

October 9, 2002

**Honorable Chairman and Members of the  
Hermosa Beach Planning Commission**

**Regular Meeting of  
October 15, 2002**

SUBJECT: 1301 MANHATTAN AVENUE – EINSTEIN’S RESTAURANT CONDITIONAL USE  
PERMIT AND PRECISE DEVELOPMENT PLAN COMPLIANCE.

**Recommendation**

To direct staff to continue to monitor the conditions at the business relative to permit and code compliance and to return with an acoustical engineering report to verify sound proofing of the facility at the November 19, 2002 meeting of the Planning Commission.

**Background:**

On September 17, 2002 the Planning Commission received written correspondence from a property owner indicating the Einstein’s restaurant was not complying with discretionary permits. The letter indicated that Einstein’s was not complying with conditions which regulate noise and operation of the business and that uses have been reconfigured within the restaurant. The letter further states that outdoor dining is occurring past permitted hours. Based on Commission direction, Staff reviewed the project conditions of approval and conducted site investigations on September 28, 2002 and October 5, 2002 to determine whether the business was in compliance with CUP Resolution No. 00-33 and PDP Resolution Nos. 96-10.

**Outdoor patios / noise**

The Conditions relating to this issue in the Einstein’s CUP read as follows:

- ❑ *Outside dining or seating shall not be allowed later than 11:00 P.M. on the lower patio, or later than 10:00 P.M on the upper patio. No new customers shall be seated on the patios beginning an hour before these times.*
- ❑ *A minimum 6-foot high partition (glass or other material approved by the CD Director) shall be installed around the perimeter of the outdoor seating areas.*

The above conditions were based on the staff recommendation to limit hours of operation for the outdoor patios in order to control noise related to live entertainment and outdoor dining. The Commission discussed this issue at the 2/20/96 hearing, and modified staff’s recommendation to allow the lower patio to be open until 11:00 p.m. and added the requirement for a six-foot glass partition, and that seating be stopped an hour before the closing times.

It is unclear whether the Commission intended to preclude occupying the patios entirely or simply to restrict seating and dining after 10:00 and 11:00 p.m.. The Commission’s exact intent was unclear and the Commission was considering a restaurant use, not a night club so standing customers was probably not a concern. However, since the condition was clearly related to noise, it may be that the intent was to close the patios to all use after 11:00 p.m.

If the applicant desired to enclose these areas completely, it would be possible to do so for the lower patio, although enclosing the uppermost patio would present problems with complying with the height limit.

Other conditions in the CUP deal with noise attenuation and noise control including Condition No. 5:

*The building shall be equipped with acoustic feature to maximize sound proofing which shall include the use of double-paned windows or equivalent and the installation of air conditioning so that windows and doors can remain closed during performances. Any additional acoustic treatment shall be provided in the interior if necessary to comply with the City's noise ordinance.*

Condition No. 6:

*The hours for live entertainment shall be limited to the hours between 4:00 p.m. to 1:15 a.m. Monday through Friday, and from 9:00 a.m. to 1:15 a.m. Saturday Sunday and federal and State holidays, Cinco De Mayo and St. Patrick's Day.*

Condition No. 7:

*Noise emanating from the property shall be within the limitations prescribed by the City's noise ordinance and shall not create a nuisance to surrounding residential neighborhoods, and or commercial establishments. Noise emanating from the property shall be monitored to verify compliance with the noise ordinance in response to any complaints.*

Condition No. 8:

*Management shall be responsible for the music/entertainment volume level.*

Condition No. 9:

*During the performance of amplified live entertainment, the exterior doors and windows shall remain closed.*

### **Conversion of banquet / office area on second floor**

Plans reviewed and approved by the Commission as part of the PDP for the building and the CUP for the restaurant identify the second floor interior (approximately 1,260 sq. ft.) as office and storage. The project building permit plans reflect this distribution of floor area. The plans for tenant improvements (T.I.) for the restaurant show a small bar located in the southwest corner, but still identifies the area as "offices, private." The T.I. plans show a large space for this open "office" area with a bar area in the western portion, (approx. 850 sq. ft) and a separate walled off area (approx. 420 square feet) in the eastern part for office/storage.

The bar was built per plan on the second floor. The area in question was initially used for luncheons and banquets. The eastern 420 sq. ft. was offices. The use of the large open area for banquets and luncheons was discussed by the applicant at the 2000 Planning Commission meeting when the CUP was upgraded for full liquor sales. The use for banquets and luncheons, while never specifically approved by the Commission in the initial or amended CUP, is not a change in the primary use of the building as a restaurant. Furthermore, dancing is not inconsistent with the use of the area for banquets. The conversion of most of the entire second floor space, sometime after 2000, for dancing, however, brings up several issues with respect to the CUP and Building Code.

CUP and PDP Condition No. 1 requires substantial consistency with approved plans and Condition No. 12 of the CUP states any changes to the interior layout, which would alter the primary function of the business as a restaurant shall be subject to review and approval of the Planning Commission. The change increased the occupant load in the late evening when the use changes primarily to dance and a large dance floor has been added that arguably changed the nature of the business at least in the late evening hours.

It can be argued that the “primary function” as restaurant is unchanged during most of the operating hours since it operates as a dining establishment, however the physical alterations may be out of compliance with Condition No. 1 which requires amendment to the CUP when there are substantial modifications to the interior layout. If the Commission believes that the alterations have altered the primary function of the business as a restaurant than the business is out of compliance with Condition Nos. 1 and 12. The Commission has previously rejected modifications to project plans when they appeared to be inconsistent with the originally permitted use. No building permits were obtained for the change to the second floor, which involved removal of a wall, and substantial changes to occupancy relative to dance as noted above. Since no plans were submitted for review with respect to the Building Code it is unclear whether there is any effect on exiting or fire safety. However, the Fire Department has advised that the owner was warned earlier this year about exceeding the permitted business occupancy. The Police Department indicates that over the last year 14 calls were received for loud music and nine calls were received for disturbing the peace.

Condition No. 7 of the CUP indicates that noise emanating from the property shall be within the limitations prescribed by the City’s noise ordinance and shall not create a nuisance to surrounding residential neighborhoods and or commercial establishments. Staff found on two late evening site inspections that there was loud noise emanating from the property along Palm Drive to the rear of the restaurant. The noise was primarily dance music and talking on the upper patio area. However, the noise was not unlike the noise emanating from two other neighboring restaurants on Hermosa Avenue and it was difficult at times to distinguish whether the noise heard by the complainant also comes from these businesses. Furthermore, the complainant is located in a residential building that is a legal nonconforming use in the zone. It is also arguable that as a long time business and property owner, the complainant is fully aware of the noise issues in the downtown and of the subject business in particular.

### **Summary**

The primary issue concerning CUP compliance is related to noise. If noise issues can be satisfactorily mitigated, staff believes the other issues can be resolved through working with the business owner.

Staff is still in the process of evaluating whether the acoustical material substituted for the glass surround on the patios will provide a sufficient noise attenuation substitute and/or whether or measures must be undertaken to deal noise mitigation.

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Sol Blumenfeld, Director  
Community Development Department

### **Attachments:**

1. Correspondence
2. Resolutions