

September 12, 2005

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

**Regular Meeting of  
September 20, 2005**

SUBJECT:                   CONDITIONAL USE PERMIT AMENDMENT 05-8  
LOCATION:                   73 PIER AVENUE  
APPLICANT:               MEDITERRANEO RESTAURANT  
REQUEST:                 CONDITIONAL USE PERMIT AMENDMENT FOR A RESTAURANT WITH  
ON-SALE ALCOHOL TO CHANGE THE CLOSING TIME FROM 12:00  
MIDNIGHT TO 2:00 A.M. DAILY

**Recommendation**

To direct staff as deemed appropriate.

**Background**

PROJECT INFORMATION:

ZONING:	C-2 Restricted Commercial
GENERAL PLAN:	General Commercial
LOT AREA:	2,802 square feet
AREA OF ESTABLISHMENT: (NO CHANGE IN TOTAL)	Approx 3,300 square feet (Interior) 740 square feet (Outdoors))
PARKING:	No on site parking
ENVIRONMENTAL DETERMINATION:	Categorically Exempt

The restaurant is located on the north side of Pier Plaza, in the prior location of “Brewski’s,” and has been operating as “Mediterraneo,” a sit-down restaurant since early 2004. The Planning Commission approved a Conditional Use Permit (CUP) amendment in October, 2003 to allow on-sale alcohol in connection with the opening of the new restaurant, and to allow interior modifications to the former restaurant which was a brewpub limited to on-sale beer and wine only and live entertainment. The conditions relating to hours of operation included a general closing time of 2:00 A.M. and hours for live entertainment closing at 1:15 A.M. On reconsideration, the City Council, on December 9, 2003 sustained the Commission’s decision to allow on-sale alcohol, but imposed a more restrictive 12:00 midnight closing time.

The Planning Commission granted a Conditional Use Permit in 1994 for on-sale beer and wine for Brewskis. In 1997 the Commission approved a CUP amendment for on-sale general alcohol and non-amplified live entertainment. The 1997 CUP for on-sale general alcohol was never implemented.

**Analysis**

The applicant is requesting the closing time as previously imposed by the City Council be changed to 2:00 A.M. pursuant to the original action of the Planning Commission. This time change is the

only change being requested at this time. The City Council imposed the 12:00 midnight restriction based on the applicant's description of the new restaurant as an upscale sit-down restaurant, and therefore did not see the need for later hours, which would most likely create a bar or night club atmosphere.

Since the opening of the restaurant, there have been no reported problems with respect to noise or other violations of the CUP. Other restaurants in the Pier Plaza have the following limits on operating hours and on liver entertainment:

<b>Restaurant</b>	<b>Hours Specified in CUP</b>	<b>Date</b>	<b>CUP type</b>
Hennessey's	7:00 A.M. – 2:00 A.M. 2:00 P.M. – 1:15 A.M. live entertainment	1997	Full Alcohol w/ Live entertainment
The Mermaid	Not specified	1990	Full Alcohol
Cantina Real	8:00 A.M. – 12:00 Midnight	1979	Full Alcohol
Fishmarket Café	Not specified	1983	Beer and Wine
Dragon	7:00 A.M. – 2:00 A.M. 7:00 P.M. – 1:15 A.M. live entertainment	2003	Full Alcohol w/ Live entertainment
The Lighthouse	No general hours specified 2:00 P.M. – 1:30 A.M. live entertainment	1991	Full Alcohol w/ Live entertainment
Zeppy's	7:00 A.M. – 10:00 P.M. beer and wine	2000	Beer and wine
Il Boccacio	8:00 A.M. – 1:30 A.M.	1993	Full Alcohol
Patrick Malloys	7:00 A.M. – 2:00 A.M. 2:00 P.M. – 1:15 A.M. live entertainment	1998	Full Alcohol w/ Live entertainment
Aloha Sharkeez	Not Specified	1968	Full Alcohol
Fat Face Fenner's	7:00 A.M. – 2:00 A.M. 2:00 P.M. – 1:15 A.M. live entertainment	1999	Full Alcohol w/ Live entertainment
Paradise Sushi	11:00 A.M. – 11:00 P.M.	1985	Beer and Wine
Sangria	7:00 A.M. – 2:00 A.M. 2:00 P.M. – 1:15 A.M. live entertainment	1996	Full Alcohol w/ Live entertainment

Since the restaurant, as modified, continues to involve live entertainment, the attached resolution includes a condition for live entertainment in the same manner of the 1997 CUP to limit the entertainment to non-amplified music. The conditions also include a requirement that the applicant prepare an acoustic study pursuant to current noise ordinance requirements, only if they change the live entertainment from non-amplified to amplified music.

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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

**P.C. RESOLUTION NO. 05-**

**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, AND LIVE ENTERTAINMENT IN CONJUNCTION WITH A RESTAURANT, AT 73 PIER AVENUE, AND LEGALLY DESCRIBED AS LOT 27, BLOCK 13 HERMOSA BEACH TRACT**

Section 1. An application was filed by “Mediterraneo” restaurant, seeking an amendment to change the closing time from 12:00 midnight to 2:00 A.M. as set forth in the conditions of approval of the existing Conditional Use Permit for on-sale general alcohol and live entertainment.

Section 2. The Planning Commission conducted a duly noticed public hearing to consider the application to amend the Conditional Use Permit on September 20, 2005, 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 current Conditional Use Permit (CUP) was approved by the City Council in 2003 to allow general alcohol sales, and to convert the space to a full-service sit down restaurant including the removal of the brewing tanks and the manufacturing of beer on the premises, and included a specific condition of approval limiting operating hours to no later than 12:00 midnight. .
2. The site is located in the downtown district, which has several similar restaurants with on-sale general alcohol and live entertainment.
3. The site is zoned C-2 allowing the existing on-sale alcohol use with a Conditional Use Permit.

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 the continued operation of the restaurant with the proposed modifications and hours of operation is suitable for the proposed location.
2. The imposition of conditions as required by this resolution to address noise concerns relative to the current requirements of the noise ordinance and to address nuisance concerns will mitigate any negative impacts on, and will improve its compatibility with, nearby residential or commercial properties within the downtown district.
3. This project is Categorically Exempt pursuant to 15301, Class 1 of the California Environmental Quality Act Guidelines, minor alterations to existing private structures.

Section 5. Based on the foregoing, the Planning Commission hereby approves the requested amendments to the Conditional Use Permit, subject to the following **Conditions of Approval**, which supersede the conditions contained in City Council Resolution 03-6317:

- 1. Interior and exterior building alterations and the continued use and operation of the restaurant shall be substantially consistent with the plans submitted and reviewed by the Planning Commission and on October 21, 2003, and by the City Council on December 9, 2003.**
- 2. The hours of operation shall be limited to between 7:00 A.M. and 2:00 A.M. daily.**

- 3. The hours for live entertainment shall be limited to the hours between 7:00 PM to 1:15 AM.**
- 4. Double pane windows or solid doors shall be provided on all openings to the outside.**
- 5. Live entertainment shall be limited to background non-amplified acoustic music such as a piano, guitar, violin, etc.**
- 6. If entertainment is to include amplified musical instruments an acoustical study shall be prepared by an acoustical engineer, including proposed sound dampening features to baffle and direct sound away from the entrance/exit and window areas to ensure compliance with the noise ordinance. Said study and sound dampening features shall be reviewed and approved by the Community Development Director prior to the issuance of building permits and shall be implemented in the building prior to occupancy.**
  - A. The acoustical study shall be based on the worst-case scenario, or on a sound level that will not be exceeded at any given time.**
  - B. Management shall be responsible for the music/entertainment volume levels.**
  - C. During the performance of any live entertainment, the exterior doors and windows shall remain closed.**
  - D. The air conditioning system shall be of an adequate capacity to air condition the restaurant.**
  - E. All exterior doors shall have self-closing hardware.**
- 7. No live entertainment or amplified music, audio, television or speakers of any kind shall be permitted in the outside seating areas.**
- 8. The establishment shall not adversely affect the welfare of the residents, and/or commercial establishments nearby.**
- 9. The business shall provide adequate staffing and management and supervisory techniques to prevent loitering, unruliness, and boisterous activities of the patrons both inside and outside the business and in nearby public areas.**
- 10. The Police Chief shall determine if a continuing police problem exists, and may authorize the presence of a police approved doorman and/or security personnel to eliminate the problem, and/or shall submit a report to the Planning Commission, which will automatically initiate a review of this conditional use permit by the Commission.**
- 11. The exterior of all the premises shall be maintained in a neat and clean manner, and maintained free of graffiti at all times.**
- 12. 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 by the Planning Commission.**
- 13. The project and operation of the business shall comply with all applicable requirements of the Municipal Code.**
- 14. 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.**

- 15. The Planning Commission shall review the operation of the restaurant for compliance with conditions of approval and compliance with the Noise Ordinance 6 months from the opening of the new restaurant, and in response to any complaints thereafter.**
- 16. The Conditional Use Permit shall become null and void if not executed within two years of the date of the approval of this Resolution.**
- 17. The owner shall comply with requirements of the encroachment permit for use of the public right-of-way.**

Section 6. This grant shall not be effective for any purposes until the permittee and the owners of the property involved have filed a 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 prior to the issuance of a building permit.

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.

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

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

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

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

Section 7. 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:  
              ABSTAIN:  
              ABSENT:

CERTIFICATION

I hereby certify that the foregoing Resolution P.C. 05- 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 September 20, 2005.

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Ron Pizer, Chairman

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Sol Blumenfeld, Secretary

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September 20, 2005  
Date

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