

May 15, 2007

Honorable Mayor and Members of the  
Hermosa Beach City Council

Regular Meeting of  
May 22, 2007

SUBJECT: REVIEW AND RECONSIDERATION OF THE PLANNING COMMISSION DECISION  
TO AMEND THE ALLOWED CLOSING TIME OF AN EXISTING RESTAURANT  
WITH ON-SALE BEER AND WINE FROM 11:00 P.M. TO MIDNIGHT AT 53 PIER  
AVENUE, PARADISE SUSHI

APPLICANT: SHIGEKI TAKAHASHI, PARADISE SUSHI  
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 5:0 at their April 17, 2007 meeting; subject to updated conditions of approval for restaurants with on-sale beer and wine and to modify the allowed closing time from 11:00 P.M. to Midnight.

The proposed business had building code and encroachment violations in 2006, but the violations were promptly corrected. Currently, the proposed business does not have any outstanding code enforcement issues. However, the business owner must renew his encroachment permit to continue using the patio area for outdoor seating.

**PROJECT INFORMATION:**

GENERAL PLAN:	General Commercial
ZONING:	C-2, Restricted Commercial
AREA OF ESTABLISHMENT:	1,015 square feet (Interior) 250 square feet (Outdoor seating area)
PARKING:	No on-site parking
ENVIRONMENTAL DETERMINATION:	Categorically Exempt

The subject restaurant is located on the ground level of the Loreto Plaza. Loreto Plaza is a two story commercial building located on the north side of Pier Plaza. On March 4, 1985, the Board of Zoning Adjustments granted a Conditional Use Permit to the subject property to allow on-sale beer and wine in conjunction with the operation of a restaurant (Paradise Sushi). The Conditional Use Permit does not include live entertainment and the current allowed operating hours are from 11:00A.M. to 11:00P.M.

**Analysis**

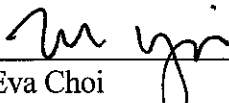
The applicant is requesting to amend the existing Conditional Use Permit to change the allowed closing time from 11:00 P.M. to 12:30 A.M.. The request involves no additional seating or intensification of land use. The applicant intends to operate the restaurant in the same manner and no other changes are proposed. From August through December of 2004, staff conducted inspection of downtown businesses relative to Conditional Use Permit conformance and no violations were noted for Paradise Sushi. The

Police Department has not recorded any disturbances in connection with the business in the past two years.

Based on recent determinations regarding closing times for restaurants, the Commission decided to impose a closing time of 12:00 midnight. The following table summarizes recent decisions by the City regarding the closing time for restaurants in the downtown area:

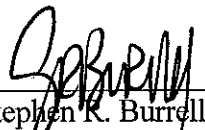
Business Name:	Address:	Closing Time:	On-Sale Alcohol:	General Live Entertainment:	Approved Date:
Mediterraneo	73 Pier Av.	12:00 Midnight*	Yes	Yes	December 2003 by Planning Commission
Hibachi	117 Pier Av.	11:00 P.M.	Yes	No	February 2005 by Planning Commission
Italy's Little Kitchen	1150 Hermosa Av.	12:00 Midnight	Yes	No	November 2005 by Planning Commission
Sharkeez (Expansion)	52 Pier Av.	12:00 Midnight	Yes	No	January 2007 by Planning Commission

\*Mediterraneo Restaurant: Filed application for an Conditional Use Permit Amendment to change closing time from 12:00 P.M. to 2:00 A.M.. On September 20, 2005, Planning Commission denied said request and City Council sustained Planning Commission's decision at its September 26, 2006 meeting.

  
 Eva Choi  
 Planning Assistant

CONCUR:

  
 Ken Robertson, Interim Director  
 Community Development Department

  
 Stephen R. Burrell  
 City Manager

Attachments

1. Draft Resolution to sustain the Commission's approval
2. Resolution 154-579 (Original resolution from 1985)
3. April 17, 2007, Planning Commission meeting minutes
4. Location Map
5. Photographs

F:/B95/CD/CC/CUP Amendment 53 Pier Avenue

RESOLUTION NO. 07-

1  
2 **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERMOSA**  
3 **BEACH, CALIFORNIA, SUSTAINING THE DECISION OF THE PLANNING**  
4 **COMMISSION TO APPROVE AN EXISTING CONDITIONAL USE PERMIT,**  
5 **AS AMENDED, TO CHANGE THE ALLOWED CLOSING TIME OF AN**  
6 **EXISTING RESTAURANT WITH ON-SALE BEER AND WINE FROM**  
7 **11:00P.M. TO 12:00 MIDNIGHT AT 53 PIER AVENUE (PARADISE SUSHI),**  
8 **LEGALLY DESCRIBED AS LOTS 22, 23 & 24, BLOCK 13, HERMOSA**  
9 **TRACT**

10 The City Council of the City of Hermosa Beach does hereby resolve and order as follows:

11 Section 1. An application was filed by Shigeki Takahashi, Paradise Sushi, seeking  
12 approval to change the allowed closing time of an existing restaurant with on-sale beer and  
13 wine from 11:00 P.M. to 12:30A.M..

14 Section 2. The Planning Commission conducted a duly noticed public hearing to  
15 consider the application for the Conditional Use Permit Amendment on April 17, 2007, at  
16 which testimony and evidence, both written and oral, was presented to and considered by the  
17 Planning Commission. Based on evidence received at the public hearing, the Planning  
18 Commission approved the request subject to conditions, as contained in P.C. Resolution 07-17.

19 Section 3. On April 24, 2007, the City Council, pursuant to Section 2.52.040,  
20 initiated review and reconsideration of the decision of the Planning Commission.

21 Section 4. The City Council conducted a duly notice public hearing to review and  
22 reconsider the decision of the Planning Commission on May 22, 2007, at which the record of  
23 the decision of the Planning Commission and testimony and evidence, both written and oral,  
24 was presented to and considered by the City Council.

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

- 27 1. The subject restaurant space is 1,015 square feet with an outdoor seating area  
28 of 250 square feet permitted by an encroachment permit.
- 29 2. The site is zoned C-2, restricted Commercial allowing restaurant uses, and on-  
sale beer and wine with approval of a Conditional Use Permit.
3. On March 4, 1985, the Board of Zoning Adjustment approved the applicant's  
request for on-sale beer and wine in conjunction with a restaurant, Resolution  
154-579.

1           Section 6.     Based on the foregoing factual findings, the City Council makes the  
2 following findings pertaining to the application for the Conditional Use Permit Amendment:

- 3           1.       The site is zoned C-2, and is suitable for the existing use with the proposed  
4 amendment;
- 5           2.       The existing use is compatible with surrounding commercial and residential  
6 uses.
- 7           3.       The imposition of conditions as required by this resolution will mitigate any  
8 negative impacts on nearby residential or commercial properties.
- 9           4.       This project is Categorical Exempt pursuant to Section 15303c of the  
10 California Environment Quality Act.

11           Section 7.     Based on the foregoing, the City Council hereby sustains the approval  
12 of the Planning Commission and approves the subject Conditional Use Permit for on-sale beer  
13 and wine in conjunction with a restaurant subject to the following **Conditions of Approval**,  
14 which supersede the conditions contained in Board of Zoning Adjustments Resolution 154-  
15 579:

16           Approved Plans and Uses:

- 17           **1. Interior and the continued use and operation of the restaurant shall be**  
18 **substantially consistent with the plans submitted and reviewed by the Planning**  
19 **Commission on April 17, 2007.**
- 20           **a. The Conditional Use Permit Amendment is for on-sale beer and wine in**  
21 **conjunction with a restaurant. Any intensification of use involving live**  
22 **entertainment, such as providing a disc jockey or other forms of amplified**  
23 **music for customer dancing, any type of live entertainment (i.e. live music**  
24 **whether acoustic or amplified, comedy acts, or any other type of performances)**  
25 **or extended hours of operation beyond what is specified requires amending this**  
26 **Conditional Use Permit.**
- 27           **b. If the Conditional Use Permit is amended to provide dancing, live music, or**  
28 **other live entertainment as noted above, an acoustical analysis shall be**  
29 **conducted to verify compliance with the noise ordinance, demonstrating that**  
**the noise will not be audible from any adjacent residential use. Mitigation**  
**measures to attenuate noise may include sound baffles, double glazing and**  
**other methods specified in the acoustical study. The scope of the acoustical**  
**study shall be approved by the Community Development Director.**

30           Operating Standards:

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1. The hours of operation for all operations of the restaurant, including the patio area, shall be limited to between 11:00 A.M. and 12:00 Midnight. The kitchen shall remain open during operating hours to ensure that the use is maintained as a restaurant.
2. The business shall not operate in a manner as to have an adverse effect on or interfere with the comfortable enjoyment of neighboring residential and commercial property.
3. The business shall provide adequate staffing, management and supervisory techniques to prevent ongoing and disruptive loitering, unruliness, and unduly boisterous activities of the patrons outside the business.
4. Noise emanating from the property shall be within the limitations prescribed by the City's noise ordinance and shall not be plainly audible from any residential use, and shall not create a nuisance to surrounding residential neighborhoods, and/or commercial establishments.
5. The exterior of all the premises shall be maintained in a neat and clean manner, and maintained free of graffiti at all times.
6. The restaurant shall not require any cover charge or fee for general entry into the restaurant or appurtenant areas.
7. If the Police Chief determines that there are a disproportionate number of police calls to the business due to the disorderly or disruptive behavior of patrons and the inability or refusal of the business to manage its patrons, the Chief may require on an interim basis (not to exceed 60 days) that the business employ private security personnel. The Chief shall notify the Director of Community Development of this action, who shall forthwith, schedule a public hearing before the Planning Commission to consider modification or revocation of this Conditional Use Permit by the Planning Commission.
8. The Fire Department shall maintain a record of the posted allowable occupant load for the business and regularly check the business for occupant load compliance. The Fire Chief may determine that there is a repeat pattern of occupant load violations and then shall submit a report to the Planning Commission which will automatically initiate a review of this Conditional Use Permit by the Planning Commission.
9. The exterior of all the premises shall be maintained in a neat and clean manner, and maintained free of graffiti at all times.
10. Any significant changes to the interior layout, which alter the primary function of the business as a restaurant, (i.e. increasing floor area for bar seating, or adding a dance floor) or increasing the designated floor area of restaurant seating shall be

1                   **subject to review and approval by the Planning Commission and require**  
2                   **amendment to this Conditional Use Permit.**

3                   **11. The project and operation of the business shall comply with all applicable**  
4                   **requirements of the Municipal Code.**

5                   **12. The Planning Commission shall conduct a review of the restaurant operations for**  
6                   **compliance with the terms of the Conditional Use Permit 6 months after**  
7                   **commencement of operations, and in response to any complaints thereafter.**

8                   Section 8.       This grant shall not be effective for any purposes until the permittee and  
9                   the owners of the property involved have filed at the office of the Planning Division of the  
10                  Community Development Department their affidavits stating that they are aware of, and agree  
11                  to accept, all of the conditions of this grant.

12                 The Conditional Use Permit shall be recorded, and proof of recordation shall be submitted to  
13                 the Community Development Department prior to the issuance of a building permit.

14                 Each of the above conditions is separately enforced, and if one of the conditions of approval is  
15                 found to be invalid by a court of law, all the other conditions shall remain valid and  
16                 enforceable.

17                 Permittee shall defend, indemnify and hold harmless the City, its agents, officers, and employees  
18                 from any claim, action, or proceeding against the City or its agents, officers, or employee to  
19                 attack, set aside, void or annul this permit approval, which action is brought within the  
20                 applicable time period of the State Government Code. The City shall promptly notify the  
21                 permittee of any claim, action, or proceeding and the City shall cooperate fully in the defense. If  
22                 the City fails to promptly notify the permittee of any claim, action or proceeding, or if the City  
23                 fails to cooperate fully in the defense, the permittee shall no thereafter be responsible to defend,  
24                 indemnify, or hold harmless the City.

25                 The permittee shall reimburse the City for any court and attorney's fees which the City may be  
26                 required to pay as a result of any claim or action brought against the City because of this grant.  
27                 Although the permittee is the real party in interest in an action, the City may, at its sole  
28                 discretion, participate at its own expense in the defense of the action, but such participation  
29                 shall not relieve the permittee of any obligation under this condition.

30                 The subject property shall be developed, maintained and operated in full compliance with the  
31                 conditions of this grant and any law, statute, ordinance or other regulation applicable to any  
32                 development or activity on the subject property. Failure of the permittee to cease any  
33                 development or activity not in full compliance shall be a violation of these conditions.

34                 The Planning Commission may review this Conditional Use Permit and may amend the subject  
35                 conditions or impose any new conditions if deemed necessary to mitigate detrimental effects on  
36                 the neighborhood resulting from the subject use.

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PASSED, APPROVED, and ADOPTED this            day of            , 2007,

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

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_ CITY CLERK

\_\_\_\_\_ CITY ATTORNEY

PARADISE  
SUSHI

1 A RESOLUTION OF THE BOARD OF ZONING ADJUSTMENTS OF THE CITY OF  
2 HERMOSA BEACH, CALIFORNIA GRANTING A CONDITIONAL USE PERMIT  
ON PROPERTY LOCATED AT 53 PIER AVENUE.

3 WHEREAS, the Board of Zoning Adjustments of the City of  
4 Hermosa Beach, California, at a public hearing held on March 4,  
5 1985 in the Council Chambers of the City Hall, considered the  
6 request of Satoshi Morikami, dba Paradise Sushi for a conditional  
7 use permit for on-sale of beer and wine in conjunction with  
8 the operation of a restaurant; and

9 WHEREAS, after due consideration the Board felt that the  
10 request was consistent with the zoning and general plan; and

11 NOW, THEREFORE, BE IT RESOLVED that the Board of Zoning  
12 Adjustments does hereby approve a conditional use permit to  
13 allow the on-sale of beer and wine in conjunction the operation  
14 of a restaurant at property known as 53 Pier Avenue subject to  
15 the following conditions:

- 16 1. Service of alcoholic beverages shall be in an establishment  
17 that operates a full kitchen and provides a full menu  
18 (complete lunches and/or dinners, with hot entrees) and  
the primary purpose of the establishment is service of  
food.
- 19 2. All alcoholic beverages shall be served with food and be  
20 consumed on the premises, and a sign stating this condition  
shall be posted in the restaurant.
- 21 3. Any changes to the interior layout of the establishment  
22 shall require that it be returned to the Board of Zoning  
23 Adjustments and it may revoke the conditional use permit  
if the new interiors are not consistent with the original  
approval.
- 24 4. Operators of the business must police the sidewalk and  
25 parking lot which are directly adjacent of the business for  
26 litter and maintain in a clean and orderly manner on a  
daily basis.

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- 1 5. This conditional use permit is issued exclusively for and  
2 so long as the premises remain a restaurant, which is  
3 defined as having gross sales of follows: not less than  
4 65% food sales - 35% beer and/or wine sales, computed  
5 monthly. The City shall have the right during business  
6 hours upon 15 days notice to inspect the books and records  
7 of the applicant to determine the gross alcoholic beverages.  
8 Upon request at the time the City inspects the books and  
9 records of the applicant, the applicant shall also submit  
10 to the City, copies of all records submitted to the State  
11 Board of Equalization for purposes of computing sales tax.  
12 Applicant also gives the City the right to review the records  
13 of the State Board of Equalization for the purpose of  
14 verifying the applicant's books and records, with the  
15 understanding that these reviews are confidential.
- \* 9 6. Maximum permissible occupancy must be clearly posted at  
10 all times and may not be exceeded at any time. If the  
11 Police and/or Fire Departments determine that the maximum  
12 permissible occupancy is being violated, they may cite the  
13 business and initiate a conditional use permit revocation.
- 12 7. That the number of tables shall not exceed building code  
13 requirements with respect to aisles and exiting.
- 14 8. Chapter 19½ of the City Code entitled "Noise Regulation",  
15 shall be complied with. Specifically, this conditional use  
16 permit is not a permit to violate Section 19 2/3 entitled  
17 "Noise Limits".
- \* 16 9. Hours of operation are limited to 11:00 a.m. to 11:00 p.m.  
18 Any expansion of hours is subject to Board of Zoning  
19 Adjustment approval.
- 18 10. There shall be a review six months following the  
19 issuance of a certificate of occupancy.
- 20 11. In the event that any one condition is found to be illegal  
21 or unenforceable by a court of competent jurisdiction, then  
22 the parties agree that all other conditions shall remain in  
23 full force and effect. The parties understand that the  
24 applicant is represented by counsel at all steps of those  
25 proceedings and it is the opinion of the City Attorney that  
26 the conditions meet Constitutional requirements and in the  
27 event that either attorney is in error both parties agree  
28 that no action for damage shall be brought against the other  
party and that the exclusive remedy on behalf of the  
applicant is for a Mandate of Declaratory Relief to make the  
determination that any one or more conditions is illegal  
and unenforceable, and parties waive all rights to damages.

1 AYES: Comms. Berardo, Williams, Chmn. Cutler  
2 NOES: None  
3 ABSENT: Comm. Corder, Moore

4 CERTIFICATION

5 I hereby certify that the foregoing Resolution BZA 154-579  
6 was adopted by the Board of Zoning Adjustments of the City of  
7 Hermosa Beach at a regular meeting held on the 4th Day of  
8 March, 1985.

9 DATE 6/17/85



11 NEAL CUTLER, ACTING CHAIRMAN



13 JOHN BERARDO, ACTING SECRETARY

Staff Recommended Action: To recommend approval of said Zone Change and adoption of an Environmental Negative Declaration.

Senior Planner Robertson stated this site is currently developed with an automotive repair and storage business with garage access from Ardmore Avenue; that it is an interior lot located between 3<sup>rd</sup> and 4<sup>th</sup> Streets and is one of the last remaining lots on this block that retains M-1 zoning, inconsistent with the Medium Density General Plan designation; and stated the change would make the zoning consistent with the General Plan. He stated the applicant has preliminarily proposed to remodel the existing structure into a single-family residence on the lot if this zone change is approved; stated that a single-family residence is a permitted use in the R-2 zone and would be approved administratively; and given that the lot is rather small, a single-family home would be the maximum number of units that would be allowed on this site.

Bob Catalano, resident, noted his support of this zone change, pointing out this area has become more residential in use.

Ken Brown, resident, noted his support for this zone change; and urged the City to follow public hearing notification requirements.

There being no further input, Chairman Allen closed the public hearing.

Commissioner Perrotti stated that over the years, this area has become more residential and noted his support for this proposal.

Senior Planner Robertson noted an amendment to the resolution, that the Commission is "recommending" approval of the zone change.

**MOTION** by Commissioner Hoffman, seconded by Vice-Chairman Kersenboom, to **APPROVE** 07-1 -- Zone Change from M-1, Light Manufacturing, to R-2, Two-Family Residential, and adoption of an Environmental Negative Declaration at 322 Ardmore Avenue. Motion carried as follows:

AYES: Allen, Hoffman, Kersenboom, Perrotti, Pizer  
NOES: None  
ABSTAIN: None  
ABSENT: None

**9. CUP 07-5 -- Conditional Use Permit amendment to change the allowed closing time of an existing restaurant with on-sale beer and wine from 11:00 p.m. to 12:30 a.m. at 53 Pier Avenue, Paradise Sushi.**

Staff Recommended Action: To approve said request subject to the conditions and to modify the allowed operating hours from 11:00 A.M. to midnight.

Director Blumenfeld stated that Paradise Sushi is located on the ground level of Loreto Plaza; that the project was approved in March 1985 for a CUP for on-sale beer and wine in conjunction with the operation of the restaurant; advised that the CUP does not include live entertainment; that the current operating hours are from 11:00 a.m. to 11:00 p.m.; that the applicant's request this evening is to change the operating hours from 11:00 p.m. to 12:30 a.m.; that there is no request to change the seating or intensify the use; and noted that the police

department has not recorded any current disturbances in connection with this business nor did Community Development staff witness any problems when they conducted code enforcement review of all the Downtown businesses two years ago. Based on the Planning Commission approvals in recent history, he noted that 12:00 midnight has been the policy for restaurants, not necessarily for beer/wine serving restaurants, but all restaurants. He mentioned the Commission has received an attached survey of some of the surrounding businesses with recent closing times, pointing out those are all basically around midnight and are relatively recent approvals. He stated that staff believes the request is relatively minor and that they would support a 12:00 midnight closure subject to updated conditions.

Chairman Allen opened the public hearing.

Howard Longacre, resident, highlighted the Council's plans to do a Specific Plan Area study in this and other nearby areas and suggested that a decision on this matter be postponed until that study is complete and that Council set a standard policy for these hours of operation. He noted his opposition to later hours for businesses serving alcohol. He expressed his belief people are drinking at this late hour, not dining.

Ron Miller, resident, stated the City should better define "restaurant" and "bar"; and expressed his belief that most people are drinking at this hour rather than dining. He stated there are too many ABC licenses in this community.

Suchi Yamaguchi, representing the applicant, stated they will continue to comply with all requirements and stated this is a place to dine on sushi and enjoy a drink with the meals.

There being no further input, Chairman Allen closed the public hearing.

Commissioner Pizer stated it has become Council policy for restaurants to close at midnight; and pointed out that most of the problems are occurring with businesses that stay open until 2:00 a.m.

Commissioner Hoffman echoed Commissioner Pizer's comments, noting that midnight closure for restaurants is the direction the Commission is getting from Council.

Chairman Allen stated this request is not unreasonable.

Vice-Chairman Kersenboom stated this is not a bar and that he would support the request.

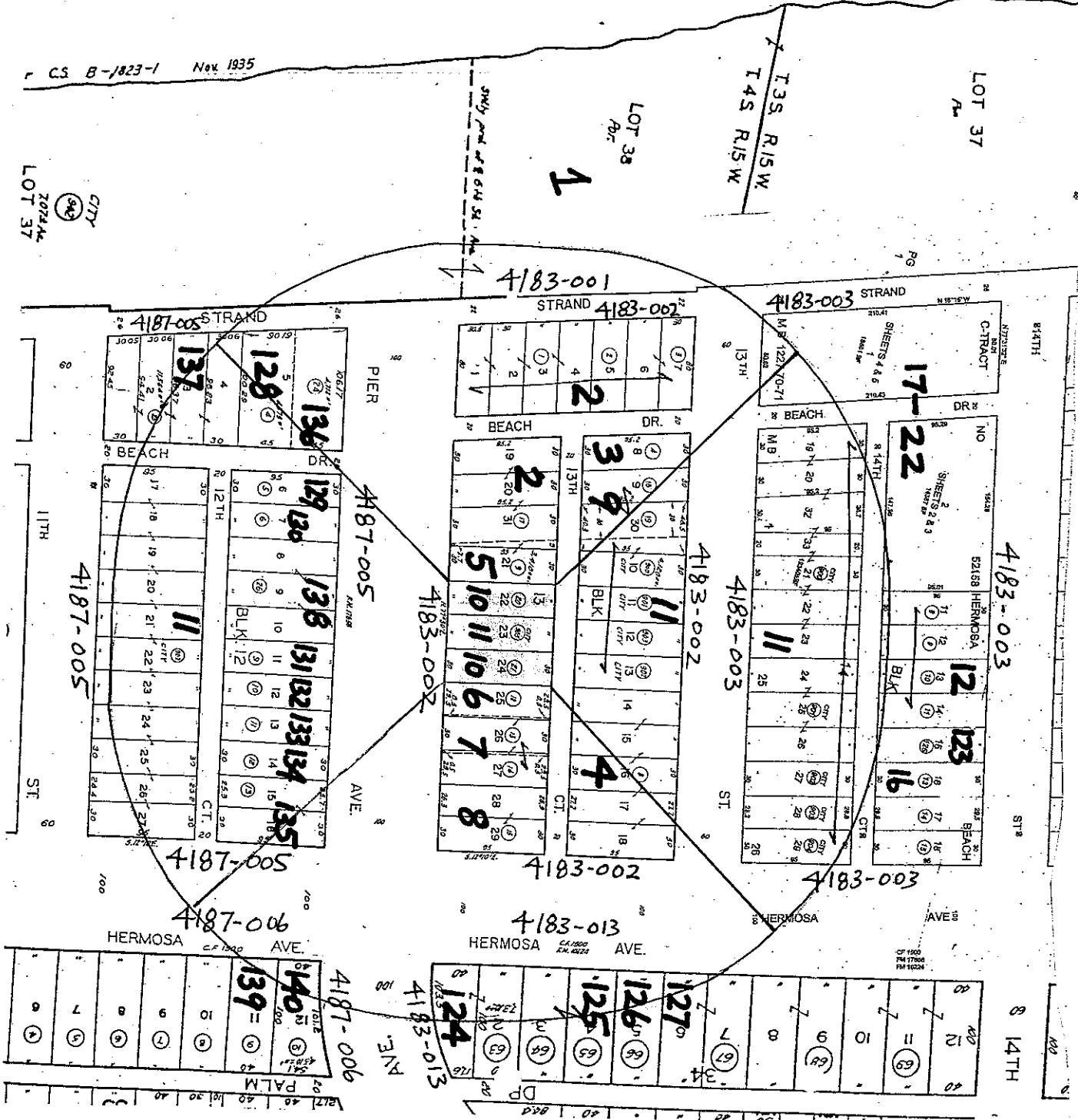
Commissioner Perrotti noted it's not uncommon to see restaurants full at 11:00 p.m.; and noted his support for this request. He added that this business has a good record on Pier Avenue.

**MOTION** by Chairman Allen, seconded by Commissioner Pizer, to **APPROVE** CUP 07-5 -- Conditional Use Permit amendment to change the allowed closing time of an existing restaurant with on-sale beer and wine from 11:00 p.m. to 12:00 a.m. at 53 Pier Avenue, Paradise Sushi. Motion carried as follows:

AYES: Allen, Hoffman, Kersenboom, Perrotti, Pizer  
NOES: None  
ABSTAIN: None  
ABSENT: None

OCEAN PACIFIC

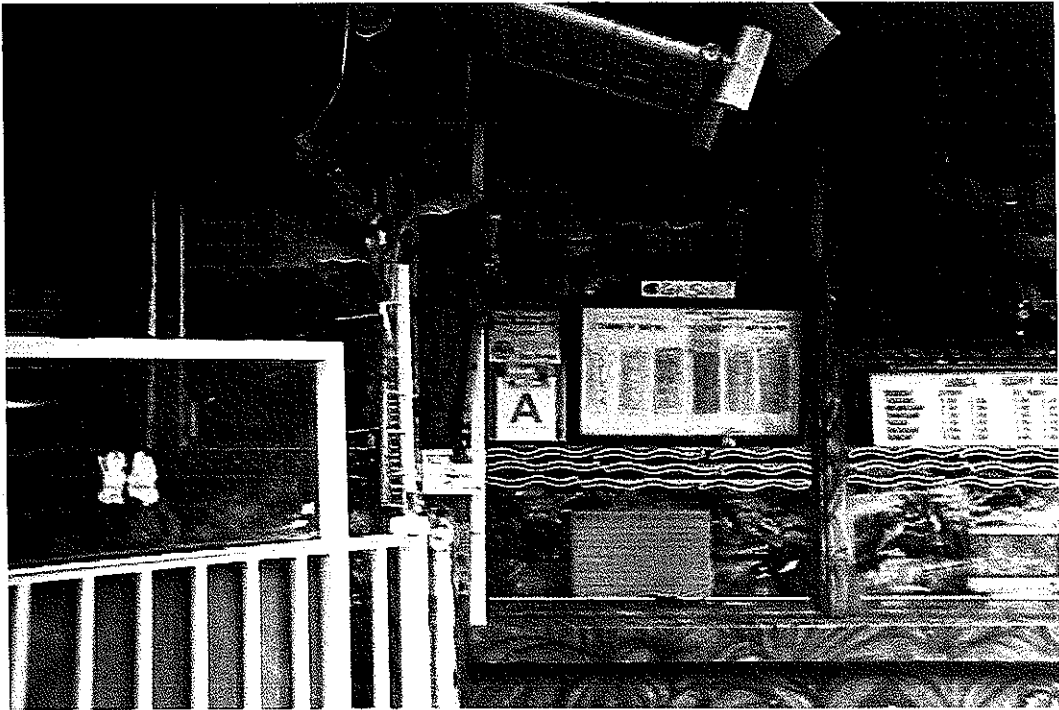
CS B-1823-1 Nov. 1935



53 Pier Avenue  
Paradise Sushi



# 53 Pier Avenue



53 Pier Avenue, Paradise Sushi