

April 9, 2007

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

**Regular Meeting of  
April 17, 2007**

**SUBJECT:** REVOCATION OF A CONDITIONAL USE PERMIT FOR ON-SALE BEER AND WINE IN CONJUNCTION WITH A RESTAURANT

**LOCATION:** 844 HERMOSA AVENUE

**Recommendation:**

To revoke the Conditional Use Permit by adopting the attached resolution.

**Background:**

**PROJECT INFORMATION:**

**ZONING:** C-2 Downtown Commercial  
**SITE AREA:** 5,880 Square Feet  
**FLOOR AREA:** 6,200 Square Feet (4,350 Sq. Ft. Restaurant, 1,850 Sq. Ft. Office)  
**PARKING SPACES:** 6

In February, 1996 the Planning Commission approved a Precise Development Plan for the construction of new building with a restaurant and second story offices for "California Beach Sushi", and a Conditional Use Permit for on-sale beer and wine in conjunction with the restaurant. The CUP conditions of approval prohibit live entertainment, but contain no limitations on the operating hours for the restaurant with on-sale beer and wine. The City Council sustained the approval in April, 1996.

The Precise Development Plan approval was based on parking requirements in effect at that time, which required parking only for the amount of square footage exceeding a 1:1 F.A.R., resulting in a requirement of 5 spaces and 6 are provided on site. The building is therefore legally nonconforming to current parking requirements and a restaurant use with offices above, or any less intensive retail or office use, will be allowed to again occupy this building despite the parking deficiency.

After the building was completed, it was used for restaurant purposes by "California Beach Sushi", and followed by another Japanese restaurant "Hama" until 2005. Both these restaurants included on-sale beer and wine. The building was also used for a cooking school "California Sushi Academy" in 2005. City business license records show that licenses for the cooking school and restaurant expired in November 2005, and building has not been occupied since that time.

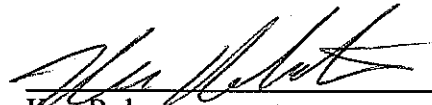
**Analysis:**

Section 17.70.010 of the Zone Code provides that the Planning Commission may modify or revoke a Conditional Use Permit under any the following grounds:

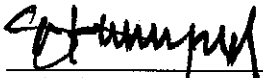
- A. That the approval was obtained by fraud;

- B. That the use for which such approval is granted is not being exercised;
- C. That the use for which such approval was granted has ceased to exist or has been suspended for one year or more;
- D. That the permit or variance granted is being, or recently has been, exercised contrary to the terms or conditions of such approval, or in violation of any statute, ordinance, law or regulation;
- E. That the use for which the approval was granted was so exercised as to be detrimental to the public health or safety, or so as to constitute a nuisance.

As noted, the use granted by the CUP (on-sale beer and wine) has ceased for greater than one year, therefore, staff recommends that the CUP be revoked. This revocation will have no effect on the approved Precise Development Plan, or the existing nonconforming parking situation. A restaurant will still be able to occupy the building, but will be required to obtain a new CUP for on-sale beer and wine, allowing the Planning Commission to update the conditions on the operation (such as hours restrictions) to be more appropriate for this location.

  
\_\_\_\_\_  
Ken Robertson,  
Senior Planner

Concur:

  
\_\_\_\_\_  
Sol Blumenfeld, Director  
Community Development

Attachments

1. Proposed Resolution
2. P.C. Resolution 96-13 granting the PDP and CUP in 1996

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**P.C. RESOLUTION 07-**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF  
HERMOSA BEACH, CALIFORNIA, TO REVOKE A CONDITIONAL USE  
PERMIT FOR ON-SALE BEER AND WINE IN CONJUNCTION WITH A  
RESTAURANT AT 844 HERMOSA AVENUE LEGALLY DESCRIBED AS  
LOTS 23 AND 24 OF TRACT NO. 1564**

Section 1. At the initiation of the Community Development Department, the Planning Commission conducted a duly noticed public hearing to consider the revocation or modification of the Conditional Use Permit for on-sale beer and wine in conjunction with a restaurant governing the use of the building at 844 Hermosa Avenue, approved February 20, 1996 (P.C. Resolution 96-13), and sustained on appeal by the City Council on April 9, 1996 (Resolution 96-5801), pursuant to Section 17.70.010 of the Zoning Ordinance on April 17, 2007, at which testimony and evidence, both written and oral, was presented to and considered by the Planning Commission.

Section 2. Based on evidence received at the public hearing, the Planning Commission makes the following findings to revoke the Conditional Use Permit, pursuant to Section 17.70.010 of the Municipal Code:

1. The use for which such approval was granted has ceased to exist or has been suspended for one year or more, since the restaurant with on-sale beer and wine has not been in operation on the property since November 2005.

Section 3. Based on the foregoing, and pursuant to Section 17.70.010 of the Zoning Ordinance, the Planning Commission hereby revokes the Conditional Use Permit for on-sale beer and wine.

Section 4. 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 the foregoing Resolution P.C. No. 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 April 17, 2007.

\_\_\_\_\_  
Kent Allen, Chairman

\_\_\_\_\_  
Sol Blumenfeld, Secretary

April 17, 2007

Date

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P.C. RESOLUTION NO. 96-13

1  
2 **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERMOSA**  
3 **BEACH, CALIFORNIA, APPROVING AN ENVIRONMENTAL NEGATIVE**  
4 **DECLARATION, CONDITIONAL USE PERMIT, AND PRECISE DEVELOPMENT**  
5 **PLAN TO ALLOW ON-SALE, BEER AND WINE, AND CONSTRUCTION OF A**  
6 **PROPOSED RESTAURANT AT 844 HERMOSA AVENUE, AND LEGALLY**  
7 **DESCRIBED AS LOTS 23, AND 24, OF TRACT NO 1564.**

8 WHEREAS, the Planning Commission held a public hearing on February 20, 1996 to  
9 receive oral and written testimony regarding this matter and made the following findings:

10 A. The site is zoned C-2, Restricted Commercial, and the proposed development and use are  
11 consistent with the standards of said zone;

12 B. The proposed use is compatible with surrounding commercial uses;

13 C. The imposition of conditions as required by this resolution will mitigate any negative  
14 impacts on nearby residential or commercial properties;

15 D The parking required for this development is zero for that portion of the project equal to a  
16 F.A.R. 1:1 and 65% of the parking requirement for that portion over 1:1, since it is  
17 located within the Downtown Enhancement District (DED), and pursuant to Section  
18 1152.5 of the Zoning Ordinance and pursuant to the Certified Coastal Land Use Plan, the  
19 reduced required parking is supported by the following findings:  
20

21 1. Fewer than 96,250 square feet of commercial development, including new  
22 buildings, expansions, and/or intensification of uses in the DED has received a  
23 Coastal Development Permit since November 1, 1994.

24 2. There is currently adequate parking to support the development and to provide  
25 adequate beach parking.

26  
27 3. A parking study recently completed for the downtown show the occupancy of the  
28 parking spaces in the downtown is 90% or less during daylight hours on summer  
29

weekends, and no more than 24,063 square feet of commercial development has occurred since the study.

E. The Staff Environmental Review Committee has prepared an environmental assessment and determined that the project, with mitigation measures incorporated to reduce off-site impacts results in less than significant impact on the environment, and therefore qualifies for a mitigated negative declaration.

**NOW, THEREFORE, BE IT RESOLVED THAT THE PLANNING COMMISSION OF THE CITY OF HERMOSA BEACH DOES HEREBY APPROVE ON-SALE ALCOHOL BEER AND WINE, IN CONJUNCTION WITH THE CONSTRUCTION OF A RESTAURANT, SUBJECT TO THE FOLLOWING CONDITIONS:**

**SECTION I** Specific Conditions of Approval

1. The development and continued use of the property shall be in conformance with submitted plans. Modifications to the plans shall be reviewed and may be approved by the Community Development Director.
2. The rear door, emergency exit, facing the alley shall remain closed at all times during business hours, and shall be equipped with panic hardware including an alarm and a self closing door mechanism; equipment shall be maintained in operational order at all times.
3. The rear roll-up door shall be maintained closed at all times except during deliveries, and trash pick-up.
4. Storage of trash bins or cans outside of the designated trash bin storage area shown on submitted plans is prohibited.
5. Odor elimination equipment shall be installed for the trash bin area; venting untreated air from this room shall be prohibited.
6. Deliveries to the rear doors on Palm Dr. shall be prohibited between 9:00 PM and 9:00 AM.
7. Use of the rear parking shall be for employees only; Signs shall be installed restricting parking to employee use.
8. A bicycle rack for a minimum of 6 bikes shall be provided; location shall be reviewed and approved by the Community Development Director.
9. Live entertainment is prohibited

SECTION II General operating and standard conditions:

1. The establishment shall not adversely effect the welfare of the residents, and/or commercial establishments in the vicinity.
2. The business shall prevent loitering, unruliness, and boisterous activities of the patrons outside the business, or in the immediate area.
3. The Police Chief may determine that a continuing police problem exists and may, subject to the review of the Planning Commission, direct the presence of a police approved doorman and/or security personnel to eliminate the problem and then shall submit a report to the Planning Commission, which will automatically initiate a review of this Conditional Use Permit by the Commission.
4. The exterior of the premises shall be maintained in a neat and clean manner, and maintained free of graffiti at all times.
5. Any changes to the interior layout which alter the primary use of the restaurant space shall be subject to review and approval by the Planning Commission.
6. The project and operation of the business shall comply with all applicable requirements of the Municipal Code.
7. The business shall participate in the City's downtown parking validation program, providing validations for parking in public lots for no less than two hours.
8. 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.
9. The building shall be equipped with acoustic features to maximize sound proofing which shall include the use of double-pane windows or an equivalent and the installation of air conditioning so that windows and doors can remain closed during performances.
  - a. The lanai windows shall remain closed during all performances and when any form of music is playing.
10. The project shall comply with the requirements of the Public Works Department.

SECTION III

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

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

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

3 Permittee shall defend, indemnify and hold harmless the City, its agents, officers, and employees  
4 from any claim, action, or proceeding against the City or its agents, officers, or employees to  
5 attack, set aside, void or annul this permit approval, which action is brought within the applicable  
6 time period of Government Code Section 65907. The City shall promptly notify the permittee of  
7 any claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails  
8 to promptly notify the permittee of any claim, action or proceeding, or if the City fails to  
9 cooperate fully in the defense, the permittee shall not thereafter be responsible to defend,  
10 indemnify, or hold harmless the City.

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

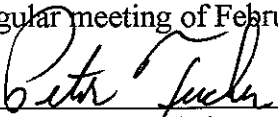
16 The subject property shall be developed, maintained and operated in full compliance with the  
17 conditions of this grant and any law, statute, ordinance or other regulation applicable to any  
18 development or activity on the subject property. Failure of the permittee to cease any  
19 development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

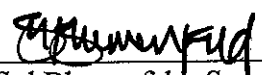
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21 VOTE:           AYES:           Comms. Dettelbach, DiMonda, Merl, Perrotti, Chrmn. Tucker  
22                   NOES:           none  
23                   ABSTAIN:       none  
24                   ABSENT:        none

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CERTIFICATION

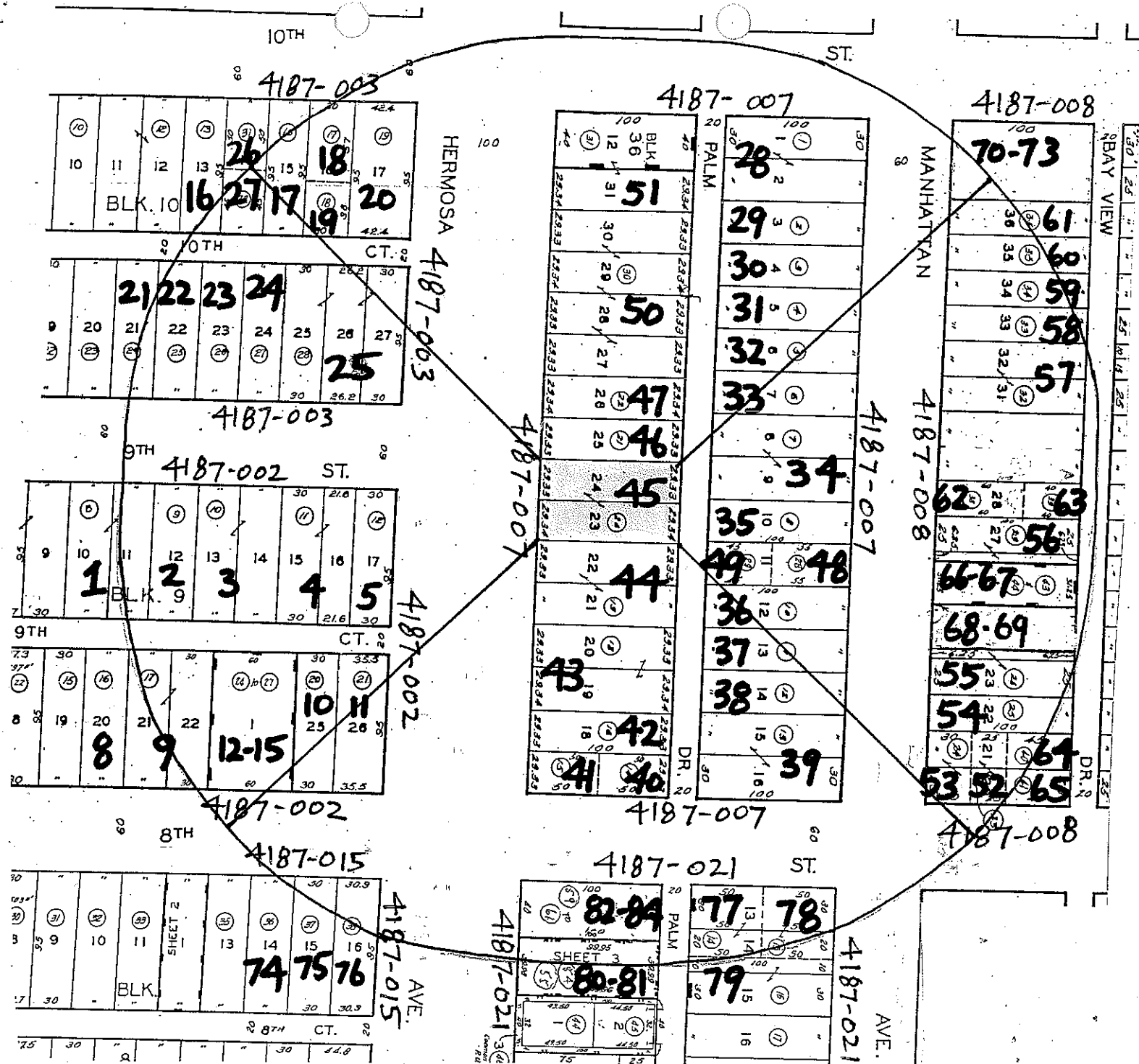
I hereby certify that the foregoing Resolution P.C. 96-13 is a true and complete record of the  
action taken by the Planning Commission of the City of Hermosa Beach, California at their  
regular meeting of February 20, 1996.

  
Peter Tucker, Chairman

  
Sol Blumenfeld, Secretary

3-19-94  
Date

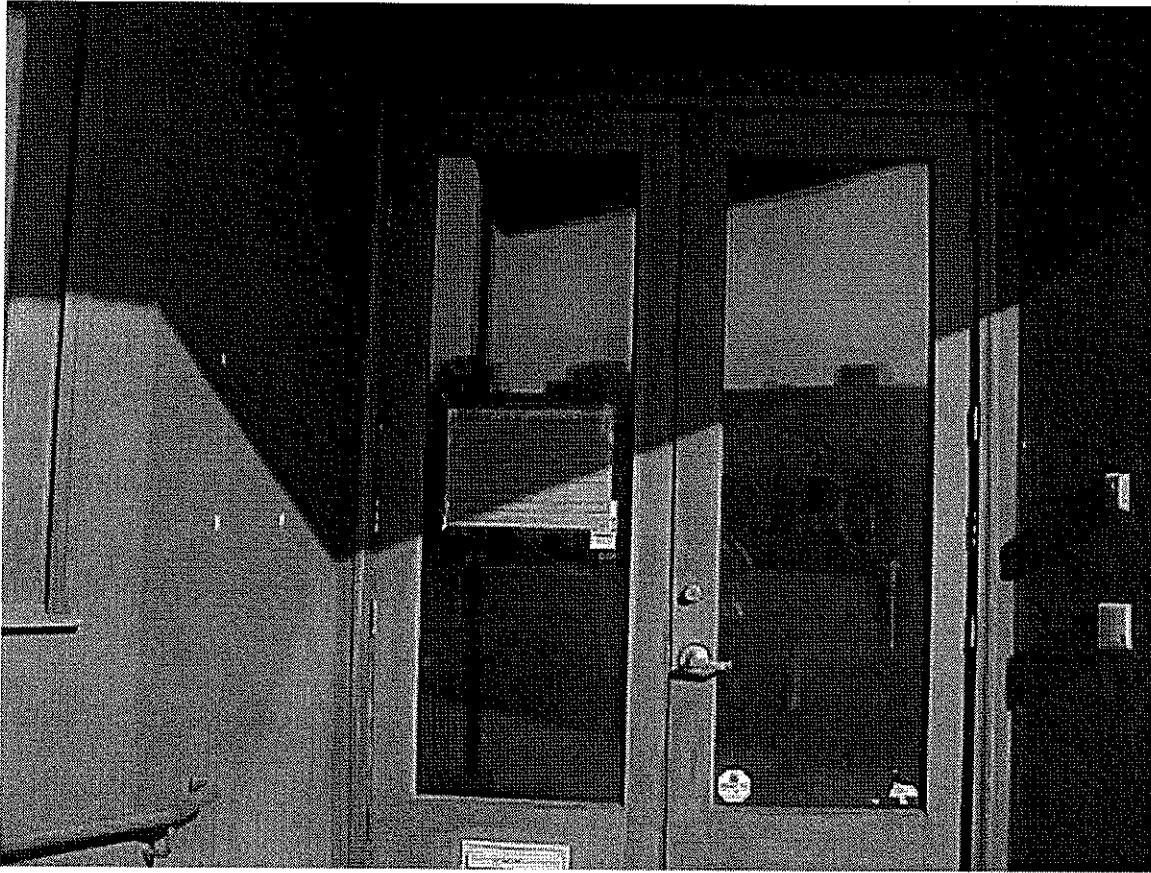
cupr9517



844 HERMOSA AVENUE

SCALE 1" = 100'





Notice posted at 844 Hermosa Avenue