

November 8, 2002

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

**Regular Meeting of
November 19, 2002**

SUBJECT: CONDITIONAL USE PERMIT AMENDMENT 02-8

LOCATION: 1100 THE STRAND

APPLICANT: PETER MANGURIAN

REQUEST: TO ALLOW ON-SALE GENERAL ALCOHOL; NON AMPLIFIED LIVE
ENTERTAINMENT, A TAKE-OUT FOOD SERVICE WINDOW, AND
EXTENDED OPERATION HOURS IN CONJUNCTION WITH AN
EXISTING RESTAURANT; AND, TO MODIFY THE FLOOR PLAN TO
INCLUDE BAR SEATING AND A DANCE FLOOR

Recommendation

To deny the requested amendment by adopting the attached resolution of denial.

ALTERNATIVE

To approve the amendment subject to conditions by adopting the attached resolution of approval.

Background

ZONING:	C-2, Restricted Commercial
GENERAL PLAN:	General Commercial
FLOOR AREA:	5,500 Square Feet (Approximately)
PARKING:	23 Spaces (4 In Tandem)
ENVIRONMENTAL DETERMINATION:	Mitigated Negative Declaration

At their meeting of October 10, 2002, the Staff Environmental Review Committed recommended a mitigated negative declaration based on the findings in the Initial Study. The mitigation measure pertains to potentially significant noise impacts, and requires live entertainment to be limited to acoustic music only pursuant to the applicant's request.

The subject request is similar to the CUP amendment request made in February, 2002. The Commission denied the request at the April 16, 2002 meeting by a vote of 5:0 based on concerns regarding noise, and the increased intensity of use due to full alcohol and live entertainment which may increase the potential for noise and operational complaints. The Commission also denied the proposed take out window which was determined to create an unsafe condition adjacent to the Strand. The applicant appealed the Commission's denial with a slightly modified request (including limiting live entertainment to non amplified and extending

operation hours to 1:00 A.M. rather than 24-hours). The City Council sustained the decision of the Commission to deny the project, as modified, at their meeting of August 13, 2002.

History

In 1985, the City Council granted, on appeal, a Conditional Use Permit (CUP) for beer and wine in conjunction with a restaurant at the subject location. In 1988, the Planning Commission granted an amendment to the CUP to expand the floor area of the restaurant by adding 2,000 square feet of open-air seating. In 1989, the Planning Commission approved an amendment to enclose the outside dining area. In 1993, the City Council, on appeal, approved an amendment to allow On-sale General Alcohol, live entertainment, and 24-hour operation of the facility. This approved amendment was never executed and has now expired. In 1999 the Planning Commission considered an amendment similar to the current request without the request for 24-hour operation and a walk-up takeout window and denied the request. The applicant filed an appeal and then subsequently withdrew it.

Analysis

The applicant is proposing to amend an existing CUP that is limited to beer and wine sales, to add full general on-sale alcohol. The requested amendment includes the addition of live entertainment and modifying the approved floor plan to add bar seating and a dance floor and a walk-up take-out window. The application also requests to modify the hours of operation to allow operation between 6:00 and 2:00 A.M. Currently the operating hours are limited to between 7:00 A.M. and 10:00 P.M. based on the 1989 CUP. These requests involve change of operation and minor alterations to the interior floor plans, and no expansion to the building. Section 17.04 of the Zoning Ordinance defines restaurant as an establishment primarily selling prepared foods and containing kitchen facilities used for food preparation and sets out percentages for gross sales computed monthly for prepared foods and alcohol sales.¹

The applicant is proposing to alter the interior of the existing restaurant with respect to the seating arrangement (no increase in occupancy) and to add a bar area and a piano for live entertainment. The subject building is located within the downtown district and suitable for the proposed use. It is similar to other restaurants in the area which have live entertainment. However, the use is located approximately ½ block to the south of the westerly end of Pier Plaza, and there is the potential that the added noise from live entertainment may present a problem for surrounding residents. At the previous hearings on this matter before Planning Commission, several residents complained that noise and disturbances from restaurants at closing time have created a nuisance in the area, though the complaints were not necessarily connected to the operation of Scotty's restaurant. They also expressed concern about the number of alcohol/entertainment type establishments in the downtown area. If the application is approved, the problem of noise generated by proposed live entertainment should be addressed with appropriate mitigation measures to address these concerns.

A "piano bar" is shown on the plans and the applicant has indicated that the request is for "non amplified live entertainment". Any excessive noise from the entertainment cannot be easily mitigated given its proposed location within a glass patio enclosure which contains sliding glass windows and since there is no

air conditioning, the sliding windows will likely be left open during the summer months. Therefore, the applicant has modified his request to limit the entertainment to non-amplified music. Typical Conditions of Approval for other similar establishments require double-glazed windows, air conditioning and that doors and windows remain shut when live entertainment occurs may not be necessary with this limitation. Therefore, if approved, staff is recommending that entertainment be specifically limited to acoustic music. Hours for live entertainment are also specified consistent with other similar downtown establishments, as are requirements for conformance with the existing approved Parking Plan.

The plans do not clearly show the location for the proposed take-out window, but the applicant indicates that it would be at the northwest corner of the dining area, with access directly out toward the Strand. Any lines forming at the take out window would encroach in to the Strand right-of-way. Since customers can order take-out inside from the hostess station next to the waiting area, it does not seem appropriate to create this potential conflict with bicycle and pedestrian traffic on the Strand.

The proposed permit amendment is essentially a re-submittal of the application denied in April, 2002, and contains no material changes (with the exception of non-amplified live entertainment) to alleviate previously expressed Commission concerns regarding operation and general on-sale alcohol.

Ken Robertson
Associate Planner

Sol Blumenfeld, Director
Community Development Department

Notes:

1. "Where beer and wine are sold, a minimum of sixty-five (65) percent of the total gross sales, computed monthly, shall result from the sale of prepared food; where other alcoholic beverages, not exclusively beer and wine, are sold, a minimum of fifty (50) percent of the total gross sales, computed monthly, shall result from the sale of prepared food."

Attachments

2. Proposed Resolution
3. April 16, 2002, Planning Commission Minutes and Resolution.
4. Photo
5. Location Map
6. Correspondence

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P.C. RESOLUTION 02-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERMOSA BEACH, CALIFORNIA APPROVING A CONDITIONAL USE PERMIT, AS AMENDED, TO ALLOW ON-SALE GENERAL ALCOHOL, LIVE ENTERTAINMENT (NON-AMPLIFIED MUSIC) AND ALTERATIONS TO AN EXISTING RESTAURANT TO INCLUDE BAR SEATING AND A DANCE FLOOR AND ADOPTING A MITIGATED ENVIRONMENTAL NEGATIVE DECLARATION FOR 1100 THE STRAND, LEGALLY DESCRIBED AS LOTS 1-4, BLOCK 12, HERMOSA BEACH TRACT

Section 1. An application was filed by Peter Mangurian, seeking amendment to an existing conditional use permit to allow on-sale alcohol; live entertainment; a take-out food service window; extended hours of operation and alterations to the floor plan to include a dance floor in conjunction with an existing restaurant.

Section 2. The Planning Commission conducted a duly noticed public hearing to consider the application to amend the Conditional Use Permit on November 19, 2002, at which testimony and evidence, both written and oral, was presented to and considered by the Planning Commission

Section 3. Based on evidence received at the public hearing, the Planning Commission makes the following factual findings:

1. The business is currently operating under the terms of a Conditional Use Permit, as amended, approved in 1989, for on-sale alcohol (beer/wine) in conjunction with a restaurant.
2. The property is zoned C-2, with commercially zoned property to the north and south, and public parking lot located to the east.
3. In 1993, the City Council approved, on appeal, a Conditional Use Permit for live entertainment, On-sale General Alcohol, and a dance floor. This permit was not executed and has now expired.

Section 4. Based on the foregoing factual findings, the Planning Commission makes the following findings pertaining to the application to amend the Conditional Use Permit:

1. The site is zoned C-2, and is suitable for the proposed use with the proposed amendment for live entertainment, On-sale General Alcohol and a dance floor.
2. The proposed take-out window and 24-hour operation are not suitable and compatible with surroundings due to potential safety, noise and nuisance problems related to proximity to residential uses and bicycle traffic along the Strand.
3. The proposed use, without the proposed take-out window is compatible with surrounding commercial uses.
4. The imposition of conditions as required by this resolution will mitigate any negative impacts on nearby residential or commercial properties since live entertainment shall be limited to non-amplified acoustical instruments and the City's Noise Ordinance.
5. The Planning Commission concurs with the Staff Environmental Review Committee's recommendation, based on their environmental assessment/initial study, that this project will result in a less than significant impact on the environment if mitigation measures are included, and therefore qualifies for a mitigated Negative Declaration.

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2 Section 5. Based on the foregoing, the Planning Commission hereby approveds
3 amendments to the Conditional Use Permit, subject to the following **Conditions of Approval**, which
4 supersede the Conditions contained in P.C. Resolution 89-7:

- 5 **1. The proposed interior alterations and continued use shall be substantially consistent**
6 **with submitted floor plans and the following:**
- 7 **a. Revised floor plan shall be submitted indicating the number of seats at the bar.**
- 8 **2. The exterior site plan shall remain in substantial conformance with plans submitted and**
9 **approved at the November 4, 2002 Planning Commission meeting.**
- 10 **3. Operating hours shall be limited to between 6:30 A.M. and 2:00 A.M.**
- 11 **a. The hours for live entertainment shall be limited to the hours between 9:00**
12 **P.M. to 1:15 A.M. Monday through Friday, and from 2:00 P.M. to 1:15 A.M.**
13 **on Saturday, Sundays, and Federal and State Holidays, Cinco De Mayo, and**
14 **St. Patrick's day.**
- 15 **4. The bicycle parking area shall be provided and maintained on-site for a minimum of 40**
16 **bicycles.**
- 17 **5. Parking shall be striped as shown approved plans, and shall provide for a minimum of**
18 **twenty three (23) spaces.**
- 19 **a. Tandem parking spaces shall be designated for employee parking only.**
20 **b. The handicapped space shall be provided and located so that it is not in tandem.**
21 **c. Pursuant to the Zoning Ordinance, parking shall be available for customers at**
22 **all times during business hours.**
- 23 **6 The establishment shall not adversely effect the welfare of the residents, and/or**
24 **commercial establishments nearby.**
- 25 **7. The business shall provide adequate staffing, management and supervisory techniques**
26 **to prevent loitering, unruliness, and boisterous activities of the patrons outside the**
27 **business and in nearby public areas.**
- 28 **8. Noise emanating from the property shall be within the limitations prescribed by the**
29 **City's Noise Ordinance and shall not create a nuisance to surrounding residential**
 neighborhoods, and/or commercial establishments.
- 9. The Police Chief may determine that a continuing police problem exists, and may**
 authorize the presence of a police approved doorman and/or security personnel to

eliminate the problem, and then shall submit a report to the Planning Commission, which will automatically initiate a review of this Conditional Use Permit by the Commission.

10. The exterior of all the premises shall be maintained in a neat and clean manner, and maintained free of graffiti at all times.

11. Any significant changes to the interior layout which would alter the primary function of the business as a restaurant shall be subject to review and approval by the Planning Commission.

12. The project and operation of the business shall comply with all applicable requirements of the Municipal Code.

CONDITIONS RELATING TO LIVE ENTERTAINMENT AND NOISE:

13. Entertainment shall be limited to acoustic music and shall not include amplified live entertainment of any kind.

14. Management shall be responsible for maintaining music/entertainment volumes at reasonable levels.

15. During any live entertainment and/or dancing, the exterior doors and windows shall remain closed. The building shall be equipped with air conditioning to ensure comfort of patrons during live entertainment, and compliance with this Condition.

16. 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.

Section 6. This grant shall not be effective for any purposes until the permittee and the owners of the property involved have filed at the office of the Planning Division of the Community Development Department their affidavits stating that they are aware of, and agree to accept, all of the conditions of this grant.

The Conditional Use Permit Amendment shall be recorded, and proof of recordation shall be submitted to the Community Development Department.

Each of the above conditions is separately enforced, and if one of the conditions of approval is found to be invalid by a court of law, all the other conditions shall remain valid and enforceable.

1 Permittee shall defend, indemnify and hold harmless the City, it agents, officers, and employees from any
2 claim, action, or proceeding against the City or its agents, officers, or employee to attack, set aside,
3 void or annul this permit approval, which action is brought within the applicable time period of
4 Government Code. The City shall promptly notify the permittee of any claim, action, or proceeding and
5 the City shall cooperate fully in the defense. If the City fails to promptly notify the permittee of any claim,
6 action or proceeding, or if the City fails to cooperate fully in the defense, the permittee shall no
7 thereafter be responsible to defend, indemnify, or hold harmless the City.

8 The permittee shall reimburse the City for any court and attorney's fees which the City may be required
9 to pay as a result of any claim or action brought against the City because of this grant. Although the
10 permittee is the real party in interest in an action, the City may, at its sole discretion, participate at its
11 own expense in the defense of the action, but such participation shall not relieve the permittee of any
12 obligation under this condition.

13 The subject property shall be developed, maintained and operated in full compliance with the conditions
14 of this grant and any law, statute, ordinance or other regulation applicable to any development or activity
15 on the subject property. Failure of the permittee to cease any development or activity not in full
16 compliance shall be a violation of these conditions.

17 The Planning Commission may review this Conditional Use Permit and may amend the subject
18 conditions or impose any new conditions if deemed necessary to mitigate detrimental effects on the
19 neighborhood resulting from the subject use.

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VOTE: AYES:
 NOES:
 ABSENT:
 ABSTAIN:

CERTIFICATION

I hereby certify the foregoing Resolution P.C. 02- is a true and complete record of the action taken by
the Planning Commission of the City of Hermosa Beach, California, at their regular meeting of
November 19, 2002.

Ron Pizer, Chairman

Sol Blumenfeld, Secretary

Date

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P.C. RESOLUTION 02-

**A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF HERMOSA BEACH, CALIFORNIA, DENYING A
CONDITIONAL USE PERMIT AMENDMENT FOR ON-SALE
GENERAL ALCOHOL, LIVE ENTERTAINMENT AND
ALTERATIONS TO AN EXISTING RESTAURANT TO
INCLUDE A DANCE FLOOR FOR 1100 THE STRAND,
LEGALLY DESCRIBED AS LOTS 1-4, BLOCK 12, HERMOSA
BEACH TRACT**

Section 1. An application was filed by Peter Mangurian, seeking amendment to an existing conditional use permit to allow on-sale alcohol; live entertainment; a take-out food service window; 24-hour operation and alterations to the floor plan to include a dance floor in conjunction with an existing restaurant.

Section 2. The Planning Commission conducted a duly noticed public hearing to consider the application to amend the Conditional Use Permit on April 16, 2002, at which testimony and evidence, both written and oral, was presented to and considered by the Planning Commission

Section 3. Based on evidence received at the public hearing, the Planning Commission makes the following factual findings:

1. The business is currently operating under the terms of a Conditional Use Permit, as amended, approved in 1989, for on-sale beer and wine in conjunction with a restaurant.

2. The property is zoned C-2, with commercially zoned property to the north and immediately to the south, and public parking lot located to the east. The predominant uses to the south are residential.

3. In 1993, the City Council approved, on appeal, a Conditional Use Permit for live entertainment, On-sale General Alcohol, and a dance floor. This permit was not executed and has now expired.

Section 4. Based on the foregoing factual findings, the Planning Commission makes the following findings pertaining to the application to amend the Conditional Use Permit:

1. The site is zoned C-2, and its location south of the downtown core area within close proximity to residential uses to the south is not suitable for the proposed use with the proposed amendment for live entertainment, on-sale general alcohol and a dance floor, and extended hours. These changes will increase noise levels to where they cannot be satisfactorily mitigated given that entertainment would be located within a glass patio enclosure which is one half block from residential land uses. Further the change will extend the hours of the business to later hours in the evening when noise is a greater concern to surrounding residents.

2. The proposed take-out window is not suitable because of the potential conflict with pedestrian and bicycle traffic along the Strand, and is not necessary as take-out orders can easily be accommodated inside the restaurant.

Section 5. Based on the foregoing, the Planning Commission hereby denies the requested amendments to the Conditional Use Permit.

Section 6. Pursuant to the Code of Civil Procedure Section 1094.6 any legal challenge to the decision of the Planning Commission, after a formal appeal to the City Council, must be made within 90 days after the final decision by the City Council.

VOTE: AYES:
 NOES:
 ABSENT:
 ABSTAIN:

CERTIFICATION

I hereby certify the foregoing Resolution P.C. 02- is a true and complete record of the action taken by the Planning Commission of the City of Hermosa Beach, California, at their regular meeting of November 19, 2002.

Ron Pizer, Chairman

Sol Blumenfeld, Secretary

Date_____

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