

3-36A
9/11/07

RESOLUTION NUMBER R-302986

DATE OF FINAL PASSAGE SEPTEMBER 11, 2007

WHEREAS, Clairemont Rental Properties, a California general partnership, Owner/ Permittee, and Java Acquisition Company 0013, LLC, Lessee, filed an application with the City of San Diego for a planned development permit to amend Planned Commercial Development Permit No. 48 and Planned Commercial Development Permit No. 30-048-1, and to rescind Planned Commercial Development Permit No. 30-48-2, Conditional Use Permit No. 454-PC and Conditional Use Permit No. 85-0628, to maintain an existing 15,300 square foot, single-story office-retail center and to construct a 6,206 square foot building to include a 4,366 square foot shell retail space and a 1,840 square foot Starbucks Café with drive-up/drive through known as the Garfield Starbucks project, located at the southeast corner of Balboa Avenue and Clairemont Drive, and legally described as Parcel 1 of Parcel Map No. 8421, and Parcel 1 of Parcel Map No. 5331, in the Clairemont Mesa Community Plan area, in the CN-1-2 zone, Clairemont Mesa Height Limit Overlay Zone; and

WHEREAS, on August 9, 2007, the Planning Commission of the City of San Diego considered Planned Development Permit [PDP] No. 265516, and pursuant to Resolution No. 4290-PC voted to deny the Permit; and

WHEREAS, Sydnee Freeman, CDS Development appealed the Planning Commission decision to the Council of the City of San Diego; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on September 11, 2007, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Planned Development Permit No. 265516:

A. **PLANNED DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE**
[SDMC] SECTION 126.0604

1. **The proposed development will not adversely affect the applicable land use plan.** The existing 15,300 square foot, single story office-retail center and proposed 6,206 square foot building (to include a 4,366 square foot shell retail space and a 1,840 square foot Starbucks Café) is located in an area designated as Neighborhood Commercial within the Clairemont Mesa Community Plan. The CN zone applied to this property implements the land use plan. The proposed café and retail space are consistent with neighborhood serving commercial uses and will not adversely affect the Clairemont Mesa Community Plan.

2. **The proposed development will not be detrimental to the public health, safety, and welfare.** The permit prepared for this development includes various conditions of approval relevant to achieving project compliance with the regulations and applicable ordinance provisions of the San Diego Municipal Code in effect for this site. As such, conditions determined to be necessary have been included in the Planned Development Permit to assure compliance with all relevant regulations addressing public health, safety, and welfare.

3. **The proposed development will comply with the regulations of the Land Development Code.** The existing 15,300 square foot, single story office-retail center and proposed 6,206 square foot building (to include a 4,366 square foot shell retail space and a 1,840 square foot Starbucks Café) will be in compliance with all applicable regulations of the Land Development Code, as allowed by a Planned Development Permit. The applicant has requested a Planned Development Permit to deviate from property development regulations to allow a drive-up/drive through for the Starbucks Café. The proposed project will observe all relevant

development regulations for the duration of the use, as allowed by a Planned Development Permit.

4. The proposed development, when considered as a whole, will be beneficial to the community. The existing 15,300 square foot, single story office-retail center and proposed 6,206 square foot building (to include a 4,366 square foot shell retail space and a 1,840 square foot Starbucks Café) is located within an older development on the corner of Balboa Avenue and Clairemont Drive. The proposed café and office-retail center will provide community-based services for the general public and local businesses in the surrounding area. In addition, the project includes pedestrian ramps, new sidewalk, street trees and other landscape improvements which will help to revitalize and enhance the appearance of this older shopping center.

5. Any proposed deviations pursuant to SDMC section 126.0602(b)(1) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone. The existing 15,300 square foot, single story office-retail center and proposed 6,206 square foot building (to include a 4,366 square foot shell retail space and a 1,840 square foot Starbucks Café) will comply with all applicable regulations of the Land Development Code, as allowed through the approval of a Planned Development Permit. The applicant has sensitively designed the proposed drive-through with its location along the rear perimeter of the subject site, thus providing a much larger area for pedestrian orientation along the project's street frontage. This additional room for pedestrian amenities has allowed space for the implementation of the Balboa Avenue Revitalization Action Program [RAP]-related improvements (a pedestrian gateway entrance with seating area, water fountain, scored concrete and raised planter beds; street trees consistent with those recently planted by the City as part of the median enhancement project; a public open area, including outdoor café seating, bicycle racks, and shade awnings; and an overall architectural theme which includes articulation, varying roof lines, canopies and pedestrian orientation). Therefore, the deviation request is appropriate for this location and will result in a more desirable neighborhood commercial center for the community that will serve as an example of how private project-related improvements can contribute to the revitalization of Balboa Avenue.

The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED, that the appeal of Sydnee Freeman, CDS Development is granted; the decision of the Planning Commission is overruled; and Planned Development Permit No. 265516 is granted to Clairemont Rental Properties, a California general partnership,

Owner/Permittee, and Java Acquisition Company 0013, LLC, Lessee/, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Andrea Contreras
Deputy City Attorney

ACD:pev
09/26/07
Or.Dept:Clerk
R-2008-216
MMS #5200

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES DEPARTMENT
PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER 42-5262

PLANNED DEVELOPMENT PERMIT NOT. 265516
GARFIELD STARBUCKS – PROJECT 84191 [MMRP]
(Amendment to Planned Commercial Development Permit No. 48 and
Planned Commercial Development Permit No. 30-048-1;
and rescinding Planned Commercial Development Permit No. 30-048-2,
Conditional Use Permit No. 454-PC and Conditional Use Permit No. 85-0628)
CITY COUNCIL

This Planned Development Permit [PDP] No. 265516, amending Planned Commercial Development Permit No. 48 and Planned Commercial Development Permit No. 30-048-1, and rescinding Planned Commercial Development Permit No. 30-048-2, Conditional Use Permit No. 454-PC and Conditional Use Permit No. 85-0628, is granted by the City Council of the City of San Diego to Clairemont Rental Properties, a California general partnership, Owner/Permittee, and Java Acquisition Company 0013, LLC, Lessee/Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0602. The 2.4-acre site is located on the southeast corner of Balboa Avenue and Clairemont Drive in the CN-1-2 zone, Clairemont Mesa Height Limit Overlay Zone, within the Clairemont Mesa Community Plan. The project site is legally described as Parcel 1 of Parcel Map No. 8421, and Parcel 1 of Parcel Map No. 5331;

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee to maintain an existing 15,300 square foot, single-story office-retail center and to construct a 6,206 square foot building to include a 4,366 square foot shell retail space and a 1,840 square foot Starbucks Cafe with drive-up/drive through, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated September 11, 2007, on file in the Development Services Department.

The project shall include:

- a. An existing 15,300 square foot, single story office-retail center (per Planned Commercial Development Permit 48)

- b. The construction of a 6,206 square foot building to include a 4,366 square foot shell retail space and a 1,840 square foot Starbucks Café
- c. Deviations to allow drive-up/drive-through (where the CN zone prohibits drive-up/drive-through)
- d. Landscaping (planting, irrigation and landscape related improvements);
- e. Off-street parking;
- f. A monument sign and wall signs; and
- g. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six months after the date on which all rights of appeal have expired. Failure to utilize and maintain utilization of this permit as described in the SDMC will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in affect at the time the extension is considered by the appropriate decision maker.

2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:

- a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
- b. The Permit is recorded in the Office of the San Diego County Recorder.

3. Unless this Permit has been revoked by the City of San Diego, the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the City Manager. All rights, responsibilities, and obligations granted under Planned Commercial Development No. 48, and Planned Commercial Development Permit 30-048-1, shall remain in full force and effect, except as provided herein. In no way shall this permit remove or alter in any way the rights, responsibilities, and obligations granted by the previous permit, except as provided below:

- a. Delete Condition Nos. 3, 5,6, 7 and 8 of Planned Commercial Development Permit No. 30-048-1; and

- b. Delete Condition Nos. 3 and 6 of Planned Commercial Development Permit No. 48.

4. This Permit is a covenant running with the subject property and shall be binding upon the Owner/Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.

5. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

6. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

7. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial modifications to the building and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

8. Construction plans shall be in substantial conformity to Exhibit "A." No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.

9. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

10. The applicant shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, including, but not limited to, any to any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify applicant of any claim, action, or proceeding and,

if the City should fail to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, applicant shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and applicant regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the applicant shall not be required to pay or perform any settlement unless such settlement is approved by applicant.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

11. Mitigation requirements are tied to the environmental document, specifically the Mitigation, Monitoring, and Reporting Program [MMRP]. These MMRP conditions are incorporated into the permit by reference or authorization for the project

12. The mitigation measures specified in the MMRP, and outlined in Mitigated Negative Declaration No. 84191, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS.

13. The Owner/Permittee shall comply with the MMRP as specified in Mitigated Negative Declaration No. 84191, satisfactory to the City Manager and the City Engineer. Prior to issuance of a building permit, all conditions of the MMRP shall be adhered to, to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

Historical Resources (archaeology)
Public Health and Safety

14. Prior to issuance of any construction permit, the Owner/Permittee shall pay the Long Term Monitoring Fee in accordance with the Development Services Fee Schedule to cover the City's costs associated with implementation of permit compliance monitoring.

ENGINEERING REQUIREMENTS:

15. Prior to issuance of the certificate of occupancy, the applicant shall improve the adjacent alley, full width, including replacing the alley apron and reconstructing the two alley curb ramps at Clairemont Drive to current standards, all satisfactory to the City Engineer.

16. Prior to building occupancy, the applicant shall close three existing driveways on Clairemont Drive and two existing driveways on Balboa Avenue with restoration to full-height curb, gutter and sidewalk, shall install a 26-foot driveway on Clairemont Drive

and shall reconstruct the curb ramp at the corner of Balboa Avenue and Clairemont Drive, all satisfactory to the City Engineer.

17. Prior to the issuance of any construction permits, the applicant shall enter into a Maintenance Agreement for the ongoing permanent Best Management Practices [BMP's] maintenance, satisfactory to the City Engineer.

18. Prior to the issuance of any construction permits, the applicant shall incorporate and show the type and location of all post-construction BMP's on the final construction drawings, in accordance with the approved Water Quality Technical Report.

19. The drainage system proposed for this development is private and subject to approval by the City Engineer.

20. Prior to the issuance of any construction permit, the applicant shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications.

21. Prior to the issuance of any construction permits, the applicant shall submit a Water Pollution Control Plan [WPCP]. The WPCP shall be prepared in accordance with the guidelines in Appendix E of the City's Storm Water Standards.

LANDSCAPE REQUIREMENTS:

22. Prior to issuance of any engineering permits for grading, construction documents for the revegetation and hydroseeding of all disturbed land shall be submitted in accordance with the Landscape Standards and to the satisfaction of the City Manager. All plans shall be in substantial conformance to this permit (including Environmental conditions) and Exhibit "A."

23. Prior to issuance of any engineering permits for right-of-way improvements, complete landscape construction documents for right-of-way improvements shall be submitted to the City Manager for approval. Improvement plans shall take into account a 40 sq-ft area around each tree which is unencumbered by utilities. Driveways, utilities, drains, water and sewer laterals shall be designed so as not to prohibit the placement of street trees.

24. In the event that a foundation only permit is requested by the Permittee or subsequent Owner, a site plan or staking layout plan shall be submitted identifying all landscape areas consistent with Exhibit "A," Landscape Development Plan. These landscape areas shall be clearly identified with a distinct symbol, noted with dimensions and labeled as 'landscaping area.'

25. Prior to issuance of any construction permits for structures (including shell), complete landscape and irrigation construction documents consistent with the Landscape Standards shall be submitted to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit "A," Landscape

Development Plan. Construction plans shall take into account a 40 sq-ft area around each tree which is unencumbered by hardscape and utilities as set forth under LDC section 142.0403(b)5.

26. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the Permittee or subsequent Owner to install all required landscape and obtain all required landscape inspections. A "No Fee" Street Tree Permit shall be obtained for the installation, establishment, and on-going maintenance of all street trees.

27. All required landscape shall be maintained in a disease, weed and litter free condition at all times. Severe pruning or "topping" of trees is not permitted unless specifically noted in this Permit.

28. The Permittee or subsequent owner shall be responsible for the maintenance of all landscape improvements in the right-of-way consistent with the Landscape Standards unless long-term maintenance of said landscaping will be the responsibility of a Landscape Maintenance District or other approved entity. In this case, a Landscape Maintenance Agreement shall be submitted for review by a Landscape Planner.

29. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the City manager within thirty days of damage or Certificate of Occupancy.

PLANNING/DESIGN REQUIREMENTS:

30. No fewer than 117 automobile spaces (thirty-one new, eighty-six existing), two accessible spaces (including one van accessible parking space), two motorcycle spaces, and two bicycle spaces with a bike rack, shall be maintained on the property within the approximate location shown on the project's Exhibit "A". Further, all on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code, and shall not be converted and/or utilized for any other purpose, unless otherwise authorized in writing by the City Manager.

31. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.

32. Uses shall not begin operating before 6:00 a.m. or continue operating later than 12:00 midnight.

33. All signs associated with this development shall be consistent with sign criteria established by either the approved Exhibit "A" or City-wide sign regulations.

34. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

TRANSPORTATION REQUIREMENTS

35. No portion of the proposed 4,366 square foot of retail area may accommodate eating and/or drinking establishments. This condition does not apply to the proposed 1,840 square foot café.

36. Prior to the issuance of the first building permit, the applicant shall dedicate 2 feet along the project frontage of Balboa Avenue and Clairemont Drive for a total 12 feet face of curb to property line, and provide a 12-foot sidewalk along the same frontage, satisfactory to the City Engineer.

37. Prior to the issuance of the first building permit, the applicant shall provide evidence of a recorded Mutual Access Agreement between all affected properties.

WATER REQUIREMENTS:

38. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of new water service(s) outside of any driveway, and the disconnection at the water main of all existing unused services adjacent to the site, in a manner satisfactory to the Water Department Director and the City Engineer.

39. Prior to the issuance of any building permits, the Owner/Permittee shall apply for a plumbing permit for the installation of appropriate private back flow prevention device(s) on each water service (domestic, fire, and irrigation), in a manner satisfactory to the Water Department Director, the City Engineer, and the Cross Connection Supervisor in the Customer Support Division of the Water Department.

40. Prior to the issuance of any certificates of occupancy, public water facilities necessary to serve the development, including services, shall be complete and operational in a manner satisfactory to the Water Department Director and the City Engineer.

41. The Owner/Permittee agrees to design and construct all proposed public water facilities, including services and meters, in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards and practices pertaining thereto. Proposed facilities that do not meet the current standards for construction, operation, maintenance and access, shall be private or modified at final engineering to comply with standards.

INFORMATION ONLY:

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within ninety days of the approval of this

development permit by filing a written protest with the City Clerk pursuant to California Government Code § 66020.

- This development may be subject to impact fees at the time of construction permit issuance

APPROVED by the City Council of the City of San Diego on September 11, 2007 by Resolution No. R-2008-216.

AUTHENTICATED BY THE CITY MANAGER

By _____

The undersigned Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Permittee hereunder.

CLAIREMONT RENTAL PROPERTIES,
a California general partnership
Owner/Permittee

By _____

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1180 et seq.**

PERMIT/OTHER – Permit Shell 11-01-04