



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Wilson and Members of the City Council

THROUGH: Geoff Dolan, City Manager

FROM: Richard Thompson, Director of Community Development
Eric Haaland, Associate Planner

DATE: March 1, 2005

SUBJECT: Adoption of Resolution Regarding Appeal of the Planning Commission Decision Approving a Use Permit and Coastal Development Permit to Allow On-Site Wine Tasting and Food Sampling at an Existing Retail Wine Store, for Bacchus, Located at 1000 Manhattan Avenue.

RECOMMENDATION:

Staff recommends that the City Council **ADOPT** Resolution No. 5966 **MODIFYING** the Planning Commission decision approving the use permit and coastal development permit to allow wine tasting.

FISCAL IMPLICATION:

There are no fiscal implications associated with the recommended action.

DISCUSSION:

The Planning Commission, at its regular meeting of January 12, 2005, **APPROVED** (4-1 vote) the subject proposal to add wine tasting to an existing retail wine store. On January 25, 2005, an appeal of that decision was filed by neighbors opposing the project. The City Council subsequently held an appeal hearing and decided to **UPHOLD** (5-0 vote) the approval with one modification to the use permit conditions.

The Council agreed with the Planning Commission that the wine tasting service was appropriate for a retail wine sales operation, but determined that a daily 8pm closing time would best prevent potential disruption to the surrounding area. The Planning Commission approval had permitted a 9pm closing time Thursday through Saturday. The attached resolution includes that condition modification and all other provisions as approved by the Planning Commission.

Attachments:

Resolution No. 5966

C: Bacchus, Applicant
Don McPherson/Martha Andreani, Appellants

RESOLUTION NO. 5966

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH APPROVING A USE PERMIT ALLOWING AN ADDITION OF WINE SAMPLING TO AN EXISTING RETAIL WINE STORE LOCATED AT 1000 MANHATTAN AVENUE (Bacchus)

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City Council of the City of Manhattan Beach hereby makes the following findings:

- A. The City Council of the City of Manhattan Beach conducted a public hearing on February 15, 2005, received testimony, and considered an appeal of the Planning Commission's decision regarding a use permit and coastal development permit to allow on-site sale and consumption of wine and food at an existing retail wine store located on the property legally described as portions of lots 5 & 6, block 68, Manhattan Beach Division #2 located at 1000b Manhattan Avenue in the City of Manhattan Beach.
- B. The Planning Commission conducted a public hearing and received public testimony on January 12, 2005. The Planning Commission approved the application by adopting Resolution No. PC 05-02. The City Council conducted a subsequent public hearing and received public testimony for the project on February 15, 2005.
- C. The applicant for the subject project is Bacchus. The owner of the property is Richard Anderson.
- D. The addition of on-site consumption of wine and food introduces an eating and drinking establishment use and an alcohol license modification to the existing retail use which requires use permit approval.
- E. The project is Categorically Exempt (Class 3 & 32, Sections 15302 & 15332) from the requirements of the California Environmental Quality Act (CEQA) since it involves minor modification of a existing structure and minor infill development within an urbanized area.
- F. The project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.
- G. The General Plan designation for the property is Downtown Commercial. The General Plan encourages commercial uses such as this that enhance the commercial viability of downtown as a community center, and supports small business (Goal 7, Land Use Element).
- H. The property is located within Area District III and is zoned CD Commercial Downtown. The surrounding private land uses consist of commercial and residential uses. The use is permitted by the zoning code and is appropriate as conditioned for the downtown commercial area.
- I. Approval of the indoor consumption of wine with limited food service, subject to the conditions below, will not be detrimental to the public health, safety or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City since the use is expected to be desirable to downtown users, and the closing times prevent disturbances during sensitive evening hours.
- J. The project shall be in compliance with applicable provisions of the Manhattan Beach Municipal Code and the Manhattan Beach Local Coastal Program as well as specific conditions contained herein further regulating the project.

- K. The wine with limited food consumption will not create adverse impacts on, nor be adversely impacted by, the surrounding area, or create demands exceeding the capacity of public services and facilities, since it is a very small operation in general, appropriately located within a commercial area, and conditioned herein to prevent possible adverse impacts.
- L. The subject location is within the Coastal Zone but not within the boundaries of the area subject to appeal to the California Coastal Commission.
- M. The project is consistent with the commercial development policies of the Manhattan Beach Local Coastal Program, specifically Policies II. A. 2, & 6, as follows:
 - The commercial structure is consistent with the building scale in the coastal zone neighborhood and complies with the applicable standards of the Local Coastal Program-Implementation Plan;
 - The project provides the full amount of parking specified by Chapter A.64 of the Implementation Plan for a retail/restaurant use within the CD zone.
- N. The project is consistent with the public access and recreation policies of Chapter 3 of the California Coastal Act of 1976, as follows:
 - Section 30212 (a) (2): The proposed structure does not impact public access to the shoreline, adequate public access is provided and shall be maintained along adjacent streets.
 - Section 30221: Present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.
- O. A determination of public convenience and necessity is made for the proposed Type 42 alcohol license (as conditioned below), which shall be forwarded to the California Department of Alcohol Beverage Control upon City council acceptance of this project approval.
- P. This Resolution, upon its effectiveness, constitutes the Use Permit, Coastal Development Permit, and State required Determination of Public Convenience and Necessity for the subject project.

SECTION 2. The City Council of the City of Manhattan Beach hereby APPROVES the subject Use Permit and Coastal Development Permit subject to the following conditions:

Site Preparation / Construction

1. The project shall be constructed and operated in substantial compliance with the submitted project description and plans (specifically including a maximum 100 square foot area) as approved by the Planning Commission on January 12, 2005. Any substantial deviation from the approved plans must be reviewed and approved by the Planning Commission. The subject property shall be in compliance with any previous coastal development permit requirements that remain effective.
2. A Traffic Management Plan shall be submitted in conjunction with all construction and other building plans, to be approved by the Police and Public Works Departments prior to issuance of building permits. The plan shall provide for the management of all construction related traffic during all phases of construction, including delivery of materials and parking of construction related vehicles.
3. Utility improvements such as property line cleanouts, backwater valves, mop sinks, drain lines, etc., shall be installed and maintained as required by the Public Works Department.
4. Modifications and improvements to the tenant space shall be in compliance with applicable Building Division, Health Department, and Alcohol Beverage Control.
5. A trash/recyclables storage area shall be installed within the subject tenant space subject to the requirements of the Community Development and Public Works Departments.

Operational Restrictions

6. The facility shall operate as a retail and eating and drinking establishment use (without seating). Food service shall be incidental to include only items that are complimentary to wine tasting. All food preparation and service equipment shall be subject to Community Development approval. Primary kitchen equipment such as stoves, convection ovens, and commercial kitchen hoods shall be prohibited. Entertainment, dancing, and alcohol beverages other than wine (beer, distilled spirits, etc.) shall be prohibited. Wine consumption shall not be separated from retail operations beyond the extent required by Alcohol Beverage Control. Full retail sales operations to the public shall be conducted at all times that on-site wine or food consumption is available.
7. In the event that the business known as Bacchus should vacate the premises, the tenant space at 1000b Manhattan Avenue, may be occupied by another similar use, if upon its review, the Department of Community Development determines that the replacement use has the same use characteristics as Bacchus including type of service provided, and peak hours of activity. The intent of this condition is to ensure that any replacement retail tenant, if exercising a Type 42 ABC license for on-site consumption of wine, would be a use similar to Bacchus.
8. The on-site alcohol consumption shall be conducted only in designated areas in conformance with the submitted floor plan. Wine tasting shall be limited to maximum 1 ounce size samples, and a maximum of five samples of wine per person. Samples shall be poured only by store employees.
9. The wine sampling area shall be limited to 100 square feet, shall have no seating furniture or fixtures, and shall be cordoned off by transbarrier posts with belts or similar barrier. Sampling shall be limited to patrons at least 21 years in age.
10. Store hours of operation shall be limited to 11am to 8pm Daily.
11. Any use of the adjacent public right-of-way for operational purposes except normal landscaping and maintenance shall be prohibited. Modifications of the adjacent walkstreet improvements may be required to prevent improper use of that area as determined to be appropriate by the Community Development Department.
12. Cups, plates, and utensils shall be washable and intended for long term use. Use of disposable cups, plates, and utensils shall be prohibited.
13. A trash storage area, with adequate capacity shall be available on the site subject to the specifications and approval of the Public Works Department, Community Development Department, and City's waste contractor. A trash and recycling plan minimizing visual effects upon surrounding residential properties and the downtown area shall be provided and implemented as required by the Public Works Department. Trash shall not deposited within public trash receptacles located outside of the establishment.
14. Parking quantities and design shall be provided in conformance with the Manhattan Beach Municipal Code and Local Coastal Program. The project plans result in a 1 space parking requirement which is proposed to be satisfied with an existing city merchant parking permit. Should any off-site parking used to satisfy parking requirements become unavailable at any time, the eating and drinking use shall be closed to an extent that achieves code compliance as determined by the Community Development Department, until a use permit amendment is processed to resolve project parking.
15. All signs shall be in compliance with the City's Sign Code. Pole signs and internally illuminated awnings shall be prohibited.
16. Noise emanating from the site shall be in compliance with the Municipal Noise Ordinance. Any outside sound or amplification system or equipment is prohibited.

17. The operation shall comply with all South Coast Air Quality Management District Regulations and shall not transmit excessive emissions or odors across property lines.
18. The operation shall remain in compliance with all Fire and Building occupancy requirements at all times.
19. The management of the facility shall police the property and all areas immediately adjacent to the business during the hours of operation to keep it free of litter.
20. The operator of the facility shall provide adequate management and supervisory techniques to prevent loitering and other security concerns outside the subject business.
21. No waste water shall be permitted to be discharged from the premises. Waste water shall be discharged into the sanitary sewer system.

Procedural

22. *Interpretation.* Any questions of intent or interpretation of any condition will be resolved by the Planning Commission.
23. *Inspections.* The Community Development Department Staff shall be allowed to inspect the site and the development during construction subject to 24-hour advance notice.
24. *Assignment.* The coastal development permit may be assigned to any qualified persons subject to submittal of the following information to the Director of Community Development:
 - a. a completed application and application fee as established by the City's Fee Resolution;
 - b. an affidavit executed by the assignee attesting to the assignee's agreement to comply with the terms and conditions of the permit;
 - c. evidence of the assignee's legal interest in the property involved and legal capacity to undertake the development as approved and to satisfy the conditions required in the permit;
 - d. the original permittee's request to assign all rights to undertake the development to the assignee; and,
 - e. a copy of the original permit showing that it has not expired.
25. *Terms and Conditions are Perpetual.* These terms and conditions shall be perpetual, and it is the intention of the Director of Community Development and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.
26. *Effective Date.* This Resolution shall become effective when all time limits for appeal as set forth in MBMC Section 10.100.030, and the City of Manhattan Beach Local Coastal Program - Implementation Program Section A.96.160 have expired.
27. The subject Coastal Development Permit will be implemented in conformance with all provisions and policies of the Certified Manhattan Beach Local Coastal Program (LCP) and all applicable development regulations of the LCP - Implementation Program.
28. All provisions of the Use Permit are subject to review by the Community Development Department 6 months after occupancy and yearly thereafter. The operator shall cooperate with the Department of the Community Development in its conduct of periodic reviews for compliance of conditions approval.
29. This Use Permit shall lapse two years after its date of approval, unless implemented or extended pursuant to 10.84.090 of the Municipal Code.
30. Pursuant to Public Resources Code section 21089(b) and Fish and Game Code section 711.4(c), the project is not operative, vested or final until the required filing fees are paid.

- 31. The applicant agrees, as a condition of approval of this project, to pay for all reasonable legal and expert fees and expenses of the City of Manhattan Beach, in defending any legal actions associated with the approval of this project brought against the City. In the event such a legal action is filed against the project, the City shall estimate its expenses for the litigation. Applicant shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due.
- 32. At any time in the future, the Planning Commission or City Council may review the Use Permit for the purposes of revocation or modification. Modification may consist of conditions deemed reasonable to mitigate or alleviate impacts to adjacent land uses.

SECTION 3. Pursuant to Government Code Section 65009 and Code of Civil Procedure Section 1094.6, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine the reasonableness, legality or validity of any condition attached to this decision shall not be maintained by any person unless the action or proceeding is commenced within 90 days of the date of this resolution and the City Council is served within 120 days of the date of this resolution. The City Clerk shall send a certified copy of this resolution to the applicant, and if any, the appellant at the address of said person set forth in the record of the proceedings and such mailing shall constitute the notice required by Code of Civil Procedure Section 1094.6.

SECTION 4. This resolution shall take effect immediately. The City Clerk shall make this resolution readily available for public inspection within thirty (30) days of the date this resolution is adopted.

SECTION 5. The City Clerk shall certify to the adoption of this resolution and thenceforth and thereafter the same shall be in full force and effect.

PASSED, APPROVED and ADOPTED this 1st day of March, 2005.

Ayes:
 Noes:
 Absent:
 Abstain:

 Mayor, City of Manhattan Beach, California

ATTEST:

 City Clerk