

August 29, 2007

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

**Regular Meeting of  
September 18, 2007**

**SUBJECT:**           CONDITIONAL USE PERMIT 07-12  
                  VARIANCE 07-6  
                  PARKING PLAN 07-8

**LOCATION:**           809 PACIFIC COAST HIGHWAY

**APPLICANT:**        BRYAN BERBER  
                  JUMP, INCORPORATED (DBA: THE TENDER BOX)  
                  809 PACIFIC COAST HIGHWAY  
                  HERMOSA BEACH, CA 90254

**REQUEST:**         REQUEST FOR AN AFTER-THE-FACT APPROVAL OF A CONDITIONAL USE PERMIT FOR THE EXPANSION OF AN EXISTING, NON-CONFORMING ADULT BUSINESS, THE TENDER BOX, TO ALLOW AN APPROXIMATE 1,000 SQUARE FOOT SECOND STORY EXPANSION TO THE EXISTING BUSINESS WITHIN AN EXISTING BUILDING, INCLUDING THE INSTALLATION OF 14 ADDITIONAL VIDEO VIEWING BOOTHS, VARIANCES TO ALLOW THE EXPANSION TO THE ADULT BUSINESS IN A BUILDING 86 FEET FROM RESIDENTIALLY ZONED PROPERTY RATHER THAN THE REQUIRED 200 FEET, AND TO PROVIDE 4 PARKING SPACES RATHER THAN THE 14 SPACES REQUIRED (ONE PARKING SPACE IS REQUIRED FOR EACH ADDITIONAL VIDEO VIEWING BOOTH), AND A PARKING PLAN TO PROVIDE OFF-STREET PARKING IN TANDEM ALONG A DRIVEWAY BEHIND THE BUILDING AT 809 PACIFIC COAST HIGHWAY.

**Recommendations:**

To deny the applications for a Variance, CUP and Parking Plan and adopt the attached Resolution.

**Background:**

- |                                |   |
|--------------------------------|---|
| • GENERAL PLAN:                | General Commercial (GC)   |
| • ZONING:                      | General Commercial (C-3)  |
| • LOT SIZE:                    | 2,360 Square Feet   |
| • BUILDING FOOT PRINT:         | 983 Square Feet   |
| • EXISTING USE:                | Adult Business (Sale of adult books, videos, magazines, and paraphernalia and adult theater/arcade) |
| • EXISTING PARKING:            | 0 Parking Spaces  |
| • PARKING REQUIRED:            | 14 Parking Spaces   |
| • PARKING PROPOSED:            | 4 Parking Spaces (1 standard plus 3 tandem)   |
| • ENVIRONMENTAL DETERMINATION: | Exempt  |

The Tender Box is located at 809 Pacific Coast Highway on the west side of the street between 8<sup>th</sup> Street and 8<sup>th</sup> Place, and has been in operation at this location since 1973.

In 1993, the City initiated a Conditional Use Permit amortization program to entitle properties that have businesses operating without the benefit of a Conditional Use Permit. On January 25, 1994, the City Council

approved an amortized Conditional Use Permit on appeal from the Planning Commission for the continued use of the adult retail sales business located at 809 Pacific Coast Highway. This CUP allows the sale of adult books, magazines, videos, and paraphernalia in addition to eight (8) individual viewing booths on the first floor only.<sup>1</sup> At the time of amortization, the second-floor was being used as a residential unit. A Condition of Approval was included that the second floor remain a non-conforming residential unit and that the interior staircase be removed.<sup>2</sup>

The Tender Box currently exists as a non-conforming use. The Hermosa Beach Municipal Code requires that any adult business be located a minimum of 200 feet from the exterior boundaries of any lot or parcel zoned residential (H.B.M.C. 17.40.050). The building is approximately twenty feet from the nearest residential use and eighty-six feet from the nearest residentially zoned parcel, rendering the business a non-conforming use. Even though the retail business conducted on the first floor of the building does not conform to zoning standards, the business as described in its CUP (i.e. sale of adult books, magazines, videos, and paraphernalia in addition to eight (8) individual viewing booths on the first floor only) is allowed to remain as a nonconforming use. Additionally, operation of adult retail businesses such as the Tender Box is an activity that is protected by the first amendment. As a protected activity, the City's ability to make changes to the existing CUP is strictly limited.

Therefore, the issue before the Commission is the expansion of the second floor into an adult use and the construction of the interior staircase leading up to the second floor. On June 13, 2007, the City received a Code Enforcement complaint that the applicant had expanded the nonconforming use to the second floor. An inspection of the site revealed that the applicant had rebuilt the interior staircase and added fourteen (14) individual "viewing booths" without obtaining building permits or Planning Commission approval for a CUP to operate an adult use on the second floor of the building. The applicant was notified that the unpermitted work violated several building and zoning requirements and several Conditions of Approval specified in the 1994 CUP and therefore, the violations must be corrected to conform to the Code. The applicant is now seeking after-the-fact Planning Commission approval for the new adult use.

The applicant has stated that the existing eight (8) viewing booths previously approved in 1994, are going to be removed and converted into additional floor area for adult book/magazine and adult paraphernalia sales. The applicant has not submitted revised plans showing the proposed first-floor modifications and it is unknown at this time if those interior modifications have been made.

Because the existing CUP restricts the placement and operation of the eight viewing booths to the first floor only and requires elimination of the interior staircase, an after the fact permit for the operation of the additional viewing booths and construction of the staircase leading up to the second floor constitutes a new adult use that must meet the objective code requirements in Section 17.40.050. Accordingly, the applicant must obtain the following approvals in order to operate the fourteen viewing booths on the second floor:

1. A Variance to allow an adult business in a building eighty-six feet from residentially zoned property rather than the required 200 feet;
2. A Variance to provide four (4) parking spaces rather than the required fourteen parking spaces;
3. A Conditional Use Permit; and
4. A Parking Plan to provide four off-street parking in a tandem formation.

**Analysis:**

**Variance – Distance from Residentially Zoned Properties**

The Hermosa Beach Municipal Code requires that any adult business with over twenty percent (20%) of stock-in-trade consisting of materials exclusively intended for adults shall be located a minimum of 200 feet from the exterior boundaries of any lot or parcel zoned residential (H.B.M.C. 17.40.050). The building is approximately

20 feet from the nearest residential use and 86 feet from the nearest residentially zoned parcel. Therefore, the applicant must obtain a Variance from the minimum distance requirement.

The Commission must make all the following findings in order to grant a variance:

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

A variance requires a physical condition on the property that is unique and makes it impossible to comply with a generally applicable zoning regulation. First, the property is zoned for regular commercial uses, such as office, retail or service based businesses. There are no unusual physical characteristics on the property that prevent the owner from using the second floor for any of these permitted commercial uses. The upstairs is also conditionally permitted to be used as a residence. The applicant has not demonstrated any exceptional circumstances that warrant deviating from the zoning standards to allow operation of the business in an improper location.

The variance is not necessary for the preservation and enjoyment of a substantial property right because the property owner is making beneficial use of this property with a conditionally permitted use in the downstairs portion of the building. The property owner has the right to use the upstairs as a residence or for a retail or office use. Additionally, expansion of the existing business in the General Commercial (C-3) zone is not consistent with the goals, objectives and implementation policies of the Land Use Element of the General Plan. The proposed use will intensify an incompatible use located in the vicinity of a residential neighborhood, creating conflicts with the established character of the area.

The Planning Commission cannot grant the variance unless all four of the findings are supported by substantial evidence. The applicant has not demonstrated that the findings can be made to support granting a variance from the 200 foot distancing requirement and therefore, staff recommends denial of the variance.

Variance – Reduction in Required Off-Street Parking

The 1994 CUP authorized the continued use of the business downstairs without any specifically identified off-street parking spaces. Hermosa Beach Municipal Code Section 17.40.050 requires that all adult businesses that include film or video viewing machines or booths shall provide one off-street parking space for every such machine or booth. Under 17.40.050, the applicant must provide fourteen off-street parking spaces to accommodate the fourteen viewing booths.

The applicant is proposing four parking spaces, one standard space (8.5 feet x 20 feet) along the west building wall plane adjacent to the north property line and three additional spaces in tandem along the driveway. The applicant must obtain a Variance for the proposed ten-space parking deficiency.

The applicant has not demonstrated any unusual physical characteristics on the property that would prevent him from operating a less intense commercial use that can be conducted with less parking. The applicant is capable of using the property for any general commercial use or as a residence, both of which have lower parking requirements.

The variance is not necessary for the preservation and enjoyment of a substantial property right or to achieve parity with other properties in the same vicinity. Every commercial business within the commercial zone is required to provide additional off-street parking if the use is intensified or additional floor area is added.

Approval of the parking Variance will be injurious to properties in the vicinity. The existing business currently provides no off-street parking for its customers and the upstairs expansion creates an additional demand for parking. An additional ten-space parking deficiency will result in customers parking in the surrounding residential neighborhoods.

Expansion of an adult business with such a large parking deficiency is not consistent with the goals, objectives, and implementation policies as specifically listed in the Land Use Element of the General Plan (Goals 1 and 2) because the increased parking demand will adversely impact the surrounding neighborhood and intensify an incompatible use within close proximity to a residential neighborhood. Additionally, Hermosa Beach Municipal Code Section 17.26.020.A.6 states that one of the specific purposes of the Commercial Zones is to provide for adequate off-street parking at commercial uses. Four parking spaces to accommodate the parking demand for the upstairs and downstairs portion of the business is inadequate and inconsistent with the General Plan and Zoning Code.

The Planning Commission cannot grant the variance unless all four of the findings are supported by substantial evidence. The applicant has not demonstrated that the findings can be made to support granting a parking variance and therefore, staff recommends denial of the variance.

#### Conditional Use Permit

Pursuant to Section 17.26.030 of the Zoning Ordinance, a conditional use permit is required to operate an adult business in the C-3 zone. An adult business includes adult motion picture theaters/arcades, defined as an establishment in which a regular or substantial portion (over 20%) of its stock-in-trade material, including but not limited to films, motion pictures, video cassettes, picture viewing machines, slide projections or similar photographic reproductions, features the exposure of specified anatomical areas or the depiction or description of specified sexual activities. The upstairs portion of the building consists entirely of fourteen viewing booths and thus, falls under the definition of adult use and requires a CUP.

Under Section 17.40.050, the Planning Commissions must approve a CUP for an adult business where evidence submitted substantiates all of the following findings:

- A. The exterior walls of the establishment are located more than 200 feet from the exterior boundaries of any lot or parcel of residentially zoned property.
- B. The exterior walls of the establishment are located more than 1,000 feet from the exterior boundaries of any property zoned or used for school, church or park purposes.
- C. The exterior walls of the establishment are located more than 1,000 feet from the exterior boundaries of any lot or parcel of land upon which any other such adult business establishment is located.
- D. Every establishment shall have clearly visible signs at all entrances stating "Adults Only--No Minor Permitted" or equivalent wording.
- E. All building openings, entries and windows shall be designed or screened so that the contents may not be seen from the public sidewalk or equivalent public areas accessible to minors.

- F. The public interior areas shall be fully and brightly lighted and arranged so that every portion of the premises is visible upon entrance, but shall not be viewed from outside of the premises, and so that the entire body of any patron is also visible immediately upon entrance to the premises.
- G. The number of film or video viewing machines or booths shall not exceed one machine per 30 square feet of floor area. All adult businesses that include film or video viewing machines or booths shall provide one off-street parking space for every such machine or booth.
- H. There shall be no doors or other similar closable screens on video or film viewing booths.
- I. No alcoholic beverages shall be sold or consumed on the premises and appropriate notification of this restriction shall be displayed on the premises.

As previously noted, the exterior walls of the establishment are not located more than 200 feet from the exterior boundaries of any lot or parcel of residentially zoned property because the building is approximately 20 feet from the nearest residential use and 86 feet from the nearest residentially zoned parcel. Finding A is not supported by substantial evidence.

The applicant will also not provide one parking space for each viewing booth and therefore, Finding G is not substantiated.

On August 29, 2007, City staff conducted an inspection of the upstairs "viewing booths" and confirmed that:

- The public interior area was not fully and brightly lighted and arranged such that every portion of the premises is visible; and,
- Doors have been installed on all fourteen (14) individual viewing booths. The 1994 Amortized Conditional Use Permit allowed for doors to be placed on the original eight (8) viewing booths located on the first floor, but these fourteen booths are not authorized under the existing CUP and must comply with the requirements of Section 17.40.050.

The applicant has not provided any information to indicate that these findings can be made. Therefore, evidence does not support findings A, F, G and H and staff recommends denial of the CUP.

#### Parking Plan

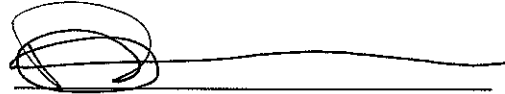
Section 17.44.210 authorizes the Planning Commission to approve a parking plan that allows for a reduction in the required parking. The burden is on the applicant to provide the information necessary to show that adequate parking will be provided for customers, clients, visitors and employees.

The site is currently developed with a 9-foot wide driveway with ingress/egress from 8<sup>th</sup> Street west of the adjacent commercial building located at the corner of 8<sup>th</sup> Street and Pacific Coast Highway. The driveway leads to a gravel lot approximately 770 square feet in size, which historically has served as parking for the upstairs residential use. The applicant is proposing one standard space (8.5 feet x 20 feet), along the west building wall plane adjacent to the north property line and three additional tandem spaces along the driveway. All proposed parking spaces comply with the minimum stall width and depth requirement and, have sufficient turning radius as required by Code. However, the Municipal Code does not permit tandem parking in commercial zones. The applicant has not indicated that valet service will be provided or provided staff with any other information to suggest that the four spaces is adequate for customers and employees of the business. While the Commission has allowed tandem parking for office uses or for larger projects where valet service is provided, it has never been approved for a small retail use. The existing business operating in the downstairs portion of the building already operates with a parking deficiency.

The applicant has not met its burden of establishing that four parking spaces will be adequate for customers, visitors and employees and therefore, staff recommends denial of the Parking Plan.

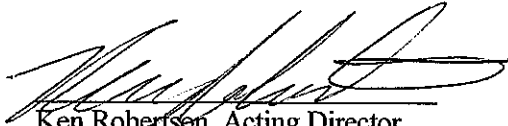
**Summary:**

The applicant has not demonstrated a unique circumstance or hardship to warrant granting a variance from the zoning and parking requirements for the property. The operation of the fourteen additional viewing booths and construction of the interior staircase does not meet the requirements for a CUP and Parking Plan. Therefore, Staff recommends denial of the variances, CUP and Parking Plan.



Richard Denniston  
Associate Planner

CONCUR:



Ken Robertson, Acting Director  
Community Development Department

**Attachments**

1. Resolution
2. Location Map
3. Radius Map
4. Poster Verification
5. Photo Survey
6. CC Resolution No. 94-5653

<sup>1</sup> **Condition of Approval No. 14:** "The number of film or video viewing machines or booths shall not exceed eight (8) individual viewing booths" (City Council Resolution No. 94-5653).

<sup>2</sup> **Condition of Approval No. 22:** "It shall be verified that the interior stairway is permanently sealed and that interior access to the second floor is permanently eliminated" (City Council Resolution No. 94-5653).

RESOLUTION NO. 07-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERMOSA BEACH, CALIFORNIA, TO DENY A VARIANCE TO ALLOW AN ADULT BUSINESS IN A BUILDING 86 FEET FROM RESIDENTIALLY ZONED PROPERTY, TO DENY A VARIANCE TO PROVIDE 4 PARKING SPACES RATHER THAN THE 14 SPACES REQUIRED, TO DENY THE REQUEST FOR A CONDITIONAL USE PERMIT FOR THE ADULT BUSINESS, AND TO DENY A PARKING PLAN TO PROVIDE OFF-STREET PARKING IN TANDEM ALONG A DRIVEWAY BEHIND THE BUILDING AT 809 PACIFIC COAST HIGHWAY, LEGALLY DESCRIBED AS A PORTION OF LOT 2 AND ALL OF LOT 4, BLOCK B, REDONDO HERMOSA TRACT

The Planning Commission does hereby resolve and order as follows:

Section 1. Recitals.

- A. An application was filed by Bryan Berber, on behalf of Jump, Incorporated, requesting after-the fact approvals of a Conditional Use Permit, Variances, and a Parking Plan for the expansion of an adult business in an existing commercial building located at 809 Pacific Coast Highway.
- B. On January 25, 1994, the City Council approved an amortized Conditional Use Permit on appeal from the Planning Commission for the continued use of the adult retail sales business located at 809 Pacific Coast Highway.
- C. The 1994 CUP allows the sale of adult books, magazines, videos, and paraphernalia in addition to the operation of eight (8) individual viewing booths on the first floor of the building. A Condition of Approval was included that the second floor remain a non-conforming residential unit and that the interior staircase be removed.
- D. On June 13, 2007, the City received a Code Enforcement complaint that the applicant had expanded the nonconforming use to the second floor. An inspection of the site revealed that the applicant had rebuilt the interior staircase and added fourteen (14) individual "viewing booths" without obtaining building permits or Planning Commission approval for a CUP to operate an adult use on the second floor of the building.
- E. The Planning Commission conducted a duly noticed public hearing to consider the application for 809 Pacific Coast Highway on September 18, 2007 and accepted public testimony for and against the project.

Section 2. Based on the evidence received at the public hearing, the Planning Commission finds as follows with respect to the variance to allow an adult business in a building eighty-six feet from residentially zoned property:

- A. There are no unusual physical characteristics on the property that prevent the owner from using the second floor for a permitted commercial use or as a conditionally permitted residential use.

- 1 B. The applicant has not demonstrated any exceptional circumstances that warrant deviating from  
2 the zoning standards to allow operation of the business in an improper location.
- 3 C. The variance is not necessary for the preservation and enjoyment of a substantial property right  
4 because the property owner is making beneficial use of this property with a conditionally  
5 permitted use in the downstairs portion of the building. The property owner is not precluded from  
6 using the upstairs as a residence or for a commercial retail or office use.
- 7 D. Allowing the existing use to expand in the General Commercial (C-3) zone is not consistent with  
8 the goals, objectives and implementation policies of the Land Use Element of the General Plan.  
9 The use will intensify an incompatible use located in the vicinity of a residential neighborhood,  
10 creating conflicts with the established character of the area.

11 Based on these findings, the Planning Commission hereby denies Variance No. 07-6 to allow an adult  
12 business in a building eighty-six feet from residentially zoned property.

13 Section 3. Based on the evidence received at the public hearing, the Planning Commission finds as  
14 follows with respect to the Variance to provide four (4) parking spaces rather than the required fourteen  
15 parking spaces:

- 16 A. The applicant has not demonstrated any unusual physical characteristics on the property that  
17 would prevent him from operating a less intense commercial use that can be conducted with less  
18 parking. The applicant is capable of using the property for any general commercial use or as a  
19 residence, both of which have lower parking requirements.
- 20 B. The variance is not necessary for the preservation and enjoyment of a substantial property right or  
21 to achieve parity with other properties in the same vicinity. Every commercial business within the  
22 commercial zone is required to provide additional off-street parking if the use is intensified or  
23 additional floor area is added.
- 24 C. Approval of the parking Variance will be injurious to properties in the vicinity. The existing  
25 business currently provides no off-street parking for its customers and the upstairs expansion  
26 creates an additional demand for parking. An additional ten-space parking deficiency will result in  
27 customers parking in the surrounding residential neighborhoods.
- 28 D. Expansion of a business with such a large parking deficiency is not consistent with the goals,  
29 objectives, and implementation policies as specifically listed in the Land Use Element of the  
General Plan (Goals 1 and 2) because the increased parking demand will adversely impact the  
surrounding neighborhood and intensify an incompatible use within close proximity to a residential  
neighborhood. Hermosa Beach Municipal Code Section 17.26.020.A.6 states that one of the  
specific purposes of the Commercial Zones is to provide for adequate off-street parking at  
commercial uses. Four parking spaces to accommodate the parking demand for the upstairs and  
downstairs portion of the business is inadequate and inconsistent with the General Plan and Zoning  
Code.

Based on these findings, the Planning Commission hereby denies Variance No. 07-6 to provide four (4)  
parking spaces rather than the required fourteen parking spaces.



1 Section 4. Based on the evidence received at the public hearing, the Planning Commission finds as follows  
2 with respect to the Conditional Use Permit for a new adult use at 809 Pacific Coast Highway:

- 3 A. The exterior walls of the establishment are not located more than 200 feet from the exterior  
4 boundaries of any lot or parcel of residentially zoned property as required by Hermosa Beach  
5 Municipal Code Section 17.40.050.A. The building is approximately 20 feet from the nearest  
6 residential use and 86 feet from the nearest residentially zoned parcel.
- 7 B. The upstairs portion of the building contains fourteen viewing booths. The applicant is required  
8 to provide one parking space for each viewing booth under Hermosa Beach Municipal Code  
9 Section 17.40.050.G. The applicant can only accommodate four off-street parking spots and does  
10 not meet the requirements in Section 17.40.050.G.
- 11 C. The public interior area is not fully and brightly lighted and arranged such that every portion of  
12 the premises is visible, as required under Section 17.40.050.F.
- 13 D. Doors have been installed on all fourteen (14) individual viewing booths, which is inconsistent  
14 with Section 17.40.050.H.

15 Based on these findings, the Planning Commission hereby denies Conditional Use Permit No. 07-12.

16 Section 5. Based on the evidence received at the public hearing, the Planning Commission finds as  
17 follows with respect to Parking Plan No. 07-8:

- 18 A. Under Hermosa Beach Municipal Code Section 17.44.210, the burden is on the applicant to  
19 provide the information necessary to show that adequate parking will be provided for customers,  
20 clients, visitors and employees.
- 21 B. The existing business currently provides no off-street parking for its customers and the upstairs  
22 expansion creates an additional demand for parking.
- 23 C. The applicant has not indicated that valet service will be provided or provided staff with any other  
24 information to suggest that the four spaces is adequate for customers and employees of the  
25 business.
- 26 D. The Municipal Code does not permit tandem parking in commercial zones.
- 27 E. The applicant has not met its burden of establishing that four parking spaces will be adequate for  
28 customers, visitors and employees.

29 Based on these findings, the Planning Commission hereby denies Parking Plan No. 07-8.

Section 6. Based on the foregoing, the Planning Commission hereby denies Variance No. 07-6,  
Conditional Use Permit No. 07-12 and Parking Plan No. 07-8.

PASSED, APPROVED AND ADOPTED by the Planning Commission of the City of Hermosa  
Beach at a regular meeting held this 18th day of September, 2007 by the following vote:

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VOTE:       AYES:  
              NOES:  
              ABSTAIN:  
              ABSENT:

CERTIFICATION

I hereby certify that 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 September 18, 2007.

\_\_\_\_\_  
Langley Kersenboom, Chairman

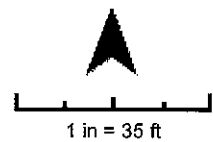
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Ken Robertson, Secretary

September 18, 2007

Date



809 Pacific Coast Highway  
 City of Hermosa Beach



Date Printed: 9/13/2007

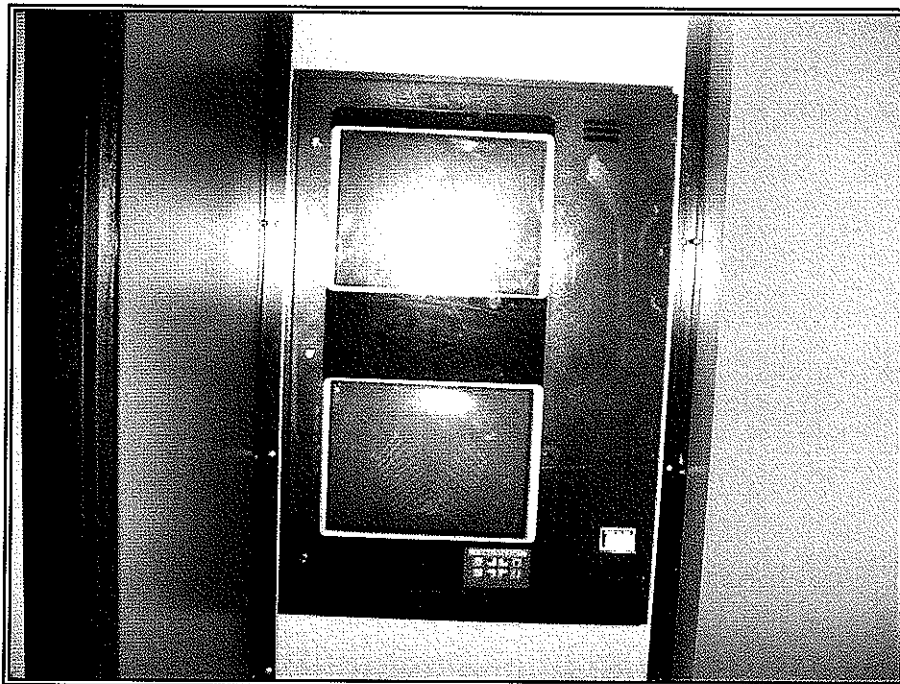
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**POSTER VERIFICATION  
809 PACIFIC COAST HIGHWAY**



PHOTO SURVEY  
809 PACIFIC COAST HIGHWAY



RESOLUTION NO. 94-5653

1 A RESOLUTION OF THE CITY COUNCIL OF HERMOSA BEACH, CALIFORNIA,  
2 TO APPROVE A CONDITIONAL USE PERMIT WITH CONDITIONS, ELIMINATING  
3 TWO OF THE PLANNING COMMISSION IMPOSED CONDITIONS ON APPEAL, FOR  
4 AN EXISTING ADULT BUSINESS (SALE OF ADULT BOOKS, VIDEOS,  
5 MAGAZINES AND PARAPHERNALIA AND ADULT THEATER/ARCADE) AT 809  
6 PACIFIC COAST HIGHWAY AND LEGALLY DESCRIBED AS LOT 2 AND LOT 4,  
7 BLOCK B, REDONDO HERMOSA TRACT

8 WHEREAS, the City Council held public hearings on December  
9 14, 1993, and January 25, 1994, to consider a conditional use  
10 permit for an existing adult business, and an appeal of two of  
11 the Planning Commission imposed conditions on said permit, and to  
12 receive oral and written testimony on the matter, and made the  
13 following findings;

- 14 A. The applicant is requesting a conditional use permit for an  
15 existing adult business, including sales of adult books,  
16 videos, magazines and paraphernalia and an adult  
17 theater/arcade, as required by Section 13.5(b) of the zoning  
18 ordinance;
- 19 B. The inherent nature of adult businesses are recognized as  
20 having potentially objectionable and deleterious operational  
21 characteristics;
- 22 C. The regulation of adult business operations and locations is  
23 in the interest of the general public health, safety, and  
24 welfare;
- 25 D. Because the subject adult business is existing and has  
26 already established certain measures to prevent lewd and  
27 immoral behavior, including the use of surveillance cameras  
28 and security attendants, not all of the standard conditions  
for adult businesses as set forth in Section 10-5 (including  
the two standard conditions imposed by the Planning

Commission, and appealed by the applicant, to limit hours of operation from 10:00 A.M. to 10:00 P.M. and to require the closure of doors on the video viewing booths) are applicable, since their application would pose a potential hardship on an existing business beyond the intent of Section 13.5(b) or Section 10-5;

E. The conditions as set forth below, are necessary to prevent illegal and immoral acts from occurring on the premises and in the vicinity, and will serve to mitigate the potential threat to the public safety and welfare to the maximum possible;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hermosa Beach, California, does hereby approve a Conditional Use Permit, on appeal, to allow the adult business at 809 Pacific Coast Highway subject to the following conditions, which supersede the conditions contained in Planning Commission Resolution 93-35:

SECTION I (CONDITIONS OF APPROVAL)

Standard Operating Conditions

1. Clearly visible signs shall be posted at the entrance to the premises stating "Adults Only - No Minors Permitted" or equivalent wording.
2. All building openings, entries, and windows shall be designed or screened so that the contents of the building may not be seen from the public sidewalk or equivalent public areas accessible to minors.
3. The public interior areas shall be fully and brightly lighted and arranged so that every portion of the premises is visible upon entrance by direct sight or by surveillance cameras, but shall not be viewed from outside, and so that any patron is also easily visible to anyone walking through the premises.
4. No alcoholic beverages shall be sold or consumed on the premises and appropriate notification of this restriction shall be displayed on the premises.
5. Advertisements, displays, or other promotional materials shall not be shown or exhibited so as to be visible to the public from exterior areas.

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- 1 6. No loudspeakers or sound equipment shall be used on the  
2 premises that can be discerned from exterior areas.
  - 3 7. Outdoor signs or similar displays showing nude bodies,  
4 topless or bottomless female bodies, or bottomless male  
5 bodies shall be prohibited.
  - 6 8. The establishment shall not adversely affect the welfare of  
7 residents and/or nearby commercial establishments.
  - 8 9. No home delivery of any materials that are distinguished or  
9 characterized by the depiction or description of specified  
10 anatomical areas or specified sexual activities.
  - 11 10. The exterior and interior of the premises shall be maintained  
12 in a neat and clean manner at all times.
  - 13 11. All signs must comply with the City Sign Ordinance. Proper  
14 sign permits, where necessary, shall be obtained from the  
15 Department of Building and Safety.
  - 16 12. A manager or employee who is aware of the conditions of this  
17 conditional use permit shall be on the premises during  
18 business hours.
    - 19 (a) The conditional use permit conditions shall be placed on  
20 the property in a location where employees can easily  
21 read the conditions.
- 14 Site Specific Conditions
- 15 13. The final floor layout shall be substantially consistent with  
16 submitted plans. Modification to the plan needs review and  
17 may be approved by the Planning Director.
  - 18 14. The number of film or video viewing machines or booths shall  
19 not exceed eight (8) individual viewing booths.
  - 20 15. There shall be only one individual per viewing booth at a  
21 time with appropriate signage indicating this condition.  
22 The locks used on the doors of the individual viewing booths  
23 shall not impede access by the Police.
  - 24 16. All surveillance cameras shall be maintained in operational  
25 order, and operating during business hours.
  - 26 17. An attendant shall be present in the theater area monitoring  
27 use of the theater booths at all hours the business is open,  
28 and shall be made aware of the rules as stated in this C.U.P.
  - 28 18. The business shall provide adequate management and  
supervisory techniques to prevent lewd and lascivious acts,  
and any other loitering, loud, boisterous, or illegal  
activity of patrons inside the business or in the immediate  
area.
  19. The police chief may determine that a continuing police  
problem exists, and may authorize the presence of a police

approved doorman and/or security personnel to eliminate the problem, and shall submit a report to the Planning Commission, which will automatically initiate a review of this conditional use permit by the Commission.

20. A sign shall be permanently displayed at the entrance requesting that patrons be considerate of the residential neighbors and not park in residential areas, or equivalent wording.

21. The existing trash dumpster used in conjunction with the business shall be maintained in the south side yard, enclosed within locked 6-foot high gates, and shall be maintained in accordance with Chapter 27A of the municipal code.

22. It shall be verified that the interior stairway is permanently sealed and that interior access to the second floor is permanently eliminated.

23. The north side yard shall have a 6-foot high gate, maintained locked, and prohibiting public access.

24. The business shall not operate or be open to the public between the hours of 2:00 A.M. and 10:00 A.M. daily.

## SECTION II

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

The Conditional Use Permit shall be recorded with Los Angeles County, and proof of recordation shall be submitted to the Planning Department.

Each of the above conditions is separately enforced, and if any 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, its agents, officers, and employees from any claim, action, or proceeding against the City or its agents, officers, or employees to attack, set aside, void or annul this permit approval, which action is brought within the applicable time period of Government Code Section 65907. 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 not 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

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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.

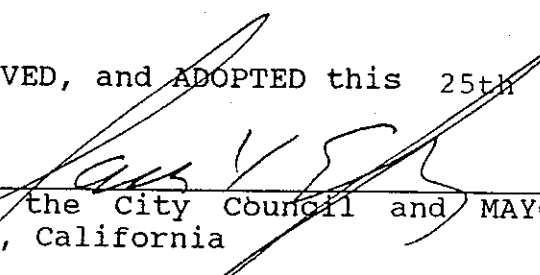
The subject property shall be developed, maintained and operated in full compliance with the conditions of this grant and any law, statute, ordinance or other regulation applicable to any development or activity on the subject property. Failure of the permittee to cease any development or activity not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

SECTION III

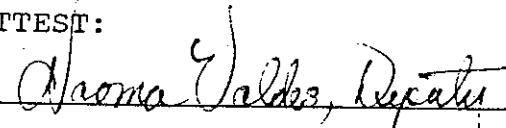
Any violation of the conditions of approval and/or violation of the Hermosa Beach Municipal Code may be grounds for a public hearing for the revocation of the Conditional Use Permit.

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.

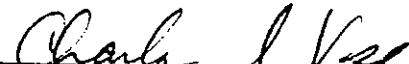
PASSED, APPROVED, and ADOPTED this 25th day of January , 1994.

  
\_\_\_\_\_  
PRESIDENT of the City Council and MAYOR of the City of Hermosa Beach, California

ATTEST:

  
\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY

p/pcrs809a

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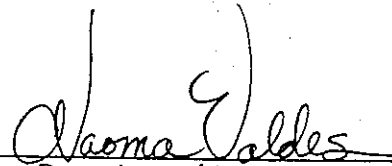
STATE OF CALIFORNIA )  
COUNTY OF LOS ANGELES )  
CITY OF HERMOSA BEACH )

I, Naoma Valdes, Deputy City Clerk of the City Council of the City of Hermosa Beach, California, do hereby certify that the foregoing Resolution No. 94-5653 was duly and regularly passed, approved and adopted by the City Council of the City of Hermosa Beach at a Regular Meeting of said Council at the regular place thereof on January 25, 1994.

The vote was as follows:

AYES: Benz, Bowler, Oakes, Reviczky  
NOES: Mayor Edgerton  
ABSTAIN: None  
ABSENT: None

DATED: January 26, 1994

  
\_\_\_\_\_  
Deputy City Clerk

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BUILDING VIOLATIONS AT THE TENDER BOX,  
809 PACIFIC COAST HIGHWAY

September 4, 2007 – Bob Rollins

Scope of Work: The existing apartment has been removed and replaced with an open floor lay-out that holds several free standing viewing booths, each with their own ceilings. The following are building concerns:

1. The interior connecting stairway does not have enough headroom.
2. The interior stairway terminates in a hall that is more narrow than the stairs, posing a safe exit route problem.
3. Were any structural members removed when the apartment was gutted? An engineering report will be required.
4. Mechanical, plumbing and electrical changes have been made without permit. These systems will need to be reviewed by licensed contractors and corrections made as recommended.
5. The rear exterior stairway is substandard and needs repair.
6. The water heater in the rear yard is improperly installed.
7. The cover is missing from the electrical panel in the rear yard.
8. The block wall on the north side of the property is cracked and failing.



RECEIVED

SEP 04 2007

COMMUNITY DEV. DEPT.

**Yu-Ying Ting**

**From:** Jackie Drasco on behalf of City Clerk  
**Sent:** Tuesday, September 04, 2007 9:08 AM  
**To:** Alan Meyer  
**Cc:** Yu-Ying Ting  
**Subject:** RE: Let's keep the balance in HB!!!

RECEIVED

SEP 04 2007

Mr. Meyer – I will forward your email to the Community Development Department

COMMUNITY DEV. DEPT.

Jackie Drasco  
 Deputy City Clerk  
 City of Hermosa Beach

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**From:** Alan Meyer [mailto:ameyer@isc-usa.com]  
**Sent:** Tuesday, September 04, 2007 8:52 AM  
**To:** City Clerk  
**Subject:** Let's keep the balance in HB!!!

Attn: All commissioners

We have lived in Hermosa Beach 14 years; 2 sons 9 and 12 go to Valley; we love it here;

I want to keep this "small" community small without increasing the potential "slim factor" or potential crime centers!

1. The Tender Box has been a good neighbor for many years; maybe their expansion was an honest mistake maybe a calculated business decision to expand the viewing rooms upstairs. WE WANT THE STATUS QUO! Just like the recent ComRev situation this is NOT GOOD for anyone in the community except the owner. I'm not asking you close them down; but to follow the law now and in the future!

2. I realize that Tattoo's are all the rage and I see no harm. If my kids want a little discreet one; OK... blazoned across their bodies they both know they'd be thrown out of my home.

BUT we DO NOT NEED a LARGE PARLOR with a huge parking lots. Usually tat stores are discreet out of the way places; not a former donut shop that EVERYONE who drives in Hermosa will pass by. GOD, the traffic and people "hanging out" will be BAD. The police will have to patrol 24/7! bet they'd have to include them in their already busy schedule as a target location to KEEP PATROLLING!!! YOUR JOB IS TO HELP KEEP OUR TOWN SAFE AND SOUND....this is not the way

Thank you.

home:

Alan, Meryl, douglas and Scott Meyer  
 543 2<sup>nd</sup> st  
 Hermosa Beach, CA 90254  
 310 372 2189

**Alan R. Meyer | Director of Sales**  
**ISC Technology, Inc.**  
 1327 Sartori Avenue, Torrance, CA 90501  
 310 618 0200 | Fax 310 618 1880  
[www.isc-usa.com](http://www.isc-usa.com)

09/04/2007

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**Ken Robertson**

**From:** Elaine Doerfling  
**Sent:** Tuesday, September 04, 2007 03:31 PM  
**To:** Ken Robertson  
**Subject:** FW: For the Planning Commission

Hi, Ken

This is for the Planning Commission.

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RECEIVED

SEP 04 2007

COMMUNITY DEV. DEPT.

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**From:** Joan Arias [mailto:joana@us.ibm.com]  
**Sent:** Tuesday, September 04, 2007 6:24 AM  
**To:** Elaine Doerfling  
**Cc:** ron.arias@mac.com  
**Subject:** For the Planning Commission

Please send this to the Planning Commissioners. If there is another way to reach them, please let me know. Thank you. Joan Arias and Ronald Arias

\*\*\*\*\*

To the commissioners: For the past few months my neighbors and I have called and written to express our concern about the construction that is proceeding on the northwest corner of 8th Street and PCH. Not only has there been a great deal of construction activity, but we have seen groups of noise-making people on the balcony of that building indicating that it has become a "party house." Now, I read about the Tender Box expansion in violation of codes. The Tender Box seems to be claiming ignorance of the regulations but it is hard to believe that a business that has been in operation for such a long period of time in the same location could not know what the rules are. A group of Hermosa Beach residents from 8th Street and the surrounding community protested the proposed installation of a porn shop on the southwest corner with a petition, expressing strong feelings against such a business in a strongly residential area. We hope that you will see the expansion of the existing business with "viewing booths" as generating the same kind of protest and quash this expansion now!

I have seen the letters that have gone back and forth in the local papers and I know that those of us who have protested have been accused of all manner of up-tight behaviors. However, we represent the family-oriented residents of Hermosa Beach and we feel that this town should not become a center for pornography and allied businesses. The Tender Box already has 8 viewing booths and is open all hours of the night; do we really need to have more than 20? Please stop this now!

Joan Arias  
IBM WW SWG Enablement  
Hermosa Beach, California  
310-242-6470