

**CITY OF HERMOSA BEACH
COMMUNITY DEVELOPMENT DEPARTMENT**

MEMORANDUM

Date: March 14, 2005

To: Honorable Mayor and Members of the
City Council

From: Sol Blumenfeld, Director
Community Development Department

Concur: Stephen Burrell, City Manager

Subject: Resolution to Approve the Conditional Use Permit and Variance for
Union Cattle Company

Attached is the resolution, reflecting the City Council's action at the March 8, 2005 meeting, to overturn the Planning Commission's decision and approve the Conditional Use Permit Amendment and Variance.

RESOLUTION NO. 05-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA, TO APPROVE A CONDITIONAL USE PERMIT AMENDMENT TO ALLOW ALTERATIONS TO AN EXISTING RESTAURANT AND A VARIANCE TO ALLOW A PERMANENT DECK COVER ON THE SECOND FLOOR DECK, AND SEASONAL TENT ON THE UPPER FLOOR DECK, TO BOTH 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. 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 as set forth in City Council Resolution No. 03-6246.
2. The applicant is requesting approval of a Conditional Use Permit amendment to allow outdoor deck covers and seasonal tent structures on the existing outdoor dining decks, and a Variance so the deck cover and seasonal tent structure, located on the 2nd and 3rd level decks respectively, can exceed the height limit. These alterations require amending the 2003 Conditional Use Permit for the restaurant.
3. The deck covers that are the subject of this request have already been constructed without permits. The decks are approved for outdoor dining as set forth in City Council resolution No. 03-6246. The illegal conditions 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. Other building code violations that have been identified as part of this code enforcement action include the installation of a tent structure on the first level patio without

permits, improper termination of heating vents below the tent structure, improper termination of kitchen exhaust equipment and chimneys at the second floor deck cover.

4. 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 5 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 8-10 feet above the height limit at its highest point.
5. Variances are necessary for both 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 Conditional Use Permit Amendment

1. The alterations are minor in scope, and do not change the use or occupant load of the restaurant, and involve enclosing or providing seasonal tent enclosures to existing approved outdoor dining areas.

2. The site is located in the downtown and zoned C-2. Restricted Commercial, and the existing restaurant use and outdoor dining areas with the proposed alterations will generally comply with the use standards contained therein, and with these enclosures the use will continue to be compatible with surrounding uses and the alterations may actually help to better mitigate noise impacts of the outdoor dining patio areas.

3. Compliance with the conditions of approval will mitigate any negative impact resulting from the proposed alterations.

Section 7. Based on the foregoing factual findings in Section 5, and the testimony and evidence presented at the public hearing, the City Council makes the following findings pertaining to the application for a Variance:

1. There are exceptional circumstances relating to the property due to the combination of site conditions, the existing open deck design on the upper floors of the west-facing portion of the building and the property location in the downtown. The lot is exceptional in that it has a severely sloping grade which averages approximately 15%, as measured from the corner point spot elevations pursuant to the definition of "grade" in Section 17.04.040 of the Zoning Ordinance. In contrast, most commercial properties in the downtown are located on flat lots or lots with less than a 15% slope.

Furthermore, the building is constructed to its near maximum height of 30', although to comply with the height limit pursuant to Section 17.46.015 of the Zoning Ordinance, it is tiered down to follow the grade from east to west from the highest point of the roof to the west edge of the outdoor decks. According to these building height provisions, the highest part of the building tends to pierce the height envelope more quickly at the lowest part of the lot. In this case, the height limit is pierced most quickly along the westerly portion of the lot where the outdoor dining decks are located. Most commercial properties in the downtown are located on flat lots or lots with less than a 15% slope and thus are less like to be encumbered

by the provisions of the height ordinance relative to enclosing open decks at upper levels. In fact, this tiered or sloping height limit results in substantial open deck areas on the upper level on the west side of the building, which compromises the utility of the building for restaurant purposes since these areas can only be used for open patio seating. Consequently, the severely sloping site affects the building design so that there are unique and exceptional conditions limiting the year round use of property with respect to the dining decks.

2. The Variance is necessary for the enjoyment of a substantial property right possessed by other properties in the vicinity because the property owner is seeking to upgrade and alter the outdoor deck areas for a reasonable permitted use and purpose. The retrofit requires enclosing upper level open decks so they can be used for restaurant seating throughout the year. Strict application of the height limit severely restricts year round use of these areas for their permitted purposes, since the upper decks cannot be enclosed and weatherproofed in compliance with the height limit. This denies the owner the opportunity for full use of the property and denies a substantial property right possessed by others in the vicinity and zone.
3. With incorporation of the Conditions of Approval below, the Variance will not be materially detrimental to the public welfare of injurious to property or improvements in the vicinity because it permits enclosure of outdoor decks at or below existing roof lines and therefore will negligibly effect the visual appearance of the building and will negligibly effect views from the east. Also the enclosure of these deck areas which are used for outside dining may potentially attenuate noise to the benefit of residents and commercial businesses in the vicinity.
4. The Variance does not conflict with and is not detrimental to the General Plan as it does not result in material damage to surrounding properties and is also consistent with the goals, objectives, and policies of the General Plan. The General Plan encourages viable economic uses in the commercial districts and encourages compatibility between commercial and residential uses.

Section 8. Based on the foregoing, the City Council hereby overturns the decision of the Planning Commission and approves the subject Conditional Use Permit Amendment and Variance subject to the following **Conditions of Approval** which supplement the Conditions of Approval contained in City Council Resolution No. 03-6246 which remain in full force and effect:

1. **The alterations to cover the outdoor dining areas shall be in conformance with submitted plans reviewed by the City Council at their meeting March 8, 2005, modified in accordance with the conditions below.**
2. **The Variance to the height limit is specifically limited to the situation and circumstances that result relative to the proposed specific use of deck covers for the existing outdoor dining decks and is not applicable to the development of new structures or any future expansion or alterations to the structure.**
3. **The tents on the first level deck and upper level deck are seasonal and subject to Building Code regulations for temporary structures.**
4. **The seasonal tent structure on the upper level deck may only exceed the height limit to the height of the existing roofline as viewed from the east (the existing roof equipment screen wall), shown on plans (submitted December 19, 2004, page 4, "revision") at a maximum height elevation of 141.9.**
5. **The project shall comply with the requirements of the Fire Department and the Public Works Department.**

6. **Final building plans/construction drawings including, floor plan, roof plan, (indicating property lines, surveyed corner point elevations, finished roof heights), occupant load plan, sections, details, submitted for building permit issuance shall be reviewed for consistency with the plans approved by the City Council and the conditions of this resolution, and approved by the Community Development Director prior to the issuance of any Building Permit.**
7. **Each of the Conditions of Approval 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.**
8. **The Permittee shall defend, indemnify and hold harmless the City, its agents, officers, and employees from any claim, action, liability, judgment or proceeding against the City or its agents, officers, or employees, initiated to challenge, set aside, void or annul this approval. The City shall promptly notify the permittee of any claim, action, or proceeding. The City may in its discretion select the counsel of its choice to defend any such action on behalf of the City, and the permittee shall reimburse the City its actual attorneys fees, and any other costs or damage awards of any kind which the City may be required to pay as a result of any claim or action brought against the City because of this grant. The Permittee will be obligated to represent itself at its expense in any such proceedings.**
9. **The subject property shall be developed, maintained and operated in full compliance with the conditions of this grant and the conditions of City Council Resolution 03-6246 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 9. 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 Amendment and Variance shall be recorded, and proof of recordation shall be submitted to the Community Development Department.

The Planning Commission may review this Precise Development Plan, Parking Plan and Variance 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 10. 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 , 2005,

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

ATTEST:

APPROVED AS TO FORM:

CITY CLERK
ATTORNEY

CITY

