on the patio.
- (5) The plan and its limited duration are in compliance with the General Plan and City regulation.

Attachment No. ZA 3

Site Plan



11-10-2017