

July 19, 2005

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

**Regular Meeting of
July 26, 2005**

SUBJECT: REVIEW OF THE PLANNING COMMISSION APPROVAL OF CONDITIONAL
USE PERMIT AMENDMENT 05-5 - A REQUEST TO ALTER THE FLOOR PLAN
TO ADD A DANCE FLOOR TO AN EXISTING RESTAURANT WITH ON-SALE
GENERAL ALCOHOL AND LIVE ENTERTAINMENT

APPLICANT: GARY VINCENT, FAT FACE FENNER'S FISHACK
53 PIER AVENUE
HERMOSA BEACH, CA 90254

Planning Commission Recommendation

To approve the request subject conditions as contained in the attached draft Resolution.

Background

The Planning Commission approved the applicant's request by a vote of 3:2 at their June 21, 2005 meeting; subject to conditions for noise attenuation and the submittal of a detailed exit discharge plan to accommodate the increased occupant load for the second story restaurant.

PROJECT INFORMATION:

ZONING:	C-2 Restricted Commercial
GENERAL PLAN:	General Commercial
AREA OF ESTABLISHMENT:	3,500 square feet (Interior) 200 square feet (Outdoors)
PROPOSED ALTERATION:	Convert 285 sq. ft. of dining area to dance floor
PARKING:	No on-site parking
ENVIRONMENTAL DETERMINATION:	Categorically Exempt

The subject restaurant is split into two customer areas separated by the kitchen and preparation areas. The proposed location for the dance floor is in the northerly section of the restaurant. The prior approved plans never identified a dance floor within the premises, and the subject area was identified as seating for dining purposes with a small area for a "portable stage".

The business is located on the second floor of Loreto Plaza. Loreto Plaza is comprised of two buildings connected by two pedestrian bridges spanning a pedestrian right-of-way which is City owned property. The bridges are subject to lease agreement between the building owner and the City, and both bridges are now occupied by the subject restaurant and used for dining. In 1998 the Planning Commission approved a Conditional Use Permit amendment to allow on-sale alcohol, live entertainment, and extended hours for the former site of Casablanca Restaurant which is in the northerly portion of the building and includes seating in an enclosed area on the bridge. In 1999, the City Council, on appeal, granted a Conditional Use Permit Amendment (C.U.P. 99-4) and Parking Plan 99-2, which allowed expansion of the restaurant to the south and outdoor patio seating on the southerly bridge. A separate Parking Plan approval was granted in 1999 for the outdoor seating on the southerly bridge.

Analysis

The new seating plan proposes a dance floor area in the northerly side of the restaurant and includes other minor changes in the floor plan/seating arrangement that are not consistent with the Planning Commission approval in 1998. The area proposed for the dance floor was identified as seating for dining purposes on both the Planning Commission reviewed plans, and plans issued for building permits. The applicant is requesting altering the interior floor plan both for the purposes of setting aside a specific area for dancing, and to recalculate the occupant load to increase occupancy pursuant to Chapter 10 of the Uniform Building Code. A dance floor area is an “assembly” use, calculated at a higher occupant load than dining. While the Zoning Ordinance does not restrict dancing within a restaurant, the change in the floor plan requires amending the Conditional Use Permit. The applicant will also be required to obtain approval from the State Alcoholic Beverage Control to allow dancing in conjunction with their on-sale license. Currently, based on approved plans, sit-down dining areas represent over 75% of the northerly section of restaurant. With the change, dining area with standard sit down tables will represent less than 50 % of this customer area, with the balance being bar seating and the proposed dance floor.

Loreto Plaza is an older two-story building, which requires two exits from the 2nd floor pursuant to Chapter 10 of the Building Code. The proposed occupancy changes will impact the exit discharge from the building, which must be evaluated by a qualified licensed design professional. Both the Fire Department and Building Division have reviewed the new seating and occupancy plan, and found there may be potential problems with the current exiting configuration of the building and the proposed new occupant load derived from the added assembly use. More detailed plans clearly delineating the assembly area for dancing, and indicating the current exiting configuration are needed before this can be finally determined. Based on staff’s recommendation the Planning Commission included a condition of approval that detailed seating plans and an exit discharge plan shall be submitted for final review and approval. The condition also states that approval of the dance floor is contingent upon an approval of these plans, and that any required upgrades to the exits be implemented in the building.

Since the proposed restaurant, as modified, will continue to provide live entertainment, the Commission approval included all the standard conditions of the original approval relating to noise, updated to be consistent with recent Conditional Use Permits. Also, the conditions include a requirement that the applicant prepare a new acoustic study pursuant to current noise ordinance requirements and implement any recommendations of the study in the building. The acoustic study should address both live entertainment noise, and noise associated with recorded music (i.e. a disc-jockey) since there is a new emphasis on dancing. An acoustical study was required in the 1999 C.U.P. (Condition #5 of Resolution No. 99-6015) only if amplified live entertainment is provided. However, no such study has been submitted pursuant this condition and live entertainment has occurred from time to time at the business. Staff believes with the new plan an acoustic analysis is necessary regardless of whether live entertainment is provided because of floor area/seating modifications that have occurred since 1998; because the proposed dance floor may increase the intensity of use of the premises; and to tailor the acoustic analysis to the current noise ordinance.

Finally it should be noted that from the period since August 2004 staff has conducted investigations in the downtown to review C.U.P. compliance for all the restaurants on lower Pier Avenue, and while the subject business was not one of the frequent violators, one citation was issued for loud music (with doors open) and on two other occasions the code enforcement officer noted that loud

music was heard from this business. In these instances it was noted that live bands were playing the restaurant and part of the dining area was being use for dancing. Also, in 2000 the business had constructed bar table-tops along the railing of the pedestrian walkway/exit corridor, and uses this area for customer service. This is a violation of the CUP, encroachment regulations, ABC regulations and blocks required exits for the building. Also, this business, along with many of the businesses on lower Pier Avenue, has frequently used illegal temporary signs (banners and flags) for special promotions without obtaining temporary sign permits.

Ken Robertson,
Senior Planner

CONCUR:

Sol Blumenfeld, Director
Community Development Department

Stephen R. Burrell
City Manager

Attachments

1. Draft Resolution to sustain the Commission's approval
 2. Location Map
 4. C.C. Resolution 99-6015
- Seating/Occupancy plans included as separate attachment

RESOLUTION 05-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA, SUSTAINING THE PLANNING COMMISSION DECISION TO APPROVE A CONDITIONAL USE PERMIT AMENDMENT TO ALLOW THE ALTERATION OF AN EXISTING RESTAURANT WITH ON-SALE ALCOHOL AND LIVE ENTERTAINMENT (TO CONVERT DINING AREA TO A DANCE FLOOR AND OTHER SEATING PLAN CHANGES) AT 53 PIER AVENUE, LOCATED IN THE SECOND FLOOR OF THE LORETO PLAZA COMMERCIAL BUILDING, LEGALLY DESCRIBED AS LOTS 22, 23, AND 24, BLOCK 13 HERMOSA BEACH TRACT

Section 1. An application was filed by Gary Vincent, owner of the business “Fat Face Fenner’s Fishack”, seeking approval of interior alterations to an existing restaurant with on-sale alcohol to convert dining area to a dance floor, and other seating plan changes.

Section 2. The Planning Commission conducted a duly noticed public hearing to consider the application to amend the Conditional Use Permit on June 21, 2005, at which testimony and evidence, both written and oral, was presented to and considered by the Planning Commission. Based on the evidence considered at the hearing, the Planning Commission approved the request subject to conditions as set forth in P.C. Resolution 05-39.

Section 3. On June 28, 2005, 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 July 26, 2005, at which the record of the decision of the Planning Commission and testimony and evidence, both written and oral, was presented to and considered by the City Council.

Section 5. Based on evidence received at the public hearing, and the record of the decision of the Planning Commission the City Council makes the following factual findings:

1. The business is located on the second floor of Loreto Plaza, which is comprised of two buildings connected by two pedestrian bridges spanning a pedestrian right-of-way owned by the City. The use of bridges is subject to a lease agreement between the City and property owner.
2. The subject restaurant is split into two customer areas separated by the kitchen and preparation areas and occupies the northerly bridge for indoor seating and the southerly bridge for outdoor seating. The proposed location for the dance floor is in the northerly section of the restaurant. No prior approved plans identified a dance floor anywhere within the premises, and the subject area was identified as seating for dining purposes with a small area for a “portable stage”.
3. In 1999 the City Council granted a Conditional Use Permit Amendment and Parking Plan to approve the 1150 square foot expansion of the restaurant into the southerly section of the building (CUP 99-4 and Parking Plan 99-2, Resolution 99-6015). Live entertainment is limited to the northerly portion of the restaurant. A separate parking plan was granted in 1999 for the outdoor seating on the southerly bridge.

4. On January 13, 1998, The Planning Commission granted a Conditional Use Permit for on-sale alcohol, live entertainment, and extended hours in conjunction with an existing restaurant use (now the northerly portion of the restaurant and previously “Casablanca” restaurant).

Section 6. Based on the foregoing factual findings, and the findings contained in Planning Commission Resolution 05-39, the City Council makes the following findings pertaining to the application for the Parking Plan:

1. The site is zoned C-2, and is suitable for the proposed use with the proposed amendment;
2. The existing use with the proposed alteration is compatible with surrounding commercial and residential uses.
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 Categorical Exempt pursuant to Section 15303c of the California Environmental Quality Act.

Section 7. Based on the foregoing, the City Council sustains the decision of the Planning Commission and hereby approves the Conditional Use Permit Amendment subject to the following **Conditions of Approval, which supersede the conditions number 5 through 17 in Resolution 99-6015 pertaining to the operation of restaurant and live entertainment and noise:**

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 May 20, 2003.**
2. **Approval of the floor plan change to add the dance floor area is subject to review and approval of a final seating, occupancy, and exit discharge plan clearly delineating the area for the dance floor and assembly occupancy, and shall clearly indicate the current exiting configuration. Any upgrades to the exiting system found to be required as a result of the review of these plans must be implemented in the building prior to any change in the posted occupancy.**
3. **The hours of operation for the restaurant shall be between 7:00 A.M. and 2:00 A.M. daily. The hours for live entertainment shall be limited to the hours between 9:00 P.M. to 1:15 A.M. Monday through Friday, and from 2:00 P.M. to 1:15 A.M. on Saturday, Sundays, and Federal and State Holidays, Cinco De Mayo, and St. Patrick's day. Live entertainment shall not be permitted in the restaurant area at the southern end of the building.**
4. **The establishment shall not adversely affect the welfare of the residents, and/or commercial establishments nearby.**
5. **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.

6. 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.
7. 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.
8. The exterior of all the premises shall be maintained in a neat and clean manner, and maintained free of graffiti at all times.
9. Any significant 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.
10. The project and operation of the business shall comply with all applicable requirements of the Municipal Code.

CONDITIONS RELATING TO LIVE ENTERTAINMENT AND NOISE:

11. 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 implemented the proposed changes in the floor plan to add a dance floor and prior to any changes in the posted occupant load.
 - 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 air conditioning system shall be of an adequate capacity to air condition the entire restaurant.
 - E. All exterior doors shall have self-closing hardware.
12. No live entertainment or amplified music, audio, television or speakers of any kind shall be permitted in the outside seating areas.
13. 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.

Section 8. 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 Conditional Use Permit 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, 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 the State Government Code. 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 Parking Plan 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.

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 _____ CITY ATTORNEY

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