

July 2, 2002

**Honorable Mayor and Members of the
Meeting of
Hermosa Beach City Council**

Regular

July 9, 2002

CONTINUED FROM THE MEETINGS OF MAY 28, AND JUNE 11, 2002

SUBJECT: RECONSIDERATION OF PLANNING COMMISSION'S APPROVAL OF
CONDITIONAL USE PERMIT AMENDMENT (CUP 02-3):
THE PITCHER HOUSE – 142 PACIFIC COAST HIGHWAY

REQUEST: TO ALLOW ON-SALE GENERAL ALCOHOL AT AN EXISTING ON-SALE BEER
AND WINE ESTABLISHMENT WITH LIVE ENTERTAINMENT

Recommendation

Adopt the attached resolution sustaining the Planning Commission's approval.

Background

PROJECT INFORMATION:

ZONING:	Commercial SPA 7
GENERAL PLAN:	Commercial Corridor
FLOOR AREA:	2,793 Square Feet
PARKING PROVIDED:	8 Spaces
MAXIMUM OCCUPANCY:	233
ENVIRONMENTAL DETERMINATION:	Categorically Exempt, Class 1 Finding

On May 28, 2002 the City Council considered the Conditional Use Permit and directed staff to return with a resolution to deny the project based on the applicant's failure to fully carry out the requirements of the current CUP. The two outstanding compliance issues involved installation of an air-conditioner adequately sized to ensure that doors and windows remain closed during periods of live entertainment, and the preparation of an acoustical study by a qualified engineer to ensure compliance with the noise ordinance. Several community members who attended the meeting complained about noise and parking in connection with the business. At the meeting of June 11, the City Council decided not to adopt the resolution of denial as the applicant had shown progress in implementing these conditions, and instead re-opened the hearing to consider additional public testimony. The project has been re-noticed to allow consideration of additional public testimony.

On April 16, 2002, the Planning Commission unanimously approved a CUP amendment to allow on-sale general alcohol for the business which has been operating for well over thirty years. According to business license records dating back to 1971, during the period of 1971 to 1978, and 1981 to 1985 business licenses had been issued for on-sale general alcohol. The business was originally established prior to the requirements for a CUP for on-sale alcohol establishments, and operated as a legal nonconforming use until 1989. In July 1989, the Planning Commission approved a CUP for on-sale beer and wine as required pursuant to Section 17.52.060. According to this Code provision, all existing establishments with alcohol

sales, which did not have a CUP were required to obtain one within two years. Notices were sent to all businesses with on-sale and off-sale alcohol that were established prior to the CUP requirement.

In November 1997, the Planning Commission approved a Conditional Use Permit Amendment for live entertainment. The premises are currently used for billiards, video games, shuffleboard, foosball, table tennis, live entertainment and dancing in conjunction with on-sale beer and wine sales and some food service. The business has been continuously operating as a “tavern” and currently has a type 42 ABC license for on-sale beer and wine sales in a public premise. The use is nonconforming to parking, providing 8 spaces located behind the business (available at night for exclusive use of the Pitcher House), whereas 35 spaces would be required under current parking requirements for a bar. Most parking for customers is available on Pacific Coast Highway or on 2nd Street.

Analysis

Since the May 28 meeting the applicant has implemented the conditions of the current CUP relating to noise, including the installation of an air-conditioning system sized to condition the space, and obtained the services of an acoustical engineer to evaluate the off-site noise impacts. The analysis of the acoustical engineer is attached, and shows that the applicant has taken measures pursuant to his recommendations, and that with live music in progress and the doors and windows closed, the live entertainment complies with the Noise Ordinance.

With compliance with the above noted conditions, the proposed use is appropriate to the commercial zone and consistent with the General Plan. The interior changes made since 1997 relocate the dance floor and stage to more central location and maintain the kitchen facilities. The occupant load for the business is unchanged. The interior layout includes a bar with stools, tables, billiard and game area, dance floor, stage, dining room, kitchen, restrooms and office.

According the police records from July 1997 to April 2002, only two loud music complaints have been received, in 1998, and one complaint regarding loud persons in November, 2001. The Police Department has advised that there appear to few operating nuisance problems reported for the business. To address potential nuisances related to the use and potential noise problems of live entertainment the proposed resolution includes standard conditions for on-sale general alcohol and live entertainment, and includes biannual acoustical review of the business.

Sol Blumenfeld, Director
Community Development Department

Stephen R Burrell,
City Manager

Attachments

1. Draft Resolution to sustain the Commission’s approval
2. Memo from Acoustical Engineer
3. Location Map
4. P.C. Minutes / Resolution
5. Correspondence

B95/cd/cc/cup02-3final

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA, SUSTAINING THE PLANNING COMMISSION'S APPROVAL OF A CONDITIONAL USE PERMIT, AS AMENDED, TO ALLOW ON-SALE OF GENERAL ALCOHOL IN CONJUNCTION WITH LIVE ENTERTAINMENT AT 142 PACIFIC COAST HIGHWAY LEGALLY DESCRIBED AS LOT 44, AND NORTHERLY 50.69 FT. OF LOTS 45 & 46 HOME BUILDERS PLACE TRACT.

The City Council does hereby resolve and order as follows:

Section 1. An application was filed by Gary Cullen, business owner of the Pitcher House located at 142 Pacific Coast Highway, seeking amendment of a Conditional Use Permit to allow on-sale general alcohol.

Section 2. The Planning Commission conducted a duly noticed de novo public hearing to consider the subject application on April 16, 2002, at which time testimony and evidence, both written and oral, was presented to and considered by the Planning Commission.

Section 3. The City Council conducted a duly noticed de novo public hearing to reconsider the Planning Commission's approval of the CUP Amendment on May 28, and July 8, 2002, at which testimony and evidence, both written and oral, was presented to and considered by the City Council.

Section 4. Based on evidence received at the public hearings, the Planning Commission makes the following factual findings:

1. The Pitcher House has been in operation at this location for over thirty years. The business was originally established prior to the requirement for a Conditional Use Permit for on-sale alcohol. In July 1989 the Planning Commission approved a Conditional Use Permit for on-sale beer and wine for the existing beer and wine bar as required pursuant to Section 17.52.060, which required existing establishments to comply with the requirement to obtain a Conditional Use Permit. In July 1997 the Planning Commission approved a Conditional Use Permit Amendment to allow live entertainment in conjunction with the existing use, with a live entertainment stage and dance floor in the back of the establishment.

2. The applicant is proposing to change from an on-sale beer and wine establishment with live entertainment, to an on-sale general alcohol establishment with live entertainment. Interior changes made since the 1997 amendment for live entertainment involve relocation of the dance floor and entertainment stage to a more central location within the building.

3. The site is zoned Commercial S.P.A. 7, which allows uses as permitted in the C-3 zone, allowing the continuation of the existing "tavern" or bar use, and live entertainment with proposed on-sale alcohol use with a Conditional Use Permit, and allows dancing as a permitted use.

Section 5. Based on the foregoing factual findings, the City Council makes the following findings pertaining to the application to amend the Conditional Use Permit:

1. The proposed amendment does not alter the primary use of the establishment as a “tavern” or bar which has been ongoing for over 30 years consistent with licenses obtained from the State Alcoholic Beverage Control, and City approval, and does not substantially intensify or change the use or its impacts;

2. The relocation of the entertainment stage and dance area does not change the intensity of the prior approve location, and helps mitigate the impacts of noise on neighboring residents to the east.

3. The site is zoned S.P.A. 7, and is suitable for the proposed use with the proposed amendment for on-sale alcohol;

4. The proposed use is compatible with surrounding commercial uses along P.C.H.;

5. The implementation of conditions previously imposed on this business to address noise impacts from live entertainment, including the installation of an adequately sized air-conditioner and an acoustical study, and imposition of conditions as required by this resolution will mitigate any negative impacts on nearby residential or commercial properties;

6. The project is Categorically Exempt from the requirement for an environmental assessment, pursuant to the California Environmental Quality Act Guidelines, Sections 15303c, Class 1 project with the finding that the project involves negligible or no expansion of use beyond that which is previously existing on the premises.

Section 6. Based on the foregoing, the City Council hereby sustains the decision of the Planning Commission and approves the Conditional Use Permit subject to the amended **Conditions of Approval** as follows:

- 1. The development and continued use of the property shall be in conformance with submitted plans received and reviewed by the Planning Commission at their meeting of April 16, 2002, and received and reviewed by the City Council at their meetings of May 28, and July 8, 2002. Any minor modification shall be reviewed and may be approved by the Community Development Director. This permit as amended shall not be in effect until all of the Conditions have been fully implemented and approved by the Community Development Director.**
- 2. The hours of operation shall be limited to between 7:00 A.M. and 2:00 A.M. daily.**
- 3. Live entertainment shall be limited to the “entertainment stage” as shown on submitted plans on file.**
- 4. 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 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.**
 - 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 acoustical study shall be prepared biannually and submitted to the Community Development Department for biannual review by the Planning Commission.**
- 5. An air conditioning system shall be installed of an adequate size to air condition the entire building, prior to any entertainment activity being conducted on the premises.**
 - 6. The establishment shall not adversely effect the welfare of the residents, and/or commercial establishments nearby.**
 - 7. The business shall prevent loitering, unruliness, and boisterous activities of the patrons outside the business, or in the immediate area.**
 - 8. 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. If the problem persists the Chief then shall submit a report to the Planning Commission, which will automatically initiate a review of this Conditional Use Permit by the Commission.**
 - 9. The exterior of the premises shall be maintained in a neat and clean manner, and maintained free of graffiti at all times.**
 - 10. The project and the continued operation of the business shall comply with all applicable requirements of the Municipal Code.**
 - 11. The hours for live entertainment shall be limited to the hours between 4:00 P.M. to 1:15 A.M. Monday through Friday, and from 9:00 A.M. to 1:15 A.M. on Saturday, Sundays, and Federal and State Holidays, Cinco De Mayo, and St. Patrick's day.**
 - 12. Management shall be responsible for the music/entertainment volume levels.**
 - 13. Noise emanating from the property shall be within the limitations prescribed by the city's noise ordinance and, as such, continuous, repeated or sustained noise between the hours of 10:00 P.M. and 8:00 A.M., that is plainly audible from an adjacent or nearby residential dwelling unit, is specifically prohibited.**

Section 7

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.

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, its 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 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 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 8

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.

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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.

PASSED AND APPROVED, and ADOPTED this day of 2002

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

ATTEST:

APPROVED AS TO FORM:

_____ CITY CLERK

_____ CITY ATTORNEY

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