

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Bruce Moe, City Manager

FROM:

Anne McIntosh, Community Development Director

SUBJECT:

Recent Planning Commission Quasi-Judicial Decision: Use Permit Amendment to Allow a Major Remodel of an Existing Restaurant with Full Liquor Service and Live Entertainment- Newman

SUPPLEMENT TO INFORMATIONAL MEMO (ITEM 14, April 2, 2019 AGENDA)

Use Permit Amendment to Allow a Major Remodel of an Existing Restaurant with Full Liquor Service and Live Entertainment: 309 Manhattan Beach Boulevard (Newman)

Item 14 on the April 2, 2019 City Council Meeting agenda (“Informational Item”) stated that on March 27, 2019 the Planning Commission would consider a resolution to allow a major remodel of an existing restaurant with full liquor service and live entertainment.

The Commission Adopted the Attached Resolution Conditionally Approving the Use Permit Amendment (4:0).

The Resolution replaces the current Use Permit for the site, and continues to allow: (1) an eating and drinking establishment use, (2) operating hours between 7am and 2am, seven days a week, and (3) live entertainment, limited to no more than five musicians, seven days a week between the hours of 7am and 1:30am.

There was no public comment. The Planning Commission made minor modifications to the proposed resolution. These modifications included requiring “food service” instead of “full menu service” at all hours of operations, allowing five live musicians instead of three live musicians, requiring that the live musicians only use the restaurant’s speaker system, and requiring Planning staff to prepare and submit an informational report to the Planning Commission giving an update on the applicant’s compliance with all conditions in the Use Permit Amendment. The Planning Commission also changed the title of the resolution acknowledging the existing residential use above the restaurant, and requiring that plans for upgrading the residential units upstairs submitted along with the plans to renovate the restaurant. The Planning Commission felt that conditions imposed on the approval address all concerns, mitigate any impacts of the Project, and adopted the Resolution, as modified.

RESOLUTION NO. PC 19-03

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH APPROVING A USE PERMIT AMENDMENT TO ALLOW A MAJOR REMODEL OF AN EXISTING RESTAURANT WITH FULL LIQUOR SERVICE AND LIVE ENTERTAINMENT, AND ACKNOWLEDGE NO MORE THAN TWO EXISTING UPSTAIRS RESIDENTIAL UNITS AT 309 MANHATTAN BEACH BOULEVARD (ESPERANZA/NEWMAN)

THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH DOES HEREBY RESOLVE AS FOLLOWS:

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

- A. On August 14, 1984, the Board of Zoning Adjustment of the City of Manhattan Beach adopted Board of Zoning Adjustment Resolution No. BZA 84-37, approving a Use Permit for a substantial remodel and renovation to an existing restaurant at the property located at 309 Manhattan Beach Boulevard, subject to a number of conditions.
- B. Under the entitlements conferred by Board of Zoning Adjustment Resolution No. BZA 84-37, the restaurant operators were granted the ability to substantially remodel and renovate the restaurant and bar while still being able have full alcohol service and live music.
- C. The Planning Commission of the City of Manhattan Beach opened a public hearing on January 23, 2019 and continued the public hearing to March 27, 2019 without discussion. At the March 27, 2019 meeting, the Commission conducted the continued public hearing, received testimony, and considered an application for a Use Permit Amendment to allow a major remodel of the existing restaurant (Shark's Cove) located at 309 Manhattan Beach Boulevard. The applicant did not request to change the operating hours, full alcohol service, or live entertainment hours.
- D. The subject property is legally described as Lot 3, Block 92, Manhattan Beach Division #2 in the City of Manhattan Beach, County of Los Angeles.
- E. The applicant for the subject project is Greg Newman, the owner of the business (hereafter referred to as "the owner").
- F. The Project is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to Existing Facilities Section 15301 based on Staff's determination that there is no expansion of use associated with the Project.
- G. 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.
- H. The existing building maintains an eating and drinking establishment use at the first story. The original permitted use for the second story was two residential units, but it appears that the second story has not been used as a residential use for some time, and is currently being used as an unpermitted office/storage use.
- I. The subject property is located in Area District III and is zoned CD, Downtown Commercial. The surrounding properties are zoned CD to the North (across Center Place), South (across Manhattan Beach Boulevard), East, and West.
- J. The use is permitted in the CD zone subject to a Use Permit and is in compliance with the City's General Plan designation of Downtown Commercial.
- K. The General Plan designation for the property is Downtown Commercial. The General Plan encourages Downtown businesses that offer "services and activities to our residents and visitors". The project is specifically consistent with General Plan Policies as follows:

LU-6: Maintain the viability of the commercial areas of Manhattan Beach.

LU-7: Continue to support and encourage the viability of the Downtown area of Manhattan Beach.

L. The Planning Commission makes the following findings required to approve the Use Permit pursuant to MBMC Section 10.84.060:

1. The proposed location of the use is in accord with the objectives of this title and the purposes of the district in which the site is located.

Esperanza will continue to be a commercial use located in the CD Downtown Commercial zone.

2. The proposed location of the use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or working on the proposed project site or 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.

Esperanza will be a commercial use consistent with the General Plan's Downtown Commercial land use designation assigned to the project lot and the neighboring lots. The proposed use is consistent with neighboring uses, as the neighboring lots have also been developed with commercial uses, many of which are eating and drinking establishments that serve alcohol. The General Plan encourages a "vibrant downtown" that offers "services and activities for residents and visitors", and Esperanza can be part of the Downtown commercial mix of businesses that helps create a dynamic and interesting Downtown.

3. The proposed use will comply with the provisions of this title, including any specific condition required for the proposed use in the district in which it would be located.

Esperanza will be an eating and drinking establishment use that complies with all provisions of the Municipal Code's Title 10 Planning and Zoning. Requiring permits for the reestablishment of two upstairs residential units will make the area in conformance with Planning, Building & Safety, Fire, Health Department, and Department of Alcoholic Beverage Control (ABC) regulations.

4. The proposed use will not adversely impact or be adversely impacted by nearby properties. Potential impacts are related but not necessarily limited to: traffic, parking noise, vibration, odors, resident security and personal safety, and aesthetics, or create demands exceeding the capacity of public services and facilities which cannot be mitigated.

The existing tenant on the site, Shark's Cove, has been operating at the location for several years, serving full alcohol in conjunction with food service. The proposed tenant, Esperanza, will also be an eating and drinking establishment located on the busy Manhattan Beach Boulevard commercial corridor in the heart of Downtown Manhattan Beach, with some of the surrounded businesses having similar operating characteristics. Significant buffers between Esperanza and surrounding residences exist, with Manhattan Beach Boulevard, Center Place, City Parking Lot 3 (between Center Place and 12th Street), and other businesses providing sound barriers that help minimize any impacts associated with the use. Additionally, the conditions to limit the hours of entertainment, further define what type of entertainment is allowed, and other conditions will serve to mitigate impacts of the use.

M. The project shall comply with all applicable provisions of the Manhattan Beach Municipal Code.

N. This Resolution, upon its effectiveness, constitutes the Use Permit Amendment for the subject project.

SECTION 2. The Planning Commission of the City of Manhattan Beach hereby **APPROVES** the Use Permit Amendment subject to the following conditions:

1. The project shall be in substantial conformance with the plans and project description submitted to, and approved by the Planning Commission on March 27, 2019 as amended and conditioned. Any substantial deviation from the approved plans and project description, as conditioned, shall require review by the Community Development Director to determine if approval from the Planning Commission is required.
2. Any questions of intent or interpretation of any condition will be reviewed by the Community Development Director to determine if Planning Commission review and action is required.
3. The applicant shall be required to obtain permits for any work necessary to bring the second floor into compliance with the Building Code and Fire Code, as determined the Building & Safety Division and Fire Department, respectively for no more than two residential units. The proposed work for the first and second stories will be under a single building permit submittal to ensure that the necessary upgrades to the residential unit(s) on the second story occur in conjunction with the renovation of the lower level restaurant space. The restaurant will not be allowed to start operations until all of the required improvements to the upstairs residential units have been completed and the permits finalized.
4. One year from the date of opening, Planning staff shall prepare and submit an informational report to the Planning Commission giving an update on the applicant’s compliance with all conditions in the Use Permit Amendment.

Operation

5. The management of the property shall police the property and all areas adjacent to the business during the hours of operation to keep it free of litter and food debris.
6. The operators of the business shall provide adequate management and supervisory techniques to prevent loitering and other security concerns outside the subject business.
7. All rooftop mechanical equipment shall be screened from the public right-of-way.
8. All mats shall be cleaned on the premises with no outside cleaning of mats permitted. If any floor mats cannot be cleaned within the premises, a service company must be contracted.
9. Hours of operation for the establishment shall be permitted as follows:

Monday - Sunday	7:00am – 2:00am
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10. Alcohol service shall be conducted only in conjunction with food service during all hours of operation.
11. Sale of alcoholic beverages for consumption off-premise is prohibited.
12. Food service shall be available at all seats, and no specific bar area serving exclusively alcohol shall be permitted.
13. The owner shall be in substantial compliance with all restrictions imposed by the Alcohol Beverage Control Board (ABC) prior to service of liquor.
14. At all times the business shall identify itself as a “restaurant” and will not identify itself as a “bar” in public advertisements.
15. The hours of live entertainment shall be limited as follows:

Monday – Sunday	7am – 1:30am
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16. Noise emanating from the property shall be within the limitations prescribed by the City Noise Ordinance and shall not create a nuisance to nearby property owners. Noise shall not be audible beyond the premises.
17. The restaurant management shall control the volume of any music. Exterior music and amplified sound associated with the commercial use is prohibited on any decks and patios.
18. The management shall ensure that all exterior doors and windows are kept closed during live entertainment performances. The exterior doors and windows facing Manhattan Beach Boulevard shall have a Sound Transmission Class (STC) rating of at least 30.
19. Live entertainment is limited to no more than five musicians and/or vocalists. Live entertainment shall only use the restaurant's speaker system, no extra speakers and/or amplifiers from an outside source is permitted. The sound system will be managed and controlled by the restaurant management staff.
20. An acoustic engineer or similarly qualified professional shall be hired by the applicant to review the restaurant's layout, materials, finishes, and operating characteristics; and will make recommendations on how to mitigate the noise generated by the business' operations. The applicant will share the acoustic engineer's recommendations and observations with Community Development Staff, and modifications shall be implemented as determined to be appropriate by the Director of Community Development.
21. At any time in the future, the Planning Commission or City Council may review the Use Permit for the purpose of revocation or modification in accordance with the requirements of the MBMC Chapter 10.104. Modification may consist of conditions deemed reasonable to mitigate or alleviate impacts to adjacent land uses.
22. There shall be no restaurant or commercial uses allowed on the second floor area including the deck. The second-floor interior and exterior deck shall not be rented out for events or private parties.
23. The Community Development Department staff shall be allowed to inspect the site at any time.

Refuse

24. The management shall arrange for special on-site pickup as often as necessary to ensure that the refuse area has adequate space to accommodate the needs of the subject business.
25. No refuse generated at the subject site shall be located in the non-alley Public Right-of-Way for storage or pickup, including the disposal of refuse in any refuse container established for public use.

Signage

26. All new signs and alterations to existing signs shall receive permits, and shall be in compliance with the City's sign code.
27. A-frame or other sidewalk signs in the public right-of-way shall be prohibited.
28. No temporary banner or other signs shall be placed on the site without City permit and approval.

Procedural

29. The owner shall be required to obtain a City of Manhattan Beach right-of-way encroachment permit for any projections into the public right-of-way.
30. This Resolution shall become effective when all time limits for appeal as set forth in MBMC Section 10.100.030 have expired

31. 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.
32. This Resolution shall serve as the amended and restated Use Permit for the subject property. Board of Zoning Adjustment Resolution No. BZA 84-37 is rescinded and no longer in effect.
33. 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.
34. The Planning Commission's decision is based upon each of the totally independent and separate grounds stated herein, each of which stands alone as a sufficient basis for its decision.
35. The Secretary of the Planning Commission shall certify to the adoption of this Resolution and shall forward a copy of this Resolution to the owner. The Secretary shall make this resolution readily available for public inspection.
36. Terms and Conditions are Perpetual; Recordation of Covenant. The provisions, terms and conditions set forth herein are perpetual, and are binding on the owner, its successors-in-interest, and, where applicable, all tenants and lessees of the site. Further, the owner shall submit the covenant, prepared and approved by the City, indicating its consent to the conditions of approval of this Resolution, and the City shall record the covenant with the Office of the County Clerk/Recorder of Los Angeles. Owner shall deliver the executed covenant, and all required recording and related fees, to the Department of Community Development within 30 days of the adoption of this Resolution. Notwithstanding the foregoing, the Director may, upon a request by owner, grant an extension to the 30-day time limit. The project approval shall not become effective until recordation of the covenant.
37. *Indemnity, Duty to Defend and Obligation to Pay Judgments and Defense Costs, Including Attorneys' Fees, Incurred by the City.* The owner shall defend, indemnify, and hold harmless the City, its elected officials, officers, employees, volunteers, agents, and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees") from and against any claims, damages, actions, causes of actions, lawsuits, suits, proceedings, losses, judgments, costs, and expenses (including, without limitation, attorneys' fees or court costs) in any manner arising out of or incident to this approval, related entitlements, or the City's environmental review thereof. The owner shall pay and satisfy any judgment, award or decree that may be rendered against City or the other Indemnitees in any such suit, action, or other legal proceeding. The City shall promptly notify the owner of any claim, action, or proceeding and the City shall reasonably cooperate in the defense. If the City fails to promptly notify the owner of any claim, action, or proceeding, or if the City fails to reasonably cooperate in the defense, the owner shall not thereafter be responsible to defend, indemnify, or hold harmless the City or the Indemnitees. The City shall have the right to select counsel of its choice. The owner shall reimburse the City, and the other Indemnitees, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Nothing in this Section shall be construed to require the owner to indemnify Indemnitees for any Claim arising from the sole negligence or willful misconduct of the Indemnitees. In the event such a legal action is filed challenging the City's determinations herein or the issuance of the approval, the City shall estimate its expenses for the litigation. The owner shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due.

I hereby certify that the following is a full, true, and correct copy of the Resolution as **ADOPTED** by the Planning Commission at its regular meeting on **March 27, 2019** and that said Resolution was adopted by the following vote:

AYES: **Morton, Thompson, Fournier,
 Chair Burkhalter**

NOES: **None**

ABSTAIN: **None**

ABSENT: **None**

Anne McIntosh
Secretary to the Planning Commission

Rosemary Lackow
Recording Secretary