



City of Huntington Beach

2000 Main Street ♦ Huntington Beach, CA 92648
(714) 536-5227 ♦ www.huntingtonbeachca.gov

Office of the City Clerk
Robin Estanislau, City Clerk

NOTICE OF APPEAL
OF PLANNING COMMISSION ACTION ON JUNE 11, 2019

TO: Project Planner
Community Development Director
City Attorney
City Manager
City Council
Public Works Director

DATE: June 20, 2019

FILED BY: THDT Investment, Inc.
Tahir Salim
1307 West 6th Street, Ste. 202
Corona CA 92882
(951) 893-1900

REGARDING: Appeal of Action taken by the Planning Commission on June 11, 2019 to Deny Tentative Tract Map No. 18157; Conditional Use Permit No. 17-042.

Copy of Appeal Letter attached.

Robin Estanislau,
City Clerk X5227

Fee Collected: \$3,778.00_

Sister Cities: Anjo, Japan ♦ Waitakere, New Zealand

**Before the City of Huntington Beach
City Council**

In re:)	
)	
Tentative Tract Map No. 18157)	
Conditional Use Permit No. 17-042)	
)	Notice of Appeal
)	\$3,778 Filing Fee
Project: Ellis Avenue Condominiums)	
)	
Project Location: 8041 Ellis Avenue)	

**Appeal from Action of the Planning Commission
Denying Tentative Tract Map No. 18157
and Conditional Use Permit No. 17-042**

Submitted to:

City of Huntington Beach
City Clerk Office
Attn: City Clerk
2000 Main Street
Huntington Beach, CA 92648
Phone: (714) 536-5227
Fax: (714) 374-1557

Appellant:

THDT Investment, Inc.
Attn: Tahir Salim
1307 West 6th Street
Suite 202
Corona, CA 92882
951-893-1900

After June 30, 2019:

4740 Green River Road
Suite 304
Corona, CA 92880

RECEIVED
2019 JUN 20 PM 12:07
CITY CLERK
CITY OF
HUNTINGTON BEACH

Introduction

THDT Investment, Inc. (the “**Applicant**”), appeals from the action of the City of Huntington Beach Planning Commission (the “**Planning Commission**”), denying Tentative Tract Map No. 18157 and Conditional Use Permit No. 17-042 (the “**Denial Action**”). The Denial Action occurred at the Planning Commission’s Regular Meeting, held on June 11, 2019.

Applicable Rules

This appeal is governed, in significant part, by the Zoning and Subdivision Code of the City of Huntington Beach (the “**Zoning Code**”). The Zoning Code, in pertinent part provides as follows:

A. Timing. “The time for appeal from a decision by ... the Planning Commission shall be filed within 10 calendar days after the date of the decision.” Section 248.16.

B. City Council to Hear Appeal. “The City Council shall hear an appeal from the decision of the Planning Commission. The decision of the City Council is final” Section 248.18.

C. Notice of Appeal. “A person desiring to appeal a decision shall file a written notice of appeal ...; an appeal to the Planning Commission’s decision shall be filed with the City Clerk.” Section 248.20A.

D. Form of Notice. “The notice of appeal shall contain the name and address of the person appealing the action, the decision appealed from and the grounds for the appeal.” Section 248.20B.

E. Action by City Clerk on Appeal. “The ... City Clerk shall set the matter for hearing before the reviewing body and shall give notice of the hearing on the appeal in the time and manner set forth in Sections 248.02 and 248.04.” Section 248.20C.

F. City Council Review. “The reviewing body shall hear the appeal as a new matter. The original applicant has the burden of proof. The reviewing body may act upon the application, either granting it, conditionally granting it or denying it, irrespective of the precise grounds or scope of the appeal. In addition to considering the testimony and evidence presented at the hearing on the appeal, the reviewing body shall consider all pertinent information from the file as a result of the previous hearings from which the appeal is taken.” Section 248.20D. “The reviewing body may reverse or affirm in whole or in part, or may modify the order, requirement, decision, or determination that is being appealed.” Section 248.20E.

Statement of the Matter

1. On or about March 7, 2019, the Applicant submitted an application for a Conditional Use Permit No. 17-042 and Tentative Tract Map No. 18157 associated with a request

to demolish a liquor store and construct a 4-story mixed use development (48 condominium units and 891 sf of retail space) with three levels of subterranean parking on a 0.955 acre site (the "Project").

2. Prior to submitting its application, the Applicant devoted substantial time, effort, thought and expense in acquiring the subject property and developing the Project as proposed. After receiving the initial comments based on the entitlement submittal on November 1, 2017, the applicant and their consultants began extensive correspondence back and forth with planning staff to obtain compliance with the Beach Edinger Specific Plan. The applicant met in person with city staff on at least four separate occasions, again to further align the project with the specific plan. The entitlement exhibits were submitted and subsequently reviewed by city staff a minimum of five separate occasions. All of the documents were scrutinized by planning staff and thus providing the applicant with a draft list of conditions on May 22, 2019 stating that planning staff felt the project was in compliance with the Beach Edinger Specific Plan (BECSP). Further stating that the proposed mixed use development "will be compatible with surrounding developments in terms of architectural design and scale pursuant to the massing and scale requirements of the BECSP". The conditions also stated "the project will result in less than significant impacts related to traffic, noise, lighting, aesthetics, and privacy of adjacent residences".

3. On or about March 7, 2019, various divisions of the City of Huntington Beach issued Project Implementation Code Requirements and conditions for approval in connection with the Project, including the Fire Department Fire Prevention staff, the Public Works Department, the Planning and Building Department, and the Police Department.

4. On or about April 1, 2019, City of Huntington Beach Department of Community Development issued a Notice of Filing Status, indicating that the Applicant's application was complete, accepted for processing, and scheduled for review with the Planning Commission. The Notice listed a number of items to resolve in advance of the public hearing.

5. On May 28, 2019, the Planning Commission considered the Project at its regularly scheduled hearing, pursuant to notice. At the hearing, the commissioners discussed the Project, and a few of the commissioners began to express a general sentiment that, although the Project fully complied with the code requirements, the Project seemed unacceptable. The commissioners struggled to articulate the bases for their views and asked the Planning Department staff to provide bases for denial of the Project. The Planning Department staff reminded the commissioners that it was their responsibility to articulate the bases for denial of the Project, whereupon the commissioners began to endeavor to articulate bases for denial. The commissioners thereupon asked the Planning Department staff to compile the bases as articulated by the commissioners as suggested findings for denial of the Project at the hearing on June 11, 2019.

6. At the regularly scheduled hearing of the Planning Commission on June 11, 2019, the Planning Commission considered the suggested findings for denial. A representative of the Applicant was permitted to speak and expressed the Applicant's view that substantial money,

effort, time and thought went into developing a Project that fully complied with all requirements of the Zoning Code only to have the Project rejected at the final hearing stage on the basis of considerations expressed by the commissioners that seemed subjective and difficult to articulate. The representative indicated that the rejection seemed akin to the famous historical moment when Emperor Joseph II said to Mozart, following the premier of "The Marriage of Figaro," that the work had "too many notes."¹ The representative stated that developers will be reluctant to develop real estate in the City of Huntington Beach if they can't know whether compliance with the Zoning Code would be enough, given the need to satisfy the additional, subjective concerns of the commissioners. After further discussion regarding the Project, the Planning Commission voted to deny the Project. Only the Chairman of the Planning Commission voted in favor of the Project, expressing his view that the bases propounded by the other commissioners in opposition to the Project were too subjective.

7. The Applicant accordingly filed this appeal.

8. The City Council should reverse the Denial Action of the Planning Commission and approve the Project. The City Council can conform any reasonable stated bases for denial of the Project as expressed by the Planning Commission into conditions of approval that must be cleared before the Project progresses. There simply is no reasonable basis to deny the Project outright as the Planning Commission did.

9. The Project is an important development for the City of Huntington Beach. The Project replaces a liquor store, vacant land and a portion of a car wash. The Project provides 48 new condominium residences and 891 sf of commercial space on the North side of Ellis Avenue, between Beach Blvd. and Patterson Lane. The Project will also provide for 5 affordable housing units as part of the overall 48 which the city will benefit from as part of state mandated compliance. The Project provides for enhanced parking beyond what the city code requires which will allow the development to sustain its own demands and not create spill over parking onto adjacent properties as has been experienced on some other projects. The smaller footprint and enhanced contemporary architecture of the Project will provide a substantial benefit to the community by improving an otherwise blighted plot of land which has been subject to many instances of vagrants and homeless people loitering on the property. While the buildings overall mass is four floors the upper most floor is substantially reduced in its setback from the street and width in relation to the overall building to reduce its impact on adjacent properties.

10. There is substantial evidence to support the City Council's action to approve the Project. The Project fully complies with the objective standards expressed in the Zoning Code. Moreover, the Project goes beyond the minimum standards to provide for both public and private open spaces well exceeding those base levels. The Project complies with the land use goals and policies including density, consolidation of parcels and provides a range of housing to meet the needs of the city. Further the fact that all of the parking is sub-grade will substantially reduce the potential solar heat gain as is typical for grade level parking lots. We believe that, because the

¹ In the movie, *Amadeus*, the Emperor further states: "Cut a few [of the notes] and it will be perfect"--to which Mozart aptly replies: "Which few did you have in mind, Majesty?" The inquiry highlights the frustration of talented persons in trying to respond to and satisfy capricious standards.

City Council's approval of the Project is supported by substantial evidence, its decision would not be contested by any party and would otherwise be upheld on any appeal. See *Kutzke v. City of San Diego* (4th Dist. 2017), 11 Cal.App.5th 1034.

For these reasons, the Applicant respectfully requests that the City Council reverse the action taken by the Planning Commission and approve the Project.

Respectfully submitted,



Tahir Salim
President

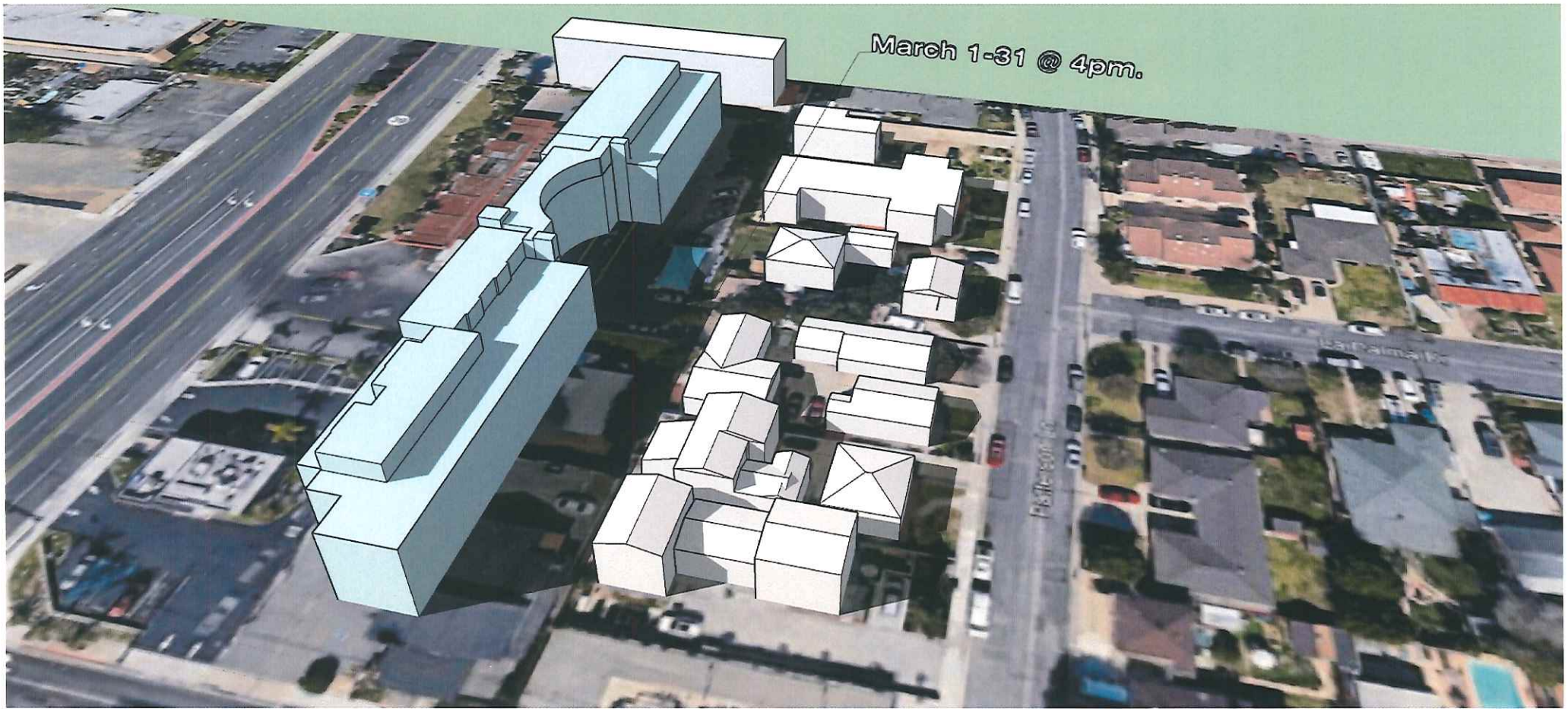


January 1-31 @4pm.



February 1-28 @ 4pm.

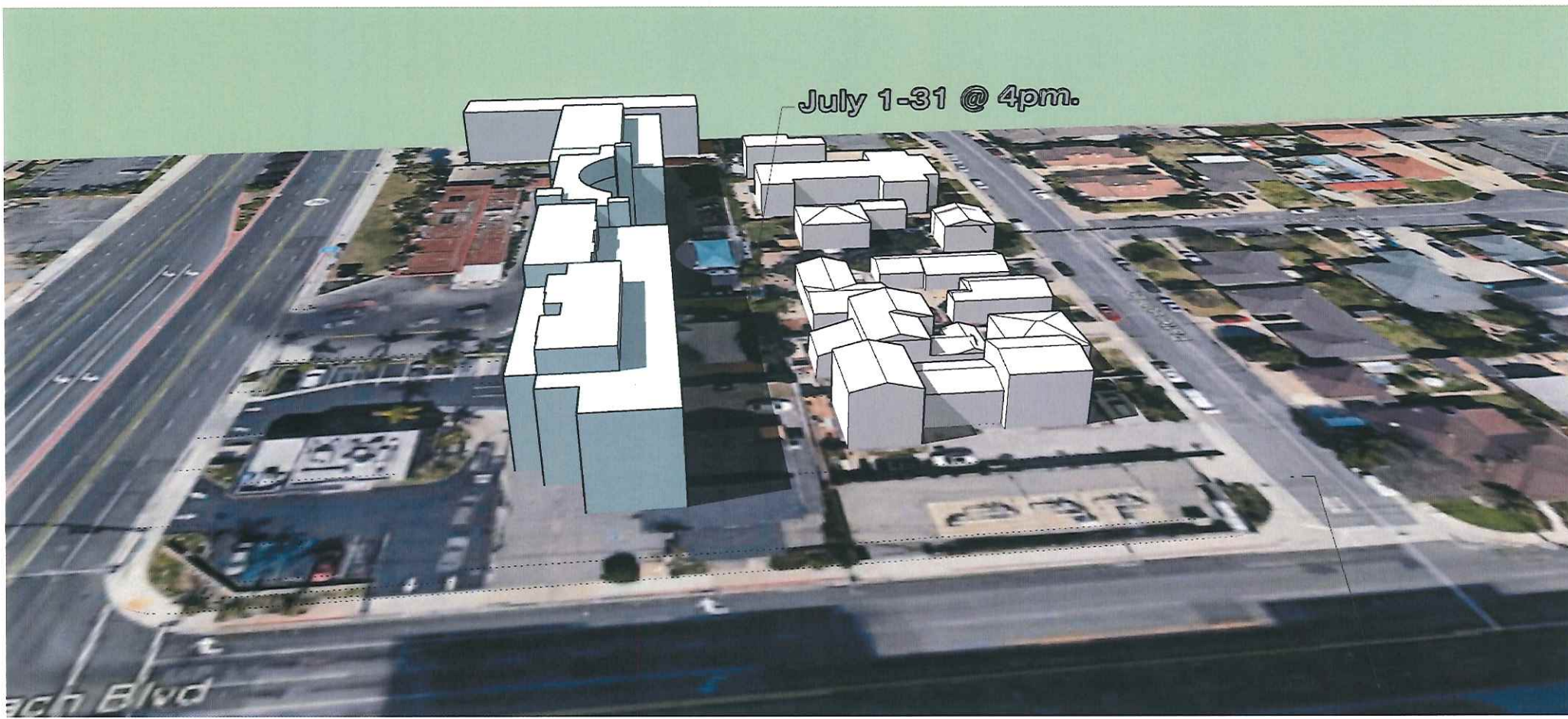




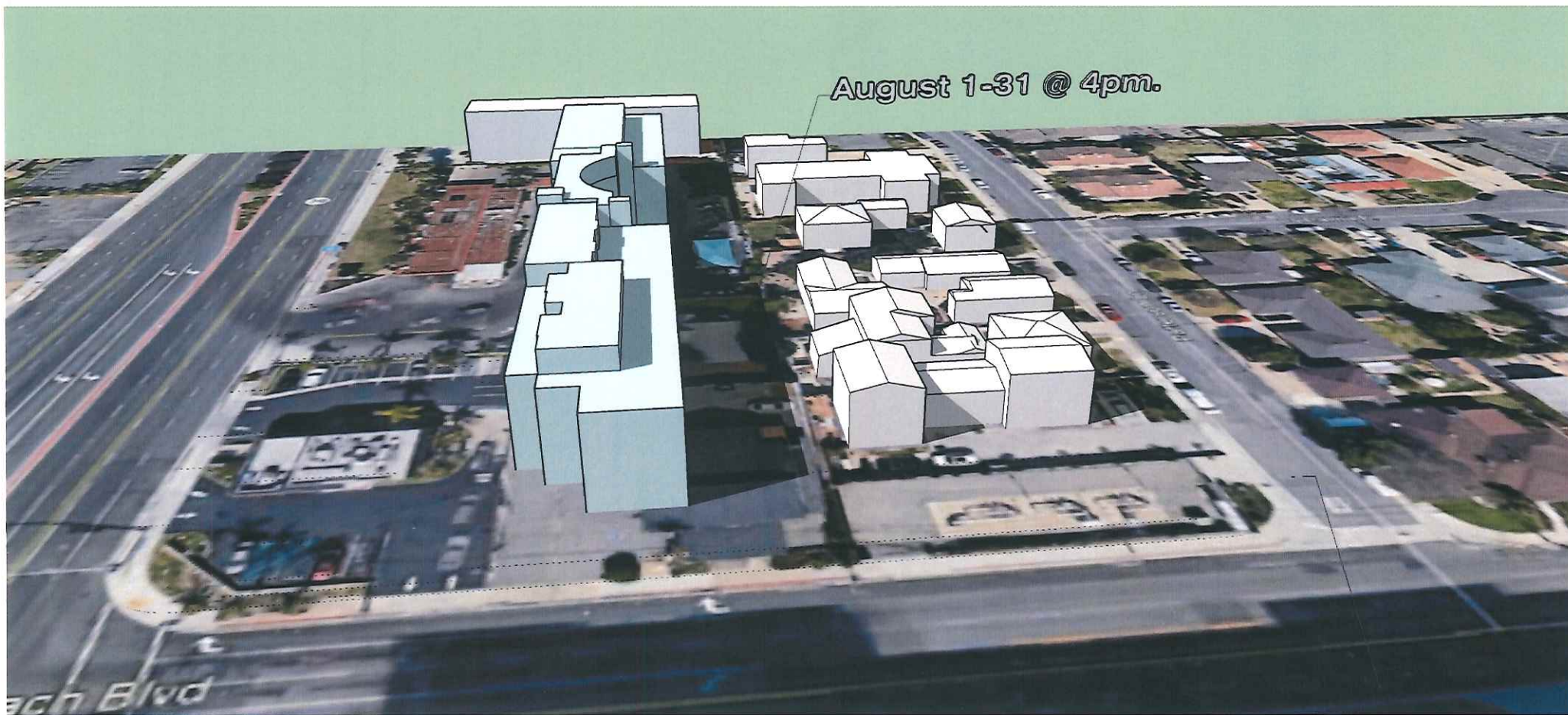




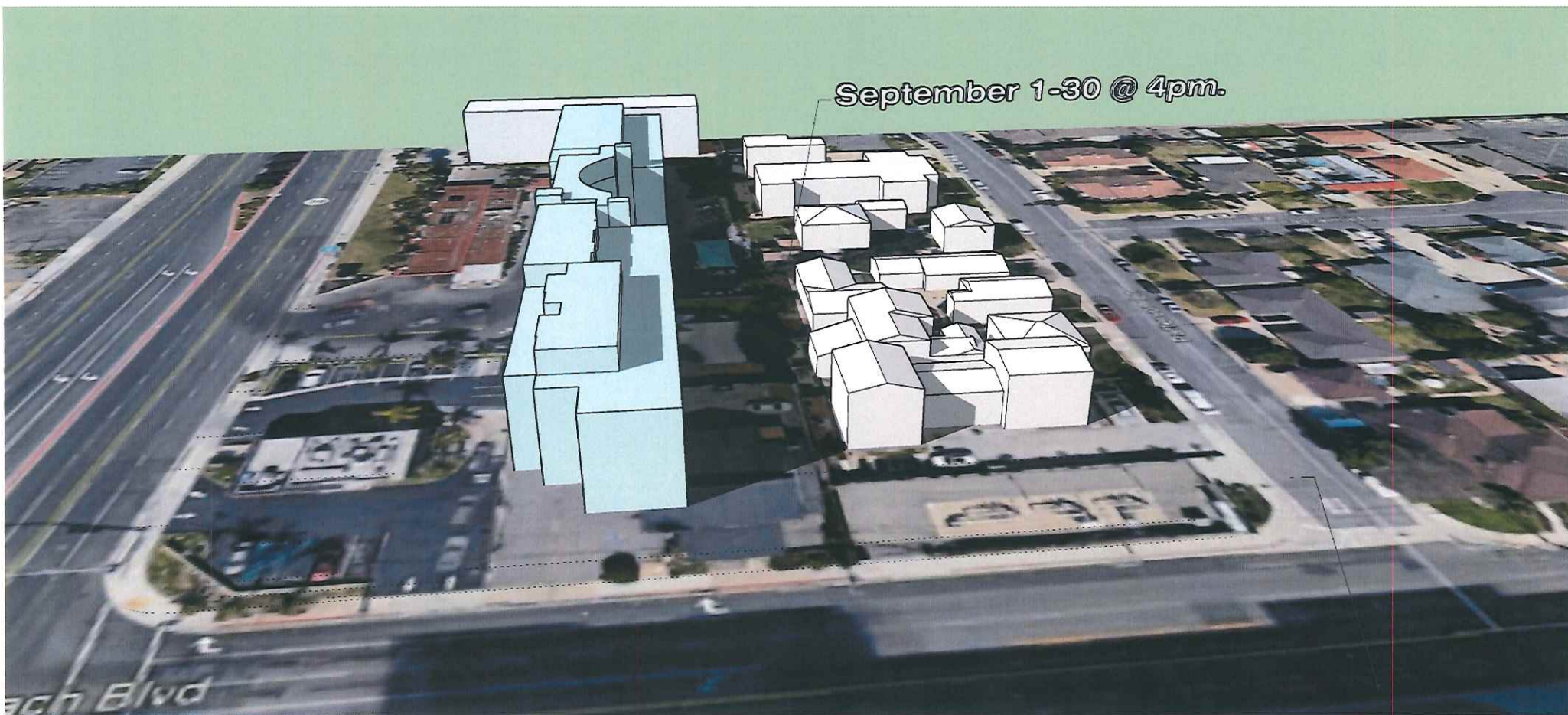




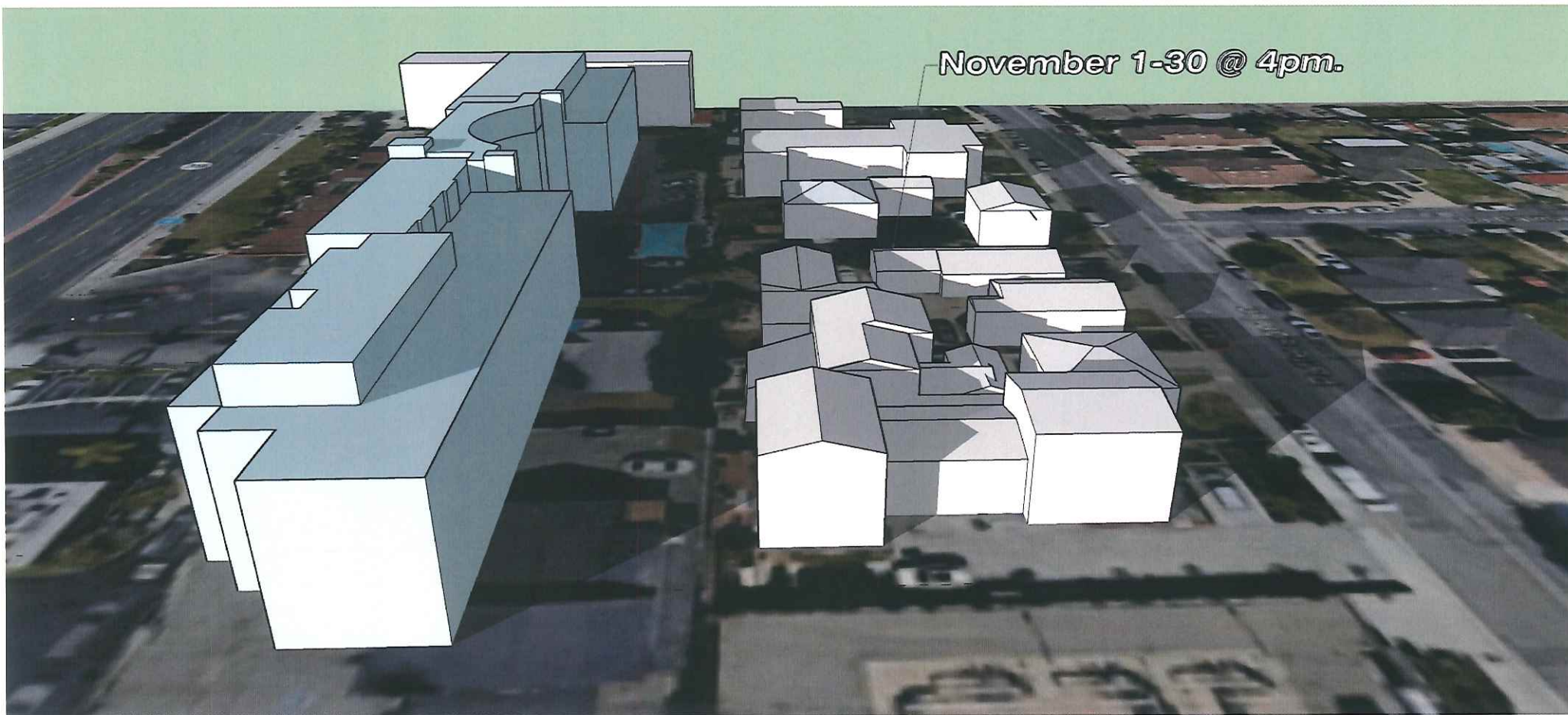
July 1-31 @ 4pm.



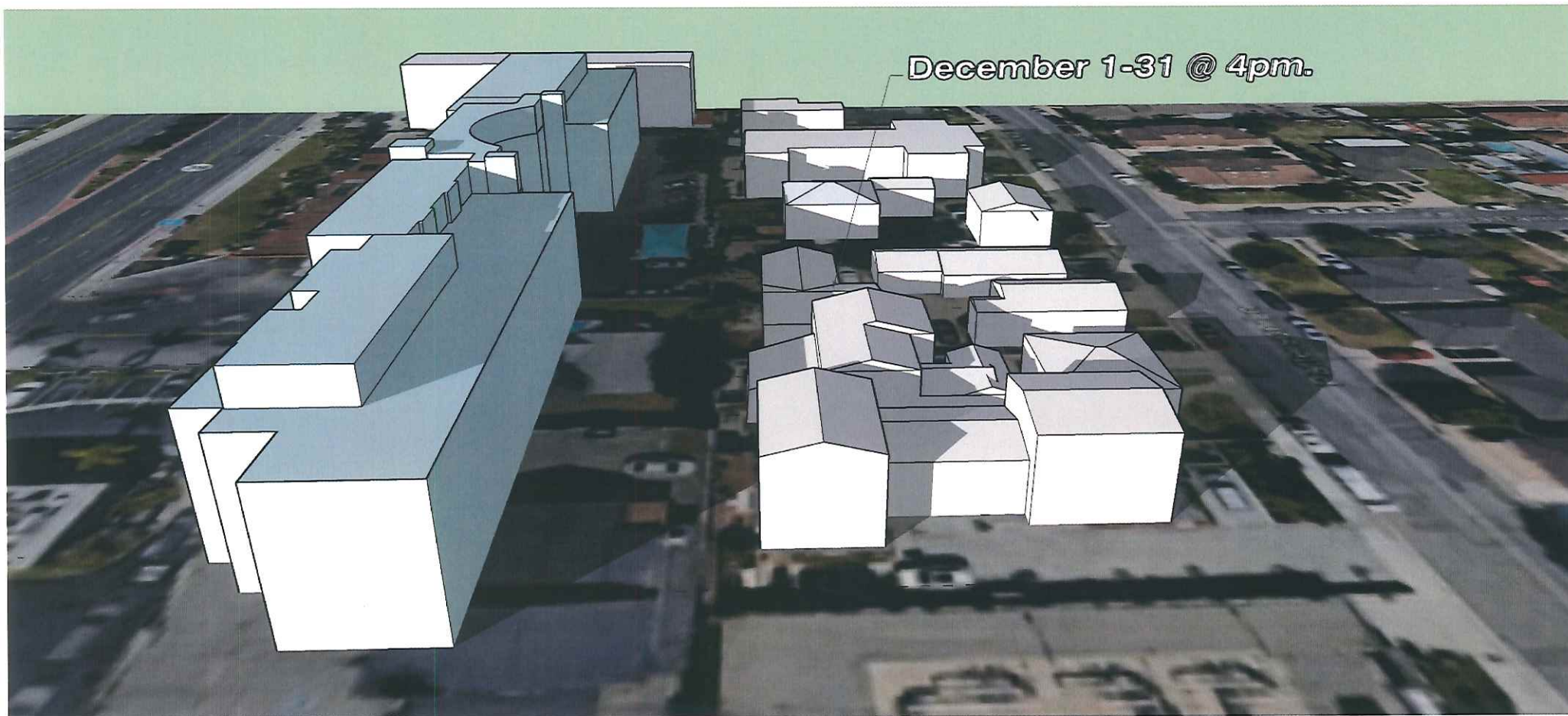
September 1-30 @ 4pm.







November 1-30 @ 4pm.



December 1-31 @ 4pm.

Phil Cleveland

Huntington Beach, California 92648

June 17, 2019

City of Huntington Beach
City Clerk Office
Attn: City Clerk
2000 Main Street
Huntington Beach, CA
Phone: (714) 536-5227
Fax: (714) 374-1557

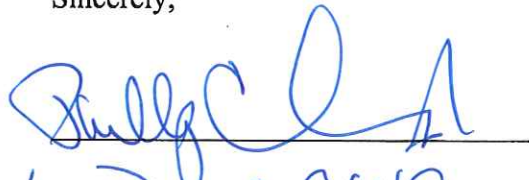
Re: Ellis Avenue Condominium Project (the "Project")
8041 Ellis Avenue
Conditional Use Permit No. 17-042

Dear City Council Members:

I am a resident of Huntington Beach, situated at the address noted above, and as you can see from my address, I live near the proposed Project. I have been shown the site plan for the Project, blueprints for this Project, a rendering of the Project and some of the considerations of the developer in developing this Project. I also have been informed that the Planning Commission denied the Project, citing various considerations, and I know that the developer is planning to appeal that denial to the City Council for further review. Considering this information, and knowing that you will be considering the Project on appeal, I want to let you know that I favor the Project. I believe that it will improve the neighborhood and hopefully the property values as well. I believe that the City Council can impose reasonable conditions as necessary to resolve any of the concerns of the Planning Commission. I hope that you take such action as will be necessary to approve the Project so that the developer can proceed.

Thank-you so much for giving me the opportunity to provide this information to you.

Sincerely,



(805) 437-9649

18371 Patterson Lane

Apt 1

Huntington Bch, CA 92648

18422 Goodwin LN
HB CA 92646

Huntington Beach, California 92648

June 18th, 2019

City of Huntington Beach
City Clerk Office
Attn: City Clerk
2000 Main Street
Huntington Beach, CA
Phone: (714) 536-5227
Fax: (714) 374-1557

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Sincerely,



SKYPHAM@KIENNAM. US

(714) 759-0980

8102 LA PALMA CH
HUNTINGTON BEACH
92648
(714) 675-4282

Huntington Beach, California 92648

June 17th, 2019

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City Clerk Office
Attn: City Clerk
2000 Main Street
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Sincerely,


Celesteino Perez

Huntington Beach, California 92648

June 18th 2019

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City Clerk Office
Attn: City Clerk
2000 Main Street
Huntington Beach, CA
Phone: (714) 536-5227
Fax: (714) 374-1557


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Sincerely,


Kamel Tadros (213) 494-7919
8252 Dancy Circle
H.B. CA 92646

8282 Dancy Cir

Huntington Beach, California 92648

June ^{18th}, 2019

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City Clerk Office
Attn: City Clerk
2000 Main Street
Huntington Beach, CA
Phone: (714) 536-5227
Fax: (714) 374-1557

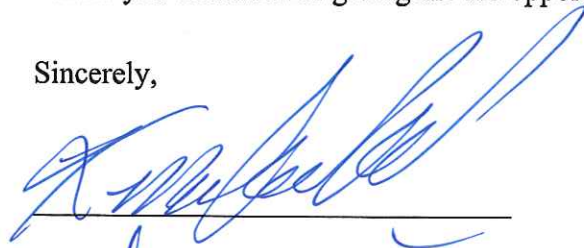
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Sincerely,


K. McREYNOLDS







Liquor

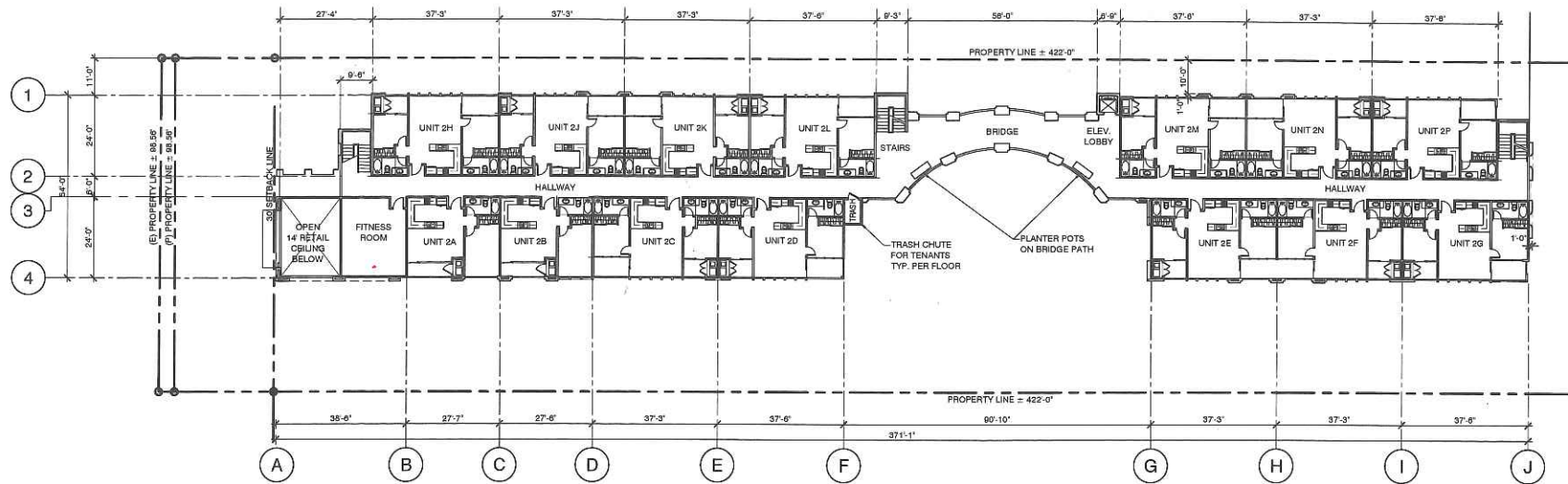
GROCERY

LIQUOR
BEER • WINE

OPEN



Remodeled
Car Wash
18400



2 ND FLOOR PLAN

LAND: 0.955 AC 41,210 S.F.
 OCCUPANCY: R-2/M
 CONSTRUCTION TYPE: III-A
 BUILDING: 66,511 S.F.

FLOOR AREA:
 STREET LEVEL 15,578 SF
 SECOND LEVEL 17,470 SF
 THIRD LEVEL 17,470 SF
 ROOF DECK LEVEL 6,810 SF
 TOTAL FLOOR AREA 57,328 SF

PARKING AREA:
 PARKING LEVEL 1 26,751 SF
 PARKING LEVEL 2 26,751 SF
 PARKING LEVEL 3 10,794 SF
 TOTAL PARKING AREA 64,296 SF

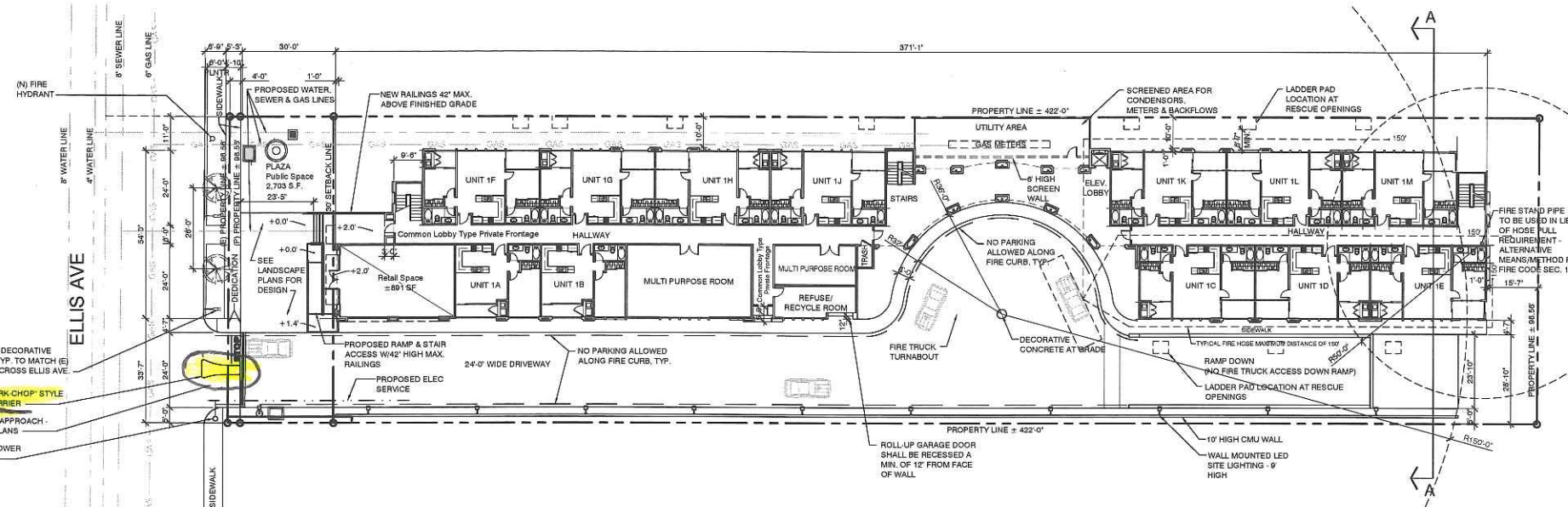
NUMBER OF UNITS
 STREET LEVEL 12 UNITS
 2ND TO 3RD LEVEL 29 UNITS
 ROOF DECK LEVEL 7 UNITS
 TOTAL UNITS 48 UNITS

* AHU = AFFORDABLE HOUSING UNIT. 4.8- UNITS
 REQUIRED. DEVELOPER WILL BE PROVIDING 5
 UNITS.

LEGAL DESCRIPTION
 TRACT 7157, IN BOOK 157, PAGE 34 OF ORANGE
 COUNTY ASSESSORS OFFICE.

OWNER
 THDT INVESTMENTS
 1307 W. 6TH ST. #202
 CORONA, CA 92682
 951.543.8665
 SALIMTHEONE@YAHOO.COM

APPLICANT
 MCG ARCHITECTURE/JEFF HERBST
 111 PACIFICA, #280
 IRVINE, CA 92618
 949.553.1117
 JHERBST@MCGARCHITECTURE.COM

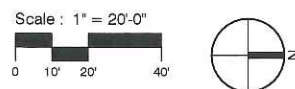


STREET LEVEL

ELLIS AVENUE CONDOS HUNTINGTON BEACH, CA

8041 ELLIS AVENUE
 HUNTINGTON BEACH, CA 92648

SITE PLAN & FIRST & SECOND FLOOR PLANS



DATE: 04/02/2019
 MCG JOB #: 17.359.01

DATE	REVISIONS
03/04/19	REVISED PER 12-26-18 COMMENTS
04/16/19	CITY COMMENTS REVISION
04/29/19	REVISED # OF AHU'S
05/01/19	REVISED AHU'S TO 5 TOTAL

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 NOTE: This information is conceptual in nature and is subject to
 adjustments pending further verification and Client, Tenant, and
 Governmental Agency approvals. No warranties or guarantees of
 any kind are given or intended by the Architect.

A-2

111 Pacifica, Suite 280
 Irvine, California 92618
 ☎ 949.553.1117 ☎ 949.474.7056
 mcgarchitecture.com



New
 Pork-Chop
 added to
 Plans.