

March 1, 2005

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

**Regular Meeting of  
March 8, 2005**

SUBJECT: REVIEW OF CONDITIONAL USE PERMIT AMENDMENT 05-12 AND VARIANCE 05-1 -  
PLANNING COMMISSION DENIAL OF THE REQUEST FOR A PERMANENT DECK  
COVER AND SEASONAL TENT STRUCTURE ON UPPER FLOOR DECKS TO EXCEED  
THE 30-FOOT HEIGHT LIMIT

APPLICANT: UNION CATTLE COMPANY, 1301 MANHATTAN AVENUE, HERMOSA BEACH, CA  
90254, ALLEN SANFORD

**Planning Commission Recommendation**

To sustain the decision denying the requested Conditional Use Permit Amendment and Variance.

**Background**

On January 18, 2004, the Planning Commission voted unanimously to deny the request because they could not make the mandatory findings to approve a Variance for the over-height structures. On January 25, 2005, pursuant to Section 2.52.040 of the Municipal Code, two members of the City Council voted to initiate review of the Planning Commission decision.

**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 patios)
ENVIRONMENTAL DETERMINATION:	Categorically Exempt

The Precise Development Plan and Conditional Use Permit for the construction of the multi-use commercial building with office, restaurant, and retail uses above a two-level parking structure was approved in 1996. The previous restaurant tenant obtained a C.U.P. for on-sale beer and wine, live entertainment, and outdoor dining in 1996. The C.U.P. was amended in May 2000 to allow full service on-sale alcohol.

A Conditional Use Permit and Precise Development Plan amendment was approved by the City Council in January 2003 for Union Cattle Company to reconfigure the interior and outdoor dining areas of the building. In March 2003, the Planning Commission confirmed that a 7'-8" glass barrier, required under the CUP, could be constructed along the west side of the upper patio for sound attenuation consistent with Section 17.46.010 of the Zone Code. The restaurant contains three separate outdoor dining areas on three levels, which provide approximately 1700 square feet of outdoor dining. The interior seating area is approximately 3500 square feet (approx. 2500 square feet on the first floor, and 1000 square feet in the second floor banquet room and private dining rooms.)

**Analysis**

A C.U.P. amendment is required in order to make material changes to the interior layout of the restaurant. In order to approve the proposed C.U.P. amendment, the City Council must approve the proposed Variance and make all the required findings discussed below. The Planning Commission determined it could not make the required findings.

The applicant is requesting approval of a Variance to maintain an existing deck cover and seasonal tent structure which exceed the height limit, and which were constructed without required permits. The illegal condition surfaced as a code enforcement action in October 2004 when the City's code enforcement officer discovered the structures. The owner was advised at that time that the structures were over height and must be removed but he inquired about processing a Variance application and requested that the structure be permitted to remain pending review by the Planning Commission. The owner agreed to immediately commence with processing a Variance application and provided evidence from a structural engineer to confirm that the subject structures were stable and constructed in compliance with the Building Code. The owner was further advised that if the Variance application was approved, then he could proceed with processing plans to obtain an after-the-fact building permit (similar to permit issuance for legal determinations or other code enforcement cases involving illegal construction). Alternately, if the owner did not prevail, then he would be required to remove the roof structure and tent immediately.

The second floor deck is adjacent to the restaurant banquet room. A deck trellis was originally permitted for this deck for the previous restaurant. This was shown on the 2003 approved plans for Union Cattle Company. The deck trellis was below the existing roofline and complied with the 30-foot height limit. The newer structure (see photo) extends above the existing roofline and exceeds the height limit by 6 feet at the peak of the sloped roof. The proposed seasonal canvas tent, on the third level, is between 8 and 9 feet above the height limit at its highest point. Variances are necessary for both structures as they exceed the 30-foot height limit in the C-2 zone.

The applicant's letters indicate these structures are required to improve noise attenuation, accommodate roof drainage, allow use of the patio in winter months for corporate and private functions and necessary for the continued success and economic viability of the restaurant. Also, the applicant states that there are no significant view impacts. The applicant's arguments are set forth in the attached letter.

In order to grant a Variance, the Commission must make the following findings:

1. There are exceptional or extraordinary 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.
4. The Variance is consistent with the General Plan.

Discussion of findings:

**Finding 1:** The applicant has not demonstrated that exceptional or unusual conditions exist with respect to the physical conditions of the property. The lot is fairly typical of lots in the vicinity sloping from east to west, and with the construction of the building in 1997. It is clearly a site that can accommodate a substantial development, with two levels of parking and two floor levels above, which include the subject restaurant with ample interior seating, banquet area and exterior seating. The applicant's argument rests more on the issue of the unique nature of the business as compared to the prior use and other restaurant/bars downtown, and the need for more enclosed seating areas in the winter months to keep this restaurant economically viable. Economic viability is not grounds for approving a Variance.

**Finding 2:** The proposed Variances are not necessary for the enjoyment of a substantial property right possessed by others in the same vicinity and zone. The property was originally developed several years

ago with a variety of commercial uses demonstrating that that a substantial property right is currently being enjoyed by several businesses on the property including the subject restaurant. The applicant appears to be seeking a special privilege, beyond the substantial property rights currently enjoyed, to exceed the height limit otherwise applicable to surrounding properties, and to convert areas that were always constructed for outdoor dining. The applicant's argument relates to maintaining the amount of seating all year in order to support an upscale restaurant.

**Finding 3:** The project may be materially detrimental to property improvements in the vicinity and zone since it may obstruct views, sunlight and air to adjacent properties. The owner has not submitted a view analysis in support of his statements that the structures will not affect views, although he has submitted a statement from some adjacent owners who indicate support for the restaurant. The structures may in fact obstruct views to the south or north. Given this potential, it does not seem a finding can be made that the structure will not be materially detrimental to any other properties. Further the tent and trellis enclosures have no relationship to the original architectural design of the building and may be considered detrimental to the property improvements in the surrounding area. (See Attached Photos).

**Finding 4:** The project does not directly conflict with the General Plan, as there is no substantial change in the use of the property.

With respect to the amendment to the proposed C.U.P., approval of the existing construction does not impact the intensity of the business, or parking requirements, occupant load or seating, since the outdoor patios have not been enlarged and were always included as part of the original approved project.

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Ken Robertson,  
Senior Planner

CONCUR:

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Sol Blumenfeld, Director  
Community Development Department

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Stephen R. Burrell,  
City Manager

Attachments

1. Proposed Resolution
2. Location Map
3. Photos
4. Applicant letter
5. Correspondence
6. Project plans and height exhibits

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## RESOLUTION NO. 05-

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA, SUSTAINING THE PLANNING COMMISSION DECISION TO DENY A REQUESTED CONDITIONAL USE PERMIT AMENDMENT AND VARIANCE TO ALLOW A PERMANENT DECK COVER ON THE SECOND FLOOR DECK, AND SEASONAL TENT ON THE UPPER FLOOR DECK TO EXCEED THE 30-FOOT HEIGHT LIMIT AT UNION CATTLE COMPANY RESTAURANT AT 1301 MANHATTAN AVENUE**

The City Council does hereby resolve and order as follows:

Section 1. An application was filed by Allen Sanford, owner of the restaurant, Union Cattle Company, located at 1301 Manhattan Avenue, seeking a Conditional Use Permit Amendment and a Variance to allow to allow a permanent deck cover on the second floor deck, and seasonal tent on the upper floor deck and to allow these deck structures to exceed the 30-foot height limit of the C-2 zone.

Section 2. The Planning Commission conducted a duly noticed public hearing to consider the application for a Conditional Use Permit and Variance on January 18, 2005, and based on the testimony and evidence, both written and oral, presented to and considered by the Planning Commission, the Commission could not make the necessary findings for a Variance and therefore denied the requested Conditional Use Permit Amendment and Variance as set forth in Planning Commission Resolution 05-5.

Section 3. On January 25, 2005, the City Council, pursuant to Section 2.52.040 of the Municipal Code initiated review of the decision of the Planning Commission.

Section 4. The City Council conducted a duly noticed public hearing to review the decision of the Planning Commission on March 8, 2005, at which testimony and evidence, both written and oral, and the record of decision of the Planning Commission was presented to and considered by the City Council.

Section 5. Based on the evidence received at the public hearing, the City Council makes the following factual findings:

1. The applicant is requesting approval of a Variance to maintain an existing deck cover and seasonal tent structure located on the 2<sup>nd</sup> and 3<sup>rd</sup> level decks respectively, which exceed the height limit, and which were constructed without required permits. These alterations also require amending the Conditional Use Permit for the restaurant with on-sale alcohol.
2. The illegal condition surfaced as a code enforcement action in October 2004 when the City's code enforcement officer discovered the structures and issued a notice to remove the illegal structures.
3. The second floor deck is adjacent to the banquet room on the second floor of the building. A deck cover trellis structure was permitted for this deck when the restaurant was Einstein's, equipped with a retractable canvas roof, and is shown on the approved plans for Union Cattle Company. However, the deck cover that was issued a building permit was below the existing roofline, and sloped down at a much lower ceiling clearance than the new cover in order to comply with the 30-foot height limit. The newer structure extends above the existing roofline creating a much higher clearance, and exceeds the height limit by as much as 6 feet at the peak of the sloped roof. The proposed seasonal "canvas" tent, which also is considered a structure, is located on the upper most level deck, and is 8-9 feet above the height limit at its highest point.
4. Variances are necessary for both proposed structures as they exceed the 30-foot height limit for the C-2 zone, and cannot be considered as elements that are allowed to exceed the height limit pursuant to Chapter 17.46.

Section 6. Based on the foregoing factual findings, the City Council makes the following findings pertaining to the application for a Variance:

1. The applicant has not demonstrated that exceptional or unusual conditions exist with respect to the physical conditions of the property. The lot is fairly typical of lots in the vicinity sloping from east to west, and with the construction of the building in 1997 it is clearly a site that can accommodate a fairly substantial development project, with two levels of parking and two floor levels above, which include the subject restaurant which contains ample interior seating and banquet areas in addition to the exterior seating.
2. The proposed Variance is not necessary for the enjoyment of a substantial property right. The relatively recent development of the property has established a variety of commercial uses demonstrating that a substantial property right is currently being enjoyed by several businesses on the property including the subject restaurant. The applicant appears to be seeking to obtain a special privilege, well beyond the substantial property rights currently enjoyed, to exceed the height limit otherwise applicable to surrounding properties, and to convert areas that were always constructed and intended to be outdoor dining in order to partially enclose and weather proof these spaces.
3. The project may potentially be materially detrimental to property improvements in the vicinity and zone since the project as constructed may marginally obstruct some views, or access to sunlight, of adjacent properties. While the construction apparently does not obstruct prominent westerly views to the ocean from properties directly to east, it potentially has impact on other views from a southerly or northerly direction, or at angles from the northeast or southeast.

Section 7. Based on the foregoing, and since all four required finding as required by Section 17.54.020 of the Zoning Ordinance cannot be made, the City Council hereby sustains the Planning Commission decision to deny the requested Variance and the requested amendment to the Conditional Use Permit.

**PASSED, APPROVED and ADOPTED** this 13th day of January, 2004, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

ATTEST:

APPROVED AS TO FORM:

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CITY CLERK

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CITY ATTORNEY