

P.C. RESOLUTION 07-6

1
2 **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERMOSA**
3 **BEACH, CALIFORNIA, APPROVING A PRECISE DEVELOPMENT PLAN TO**
4 **RECONSTRUCT AND EXPAND A TWO STORY BUILDING DAMAGED BY FIRE**
5 **FOR AN EXISTING RESTAURANT WITH ON-SALE ALCOHOL; A CONDITIONAL**
6 **USE PERMIT TO ALLOW OUTDOOR SEATING IN ADDITION TO THE PATIO**
7 **WITHIN THE PIER PLAZA ENCROACHMENT AREA; AND, A PARKING PLAN TO**
8 **ALLOW SAID EXPANSION (AN INCREASE FROM APPROXIMATELY 3,600**
9 **SQUARE FEET TO 5,600 SQUARE FEET INCLUDING OUTDOOR SEATING**
10 **AREAS) WITH THE PAYMENT OF PARKING IN-LIEU FEES TO COMPENSATE**
11 **FOR PROVIDING LESS THAN REQUIRED PARKING ON SITE, ON PROPERTY AT**
12 **52 PIER AVENUE AND LEGALLY DESCRIBED AS LOTS 11, BLOCK 12,**
13 **HERMOSA BEACH TRACT**

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

15 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.

16 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:

17 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.

18 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.

19 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.

1 4. Section 17.44.040 pertaining to parking requirements in the downtown area require that
2 parking be provided for the amount of the expansion. Based on the requirements for a restaurant
3 use, including outdoor seating areas (1 space per 1,000 square feet of gross floor area) the
4 proposed expansion results in a requirement of 20 spaces. Since all the required parking cannot be
5 provided on site, the applicant is requesting to pay parking in-lieu fees to satisfy parking
6 requirements pursuant to the program established by the City Council . Currently the in-lieu fee
7 program as approved by the City Council is \$28,900 per required parking space.

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

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

21 7. The outdoor dining area located in the Pier Plaza encroachment area is regulated by
22 Section 12.16.100 of the Municipal Code, and therefore is subject only to the requirement for an
23 encroachment permit and exempt from the requirement for a conditional use permit.

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

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

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

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

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

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

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

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

- 30 a. The project will not substantially depreciate property values in the vicinity, or interfere
31 with the use or enjoyment of property in such area, because of excessive dissimilarity
32 or inappropriateness of design in relation to the surrounding vicinity.
- 33 b. The project will not have significant environmental adverse impacts.

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

- 7 a. Sufficient public parking exists to accommodate the parking demand of the project
8 without causing a significant adverse impact on parking that is available to the beach
9 going public, since this is the replacement of the historical use of the property, and the
10 peak demand for parking does not coincide with the peak demands for beach parking.

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

14 Section 4. Environmental Review. Pursuant to the California Environmental Quality Act
15 (“CEQA”) and the City's local CEQA Guidelines, the project is Categorically exempt from the
16 requirement for environmental review and the provisions of CEQA, pursuant to Article 19, Section
17 15303, of the CEQA guidelines which exempts the construction of restaurants or similar structures
18 in urbanized areas not exceeding 10,000 square feet of floor area on sites zoned for such use.

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

- 22 **1. Project approval is contingent upon City Council approval of the text amendment of
23 Municipal Code, Section 17.44.040 (E) of the Zoning Ordinance, to exempt properties
24 fronting on Pier Plaza from the requirement to provide 25% of required parking on
25 site for projects exceeding a 1:1 floor area to lot area ratio when in-lieu parking fees
26 are used to satisfy parking requirements. If this text amendment is not approved,
27 project approval is null and void.**
- 28 **2. The development and continued use of the property shall be substantially consistent
29 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.**

- 1 a. The roof-top equipment room shall be reduced to comply with the maximum
2 5% of roof area allowed to exceed the height limit pursuant to Section
3 17.46.010 of the Zoning Ordinance.
- 4 b. The project plans shall be amended to remove the disk jockey booth which
5 constitutes live entertainment.
- 6 4. In order to compensate for required parking that is not provided on site, the
7 applicant shall contribute fees to the City's parking improvement fund in lieu of the
8 required twenty (20) parking spaces, as set forth in Section 17.44.040(E) of the
9 Zoning Ordinance, at the amount of \$28,900 per required space as set forth by
10 resolution of the City Council, for a total payment of \$578,000. The payment of fees
11 in-lieu of parking shall be made prior to issuance of a Certificate of Occupancy for
12 the building.
- 13 5. Architectural treatment of the building and all finishes shall be as shown on building
14 elevations and site and floor plans. Any modification shall require approval by the
15 Community Development Director.
- 16 6. Final verification of compliance with the height limit requires submittal of revised
17 roof plan with property corner elevations and finished roof heights, and maximum
18 heights identified at the critical points, prior to the issuance of a building permit.
- 19 7. A detailed drainage and (SUSMP) Standard Urban Stormwater Mitigation Plan is
20 required for approval by the Public Works Department, prior to the issuance of
21 building permits and implemented on site, demonstrating best management practices
22 for stormwater pollution control, and for sediment control and erosion control during
23 construction.
- 24 8. The applicant is responsible for all off-site right-of-way construction required by the
25 Public Works Department, or alternatively, may deposit funds in amount to cover the
26 cost for future right-of-way construction for the Pier Avenue frontage.
- 27 9. Any existing or proposed encroachments in the public right-of-way, must comply
28 with or be corrected as necessary to meet the requirements of Chapter 12.16 of the
29 Municipal Code, including the requirement to obtain an encroachment permit from
 the Public Works Department.
10. The applicant shall submit all required plans and reports to comply with the City's
 construction debris recycling program for new construction including manifests from
 both the recycler and County landfill.
11. The project shall comply with the requirements of the Fire Department.
12. Final building plans/construction drawings including site, elevation, floor plan,
 sections, details, signage, landscaping and irrigation, submitted for building permit

1 issuance shall be reviewed for consistency with the plans approved by the Planning
2 Commission and the conditions of this resolution, and approved by the Community
3 Development Director prior to the issuance of any Building Permit.

4 **13. All roof equipment shall be located and designed to be screened from public view and
5 any portion that exceeds the height limit shall not cover more than 5% of the roof
6 area.**

7 **14. The applicant shall retain a qualified acoustical engineer to review project plans and
8 prepare an acoustical study to verify that under a worst-case scenario, noise from the
9 establishment is consistent with requirements established in Sections 8.24.030,
10 8.24.040 (I) and (J) and 8.24.045 of the Municipal Code. The study shall specifically
11 address outdoor dining conditions shown on project plans and provide mitigation
12 measures to attenuate noise that may include sound baffles, double glazing, glass
13 panels, closing open-air dining areas during specified hours and other specified
14 methods. The scope of the acoustical study shall be approved by the Community
15 Development Director prior to the issuance of building permits and the mitigations
16 measure shall be implemented on site. Additionally the following sound control
17 measures are required:**

18 **a. No televisions, speakers or audio shall be allowed in the outdoor dining area (The
19 encroachment area is regulated by the encroachment permit).**

20 **b. The retractable roof/skylight and all windows on the second floor shall be closed
21 at 10:00 P.M. daily.**

22 **15. The second floor of the building shall be equipped with an automatic shut off for the
23 HVAC system when the retractable roof/skylight and/or windows are open.**

24 **16. The Precise Development Plan is for restaurant purposes only consistent with the
25 intent of the original Conditional Use Permit. Any intensification of use involving live
26 entertainment, (i.e. live music whether acoustic or amplified, comedy acts, disk
27 jockeys or any other type of performances) requires a modification to the original
28 Conditional Use Permit.**

29 **17. The hours of operation shall be limited to between 7:00 A.M. and 12:00 A.M.
midnight for the second floor restaurant, lounge and bar areas, and from 7:00 A.M.
and 2:00 A.M, for the first floor restaurant area. The kitchen shall remain open
during all operating hours to ensure that the use is maintained as a restaurant.**

**18. The outdoor patio area on the first floor, excluding the portion within the Pier Plaza
encroachment area, shall be completely enclosed at 12:00 A.M. midnight daily.
Project plans shall include the specifications for a retractable door/wall system that
will provide this enclosure at the front property line, and incorporate a standard door
opening with panic hardware for exiting.**

- 1 **19. The business shall not operate in a manner as to have an adverse effect on or interfere**
2 **with the comfortable enjoyment of neighboring residential and commercial property.**
- 3 **20. The business shall provide adequate staffing, management and supervisory**
4 **techniques to prevent ongoing and disruptive loitering, unruliness, and undue**
5 **boisterous activities of the patrons.**
- 6 **21. Noise emanating from the property shall be within the limitations prescribed by the**
7 **City's noise ordinance and shall not be plainly audible from any residential use, and**
8 **shall not create a nuisance to surrounding residential neighborhoods, and/or**
9 **commercial establishments.**
- 10 **22. If the Police Chief determines that there are a disproportionate number of police calls**
11 **to the business due to the disorderly or disruptive behavior of patrons and the**
12 **inability or refusal of the business to manage its patrons, the Chief may require on an**
13 **interim basis (not to exceed 60 days) that the business employ private security**
14 **personnel. The Chief shall notify the Director of Community Development of this**
15 **action, who shall forthwith, schedule a public hearing before the Planning**
16 **Commission to consider modification or revocation of this Precise Development Plan**
17 **by the Planning Commission.**
- 18 **23. The applicant shall install video recording equipment with a minimum of two weeks**
19 **storage capacity to record activities in the patio and exits and entrances. The design**
20 **and operation of the video system shall be reviewed and approved by the Police Chief**
21 **prior to occupancy of the premises, and the Police Department shall have access to**
22 **the security videos when requested.**
- 23 **24. The applicant shall submit a detailed seating and occupant load plan prepared by a**
24 **licensed design professional, which shall be approved by the Community**
25 **Development and Fire Departments. The seating and tables shall be placed and**
26 **maintained in the restaurant as indicated on the occupant load plan during all**
27 **operating hours. All approved occupant load signs must be posted as required by the**
28 **Fire Department prior to occupancy of the premises.**
- 29 **25. 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.
- 26. The exterior of all the premises shall be maintained in a neat and clean manner, and**
 maintained free of graffiti at all times.

1 27. Any significant changes to the interior layout, which alter the primary function of the
2 business as a restaurant, (i.e. increasing floor area for bar seating, or adding a dance
3 floor) shall be subject to review and approval by the Planning Commission and
4 require amendment to this Precise Development Plan.

5 28. The Planning Commission shall conduct a review of the restaurant operations for
6 compliance with the terms of this permit 6 months after commencement of
7 operations, and in response to any complaints thereafter.

8 29. A code complying fire sprinkler system shall be installed pursuant to the
9 requirements of the Building Code and the Nonconforming Ordinance.

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

12 31. The Precise Development Plan and Parking Plan shall be recorded, and proof of
13 recordation shall be submitted to the Community Development Department.

14 32. Each of the above Conditions of Approval is separately enforced, and if one of the
15 Conditions of Approval is found to be invalid by a court of law, all the other
16 conditions shall remain valid and enforceable.

17 33. Permittee shall defend, indemnify and hold harmless the City, it agents, officers, and
18 employees from any claim, action, or proceeding against the City or its agents,
19 officers, or employee to attack, set aside, void or annul this permit approval, which
20 action is brought within the applicable time period of the State Government Code.
21 The City shall promptly notify the permittee of any claim, action, or proceeding and
22 the City shall cooperate fully in the defense. If the City fails to promptly notify the
23 permittee of any claim, action or proceeding, or if the City fails to cooperate fully in
24 the defense, the permittee shall not thereafter be responsible to defend, indemnify, or
25 hold harmless the City.

26 34. The permittee shall reimburse the City for any court and attorney's fees which the
27 City may be required to pay as a result of any claim or action brought against the
28 City because of this grant. Although the permittee is the real party in interest in an
29 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.

30 35. 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.

