

**CITY OF CARMEL-BY-THE-SEA
PLANNING COMMISSION**

PLANNING COMMISSION RESOLUTION NO. 2021-60-PC

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARMEL-BY-THE-SEA APPROVING A DESIGN REVIEW AND USE PERMIT FOR A REMODEL AND STRUCTURAL SEISMIC RETROFIT OF AN HISTORIC STRUCTURE, KNOWN AS THE CHINA ARTS CENTER, WHICH INCLUDES NEW ACOUSTIC INFRASTRUCTURE, AS WELL AS NEW ELEVATOR AND STAIRWAY ADDITIONS TO THE ROOF AND A NEW SKYLIGHT AND EXTERIOR WINDOWS FOR A NEW PRIVATE MUSIC RECORDING STUDIO LOCATED AT DOLORES STREET, 2 NORTHWEST OF 7TH AVENUE IN THE CENTRAL COMMERCIAL (CC) ZONING DISTRICT AND DOWNTOWN CONSERVATION DISTRICT (CD) OVERLAY. APN: 010-147-006

WHEREAS, Robert Carver (“Applicant”) on behalf of property owner, Dolores & 7th, LLC, submitted an application requesting approval of a Design Review application “DR 21-114” and Use Permit application “UP 21-226” described herein (“Application”); and

WHEREAS, the project is located on Dolores 2 Northwest 7th Avenue (Block: 75, Lot: 19) in the Central Commercial (CC) Zoning District and Downtown Conservation District (CD) Overlay; and

WHEREAS, the Applicant is requesting approval of a Design Review Application and a Conditional Use Permit for a seismic retrofit and remodel of the building into a multi-story, private music recording studio; and

WHEREAS, a Coastal Development Permit is not required pursuant to CMC 17.52.100.C, Developments Excluded from Coastal Permit Requirements –Other Improvements; and

WHEREAS, the California Environmental Quality Act (California Public Resources Code §21000, et seq., “CEQA”), together with State Guidelines (14 California Code Regulations §15000, et seq., the “CEQA Guidelines”) and City Environmental Regulations (CMC 17.60) require that certain projects be reviewed for environmental impacts and that environmental documents be prepared; and

WHEREAS, pursuant to CEQA regulations, the Application is categorically exempt under Section 15303 (Class 3), New Construction or Conversion of Small Structures and no exceptions to the exemption exist pursuant to section 15300.2 of the CEQA Guidelines; and

WHEREAS, a notice of the public hearing was published on October 1, 2021 in compliance with State law (California Government Code 65091), as well as hand-delivery of the public notice by the Applicant to each occupant within a 100-foot radius of the project site indicating the date and time of the public hearing; and

WHEREAS, on August 16, 2021, the Historic Resources Board held a public hearing to receive public testimony regarding the Application, including without limitation, the information provided to the Planning Commission by City staff and public testimony on the Design Review application and adopted Resolution 2021-007-HRB issuing a Determination of Consistency with the Secretary of the Interior's Standards; and

WHEREAS, on October 13, 2021, the Planning Commission held a public hearing to receive public testimony regarding the Application, including without limitation, the information provided to the Planning Commission by City staff and public testimony on the Design Review Application and Use Permit application; and

WHEREAS, on October 13, 2021, the Planning Commission continued the application with direction the applicant to explore relocating the sound lock to the interior of the existing structure; and

WHEREAS, on November 10, 2021, the Planning Commission held a public hearing to receive public testimony regarding the Application, including without limitation, the information provided to the Planning Commission by City staff and public testimony on the Design Review Application and Use Permit application; and

WHEREAS, this Resolution and its findings are made based upon the evidence presented to the Commission at the public hearing including, without limitation, the staff report and attachments submitted by the Community Planning and Building Department; and

WHEREAS, the Planning Commission did hear and consider all said reports and attachments, recommendations and testimony hereinabove set forth and used their independent judgment to evaluate the project; and

WHEREAS, Pursuant to CMC 17.14.220.A, Façade Remodels, *when plans for remodels are reviewed for approval, the reviewing body must find the following to be true:*

1. *The proposed modification contributes to, restores or achieves consistency of architectural character and scale when considering the building or courtyard as a whole.*
2. *The proposed modification does not incorporate materials, patterns or other design elements that would:*
 - a. *Call attention to the building.*
 - b. *Create a form of advertising or sign through architectural treatment.*
 - c. *Would render the storefront unusable by a different business occupant without further remodeling.*
 - d. *Create a standardized identification with a particular business use.*

WHEREAS, the facts set forth in the recitals are true and correct and are incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission of the City of Carmel-By-The-Sea does hereby make the following findings and determinations regarding the Use Permit:

FINDINGS REQUIRED FOR USE PERMIT APPROVAL (CMC 17.64.010 & 17.64.020)		
For each of the required Use Permit findings listed below, staff has indicated whether the submitted plans support the adoption of the findings. For all findings checked "no" the staff report discusses the issues to facilitate the Planning Commission decision-making. Findings checked "yes" may or may not be discussed in the report depending on the issues.		
Municipal Code Finding	YES	NO
1. That the proposed use will not be in conflict with the City's General Plan.	✓	
2. That the proposed use will comply with all zoning standards applicable to the use and zoning district.	✓	
3. That granting the use permit will not set a precedent for the approval of similar uses whose incremental effect will be detrimental to the City or will be in conflict with the General Plan.	✓	
4. That the proposed use will not make excessive demands on the provision of public services, including water supply, sewer capacity, energy supply, communication facilities, police protection, and fire protection.	✓	
5. That the proposed use will not be injurious to public health, safety, or welfare.	✓	
6. That the proposed use will be compatible with surrounding land uses and will not conflict with the purpose established for the district within which it will be located.	✓	
7. That the proposed use will not generate adverse impacts affecting the health, safety, or welfare of neighboring properties or uses.	✓	
8. That allowing the proposed use will not conflict with the City's goal of achieving and maintaining a balanced mix of uses that serve the needs of both local and nonlocal populations.	✓	
9. That proposed use will provide adequate ingress and egress to and from the proposed location.	✓	
10. That the capacity of surrounding streets is adequate to serve the automobile and delivery truck traffic generated by the proposed use.	✓	

BE IT FURTHER RESOLVED, that the Planning Commission of the City of Carmel-By-The-Sea does hereby make the following findings and determinations regarding the **Design Review**:

FINDINGS REQUIRED FOR DESIGN REVIEW APPROVAL		
For each of the required findings listed below, staff has indicated whether the application supports adoption of the findings. For all findings checked "no" the staff report discusses the issues to facilitate the Planning Commission decision-making. Findings checked "yes" may or may not be discussed in the report depending on the issues.		
CMC 17.58.060.B, Findings Required for Design Review Approval in any district	YES	NO
1. Conform to the applicable policies of the General Plan and the Local Coastal Program	✓	
2. Comply with all applicable provisions of this code	✓	
3. Are consistent with applicable adopted design review guidelines	✓	

BE IT FURTHER RESOLVED that the Planning Commission of the City of Carmel-by-the-Sea does hereby **APPROVE** the Design Review Application (DR 21-114) and Use Permit Application (UP 21-226) for a remodel and structural seismic retrofit of an historic structure, known as the China Arts Center, which includes new acoustic infrastructure, as well as new elevator and stairway additions to the roof and a new skylight and exterior windows for a new private music recording studio located at Dolores Street, 2 northwest of 7th Avenue in the Central Commercial (CC) Zoning District and Downtown Conservation District (CD) Overlay (APN: 010-147-006), subject to the following Conditions of Approval:

CONDITIONS OF APPROVAL		
No.	Standard Conditions	
1.	Authorization. This approval of Design Review (DR 21-114) and Use Permit (UP 21-226) authorizes a remodel and structural seismic retrofit of an historic structure, known as the China Arts Center, which includes new acoustic infrastructure, as well as new elevator and stairway additions to the roof and a new skylight and exterior windows for a new private music recording studio as depicted in the plans prepared by Studio Carver Architects as presented to the Planning Commission on October 13, 2021, unless modified by the conditions of approval contained herein.	✓
2.	Codes and Ordinances. The project shall be constructed in conformance with all requirements of the CC zoning district. All adopted building and fire codes shall be adhered to in preparing the working drawings. If any codes or ordinances require design elements to be changed, or if any other changes are requested at the time such plans are submitted, such changes may require additional environmental review and subsequent approval by the Planning Commission.	✓
3.	Permit Validity. This approval shall be valid for a period of 6 months from the date of action unless an active building permit has been issued and maintained for the proposed construction.	✓
4.	Water Use. Approval of this application does not permit an increase in water use on the project site without adequate supply. Should the Monterey Peninsula Water Management District determine that adequate water is not available for this site, this permit will be scheduled for reconsideration and appropriate findings prepared for review and adoption by the Planning Commission.	✓
5.	Modifications. The applicant shall submit in writing, with revised plans, to the Community Planning and Building staff any proposed changes to the approved project plans prior to incorporating those changes. If the applicant changes the project without first obtaining City approval, the applicant will be required to submit the change in writing, with revised plans, within 2 weeks of the City being notified. A cease work order may be issued any time at the discretion of the Director of Community Planning and Building until: a) either the Planning Commission or Staff has approved the change, or b) the property owner has eliminated the change and submitted the proposed change in writing, with revised plans, for review. The project will be reviewed for its compliance to the approved plans prior to final inspection.	✓

6.	Service Laterals. All electrical service laterals to any new building or structure, or to any building or structure being remodeled when such remodeling requires the relocation or replacement of the main service equipment, shall be placed underground on the premises upon which the building or structure is located. Undergrounding will not be required when the project valuation is less than \$200,000 or when the City Forester determines that undergrounding will damage or destroy significant trees(s) (CMC 15.36.020).	✓
7.	Indemnification. The applicant agrees, at his or her sole expense, to defend, indemnify, and hold harmless the City, its public officials, officers, employees, and assigns, from any liability; and shall reimburse the City for any expense incurred, resulting from, or in connection with any project approvals. This includes any appeal, claim, suit, or other legal proceeding, to attack, set aside, void, or annul any project approval. The City shall promptly notify the applicant of any legal proceeding, and shall cooperate fully in the defense. The City may, at its sole discretion, participate in any such legal action, but participation shall not relieve the applicant of any obligation under this condition. Should any party bring any legal action in connection with this project, the Superior Court of the County of Monterey, California, shall be the situs and have jurisdiction for the resolution of all such actions by the parties hereto.	✓
8.	Hazardous Materials Waste Survey. A hazardous materials waste survey shall be required in conformance with the Monterey Bay Unified Air Pollution Control District prior to issuance of a demolition permit.	✓
9.	Cultural Resources. All new construction involving excavation shall immediately cease if cultural resources are discovered on the site, and the applicant shall notify the Community Planning and Building Department within 24 hours. Work shall not be permitted to recommence until such resources are properly evaluated for significance by a qualified archaeologist. If the resources are determined to be significant, prior to resumption of work, a mitigation and monitoring plan shall be prepared by a qualified archaeologist and reviewed and approved by the Community Planning and Building Director. In addition, if human remains are unearthed during excavation, no further disturbance shall occur until the County Coroner has made the necessary findings as to origin and distribution pursuant to California Public Resources Code (PRC) Section 5097.98.	✓
10.	Truck Haul Route. Prior to Building Permit issuance, the applicant shall provide for City (Community Planning and Building Director in consultation with the Public Services and Public Safety Departments) review and approval, a truck-haul route and any necessary temporary traffic control measures for the grading activities. The applicant shall be responsible for ensuring adherence to the truck-haul route and implementation of any required traffic control measures.	✓
11.	USA North 811. Prior to any excavation or digging, the applicant shall contact the appropriate regional notification center (USA North 811) at least two working days, but not more than 14 calendar days, prior to commencing that excavation or digging. No digging or excavation is authorized to occur on site until the applicant has obtained a Ticket Number and all utility members have positively responded to the dig request. (Visit USANorth811.org for more information)	✓

12.	Conditions of Approval. All conditions of approval for the Planning permit(s) shall be printed on a full-size sheet and included with the construction plan set submitted to the Building Safety Division.	✓
SPECIAL CONDITIONS		
13.	Decorative Plaster Repair. Any repair to the decorative cement plaster shall be done in-kind to match the existing cement plaster in color, texture and method of application/detailing. If repair is required, photo documentation of the existing feature shall be provided to the Community Planning and Building Department for review and approval prior to commencement of the repair work.	✓
14.	Wood Repair. Any repair to the original wood brackets which support the roof structure shall use Dutchman techniques that remove a minimum amount of deteriorated material. If wood replacement is necessary, it shall match the original detail in size, profile and method of application. If repair is required, photo documentation of the existing feature shall be provided to the Community Planning and Building Department for review and approval prior to commencement of the repair work.	✓
15.	Treatments for Cleaning and Repairs. Physical treatments to repair existing cement plaster details, wood details and steel window sash will be undertaken with accepted methods for a given substrate. The applicant shall consult Preservation Brief 21 and/or 23 when undergoing repair to plaster, Preservation Brief 13 when undergoing repair to the steel windows, and Preservation Brief 6 before cleaning any feature.	✓
16.	Sound Lock Entry Design. The glazing system shall be revised to include fewer glass panels and thinner steel framing elements to make this glazing system as transparent as possible. A detail shall be provided to CPB for review and approval prior to issuance of a building permit.	✓
17.	Sound Lock Entry Detail. A detail of the glazing system that includes type/opacity of glass, width of framing elements and method of connection to the existing cement plaster arch shall be provided to CPB for review and approval prior to issuance of a building permit. The glazing system shall maintain transparent glass and the connection shall be designed to minimize damage to the existing plaster during installation and ensure the glazing system can be easily removed in the future.	✓
18.	Noise. All noise and sound associated with the uses shall be confined within the enclosed structure. The City reserves the right to require an acoustical analysis prepared by a qualified professional at the property owner's expense if complaints of excessive noise are received. Should the use be found to be not in compliance with this condition, the property owner agrees to seek immediate compliance and all business activity shall be ceased until it is demonstrated compliance with this condition has been achieved. Failure to comply and/or repeated violations shall be cause for the City to schedule a revocation hearing with the Planning Commission. At such hearings, the Commission may: a. Require changes in the noise mitigation plan; b. Establish new permit conditions; or c. Revoke the permit.	✓

19.	Music within Outdoor Areas. Recorded or reproduced music on private property played from accessible exterior areas of the building, including but not limited to the roof or rear patio area, are shall not exceed a volume that produces a sound level exceeding 55 db-A as measured at the property line. Live music is prohibited outdoors. Exceptions may be granted for temporary and special events upon approval of a temporary use permit granted by the Planning Director pursuant to CMC 17.14.050.I. Failure to comply and/or repeated violations shall be cause for the City to schedule a Use Permit revocation hearing with the Planning Commission. At such hearings, the Commission may: a. Require changes in the noise mitigation plan; b. Establish new permit conditions; or c. Revoke the use permit.	✓
20.	Rooftop Mechanical Equipment. If proposed, rooftop mechanical equipment such as, but not limited to, heating, cooling and ventilation system equipment shall be concealed from public view.	✓
21.	Fire Service Equipment. If required, all new fire service equipment shall be screened from public view.	✓
22.	Prohibited Uses. Concerts with live audiences in attendance are not permitted as part of the action. The use may live stream recording sessions and provide opportunities for local musical enterprises for recording, rehearsing and streaming of private performances.	✓
23.	Maximum Occupancy. Maximum building occupancy shall not exceed the standards in the California Building and Fire Codes. The maximum building occupancy for the established "B" building occupancy is forty-nine (49) persons unless otherwise modified by these conditions of approval.	✓
24.	<p>Occupancy Exceedances for Orchestral Recordings. The owner may temporarily exceed the maximum building occupancy established in Condition of Approval #23, Maximum Occupancy, for the purposes of seating an orchestra for music recording purposes upon written approval from The Director of Community Planning and Building, and the fire department. To be approved, the following the following requirements must be met:</p> <ul style="list-style-type: none"> A. The building occupancy during an orchestral recording session shall not exceed more than one hundred (100) persons total at any time, inclusive of staff and guests. B. A professional event management or security company shall be on-site for the duration of the recording session. At least two (2) employees from the professional company shall be on-site at all times when the occupancy is over 49 persons, to ensure strict compliance with Condition of Approval #24 of this permit and to provide exiting and crowd control assistance in the event of an emergency. The two employees of the professional company shall count towards the total maximum temporary occupancy of 100 persons. C. Roof access is prohibited at all times to any person for the duration of the orchestral recording session when building occupancy exceeds 49 people. D. No more than five (5) Orchestral Event Permits shall be allowed in any calendar year. The duration of each event may not exceed 4 days. 	✓

	<p>Prior to any orchestral recording session where the maximum building occupancy would be exceeded, the owner shall submit the following the Community Planning and Building Department for approval by the Director and fire department:</p> <ol style="list-style-type: none"> 1. A dimensioned floor plan that includes, but is not limited to: seating arrangement, aisle locations and widths, location of equipment. Additional information may be request by the Director or the fire department. 2. A written request describing the proposed event including the total number of anticipated occupants, and days and hours the occupancy is proposed to be exceeded. The written request shall include a description of measures taken to ensure compliance with Condition of Approval #24, Orchestral Event Permit Conditions. 	
25.	Roof Access. The elevator door on the roof shall be located on the eastern side of the elevator shaft. A permeant guardrail or railing shall be installed extending from the northwestern corner of the elevator enclosure to the western parapet wall to prevent roof top access to the portion of the roof adjacent to the residential apartment unit to the south.	✓
26.	Easement Recordation. An easement shall be recorded across the Cypress Inn Property (APN: 010-147-008-000) prior to issuance of a building permit. A copy of the recorded easement shall be provided to the Community Planning and Building Department. The easement shall provide access from the subject property to 7 th Avenue as a means of providing emergency egress from the subject property to the public way.	✓
27.	<u>Sound Attenuating Vestibule Location. The proposed glass sound attenuating vestibule shall be relocated to the interior of the building with no modifications made to the primary building elevation on Dolores Street. The existing wood gates shall remain, however, may be minimally repositioned to meet exiting (egress) requirements as required by the Building and Fire Codes.</u>	✓

Acknowledgement and acceptance of conditions of approval.

Applicant Signature

Printed Name

Date

Property Owner Signature

Printed Name

Date

Once signed, please return to the Community Planning and Building Department.

PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF CARMEL-BY-THE-SEA this 10th day of November 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Michael LePage
Chair

Margi Perotti
Planning Commission Secretary