

February 13, 2007

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

**Regular Meeting of
February 20, 2007**

SUBJECT: PRECISE DEVELOPMENT 07-3
 PARKING PLAN 07-3
 CONDITIONAL USE PERMIT 07-3
 TEXT AMENDMENT 07-1

APPLICANT: GREGORY NEWMAN

REQUESTS: PRECISE DEVELOPMENT PLAN (PDP) TO RECONSTRUCT AND EXPAND AN EXISTING
 BUILDING NONCONFORMING TO PARKING, DAMAGED BY FIRE, FOR A RESTAURANT
 WITH ON-SALE ALCOHOL

PARKING PLAN TO ALLOW AN APPROXIMATE 2000 SQUARE FOOT EXPANSION OF THE
RESTAURANT WITH THE PAYMENT OF PARKING IN-LIEU FEES RATHER THAN
PROVIDING REQUIRED PARKING ON SITE

CONDITIONAL USE PERMIT (CUP) FOR OUTDOOR SEATING ADDED ON FIRST LEVEL,
AND TO ALLOW SEASONAL OUTDOOR USE OF UPPER FLOOR WITH A RETRACTABLE
SKYLIGHT

TEXT AMENDMENT TO SECTION 17.44.040, ALLOWING IN LIEU PARKING FEES FOR
100% OF REQUIRED PARKING ALONG PIER PLAZA

Recommendation:

1. Approve the request subject to conditions in the attached resolution.
2. Approve the attached resolution, recommending approval of a text amendment to Section 17.44.040 of the Municipal Code, to exempt building sites on Pier Plaza from the parking in-lieu requirement that 25% of required parking for a building exceeding a 1:1 floor area ratio be provided on site.

Background:

PROJECT INFORMATION:

ZONING:	C-2
GENERAL PLAN:	General Commercial
EXISTING RESTAURANT AREA:	3,646 sq. ft*. (prior to fire damage)
PROPOSED RESTAURANT AREA:	5,612 sq. ft. (433 sq. ft. new outdoor patio)
PATIO ENCROACHMENT AREA:	385 sq. ft. (no change)
NET EXPANSION:	1,966 sq. ft. (1,533 sq. ft. inside, 433 sq. ft. outside)
FLOOR AREA / LOT AREA RATIO:	1.95
PARKING REQUIRED FOR EXPANSION:	20 spaces
PARKING PROVIDED:	0
PARKING REQUIRED ON-SITE (25% RULE)	5 spaces**
ENVIRONMENTAL DETERMINATION:	Categorically Exempt***

* Existing square footage included a mezzanine level that contained office and storage, and a 73 sq. ft. outdoor patio area on private property adjacent to encroachment area patio.

** Approval of the subject text amendment will eliminate this requirement.

*** Based on Section 15301 of the CEQA Guidelines which exempts additions to existing structures with less than 50% increase in floor area, or less than 2,500 square feet, whichever is less.

The project involves reconstruction and an addition to a building that was extensively damaged by fire in May 2006. Prior to the fire damage the building was nonconforming to parking requirements as no parking existed on-site. Since the fire damage was extensive, the only feasible option for the owner is to completely reconstruct the building. The property is subject to the recently adopted provisions of Section 17.52.070 pertaining to reconstruction of damaged nonconforming buildings which allows the building and prior use to be restored to its pre-damaged condition regardless of the extent of fire damage, provided that the rebuilt structure does not exceed the gross floor area and footprint of the building prior to damage, that there is no occupant load increase, that the building can be duplicated to its pre-damaged condition in compliance with current building and safety codes, and the building includes installation of a fully code complying fire sprinkler system. However, if the restoration deviates from the pre-damaged condition of the building, the deviation must conform to current zoning requirements.

Therefore, if the owner was proposing to reconstruct the building precisely as it existed before, the City could simply issue a building permit for reconstruction with approval of a Precise Development Plan. However, since the applicant is proposing both to reconstruct the prior use, and expand it by nearly 2,000 square feet it is subject to other discretionary review including the requirement for a Parking Plan, text amendment to the parking ordinance and a Conditional Use Permit for outdoor dining.

Analysis:

The proposed project involves the complete demolition of the fire damaged structure, and the construction of a new two story building. This includes an increase in the building footprint from property line to property line (previously the building maintained a 3-foot clearance from the rear property line), increasing the building height to the maximum of 30 feet, and proposing a substantially different interior floor plan and larger outdoor patio area. Also, the upper floor includes a retractable skylight to allow for seasonal outdoor use of the second level. The first floor level includes a moderate sized kitchen, a long bar with fixed bar stools, some fixed and movable seating areas for dining, with the areas with movable seating also identified for dancing, and a disc jockey station. The current CUP does not include live entertainment. Therefore, this use should be removed from project plans or the current CUP must be amended to permit live entertainment with a disk jockey.¹

The first floor plan also includes an outdoor bar and an outdoor patio area adjacent to and behind the pre-existing encroachment area patio. This includes retractable doors, called "nano doors" which give the option of enclosing the entire front part of the restaurant. The second floor (which has both stair and elevator access) includes a circular bar, and a large area towards the front identified as "lounge/banquet" seating, which includes movable seating, and fixed low profile booth seating along the walls. Approximately ½ of the second floor is comprised of bathrooms, stairs, elevator and service equipment. The proposed restaurant accommodates approximately 260 patrons based upon a preliminary occupant load review.

The building parapet and exposed roof equipment are designed to comply with the height limit. The parapet wall provides a screen for the roof-top equipment. However, the plan also includes a stair tower accessing elevator equipment, extending above the height limit which covers over 7% of the roof surface and exceeds the 5% allowance of the Zoning Ordinance. The plan must be corrected by reducing the roof-top equipment room that exceeds the height limit by approximately 62 square feet in order to comply with Section 17.46.010 of the Municipal Code for structures that exceed the height limit.

Precise Development Plan

Chapter 17.58 pertaining to requirement for a Precise Development Plan requires Planning Commission review of projects both related to their proposed use and overall design and construction. This includes reviewing the proposed use and structures for minimum compliance with zoning standards, to review and consider mitigation of environmental impacts including noise, parking, traffic and neighborhood compatibility, and to review the overall quality of the proposed development. Pursuant to Chapter 17.58 the criteria for Planning Commission review and approval is very broad, and includes the following:

- The amount of existing or proposed off-street parking in relation to actual need
- The combination of uses proposed as relate to compatibility
- The traffic impacts, and the capacity of streets serving the area
- The proposed exterior signs and décor, and compatibility with existing establishments
- Noise, odor, dust and/or vibration that may be generated by the proposed use
- Impact on the city's infrastructure, and/or services
- Other considerations to ensure compatibility

Thus to approve the PDP, the Commission must find, among other things, that the reconfigured project is consistent with the governing CUP (which limits the operation to a restaurant use) and that it will not adversely impact nearby properties. The Commission and City Council have recently moved to limit noise emanating from downtown businesses by enacting more stringent noise standards for Pier Plaza and more restrictive business operating standards for discretionary permits for restaurants. Thus the Commission may want to ensure that PDP conditions for the project also address environmental issues related to noise and operations consistent with the most current discretionary approvals for downtown restaurants. Such conditions may include requirements to ensure that the kitchen for the business is always open and that meals are served during all operating hours; that the bar/lounge part is considered a secondary aspect of the business and reflected in this manner on project plans; and that noise issues related to the building design and project layout be reviewed by a qualified acoustical engineer. In light of recent Commission concerns about emergency calls to Pier Plaza, the Police Chief has reviewed the project plans and recommends installation of video systems for open patios and exits as a security measure and additional noise attenuation in open dining areas.

Parking Plan/In Lieu Parking

The building is currently nonconforming to parking, and pursuant to Section 17.44.040, pertaining to downtown parking regulations, parking is required for the amount of the expansion. Based on the requirements for a restaurant use, including outdoor seating areas (1 space per 100 square feet of gross floor area) the proposed expansion results in a requirement of 20 spaces. The applicant is not proposing any parking on site, and thus is requesting to pay in-lieu fees pursuant to Section 17.44.040 of the Municipal Code, and the City's Certified Coastal Land Use Plan. Also, pursuant to the Coastal Land Use Plan, the City may accept said in-lieu fee if it can "assure that sufficient parking exists to accommodate the parking demand of new development without causing significant adverse impact on parking that is available to the beach going public." With the required payment of \$28,900 for each required in-lieu parking space not provided on-site, a total payment of \$578,000 is required. In-lieu fees are deposited in the City's parking improvement fund, which is set aside for the City to construct public parking in the future when the number of in-lieu parking spaces reaches 100.²

In accepting in-lieu parking, the Commission must ensure that the current parking deficiency will not unduly impact area parking. Recently the Commission approved the use of in-lieu parking for proposed office and retail building at 1429 Hermosa Avenue, where it was demonstrated that peak use of the building coincided with times of the week where substantial public parking was available on the street and in the parking structure, and also that there was otherwise enough parking on site to satisfy demand during peak demand periods. Coastal Commission approval is pending for the 1429 Hermosa Avenue project and is also required for this application.

Conditional Use Permit

Prior to the fire damage, the restaurant was operating with approval for on-sale alcohol pursuant to a Conditional Use Permit approved by the Planning Commission in 1968, which contained no operating conditions, or conditions that tied the approval to a particular floor plan. That conditional use permit runs with the property, and also will run with any reconstruction of a restaurant with on-sale alcohol as long as the restaurant use is continued.³ With respect to live entertainment, although the record shows the location had approved live entertainment in 1969, the Municipal Code in effect at that time and until 1970 did not require a CUP for live entertainment but only required a license for entertainment and a business license. There is no record that this location ever obtained a CUP for live entertainment. Effective May 21, 1970 the Zoning Ordinance was amended to require a CUP for live entertainment. The entertainment permit from 1969 does not run with the land like a CUP, therefore the property does not have a CUP for live entertainment. This affects the proposed disc jockey use shown on project plans, which cannot be allowed unless the applicant requests an amendment to include live entertainment as part of the CUP.

Section 17.26.050 pertaining to permitted uses in the C-2 zone states that all uses shall be conducted wholly within a building enclosed on all sides, except that outdoor uses may be permitted by a Conditional Use Permit. The proposal includes additional outdoor area at the first level in (approximately 400 square feet), and a retractable skylight on the upper floor, which also would be considered an outdoor use when opened. While the outdoor patio use within the Pier Plaza right-of-way is a permitted use in conjunction with the existing C.U.P., subject only to an encroachment permit, the outdoor dining on private property requires a Conditional Use Permit. The proposed expansion of the restaurant includes an expanded outdoor seating area, and outdoor bar, as well as a retractable roof. These changes will potentially result in increased noise from the business as compared to the prior use. This noise potentially will be both directed out towards the plaza, as well as into nearby residential areas. To address these concerns the Commission may want to consider more restrictive hours for the outdoor uses and/or require enclosure of the open dining areas based upon an evaluation of acoustical conditions of the new building. Without mitigation of these factors, noise violations may have a detrimental effect on the downtown and within the vicinity.

Text Amendment – Section 17.44.040

Section 17.44.040 of the Zoning Ordinance, regarding parking requirements for the downtown district, includes specific allowances for on-site parking for projects requesting parking in lieu fees⁴. Where building floor area exceeds a one to one ratio as compared to building site area, 25% of the required parking shall be provided on site. Since the subject project has more than a 1:1 floor area to lot area ratio (F.A.R.); 25%, or 5 spaces must be provided on site. The applicant, however, is proposing that all the required parking be compensated by an in-lieu fee, which is currently not allowed by Section 17.44.040(E).

This section of the Zoning Ordinance was amended in 2004, in conjunction with a Coastal Land Use Plan amendment that modified parking requirements in the downtown district, including the allowances for on-

site parking when in-lieu fees are paid. Previously, when in-lieu fees were paid, 25% of required parking was required on site for lots of less than 4,000 square feet with an F.A.R. of greater than 1:1; 50% on sites between 4,000 and 12,000 square feet; and no in-lieu fees were allowed for sites greater than 12,000 square feet. The purpose of the 25% rule is to ensure that some minimum amount of parking is provided on site for projects either on small lots or on assembled lots. Another hypothetical example would be the addition of second floor office space above an existing retail use on the Plaza. For example, a 2700 square foot office expansion (at 1 space required per 333 square feet) would result in a requirement of 8 spaces and, therefore with the 25% rule, 2 spaces would be required on site and 6 could be paid for with in-lieu fees.

The Commission and City Council have previously stated that it is not desirable to require on-site parking at all on Pier Plaza, since the sites are small and have limited vehicle access. The properties that front on Pier Plaza are typically 30' X 95' and have limited access for parking either on the rear alley for the north side, or through the public parking lot on the south side. Most of the buildings on the Plaza are developed at or above the one-to-one floor area ratio, and very few have any existing on site parking. Therefore, the expansion or redevelopment of any of these sites is adversely affected by this 25% on-site rule. While it may be physically possible to provide parking at the rear of these buildings, it may not be economically feasible to develop these parcels with additional parking. Given the 30-foot width of the lots, it would be feasible to provide three at grade parking spaces with direct access to the rear; however, any additional spaces would require either tandem parking or substantially reduce buildable floor area at the ground floor. This may impact the pedestrian character and ambiance of the Plaza if parking were visible from the Plaza. The Coastal Land Use plan as amended in 2004, and certified by the Coastal Commission, specifically references the downtown parking section of the Zoning Ordinance, and therefore, the Coastal Commission will have to approve any modification of these parking regulations.

Summary:

The proposed project involves a building expansion of nearly 2,000 sq. ft. If the project involved reconstruction of the building precisely as it existed prior to the fire, the City could simply review the project under the provisions of the PDP and issue a building permit upon discretionary approval. However, since the applicant is proposing both to reconstruct and expand the use and incorporate outdoor dining and live entertainment, it is also subject to a Parking Plan, Conditional Use Permit for outdoor dining and the need to amend the parking ordinance to accommodate 100% of the expansion parking through the in lieu parking program.

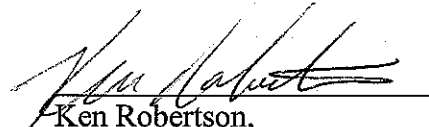
If the Commission approves the project, the following specific conditions of approval can be considered for the Precise Development Plan as required by Chapter 17.58 and the Parking Plan under Chapter 17.44 of the Zone Code to mitigate impacts of the proposed expansion:

1. Interior and 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 on February 20, 2007.
2. The applicant shall retain a qualified acoustical engineer to review project plans and prepare an acoustical study to verify that under a worst-case scenario, noise from the establishment is consistent with requirements established in Sections 8.24.030, 8.24.040 (I) and (J) and 8.24.045 of the Municipal Code. The study shall specifically address outdoor dining conditions shown on project plans and provide mitigation measures to attenuate noise that may include sound baffles, double glazing, glass panels, closing open-air dining areas during specified hours and other specified

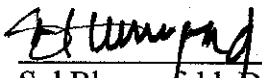
methods. The scope of the acoustical study shall be approved by the Community Development Director.

3. The Precise Development Plan is for restaurant purposes only consistent with the intent of the original Conditional Use Permit. Any intensification of use involving live entertainment, (i.e. live music whether acoustic or amplified, comedy acts, disk jockeys or any other type of performances) requires a modification to the original Conditional Use Permit.
4. The hours of operation for the restaurant and lounge area, shall be limited to between 7:00 A.M. and 2:00 A.M, consistent with current ABC operating hours. The kitchen shall remain open during operating hours to ensure that the use is maintained as a restaurant.
5. The business shall not operate in a manner as to have an adverse effect on or interfere with the comfortable enjoyment of neighboring residential and commercial property.
6. The business shall provide adequate staffing, management and supervisory techniques to prevent ongoing and disruptive loitering, unruliness, and unduly boisterous activities of the patrons.
7. Noise emanating from the property shall be within the limitations prescribed by the City's noise ordinance and shall not be plainly audible from any residential use, and shall not create a nuisance to surrounding residential neighborhoods, and/or commercial establishments.
8. If the Police Chief determines that there are a disproportionate number of police calls to the business due to the disorderly or disruptive behavior of patrons and the inability or refusal of the business to manage its patrons, the Chief may require on an interim basis (not to exceed 60 days) that the business employ private security personnel. The Chief shall notify the Director of Community Development of this action, who shall forthwith, schedule a public hearing before the Planning Commission to consider modification or revocation of this Precise Development Plan by the Planning Commission.
9. The applicant shall install video recording equipment with a minimum of two weeks storage capacity to record activities in the patio and exits and entrances. The design and operation of the video system shall be reviewed and approved by the Police Chief prior to occupancy of the premises.
10. The applicant shall submit a detailed seating and occupant load plan prepared by a licensed design professional, which shall be approved by the Community Development and Fire Departments. The seating and tables shall be placed and maintained in the restaurant as indicated on the occupant load plan during all operating hours. All approved occupant load signs must be posted as required by the Fire Department prior to occupancy of the premises.
11. The Fire Department shall maintain a record of the posted allowable occupant load for the business and regularly check the business for occupant load compliance. The Fire Chief may determine that there is a repeat pattern of occupant load violations and then shall submit a report to the Planning Commission which will automatically initiate a review of the original Conditional Use Permit and Precise Development Plan by the Planning Commission.

12. The exterior of all the premises shall be maintained in a neat and clean manner, and maintained free of graffiti at all times.
13. Any significant changes to the interior layout, which alter the primary function of the business as a restaurant, (i.e. increasing floor area for bar seating, or adding a dance floor) shall be subject to review and approval by the Planning Commission and require amendment to this Precise Development Plan.
14. The business shall comply with all applicable requirements of the Municipal Code.
15. The Planning Commission shall conduct a review of the restaurant operations for compliance with the terms of this permit 6 months after commencement of operations, and in response to any complaints thereafter.
16. A code complying fire sprinkler system shall be installed pursuant to the requirements of the Building Code and the Nonconforming Ordinance.
17. In lieu parking fees shall be paid pursuant to the requirements of Section 17.44.040 of the Zone Code for 20 parking spaces (\$578,000) prior to occupancy of the building.
18. Project approval is contingent upon approval of amendment of the Parking Ordinance to allow 100% in lieu parking on Pier Plaza.
19. The project plans shall be amended to remove the disk jockey booth which constitutes live entertainment in violation of the current CUP.
20. The project roof plan must be corrected to comply with Section 17.46.010 of the Zone code regarding roof structures.


Ken Robertson,
Senior Planner

CONCUR:


Sol Blumenfeld, Director
Community Development.

Notes:

¹ Section 17.04.050 – Commercial Land Use Definitions - Live entertainment” means the provision of live entertainment such as live music, stand-up comedy and/or live theater on a regular basis. The current CUP does not include live entertainment and the Commission has previously interpreted a disc jockey as “live entertainment”. Most recently the Commission has interpreted use of disk jockeys as live entertainment in Stillwater Bistro and Club 705/Saffire CUP’s.

² The text from the Coastal Land Use Plan, as amended in 2004, reads as follows “Program: In order to mitigate the impacts of increased parking demand that is created by new development, but is not compensated for by requiring additional parking spaces, City Council shall provide an in-lieu fund transfer or an in-lieu fee as described in Section 17.44.040 of the Zoning Ordinance and

Ordinance No. 80-643 and Resolutions Nos. 80-4307 and 99-6001 to an improvement fund earmarked specifically for creating parking, in an amount determined to be sufficient to off-set the increase in required parking spaces caused by the expansion, intensification, or new construction not provided on site. If the City Council determines that the private party is responsible for the in-lieu fee, the private party shall pay said fee"; "Program: The City shall not accept a fee in lieu of providing on site parking unless the Community Development Director assures that sufficient parking exists to accommodate the parking demand of new development without causing a significant adverse impact on parking that is available to the beach going public. The improvement fund to mitigate increased parking demand shall be geared to a threshold limit of increased parking demand. The threshold limit was established at 100 parking spaces in 1982 and has not yet been reached. The City shall continue tallying the number of spaces (of that 100) that have been allocated based on receipt of in-lieu fees, and the City shall construct new parking upon reaching that threshold limit or the City shall not accept any fees in-lieu of parking beyond that threshold limit. The City shall provide an annual accounting of the in-lieu parking program." The City has long range plans to construct additional parking in the Civic Center as part of a proposed master plan, however, this project has not commenced.

³ The City Attorney has determined that the 1968 C.U.P. approval is still in effect for the property and runs with the land as long as the same use is maintained or expanded as proposed by the applicant.

⁴"Section 17.44.040 (E). Parking in-lieu fees. When the city council provides for contributions to an improvement fund for a vehicle parking district in-lieu of parking spaces so required, said in-lieu fee contributions shall be considered to satisfy the requirements of this chapter.

"1. The Director of the Community Development Department shall be responsible for the calculations required under this chapter and shall calculate and collect the in-lieu contribution.

"2. The following allowances through in-lieu fee contributions for parking may be allowed with a parking plan as approved by the Planning Commission and as prescribed in Section 17.44.210:

"a. Building sites with a ratio of building floor area to building site of one-to-one or less may pay an "in-lieu" fee for all required spaces.

"b. Building sites where buildings will exceed a one-to-one gross floor area to building site area ratio shall be required to provide a minimum of twenty-five (25) percent of the required parking on-site."

Attachments:

1. Proposed Resolution to Approve
2. Resolution to recommend amending Section 17.44.040
3. Location Map and Aerial Photo
4. Correspondence

F:/b95/cd/pc/pdp-52Pier

P.C. RESOLUTION 07-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERMOSA BEACH, CALIFORNIA, APPROVING A PRECISE DEVELOPMENT PLAN TO RECONSTRUCT AND EXPAND A TWO STORY BUILDING DAMAGED BY FIRE FOR AN EXISTING RESTAURANT WITH ON-SALE ALCOHOL; A CONDITIONAL USE PERMIT TO ALLOW OUTDOOR SEATING IN ADDITION TO THE PATIO WITHIN THE PIER PLAZA ENCROACHMENT AREA; AND, A PARKING PLAN TO ALLOW SAID EXPANSION (AN INCREASE FROM APPROXIMATELY 3,600 SQUARE FEET TO 5,600 SQUARE FEET INCLUDING OUTDOOR SEATING AREAS) WITH THE PAYMENT OF PARKING IN-LIEU FEES TO COMPENSATE FOR PROVIDING LESS THAN REQUIRED PARKING ON SITE, ON PROPERTY AT 52 PIER AVENUE AND LEGALLY DESCRIBED AS LOTS 11, BLOCK 12, HERMOSA BEACH TRACT

The Planning Commission of the City of Hermosa Beach does hereby resolve and order as follows:

Section 1. An application was filed by Gregory Newman owner of property at 52 Pier Avenue seeking approval of a Precise Development Plan to reconstruct and expand and existing commercial restaurant building damaged by fire, a Conditional Use Permit for outdoor dining in addition to the existing encroachment area, and a Parking Plan to pay parking in-lieu fees to compensate for less than required parking.

Section 2. The Planning Commission conducted a duly noticed public hearing to consider the subject application on February 20, 2007, and considered testimony and evidence both written and oral. Based on the testimony and evidence received the Planning Commission makes the following factual findings:

1. The subject site is located on the south side of Pier Plaza mid block between Hermosa Avenue and The Strand. The property historically has been used for a restaurant with on-sale alcohol, which was recently destroyed by fire, and given the severity of the fire damage, the building cannot be repaired.

2. The project involves the reconstruction of the damaged building, and replacing it with a larger structure, expanding the floor area and outdoor dining areas from approximately 3,600 square feet to 5,600 square feet, requiring a Precise Development Plan pursuant to Chapter 17.58 of the Zoning Ordinance of the Municipal Code.

3. Prior to the fire damage, the restaurant was operating with approval for on-sale alcohol pursuant to a Conditional Use Permit approved by the Planning Commission in 1968, which contained no operating conditions, or conditions that tied the approval to a particular floor plan. That conditional use permit runs with the property, and also will run with any reconstruction of a restaurant with on-sale alcohol as long as the restaurant use continued.

4. Section 17.44.040 pertaining to parking requirements in the downtown area require that parking be provided for the amount of the expansion. Based on the requirements for a restaurant use, including outdoor seating areas (1 space per 1,000 square feet of gross floor area)

1 the proposed expansion results in a requirement of 20 spaces. Since all the required parking
2 cannot be provided on site, the applicant is requesting to pay parking in-lieu fees to satisfy parking
3 requirements pursuant to the program established by the City Council . Currently the in-lieu fee
4 program as approved by the City Council is \$28,900 per required parking space.

5 5. Section 17.44.040 also requires that where building floor area exceeds a one to one
6 ratio as compared to lot area that 25% of the required parking shall be provided on site. In this
7 case, the floor area to lot area ratio is well in excess of 1:1, and thus 5 of the 20 required parking
8 spaces must be provided on site. The applicant is requesting consideration of a text amendment to
9 exempt Pier Plaza properties from this on-site requirement, and requesting approval contingent
10 upon approval of said text amendment.

11 6. Section 17.26.050 pertaining to permitted uses in the C-2 zone states that all uses
12 shall be conducted wholly within a building enclosed on all sides, except that outdoor uses may be
13 permitted by a Conditional Use Permit. The proposal includes additional outdoor area at the first
14 level in (approximately 433 square feet), and a retractable skylight on the upper floor, which also
15 is considered an outdoor use when it's opened. While the outdoor patio use within the Pier Plaza
16 right-of-way is a permitted use in conjunction with the existing C.U.P., subject only to an
17 encroachment permit, the expanded outdoor uses require a Conditional Use Permit.

18 Section 3. Based on the foregoing factual findings the Planning Commission makes the
19 following findings pertaining to the application for a Precise Development Plan, Conditional Use
20 Permit, and Parking Plan:

21 1. The project is consistent with applicable general and specific plans and is in compliance
22 with the use and development requirements of the Zoning Ordinance;

23 2. The site is zoned C-2 and is physically suitable for the type and density of proposed
24 development and the project and the proposed use complies with the development standards
25 contained therein;

26 3 The project, as conditioned, will conform to all zoning laws and criteria and will be
27 compatible with neighboring residential and commercial properties;

28 4. The applicant will compensate for the parking deficiency of 20 spaces, by paying a
29 parking in-lieu fee, pursuant to Section 17.44.040

30 5. The general criteria of Hermosa Beach Municipal Code Section 17.58.030 for granting
31 or conditionally granting a Precise Development Plan and general criteria of Section 17.40.020 for
32 granting Conditional Use Permits have been considered. In making this finding, the Planning
33 Commission has determined that:

- 34 a. The proximity of the project to existing commercial and residential uses in the
35 downtown area will not result in negative effects with incorporation of the conditions
36 below.

- b. The project is designed to minimize impact on ocean views from residential areas, as the building will be constructed in compliance with the 30-foot height limit of the C-2 zone.
- c. The amount of proposed off-street parking to be paid for consistent with the City's parking in-lieu fee program is sufficient for actual need and consistent with the parking requirements for the downtown district.
- d. The use proposed is consistent with historical use of the property and is compatible with the area.
- e. The capacity and safety of the streets serving the area is adequate for the traffic volume estimated to be generated by the project.
- f. The proposed exterior signs and decor are sufficiently compatible with existing establishments in the area with incorporation of the conditions below.
- g. Building and driveway orientation is appropriate to minimize noise and traffic impacts on nearby residential areas.
- h. The project will not result in adverse noise, odor, dust or vibration environmental impacts with incorporation of the conditions of approval which require an acoustical study and management of noise volumes.
- i. The proposed use will not result in an adverse impact on the City's infrastructure and/or services.

7. The criteria of Hermosa Beach Municipal Code Section 17.58.030(C) for denial of a Precise Development Plan are not applicable. In making this finding, the Planning Commission has determined that:

- a. The project will not substantially depreciate property values in the vicinity, or interfere with the use or enjoyment of property in such area, because of excessive dissimilarity or inappropriateness of design in relation to the surrounding vicinity.

- a. The project will not have significant environmental adverse impacts.

11. The requirements of Hermosa Beach Municipal Code Section 17.44.040 for granting a Parking Plan for the payment of in-lieu fees for a portion of the required parking, and the policies contained in the Local Coastal Plan, have been considered and are satisfied by the proposal contingent upon City Council adoption of the proposed text amendment to exempt Pier Plaza fronting properties from the 25% allowance otherwise required for on-site parking when in-lieu fees are paid. In making this finding, the Planning Commission has determined that:

- b. Sufficient public parking exists to accommodate the parking demand of the project without causing a significant adverse impact on parking that is available to the beach going public, since this is the replacement of the historical use of the property, and

the peak demand for parking does not coincide with the peak demands for beach parking.

12. The City Council, at its meeting of August 8, 2006, set the parking in-lieu fee at \$28,900 per required parking space, payable in lump sum prior to issuance of Certificate of Occupancy.

Section 4. Environmental Review. Pursuant to the California Environmental Quality Act ("CEQA") and the City's local CEQA Guidelines, the project is Categorically exempt from the requirement for environmental review and the provisions of CEQA, pursuant to Article 19, Section 15303, of the CEQA guidelines which exempts the construction of restaurants or similar structures in urbanized areas not exceeding 10,000 square feet of floor area on sites zoned for such use.

Section 5. Based on the foregoing, the Planning Commission hereby approves the subject Precise Development Plan, Conditional Use Permit for outdoor seating, and Parking Plan for less than required parking on site, subject to the following **Conditions of Approval**:

1. **Project approval is contingent upon City Council approval of the text amendment of Municipal Code, Section 17.44.040 (E) of the Zoning Ordinance, to exempt properties fronting on Pier Plaza from the requirement to provide 25% of required parking on site for projects exceeding a 1:1 floor area to lot area ratio when in-lieu parking fees are used to satisfy parking requirements. If this text amendment is not approved, project approval is null and void.**
2. **The development and continued use of the property shall be substantially consistent with submitted plans as reviewed by the Planning Commission at their meeting of February 20, 2007, incorporating all revisions as required by the conditions below. Any major modification shall be subject to review and approval of the Planning Commission. Minor modifications may be approved by the Community Development Director but shall not be final until confirmed by the Planning Commission as a consent calendar item on the Commission agenda.**
3. **Final plans for building permit issuance shall be revised to incorporate the following.**
 - a. **The roof-top equipment room shall be reduced to comply with the maximum 5% of roof area allowed to exceed the height limit pursuant to Section 17.46.010 of the Zoning Ordinance.**
 - b. **The project plans shall be amended to remove the disk jockey booth which constitutes live entertainment.**
4. **In order to compensate for required parking that is not provided on site, the applicant shall contribute fees to the City's parking improvement fund in lieu of the required twenty (20) parking spaces, as set forth in Section 17.44.040(E) of the Zoning Ordinance, at the amount of \$28,900 per required space as set forth by resolution of the City Council, for a total payment of \$578,000. The payment of fees**

1 in-lieu of parking shall be made prior to issuance of a Certificate of Occupancy for
2 the building.

- 3 5. Architectural treatment of the building and all finishes shall be as shown on building
4 elevations and site and floor plans. Any modification shall require approval by the
Community Development Director.
- 5 6. Final verification of compliance with the height limit requires submittal of revised
6 roof plan with property corner elevations and finished roof heights, and maximum
7 heights identified at the critical points.
- 8 7. A detailed drainage and (SUSMP) Standard Urban Stormwater Mitigation Plan is
9 required for approval by the Public Works Department, prior to the issuance of
10 building permits and implemented on site, demonstrating best management practices
for stormwater pollution control, and for sediment control and erosion control during
construction.
- 11 8. The applicant is responsible for all off-site right-of-way construction required by the
12 Public Works Department, or alternatively, may deposit funds in amount to cover the
13 cost for future right-of-way construction for the Pier Avenue frontage.
- 14 9. Any existing or proposed encroachments in the public right-of-way, must comply
15 with or be corrected as necessary to meet the requirements of Chapter 12.16 of the
16 Municipal Code, including the requirement to obtain an encroachment permit from
the Public Works Department.
- 17 10. The applicant shall submit all required plans and reports to comply with the City's
18 construction debris recycling program for new construction including manifests from
19 both the recycler and County landfill.
- 20 11. The project shall comply with the requirements of the Fire Department.
- 21 12. Final building plans/construction drawings including site, elevation, floor plan,
22 sections, details, signage, landscaping and irrigation, submitted for building permit
23 issuance shall be reviewed for consistency with the plans approved by the Planning
24 Commission and the conditions of this resolution, and approved by the Community
Development Director prior to the issuance of any Building Permit.
- 25 13. All roof equipment shall be located and designed to be screened from public view and
26 any portion that exceeds the height limit shall not cover more than 5% of the roof
area.
- 27 14. The applicant shall retain a qualified acoustical engineer to review project plans and
28 prepare an acoustical study to verify that under a worst-case scenario, noise from the
29 establishment is consistent with requirements established in Sections 8.24.030,
8.24.040 (I) and (J) and 8.24.045 of the Municipal Code. The study shall specifically
address outdoor dining conditions shown on project plans and provide mitigation
measures to attenuate noise that may include sound baffles, double glazing, glass

panels, closing open-air dining areas during specified hours and other specified methods. The scope of the acoustical study shall be approved by the Community Development Director.

15. The Precise Development Plan is for restaurant purposes only consistent with the intent of the original Conditional Use Permit. Any intensification of use involving live entertainment, (i.e. live music whether acoustic or amplified, comedy acts, disk jockeys or any other type of performances) requires a modification to the original Conditional Use Permit.
16. The hours of operation for the restaurant and lounge area, shall be limited to between 7:00 A.M. and 2:00 A.M, consistent with current ABC operating hours. The kitchen shall remain open during operating hours to ensure that the use is maintained as a restaurant.
17. The business shall not operate in a manner as to have an adverse effect on or interfere with the comfortable enjoyment of neighboring residential and commercial property.
18. The business shall provide adequate staffing, management and supervisory techniques to prevent ongoing and disruptive loitering, unruliness, and unduly boisterous activities of the patrons.
19. Noise emanating from the property shall be within the limitations prescribed by the City's noise ordinance and shall not be plainly audible from any residential use, and shall not create a nuisance to surrounding residential neighborhoods, and/or commercial establishments.
20. If the Police Chief determines that there are a disproportionate number of police calls to the business due to the disorderly or disruptive behavior of patrons and the inability or refusal of the business to manage its patrons, the Chief may require on an interim basis (not to exceed 60 days) that the business employ private security personnel. The Chief shall notify the Director of Community Development of this action, who shall forthwith, schedule a public hearing before the Planning Commission to consider modification or revocation of this Precise Development Plan by the Planning Commission.
21. The applicant shall install video recording equipment with a minimum of two weeks storage capacity to record activities in the patio and exits and entrances. The design and operation of the video system shall be reviewed and approved by the Police Chief prior to occupancy of the premises.
22. The applicant shall submit a detailed seating and occupant load plan prepared by a licensed design professional, which shall be approved by the Community Development and Fire Departments. The seating and tables shall be placed and maintained in the restaurant as indicated on the occupant load plan during all operating hours. All approved occupant load signs must be posted as required by the Fire Department prior to occupancy of the premises.

- 1 **23. The Fire Department shall maintain a record of the posted allowable occupant load**
2 **for the business and regularly check the business for occupant load compliance. The**
3 **Fire Chief may determine that there is a repeat pattern of occupant load violations**
4 **and then shall submit a report to the Planning Commission which will automatically**
5 **initiate a review of the original Conditional Use Permit and Precise Development Plan**
6 **by the Planning Commission.**
- 7 **24. The exterior of all the premises shall be maintained in a neat and clean manner, and**
8 **maintained free of graffiti at all times.**
- 9 **25. Any significant changes to the interior layout, which alter the primary function of the**
10 **business as a restaurant, (i.e. increasing floor area for bar seating, or adding a dance**
11 **floor) shall be subject to review and approval by the Planning Commission and**
12 **require amendment to this Precise Development Plan.**
- 13 **26. The Planning Commission shall conduct a review of the restaurant operations for**
14 **compliance with the terms of this permit 6 months after commencement of**
15 **operations, and in response to any complaints thereafter.**
- 16 **27. A code complying fire sprinkler system shall be installed pursuant to the**
17 **requirements of the Building Code and the Nonconforming Ordinance.**
- 18 **28. The project and operation of the business shall comply with all applicable**
19 **requirements of the Municipal Code.**
- 20 **29. The Precise Development Plan and Parking Plan shall be recorded, and proof of**
21 **recordation shall be submitted to the Community Development Department.**
- 22 **30. Each of the above Conditions of Approval is separately enforced, and if one of the**
23 **Conditions of Approval is found to be invalid by a court of law, all the other**
24 **conditions shall remain valid and enforceable.**
- 25 **31. Permittee shall defend, indemnify and hold harmless the City, it agents, officers, and**
26 **employees from any claim, action, or proceeding against the City or its agents,**
27 **officers, or employee to attack, set aside, void or annul this permit approval, which**
28 **action is brought within the applicable time period of the State Government Code.**
29 **The City shall promptly notify the permittee of any claim, action, or proceeding and**
30 **the City shall cooperate fully in the defense. If the City fails to promptly notify the**
31 **permittee of any claim, action or proceeding, or if the City fails to cooperate fully in**
32 **the defense, the permittee shall not thereafter be responsible to defend, indemnify, or**
33 **hold harmless the City.**
- 34 **32. The permittee shall reimburse the City for any court and attorney's fees which the**
35 **City may be required to pay as a result of any claim or action brought against the**
36 **City because of this grant. Although the permittee is the real party in interest in an**
37 **action, the City may, at its sole discretion, participate at its own expense in the**

1 defense of the action, but such participation shall not relieve the permittee of any
2 obligation under this condition.

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

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

12 Section 7. Pursuant to the Code of Civil Procedure Section 1094.6, any legal challenge to
13 the decision of the Planning Commission, after a formal appeal to the City Council, must be made
14 within 90 days after the final decision by the City Council.

15 VOTE: AYES:
16 NOES:
17 ABSTAIN:
18 ABSENT:

19 CERTIFICATION

20 I hereby certify the foregoing Resolution P.C. No. 07- is a true and complete record of the action
21 taken by the Planning Commission of the City of Hermosa Beach, California at their regular
22 meeting of October 17, 2006.

23 _____
24 Kent Allen, Chairman

25 _____
26 Sol Blumenfeld, Secretary

27 _____
28 Date

29 F:\B95\CD\PC\2007\02-20-07\PDPR-52 Pier.doc

RESOLUTION P.C. 07-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERMOSA BEACH TO RECOMMEND AMENDING THE ZONING ORDINANCE TO EXEMPT PIER PLAZA BUILDING SITES FROM PROVIDING A PERCENTAGE OF PARKING SPACES ON SITE WHEN IN-LIEU PARKING FEES ARE PAID

The Planning Commission of the City of Hermosa Beach does hereby resolve as follows:

Section 1. The Planning Commission held a duly noticed public hearing on February 20, 2007, to consider amending the Zoning Ordinance to consider modifications of certain provisions of section 17.44.040 with respect to the allowances for on-site parking when payment parking in-lieu fees are provided rather than providing parking on site in the downtown district;

Section 2. Based on the evidence considered at the public hearing, the Planning Commission makes the following findings:

1. The requirement to provide a minimum of 25% of required parking on-site, for building sites of greater than 1:1 floor area to building site area, is not appropriate for sites on Pier Plaza because of their limited access and the pedestrian attributes of the Plaza. Therefore, these sites should be allowed to pay in-lieu fees for all required parking.

Section 3. Based on the foregoing, the Planning Commission hereby recommends that the Hermosa Beach Municipal Code, Title 17-Zoning, be amended as follows:

1. Subsection 17.44.040-E of Title 17 of the Hermosa Beach Municipal Code, pertaining to parking in-lieu fees in the downtown district is hereby amended to read as follows:

"E. Parking in-lieu fees. When the City Council provides for contributions to an improvement fund for a vehicle parking district in-lieu of parking spaces so required, said in-lieu fee contributions shall be considered to satisfy the requirements of this chapter.

"1. The Director of the Community Development Department shall be responsible for the calculations required under this chapter and shall calculate and collect the in-lieu contribution.

"2. The following allowances through in-lieu fee contributions for parking may be allowed with a parking plan as approved by the Planning Commission and as prescribed in Section 17.44.210:

"a. Building sites with a ratio of building floor area to building site of one-to-one or less may pay an "in-lieu" fee for all required spaces.

"b. Building sites where buildings will exceed a one-to-one gross floor area to building site area ratio shall be required to provide a minimum of twenty-five (25) percent of the required parking on-site, except for sites on Pier Plaza west of Hermosa Avenue."

Section 4. This code amendment is categorically exempt from environmental review pursuant to the California Environmental Quality Act Guidelines, Section 15305, Class 5: Minor Changes in Land Use Limitations, because the amendment would make minor changes in the regulation of parking regulations.

VOTE: AYES:
NOES:
ABSTAIN:
ABSENT:

CERTIFICATION

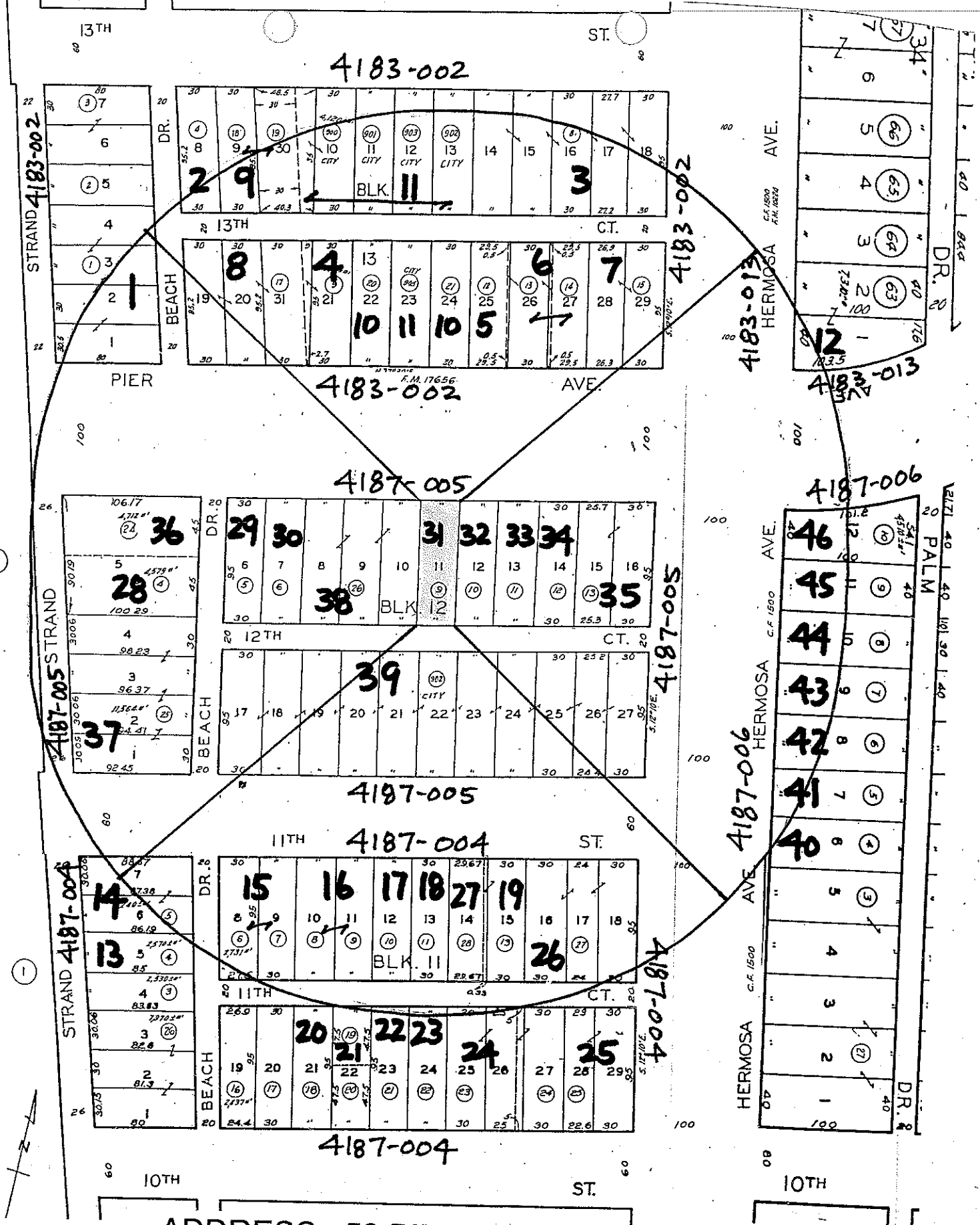
I hereby certify the foregoing Resolution P.C. 07- is a true and complete record of the action taken by the Planning Commission of the City of Hermosa Beach, California, at their regular meeting of February 20, 2007.

Kent Allen, Chairman

Sol Blumenfeld, Secretary

Date _____

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ADDRESS: 52 PIER AVENUE

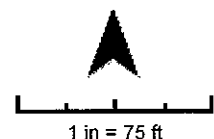
SCALE 1" = 100'





City of Hermosa Beach

52 Pier



Date Printed: 2/15/2007

20

**52 PIER AVENUE
"SHARKEEZ"**

