



# City of Orange

## Legislation Details (With Text)

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**Title:** Design Review No. 4991-19, Nexx Burger, 2940 E. Chapman Avenue - Continued from January 6, 2021

A proposal to redevelop a former full-service restaurant site with a new 2,460 square foot drive-through fast food restaurant, 610 square foot outdoor dining area, and related site improvements.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Staff Report, 2. Attachment 1 Vicinity Map, 3. Attachment 2 January 6, 2021 DRC Meeting Minutes, 4. Attachment 3 Applicant's Responses to Comments from the January 6, 2021 DRC Meeting, 5. Attachment 4 Architectural and Civil Plans, Date Stamped March 18, 2021; Colors and Materials Board Available at Planning Counter, 6. Attachment 5 Sign Plans, Date Stamped March 18, 2021

Date	Ver.	Action By	Action	Result
4/7/2021	1	Design Review Committee	Approved	Pass

**TO:** Chair and Members of the Design Review Committee

**THRU:** Anna Pehoushek, Assistant Community Development Director

**FROM:** Monique Schwartz, Associate Planner

### 1. SUBJECT

Design Review No. 4991-19, Nexx Burger, 2940 E. Chapman Avenue

### 2. SUMMARY

Recommendation of approval to the Planning Commission.

The applicant proposes to redevelop a former full-service restaurant site with a new 2,460 square foot drive-through fast food restaurant, 610 square foot outdoor dining area, and related site improvements.

### 3. BACKGROUND INFORMATION

Applicant/Owner: Spiros Politis

Property Location: 2940 E. Chapman Avenue

General Plan Designation: General Commercial Max. 1.0 FAR (G-C)

Zoning Classification: Limited Business (C-1)

Existing Development: The project site is presently vacant due to demolition of the original restaurant building following a fire in 2020. The site was previously developed with a 2,948 square foot, full-service restaurant (Johnny Reb's), attached 583 square foot outdoor patio area, surface parking, pole sign, and related site improvements. A dense row of mature Ficus trees was also removed along the west property line.

Associated Applications: Conditional Use Permit No. 3103-19, and Minor Site Plan Review No. 0991-19

Previous DRC Project Review: January 6, 2021

## **4. PROJECT DESCRIPTION**

The project proposes replacement of a former full-service restaurant building with a new 2,460 square foot drive-through fast food restaurant building, 610 square foot outdoor dining area, trash enclosure, surface parking, landscaping, and related site improvements. Access to the single drive-through lane begins at the northeast driveway entrance where the cars form a queue around the perimeter of the building leading to the "point of sale" service window adjacent to the southeast corner of the building. The restaurant facility has been provided with eighteen parking spaces and drive-through queuing capacity for fourteen vehicles.

The interior of the restaurant will be configured to contain 1,040 square feet of dining area with 58 seats, kitchen, food preparation and storage areas, employee room, office, and two restrooms. The 610 square foot outdoor dining area provides seating for 36 people.

### Architecture

The rectangular one-story building has a maximum height of nineteen feet-six inches. The building design incorporates a contemporary architectural style with features including, varied flat roof lines, alternating wall planes, and cantilevered canopies. Exterior materials and colors also contribute to the contemporary style including, James Hardie horizontal siding, brick veneer, painted smooth textured plaster, horizontal aluminum details, and aluminum store front windows. The overall color scheme of the building will incorporate tones of grey, white, and red.

A detached trash enclosure, located adjacent to the southwest corner of the site will be constructed of concrete masonry block with a smooth plaster finish, flat open metal roof trellis, and a solid corrugated metal door. The materials and colors are intended to coordinate with the design of the restaurant building.

### Landscaping

Sheets L-1, L-2, and LI-0.01 through LI-6.01 of the submittal plans provides conceptual landscape/irrigation plans. Mature Ficus trees along the west property line were removed when the applicant acquired the property. The project proposes water efficient landscaping along the property frontage, site interior, and perimeter boundaries to include Columbia London Plane, Long Leafed Yellow Wood Column, Brisbane Box, Mediterranean Fan, Pigmy Date Multi-Trunk trees, and groupings of shrubs and groundcover including Blue Glow Agave, Coral Aloe, Blue Fescue, Lindheimer's Muhly, and New Gold Lantana. The total landscaped area proposed will be 5,251 square feet (23% of the site). Pedestrian walkways and the outdoor dining area will be provided with decorative brick paving.

Throughout the course of preliminary project review, the City received project inquiries from the adjacent resident who resides at 126 S. Kathleen Lane (along the east property line) relating to privacy and project related noise. It is important to note that the applicant is proposing to replace existing fencing along the east property line with a six-foot tall concrete masonry block wall and a row

of 24-inch box size Long Leafed Yellow Wood Column trees to provide additional screening for the residential properties to the east.

#### Fencing

Existing perimeter fencing/block walls will be removed and replaced with new 30 inch to six feet tall concrete masonry block walls with a painted plaster finish. In addition, new 42 inch tall bright aluminum metal fencing is proposed around three sides of the outdoor dining area.

#### Lighting

The restaurant building proposes LED gooseneck wall mounted fixtures in a red finish on all building elevations with the light projecting in a downward direction. In addition, dimmable LED border tube lighting is proposed as a horizontal accent detail on the building rooflines and canopies. The project interior will include four, 20 foot tall pole mounted LED light fixtures located in landscape planters along the project perimeters and adjacent to the proposed speaker/audible order device that will provide nighttime illumination to the parking lot and drive-through lane. In-ground fixtures for tree up-lighting will also be provided. All project lighting will be installed and directed so as to prevent off site light spillage beyond the exterior boundaries of the property.

#### Signage

The applicant has included a sign concept that meets Code requirements and is generally compatible with the contemporary building design through the use of a similar color palette. The existing 25-foot tall, double-faced pole sign, located within a landscape planter along the property frontage will remain in place, and be refaced with an illuminated sign with the Nexx Burger brand logo and words "drive thru". Building signage will include illuminated Nexx Burger brand logos on the north, east, and west elevations, as well as typical drive-through restaurant illuminated digital pre-menu and menu boards, drive-through lane signage, and directional signage.

#### Access and Circulation

The project will remove an existing one-way entrance driveway at the northwest corner of the site in order to accommodate a new one-way drive approach, project frontage landscape planters, and entrance to the new drive-through lane. The existing one-way egress driveway at the northeast corner of the site will remain. Site circulation is provided by a one-way drive aisle and single drive-through lane that wrap around the perimeter of the restaurant building.

#### Parking

The City is currently in the process of amending the existing parking code, including the required parking for restaurants with drive-through lanes. The applicant has decided to pursue the current site layout and parking in anticipation of approval of the future adopted parking code requirements. The current code requires a total of 31 parking spaces, while the future code would require a total of eighteen parking spaces for the project. The reduced amount of parking on the site plan enables the site to accommodate a high quality landscape program for the project and its interface with surrounding uses.

Overall, the project's coordinated architectural style, use of matching colors and materials for the restaurant building and trash enclosure, signage, as well as landscape and streetscape design as proposed presents an overall integrated design theme.

## **5. EXISTING SITE**

The .53-acre project site is located on the south side of E. Chapman Avenue, between Kathleen Lane to the north and Malena Drive to the south. The site is currently vacant and improved with a pole sign, trash enclosure walls, and minimal landscaping. The site is currently accessed via a one-way

driveway at the northwest corner of the site and one-way egress driveway at the northeast corner of the site.

## **6. EXISTING AREA CONTEXT**

Surrounding development to the north of the project site is a gas station and convenience store (ARCO). To the south is a two-story single family residence. To the east is a one-story multi-tenant commercial building (Kathleen Building) and one-story single family residences. To the west is a two-story restaurant (The Hobbit) and associated surface parking lot. The architecture of the surrounding development is eclectic and typical of commercial development dating from the 1960's through the 1980's.

## **7. ANALYSIS AND STATEMENT OF THE ISSUES**

On January 6, 2021, the Design Review Committee (DRC) conducted a review of the proposed project. At that time, the Committee provided comments to the applicant regarding the following:

- The easement
- Trash enclosure
- Parking lot layout
- The grading and landscape plans in relation to water quality features
- Wall height
- Lighting
- Signage

The applicant has subsequently revised their plans incorporating some recommendations by the Committee. The applicant has provided written response to comments, included as Attachment 3 to this report. Updates and clarification regarding the proposed project include the following:

### Easements

The applicant's Preliminary Title Report indicates that there are easements located on the property for existing roads, reservation for road and irrigation ditches over the northerly 30 feet of the parcel (already developed as Chapman Avenue), and easements for pipe lines in favor of the S.A.V.I. company, which were granted to the City upon the demise of the company (not in use and may be removed or crushed in place). The applicant and the Public Works Department, Right of Way Division have confirmed that all existing easements do not conflict with the proposed development of the property.

### Trash Enclosure

Concerns were raised by the DRC pertaining to the proximity of the trash enclosure to the adjacent two-story residence to the south. The applicant has subsequently revised the orientation of the enclosure from a north-south to an east-west direction, minimizing the impacts to the adjacent residence to the south by increasing the rear yard setback from two to eight feet. The enclosure was also enlarged to include trash and recycle bins. In order to address Police security concerns, defensible landscaping is proposed within the setback areas along the south and west property lines and the roof of the enclosure will incorporate an open metal roof design to help deter unwanted activities.

### Parking Lot Layout

The proposed parking lot layout is the same as presented to the DRC at the prior meeting, with the exception of the trash enclosure orientation. There was a concern regarding the location of the bicycle and motorcycle parking area adjacent to the northwest corner of the property; however, the applicant has indicated that the existing location provides adequate visibility from Chapman Avenue

and the restaurant building to help maintain safety for the drivers.

#### Grading and Landscape Plans in Relation to Water Quality Features

The DRC raised concerns regarding the inconsistency between the Grading and Landscape Plans relating to site drainage and water quality features. The applicant has indicated that the project proposes site drainage at the southwest corner of the site to an existing storm drain conveyance system to south Craig Drive and that there will be an opening in the new six-foot tall masonry wall to allow for the connection.

The Conceptual Grading Plan (Sheet 1 of 1) and Conceptual Landscape/Irrigation Plans (Sheets L-1, L-2, and LI-0.01 through LI-6.01) have been revised and coordinated to include the project's water conveyance system. All water on the site, including roof water will be pumped from the catch basin at the northeast corner of the trash enclosure to the bio filtration planter along the west property line, as illustrated in the Storm Water Drainage and Treatment Schematic diagram on Sheet 1 of 1 of the Conceptual Grading Plan. The applicant has included modified plant material along the south property line adjacent to the catch basin, and along the west property line, in response to the relocation of the trash enclosure and bio filtration planter system. A Queen Palm tree and Big Red Kangaroo Paw shrubs located around the trash enclosure have been replaced with Lindheimer's Muhly shrubs, Yellow Trumpet vines, and Long Leafed Yellow Wood Column trees. In addition, Brisbane Box trees and Red Yucca shrubs along the west property line were replaced with Columbia London Plane trees and Lindheimer's Muly shrubs to better fit with the bio filtration planter system. The applicant's civil engineer and landscape architect confirmed that the revised planting material will not conflict with the four-inch perforated PVC pipe located approximately four-feet below the surface along the west property line. The proposed irrigation piping serving the Columbia London Plane trees will be installed twelve inches below the surface and the drip system will be surface mounted. In addition, the applicant's civil engineer has confirmed that the proposed bio filtration planter area with underdrain meets the Orange County Technical Guidance Document guidelines and has enough surface area available to achieve treatment, and that the Best Business Practice (BMP) works as originally designed regardless of the orientation of the trash enclosure.

#### Landscape and Irrigation

The DRC expressed concerns regarding the viability of the proposed "fusion-style" planting mix of cactus and palm plant material. The applicant has revised the Landscape and Irrigation Plans (Sheets L-1, L-2, and LI-0.01 through LI-6.01) by replacing all Queen Palms with Brisbane Box and Mediterranean Fan Palm trees, Red Yucca shrubs with Lindheimer's Muhly shrubs, and Brisbane Box trees with Columbia London Plane trees and adjusting the irrigation accordingly.

#### Wall Height

Concerns were raised regarding site visibility along Chapman Avenue and the 42-inch high walls proposed within the front yard setback along the east and west property lines. The applicant has reduced the wall height to 30-inches to allow for increased visibility from Chapman Avenue.

#### Lighting

Concerns were raised regarding visibility to adjacent residential properties of the proposed LED strip lighting along the raised roofline above the east drive-through pick-up window and south elevation. The applicant has resolved this issue by removing the strip lighting along both rooflines as illustrated on Sheets 3 and 4 of the submittal Sign Plans. In addition, in-ground lighting has been adjusted to light the underside of proposed trees rather than the underside of shrubs as illustrated on Sheet L-3.

#### Signage

There was a conflict with the location of four loading zone pole signs and proposed trees within the

bio filtration planter along the west property line. In addition, the directional signs at the east and west driveways appeared misleading because of the bidirectional arrows within the burger logo. The applicant has since revised the Site Plan (Sheet A-0.0) by eliminating the pole signs and including signage painted on the pavement of four parking stalls, and revised directional signs “F” and “J” to include arrows and a reduced burger logo, as shown on Sheets 2 and 19 of the submittal Sign Plans.

## **8. ADVISORY BOARD RECOMMENDATION**

The Streamlined Multidisciplinary Accelerated Review Team (SMART) conducted reviews of the project on October 23, 2019, April 29, 2020, and August 19, 2020. On November 18, 2020, SMART recommended that the project proceed to the Design Review Committee.

The DRC conducted a review of the project on January 6, 2021 and recommended a continuance by a 4-0-1 vote.

## **9. PUBLIC NOTICE**

No Public Notice was required for Design Review of the project.

## **10. ENVIRONMENTAL REVIEW**

The proposed project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15303 (Class 3 - New Construction or Conversion of Small Structures) because the project consists of the construction of a new, small (<10,000 square foot in urbanized area) structure zoned for such use, not involving the significant use of hazardous substances, where all necessary public services are available, and where the area is not environmentally sensitive. There is no environmental public review or notice required for a categorical exemption.

## **11. STAFF RECOMMENDATION AND REQUIRED FINDINGS**

The courts define a “Finding” as a conclusion which describes the method of analysis decision makers utilize to make the final decision. A decision making body “makes a Finding,” or draws a conclusion, through identifying evidence in the record (i.e., testimony, reports, environmental documents, etc.) and should not contain unsupported statements. The statements which support the Findings bridge the gap between the raw data and the ultimate decision, thereby showing the rational decision making process that took place. The “Findings” are, in essence, the ultimate conclusions which must be reached in order to approve (or recommend approval of) a project. The same holds true if denying a project; the decision making body must detail why it cannot make the Findings.

Findings for DRC applications come from three sources:

- The Orange Municipal Code (OMC)
- The Infill Residential Design Guidelines
- The Historic Preservation Design Standards for Old Towne (commonly referred to the Old Towne Design Standards or OTDS)

The Findings are applied as appropriate to each project. Based on the following Findings and statements in support of such Findings, staff recommends the DRC approve the project with recommended conditions.

- The project design upholds community aesthetics through the use of an internally consistent, integrated design theme and is consistent with all adopted specific plans, applicable design standards, and their required findings (OMC 17.10.07.F.3).

The new drive-through fast food restaurant project and landscaping as proposed, will generally provide positive improvements to the vacant, fire damaged, and degraded site conditions. The

exterior design, including colors and materials, provides an internally consistent and integrated design theme that upholds community aesthetics. While the project provides a contemporary aesthetic to an area that is predominately comprised of commercial buildings dating from the 1960's through the 1980's, the proposed design has incorporated a one-story scale along the street frontage that takes into consideration pedestrians and adjacent commercial properties. The proposed groupings of landscaping, including trees, shrubs and accent plants, will complement the project design and integrate well with landscaping along the East Chapman Avenue corridor. The new restaurant project will not only provide an updated feel along East Chapman Avenue, it will also replace an aging and outdated restaurant facility with one that will better serve the community.

## **12. CONDITIONS**

The approval of this project is subject to the following conditions:

1. All construction shall conform in substance and be maintained in general conformance with plans and exhibits labeled as Attachment 4 in the staff report (date stamped received March 18, 2021), including modifications required by the conditions of approval, and as recommended for approval by the Design Review Committee.
2. Except as otherwise provided herein, this project is approved as a precise plan. After any application has been approved, if changes are proposed regarding the location or alteration of any use or structure, a changed plan may be submitted to the Community Development Director for approval. If the Community Development Director determines that the proposed change complies with the provisions and the spirit and intent of the approval action, and that the action would have been the same for the changed plan as for the approved plot plan, the Community Development Director may approve the changed plan administratively.
3. Subsequent modifications to the approved architecture and color scheme shall be submitted for review and approval to the Community Development Director or designee. Should the modifications be considered substantial, the modifications shall be reviewed by the Design Review Committee.
4. The applicant agrees to indemnify, hold harmless, and defend the City, its officers, agents and employees from any and all liability or claims that may be brought against the City arising out of its approval of this permit, save and except that caused by the City's active negligence. The City shall promptly notify the applicant of any such claim, action, or proceedings and shall cooperate fully in the defense.
5. The applicant shall comply with all federal, state, and local laws, including all City regulations. Violation of any of those laws in connection with the use will be cause for revocation of this permit.
6. Building permits shall be obtained for all future construction work, as required by the City of Orange, Community Development Department's Building Division. Failure to obtain the required building permits will be cause for revocation of this permit.
7. All signage shall comply with Chapter 17.36 Sign Regulations of the Orange Municipal Code.
8. If not utilized, project approval expires twenty-four months from the approval date. Extensions of time may be granted, if requested in writing in accordance with OMC Section 17.08.060. The Planning entitlements expire unless Building Permits are pulled within two years of the original approval.

9. In conjunction with construction, all activity will be limited to the hours between 7 a.m. and 8 p.m. Monday through Saturday. No construction activity will be permitted on Sundays and Federal holidays.
10. These conditions shall be reprinted on the second page of the construction documents when submitted to the Building Division for the plan check process.
11. Any graffiti shall be removed within 72 hours from the time the City of Orange Notice of Violation is received by the applicant/property owner.
12. Any new lighting on the premise shall be installed in such a way to direct, control, and screen the lighting to prevent off site light spillage onto adjoining properties and shall not be a nuisance to any point beyond the exterior boundaries of the property.
13. Prior to issuance of Certificate of Occupancy, the applicant shall schedule a light reading inspection with the Crime Prevention Bureau. The lighting shall be tested and confirmed to determine if the lighting meets or exceeds the exterior boundary standards. The applicant shall use shielding so as to ensure that the light standards meet the requirements of OMC Section 17.12.030 for areas beyond the property's exterior boundaries; light spillage or pollution to surrounding residential areas shall not exceed a maintained minimum of 0.5 foot-candle.
14. Prior to building permit issuance, the applicant shall demonstrate to the satisfaction of the Community Development Director that all mechanical and air conditioning equipment shall be shielded and screened from view from adjacent streets and properties. The screening shall be integrated architecturally with the building and painted to match the walls of the building.
15. Plans submitted for Building Plan Check shall comply with the California Fire Code as amended by the City and as frequently amended and in effect at the time of application for Building Permit.
16. Prior to building permit issuance, final landscaping plans for the project shall be designed to comply with the City's Water Efficient Landscape Guidelines as described in Section IX et al of the City of Orange Landscape Standards and Specifications.
17. Prior to building permit issuance, the applicant shall prepare a final landscaping and irrigation plan consistent with the grading plans, site plans, and the conceptual landscaping plan as proposed for the project for the review and approval of the Director of Community Development and Community Services Director.

### **13. ATTACHMENTS**

- Attachment 1 Vicinity Map
- Attachment 2 January 6, 2021 DRC Meeting Minutes
- Attachment 3 Applicant's Responses to Comments from the January 6, 2021 DRC Meeting
- Attachment 4 Architectural and Civil Plans, Date Stamped March 18, 2021; Colors and Materials Board Available at Planning Counter
- Attachment 5 Sign Plans, Date Stamped March 18, 2021



