

January 11, 2005

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

**Regular Meeting of  
January 18, 2005**

SUBJECT:                   CONDITIONAL USE PERMIT AMENDMENT 05-12  
                                  VARIANCE 05-1

LOCATION:                   1301 MANHATTAN AVENUE

APPLICANT:               ALLEN STANFORD (UNION CATTLE COMPANY)  
                                  1301 MANHATTAN AVENUE  
                                  HERMOSA BEACH, CA 90254

REQUEST:                 TO ALLOW A PERMANENT DECK COVER ON THE SECOND FLOOR  
                                  DECK, AND SEASONAL TENT ON THE UPPER FLOOR DECK AND TO  
                                  ALLOW THESE DECK STRUCTURES TO EXCEED THE 30-FOOT HEIGHT  
                                  LIMIT

**Recommendation**

To deny the requested Conditional Use Permit Amendment and Variance by adoption of the attached resolution.

**Background**

**PROJECT INFORMATION:**

ZONING:	C-2, Restricted Commercial
GENERAL PLAN:	General Commercial
TOTAL AREA OF ESTABLISHMENT:	6,400 square feet (Interior) 1,700 square feet (exterior)
ENVIRONMENTAL DETERMINATION:	Categorically Exempt

A Conditional Use Permit Precise Development Plan amendment was granted by the Planning Commission in December 2002, and approved upon reconsideration by the City Council in January 2003. The amendment was to reconfigure the interior and outdoor dining areas of the building to accommodate a new restaurant with a western steakhouse theme. Also, in March of 2003, the Planning Commission determined that a 7-8 glass barrier could be constructed along the west side of the upper patio as it was a sound attenuation requirement of the C.U.P. and was deemed to be similar to other building elements that are allowed to exceed the height limit such as parapet walls, towers, and elevator housings.

The Precise Development plan for the construction of the multi-use commercial building with office, restaurant, and retail uses above a two-level parking structure was granted in 1996, with the building constructed within the 30-foot height limit. The C.U.P. for on-sale beer and wine, live entertainment, and outdoor dining for the restaurant was granted concurrently with the P.D.P. by the Planning Commission in February, 1996. A C.U.P. amendment was granted in May, 2000 to the restaurant when it was Einstein's, to allow full service on-sale alcohol.

## Analysis

As shown on the submitted plans, the restaurant contains three separate outdoor dining areas at three separate levels, which provide approximately 1700 square feet of outdoor seating area. The interior seating area of the restaurant is approximately 3500 square feet (approx. 2500 square feet on the first floor, and 1000 square feet in the second floor banquet room and private dining rooms).

The applicant is requesting approval of a variance to maintain an existing deck cover and seasonal tent structure located on the 2<sup>nd</sup> and 3<sup>rd</sup> level decks respectively, which exceed the height limit, and which were constructed without required permits. The illegal condition surfaced as a code enforcement action in October 2004 when the City's code enforcement officer discovered the structures. The owner was advised at that time that the structures were over height and must be removed. He inquired about processing a variance application and requested that the structure be permitted to remain pending review by the Planning Commission. Since the owner agreed to immediately commence with processing a variance application, staff gave the owner the option to have a structural engineer confirm that the roof structure was stable and constructed in compliance with the Building Code, or alternatively to have the space on the second floor deck posted for no occupancy pending Commission review. If the Commission approved the variance application, the owner could then proceed with processing plans to obtain an after-the-fact building permit similar to permit issuance for legal determinations or other code enforcement cases involving illegal construction. If the owner did not prevail at Commission, then he would be required to remove the roof structure and tent immediately. The owner agreed to the first option, and supplied a letter testifying to the structural integrity of the roof structure.

The second floor deck is adjacent to the banquet room on the second floor of the building. A deck cover trellis structure was permitted for this deck when the restaurant was Einstein's, equipped with a retractable canvas roof, and is shown on the approved plans for Union Cattle Company. However, the deck cover that was issued a building permit was below the existing roofline, and sloped down at a much lower ceiling clearance than the new cover in order to comply with the 30-foot height limit. The newer structure (see photo) extends above the existing roofline creating a much higher clearance, and exceeds the height limit by as much as 6 feet at the peak of the sloped roof. The proposed seasonal "canvas" tent, which is still considered a structure, is located on the upper most level deck, and is 8-9 feet above the height limit at its highest point. Variances are necessary for both proposed structures as they exceed the 30-foot height limit for the C-2 zone, and cannot be considered as elements that are allowed to exceed the height limit pursuant to Chapter 17.46.

According to the applicant he is seeking support of these requests to improve noise attenuation, better deal with rainwater, and to allow use of the patio areas in winter months for corporate and private functions, and to maintain the up-scale character of the business. He believes the uses of the patio areas is necessary for the continued success and economic viability of the restaurant as an up-scale steakhouse, with ability to accommodate banquets and parties as originally envisioned and approved by the Planning Commission. Also, the applicant states that there are no significant view impacts. The applicant's arguments are set forth in the attached letter.

With respect to the amendment to the C.U.P., approval of the existing construction would not necessarily impact the intensity of the use of the business, or have impact on parking requirements, occupant loads or seating capacity or other issues related to the use since the outdoor seating areas

were always included in the parking calculation as seating areas when the project was approved. However, these partial enclosures, one permanent, and the other seasonal, might be considered as enclosing additional floor area that has always been identified as outdoor seating area.

In order to grant a Variance, the Commission must make the following findings:

1. There are exceptional or extraordinary circumstances, limited to the physical conditions applicable to the property involved.
2. The Variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same vicinity and zone, and denied to the property in question.
3. The granting of the Variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and zone in which the property is located.
4. The Variance is consistent with the General Plan.

Discussion of findings:

**Finding 1:** The applicant has not demonstrated that exceptional or unusual conditions exist with respect to the physical conditions of the property. The lot is fairly typical of lots in the vicinity sloping from east to west, and with the construction of the building in 1997 it is clearly a site that can accommodate a fairly substantial development project, with two levels of parking and two floor levels above, which include the subject restaurant which contains ample interior seating and banquet areas in addition to the exterior seating. The applicant's argument rests more on the issue of the unique nature of the business as compared to the prior use and other restaurant/bars downtown, and the need for more enclosed seating areas in the winter months to keep this restaurant economically viable.

**Finding 2:** The proposed Variances do not appear to be necessary for the enjoyment of a substantial property right. The recent development of the property has established a variety of commercial uses demonstrating that a substantial property right is currently being enjoyed by several businesses on the property including the subject restaurant. The applicant appears to be seeking to obtain a special privilege, well beyond the substantial property rights currently enjoyed, to exceed the height limit otherwise applicable to surrounding properties, and to convert areas that were always constructed as and intended to be outdoor dining areas to partially enclosed weather proofed spaces. Again the applicant's argument relates to maintaining the amount of seating to support an upscale sit-down restaurant.

**Finding 3:** The project may potentially be materially detrimental to property improvements in the vicinity and zone since the project as constructed may marginally obstruct some views, or access to sunlight, of adjacent properties. While the construction apparently does not obstruct prominent westerly views to the ocean from properties directly to east, it potentially has impact on other views from a southerly or northerly direction, or at angles from the northeast or southeast. Given this potential, it does not seem a finding can be made to say that it will not be materially detrimental to any other properties. Certainly, the applicant has not provided any supporting evidence to demonstrate that this construction has no adverse impact.

**Finding 4:** The project does not bring up any issues or concerns that directly conflict with the

General Plan, as there is not substantial change in the use of the property.

To approve the requested C.U.P. amendment, the Commission must approve the Variance. To approve the Variance it must adopt all the required findings noted above.

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Ken Robertson,  
Senior Planner

CONCUR:

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Sol Blumenfeld, Director  
Community Development Department

Attachments

1. Proposed Resolution
  2. Location Map
  3. Photos
- Applicant letter, Correspondence,  
Project plans and height exhibits included as separate attachment