

April 19, 2005

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

**Regular Meeting of  
April 26, 2005**

SUBJECT: RESOLUTION TO DENY THE CONDITIONAL USE PERMIT AND VARIANCE FOR  
UNION CATTLE COMPANY -

**Recommendation:**

To reopen the public hearing on the request, and after taking testimony consider the attached resolution to sustain the Planning Commission's decision and deny the request. The resolution reflects the vote of the City Council at the March 22, 2005 meeting failing to approve a resolution of approval.

**Background:**

At the public hearing on this matter held on March 8, 2005, after considering the public testimony and deliberating on the evidence, the Council directed staff on a 3-2 vote to return with a resolution containing findings to approve the Conditional Use Permit Amendment and Variance. This direction was consistent with the City's longstanding practice to make all quasi-judicial land use decisions by written resolution.

At the Council's regular meeting of March 22, 2005, the vote of the resolution was 2-3, meaning that the resolution failed passage. Staff indicated that it would return with a resolution containing findings to deny the request.

The above two actions have generated comment by the applicant and others, and engendered some confusion. The attorney for the applicant contends that the Council's vote on March 8, 2005 was a final action; the City Attorney disagrees with this contention, and the City Attorney's opinion on this subject is attached as an exhibit to this staff report. At this juncture, no final action has yet been taken by the Council.

The City Attorney and staff anticipate that interested parties will want to speak to the merits of this application when the resolution is brought before the Council for adoption. Accordingly, in order to assure fairness, to give all interested persons an equal opportunity to participate and to assure that all evidence is received within the record of the public hearing, the most prudent course is to re-open the public hearing and allow public testimony. The matter has been properly noticed for a public hearing. Following receipt of testimony, the Council may take whatever action it determines to be appropriate based on the evidence in the record.

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Sol Blumenfeld, Director  
Community Development Department

Concur:

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Stephen R. Burrell  
City Manager

Attachments:  
1. Resolution

**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 because the applicant had not demonstrated that exceptional or unusual conditions exist with respect to the physical conditions of the property and the proposed Variance was not necessary for the enjoyment of a substantial property right possessed by others in the same vicinity and zone 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 hearings to review the decision of the Planning Commission on March 8, and April 26, 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      day of      2005, 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