

December 18, 2002

**Honorable Chairman and Members of the
Hermosa Beach City Council**

**Regular Meeting of
January 14, 2002**

SUBJECT: RECONSIDERATION OF PLANNING COMMISSION APPROVAL
CONDITIONAL USE PERMIT AMENDMENT 02-2
PRECISE DEVELOPMENT PLAN AMENDMENT 02-22

LOCATION: 1301 MANHATTAN AVENUE – EINSTEIN’S

APPLICANT: ALLEN STANFORD (PHILIA 5 GROUP, LLC) UNION CATTLE COMPANY
1710 ESPLANADE, #C
REDONDO BEACH, CA 90277

REQUEST: TO ALLOW RECONFIGURATION TO THE INTERIOR FLOOR PLAN OF AN
EXISTING RESTAURANT WITH ON-SALE GENERAL ALCOHOL, LIVE
ENTERTAINMENT AND OUTDOOR DINING

Recommendation

To sustain the Planning Commission decision to approve the request subject to the conditions as contained in the attached resolution.

Background

At their meeting of December 4, 2002 the Planning Commission approved the requested amendments by a vote of 3:1 subject to conditions. The conditions of approval include standard conditions to mitigate the potential noise caused by live entertainment and dancing, a limitation on live entertainment to be non-amplified piano and acoustic music only, the provision of sound barriers around the outdoor dining areas, and to eliminate restricted access to a portion of the parking structure.

A Precise Development Plan was granted by the Planning Commission in February, 1996, for the construction of the multi-use commercial building with office, restaurant, and retail uses above a two-level parking structure. The C.U.P. for on-sale beer and wine, live entertainment, and outdoor dining for the restaurant was granted concurrently with the P.D.P. by the Planning Commission in February, 1996. A C.U.P. amendment was granted for the restaurant for full service on-sale alcohol in May, 2000. The restaurant has been the subject of a code compliance review because of noise and nuisance complaints. This review has been tabled pending review of this new project.

PROJECT INFORMATION:

ZONING:	C-2, Restricted Commercial
GENERAL PLAN:	General Commercial
TOTAL AREA OF ESTABLISHMENT:	6,400 square feet (Interior) 1,700 square feet (exterior)
PARKING:	78 Parking Spaces in Center: (38 upper level deck; 40 lower deck gated for employees only with assigned spaces)
ENVIRONMENTAL DETERMINATION:	Categorically Exempt

This project is Categorically Exempt pursuant to 15323, Class 23 of the California Environmental Quality Act Guidelines. Normal operations of existing facilities for public gatherings for which the

facilities were designed, where there is a past history of the facility being used for the same kind of purpose.

Analysis

The current business is being sold and will be owned and operated under new management. The applicant is requesting to reconfigure the interior and outdoor dining areas of the building to accommodate a new restaurant with a western steakhouse and renamed the "Union Cattle Company". On the first level, the changes include a new seating arrangement, with an increase of restaurant seating; enclosure of the first level patio; and the creation of a double door entry with an entry vestibule. Also, a "mechanical bull ride" is proposed in the main dining area consistent with the western steakhouse theme. (see the attached description). On the second level, the applicant is proposing to revert to the original concept of a banquet room instead of the current use as disco, with the addition of two private smaller dining rooms adjacent to and east of the banquet room in the area originally approved for restaurant offices. The applicant proposes to use part of the banquet area for dancing in connection with special bookings of the banquet facility. Also, solid walls are proposed on the south side of the second level deck to improve soundproofing, and perimeter glass rails are proposed to comply with the provisions of the existing C.U.P. The upper deck will remain open to the sky for outdoor seating, and includes two proposed fire pits constructed of concrete block (see attached photos). For further description please refer to the attached letter from the applicant.

The applicant has proposed to phase the improvements of the lower deck with construction commencing after August, 2003 for financial reasons.

When the project was approved by the Planning Commission in 1996, parking for the entire restaurant including outdoor seating areas were calculated based on the gross floor area of the restaurant, with no reductions for proposed interior office space. Therefore, parking requirements are not altered with the proposed changes. The use of the large area on the second floor for banquets and luncheons, while never specifically approved by the Commission, was discussed by the applicant at the 2000 Planning Commission meeting when the C.U.P. was changed to include full liquor sales. The use of this area for banquets is not a change in the primary use as a restaurant, and dancing is not inconsistent with the use of the area for banquets. The new location for the proposed management offices in the front of the building replaces a location that was previously approved for retail, which also does not impact parking requirements.

When the building PDP was approved in 1996 the parking structure was anticipated to be open and accessible for customers and employees to maximize efficiency of the structure, and allow accessibility of all the parking for the restaurant in highly impacted times evening and nights. Currently the 40 spaces in the lower level (with access from the alley) are gated with limited access to employees only, with assigned parking for each business. Therefore, only the 38 spaces in the upper level (with access to Manhattan Avenue) are available for customers of the business and restaurant. This arrangement limits the accessibility of parking for the restaurant, and is not consistent with the intent of the original approval for the building. The Planning Commission included a condition of approval that the owner make all the parking available for employees and customers (of the restaurant and other business in the center) after 6:00 P.M. daily, either by opening the gates after 6:00 P.M. or, alternatively, using the area for valet parking with keyed access to the lower level. This will maximize the use of the parking lot, which is currently under-utilized at night as several spaces are assigned to primarily daytime tenants.

Noise concerns are being addressed both by physical changes and operational changes. The first level outdoor seating area will be enclosed. The south edge of the second level deck will be a solid stucco wall. Laminated glass is proposed for the West Side of the outdoor seating areas to comply with the existing Conditional Use Permit. Operational changes include a change in the type of the live entertainment (live

piano / radio music), the elimination of outdoor amplified music on the 2nd level patio; and the upper floor patio is designed to be limited to seating for dining purposes and not to be used for banquets. The applicant has not requested any change in the existing limitations on the hours for the outdoor patios which currently is limited to 11:00 P.M. for the lower patio and 10:00 P.M. on the upper patio. However, the current patio on the first level will become interior space and will not be subject to the requirement.

Since the proposed restaurant, as modified, continues to involve live entertainment, the attached resolution includes standard conditions of the original approval and approval of an acoustical study in order to attenuate noise, including the requirement for barriers around the outdoor dining. Since the applicant is proposing a laminated glass barrier, the conditions include a requirement for an analysis by an acoustical engineer to verify its effectiveness to attenuate noise. Staff is also including a condition for a six-month review in order to monitor the operation and compliance with the conditions.

Summary of Special Conditions

- ❑ 6-month Planning Commission review of project operations relative to C.U.P. compliance.
- ❑ Plans approved by a qualified acoustical engineer for enclosure of the lower patio
- ❑ Acoustical study with proposed sound dampening features related to live entertainment and amplified music and to direct sound away from entrance/exit areas and windows.
- ❑ Glass or other barrier along west side of the outdoor dining areas, approved by an acoustic engineer
- ❑ Occupancy of the upper patio until 10:00 P.M., and occupancy of the second level patio until 11:00 P.M. (existing condition)
- ❑ Non-amplified piano or acoustic music only.
- ❑ No live entertainment in outdoor seating areas, any amplified music to be monitored for volume levels.
- ❑ Any project changes to building interior layout or operations subject to review and approval of the Planning Commission.
- ❑ Dancing limited to banquet room area.
- ❑ All parking to be available during evening and night hours for customers of business in the center on a first come first serve basis with no assigned parking or, alternatively, with keyed valet access on the lower level only.

Ken Robertson,
Associate Planner

CONCUR:

Sol Blumenfeld, Director
Community Development Department

Stephen R. Burrell,
City Manager

Attachments

1. Proposed Resolution
2. Planning Commission Minutes 12/4/02
3. Location Map
4. Company Description
5. Correspondence

Floor plans included as separate attachment

RESOLUTION 02-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA, SUSTAINING THE PLANNING COMMISSION'S DECISION, UPON RECONSIDERATION, TO APPROVE A CONDITIONAL USE PERMIT AND PRECISE DEVELOPMENT PLAN, AS AMENDED TO RECONFIGURE THE FLOOR PLAN, TO ALLOW GENERAL ALCOHOL, IN CONJUNCTION WITH AN EXISTING RESTAURANT WITH LIVE ENTERTAINMENT AND OUTDOOR DINING, AT 1301 MANHATTAN AVENUE, AND LEGALLY DESCRIBED AS LOTS 16, 17& 23 TRACT 1125, AND LOTS 18 AND 19 BLOCK 34, FIRST ADDITION TO HERMOSA BEACH TRACT

Section 1. An application was filed by Allen Sanford (of Philia 5 Group, LLC) seeking an amendment to a Conditional Use Permit and Precise Development Plan to reconfigure and existing restaurant with on-sale general alcohol, live entertainment and outdoor dining.

Section 2. The Planning Commission conducted a duly noticed de novo public hearing to consider the application to amend the Conditional Use Permit and Precise Development Plan on December 4, 2002, at which testimony and evidence, both written and oral, was presented to and considered by the Planning Commission. Based on the evidence the Commission approved the request subject to conditions.

Section 3. On December 10, 2002, the City Council, pursuant to Section 2.52.040, initiated review and reconsideration of the decision of the Planning Commission.

Section 4. The City Council conducted a duly notice public hearing to review and reconsider the decision of the Planning Commission on January 14, at which testimony and evidence, both written and oral, was presented to and considered by the City Council.

Section 3. Based on evidence received at the public hearing, and the record of decision of the Planning Commission, the City Council makes the following factual findings:

1. A Precise Development Plan was granted by the Planning Commission in February, 1996, for the construction of the multi-use commercial building with office, restaurant, and retail uses above a two-level parking structure. The C.U.P. for on-sale beer and wine, live entertainment, and outdoor dining for the restaurant was granted concurrently with the P.D.P. by the Planning Commission in February, 1996. A C.U.P. amendment was granted for the restaurant for full service on-sale alcohol in May, 2000. The proposed amendment does not significantly alter the floor plan and does not alter the existing and approved primary use as a restaurant with live entertainment and outdoor dining.

2. The site is located in the downtown district, which has several similar restaurants with on-sale general alcohol;

3. The site is zoned C-2 allowing the proposed on-sale alcohol use with a Conditional Use Permit.

Section 4. Based on the foregoing factual findings, and the record of the decision of the Planning Commission, the City Council makes the following findings pertaining to the application to amend the Conditional Use Permit:

1. The site is zoned C-2, and the continued operation of the restaurant with the proposed modifications is suitable for the proposed location.

2. The continued use of the building for a restaurant with the proposed modifications to address noise and nuisance concerns will improve its compatibility with surrounding commercial and residential uses within the downtown district;

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

4. This project is Categorically Exempt pursuant to 15323, Class 23 of the California Environmental Quality Act Guidelines. Normal operations of existing facilities for public gatherings for which the facilities were designed, where there is a past history of the facility being used for the same kind of purpose.

Section 5. Based on the foregoing, the City Council hereby approves the requested amendments to the Conditional Use Permit and Precise Development Plan, subject to the following **Conditions of Approval**, which supersede the conditions contained in P.C. Resolution 00-33:

1. **Interior and exterior building alterations and the continued use and operation of the restaurant shall be substantially consistent with the plans submitted and reviewed by the Planning Commission on December 4, 2002.**
2. **The parking spaces in the two level parking structure shall be accessible to all patrons of the businesses including the restaurant after 6:00 P.M. daily. No assigned parking or gated access shall be allowed between 6:00 P.M. and 2:00 A.M. Alternatively the applicant may limit the use of the lower level parking area for valet attendant parking during these hours, by providing evidence of the valet service operation for approval by the Community Development Director.**
3. **The hours of operation shall be limited to between 7:00 A.M. and 2:00 A.M. daily. Outdoor dining, seating and any use of the outdoor patio areas shall not be allowed later than 11:00 PM on the lower patio or later than 10:00 PM on the upper patio. No patrons shall be seated on the patios beginning an hour before these times.**
4. **The hours for live entertainment shall be limited to the hours between 4:00 PM to 1:15 AM Monday through Friday, and from 9:00 AM to 1:15 AM on Saturdays and Sundays, Federal, and State holidays, Cinco De Mayo and St. Patrick's day.**
5. **Live entertainment shall be limited to unamplified piano and acoustic music.**
6. **Dancing shall be limited to the second level interior banquet room.**
7. **A minimum 6-foot high partition to provide adequate sound attenuation shall be installed around the perimeter of the outdoor seating areas. The type of glass or other barrier shall be specified by a qualified acoustical engineer to attenuate noise.**
8. **An acoustical study shall be prepared by an acoustical engineer, including proposed sound dampening features to baffle and direct sound away from the entrance/exit and window areas to ensure compliance with the noise ordinance. Said study and sound dampening features shall be reviewed and approved by the Community Development Director prior to the issuance of building permits and shall be implemented in the building.**
 - A. **The acoustical study shall be based on the worst-case scenario, or on a sound level that will not be exceeded at any given time for all areas of the restaurant.**
 - B. **Management shall be responsible for the music/entertainment volume levels.**
 - C. **During the performance of any live entertainment, the exterior doors and windows shall remain closed.**
 - D. **The air conditioning system shall be of an adequate capacity to air condition the entire restaurant.**

- 9. The establishment shall not adversely effect the welfare of the residents, and/or commercial establishments nearby.**
- 10. The business shall provide adequate staffing, management and supervisory techniques to prevent loitering, unruliness, and boisterous activities of the patrons outside the business and in nearby public areas.**
- 11. 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 then shall submit a report to the Planning Commission, which will automatically initiate a review of this conditional use permit by the 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 changes to the interior layout which would alter the primary function of the business as a restaurant shall be subject to review and approval by the Planning Commission.**
- 14. The project and operation of the business shall comply with all applicable requirements of the Municipal Code.**
- 15. No live entertainment shall be permitted in the outside seating areas, and the volume level of any amplified music in the outside seating area shall be controlled by management to ensure compliance with the noise ordinance.**
- 16. 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.**
- 17. The Planning Commission shall review the operation of the restaurant and the parking facility for compliance with conditions of approval and compliance with the Noise Ordinance 6 months from the opening of the new restaurant, and in response to any complaints thereafter.**

Section 6. This grant shall not be effective for any purposes until the permittee and the owners of the property involved have filed a the office of the Planning Division of the Community Development Department their affidavits stating that they are aware of, and agree to accept, all of the conditions of this grant. The grant for live entertainment shall not be in effect until the acoustical study is complete and approved by the Community Development Director, and all sound proofing measures are implemented in the building pursuant to Condition Nos. 12, 14, and 16.

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

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

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

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

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

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

Section 7. Pursuant to the Code of Civil Procedure Section 1094.6, any legal challenge to the decision of the City Council, must be made within 90 days after the final decision by the City Council.

PASSED, APPROVED, and ADOPTED this day of , 2001,

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

ATTEST:

APPROVED AS TO FORM:

_____ CITY CLERK _____ CITY ATTORNEY