CITY OF MANHATTAN BEACH CITY HALL
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TO: Honorable Mayor and Members of the City Council

FROM: Carrie Tai, Community Development Director

MEETING: City Council Regular Meeting, October 20, 2020

SUBJECT: Agenda Item No. 10 – Public Hearing to Consider A Master Use Permit Amendment at an Existing Restaurant at 1125-1131 Manhattan Avenue and 133 Manhattan Beach Boulevard (Nando Milano LA, LLC/Vullo)

DATE: October 20, 2020

SUPPLEMENTAL REPORT

BACKGROUND

Agenda Item 10 City Council agenda is a public hearing to consider the request by Nando Milano for a Master Use Permit (MUP) Amendment to allow full liquor service in conjunction with food service (the "Project") at 1131 Manhattan Avenue, a location that has had restaurants operating for many years, with a beer and wine license, pursuant to the MUP, as previously amended. There is no request to expand hours of operation or intensify the use; the request is merely to allow the restaurant to serve additional beverages, albeit alcoholic, with its meals.

Yesterday night[1], Don McPherson ("Appellant") emailed the City. The email will be available to the public.

DISCUSSION

The primary arguments in the email are:

1. The service of additional beverages constitutes an "intensification of use."
2. The service of additional beverages will "interfere with the quiet enjoyment" of residents

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[1] Last time Mr. McPherson dropped documents on the City at the last minute, he apologized. This time, there was no apology. Note that the report from his consultant is dated October 16, 2020. I apologize if there are any typos created by responding to the eleventh hour email.

in the Downtown area and thus violates the City's noise ordinance.

3. The City needs to consider the "cumulative noise impacts" in downtown parking lots arising from allowing the additional beverage service, the full-liquor license approved for Tacolicious in 2019, and the recent amendment of the MB Post use permit.

4. The request needs a coastal permit, because the additional service allegedly: (a) constitutes intensification under the Coastal Act; and (b) interferes with coastal access because Nando diners will allegedly park in the Pier parking lot late at night and take parking spaces away from those "who desire a late-night walk, picnic, or to fish."

In addition, Appellant has recycled arguments about alleged cumulative impacts and unusual circumstances that he raised in connection with his appeal on the MB Post application. The Supplemental Staff Report dated May 5, 2020 rebutting those allegations is hereby incorporated by this reference. By contrast to the arguments he raised in opposing the MB Post Use Permit Amendment, Appellant does not complain that potential noise arising from the service of additional beverages will directly interfere with residents' peace and quiet. Instead, Appellant focuses on speculative noise that might occur at Parking Lot 2 and the Upper Pier Parking Lots. Regardless of whether such noise is relevant to the service of additional beverages at Nando, Appellant does not provide any substantial evidence to support such complaints. Finally, Appellant claims that the ABC will not issue a "new" license because "Nando patrons use parking lots within 100 feet of residences." He is incorrect.

As described more fully below, I, in my professional capacity as a certified and licensed member of the American Institute of Certified Planners (AICP) and expert on the California Environmental Quality Act (CEQA) and the Coastal Act, find no merit in any of the arguments raised by Appellant.

a. <u>There is no intensification of use, either under CEQA or the Coastal Act</u>.

<u>CEQA</u>. The Project is categorically exempt from the requirements of CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities). There is no expansion of use associated with the Project, as the existing restaurant is merely shifting from beer and wine service to full liquor service. Under CEQA, the Categorical Exemption is appropriate even where, unlike here, there is external construction such as "in-fill" development and the expansion of buildings. There is absolutely no change or expansion of the use – the site will remain a restaurant, within the confines of the existing structure.

<u>Coastal Act</u>. The Project is not "development" within the meaning of the Coastal Act, and thus no Coastal Development Permit (CDP) is required. The Project does not meet the City's Local Coastal Program's (LCP) definition of a "development" (A.96.030). The Project is not an intensification of use, as the applicant's use and the previous tenant's use are both "Eating and Drinking Establishments" as defined in A.08.050 of the City's LCP. An Eating and Drinking Establishment is a business that serves "prepared food or beverages for consumption." The "Eating and Drinking Establishment" land use classification does not distinguish between the types of beverages served. Beer, wine, and distilled spirts are all beverages, and the fact the applicant's new restaurant taking over the existing restaurant space will still serve beverages does not change the intensity of use because the former restaurant also served beverages.

Accordingly, the notice of hearing meets all legal requirements.

b. There is no applicable CEQA exception to a Categorical Exception.

As McPherson and his attorney argued in connection with the MB Post Use Permit Amendment, he claims that, because of "cumulative impacts" and "unusual circumstances," a Categorical Exception is not appropriate here. Neither exception applies here.

No cumulative impacts arising from the service of additional beverages. There is no reasonable possibility that the Project will result in potential adverse cumulative impacts, including as to noise. Appellant's speculation that the Project will result in cumulative noise impacts is unsupported. The City Parking Lot Noise Impact Analysis ("Parking Lot Report") prepared by Steve Rogers Acoustics, LLC, and proffered by Appellant, is based solely on conjecture and supposition, offers only general conclusions that are not specific to the restaurant, does not provide any baseline noise analysis as to the restaurant, does not account for any noise attenuation features of the site, and rests its conclusions on speculative future conditions.

As its title indicates - City Parking Lot Noise Impact Analysis - the conclusions in the Parking Lot Report are not based on alleged projected future sound coming from the restaurant attributable to the service of additional alcoholic beverages. Rather, his conclusion is based exclusively on the "measured ambient noise levels in parking lots adjoining residents." (Report, p. 1 of 3). The Appellant indicates that "Since 2018, the city has approved increased alcohol services at seven Premises, without considering the cumulative impacts of noise in parking lots adjacent to residences." There is no indication that alcohol service at restaurants generates additional patrons. The City's parking requirements are based on square footage of a restaurant, not what type of food or beverage is sold. Furthermore, Appellants have offered no evidence that alcohol service itself creates additional noise, either during the act of service and consumption at the restaurant or elsewhere, such as a parking lot.

The Appellant claims "The city has considered each project separately, without evaluating the growing volume of noise in the parking lots from the seven projects that have increased alcohol service intensity." The downtown parking lots accommodate a variety of users throughout the downtown area, including patrons to downtown establishments and overnight residential parking permit holders. People also walk or bicycle, use rideshare, or park in on-street parking spaces. Appellants have offered no evidence that noise from parking lots is attributable to patrons visiting restaurants. Furthermore, there is even less indication that the service of alcohol at restaurants can attribute to noise in a parking lot.

No unusual circumstances. There is no reasonable possibility that serving additional beverages will create a significant impact on the environment based on unusual circumstances. Indeed, the circumstance here – allowing a restaurant to serve additional alcoholic beverages – is not unusual in any way.

Appellant argues, without any evidentiary support, that having parking lots near residences is an "unusual circumstance" within the meaning of CEQA. In my professional opinion, there are numerous parking lots adjacent to residential uses, especially in California coastal towns where communities such as Manhattan Beach, Hermosa Beach, Long Beach, Venice, Santa Monica and Seal Beach have a mix of residential and commercial uses along the coast, often adjacent to a pier. Presumably, the environmental impacts associated with such parking lots were considered in connection with the construction of the parking lots.

c. The service of additional beverages will not "interfere with the quiet enjoyment" of residents in the Downtown area and thus the additional beverage service will not violate the City's noise ordinance.

Appellant has presented no evidence that the service of additional alcoholic beverages at Nando will interfere with the quiet enjoyment of residents in the surrounding area. Instead, Appellant's consultant concludes that future noise at two parking lots will violate the City's Noise Ordinance. As stated elsewhere, such a conclusion is purely speculative, and is based upon unsupported statements included in the Parking Lot Report. For instance, Mr. Roger finds, with absolutely no evidentiary support, that the proposed addition of full liquor service at Nando restaurant would "naturally increase late-night activity in the City parking lots" which would "result in a violation" of the City's noise regulations. As stated elsewhere, such a conclusion is premised on numerous incorrect presumptions that, for the sake of brevity, will not be repeated here.

d. Appellant has presented no evidence that allowing the Applicant to serve additional beverages adversely impacts access to the beach.

As a threshold issue, visitor serving uses, such as restaurants, are a priority under the Coastal Act. The Coastal Commission encourages restaurants because if visitors come to Manhattan Beach to eat at a restaurant such as Nando, they often will visit the beach, the Strand, and the Pier.

The Appellant claims, "When eating and drinking establishments resume full indoor service, Lot 2 will overflow into the pier lots, …thus reducing beach access, the highest priority policy in the Coastal Act." Currently, most restaurants downtown are utilizing former on-street parking spaces to accommodate outdoor dining while the COVID-19 pandemic regulations prevent operation of indoor dining rooms. When indoor dining is permitted again, on-street parking spaces will also become available again. Furthermore, several other parking lots (Lot 1, Lot 3, Lot 6, Lot M) are located closer to restaurants and commercial areas that are more likely to be used in general. There is no indication that Lot 2 users will choose the Pier lots to visit restaurants.

It is speculative conjecture and without any evidence to support a conclusion that Nando diners will allegedly park in the Pier parking lot late at night and take parking spaces away from those "who desire a late-night walk, picnic, or to fish."