

RESOLUTION NO. 2024-XX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF RIALTO, CALIFORNIA APPROVING CONDITIONAL DEVELOPMENT PERMIT NO. 2023-0026 ALLOWING THE ESTABLISHMENT OF VEHICULAR DRIVE-THRU SERVICE IN CONJUNCTION WITH A PROPOSED 3,915 SQUARE FOOT RESTAURANT BUILDING ON 1.18 ACRES OF LAND (PARCEL 1 OF TENTATIVE PARCEL MAP NO. 20602) LOCATED AT THE SOUTHEAST CORNER OF THE SR-210 FREEWAY AND PEPPER AVENUE WITHIN THE COMMUNITY COMMERCIAL (CC) LAND USE DISTRICT OF THE PEPPER AVENUE SPECIFIC PLAN.

WHEREAS, the applicant, Newcastle Rialto Associates, LLC, proposes to establish vehicular drive-thru service in conjunction with a proposed 3,915 square foot restaurant building (“Project”) on 1.18 acres of land (Parcel 1 of Tentative Parcel Map No. 20602) located at the southeast corner of the SR-210 Freeway and Pepper Avenue within the Community Commercial (CC) land use district of the Pepper Avenue Specific Plan (“Site”); and

WHEREAS, Pursuant to Table 5-2 (Permitted Uses) of the Pepper Avenue Specific Plan, the Project requires a Conditional Development Permit, and the applicant has agreed to apply for Conditional Development Permit No. 2023-0026 (“CDP No. 2023-0026”); and

WHEREAS, the Project will consist of a 3,915 square foot commercial building, a double-lane drive-thru with stacking for approximately eleven (11) vehicles, fifty (50) parking spaces, an abundant amount of landscaping, and full pedestrian and vehicle access; and

WHEREAS, in conjunction with the Project, the applicant has applied for Tentative Parcel Map No. 2023-0005, also referred to as Tentative Parcel Map No. 20602, (“TPM No. 20602”), to facilitate the subdivision of two (2) parcels of land (APNs: 0264-191-02 & -04) into three (3) new parcels of land – Parcel 1 (1.18 acres), Parcel 2 (1.46 acres), and Parcel 3 (11.65 acres); and

WHEREAS, in conjunction with the Project, the applicant has applied for Conditional Development Permit No. 2022-0015 to allow the development and operation of a 224,566 square foot industrial warehouse building on Parcel 3 of TPM No. 20602 (“CDP No. 2022-0015”); and

1 WHEREAS, in conjunction with the Project, the applicant has applied for Conditional
2 Development Permit No. 2023-0027 to allow the development and operation of a vehicle fuel station,
3 consisting of six (6) fuel dispensers and a 4,042 square foot overhead canopy on Parcel 2 of TPM No.
4 20602 (“CDP No. 2023-0027”); and

5 WHEREAS, in conjunction with the Project, the applicant has applied for Conditional
6 Development Permit No. 2023-0028 to allow the development and operation of a 3,700 square
7 foot convenience market building on Parcel 2 of TPM No. 20602 (“CDP No. 2023-0028”); and

8 WHEREAS, in conjunction with the Project, the applicant has applied for Conditional
9 Development Permit No. 2023-0029 to allow the development of a 1,458 square foot automated
10 car wash building on Parcel 2 of TPM No. 20602 (“CDP No. 2023-0029”); and

11 WHEREAS, in conjunction with the Project, the applicant has applied for Conditional
12 Development Permit No. 2023-0031 to allow the sale of beer, wine, and distilled spirits for off-
13 site consumption from a proposed 3,700 square foot convenience market on Parcel 2 of TPM No.
14 20602 (“CDP No. 2023-0031”); and

15 WHEREAS, in conjunction with the Project, the applicant has applied for Precise Plan of
16 Design No. 2022-0017 (“PPD No. 2022-0017”) to facilitate the development of a 224,566 square
17 foot industrial warehouse building, a 3,915 square foot restaurant building with drive-thru service,
18 and a vehicle fuel station comprised of six (6) fuel dispensers, a 4,042 square foot overhead
19 canopy, a 3,700 square foot convenience market building, a 1,458 square foot automated car wash
20 building, and associated paving, landscaping, fencing, lighting, and drainage improvements on
21 Parcel 1, Parcel 2, and Parcel 3 of TPM No. 20602; and

22 WHEREAS, on April 3, 2024, the Planning Commission of the City of Rialto conducted a
23 duly noticed public hearing, as required by law, on CDP No. 2023-0026, TPM No. 20602, CDP
24 No. 2022-0015, CDP No. 2023-0026, CDP No. 2023-0027, CDP No. 2023-0028, CDP No. 2023-
25 0029, CDP No. 2023-0031, and PPD No. 2022-0017, took testimony, at which time it received
26 input from staff, the city attorney, and the applicant; heard public testimony; discussed the
27 proposed CDP No. 2023-0026, TPM No. 20602, CDP No. 2022-0015, CDP No. 2023-0026, CDP
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No. 2023-0027, CDP No. 2023-0028, CDP No. 2023-0029, CDP No. 2023-0031, and PPD No. 2022-0017; and closed the public hearing; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Rialto as follows:

SECTION 1. The Planning Commission hereby specifically finds that all of the facts set forth in the recitals above of this Resolution are true and correct and incorporated herein.

SECTION 2. Based on substantial evidence presented to the Planning Commission during the public hearing conducted with regard to CDP No. 2023-0026, including written staff reports, verbal testimony, site plans, other documents, and the conditions of approval stated herein, the Planning Commission hereby determines that CDP No. 2023-0026 satisfies the requirements of Section 18.66.020 of the Rialto Municipal Code pertaining to the findings which must be made precedent to granting a conditional development permit. The findings are as follows:

1. The proposed use is deemed essential or desirable to provide a service or facility which will contribute to the convenience or general well-being of the neighborhood or community; and

This finding is supported by the following facts:

The Project is anticipated to be a benefit to the community creating a more diverse economic base for the community by providing an additional choice of food and beverages at a convenient location. Additionally, the Project will replace the blight of undeveloped property with desirable improvements that will aesthetically enhance the appearance of the community.

2. The proposed use will not be detrimental or injurious to health, safety, or general welfare of persons residing or working in the vicinity; and

This finding is supported by the following facts:

The development of restaurant building with drive-thru service on the Site is consistent with the underlying Community Commercial (CC) land use district of the Pepper Avenue Specific Plan, which conditionally permits the development and operation of restaurants with drive-thru service. To the north of the Site is the SR-210 Freeway, and to the east is approximately 11.65 acres of vacant land planned for the development of a 224,566 square foot industrial warehouse building. To the south is approximately 23.82 acres of vacant land entitled for the development of a 470,000 square foot industrial warehouse building, and to the west, across Pepper Avenue, is approximately 3.83 acres of vacant land. There

are no sensitive use adjacent to or across the street from the Site. The project is not expected to negatively impact any uses with the successful implementation of measures such as landscape buffering and aesthetic building enhancements.

3. The site for the proposed use is adequate in size, shape, topography, accessibility and other physical characteristics to accommodate the proposed use in a manner compatible with existing land uses; and

This finding is supported by the following facts:

The Site consists of 1.21 acres of vacant land that is fairly level and adjacent to one (1) public street. The Site will be accessible from a sixty-five (65) foot wide signalized shared driveway accessible through an access easement on Parcel 2 of TPM No. 20602. Upon completion of the Project, the Site will contain 50 parking spaces, which equals the amount of parking spaces required by Chapter 18.58 (Off-Street Parking) of the Rialto Municipal Code. In addition, the development will have a trash enclosure, lighting, and accessible pathways leading to the public right-of-way.

4. The site has adequate access to those utilities and other services required for the proposed use; and

This finding is supported by the following facts:

The Site has adequate access to all utilities and services required through main water, electric, sewer, and other utility lines that will be hooked up to the Site as part of the proposed Project.

5. The proposed use will be arranged, designed, constructed, and maintained so as it will not be injurious to property or improvements in the vicinity or otherwise be inharmonious with the General Plan and its objectives, or any zoning ordinances; and

This finding is supported by the following facts:

The Project is consistent with the underlying Community Commercial (CC) land use district of the Pepper Avenue Specific Plan. The Project will feature a high-quality building exterior designed in compliance with the City's Design Guidelines. Landscaping has been abundantly incorporated into the site. The landscape coverage for the Project is 30.9 percent, which greatly exceeds the minimum required amount of 10.0 percent. Landscape planters containing trees spaced every thirty (30) linear feet will be installed along the entire perimeter of the Site. Furthermore, the Project includes the installation of 50 parking spaces, which equals the amount of parking spaces required by Chapter 18.58 (Off-Street Parking) of the Rialto Municipal Code.

6. Any potential adverse effects upon the surrounding properties will be minimized to every extent practical and any remaining adverse effects shall be outweighed by the benefits conferred upon the community or neighborhood as a whole.

1 *This finding is supported by the following facts:*

2 The Project's effects will be minimized through the implementation of the Conditions of
3 Approval contained herein, and through the implementation of Conditions of Approval
4 imposed by the Planning Commission on the Precise Plan of Design, such as extensive
5 landscaping and enhanced architectural features. The Project will meet the development
6 criteria of the Community Commercial (CC) land use district and the design criteria of the
7 Pepper Avenue Specific Plan. The project is consistent with the Community Commercial
8 (CC) land use district and the planned commercial uses to the south of the Site. There are
9 no sensitive use adjacent to or across the street from the Site. The project is not expected
10 to negatively impact any uses with the successful implementation of measures such as
11 landscape buffering and aesthetic building enhancements. Therefore, any potential adverse
12 effects are outweighed by the benefits conferred upon the community and neighborhood as
13 a whole.

14 SECTION 3. An Addendum to the Pepper Avenue Specific Plan Amendment and Industrial
15 Development Project Subsequent Environmental Impact Report (Environmental Assessment Review
16 No. 2023-0048) has been prepared for the Project in accordance with the California Environmental
17 Quality Act (CEQA), and it has been determined that the proposed Project would result in no new
18 significant impacts that were not analyzed in the Pepper Avenue Specific Plan Amendment and
19 Industrial Development Project Subsequent Environmental Impact Report ("SEIR"), nor would the
20 proposed Project cause a substantial increase in the severity of any previously identified
21 environmental impacts. The potential impacts associated with proposed Project would either be the
22 same or less than those described in the SEIR. In addition, there are no substantial changes to the
23 circumstances under which the proposed Project would be undertaken that would result in new or
24 more severe environmental impacts than previously addressed in the SEIR, nor has any new
25 information regarding the potential for new or more severe significant environmental impacts been
26 identified. The Planning Commission hereby adopts the Addendum to the Pepper Avenue Specific
27 Plan Amendment and Industrial Development Project Subsequent Environmental Impact Report
28 (Environmental Assessment Review No. 2023-0048) for the Project.

29 SECTION 4. CDP No. 2023-0026 is granted to Newcastle Rialto Associates, LLC in
30 accordance with the plans and application on file with the Planning Division, subject to the following
31 conditions:

1. The applicant is granted CDP No. 2023-0026 allowing the establishment of vehicular drive-thru service in conjunction with a proposed 3,915 square foot restaurant building on 1.18 acres of land (Parcel 1 of TPM No. 20602) located at the southeast corner of the SR-210 Freeway and Pepper Avenue within the Community Commercial (CC) land use district of the Pepper Avenue Specific Plan, as shown on the plans attached as Exhibit A and as approved by the Planning Commission. If the Conditions of Approval specified herein are not satisfied or otherwise completed, the project shall be subject to revocation.
2. City inspectors shall have access to the site to reasonably inspect the site during normal working hours to assure compliance with these conditions and other codes.
3. The applicant shall indemnify, protect, defend, and hold harmless, the City of Rialto, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (collectively, the "City Parties"), from any and all claims, demands, law suits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively "Actions"), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, the any action of, or any permit or approval issued by, the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City), for or concerning the Project (collectively, the "Entitlements"), whether such Actions are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure Chapter 1085 or 1094.5, the California Public Records Act, or any other state, federal, or local statute, law, ordinance, rule, regulation, or any decision of a court of competent jurisdiction. This condition to indemnify, protect, defend, and hold the City harmless shall include, but not be limited to (i) damages, fees and/or costs awarded against the City, if any, and (ii) cost of suit, attorneys' fees and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by applicant, Property owner, or the City and/or other parties initiating or bringing such proceeding (collectively, subparts (i) and (ii) are the "Damages"). Notwithstanding anything to the contrary contained herein, the Applicant shall not be liable to the City Parties under this indemnity to the extent the Damages incurred by any of the City Parties in such Action(s) are a result of the City Parties' fraud, intentional misconduct or gross negligence in connection with issuing the Entitlements. The applicant shall execute an agreement to indemnify, protect, defend, and hold the City harmless as stated herein within five (5) days of approval of CDP No. 2023-0026.
4. In accordance with the provisions of Government Code Section 66020(d)(1), the imposition of fees, dedications, reservations, or exactions for this Project, if any, are subject to protest by the applicant at the time of approval or conditional approval of the Project or within 90 days after the date of the imposition of the fees, dedications, reservations, or exactions imposed on the Project.

5. The applicant, property owner, and/or the tenant utilizing the drive-thru use, shall ensure that vehicle stacking/queuing for the drive-thru lanes does not create circulation impacts off-site at all times. The applicant, property owner, and/or the tenant shall implement measures to address any impacts, should they occur, after discussion and mutual agreement with the Community Development Director.
6. The applicant shall install and maintain a trash receptacle on the driver-side of the exit of the drive-thru lane. The trash receptacle shall be installed prior to issuance of the Certificate of Occupancy.
7. The privileges granted by the Planning Commission pursuant to approval of this Conditional Development Permit are valid for one (1) year from the effective date of approval. If the applicant fails to commence the project within one year of said effective date, this conditional development permit shall be null and void and any privileges granted hereunder shall terminate automatically. If the applicant or his or her successor in interest commence the project within one year of the effective date of approval, the privileges granted hereunder will continue inured to the property as long as the property is used for the purpose for which the conditional development permit was granted, and such use remains compatible with adjacent property uses.
8. Approval of CDP No. 2023-0026 will not become effective until the applicant has signed a statement acknowledging awareness and acceptance of the required conditions of approval contained herein.
9. In the event, that any operation on the Site is found to be objectionable or incompatible with the character of the City and its environs due to excessive noise, excessive traffic, loitering, criminal activity or other undesirable characteristics including, but not strictly limited to, uses which are or have become offensive to neighboring property or the goals and objectives of the Community Commercial (CC) land use district of the Pepper Avenue Specific Plan and/or the City's General Plan, the applicant shall address the issues as quickly as reasonably possible after being notified by the City.
10. If the applicant fails to comply with any of the conditions of approval placed upon CDP No. 2023-0026, TPM No. 20602, or PPD No. 2022-0017, the Planning Commission may initiate proceedings to revoke the conditional development permit in accordance with the provisions of Sections 18.66.070 through 18.66.090, inclusive, of the Rialto Municipal Code. CDP No. 2023-0026 may be revoked, suspended or modified in accordance with Section 18.66.070 of the Zoning Ordinance at the discretion of the Planning Commission if:
 - a) The use for which such approval was granted has ceased to exist, been subsequently modified, or has been suspended for six (6) months or more;
 - b) Any of the express conditions or terms of such permit are violated;

c) The use for which such approval was granted becomes or is found to be objectionable or incompatible with the character of the City and its environs due to excessive noise, excessive traffic, loitering, criminal activity or other undesirable characteristics including, but not strictly limited to uses which are or have become offensive to neighboring property or the goals and objectives of the Community Commercial (CC) land use district, the Pepper Avenue Specific Plan, and the City's General Plan.

SECTION 5. The Chairman of the Planning Commission shall sign the passage and adoption of this resolution and thereupon the same shall take effect and be in force.

PASSED, APPROVED AND ADOPTED this 3rd day of April, 2024.

JERRY GUTIERREZ, CHAIR
CITY OF RIALTO PLANNING COMMISSION

1 STATE OF CALIFORNIA)
2 COUNTY OF SAN BERNARDINO) ss
3 CITY OF RIALTO)
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5 I, Kimberly Dame, Administrative Analyst of the City of Rialto, do hereby certify that the
6 foregoing Resolution No. ____ was duly passed and adopted at a regular meeting of the Planning
7 Commission of the City of Rialto held on the ____th day of ____, 2024.

8 Upon motion of Planning Commissioner_____, seconded by Planning Commissioner
9 ____, the foregoing Resolution No. ____ was duly passed and adopted.

10 Vote on the motion:

11 AYES:

12 NOES:

13 ABSENT:

14 IN WITNESS WHEREOF, I have hereunto set my hand and the Official Seal of the City of
15 Rialto this ____th day of ____, 2024.

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19 _____
20 KIMBERLY DAME, ADMINISTRATIVE ANALYST
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Exhibit “A”
Project Plans