



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Montgomery and Members of the City Council

THROUGH: David N. Carmany, City Manager

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

DATE: April 5, 2011

SUBJECT: Consideration of Two Appeals of the Planning Commission's Decision to Approve a Use Permit for Strata to Remodel an Existing Restaurant, Provide Outdoor Seating, and Expand Operating and Entertainment Hours and Consideration of an Encroachment Permit for Outdoor Dining Over the Sidewalk at 117 Manhattan Beach Boulevard.

RECOMMENDATION:

Staff recommends that the City Council uphold the decision of the Planning Commission approving the request, and consider the request for an Encroachment Permit for outdoor dining above the public sidewalk.

FISCAL IMPLICATION:

There are no fiscal implications associated with the recommended action.

DISCUSSION:

The Planning Commission, at its regular meeting of March 9, 2011, approved (4-0 vote, 1 abstention) a request to remodel an existing 6,750 square foot restaurant building with some business operational changes. The existing building was constructed near the 26-foot height limit, and at the 1.5 floor area ratio limit, with 4 on-site parking spaces.

The proposal is for the building's existing 4 floor levels to be modified, and the addition of a new partial basement level for wine storage, rear employee restroom and locker facilities, and two new upper level dining balconies over Manhattan Beach Boulevard. Substantial upgrades are proposed for kitchen capacity, health codes, building codes, utilities, disabled access, ventilation, sound containment, and trash storage. Additional changes to the building include recessions of the front walls to provide outdoor dining, waiting, and entry areas; and the retractable windows to allow the restaurant to open to Manhattan Beach Boulevard during good weather. The applicant also proposes modifying the restaurant's hours of operation, entertainment and dancing.

Use Permit Amendment approval is required for the applicant's proposals to create outdoor dining/seating, change hours of operation, allow additional nights of dancing, relocate/modify the dance floor, and to install retractable walls/windows at the building frontage.

The Planning Commission received letters and testimony from neighbors stating concerns for noise and other disruptions that could occur from modified hours, dancing, and openness of the building. The Commission also had concerns for these issues, requesting additional information from the applicant and suggesting possible ongoing review of sensitive aspects of the business. The applicant subsequently eliminated the retractable window design from the uppermost level of the building opening onto the outdoor dining patio; and provided a formal noise analysis and further explanations of sound mitigating materials to be used in the building remodel. Staff recommended conditions extending the authority of the restaurant's required annual Entertainment Permit to regulate the noise caused by the openings, and to reduce entertainment and dancing if needed. At the continued public hearing the Planning Commission generally accepted these conditions, and accepted an agreement between the applicant and neighbor representatives regarding hours and dancing. The final approved resolution (Exhibit A) included the following changes to the existing Use Permit:

- **Dancing** was added for Thursdays and Sundays with the restriction that it end by 11:30pm on those nights. The current Use Permit only allows entertainment without dancing, with hours until 1:00am on Sunday and 11:30pm on Thursday.
- **Closing times** for Sunday – Thursday were reduced from 1am to midnight to compensate for the added dancing as agreed upon with neighbor representatives.
- **Opening times** for holidays were extended from 10am to 8am to allow breakfast service similar to existing weekend entitlements.
- **Delivery hours** were restricted to 8am to 10pm to compensate for the added breakfast hours. Currently there are no restrictions.
- **Noise at non-entertainment times** (when windows/walls are permitted to be kept open) was made subject to an annual entertainment permit when windows/walls can be opened.
- **Noise at all times** was prohibited from being audible more than 75 feet away from the restaurant as recommended by the Police Department.
- **Encroachments** of 18-inch deep architectural “false balcony” features over the Manhattan Beach Boulevard right-of-way, instead of the originally requested dining balconies over the sidewalk were proposed by the applicant. The Commission does not have authority to approve a balcony encroachment, and could not reach a consensus recommendation on this issue.
- Updated/miscellaneous Use Permit conditions were imposed regarding utilities, use of rear roof area, and supervising the surrounding area.

Applications appealing the Planning Commission's decision were received from the project applicant, and a resident who participated in the public hearing. The attached applicant appeal request is to permit 5-foot wide balcony dining encroachments over the sidewalk with 200 square feet of area, and 24 seats. The resident appeal opposes expansion of “nightclub“ aspects of the business.

The applicant had proposed two balconies partially cantilevering over the public sidewalk. Commercial encroachments over sidewalks are limited to canopies, signs, eaves, and awnings with

Director of Community Development approval. Other commercial use of the public right-of-way requires City Council approval pursuant to Municipal Code Section 7.36.100. The Planning Commission had concerns with allowing restaurant dining above the public sidewalk, and was also hesitant to establish a precedent for restaurant patrons to be located directly above public sidewalks creating a street dynamic that may be disruptive or otherwise undesirable. The applicant's appeal letter (attached) requests the Council to approve 5-foot deep balcony encroachments to compensate for existing dining area displaced by kitchen and other support upgrades to the restaurant. The applicant points out that a somewhat similar encroachment example exists in that the neighboring building to the east has a 5-foot balcony, which appears on its original 1971 plans, apparently for incidental purposes to an office use. No right-of-way encroachment approval was found for this item.

The attached resident appeal material states that the project overemphasizes alcohol and entertainment components of the restaurant use. The document lists concerns for noise, parking, closing procedures, environmental documentation, and coastal regulations. The Planning Commission felt that: noise was adequately addressed as discussed above, no additional parking is required since there is no increase in dining area, and the project is exempt from extensive environmental review as an alteration of an existing use. Staff had initially determined the project is exempt from a Coastal Development Permit as a continuation of an existing restaurant use, but has subsequently learned that the site is regulated by a 1983 State-issued coastal permit, and any further coastal permit requirement determinations must be made by the California Coastal Commission.

Coastal Development Permit:

The project is located within the appealable portion of the City's coastal zone. A coastal development permit required for a substantial development at this location would be appealable to the California Coastal Commission after City Council's decision. Staff had determined that the project was exempt from a coastal permit since the restaurant land use would remain essentially the same, and the building would not become any larger, or significantly smaller. The resident appellant disagrees with this exemption determination feeling that changing dancing and hours of operation significantly change the land use.

Subsequent to the Planning Commission's meeting, Staff has learned that the building has a pre-existing permit for an addition/remodel issued by the Coastal Commission in 1983 prior to the City's Local Coastal Program. Section A.96.080 of the Local Coastal Program states that pre-existing permits such as this "remain under the jurisdiction of the Commission". In this case the Coastal Commission would process a coastal permit amendment or exempt the project after the City's action. Staff's understanding at this time is that allowing the Coastal Commission to make that determination is the appropriate procedure.

Environmental Review:

Since the project involves discretionary review, it is subject to the California Environmental Quality Act (CEQA), which can involve extensive procedures and documentation. Section 15301 of CEQA states that alterations to existing facilities are exempt from those procedures, including additions up to 2,500 square feet. The City Attorney explained to the Planning Commission that the City could determine that the project is not exempt if an environmental impact was believed to be present, but the Planning Commission did not find this to be the case.

Use Permit Findings:

Section 10.84.010 of the Zoning Code establishes that the purpose of Use Permits is as follows:

Use permits are required for use classifications typically having unusual site development features or operating characteristics requiring special consideration so that they may be designed, located, and operated compatibly with uses on adjoining properties and in the surrounding area.

Section 10.84.020 states that “The Planning Commission shall approve, conditionally approve, or disapprove applications for use permits or variances”.

Pursuant to Section 10.84.060 the City Council is required to make certain findings in order to approve the proposed use permit as follows:

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;
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;
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; and
4. The proposed use will not adversely impact nor 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.

Section 10.84.070 provides that reasonable conditions may be imposed upon a Use Permit as necessary to:

- A. Achieve the general purposes of this ordinance or the specific purposes of the zoning district in which the site is located, or to make it consistent with the General Plan;
- B. Protect the public health, safety, and general welfare; or
- C. Ensure operation and maintenance of the use in a manner compatible with existing and potential uses on adjoining properties or in the surrounding area.
- D. Provide for periodic review of the use to determine compliance with conditions imposed, and Municipal Code requirements.

The Planning Commission made these required findings and imposed conditions it felt were reasonable to meet the Code criteria.

Balcony Encroachment

The applicant's proposal for two balconies partially cantilevering over the public sidewalk is unique, although the neighboring building to the east has a 5-foot balcony for an office use. Currently, allowance for commercial encroachments over sidewalks has been limited to signs, canopies, and awnings projecting 3 feet over City right-of-way. The Planning Commission discussed concerns regarding disruption and safety to the street below, permanence, visual compatibility, view obstruction, equity, and setting a precedent for similar future requests. The Commission could not determine that the balcony dining was appropriate. The applicant is requesting the City Council to approve the balconies with dining area based on facts that dining area is being lost as part of the overall restaurant upgrade, and that sidewalk dining is commonly permitted at ground level Downtown.

The Land Use Element of the Manhattan Beach General Plan supports the visual aspect of the proposed balconies by encouraging development to have "notches, balconies, rooflines, open space, setbacks, landscaping, or other architectural details". Infrastructure Element Policy I-1.10 directs that the City "adopt and implement standards for public street right-of-way for private purposes". This was accomplished by updating Chapter 7.36 of the Municipal Code, which contains relevant Section 7.36.170 providing that City Council must approve non-standard commercial encroachments, and prohibiting commercial use of walk street right-of-way.

Staff has contacted some other cities and found that Hermosa Beach, Redondo Beach, and Huntington Beach would not permit any such encroachments. Carlsbad indicated that ground level dining encroachments are common in its downtown area, but balcony encroachments would not be permitted. Each of these cities had the option of applying/appealing to City Council for such a request. New Orleans, Louisiana, which is well known for balcony encroachments, indicated they are common, and are primarily handled as complex long term leases through the City's "Office of Property Management". The City of Santa Monica's website makes reference to balcony encroachments, and that City's staff indicated that they are permitted.

The portion of the building facing Manhattan Beach Boulevard is set back ten inches from the property line where the two balconies are proposed. The sidewalk is 8 feet wide. The City Council may wish to discuss the following dimensional options:

1. A 1' balcony projection for architectural purposes only, which results in a 2" encroachment over the sidewalk.
2. A 2'-4" balcony projection, which results in an 18" encroachment over the sidewalk.
3. A 3'-10" balcony projection, which results in a 3' encroachment over the sidewalk.
4. A 5'-10" balcony projection, which results in a 5' encroachment over the sidewalk.

Public Input:

Staff received one message in response to the appeal hearing notice requesting additional consideration of roof equipment design and screening. Some discussion had occurred regarding preserving neighbors views when locating new roof equipment on the building, and potentially reducing screening requirements in favor of preserving these views. The applicant has indicated agreement to the attached neighbor suggestion. Staff suggests that equipment be visually screened, especially since this building is prominently visible from the public beach and pier, and will work with the applicant and neighbor to balance these concerns.

CONCLUSION

Staff recommends that the City Council conduct the appeal hearing, discuss testimony received, and uphold the Planning Commission's decision approving the proposed restaurant remodel with certain operational changes, subject to conditions listed in Planning Commission Resolution No. PC 11-02 (Exhibit A). If the City Council determines that the requested balcony dining, or architectural projection encroachments are appropriate, staff will prepare a modified use permit, or separate resolution reflecting that decision, and will subsequently issue the related encroachment permit.

ALTERNATIVES:

The alternatives to the staff recommendation include:

1. Conduct the public hearing, uphold the Planning Commission's use permit approval subject to conditions, and approve an 18-inch architectural projection without dining area over the right-of-way encroachment.
2. Conduct the public hearing and direct Staff and the Applicant regarding the use permit and encroachment proposals as determined to be appropriate.

Attachments:

- A. Resolution No. PC 11-02
- B. P.C. Minutes excerpts, dated 1/26/11 & 2/23/11
- C. P.C. Staff Reports and attachments, dated 1/26/11 & 2/23/11
- D. Applicant appeal material
- E. Resident appeal material
- F. Neighbor letter
- G. Existing 1983 State coastal permit
- H. Commercial encroachment code
- I. Project plans (separate-not available electronically)

cc: Michael Zislis, Appellant/Applicant Representative
Don McPherson, Appellant

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RESOLUTION NO. PC 11-02

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH APPROVING A USE PERMIT AMENDMENT TO ALTER AN EXISTING RESTAURANT ON THE PROPERTY LOCATED AT 117 MANHATTAN BEACH BOULEVARD (MB Dining LLC/Strata)

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. The Planning Commission of the City of Manhattan Beach conducted public hearings on January 26, and February 23, 2011, received testimony, and considered an application for a use permit amendment to allow alteration of an existing restaurant including: outdoor dining, operating hours, entertainment, and other building modifications on the property located on the property legally described as Lots 7 & 8, Block 13, Manhattan Beach Division #2., at 117 Manhattan Beach Boulevard in the City of Manhattan Beach.
- B. The applicant for the subject project is MB Dining LLC, the owner of the property.
- C. The applicant had also requested extended closing times of 2am, increased frequency of dancing by two days per week, and balcony dining within the public right-of-way (later revised to be decorative projections); but these requests were not approved by the Planning Commission, due to concerns for increased disruption to the surrounding area and the Manhattan Beach Boulevard right-of-way.
- D. The project is exempt from obtaining a Coastal Development Permit in accordance with the City's Coastal Program as the alteration or improvement to an existing structure that does not change the intensity or use of the existing structure is in accordance with Manhattan Beach LCP Section A.96.050B. At the conclusion of the hearing the Planning Commission made a specific factual finding that the project, as finally approved, does not increase the intensity of the use or create new, additional or intensified impacts.
- E. The proposed encroachment of decorative projections over the public right-of-way over the Manhattan Beach Boulevard sidewalk, requires action by the City Council in accordance with Section 7.36.170 A- Long-term commercial use encroachment permits, of the MBMC.
- F. The project is Categorically Exempt (Class 1, Section 15301) from the requirements of the California Environmental Quality Act (CEQA) since it involves minor modification of an existing facility.
- 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 General Plan designation for the property is Downtown Commercial. The General Plan encourages commercial uses such as this that serve city residents, and are buffered from residential areas.
- I. 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.
- J. Approval of the restaurant use, 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 primarily existing in a central Downtown beach/pier oriented location, expected to increase focus on food service, and limited by operation hours that are reasonable restaurant hours for this commercial area.

- K. The project shall be in compliance with applicable provisions of the Manhattan Beach Municipal Code as well as specific conditions contained herein further regulating the project.
- L. The restaurant 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 has existed at the subject location, is appropriately located within a commercial area, and is conditioned herein to prevent possible adverse impacts.
- M. This Resolution, upon its effectiveness, constitutes the Use Permit for the subject restaurant and supersedes all previous use permit resolutions pertaining to the restaurant use.

Section 2. The Planning Commission of the City of Manhattan Beach hereby **APPROVES** the subject Use Permit Amendment subject to the following conditions (* indicates a special condition):

Site Preparation / Construction

- 1. The project shall be constructed and operated in substantial compliance with the submitted plans (on 1/26/11 with specified revisions on 2/23/11) and project description as approved by the Planning Commission on February 23, 2011. Any substantial deviation from the approved plans and project description must be reviewed and approved by the Planning Commission.
- 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, grease interceptors, 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 and Health Department regulations.
- 5. Exterior equipment, antennas, etc., shall be appropriately screened and compliant with applicable regulations. Storage on roofs, long-term or short-term, such as tables and chairs, shall be prohibited.

Operational Restrictions

- 6. * The management of the restaurant shall police the property in all areas immediately adjacent to the business during the hours of operation, and one hour after closing each night, to keep it free of litter and to discourage patrons from entering residential areas, through use of temporary signs and other means.
- 7. * The business proprietor shall provide adequate management and supervisory techniques to prevent loitering, unruliness, and boisterous activities of patrons outside the business or in the immediate area. Any queuing of customers waiting to enter the establishment shall be prohibited from occupying Ocean Drive or Center Place, and shall be managed in compliance with the direction of the Police Department and the establishment's Group Entertainment Permit.

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8. * Hours of operation for the establishment shall be permitted as follows:

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| Monday - Thursday | 10:00am - midnight |
| Friday | 10:00am - 1:00am |
| Saturday | 8:00am - 1:00am |
| Sunday | 8:00am - midnight |

Weekday opening times may be extended to 8:00am on holidays specified by the establishment's Group Entertainment Permit. Deliveries and other loading, truck idling, etc., occurring outside of the building shall be prohibited between 10pm and 8am nightly.

9. * The service of alcohol shall be in conjunction with minimum food service during all hours of alcohol availability, and "bona fide eating place" type of alcohol license from the State of California shall be maintained. Minimum food service shall consist of a menu of similar variety to the "all hours" menu on file. Full menu food service shall be available at the bar seats during all hours of operation.

10. * Noise emanating from the site shall be in compliance with the Municipal Noise Ordinance and the restaurant's Group Entertainment Permit. Any outdoor sound or outdoor amplification system or equipment is prohibited. No operable windows or similar openings shall be located on the north, west, or east sides of the restaurant. All doorways and windows for the business shall remain closed at all times during entertainment or dancing, and shall be closed at other times as specified by the establishment's Group Entertainment Permit. Noise from the business shall not be audible beyond 75 feet of the subject site as determined by the Police Department.

11. * Dancing and entertainment other than background music or television shall be limited to level 1 as shown on the approved floor plans as follows:

- A. Entertainment and dancing on Fridays and Saturdays until 1:00am.
- B. Entertainment and dancing on Thursdays and Sundays until 11:30pm,

12. * A Class I Group Entertainment Permit shall be obtained for all entertainment and noise aspects of the business. Should entertainment, outdoor dining, window/door openings, etc. be determined to be detrimental to the surrounding area, said permit shall be revoked or revised under administrative authority without prejudice to the remaining conditions of approval. Staff decisions regarding significant changes to Group Entertainment Permits require notice to property owners within a 300-foot radius with standard notice procedure, and are appealable to the City Council.

13. The service of food and beverages shall be primarily by employees to customers seated at tables, and there shall be no take-out windows.

14. Utilities serving the site shall be underground, pursuant to City ordinance.

15. All site nuisance and storm water, including roof drainage, shall be contained on site and outletted through the curb on Manhattan Beach Boulevard as approved by the Director of Public Works. All existing exterior drains shall comply with applicable sewage requirements prior to implementation of this Uwe Permit Amendment, subject to review and approval of the Department of Public Works.

16. * 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. The trash enclosure shall have a roof, sewer drain, and all other Public Works specifications. A trash and recycling plan shall be provided and implemented as required by the Public Works Department. The premises shall not provide a repository for trash from any other business. Delivery and trash locations shall be chosen to minimize impact on the residential neighborhood.

17. * The roof area above the parking area shall maintain the existing parapet wall along the west and east of a height not to exceed three feet above the abutting roof surface. No use or activity shall occur on this roof area except for maintenance purposes. Access to this area shall be by ladders or a maintenance hatch.

18. * All signs shall be in compliance with the City's Sign Code. The maximum total sign area permitted for the site shall be 50 square feet. All signs shall be located within 30 feet of the southerly property line. Pole signs and internally illuminated awnings shall be prohibited.
19. The operation shall comply with all South Coast Air Quality Management District Regulations and shall not transmit excessive emissions or odors across property lines.
20. The operation shall remain in compliance with all Fire and Building occupancy requirements at all times.
21. Parking for the site shall be in conformance with the Manhattan Beach Municipal Code and Local Coastal Program. Four parking spaces shall be provided on-site. The on-site parking spaces shall be marked and monitored to prevent conflicts with the public right-of-way. The carport shall remain available for parking at all times; long term storage shall not be permitted, such as tables and chairs.

Procedural

22. All provisions of the Use Permit are subject to review by the Community Development Department 6 months after occupancy and yearly thereafter.
23. * This Use Permit Amendment shall lapse two years after its date of approval, unless implemented or extended pursuant to 10.84.090 of the Municipal Code.
24. 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.
25. 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.
26. * 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.

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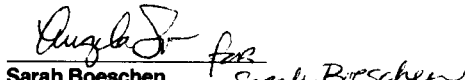
SECTION 3. Pursuant to Government Code Section 65009 and Code of Civil Procedure Section 1094.6, any action or proceeding to attack, review, set aside, void or annul this decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to such decision or to determine 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.

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of February 23, 2011 and that said Resolution was adopted by the following vote:

AYES: Fasola, Lesser, Seville-Jones,
Chalperson Paralusz
NOES: None
ABSTAIN: Andreani
ABSENT: None



RICHARD THOMPSON,
Secretary to the Planning Commission



Sarah Boeschen, *Sarah Boeschen*
Recording Secretary

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Ester Besbris said that a forum for the City Council candidates will be held by the Manhattan Beach Residents Association in the Council chambers on February 10, 2001, between 7:00 p.m. and 8:30 p.m. She said that she believes it will be televised live. She said that they are encouraging questions from members of the community which can be submitted to yourmbra@gmail.com or by phoning (310) 379-3277.

Bill Victor pointed out that it is appropriate for members of public bodies to disclose if they have had any contact or received contributions from applicants or participants that are involved in a matter being considered. He said that **Mr. Ngo's** request that the Commissioners disclose if they have received any contributions from parties involved in the public hearing that is before the Commission does have merit.

4. PUBLIC HEARINGS

01/26/11-1 Consideration of a Use Permit Amendment to Remodel an Existing Restaurant Including the Addition of Outdoor Dining with Balconies Adjacent to Manhattan Beach Boulevard, and Expansion of Operating and Entertainment Hours, on the Property Located at 117 Manhattan Beach Boulevard

Commissioner Lesser indicated that he does not have a financial interest in the subject project and has not received any donations from the applicant.

Commissioner Paralusz commented that she has no financial interest in the applicant's business. She commented that the applicant did contribute to her political campaign two years ago when she ran for the City Council in 2009; however, she does not feel that it has affected her ability to be fair and impartial in any matters that have been before the Commission. She said that she is willing to recuse herself and said that she would defer to the opinion of the other Commissioners as to whether they feel it would be appropriate.

Chairman Fasola said that it is Commissioner Paralusz's choice as to whether she feels she should recuse herself from considering the issue. He stated that his understanding is that a Commissioner should not participate in consideration of an issue if they have a financial interest in the project that is being considered.

Commissioner Paralusz said that she does not have a financial interest in any property owned by **Mr. Zislis**.

Commissioner Seville-Jones stated that there is not a legal requirement for Commissioner Paralusz to recuse herself, and it is her decision if she feels it would be appropriate.

Commissioner Lesser said that he does not believe that Commissioner Paralusz has a legal obligation to recuse herself, and it is up to her discretion.

Commissioner Paralusz pointed out that the contribution to her campaign from **Mr. Zislis** has been in the public record for over two years. She said that she believes she can be fair and impartial in considering the subject application. She indicated that she appreciates the support of the other Commissioners regarding her ability to be impartial. She said that she will consider the issue and that she will continue to work hard to evaluate the issues fairly on the basis of the law and public input in order to arrive at a Resolution that benefits everyone.

Director Thompson said that a Use Permit was approved for the site in 1994, and there have been different restaurants that have relied on the permit over the years. He indicated that the

permit established the hours of operation, provisions for entertainment, and many other restrictions. He indicated that the item is before the Commission because of the additional changes being proposed by the applicant for a new restaurant.

Associate Planner Haaland said that the proposed remodel includes requests for the expansion the hours and entertainment. He indicated that the proposal includes outdoor dining; balconies that would project over the Manhattan Beach Boulevard sidewalk; enlarging of the exterior entries; relocation of the dance floor; the installation of retractable walls along Manhattan Beach Boulevard; and the addition of a basement wine cellar. He stated that the current permitted hours of operation are until 1:00 a.m., and the applicant is proposing to close at 2:00 a.m. on Friday and Saturdays. He indicated that the applicant is also proposing to extend the operating hours on weekday mornings to open at 8:00 a.m. for breakfast. He commented that dancing is currently permitted on Friday and Saturdays, and the proposal is to also allow dancing on Thursday and Sunday nights and nights before holidays. He stated that the proposal is also to increase the number of special events that are permitted per year from 6 to 12. He pointed out that no addition of square footage is proposed to the building. He indicated that the project does conform to the City's applicable Code requirements.

Associate Planner Haaland said that the previous use on the site did not include outdoor dining, and the Use Permit requires that the operation remain within the enclosed building. He stated that the existing building has a partial retractable roof. He indicated that the proposal includes retractable walls, windows and doors at the front of the building. He commented that the balconies with dining are proposed to extend 3 feet over the sidewalk along Manhattan Beach Boulevard into the City right-of-way. He pointed out that it is normal to allow canopies and awnings to encroach over the sidewalk, but it is not typical for a balcony. He said that the only example of a balcony encroaching into the right-of-way is at a building next to the subject site. He commented that there are no other examples of dining areas in the downtown that encroach on a balcony within the City right-of-way. He stated that the Encroachment Code does permit the City Council to approve atypical projections.

Associate Planner Haaland stated that the proposal is for hours of operation until 2:00 a.m. on weekends. He commented that it was routine to allow restaurants to be open until 2:00 a.m. prior to the 1990's; however, the latest hours that have been approved generally since that time have been 1:00 a.m. He indicated that the applicant is also proposing to open at 8:00 a.m. for breakfast service on weekdays. He said that breakfast service generally has not been a concern with most applications. He commented that the applicant is requesting that dancing be permitted on Thursdays and Sundays and on nights prior to holidays in addition to already being permitted on Friday and Saturday nights. He said that the applicant has pointed out that the prior operation at the subject site did include dancing on Thursday and Sunday evenings, although it is not allowed in the existing Use Permit. He indicated that the dance floor has been required to be definable and separated from the additional dining area on the main floor. He stated that the applicant is proposing to move the dance floor to a more central location and have dining area on either side of the dance area. He commented that with the configuration of the proposed design, it would not be feasible to include a railing to separate the dance area from the dining area. He indicated that the applicant is also requesting to increase the number of special events that are permitted from 6 to 12 per year. He stated that comments that were received from one neighboring resident have been included in the staff report, and comments that were received after the staff report was distributed have also been provided to the Commissioners.

In response to a question from Commissioner Lesser, Associate Planner Haaland said that the goal of the City Council for the last 20 years has been to be more restrictive regarding closing

times for restaurants. He indicated that outdoor dining in the downtown area has been encouraged as a result of the downtown strategic plan.

In response to a question from Commissioner Lesser, Associate Planner Haaland said that the patrons of the former operation on the subject site parked in the downtown public parking lots and metered parking on the adjacent streets. He pointed out that the proposal does not generate an additional requirement for parking per Code. He commented that the proposal would actually include a reduction in dining area from the previous operation on site.

In response to a question from Commissioner Lesser, Associate Planner Haaland indicated that the Commission should determine whether they feel the proposed encroachment of the balcony over the public right-of-way is appropriate for the subject use and whether it would be detrimental to the surrounding area. He indicated that the City Council will review the comments of the Commission and has the deciding authority on whether or not the encroachment is approved.

Director Thompson pointed out that the reason the encroachment for the balcony is before the Commission is because it is included in the overall restaurant use and relevant to the Use Permit. He said that staff felt that it would be appropriate for the Commission to review whether or not they feel the encroachment should be permitted. He commented that staff does not have a major concern with allowing the balcony. He stated that there are projections from the roofs of other structures on Manhattan Beach Boulevard. He said that the proposal for the balcony is unique because it would be used for dining. He commented that the City Council will ultimately make the decision as to whether or not the projections are approved. He said that Petros is an example of a restaurant that is able to serve liquor on City property within the Metlox property. He indicated that their outdoor dining area is separated by a railing.

Chairman Fasola commented that his understanding is that the Building Code limits projections over the public right-of-way to non structural awnings and canopies. He asked whether the proposal for the balcony has been reviewed by the Building Department.

Associate Planner Haaland indicated that the Building Department reviewed the proposal and did not provide any specific comments regarding the balcony projection.

Commissioner Lesser asked regarding the possibility of requiring that the sliding retractable windows and the balcony area be closed after a certain hour.

Associate Planner Haaland said that there is a condition in the current Use Permit that all window openings be closed while entertainment is occurring. He commented that all entertainment would occur on level one. He indicated that the applicant is proposing that the windows be closed while entertainment is occurring.

In response to a question from Commissioner Lesser, Associate Planner Haaland said that he does not have any information regarding the requirement of Shark's Cove to close their windows after a certain hour in order to contain noise.

Commissioner Lesser commented that he would like further information as to whether Shark's Cove is required to close their windows after a certain hour and whether there is a record of any complaints regarding noise from that establishment.

Commissioner Seville-Jones commented that walking under a balcony would seem to be quite different than walking under an awning or canopy.

In response to a question from Commissioner Paralusz, Associate Planner Haaland stated that the applicant has discussed requirements and conditions for this project that are influenced by their experience with The Shade.

Director Thompson indicated that he feels staff has learned a great deal with The Shade project, and appropriate conditions would be placed on the subject proposal in order to avoid the same issues from occurring.

In response to a question from Chairman Fasola, Associate Planner Haaland indicated that the proposed basement area would be new. He pointed out that the basement area would be used for storage and would not be countable as square footage. He said that the area would likely be greater than 100 square feet.

In response to a question from Chairman Fasola, Associate Planner Haaland commented that there has not been any staff experience with the previous operator on the subject site having special events. He indicated that each event would be reviewed and would have conditions.

Director Thompson said that staff is not specifically concerned with special events but rather regarding noise impacts from the operation in general.

In response to a question from Chairman Fasola, Director Thompson indicated that staff has not received complaints regarding noise along Manhattan Beach Boulevard since greater restrictions have been placed as new Use Permits have been approved.

In response to a question from Chairman Fasola, Associate Planner Haaland indicated that he is not aware that Simzzy's has received any noise complaints.

In response to a question from Commissioner Lesser, Director Thompson said that the City works with the Department of Alcohol Beverage Control (ABC) to regulate conditions of the alcohol license. He stated that the City ensures that the conditions are enforced whether it is the jurisdiction of the City or the ABC. He commented that staff feels it is important to place language in the Use Permit requiring that alcohol be served in conjunction with food service in order to provide a condition that can be enforced by the City.

Michael Zislis, the applicant, pointed out that there is no request in the proposal for expanded entertainment, and the proposal actually includes a reduction. He commented that current permit allows hours of operation until 1:00 a.m. every night. He commented that they are seeking clarification in the hours of operation that entertainment and service would end at 1:00 a.m. and the restaurant would be shut down by 2:00 a.m. on weekends. He said that they have proposed the balconies to compensate for the loss of square footage in the building as a result of providing for handicapped access elevators and expanding the kitchen. He commented that he would plan to keep the retractable roof if he is not permitted to have the balcony. He indicated that he is asking to allow for 12 special events per year with dancing permitted until 11:00 p.m. on the lower level. He said that the dance floor is a separate defined area, and the stereo speakers are around the dance area.

Mr. Zislis commented that they are discontinuing the use of the northwest corner, which would improve the view corridor toward the pier. He said that they are proposing to move the air conditioners to the parapet, and the area could not be used for people to gather. He indicated that they are proposing to enclose the trash area. He commented that they also plan to allow the trash enclosure to be used by all of the restaurants on the alley. He stated that they have agreed to change the loading from the alley to Ocean Drive. He indicated that the windows are

all double glazed to provide sound mitigation. He stated that they have eliminated dancing on the upper level and have reduced the size of the bar on the upper level. He said that they have added three bathrooms. He commented that they have enlarged the kitchen by 25 percent. He said that the menu will be upper scale with a high end wine list. He indicated that the ceiling and walls will be sound absorbing. He pointed out that he has received complaints at his other operations but has never received a citation for a violation. He indicated that the previous operators at the subject site were not responsive to the neighbors in the past when there were problems. He stated that he has been responsive to noise problems regarding The Shade. He said that they have designed the restaurant with consideration to noise concerns. He commented that he met with a group of about 16 neighbors and later met with three of the neighbors to draft a document listing mitigation measures. He indicated that he agreed not to open at 8:00 a.m. for breakfast during the week due to the concerns of the neighbors.

Mr. Zislis said that currently dancing is permitted until 1:00 a.m. every night. He indicated that they plan to do last call at midnight during the week and 1:00 a.m. on Friday and Saturday nights. He said that he is asking for clarification of the hours so that there is no confusion regarding enforcement. He commented that the previous use has been allowed to operate until 2:00 a.m. on the weekends for the past 40 years.

In response to a question from Commissioner Lesser, **Mr. Zislis** indicated that the intent was to include in this application that last call on the weekends would be at 1:00 a.m. with the last drink being served at 1:20 a.m. He indicated that exiting customers all at one time would result in them congregating on the sidewalk outside of the restaurant. He said that the previous operator served drinks until 2:00 a.m. on weekends.

Chairman Fasola pointed out that the Use Permit specifies hours of operation are permitted until 1:00 a.m. regardless of whether the previous operator was in violation by serving until 2:00 a.m.

Mr. Zislis said that his intent is that a clear definition of closed be specified.

Commissioner Seville-Jones stated that the Use Permit states that the hours of operation for the restaurant shall be until 1:00 a.m., which suggests that everyone should be out of the restaurant by 1:00 a.m.

Mr. Zislis commented that allowing hours of operation until 1:00 a.m. does not mean the same as being closed at 1:00 a.m.

Mr. Zislis indicated that he is proposing to limit live entertainment to end at 11:00 p.m. He said that he feels the dancing floor is a great addition to the downtown area. He pointed out that the subject site is centrally located in the downtown area, and the neighbors purchased their properties knowing that the restaurant was located on the site. He commented that he is trying to mitigate any impacts to the neighbors from the previous operation.

In response to questions from Commissioner Lesser, **Mr. Zislis** said that he would not want to give up the current rights he has to operate until 1:00 a.m. He said that they agreed to place the use of the balcony under the Entertainment Permit so that it could be changed if there was an issue with noise to the neighbors. He said that he would like for any decision regarding adding a condition that the doors be closed after a certain hour to be considered 90 days after opening. He said that placing those items in the Entertainment Permit would allow staff the flexibility to change the requirements if there are noise impacts to the neighbors. He suggested that the allowance for 12 special events could also be placed in the Entertainment Permit. He

commented that valet service is not permitted in the area because it would result in additional cars in the adjacent neighborhood.

In response to a question from Commissioner Paralusz, **Mr. Zislis** stated that the retractable roof would be changed to a solid roof if the proposed balcony is permitted for the project. He indicated that he has met with about 15 neighbors to discuss the project, and three neighbors helped to draft the document that is before the Commission.

At 8:00 a five minute recess was taken.

Chairman Fasola opened the public hearing.

Jim Quilliam, a Manhattan Beach resident, said that they did meet with the applicant, and no formal agreement was made. He said that the plans appear to be inconsistent and incongruent with the discussion that occurred at the meeting with the neighbors. He indicated that **Mr. Zislis** indicated that there would be a greater emphasis on food service; however, the plan shows three or four levels of bars and cocktail lounges. He indicated that the plan is for increased music, dancing and special events. He said that a review of the plans would indicate that the priority is not for higher end food service but rather for a party establishment that would include more special events. He stated that the intent appears to be to create a higher end party environment.

Mr. Quilliam stated that the main concern is the well being of the residents in the adjacent neighborhood who will be impacted by the project for many years into the future. He commented that they are asking the Commission to consider minimizing any noise and quality of life impacts. He said that they are requesting that the days and hours for music and dancing be restricted and that any open areas be restricted. He commented that they could hear the music from the previous operation at the site clearly from their living room and bedroom with their windows closed. He stated that their letter they have provided to the Commission has outlined 15 items that they wish to have included in the Use Permit. He pointed out that Strata is a new business which must earn the trust of the adjacent neighbors. He indicated that they want to find solutions that will allow the business to be successful and allow all of the neighbors and the applicant to live in the community together.

In response to a question from Commissioner Lesser, **Mr. Quilliam** said that the retractable roof was always closed before any entertainment started. He indicated that his preference would be for any open area to be away from the residents if he had to choose between having the retractable roof and balcony area.

Allen Selner, a resident of the 1000 block of The Strand, commented that his home is adjacent to the subject property, and he has never had an issue regarding noise from the operation of the previous establishment on the site. He said, however, that the establishment can attract a certain type of people that stay in the area late at night. He indicated that the patrons of the previous establishment did not necessarily leave the area after the restaurant was closed. He indicated that people standing on the street would make noise until 3:00 a.m. He indicated that with children living in the area, he was concerned about the character of the people that would loiter in front of the restaurant. He indicated that the type of patrons that visit the restaurant and how they are directed after the restaurant closes are issues that need to be mitigated. He indicated that no noise from the dance floor of the establishment would reach the neighbors with soundproof glass; however, there can be a great deal of noise impacts to the neighbors from patrons loitering on the street. He pointed out that outdoor dining is a great asset which makes the City unique, and it would work very well with soundproofing.

In response to a question from Commissioner Paralusz, **Mr. Selner** said that the previous operators made efforts to attract a younger college crowd who would spend money drinking. He commented that there were buses with young people that came to the establishment. He commented that he understands, however, that the new restaurant would not attract the same young crowd. He said that there was no security provided on the outside of the previous establishment. He said that he understands with the money being put into the establishment that they would not want the behavior of the patrons to become an issue. He said that the previous operation represented the prior character of the downtown area as a bar type of atmosphere.

Bill Victor said that the echoes of noise can spread through a neighborhood, and there is no method of determining the type of patrons that would visit the restaurant. He commented that the operators of The Shade have not responded to all of the noise complaints. He indicated that the subject establishment would not be good for the community. He said that the facility should not have open windows and doors facing the residential area.

Steve Wible, a resident of the 1200 block of Ardmore Avenue, said that the neighbors adjacent to The Shade have spent five years dealing with the lack of enforcement regarding the noise impacts from the establishment. He said that the conditions of the Noise Ordinance are still not enforced regarding The Shade. He said that the City allowed some of the noise abatement materials to be eliminated from The Shade which has contributed to the noise problem in the adjacent neighborhood. He indicated that he assumes that the neighbors adjacent to the subject establishment would have similar problems. He indicated that there is no enforcement by the City of the conditions of the Noise Ordinance. He commented that there needs to be enforcement of the Noise Ordinance. He indicated that the neighboring residents of The Shade have spent their own money attempting to solve the noise issues.

Annette Davis, a resident of the North End, said that extending the rights of business operators creates greater impacts to the adjacent neighbors. She commented that once restrictions are eased, the residents must go through the process of making sure they are enforced. She said that it is very predictable that there will be complaints from the neighbors regarding noise if the balconies are permitted. She pointed out that it is difficult to make the conditions of a Use Permit more restrictive after they have been approved. She commented that dancing creates a lively atmosphere, and people who have been dancing create a great deal of noise when they leave an establishment. She commented that sound from the balconies would travel and project out into the neighborhood and disturb the residents. She indicated that she agrees that the STC 50 noise standard should be required.

Wayne Partridge said that the downtown area previously became a nightclub and bar venue until the City Council changed the restrictions. He commented that the subject establishment is not primarily a restaurant use as has been suggested by the applicant. He indicated that the proposal includes a large amount of bar area and includes too many opportunities for tables to be moved away from the dining area. He said that he is opposed to allowing open windows. He said that even noise experts are not able to determine all noise impacts until a structure is built, and there is a high probability that sound would emanate out from the windows at the upper levels and create a major problem in the neighborhood. He stated that a condition should be included that the windows must be closed by a certain hour if they are allowed. He said that the conditions need to be very clear and well defined in order to allow for enforcement. He indicated that the existing Conditional Use Permit requires that the restaurant be closed at 1:00 a.m., and there is no basis for the interpretation of **Mr. Zislis** that the operation is permitted to close at 2:00 a.m. He commented that having a larger number of bar stools increases the parking demand. He suggested placing the issues regarding operation that may require modification as part of the Entertainment Permit which can be changed and revoked rather than

becoming an entitlement in the Use Permit. He said that it should also be made clear that the Entertainment Permit is revocable and can be changed by the City if there are problems with the operation.

George Kaufman, a resident of the downtown area, said that he echoes the comments of **Mr. Partridge**. He indicated that he does not agree with the position of **Mr. Zislis** that that the closing time automatically becomes an hour later because dancing is allowed until 1:00 a.m. He pointed out that restrictions need to be placed on the restaurant now, as they are difficult to add after the operation has been approved. He said that a requirement should be included that the windows need to be closed after a certain hour if they are permitted, as it would be difficult to monitor a condition only that they be closed at times when entertainment is occurring. He also commented that there is a good chance that the entertainment would occur during times with warm weather when it would be desirable to have the windows open.

Candee Wilson Gerson, a resident of the 100 block of 12th Street, said that she moved to the downtown area knowing that there were restaurants and establishments that have music in the area. She commented that **Mr. Zislis** has been a good neighbor. She indicated that she is looking forward to a nice and updated establishment at the subject site. She said that it is expected to have some noise in the downtown area.

Kathy Smith, a resident of the 100 block of 10th Street, commented that there is a good chance that the noise from the establishment with open areas facing onto Manhattan Beach Boulevard would impact the nearby residents. She indicated that there have been noise problems to the residents that have resulted from the operation of Muchos, which has open areas along Manhattan Avenue. She said that noise is difficult to control. She commented that the previous issue of people leaving bars late at night and creating a disturbance to the nearby residents has been under control. She said that placing tight restrictions is the best method to ensure that there are not impacts from the subject establishment.

Jackie May, a resident of 10th Street, indicated that she lives close to Simzzy's and Shark's Cove which include open areas. She indicated that she can hear the noise from Shark's Cove from her home and believes she also hears noise from Simzzy's. She commented that there are unsavory people around in the neighborhood and not only at the subject site. She commented that she has a question as to the number of employees of the subject establishment and where they would park. She indicated that parking for the subject establishment needs to be considered, as it could become very busy. She pointed out that the establishment as proposed would have three open walls on the south side with a balcony. She said that Petros has dining on the sidewalk which is separated from the main public walkway and is a different situation than the subject project.

Don McPherson, a resident of the 1000 block of 1st Street, said that the STC 50 soundproofing standard should be required for the project, which would help to mitigate noise when the windows and doors are closed. He commented that the standard is required by many cities for hotels, restaurants, and nightclubs, and he would suggest that the standard should be included in the Building Code for Manhattan Beach. He suggested that the standard should be required and that occupancy of the site not be allowed until it is certified that it has been met. He said that the applicant must prove that the noise outside of the establishment does not exceed 60 decibels after 10:00 p.m. as required by the Municipal Code. He commented that the direction of the Commission regarding the environmental report for the project is very important because the report must be approved by the Coastal Commission. He suggested that the Commission deny extended hours on Friday and Saturday nights; dancing on Thursdays, Sundays, and the nights before holidays; increased special events; and the two upper level balconies.

Mr. McPherson pointed out that finding 4 of the original Use Permit allowed for increased entertainment with the condition that the operating hours be limited to 1:00 a.m. He indicated that the applicant should not provide music and dancing if he wishes to operate until 2:00 a.m. He said that the Planning Commission in 2009 denied waivers to Use Permits to allow extended operating hours for restaurants on the nights before holidays except for New Year's Eve. He indicated that **Mr. Zislis** has changed special events to be undefined. He commented that there is no reason to have special events at the subject establishment, as weddings and parties would be permitted as long as they remain within the parameters of the Use Permit and Entertainment Permit. He indicated that the proposed balconies that would project over the sidewalk would not possibly comply with the Noise Ordinance and would be denied by the Coastal Commission. He suggested that the Commission deny the balconies.

Lisa Polumbo, a resident of the 1100 block of The Strand, asked that conditions be imposed to mitigate concerns with noise and expanded hours. She said that she has a concern that there would be little ability to make changes once the use is approved if the neighbors have problems. She commented that **Mr. Zislis** previously indicated to the adjacent residents that he was definitely planning to remove the retractable ceiling; however, he stated at this hearing that he would keep the retractable ceiling if the balconies are not approved. She said that **Mr. Zislis** also agreed not to serve breakfast at 8:00 a.m. during the week. She said that she is concerned that deliveries would be made during early hours in the morning. She commented that they could hear the noise of the staff cleaning up after closing with the previous establishment. She indicated that extended hours could create an impact to the adjacent residents. She commented that there are many children who live in the neighborhood. She suggested that the conditions be placed in the entertainment permit so that they can be altered if there are problems.

Elena Marshall, a resident of the 1100 block of The Strand, said that the establishment would be open on weeknights as well as weekends, and she is concerned about noise which would make it difficult to get enough sleep.

Veronica Marshall, a resident of the 1100 block of The Strand, said that it is hard to do homework and to get enough sleep with hearing the music playing at the establishment.

Brooks Marshall, a resident of the 1100 block of The Strand, said that their primary concern is regarding the noise impacts that would result from the establishment. He said that their children's bedrooms face south directly toward the subject property. He indicated that they have met with **Mr. Zislis**, and he appears genuinely concerned with the noise impacts to the neighbors. He said that he does believe that **Mr. Zislis** is doing what he can to accommodate the neighbors. He commented that including double pane glass windows on the establishment will help to mitigate noise; however, he would like for there to be some recourse if there still is an issue regarding noise. He also suggested including approval of the balconies as part of the Entertainment Permit so that they can be changed if there is a problem. He stated that he would not want extended hours until 2:00 a.m. on weekends or dancing on Thursday and Sunday evenings to be approved; however, his main concern is generally regarding noise. He said that he would be supportive of the project if the soundproofing does mitigate the noise impacts.

Viet Ngo said that **Mike Zislis** has formed the Zislis Group with between 50 and 60 members, and the Commissioners must disclose any association or financial ties with his group. He said that **Mr. Zislis** has been taking money from the community with the help of the Commission by their decisions regarding The Shade. He commented that he has a letter from the City Attorney that confirms that **Mr. Zislis** has no agreement with the City; however, **Mr. Zislis** has falsely testified that he has paid the City \$300,000.00 per year. He said that the Commission has accommodated **Mr. Zislis** and helped him to take public money, and the Commissioners will

not be entitled to immunity for any action that is brought against them. He said that the Commissioners must disclose whether they have an interest in **Mr. Zislis'** projects.

Mr. Ngo said that the property has already changed ownership, and **Mr. Zislis** has violated the Code by already beginning construction on the site without a permit. He pointed out that the City stopped construction for the project at 3404 The Strand that was not permitted but has not stopped construction on the subject site that has not been permitted. He said that the current proposal should be denied because there is clear evidence that **Mr. Zislis** has violated the Code. He said that the Commissioners are part of the criminal conspiracy and have not stood up for the community out of greed. He said that the Commission should order staff to stop construction on the site and refer the issue to the City Attorney for prosecution.

Mr. Zislis said that **Mr. Ngo's** comments were a threat to the Commission and slanderous to him. He pointed out that he has obtained building, demolition, structural and shoring permits for the subject site and has not proceeded with construction illegally. He pointed out that a typical wall has an STC rating of 42, and double pane glass has an STC rating of between 45 and 54. He indicated that all of the glass used for the project will be double pane glass. He stated that they would be willing to have dancing on Thursday on Sunday nights be approved as part of the Entertainment Permit which could be reviewed and taken away if it is found to create a problem for the neighbors. He commented that they would be willing to have a restriction on times for deliveries by vendors to the site. He suggested that deliveries not be permitted prior to 9:00 a.m. in the alley. He said that he wants the establishment to be open to the outdoors and would want to keep the ability to open the retractable roof if the balconies are not permitted. He said that he purchased the property with the rights that were previously approved as part of the existing Use Permit. He commented that he has proposed modifications to the conditions to help the neighbors. He stated that he would like for the project to move forward as quickly as possible. He suggested that the proposal to have open doors along Manhattan Beach Boulevard could also be placed in the Entertainment Permit and could be taken away if there is too much noise.

Chairman Fasola closed the public hearing.

In response to a question from Commissioner Paralusz, Director Thompson indicated that the Entertainment Permit would be reviewed before a year if noise issues become a problem, and staff would respond immediately to any complaints that are received. He said that language could also be added for review in 90 days.

In response to a question from Commissioner Lesser, Director Thompson pointed out that the current Use Permit is fairly well structured, and many of the items such as hours of operation are best included as part of the Use Permit rather than the Entertainment Permit. He commented that the Commission can adjust the operating hours as they feel appropriate. He said that he is not sure that there should be a great deal of flexibility with the hours of operation or with the hours during which liquor can be sold. He indicated that the Entertainment Permit could include the hours which live entertainment may occur.

The Commissioners agreed that they would support keeping the existing permitted hours of operation and would not support extending until 2:00 a.m. on weekends.

Commissioner Lesser commented that he would support retaining dancing on Friday and Saturday evenings only initially, and to use the Entertainment Permit allow greater flexibility. He said that he would like for dancing to initially be permitted on Friday and Saturday nights in order to determine the response of the neighbors and then possibly to allow for dancing on Thursday and Sunday nights later if it is not determined to be a concern.

Commissioner Paralusz said that she is in agreement with the suggestion of Commissioner Lesser to allow dancing on Friday and Saturday nights, and use the Entertainment Permit to allow flexibility.

Commissioner Seville-Jones said that she is concerned with conditions that are approved as part of the Entertainment Permit possibly being eased too easily and that there would not be a standard by which the rights may then be scaled back. She indicated that she would be concerned that the neighbors may not have a remedy if they have issues after conditions are eased as part of the Entertainment Permit.

In response to a question from Commissioner Lesser, Director Thompson said that neighbors would receive notice for changes that are proposed to the Use Permit. He commented that noticing is not required for approval of changes to the Entertainment Permit. He said that staff would make a decision on changes to the Entertainment Permit based on any complaints that have been received by the Police or Code Enforcement.

Commissioner Seville-Jones commented that as has been demonstrated by The Shade, it does not appear that complaints that have been received by Code Enforcement are a sufficient measure as to whether an operation is impacting the neighbors. She said that she would like for the hours permitted for dancing to be included as part of the Use Permit.

The Commission agreed to allow breakfast service at 8:00 a.m. every day and that deliveries should be restricted from occurring during earlier hours.

The Commissioners supported expanding the number of special events from 6 to 12.

Commissioner Lesser said that he would support allowing an increase in the number of special events with the presumption that the noise mitigation measures would be effective in reducing any impacts to the neighbors.

Chairman Lesser pointed out that the subject establishment would have people in the dining area whether or not there is a special event.

Director Thompson said that staff is not concerned with allowing more special events, and he feels the main concern is that noise issues in general are mitigated from the building.

Commissioner Lesser indicated that he is sensitive to the applicant wishing to move the project forward. He indicated, however, that he would like more information regarding the policies of other cities in terms of having private space encroach higher than the first floor over the public sidewalk area. He indicated that he understands that the architect is attempting to create an articulated and visually attractive exterior and to provide an area for dining that is open to the outdoors. He said that he would like for the applicant to have outdoor dining, but he would like more information regarding encroaching into the public space.

Commissioner Paralusz stated that she also is concerned about allowing people to eat and drink on the balcony above the sidewalk. She commented that she would not want the balcony to become an attraction for people to shout to pedestrians on the sidewalk which could result in noise spilling into the neighborhood. She said that she has concerns with a private operation encroaching into public space. She commented that the proposed balcony is different than having a canopy over the sidewalk. She said that the balcony would be a permanent structure with people talking and drinking.

Commissioner Seville-Jones said that she has the same concern as Commissioner Paralusz regarding people on the balcony yelling down to pedestrians on the sidewalk. She indicated that she is concerned that the balcony would obstruct the view down Manhattan Beach Boulevard toward the pier. She commented that she is also concerned that allowing the balcony for the subject use would result in other businesses in the area requesting similar balconies. She commented that she is concerned that allowing the balconies is heading in the wrong direction for the downtown area, and there are other opportunities in the building to provide ocean views.

Chairman Fasola said that he does not believe that the proposal for the balcony would comply with the Building Code even if it were supported by the Commission. He indicated that allowing the balcony over the sidewalk would set a precedent for other businesses. He commented that he is sure that the projection on the neighboring structure was originally built as a canopy rather than as a balcony. He indicated that the upper balcony would be located next to the bar area. He said that he would predict that people would take their drinks and congregate on the balcony. He indicated that drinks could fall over the edge of the balcony onto the sidewalk which could create a liability concern. He said that he does not support the proposal for the balconies.

In response to a question from Commissioner Lesser, Chairman Fasola said that his main concern is regarding the encroachment of patrons into the public right-of-way. He commented that allowing the balcony for the subject proposal would set a precedent for other businesses.

Commissioner Seville-Jones said that it would be sad for the building to be so close to the ocean without having windows that are able to open for fresh air. She indicated, however, that there needs to be a balance between having the entire wall being open toward Manhattan Beach Boulevard and having the entire structure enclosed with no windows. She suggested possibly having the openings become smaller, having openings only on certain floors, or allowing open windows only during certain hours. She said that she would still have a concern with specifying a time that the windows would need to be shut because there could be a lot of noise generated from the establishment during daytime hours.

Commissioner Paralusz stated that she would be in favor of limiting the hours that the windows could be open. She said that it would be a shame not to have retractable windows to provide open air, but it does need to be balanced with the needs of the adjacent neighbors.

Commissioner Lesser commented that the applicant had indicated that the STC rating of the glass is higher than that of typical walls.

Chairman Fasola pointed out that the applicant stated that the STC rating of the glass varies from 45 to 54, which are quite different ratings.

Commissioner Lesser said that he shares the concerns of Commissioner Seville-Jones regarding noise impacts during daytime hours. He said that he would not want to be unfair toward the applicant in denying windows, as Shark's Cove is near the subject site and has windows that open to the outside. He indicated that he would like further information on the estimated sound that would emanate from the windows before he makes a judgment.

Commissioner Seville-Jones pointed out that the sound is audible when standing in front of Simzzy's, and the subject site would be much larger.

Chairman Fasola commented that the sound from Simzzy's may travel further because of the angle of the roof which acts like a megaphone. He said that the noise should not be as audible

from the subject establishment with flat ceilings. He indicated that he would support allowing the applicant to open the door on level three where there is a small balcony with two tables. He said that he could envision that patrons would congregate on the patio on level 4. He indicated that he has a concern with the patio being located next to the bar area on the fourth level without tables in front of the doors to block access. He commented that he does not have as much of a concern with the patio doors on the third level where there are tables in front of it. He said that he would support the applicant having the ability to open some doors with the provision that they be closed if there is a problem with noise. He said that he does not have as much of a concern with noise on the first and second levels and feels the main concern is on the fourth level and possibly the third level. He suggested possibly requiring that the doors be closed at a certain time and limiting access to the patio.

Commissioner Seville-Jones said that she would like for the building to have fewer windows that open on the south side toward Manhattan Beach Boulevard.

Chairman Fasola commented that reducing the size of the windows results in less of a feeling of being outside, and the establishment is an opportunity to provide an outdoor atmosphere. He indicated that it would be an advantage to have the windows on Manhattan Beach Boulevard rather than to the west because it would prevent a great deal of the wind that comes off of the ocean from blowing in from the windows.

Commissioner Seville-Jones said that she is convinced that there would be noise from the restaurant that would impact the neighbors if there are open windows. She indicated that she would like for there to be fewer windows. She commented that she would think that noise would be generated into the neighborhood with the patio doors on the first floor being open.

Commissioner Lesser said that he would like for an acoustic study to be done for the site.

Director Thompson said that staff has heard the concerns of the Commission and will come back with further recommendations. He said that staff will provide more information on the doors and windows.

In response to a comment from Chairman Fasola, Associate Planner Haaland pointed out that there is no proposal for expansion of total dining area.

The Commissioners agreed that they do not have a concern with the location of the dance floor as proposed.

Chairman Fasola said that he has a concern with the rooftop terrace where a satellite dish was previously located. He said that he would like for the area to become part of the roof with no doorway access rather than to have a parapet placed around it. He commented that he would not like for it to become an employee break area, as it is located directly adjacent to residents.

Director Thompson commented that the proposal is to only allow access to the rooftop terrace for maintenance. He indicated that any access to the roof would be a hatch rather than a door, and the area would only include mechanical equipment.

Chairman Fasola suggested that the restaurant begin operating with the conditions that were part of the existing Use Permit, and the applicant can then request changes once the establishment has been in operation for a period of time. He commented that he would rather act conservatively and not allow more entitlements than are currently permitted under the existing Use Permit.

Mr. Zislis said that he would like for the Commission to vote on the project as described in the staff report so that it can move forward to the City Council. He commented that he has attempted to design the project to help mitigate any impacts to the neighbors. He indicated that he has rights as part of the existing Conditional Use Permit. He stated that he has worked hard with the neighbors and would prefer to not have additional conditions imposed. He said that he suggested allowing dancing on Thursday and Sunday nights as part of the Entertainment Permit; however, his understanding is that the Commissioners have suggested that it be permitted on Friday and Saturday nights only with a possibility of allowing Thursday and Sunday nights later.

Chairman Fasola said that the direction of the Commission is that the establishment operate under the conditions of the existing Use Permit and that further entitlements be considered after the business has been in operation for a period of time. He indicated that the Commission is not suggesting that any rights under the existing permit be taken away.

Mr. Zislis commented that he is on a tight time line. He indicated that he has already begun development of the property and has already spent a great deal of money on the project. He said that he does not want to lose any of the rights he currently has with the property, and he hopes that the Resolution that is approved will allow him to keep the rights he has with the existing permit and meet the concerns of the neighbors. He said that he is willing to have a review in 90 days.

In response to a comment from **Mr. Zislis**, Chairman Fasola said that he feels that the intent of operating hours until 1:00 a.m. means that the building is shut down at that time, and the time line for ending dancing and alcohol service before that hour is up to the applicant.

Mr. Zislis said that closing at 1:00 a.m. means that service ends at that time, and the Police Department can only enforce that service stop at that time.

In response to a comment from Commissioner Lesser, **Mr. Zislis** said that he would like to have Council consider the request for the balconies rather than to remove them from the plans at this point. He commented that the Council had previously indicated that balconies would be a good addition to the downtown.

Commissioner Lesser said that he did not see any information regarding the opinion of the Council regarding the balconies in the staff report. He indicated that he feels he does not have sufficient information on which to base his decision.

In response to a question from Commissioner Lesser, **Mr. Zislis** said that he will wait for the matter to be continued on February 23 before the Commission provided that the Commissioners are willing to protect his existing rights.

Commissioner Seville-Jones said that she is basically supportive of the improvements to the property. She commented, however, that it is her understanding that only three residents were present when the document specifying the mitigation measures was written. She indicated that she would like for the item to come back before the Commission with the specific language as to how the concerns of the neighbors will be addressed.

Commissioner Lesser indicated that he would like further information regarding the effectiveness of the glass and other parts of the design in soundproofing.

Chairman Fasola reopened the public hearing.

A motion was MADE and SECONDED (Lesser/Paralusz) to **CONTINUE** the public hearing for the Use Permit Amendment to remodel an existing restaurant including the addition of outdoor dining with balconies adjacent to Manhattan Beach Boulevard, and expansion of operating and entertainment hours, on the property located at 117 Manhattan Beach Boulevard to the meeting of February 23, 2011.

AYES: Lesser, Paralusz, Seville-Jones, Chairman Fasola
NOES: None
ABSENT: Andreani
ABSTAIN: None

5. AUDIENCE PARTICIPATION

6. DIRECTORS ITEMS

7. PLANNING COMMISSION ITEMS

In response to a question from Chairman Fasola, Director Thompson said that the City Manager wanted to fully understand the new library proposal before it was scheduled before the City Council.

Commissioner Paralusz said that the litigation against Chevron has been resolved, and the construction at the Chevron station on Aviation Boulevard has been restarted.

In response to a question from Commissioner Lesser, Director Thompson indicated that the City Council approved the request of the Belamar Hotel to charge overnight guests for overnight parking. He indicated that the City Council has requested that the decision be reviewed in six months.

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**CITY OF MANHATTAN BEACH
PLANNING COMMISSION
MINUTES OF REGULAR MEETING
FEBRUARY 23, 2011**

A Regular Meeting of the Planning Commission of the City of Manhattan Beach, California, was held on the 23rd day of February, 2011, at the hour of 6:30 p.m., in the City Council Chambers of City Hall, at 1400 Highland Avenue, in said City.

1. ROLL CALL

Present: Andreani, Fasola, Lesser, Seville-Jones, Chairman Paralusz
Absent: None
Staff Present: Laurie Jester, Planning Manager
Eric Haaland, Associate Planner
Robert Wadden, City Attorney
Recording Secretary, Sarah Boeschen

2. APPROVAL OF MINUTES – February 9, 2011

Chairman Paralusz requested that the fourth paragraph under “Planning Commission Items” on page 7 of the February 9 minutes be corrected to read: “Commissioner Paralusz said the Older Adults Program is also sponsoring a forum on Thursday, February 24, 2011, at the ~~Joselyn~~ Joslyn Center.”

A motion was MADE and SECONDED (Seville-Jones/Andreani) to **APPROVE** the minutes of February 9, 2011, as amended.

AYES: Andreani, Fasola, Lesser, Seville-Jones, Chairman Paralusz
NOES: None
ABSENT: None
ABSTAIN: None

3. AUDIENCE PARTICIPATION

Viet Ngo, requested that Chairperson Paralusz and Commissioner Fasola recuse themselves from discussion of the hearing regarding Strata in order to maintain the integrity of the hearing process. He indicated that Chairperson Paralusz failed to disclose a financial interest with **Michael Zislis**. He pointed out that Chairperson Paralusz is not only the chairperson of the Commission but also a candidate for City Council. He requested that Chairperson Paralusz recuse herself to maintain the integrity of the election.

Chairperson Paralusz said that **Mr. Zislis** contributed \$100.00 to her campaign for City Council in 2009. She said that the contribution will not have an impact on her vote, and she will be impartial. She pointed out that the contribution has been in the public record at the clerk’s office since 2009. She said that she feels she can consider the item fairly and will consider the issue.

4. PUBLIC HEARINGS

02/08/11-3 Consideration of a Continued Use Permit Amendment to Remodel an Existing Restaurant Including the Addition of Outdoor Dining with Balconies Adjacent to Manhattan Beach Boulevard, and Expansion of

**Operating and Entertainment Hours, on the Property Located at 117
Manhattan Beach Boulevard.**

Commissioner Andreani said that she is recusing herself from consideration of the issue because she lives within the 500 foot noticing radius of the project. She pointed out that she is not recusing herself because of any financial interest in the project.

Planning Manager Jester said that handouts and emails that were received after the staff report was distributed have been provided to the Commissioners. She commented that the Commissioners were also emailed draft findings that staff is suggesting be added to the draft Resolution.

Associate Planner Haaland summarized the staff report.

In response to a question from Commissioner Fasola, Associate Planner Haaland said that three of the four front walls would be retractable per the revised plan.

In response to a question from Commissioner Fasola, Associate Planner Haaland said that staff is recommending that dancing continue to be permitted on Fridays and Saturdays, with allowance for a maximum additional 52 days of dancing per year in lieu of the existing 104 Thursday/Sunday non-dancing entertainment days, plus 6 to 12 special event days per year.

In response to a question from Commissioner Fasola, Associate Planner Haaland said that the retractable roof is proposed to be eliminated, and replaced with a solid roof.

In response to a question from Commissioner Fasola, Associate Planner Haaland indicated that the Police Department feels comfortable making a determination regarding whether substantial noise is emanating from the operation beyond a certain distance.

Commissioner Fasola commented that the Police Department making a determination regarding noise is a practical method of addressing the issue, although he is not certain that it can effectively be enforced.

Associate Planner Haaland indicated that the applicant is willing to comply with the language in Condition 10 that noise from the establishment shall not be audible beyond a distance of 75 feet from the subject site as determined by the Police Department.

In response to a question from Commissioner Lesser, Associate Planner Haaland said that staff's interpretation of the definition of closed is the doors are locked and that all customers are out of the establishment.

In response to a question from Commissioner Lesser, Planning Manager Jester said that the acoustic study, provided by the applicant, appears to be complete. She said that staff did have a question regarding noise resulting from the roof area that was previously possibly used by employees at the prior establishment.

In response to a question from Commissioner Lesser, Associate Planner Haaland stated that there could be a use permit condition included that all of the windows/walls of the establishment must be closed after a certain hour. He indicated that staff anticipated that the times that the windows must be closed would be specified in the Entertainment Permit.

In response to a question from Commissioner Seville-Jones, Associate Planner Haaland said that it would be more consistent with the current City practice in recent years for the

establishment to have earlier closing hours during the week. He said, however, that staff understood the Planning Commission's position to be that the closing hours would remain 1:00 a.m. daily.

Planning Manager Jester pointed out that the Commission should carefully consider any proposed elimination of hours of operation from the existing Use Permit, as this is an Amendment not a new Use Permit. She commented that weekday operating hours until 1:00 a.m. have not typically been allowed for new Use Permits in the last 15 years.

Commissioner Lesser pointed out that an entitlement for operating hours until 2:00 a.m. has been maintained by Shark's Cove through the years.

Commissioner Seville-Jones indicated that the owners of Shark's Cove chose to retain the existing Use Permit which allows hours until 2:00 a.m. and remodel rather than to proceed with a proposal to amend the permit which would have meant a reduction in operating hours.

In response to a question from Chairperson Paralusz, Associate Planner Haaland indicated that entertainment without dancing currently is allowed under the Use Permit on Thursdays and Sundays.

In response to a question from the Commission, City Attorney Robert Wadden said that staff is relying on the exemption in CEQA Guideline Section 15301, and it does appear that the proposal meets the exemption. He stated, however, that CEQA provides that any project must be reviewed if it is determined that it would have an impact on the environment even if it fits an exemption. He indicated that the Commissioners have the option of asking staff for a study that if there are facts that would lead them to believe that changes resulting from the project would increase the impacts beyond the previous allowed use on the site.

In response to a question from Commissioner Lesser, City Attorney Wadden indicated that the Commission should consider if there would be any new and substantial impacts to the environment resulting from the project that would be over and above the previous operation approval.

In response to a question from Commissioner Seville-Jones, City Attorney Wadden said that the Commissioners may consider mitigation measures that are included as part of the project description in making a determination as to whether the project is eligible for the exemption.

Chairperson Paralusz opened the public hearing, and asked to hear first from the applicant.

Tom Corbishley, Behrens and Associates, noise consultant for the applicant, summarized the noise study that was conducted for the site. He stated that they needed to make assumptions regarding the amount of noise that was generated previously and the amount of noise that would be generated with the proposal, as the previous use is no longer in operation. He said that they are predicting lower noise levels with the proposed operation than with the previous operation on the site. He commented that their study assumes a noise level of 100 decibels from inside the building, which is standard for the type of use. He stated that they are predicting a reduction of noise of 8 decibels from the exterior of the proposed business on a typical busy night. He said that they are predicting a reduction of 22 decibels from the trash area noise with the new trash enclosure as compared to the prior condition without an enclosure.

In response to a question from Commissioner Seville-Jones, **Mr. Corbishley** said that he is not certain that a requirement that noise from inside the establishment be inaudible beyond a

distance of 75 feet from the structure would be practical. He commented that it would be a difficult standard to achieve, and he is not sure it is reasonable to ask that the noise from the establishment be inaudible from a distance of 75 feet.

In response to a question from Commissioner Seville-Jones, **Mr. Corbishley** said that they did not study the noise that would occur during daytime hours without entertainment occurring and with the windows open. He indicated that they studied the conditions that would occur with the most noise being generated, which is weekend nights with entertainment and dancing, or events.

In response to a question from Commissioner Lesser, **Mr. Corbishley** said that a study was not done on the noise with the south-facing windows open. He said that the additional noise would be significant on the south side with the downstairs windows open. He indicated that a restaurant generates much less noise than a club, and the noise levels would be lower when live entertainment is not occurring.

Michael Zislis, the applicant, pointed out that Simmzy's does not have acoustical noise mitigating measures and has a flat roof which amplifies the noise. He pointed out that the proposed establishment would have 5 feet of ceiling above the upstairs windows. He said that they want to prevent the noise downstairs, where the dancing and entertainment will be, from rising and impacting the patrons on the second level restaurant area. He commented that the City has Code requirements for sound standards, and they can be cited if they exceed the standard of 55 decibels outside of the building. He stated that requiring that sound from inside the establishment be inaudible 75 feet from the building would be difficult to enforce. He said that the glass they are proposing is the highest performance for noise attenuation on the market.

Mr. Zislis pointed out that the subject property is in the heart of the downtown area, and the adjacent residents moved into the area knowing that their properties were located next to a commercial property. He said that the restaurant would be operated under the City's downtown strategic plan and the Zoning Plan. He commented that the current Use Permit allows hours of operation with alcohol service and dancing to end at 1:00 a.m., and currently staff is proposing that "last call" be at 12:40. He indicated that he has lost many entitlements with staff's current recommendations that are allowed with the existing Use Permit. He said that he would like to have the ability to open the windows on the upper levels to provide fresh air. He stated that the balconies would be decorative and would not be usable. He commented that he has addressed the concerns of the neighbors and designed the building with consideration of their comments. He indicated that the neighbors do not have an objection to the operation if they cannot hear the noise from the establishment and if security personnel direct patrons away from the neighbors. He pointed out that he chose Behrens and Associates to do the sound study because they had been hired by the City previously to do the sound study for The Shade. He commented that he asked for sound models when the noise would be at the highest level because that was what he understood to be the main concern. He stated that he accepts the recommendations of staff and the neighbors in order to be a good neighbor to the adjacent residents.

In response to a question from Commissioner Lesser, **Mr. Zislis** said that he feels the requirement in the existing Use Permit that the windows be closed when there is entertainment occurring is appropriate, and staff can add additional requirements later if it is determined to be necessary. He stated that the requirement that sound not be audible 75 feet outside of the establishment was written by a police officer who does not have detailed knowledge of acoustics. He said that he feels the requirement of the Noise Ordinance that the sound not be more than 55 decibels from outside of the establishment should be used in enforcing any noise complaints. He indicated that all of the noise would be oriented toward the commercial area.

In response to a question from Commissioner Fasola, **Mr. Zislis** indicated that his interpretation is that “last call” at 12:40 p.m. does not mean that all patrons are out of the building by 1:00 a.m. He commented that requiring all patrons to exit all at one time would result in more noise in the adjacent area.

Planning Manager Jester said that the Police Department has indicated that the important consideration is that no service is allowed after the specified time for closing. She commented that being closed at 1:00 a.m. means that no additional patrons would be admitted and that service ends, but it is not realistic that all patrons would be out at 1:00 a.m., but shortly thereafter. She said that the Police Department would not want patrons to exit the establishment all at one time and they are the Department that will enforce the requirement. She pointed out that patrons do leave an establishment after food and alcohol service ends.

Commissioner Fasola said that he would like to have a clear understanding of the definition of closed.

Mr. Zislis stated that he would withdraw his application if they are required to have all patrons exit at 1:00 a.m.

Planning Manager Jester pointed out that the City uses the reasonable person standard in the Code for enforcing noise complaints, which is whether the noise is considered loud enough to cause a disturbance to a reasonable person of normal sensitivity. She indicated that the reasonable person standard would be used as determined by the Police Department.

James Quilliam, neighborhood representative and a resident of the 100 block of 12th Street asked that the Commission consider the input that has been provided by the neighbors regarding changes to the draft Resolution. He stated that they also have provided a document that states the rationale for their input. He said that they are proposing closing hours of midnight from Sunday through Thursday, which is consistent with the City’s current policy for the downtown since 1994. He commented that 8 of the 33 downtown premises with alcohol have closing hours later than midnight on weekdays. He indicated that all of the 8 establishments that remain open past midnight have operated prior to 1994 and have not received an amended permit since that time. He said that they are requesting that the Use Permit require that the doors and retractable windows be closed by 8:00 p.m. with an option in the Entertainment Permit for them to remain open longer. He said that they are concerned with the request to increase the number of extra days that dancing is allowed to 52 per year. He indicated that they are requesting to allow 12 extra days of dancing and entertainment on Thursdays or Sundays. He said that they are suggesting that dancing and entertainment be allowed on Fridays and Saturdays.

In response to a question from Commissioner Lesser, **Mr. Quilliam** said that they will not know the effectiveness of the noise mitigation measures until the business is operating. He indicated that they are also concerned with the business being open until 1:00 a.m. during the week, as there are many young children who live in the area who would be impacted by the noise.

Michelle Murphy, a resident of the 4400 block of The Strand, said that the Commission must consider the future of the City, and Manhattan Beach does not need another night club. She commented that the intent of the applicant is for the proposed establishment to be more successful than the previous use on the site, which would mean more noise. She pointed out that bars typically have patrons outside who are smoking and generate noise. She stated that there is not only an issue with people depositing trash in the trash bin, but there is a larger issue with the noise of the trash trucks collecting trash.

Sandy Wu, a resident of the 100 block of 12th Street, said that he has been a patron and enjoys **Mr. Zislis'** other establishments. He stated that he understands the establishment operating later and having entertainment on Friday and Saturday nights. He indicated, however, that he would like entertainment and dancing at the operation to be limited on Thursdays and Sundays. He commented that he also has a concern with patrons of the establishment walking around the residential area late at night, particularly during the week.

Mike Pennings, a resident of the 100 block of 12th Street, pointed out that there are many families with children that live on the adjacent street. He commented that the residents accept that there are often people walking from the downtown area who make noise on the street late at night and who leave trash. He indicated, however, that the residents would appreciate any help from the Commission in mitigating noise from patrons of the subject establishment. He said that he would hope that the Commission would give careful consideration to the conditions of approval for the project, as it would be hard to change the operation once it is in place.

Phil Reimert, a Manhattan Beach resident, stated that he would want to be certain that the balconies that would protrude over the public right-of-way are designed so that objects cannot fall from them and hit someone on the sidewalk below. He suggested that the handrails be round or designed so that an object would fall inward on the balcony rather than outward toward the sidewalk. He pointed out that the City would be liable if someone walking below the balcony is hurt by a falling object.

James Grande, a resident of the 1100 block of Ocean Drive, said that he appreciates that the soundproofing on the building would be improved from the previous establishment. He commented, however, that they are concerned with the noise and impact of patrons loitering outside of the establishment. He requested that patrons be directed by the security staff toward Manhattan Beach Boulevard rather than toward the residential neighborhood.

John Schmidt, a resident of the 1100 block of The Strand, said that there has been an issue with noise from the previous establishment, although it does appear that the noise from inside the new establishment would be abated provided that the building is constructed to the standards that have been indicated. He stated, however, that there has been a larger problem with people loitering and causing damage in the area after closing. He indicated that they would hope that the applicant would meet his commitment to have security staff direct people away from the residential area after closing. He requested that the occupancy not exceed the maximum permitted by the Fire Department.

Joe Behar, a resident of the 100 block of 12th Street, said that patrons exiting the previous establishment created a great deal of noise along 12th Street. He said that it has been much quieter since Beaches closed. He stated that he understands that there is an expectation of ambient noise from the downtown area, but it is not expected to have a significant impact of noise from one particular establishment. He commented that the establishment is a benefit to the City and creates jobs, but it must be operated in a manner that addresses the concerns of the adjacent residents.

Carolyn Behar, a resident of the 100 block of 12th Street, said that the proposed establishment would be a very large entity for the neighborhood. She commented that she would be concerned regarding noise when the windows are open with dancing inside of the establishment. She said that the walls of the building must be enclosed to contain the noise. She indicated that the noise standards must be enforced. She said that additional patrons at the subject establishment would mean additional deliveries from trucks. She commented that the hours permitted for deliveries would need to be enforced. She said that she would also be

concerned that the patrons are controlled. She stated that she wants the project to be successful but is concerned that the project may be too large for the City to manage.

Don McPherson, a resident of 1014 1st Street, stated that he has provided the staff with data regarding the noise at Simmzy's. He said that the Code limit after 9:00 p.m. is 60 decibels, and Simmzy's remains at a level of about 75 decibels. He said that the subject establishment would be in violation of the Noise Ordinance when their retractable doors are open. He commented that there is no language in the draft Resolution regarding requirements for sound abatement other than that the project must comply with the Noise Ordinance. He commented that there needs to be language in the draft Resolution to verify that the sound control is effective. He pointed out that The Shade has a very specific closing requirement that all patrons who are not hotel guests be off of the premises. He said that it should be approved that all patrons be vacated from the premises by the closing hour and that all of the drinks are collected. He commented that a condition should be included as suggested that the tables and chairs be maintained as shown on the approved plans. He commented that he would not want for the establishment to basically become a night club between 11:00 p.m. and 1:00 a.m.

Mr. McPherson commented that he would hope that the Commission would review the suggested changes of the adjacent residents to the draft Resolution. He stated that Talia's agreed to a reduction of operating hours until midnight in exchange for being permitted to have a full liquor license. He indicated that no operation in the City has had a new or amended Use Permit since 1994 that allows operating hours after midnight on weeknights. He commented that the sound absorbing ceilings would help with noise mitigation; however, there is not enough detail and no language in the Use Permit to confirm that certain materials will be required. He indicated that there is no reason for the balconies to encroach into the public right-of-way. He recommended following staff's suggestion at the previous hearing that the doors and windows of the establishment be required to be closed at 8:00 p.m. in the Use Permit and that any additional time they may be open be addressed in the Entertainment Permit.

Felix Tinkov, Lounsbery, Ferguson, Altona & Peak, representing **Mr. McPherson**, commented that he submitted a letter to the City regarding the CEQA requirements. He indicated that staff has determined that a Coastal Development Permit is not required for the subject proposal because there is no enlargement of the building floor area or height. He stated that Section A.96.040 of the Local Coastal Program states that a Coastal Permit is required for any development which changes the availability of public parking. He commented that the previous use busseled in many of its patrons. He said that it is assumed that the patrons would drive to the new establishment, which would increase the demand for parking. He said that extending the hours would also increase the demand for parking. He commented that doubling the number of special events as suggested by staff would intensify the use. He said that events such as weddings are an intensification of use. He indicated that Local Coastal Program Section A.96.120 states that the City must review projects in the Coastal Zone for compliance with all applicable land use plans. He said that the determination was made that a review would not be done under the Coastal Act which he feels is improper.

Wayne Partridge, a resident of the 3500 block of The Strand, said that he does not understand staff's determination that a Coastal Development Permit is not required for the project. He said that the project would result in an increase in intensity from the previous use with extended hours, increased entertainment, and open windows on the south side of the building. He said that he supports the development of the restaurant but does not feel that the proper policy for approval is being followed. He commented that the Entertainment Permit should be shown to the Commission so that they know what would be included as part of the permit before it is approved. He indicated that the Commission is also not seeing exactly what would be done for the noise attenuation, and there is no language included in the Use Permit regarding

requirements for noise attenuation. He suggested that the Commission require the applicant to specify clearly in writing what measures would be taken for noise mitigation. He indicated that the issue currently is open ended and relies on the promises of the applicant.

Allen Selner, a resident of the 1100 block of The Strand, said that he lives next to the adjacent property and has not had an issue with noise emanating from the previous establishment. He stated that the main concern is regarding patrons remaining in the area after the establishment is closed. He commented that there was an issue regarding the type of patrons that were coming to the previous establishment from out of the area. He commented that the applicant is proposing to add soundproof windows and to add security guards to help police the area after closing. He pointed out that security people for the subject establishment would also help to direct patrons of Shellbacks away from the neighborhood. He indicated that having security guards in the area for an hour after closing would be the most important factor for mitigating noise. He commented that entertainment is part of the character of Manhattan Beach.

Milo Bacic, a Manhattan Beach resident and Shade Hotel partner, said that some residents would complain about an operation at the subject site regardless of the type of business. He stated that the applicant operates good establishments for the City. He commented that The Shade has not had any noise complaints for the past six months. He stated that more noise would be generated from other existing operations in the area than from the proposed establishment. He indicated that the project would add to the City, and the applicant wants to address the neighbors' concerns. He pointed out that the Commission must consider the reasonable concerns that are raised by the neighbors but must also consider the concerns of the applicant.

John Strain, attorney representing the applicant, said that the main question regarding the requirements under CEQA is whether the proposal is an intensification of the existing use. He indicated that the discussion has not been regarding an intensification of the previous use but rather that the residents want a reduction in intensification from the previous use. He pointed out that the operating hours are not proposed to be extended from the previous use except for 8:00 a.m. to 10:00 a.m. during weekdays. He also stated that the proposal is to allow 52 events per year which would be in place of 104 nights that were permitted for entertainment under the existing Use Permit. He indicated that other businesses have not had such a detailed definition of closing as is proposed for the subject establishment. He commented that most of the establishments in Metlox and along Manhattan Beach Boulevard utilize the provisions in the Municipal Code to promote outdoor dining. He indicated that the subject location is an ideal location to utilize outdoor dining, and the discussion has been that the project should be subject to a unique limitation to remain enclosed because it would result in noise that would disturb the public.

Mr. Ngo said that an Environmental Impact Report has not been prepared for the project, and the project is not exempt from the requirement for such a study. He commented that all of the information that has been presented to the Commission is based on the old Use Permit; however, the project would be a new use on the site. He indicated that the noise expert presented a report based on assumptions of the noise that would result from the proposed establishment. He commented that the project is completely new and should be considered separately from the previous use. He indicated that the Commission must follow proper procedure and follow CEQA, the Coastal Act, and the Noise Element in considering the proposal. He said that the establishment has not been yet been created, and any impacts need to be studied.

Chairperson Paralusz closed the public hearing.

Mr. Zislis, project applicant, commented that he previously agreed to closing at midnight during the week if he were able to operate until 2:00 a.m. on Friday and Saturday nights. He stated that they have specified soundproofing measures that would be done as part of the project. He commented that Beaches did not go out of business but rather was sold. He said that they would have a smoking area on the front level off of the egress underneath a cantilevered ceiling. He indicated that they would use glasses and would not have bottled beer. He indicated that their maximum occupancy is calculated using a 240 square foot dance floor. He said that they do show the furniture on the dance floor because dancing only occurs a few nights a week. He pointed out that Beaches actually closed at 2:00 a.m. and required all of their patrons to leave at closing. He stated that dancing does not generate as much noise as live entertainment. He indicated that they are not proposing extended hours from the existing Use Permit.

Mr. Zislis commented that they do not need additional hours for breakfast service at 8:00 a.m. on weekdays except for holidays. He stated that they do have security staff to direct patrons away from the residential area after closing. He said that there is no indication that the proposed establishment would violate the City's Sound Ordinance. He commented that he thinks the proposed draft Resolution is a balance in allowing his ability to operate the business and addressing the concerns of the neighbors. He pointed out that Beaches was a wedding venue and had many special events. He commented that the proposal would also result in a reduction in entertainment. He suggested that the Entertainment Permit be prepared and presented to the City Council when they consider the proposal. He said that the sound study was done based on the sound mitigation measures that have been chosen as part of the design.

In response to a question from Commissioner Fasola, **Mr. Zislis** said that a condition could be included that the three tables with only 12 seats on the upper patio be moved onto the balcony over the sidewalk from the inside dining area.

In response to a question from Commissioner Lesser, **Mr. Zislis** commented that they would not need opening hours of 8:00 a.m. during the week for breakfast service excluding holidays. He stated that they do plan to serve brunch on the weekends.

At 9:00 a ten minute recess was taken.

After discussion, the Commission indicated they would address the following items:

1. Right-of Way balconies
2. "Closed" definition
3. Outdoor patio
4. Openable windows/walls
5. City "Policy" for closing hours
6. Entertainment Permit
7. Hours of Operation
8. Noise
9. Trash
10. Security after hours
11. CEQA
12. Residents redline/strikeout Resolution

In response to a question from Commissioner Lesser, Planning Manager Jester indicated that the applicant would have the ability to open the establishment under the existing Use Permit.

In response to a question from Commissioner Lesser, Associate Planner Haaland said that the applicant would be able to operate until 1:00 a.m. every night under the existing Use Permit.

In response to a question from Commissioner Lesser, Planning Manager Jester indicated that the proposed modifications to the Use Permit resulted because the applicant was requesting to remain open for longer hours for breakfast during the week, building a new employee area, and changing the dance floor.

Associate Planner Haaland stated that adding outdoor dining also was part of the reason for the applicant applying for an amendment to the Use Permit.

Commissioner Fasola said that he would not be opposed to allowing an awning or other type of projection over the sidewalk, but would not support allowing a balcony to extend over the public right-of-way.

Commissioner Lesser said that he would be more receptive to allowing projections that would hold plants rather than a balcony that would accommodate patrons. He said that the projections as proposed would provide articulation. He said that he could support the projections provided that they do not support tables and cannot be used for dining.

Commissioner Seville-Jones said that she feels the balconies should not extend over the sidewalk, as they would impact the line of sight down Manhattan Beach Boulevard. She commented that the City Council will ultimately make the decision regarding the balconies.

Chairperson Paralusz said that she also has concerns with allowing dining on a balcony that extends over the right-of-way.

Commissioner Fasola pointed out that projections other than balconies, (ie. eases & awnings), are allowed to extend into the right-of-way.

Commissioner Lesser said that the projections do add articulation to the building rather than having a large box like structure. He said that he is more receptive to allowing the balconies provided that they are less than 18 inches and not functional.

Chairperson Paralusz reopened the public hearing.

Mr. Zislis said that the projections would be architectural details and that glass could be placed in front of them in order to prevent access. He indicated that it does add to the design of the building.

Chairperson Paralusz closed the public hearing.

Planning Manager Jester said that eave projections are permitted within the public right-of-way. She commented that the City Council will make the final determination regarding the projections over the right-of-way.

In response to a question from Commissioner Lesser, Planning Manager Jester indicated that there is not a precedent for allowing such projections, and each case is considered individually.

Commissioner Seville-Jones said that the decisions of the Commission become the standard that is used for other projects.

Commissioners Lesser and Paralusz said that they would support the projections being an eave with glass railings.

Commissioner Seville-Jones commented that she is not sure if the projections would actually be considered eaves.

Commissioner Fasola said that there are many designs that could be done within the Code for the projections.

Commissioners Seville-Jones and Fasola said they could not support the projections over the right-of-way.

Planning Manager Jester commented that she would not consider the projections as proposed to be eaves, and they would need to be considered by the City Council. She said that the glass railing would give it the appearance of balconies, even if not used as balconies. All of the Planning Commission comments will be forwarded to the City Council.

In response to a question from Commissioner Fasola regarding defining closing procedures, Planning Manager Jester indicated that The Shade is a very different situation than the subject use because it includes a bar with a closing time that is located within the lobby area which is open 24 hours a day.

Commissioner Seville-Jones said that The Shade is a unique situation, and the subject project should be considered on its own. She said that she does not feel a restaurant needs such a strict definition for closing. She said that there does not need to be a requirement for when drink glasses must be picked up. She indicated that food and alcohol service would end at 12:40 a.m. as proposed. She stated that the subject establishment is not the same situation as The Shade with people in the lobby area after closing of the bar area.

Commissioner Lesser said that he is in agreement that there does not need to be a strict definition of closing.

Chairperson Paralusz said she agrees with the comments of Commissioner Seville-Jones that the subject project is very different than The Shade.

Commissioner Fasola said that he does not feel that noise extending out to the south to the commercial area with the windows of the establishment open is an issue. He pointed out that the applicant is willing to accept the condition that sound must not be audible beyond 75 feet of the establishment.

Commissioner Lesser indicated that he is concerned regarding the noise during hours when entertainment is not occurring. He said that he would support a condition in the Use Permit that the windows be closed at 8:00 p.m., although he does appreciate that the patrons would like the windows to remain open later. He said that it was helpful to see the models regarding the noise when the windows would be closed that were presented as part of the sound study.

Commissioner Fasola said that the property is in the middle of the commercial area where there is noise.

Commissioner Seville-Jones said that she feels the sound study was helpful, and it addresses her concerns regarding noise mitigation on three sides of the building. She commented, however, that the sound study does not address the noise that would be audible from the south side of the structure with the windows open. She commented that she would support requiring

that the windows be closed at 8:00 p.m. with the ability of the Community Development Director to allow them to remain open longer.

Planning Manager Jester said that language to the fourth sentence of Condition 10 be added to read: “All doorways and windows for the business shall remain closed at all times during entertainment and dancing and closed at other times as deemed necessary through the Entertainment Permit.”

Commissioner Fasola indicated that he does not feel it would be necessary for the patio doors on the upper level to be required to be closed unless there is determined to be a problem with noise.

Commissioner Seville-Jones commented that she feels not requiring the windows and doors to be closed unless there is a problem would be a large step backwards.

In response to a question from Commissioner Seville-Jones, Planning Manager Jester stated that she is not certain whether the operation would be in compliance with the Sound Ordinance if the windows and doors are open.

Commissioner Seville-Jones said that she has trouble approving conditions for the establishment when the level of sound that would emanate from the south side of the establishment is not known.

Planning Manager Jester commented that the Police Department can make the determination as to whether the level of noise is loud enough to require the applicant to close the windows and doors if there is a complaint.

Commissioner Seville-Jones indicated that people may not realize that they can go to the police to complain about the noise levels. She said that it is important in planning the project that a determination is made that the level of noise would be appropriate for the commercial area. She said that maybe allowing some level of noise is appropriate, but there is no method to measure the level of noise that would be acceptable.

Planning Manager Jester commented that the adjacent residents are well aware of the project, and they would call the police if there is a problem with noise.

Commissioner Seville-Jones said that given that the applicant would like for the item to go forward, staff can decide whether it would be appropriate for a sound study to be conducted with the windows open that would be reviewed by the City Council. She said that she has some comfort with the wording in Condition 10 being included which states that noise may not be audible beyond 75 feet of the establishment as determined by the Police Department.

Commissioner Lesser commented that he would support adding the language as suggested by Planning Manager Jester to state that the doors and windows be closed during live entertainment and at other times as deemed necessary through the Entertainment Permit. He indicated that such language would allow staff to have another means of enforcing any complaints that are received regarding noise.

Commissioner Seville-Jones stated that it is important for the adjacent residents to know when the Entertainment Permit is being modified and that they have an opportunity to provide input. She commented that there are many conditions that would be included in the Entertainment Permit, and it is important that the residents know when the permit is being modified.

Commissioner Lesser said that including many conditions as part of the Entertainment Permit would mean that they could be modified more easily than if they were placed in the Use Permit. He pointed out that the Use Permit remains with the property if the business changes. He suggested including additional language to Condition 10 that the windows and doors be closed during live entertainment and at other times as deemed necessary by the Community Development Director.

Commissioner Seville-Jones said that she would like an additional sentence to be added to state that the public has the ability to know when the Entertainment Permit is being renewed to allow them to provide input.

In response to a question from Chairperson Paralusz, Planning Manager Jester said that there currently is no public notification when the Entertainment Permit is reviewed. She indicated that the permits are reviewed by staff based on comments that are received by other City Departments as to complaints that have been received.

Commissioner Seville-Jones said that she does not feel that the Commission should review the Entertainment Permit but rather that the residents have an opportunity to provide input to the Community Development Director before the permit is renewed.

Commissioner Lesser said that any resident can go to staff at any time with complaints.

Commissioner Seville-Jones stated that she would suggest that notice is sent to the residents within 500 feet of the subject property a month before the Entertainment Permit is renewed stating that they should contact staff if they have any comments. She commented that she would not suggest that renewal for all Entertainment Permits be noticed, but many conditions are being placed in the Entertainment Permit for this particular project.

Chairperson Paralusz said that the project would set a precedent as to the conditions that are included in Entertainment Permits. She said that such noticing should be required for other projects if their permits are structured as is proposed for the subject project.

In response to a question from Commissioner Lesser, Planning Manager Jester said that staff could notice renewal of the Entertainment Permit. She said that she is not certain that it would be necessary to notify residents within a full 500 foot radius of the subject property.

Commissioner Fasola commented that staff would take complaints into consideration whenever they were received.

Planning Manager Jester said that a condition can be included that renewal of the Entertainment Permit be noticed to the adjacent residents.

Commissioner Lesser said that he would support requiring noticing for renewal of the Entertainment Permit for this project to allow the residents to be aware of changes.

Commissioner Fasola indicated that neighboring residents always have an opportunity to raise their complaints to staff if an establishment creates a problem.

Chairperson Paralusz said that she would support requiring that renewal of the Entertainment Permit be noticed, as it would provide transparency. She said that the requirement could be modified later if it is determined to be too cumbersome or not effective.

In response to a question from Commissioner Fasola, Planning Manager Jester said that staff reviews the complaints that have been received by the City's Code Enforcement Officer and the Police Department when reviewing Entertainment Permits for renewal. She indicated that the Entertainment Permits are modified as needed to address the complaints that have been received.

Commissioner Fasola commented that he does not feel there needs to be a uniform closing time for businesses in the downtown area and all of the restaurants and bars should not all close at one time. He indicated that much of the concern with the subject project is because it appears to be a club. He commented that possibly the hours during the week should be limited to midnight in order to maintain the City's small town character, but he is not sure he would want to reduce the hours that were approved under the existing Use Permit.

Commissioner Seville-Jones stated that she would like for the hours of the establishment to be limited to midnight during the week, but she does not feel that the applicant has been offered enough in exchange in order for him to agree to reduce the hours during the week.

Commissioner Lesser said that the downtown had a late night bar atmosphere 20 or 30 years ago which has been changed by the City Council. He said, however, that the applicant currently has an entitlement to operate until 1:00 a.m. every night, and it does not appear that the applicant is receiving enough of a benefit in exchange for reducing the hours to midnight during the week.

Chairperson Paralusz said that the applicant does have the right under the existing Use Permit to operate until 1:00 a.m. every night. She pointed out that the applicant indicated that he would withdraw the application and just remodel if he is not allowed to operate until 1:00 a.m. with the amendments.

Commissioner Fasola suggested changing the language of the first sentence of Condition 8 of the draft Resolution to specify that the hours of operation shall be from 10:00 a.m. to 1:00 a.m. Monday through Friday and 8:00 a.m. to 1:00 a.m. on Saturdays and Sundays and holidays.

The Commissioners agreed to the suggested change to Condition 10 by Commissioner Fasola.

Commissioner Seville-Jones suggested that the Entertainment Permit be reviewed by the City Council when they consider the project, as the applicant is anxious for the project to move forward.

Commissioner Fasola commented that he would not be opposed to allowing dancing at the subject establishment on Thursday nights.

Commissioner Seville-Jones indicated that she feels allowing dancing on Thursday nights would result in neighborhood impacts, and she would support hours until 11:30 p.m. for entertainment only.

Commissioner Seville-Jones said that she has a concern with the noise of people leaving the establishment. She commented that she suspects dancing would attract people to the establishment on Thursdays. She indicated that there is a reason why the original permit specified that entertainment and not dancing was allowed on Thursdays and Sundays in order to lessen impacts to the neighbors.

Chairperson Paralusz opened the public hearing.

Mr. Zislis commented that they have designed the establishment under the existing Use Permit. He pointed out that he has the entitlement under the existing Use Permit to have live entertainment until 11:30 p.m. on Thursdays and 1:00 a.m. Sundays. He suggested that in exchange for closing at midnight on weekdays that operating hours be permitted until 1:00 a.m. on weekends and that entertainment and dancing be allowed until 11:30 on Thursdays and Sundays. He pointed out that the Entertainment Permit would be revised when there are complaints received by the Police and Community Development Department.

Chairperson Paralusz closed the public hearing.

Commissioner Lesser said that he would be receptive to **Mr. Zislis'** suggestion, as the goal for the neighbors is to reduce the hours and intensity of the operation.

At 10:10, a ten minute recess was taken so the neighbors could discuss the applicants proposal.

Chairperson Paralusz reopened the public hearing.

Mr. Quilliam indicated that the neighbors would agree to operating hours for the establishment of 10:00 a.m. to midnight on Monday through Thursday; 8:00 to midnight on Sundays; 10:00 a.m. to 1:00 a.m. on Fridays and 8:00 a.m. to 1:00 a.m. on Saturdays and additionally, opening at 8:00 a.m. on Holidays. He said that they would also agree to allow dancing and entertainment until 11:30 p.m. on Thursdays and Sundays and until 1:00 a.m. on Fridays and Saturdays and to eliminate the language requiring that "last call" be at 12:40 a.m. on Fridays and Saturdays.

Chairperson Paralusz closed the public hearing.

Commissioner Seville-Jones said that **Mr. Zislis'** proposal would be a compromise to provide for an earlier closing time during the week and to allow **Mr. Zislis** to have dancing and entertainment four nights a week.

Commissioner Lesser said that he feels the proposed compromise is a good solution and the Commission agreed.

Chairperson Paralusz indicated that it would be very difficult for the Police Department to manage a standard that noise from the establishment not be audible beyond a distance of 75 feet. She stated that the noise from the subject establishment would be difficult to distinguish from the noise generated from Shellbacks which is located across the street.

Commissioner Fasola pointed out that the applicant is willing to accept the condition regarding noise from the establishment not being audible at a distance beyond 75 feet.

Commissioner Seville-Jones commented that she feels it is an important condition to keep in the Resolution. She indicated that she does feel that enforcement of the condition would need to be reasonable.

Commissioner Paralusz said that she would want to be certain that the condition would be reasonable to enforce. She said that she would not oppose keeping the language since the applicant is willing to accept the condition and the other Commissioners are in agreement.

Commissioner Seville-Jones stated that the trash enclosure as proposed appears that it would be a large improvement to the existing trash bin on the subject site, and the Commission agreed.

Chairperson Paralusz indicated that she feels having security personnel after hours to direct patrons away from the residences would have a great effect in reducing the noise to the adjacent neighbors. She indicated that a number of the residents commented that the noise issues from the previous establishment were primarily regarding the patrons after closing. She stated that she wants to be certain that security would be required in the Use Permit.

Commissioner Lesser pointed out that there are requirements in Conditions 6 and 7 of the existing Use Permit regarding security personnel and the Commission agreed that this addressed any concerns.

In reviewing the neighbors proposed redline/strikeout of the Resolution, Commissioner Seville-Jones said that the proposed changes to the findings are not necessary, as they are specific to the issues that have been raised by the residents and should not be included.

The Commissioners agreed not to include the proposed changes of the neighbors to the findings of the draft Resolution.

Planning Manager Jester pointed out that staff has provided the Commission with suggested additions to the findings included in the draft Resolution. She indicated that staff is suggesting that the Commission add a finding to read: "The project is exempt from obtaining a Coastal Development Permit in accordance with the Local Coastal Program because it is an alteration or improvement of an existing structure that does not change the intensity of the use of the existing structures in accordance with Manhattan Beach LCP Section A.96.050B." She suggested revising staff's second suggested additional finding to read: "The proposed encroachment of ~~balconies decorative projections (with or without seating or dining)~~ over the public right-of-way over the Manhattan Beach Boulevard sidewalk requires action by the City Council in accordance with Section 7.36.170A – Long-term commercial use encroachment permits, of the Manhattan Beach Municipal Code."

Commissioner Seville-Jones said that it would seem odd to add the second proposed finding by staff in the Resolution, as there is not agreement by the Commission regarding the balconies.

Chairman Paralusz pointed out that the Commission is deferring the issue regarding the balconies to the City Council.

Planning Manager Jester indicated that the finding is specifying that the City Council will make the final decision regarding the balconies. She indicated that the discussion of the Commissioners will be included in the information that is provided to the City Council.

The Commissioners agreed not to include the definitions in the draft Resolution as suggested by the neighbors.

The Commissioners agreed not to include the neighbors' suggested language to Condition 4.

Commissioner Seville-Jones said that the Commissioners have deferred consideration of the balconies to the City Council, and she does not feel it is necessary to include the suggested additional language to Condition 4.

The Commissioners agreed to include the neighbors' suggested language to Condition 8 to read: "No storage permitted on roofs, long-term or short-term, such as tables and chairs."

The Commissioners agreed not to add the neighbors' suggested language to Condition 9.

The Commissioners agreed to add the neighbors' proposed language to Condition 10 to read: “. . . and to discourage patrons from entering residential areas, through use of temporary signs and other means.”

Commissioner Seville-Jones said that she would support adding the proposed language of the neighbors to Condition 10, as it is consistent with the statements of the applicant. The Commissioners agreed not to include the neighbors' suggested language for Condition 12.

Commissioner Seville-Jones commented that the hours of operation have been addressed in the prior discussion.

The Commissioners agreed not to include the suggested language of the neighbors to the last sentence of Condition 14.

The Commissioners agreed not to include the proposed language of the neighbors to Condition 15.

Commissioner Fasola said that he would not want to regulate the operation of the applicant's sound system, as is suggested by the neighbors in Condition 15.

The Commissioners agreed to add the recommended language of the neighbors to the last sentence of Condition 16 with the revision to maintain the appeal with the City Council to read: “Staff decisions regarding significant changes to Group Entertainment Permits require notice to property owners within a 300-foot radius with standard notice procedure, and are appealable to the City Council.”

Commissioner Seville-Jones said that the wording as suggested by the neighbors is a compromise, as it would not provide for a yearly noticing for the Entertainment Permit but would provide for notice to the neighbors when a decision is being made to change the Entertainment Permit.

Planning Manager Jester pointed out that any appeal to changes in the Entertainment Permit would be brought before the City Council and not the Planning Commission.

The Commission agreed to include the suggested language of the neighbors at the end of Condition 20, except not the last sentence, to read: “The premises shall not provide a repository for trash from any other business. Delivery and trash locations shall be chosen to minimize impact on the residential neighborhood”.

Chairperson Paralusz pointed out that the trash enclosure would mitigate the noise of trash being placed in the dumpster.

The Commissioners agreed not to include the neighbors' proposed language to Condition 24.

Commissioner Paralusz reopened the public hearing.

In response to a question from Commissioner Seville-Jones regarding Condition 25, **Mr. Zislis** commented that tables and food for weddings would temporarily be placed in the carport area. He pointed out that the parking spaces are designated as private parking. He said that they would not object to a condition for no storage in the carport over two days. He said that items are stored in the spaces temporarily as they are unloaded.

Chairperson Paralusz closed the public hearing.

The Commissioners agreed to add language to the end of Condition 25 to read: “The carport shall remain available for parking at all times; long term storage shall not be permitted, such as for tables and chairs”.

The Commissioners agreed to not include the suggested changes of the neighbors to Condition 26.

The Commissioners agreed that the reduction in hours and proposed changes to the Entertainment Permit as discussed would reduce the impact of the property on the neighborhood from the previous use and that the project would fall under the exemption for review under the CEQA requirements.

A motion was MADE and SECONDED (Fasola/Seville-Jones) to **APPROVE** a Use Permit Amendment to Remodel an Existing Restaurant, and Modification of Operating and Entertainment Hours, on the Property Located at 117 Manhattan Beach Boulevard, with the changes as discussed.

AYES: Lesser, Paralusz, Seville-Jones, Chairman Fasola
NOES: None
ABSENT: Andreani
ABSTAIN: None

Planning Manager Jester explained the appeal period and stated that the item will be placed on the City Council’s agenda for their meeting of March 15, 2011, unless appealed.

5. DIRECTORS ITEMS

6. PLANNING COMMISSION ITEMS

Commissioner Andreani returned to the dais and indicated that a City Council candidate forum sponsored by the Older Adults Program is scheduled for February 24, 2011, at the Joslyn Center from 11:30 a.m. to 1:00 p.m. She said that the Chamber of Commerce is sponsoring another candidate forum on Thursday, March 3, 2011, from 6:00 p.m. to 8:00 p.m. at O’Donnell Hall at American Martyrs.

In response to a question from Commissioner Fasola, Planning Manager Jester said that she will provide an update regarding the date that the library project will come before the City Council.

Commissioner Lesser commented that other members of the public would also be interested in the status of the library project.

7. TENTATIVE AGENDA March 9, 2011

- A. Zoning Code Amendments – Sustainable Building
- B. Hot Doggers- Use Permit for Beer and Wine License at 1605 North Sepulveda Boulevard

8. ADJOURNMENT

The meeting was adjourned at 10:45 p.m. to Wednesday, March 9, 2011, in the City Council Chambers, City Hall, 1400 Highland Avenue

**CITY OF MANHATTAN BEACH
DEPARTMENT OF COMMUNITY DEVELOPMENT
MEMORANDUM**

TO: Planning Commission

FROM: Richard Thompson, Director of Community Development

BY: Eric Haaland, Associate Planner

DATE: January 26, 2011

SUBJECT: Consideration of a Use Permit Amendment to Remodel an Existing Restaurant Including the Addition of Outdoor Dining with Balconies adjacent to Manhattan Beach Boulevard, and Expansion of Operating and Entertainment Hours, on the Property Located at 117 Manhattan Beach Boulevard (MB Dining LLC)

RECOMMENDATION

Staff recommends that the Planning Commission **CONDUCT** the Public Hearing and **PROVIDE DIRECTION**.

APPLICANT/OWNER

MB Dining LLC
117 Manhattan Beach Boulevard
Manhattan Beach, CA 90266

PROJECT OVERVIEW

LOCATION

| | |
|--------------------------|---|
| <u>Location</u> | 117 Manhattan Beach Blvd., at the northeast corner of MBB and Ocean Dr. (See Vicinity Map). |
| <u>Legal Description</u> | Lots 7 & 8, Block 13, Manhattan Beach Division #2. |
| <u>Area District</u> | III |

LAND USE

| | | |
|---|---|---|
| <u>General Plan</u> <u>Zoning</u> <u>Land Use</u> | Downtown Commercial CD, Commercial Downtown <u>Existing</u> 6,750 sq. ft. Restaurant | <u>Proposed</u> 6,865 sq. ft. Restaurant plus. 276 sq. ft. basement |
|---|---|---|

Neighboring Zoning/Land Uses

| | |
|-----------------------------|-----------------------|
| North (across Center Place) | RH/ Multi-residential |
| South (across MBB) | CD/Restaurants |
| East | CD/Retail-Office |
| West (across Ocean Dr.) | CD/City parking lot |

PROJECT DETAILS

| | <u>Proposed (and existing)</u> | <u>Requirement (Staff Rec)</u> |
|----------------------|--|---|
| Parcel Size: | 4,500 sq. ft. | 2,700 sq. ft. min |
| Building Floor Area: | 6,563 sq. ft. (6,750 sq. ft.) | 6,750 sq. ft. max |
| Height | 25.4 ft., 2-stories | 26 ft. max. |
| Setbacks | None | None |
| Parking: | 4 spaces existing | No change |
| Hours of Operation: | Su-Th: 8am-1am, F/Sa: 8am-2am (M-F: 10am – 1am, Sa-Su: 8am – 1am) | N/A (Su-Th: 8am – 1am, F-Sa: 8am-1am) |
| Entertainment | Ent./dancing Th-Su &Pre-hol. (Ent/dancing F-Sa, Ent: Th & Sun) | N/A (No change) |

BACKGROUND

The subject site is developed with a 2-story/split-level building, which is currently vacant, and previously contained Beaches restaurant. The restaurant’s existing use permit (attached as Exhibit C) was approved in 1994. The current proposal to substantially change the restaurant use requires amendment of the existing use permit.

The site is located within the appealable portion of the coastal zone, however, a coastal development permit is not required since there is no enlargement of the building in floor area or height.

DISCUSSION

The submitted plans show each of the subject building's existing 4 floor levels to be modified, and the addition of a new partial basement level for wine storage, rear employee restroom and locker facilities, and two upper level dining balconies over Manhattan Beach Boulevard (MBB). Floor plan modifications include conversion of some interior dining to exterior space, expansion of kitchen/service facilities, enhanced front entries, and relocation of bars, stairs, elevator, and dance floor. The building façade would be completely updated including retractable window/wall surfaces facing Manhattan Beach Boulevard on levels 2, 3, and 4. The existing 6,750 square foot building would actually decrease in countable floor area to 6,563 square feet due to front dining and entry recessions and elevator enlargement. The added basement area is not counted toward "buildable floor area". Total dining area would also decrease from the existing use permit plan's 4,189 square feet to 3,528 square feet.

The restaurant is proposed to remain a table service dining operation with two fixed bars, weekend entertainment, and a temporary dance floor. The applicant intends greater emphasis on food service with the expanded food preparation facilities and added weekday breakfast hours. They also request more special events such as weddings, with an increased allowance from six to twelve events annually. The applicant also requests to maximize "weekend" entertainment scheduling with increased dancing compared to the more limited existing use permit. The existing full alcohol service license would remain. The existing parking and loading area at the rear alley is proposed to remain with four parking spaces and an expanded and upgraded trash/recycling enclosure proposed for possible neighbor sharing.

The project conforms to the City's requirements for commercial uses. The primary project issues are: parking, noise, balcony encroachments, entry features, hours of operation, and entertainment.

Parking

The subject site has 4 parking spaces located at the rear accessed from Center Place. The attached parking worksheet (Exhibit G) indicates that the proposal results in a lower parking requirement than the existing approved restaurant use although the property would remain nonconforming for 23 spaces since no parking was required when the building was built. The parking worksheet factors in the Downtown parking exemption, which requires only the amount of floor area (2,250 sf) exceeding the site area to provide parking. The reduction in seating area proposed (618 sf less) results in a requirement 3 spaces less than the plans approved for the existing use permit. Staff believes that parking demand for the proposed restaurant design approximately equals the existing design.

Noise

The restaurant currently has no outdoor seating, although the existing upper most level (level 4) has a retractable roof that is proposed to be replaced by a fixed roof. All openings are to be kept closed during times that entertainment is provided. The applicant is proposing noise mitigating building materials and minimal building openings other than at the front along Manhattan Beach Blvd. Outdoor dining is proposed with 22 seats (280 sf) at the upper building levels (levels 3 & 4). This would be the first upper level outdoor dining to occur Downtown. Also, expanded exterior space is proposed at the two ground level entryways on MBB which will also result in some waiting customer noise at times. Additionally, retractable window assemblies are proposed for three of the four wall surfaces on levels 2, 3, and 4, facing MBB. These retractable facades have become common Downtown in recent years for restaurants without dancing. These retractable walls allow noise to escape when an entire restaurant is open to the street this way, however, MBB is a central commercial corridor primarily without noise sensitive uses. These outdoor areas appear to be appropriate at this location since it is a focal point of Downtown/beach activity and the community seems to have accepted the concept of open restaurant frontages, if all of the building openings are closed while entertainment occurs.

An additional noise issue may result by allowing access to the roof at the northwest building corner. This low roof area proposed for partial enclosure and exterior equipment has been identified as a sensitive location to rear-adjacent neighbors in previous Use Permit proceedings. The submitted plans include a standard door accessing this area, which may result in disruptive use of this area by restaurant employees since it abuts the employee locker room. Staff would suggest a condition on project approval that limits any use of this area to maintenance only, and limits the roof access to a small hatch.

Balcony Encroachment

The applicant's proposal for two balconies partially cantilevering over the public sidewalk is unique, although the neighboring building to the east has a 5-foot balcony, which appears on its original 1971 plans, apparently for incidental purposes to an office use. No right-of-way encroachment approval was found for this item. Currently, allowance for commercial encroachments over sidewalks has been limited to canopies and awnings projecting 3 feet over City right-of-way. The submitted plans conform to the 3-foot dimension, but allowing dining or other active use above the public sidewalk would be unprecedented. The applicant suggests that concentrating the outdoor dining area at the front of the building is a better alternative to placing it at the rear adjacent to residential neighbors. Staff supports the proposed front outdoor dining use adjacent to MBB.

Entry Features

The project plans indicate potential exterior fire and water elements at the enlarged entry points adjacent to MBB. While the enhanced entries would be aesthetically beneficial to the street, there is a concern for the safety and disruptiveness of fire or water being exposed to the public sidewalk. The high volume of pedestrians, sidewalk slope, and wind exposure of this location make it especially susceptible to detrimental effects. Staff suggests a condition of approval requiring staff review of fire or water elements for appropriate containment.

Hours of Operation

The existing required restaurant closing time is 1am daily. The applicant is requesting to extend the existing restaurant closing time 1 hour on weekends (Friday/Saturday) to 2:00am. An 8:00am opening time is also requested for weekday breakfast service, to supplement existing weekend breakfast. Breakfast hours for restaurants have typically not caused concerns, however, late night hours have been closely scrutinized.

The subject restaurant currently has the latest closing time approved (with prominent alcohol service) in the last two decades. Concern for late night hours has been strong since the early 1990's. Some previously established hours shown in the attached Downtown restaurant summary (Exhibit D) have 2:00am closing times or none at all, but have been expected to become more restrictive in the future. The existing daily 1:00am closing time reflects what was considered the latest desirable time for Downtown in 1994, which was warranted for this central location with a history of late night hours. Many other restaurant use permits since then have had earlier closing times. Staff recommends that the additional breakfast hours be approved, but that the restaurant closing time remain 1:00am daily.

Entertainment

The subject restaurant has had the most prominent longstanding component of entertainment and dancing Downtown. The existing use permit has a relatively strict limitation with dancing on Fridays and Saturdays only. Entertainment, typically live music, is also permitted on Thursdays and Sundays without dancing. The applicant believes that dancing commonly occurred without disturbances on these days when it wasn't permitted, and requests that such dancing now be permitted. It is also requested that entertainment and dancing be permitted on evenings before holidays, which extends the City's recent decision to allow later hours for restaurants (with a separate discretionary permit) on New Year's Eve. If this proposal is found to be appropriate, it probably should be limited to national/major holidays.

Additional entertainment proposals relate to special events and dance floor placement. The existing Use Permit provides for 6 special events (e.g., weddings) annually, and an alternative entertainment/dance location at the upper levels (most likely for special events). It also requires the main dance floor at the lower level to be delineated by a railing, to prevent dancing from extending into the remainder of the floor. The applicant proposes 12 special events annually, elimination of the upper level entertainment alternative, elimination of the railing requirement, and relocation of the

main dance floor. The dance floor shown on the submitted plans on level 1 (Exhibit H) is shifted from the interior end of the lower level to a more central location closer to the bar and abutting a stairway. This design is deliberately more integrated into the overall floor level, involving circulation through the dance floor to the dining area at the rear, which would make a railing or similar barrier impractical.

Staff generally recommends that entertainment not be intensified, and suggests no increase in days of entertainment or dancing, and that the dance floor remain at a perimeter location with a definable boundary, although not necessarily a rail.

City Department Comments: No special comments were received from City Departments reviewing the application except the attached Police comments (Exhibit E), which recommend the following:

- Noise from the business is not to exceed beyond 75 feet of the business.
- Windows and doors shall be kept closed at any time that entertainment other than background noise or television occurs.

As mentioned above, the existing and proposed Use Permits require all openings to be closed during entertainment. Eliminating all audible noise at a distance of 75 feet may not be feasible for the project as proposed with outdoor dining and retractable windows/walls.

Public Input: Staff has received a few verbal inquiries, and one written response (Exhibit F) to the project notice. The attached message indicates initial concerns from a neighbor group regarding outdoor dining, hours, and dancing, with further input to follow. The public hearing notice was published in the Beach Reporter newspaper, and mailed to property owners within 500 feet of the site.

Miscellaneous Conditions: Should the Planning Commission approve the project, staff would include updated standard restaurant conditions in a draft Resolution. Notable conditions would include the following: prohibition of outdoor amplified sound equipment, sign ordinance compliance, equipment screening, utility requirements, water quality requirements, and indemnification.

Planning Commission Authority

Section 10.84.010 of the Zoning Code establishes that the purpose of Use Permits is as follows:

Use permits are required for use classifications typically having unusual site development features or operating characteristics requiring special consideration so that they may be designed, located, and operated compatibly with uses on adjoining properties and in the surrounding area.

Section 10.84.020 states that “The Planning Commission shall approve, conditionally approve, or disapprove applications for use permits or variances” .

Pursuant to Section 10.84.060 The Planning Commission is required to make certain findings in order to approve the proposed use permit as follows:

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;
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;
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; and
4. The proposed use will not adversely impact nor 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.

Section 10.84.070 provides that reasonable conditions may be imposed upon a Use Permit as necessary to:

- A. Achieve the general purposes of this ordinance or the specific purposes of the zoning district in which the site is located, or to make it consistent with the General Plan;
- B. Protect the public health, safety, and general welfare; or
- C. Ensure operation and maintenance of the use in a manner compatible with existing and potential uses on adjoining properties or in the surrounding area.
- D. Provide for periodic review of the use to determine compliance with conditions imposed, and Municipal Code requirements.

CONCLUSION

Staff recommends that the Planning Commission conduct the public hearing, consider the information presented, and direct staff as determined to be appropriate.

ENVIRONMENTAL DETERMINATION

Pursuant to the California Environmental Quality Act (CEQA), and the Manhattan Beach CEQA Guidelines, the subject project has been determined to be exempt (Class 1) as an alteration to an existing facility per Section 15301 of CEQA.

Attachments:

- A. Vicinity map
- B. Applicant request/information
- C. Existing Use Permit Reso. No. 5087
- D. Downtown Restaurant Summary
- E. Police comments
- F. Public Input
- G. Proposed parking calculation
- H. Plans (not available electronically)

cc: Michael Zislis, Applicant Representative

Vicinity Map
117 Manhattan Beach Blvd.

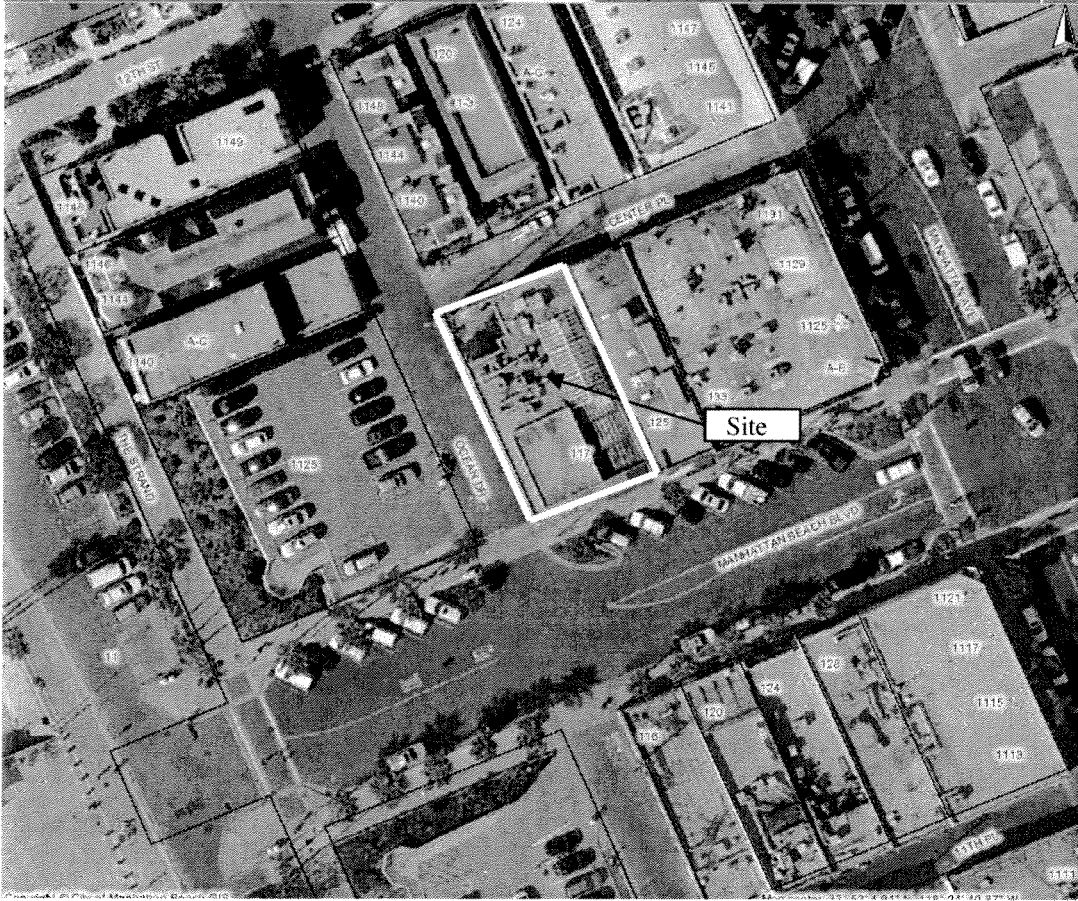


EXHIBIT A
PC Mtg. 1/26/11

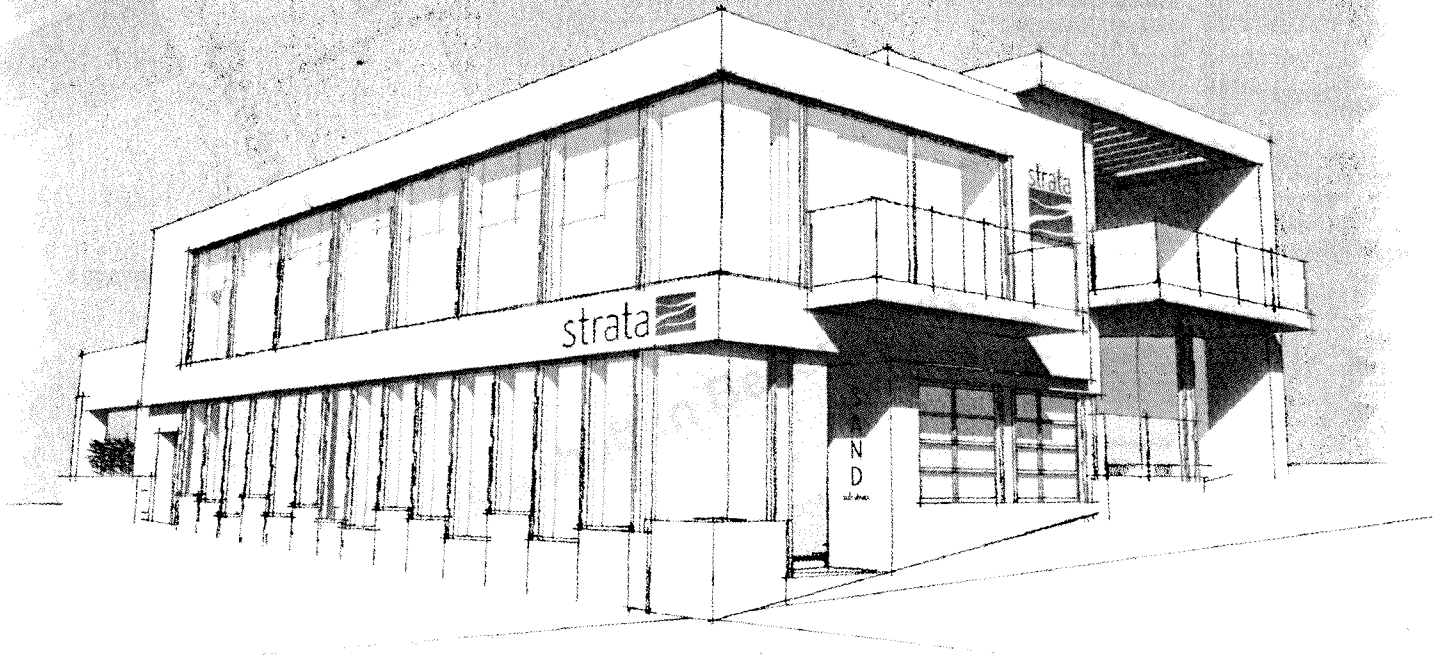
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CONDITIONAL USE PERMIT APPLICATION



STRATA
117 Manhattan Beach Blvd.
Manhattan Beach, CA

XQTD

XQTD, Inc.
9001 Wilshire Blvd. #1121
Beverly Hills, CA 90210

310 246-4224
310 877-4200 FAX
www.xqtd.com

A PROJECT FOR

MB DINING, LLC
117 MANHATTAN BEACH BLVD.
MANHATTAN BEACH,
CA 90266

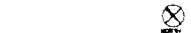
Contact:
Mike Zwick, its manager
T: 310.704.8507

PROJECT LOCATION

RENOVATION

STRATA
117 MANHATTAN BEACH BLVD.
MANHATTAN BEACH,
CA 90266

PERMIT NO. 12-133436



COVER SHEET

Project: 117 MANHATTAN BEACH BLVD.
Date: DECEMBER 25, 2010
Drawn by: [Signature]
Checked by: [Signature]

T100

EXHIBIT B
PC Mtg. 1/26/11

WRITTEN DESCRIPTION

Purpose of Application

MB Dining LLC recently entered into a lease for the restaurant property previously known as "Beaches" located at 117 Manhattan Beach Boulevard. The Zislis Group, Inc., a corporation owned and controlled by Michael and David Zislis, is the Manager of MB Dining LLC and will manage the restaurant to be named "STRATA". The restaurant will be transformed into a new upscale-casual dining concept. The building has not been substantially improved in over fifteen years and is in need of a remodel and upgrade. The proposed changes will enhance the appearance of the building, improve the functionality of the restaurant, and add sit down dining while reducing bar seating and standing areas which will result in a less intense occupant load.

Our proposed changes to the building include:

1. Expand the kitchen located on the second level from 848 square feet to 1,248 square feet. The existing kitchen was not designed with adequate size and cooking equipment to efficiently service an upscale restaurant with an occupancy of over 300 guests. The prior owners appeared to operate the property as a bar with food service as a secondary consideration. All the Zislis Group restaurants (Rock'N Fish, Brewco, Mucho) are operated primarily as dining establishments.
2. Add a new wine cooler (between 150 - 250 square feet) to be located at the new basement level for the purpose of stocking a diverse selection of approximately five thousand bottles of premium wine. In order to attract a more mature and sophisticated clientele, the lower level lounge intends to feature a "Champagne Menu" offering twenty champagnes by the glass and over fifty champagnes by the bottle. The wine cooler will be needed to preserve ten-year verticals of some of the more prestigious champagne labels. The cooler will be designed as a modern glass enclosure which will be visible but not accessible to the public.
3. Install a grease interceptor for the kitchen dishwasher and sinks to be located in the trash/oil recycling enclosure at the back of the building (currently there is no grease interceptor). A new drain will also be installed in the enclosure to comply with the current City codes.
4. Install a new, larger elevator and an elevator equipment room to comply with current City of Manhattan Beach building codes and handicap regulations.
5. Add one employee restroom (52 sq. ft.) and one employee locker room (34 sq. ft.) to comply with current health department codes and for employee privacy and convenience.

6. Remove the storage shed from the north-west roof. The current installation does not comply with requirements for screening and has been an eyesore for over fifteen years.
7. Remove the retractable glass roof in the upper dining area and install a new, permanently enclosed ceiling and roof with clerestory windows.
8. Install a new eco-friendly "neighborhood" trash bin and fryer oil recycling facility on the back side of the premises to improve the appearance, cleanliness and functionality of the alley (Center Place), which is shared with other businesses and some residences. The new enclosure will be available for use by adjacent businesses to store bottles, cardboard boxes and fryer oil. It will be a walk-in enclosure which will be secured to eliminate noise in the alley caused by late night bottle collectors and dumping of trash. (The specific use of and access to the recycling facility must be discussed with the City.)
9. Install new decorative windows and doors on the first and second levels of the front of the building facing Manhattan Beach Boulevard as part of the overall remodel of the exterior facades. The windows will be of the operable sliding, folding or roll-up type. We will comply with the pertinent conditions of the existing use permit by keeping windows and doors closed during live entertainment and dancing hours and maintaining noise levels emanating from the property within the limitations prescribed by the City's noise ordinance.

As part of the remodel and the improvements being made to the property, we seek to amend the existing use permit to include the following changes:

1. Construct two new small outdoor dining balconies with a total of 6 tables and 12 seats on the second level of the building facing Manhattan Beach Boulevard. The two balconies will be constructed to cantilever over the sidewalk with a design similar to the existing balcony above the neighboring "Diane's Bikinis" retail shop.

There is no outdoor restaurant dining on Manhattan Beach Boulevard west of Manhattan Avenue, and these two small open spaces - with breath-taking views of the expanse of the beach, municipal pier, historic Roundhouse, and Pacific Ocean -- will be a welcome addition to the downtown dining scene to be enjoyed by residents and beach visitors. This outdoor dining will not impact any residential properties and will provide a public convenience.

2. Extend the restaurant hours for dining and drinking to a closing time of 2:00 a.m. on Fridays and Saturdays. Dancing and live entertainment will continue to terminate at 1:00 a.m.

We also propose that dancing be permitted on Thursday evenings from 9:00 p.m. until 12:00 a.m. as was the practice of the prior owners which occurred regularly without incident or complaint. As we anticipate that the restaurant will become a popular wedding and special events facility, we request that dancing be permitted on Sundays until 5:00 p.m. and for an additional twelve private events during the year until 12:00 a.m. (Sunday - Wednesday).

Lastly, we propose that dancing and live entertainment be allowed on evenings before federal, state or municipal holidays including, but not limited to, Independence Day, Labor and Memorial Days, and New Year's Day.

As part of the remodel of the downstairs level, a cutting edge surround sound audio system will be installed at the perimeter of the dance floor. This will be specifically engineered to direct and contain sound within the dance floor area and to achieve a fifty percent decibel reduction to all the other areas of the room. This innovative technology will add to the comfort of non-dancing guests and will help reduce noise emanating from the building. The downstairs windows facing west and nearest the dance floor will be double paned to further minimize noise transmission so as not to disturb neighboring residences.

The current CUP condition (8B, Page 3) prohibiting customers from occupying any portion of the dance floor on Sundays needs to be eliminated, because it is our intent to use the space for dining during the non-dancing hours.

3. Replace the condition requiring a permanent railing barrier be installed at the perimeter of the lower level dance floor with a condition that the flooring material of the dance area be distinguished from the flooring of the remainder of the dining and bar areas. The distinction of flooring materials will identify to patrons and enforcing agencies the specific area of the dance floor. The prior owners of the property never installed the railing sixteen years ago, and the absence of the barrier did not cause a problem for the operators, customers or the City. The railing will have a negative impact on the design and flow of the lower level room and will impair the multipurpose functioning of the space (the vast majority of the time the area will be used for dining and other service, not entertainment and dancing). The operators will make every effort to restrict dancing to the dance floor, keep exits accessible, maintain clear and open pathways, and strictly adhere to occupancy limits.

Many of the changes described above (the kitchen expansion, the addition of the employee dressing room and restroom, the larger elevator and elevator equipment room, and the trash/ oil recycling enclosure) are proposed for code compliance or operational necessity. The restaurant intends to employ a high profile chef and offer an upscale full-dining menu (see the attached sample menu). In order to produce the high quality of menu items and the volume of food we project will be demanded at the new restaurant, we determined that the kitchen facilities need to be enlarged by approximately 400 square feet to install additional cooking equipment and expand the prep areas and storage. These modifications (excluding the trash enclosure) will result in a reduction of the usable public space available for dining and bar service by approximately 181 square feet.

We propose that the City approve our request to offset the loss of usable public space caused by the requirement to comply with current building and health department codes and the implementation of the other improvements by permitting us to construct the employee restroom, locker room and the two small outdoor balconies to be located on the second level facing Manhattan Beach Boulevard. The proposed offsetting space includes:

| | |
|------------------------|-----------|
| Two Outdoor Balcony | 212 s.f. |
| Employee Restroom | 52 |
| Employee Dressing Room | <u>34</u> |
| Total | 298 s.f. |

The net public space reduction resulting from the proposed changes is 181 square feet (3,752 - 3571 square feet). **The change of occupant factor will be reduced from 379 to the proposed 368. Thus, the final occupancy load will actually be less than the current allowable occupancy.** However, a portion of the current bar use is being converted to additional dining. This change results in more seats of dining but less bar seating and standing area. The result is a less intense occupant load.

The restaurant that has been located at this address has been a neglected and underutilized venue for over a decade. With the minimal changes requested by MB Dining, the community will benefit by gaining a beautifully designed restaurant and multipurpose facility with great food, an incredible view, outdoor patio dining, proximity to convenient parking, flexible seating availability and catering services for weddings, anniversaries and other special events. We hope to make this unique space the iconic venue the City deserves.

Legal Description

Manhattan Beach Division #2, Block 13, Lots 7 & 8

Area District

III

General Plan Designation

Downtown Commercial

L.C.P, L.U.P. Designation

Downtown Commercial

Zoning

CD, Downtown Commercial

Neighboring Land Uses

| | |
|-------|---------------------------------|
| West | Parking Lot, Beach |
| East | Commercial, Retail & Restaurant |
| North | Residential, Alley, Commercial |
| South | Commercial, Restaurants |

Alcohol License

Type 47: On-Sale General Eating Place

Occupancy

Existing: 379

Proposed: 368

Building Square Footage

Existing: 7,218

Proposed: 7,630

Parking

None required. The intensity of the use will decrease due to the loss of interior space for code compliance issues.

Hours of Operation

| | | |
|-----------|-------------------|------------------------|
| Existing: | Monday- Friday | 10:00 a.m. - 1:00 a.m. |
| | Saturday - Sunday | 8:00 a.m. - 1:00 a.m. |

| | | |
|-----------|--|-----------------------|
| Proposed: | Sunday - Thursday | 8:00 a.m. - 1:00 a.m. |
| | Friday & Saturday | 8:00 a.m. - 2:00 a.m. |
| | Evenings before Federal, State and Municipal Holidays | 8:00 a.m. - 2:00 a.m. |

Peak Hours

| | |
|-------------------|------------------------|
| Monday - Thursday | 7:30 p.m. - 10:00 p.m. |
| Friday - Sunday | 12:00 p.m. - 3:00 p.m. |
| Friday & Saturday | 7:30 p.m. - 12:30 a.m. |

Dancing & Entertainment (Lower Level)

| | | |
|-----------|--|------------------|
| Existing: | Friday & Saturday | Until 1:00 a.m. |
| Proposed: | Thursday | Until 12:00 a.m. |
| | Friday & Saturday | Until 1:00 a.m. |
| | Sunday | Until 5:00 p.m. |
| | 12 private events during the year (Sunday through Wednesday) | Until 12:00 p.m. |
| | Evenings before Federal, State and Municipal Holidays | Until 1:00 a.m. |

Entertainment Without Dancing (Lower Level).

| | | |
|-----------|----------|------------------|
| Existing: | Thursday | Until 11:30 p.m. |
| | Sunday | Until 1:00 p.m. |
| Proposed: | Sunday | Until 1:00 a.m. |

Environmental Impact

None.

DESCRIPTION OF HOW FINDINGS WILL BE MET

1. The proposed amendment to the use permit of 117 Manhattan Beach Blvd (formerly the restaurant "Beaches") is consistent with the objectives and purposes of the Commercial Downtown designation. This area is specifically designated for community activity and a service area for residents, local workers, shoppers, diners, and beach visitors. Several other restaurants and taverns in the area already engage in similar use.
2. The proposed amended use of this location is consistent with the General Plan for the Commercial Downtown designation, because it is merely the granting of similar privileges to a long-time existing use that will result in no fundamental change of the use. The new restaurant operators (Michael and David Zislis) have owned and operated restaurants in downtown Manhattan Beach for twenty years and have maintained an excellent reputation in the community as responsible and civically concerned business people. The proposed changes will have no negative environmental impact and will not be detrimental to the public health, safety or welfare of persons residing or working in or adjacent to the neighborhood of the restaurant. There will be no negative impact on properties or improvements in the vicinity, nor the general welfare of the city. In fact, the proposed shared trash and oil recycling area to be installed on the back side of the building will greatly alleviate the problems experienced by residences and adjacent businesses located on Center Place.
3. The proposed changes to the use permit are consistent with the existing use at this location as a restaurant with a bar. The proposed use will comply with the provisions and conditions of this title.
4. Because the proposed changes to the use permit will not alter the fundamental use, purpose or character of the restaurant, and because there will not be an intensification of use in the occupancy or number of seats at the restaurant, the proposed amended use will not create adverse impacts on traffic or create demands exceeding the capacity of public services and facilities.

Founders and Managers of MB Dining LLC

Michael A. Zislis and David Zislis (through their company, The Zislis Group, Inc.) will serve as the company's legal manager and will oversee all aspects of the restaurant operations, including the general management of the restaurant, concept and menu development, and administering all financial and legal aspects of the business. Michael and David have significant experience in establishing and managing restaurants. David is president of BREWCO (formerly Manhattan Beach Brewing Company, established in 1991) and the Redondo Beach Brewing Company (since 1993). Since 2000, David has served as the managing member of Rock'N Fish in Manhattan Beach and Michael has held the position of general manager responsible for the daily operations of that restaurant. Michael and David are the founders of Shade Hotel, a popular luxury boutique that opened in downtown Manhattan Beach in November 2005. They are the founders and Managers of Mucho Ultima Mexicana, an upscale restaurant in Manhattan Beach that opened in November 2007, as well as the second Rock'N Fish located in the LA Live complex in downtown Los Angeles. In 2010, the Zislis brothers opened Rock & Brews beer garden in El Segundo. They are opening the third Rock'N Fish in Laguna Beach in December.

The following conditions in the attached existing use permit for 117 Manhattan Beach Boulevard will need to be modified if the proposed changes are approved.

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RESOLUTION NO. 5087

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, AFFIRMING THE DECISION OF THE PLANNING COMMISSION, AS MODIFIED, APPROVING AN AMENDMENT TO A PREVIOUSLY APPROVED USE PERMIT TO ALLOW THE ADDITION OF DANCING TO AN EXISTING ENTERTAINMENT APPROVAL FOR A RESTAURANT ON THE PROPERTY LOCATED AT 117 MANHATTAN BEACH BOULEVARD (MITCH MCFANTI, INC.)

WHEREAS, there was filed with the Planning Commission of the City of Manhattan Beach, California, an application for a Use Permit Amendment, for the property legally described as Lots 4 & 5, Block 66, Manhattan Beach Division #2 and located at 117 Manhattan Beach Boulevard, in the City of Manhattan Beach; and,

WHEREAS, the applicant for said project is Mitch McFanti Inc., who is also the owner of the subject property; and,

WHEREAS, after duly processing said application and holding a public hearing thereon, the Planning Commission adopted its Resolution No. PC 94-11 (which is on file in the office of the Secretary of said Commission in the City Hall of said City, open to public inspection and hereby referred to in its entirety and by this reference incorporated herein and made part hereof), on March 23, 1994, approving the application; and

WHEREAS, within the time period allowed by law, on April 19, 1994, the City Council appealed the decision of the Planning Commission; and

WHEREAS, the Council of said City pursuant to the provisions of the Municipal Code held a public hearing on May 17, 1994, receiving and considering all written documents and oral argument for and against the appeal; thereafter on said May 17, 1994, the Council affirmed the decision of said Commission and approved such appeal with modified conditions.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, FIND,

LOTS 7 & 8, Block 13

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DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That the City Council does hereby make the following findings:

- 1. The applicant requests approval of a Use Permit Amendment seeking to allow dancing on dance floor areas of 240 and 225 square feet (including music equipment etc.) on the lower and upper levels respectively, in an existing restaurant/bar. The applicant revised the request in the public hearing to include 3 nights of dancing and one night of entertainment-only on the lower floor, and dancing on the upper floor during special events not to occur at the same time of lower floor dancing or entertainment.
- 2. The subject use is presently governed by Resolutions PC 89-2 and 4651 authorizing a restaurant/bar with entertainment and one 10 foot satellite dish with a reduction in required parking. Dancing is not authorized in the existing approval.
- 3. The property is located in Area District III and is zoned CD, Downtown Commercial, as are the surrounding properties.
- 4. The existing/proposed 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; 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; in that the increased entertainment intensity is in conjunction with a reduction in operating hours and alcohol service.
- 5. The project shall be in compliance with the provisions of the Manhattan Beach Municipal Code.
- 6. The project will not create adverse impacts on traffic nor create demands exceeding the capacity of public services and facilities which cannot be mitigated.
- 7. The Planning Commission conducted a public hearing for the subject Use Permit Amendment.
- 8. The project is consistent with the Land Use Plan of the Local Coastal Program approved for Manhattan Beach.

SECTION 2. The City Council does hereby approve an amendment to the use permit subject to the conditions enumerated below, which shall replace the conditions of the existing Use Permit (Resolution Nos. PC 89-2 and 4651) approval:

- 1. The project shall be constructed and maintained in substantial compliance with the plans as approved by the Planning Commission on March 23, 1994.

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2. The management of the restaurant shall police the property in all areas immediately adjacent to the business during the hours of operation to keep it free of litter.

3. The business proprietor shall provide adequate management and supervisory techniques to prevent loitering, unruliness, and boisterous activities of patrons outside the business or in the immediate area.

4. The hours of operation for the restaurant/bar shall be:

| | |
|-------------|--------------------|
| Mon. - Fri. | 10:00 am - 1:00 am |
| Sat. - Sun. | 8:00 am - 1:00 am |

5. The service of alcohol shall be in conjunction with minimum food service during all hours of alcohol availability, and a "bona fide eating place" type of alcohol license from the State of California shall be maintained. Minimum food service shall consist of a menu of similar variety to the "all hours" menu submitted to the Planning Commission.

6. The noise emanating from the property shall be within the limitations prescribed by the City's noise ordinance and shall not create a nuisance to the surrounding residential neighbors.

7. All doorways and windows for the business shall remain closed at all times during live entertainment. No live entertainment or amplified music shall be permitted within the second floor area when the retractable roof is in an open position.

8. Dancing and entertainment shall be permitted as follows:

A. Entertainment and dancing located on the lower level dance floor on Friday and Saturday until 1:00 am; on a weekly basis.

B. Live entertainment without dancing located on the lower level dance floor on Thursday until 11:30 pm and on Sunday until 1:00 am, on a weekly basis. Customers shall be prohibited from occupying any portion of the dance floor on Sundays.

C. A maximum of 6 additional events located on the temporary upper dance floor area, per calendar year subject to approval of Class II Group Entertainment Permits (including corresponding fees) pursuant to the procedures, and requirements of the Manhattan Beach Municipal Code. In no case shall entertainment or dancing occur on both the upper and lower levels at the same time.

9. A Class I Group Entertainment Permit shall be obtained for all entertainment aspects of the business. Should said entertainment be determined to provide a nuisance, said permit shall be revoked under administrative authority without prejudice to the remaining conditions of approval.

10. All commercial activities shall take place within an enclosed building.

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11. The service of food and beverage shall be primarily by employees to customers seated at tables, and there shall be no take-out windows.
 12. Utilities serving the site shall be underground, pursuant to City ordinance.
 13. All site nuisance and storm water, including roof drainage, shall be contained on site and outletted through the curb on Manhattan Beach Boulevard as approved by the Director of Public Works. All existing exterior drains shall comply with applicable sewage requirements prior to implementation of this Use Permit Amendment, subject to review and approval of the Department of Public Works.
 14. A refuse enclosure shall be maintained as approved by the Director of Public Works.
 15. The roof area above the parking area shall have a parapet wall along the west and east of a height not to exceed three feet in height.
 16. The ten (10) foot satellite dish shall be painted in a light color to minimize the visual impact of its presence; subject to the approval of the Department of Community Development.
 17. The ten (10) foot satellite dish shall not exceed the maximum height of 26 feet.
 18. The added enclosed floor area shall be permitted to be used only as incidental kitchen storage. The added roof, over the parking area, shall be permitted as a roof only for placement of one 10 foot diameter satellite dish painted in a light color to minimize the visual impact of its presence. No other uses shall be permitted. Any existing storage, office, or other items presently located on said roof shall be removed prior to implementation of any dancing activities.
 19. A permanent railing barrier shall be installed at the perimeter of the lower level dance floor subject to approval of the Fire Marshal and Community Development Department.
 20. All signs shall be in compliance with the City's Sign Code and freestanding or pole signs shall be prohibited on the subject property.
 21. This Use Permit amendment shall lapse one-year after its date of approval, unless implemented or extended pursuant to 10.84.090 of the Municipal Code.
 22. 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.
 23. Applicant agrees, as a condition of approval of this project, to pay all reasonable legal and expert fees and expenses of the City of Manhattan Beach, up to \$20,000, in defending any legal action brought against the City within 90 days after the City's final approval of the project, other than one by the Applicant, challenging the approval of this project, or

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1 RESOLUTION NO. 5087

2 A RESOLUTION OF THE CITY COUNCIL OF THE CITY
3 OF MANHATTAN BEACH, CALIFORNIA, AFFIRMING THE
4 DECISION OF THE PLANNING COMMISSION, AS
5 MODIFIED, APPROVING AN AMENDMENT TO A
6 PREVIOUSLY APPROVED USE PERMIT TO ALLOW THE
7 ADDITION OF DANCING TO AN EXISTING
8 ENTERTAINMENT APPROVAL FOR A RESTAURANT ON
9 THE PROPERTY LOCATED AT 117 MANHATTAN BEACH
10 BOULEVARD (MITCH MCFANTI, INC.)

11 WHEREAS, there was filed with the Planning Commission of
12 the City of Manhattan Beach, California, an application for a Use
13 Permit Amendment, for the property legally described as Lots 4 &
14 5, Block 66, Manhattan Beach Division #2 and located at 117
15 Manhattan Beach Boulevard, in the City of Manhattan Beach; and,

16 WHEREAS, the applicant for said project is Mitch McFanti
17 Inc., who is also the owner of the subject property; and,

18 WHEREAS, after duly processing said application and
19 holding a public hearing thereon, the Planning Commission adopted
20 its Resolution No. PC 94-11 (which is on file in the office of the
21 Secretary of said Commission in the City Hall of said City, open
22 to public inspection and hereby referred to in its entirety and by
23 this reference incorporated herein and made part hereof), on March
24 23, 1994, approving the application; and

25 WHEREAS, within the time period allowed by law, on
26 April 19, 1994, the City Council appealed the decision of the
27 Planning Commission; and

28 WHEREAS, the Council of said City pursuant to the
29 provisions of the Municipal Code held a public hearing on May 17,
30 1994, receiving and considering all written documents and oral
31 argument for and against the appeal; thereafter on said May 17,
32 1994, the Council affirmed the decision of said Commission and
approved such appeal with modified conditions.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF
MANHATTAN BEACH, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, FIND,



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DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That the City Council does hereby make the following findings:

1. The applicant requests approval of a Use Permit Amendment seeking to allow dancing on dance floor areas of 240 and 225 square feet (including music equipment etc.) on the lower and upper levels respectively, in an existing restaurant/bar. The applicant revised the request in the public hearing to include 3 nights of dancing and one night of entertainment-only on the lower floor, and dancing on the upper floor during special events not to occur at the same time of lower floor dancing or entertainment.
2. The subject use is presently governed by Resolutions PC 89-2 and 4651 authorizing a restaurant/bar with entertainment and one 10 foot satellite dish with a reduction in required parking. Dancing is not authorized in the existing approval.
3. The property is located in Area District III and is zoned CD, Downtown Commercial, as are the surrounding properties.
4. The existing/proposed 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; 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; in that the increased entertainment intensity is in conjunction with a reduction in operating hours and alcohol service.
5. The project shall be in compliance with the provisions of the Manhattan Beach Municipal Code.
6. The project will not create adverse impacts on traffic nor create demands exceeding the capacity of public services and facilities which cannot be mitigated.
7. The Planning Commission conducted a public hearing for the subject Use Permit Amendment.
8. The project is consistent with the Land Use Plan of the Local Coastal Program approved for Manhattan Beach.

SECTION 2. The City Council does hereby approve an amendment to the use permit subject to the conditions enumerated below, which shall replace the conditions of the existing Use Permit (Resolution Nos. PC 89-2 and 4651) approval:

1. The project shall be constructed and maintained in substantial compliance with the plans as approved by the Planning Commission on March 23, 1994.

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2. The management of the restaurant shall police the property in all areas immediately adjacent to the business during the hours of operation to keep it free of litter.
3. The business proprietor shall provide adequate management and supervisory techniques to prevent loitering, unruliness, and boisterous activities of patrons outside the business or in the immediate area.
4. The hours of operation for the restaurant/bar shall be:

| | |
|-------------|--------------------|
| Mon. - Fri. | 10:00 am - 1:00 am |
| Sat. - Sun. | 8:00 am - 1:00 am |
5. The service of alcohol shall be in conjunction with minimum food service during all hours of alcohol availability, and a "bona fide eating place" type of alcohol license from the State of California shall be maintained. Minimum food service shall consist of a menu of similar variety to the "all hours" menu submitted to the Planning Commission.
6. The noise emanating from the property shall be within the limitations prescribed by the City's noise ordinance and shall not create a nuisance to the surrounding residential neighbors.
7. All doorways and windows for the business shall remain closed at all times during live entertainment. No live entertainment or amplified music shall be permitted within the second floor area when the retractable roof is in an open position.
8. Dancing and entertainment shall be permitted as follows:
 - A. Entertainment and dancing located on the lower level dance floor on Friday and Saturday until 1:00 am; on a weekly basis.
 - B. Live entertainment without dancing located on the lower level dance floor on Thursday until 11:30 pm and on Sunday until 1:00 am, on a weekly basis. Customers shall be prohibited from occupying any portion of the dance floor on Sundays.
 - C. A maximum of 6 additional events located on the temporary upper dance floor area, per calendar year subject to approval of Class II Group Entertainment Permits (including corresponding fees) pursuant to the procedures, and requirements of the Manhattan Beach Municipal Code. In no case shall entertainment or dancing occur on both the upper and lower levels at the same time.
9. A Class I Group Entertainment Permit shall be obtained for all entertainment aspects of the business. Should said entertainment be determined to provide a nuisance, said permit shall be revoked under administrative authority without prejudice to the remaining conditions of approval.
10. All commercial activities shall take place within an enclosed building.

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11. The service of food and beverage shall be primarily by employees to customers seated at tables, and there shall be no take-out windows.
12. Utilities serving the site shall be underground, pursuant to City ordinance.
13. All site nuisance and storm water, including roof drainage, shall be contained on site and outletted through the curb on Manhattan Beach Boulevard as approved by the Director of Public Works. All existing exterior drains shall comply with applicable sewage requirements prior to implementation of this Use Permit Amendment, subject to review and approval of the Department of Public Works.
14. A refuse enclosure shall be maintained as approved by the Director of Public Works.
15. The roof area above the parking area shall have a parapet wall along the west and east of a height not to exceed three feet in height.
16. The ten (10) foot satellite dish shall be painted in a light color to minimize the visual impact of its presence; subject to the approval of the Department of Community Development.
17. The ten (10) foot satellite dish shall not exceed the maximum height of 26 feet.
18. The added enclosed floor area shall be permitted to be used only as incidental kitchen storage. The added roof, over the parking area, shall be permitted as a roof only for placement of one 10 foot diameter satellite dish painted in a light color to minimize the visual impact of its presence. No other uses shall be permitted. Any existing storage, office, or other items presently located on said roof shall be removed prior to implementation of any dancing activities.
19. A permanent railing barrier shall be installed at the perimeter of the lower level dance floor subject to approval of the Fire Marshal and Community Development Department.
20. All signs shall be in compliance with the City's Sign Code and freestanding or pole signs shall be prohibited on the subject property.
21. This Use Permit amendment shall lapse one-year after its date of approval, unless implemented or extended pursuant to 10.84.090 of the Municipal Code.
22. 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.
23. Applicant agrees, as a condition of approval of this project, to pay all reasonable legal and expert fees and expenses of the City of Manhattan Beach, up to \$20,000, in defending any legal action brought against the City within 90 days after the City's final approval of the project, other than one by the Applicant, challenging the approval of this project, or

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any action or failure to act by the City relating to the environmental review process pursuant to the California Environmental Quality Act. In the event such a legal action is filed against the City, the City shall estimate its expenses for the litigation and Applicant shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due.

24. At any time in the future, the Planning Commission reserves the right to review the subject Use Permit for the purposes of revocation or modification in accordance with Section 10.104.030 of the Municipal Code. Modification may consist of the following, but is not necessarily limited to: limitation of hours, further limitation of total occupancy, requirement for valet parking, imposition of conditions deemed reasonable to mitigate or alleviate impacts to adjacent or nearby land uses.

SECTION 3. Pursuant to Government Code Section 65907 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.

SECTION 5. The City Clerk shall certify to the passage and adoption of this resolution; shall cause the same to be entered among the original resolutions of said City; and shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council of said City in the minutes

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of the meeting at which the same is passed and adopted.

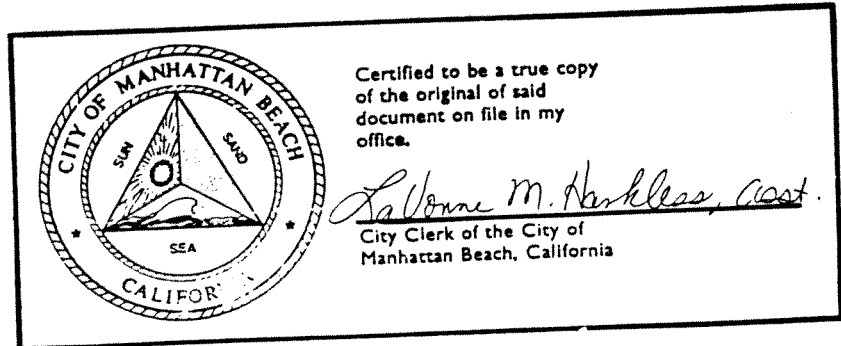
PASSED, APPROVED, and ADOPTED this 17th day of May,
1994.

Ayes: Cunningham, Lilligren, Barnes, Jones, Mayor Napolitano
Noes: None
Abstain: None
Absent: None

/s/ Steven A. Napolitano
Mayor, City of Manhattan Beach,
Manhattan Beach

ATTEST:

/s/ Win Underhill
City Clerk



SURVEY OF DOWNTOWN EATING AND DRINKING ESTABLISHMENTS

| Establishment | Address | Hours of Operation | Alcohol License | Reso. # |
|-----------------------------|---------------------------|--|------------------------|---------------------|
| 900 Manhattan Club/Sidedoor | 900 Manhattan Ave. | M-Th 11am-12 am F 11am-1 am Sat 9am-12am Sun 9am-12am | Full Liquor | CC Reso. 5155 |
| Crème de la Crepe | 1140 Highland Ave. | Su-Th 6am-10pm F-Sa 6am-11pm | Beer and Wine | 02-14 |
| Beaches | 117 Manhattan Beach Blvd. | M-F 10am-1am Sa-Sun 8 am-1am | Full Liquor | CC Reso 5087 PC 243 |
| Café Pierre | 317 Manhattan Beach Blvd. | 9am-1am Daily | Full Liquor | 94-20 |
| Pasta Pomodoro | 401 Manhattan Beach Blvd. | Sun-Wed 9am-11pm Thu-Sat 7am-12am | Beer and Wine | 03-05 |
| Simmzy's | 229 Manhattan Beach Blvd. | M-Th 6am - 11pm F-Sa 6am-12am | Beer and Wine | 03-20 |
| El Sombrero | 1005 Manhattan Ave. | Su-Th 7am-11pm F-Sa 7am-12am | Beer and Wine | 07-09 |
| Ercoles | 1101 Manhattan Ave. | 11am-2am Daily | Full Liquor | 85-32 |
| Fonzs | 1017 Manhattan Ave. | Su 9am-9pm M-Th 5:30am-10pm F-Sa 5:30am-11pm | Full Liquor | 01-04 |
| Mr. Cecils California Ribs | 1209 Highland Ave. | Sun-Th 7am-11pm F-Sat 7am-12am | Beer and Wine | 99-09 |
| Hennesseys | 313 Manhattan Beach Blvd. | 11am-2am Daily | Full Liquor | 83-18 |
| Fusion Sushi | 1150 Morningside Dr. | Su-W 9am -11pm Th-Sa 7am-12am | Full Liquor | 03-05 |
| Kettle | 1138 Highland Ave. | 24 Hours Daily | Beer and Wine | 83-06 |
| Le Pain Quotidien | 451 Manhattan Beach Blvd. | M-Sun 7 am -7:30 PM- (alcohol 10 am) | Limited beer and wine | 08-08 |
| Mama D's | 1125 A Manhattan Ave. | 7am-2am Daily | Beer and Wine | CC Reso. 5175 |
| Mangiamo | 128 Manhattan Beach Blvd. | 8am-12am Daily | Full Liquor | 83-28 |
| Brewco | 124 Manhattan Beach Blvd. | Su-Sa 7am-12am F-Sat 7am-1am | Full Liquor | 97-43 |
| Sharks Cove | 309 Manhattan Beach Blvd. | 7am-2am Daily | Full Liquor | 03-24 |
| Manhattan Pizzeria | 133 Manhattan Beach Blvd. | 6am-2am Daily | Beer and Wine | CC Reso. 5175 86-38 |
| Mucho | 903 Manhattan Ave. | Su-T 11am-12am F-Sat 11am-2am | Full Liquor | CC Reso. 4108 |
| Izaka-Ya | 1133 Highland Ave. | Su-W 11:00am-11pm Th-Sa 11:00pm-12am | Beer and Wine | 10-04 |
| Old Venice/El Sombrero | 1001 Manhattan Ave. | Sun-Thu 7am-11pm Fri-Sat 7am-12am | Beer and Wine | 07-09 |
| Penny Lane | 820 Manhattan Ave. | Su-Th 7am-10:30pm F-Sa 7am-11:30pm | Beer and Wine | 89-23 |
| Rock N Fish | 120 Manhattan Beach Blvd. | Su-Th 7am-12am F-Sa 7am-1am | Full Liquor | 99-04 |
| Shellback | 116 Manhattan Beach Blvd. | No Reso | Full Liquor | No Reso |

EXHIBIT D
PC MTA. 1/26/11

| | | | | |
|-----------------|---|---|------------------|------------------|
| Sun & Moon Café | 1131 Manhattan Ave. | Su-Th 6am-11pm F-Sa 6am-12am | Beer and Wine | CC Reso. 5175 |
| Talia's | 1148 Manhattan Ave. | Su-W 7am-11pm Th-Sa 7am-12am | Full Liquor | 01-24 |
| Memphis | 1142 Manhattan Ave. | M-W 11am-11pm Th-F 11am-12am Sa 7am-12am Su 7am-11pm | Full Liquor | 99-20 |
| 12th+Highland | 304 12th Street | Su-Th 10am-12am F-Sa 10am-1am | Full Liquor | 87-36 |
| Wahoo's | 1129 Manhattan Ave. | Su-Th 6am-11pm F-Sa 6am-12am | Beer and Wine | CC Reso. 5312 |
| Darren's | 1141 Manhattan Ave. | Su-Th 11am-11pm F-Sa 11am-12am | Full Liquor | 02-28 |
| Shade Hotel | 1221 Valley Drive | Zinc Lobby Bar, Terrace, Conf Room and Courtyard-(Special Events)- Su-Th 6am-11pm, F, S and Sun before Mem and Labor days 12am midnight. Courtyard-(Functions)and Roofdeck Daily 6am-10pm | Full Liquor | 02-18 |
| Petro's | 451 Manhattan Beach Blvd Suite B-110 | Su-Th 6am-12 am F-Sa 6am-1am Off-site specialty wine | Full Liquor | 06-20 |
| Sashi | 451 Manhattan Beach Blvd Suite D-126 1200 Morningside | Su-Th 6am-11pm F-Sa 6am-12am | Full Liquor | 02-18 |

Eric Haaland

From: Laurie B. Jester
Sent: Tuesday, January 18, 2011 8:21 AM
To: Chris Vargas
Cc: Eric Haaland
Subject: RE: Conditions- Strata

Chris-
Thanks for the input-
Laurie

Laurie B. Jester
Planning Manager
P: (310) 802-5510
E: ljester@citymb.info



From: Chris Vargas
Sent: Sunday, January 16, 2011 12:41 PM
To: Laurie B. Jester
Subject: Conditions

Laurie,
I met with Mike Zislis today in regards to the conditions to be in place at the Strada 117 Manhattan Beach Blvd. He gave me a tour of the location, explained to me the construction and plans. We walked around the neighborhood and discussed my concerns. After meeting with Mr. Zislis, I want to amend the previously recommended conditions to reflect the following.

- Noise from the business is not to exceed beyond 75 feet of the business.
- Windows and doors shall be kept closed at any time that entertainment other than background noise or television occurs.

Thanks, Chris

Chris Vargas
Sergeant Parking & Animal Control Supervisor
P: (310) 802-5158
E: cvargas@citymb.info



EXHIBIT E
PC MH. 4/26/11

**CITY OF MANHATTAN BEACH
DEPARTMENT OF COMMUNITY DEVELOPMENT**

TO: See distribution below

FROM: Angela Soo, Executive Secretary
c/o (Eric Haaland)

DATE: DECEMBER 10, 2010

SUBJECT: Review Request for Proposed Project at:

117 MANHATTAN BEACH BLVD.
"STRATA" (formerly Beaches site)

(Revision to 1st submittal on 10/27/10: includes added dining balconies facing MBB and changes in hours of operation)

The subject application has been submitted to the Planning Division. Please review the attached material(s) and provide specific comments and/or conditions you recommend to be incorporated into the draft Resolution for the project. Conditions should be primarily those which are not otherwise addressed by a City Ordinance.

If no response is received by **DECEMBER 28** we will conclude there are no conditions from your department.

Comments/Conditions (attach additional sheets as necessary):

I HAVE CONCERNS ABOUT THE OUT-DOOR DINING BALCONIES AND THE NOISE COMING FROM THE BALCONIES DISTURBING THE RESIDENTS TO THE NORTH & SOUTH OF THE LOCATION. ADD CONDITION RESTRICTING USE OF THE BALCONIES TO 9PM EVERYDAY. C. V.

Yes / No Building Div.

Yes / No Fire Dept

Yes / No Public Works (Roy)

Yes / No Engineering (Steve F)

Yes / No Waste Mgmt (Anna)

Yes / No Traffic Engr.(Erik)

Yes / No City Attorney

Yes / No Police Dept.:

Traffic

Detectives

Crime Prevention

Alcohol License (Chris Vargas)

Eric Haaland

From: Quilliam, James LA Tecolote [JQuilliam@Tecolote.com]
Sent: Thursday, January 20, 2011 1:29 PM
To: Eric Haaland
Subject: information to be included in report
Signed By: There are problems with the signature. Click the signature button for details.

Eric,

Thanks for taking the time to discuss the upcoming meeting on Jan 26th.
I am sending this info so that it can be included in the report. Our Downtown residents team made up of residential neighbors in close proximity of the Spectra establishment (Previous Beaches) are very concerned about the proposed plan for outdoor patio, change in operating hours, extended dancing etc... the proposed changes will have an adverse impact to the quality of life to our neighbors and surrounding community. We plan to look over the details of the plan once it is available and plan to support the Jan 26th meeting and share our concerns and work with the city and new owners to mitigate these impacts.

Please send any future e-mail messages to jimquilliam@hotmail.com in order to meet the report deadline I am sending to you from my work e-mail

Regards,
DRT

EXHIBIT F
PCMH. 1/26/11

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SIT DOWN RESTAURANT PARKING CALCULATION WORKSHEET
 (Quantities are square feet unless otherwise noted)

PROJECT: Strata

Existing Parking Requirement(A):
 (if existing facility is to remain & project < 50%)

| Use | Quantity | Req't | Spaces Required |
|-----------------------|----------|-----------------|--------------------|
| Dining | 3450 | / 50 per space | = 69 spaces |
| Bar w/o Entertainment | 0 | / 50 per space | = 0 spaces |
| Bar w/ Entertainment | 499 | / 35 per space | = 14.257143 spaces |
| Entertainment | 240 | / 35 per space | = 6.8571429 spaces |
| Pool Tables | 0 | / 1 per space | = 0 spaces |
| Electronic Games | 0 | / 400 per space | = 0 spaces |
| Accessory Retail | | / 200 per space | = 0 spaces |
| Total(A): | | | 90.114286 spaces |

Proposed Parking Requirement(B):

| Use | Quantity | Req't | Spaces Required |
|-----------------------|----------|-----------------|--------------------|
| Dining | 2543 | / 50 per space | = 50.86 spaces |
| Bar w/o Entertainment | 0 | / 50 per space | = 0 spaces |
| Bar w/ Entertainment | 788 | / 35 per space | = 22.514286 spaces |
| Entertainment | 240 | / 35 per space | = 6.8571429 spaces |
| Pool Tables | 0 | / 1 per space | = 0 spaces |
| Electronic Games | 0 | / 400 per space | = 0 spaces |
| Accessory Retail | 0 | / 200 per space | = 0 spaces |
| Total(B): | | | 80.231429 spaces |

Parking Requirement Exclusions/Exemptions (for restaurant-only sites):

Type of Exclusion: Downtown 1 to 1 floor area exemption

| Total Rest. Area | Excludable Area | Countable Area | % of Total |
|------------------|-----------------|----------------|-------------|
| 6750 | - 4500 | = 2250 | = 0.3333333 |

| | | |
|-----------|---------|---------------|
| Total(A) | %'age | Net Req't.(A) |
| 90.114286 | x 0.333 | = 30 |

| | | |
|-----------|---------|---------------|
| Total(B) | %'age | Net Req't.(B) |
| 80.231429 | x 0.333 | = 27 |

Net Requirement for Proposed Project

| | | |
|---------------|---------------|---------------------|
| Net Req't.(B) | Net Req't.(A) | Project Requirement |
| 27 | - 30 | = -3 |




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**CITY OF MANHATTAN BEACH
DEPARTMENT OF COMMUNITY DEVELOPMENT
STAFF REPORT**

TO: Planning Commission

FROM: Richard Thompson, Director of Community Development 

BY: Eric Haaland, Associate Planner 

DATE: February 23, 2011

SUBJECT: Consideration of a Continued Use Permit Amendment to Remodel an Existing Restaurant Including the Addition of Outdoor Dining with Balconies adjacent to Manhattan Beach Boulevard, and Expansion of Operating and Entertainment Hours, on the Property Located at 117 Manhattan Beach Boulevard (MB Dining LLC)

RECOMMENDATION

Staff recommends that the Planning Commission **CONDUCT** the continued Public Hearing and **APPROVE** the project by adopting the attached resolution.

APPLICANT/OWNER

MB Dining LLC
117 Manhattan Beach Boulevard
Manhattan Beach, CA 90266

BACKGROUND

At its regular meeting of January 26, 2011, the Planning Commission conducted and continued the public hearing for the subject project. The Commission indicated general support for the project, but did not support extended closing times or balcony dining in the right-of-way, and expressed concerns for noise containment and additional dancing. Staff and the applicant were directed to return with additional information including: revised plans, noise control details, and entertainment scheduling concepts.

Since the January 26th meeting, the applicant has provided a partial set of updated plans and a neighbor group has submitted the attached proposal for a complete replacement of the restaurant's use permit conditions of approval.

DISCUSSION

The submitted revised plans show changes including reduced balcony depth, a conventional façade at level 4, and modified entries. Upper level floor plan now shows 18-inch balcony encroachments without seating or dining. This reduced encroachment is still subject to City Council authority. The level 4 floor plan now shows a fixed wall with windows and a single swinging door between the interior bar area and outdoor dining area in response to noise concerns for the dining area becoming an extension of the bar area. The two entry areas have been revised to eliminate a water feature, and partially internalize a fire element.

The applicant has also submitted the attached menu/chef information, and images of some potential door/ window components. Additional details regarding retractable walls or other sound issues are anticipated at the February 23rd meeting.

The neighbor proposal suggests formatting the entire set of use permit conditions similar to the recent Shade Hotel (1221 Valley Drive) use permit, with definitions, multiple noise conditions, detailed closing procedures, etc. Substantial requirement changes suggested by the neighbors include: weeknight closing at midnight, entertainment ending 30 minutes prior to closing, and an engineered noise control rating. Many of the other items appear useful, and may be acceptable to the applicant; however, the Planning Commission's direction was to primarily retain the existing use permit with some specific changes.

The attached draft resolution produced by staff retains the existing use permit format with updated standard restaurant conditions, and modifications addressing issues of entertainment, noise, and hours. A simple addition of weekday breakfast hours with restriction of all deliveries to between 8am to 10pm has been included. The resolution also incorporates the Planning Commission's expressed interest in using the establishment's required annual entertainment permit to schedule entertainment beyond the primary Friday/Saturday events, and also to control general noise and related operations.

The current use permit permits secondary entertainment without dancing on Thursdays and Sundays, and 6 annual special events with entertainment and dancing. The draft resolution includes a simplified compromise between the existing use permit, the applicant's request for additional nights of dancing, and the Commission's desire to modify any additional dancing if necessary in the future. The condition language exchanges all existing Thursday, Sunday, and special event entertainment for one day per week of entertainment with dancing subject to the annual entertainment permit. The entertainment permit would establish the scheduling (or schedule reduction) and details for that secondary dancing each year, or more frequently as appropriate.

Condensing what is currently 120 days per year of allowable secondary entertainment with multiple entertainment permits, down to 52 days per year under a single controlling entertainment permit appears to improve upon possible uncertainty involved in past entertainment scheduling.

The Planning Commission also discussed using the annual entertainment permit process as an ongoing and flexible tool for controlling noise from the establishment. The most prominent items of concern that might need future restriction or adjustment were outdoor dining and retractable walls. The draft resolution requires that all general noise aspects of the business be regulated by the entertainment permit, as well as queuing for waiting customers.

Public Input: In addition to the neighbor proposal for use permit resolution language, staff has received the attached message supporting the neighbor proposal.

CONCLUSION

Staff recommends that the Planning Commission accept additional public hearing testimony, discuss the project issues, and approve the project by adopting the attached resolution.

Attachments:

- A. Draft Resolution No. PC 11-
 - B. P.C. Minutes excerpts, dated 1/26/11
 - C. P.C. Staff report & attachments
 - D. Additional applicant material
 - E. Neighbor resolution proposal
 - F. Recent neighbor message
 - G. Plans (separate - NAE)
- (NAE = not available electronically)

cc: Michael Zislis, Applicant Representative

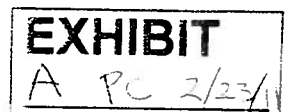
RESOLUTION NO. PC 11-

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
MANHATTAN BEACH APPROVING A USE PERMIT AMENDMENT TO
ALTER AN EXISTING RESTAURANT ON THE PROPERTY LOCATED
AT 117 MANHATTAN BEACH BOULEVARD (MB Dining LLC/Strata)**

**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. The Planning Commission of the City of Manhattan Beach conducted a public hearing on January 26, and February 23, 2011, received testimony, and considered an application for a use permit amendment to allow alteration of an existing restaurant including: outdoor dining, operating hours, entertainment, and other building modifications on the property located on the property legally described as Lots 7 & 8, Block 13, Manhattan Beach Division #2., at 117 Manhattan Beach Boulevard in the City of Manhattan Beach.
- B. The applicant for the subject project is MB Dining LLC, the owner of the property.
- C. The applicant had also requested extended closing times of 2am, increased frequency of dancing by two days per week, and balcony dining within the public right-of-way; but these requests were not approved by the Planning Commission, due to concerns for increased disruption to the surrounding area and the Manhattan Beach Boulevard right-of-way.
- D. The project is Categorically Exempt (Class 1, Section 15301) from the requirements of the California Environmental Quality Act (CEQA) since it involves minor modification of an existing facility.
- E. 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.
- F. The General Plan designation for the property is Downtown Commercial. The General Plan encourages commercial uses such as this that serve city residents, and are buffered from residential areas.
- G. 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.
- H. Approval of the restaurant use, 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 primarily existing in a central Downtown beach/pier oriented location, expected to increase focus on food service, and limited by operation hours that are reasonable restaurant hours for this commercial area.
- I. The project shall be in compliance with applicable provisions of the Manhattan Beach Municipal Code as well as specific conditions contained herein further regulating the project.
- J. The restaurant 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 has existed at the subject location, is appropriately located within a commercial area, and is conditioned herein to prevent possible adverse impacts.
- K. This Resolution, upon its effectiveness, constitutes the Use Permit for the subject restaurant and supersedes all previous use permit resolutions pertaining to the restaurant use.



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Section 2. The Planning Commission of the City of Manhattan Beach hereby **APPROVES** the subject Use Permit Amendment subject to the following conditions (* indicates a special condition):

Site Preparation / Construction

1. The project shall be constructed and operated in substantial compliance with the submitted plans (on 1/26/11 with specified revisions on 2/23/11) and project description as approved by the Planning Commission on February 23, 2011. Any substantial deviation from the approved plans and project description must be reviewed and approved by the Planning Commission.
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, grease interceptors, 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 and Health Department regulations.
5. Exterior equipment, antennas, etc., shall be appropriately screened and compliant with applicable regulations.

Operational Restrictions

6. * The management of the restaurant shall police the property in all areas immediately adjacent to the business during the hours of operation, and one hour after closing each night, to keep it free of litter.
7. * The business proprietor shall provide adequate management and supervisory techniques to prevent loitering, unruliness, and boisterous activities of patrons outside the business or in the immediate area. Any queuing of customers waiting to enter the establishment shall be prohibited from occupying Ocean Drive or Center Place, and shall be managed in compliance with the direction of the Police Department and the establishment's Group Entertainment Permit.
8. * Hours of operation shall be limited to 8am to 1am daily. Alcohol service shall cease at 12:40 nightly. Deliveries and other loading, truck idling, etc., occurring outside of the building shall be prohibited between 10pm and 8am nightly.
9. * The service of alcohol shall be in conjunction with minimum food service during all hours of alcohol availability, and "bona fide eating place" type of alcohol license from the State of California shall be maintained. Minimum food service shall consist of a menu of similar variety to the "all hours" menu on file. Full menu food service shall be available at the bar seats during all hours of operation.
10. * Noise emanating from the site shall be in compliance with the Municipal Noise Ordinance and the restaurant's Group Entertainment Permit. Any outdoor sound or outdoor amplification system or equipment is prohibited. No operable windows or similar openings shall be located on the north, west, or east sides of the restaurant. All doorways and windows for the business shall remain closed at all times during entertainment or dancing. Noise from the business shall not be audible beyond 75 feet of the subject site as determined by the Police Department.

11. * Dancing and entertainment other than background music or television shall be limited to level 1 as shown on the submitted floor plans as follows:
 - A. Entertainment and dancing on Fridays and Saturdays.
 - B. A maximum of one entertainment/dancing event per week shall be permitted subject to an approved schedule and restrictions contained within the approved Class I Group Entertainment Permit. The quantity, timing, or other restrictions of these additional events shall be subject to change by the Community Development Director with a minimum of 21 days notice to the owner/operator.
12. * A Class I Group Entertainment Permit shall be obtained for all entertainment and noise aspects of the business. Should entertainment, outdoor dining, window/door openings, etc. be determined to be detrimental to the surrounding area, said permit shall be revoked or revised under administrative authority without prejudice to the remaining conditions of approval. Staff decisions regarding Group Entertainment Permits are appealable to the City Council.
13. The service of food and beverages shall be primarily by employees to customers seated at tables, and there shall be no take-out windows.
14. Utilities serving the site shall be underground, pursuant to City ordinance.
15. All site nuisance and storm water, including roof drainage, shall be contained on site and outletted through the curb on Manhattan Beach Boulevard as approved by the Director of Public Works. All existing exterior drains shall comply with applicable sewage requirements prior to implementation of this Uwe Permit Amendment, subject to review and approval of the Department of Public Works.
16. * 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. The trash enclosure shall have a roof, sewer drain, and all other Public Works specifications. A trash and recycling plan shall be provided and implemented as required by the Public Works Department.
17. * The roof area above the parking area shall maintain the existing parapet wall along the west and east of a height not to exceed three feet above the abutting roof surface. No use or activity shall occur on this roof area except for maintenance purposes. Access to this area shall be by ladders or a maintenance hatch.
18. * All signs shall be in compliance with the City's Sign Code. The maximum total sign area permitted for the site shall be 50 square feet. All signs shall be located within 30 feet of the southerly property line. Pole signs and internally illuminated awnings shall be prohibited.
19. The operation shall comply with all South Coast Air Quality Management District Regulations and shall not transmit excessive emissions or odors across property lines.
20. The operation shall remain in compliance with all Fire and Building occupancy requirements at all times.
21. Parking for the site shall be in conformance with the Manhattan Beach Municipal Code and Local Coastal Program. Four parking spaces shall be provided on-site. The on-site parking spaces shall be marked and monitored to prevent conflicts with the public right-of-way.

Procedural

22. All provisions of the Use Permit are subject to review by the Community Development Department 6 months after occupancy and yearly thereafter.

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23. * This Use Permit Amendment shall lapse two years after its date of approval, unless implemented or extended pursuant to 10.84.090 of the Municipal Code.
24. 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.
25. 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.
26. * 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.

I hereby certify that the foregoing is a full, true, and correct copy of the Resolution as adopted by the Planning Commission at its regular meeting of February 23, 2011 and that said Resolution was adopted by the following vote:

AYES: ,

NOES:

ABSTAIN:

ABSENT:

RICHARD THOMPSON,
Secretary to the Planning Commission

Sarah Boeschen,
Recording Secretary

Chairman Fasola commented that he does not want the hearing to become a forum for a political debate.

Mr. Ngo requested that Commissioners Lesser, Paralusz and Fasola recuse themselves from considering the public hearing being discussed at this meeting, as they have a conflict of interest with **Michael Zislis**, who is the applicant. He requested that the Commissioners disclose any relationship or political contributions received from **Mr. Zislis**. He said that it is required by law that the Commissioners disclose any financial relationship or contributions to avoid any conflict of interest.

Ester Besbris said that a forum for the City Council candidates will be held by the Manhattan Beach Residents Association in the Council chambers on February 10, 2001, between 7:00 p.m. and 8:30 p.m. She said that she believes it will be televised live. She said that they are encouraging questions from members of the community which can be submitted to yourmbra@gmail.com or by phoning (310) 379-3277.

Bill Victor pointed out that it is appropriate for members of public bodies to disclose if they have had any contact or received contributions from applicants or participants that are involved in a matter being considered. He said that **Mr. Ngo's** request that the Commissioners disclose if they have received any contributions from parties involved in the public hearing that is before the Commission does have merit.

4. PUBLIC HEARINGS

01/26/11-1 Consideration of a Use Permit Amendment to Remodel an Existing Restaurant Including the Addition of Outdoor Dining with Balconies Adjacent to Manhattan Beach Boulevard, and Expansion of Operating and Entertainment Hours, on the Property Located at 117 Manhattan Beach Boulevard

Commissioner Lesser indicated that he does not have a financial interest in the subject project and has not received any donations from the applicant.

Commissioner Paralusz commented that she has no financial interest in the applicant's business. She commented that the applicant did contribute to her political campaign two years ago when she ran for the City Council in 2009; however, she does not feel that it has affected her ability to be fair and impartial in any matters that have been before the Commission. She said that she is willing to recuse herself and said that she would defer to the opinion of the other Commissioners as to whether they feel it would be appropriate.

Chairman Fasola said that it is Commissioner Paralusz's choice as to whether she feels she should recuse herself from considering the issue. He stated that his understanding is that a



Commissioner should not participate in consideration of an issue if they have a financial interest in the project that is being considered.

Commissioner Paralusz said that she does not have a financial interest in any property owned by **Mr. Zislis**.

Commissioner Seville-Jones stated that there is not a legal requirement for Commissioner Paralusz to recuse herself, and it is her decision if she feels it would be appropriate.

Commissioner Lesser said that he does not believe that Commissioner Paralusz has a legal obligation to recuse herself, and it is up to her discretion.

Commissioner Paralusz pointed out that the contribution to her campaign from **Mr. Zislis** has been in the public record for over two years. She said that she believes she can be fair and impartial in considering the subject application. She indicated that she appreciates the support of the other Commissioners regarding her ability to be impartial. She said that she will consider the issue and that she will continue to work hard to evaluate the issues fairly on the basis of the law and public input in order to arrive at a Resolution that benefits everyone.

Director Thompson said that a Use Permit was approved for the site in 1994, and there have been different restaurants that have relied on the permit over the years. He indicated that the permit established the hours of operation, provisions for entertainment, and many other restrictions. He indicated that the item is before the Commission because of the additional changes being proposed by the applicant for a new restaurant.

Associate Planner Haaland said that the proposed remodel includes requests for the expansion the hours and entertainment. He indicated that the proposal includes outdoor dining; balconies that would project over the Manhattan Beach Boulevard sidewalk; enlarging of the exterior entries; relocation of the dance floor; the installation of retractable walls along Manhattan Beach Boulevard; and the addition of a basement wine cellar. He stated that the current permitted hours of operation are until 1:00 a.m., and the applicant is proposing to close at 2:00 a.m. on Friday and Saturdays. He indicated that the applicant is also proposing to extend the operating hours on weekday mornings to open at 8:00 a.m. for breakfast. He commented that dancing is currently permitted on Friday and Saturdays, and the proposal is to also allow dancing on Thursday and Sunday nights and nights before holidays. He stated that the proposal is also to increase the number of special events that are permitted per year from 6 to 12. He pointed out that no addition of square footage is proposed to the building. He indicated that the project does conform to the City's applicable Code requirements.

Associate Planner Haaland said that the previous use on the site did not include outdoor dining, and the Use Permit requires that the operation remain within the enclosed building. He stated that the existing building has a partial retractable roof. He indicated that the proposal includes

retractable walls, windows and doors at the front of the building. He commented that the balconies with dining are proposed to extend 3 feet over the sidewalk along Manhattan Beach Boulevard into the City right-of-way. He pointed out that it is normal to allow canopies and awnings to encroach over the sidewalk, but it is not typical for a balcony. He said that the only example of a balcony encroaching into the right-of-way is at a building next to the subject site. He commented that there are no other examples of dining areas in the downtown that encroach on a balcony within the City right-of-way. He stated that the Encroachment Code does permit the City Council to approve atypical projections.

Associate Planner Haaland stated that the proposal is for hours of operation until 2:00 a.m. on weekends. He commented that it was routine to allow restaurants to be open until 2:00 a.m. prior to the 1990's; however, the latest hours that have been approved generally since that time have been 1:00 a.m. He indicated that the applicant is also proposing to open at 8:00 a.m. for breakfast service on weekdays. He said that breakfast service generally has not been a concern with most applications. He commented that the applicant is requesting that dancing be permitted on Thursdays and Sundays and on nights prior to holidays in addition to already being permitted on Friday and Saturday nights. He said that the applicant has pointed out that the prior operation at the subject site did include dancing on Thursday and Sunday evenings, although it is not allowed in the existing Use Permit. He indicated that the dance floor has been required to be definable and separated from the additional dining area on the main floor. He stated that the applicant is proposing to move the dance floor to a more central location and have dining area on either side of the dance area. He commented that with the configuration of the proposed design, it would not be feasible to include a railing to separate the dance area from the dining area. He indicated that the applicant is also requesting to increase the number of special events that are permitted from 6 to 12 per year. He stated that comments that were received from one neighboring resident have been included in the staff report, and comments that were received after the staff report was distributed have also been provided to the Commissioners.

In response to a question from Commissioner Lesser, Associate Planner Haaland said that the goal of the City Council for the last 20 years has been to be more restrictive regarding closing times for restaurants. He indicated that outdoor dining in the downtown area has been encouraged as a result of the downtown strategic plan.

In response to a question from Commissioner Lesser, Associate Planner Haaland said that the patrons of the former operation on the subject site parked in the downtown public parking lots and metered parking on the adjacent streets. He pointed out that the proposal does not generate an additional requirement for parking per Code. He commented that the proposal would actually include a reduction in dining area from the previous operation on site.

In response to a question from Commissioner Lesser, Associate Planner Haaland indicated that the Commission should determine whether they feel the proposed encroachment of the balcony

over the public right-of-way is appropriate for the subject use and whether it would be detrimental to the surrounding area. He indicated that the City Council will review the comments of the Commission and has the deciding authority on whether or not the encroachment is approved.

Director Thompson pointed out that the reason the encroachment for the balcony is before the Commission is because it is included in the overall restaurant use and relevant to the Use Permit. He said that staff felt that it would be appropriate for the Commission to review whether or not they feel the encroachment should be permitted. He commented that staff does not have a major concern with allowing the balcony. He stated that there are projections from the roofs of other structures on Manhattan Beach Boulevard. He said that the proposal for the balcony is unique because it would be used for dining. He commented that the City Council will ultimately make the decision as to whether or not the projections are approved. He said that Petros is an example of a restaurant that is able to serve liquor on City property within the Metlox property. He indicated that their outdoor dining area is separated by a railing.

Chairman Fasola commented that his understanding is that the Building Code limits projections over the public right-of-way to non structural awnings and canopies. He asked whether the proposal for the balcony has been reviewed by the Building Department.

Associate Planner Haaland indicated that the Building Department reviewed the proposal and did not provide any specific comments regarding the balcony projection.

Commissioner Lesser asked regarding the possibility of requiring that the sliding retractable windows and the balcony area be closed after a certain hour.

Associate Planner Haaland said that there is a condition in the current Use Permit that all window openings be closed while entertainment is occurring. He commented that all entertainment would occur on level one. He indicated that the applicant is proposing that the windows be closed while entertainment is occurring.

In response to a question from Commissioner Lesser, Associate Planner Haaland said that he does not have any information regarding the requirement of Shark's Cove to close their windows after a certain hour in order to contain noise.

Commissioner Lesser commented that he would like further information as to whether Shark's Cove is required to close their windows after a certain hour and whether there is a record of any complaints regarding noise from that establishment.

Commissioner Seville-Jones commented that walking under a balcony would seem to be quite different than walking under an awning or canopy.

In response to a question from Commissioner Paralusz, Associate Planner Haaland stated that the applicant has discussed requirements and conditions for this project that are influenced by their experience with The Shade.

Director Thompson indicated that he feels staff has learned a great deal with The Shade project, and appropriate conditions would be placed on the subject proposal in order to avoid the same issues from occurring.

In response to a question from Chairman Fasola, Associate Planner Haaland indicated that the proposed basement area would be new. He pointed out that the basement area would be used for storage and would not be countable as square footage. He said that the area would likely be greater than 100 square feet.

In response to a question from Chairman Fasola, Associate Planner Haaland commented that there has not been any staff experience with the previous operator on the subject site having special events. He indicated that each event would be reviewed and would have conditions.

Director Thompson said that staff is not specifically concerned with special events but rather regarding noise impacts from the operation in general.

In response to a question from Chairman Fasola, Director Thompson indicated that staff has not received complaints regarding noise along Manhattan Beach Boulevard since greater restrictions have been placed as new Use Permits have been approved.

In response to a question from Chairman Fasola, Associate Planner Haaland indicated that he is not aware that Simzzy's has received any noise complaints.

In response to a question from Commissioner Lesser, Director Thompson said that the City works with the Department of Alcohol Beverage Control (ABC) to regulate conditions of the alcohol license. He stated that the City ensures that the conditions are enforced whether it is the jurisdiction of the City or the ABC. He commented that staff feels it is important to place language in the Use Permit requiring that alcohol be served in conjunction with food service in order to provide a condition that can be enforced by the City.

Michael Zislis, the applicant, pointed out that there is no request in the proposal for expanded entertainment, and the proposal actually includes a reduction. He commented that current permit allows hours of operation until 1:00 a.m. every night. He commented that they are seeking clarification in the hours of operation that entertainment and service would end at 1:00 a.m. and the restaurant would be shut down by 2:00 a.m. on weekends. He said that they have proposed the balconies to compensate for the loss of square footage in the building as a result of providing for handicapped access elevators and expanding the kitchen. He commented that he would plan to keep the retractable roof if he is not permitted to have the balcony. He indicated

that he is asking to allow for 12 special events per year with dancing permitted until 11:00 p.m. on the lower level. He said that the dance floor is a separate defined area, and the stereo speakers are around the dance area.

Mr. Zislis commented that they are discontinuing the use of the northwest corner, which would improve the view corridor toward the pier. He said that they are proposing to move the air conditioners to the parapet, and the area could not be used for people to gather. He indicated that they are proposing to enclose the trash area. He commented that they also plan to allow the trash enclosure to be used by all of the restaurants on the alley. He stated that they have agreed to change the loading from the alley to Ocean Drive. He indicated that the windows are all double glazed to provide sound mitigation. He stated that they have eliminated dancing on the upper level and have reduced the size of the bar on the upper level. He said that they have added three bathrooms. He commented that they have enlarged the kitchen by 25 percent. He said that the menu will be upper scale with a high end wine list. He indicated that the ceiling and walls will be sound absorbing. He pointed out that he has received complaints at his other operations but has never received a citation for a violation. He indicated that the previous operators at the subject site were not responsive to the neighbors in the past when there were problems. He stated that he has been responsive to noise problems regarding The Shade. He said that they have designed the restaurant with consideration to noise concerns. He commented that he met with a group of about 16 neighbors and later met with three of the neighbors to draft a document listing mitigation measures. He indicated that he agreed not to open at 8:00 a.m. for breakfast during the week due to the concerns of the neighbors.

Mr. Zislis said that currently dancing is permitted until 1:00 a.m. every night. He indicated that they plan to do last call at midnight during the week and 1:00 a.m. on Friday and Saturday nights. He said that he is asking for clarification of the hours so that there is no confusion regarding enforcement. He commented that the previous use has been allowed to operate until 2:00 a.m. on the weekends for the past 40 years.

In response to a question from Commissioner Lesser, **Mr. Zislis** indicated that the intent was to include in this application that last call on the weekends would be at 1:00 a.m. with the last drink being served at 1:20 a.m. He indicated that exiting customers all at one time would result in them congregating on the sidewalk outside of the restaurant. He said that the previous operator served drinks until 2:00 a.m. on weekends.

Chairman Fasola pointed out that the Use Permit specifies hours of operation are permitted until 1:00 a.m. regardless of whether the previous operator was in violation by serving until 2:00 a.m.

Mr. Zislis said that his intent is that a clear definition of closed be specified.

Commissioner Seville-Jones stated that the Use Permit states that the hours of operation for the restaurant shall be until 1:00 a.m., which suggests that everyone should be out of the restaurant by 1:00 a.m.

Mr. Zislis commented that allowing hours of operation until 1:00 a.m. does not mean the same as being closed at 1:00 a.m.

Mr. Zislis indicated that he is proposing to limit live entertainment to end at 11:00 p.m. He said that he feels the dancing floor is a great addition to the downtown area. He pointed out that the subject site is centrally located in the downtown area, and the neighbors purchased their properties knowing that the restaurant was located on the site. He commented that he is trying to mitigate any impacts to the neighbors from the previous operation.

In response to questions from Commissioner Lesser, **Mr. Zislis** said that he would not want to give up the current rights he has to operate until 1:00 a.m. He said that they agreed to place the use of the balcony under the Entertainment Permit so that it could be changed if there was an issue with noise to the neighbors. He said that he would like for any decision regarding adding a condition that the doors be closed after a certain hour to be considered 90 days after opening. He said that placing those items in the Entertainment Permit would allow staff the flexibility to change the requirements if there are noise impacts to the neighbors. He suggested that the allowance for 12 special events could also be placed in the Entertainment Permit. He commented that valet service is not permitted in the area because it would result in additional cars in the adjacent neighborhood.

In response to a question from Commissioner Paralusz, **Mr. Zislis** stated that the retractable roof would be changed to a solid roof if the proposed balcony is permitted for the project. He indicated that he has met with about 15 neighbors to discuss the project, and three neighbors helped to draft the document that is before the Commission.

At 8:00 a five minute recess was taken.

Chairman Fasola opened the public hearing.

Jim Quilliam, a Manhattan Beach resident, said that they did meet with the applicant, and no formal agreement was made. He said that the plans appear to be inconsistent and incongruent with the discussion that occurred at the meeting with the neighbors. He indicated that **Mr. Zislis** indicated that there would be a greater emphasis on food service; however, the plan shows three or four levels of bars and cocktail lounges. He indicated that that the plan is for increased music, dancing and special events. He said that a review of the plans would indicate that the priority is not for higher end food service but rather for a party establishment that would include more special events. He stated that the intent appears to be to create a higher end party environment.

Mr. Quilliam stated that the main concern is the well being of the residents in the adjacent neighborhood who will be impacted by the project for many years into the future. He commented that they are asking the Commission to consider minimizing any noise and quality of life impacts. He said that they are requesting that the days and hours for music and dancing be restricted and that any open areas be restricted. He commented that they could hear the music from the previous operation at the site clearly from their living room and bedroom with their windows closed. He stated that their letter they have provided to the Commission has outlined 15 items that they wish to have included in the Use Permit. He pointed out that Strata is a new business which must earn the trust of the adjacent neighbors. He indicated that they want to find solutions that will allow the business to be successful and allow all of the neighbors and the applicant to live in the community together.

In response to a question from Commissioner Lesser, **Mr. Quilliam** said that the retractable roof was always closed before any entertainment started. He indicated that his preference would be for any open area to be away from the residents if he had to choose between having the retractable roof and balcony area.

Allen Selner, a resident of the 1000 block of The Strand, commented that his home is adjacent to the subject property, and he has never had an issue regarding noise from the operation of the previous establishment on the site. He said, however, that the establishment can attract a certain type of people that stay in the area late at night. He indicated that the patrons of the previous establishment did not necessarily leave the area after the restaurant was closed. He indicated that people standing on the street would make noise until 3:00 a.m. He indicated that with children living in the area, he was concerned about the character of the people that would loiter in front of the restaurant. He indicated that the type of patrons that visit the restaurant and how they are directed after the restaurant closes are issues that need to be mitigated. He indicated that no noise from the dance floor of the establishment would reach the neighbors with soundproof glass; however, there can be a great deal of noise impacts to the neighbors from patrons loitering on the street. He pointed out that outdoor dining is a great asset which makes the City unique, and it would work very well with soundproofing.

In response to a question from Commissioner Paralusz, **Mr. Selner** said that the previous operators made efforts to attract a younger college crowd who would spend money drinking. He commented that there were buses with young people that came to the establishment. He commented that he understands, however, that the new restaurant would not attract the same young crowd. He said that there was no security provided on the outside of the previous establishment. He said that he understands with the money being put into the establishment that they would not want the behavior of the patrons to become an issue. He said that the previous operation represented the prior character of the downtown area as a bar type of atmosphere.

Bill Victor said that the echoes of noise can spread through a neighborhood, and there is no method of determining the type of patrons that would visit the restaurant. He commented that the operators of The Shade have not responded to all of the noise complaints. He indicated that the subject establishment would not be good for the community. He said that the facility should not have open windows and doors facing the residential area.

Steve Wible, a resident of the 1200 block of Ardmore Avenue, said that the neighbors adjacent to The Shade have spent five years dealing with the lack of enforcement regarding the noise impacts from the establishment. He said that the conditions of the Noise Ordinance are still not enforced regarding The Shade. He said that the City allowed some of the noise abatement materials to be eliminated from The Shade which has contributed to the noise problem in the adjacent neighborhood. He indicated that he assumes that the neighbors adjacent to the subject establishment would have similar problems. He indicated that there is no enforcement by the City of the conditions of the Noise Ordinance. He commented that there needs to be enforcement of the Noise Ordinance. He indicated that the neighboring residents of The Shade have spent their own money attempting to solve the noise issues.

Annette Davis, a resident of the North End, said that extending the rights of business operators creates greater impacts to the adjacent neighbors. She commented that once restrictions are eased, the residents must go through the process of making sure they are enforced. She said that it is very predictable that there will be complaints from the neighbors regarding noise if the balconies are permitted. She pointed out that it is difficult to make the conditions of a Use Permit more restrictive after they have been approved. She commented that dancing creates a lively atmosphere, and people who have been dancing create a great deal of noise when they leave an establishment. She commented that sound from the balconies would travel and project out into the neighborhood and disturb the residents. She indicated that she agrees that the STC 50 noise standard should be required.

Wayne Partridge said that the downtown area previously became a nightclub and bar venue until the City Council changed the restrictions. He commented that the subject establishment is not primarily a restaurant use as has been suggested by the applicant. He indicated that the proposal includes a large amount of bar area and includes too many opportunities for tables to be moved away from the dining area. He said that he is opposed to allowing open windows. He said that even noise experts are not able to determine all noise impacts until a structure is built, and there is a high probability that sound would emanate out from the windows at the upper levels and create a major problem in the neighborhood. He stated that a condition should be included that the windows must be closed by a certain hour if they are allowed. He said that the conditions need to be very clear and well defined in order to allow for enforcement. He indicated that the existing Conditional Use Permit requires that the restaurant be closed at 1:00 a.m., and there is no basis for the interpretation of **Mr. Zislis** that the operation is permitted to close at 2:00 a.m. He commented that having a larger number of bar stools increases the parking demand. He suggested placing the issues regarding operation that may require

modification as part of the Entertainment Permit which can be changed and revoked rather than becoming an entitlement in the Use Permit. He said that it should also be made clear that the Entertainment Permit is revocable and can be changed by the City if there are problems with the operation.

George Kaufman, a resident of the downtown area, said that he echoes the comments of **Mr. Partridge**. He indicated that he does not agree with the position of **Mr. Zislis** that that the closing time automatically becomes an hour later because dancing is allowed until 1:00 a.m. He pointed out that restrictions need to be placed on the restaurant now, as they are difficult to add after the operation has been approved. He said that a requirement should be included that the windows need to be closed after a certain hour if they are permitted, as it would be difficult to monitor a condition only that they be closed at times when entertainment is occurring. He also commented that there is a good chance that the entertainment would occur during times with warm weather when it would be desirable to have the windows open.

Candee Wilson Gerson, a resident of the 100 block of 12th Street, said that she moved to the downtown area knowing that there were restaurants and establishments that have music in the area. She commented that **Mr. Zislis** has been a good neighbor. She indicated that she is looking forward to a nice and updated establishment at the subject site. She said that it is expected to have some noise in the downtown area.

Kathy Smith, a resident of the 100 block of 10th Street, commented that there is a good chance that the noise from the establishment with open areas facing onto Manhattan Beach Boulevard would impact the nearby residents. She indicated that there have been noise problems to the residents that have resulted from the operation of Muchos, which has open areas along Manhattan Avenue. She said that noise is difficult to control. She commented that the previous issue of people leaving bars late at night and creating a disturbance to the nearby residents has been under control. She said that placing tight restrictions is the best method to ensure that there are not impacts from the subject establishment.

Jackie May, a resident of 10th Street, indicated that she lives close to Simzzy's and Shark's Cove which include open areas. She indicated that she can hear the noise from Shark's Cove from her home and believes she also hears noise from Simzzy's. She commented that there are unsavory people around in the neighborhood and not only at the subject site. She commented that she has a question as to the number of employees of the subject establishment and where they would park. She indicated that parking for the subject establishment needs to be considered, as it could become very busy. She pointed out that the establishment as proposed would have three open walls on the south side with a balcony. She said that Petros has dining on the sidewalk which is separated from the main public walkway and is a different situation than the subject project.

Don McPherson, a resident of the 1000 block of 1st Street, said that the STC 50 soundproofing standard should be required for the project, which would help to mitigate noise when the windows and doors are closed. He commented that the standard is required by many cities for hotels, restaurants, and nightclubs, and he would suggest that the standard should be included in the Building Code for Manhattan Beach. He suggested that the standard should be required and that occupancy of the site not be allowed until it is certified that it has been met. He said that the applicant must prove that the noise outside of the establishment does not exceed 60 decibels after 10:00 p.m. as required by the Municipal Code. He commented that the direction of the Commission regarding the environmental report for the project is very important because the report must be approved by the Coastal Commission. He suggested that the Commission deny extended hours on Friday and Saturday nights; dancing on Thursdays, Sundays, and the nights before holidays; increased special events; and the two upper level balconies.

Mr. McPherson pointed out that finding 4 of the original Use Permit allowed for increased entertainment with the condition that the operating hours be limited to 1:00 a.m. He indicated that the applicant should not provide music and dancing if he wishes to operate until 2:00 a.m. He said that the Planning Commission in 2009 denied waivers to Use Permits to allow extended operating hours for restaurants on the nights before holidays except for New Year's Eve. He indicated that **Mr. Zislis** has changed special events to be undefined. He commented that there is no reason to have special events at the subject establishment, as weddings and parties would be permitted as long as they remain within the parameters of the Use Permit and Entertainment Permit. He indicated that the proposed balconies that would project over the sidewalk would not possibly comply with the Noise Ordinance and would be denied by the Coastal Commission. He suggested that the Commission deny the balconies.

Lisa Polumbo, a resident of the 1100 block of The Strand, asked that conditions be imposed to mitigate concerns with noise and expanded hours. She said that she has a concern that there would be little ability to make changes once the use is approved if the neighbors have problems. She commented that **Mr. Zislis** previously indicated to the adjacent residents that he was definitely planning to remove the retractable ceiling; however, he stated at this hearing that he would keep the retractable ceiling if the balconies are not approved. She said that **Mr. Zislis** also agreed not to serve breakfast at 8:00 a.m. during the week. She said that she is concerned that deliveries would be made during early hours in the morning. She commented that they could hear the noise of the staff cleaning up after closing with the previous establishment. She indicated that extended hours could create an impact to the adjacent residents. She commented that there are many children who live in the neighborhood. She suggested that the conditions be placed in the entertainment permit so that they can be altered if there are problems.

Elena Marshall, a resident of the 1100 block of The Strand, said that the establishment would be open on weeknights as well as weekends, and she is concerned about noise which would make it difficult to get enough sleep.

Veronica Marshall, a resident of the 1100 block of The Strand, said that it is hard to do homework and to get enough sleep with hearing the music playing at the establishment.

Brooks Marshall, a resident of the 1100 block of The Strand, said that their primary concern is regarding the noise impacts that would result from the establishment. He said that their children's bedrooms face south directly toward the subject property. He indicated that they have met with **Mr. Zislis**, and he appears genuinely concerned with the noise impacts to the neighbors. He said that he does believe that **Mr. Zislis** is doing what he can to accommodate the neighbors. He commented that including double pane glass windows on the establishment will help to mitigate noise; however, he would like for there to be some recourse if there still is an issue regarding noise. He also suggested including approval of the balconies as part of the Entertainment Permit so that they can be changed if there is a problem. He stated that he would not want extended hours until 2:00 a.m. on weekends or dancing on Thursday and Sunday evenings to be approved; however, his main concern is generally regarding noise. He said that he would be supportive of the project if the soundproofing does mitigate the noise impacts.

Viet Ngo said that **Mike Zislis** has formed the Zislis Group with between 50 and 60 members, and the Commissioners must disclose any association or financial ties with his group. He said that **Mr. Zislis** has been taking money from the community with the help of the Commission by their decisions regarding The Shade. He commented that he has a letter from the City Attorney that confirms that **Mr. Zislis** has no agreement with the City; however, **Mr. Zislis** has falsely testified that he has paid the City \$300,000.00 per year. He said that the Commission has accommodated **Mr. Zislis** and helped him to take public money, and the Commissioners will not be entitled to immunity for any action that is brought against them. He said that the Commissioners must disclose whether they have an interest in **Mr. Zislis'** projects.

Mr. Ngo said that the property has already changed ownership, and **Mr. Zislis** has violated the Code by already beginning construction on the site without a permit. He pointed out that the City stopped construction for the project at 3404 The Strand that was not permitted but has not stopped construction on the subject site that has not been permitted. He said that the current proposal should be denied because there is clear evidence that **Mr. Zislis** has violated the Code. He said that the Commissioners are part of the criminal conspiracy and have not stood up for the community out of greed. He said that the Commission should order staff to stop construction on the site and refer the issue to the City Attorney for prosecution.

Mr. Zislis said that **Mr. Ngo's** comments were a threat to the Commission and slanderous to him. He pointed out that he has obtained building, demolition, structural and shoring permits for the subject site and has not proceeded with construction illegally. He pointed out that a typical wall has an STC rating of 42, and double pane glass has an STC rating of between 45 and 54. He indicated that all of the glass used for the project will be double pane glass. He stated that they would be willing to have dancing on Thursday on Sunday nights be approved as part of the Entertainment Permit which could be reviewed and taken away if it is found to

create a problem for the neighbors. He commented that they would be willing to have a restriction on times for deliveries by vendors to the site. He suggested that deliveries not be permitted prior to 9:00 a.m. in the alley. He said that he wants the establishment to be open to the outdoors and would want to keep the ability to open the retractable roof if the balconies are not permitted. He said that he purchased the property with the rights that were previously approved as part of the existing Use Permit. He commented that he has proposed modifications to the conditions to help the neighbors. He stated that he would like for the project to move forward as quickly as possible. He suggested that the proposal to have open doors along Manhattan Beach Boulevard could also be placed in the Entertainment Permit and could be taken away if there is too much noise.

Chairman Fasola closed the public hearing.

In response to a question from Commissioner Paralusz, Director Thompson indicated that the Entertainment Permit would be reviewed before a year if noise issues become a problem, and staff would respond immediately to any complaints that are received. He said that language could also be added for review in 90 days.

In response to a question from Commissioner Lesser, Director Thompson pointed out that the current Use Permit is fairly well structured, and many of the items such as hours of operation are best included as part of the Use Permit rather than the Entertainment Permit. He commented that the Commission can adjust the operating hours as they feel appropriate. He said that he is not sure that there should be a great deal of flexibility with the hours of operation or with the hours during which liquor can be sold. He indicated that the Entertainment Permit could include the hours which live entertainment may occur.

The Commissioners agreed that they would support keeping the existing permitted hours of operation and would not support extending until 2:00 a.m. on weekends.

Commissioner Lesser commented that he would support retaining dancing on Friday and Saturday evenings only initially, and to use the Entertainment Permit allow greater flexibility. He said that he would like for dancing to initially be permitted on Friday and Saturday nights in order to determine the response of the neighbors and then possibly to allow for dancing on Thursday and Sunday nights later if it is not determined to be a concern.

Commissioner Paralusz said that she is in agreement with the suggestion of Commissioner Lesser to allow dancing on Friday and Saturday nights, and use the Entertainment Permit to allow flexibility.

Commissioner Seville-Jones said that she is concerned with conditions that are approved as part of the Entertainment Permit possibly being eased too easily and that there would not be a standard by which the rights may then be scaled back. She indicated that she would be

concerned that the neighbors may not have a remedy if they have issues after conditions are eased as part of the Entertainment Permit.

In response to a question from Commissioner Lesser, Director Thompson said that neighbors would receive notice for changes that are proposed to the Use Permit. He commented that noticing is not required for approval of changes to the Entertainment Permit. He said that staff would make a decision on changes to the Entertainment Permit based on any complaints that have been received by the Police or Code Enforcement.

Commissioner Seville-Jones commented that as has been demonstrated by The Shade, it does not appear that complaints that have been received by Code Enforcement are a sufficient measure as to whether an operation is impacting the neighbors. She said that she would like for the hours permitted for dancing to be included as part of the Use Permit.

The Commission agreed to allow breakfast service at 8:00 a.m. every day and that deliveries should be restricted from occurring during earlier hours.

The Commissioners supported expanding the number of special events from 6 to 12.

Commissioner Lesser said that he would support allowing an increase in the number of special events with the presumption that the noise mitigation measures would be effective in reducing any impacts to the neighbors.

Chairman Lesser pointed out that the subject establishment would have people in the dining area whether or not there is a special event.

Director Thompson said that staff is not concerned with allowing more special events, and he feels the main concern is that noise issues in general are mitigated from the building.

Commissioner Lesser indicated that he is sensitive to the applicant wishing to move the project forward. He indicated, however, that he would like more information regarding the policies of other cities in terms of having private space encroach higher than the first floor over the public sidewalk area. He indicated that he understands that the architect is attempting to create an articulated and visually attractive exterior and to provide an area for dining that is open to the outdoors. He said that he would like for the applicant to have outdoor dining, but he would like more information regarding encroaching into the public space.

Commissioner Paralusz stated that she also is concerned about allowing people to eat and drink on the balcony above the sidewalk. She commented that she would not want the balcony to become an attraction for people to shout to pedestrians on the sidewalk which could result in noise spilling into the neighborhood. She said that she has concerns with a private operation encroaching into public space. She commented that the proposed balcony is different than

having a canopy over the sidewalk. She said that the balcony would be a permanent structure with people talking and drinking.

Commissioner Seville-Jones said that she has the same concern as Commissioner Paralusz regarding people on the balcony yelling down to pedestrians on the sidewalk. She indicated that she is concerned that the balcony would obstruct the view down Manhattan Beach Boulevard toward the pier. She commented that she is also concerned that allowing the balcony for the subject use would result in other businesses in the area requesting similar balconies. She commented that she is concerned that allowing the balconies is heading in the wrong direction for the downtown area, and there are other opportunities in the building to provide ocean views.

Chairman Fasola said that he does not believe that the proposal for the balcony would comply with the Building Code even if it were supported by the Commission. He indicated that allowing the balcony over the sidewalk would set a precedent for other businesses. He commented that he is sure that the projection on the neighboring structure was originally built as a canopy rather than as a balcony. He indicated that the upper balcony would be located next to the bar area. He said that he would predict that people would take their drinks and congregate on the balcony. He indicated that drinks could fall over the edge of the balcony onto the sidewalk which could create a liability concern. He said that he does not support the proposal for the balconies.

In response to a question from Commissioner Lesser, Chairman Fasola said that his main concern is regarding the encroachment of patrons into the public right-of-way. He commented that allowing the balcony for the subject proposal would set a precedent for other businesses.

Commissioner Seville-Jones said that it would be sad for the building to be so close to the ocean without having windows that are able to open for fresh air. She indicated, however, that there needs to be a balance between having the entire wall being open toward Manhattan Beach Boulevard and having the entire structure enclosed with no windows. She suggested possibly having the openings become smaller, having openings only on certain floors, or allowing open windows only during certain hours. She said that she would still have a concern with specifying a time that the windows would need to be shut because there could be a lot of noise generated from the establishment during daytime hours.

Commissioner Paralusz stated that she would be in favor of limiting the hours that the windows could be open. She said that it would be a shame not to have retractable windows to provide open air, but it does need to be balanced with the needs of the adjacent neighbors.

Commissioner Lesser commented that the applicant had indicated that the STC rating of the glass is higher than that of typical walls.

Chairman Fasola pointed out that the applicant stated that the STC rating of the glass varies from 45 to 54, which are quite different ratings.

Commissioner Lesser said that he shares the concerns of Commissioner Seville-Jones regarding noise impacts during daytime hours. He said that he would not want to be unfair toward the applicant in denying windows, as Shark's Cove is near the subject site and has windows that open to the outside. He indicated that he would like further information on the estimated sound that would emanate from the windows before he makes a judgment.

Commissioner Seville-Jones pointed out that the sound is audible when standing in front of Simzzy's, and the subject site would be much larger.

Chairman Fasola commented that the sound from Simzzy's may travel further because of the angle of the roof which acts like a megaphone. He said that the noise should not be as audible from the subject establishment with flat ceilings. He indicated that he would support allowing the applicant to open the door on level three where there is a small balcony with two tables. He said that he could envision that patrons would congregate on the patio on level 4. He indicated that he has a concern with the patio being located next to the bar area on the fourth level without tables in front of the doors to block access. He commented that he does not have as much of a concern with the patio doors on the third level where there are tables in front of it. He said that he would support the applicant having the ability to open some doors with the provision that they be closed if there is a problem with noise. He said that he does not have as much of a concern with noise on the first and second levels and feels the main concern is on the fourth level and possibly the third level. He suggested possibly requiring that the doors be closed at a certain time and limiting access to the patio.

Commissioner Seville-Jones said that she would like for the building to have fewer windows that open on the south side toward Manhattan Beach Boulevard.

Chairman Fasola commented that reducing the size of the windows results in less of a feeling of being outside, and the establishment is an opportunity to provide an outdoor atmosphere. He indicated that it would be an advantage to have the windows on Manhattan Beach Boulevard rather than to the west because it would prevent a great deal of the wind that comes off of the ocean from blowing in from the windows.

Commissioner Seville-Jones said that she is convinced that there would be noise from the restaurant that would impact the neighbors if there are open windows. She indicated that she would like for there to be fewer windows. She commented that she would think that noise would be generated into the neighborhood with the patio doors on the first floor being open.

Commissioner Lesser said that he would like for an acoustic study to be done for the site.

Director Thompson said that staff has heard the concerns of the Commission and will come back with further recommendations. He said that staff will provide more information on the doors and windows.

In response to a comment from Chairman Fasola, Associate Planner Haaland pointed out that there is no proposal for expansion of total dining area.

The Commissioners agreed that they do not have a concern with the location of the dance floor as proposed.

Chairman Fasola said that he has a concern with the rooftop terrace where a satellite dish was previously located. He said that he would like for the area to become part of the roof with no doorway access rather than to have a parapet placed around it. He commented that he would not like for it to become an employee break area, as it is located directly adjacent to residents.

Director Thompson commented that the proposal is to only allow access to the rooftop terrace for maintenance. He indicated that any access to the roof would be a hatch rather than a door, and the area would only include mechanical equipment.

Chairman Fasola suggested that the restaurant begin operating with the conditions that were part of the existing Use Permit, and the applicant can then request changes once the establishment has been in operation for a period of time. He commented that he would rather act conservatively and not allow more entitlements than are currently permitted under the existing Use Permit.

Mr. Zislis said that he would like for the Commission to vote on the project as described in the staff report so that it can move forward to the City Council. He commented that he has attempted to design the project to help mitigate any impacts to the neighbors. He indicated that he has rights as part of the existing Conditional Use Permit. He stated that he has worked hard with the neighbors and would prefer to not have additional conditions imposed. He said that he suggested allowing dancing on Thursday and Sunday nights as part of the Entertainment Permit; however, his understanding is that the Commissioners have suggested that it be permitted on Friday and Saturday nights only with a possibility of allowing Thursday and Sunday nights later.

Chairman Fasola said that the direction of the Commission is that the establishment operate under the conditions of the existing Use Permit and that further entitlements be considered after the business has been in operation for a period of time. He indicated that the Commission is not suggesting that any rights under the existing permit be taken away.

Mr. Zislis commented that he is on a tight time line. He indicated that he has already begun development of the property and has already spent a great deal of money on the project. He

said that he does not want to lose any of the rights he currently has with the property, and he hopes that the Resolution that is approve will allow him to keep the rights he has with the existing permit and meets the concerns of the neighbors. He said that he is willing to have a review in 90 days.

In response to a comment from **Mr. Zislis**, Chairman Fasola said that he feels that the intent of operating hours until 1:00 a.m. means that the building is shut down at that time, and the time line for ending dancing and alcohol service before that hour is up to the applicant.

Mr. Zislis said that closing at 1:00 a.m. means that service ends at that time, and the Police Department can only enforce that service stop at that time.

In response to a comment from Commissioner Lesser, **Mr. Zislis** said that he would like to have Council consider the request for the balconies rather than to remove them from the plans at this point. He commented that the Council had previously indicated that balconies would be a good addition to the downtown.

Commissioner Lesser said that he did not see any information regarding the opinion of the Council regarding the balconies in the staff report. He indicated that he feels he does not have sufficient information on which to base his decision.

In response to a question from Commissioner Lesser, **Mr. Zislis** said that he will wait for the matter to be continued on February 23 before the Commission provided that the Commissioners are willing to protect his existing rights.

Commissioner Seville-Jones said that she is basically supportive of the improvements to the property. She commented, however, that it is her understanding that only three residents were present when the document specifying the mitigation measures was written. She indicated that she would like for the item to come back before the Commission with the specific language as to how the concerns of the neighbors will be addressed.

Commissioner Lesser indicated that he would like further information regarding the effectiveness of the glass and other parts of the design in soundproofing.

Chairman Fasola reopened the public hearing.

A motion was MADE and SECONDED (Lesser/Paralusz) to **CONTINUE** the public hearing for the Use Permit Amendment to remodel an existing restaurant including the addition of outdoor dining with balconies adjacent to Manhattan Beach Boulevard, and expansion of operating and entertainment hours, on the property located at 117 Manhattan Beach Boulevard to the meeting of February 23, 2011.

AYES: Lesser, Paralusz, Seville-Jones, Chairman Fasola
NOES: None
ABSENT: Andreani
ABSTAIN: None

5. AUDIENCE PARTICIPATION

6. DIRECTORS ITEMS

7. PLANNING COMMISSION ITEMS

In response to a question from Chairman Fasola, Director Thompson said that the City Manager wanted to fully understand the new library proposal before it was scheduled before the City Council.

Commissioner Paralusz said that the litigation against Chevron has been resolved, and the construction at the Chevron station on Aviation Boulevard has been restarted.

In response to a question from Commissioner Lesser, Director Thompson indicated that the City Council approved the request of the Belamar Hotel to charge overnight guests for overnight parking. He indicated that the City Council has requested that the decision be reviewed in six months.



[sample After Dinner Hours menu]

Chorizo and potato 'torilla'

Crispy Shrimp, yuzu kosho aioli

Carlsbad Mussels, lemon, basil

Oysters on a ½ shell, cocktail sauce, mignonette

Beet and Burrata Salad, frisee lettuce, dried-cranberries, walnuts, raspberry vinaigrette

Ahi Tuna Tartar, avocado, cucumber, lime-ginger vinaigrette

Wood-Oven Roasted Calamari, chorizo, parsley, confit Meyer lemon

Prime Beef Sliders, smoked tomato ketchup, gruyere

Mini Lump Crab Cakes, whole grain mustard remoulade

Baby Rack of Lamb, olive tepanade

Hamachi Sashimi, pickled radish, lemon 'caviar'

WOOD-FIRED PIZZAS

Spicy Sopressata, mozzarella, Crimini mushrooms, sage

Smoked Duck, hoisin, red onion, cilantro, gouda

Margarita, tomatoes, oregano, garlic, chiles, olive oil

EXHIBIT
C PC 2/23/11

Neal Fraser

Executive Chef / Consultant



Biography

Fraser began his culinary career in Los Angeles at the age of 20, working as a line cook at Eureka Brewery and Restaurant, one of Wolfgang Puck's earliest restaurants. Inspired by this introduction to the life of a professional chef, Fraser entered the prestigious Culinary Institute of America in Hyde Park, New York, in the fall of 1990.

During his tenure at the CIA, Fraser worked with such luminaries as Thomas Keller at the Checkers Hotel in Los Angeles, and David Burke at the Park Avenue Café in New York. Upon returning to his native Los Angeles, Fraser continued cooking with the best in the business, including stretches at Joachim Splichal's Pinot Bistro, Wolfgang Puck's Spago, and Hans Rockenwagner's Rox.

When he was ready to strike out on his own, Fraser opened Boxer in 1995. The time spent as Executive Chef and part-owner of the intimate 50-seat restaurant afforded him his first opportunity to learn all the nuances and challenges of running a destination restaurant. And he accomplished all the tasks while earning glowing reviews from local and national media.

After three years, Fraser moved on to Rix in Santa Monica. As Executive Chef he continued to attract media attention with his weekly 8- to 10-course tasting menus, one of which was a controversial but well-received all-hemp menu.

Fraser made another move in the fall of 1999: He took over the kitchens at the legendary Jimmy's in Beverly Hills. This coveted position would be short-lived, however, due to a change in building ownership. Jimmy's closed its doors soon after Fraser's arrival.

Neal Fraser spent his down time contemplating his next move—opening GRACE in 2003. As Co-owner and Executive Chef, Fraser serves his New American cuisine in an atmosphere perfectly designed to complement the ambitious flavors of one of Los Angeles' most revolutionary culinary talents.

Earning national critical acclaim for his masterful approach to any ingredient from wild boar to tofu, critical accolades include "Hot Tables"—Condé Nast Traveler, "LA's 25 Best Restaurants" "LA's 75 Best Restaurants"—Los Angeles Magazine, "Chef of the Year"—Angeleno. In January 2006 Fraser battled Iron Chef Cat Cora on Food Network's widely popular series "Iron Chef America" and became the first Los Angeles chef to win the culinary competition.

Fraser opened BLD, his second restaurant with his partners from GRACE in July 2006. Located just steps away from GRACE, BLD serves breakfast, lunch and dinner in a comfortable yet elegant atmosphere.

APPETIZERS

| | |
|--|----|
| Corn Soup fava beans, guanciale crostini, burgundy snails | 14 |
| Butter Lettuce Salad buttermilk blue cheese, cherry tomatoes, smoked bacon, blue cheese vinaigrette | 14 |
| Roasted Beet Salad goat's milk, greens, pistachios, goat cheese fondue | 15 |
| Spinach & Arugula Salad candied pecans, poached pears, ricotta salata | 14 |
| Olive Oil Poached Halibut brandade, horseradish cream, sherry gelée | 16 |
| Slow Cooked Egg spring onions, pork belly, oyster mushrooms | 16 |
| House Made Pappardelle mussels, pork sausage, tomato sauce, fresh garbanzos | 16 |



GRACE
RESTAURANT

ENTRÉES

| | |
|--|----|
| Smoked Tofu butternut squash purée, broccolini, oyster mushrooms, balsamic reduction | 25 |
| Sautéed Day Boat Scallops english pea risotto, morel mushrooms, asparagus, basil nage | 30 |
| Sautéed Bristol Bay King Salmon beluga lentils, beet greens, vadouvan | 31 |
| Grilled Jidori Chicken Breast goat cheese cannelloni, guajillo chilis | 27 |
| Braised Pork Shank smoked shallot & chorizo home fries, garlic rapini, cider sage sauce | 28 |
| Grilled Ribeye of Beef nettle polenta, balsamic cippollini onions, red wine nage | 31 |

DESSERT

| | |
|--|----|
| Sticky Toffee Pudding brûléed bananas, toffee sauce, hazelnut gelato | 10 |
| Honeyed Pain Perdu lavender ice cream, meyer lemon curd, pistachios | 10 |
| Warm Blackberry Blueberry Crisp spice crumble, vanilla ice cream | 10 |
| Chocolate Soufflé Cake Affogato vanilla malt ice cream, toasted almonds, espresso syrup | 10 |
| Cinnamon Beignets warm dulce de leche, crème fraîche, salted pecans | 10 |
| Cookies & Milk house made cookies with warm spiced milk | 10 |

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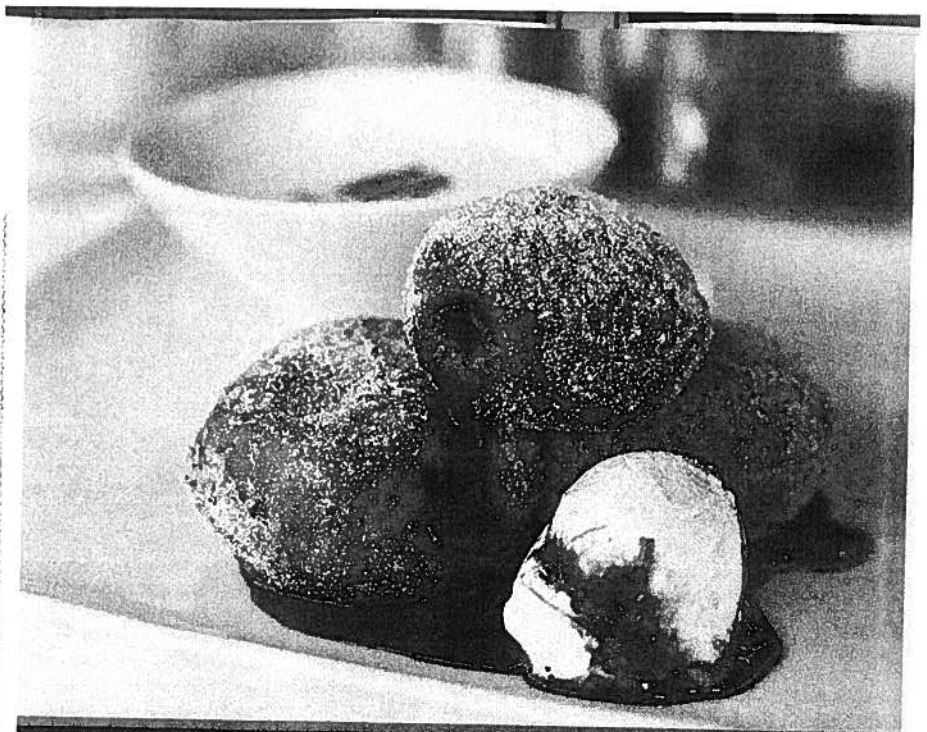
Circulation: 50,000

Angeleno

THE RESTAURANT ISSUE 2008

MODERN LUXURY™

[TOP 25] *Grace* is the perfect example of how to decorate a grand space without going overboard. Dining here always feels like a special occasion, even if you're dressed in jeans and enjoying a burger. And as delicious as the roasted halibut or grilled wild boar might be, the best option is to simply ask Neal Fraser to cook whatever inspires him. 7360 Beverly Blvd., L.A., 323.934.4400, www.gracerestaurant.com.

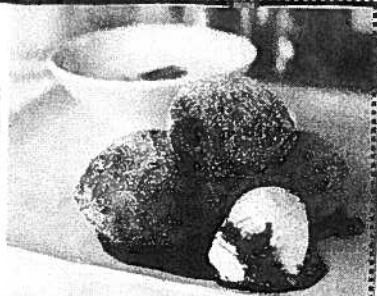


GRACE

LOS ANGELES

40

NEAL FRASER UNDOUBTEDLY birthed the first *gastrique* on Beverly Boulevard. He was sourcing and sautéing there long before it became the new restaurant row. Grace is an establishment that is mature in every way. The decor looks like West Elm on a fabulous budget; the atmosphere is contemporary and urbane. Curved mirrors reflect the room and the nook of a bar. Fraser's cooking, ever wide-ranging, crystallizes around themes like local ingredients and game. A dish such as McFarland Farms pheasant with bacon molasses, Anson Mills polenta, and a brandy-orange reduction hits the spot between the old and the new. Dessert doughnuts are a must. » 7360 Beverly Blvd., L.A., 323-934-4400 or gracerestaurant.com. ✪ ✪



GRACE

LOS ANGELES

It's the first time the world has seen a chef's kitchen in a restaurant. Grace is a chef's kitchen in a restaurant. It's the first time the world has seen a chef's kitchen in a restaurant. It's the first time the world has seen a chef's kitchen in a restaurant.

Even though, L.A. is a city of chefs, it's hard to find a restaurant that's as good as Grace. It's a chef's kitchen in a restaurant. It's the first time the world has seen a chef's kitchen in a restaurant.

Just past Baker, Grace's Beverly Boulevard restaurant is a chef's kitchen in a restaurant. It's the first time the world has seen a chef's kitchen in a restaurant.

The Foundry on Melrose is a chef's kitchen in a restaurant. It's the first time the world has seen a chef's kitchen in a restaurant.

In a restaurant, and the kitchen, there are many things to see. It's a chef's kitchen in a restaurant. It's the first time the world has seen a chef's kitchen in a restaurant.

376
Master's Steakhouse
LOS ANGELES

Master's has an excellent reputation for its steaks. It's a chef's kitchen in a restaurant. It's the first time the world has seen a chef's kitchen in a restaurant.

377
Ciudad
LOS ANGELES

WE WOULD LOVE FOR THE chef to be in the kitchen. It's a chef's kitchen in a restaurant. It's the first time the world has seen a chef's kitchen in a restaurant.

378
Simon LA
LOS ANGELES

Just past Baker, Grace's Beverly Boulevard restaurant is a chef's kitchen in a restaurant. It's the first time the world has seen a chef's kitchen in a restaurant.

379
The Foundry on Melrose
LOS ANGELES

The Foundry on Melrose is a chef's kitchen in a restaurant. It's the first time the world has seen a chef's kitchen in a restaurant.

Los Angeles

LA'S 75 BEST RESTAURANTS
Who Will Rank ★★★★★?
Find Out on Page 106

Client: Grace

Publication: *Los Angeles Times – The Guide*

Date: August 8, 2008

Circulation: N/A

Los Angeles Times The Guide

Lists

Antonio Villaraigosa's favorite L.A. restaurants



There's something about running the second largest city in America that makes you hungry. Los Angeles Mayor Antonio Villaraigosa is constantly on the move, but even a mayor has to eat, and he takes the opportunity to frequent many of the city's top dining destinations.

And not all of them are the city's spendiest, either. Check out the list he gave us. Unlike former Mayor Richard Riordan (who owns a few well-known spots in town), Villaraigosa hasn't really staked out a particular room in town where he holds court. He's got too much ground to cover. Instead, he seems to have the good taste of a man who's knowledgeable about every corner of his city. A few of these entries just might surprise you.

1. Patina Downtown L.A.



You get a great dish every single time here. There is a high level of culinary excellence every time and a consistency that is just incredible. I'd say their cheese selection is maybe the best in the city. And I always get the Foie Gras. It's great.

2. Water Grill Downtown L.A.



The best food anywhere in Los Angeles. They change their dishes often, but I know that the tuna tartare is great and the oysters are just phenomenal.

3. Spago Beverly Hills



Wolfgang does most of our events. I tend not to go to restaurants out of the city of Los Angeles too often. He caters the vast majority of our events when we entertain dignitaries. He almost always caters for us.

8. Grace Fairfax District



You get family-sized servings here. It's unique and great cuisine...they have wild boar [on the menu].

Travis Lorton

Chef de Cuisine

Biography

Growing up in a small farm town in the Midwest, Travis Lorton is no stranger to feeding people. When he was a dishwasher at 14 years old he knew then that a restaurant kitchen felt like home.

Young in his career, Travis moved to Chicago, where he earned a degree in Culinary Arts and Hospitality Management. While in Chicago he was afforded the opportunities to work and stage in restaurants and hotels across the city including MK, Blackbird, Avenues at the Peninsula, Le Meridien, Schwa, and One Sixty Blue. Most recently Travis has been honing his skills in Los Angeles at Gjelina.

Passionate about fresh, local ingredients, Travis is a regular visitor to local farmers markets. He's spent time building important relationships with many of the farmers because of his desire to know as much about the food as possible. Travis is completely invested in using organic and sustainable methods when cooking. Not because it's trendy, but because he knows that people not only want to be full and satisfied but they also want to feel good about what they consume.

| | | |
|------------------------|-------------------|-------------------------------|
| GJELINA | Los Angeles, CA | June 2009 – Present |
| BISTRO ONE | Denver, CO | March 2008 – December 2008 |
| FINESSE CUISINE | Chicago, IL | July 2007 – November 2007 |
| BLACKBIRD RESTAURANT | Chicago, IL | December 2006 – June 2007 |
| MK THE RESTAURANT | Chicago, IL | June 2005 – December 2006 |
| LE MERIDIEN HOTEL | Chicago, IL | January 2004 – June 2005 |
| SILVERCREEK RESTAURANT | Urbana, IL | September 2003 – January 2004 |
| OLDE VOSS SALOON | Bonnot's Mill, MO | July 1996 – December 1998 |
| SEIGFREID'S FINE FOODS | Owensville, MO | April 1992 – September 1995 |

Blackbird Dinner Menu

Appetizers

- 12 garbanzo bean soup with falafel, pickled asian pear, caramelized egg yolk and sumac
- 11 blue hill bay bouchot mussel soup with whitefish, saffron, garlic and basil
- 12 salad of endives with crispy potatoes, basil, dijon, pancetta and poached egg
- 15 smoked duck liver pate with baby carrots, pickled mustard seeds, rye bread and burnt caramel vinegar
- 15 maple glazed veal sweetbreads with rutabaga, granny smith apple and black caraway
- 15 smoked suckling pig with hama hama oyster, fall giardiniera, sunchoke and hazelnuts
- 20 roasted hudson valley foie gras with charred green garlic, black garlic, preserved plum and shrimp salt
- 18 seared diver scallops with pears, brussels sprouts and powdered sauerkraut
- 15 octopus confit with celery root, crispy tuscan kale, caviar and red navel orange
- 15 coffee-scented fluke tartare with lemon cucumber, saffron, and bread sauce

Entrees

- 34 wood-grilled sturgeon with ham hock, red beet, cabbage, smoked dates and walnut consommé
- 34 smoked arctic char with flageolets, pink lady apple and fried pumpnickel
- 33 alaskan sablefish and sweet potato brandade, shrimp braised onions, turmeric and pickled cranberries
- 28 butternut and ricotta tart with black trumpet mushrooms, quinoa and wakame
- 35 aged pekin duck breast with golden beets, chestnut soubise and munich malt
- 32 roasted farm chicken and sausage with cauliflower, maitake mushrooms, kaffir limes and applewood broth
- 35 grilled pork shoulder with roasted turnips, charred leeks, quince and black truffle
- 37 roasted colorado lamb saddle with salsify, fried lentils, licorice root and smoked olives
- 40 duck fat poached elk strip loin with whole wheat knefla, crispy broccoli, pickled mulberries and bergamot cream
- 38 braised short rib with parsley root, grapefruit, elderflower and red wine

MK Menu

oysters

chilled kumamoto and beau soleil oysters on the half shell, mignonette 18

lobster

chilled maine lobster, cara cara oranges, pickled shallots, werp farm petite lettuces
cracked black pepper 16

quail

texas bobwhite quail, mission figs, parsley root, lamb pancetta 16

tuna

yellowfin tuna tartare, celery root remoulade, moroccan cured olives, extra virgin olive oil 15

gnocchi

cow's milk ricotta gnocchi, tuscan kale, smoked bacon, parmigiano reggiano, chilies 14

king crab

sweet alaskan king crab, avocado, jicama, local petite lettuces, cilantro, lime vinaigrette 16

salad

belgian endive, french green beans, apple, watercress, local blue cheese, spiced pecans 14

octopus

baby octopus grilled over hardwood charcoal, braised bell peppers, scallions, red pepper purée 14

pasta

house made fettuccine, seasonal wild mushrooms, pecorino, thyme 15/25

lobster bisque

maine lobster, tomato, saffron, cognac and a touch of cream 15

arugula

baby arugula, shaved fennel, pine nuts, humboldt fog goat cheese, lemon vinaigrette 12

market fresh fish

oven roasted whole fish, poached fennel, thyme, sherry vinaigrette 40

scallops

main diver sea scallops, caramelized cauliflower, pickled leeks, pink peppercorns 32

salmon

atlantic salmon grilled over hardwood charcoal, chinese mustard glaze, bok choy
shiitake mushrooms, ginger soy vinaigrette 30

tuna

peppercorn crusted yellowfin tuna seared rare, spinach, shiitake mushrooms
garlic mashed potato, red wine syrup 35

whitefish / lobster

pan roasted lake erie whitefish, poached maine lobster, leeks, spaghetti squash, lemongrass
kaffir lime scented shellfish broth 36

bison

grilled bison ribeye, sunchokes, heirloom carrots, vidalia onions, pommery mustard 45

chicken

naturally raised and roasted, anson mills corn polenta, stewed heirloom tomato, rosemary 28

lamb

roast colorado lamb rack, italian cous cous, chanterelle mushrooms, salsa verde 49

veal

veal porterhouse grilled over hardwood charcoal, rapini, villa manodori aged balsamic 45

steak

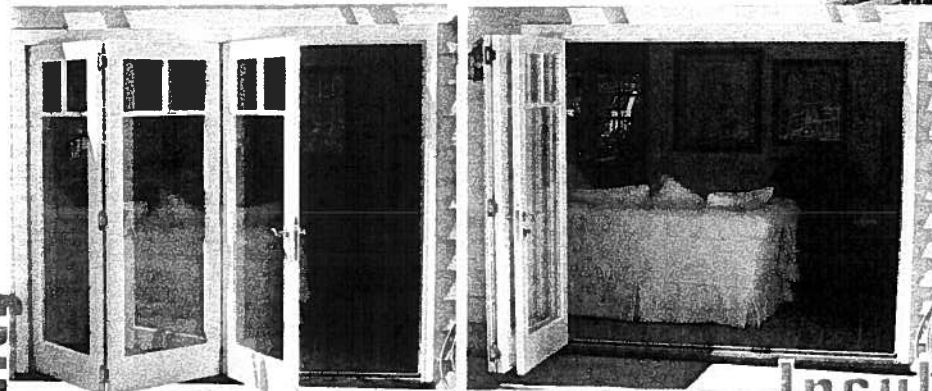
prime new york sirloin grilled over hardwood charcoal, royal trumpet mushrooms, red wine sauce 48

pommes frites, truffle cream 8 extra truffle cream 2

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YOUR NEIGHBORHOOD



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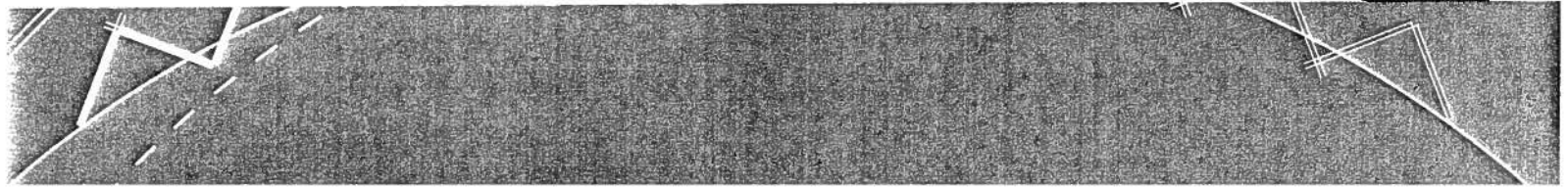


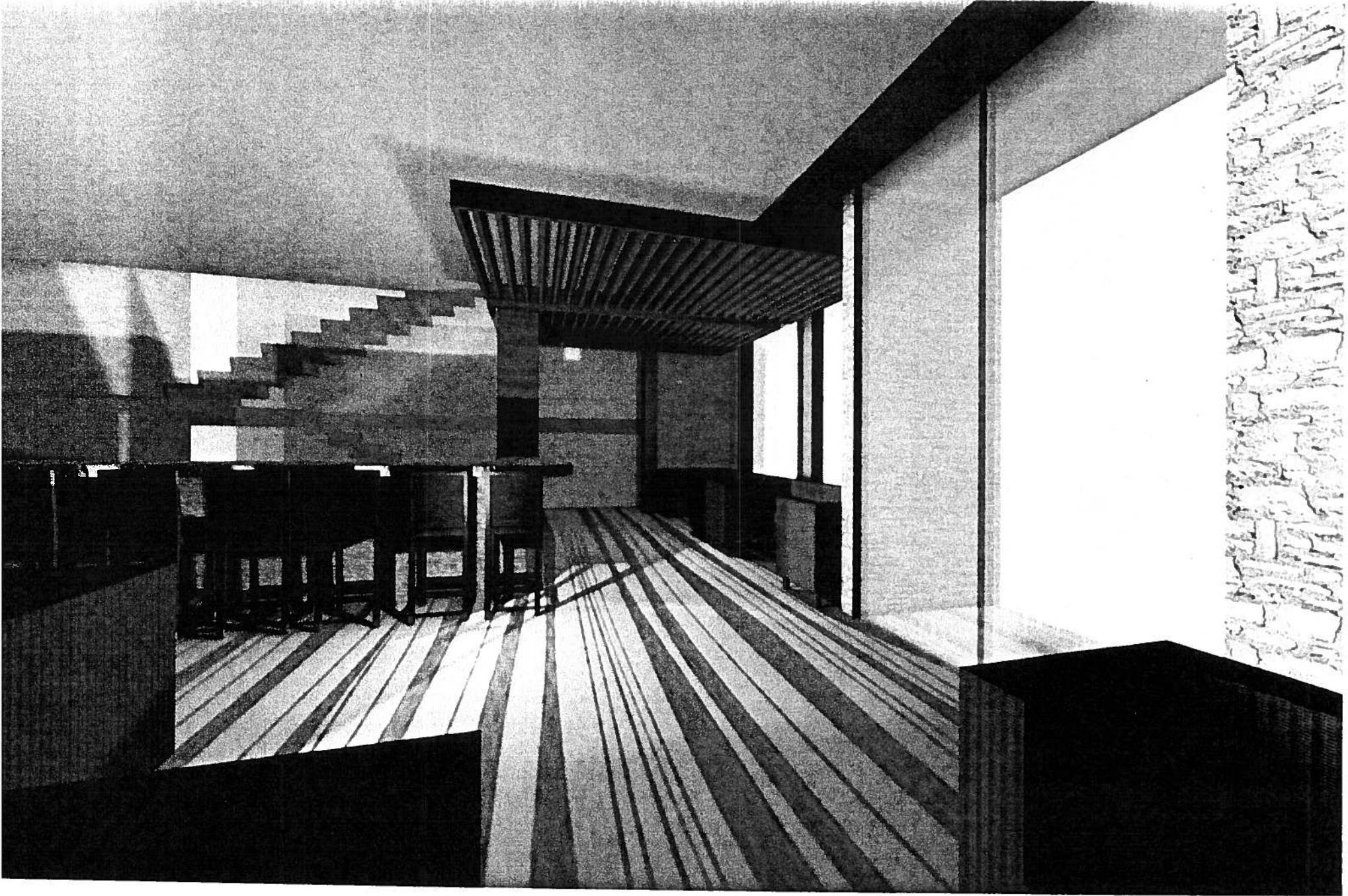
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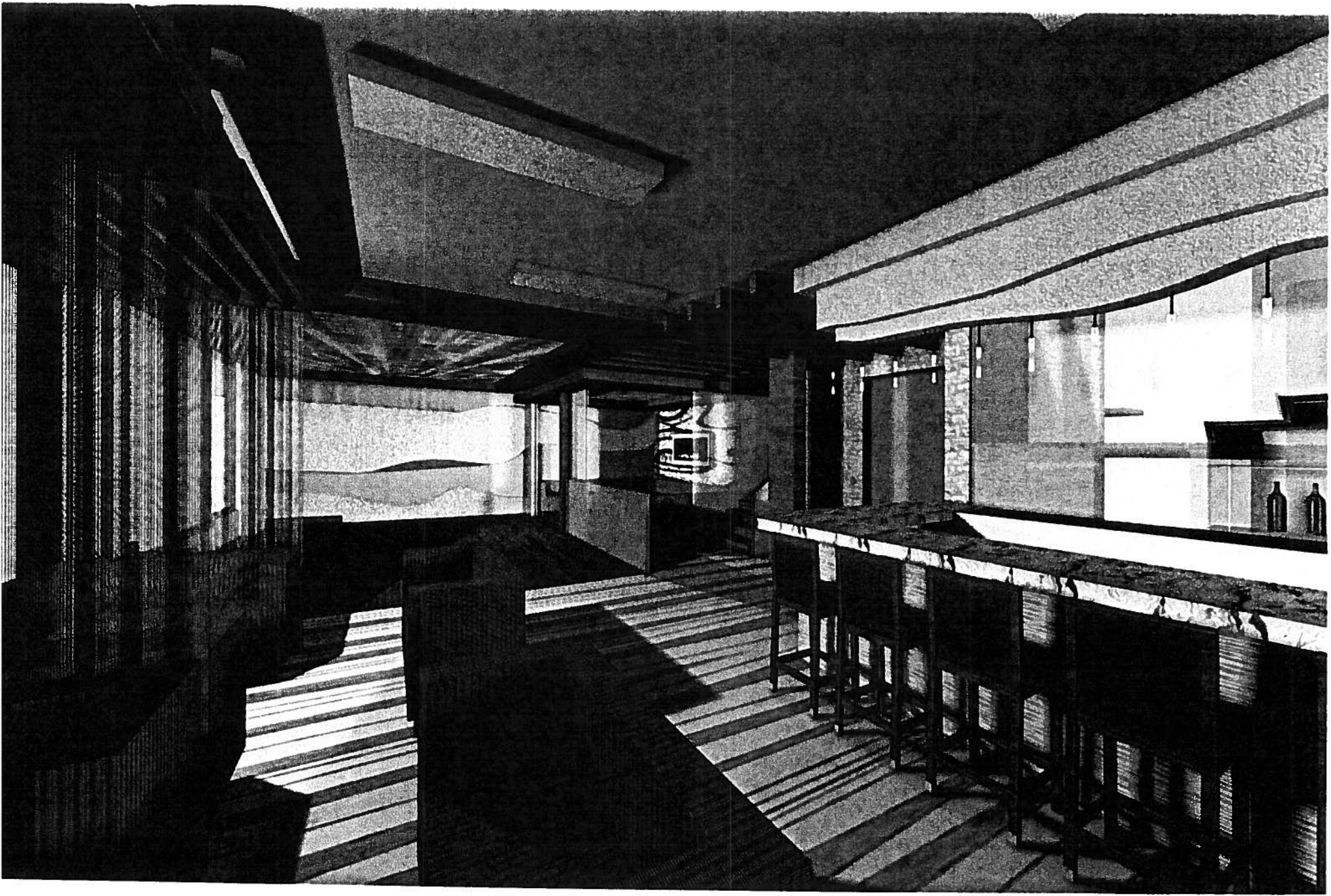


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Eric Haaland

From: jim quilliam [jimquilliam@hotmail.com]
Sent: Monday, February 14, 2011 8:04 PM
To: List - Planning Commission
Cc: List - City Council; City Manager; Richard Thompson; Eric Haaland
Subject: Special Event Revision to Draft Strata Use Permit
Attachments: ExhibitA-Strata-ResUseCond-RevD.pdf; 110126-PC-Strata-StaffReport-ClosingHours.pdf

Planning Commission
City of Manhattan Beach
Via Email

Commissioners,

Yesterday, Sunday February 13, the neighborhood met to discuss our draft Strata use permit. Among other items, we decided to accept the twelve special events to permit dancing on days other than Friday and Saturday.

We concluded, if the commission imposes additional restrictions on Strata, such as midnight closing for Sunday through Thursday, that will offset the disturbances caused by the additional nights for dancing during the work week.

The attachment provides the revised draft use permit, which now includes a definition and condition for special events.

The second attachment shows that 25 of 33 Downtown premises have closing hours on or before midnight, for Sundays through Thursdays. The eight establishments with later than midnight closing on work-week nights have use permits that predate the city policy to reduce bar hours.

We have one unresolved item, namely queues on public right of ways, the last item in the draft use permit. We requested from staff the city policy for bar and nightclub queues on sidewalks, but have not yet received that information.

Next Friday, when the city posts on the Internet the staff report for the Wednesday February 23 hearing, we will review our draft use permit for further modification. In that input to the commission, we will also provide brief explanations for our findings and conditions that conflict with those in the draft resolution.

Regards, Jim Quilliam
124 B 12th St, Manhattan Beach CA 90266
310 546 6276



EXHIBIT A

PROPOSED NEIGHBORHOOD USE PERMIT FINDINGS AND CONDITIONS

FINDINGS (preceding * indicates derivation from Resolution 6275, Shade Hotel).

RF-1. The previous use permit, Resolution 5087, states at Finding 4, that the use will not be detrimental, “...*in that the increased entertainment intensity is in conjunction with a reduction in operating hours and alcohol service.*” The aforementioned policy remains in effect for this Resolution, to require reductions in entitlements, for any additional intensification in operation.

RF-2. The premises require an entertainment permit, as defined and regulated in Chapter 4.20 of the MBMC, because more than 100 patrons can assemble at one time, when either one, two or all three of the following conditions exist: entertainment, food service or alcohol service.

RF-3. In Resolution 5087, Condition 9 states that, “A Class I Group Entertainment Permit shall be obtained for all entertainment aspects of the business.” The city may administratively deny granting a permit or revoke an existing permit, as per MBMC 4.20.080 and 4.20.110, respectively. Group entertainment includes dancing. Consequently, the parameters defining entertainment and dancing, such as times and days, do not constitute entitlements.

RF-4. In Resolution 5087, Condition 8(C) identifies six special events as located on “the temporary upper dance floor,” which the current applicant did not request. Furthermore, the said condition stipulates that the events are subject to approval in a Class II Entertainment Permit. For Class II permits, the municipal code at MBMC 4.20.050(B) requires the operator to apply for each event separately, which the city can administratively deny. Therefore, the said six special events defining dancing on the second floor do not constitute entitlements.

RF-5. *As defined and required by Chapter 4.20 of the MBMC, all aspects of entertainment, including dancing, shall continue in this Resolution to be regulated by appropriate entertainment permits, both deniable and revocable.

RF-6. The property has an ABC Type 47 license, On Sale General–Eating Place. The premises license predates the standard ABC condition in later Type 47 licenses, which require alcohol sales not to exceed food sales, on a quarterly basis. Notwithstanding lack of said condition in the current alcohol license, the permitted use remains strictly for a restaurant, with emphasis on food service, not alcohol.

RF-7. *Based on testimony from many neighboring residents, in the past, the premises created noise and disturbances that discomforted and irritated reasonable persons of normal sensitiveness. The MBPD responded to numerous calls regarding these disturbances, and for some incidents, booked as evidence, reports and recordings of noise.

RF-8. *Many parallels exist between this Resolution and the hearings that led to Shade Hotel Resolution 6275. Where effective and practical, to prevent the abovementioned disturbances, the administrative record for Shade Hotel constitutes a model and template for this Resolution, incorporated by reference into the record for this permitting process.

EXHIBIT A

PROPOSED NEIGHBORHOOD USE PERMIT FINDINGS AND CONDITIONS

RF-9. To encourage outdoor dining, the city permits eating and drinking places to have fully-retractable windows and doors that open onto public right of ways. Statements by city officials and public testimony indicate, that in some cases, this has resulted in high levels of noise on said public right of ways. This Resolution addresses mitigation required, to ensure that such external noise from south-facing openings shall not exceed maximum permitted levels.

RF-10. For the premises, Chapter 4.20 of the MBMC defines either service of food or alcohol as constituents of group entertainment, subject to administrative regulation. Consequently, the city shall use the annual entertainment permit to ensure compliance with the noise ordinance when windows and doors open, as provided for in MBMC 4.20.080 (A) and (B).

RF-11. In addition to noise resulting from entertainment and dancing, public testimony has established that the residential neighborhood experiences additional disturbances, as result of kitchen operations, facility cleaning, staff activities, and other daily maintenance. This Resolution addresses soundproofing the entire structure, not just the areas occupied by patrons, to ensure that all internally-generated noise shall not result in external sound that exceeds maximum permitted levels. Additionally, this Resolution limits hours and locations of activities outside of the facility, such as but not restricted to, deliveries and trash pickup.

RF-12. The restaurant use requires substantial roof-top installations of kitchen exhausts, heating and cooling equipment, and other noisy mechanical devices. The applicant has requested to move some equipment to the northwest roof, above the carport area and adjacent to residences. This Resolution addresses acoustic baffling and cosmetic shielding of all rooftop equipment, to ensure that resulting noise at residential properties does not exceed permitted levels, nor that the installations create visual blight, as viewed from homes.

RF-13. Public testimony attests that patrons from the premises intrude into the adjoining residential neighborhood and cause disturbances, as well as disturbances in the state parking lots adjoining the premises. Among other means such as signs, this Resolution requires restaurant staff stationed outside the premises, to encourage patron behavior respectful of residents and to monitor the area for timely reporting of disturbances to MBPD.

EXHIBIT A PROPOSED NEIGHBORHOOD USE PERMIT FINDINGS AND CONDITIONS

CONDITIONS (preceding * indicates derivation from Resolution 6275, Shade Hotel).

RC-1. Definitions.

- RC1-1. ***Closed.** Premises vacated by the general public, special guests, or anyone other than employees. At closing time, staff shall have collected all glasses, bottles, cans and drinks, to comply with the ABC definition of closed, as "no sale, service, or consumption of alcoholic beverages." Amplified sound off, including TV. All doors, windows and other openings closed.
- RC1-2. ***End of alcohol service.** Replaces 'last call.' No service of alcohol drinks after 'end of alcohol service.'
- RC1-3. **Special event.** A special event permits dancing on days other than Friday and Saturday. During a special event, all conditions other than dancing, as provided for herein, remain in effect, such as closing time and implementation measures to ensure compliance with the noise ordinance.
- RC1-4. ***Background music.** Sound intensity anywhere in a room or venue shall not exceed 65 dBA, where 'A' represents the A-weighted frequency response commonly attributed to human hearing, as described in MBMC. All dB values refer to the dBA unit.
- RC1-5. **Impulsive Sound.** For the five (5) dB reduction in the noise standards required in MBMC for Correction of Character of Sound, impulsive sound shall include shouts, yells, screams, and the periodic beat of music.
- RC1-6. **Pure tone.** For the five (5) dB reduction in the noise standards required in MBMC for Correction of Character of Sound, pure tone shall include the hum, whine or clattering of mechanical equipment, such as, but not limited to, air conditioners and refrigerator compressors.
- RC1-7. **Amplified sound or entertainment.** This refers to any sound generated electronically, including TV and other media.
- RC1-8. **Sound Transmission Class, STC 50.** Air-borne sound attenuation of 50 dB (45 dB if field tested), equivalent to Section 1207 of the International Building Code (IBC) and appropriate ASTM International standards.
- RC1-9. **Permitted Sound Levels.** Intensities in dB set forth in the noise ordinance, or as determined by MBPD or a city employee, as additionally provided for herein.
- RC1-10. **Entertainment.** As defined in Chapter 4.20 of MBMC, entertainment specifically includes dancing. No aspect or parameter of entertainment stipulated in the annual entertainment permit constitutes an entitlement or property right.

RC-2. Entertainment and Noise.

- RC2-1. ***General.** The Director of Community Development shall not loosen, reduce or make less restrictive, any limitations or conditions set forth in this document, including the initial entertainment permit, as amended, without approval by the planning commission, with notice to property owners within a 300-foot radius, according to standard notice procedures.

EXHIBIT A
PROPOSED NEIGHBORHOOD USE PERMIT FINDINGS AND CONDITIONS

- RC2-2. ***Entertainment and amplified sound.** All live and recorded amplified entertainment shall use the house system only, under control of staff.
- RC2-3. ***Sound audibility.** In addition to noise standards stipulated in the noise ordinance, the volume of music, entertainment, group singing, and voice, whether or not amplified, shall not create sound levels, for any length of time, that exceed any of the following, as determined by MBPD or a city employee:
- A. Audible at a range of 75 feet
 - B. The dominant noise source at any point on or outside the property lines, as described in MBMC 5.48.160 (C).
- RC2-4. ***Entertainment and Dancing Location.** Live amplified sound and dancing are limited to Level 1, with a 240 SF dance floor, defined by a temporary railing fixed to the floor. The city shall use the annual entertainment permit to regulate all aspects of entertainment, including dancing, but not to exceed the regulations set forth in this resolution.
- RC2-5. ***Entertainment Permit.** As required by Chapter 4.20 of MBMC, on or before March 1 of every year, the establishment shall apply for a Class I Group Entertainment Permit. The city shall use the entertainment permit to regulate all aspects and parameters of entertainment, such as, but not limited to, dancing start-stop times and days of the week.
- RC2-6. ***Special Events.** The annual entertainment permit may authorize up to twelve (12) special events a year, but no more than one per month. Each special event shall require a Class II Group Entertainment Permit. Except for dancing on days other than Friday and Saturday, special events shall observe all other regulations provided for herein.
- RC2-7. **Internal noise mitigation design features.**
- A. Self-closing, double-doors for all ingress-egress.
 - B. All windows and similar features shall be unopenable, except for south-facing doors and windows, and other doors required for ingress-egress.
 - C. All windows shall have multiple-glazing
 - D. Ceilings and walls shall have sound-absorbing structures throughout.
 - E. The building shall have capability to be fully enclosed, to comply with STC 50.
 - F. A roof designed to STC 50 shall cover the entire building; no outside patios.
- RC2-8. **External noise mitigation design features**
- A. The building shall not encroach into the public right of way, except for features such as awnings and signs, as permitted by MBMC 7.36.170 (A)(b).
 - B. No persons permitted on roof of the northwest carport, except for maintenance.
 - C. No storage permitted on roofs, long-term or short-term, such tables and chairs.
 - D. All roof-top equipment shall have acoustic baffling and cosmetic shielding, to ensure that resulting noise at property lines does not exceed permitted levels, nor that the installations create visual blight, as required by MBMC.

EXHIBIT A

PROPOSED NEIGHBORHOOD USE PERMIT FINDINGS AND CONDITIONS

- RC2-9. ***Noise compliance verification, all external openings closed.** Prior to issuance of the building permit, a certified acoustics engineer shall verify, that with all external openings closed, the building design provides 50 dB sound attenuation of airborne sound from interior to exterior, not merely the use of STC 50-rated materials. Prior to issuance of the occupancy certificate, a certified acoustics engineer shall verify by field test, that all facades and roofs provide 45 dB attenuation of airborne sound, measured as close to facades and roofs as feasible, in accordance with accepted standards. Future building modifications shall comply with this condition.
- RC2-10. ***Noise compliance verification, south-facing doors and windows open.** Prior to issuance of the building permit, a certified acoustics engineer shall verify, that with south-facing doors and windows open and the premises at full occupancy, sound on or outside the property lines shall not exceed standards set forth in the noise ordinance, nor as otherwise provided herein. Before issuance of an occupancy certificate, field tests verified by the certified acoustics engineer shall demonstrate compliance with the noise ordinance. Future building modifications shall comply with this condition.
- RC2-11. **Noncompliant noise.** In the event the premises do not comply with the noise ordinance, or with sound restrictions otherwise provided for herein, the city shall administratively amend the annual entertainment permit to ensure compliance.
- RC-3. *Hours of operation.** Except for premises opening and closing times, by means of the annual entertainment permit, the city may administratively further restrict hours of operation for all entertainment activities, including dancing, as provided for in Chapter 4.20 of MBMC. The city may not, however, administratively increase hours of operations of such activities, as set forth herein. Conditions *in italics* indicate items subject to regulation by the annual entertainment permit.
- A. Opening time: 8:00 AM everyday
 - B. Closing time: Midnight (0:00 AM) Sunday through Thursday;
and 1:00 AM Saturday and Sunday mornings
 - C. *End of alcohol service: Twenty (20) minutes before closing*
 - D. *Lights on and amplified sound off, including TV: Thirty (30) minutes before closing*
 - E. *All doors and windows closed: 8:00 PM to 8:00 AM, or whenever entertainment, dancing or amplified sound in progress, except background music and TV.*
 - F. All doors facing on Ocean Dr and Center Dr: Always closed, except for ingress-egress.
 - G. *Entertainment: Thursday through Saturday until thirty minutes before closing; on Sundays, ends at 8:00 PM*
 - H. *Dancing: Friday and Saturday only, until thirty (30) minutes before closing*
 - I. *Deliveries: Between 8:00 AM and 8:00 PM, Monday through Saturday only*
 - J. New Years Eve closing, dancing and entertainment: Only as permitted by ordinance.

RC-4. General Conditions.

- RC4-1. **Substantial Compliance.** The proposed changes shall be in substantial conformance with the plans submitted, the project description and revised entertainment permit, as approved by the Planning Commission, subject to any special conditions set forth in this amendment.

EXHIBIT A
PROPOSED NEIGHBORHOOD USE PERMIT FINDINGS AND CONDITIONS

- RC4-2. **Food Service.** During all hours of alcohol service, the restaurant shall provided food service, at a minimum, from a limited, but significant, selection on the full menu.
- RC4-3. **Occupancy.** MBFD shall determine occupancy based on reduction of floor area by all seating and table furnishings, as depicted in the submitted plans approved by the Planning Commission. These or similar furnishings shall remain in place at all times, except on the 240 SF dance floor and the area north of it on Level 1.
- RC4-4. **Delivery and trash pickup.** The premises shall not provide a repository for trash from any other business. Delivery and trash locations shall be chosen to minimize impact on the residential neighborhood.
- RC4-5. **Carport.** The carport shall remain available for parking at all times; long-term or short-term storage not permitted, such as tables and chairs.

RC-5. Ingress-egress control.

- RC5-1. **Outside crowd control.** At 11 PM every day, until a half-hour after close, a staff member shall monitor the outside ingress-egress area and encourage patrons not to enter the residential area. Staff shall have a walky-talky to alert management of problems, such as too much external noise or a disturbance requiring MBPD response.
- RC5-2. **Temporary signage to discourage residential entry.** To assist the outside staff monitor, temporary signs on either side of Ocean Drive shall request no entry to residential area.
- RC5-3. **Valet.** Valet service is not permitted.
- RC5-4. **Bussing Patrons.** The restaurant shall not transport patrons to and from the premises, by any means.
- RC5-5. **Queues.** *[To be determined]*

SURVEY OF DOWNTOWN EATING AND DRINKING ESTABLISHMENTS

| Estabilishment | Address | Hours of Operation | Alcohol License | Reso. # |
|-----------------------------|---------------------------|--|------------------------|---------------------|
| 900 Manhattan Club/Sidedoor | 900 Manhattan Ave. | M-Th 11am-12 am F 11am-1 am Sat 9am-12am Sun 9am-12am | Full Liquor | CC Reso. 5155 |
| Crème de la Crepe | 1140 Highland Ave. | Su-Th 6am-10pm F-Sa 6am-11pm | Beer and Wine | 02-14 |
| Beaches | 117 Manhattan Beach Blvd. | M-F 10am-1am Sa-Sun 8 am-1am | Full Liquor | CC Reso 5087 PC 243 |
| Café Pierre | 317 Manhattan Beach Blvd. | 9am-1am Daily | Full Liquor | 94-20 |
| Pasta Pomodoro | 401 Manhattan Beach Blvd. | Sun-Wed 9am-11pm Thu-Sat 7am-12am | Beer and Wine | 03-05 |
| Simmzy's | 229 Manhattan Beach Blvd. | M-Th 6am - 11pm F-Sa 6am-12am | Beer and Wine | 03-20 |
| El Sombrero | 1005 Manhattan Ave. | Su-Th 7am-11pm F-Sa 7am-12am | Beer and Wine | 07-09 |
| Ercoles | 1101 Manhattan Ave. | 11am-2am Daily | Full Liquor | 85-32 |
| Fonzs | 1017 Manhattan Ave. | Su 9am-9pm M-Th 5:30am-10pm F-Sa 5:30am-11pm | Full Liquor | 01-04 |
| Mr. Cecils California Ribs | 1209 Highland Ave. | Sun-Th 7am-11pm F-Sat 7am-12am | Beer and Wine | 99-09 |
| Hennesseys | 313 Manhattan Beach Blvd. | 11am-2am Daily | Full Liquor | 83-18 |
| Fusion Sushi | 1150 Morningside Dr. | Su-W 9am -11pm Th-Sa 7am-12am | Full Liquor | 03-05 |
| Kettle | 1138 Highland Ave. | 24 Hours Daily | Beer and Wine | 83-06 |
| Le Pain Quotidien | 451 Manhattan Beach Blvd. | M-Sun 7 am -7:30 PM- (alcohol 10 am) | Limited beer and wine | 08-08 |
| Mama D's | 1125 A Manhattan Ave. | 7am-2am Daily | Beer and Wine | CC Reso. 5175 |
| Mangiamo | 128 Manhattan Beach Blvd. | 8am-12am Daily | Full Liquor | 83-28 |
| Brewco | 124 Manhattan Beach Blvd. | Su-Sa 7am-12am F-Sat 7am-1am | Full Liquor | 97-43 |
| Sharks Cove | 309 Manhattan Beach Blvd. | 7am-2am Daily | Full Liquor | 03-24 |
| Manhattan Pizzeria | 133 Manhattan Beach Blvd. | 6am-2am Daily | Beer and Wine | CC Reso. 5175 86-38 |
| Mucho | 903 Manhattan Ave. | Su-T 11am-12am F-Sat 11am-2am | Full Liquor | CC Reso. 4108 |
| Izaka-Ya | 1133 Highland Ave. | Su-W 11:00am-11pm Th-Sa 11:00pm-12am | Beer and Wine | 10-04 |
| Old Venice/El Sombrero | 1001 Manhattan Ave. | Sun-Thu 7am-11pm Fri-Sat 7am-12am | Beer and Wine | 07-09 |
| Penny Lane | 820 Manhattan Ave. | Su-Th 7am-10:30pm F-Sa 7am-11:30pm | Beer and Wine | 89-23 |
| Rock N Fish | 120 Manhattan Beach Blvd. | Su-Th 7am-12am F-Sa 7am-1am | Full Liquor | 99-04 |
| Shellback | 116 Manhattan Beach Blvd. | No Reso | Full Liquor | No Reso |

EXHIBIT D
PC Mth. 4/26/11

| | | | | |
|-----------------|---|---|------------------|------------------|
| Sun & Moon Café | 1131 Manhattan Ave. | Su-Th 6am-11pm F-Sa 6am-12am | Beer and Wine | CC Reso. 5175 |
| Talia's | 1148 Manhattan Ave. | Su-W 7am-11pm Th-Sa 7am-12am | Full Liquor | 01-24 |
| Memphis | 1142 Manhattan Ave. | M-W 11am-11pm Th-F 11am-12am Sa 7am-12am Su 7am-11pm | Full Liquor | 99-20 |
| 12th+Highland | 304 12th Street | Su-Th 10am-12am F-Sa 10am-1am | Full Liquor | 87-36 |
| Wahoo's | 1129 Manhattan Ave. | Su-Th 6am-11pm F-Sa 6am-12am | Beer and Wine | CC Reso. 5312 |
| Darren's | 1141 Manhattan Ave. | Su-Th 11am-11pm F-Sa 11am-12am | Full Liquor | 02-28 |
| Shade Hotel | 1221 Valley Drive | Zinc Lobby Bar, Terrace, Conf Room and Courtyard-(Special Events)- Su-Th 6am-11pm, F, S and Sun before Mem and Labor days 12am midnight. Courtyard-(Functions)and Roofdeck Daily 6am-10pm | Full Liquor | 02-18 |
| Petro's | 451 Manhattan Beach Blvd Suite B-110 | Su-Th 6am-12 am F-Sa 6am-1am Off-site specialty wine | Full Liquor | 06-20 |
| Sashi | 451 Manhattan Beach Blvd Suite D-126 1200 Morningside | Su-Th 6am-11pm F-Sa 6am-12am | Full Liquor | 02-18 |

Eric Haaland

From: tlivian@aol.com
Sent: Monday, February 14, 2011 4:22 PM
To: List - Planning Commission
Cc: Richard Thompson; Eric Haaland
Subject: Strata Proposal

To whom it may concern:

Since we will be out of town to support the Feb 23rd meeting on the Strata proposal we wanted to send a note that as owners of 124 12th Street Unit A we are very concerned about the planned Strata proposal. We are supportive of putting in the proper soundproofing to keep the noise levels down and safeguards to minimize the unruly behavior that impact our neighborhood. We fully support the conditions proposed in our neighborhood use permit. Thanks for your support and consideration to put these conditions in place to protect our neighbors and community.

Sincerely, Tracy and Andy Livian

02/15/2011

EXHIBIT
E PC 2/23/11

**LATE ATTACHMENTS
FOR
PLANNING COMMISSION MEETING
OF
FEBRUARY 23, 2011**

Laurie B. Jester

From: Laurie B. Jester
Sent: Tuesday, February 22, 2011 12:16 PM
To: Laurie B. Jester
Subject: FW: Planning Commission Hearing for Strata - Feb. 23, 2011
Attachments: L-Paralusz re Strata PC Hearing 022311.doc

From: Felix Tinkov <fmt@lfap.com>
Date: February 18, 2011 8:32:33 PM PST
To: "kparalusz@citymb.info" <kparalusz@citymb.info>
Cc: "sseville-jones@citymb.info" <sseville-jones@citymb.info>, "mandreani@citymb.info" <mandreani@citymb.info>, "jfasola@citymb.info" <jfasola@citymb.info>, "dlessler@citymb.info" <dlessler@citymb.info>, "CityCouncil@citymb.info" <CityCouncil@citymb.info>, "rthompson@citymb.info" <rthompson@citymb.info>, "ehaaland@citymb.info" <ehaaland@citymb.info>, "jimquilliam@hotmail.com" <jimquilliam@hotmail.com>, Don McPherson <dmcphersonla@gmail.com>
Subject: Planning Commission Hearing for Strata - Feb. 23, 2011

Honorable Planning Commissioner Paralusz:

Please find enclosed a comment letter pertaining to the February 23, 2011 Planning Commission hearing for the Strata use permit amendment.

We look forward to the opportunity to be heard on this matter.

Regards,

Felix M. Tinkov, Esq.
 Lounsbury, Ferguson, Altona & Peak, LLP
 401 West A Street, Suite 1825
 San Diego, CA 92101
 Tel. (619)236-1201
 Fax (619)236-0944
fmt@lfap.com

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Richard Thompson
Director of Community Development
 P: (310) 802-5502
 E: rthompson@citymb.info

02/22/2011



CITY OF
MANHATTAN BEACH

1100 HIGHLAND AVENUE, MANHATTAN BEACH, CA 90266
WWW.CITYMB.INFO



Please consider the environment before printing this email.

Laurie B. Jester
Planning Manager

P: (310) 802-5510

E: ljester@citymb.info



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**LOUNSBERY FERGUSON
ALTONA & PEAK LLP**

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www.LFAP.com

OF COUNSEL:
JAMES P. LOUGH
GARTH O. REID

SPECIAL COUNSEL:
JOHN W. WITT

VIA EMAIL

February 15, 2011

Hon. Kathleen Paralusz, Chairperson
Planning Commission
City of Manhattan Beach
kparalusz@citymb.info

Subject: Use Permit for Strata (MB Dining) Located at 117 Manhattan Beach Blvd

Honorable Chairperson Paralusz and fellow Commissioners:

This firm represents Mr. Don McPherson, a resident of the City of Manhattan Beach concerned about the development of the proposed Strata bar, nightclub and restaurant (the "Premises") at 117 Manhattan Beach Boulevard. We understand that the Planning Commission intends to review a request for a use permit modification (the "Project") on February 23, 2011. The applicant's request includes the redevelopment of the Premises to permit outdoor balconies, changes to the layout of the four existing levels within the establishment as well as the addition of a new basement, and exposing the activities within the business directly onto the public street. In addition, the request seeks to extend restaurant, nightclub and live entertainment hours and permit double the number of large special events (such as private parties and weddings) to a dozen each year. All of these use permit revisions trigger the City's legal requirement to study the proposed intensification of the use for potentially significant environmental effects and to require a coastal development permit.

REVIEW OF THE PROJECT UNDER CEQA

The California Environmental Quality Act, found at Pub. Res. Code §§21000 *et seq.*, requires lead agencies, such as the City, to prepare environmental assessments that disclose the potential impacts of discretionary projects seeking approval. The planning staff have proposed that the Project is excused from such review as a Class 1 categorical exemption per CEQA Guidelines §15301 as an alteration to an existing facility. In fact, this exemption is not available to the subject Project.

CEQA takes a very broad view of what constitutes a "project" requiring environmental analysis. *McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136,

*Escondido Office: 960 Canterbury Place, Suite 300 Escondido, CA 92025
Telephone (760) 743-1201 & Facsimile (760) 743-9226*

1143. Even projects that appear benign will likely fall within the ambit of CEQA. *Bloom v. McGurk* (1994) 26 Cal.App.4th 1307, 1312. While the Guidelines provide opportunities for projects to be exempted from CEQA review, these exemptions are limited in nature. In the case of this Project, staff have focused on the *physical* alteration of the Premises to justify an exemption to CEQA when, in fact, the discretionary permit revisions relating to expanded hours of operation and the doubling of large events onsite dictate a need to perform an initial study to analyze potential impacts. These additional entitlements will inevitably create impacts over the existing baseline including, substantial temporary or periodic increases in ambient noise levels and augmented vehicular traffic in the project vicinity due to increased patronage and expanded operations.

Even the developmental revisions to the physical plant of the Premises, including the unusual circumstance of permitting exceedingly large exposed openings between the front of the Premises and the public street, engender the potential for excessive noise impacts to the surrounding neighborhood. Furthermore, the City is obliged, under CEQA, to investigate those cumulative impacts arising from the redevelopment of facility when taken in relation to the other impact generating developments in the area.

Therefore, our client demands that the City prepare an initial study, as required by CEQA Guidelines §15002(k)(2), for the Project in order to inform the public of its potentially significant impacts.

REVIEW OF THE PROJECT UNDER THE COASTAL ACT

The Coastal Act of 1976, found at Pub. Res. Code §§30000 *et. seq.*, requires a coastal development permit (“CDP”) be granted for development activities, which are broadly defined to include the construction, reconstruction, or alteration of any structures, and any activities that change the intensity of use of land within the Coastal Zone (“CZ”). The City has a Local Coastal Program (“LCP”), approved by the Coastal Commission, which requires that all such development activity within its jurisdiction be reviewed for compliance with the Coastal Act. Pursuant to LCP §A.96.050(B)(1), a non-residential development within the CZ which intensifies an existing use triggers a requirement for a coastal development permit (“CDP”). The subject Project lies within 300 feet of the beach, and is therefore within the CZ. The applicant requests the right to reconstruct and alter the size of the Premises, quite plainly meeting the definition of “development” found at LCP §A.96.030(I). Unfortunately, the staff report incorrectly states that a CDP is not required simply because “there is no enlargement of the building in floor area or height” when, in fact, the Project meets several criteria triggering this very requirement.

The Project, as outlined in the staff report and the applicant’s description of the Project, specifically seeks to permit the intensification of the use of the Premises by expanding hours of operation, escalating the permitted uses onsite, and exposing the surrounding community to augmented noise levels without proffering any sort of

mitigation for these activities. This alone generates a CDP requirement for the Project pursuant to LCP §A.96.050(B)(1).

The Project applicant also requests the right to develop a basement which, pursuant to LCP §A.96.050(B)(3) and §A.96.050(A)(3)(b), dictates that a CDP is required for any project which includes the "construction of an additional story."

The staff report states that notwithstanding the fact that the Premises only has four (4) parking spaces available to it, the Project, as a previously nonconforming use, has no additional parking requirements under the municipal code because the *countable* floor space is not being increased. While it flies in the face of sense and reason that four spaces are considered to be sufficient for an establishment which can hold 368 diners, drinkers and dancers, not to mention scores of employees, service contractors, and delivery personnel, staff's analysis fails to grasp the difference between the municipal code and LCP requirements. Namely, the municipal code provides a means to calculate the minimum number of parking spaces per square foot of a specific type of commercial use, while the LCP looks at the existing and forecast *availability* (or lack thereof) of parking spaces due to a development. In this instance, where the Project seeks to have additional morning and late night hours, parking availability in the vicinity of the Premises is logically expected to be reduced by the influx of patrons and employees and agents of the applicant that would not otherwise be there at those hours were it not for the new development being requested. This intensification of the use of the Premises therefore triggers the requirement of a CDP for the Project.

If the City chooses to continue down its current course and not require a CDP for this Project, pursuant LCP §A.96.080(D), this correspondence should be considered a formal challenge to that assertion. By virtue of this letter, my client demands that the Coastal Commission's Executive Director be given the opportunity to consider the applicability of a CDP to the Project. If the Director's determination is contrary to that of the City, the Coastal Commission would then schedule a hearing on the matter.

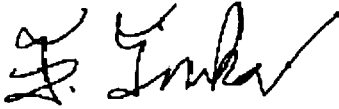
CONCLUSION

The development of Strata is not likely to be the innocuous project described in the staff report given the requested increases in the intensity of use of the Premises as well as the concomitant redevelopment of site. Therefore, both state and local law require that the City perform certain specific analyses to determine the extent of the impacts of this development, both on its own and in conjunction with neighboring uses, so as to determine the appropriate mitigation measures. Failure to act in accordance with the law is likely to prompt an appeal of any approval.

Therefore, we would recommend that the Planning Commission advise the City Council of the potential impacts, and devise means to mitigate these issues, including denial of (1) the enhanced exposure of the Premises to the public street, (2) the expanded hours of operation, and (3) the right to hold additional large events onsite.

Should you have any questions, do not hesitate to contact us at fmt@lfap.com or 619-236-1201.

Respectfully,
LOUNSBERY FERGUSON ALTONA & PEAK LLP



Felix M. Tinkov, Esq.

cc: Sandra Seville-Jones, Planning Commissioner - sseville-jones@citymb.info
Martha Andreani, Planning Commissioner - mandreani@citymb.info
Jim Fasola, Planning Commissioner - jfasola@citymb.info
David Lesser, Planning Commissioner - dlesser@citymb.info
City Councilmembers - CityCouncil@citymb.info
Richard Thompson, Dir. of Community Development - rthompson@citymb.info
Eric Haaland, Associate Planner - ehaaland@citymb.info
Jim Quilliam - jimquilliam@hotmail.com
Don McPherson - dmcphersonla@gmail.com

Eric Haaland

From: Don McPherson [dmcphersonla@gmail.com]
Sent: Friday, February 18, 2011 7:54 AM
To: David Lesser; Jim Fasola; Kathleen Paralusz; Martha Andreani; Sandra Seville-Jones
Cc: Mitch Ward; Nick Tell; Portia P. Cohen; Richard P. Montgomery; Wayne Powell; Richard Thompson; Eric Haaland; Andrew Harrod; Chris Vargas; James Quilliam; Felix Tinkov
Subject: Will Strata Comply with the Noise Ordinance?
Attachments: 110223-PC-Input.pdf

Planning Commission
City of Manhattan Beach
Via Email

Subject: Policy and Noise Ordinance Issues with Strata

I view the current Strata permitting action as simply an extension of the public hearings last year to abate the public nuisance created by the Shade Hotel.

The residents' draft use permit for Strata uses as a template, the Shade amendment approved last year by the city. The residents' conditions also address Strata features that differ from Shade, such as day-long dining at the huge open south façade, fronting on MB Blvd and the environmentally-sensitive pier area.

My attached input focuses on problems unique to Strata, for example, the policy-changing, precedent-setting balcony encroachments, that will jut over the MB Blvd sidewalk.

Actually, all of the Strata features that can cause disturbances relate to noise. This constitutes another significant difference from Shade. The city acoustic engineer, Behrens, could measure Shade noise and evaluate mitigation measures. Currently, Strata stands as a vacant, gutted silent shell.

Consequently, I purchased a high-end sound meter and a standalone calibration source, in order to measure ambient noise levels around Strata, as well as noise levels outside the many Downtown bars and nightclubs. To no one's surprise, those premises significantly violate the standards stipulated in the noise ordinance, specifically at MBMC 5.48.160, External Noise Standards.

I have no intention to address those violations, but to use the sound measurements as a surrogate for Strata. Much-smaller Simmzy's, one block east on MB Blvd, provides an ultra-conservative measure of noise from the much-larger and more highly-populated Strata open south façade. The ear-splitting pulsing on the sidewalk fronting Shark's Cove equates to a rock band inside Strata.

As graphically portrayed in the attachment, the sound measurements provide estimates for mitigation required with the Strata south-façade open (no entertainment) and with it closed (entertainment).

02/18/2011

I do not address herein another major difference between Shade and Strata. The latter lies in the zone appealable to the Coastal Commission. Hence, in addition to compliance with the municipal code, policies and practices, the city must ensure that Strata complies with the significantly different requirements in CEQA and the Coastal Act, such as impact on parking availability.

The attachment has a reasonable amount of white space, as well as graphics and tables easily understood. Although it should not take long to peruse, I appreciate your extra effort to consider my input.

Don McPherson

1014 1st St, Manhattan beach CA 90266

310.487.0383

dmcphersonla@gmail.com

Attachment: 110223-PC-Input.pdf

STRATA LEADS THE CITY INTO UNCHARTED WATERS

SUMMARY.

The Strata use permit amendment leads the city into areas involving either policy changes or new challenges to regulate, and for some items, both issues.

The city must address these unique Strata features:

- The 16- and 19-foot 2nd-story balcony encroachments
- Retention of 1 AM closing on Sundays through Thursdays
- The open south façade, facing MB Blvd and the pier area.
- Live entertainment adjacent to residences

The use permit conditions submitted by residents address these four issues as follows:

- Deny the balcony encroachments
- Roll back closing on Sun-Thu from 1 AM to midnight
- Apply sound absorbing structures on ceilings and walls throughout.
- Soundproof the entire building to the STC 50 international standard

DISCUSSION.

The discussion briefly addresses each of the four above issues, in order.

Balcony Encroachments. According to their January 26 report and statements at the hearing, staff supports the balconies encroaching over the MB Blvd sidewalk. They did not conduct the initial study for Strata, as required by CEQA. Therefore, staff did not analyze the cumulative impacts that will result from the precedent-setting Strata balconies, in terms of future Downtown development, as noted by a commissioner at the January 26 hearing.

The city devotes an entire chapter in the municipal code to Private Use of the Public Right of Way, MBMC 7.36. It seems imprudent to back into a policy change to expand commercial use, through the mechanism of setting a precedent with the use permit amendment for Strata. Any such modification to the encroachment ordinance deserves to receive a thorough public vetting, not merely by Strata neighborhood residents.

Most unsettling, the Strata balconies will become an entitlement. If later, when the negative impacts become apparent of restaurant/bar balconies above the sidewalks, then the city can never rectify their hurried mistake made with Strata.

If Mr. Zislis wants balconies, he can design the Strata renovation with stub-outs to take the cantilevered structures. If he eventually prevails in changing the encroachment ordinance to permit commercial balconies over sidewalks, then the installation becomes a simple matter.

Retention of 1 AM Closing on Sundays-Thursdays. Since 1994, the city has exercised the policy of setting restaurant/bar closings to midnight on Sundays through Thursdays. The city has applied this policy to 25 of the 33 alcohol-serving premises in the Downtown, which had use permits either issued or amended during the past fifteen years.

The other eight establishments have either no use permit or one that predates the policy applied since 1994. Tables below provide listings of the 33 premises, as excerpted from Exhibit D in the January 26 staff report.

The Strata application retains their 1 AM closing on Sundays through Thursday, which if granted, will constitute a policy change by the city, after fifteen uninterrupted years. Neither Strata nor staff have submitted any evidence to support such a policy change.

Furthermore, permitting Strata to remain open after midnights on weekdays aggravates one of the most difficult disturbances to mitigate, intrusion of inebriates into residential areas and noise late at night, from patrons entering vehicles, starting engines and leaving the area.

Having Strata open until 1 AM weekdays permits Mr. Zislis to circumvent the midnight closing at Brewco and Rock N Fish. His patrons can simply walk across MB Blvd to Strata for another hour of drinking.

Imposing midnight closing on Strata for weekdays constitutes a high priority condition in the residents' draft use permit submitted to the planning commission.

**THESE PREMISES CLOSE ON OR BEFORE MIDNIGHT WEEKDAYS,
HAVING USE PERMITS ISSUED OR REVISED AFTER 1994**

| | | | |
|--------------------|---------------------|----------------------------|-------------------------|
| 900 Manhattan Club | 900 Manhattan Ave | Izaka-Ya | 1133 Highland Ave |
| Crème de la Crepe | 1140 Highland Av | Old Venice | 1001 Manhattan Ave |
| Pasta Pomodoro | 401 MB Blvd | Penny Lane | 820 Manhattan Ave |
| Simmzy's | 229 MB Blvd | Rock N Fish (Zislis) | 120 Manhattan Ave |
| El Sombrero | 1005 Manhattan Ave | Sun & Moon Cafe | 1131 Manhattan Ave |
| Fonzes | 1017 Manhattan Ave | Talia's | 1148 Manhattan Ave |
| Mr Cecil's | 1209 Highland Ave | Memphis | 1142 Manhattan Ave |
| Fusion Sushi | 1150 Morningside Dr | 12 th +Highland | 304 12 th St |
| Le Pain Quotidien | Metlox Plaza | Wahoo's | 1129 Manhattan Ave |
| Mangiamao | 128 MB Blvd | Darren's | 1141 Manhattan Ave |
| Brewco (Zislis) | 124 MB Blvd | Shade Hotel (Zislis) | Metlox Plaza |
| Manhattan Pizzeria | 139 MB Blvd | Petros | Metlox Plaza |
| Muchos (Zislis) | 903 Manhattan Ave | | |

**THESE PREMISES CLOSE AFTER MIDNIGHT WEEKDAYS,
HAVING NO USE PERMIT, OR ONE PREDATING 1994**

| | | | |
|-----------------|--------------------|---------------------------|----------------------|
| Strata (Zislis) | 117 MB Blvd | Kettle | 1138 Highland Ave |
| Café Pierre | 317 MB Blvd | Mama D's | 1125 A Manhattan Ave |
| Ercoles | 1101 Manhattan Ave | Shark's Cove (see Note 1) | 309 MB Blvd |
| Hennessey's | 313 MB Blvd | Shellback | 116 MB Blvd |

Note 1. Exhibit D in the January 26 staff report states that in 2003, Sharks Cove received PC Reso 03-24. The applicant appealed that decision to the city council, because it deleted the live entertainment entitlement. The council upheld the PC resolution. Sharks Cove then withdrew their application for a use permit change. Consequently, Sharks Cove either does not have a use permit or has one that predates 1994.

Open South Façade, Fronting MB Blvd. In past years, restaurant/bars have adopted openable façades that face fronting streets. The city administratively approves such conversions through building permits. This has resulted in noise disturbances, as noted by commissioners in the January 26 hearing, for Simmzy's.

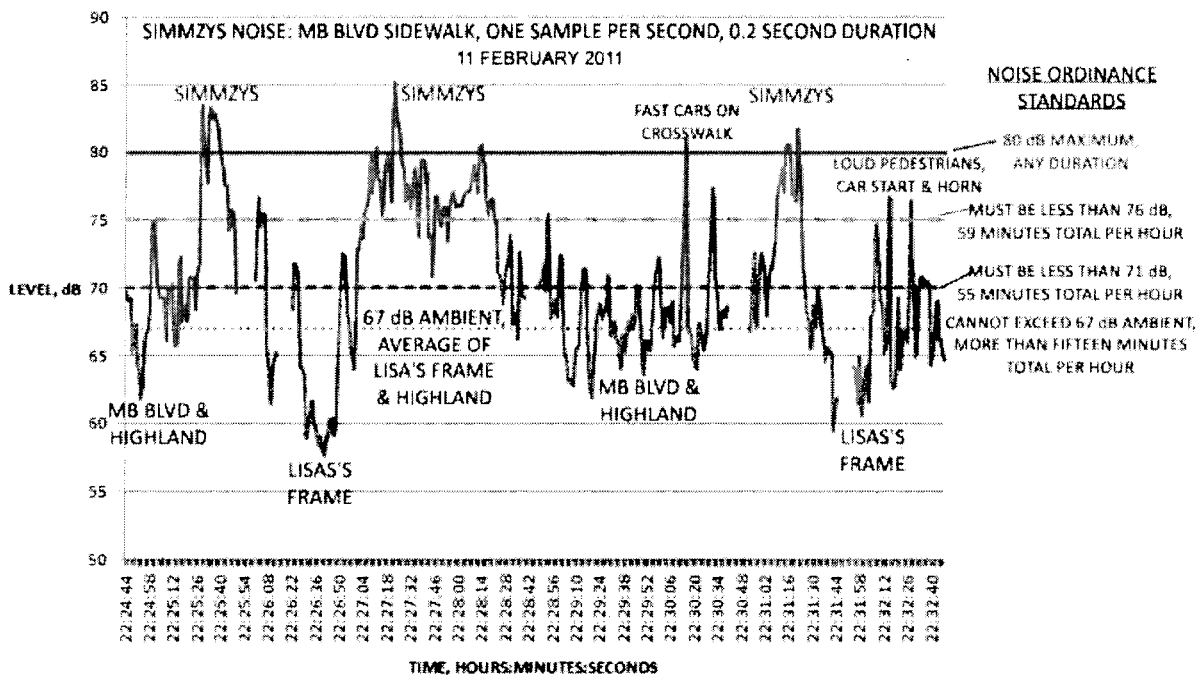
Sound level measurements demonstrate that Simmzy's noise on the MB Blvd sidewalk constitutes a significant violation of the noise ordinance. The figure below portrays sound level measurements taken with a handheld device. Starting on the left at approximately 10:22 PM, Friday February 11, at the northwest corner of MB Blvd and Highland, the device recorded sound levels every second for three passes back and forth, past Simmzy's.

The route went from Highland to Lisa's Frame Shop, then back to Highland, with a return west. At Lisa's and at Highland, data were recorded for more than a minute, to obtain ambient noise levels, which were averaged to provide an estimate of ambient at Simmzy's, if it could be turned off.

At the right, the figure portrays standards from the noise ordinance, MBMC 5.48.160, in a commercial area after 10 PM. In each pass, Simmzy's created noise over 80 dB, the maximum permitted, regardless of duration. Tests on February 5 and 7 also recorded 80-plus dB levels.

Additionally, Simmzy's violates the other standards related to duration. For example, during the two or three minutes of Simmzy's noise shown below, the levels exceed 75 dB, which according to code, cannot be exceeded for more than one minute per hour. The same holds for standards at five- and fifteen-minutes durations.

How does Simmzy's noise relate to Strata? Please see the next page.



NOTES: Measurements taken with a Lutron SL-4023SD Sound Level Meter, which records date-time and dB on an SD card in Microsoft Excel format. The meter self-calibrates at turn-on. For verification, before and after each field test, the meter is separately calibrated with a Lutron SC-941 calibration source. When possible, sound levels are taken at standstill for over a minute. Noise from walking typically amounts to less than 40 dB. Simmzy's noise exceeds ambient levels by 10 dB or more, so according to MBMC 4.48.160 (B), they need no correction.

How do Simmzy's noise levels relate to Strata? The latter has an open façade several times larger than Simmzy's. Strata's possible 368 patrons vastly outnumber Simmzy's crowd.

Consequently, Simmzy's noise constitutes a conservative estimate of Strata's, with no sound-suppression measures implemented. The figure at bottom of this page shows the midsection of Simmzy's noise from the previous figure, superimposed with ambient levels measured on the MB Blvd sidewalk in front of Strata and on Center Dr behind the premises.

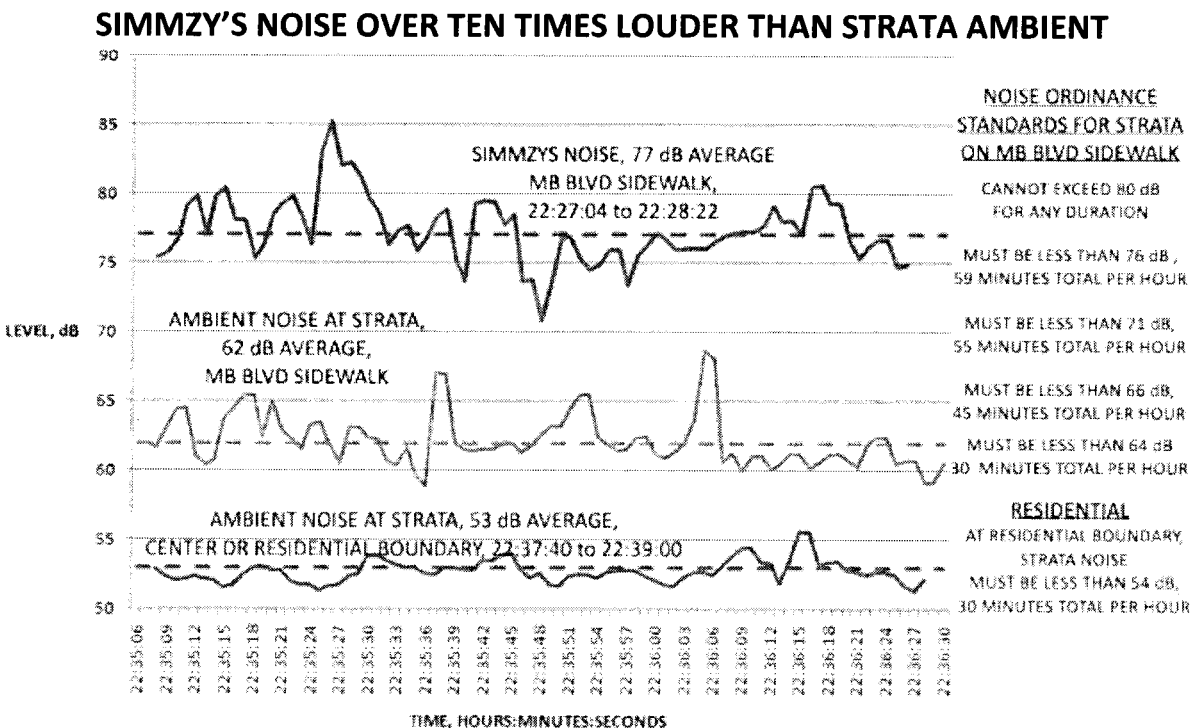
Clearly, with the south façade open, Strata will need about 20 to 30 dB noise suppression to comply with regulations. The residents' use permit requires sound absorbing structures on ceilings and walls throughout. These measures will quiet the premises, which should also result in patrons lowering their voices, because they will not have to shout to be heard across a table. If sound absorbing proves insufficient to comply with the noise ordinance, then the area of the open facade will require a reduction.

Entire Building Soundproofed to STC-50, when Entertainment present. This solution for soundproofing the building after 8 PM, or whenever entertainment present, also has basis in the figure below. Center Drive between Strata and the residences has an ambient level in the mid 50-dB range. A rock band equates to 100 dB inside. The ASTM STC 50 protocol requires a 45 dB reduction, as measured by field test, which should result in noise ordinance compliance. If not, Strata can always turn the music volume down by five dB or so.

CONCLUSION.

The residents' use permit addresses the four principal issues listed in the summary, by denying the balconies, rolling back weekday closing times to midnight, and applying substantial soundproofing and absorbers on ceilings and walls to comply with the noise ordinance.

The residents only want the city to ensure that Strata complies with the municipal code and Coastal Act, while conforming with policies that exported the 1990's bar scene to Hermosa.



Laurie B. Jester

From: Michael Zislis [zislis@aol.com]
Sent: Monday, February 21, 2011 8:29 PM
To: List - Planning Commission; Laurie B. Jester; Richard Thompson; List - City Council
Subject: Fwd: Revised Strata Noise Report
Follow Up Flag: Follow up
Flag Status: Red
Attachments: pastedGraphic.pdf; ATT522493.htm; Strata Report 2-22-11.pdf; ATT522494.htm

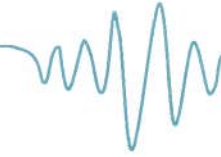
Dear Planning members, Council members, and staff:

I just got the sound study. I hope both city staff, the planning department and the neighbors understand how the new design will reduce sound by 50% from Beaches. Not to mention the huge reduction in sound around the trash area with the new trash enclosure because of all the complaints about trash sound by the immediate neighbors. The cost to me is 120,000 for the new double pane glass with the inner laminate on the west side. Please listen to the neighbors that live around the old "Beaches" and not the activists against local restaurant businesses. Remember, I will be operating this premier beachfront restaurant with no operable windows facing the beach. This seems contrary to city policy regarding outdoor dining.

Michael Zislis
Owner
Michael@Zislisgroup.com

Behrens and Associates, Inc.

Acoustics, Noise and Vibration Consultants



February 22, 2011

Strata Restaurant
117 Manhattan Beach Boulevard
Manhattan Beach, CA 90266

Subject: Beaches and Strata Noise Impact Report

Dear Mr. Zislis,

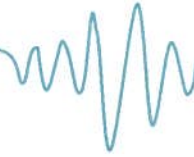
We have completed the noise impact assessment for the proposed Strata Restaurant and lower lounge, located at 117 Manhattan Beach Boulevard in Manhattan Beach, California. This report provides a comparison of the noise levels produced by the original Beaches nightclub at the property and the Strata project.

The project is currently under construction and therefore no noise levels were measured during our study. Instead, computer models were developed to assess the noise. These models were built using a combination of architectural drawings of both the original Beaches nightclub and the Strata project, and building construction information obtained during an inspection of the existing building. The models take into account the various window and wall constructions and use measured noise transmission data of equivalent window and wall constructions.

The models simulate the noise produced on a busy weekend night. Research has shown that typical interior nightclub noise levels are generally between 90 and 110 dBA. Our analysis assumes the average noise level at dance floor areas inside the building to be 100 dBA. This assumption was used for both the Beaches and Strata models. It is recognized that this assumption is not based on measured noise levels at the club. However, the purpose of this analysis is to predict the reduction in noise due to the upgraded building construction. Therefore, in assessing the results of the modeling, the difference in noise levels of the two models is more relevant than the modeled noise levels produced by the individual uses.

The first noise model is designed to be representative of the original Beaches nightclub on a typical busy weekend night and includes noise produced by music and guests on the first and second floors. The Sound Transmission Class (STC) ratings of the various building elements used in the model are provided in Table 1. It is understood that the small sliding glass windows of the Beaches club were opened for ventilation purposes at busy times. These openings are included in the Beaches noise model. The large sliding glass roof was modeled as being closed. In addition, noise produced by people talking on the northwest second floor balcony (previously used as an employee break area) was included in the model

Noise maps showing the predicted average noise level in the vicinity of the building at 1st and 3rd floor locations are provided in Figures 1 and 2.



Strata Restaurant
 February 22, 2011
 Page 2

Table 1. Modeled STC Ratings for Original Beaches Nightclub

| Façade Element | Construction | STC Rating |
|--|-----------------------------------|-------------------|
| Windows on Manhattan Beach Boulevard | Single ¼" pane | 31 |
| Doors on Manhattan Beach Boulevard | Dual ⅛" panes with ½" air gap | 31 |
| Windows on Ocean Drive | Dual ⅛" panes with ½" air gap | 31 |
| Walls on Manhattan Beach Boulevard and Ocean Drive | Standard insulated stucco wall | 42 |
| Wall on Center Place | 6" concrete block | 50 |
| Door on Center Place | Hollow-core steel door with seals | 28 |
| Roof | Built-up roof | 43 |
| Sliding glass roof | ¼" laminated glass | 35 |

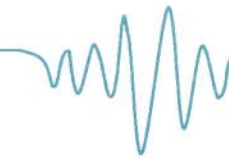
The second noise model is designed to be representative of the proposed Strata project on a typical busy weekend night.

The Sound Transmission Class (STC) ratings of the various building elements used in the Strata model are provided in Table 2. The noise sources modeled were music and guests on the first floor and the restaurant on the second floor. The mechanical louver above the dining area on Level 4 was modeled as being open. The staff break area on the northwest balcony is no longer a source of employee noise at Strata due to this area being inaccessible.

Noise maps showing the predicted average noise level in the vicinity of the building at 1st and 3rd floor locations are provided in Figures 3 and 4.

Table 2. Modeled STC Ratings for Proposed Strata Nightclub

| Façade Element | Construction | STC Rating |
|--|--|-------------------|
| Windows on Manhattan Beach Boulevard | Dual pane, 1" glazing | 36 |
| Doors on Manhattan Beach Boulevard | Single pane | 31 |
| First floor windows on Ocean Drive | Dual pane, ¼" laminated glass, ½" air gap, ¼" glass | 39 |
| Second floor windows on Ocean Drive | Dual pane, ¼" glass, ½" air gap, ¼" glass | 36 |
| Walls on Manhattan Beach Boulevard and Ocean Drive | Stucco or stone faced insulated walls with two drywall layers. | 45 |
| Wall on Center Place | 6" concrete block | 50 |
| Door on Center Place | Hollow-core steel door with perimeter seals | 28 |
| Roof | Built-up roof | 43 |



Strata Restaurant
February 22, 2011
Page 3

Results of Noise Modeling

The results of our noise modeling indicate that the average noise levels for the original Beaches nightclub were approximately 47 dBA at the residences on Center Place and 48 dBA at the residences on the Strand south of 11th Street, based on an interior noise level of 100 dBA.

The modeling results for the proposed Strata project indicate that the average noise level will be approximately 39 dBA at the residences on Center Place and 41 dBA at the first residence on the Strand south of 11th Street, based on an interior noise level of 100 dBA.

The modeling results indicate that the Strata project will produce noise levels up to 8 dB lower than those produced by the Beaches nightclub at the residential properties in the area. This noise reduction is significant and is slightly less than a perceived 50% reduction in noise level.

The City of Manhattan Beach Municipal Code permits noise levels of up to 45 dBA for a cumulative period of more than 30 minutes in an hour at residential properties during the nighttime hours (10 pm to 7 am). Increased noise levels are permitted for shorter durations; however, due to the character of the noise, the 30 minute limit is likely to be the critical limit in assessing the noise. It is noted that the Municipal Code allows for adjustment of the noise limit to account for the existing ambient noise level. The ambient noise level in the area has not been measured and is not considered in this study.

Trash Noise at Rear of Property

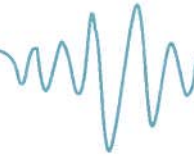
Noise caused by the use of trash cans at the rear of the project has been identified by the project proponent as a source of noise complaints by residents on Center Place. These noises are likely to be relatively high in level and short in duration compared to the other noise sources. Therefore this noise has been analyzed by separately modeling the maximum noise levels of this noise source. The source data used to model the trash can noise is not based on measurements at the property. Instead, representative noise sources levels and noise spectra have been assumed.

A noise contour map showing the maximum noise levels caused by use of the trash cans at the rear of the original Beaches nightclub is provided in Figure 5. Our analysis indicates that the maximum short duration noise levels at the residential properties on Central Place would be up to 77 dBA.

The trash cans at the proposed Strata nightclub will still be located at the rear of the property, but will be enclosed in a room. This room will have a roll-up door on the north side

Behrens and Associates, Inc.

Acoustics, Noise and Vibration Consultants



Strata Restaurant
February 22, 2011
Page 4

and entry door on the west side. A noise contour map showing the maximum noise levels caused by use of the trash cans at the rear of the proposed Strata project is provided in Figure 6. This noise map shows maximum short duration noise levels of up to 55 dBA at the residential properties on Central Place.

Our analysis indicates that the enclosure around the trash cans will reduce the maximum short duration noise level due to this source by 22 dB at the nearest residential properties. This reduction is perceived as slightly more than a 75% decrease in noise level.

Please contact me with any questions or comments.

Very truly yours,

Thomas Corbishley
Acoustical Engineer

Behrens and Associates, Inc.

Acoustics, Noise and Vibration Consultants

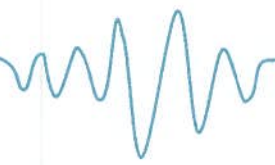
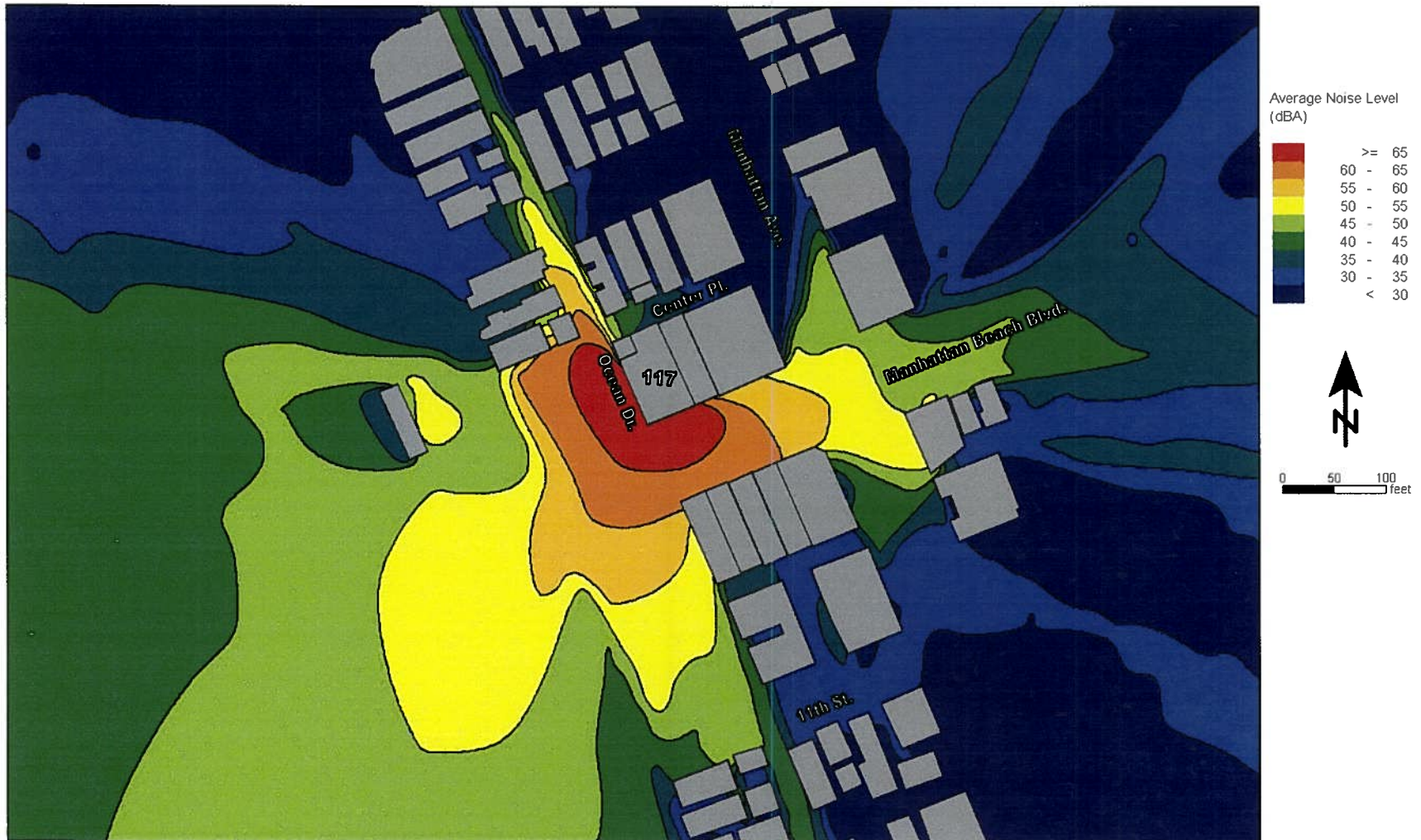


Figure 1. Modeled Average Noise Level of Original Beaches Nightclub at 1st Floor with Small Windows Open and Retractable Ceiling Closed



Behrens and Associates, Inc.

Acoustics, Noise and Vibration Consultants

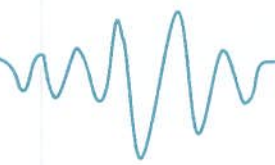


Figure 2. Modeled Average Noise Level of Original Beaches Nightclub at 3rd Floor with Small Windows Open and Retractable Ceiling Closed

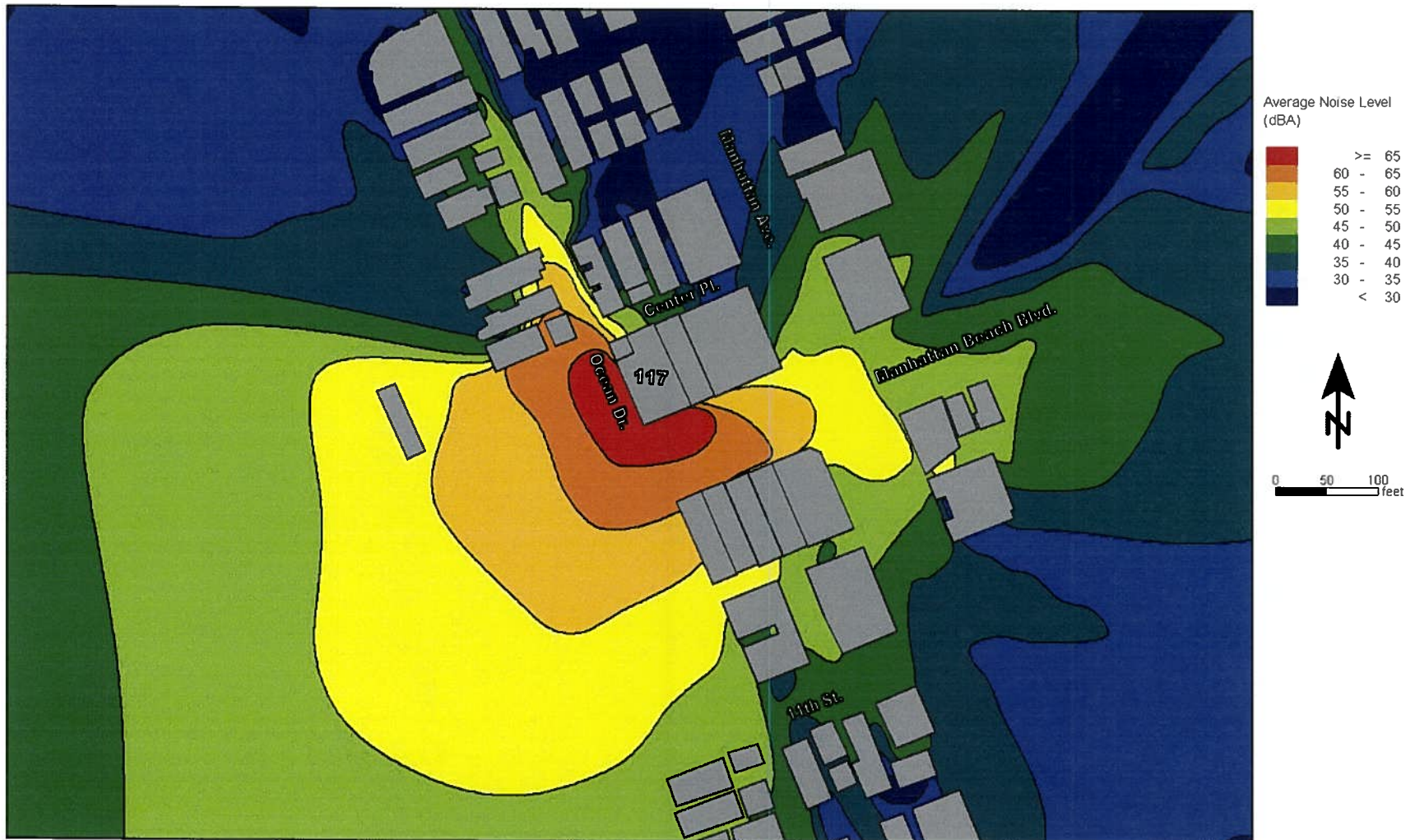




Figure 3. Modeled Average Noise Level of Proposed Strata Project at 1st Floor with Windows Closed and Patios and Balconies Occupied

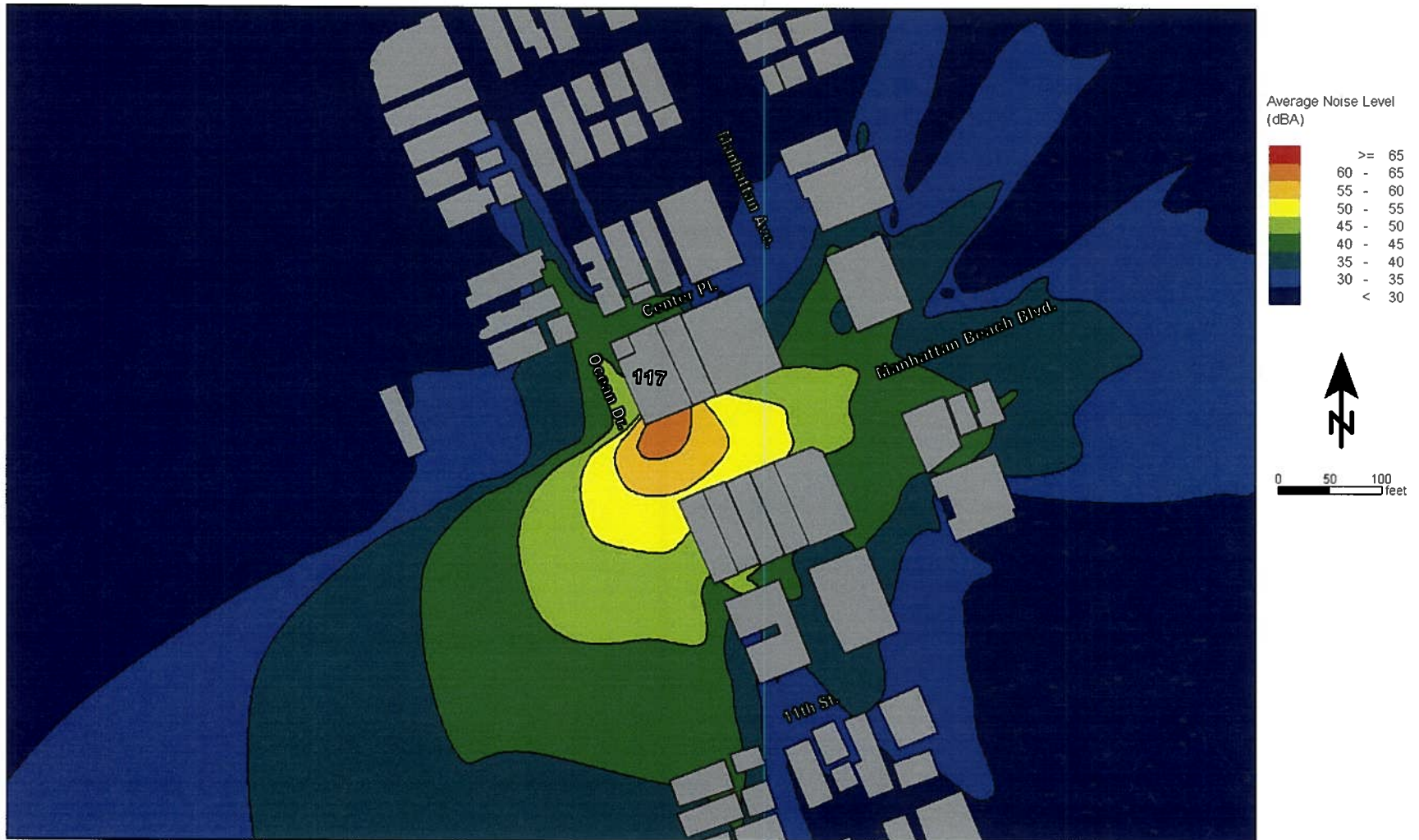


Behrens and Associates, Inc.

Acoustics, Noise and Vibration Consultants



Figure 4. Modeled Average Noise Level of Proposed Strata Project at 3rd Floor with Windows Closed and Patios and Balconies Occupied



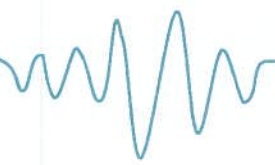
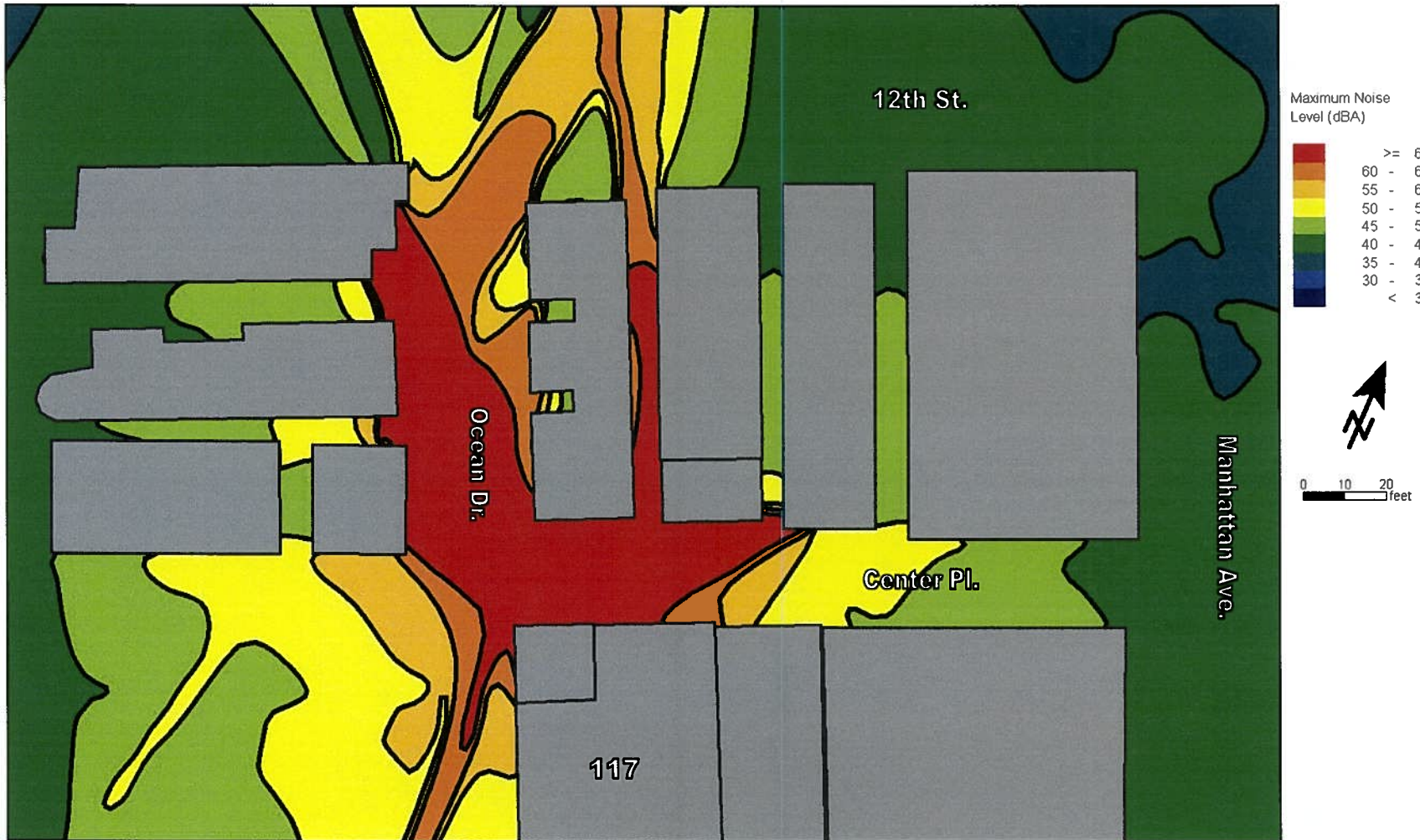


Figure 5. Maximum Noise Level of Trash Can Impacts at Rear of Original Beaches Nightclub at 1st Floor



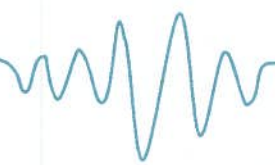
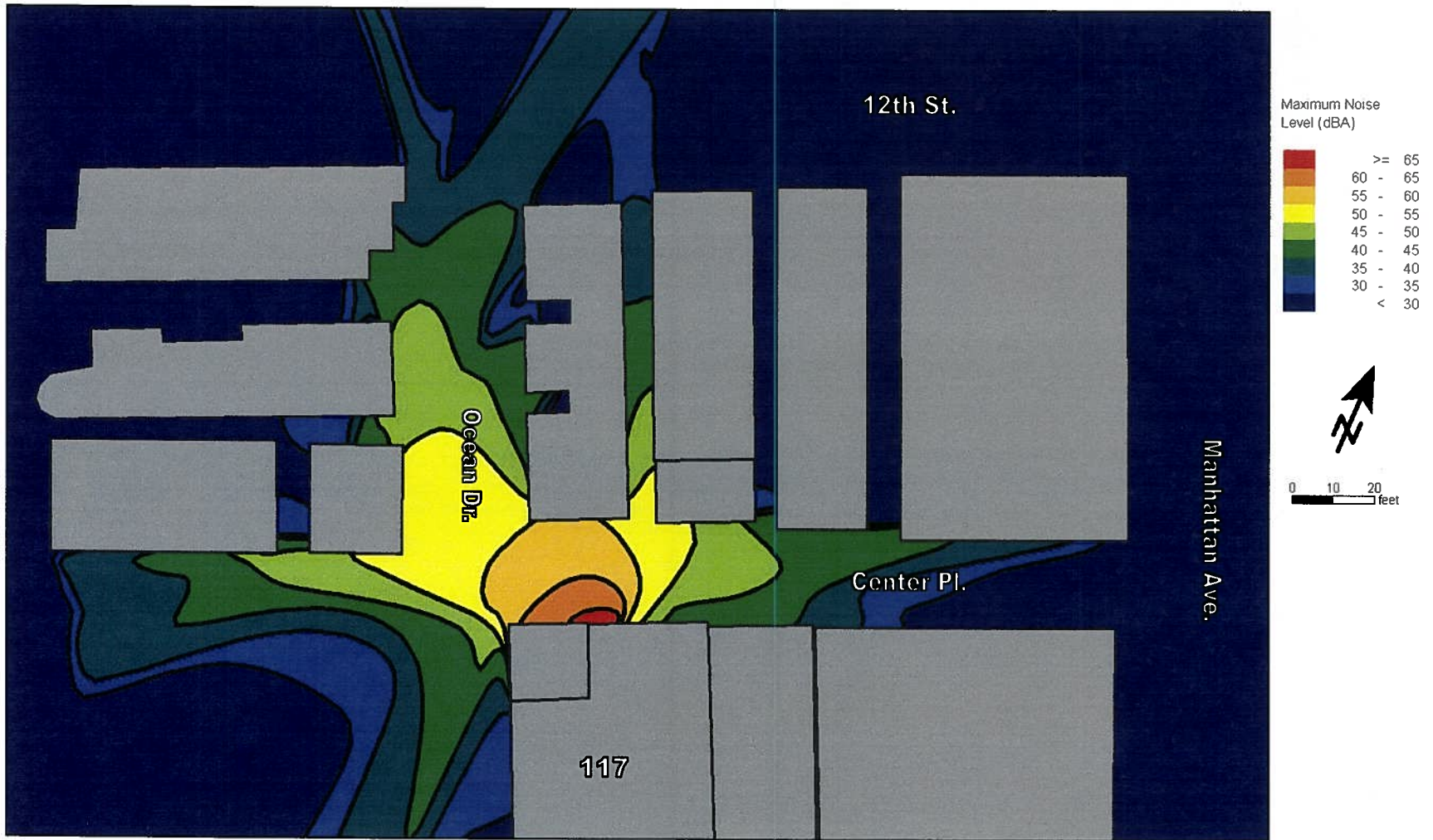


Figure 6. Maximum Noise Level of Trash Can Impacts at Rear of Proposed Strata Project at 1st Floor with New Enclosed Trash Room



Jennifer Sorrell

From: Don McPherson <dmcphersonla@gmail.com>
Sent: Monday, February 21, 2011 11:40 AM
To: David Lesser; Jim Fasola; Kathleen Paralusz; Martha Andreani; Sandra Seville-Jones
Cc: Richard Thompson; Laurie B. Jester; Eric Haaland; James Quilliam
Subject: Errata to 'Rationale for Neighbors' Inputs to Strata Resolution'
Attachments: 110223-PC-Resolution-Neighbors-Rationale-RevA-Compiled.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Planning Commission
City of Manhattan Beach
Via Email

Commissioners,

A reordering of findings in the 'Neighbors' Inputs to the Strata Resolution' did not get incorporated into the accompanying 'Rationale', which provides brief explanations for each resolution change.

Please discard the version of the 'Rationale' sent by Jim Quilliam this morning and use the attached corrected version in its place.

Jim had a family event scheduled for the rest of the day, so I have sent the correction.

Apologies for any confusion the error might have caused.

Don McPherson
1014 1st St, Manhattan Beach CA 90266
310.487.0383
dmcphersonla@gmail.com

RATIONALE FOR NEIGHBORS' INPUTS TO STRATA RESOLUTION

INTRODUCTION.

The following provides brief explanations for each item in the Neighbors' Input to the Strata Resolution. The exhibits provide supporting evidence, if not already submitted to the planning commission.

The identifiers for each finding and condition correspond to those in the neighbors' edit of the resolution, not those identifiers in the original staff resolution.

This rationale makes the following principal points:

- **Finding D.** The Strata project requires a Coastal Development Permit (CDP.) The planning commission cannot approve the resolution, without having an accompanying CDP that complies with CEQA and the Coastal Act. See Local Coastal Program A.96.120, Standards for Application Review.
- **Condition 1.** The definition of 'closed' includes a requirement that all patrons have vacated the premises. This corresponds to the definition of 'closed' that the ABC imposed on the license for North End Caffe, the permitting action heard by the planning commission in August 2010. See Exhibit E, the Petition for Conditional License, North End Caffe.
- **Condition 9.** The STC 50 specification for noise attenuation, when all windows and doors are closed. The city lacks an ordinance in the building code for noise suppression, so the STC-50 specification in the International Building Code becomes the default regulation.
- **Condition 12.** Midnight closing on Sunday through Thursday. City policy for all alcohol-serving establishments in the Downtown that received new or amended use permits, since 1994. Of the 33 premises in the Downtown, only eight, including Strata, have closing times later than midnight on weekdays. None of these eight establishments have received an amended use permit since 1994.
- **Condition 15.** The neighbors' edit returns the number of extra days dancing from the staff proposal of 52 to the commissioners' agreement for twelve additional days. The staff proposal will effectively escalate the permitted Thursday entertainment every week, to entertainment plus dancing, opposed by both commissioners and neighbors.
- **Condition 24.** Strata has an approved use as a restaurant, not a nightclub. Consequently, MBFD should determine occupancies based on the table-&-chair configuration depicted in approved drawings. Furthermore, Strata should maintain that configuration during all operating hours.

FINDINGS.

Finding D. Coastal Designation.

The January 26 staff report identifies Strata as in the appealable zone and that a change in use triggered the requirement for a use permit amendment. The letter emailed by Felix Tinkov to the planning commission on Friday January 18 provides the arguments why Strata requires a Coastal Development Permit, based on changes to the intensity and use created by the improvements to the building. See LCP A.96.050 (B).

RATIONALE FOR NEIGHBORS' INPUTS TO STRATA RESOLUTION

Finding F. Noncompliance with Annual Group Entertainment Permit.

The administrative file contains only two annual entertainment permits, dated 17 Aug 1989 and 4 Feb 1993, respectively. MB Dining, LLC has owned and operated the premises since July 2010, without the required Annual Group Entertainment Permit. See Exhibit A from the city administrative file, the transfer-of-alcohol-license Forms 211, dated 26 Jul 2010, from M McFanti to MB Dining representatives, William Bloomfield and Joanne Bloomfield Hunter. See also Exhibit B, MB Dining LLC filing of articles of incorporation with the Secretary of State.

Finding G. No 50-50% Alcohol-to-Food Sales Ratio Condition in ABC License.

Refer to Exhibit C, email from B Richard, Supervising Investigator, ABC Long Beach

Finding H. Noise Disturbances.

Residents' testimony at 26 Jan 2011 Strata hearing. Police reports not available, although requested, as per Exhibit D. Same as Finding R in Shade use permit amendment, Resolution 6275, 7 Sep 2010.

Finding I. Noise Disturbances from Premises Staff.

Residents' testimony at 26 Jan 2011 Strata hearing.

Finding J. Noisy Rooftop Equipment.

Applicant's testimony at 26 Jan 2011 Strata hearing.

Finding K. Outdoor Dining Noise on Public Right of Way.

Residents' testimony at 26 Jan 2011 Strata hearing. Planning Commissioner statements at the 26 Jan 2011 Strata hearing.

Finding L. Patrons Intrusions and Disturbances in Adjoining Residential Area.

Residents' testimony at 26 Jan 2011 Strata hearing.

CONDITIONS.

Definitions.

The current PC pioneered definitions in the Shade use permit, but staff chose not to include any in their Strata resolution.

Condition 1. Closed.

This definition corresponds to Condition 1 in the Shade use permit, Resolution 6275. Additionally, the definition requires the public to have vacated the premises by closing. The PC could not require that for Shade, because of the hotel guest issue.

Just as the PC based their definition of 'closed' on the ABC definition of 'closed', they can also incorporate the requirement that patrons must have vacated the premises, based on the definition of 'closed' that the ABC used for the North End Caffe license, Exhibit E.

Condition 2. Background Music.

Same as Condition 7 in the Shade use permit, Resolution 6275.

Condition 3. Sound Transmission Class STC 50.

Section 1207, Sound Transmission, in the International Building Code. See also ASTM E-90, ASTM E-336-09 and ASTM E-413.

RATIONALE FOR NEIGHBORS' INPUTS TO STRATA RESOLUTION

Condition 4. Substantial Compliance with Plans.

The staff report states the balconies have been reduced in width to 18 inches. No reason exists to grant Strata an encroachment, other than for features such as awnings and signs, as per municipal code Chapter 7.37, MBMC 7.36.170 (A).

Condition 9. Specification of STC 50 when Windows and doors Closed.

The city does not have a specific statute to define noise isolation in structures. In such cases, the International Building Code applies, specifically at Section 1207, Sound Transmission.

This standard requires a field test to demonstrate 45 dB attenuation, for a 50 dB-attenuation building-design.

Mr Zislis apparently proposes to install windows with an STC 39 rating, as shown in Exhibit F. Strata has mostly window walls, so cannot possibly meet the STC 50 standard with the proposal shown in Exhibit F.

Mr Zislis makes a point about cost of multi-glazed windows. Strata will need those to meet energy conservation standards, regardless of any sound transmission requirements.

Condition 10. Outside Staff to Discourage Patrons from Intruding in Residential Area.

This feature described by Mr Ron Newman, Sharkeez owner, in their 'HUSH!' program, at the city-sponsored hearing on Sharkeez, 26 Jan 2011.

Condition 12. Hours of Operation.

- See Introduction for rationale on midnight closing on Sunday through Thursday
- End of alcohol service and entertainment: same as Condition 23 in the Shade use permit, Resolution 6275.

Condition 15. Entertainment and Dancing.

At the January 26 hearing, the commissioners unanimously supported just twelve extra days for dancing, compared to six in the previous use permit, Resolution 5087.

Staff proposes to increase that number from 12 to 52. In exchange, they eliminate entertainment on Thursdays and Sundays.

Effectively, staff proposes to let Strata have dancing every night on Thursdays, which the commissioners unanimously oppose.

Dancing 52 times a year constitutes a huge intensification, compared to entertainment on Thursdays and Sundays. Nightclub owners rarely schedule entertainment for Sundays. At a Shade hearing, Mr Zislis testified that Sundays were dead.

Consequently, staff essentially proposes to escalate the permitted Thursday entertainment to entertainment plus dancing, which the neighbors oppose.

Condition 16. Amendments to the Annual Group Entertainment Permit.

Staff proposes to cut out the planning commission in the appeal loop for entertainment permit amendments, thereby circumventing the Local Coastal Program protocol on appeals, LCP A.96.160 (A). The neighbors' edit conforms to the LCP, which requires the planning commission to hear appeals of decisions by the Director of Community Development.

Additionally, consistent with Condition 9 in the Shade use permit, Resolution 6275, the neighbors' edit requires notification of entertainment amendments, to a 300-foot radius.

RATIONALE FOR NEIGHBORS' INPUTS TO STRATA RESOLUTION

Condition 20. Trash Storage.

At the January 26 hearing, Mr Zislis testified twice that Strata will provide a repository for other premises on the north side of MB Blvd, west of Manhattan Ave. The neighbors' edit prohibits Mr Zislis from accepting refuse, which would entail staff from other restaurants rolling their trash cans down Center Dr late at night.

Furthermore, after 10 PM, staff shall store trash within the premises, until 8 AM the following morning. This constitutes another practice used by Mr Newman's Sharkeez.

Condition 24. Occupancy Based on Table & Chair Configuration in Approved Plans.

The record for the Shade Hotel proceedings shows that on big bar nights, staff clears the area of tables and chairs, to increase the number of patrons accommodated. Presumably, MBFD based their occupancy numbers on empty venues.

At a meeting with the applicant at Shade, a Strata resident stated that staff there told him they clear the Zinc lounge of tables and chairs to accommodate dancing. Condition 13 in the edited staff resolution clearly establishes Strata as a restaurant, not a nightclub.

Consistent with that, MBFD should determine maximum occupancy based on the table and chair configuration portrayed in the approved drawings. Likewise, the use permit should require Strata to maintain that configuration during all operating hours.

Condition 25. Availability of Onsite Parking.

The carport at the north side should remain available at all times. Furthermore, in consideration of Condition 24 above, it should not be used as a repository for tables and chairs cleared from the dining and drinking venue.

Condition 26. Valet Service and College Student Busing.

At the January 26 hearing, Mr Zislis testified that Strata would not provide valet service. This condition incorporates his testimony.

Some premises in the city bus in college students and other patron groups. This condition prohibits that practice, while permitting second-party entities to transport guests for large bookings, such as weddings.

APPLICATION FOR ALCOHOLIC BEVERAGE LICENSE(S)

ABC 211 (6/99)

TO: Department of Alcoholic Beverage Control
3950 PARAMOUNT BLVD
STE 250
LAKEWOOD, CA 90712
(562) 982-1337

File Number: 502185
Receipt Number: 2011444
Geographical Code: 1935
Copies Mailed Date: August 4, 2010
Issued Date:

DISTRICT SERVING LOCATION: **LB/LAKEWOOD**

First Owner: **MB DINING LLC**

Name of Business: **MB DINING LLC**

Location of Business: **117 MANHATTAN BEACH BLVD
MANHATTAN BEACH, CA 90266**

County: **LOS ANGELES**

Is Premise inside city limits? **Yes** Census Tract **6203.02**

Mailing Address: **865 MANHATTAN BEACH BLVD
MANHATTAN BEACH, CA 90266**
(If different from premises address)

Type of license(s): **47, 58**

Transferor's license/name: **233387 / MITCH MCFANTI INC**

Dropping Partner: Yes No

SEE BOTTOM OF PAGE 2 FOR JULY 2010 FILING DATE

| License Type | Transaction Type | Fee Type | Master | Dup | Date | Fee |
|-----------------------------|---------------------------|----------|--------|-----|----------|-------------------|
| NA | STATE FINGERPRINTS | NA | N | 5 | 08/04/10 | \$195.00 |
| NA | FEDERAL FINGERPRINTS | NA | N | 5 | 08/04/10 | \$120.00 |
| 47 - On-Sale General Eating | PERSON-TO-PERSON TRANSFER | P20 | N | 1 | 08/04/10 | \$1,350.00 |
| 47 - On-Sale General Eating | ANNUAL FEE | P20 | N | 1 | 08/04/10 | \$1,015.00 |
| 58 - Caterer Permit | DUPLICATE/SECONDARY | NA | N | 1 | 08/04/10 | \$131.00 |
| Total | | | | | | \$2,811.00 |

Have you ever been convicted of a felony? **No**

Have you ever violated any provisions of the Alcoholic Beverage Control Act, or regulations of the Department pertaining to the Act? **No**

Explain any "Yes" answer to the above questions on an attachment which shall be deemed part of this application.

Applicant agrees (a) that any manager employed in an on-sale licensed premises will have all the qualifications of a licensee, and (b) that he will not violate or cause or permit to be violated any of the provisions of the Alcoholic Beverage Control Act.

STATE OF CALIFORNIA County of LOS ANGELES

Date: August 4, 2010

Under penalty of perjury, each person whose signature appears below, certifies and says: (1) He is an applicant, or one of the applicants, or an executive officer of the applicant corporation, named in the foregoing application, duly authorized to make this application on its behalf; (2) that he has read the foregoing and knows the contents thereof and that each of the above statements therein made are true; (3) that no person other than the applicant or applicants has any direct or indirect interest in the applicant or applicant's business to be conducted under the license(s) for which this application is made; (4) that the transfer application or proposed transfer is not made to satisfy the payment of a loan or to fulfill an agreement entered into more than ninety (90) days preceding the day on which the transfer application is filed with the Department or to gain or establish a preference to or for any creditor or transferor or to defraud or injure any creditor of transferor; (5) that the transfer application may be withdrawn by either the applicant or the licensee with no resulting liability to the Department.

Applicant Name(s)

Applicant Signature(s)

MB DINING LLC

See 211 Signature Page

ABC 211 519
ABC 211 A
ABC 227

EXHIBIT A

STRATA-QUILIAM

State of California

Department of Alcoholic Beverage Control

APPLICATION SIGNATURE SHEET ("SIGN ON")

- This form is to be used as the signature page for applications not signed in the District Office.
- Read instructions on reverse before completing.
- All signatures must be notarized in accordance with laws of the State where signed.

1 OWNERSHIP TYPE (Check one)

- Sole Owner
- Partnership-Ltd
- Partnership
- Corporation
- Married Couple Limited Liability Company
- Domestic Partner
- Other
- Person to Person Transfer
- Premise to Premise Transfer
- Other

2 FILE NUMBER (if any)

502185

3 LICENSE TYPE

47 & 58

4 TRANSACTION TYPE

- Original
- Exchange

5 APPLICANT(S) NAME (Last, first, middle)

MB Dining LLC

6 APPLICANT'S MAILING ADDRESS (Street address/P.O. box, city, state, zip code)

865 Manhattan Beach Blvd., Manhattan Beach, CA 90266

7 PREMISES ADDRESS (Street address, city, zip code)

117 Manhattan Beach Blvd., Manhattan Beach, CA 90266

APPLICANT'S CERTIFICATION

Under penalty of perjury, each person whose signature appears below, certifies and says: (1) He/She is an applicant, or one of the applicants, or an executive officer of the applicant corporation, named in the foregoing application, duly authorized to make this application on its behalf; (2) that he/she has read the foregoing and knows the contents thereof and that each of the above statements therein made are true; (3) that no person other than the applicant or applicants has any direct or indirect interest in the applicant or applicant's business to be conducted under the license(s) for which this application is made; (4) that the transfer

payment of a loan or to fulfill an agreement entered into more than ninety (90) days preceding the day on which the transfer application is filed with the Department, (b) to gain or establish a preference to or for any creditor or transferor, or (c) to defraud or injure any creditor or transferor; (5) that the transfer application may be withdrawn by either the applicant or the licensee with no resulting liability to the Department.

I understand that if I fail to qualify for the license or withdraw this application there will be a service charge of one-fourth of the license fee paid, up to \$100.

SOLE OWNER

8 PRINTED NAME (Last, first, middle)

SIGNATURE

DATE SIGNED

X

PARTNERSHIP/LIMITED PARTNERSHIP (Signatures of general partners only)

9 PARTNER'S PRINTED NAME (Last, first, middle)

SIGNATURE

DATE SIGNED

X

PARTNER'S PRINTED NAME (Last, first, middle)

SIGNATURE

DATE SIGNED

X

PARTNER'S PRINTED NAME (Last, first, middle)

SIGNATURE

DATE SIGNED

X

CORPORATION

10 PRINTED NAME (Last, first, middle)

SIGNATURE

DATE SIGNED

X

TITLE

- President
- Vice President
- Chairman of the Board

PRINTED NAME (Last, first, middle)

SIGNATURE

DATE SIGNED

X

TITLE

- Secretary
- Asst. Secretary
- Chief Financial Officer
- Asst. Treasurer

LIMITED LIABILITY COMPANY

11. The limited liability company is member-run Yes No (If no, complete Item #12 below)

12 NAME OF DESIGNATED MANAGER, MANAGING MEMBER OR DESIGNATED OFFICER (Last, first, middle)

Bloomfield, William E. and Hunter, Joanne B.

13 MEMBER'S PRINTED NAME (Last, first, middle)

SIGNATURE

DATE SIGNED

Bloomfield, William E.

SIGNATURE

DATE SIGNED

MEMBER'S PRINTED NAME (Last, first, middle)

Hunter, Joanne B.

SIGNATURE

DATE SIGNED

CALIFORNIA JURAT WITH AFFIANT STATEMENT

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

 Signature of Document Signer No. 1

 Signature of Document Signer No. 2 (if any)

State of California
 County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this

26 day of July, 2010, by
Date Month Year
 (1) William S. Bloomfield
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (.)

(and
 (2) Joanne B. Hunter
Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature Melanie M. Sears, Notary
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: App. Sig. Sheet "Sign on"

Document Date: 7-26-10 Number of Pages: 1

Signer(s) Other Than Named Above: N/A

RIGHT THUMBPRINT OF SIGNER #1
 Top of thumb here

RIGHT THUMBPRINT OF SIGNER #2
 Top of thumb here

STRATA ABC LICENSE TRANSFERS
EXHIBIT A **STRATA-QUILLIAM**

Department of Alcoholic Beverage Control

State of California

APPLICATION FOR ALCOHOLIC BEVERAGE LICENSE(S)

ABC 211 (6/99)

TO: Department of Alcoholic Beverage Control
 3950 PARAMOUNT BLVD
 STE 250
 LAKEWOOD, CA 90712
 (562) 982-1337

File Number: **502185**
 Receipt Number: **2032527**
 Geographical Code: **1935**
 Copies Mailed Date: **December 9, 2010**
 Issued Date:

DISTRICT SERVING LOCATION: LB/LAKEWOOD
First Owner: **MB DINING LLC**
Name of Business: **MB DINING LLC**
Location of Business: **117 MANHATTAN BEACH BLVD**
MANHATTAN BEACH, CA 90266-5431
County: **LOS ANGELES**

Is Premise inside city limits? **Yes** **Census Tract** **6203.02**

Mailing Address:
 (If different from premises address)

Type of license(s): **47**

Transferor's license/name: _____ **Dropping Partner:** Yes ___ No

| <u>License Type</u> | <u>Transaction Type</u> | <u>Fee Type</u> | <u>Master</u> | <u>Dup</u> | <u>Date</u> | <u>Fee</u> |
|-----------------------------|-------------------------|-----------------|---------------|------------|-------------|-----------------|
| 47 - On-Sale General Eating | STOCK TRANSFER | P20 | Y | 0 | 12/09/10 | \$800.00 |
| Total | | | | | | \$800.00 |

Have you ever been convicted of a felony? **No**
Have you ever violated any provisions of the Alcoholic Beverage Control Act, or regulations of the Department pertaining to the Act? **No**
 Explain any "Yes" answer to the above questions on an attachment which shall be deemed part of this application.

Applicant agrees (a) that any manager employed in an on-sale licensed premises will have all the qualifications of a licensee, and (b) that he will not violate or cause or permit to be violated any of the provisions of the Alcoholic Beverage Control Act.

STATE OF CALIFORNIA **County of LOS ANGELES** **Date: December 9, 2010**

Under penalty of perjury, each person whose signature appears below, certifies and says: (1) He is an applicant, or one of the applicants, or an executive officer of the applicant corporation, named in the foregoing application, duly authorized to make this application on its behalf; (2) that he has read the foregoing and knows the contents thereof and that each of the above statements therein made are true; (3) that no person other than the applicant or applicants has any direct or indirect interest in the applicant or applicant's business to be conducted under the license(s) for which this application is made; (4) that the transfer application or proposed transfer is not made to satisfy the payment of a loan or to fulfill an agreement entered into more than ninety (90) days preceding the day on which the transfer application is filed with the Department or to gain or establish a preference to or for any creditor or transferor or to defraud or injure any creditor of transferor; (5) that the transfer application may be withdrawn by either the applicant or the licensee with no resulting liability to the Department.

Applicant Name(s)

Applicant Signature(s)

MB DINING LLC

See 211 Signature Page 

State of California

Department of Alcoholic Beverage Control

APPLICATION SIGNATURE SHEET ("SIGN ON")

- This form is to be used as the signature page for applications not signed in the District Office.
- **Read instructions on reverse before completing.**
- **All signatures must be notarized in accordance with laws of the State where signed.**

OWNERSHIP TYPE (Check one)

- Sole Owner Partnership-Ltd
 Partnership Corporation
 Married Couple Limited Liability Company
 Domestic Partner Other

2. FILE NUMBER (if any)

3. LICENSE TYPE

4. TRANSACTION TYPE

502185

47/58

- Original Person to Person Transfer
 Exchange Premise to Premise Transfer
 Other Stock Transfer

5. APPLICANT(S) NAME (Last, first, middle)

MB Dining LLC

6. APPLICANT'S MAILING ADDRESS (Street address/P.O. box, city, state, zip code)

117 Manhattan Beach Blvd., Manhattan Beach, CA 90266

7. PREMISES ADDRESS (Street address, city, zip code)

117 Manhattan Beach Blvd., Manhattan Beach, CA 90266

APPLICANT'S CERTIFICATION

Under penalty of perjury, each person whose signature appears below, certifies and says: (1) He/She is an applicant, or one of the applicants, or an executive officer of the applicant corporation, named in the foregoing application, duly authorized to make this application on its behalf; (2) that he/she has read the foregoing and knows the contents thereof and that each of the above statements therein made are true; (3) that no person other than the applicant or applicants has any direct or indirect interest in the applicant or applicant's business to be conducted under the license(s) for which this application is made; (4) that the transfer

payment of a loan or to fulfill an agreement entered into more than ninety (90) days preceding the day on which the transfer application is filed with the Department, (b) to gain or establish a preference to or for any creditor or transferor, or (c) to defraud or injure any creditor or transferor; (5) that the transfer application may be withdrawn by either the applicant or the licensee with no resulting liability to the Department.

I understand that if I fail to qualify for the license or withdraw this application there will be a service charge of one-fourth of the license fee paid, up to \$100.

SOLE OWNER

8. PRINTED NAME (Last, first, middle)

SIGNATURE

DATE SIGNED

X

PARTNERSHIP/LIMITED PARTNERSHIP (Signatures of general partners only)

9. PARTNER'S PRINTED NAME (Last, first, middle)

SIGNATURE

DATE SIGNED

X

PARTNER'S PRINTED NAME (Last, first, middle)

SIGNATURE

DATE SIGNED

X

PARTNER'S PRINTED NAME (Last, first, middle)

SIGNATURE

DATE SIGNED

X

CORPORATION

10. PRINTED NAME (Last, first, middle)

SIGNATURE

DATE SIGNED

Zislis, Michael A.

X

Michael A. Zislis 11/15/10

TITLE

- President Vice President Chairman of the Board

PRINTED NAME (Last, first, middle)

SIGNATURE

DATE SIGNED

Zislis, David

X

David Zislis 11/15/10

TITLE

- Secretary Asst. Secretary Chief Financial Officer Asst. Treasurer

LIMITED LIABILITY COMPANY

11. The limited liability company is member-run

Yes

No

(If no, complete Item #12 below)

12. NAME OF DESIGNATED MANAGER, MANAGING MEMBER OR DESIGNATED OFFICER (Last, first, middle)

The Zislis Group, Inc.

13. MEMBER'S PRINTED NAME (Last, first, middle)

SIGNATURE

DATE SIGNED

X

MEMBER'S PRINTED NAME (Last, first, middle)

SIGNATURE

DATE SIGNED

X

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles

On Nov. 15, 2010 before me, Selena Hira-Toth, Notary Public

personally appeared Michael A. Zsliis



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: ABC Application (ABC-211-SIG)

Document Date: 11/16/2010 Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles }

On Nov. 15, 2010 before me, Selena Mira-Toth Notary Public
Date Here Insert Name and Title of the Officer

personally appeared David Zisis
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

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Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

EXHIBIT B

STARTA-QUILLIAM



Business Entities (BE)

Online Services

- [Business Search](#)
- [Disclosure Search](#)
- [E-File Statements](#)
- [Processing Times](#)

[Main Page](#)

[Service Options](#)

[Name Availability](#)

[Forms, Samples & Fees](#)

[Annual/Biennial Statements](#)

[Filing Tips](#)

[Information Requests](#)
(certificates, copies & status reports)

[Service of Process](#)

[FAQs](#)

[Contact Information](#)

Resources

- [Business Resources](#)
- [Tax Information](#)
- [Starting A Business](#)
- [International Business Relations Program](#)

[Customer Alert](#)
(misleading business solicitations)

Business Entity Detail

Data is updated weekly and is current as of Friday, February 04, 2011. It is not a complete or certified record

| | |
|-------------------------------|----------------------------------|
| Entity Name: | MB DINING, LLC |
| Entity Number: | 201020010051 |
| Date Filed: | 07/16/2010 |
| Status: | ACTIVE |
| Jurisdiction: | CALIFORNIA |
| Entity Address: | 865 MANHATTAN BEACH BLVD STE 204 |
| Entity City, State, Zip: | MANHATTAN BEACH CA 90266 |
| Agent for Service of Process: | HEATH GREGORY |
| Agent Address: | 865 MANHATTAN BEACH BLVD STE 204 |
| Agent City, State, Zip: | MANHATTAN BEACH CA 90266 |

* Indicates the information is not contained in the California Secretary of State's database.

* **Note:** If the agent for service of process is a corporation, the address of the agent may be requested by or

- For information on checking or reserving a name, refer to [Name Availability](#).
- For information on ordering certificates, copies of documents and/or status reports or to request a more [Information Requests](#).
- For help with searching an entity name, refer to [Search Tips](#).
- For descriptions of the various fields and status types, refer to [Field Descriptions and Status Definitio](#)

[Modify Search](#) [New Search](#) [Printer Friendly](#) [Back to Search Results](#)

[Privacy Statement](#) | [Free Document Readers](#)

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From: Richard.Brandie@ABC
To: Don.McPherson
Cc: Cravens.Vincent@ABC
Subject: RE: Questions Regarding Restriction on Alcohol to Food Sales Ratio
Date: 28 January, 2011 16:59:57

Hello Mr. McPherson,

In reviewing the files in question, the alcohol-to-food sales ratio does not apply to these licenses. However, their type license (T-47) requires them to be a bona fide eating place, which is defined under Section 23038 B&P:

"Bona fide public eating place" means a place which is regularly and in a bona fide manner used and kept open for the serving of meals to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for ordinary meals, the kitchen of which must be kept in a sanitary condition with the proper amount of refrigeration for keeping of food on said premises and must comply with all the regulations of the local department of health. "Meals" means the usual assortment of foods commonly ordered at various hours of the day; the service of such food and victuals only as sandwiches or salads shall not be deemed a compliance with this requirement. "Guests" shall mean persons who, during the hours when meals are regularly served therein, come to a bona fide public eating place for the purpose of obtaining, and actually order and obtain at such time, in good faith, a meal therein. Nothing in this section, however, shall be construed to require that any food be sold or purchased with any beverage.

Let me know if you have any further questions.

Brandie Richard
Supervising Investigator
Lakewood District Office
(562) 982-1390

From: Don McPherson [<mailto:dmcphersonla@gmail.com>]
Sent: Friday, January 28, 2011 3:51 PM
To: Morales, Rosalva@ABC
Cc: Richard, Brandie@ABC; Wayne Partridge; James Quilliam; Annette Davis
Subject: Questions Regarding Restriction on Alcohol to Food Sales Ratio

Vincent Cravens, District Administrator
Long Beach/Lakewood District Office
Via Email, FAX and U.S. Postal Service

Subject: Applicability of the Rule for Alcohol Sales not to Exceed That of Food;
License No. 47-502717 (3600 Highland Ave, Manhattan Beach CA 90266) and
License No. 47-502185 (117 Manhattan Beach Blvd, Manhattan Beach CA 90266)

Mr. Cravens,

I am involved in actions conducted by the City of Manhattan Beach regarding the

subject Type 47 licenses.

My attached letter addresses questions regarding the applicability to these two licenses, of the restriction that alcohol sales shall not exceed those of food.

It appears that the Department apparently has not explicitly stated that the restriction regarding alcohol-to-food sales applies to the subject licenses.

The city will hold its next public hearing for the premises at 117 Manhattan Beach Blvd on February 23. Before then, if possible, I would appreciate learning whether the alcohol-to-food sales ratio applies to the subject licenses, as outlined in my attached letter.

Thanks,

Don McPherson
1014 1st St, Manhattan Beach CA 90266
310.487.0383
dmcphersonla@gmail.com

Copy Via Email Only: Brandie Richard (ABC LBH), W Partridge, J Quilliam, A Davis

EXHIBIT D

STRATA-Quilliam

From: [Don McPherson](mailto:Don_McPherson)
To: [Liza Tamura \(L.Tamura@citymb.info\)](mailto:Liza_Tamura(L.Tamura@citymb.info))
Cc: "[David Lesser \(dless@citymb.info\)](mailto:David_Lesser(dless@citymb.info))"; "[James Fasola \(jfasola@citymb.info\)](mailto:James_Fasola(jfasola@citymb.info))"; "[Kathleen Paralusz \(kparalusz@citymb.info\)](mailto:Kathleen_Paralusz(kparalusz@citymb.info))"; "[Martha Andreani \(mandreani@citymb.info\)](mailto:Martha_Andreani(mandreani@citymb.info))"; "[Sandra Seville-Jones \(sseville-jones@citymb.info\)](mailto:Sandra_Seville-Jones(sseville-jones@citymb.info))"; "[Richard Thompson \(rthompson@citymb.info\)](mailto:Richard_Thompson(rthompson@citymb.info))"; "[Eric Haaland \(ehaaland@citymb.info\)](mailto:Eric_Haaland(ehaaland@citymb.info))"; "[James Quilliam \(jimquilliam@hotmail.com\)](mailto:James_Quilliam(jimquilliam@hotmail.com))"; "[Wayne Partridge \(wepmako@gte.net\)](mailto:Wayne_Partridge(wepmako@gte.net))"; "[Felix Tinkov \(fmt@lfap.com\)](mailto:Felix_Tinkov(fmt@lfap.com))"
Subject: Additional Public Records Request for Strata
Date: 28 January, 2011 10:52:00
Attachments: [110128-ExhibitA-MBPD-CallLog-Format.pdf](#)
[110128-ExhibitB-MBPD-ReportFormat.pdf](#)

Liza Tamura, City Clerk
City of Manhattan Beach
Via Email

Subject: Additional Public Records Request for Strata Public Hearing, 117 Manhattan Beach Blvd

Liza,

Thank you for your prompt response to my recent public records request, included at the end of this email.

Yesterday, we identified what I hope constitute all remaining public records needed for the Strata public hearing, scheduled Wednesday February 23, as follows:

1. For the city council appeal of Resolution 5087, dated 17 May 1994, the staff report and minutes, including all attachments
2. DVD video of the city council meeting for 17 May 1994
3. Previous use permits for the subject premises, if any, that predate Resolution 5087 (we have latter)
4. Annual entertainment permits issued by the city to the subject premises, from 1994 to present
5. MBPD records for the subject premises during the past five years, as follows:
 - Call log (see format in attached example, Exhibit A)
 - Police reports, if any, for items in call log indicating a report (see format in attached example, Exhibit B)
 - For above reports, in DVD form, audio and video media booked as evidence
 - Police reports, including booked evidence, for citations of patrons in vicinity of the subject premises, in incidents for which the premises had a material involvement.

I recognize this request as a tall order, but would appreciate receiving as much of the records as possible on or before Friday February 18. Incremental delivery, as records become available, would help immensely.

Thanks again for your quick response to my email below,
Don McPherson

Copy: Planning Commission, City Staff, Strata Neighborhood, W Partridge, F Tinkov
(Lounsbery et al, LLP)

From: Don McPherson [mailto:dmcphersonla@gmail.com]
Sent: 27 January, 2011 11:30
To: Liza Tamura (LTamura@citymb.info)
Cc: Richard Thompson (rthompson@citymb.info); Eric Haaland (ehaaland@citymb.info); James Quilliam (jimquilliam@hotmail.com); Wayne Partridge (wepmako@gte.net)
Subject: Public Records Request; 26Jan2011 PC Meeting Video

Liza Tamura, City Clerk
City of Manhattan Beach
Via Email

Subject: Video DVD for Planning Commission Meeting, 26 January 2011

Liza,

Please provide the subject DVD, compatible with Windows Media Player, Version
12.0.7600.16667.

Time is of the essence, because the planning commission will continue the Strata public
hearing on 23 February 2011.

Consequently, I need the DVD no later than Wednesday February 16.

Thanks, Don McPherson

EXHIBIT E
BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA

STRATA-QUILLIAM

In the Matter of the Application of:

NORTH END CAFFE INC
Dbas: North End Caffe
3421 Highland Ave
Manhattan Beach, CA 90266-3364

SEE CONDITION 1 AT TOP OF PAGE 2
FOR ABC DEFINITION OF CLOSED

File: 41-505881

Reg:

PETITION FOR
CONDITIONAL
LICENSE

RECEIVED
DEC 28 2010
DEPARTMENT OF
ALCOHOLIC BEVERAGE CONTROL
LONG BEACH, CALIFORNIA

For issuance of an On-Sale Beer and Wine Eating Place

Under the Alcoholic Beverage Control Act

WHEREAS, petitioner(s) has/have filed an application for the issuance of the above-referenced license(s) for the above-mentioned premises; and,

WHEREAS, pursuant to Section 23958 of the Business and Professions Code, the Department may deny an application for a license where issuance would result in or add to an undue concentration of licenses; and,

WHEREAS, the proposed premises are located in Census Tract 6203.02 where there presently exists an undue concentration of licenses as defined by Section 23958.4 of the Business and Professions Code; and,

WHEREAS, the petitioner(s) stipulate(s) that by reason of the aforementioned over concentration of licenses, grounds exist for denial of the applied-for license(s); and,

WHEREAS, the proposed premises and/or parking lot, operating in conjunction therewith, are located within 100 feet of residence(s); and,

WHEREAS, the proposed premises previously have never had an alcohol license; and

WHEREAS, issuance of the applied-for license without the below-described conditions would interfere with the quiet enjoyment of the property by nearby residents and constitute grounds for the denial of the application under the provisions of Rule 61.4, of Chapter 1, Title 4, of the California Code of Regulation; and,

WHEREAS, protest(s) has/have been filed against the issuance of the applied-for license; and,

WHEREAS, the protest(s) deal(s) with the proposed operation of the applied-for premises; and,

WHEREAS, the issuance of unrestricted license would be contrary to public welfare or morals;

Page 2

#41-505881

NORTH END CAFE INC

NOW THEREFORE, the undersigned petitioner(s) do/does hereby petition for a conditional license as follows, to-wit:

ABC DEFINITION OF CLOSED

1. Sales, service and consumption of alcoholic beverages shall be permitted only between the hours of Sunday through Thursday from 7:00 a.m. to 10:00 p.m. and Friday through Saturday from 7:00 a.m. to 11:00 p.m. and to the extent permissible under the applicable policies of the City of Manhattan Beach, between the hours of 7:00 a.m. to 11:00 p.m. on legal holidays. At the above stated closing hours, all members of general public shall have vacated the premises. On or before closing, staffs shall collect all glasses, bottles, cans and drinks.
2. No alcoholic beverages shall be consumed on any property adjacent to the licensed premises under the control of the licensee(s) as depicted on the ABC-257 dated 12/28/10 and ABC-253 dated 10/29/10.
3. The premises shall not serve foods or beverages, nor place seating, tables, or any improvements or structures that enable seating, on public right of ways or city property north of the premises' northerly east-west property line, or extension thereof, specifically on the 35th Street right of way.
4. There shall be no live entertainment of any type, including but no limited to live music, disc jockey, karaoke, topless entertainment, male or female performers or fashion shows.
5. Amplified music or voice shall not be audible beyond the area under the control of the licensee(s) as defined on the ABC-257 dated 12/28/10 and ABC-253 dated 10/29/10.
6. There shall be no amusement machines or video game devices in the premises at any time.
7. The sale of alcoholic beverages for consumption off the premises is strictly prohibited.
8. The premises shall operate as a bona fide restaurant with a full menu containing an assortment of foods typical of a restaurant.
9. The gross quarterly sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sales of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand.
10. The alcohol consumption area and seating is limited as defined on the ABC-257 dated 12/28/10, and shall not be modified, unless noticed to the public within a 500 foot radius and approved by the Department.

Page 3

#41-505881

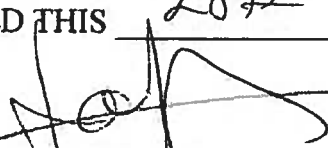
NORTH END CAFFE INC

This petition for conditional license is made pursuant to the provisions of Sections 23800 through 23805 of the Business and Professions Code and will be carried forward in any transfer at the applicant-premises.

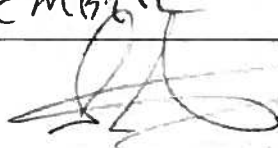
Petitioner(s) agree(s) to retain a copy of this petition on the premises at all times and will be prepared to produce it immediately upon the request of any peace officer.

The petitioner(s) understand(s) that any violation of the foregoing condition(s) shall be grounds for the suspension or revocation of the license(s).

DATED THIS 28TH DAY OF DECEMBER, 2010.



Applicant/Petitioner

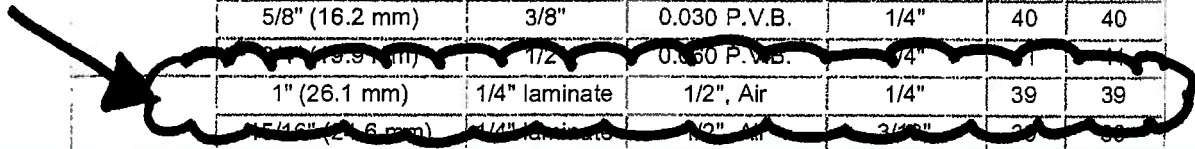


Applicant/Petitioner

WINDOWS PROPOSED FOR STRATA DO NOT MEET STC 50 REQUIREMENT

STC Ratings Chart

| Acoustical Performance of Glass and Wall Constructions | | | | | | |
|--|---|---------------|--------------------|---------------|-----------|---------------------|
| | Overall Thickness | Inside | Construction Space | Outside | STC Value | ISO RW ³ |
| Single Laminated Glass ¹ | 1/4" (7.24 mm) | 1/8" | 0.030 P.V.B. | 1/8" | 35 | 35 |
| | 3/8" (9.53 mm) | 1/4" | 0.030 P.V.B. | 1/8" | 36 | 36 |
| | 3/8" (10.5 mm) | 1/4" | 0.060 P.V.B. | 1/8" | 37 | 37 |
| | 1/2" (12.1 mm) | 1/4" | 0.030 P.V.B. | 1/4" | 38 | 38 |
| | 1/2" (12.9 mm) | 1/4" | 0.060 P.V.B. | 1/4" | 39 | 39 |
| | 5/8" (16.2 mm) | 3/8" | 0.030 P.V.B. | 1/4" | 40 | 40 |
| Laminated-Insulating Glass ² | 1" (26.1 mm) | 1/4" laminate | 1/2", Air | 1/4" | 39 | 39 |
| | 1-1/8" (29.3 mm) | 3/8" laminate | 1/2", Air | 1/4" | 40 | 40 |
| | 1-7/16" (37.3 mm) | 1/4" laminate | 1", Air | 3/16" | 42 | 42 |
| | 2-7/16" (62.7 mm) | 1/4" laminate | 2", Air | 3/16" | 45 | 45 |
| | 4-1/2" (113.5 mm) | 1/4" laminate | 4", Air | 3/16" | 48 | 48 |
| | 4-5/8" (119.1 mm) | 1/2" laminate | 4", Air | 3/16" | 49 | 49 |
| | 1" (27.9 mm) | 1/4" laminate | 1/2", Air | 1/4" laminate | 42 | 42 |
| | 4-3/4" (120.7 mm) | 1/2" laminate | 4", Air | 1/4" laminate | 51 | 51 |
| Airspaced Glass ¹ | 1/2" (14.5 mm) | 1/8" | 1/4", Air | 1/8" | 28 | 30 ⁴ |
| | 1" (27.9 mm) | 1/4" | 1/2", Air | 1/4" | 35 | 35 |
| | 1 1/2" (40.6 mm) | 1/4" | 1", Air | 1/4" | 37 | 37 |
| Monolithic Glass ¹ | 1/4" (5.9 mm) | 1/4" | - | - | 31 | 32 ⁵ |
| | 1/2" (12.4 mm) | 1/2" | - | - | 36 | 37 ⁶ |
| Walls ¹ | 1/2" Gypsum board (both sides) screwed to 3-5/8" metal studs | | | | 36 | 36 |
| | 4" Face brick, mortared together | | | | 45 | 45 |
| | 6" Lightweight concrete block, two coats of paint each side | | | | 46 | 46 |
| | 4" Hollow lightweight masonry block, plastered on both side | | | | 48 | 48 |
| | 8" Dense concrete block wall, two coats of paint each side | | | | 52 | 52 |
| | Double layer of gypsum wall board, both sides, 3-5/8" metal studs, 3" sound attenuation blanket | | | | 54 | 54 |



¹ Tested under ASTM E90, panels caulked in place with wooden stops and glazing putty.
² Tested under ASTM E90, laminated outside pane consisted of either 1/8"-0.030" P.V.B. -1/8" (total 1/4" thick), 1/4"-0.030" P.V.B. -1/8" (total 3/8" thick), 1/4"-0.030" P.V.B. -1/4" (total 1/2" thick), 1/4"-0.030" P.V.B. -1/2" (total 3/4" thick), panels caulked in place in single frame with wooden stops and glazing putty. Units with less than 1" airspace were factory sealed. All other units were constructed in place.
³ Weighted Sound Reduction Index (Rw) in accordance with ISO 717/3
⁴ Deviates below Rw 30 contour by 10 dB at 400 Hz
⁵ Deviates below Rw 32 contour by 9 dB at 2,500 Hz
⁶ Deviates below Rw 37 contour by 9 dB at 1,200 Hz

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH
APPROVING A USE PERMIT AMENDMENT TO ALTER AN EXISTING RESTAURANT ON
THE PROPERTY LOCATED AT 117 MANHATTAN BEACH BOULEVARD (MB Dining
LLC/Strata)

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

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

- A. The Planning Commission of the City of Manhattan Beach conducted a public hearing on January 26, and February 23, 2011, received testimony, and considered an application for a use permit amendment to allow alteration of an existing restaurant including: outdoor dining, operating hours, entertainment, and other building modifications on the property located on the property legally described as Lots 7 & 8, Block 13, Manhattan Beach Division #2, at 117 Manhattan Beach Boulevard in the City of Manhattan Beach.
- B. The applicant for the subject project is MB Dining LLC, the owner of the property.
- C. The applicant had also requested extended closing times of 2am, increased, frequency of dancing by two days per week, and balcony dining within the public right-of-way; but these requests were not approved by the Planning Commission, due to concerns for increased disruption to the surrounding area and the Manhattan Beach Boulevard right-of-way.
- D. ~~The project is Categorically Exempt (Class I, Section 15301) from the requirements of the California Environmental Quality Act (CEQA) since it involves minor modification of an existing facility.~~ The project lies in the zone appealable to the Coastal Commission and requires a Coastal Development Permit, because the improvements change the intensity and use of the structure.
- E. 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.
- F. ~~The premises have not complied with the requirement to have an annual Class I Group Entertainment Permit, including under ownership of MB Dining LLC, at least since July 2010.~~
- G. ~~The property has an ABC Type 47 license, On Sale General-Eating Place. The premises license predates the standard ABC condition in later Type 47 licenses, which require alcohol sales not to exceed food sales, on a quarterly basis. Consequently, the premises license does not include this condition.~~
- H. ◊Based on testimony from many neighboring residents, in the past, the premises created noise and disturbances that discomforted and irritated reasonable persons of normal sensitiveness. The MBPD responded to numerous calls regarding these disturbances, and for some incidents, booked as evidence, reports and recordings of noise.
- ~~F.~~ I. In addition to noise resulting from entertainment and dancing, public testimony has established that the residential neighborhood experiences additional disturbances, as result of kitchen operations, facility cleaning, staff activities, and other daily maintenance.
- ~~G.~~ J. The restaurant use requires substantial roof-top installations of kitchen exhausts, heating and cooling equipment, and other noisy mechanical devices. The applicant has requested to move some equipment to the northwest roof, above the carport area and adjacent to residences.

- K. To encourage outdoor dining, the city permits eating and drinking places to have fully-retractable windows and doors that open onto public right of ways. Statements by city officials and public testimony indicate, that in some cases, this has resulted in high levels of noise on said public right of ways.
- ~~H~~L. Public testimony attests that patrons from the premises intrude into the adjoining residential neighborhood and cause disturbances, as well as in state parking lots adjoining the premises. Additionally, taxicabs orbit through the residential areas, cruising to pick up passengers.
- ~~H~~M. ~~F~~The General Plan designation for the property is Downtown Commercial. The General Plan encourages commercial uses such as this that serve city residents, and are buffered from residential areas.
- ~~H~~N. ~~G~~ 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.
- ~~K~~O. ~~H~~ Approval of the restaurant use, 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 primarily existing in a central Downtown beach/pier oriented location, expected to increase focus on food service, and limited by operation hours that are reasonable restaurant hours for this commercial area.
- ~~H~~P. ~~H~~The project shall be in compliance with applicable provisions of the Manhattan Beach Municipal Code as well as specific conditions contained herein further regulating the project.
- ~~M~~Q. ~~H~~The restaurant 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 has existed at the subject location, is appropriately located within a commercial area, and is conditioned herein to prevent possible adverse impacts.
- ~~H~~R. ~~K~~This Resolution, upon its effectiveness, constitutes the Use Permit for the subject restaurant and supersedes all previous use permit resolutions pertaining to the restaurant use.

Section 2. The Planning Commission of the City of Manhattan Beach hereby **APPROVES** the subject Use Permit Amendment subject to the following conditions (* indicates a special condition):

Definitions

1. \diamond Closed. Premises vacated by the general public, special guests, or anyone other than employees. At closing time, staff shall have collected all glasses, bottles, cans and drinks, to comply with the ABC definition of closed, as "no sale, service, or consumption of alcoholic beverages." Amplified sound off, including TV. All doors, windows and other openings closed.
2. \diamond Background music. Sound intensity anywhere in a room or venue shall not exceed 65 dBA, where 'A' represents the A-weighted frequency response commonly attributed to human hearing. All dB values refer to the dBA unit.
3. Sound transmission class STC 50. Air-borne sound attenuation of 50 dB (45 dB if field tested), equivalent to Section 1207 of the International Building Code (IBC) and appropriate ASTM International standards.

Site Preparation / Construction

- ~~1~~4. The project shall be constructed and operated in substantial compliance with the submitted plans (on 1/26/11 with specified revisions on 2/23/11) and project description as approved by the Planning Commission on February 23, 2011. **The building shall not encroach into public right of ways, except for features such as awnings and signs, as permitted by MBMC.** Any substantial deviation from the approved plans and project description must be reviewed and approved by the Planning Commission.
- ~~2~~5. 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~~6. Utility improvements such as property line cleanouts, backwater valves, mop sinks, drain lines, grease interceptors, etc., shall be installed and maintained as required by the Public Works Department.
- ~~4~~7. Modifications and improvements to the tenant space shall be in compliance with applicable Building Division and Health Department regulations.
8. ~~5~~ Exterior equipment, antennas, etc., shall be appropriately screened and compliant with applicable regulations. **No storage permitted on roofs, long-term or short-term, such as tables and chairs.**
- ~~5~~9. When all doorways and windows closed, the building shall comply with Sound Transmission Code STC 50 (field tested to 45 dB attenuation) and shall include:
 - A. Self-closing double doors for all ingress-egress
 - B. Sound-absorbing structures on ceilings and walls throughout
 - C. A roof designed to STC 50 covering the entire building, with no outside patios.
 A certified acoustics engineer shall verify that building design will comply with noise regulations, both in open and closed configurations.

Operational Restrictions

- ~~6~~10. The management of the restaurant shall police the property in all areas immediately adjacent to the business during the hours of operation, and one hour after closing each night, to keep it free of litter and to discourage patrons from entering residential areas, through use of temporary signs and other means.
- ~~7~~11. The business proprietor shall provide adequate management and supervisory techniques to prevent loitering, unruliness, and boisterous activities of patrons outside the business or in the immediate area. Any queuing of customers waiting to enter the establishment shall be prohibited from occupying Ocean Drive or Center Place, and shall be managed in compliance with the direction of the Police Department and the establishment's Group Entertainment Permit.
- ~~8~~12. ◊Hours of operation shall be limited to 8am to 1am daily. Alcohol service shall cease at 12:40 nightly. Deliveries and other loading, truck idling, etc., occurring outside of the building shall be prohibited between 10 PM and 8 AM nightly, as follows:
- A. Opening time: 8:00 AM everyday
 - B. Closing time: Midnight (0:00 AM) Sunday through Thursday; and 1:00 AM Saturday and Sunday mornings
 - C. All doors and windows closed: 8 PM every day
 - D. End of alcohol service: Twenty (20) minutes before closing
 - E. Lights on and music off: Thirty (30) minutes before closing
 - F. Entertainment ended: Thirty (30) minutes before closing
 - G. Deliveries and other loading, truck idling, & etc: 10:00 AM to 8:00 PM.
- ~~9~~13. The service of alcohol shall be in conjunction with minimum food service during all hours of alcohol availability, and "bona fide eating place" type of alcohol license from the State of California shall be maintained. Minimum food service shall consist of a menu of similar variety to the "all hours" menu on file. Full menu food service shall be available at the bar seats during all hours of operation.
- ~~10~~14. Noise emanating from the site shall be in compliance with the Municipal Noise Ordinance and the restaurant's Group Entertainment Permit. Any outdoor sound or outdoor amplification system or equipment is prohibited. No operable windows or similar openings shall be located on the north, west, or east sides of the restaurant. All doorways and windows for the business shall remain closed at all times during entertainment or dancing. Noise from the business shall not be audible beyond 75 feet of the subject site, for any length of time, as determined by the Police Department.
- ~~11~~15. Dancing and entertainment other than background music or television shall be limited to Level 1, as shown on the submitted floor plans, as follows:
- A. Entertainment and dancing on Fridays and Saturdays.
 - B. ~~A maximum of one entertainment/dancing event per week shall be permitted subject to an approved schedule and restrictions contained within the approved Class I Group Entertainment Permit. The quantity, timing, or other restrictions of these additional events shall be subject to change by the Community Development Director with a minimum of 21 days notice to the owner/operator.~~ Entertainment only on Thursday and Sunday
 - C. Twelve extra days of entertainment and dancing, on any day, only once per month
 - D. ◊All live and recorded amplified entertainment shall use the house system only, under control of staff.

- ~~12~~16. * ♦ A Class I Group Entertainment Permit shall be obtained for all entertainment and noise aspects of the business. Should entertainment, outdoor dining, window/door openings, etc. be determined to be detrimental to the surrounding area, said permit shall be revoked or revised under administrative authority without prejudice to the remaining conditions of approval. Staff decisions regarding Group Entertainment Permits **require notice to property owners within a 300-foot radius with standard notice procedures, and** are appealable to the ~~City Council~~ **Planning Commission**.
- ~~13~~17. The service of food and beverages shall be primarily by employees to customers seated at tables, and there shall be no take-out windows.
- ~~14~~18. Utilities serving the site shall be underground, pursuant to City ordinance.
- ~~15~~19. All site nuisance and storm water, including roof drainage, shall be contained on site and outletted through the curb on Manhattan Beach Boulevard as approved by the Director of Public Works. All existing exterior drains shall comply with applicable sewage requirements prior to implementation of this Use Permit Amendment, subject to review and approval of the Department of Public Works.
- ~~16~~20. * 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. The trash enclosure shall have a roof, sewer drain, and all other Public Works specifications. A trash and recycling plan shall be provided and implemented as required by the Public Works Department. **The premises shall not provide a repository for trash from any other business. Delivery and trash locations shall be chosen to minimize impact on the residential neighborhood. After 10 PM, staff shall store trash inside the premises for deposit in the enclosure after 8 AM the next morning.**
- ~~17~~21. * The roof area above the parking area shall maintain the existing parapet wall along the west and east of a height may not exceed three feet above the abutting roof surface. No use or activity shall occur on this roof area except for maintenance purposes. Access to this area shall be by ladders or a maintenance hatch.
- ~~18~~22. * All signs shall be in compliance with the city sign code. The maximum total sign area permitted for the site shall be 50 square feet. All signs shall be located within 30 feet of the southerly property line. Pole signs and internally illuminated awnings shall be prohibited.
- ~~19~~23. The operation shall comply with all South Coast Air Quality Management District Regulations and shall not transmit excessive emissions or odors across property lines.
- ~~20~~24. The operation shall remain in compliance with all Fire and Building occupancy requirements at all times. **MBFD shall determine occupancy based on reduction of floor area by all seating and table furnishings, as depicted in the submitted plans approved by the Planning Commission. These or similar furnishings shall remain in place at all times, except on the 240 SF dance floor and the area north of it on Level 1.**
25. ~~21~~ Parking for the site shall be in conformance with the Manhattan Beach Municipal Code and Local Coastal Program. Four parking spaces shall be provided on-site. The on-site parking spaces shall be marked and monitored to prevent conflicts with the public right-of-way. **The carport shall remain available for parking at all times; long-term or short-term storage shall not be permitted, such as for tables and chairs.**

- ~~21~~26. The premises shall not provide the following vehicular services, unless duly noticed and approved by the Planning Commission:
- A. Valet service
 - B. Transport of patrons to and from the premises. A second party may transport their guests by bus, vans or other means to and from the premises.

Procedural

- ~~22~~27. All provisions of the Use Permit are subject to review by the Community Development Department 6 months after occupancy and yearly thereafter.
- ~~23~~28. * This Use Permit Amendment shall lapse two years after its date of approval, unless implemented or extended pursuant to 10.84.090 of the Municipal Code.
- ~~24~~29. 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.
- ~~25~~30. 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.
- ~~26~~31. * 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.

I hereby certify that the foregoing is a full-time and correct copy of the Resolution, as adopted by the Planning Commission at its regular meeting of February 23, 2011 and that said Resolution was adopted by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

RICHARD THOMPSON. Secretary to the Planning Commission
Sarah Boesch. Recording Secretary

Laurie B. Jester

From: Don McPherson [dmcphersonla@gmail.com]
Sent: Tuesday, February 22, 2011 11:49 AM
To: List - Planning Commission
Cc: List - City Council; City Manager; Richard Thompson; Eric Haaland; Laurie B. Jester
Subject: Errata Re Cover Letter RE: Neighbors' Input to Strata Resolution
Planning Commission
City of Manhattan beach
Via Email

In our haste to provide you with our input on the resolution, we made some mistakes on the cover letter, as corrected below.

Apologies for the error and confusing text, but we had a lot of material to prepare in just two days.

From: jim quilliam [mailto:jimquilliam@hotmail.com]
Sent: 21 February, 2011 9:36
To: PC
Cc: City Council; City Manager; richard; eric; ljester@citymb.info
Subject: Neighbors' Input to Strata Resolution

Planning Commission
City of Manhattan Beach
Via Email

Commissioners,

The attachments provide our inputs to the staff resolution for Strata. By integrating our inputs into the resolution, as shown in **RED**, we have significantly simplified and condensed the neighbors' conditions, compared to our draft use permit submitted to you a couple weeks ago.

The second attachment provides a brief discussion on each of our changes to the staff resolution. Please use this as a guide, when considering our proposed changes. It provides additional evidence to support our proposed changes.

We do not believe that staff responded adequately to the direction you provided at the January 26 hearing. We have endeavored to comply with all of your opinions expressed at the hearing. Additionally, we want other conditions, such as **8 midnight (00:00 AM)** closing on Sunday through Thursday, consistent with city policy for the downtown, on all use permits issued or amended since 1994.

We were shocked by staff's proposal to increase the number of extra days for dancing to 52, compared to the twelve extra days on which the commissioners agreed.

02/22/2011

Staff essentially proposes to grant Mr. Zislis his request for dancing on Thursdays, despite the commissioners' denial of that feature. Staff's token concession of eliminating entertainment on Sunday as an exchange for the 52 extra dancing days has no value. Nightclubs do not get much action on Sundays and rarely would incur the cost of entertainment.

At the neighborhood meeting yesterday, Sunday Feb 20, the group agreed they opposed staff's 52 extra days of dancing. As the attached Neighbors' Input to the Resolution shows, we want the commission to stand by their decision: twelve extra days of dancing, and entertainment only on Thursdays and Sundays. **Dancing and entertainment on Fridays and Saturdays remains unchanged.**

We would have liked to get our input to you earlier, but it took a long time to integrate our conditions into the staff resolution.

At the February 23 hearing, we request that you consider each and every one of our changes to the resolution, as indicated in **RED**.

As has been our position, we only ask the city to condition the Strata renovation to comply with city law, policies and practices, as well as CEQA and the Coastal Act.

Regards, Jim Quilliam
124 B 12th St, Manhattan Beach CA 90266
310 546 6276

John Schmitt
1148 The Strand

Don McPherson
1014 1st St

Jennifer Sorrell

From: jim quilliam <jimquilliam@hotmail.com>
Sent: Monday, February 21, 2011 9:36 AM
To: List - Planning Commission
Cc: List - City Council; City Manager; Richard Thompson; Eric Haaland; Laurie B. Jester
Subject: Neighbors' Input to Strata Resolution
Attachments: 110223-PC-Staff-DraftReso-Neighbors-RevA.pdf; 110223-PC-Resolution-Neighbors-Rationale-Compiled.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Planning Commission
City of Manhattan Beach
Via Email

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Regards, Jim Quilliam
124 B 12th St, Manhattan Beach CA 90266
310 546 6276

John Schmitt
1148 The Strand

Don McPherson
1014 1st St

Jennifer Sorrell

From: Don McPherson <dmcphersonla@gmail.com>
Sent: Wednesday, February 23, 2011 1:06 PM
To: David Lesser; Jim Fasola; Kathleen Paralusz; Martha Andreani; Sandra Seville-Jones
Cc: Richard Thompson; Laurie B. Jester; Eric Haaland; James Quilliam; Jim Grande; Evelyn Schmitt; John Schmitt; Brooks Marshall; Wayne Partridge; Felix Tinkov
Subject: Critique of Behrens Strata Acoustic Analysis
Attachments: 110223-Critique-Behrens Report-Compiled.pdf

After well over a year of detailed design work, with construction underway, at tonight's hearing, Mr. Zislis will submit the first analysis of acoustic mitigation to abate potential violations by Strata of the noise ordinance.

Although a welcome first step to address the noise problem, the report has these major deficiencies:

- It does not address the major problem: noise from the open south façade
- The report biases the results in favor of Strata, by comparing Strata with windows closed to Beaches with windows open
- The report additionally biases the results, by including people talking on the northwest carport roof in the Beaches noise-source model, compared to none on the roof for Strata
- The vividly-colored noise-model graphics show that Strata reduces noise by 20 dB compared to Beaches, whereas the text details correctly state an 8 dB reduction. **This may even be high, because of the two above biases**
- The noise contours shown for Strata first floor are highly suspect, showing sound levels outside the front door as 15 to 20 dB higher, than outside the windows next to the 100 dB entertainment. The front door lies forty-feet from the entertainment, and has an STC rating only 8 dB less than the windows. How could that result in 15-20 dB louder noise, compared to the windows?

The attachment provides a brief 1-1/2 page critique preceding the Behrens report, in which the above issues are noted, boxed in **RED**.

In conclusion, the report provides useful data on STC materials, but the conclusions are totally erroneous. In addition, the report does not address the major Strata disturbance problem, noise from the open south façade.

Apologies for this late input, but Mr. Zislis provided the Behrens acoustic report to the neighbors after 10 PM last night.

CRITIQUE OF BEHRENS REPORT ON STRATA, DATED 22 FEBRUARY 2011

SUMMARY.

The acoustic study by Behrens does constitute a welcome first step for conditioning Strata to reduce noise. At first look, however, the report has the following fundamental flaws:

- The Behrens study does not address the major issue identified by the planning commission, the noise from the open south façade.
- The study biases the results in favor of Strata, by comparing the latter with windows closed, to Beaches with windows open, a violation of the use permit for entertainment
- The Beaches model includes people talking on the northwest carport roof, also a violation of the use permit, whereas the Strata model has no such noise source. This modeling difference favors Strata
- The noise contours for Strata first floor intuitively look wrong. See description below.
- The vividly-colored noise-model graphs appear to show that Strata has a 20 dB reduction in external noise, compared to Beaches. Whereas in the text details, Behrens correctly states only an 8 dB reduction would occur.

Much of that 8 dB reduction comes from the two biases above, which makes the Beaches's noise source significantly larger than that modeled for Strata.

DISCUSSION.

The annotated Behrens report following this critique includes notes outlined in RED to explain the above principal flaws. The following provides brief narratives for each item.

- **Noise from Open South Façade.** The Behrens study does not address the major issue identified by the planning commission, the noise from the open south façade. Residents have submitted sound-level measurements that show Simmzy's significantly violates several standards in the noise ordinance. Noise from Strata will far exceed that of Simmzy's because of larger open area and more patrons. Behrens does not analyze this.
- **Biases in the Beaches Model Favoring Strata.** Although only studying the minor problem of soundproofing, Behrens analyzes the sound reduction of various components, such as STC-rated windows, doors and walls. They evaluate the effectiveness by comparing predicted sound levels of Strata from those predicted for Beaches. **They bias the results in favor of Strata as follows:**
 - They compare Strata having windows closed with Beaches having them open
 - For Beaches, they include people talking on the northwest carport roof, versus none on the roof for Strata
 - The current use permit required Beaches to have windows closed with entertainment and no persons on the NW carport roof.

They claim to evaluate the improvements of Strata soundproofing versus the Beaches non-soundproofed baseline. **Actually, much of the 8 dB improvement comes from Behrens making the Beaches noise source larger than Strata's.**

- **Inconsistencies in Strata Noise Model Contours.** In Figure 3 of the attached report, the noise outside the front door appears 15 to 20 dB louder than by the windows next to the dance floor, where the 100 dB entertainment takes place.

The windows reduce sound by 39 dB, compared to 31 dB for the front door, an 8 dB difference. The front door is forty feet from the sound, adjacent to the window. It appears inconsistent that the noise outside the windows is 15-20 dB quieter.

- **Inconsistencies in Noise Model Graphics for Strata vs Beaches.** On Page 3 of the attached report, the text details state that Strata will provide an 8 dB reduction in sound compared to Beaches. Yet compare first-floor Beaches in Figure 1 to first-floor Strata in Figure 3. As per the notes on those graphics, one concludes that Strata provides **20 dB** improvement compared to Beaches.

This 20 dB improvement is all the more improbable considering that Behrens biased the models in favor of Strata, by leaving Beaches windows open and placing people talking on the northwest carport roof.

Even if Behrens had not biased the models in favor of Strata, the differences of 6 to 8 dB in STC ratings between Strata and Beaches elements could not possibly provide the 20 dB improvement for Strata, as Figures 1 and 3 portray.

CONCLUSION.

The Behrens acoustic study does not address the principal noise problem with Strata, the open south façade.

The acoustic analysis that compares Strata soundproofing to Beaches has no validity because of the biases in the noise-source models. Additionally, inconsistencies appear highly suspect in the noise-model graphics, compared to the text narrative and STC values presented for Beaches and Strata components, in Tables 1 and 2, respectively.

The acoustic analysis represents a welcome first step by Mr Zislis to address the noise problem, but has no other intrinsic value.

Behrens and Associates, Inc.

Acoustics, Noise and Vibration Consultants



February 22, 2011

Strata Restaurant
117 Manhattan Beach Boulevard
Manhattan Beach, CA 90266

Behrens fails to analyze the principal problem: noise levels with the south façade open.

Subject: Beaches and Strata Noise Impact

Dear Mr. Zislis,

Comparison fallacious: Reso 5087 requires windows closed with entertainment. Behrens compares Beaches with windows open to Strata with windows closed.

We have completed the noise impact assessment for the proposed Strata Restaurant and lower lounge, located at 117 Manhattan Beach Boulevard in Manhattan Beach, California. This report provides a comparison of the noise levels produced by the original Beaches nightclub at the property and the Strata project.

The project is currently under construction and therefore no noise levels were measured during our study. Instead, computer models were developed to assess the noise. These models were built using a combination of architectural drawings of both the original Beaches nightclub and the Strata project, and building construction information obtained during an inspection of the existing building. The models take into account the various window and wall constructions and use measured noise transmission data of equivalent window and wall constructions.

The models simulate the noise produced on a busy weekend night. Research has shown that typical interior nightclub noise levels are generally between 90 and 110 dBA. Our analysis assumes the average noise level at dance floor areas inside the building to be 100 dBA. This assumption was used for both the Beaches and Strata models. It is recognized that this assumption is not based on measured noise levels at the club. However, the purpose of this analysis is to predict the reduction in noise due to the upgraded building construction. Therefore, in assessing the results of the modeling, the difference in noise levels of the two models is more relevant than the modeled noise levels produced by the individual uses.

The first noise model is designed to be representative of the original Beaches nightclub on a typical busy weekend night and includes noise produced by music and guests on the first and second floors. The Sound Transmission Class (STC) ratings of the various building elements used in the model are provided in Table 1. It is understood that the small sliding glass windows of the Beaches club were opened for ventilation purposes at busy times. These openings are included in the Beaches noise model. The large sliding glass roof was modeled as being closed. In addition, noise produced by people talking on the northwest second floor balcony (previously used as an employee break area) was included in the model

Noise maps showing the predicted average noise level in the vicinity of the building at 1st and 3rd floor locations are provided in Figures 1 and 2.

Another fallacious comparison: Reso 5087 prohibits any use of the northwest roof. Behrens biases the comparisons by putting a noise source on the NW roof for Beaches, but not Strata.

Behrens and Associates, Inc.

Acoustics, Noise and Vibration Consultants



Strata Restaurant
February 22, 2011
Page 2

Table 1. Modeled STC Ratings for Original Beaches Nightclub

| Façade Element | Construction | STC Rating |
|--|-----------------------------------|------------|
| Windows on Manhattan Beach Boulevard | Single 1/4" pane | 31 |
| Doors on Manhattan Beach Boulevard | Dual 1/8" panes with 1/2" air gap | 31 |
| Windows on Ocean Drive | Dual 1/8" panes with 1/2" air gap | 31 |
| Walls on Manhattan Beach Boulevard and Ocean Drive | Standard insulated stucco wall | 42 |
| Wall on Center Place | 6" concrete block | 50 |
| Door on Center Place | Hollow-core steel door with seals | 28 |
| Roof | Built-up roof | 43 |
| Sliding glass roof | 1/4" laminated glass | 35 |

The second noise model is designed to be representative of the proposed Strata project on a typical busy weekend night.

Note: Beaches and Strata Level 1 windows differ by only 8 dB

The Sound Transmission Class (STC) ratings of the various building elements used in the Strata model are provided in Table 2. The noise sources modeled were music and guests on the first floor and the restaurant on the second floor. The mechanical louver above the dining area on Level 4 was modeled as being open. The staff break area on the northwest balcony is no longer a source of employee noise at Strata due to this area being inaccessible.

Noise maps showing the predicted average noise level in the vicinity of the building at 1st and 3rd floor locations are provided in Figures 3 and 4.

Table 2. Modeled STC Ratings for Proposed Strata Nightclub

| Façade Element | Construction | STC Rating |
|--|--|------------|
| Windows on Manhattan Beach Boulevard | Dual pane, 1" glazing | 36 |
| Doors on Manhattan Beach Boulevard | Single pane | 31 |
| First floor windows on Ocean Drive | Dual pane, 1/4" laminated glass, 1/2" air gap, 1/4" glass | 39 |
| Second floor windows on Ocean Drive | Dual pane, 1/4" glass, 1/2" air gap, 1/4" glass | 36 |
| Walls on Manhattan Beach Boulevard and Ocean Drive | Stucco or stone faced insulated walls with two drywall layers. | 45 |
| Wall on Center Place | 6" concrete block | 50 |
| Door on Center Place | Hollow-core steel door with perimeter seals | 28 |
| Roof | Built-up roof | 43 |

Behrens and Associates, Inc.

Acoustics, Noise and Vibration Consultants



Strata Restaurant
February 22, 2011
Page 3

The text below says Strata provides an 8 dB improvement, compared to Beaches. The vividly-colored noise-model graphics, Figures 1 & 3, give an impression of a 20 dB improvement.

Results of Noise Modeling

The results of our noise modeling indicate that the average noise levels for the original Beaches nightclub were approximately 47 dBA at the residences on Center Place and 48 dBA at the residences on the Strand south of 11th Street, based on an interior noise level of 100 dBA.

The modeling results for the proposed Strata project indicate that the average noise level will be approximately 39 dBA at the residences on Center Place and 41 dBA at the first residence on the Strand south of 11th Street, based on an interior noise level of 100 dBA.

The modeling results indicate that the Strata project will produce noise levels up to 8 dB lower than those produced by the Beaches nightclub at the residential properties in the area. This noise reduction is significant and is slightly less than a perceived 50% reduction in noise level.

8 dB lower

The City of Manhattan Beach Municipal Code permits noise levels of up to 45 dBA for a cumulative period of more than 30 minutes in an hour at residential properties during the nighttime hours (10 pm to 7 am). Increased noise levels are permitted for shorter durations; however, due to the character of the noise, the 30 minute limit is likely to be the critical limit in assessing the noise. It is noted that the Municipal Code allows for adjustment of the noise limit to account for the existing ambient noise level. The ambient noise level in the area has not been measured and is not considered in this study.

Trash Noise at Rear of Property

Noise caused by the use of trash cans at the rear of the project has been identified by the project proponent as a source of noise complaints by residents on Center Place. These noises are likely to be relatively high in level and short in duration compared to the other noise sources. Therefore this noise has been analyzed by separately modeling the maximum noise levels of this noise source. The source data used to model the trash can noise is not based on measurements at the property. Instead, representative noise sources levels and noise spectra have been assumed.

A noise contour map showing the maximum noise levels caused by use of the trash cans at the rear of the original Beaches nightclub is provided in Figure 5. Our analysis indicates that the maximum short duration noise levels at the residential properties on Central Place would be up to 77 dBA.

The trash cans at the proposed Strata nightclub will still be located at the rear of the property, but will be enclosed in a room. This room will have a roll-up door on the north side

Behrens and Associates, Inc.

Acoustics, Noise and Vibration Consultants



Strata Restaurant
February 22, 2011
Page 4

and entry door on the west side. A noise contour map showing the maximum noise levels caused by use of the trash cans at the rear of the proposed Strata project is provided in Figure 6. This noise map shows maximum short duration noise levels of up to 55 dBA at the residential properties on Central Place.

Our analysis indicates that the enclosure around the trash cans will reduce the maximum short duration noise level due to this source by 22 dB at the nearest residential properties. This reduction is perceived as slightly more than a 75% decrease in noise level.

Please contact me with any questions or comments.

Very truly yours,

Thomas Corbishley
Acoustical Engineer

Noise model predicts 60-65 dB at first Strand residence for Beaches. At Figure 3, however, the model predicts 40-45 dB for Strata. How can that be? The STC difference between Strata's and Beaches's windows is only 8 dB. The Strata windows have about double the area as Beaches's (-3 dB difference), whereas Strata walls have a +3 dB improvement over Beaches's walls. The latter two factors cancel each other.

Figure 1. Modeled Average Noise Level of Original Beaches Nightclub at 1st Floor with Small Windows Open and Retractable Ceiling Closed

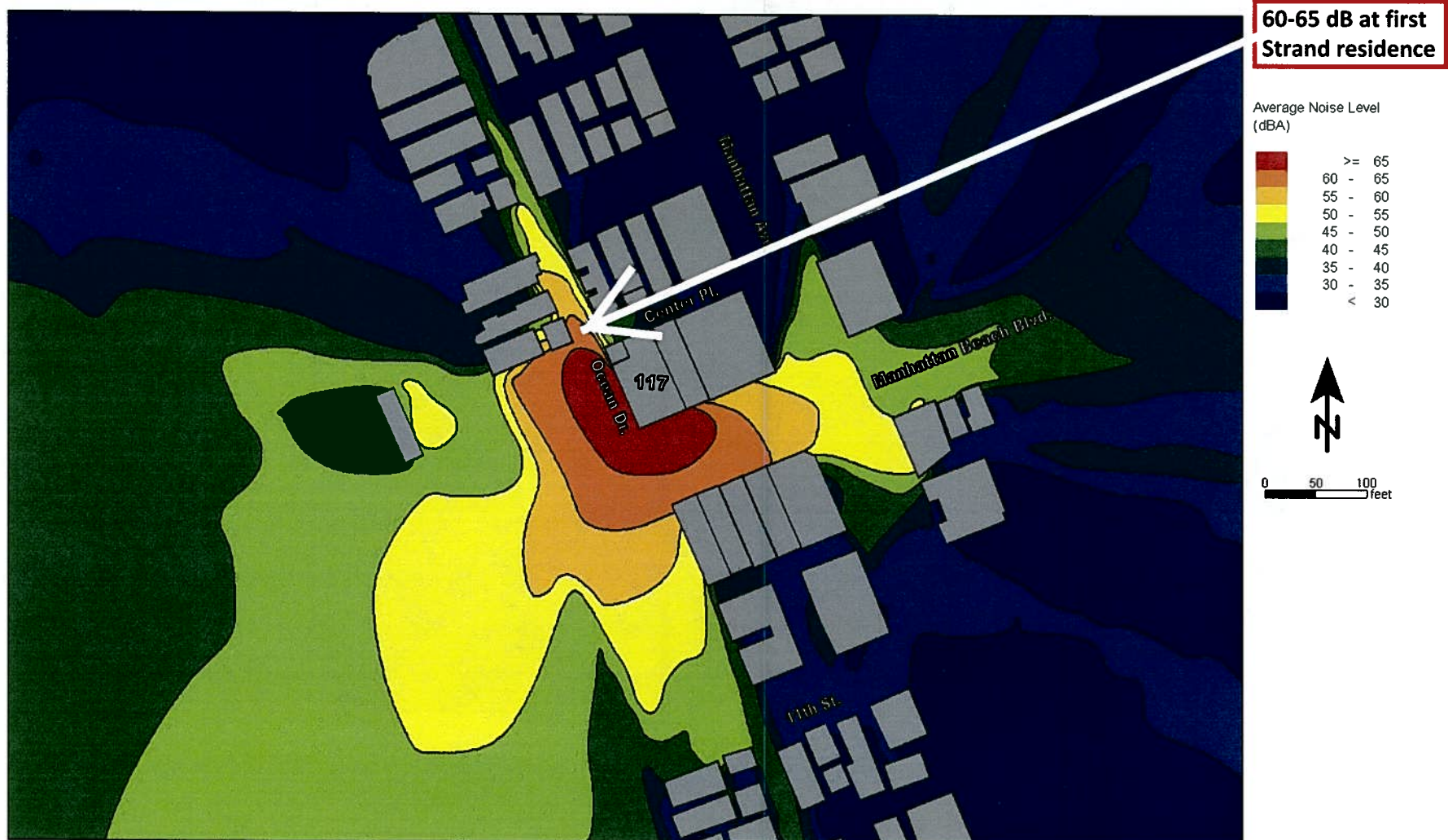
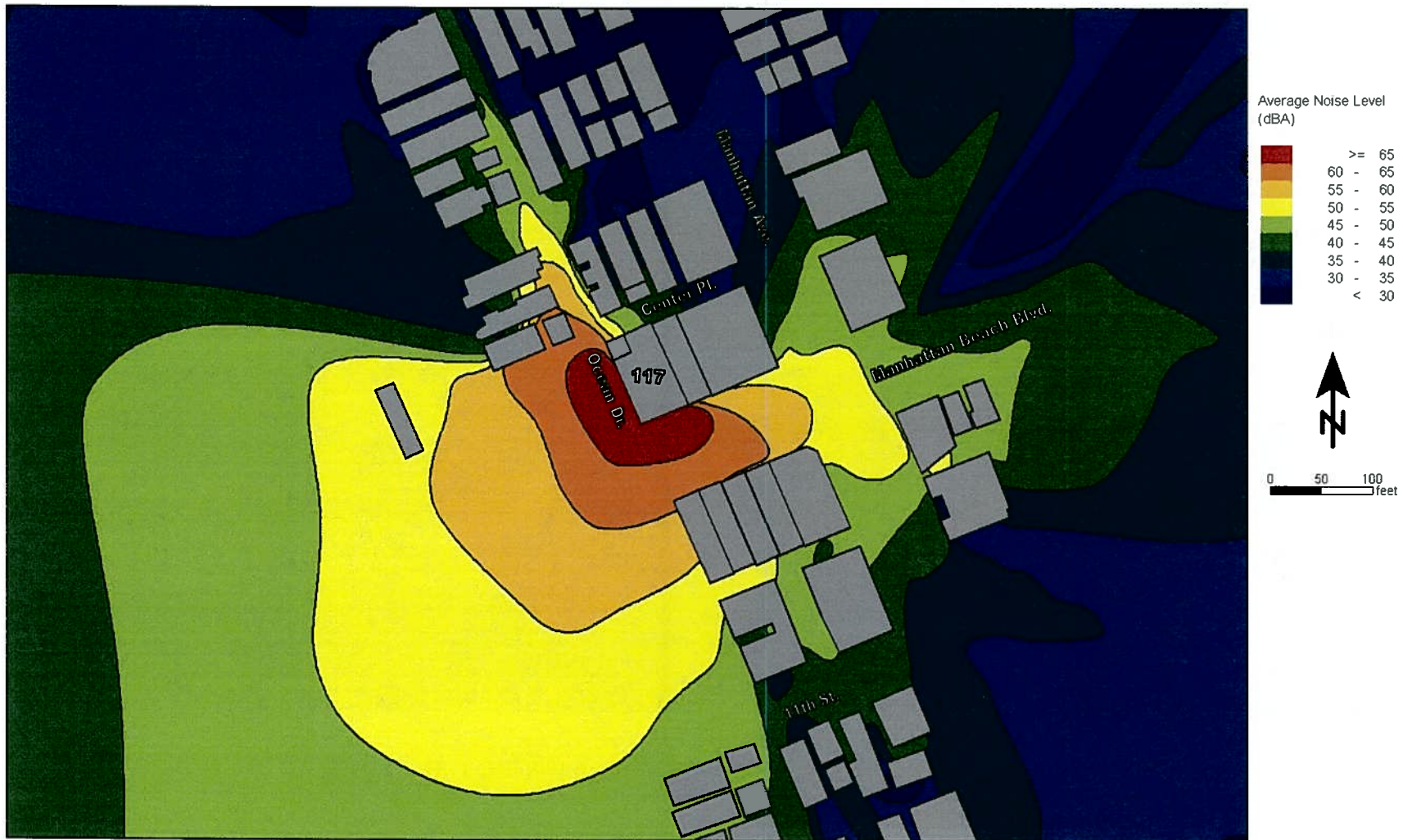




Figure 2. Modeled Average Noise Level of Original Beaches Nightclub at 3rd Floor with Small Windows Open and Retractable Ceiling Closed



Noise model predicts 40-45 dB at first residence for Strata. At Figure 1, the model predicts 60-65 dB for Beaches. How can that be? The STC difference between Strata and Beaches windows is only 8 dB. The Strata windows have about double the area as Beaches's (-3 dB difference), whereas Strata walls have a +3 dB improvement over Beaches's walls. The latter two factors cancel each other.

Figure 3. Modeled Average Noise Level of Proposed Strata Project at 1st Floor with Windows Closed and Patios and Balconies Occupied



Intuitively, this contour pattern looks wrong. The noise-source dance floor is located right by the windows, approximately at the address, '117', on the graphic. As per the Strata STC ratings, Table 2, the Ocean Dr windows and the MB Blvd door have only an 8 dB difference. The graphic shows over 65 dB just outside the door, but only 45-50 dB just outside the windows. The dance floor is right beside the windows, whereas the front door is forty feet away. How could the noise outside the windows be 15-20 dB less than just outside the door?



Figure 4. Modeled Average Noise Level of Proposed Strata Project at 3rd Floor with Windows Closed and Patios and Balconies Occupied

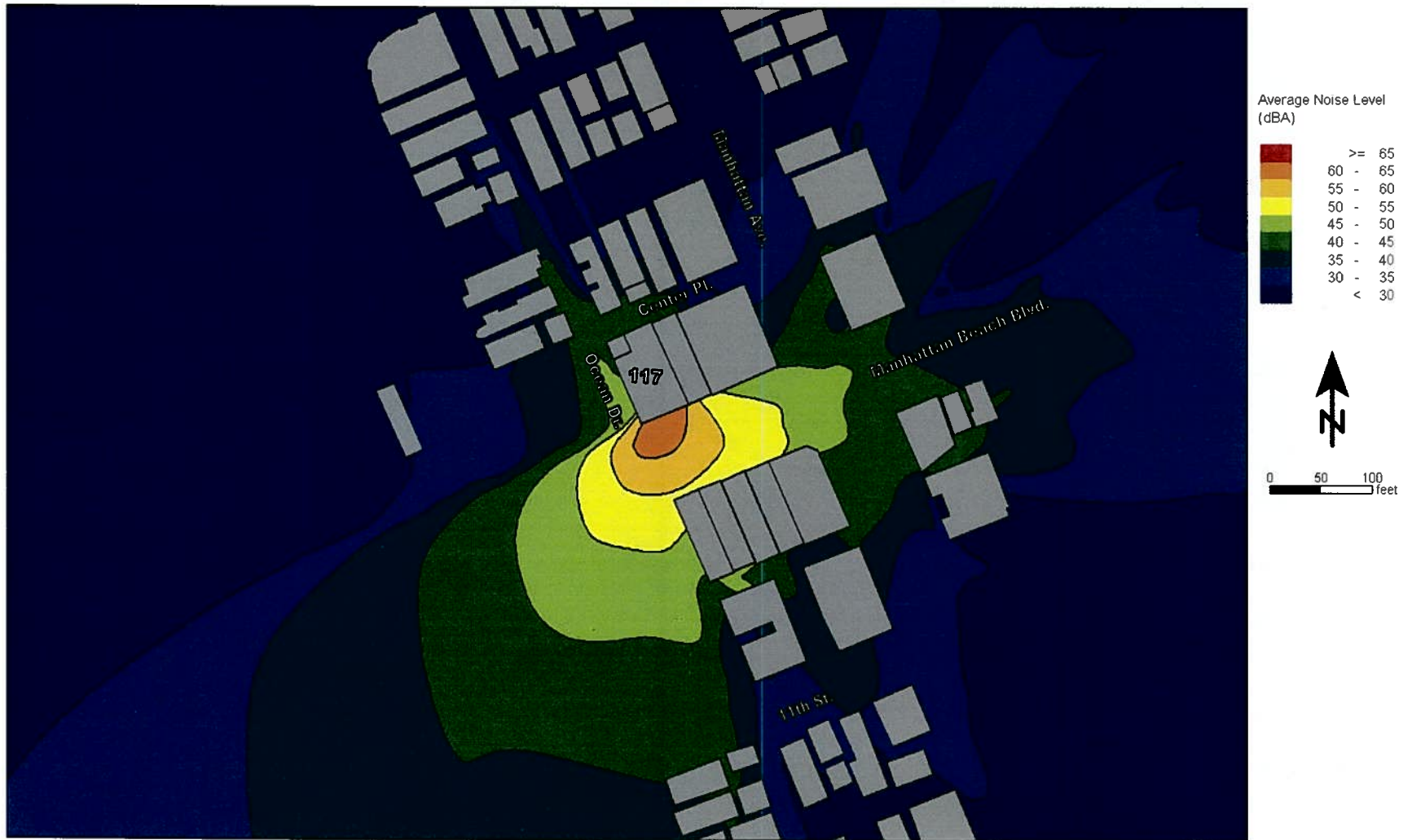
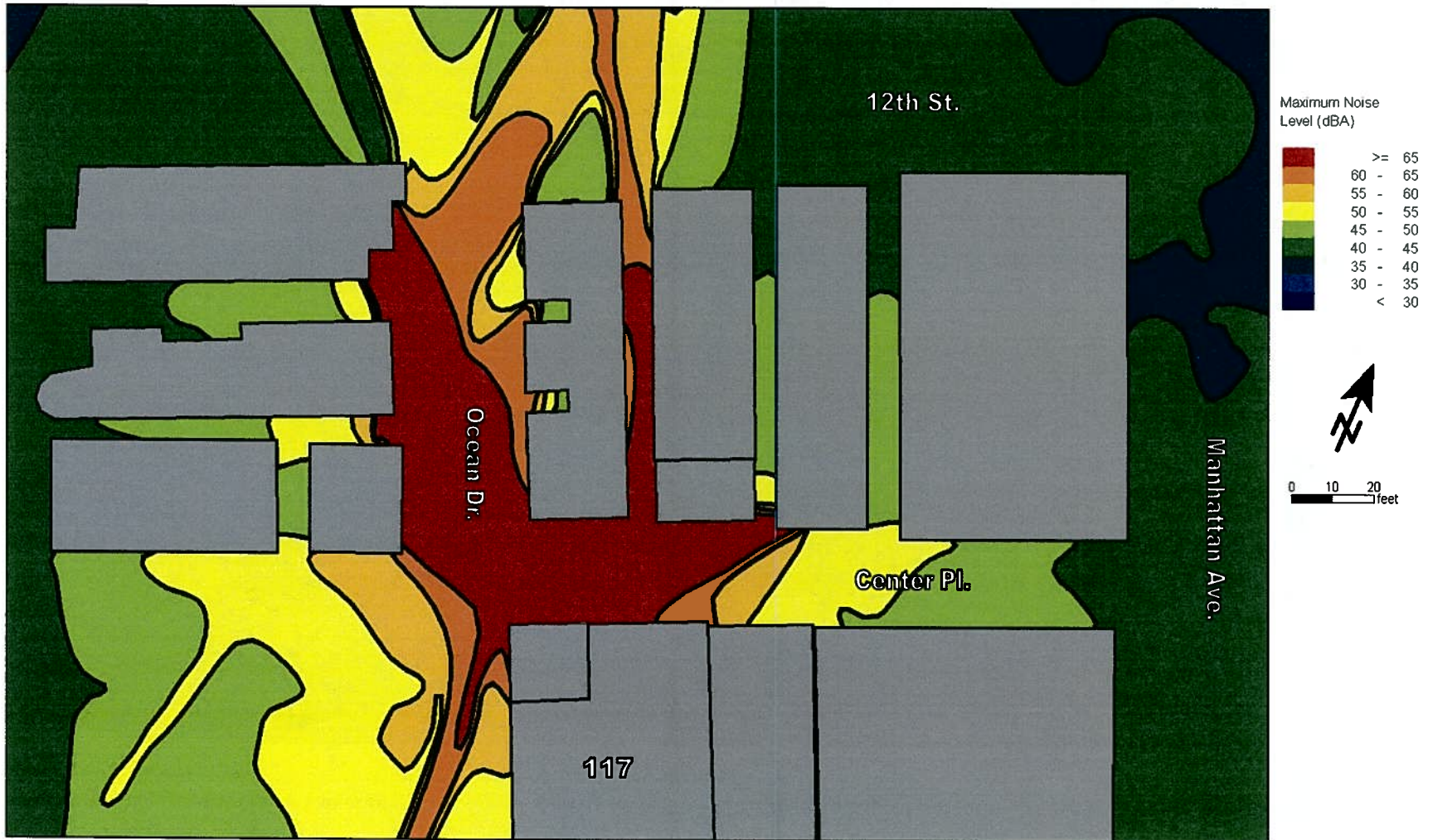




Figure 5. Maximum Noise Level of Trash Can Impacts at Rear of Original Beaches Nightclub at 1st Floor

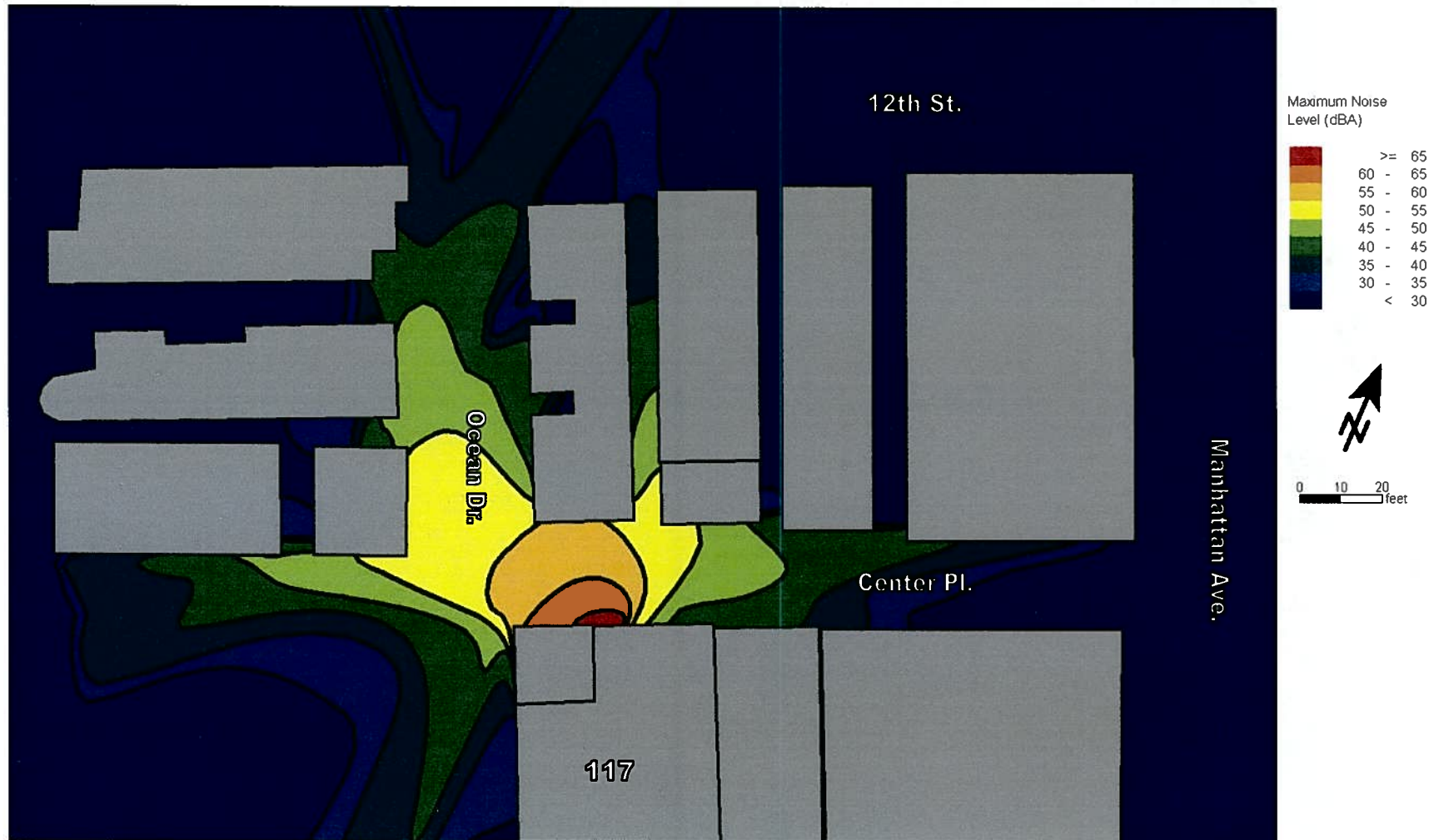


Behrens and Associates, Inc.

Acoustics, Noise and Vibration Consultants



Figure 6. Maximum Noise Level of Trash Can Impacts at Rear of Proposed Strata Project at 1st Floor with New Enclosed Trash Room



Laurie B. Jester

From: Laurie B. Jester
Sent: Wednesday, February 23, 2011 3:08 PM
To: List - Planning Commission
Cc: Eric Haaland; Robert Wadden; 'jrgersonmd@gmail.com'
Subject: Strata

I just got a phone call from the neighbors that live across the alley, Dr. Jerry and Candy Gerson, 120 12th Street #2. They are traveling and do not have access to e-mail and are not able to attend the meeting. They indicated that their bedroom backs onto the alley and is very close to Strata. They asked me to pass along their support of the proposed project.

They said they are not disturbed by noise, and that the restaurant will upgrade the facility. They want to support an upgrade, and think that it will be much better than Beaches that sometimes was loud and raucous. They indicated when people live in a residential area next to a commercial Downtown area and the beach, that activity is to be expected and embraced.

Distributed at
PC mtg. 2/23/11

117 Manhattan Beach Blvd.
Strata
Additions to Draft Resolution
2-23-11

Section 1. Findings

The project is exempt from obtaining a Coastal Development Permit in accordance with the City's Coastal Program as the alteration or improvement to an existing structure that does not change the intensity or use of the existing structures in accordance with Manhattan Beach LCP Section A.96.050B.

The proposed encroachment of balconies (with or without seating or dining) over the public right-of-way over the Manhattan Beach Boulevard sidewalk, requires action by the City Council in accordance with Section 7.36.170 A- Long-term commercial use encroachment permits, of the MBMC.

Distributed by
staff at

2/23/11 PC mtg.

Beaches and Strata Noise Impact Evaluation

Behrens and Associates, Inc.

www.environmental-noise-control.com

2/23/11 - File
Distributed at
P.C. meeting

Behrens and Associates, Inc.

Noise and vibration consultancy. Providing noise and vibration control services since 1988.

Offices in California, Texas, Louisiana, Colorado and Pennsylvania.

Don Behrens

President, Behrens and Associates

34 years of experience in noise and vibration engineering

Associate Member, Institute of Noise Control Engineering (INCE)

Tom Corbishley

Acoustical Engineer, Behrens and Associates

Master of Engineering in Acoustical Engineering (ISVR, UK)

5 years of experience as Acoustical Consultant

Member, Institute of Noise Control Engineering (INCE)

Client List

City of Beverly Hills
City of Culver City
City of Los Angeles
City of Manhattan Beach
City of Orange
City of San Diego
City of Santa Monica

Black & Veatch
Boeing
BP
Calleguas Municipal Water District
CDM
Chesapeake Energy
Devon Energy
Downey Studios
EOG Resources

ExxonMobil
Hilton Hotels
Kiewit
Northrop Grumman
Oakley
Paramount Pictures
Parsons Brinckerhoff
Petrohawk Energy
PXP
Raleigh Studios
Scripps Research Institute
Shell Oil Company
Sony Pictures
Tetra Tech
The Standard Hotel
UCLA
Universal Studios

Noise Study Methodology

Provide an assessment of noise produced by original Beaches nightclub and proposed Strata project by means of noise modeling.

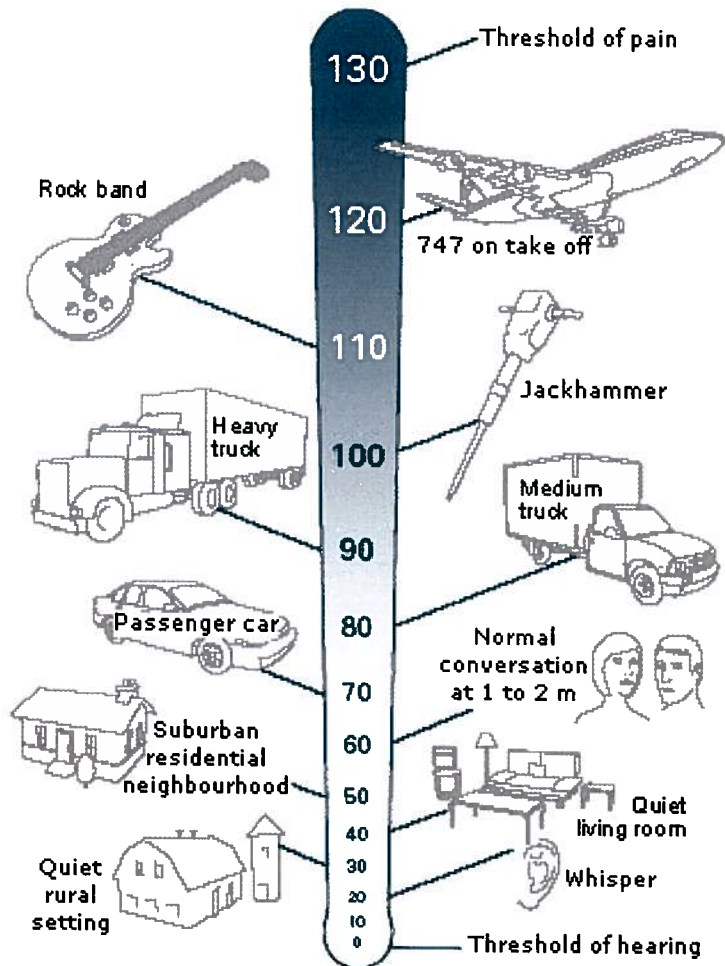
Study conducted using SoundPLAN three-dimensional noise modeling software.

Modeling was performed using construction information obtained from the existing building and the planned building design.

No noise measurements were made. It was assumed that the average noise level at the dance floor areas is 100 dBA.

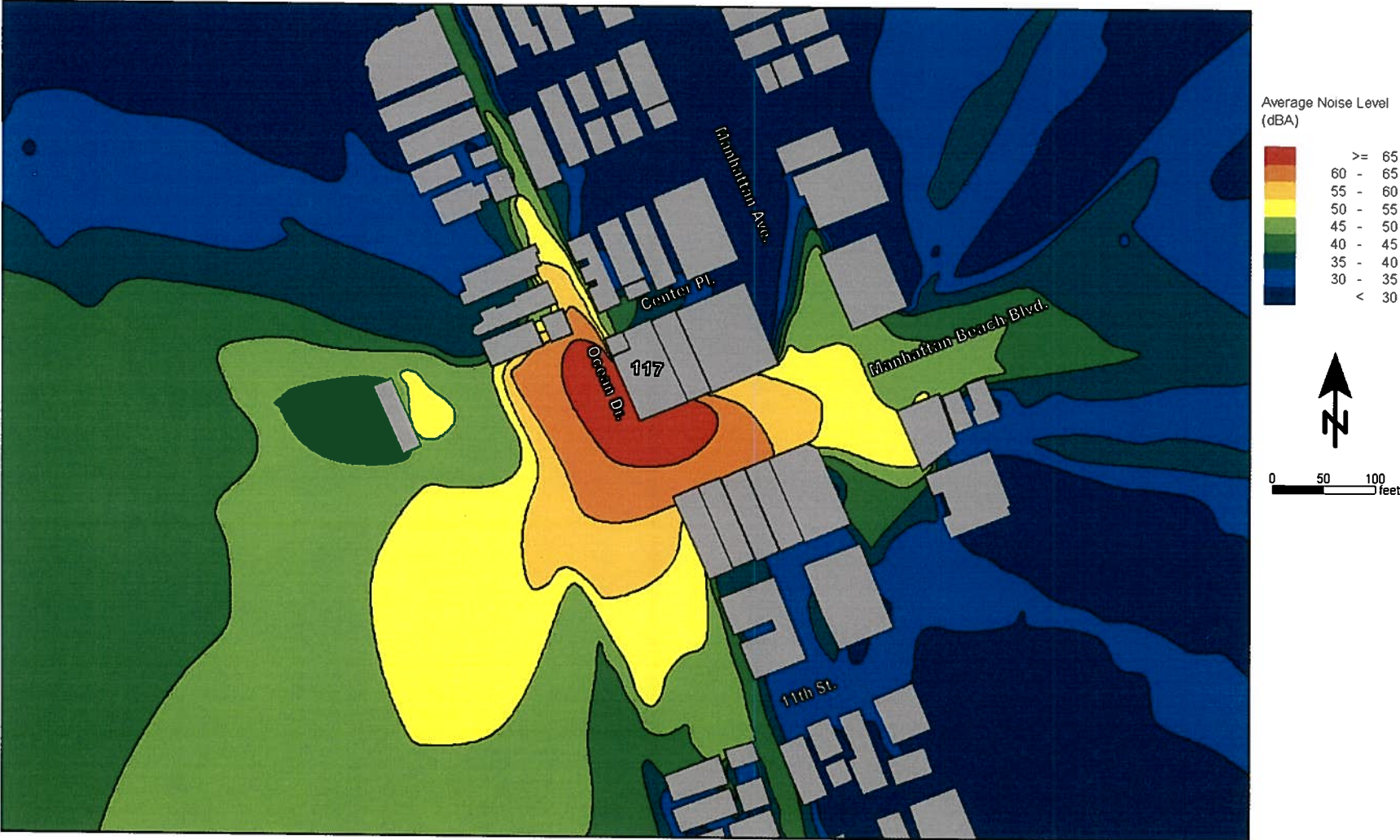
Understanding Noise

DECIBEL SCALE (dBA)

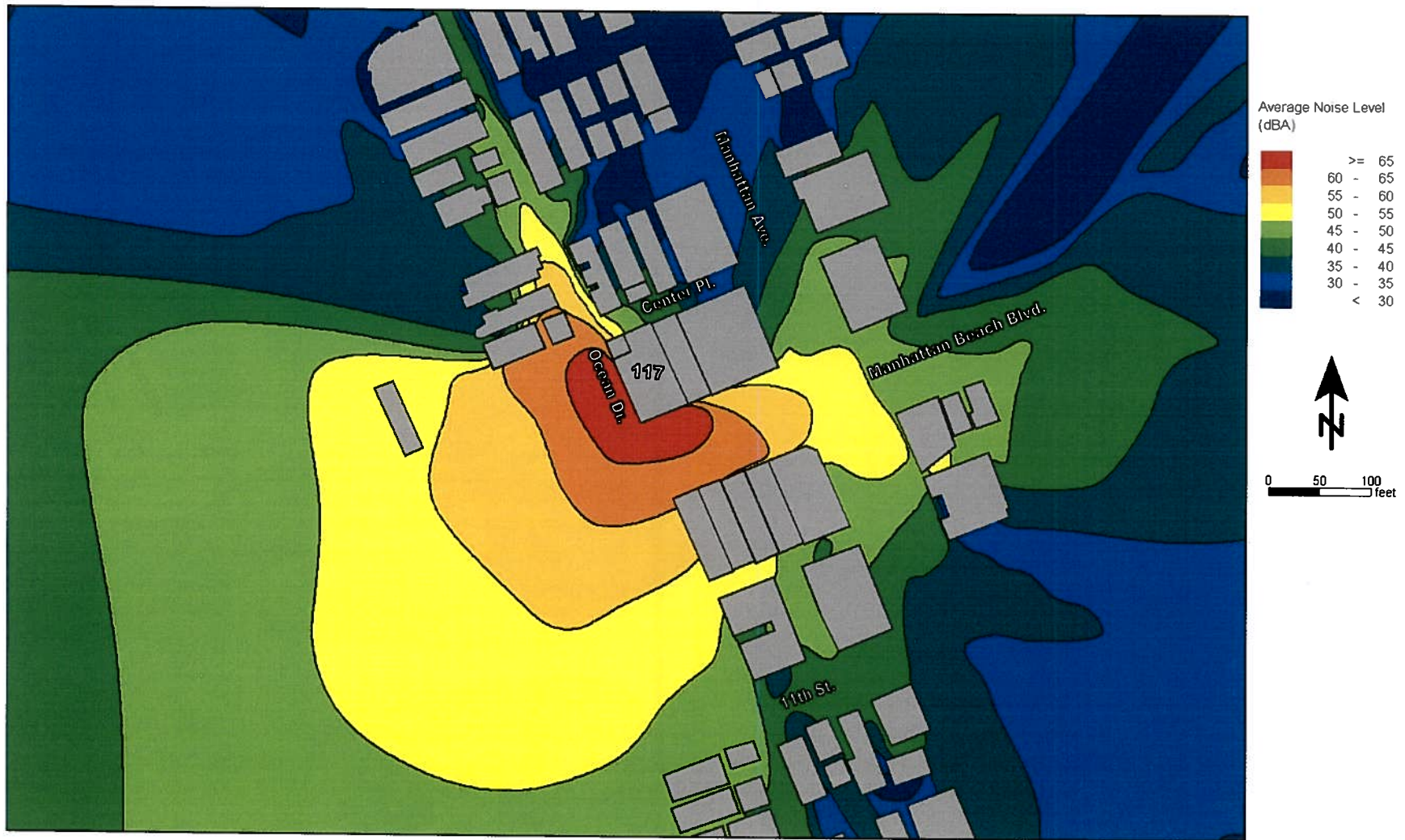


| OVER-ALL-dB(A) LEVEL | COMMUNITY | HOME OR INDUSTRY | LOUDNESS |
|---------------------------|---|---|----------------------------|
| 130 UNCOMFORTABLY LOUD | Military Jet Aircraft Take-Off with After-Burner From Aircraft Carrier @ 50 feet (130) | Oxygen Torch (121) | 120 dB(A) 32 Times As Loud |
| 120 | Turbo-Fan Aircraft @ Take-off Power @ 200 feet (118) | Riveting Machine (110) Rock and Roll Band (108-114) | 110 dB(A) 16 Times As Loud |
| 110 | Boeing 707, DC-8 @ 6080 feet Before Landing (106) Jet Flyover @ 1000 feet (103) J-2A Helicopter @ 25 feet (100) | | 100 dB(A) 8 Times As Loud |
| 100 VERY LOUD | Power Mower (96) Motorcycle @ 25 feet (90) | Newspaper Press (97) | 90 dB(A) 4 Times As Loud |
| 90 | Car Wash @ 20 feet (89) Prop. Plane Flyover @ 1000 feet (88) Diesel Truck, 40 mph @ 59 feet (84) Diesel Train, 45 mph @ 100 feet (83) | Food Blender (88) Milling Machine (85) Garbage Disposal (80) | 80 dB(A) 2 Times As Loud |
| 80 MODERATELY LOUD | High Urban Ambient Sound (80) Passenger Car, 65 mph @ 25 feet (77) Freeway @ 50 feet from Pavement Edge @ 10 am (76+6) | Living Room Music (76) TV-Audio, Vacuum Cleaner (70) | 70 dB(A) |
| 70 | Air Conditioning Unit @ 100 feet (60) | Cash Register @ 10 feet (65-75) Electric Typewriter @ 10 feet (64) Dishwasher (Rinse) @ 10 feet (60) Conversation (60) | 60 dB(A) ½ Times As Loud |
| 60 | Large Transformer @ 100 feet (50) | | 50 dB(A) ¼ Times As Loud |
| 50 QUIET | Bird Calls (44) Lower Limit, Urban Ambient Sound (40) | | 40 dB(A) 1/8 Times As Loud |
| 40 JUST AUDIBLE | | | |
| 0 THRESHOLD OF HEARING | | | |

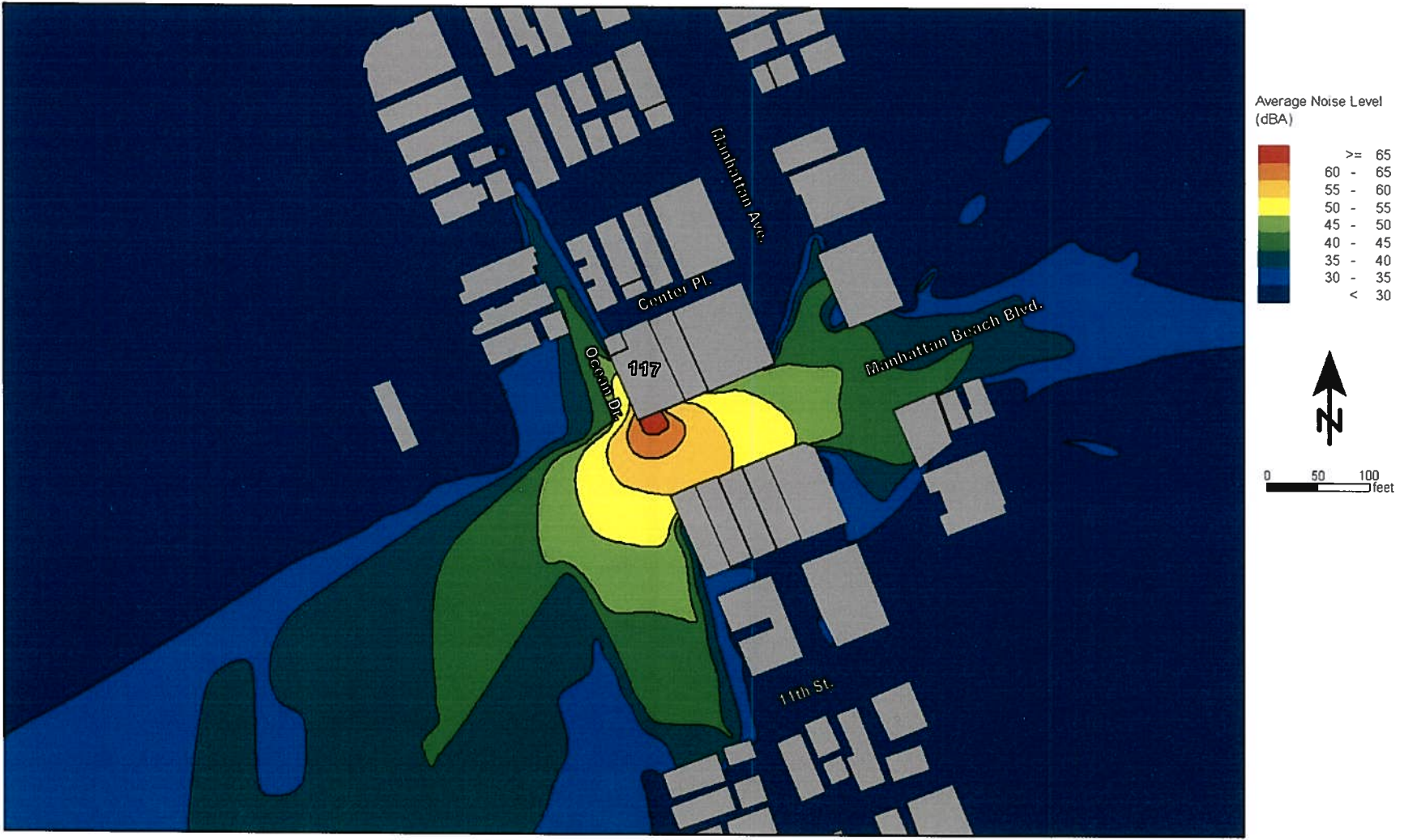
Modeled Average Noise Level of Original Beaches Nightclub at 1st Floor with Small Windows Open and Retractable Ceiling Closed (Report Figure 1)



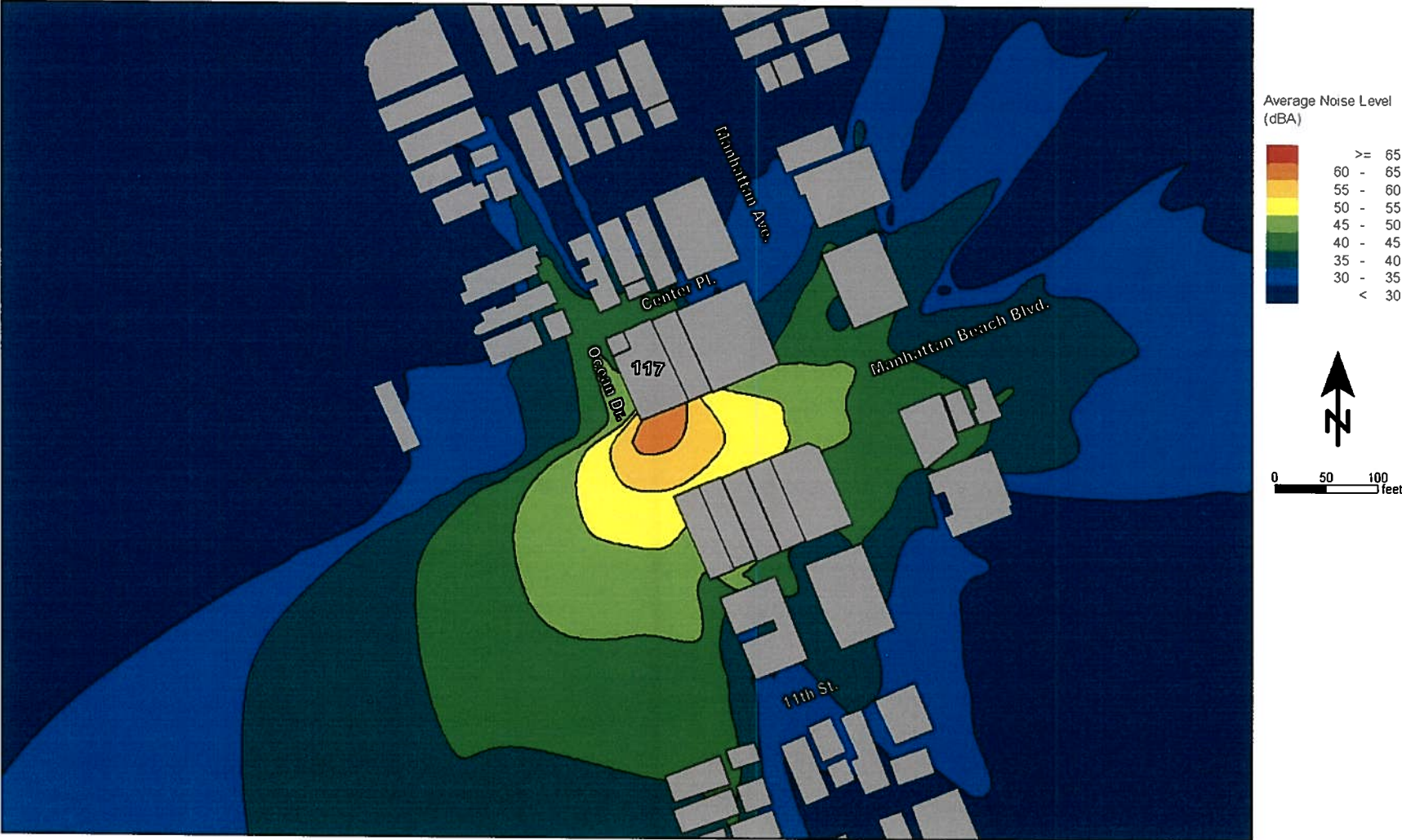
Modeled Average Noise Level of Original Beaches Nightclub at 3rd Floor with Small Windows Open and Retractable Ceiling Closed (Report Figure 2)



Modeled Average Noise Level of Proposed Strata Project at 1st Floor with Windows Closed and Patios and Balconies Occupied (Report Figure 3)



Modeled Average Noise Level of Proposed Strata Project at 3rd Floor with Windows Closed and Patios and Balconies Occupied (Report Figure 4)



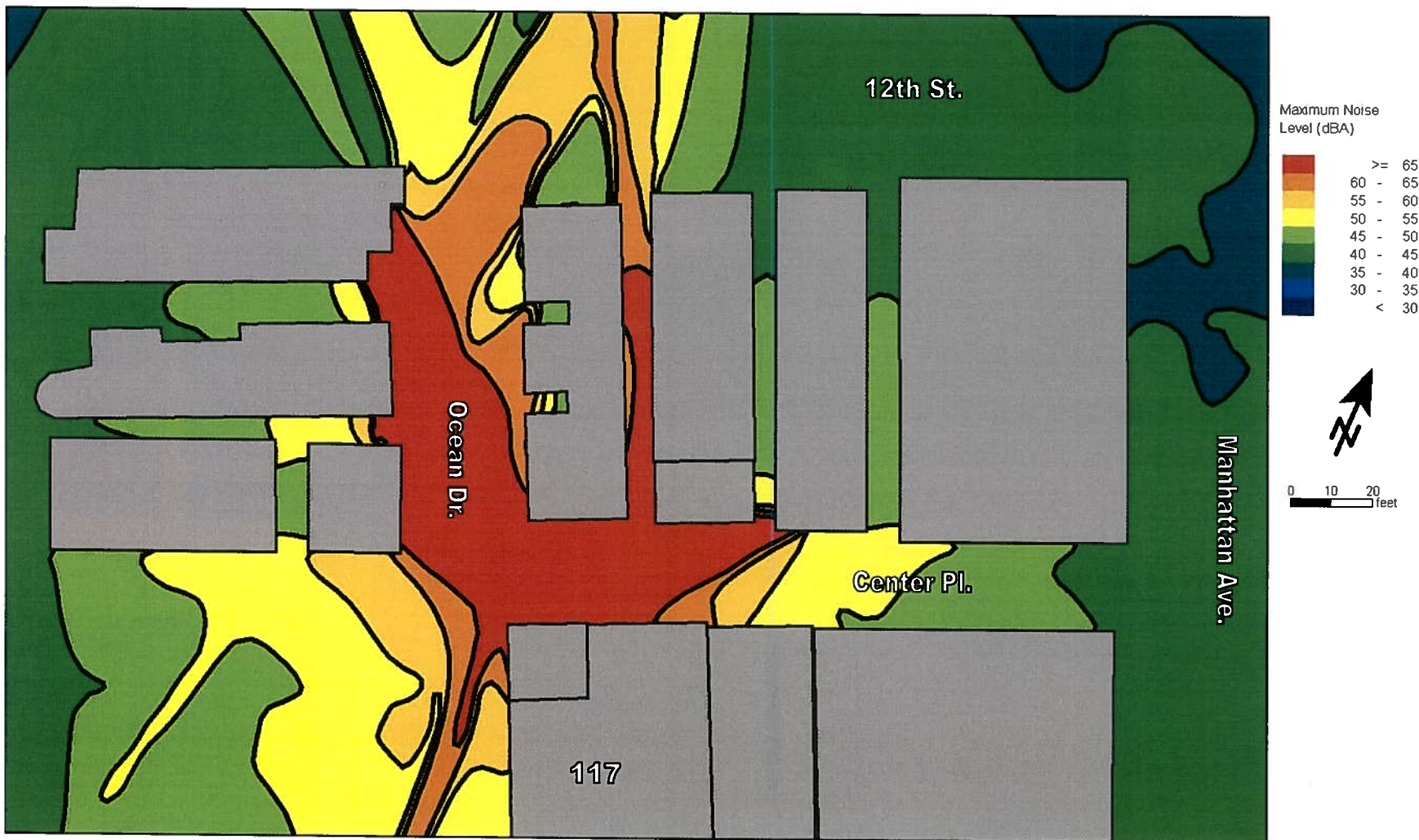
Summary of Results

- Assuming an interior noise level of 100 dBA, the models predict noise levels of:

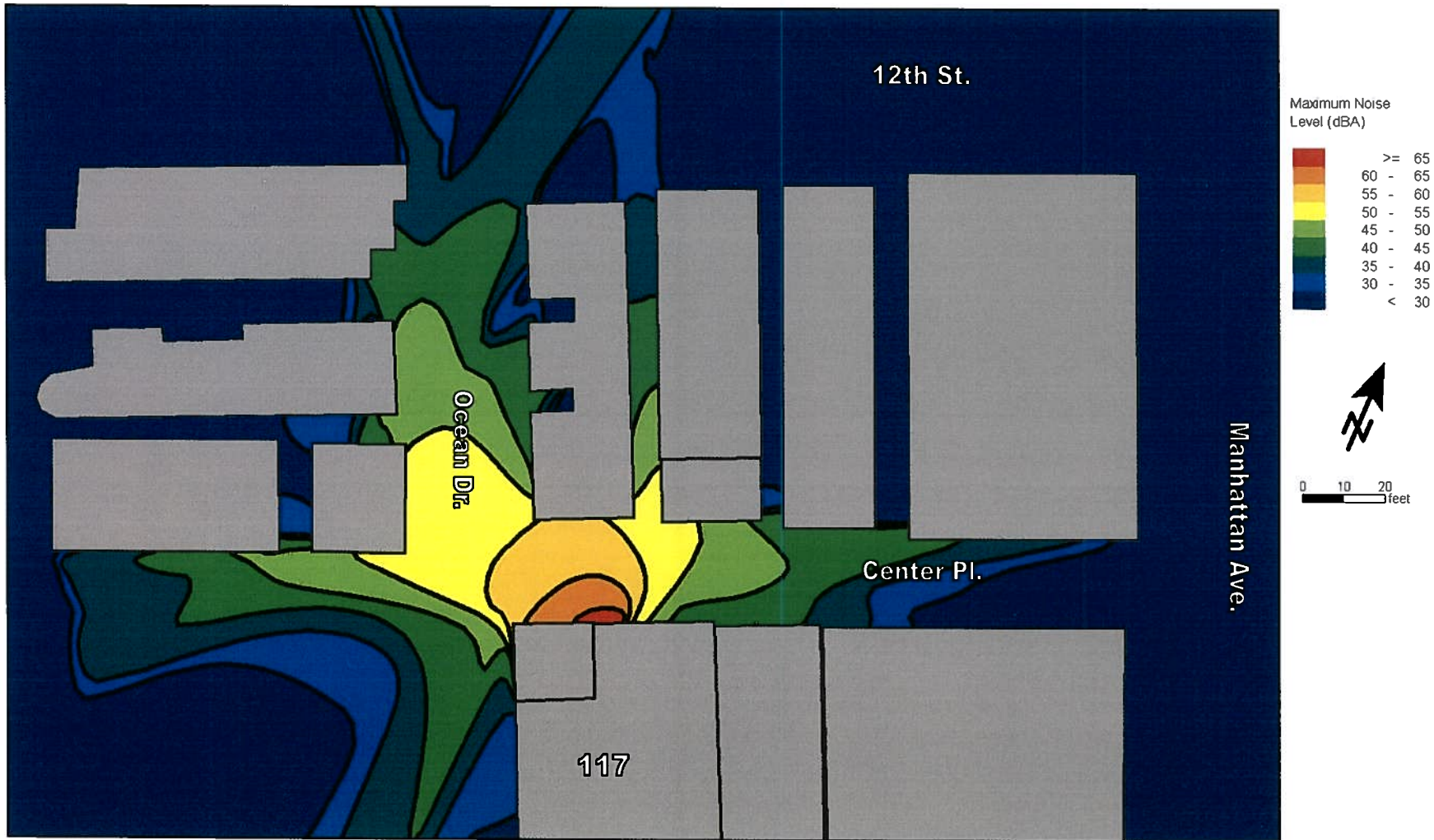
| | Beaches Nightclub | Strata Project |
|--|-------------------|----------------|
| Residences on Center Place | 47 dBA | 39 dBA |
| First Residence on Strand South of 11 th St. | 48 dBA | 41 dBA |

- Reductions of up to 8 dBA for entertainment noise. This represents a perceived noise reduction of slightly less than 50%.

Maximum Noise Level of Trash Can Impacts at Rear of Original Beaches Nightclub at 1st Floor (Report Figure 5)



Maximum Noise Level of Trash Can Impacts at Rear of Proposed Strata Project at 1st Floor with New Enclosed Trash Room (Report Figure 6)



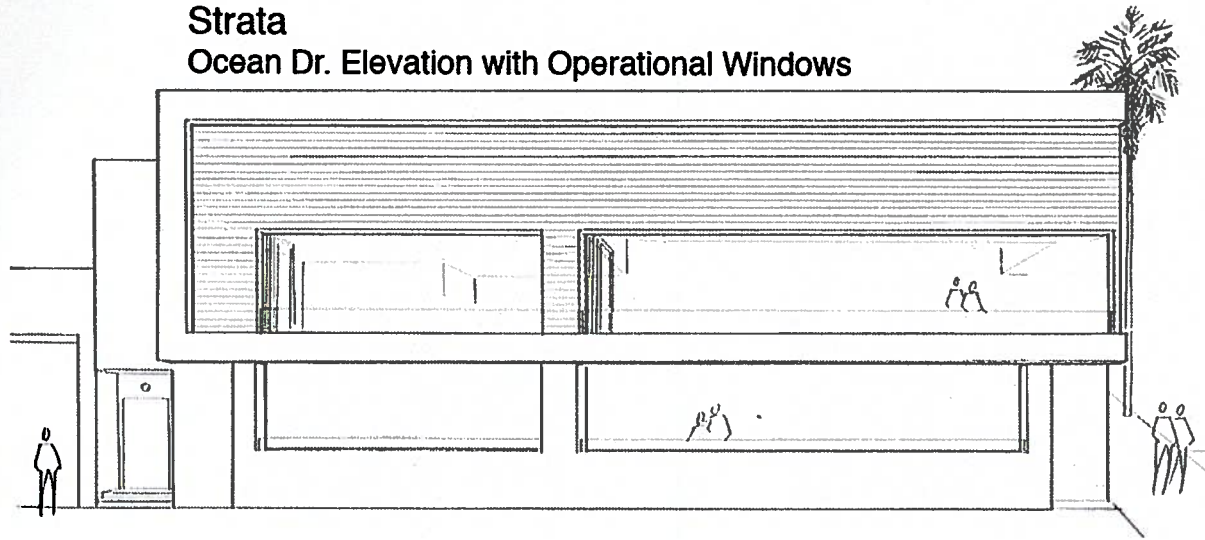
Summary of Results

The Beaches model predicts maximum trash noise levels of up to 77 dBA at the residential properties on Center Place.

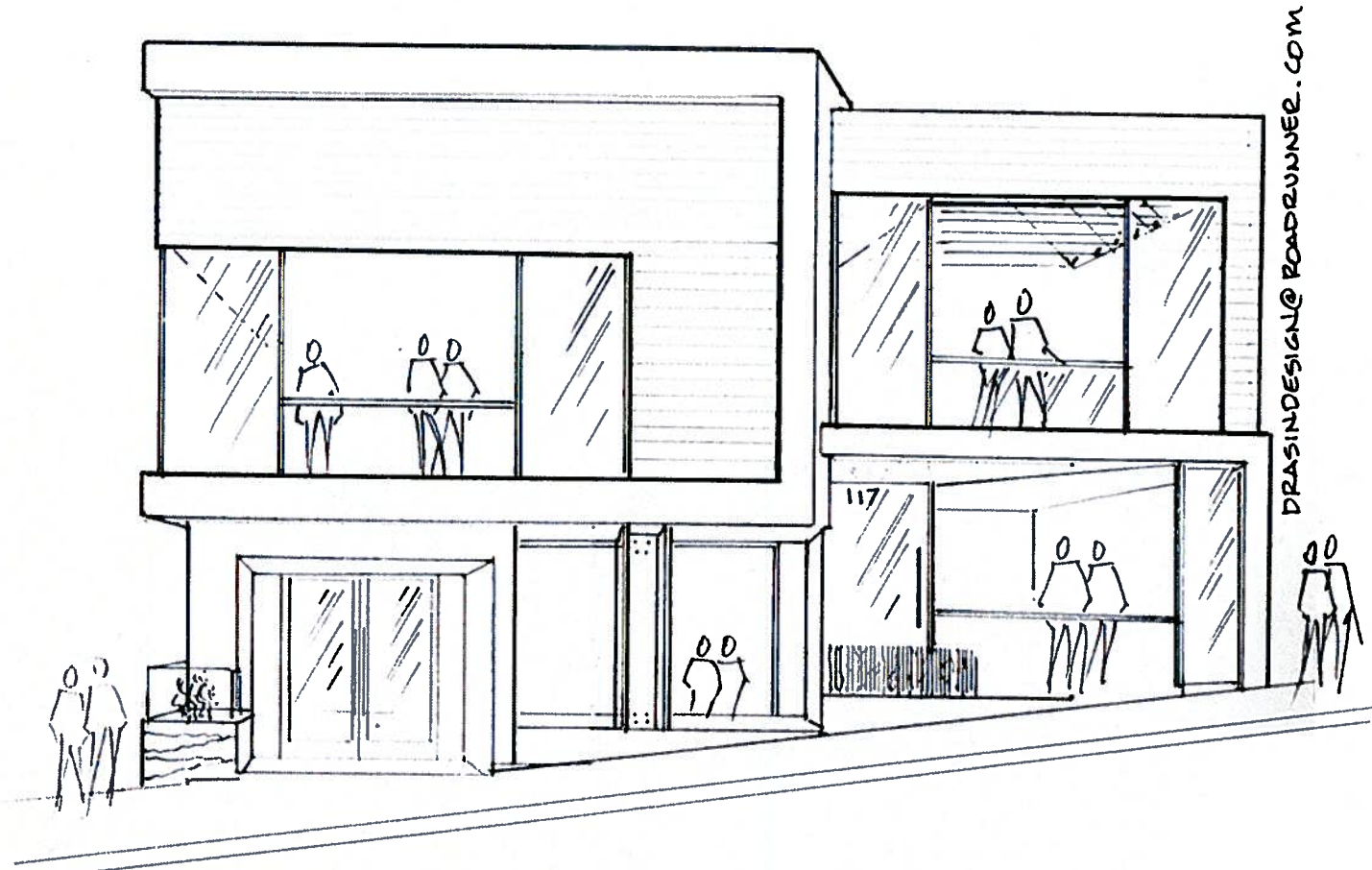
The Strata model predicts maximum trash noise levels of up to 55 dBA at the residential properties on Center Place.

Trash room reduces maximum level of short duration noises by about 22 dBA. This represents a perceived noise reduction of slightly more than 75%.

Strata
Ocean Dr. Elevation with Operational Windows

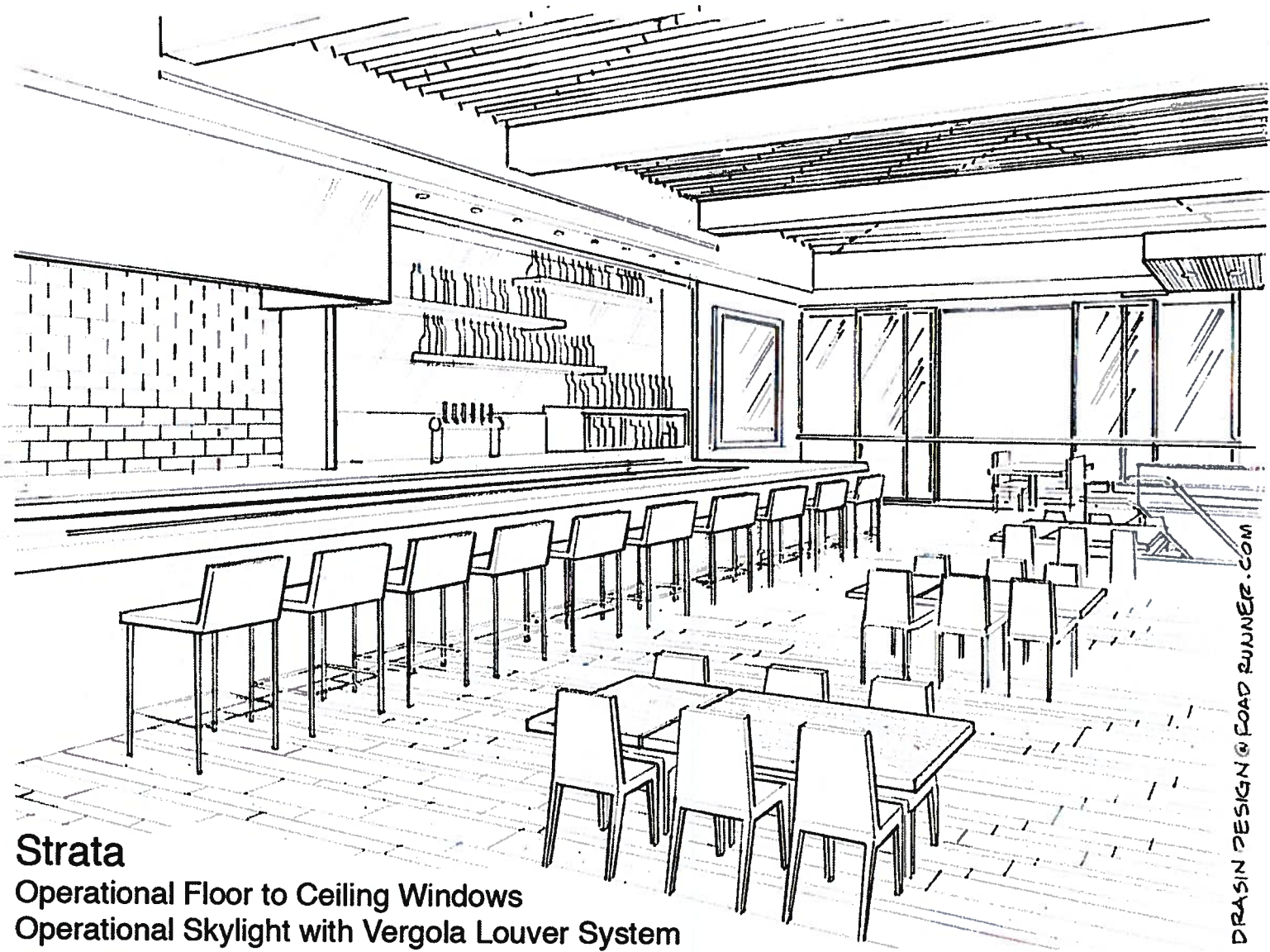


2/23/11
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PC meeting
File



Strata

Manhattan Beach Blvd Elevation with Operational Windows



Strata

Operational Floor to Ceiling Windows

Operational Skylight with Vergola Louver System

DRASIN DESIGN @ FOOD RUNNER .COM

VERGOLA: Adjustable Roof System

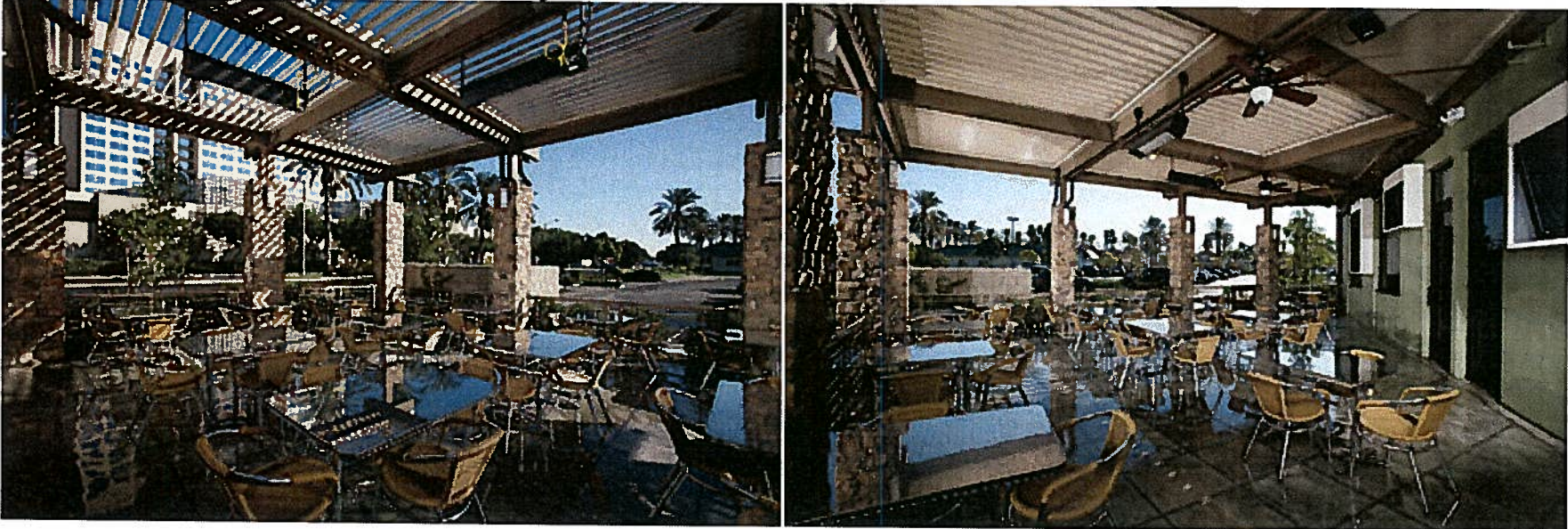


CHART 1 - GAINS & LOSSES WITH AMENDED CUP COMPARED TO CURRENT CUP

| | CURRENT CUP | PROPOSED CUP AMENDMENT | GAINS | LOSSES |
|-----------------------------------|--------------------|-------------------------------|--------------|---------------------|
| LAST ALCOHOL SERVICE | 1:00 AM | 12:40 AM | 0 | 2 HRS 20 MIN PER WK |
| SPECIAL EVENTS UPSTAIRS | 6 | 0 | 0 | 6 |
| LIVE ENTERTAINMENT | 104 (AUTOMATIC) | 52 (UNDER ENT. PERMIT) | 0 | 52 |
| WEST FACING WINDOWS | ALLOWED | NONE | 0 | FRESH AIR |
| OPEN AIR SEATING | 800 SQ. FT. | 160 SQ. FT. | 0 | 640 SQ. FT. |
| OCCUPANCY | 379 PPL | 356 PPL | 0 | 23 |
| NEW OPERATING RESTRICTIONS | | | | SEE CHART 2 |

CHART 2 - OTHER NEW PROPOSED RESTRICTIONS

Resolution No. PC 11

Management must "police the property in all areas immediately adjacent to the business during the hours of operation, and one hour after closing each night..."

"Any queuing of customers waiting to enter the establishment shall be prohibited from occupying Ocean Drive or Center Place, and shall be managed in compliance with the direction of the Police Department and the establishment's Group Entertainment Permit."

"Alcohol service shall cease at 12:40 nightly."

"Deliveries and other loading, truck idling, etc. occurring outside of the building shall be prohibited between 10pm and 8am nightly."

"Full menu food service shall be available at the bar seats during all hours of operation."

"Any outdoor sound or outdoor amplification system or equipment is prohibited. No operable windows or similar openings shall be located on the north, west, or east sides of the restaurant."

"Noise from the business shall not be audible beyond 75 feet of the subject site as determined by the Police Department."

The uses proposed under this Amendment fit exactly within the intended use of the Downtown Commercial District as established in the Municipal Code:

1. “ This district is intended to accommodate a broad range of community businesses and to serve beach visitors.” Mun. C. Section 10.16.010
2. The Municipal Code permits outdoor commercial activity so as “to encourage visual interest along commercial streets and support the business community”. Mun. C. 10.60.080
3. The Municipal Code even includes provisions that encourage business use of the public right of way where that is “functional, attractive and non-obtrusive to the public”. Mun. C. Section 7.36.010

*****PROPOSAL - CONTRACT*****

State Lic C-17 720914

Bond & Insured

Web Site: http://www.aitalglass.com

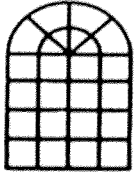
E-mail : Sales@aitalglass.com

E-mail : Larry@aitalglass.com

Tel: (800) 938-8886

Tel: (626) 444-1618

Fax: (626) 444-0878



藝 達 玻璃鏡子工程公司

AITAL CUSTOM GLASS & MIRROR INC.

2617 N. ROSEMEAD BLVD. SO. EL MONTE, CA 91733

Glass, Mirror, Storefront, Aluminum windows & Doors, Complete Glass Service

| | | |
|---|--|----------|
| PROPOSAL SUBMITTED TO: | PHONE / FAX | DATE |
| NAME XQTD, Inc. - Paolo Volpis Design Studio | 310-245-8224 | 2/7/2011 |
| STREET 9601 Wilshire Blvd., Suite 1121 | JOB NAME Strata | |
| CITY, STATE, ZIP CODE Beverly Hills, CA 90210 | JOB LOCATION 117 Manhattan Beach Blvd., Manhattan Beach, CA 90266 | |

WE PROPOSE TO FURNISH ALL MATERIAL & LABOR NECESSARY TO PERFORM & COMPLETE THE FOLLOWING:

| Qty | Size | Type | Description | Page 1 of 2 |
|-----|---------------------|------|---|-------------|
| 1 | 4' X 8'-1 1/2" | | Install 2" X 6" storefront w/ 1" thick dual pane glass. 1/4" clear temp. out board, 1/2" air space & 1/4" laminated STC glass in board. | |
| 4 | 3'-10" X 6'-9 1/2" | | Install 2" X 6" storefront w/ 1" thick dual pane glass. 1/4" clear temp. out board, 1/2" air space & 1/4" laminated STC glass in board. | |
| 2 | 4' X 7'-5 1/2" | | Install 2" X 6" storefront w/ 1" thick dual pane glass. 1/4" clear temp. out board, 1/2" air space & 1/4" laminated STC glass in board. | |
| 4 | 4'-2" X 8'-1 1/2" | | Install 2" X 6" storefront w/ 1" thick dual pane glass. 1/4" clear temp. out board, 1/2" air space & 1/4" laminated STC glass in board. | |
| 2 | 3'-10" X 7'-5 1/2" | | Install 2" X 6" storefront w/ 1" thick dual pane glass. 1/4" clear temp. out board, 1/2" air space & 1/4" laminated STC glass in board. | |
| 1 | 9 1/2" X 10' | | Install 2" X 6" storefront w/ 1" thick dual pane glass. 1/4" clear temp. out board, 1/2" air space & 1/4" laminated STC glass in board. | |
| 1 | 12'-3 1/2" X 10' | | Install 2" X 6" storefront w/ 1" thick dual pane glass & 1 unit 5'-11 1/2" X 7'-6" Herculite pair door. | |
| 1 | 4'-10" X 8'-11 1/2" | | Install 2" X 6" storefront w/ 1" thick dual pane glass. | |
| 1 | 2'-4" X 8'-11 1/2" | | Install 2" X 6" storefront w/ 1" thick dual pane glass. | |
| 1 | 7' X 8'-11 1/2" | | Install 2" X 6" storefront w/ 1" thick dual pane glass. | |
| 1 | 4'-6" X 8'-11 1/2" | | Install 2" X 6" storefront w/ 1" thick dual pane glass & 1 unit 3' X 8' Herculite door. | |
| 1 | 13' X 8'-11 1/2" | | Install 2" X 6" storefront w/ 1" thick dual pane glass. | |
| 1 | 2' X 8'-11 1/2" | | Install 2" X 6" storefront w/ 1" thick dual pane glass. | |
| 1 | 60' X 8'-10 1/2" | | Install 2" X 6" storefront w/ 1" thick dual pane glass. | |
| 1 | 5'-6" X 8'-10 1/2" | | Install 2" X 6" storefront w/ 1" thick dual pane glass. | |
| 1 | 8'-8" X 9'-4 1/2" | | Install 2" X 6" storefront w/ 1" thick dual pane glass. | |

ALL OF THE WORK TO BE COMPLETED IN WORKMANLIKE MANNER ACCORDING TO STANDARD PRACTICES FOR

THE SUM OF

Dollars (\$.00)

PAYMENT TO BE MADE

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control.

Authorized Signature Larry

NOTE: THIS PROPOSAL MAY BE WITHDRAWN BY US IF NOT ACCEPTED WITHIN (60) DAYS.

Acceptance of Proposal :

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. The undersigned individual having a direct financial interest in on behalf of buyer hereby individually and unconditionally guarantees any and all indebtedness of buyers including all interest, costs and agrees to pay additional costs including reasonable attorney fees incurred by buyer in enforcing its rights under this guarantee. I have read the conditions of proposal and contract hereof and agree to same.

Date of Acceptance: _____

Signature _____

*****PROPOSAL - CONTRACT*****

State Lic C-17 720914

Bond & Insured

Web Site: http://www.aitalglass.com

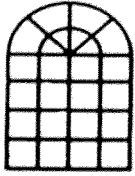
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| NAME XQTD, Inc. - Paolo Volpis Design Studio | 310-245-8224 | 2/7/2011 |
| STREET 9601 Wilshire Blvd., Suite 1121 | JOB NAME Strata | |
| CITY, STATE, ZIP CODE | JOB LOCATION | |
| Beverly Hills, CA 90210 | 117 Manhattan Beach Blvd., Manhattan Beach, CA 90266 | |

WE PROPOSE TO FURNISH ALL MATERIAL & LABOR NECESSARY TO PERFORM & COMPLETE THE FOLLOWING:

Page 2 of 2

| Qty | Size | Type | Description |
|-----|---------------------|------|---|
| 1 | 6'-6" X 3' | | Install 1/2" clear temp. glass frameless railing w/ stand alone rail shoe & cap railing |
| 1 | 8'-6" X 3' | | Install 1/2" clear temp. glass frameless railing w/ stand alone rail shoe & cap railing |
| 1 | 1'-6" x 3' | | Install 1/2" clear temp. glass frameless railing w/ stand alone rail shoe & cap railing |
| 1 | 7'-6" x 3' | | Install 1/2" clear temp. glass frameless railing w/ stand alone rail shoe & cap railing |
| 4 | 3' X 3' | | Install 1/2" clear temp. glass frameless railing w/ stand alone rail shoe & cap railing |
| 1 | 15'-4" X 3' | | Install 1/2" clear temp. glass frameless railing w/ stand alone rail shoe & cap railing |
| 1 | 17'-10" X 3' | | Install 1/2" clear temp. glass frameless railing w/ stand alone rail shoe & cap railing |
| 1 | 15'-4" X 8'-10 1/2" | | Install XXP style glass pocket door w/ aluminum door frame. |
| 1 | 11' X 9'-4 1/2" | | Install XXP style glass pocket door w/ aluminum door frame. |

Total Amount:

\$ 138,800.00

- Note:**
- * Above price include labor , material and tax.
 - * All frame and glass to be per plan and spec.
 - * All door hardware per plan and spec.
 - * Glass entrance door to be herculite door with 1/2" clear tempered glass and straight style pull handles with chrome stainless steel finish.
 - * This quotation is valid only for 90 days. After this period, price maybe adjusted to incorporate any increase in manufacturer's surcharge.

- Exclusion:**
- * Any item not list in this proposal
 - * All Galv. Perforated metal panel at entry storefront.
 - * All vision lite frame for interior wood door.

| | |
|---|-------------------|
| ALL OF THE WORK TO BE COMPLETED IN WORKMANLIKE MANNER ACCORDING TO STANDARD PRACTICES FOR | |
| THE SUM OF | Dollars (\$.00) |
| PAYMENT TO BE MADE | |

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes , accidents or delays beyond our control.

Authorized Signature Larry

NOTE: THIS PROPOSAL MAY BE WITHDRAWN BY US IF NOT ACCEPTED WITHIN (60) DAYS.

Acceptance of Proposal :

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. The undersigned individual having a direct financial interest in on behalf of buyer hereby individually and unconditionally guarantees any and all indebtedness of buyers including all interest, costs and agrees to pay additional costs including reasonable attorney fees incurred by buyer in enforcing its rights under this guarantee. I have read the conditions of proposal and contract hereof and agree to same.

Date of Acceptance: _____ Signature _____

Sound Control

Capabilities (continued)

Laminated Insulating Glass: Sound Transmission Loss Data⁽¹⁾

| 1/3 Octaveband (HZ) | 100 | 125 | 160 | 200 | 250 | 315 | 400 | 500 | 630 | 800 | 1000 | 1250 | 1600 | 2000 | 2500 | 3150 | 4000 | 5000 | STC | DTC | Rw |
|--|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|------|------|------|------|------|------|------|------|-----|-----|----|
| 1/4" Lam.-1/4" AS²-1/8" (SEALED) RAL-TL95-296 | 32 | 31 | 30 | 28 | 27 | 24 | 26 | 28 | 31 | 34 | 37 | 39 | 41 | 43 | 49 | 52 | 51 | 57 | 35 | 31 | 35 |
| 1/4" Lam.-3/8" AS-3/16" (SEALED) RAL-TL85-189 | 27 | 27 | 26 | 24 | 22 | 28 | 32 | 35 | 38 | 38 | 39 | 40 | 42 | 43 | 41 | 45 | 52 | 57 | 37 | 31 | 37 |
| 1/4" Lam.-1/2" AS-3/16" (SEALED) RAL-TL85-238 | 26 | 23 | 25 | 23 | 27 | 31 | 34 | 36 | 38 | 39 | 41 | 43 | 45 | 46 | 43 | 49 | 55 | 55 | 39 | 31 | 39 |
| 1/4" Lam.-1/2" AS-1/4" (SEALED) RAL-TL85-235 | 28 | 20 | 29 | 24 | 26 | 30 | 34 | 36 | 39 | 42 | 43 | 44 | 44 | 41 | 40 | 47 | 52 | 56 | 39 | 31 | 39 |
| 3/8" Lam.-1/2" AS-1/4" (SEALED) RAL-TL85-192 | 28 | 17 | 28 | 29 | 33 | 34 | 38 | 40 | 40 | 41 | 41 | 41 | 41 | 40 | 43 | 49 | 54 | 58 | 40 | 31 | 40 |
| 1/4" Lam.-1" AS-3/16" (UNSEALED) RAL-TL85-239 | 22 | 27 | 27 | 28 | 31 | 35 | 38 | 41 | 42 | 43 | 44 | 45 | 47 | 47 | 45 | 50 | 58 | 61 | 42 | 33 | 42 |
| 1/4" Lam.-2" AS-3/16" (UNSEALED) RAL-TL85-173 | 24 | 25 | 34 | 33 | 34 | 40 | 41 | 44 | 44 | 46 | 47 | 47 | 48 | 48 | 46 | 50 | 55 | 56 | 45 | 35 | 45 |
| 1/2" Lam.-2" AS-3/16" (UNSEALED) RAL-TL85-194 | 27 | 36 | 33 | 33 | 35 | 39 | 41 | 45 | 45 | 46 | 46 | 46 | 49 | 51 | 52 | 56 | 60 | 62 | 46 | 38 | 46 |
| 1/2" Lam.-2" AS-3/8" (UNSEALED) RAL-TL85-196 | 34 | 37 | 33 | 38 | 40 | 42 | 44 | 48 | 47 | 46 | 45 | 42 | 46 | 51 | 55 | 59 | 61 | 62 | 46 | 42 | 47 |
| 1/2" Lam.-1" AS-3/16" (UNSEALED) RAL-TL95-298 | 24 | 30 | 32 | 32 | 36 | 39 | 42 | 45 | 47 | 50 | 51 | 50 | 53 | 57 | 57 | 60 | 62 | 63 | 47 | 36 | 47 |
| 1/4" Lam.-4" AS-3/16" (UNSEALED) RAL-TL85-174 | 26 | 36 | 34 | 37 | 37 | 43 | 44 | 48 | 49 | 51 | 51 | 50 | 51 | 50 | 47 | 51 | 58 | 60 | 48 | 39 | 48 |
| 1/2" Lam.-4" AS-3/16" (UNSEALED) RAL-TL85-195 | 30 | 37 | 33 | 38 | 37 | 42 | 45 | 49 | 50 | 51 | 50 | 48 | 50 | 53 | 53 | 57 | 61 | 64 | 49 | 41 | 49 |
| 1/2" Lam.-4" AS-3/8" (UNSEALED) RAL-TL85-197 | 38 | 38 | 33 | 40 | 40 | 43 | 46 | 51 | 52 | 52 | 50 | 45 | 48 | 53 | 56 | 59 | 62 | 64 | 49 | 44 | 50 |
| 3/4" Lam.-4" AS-1/8" (UNSEALED) RAL-TL85-240 | 29 | 33 | 31 | 36 | 38 | 43 | 44 | 46 | 47 | 49 | 50 | 52 | 52 | 55 | 59 | 59 | 58 | 60 | 49 | 40 | 49 |

(1) The data here is based on samples tested at Riverbank Acoustical Laboratories in accordance with ASTM E90-97, ASTM E413-87 and ASTM E1332-90 and are not guaranteed for all samples or applications.

(2) Airspace

(continued on next page)



Oldcastle Glass

Where glass becomes architecture™

**ARCHITECTURAL GUIDE SPECIFICATION
SECTION 08 81 00 GLASS GLAZING**

Note to Specifiers:

The specifications below are offered as desirable inclusions in glass and glazing specifications (section 08 81 00), but are not intended to be complete. An appropriate and qualified Architect or Engineer must verify suitability of a particular product for use in a particular application as well as review final specifications.

PRODUCTS

Approved Glass Fabricator Oldcastle BuildingEnvelope™

Glass Description FLOAT GLASS

1. USA - Annealed float glass shall comply with ASTM C1036, Type I, Class 1 (clear), Class 2 (tinted), Quality-Q3. Canada - Annealed float glass shall comply with CAN/CGSB-12.3-M, Quality-Glazing.
2. USA- Heat-strengthened float glass shall comply with ASTM C1048, Type I, Class 1 (clear), Class 2 (tinted), Quality Q3, Kind HS. Canada - Heat-strengthened float glass shall comply with CAN/CGSB-12.9-M, Type 2-Heat-Strengthened Glass, Class A-Float Glass.
3. USA - Tempered float glass shall comply with ASTM C1048, Type I, Class 1 (clear), Class 2 (tinted), Quality Q3, Kind FT. Canada - Tempered float glass shall comply with CAN/CGSB-12.1-M, Type 2-Tempered Glass, Class B-Float Glass.
4. USA - Laminated glass to comply with ASTM C1172. Canada - Laminated glass to comply with CAN/CGSB-12.1-M, Type 1-Laminated Glass, Class B-Float Glass.
5. Glass shall be annealed, heat-strengthened or tempered as required by codes, or as required to meet thermal stress and wind loads.

Sealed Insulating Glass (IG) Vision Glass (vertical) GENERAL

1. IG units consist of glass lites separated by a dehydrated airspace that is hermetically dual sealed with a primary seal of polyisobutylene (PIB), or thermo plastic spacer (TPS) and a secondary seal of silicone or an organic sealant depending on the application.
2. USA - Insulating glass units are certified through the Insulating Glass Certification Council (IGCC) to ASTM E2190. Canada - Insulating Glass units are certified through the Insulating Glass Manufacturers Alliance (IGMA) to either the IGMAC certification program to CAN/CGSB-12.8, or through the IGMA program to ASTM E2190..

IG VISION UNIT PERFORMANCE CHARACTERISTICS

1. **Exterior Lite** 1/4" Laminate - 1/8" Clear - 0.030" Clear PVB - 1/8" Clear
2. **Interior Lite** 1/4" PPG Solarban® 60 on Clear Low-E #5
3. **1/2" Cavity** Air (Standard)
4. **Performance Characteristics**

| | | | |
|---|------|--------------------------------------|-----|
| Winter U-factor/U-Value (Btu/hr-ft ² -F°): | 0.29 | Visible Light Transmittance: | 70% |
| Summer U-factor/U-Value (Btu/hr-ft ² -F°): | 0.27 | Visible Light Reflectance (outside): | 12% |
| Solar Heat Gain Coefficient: | 0.44 | Visible Light Reflectance (inside): | 11% |
| Shading Coefficient: | 0.50 | Total Solar Transmittance: | 32% |
| Relative Heat Gain: | 105 | Total Solar Reflectance (outside): | 28% |
| Light to Solar Gain: | 1.59 | Ultraviolet Transmittance: | <1% |

Contact Oldcastle BuildingEnvelope™ at 866-Oldcastle (653-2278) for samples or additional information concerning performance, strength, deflection, thermal stress or application guidelines. GlasSelect® calculates center of glass performance data using the Lawrence Berkeley National Laboratory (LBNL) Window 5.2 program (version 5.2.17) with Environmental Conditions set at NFRC 100-2001. Gas Library ID#1 (Air) is used for Insulating Glass units with air. Gas Library ID#9 (10% Air/90% Argon) is used for Insulating Glass units with argon. Monolithic glass data is from the following sources: 1. LBNL International Glazing Database (IGDB) version 17.3; 2. Vendor supplied spectral data files. Laminated glass data is from the following sources: 1. LBNL International Glazing Database (IGDB) version 17.3; 2. LBNL Optics 5 (version 5.1 Maintenance Pack 2); 3. Vendor supplied spectral data files; 4. Vendor supplied data.

**LOUNSBERY FERGUSON
ALTONA & PEAK LLP**

ATTORNEYS AT LAW

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OF COUNSEL:
JAMES P. LOUGH
GARTH O. REID

SPECIAL COUNSEL:
JOHN W. WITT

STRATA DEVELOPMENT

(117 Manhattan Beach Boulevard – MB Dining LLC)

Impacts

The developer seeks:

1. an extension of hours of operation in both the morning and night;
2. to greatly expand the opening of its primary façade to the public right of way; and
3. to have numerous large events permitted on the premises as a matter of right.

Implications

A **Coastal Development Permit is required** because the Project will cause:

1. A reduction in the availability of public parking - LCP Sec. A.96.040
 - a. Beaches bussered in clientele while Strata will appeal to “high-end” patrons who will drive their own vehicles; and
 - b. Extra hours of operation will reduce already limited parking in the morning and nighttime.
2. A change in intensity or use of a structure - LCP Sec. A.96.050(B)(1)
 - a. Right to hold more than the 6 special events permitted to Beaches;
 - b. Increase in hours of operation; and
 - c. Noise created by expanding building’s exposure to the public right of way.

Given the physical and use alterations sought by the developer, Strata must be reviewed under the regulatory framework of the Coastal Act, as well as the California Environmental Quality Act as outlined in our letter to the Planning Commission dated February 15, 2011.

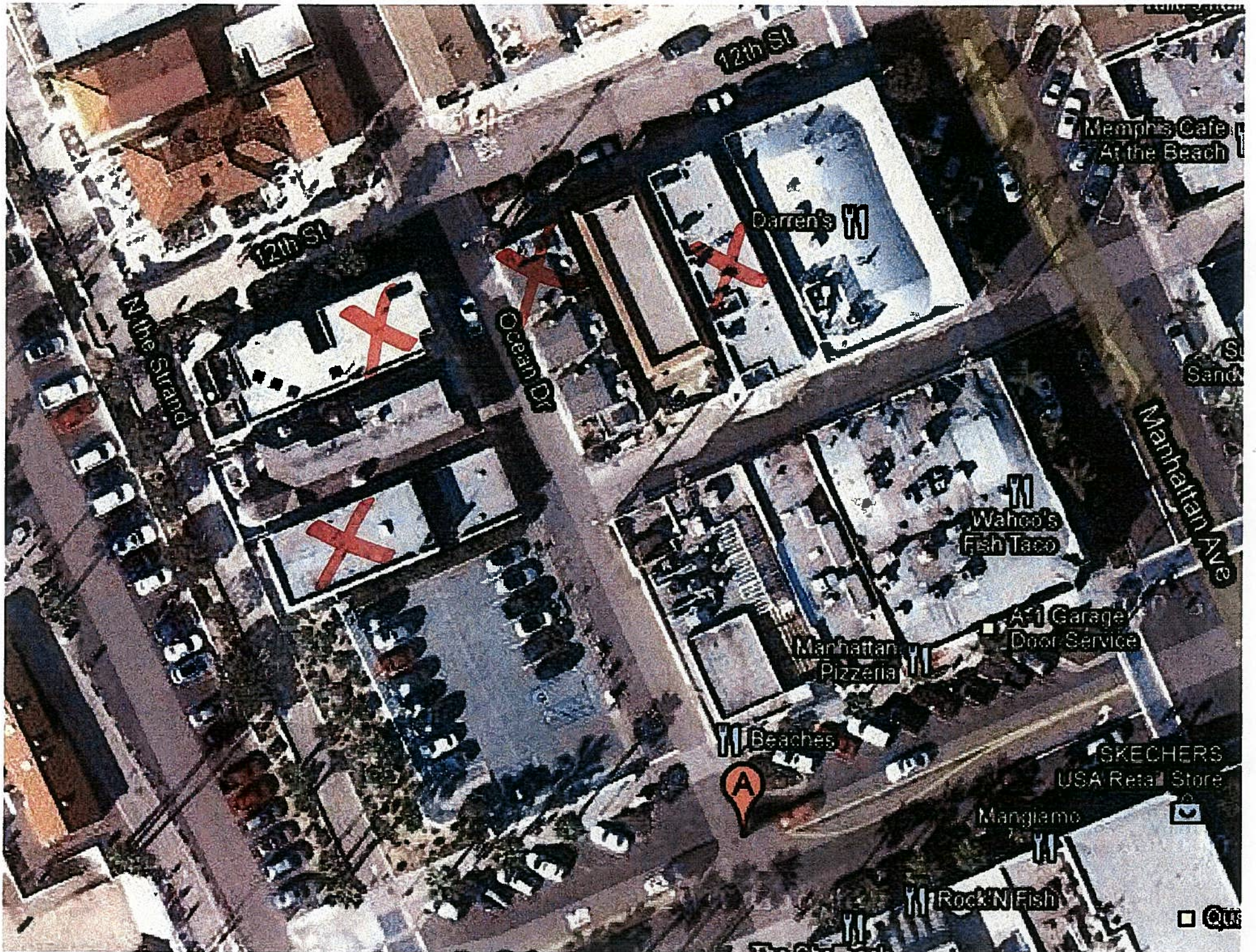
2/23/11

File

Distributed at P.C.

Escondido Office: 960 Canterbury Place, Suite 300 Escondido, CA 92025
Telephone (760) 743-1201 & Facsimile (760) 743-9226

meeting



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Statement Regarding MB Dining's Appeal of PC Resolution No. PC 11-02

A. City Council Jurisdiction and Authority.

1. Encroachment Permit. Applicant is proposing an encroachment for restaurant seating overhanging the public sidewalk on Manhattan Beach Blvd. Any long term encroachment on or over public property can be approved only by the City Council. Mun. C. § 7.36.170 A. The features of such encroachment are briefly discussed below. Applicant understands the City may charge an annual fee for such overhanging encroachments.

2. Conditional Use Permit Issues. The potential of overhanging balconies also indirectly bears on at least one Conditional Use Permit issue considered by the Planning Commission – that is, the overall square feet of dining space. The plans submitted by Applicant (as approved by the Planning Commission) reduce the restaurant's dining area by about 224 square feet. This is due to updating the building's ADA compliance, expanding the kitchen to increase the dining emphasis, and other matters. The proposed balconies are Applicant's preferred means of restoring some of the previously existing capacity.

B. Applicant's Proposal.

Applicant proposes a 60 inch wide encroachment for balconies with up to 200 square feet including 24 seats for dining. That feature would also involve an amendment to the PC Resolution regarding the Conditional Use Permit Application since there would be an increase in the dining area and seating capacity above that reflected in the approved plans referred to in Paragraph 2 of the Resolution. This would not involve any increase from the capacity that existed before this Application.

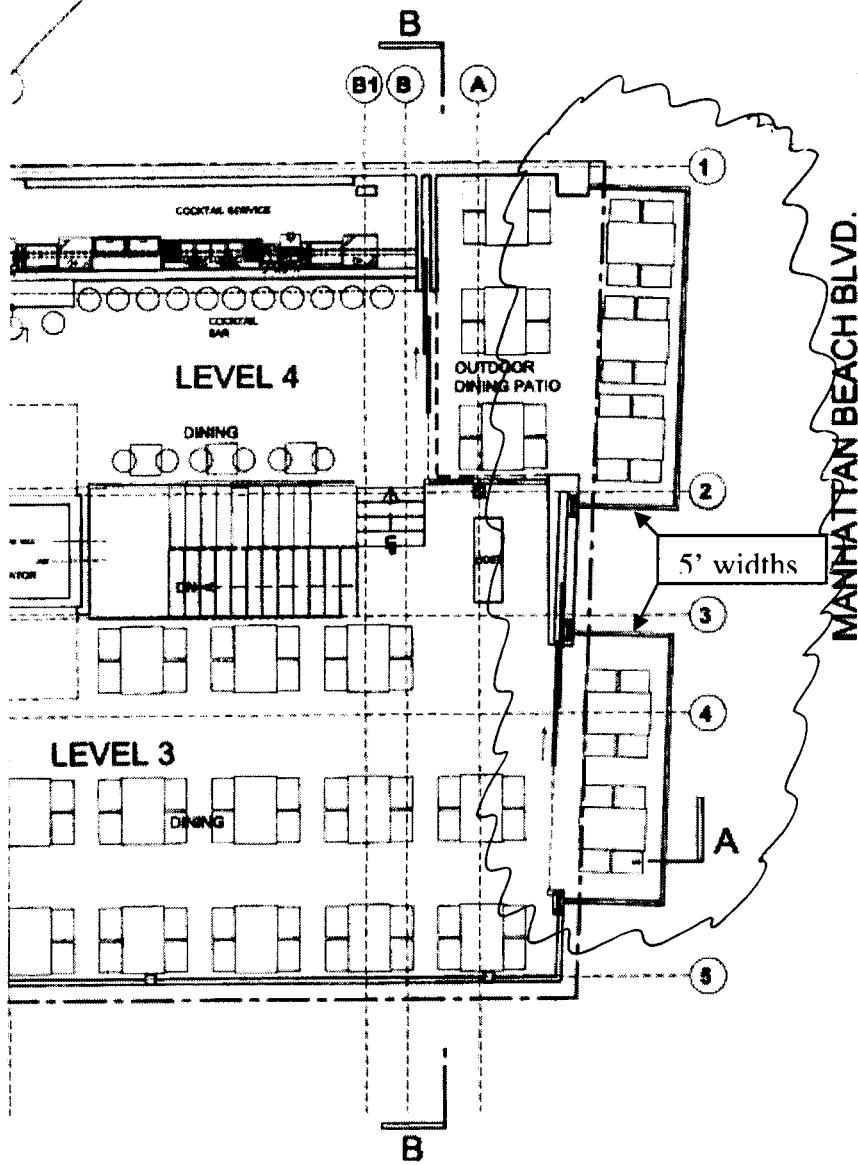
If the City Council does not approve that request, the Applicant proposes an 18 inch decorative projection without restaurant seating. In that event, Applicant will also propose that the restaurant design as submitted and approved by the Planning Commission should be modified in some other way to restore the lost seating capacity.

Mun. C. § 10.16.080 permits outdoor commercial activity in the Downtown Commercial area, including service of food and beverages in order to "encourage visual interest along commercial streets and support the business community." This property is uniquely located on Manhattan Beach Boulevard, immediately adjoining the Pier and the Strand. No other property in the City offers the same opportunity for "visual interest" for City residents and visitors. Moreover, the proposed balcony amounts to a visual extension of an overhanging encroachment currently existing on the adjoining property where Diane's Bikinis is located.

It is common in that central commercial area for dining establishments to be set up for service on the public right of way. The requested 60 inch encroachment fits very well within this established policy and practice. Moreover, due to the height of the balconies, they will not impede pedestrian traffic.

117 Manhattan Beach Blvd Appeal

5-Foot Wide Balcony Dining Encroachments



Angela Soo

From: Laurie B. Jester
Sent: Tuesday, March 29, 2011 3:59 PM
To: Angela Soo
Subject: FW: MB Dining: April 5 agenda
Attachments: Letter for MB Dining.pdf

For Strata Council appeal

Laurie B. Jester
Planning Manager
P: (310) 802-5510
E: ljester@citymb.info



From: John Strain [<mailto:jstrain@ustaxlawyer.com>]
Sent: Tuesday, March 29, 2011 3:37 PM
To: Richard Thompson; Laurie B. Jester; Eric Haaland
Cc: Mike Zislis; Heath Gregory
Subject: FW: MB Dining: April 5 agenda

I am forwarding a copy of an email (and attached letter) that I just sent to the City Council. I will also send this to the Planning Commission members, since it involves an appeal from their determination.

John Strain

From: John Strain
Sent: Tuesday, March 29, 2011 3:17 PM
To: 'CityCouncil@citymb.info'
Subject: MB Dining: April 5 agenda

Dear Council Members:

Don McPherson recently sent you an email stating the grounds for his Appeal regarding the pending CUP Application from MB Dining, LLC. Erroneous assertions in his email required a written response from the Applicant. That is attached.

Best Regards,

John A. Strain

LAW OFFICES OF JOHN A. STRAIN
321 12th Street, Suite 101

Law Offices of John A. Strain

A Professional Corporation

*Certified Specialist Taxation Law

California Board of Legal Specialization

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www.ustaxlawyer.com

March 29, 2011

9085.007

By Email

Manhattan Beach City Council
Manhattan Beach, California

Re: *Resolution PC 11-02*
City Council Meeting of April 5

Dear Council Members:

On behalf of MB Dining, LLC, this letter briefly responds to Don McPherson's letter dated 9 March 2011 (and its enclosure) which appealed Resolution PC 11-02. His claims simply do not fit the facts of this case.

The subject property has operated as a restaurant and bar for at least 40 years. The changes under the pending Application place greater emphasis on upscale dining uses of the property in a manner that fits very well within the City's land use rules and the interests of the City and its residents as a whole. The Planning Commission properly found that the changes approved by Resolution PC 11-02 diminish the intensity of the use of this property. Still, Mr. McPherson repeatedly asserts that this Application involves an "intensification" of use, by inaccurately stating the terms of the Application and by highlighting certain details without noting counter-balancing features. In fact, the Resolution does not permit "intensification" of use of this property.

Here are our responses to specific allegations in Mr. McPherson's appeal:

"Resolution PC 11-02 Enables an Open Air Nightclub." The premises will offer alcohol service on all of its levels and will be open for dining and for lounge activities in evening hours, but these facts have been true at the premises for decades. The building plans submitted by the Applicant, and the long history of the Applicant's principals as restaurant operators, clearly show that there will be an increased focus on dining. While the Resolution authorizes "open air" dining, this is encouraged by City rules and avidly desired by our residents. Resolution PC 11-02 imposes new use restrictions that will decrease the overall noise levels – especially in later hours. The "open air" element of the property is actually reduced by eliminating the retractable roof that has existed for years and by requiring doors and windows to be closed during dancing hours. Indeed, terms of the Resolution prohibiting operable windows on the ocean side of the premises are a disservice to our community and should be reconsidered by the City Council.

“Resolution PC 11-02 violated LCP requirement for Coastal Development Permit.” This claim is based entirely on Mr. McPherson’s erroneous conclusion that the changes under the Resolution intensify the use of the premises. The Resolution does authorize dancing on 104 additional days per year (i.e., all Thursdays and Sundays), but only because it takes away “events” on 120 days (and requires earlier closing times on these 104 days). The decision not to adopt Mr. McPherson’s unique new definition of “closed” is not an intensification of use.

“Potential noise ordinance violations.” On this point, Mr. McPherson clearly shows that he simply wants to decrease City nightlife in general, including the level of activity that has been permitted at this location for decades. The Municipal Code already contains both “objective” (decibel measured) and “subjective” (reasonable person) restrictions that apply uniformly to all commercial properties in the City. Nothing in City rules or prior practices remotely supports the sorts or pre-approval sound testing and verification that he seeks. This particular property – at the base of the pier – is the last place that should be singled out for new restrictions against activities of the public.

“Reso PC 11-02 Sets City Policy for Restaurant/Bar Closing Time, without Public Notice/Input.” The Resolution simply uses natural terms, such as “hours of operation” that are in standard use in the City and exactly as they are used in the previously existing CUP for this property. Rather than setting new policy, this simply follows well established Municipal Code rules and CUP practices.

“Staff misled the PC that the Ent. Permit can regulate hours of activities or operations.” The Municipal Code clearly anticipates that any noise concerns will be addressed either by enforcement of generally applicable Code nuisance rules or by terms of Entertainment Permits. If Mr. McPherson believes the City should require expansive pre-development noise testing, he should propose such changes to the Municipal Code.

“CEQA requires an initial study for Strata, relative to cumulative impacts from downtown bars.” Mr. McPherson’s CEQA claim is based on his unsupported allegation that there is an increase in intensity of use (and thus environmental impacts) as a result of this amendment. With the support of the City Attorney, the Planning Commission appropriately concluded that this is not true.

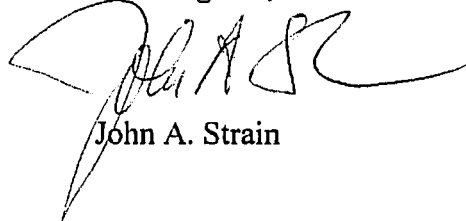
“Accelerated Schedule for Strata construction and permits impacted commissioners’ decisions.” The Applicant, on its own initiative and at its own expense, obtained a sound study from a respected independent firm. Since there is no requirement for any such study, there are no grounds to complain about short notice.

“At the Feb 23 hearing, commissioners did not disclose communications regarding Strata.” MB Dining agrees that there should be municipal transparency, but there is no basis for a conspiracy theory in the City of Manhattan Beach. This is an above board and routine example of the City approval process.

Manhattan Beach City Council
March 29, 2011
Page 3

We look forward to a final resolution of this matter on April 5.

Best Regards,

A handwritten signature in black ink, appearing to read 'John A. Strain', written over the printed name below it.

John A. Strain

JAS;dmd

cc: Mr. Richard Thompson
Ms. Laurie Jester
Planning Commission
Mr. Michael A. Zislis
Mr. Heath Gregory

Don McPherson
1014 1st St
Manhattan Beach CA 90266

Tel: 310.372.2774
Cell: 310.487.0383
Fax: 310.372.2539
Email: dmcphersonla@gmail.com

9 March 2011

2011 MAR -9 11:2:17

Lisa Tamura, City Clerk
City of Manhattan Beach
1400 Highland Ave
Manhattan Beach CA 90266

Subject: Appeal of Resolution PC 11-02 for Strata, 117 Manhattan Beach Blvd

Please find the attached subject appeal.

The grounds are so numerous, that I document them in outline form, attached Exhibit A.

I do not oppose the restaurant, but rather the expansion of the nightclub operation. Therefore, at the appeal hearing, I will submit a redlined version of Resolution PC 11-02, which will prevent Strata from becoming a public nuisance.

Although Exhibit A appears rather dense, one can scan the bolded outline headings to obtain an overview of the grounds for the appeal.

In the event that the applicant withdraws their application for a use permit amendment, then this filing becomes an appeal to the planning commission, for all permits approved by the Director of Community Development for the Strata renovation.

The expiry stated in the municipal code for appeals of approvals by the Director of Community Development has no validity. Please refer to McPherson vs. City of Manhattan Beach (2000) 78 Cal. App. 4th 1252.

Thanks,



Don McPherson
1014 1st St, Manhattan Beach CA 90266
310.487.0383
dmcphersonla@gmail.com

Attachment: Exhibit A. Grounds for Appeal of Strata Resolution PC 11-02

EXHIBIT E
CC MTG 4-5-11

EXHIBIT A. GROUNDS FOR APPEAL OF STRATA RESOLUTION PC 11-02

Resolution PC 11-02 Enables an Open Air Nightclub

- **Three of four levels focus on bar, cocktail lounge and entertainment activities**
 - ◆ Level 1 constitutes a cocktail lounge, with entertainment
 - ◆ Level 2 constitutes a sports bar
 - ◆ Level 3 will transform from dining to cocktail lounge late at night
 - ◆ Level 4 constitutes a bar, opening to an outdoor pation
 - ◆ All four levels expose MB Blvd and the pier to nightclub noise until closing time
- **Reso PC 11-02 grants an entitlement for an outdoor nightclub, without concessions**
 - ◆ The current use permit requires all enclosed activities within an enclosed building
 - ◆ Reso PC 11-02 eliminates that condition
 - ◆ Reso PC 11-02 requires no concessions for this intensifying outdoor entitlement

Resolution PC 11-02 violates LCP requirement for coastal development permit (CDP)

Changes in entitlements will increase intensity and require CDP [LCP A.96.050 (B)(1)]

- ◆ Effective closing time increased one hour after stated time, as per PC adoption of applicants' definition for 'closed' (See 'Closed Policy' below)
 - ◆ 104 additional days of dancing on Thu and Sun
 - ◆ PC claim invalid, that Sun-Thu midnight closing offsets 104 more dancing days; PC adopted applicants' definition of 'closed', which extends 'premises vacant' to 1 AM
 - ◆ Deletion of railing that physically restricts dance floor to the permitted area
 - ◆ **Applicant Appeal:** Balconies with dining tables, encroaching into MB Blvd
 - ◆ Increase in operating hours, by 8 AM weekday opening, versus current 10 AM
 - ◆ Diners and their noise adjacent to sidewalk, from openable south façade facing MB Blvd public right of way, even if in compliance with noise ordinance.
- **Changes in entitlements will decrease parking availability [LCP A.96.040]**
 - ◆ 104 additional days of dancing on Thu and Sun will reduce evening beach parking
 - ◆ Two-hour earlier opening on weekdays will reduce morning beach parking
 - ◆ Cumulative increases in intensity increases patronage and will reduce beach parking
 - ◆ No entitlement concessions proposed to offset reduction in parking availability.
 - **Reso PC 11-02 Finding D that Strata project does not increase intensity IS INVALID**
 - ◆ The PC narrowly limited their finding only to intensity from 104 additional days of dancing, offset by reducing hours Sun-Thu from 1 AM to midnight
 - ◆ After the Feb 23 approval of the resolution, staff deleted the provision for alcohol service end, twenty minutes before close, hence removing any specificity for 'closed' definition
 - ◆ Resolution PC 11-02 does not define 'closed'; no documented definition of 'closed' exists
 - ◆ Applicant defined close as last call at stated hour; premises vacated one hour later
 - ◆ Applicant's definition results in effective close Sun-Thu, not at midnight, but 1 AM
 - ◆ Hence, no offsetting intensity reduction exists for 104 additional days of dancing
 - ◆ When making Finding D, the PC did not address other intensifications, except the 104 additional days of dancing, nor did they address reductions in parking availability
 - ◆ Hence, *Finding D is invalid*

EXHIBIT A. GROUNDS FOR APPEAL OF STRATA RESOLUTION PC 11-02

- **Reso PC 11-02 Finding F that Strata project categorically exempt IS INVALID**
 - ◆ See arguments above for Finding D

Potential noise ordinance violations, MBMC 5.48.140 and 5.48.160 (B) and (C)

- **Evidence for potential violations by Strata of the noise ordinance**
 - ◆ Public testimony and MBPD reports attest to the premises formerly causing noise disturbances, as defined in MBMC 5.48.140
 - ◆ Crowd babble from Simmzy's open south façade creates noise in violation of exterior noise standards, MBMC 5.48.160 (B) & (C).
 - ◆ Compared to Simmzy's, Strata has a much larger south façade and far more patrons
- **Applicants' acoustics study of external noise invalidated by deliberately-biased results**
 - ◆ Analysis purported to compare Strata soundproofing performance relative to Beaches
 - ◆ Acoustics consultant modeled Beaches with windows open, a use permit violation
 - ◆ Acoustics analyst testified that modeling Beaches with windows closed would have **significantly reduced the predicted differences**, between Strata and Beaches
 - ◆ **Deliberately-biased modeling rendered the acoustics study results completely invalid**
- **Potential noise violations of open south façade ignored by city and applicant**
 - ◆ Applicant provided no design of mitigation required to reduce crowd babble, from the open south façade, to comply with exterior noise standards, MBMC 5.48.160 (B) & (C).
 - ◆ Acoustics consultant **did not analyze** crowd babble from the open south façade
 - ◆ Acoustics analyst **speculated** in testimony, that crowd babble not significant
- **No verification that Strata soundproofing will conform with the noise ordinance**
 - ◆ Acoustics report states that analysis does not accurately predict exterior noise levels
 - ◆ Acoustics analyst testified that Strata **would not comply** with the MBPD requirement in Resolution PC 11-02, of being inaudible at a range of 75 feet
 - ◆ The architect commissioner stated that the proposed Level 1 and Level 3 windows do not meet the STC 50 standard, required by the International Building Code
 - ◆ Title 10, Planning and Zoning of the municipal code, contains no standards for soundproofing eating and drinking establishments, and therefore, defaults to the International Building Code, Section 1207 Sound Transmission, which requires the sound transmission class, STC 50 (45 dB if field tested.)

Reso PC 11-02 Sets City Policy for Restaurant/Bar Closing Time, without Public Notice/Input

- **City has no documented definition of 'closed'**
 - ◆ Therefore, MBPD cannot enforce closing, without a use-permit definition of 'closed'
 - ◆ According to applicant testimony, downtown bars operate and serve alcohol, after closing time specified in use permits
 - ◆ Hotel surveillance cameras and other MPBD booked-evidence show that Shade Hotel served alcohol for over an hour past use-permit cutoff and nearly an hour after close
 - ◆ At the Feb 23 hearing, in response to PC question of city definition for 'closed'; staffer Eric Haaland replied, 'premises vacated.'

EXHIBIT A. GROUNDS FOR APPEAL OF STRATA RESOLUTION PC 11-02

- **The PC applied different standards for Strata and Shade, for the closing-time condition**
 - ◆ Shade and Strata have nightclub operations adjacent to residences, with Strata closer
 - ◆ The current PC imposed a strict definition on Shade closing, excerpted as follows:
All members of the general public, including special event and function guests who are not registered guests, shall be out of the hotel. In the Zinc bar and lobby, terrace, courtyard, skydeck and all public areas, without exception, on or before closing, staff shall collect all glasses, bottles, cans, and drinks, including from registered guests, to comply with the ABC definition of closed, as "no sale, service, or consumption of alcoholic beverages."
 - ◆ For Strata, the PC rejected their definition of 'closed' imposed on Shade Hotel
 - ◆ The PC broadly described 'closed' for Strata as consistent other downtown bars, which violate staff's definition of 'closed', as per the applicant
 - ◆ At the Jan 26 and Feb 23 hearings, the applicant described 'closed' as end of alcohol service at specified closing time and premises vacated one hour later
 - ◆ By default, the PC adopted for Strata the applicant's definition of 'closed'
- **Resolution PC 11-02 changes the city policy and practice on definition of 'closed', to differ from staff's previous definition, as 'premises vacated', without public notice or input**

Staff misled the PC regarding scope of the entertainment permit to regulate Strata

- **The entertainment permit ordinance, at MBMC 4.20.080, strictly limits its scope**
 - ◆ The PC adopted staff's recommendation to relegate all noise matters, including noise mitigation design, to the entertainment permit ('Ent. Permit')
 - ◆ The *Ent. Permit*, at MBMC 4.20.080, can only "...regulate the operation and conduct of the applicant's business or activities...", so cannot dictate physical noise mitigation
 - ◆ As result, the PC approved no drawings, specifications or requirements for noise mitigation design, as they did for Shade Hotel
 - ◆ Resolution PC 11-02 contains no requirements for noise mitigation, other than compliance with the noise ordinance
 - ◆ At the 26 Jan 2011 city meeting regarding the Sharkeez move to 3505 Highland Ave, the city code enforcement officer stated that they do not enforce the noise ordinance
 - ◆ As result, Strata has no requirements for noise mitigation, nor will the city abate noise disturbances as public nuisances
- **Staff misled the PC that the *Ent. Permit* can regulate hours of activities or operations**
 - ◆ In the *Ent. Permit* ordinance, MBMC 4.20.090 provides an exception, that for establishments with use permits, hours in those use permits establish hours for entertainment
 - ◆ Staff stated that the *Ent. Permit* would regulate closure of roll-up windows
 - ◆ Resolution PC 11-02 has no provision to permit regulation by the *Ent. Permit* of roll-up window operation, or any other of the extensive activities cited by staff
 - ◆ Staff misled the PC that the *Ent. Permit* would regulate roll-up window closure at night
 - ◆ Staff further overruled the PC, by reinstating in the use permit, the 8 AM weekday opening, as an exception permitted by the *Ent. Permit*

EXHIBIT A. GROUNDS FOR APPEAL OF STRATA RESOLUTION PC 11-02

- **The PC stipulated many conditions that staff claimed the *Ent. Permit* would include**
 - ◆ Staff **did not** submit a draft initial *Ent. Permit* for the PC to review and approve
 - ◆ Resolution PC 11-02 **does not** include any of the PC's decisions for the *Ent. Permit*

CEQA requires an initial study for Strata, relative to cumulative impacts from downtown bars

- **Downtown bars operate past closing hours and violate the noise ordinance**
 - ◆ Sound level measurements submitted for the Feb 23 hearing prove downtown bars violate the noise ordinance
 - ◆ The applicant's testimony stated downtown bars violate closing hours, as defined by staff
 - ◆ MBPD booked evidence proves that the applicant's Shade Hotel violated closing hours
 - ◆ The above three facts establish a cumulative increase in environmental impact by bars
- **Compared to a typical MB Blvd bar, Strata quadruples both open frontage and patrons**
 - ◆ Strata will significantly add to the cumulative environmental impact cited above
 - ◆ Resolution PC 11-02 violates CEQA, by not mitigating cumulative environmental impact

Accelerated schedule for Strata construction and permits impacted commissioners' decisions

- **Applicant delayed application for conditional use permit (CUP)**
 - ◆ Detailed "Drawings for Conditional Use Permit Application" dated 13 Jan 2010
 - ◆ Secretary of State record for MB Dining LLC dated 16 Jul 2010
 - ◆ Alcohol license transfer, Form ABC 211, filed 26 Jul 2010 by MB Dining LLC (William Bloomfield and Joanne Bloomfield Hunter)
 - ◆ **Application for CUP filed 27 Oct 2010**
 - ◆ Demolition/Construction started prior to first CUP hearing, 26 Jan 2011
 - ◆ Applicant's acoustics study delivered hours before 23 Feb 2011 hearing
 - ◆ Strata project scheduled for completion by June 2011
- **At 23 Feb hearing, PC did not have the facts regarding potential noise violations**
 - ◆ At the Jan 26 hearing, a commissioner requested an acoustics study
 - ◆ Applicant submitted an acoustics study only hours before Feb 23 hearing commenced
 - ◆ Project planner Eric Haaland testified he had not reviewed the study
 - ◆ Planning Manager Laurie Jester testified she had reviewed the study and certified its completeness and accuracy
 - ◆ Appellant submitted to the PC on Feb 22 a review of the study, concluding it had biased the results to make Strata noise suppression appear more effective than Beaches
 - ◆ At the Feb 23 hearing, the acoustics analyst concurred that the study significantly overestimated the difference in exterior noise levels between Strata and Beaches
 - ◆ The aforementioned commissioner, who requested the noise study, opined that they needed a more comprehensive acoustics study, but that the applicants' June 2011 deadline for construction completion precluded any further acoustics analysis

EXHIBIT A. GROUNDS FOR APPEAL OF STRATA RESOLUTION PC 11-02

At the Feb 23 hearing, commissioners did not disclose communications regarding Strata

- **City policy dictates disclosures by commissioners of all contacts regarding Strata**
 - ◆ Planning commissioners routinely make such disclosures before all public hearings
 - ◆ With one exception, at the Feb 23 hearing, no commissioner addressed disclosures
 - ◆ Two commissioners ran for city council during the Strata public hearings
 - ◆ One commissioner had a previous relationship with the acoustics consultant Behrens
 - ◆ Commissioners' statements at the Jan 26 and Feb 23 hearings, regarding issues such as closing time, indicate material differences not supported by facts available to the public
- **Commissioners must declare any contact regarding Strata, prior to the Feb 23 hearing**
 - ◆ To allay any doubts regarding conflict of interest, the commissioners must provide declarations of contacts regarding Strata, occurring before the Feb 23 hearing.

Angela Soo

From: Laurie B. Jester
Sent: Tuesday, March 29, 2011 5:41 PM
To: Eric Haaland
Cc: Angela Soo
Subject: FW: Public Records Request for Strata Appeal Hearing, April 5
Attachments: 110128-ExhibitA-MBPD-CallLog-Format.pdf; 110128-ExhibitB-MBPD-ReportFormat.pdf; 110126-PC-Strata-StaffReport-ClosingHours.pdf

This e-mail– the attachments and responses needs to be part of the CC packet

Laurie B. Jester
Planning Manager

P: (310) 802-5510

E: ljester@citymb.info



Please consider the environment before printing this email.

From: Don McPherson [<mailto:dmcphersonla@gmail.com>]
Sent: Tuesday, March 22, 2011 8:59 PM
To: Liza Tamura
Cc: Beverly Palmer; Felix Tinkov; Eric Haaland; Richard Thompson; Laurie B. Jester; Rod Uyeda
Subject: Public Records Request for Strata Appeal Hearing, April 5

Liza Tamura, City Clerk
City of Manhattan Beach
Via Email

Subject: Public Records Request for April 5 Appeal, Strata, 117 Manhattan Beach Blvd

Liza,

Please provide these records no later than April 1.

1. Revised encroachment section in the Local Coastal Program. Angela has spoken about this to my attorney, Beverly Palmer.
2. The third attachment provides the city list of closing times for downtown restaurant/bars. Please have Community Development summarize the history of closing-time changes for these premises, as well as those in the North End, such as Harvey Wallbangers, which had hours reduced from the former liquor store 2 AM closing. The planning commission requested this information at the Feb 23 PC hearing on Strata, but did not get it. Eric Haaland will know what I want.

4. Annual entertainment permits issued by the city to the Strata premises, from 1994 to present

5. MBPD records for the Strata premises during the past five years, as follows:

- Call log (see format in attached example, Exhibit A)
- Police reports, if any, for items in call log indicating a report (see format in attached example, Exhibit B)
- For above reports, in DVD form, audio and video media booked as evidence
- Police reports, including booked evidence, for citations of patrons in vicinity of the subject premises, in incidents for which the premises had a material involvement.

I had made a request for some of this material on Jan 28, such as the MBPD records, but as we discussed, apparently it got lost.

Thanks,

Don McPherson

1014 1st St, Manhattan Beach CA 90266

310.487.0383

dmcphersonla@gmail.com

EXHIBIT A: MBPD CALL LOG FORMAT

| Call No | Report No | Received Date | Priority | Call Type | Unit ID | Disposition | Jurisdiction | Location |
|-----------|-----------|---------------|----------|-----------|---------|-------------|--------------|------------------|
| 051820230 | | 07/01/2005 | 2 | 415 | 2L3D | ADAST | MB | 1221 N VALLEY DR |
| 053160160 | | 11/12/2005 | 2 | 415 | 2L2D | ADAST | MB | 1221 N VALLEY DR |
| 053170365 | | 11/13/2005 | 2 | 415 | 2L2D | ADAST | MB | 1221 N VALLEY DR |
| 053510016 | | 12/17/2005 | 2 | 415 | 2K6 | OTHER | MB | 1221 N VALLEY DR |
| 060340077 | | 02/03/2006 | 2 | 415 | 2L3M | ADAST | MB | 1221 N VALLEY DR |
| 060700485 | | 03/11/2006 | 2 | 415 | | | MB | 1221 N VALLEY DR |
| 061080561 | | 04/18/2006 | 2 | 415 | 2L2M | SECURE | MB | 1221 N VALLEY DR |
| 061100488 | | 04/20/2006 | 2 | 415 | 2L3S | ADAST | MB | 1221 N VALLEY DR |
| 061290583 | | 05/09/2006 | 2 | 415 | 2L2M | ADAST | MB | 1221 N VALLEY DR |
| 061480740 | 06-1942 | 05/28/2006 | 2 | 415 | 2L1M | CMC | MB | 1221 N VALLEY DR |
| 061490546 | | 05/29/2006 | 2 | 415 | 2L4S | ADAST | MB | 1221 N VALLEY DR |
| 061730529 | | 06/22/2006 | 2 | 415 | 2L1S | ADAST | MB | 1221 N VALLEY DR |
| 061830052 | | 07/02/2006 | 2 | 415 | 2L3M | ADAST | MB | 1221 N VALLEY DR |
| 061960624 | | 07/15/2006 | 2 | 415 | 2L2S | ADAST | MB | 1221 N VALLEY DR |
| 061960707 | 06-2752 | 07/15/2006 | 2 | 415 | 2A4S | BKG | MB | 1221 N VALLEY DR |
| 062090710 | | 07/28/2006 | 2 | 415 | 2L3S | ADAST | MB | 1221 N VALLEY DR |
| 062570650 | | 09/14/2006 | 2 | 415 | 2L3M | ADAST | MB | 1221 N VALLEY DR |
| 063150593 | | 11/11/2006 | 2 | 415 | 2L5S | NRD | MB | 1221 N VALLEY DR |
| 063500575 | | 12/16/2006 | 2 | 415 | 2L3S | ADAST | MB | 1221 N VALLEY DR |
| 070270318 | | 01/27/2007 | 2 | 415 | 2L3D | NRD | MB | 1221 N VALLEY DR |
| 070460341 | | 02/15/2007 | 2 | 415 | 2L2D | ADAST | MB | 1221 N VALLEY DR |
| 070620498 | | 03/03/2007 | 2 | 415 | 2L3S | ADAST | MB | 1221 N VALLEY DR |
| 070630500 | | 03/04/2007 | 2 | 415 | 2L1S | ADAST | MB | 1221 N VALLEY DR |
| 070630531 | | 03/04/2007 | 2 | 415 | 2L3S | ADAST | MB | 1221 N VALLEY DR |

EXHIBIT B: POLICE REPORT FORMAT

MANHATTAN BEACH POLICE DEPARTMENT

| | | | | | | |
|-------|---|-------------|------|-------------------------------|---------------------------|---------------------------------|
| CRIME | 1 DATE & TIME RPTD. 9-27-09 1951 | 2 BEAT 3 | 3 RD | CAO 1944 | 4 INCIDENT 633 | 5 DR 09-4072 |
| | 6 CRIME OR INCIDENT INFORMATION REPORT - NOISE COMPLAINT | | | 7 DATE(S) OCCURRED 9-27-09 | 8 DAY(S) OCCURRED SUN. | 9 TIME(S) OCCURRED 1951 |
| | 10 ADDRESS OR LOCATION 1221 VALLEY DR. | | | 11 BUSINESS NAME SHADE | | 12 PREMISES/VEHICLE SECURED BY: |

| | | | | | | | | | | |
|---|--|-------------------------------------|--------------------------------------|--|---|---|---|-----------|--------------|-----------|
| VICTIM | 13 VICTIM'S NAME (LAST, FIRST, MIDDLE) | | | RESIDENCE ADDRESS | CITY | STATE | ZIP | RES PHONE | | |
| | SEX | RACE | DOB | BUSINESS NAME AND ADDRESS | | | WORK HOURS | DAYS OFF | BUS PHONE | |
| | V. | RP | 14 NAME (LAST, FIRST, MIDDLE) | | | RESIDENCE ADDRESS | CITY | STATE | ZIP | RES PHONE |
| | W. | DC | WIBLE, STEVE | | | 1212 ARDMORE AVE. MB | CA | 90266 | 310-545-6331 | |
| | SEX | RACE | DOB | BUSINESS NAME AND ADDRESS | | | WORK HOURS | DAYS OFF | BUS PHONE | |
| | M | W | 4-4-47 | | | | | | 310-666-7089 | |
| WITNESSES | 15 NAME (LAST, FIRST, MIDDLE) | | | RESIDENCE ADDRESS | CITY | STATE | ZIP | RES PHONE | | |
| | W. | DC | ZISLIS, MIKE | | | | | | 310-704-8507 | |
| | SEX | RACE | DOB | BUSINESS NAME AND ADDRESS | | | WORK HOURS | DAYS OFF | BUS PHONE | |
| | M | W | | SHADE HOTEL 1221 VALLEY DR. MB 90266 | | | | | | |
| | 16 SECURITY CHECK REQ | | 17 SECURITY SYSTEMS | | | 18 PRELIMINARY INVESTIGATION | | | | |
| | <input type="checkbox"/> VICTIM <input type="checkbox"/> OTHER | <input type="checkbox"/> ALARM | <input type="checkbox"/> CRIME WATCH | <input type="checkbox"/> OPERATION ID | <input type="checkbox"/> AREA CHECKED | <input type="checkbox"/> NEIGHBORS CONTACTED | <input checked="" type="checkbox"/> VICTIM(S) CONTACTED | | | |
| <input type="checkbox"/> WITNESS | <input type="checkbox"/> CAMERA | <input type="checkbox"/> FENCE/BARS | | <input type="checkbox"/> DUSTED FOR PRINTS | <input type="checkbox"/> TIRE/SHOE TRACKS | <input checked="" type="checkbox"/> WITNESSES CONTACTED | | | | |
| 19 <input type="checkbox"/> BOAT <input type="checkbox"/> VEHICLE | LICENSE/CF NO | YEAR | MAKE | MODEL | BODY STYLE | COLOR | | | | |

| | | | | | |
|--|--|-----------------------|------------------------|----------------------------|-------------------------|
| MO FA CT OR S | 20 STRUCTURE | 21 AREA | 23 POINT OF ENTRY | 24 METHOD OF ENTRY | 25 SUSPECT ACTIONS |
| | RESIDENTIAL | 1 BEACH/OCEAN | 1 UNKNOWN | 0 UNKNOWN | 0 NO LOSS |
| | <input type="checkbox"/> 1 APARTMENT | 2 COMMERCIAL | 2 FRONT | 1 ATTEMPT ONLY | 1 ALARM DISABLED |
| | <input type="checkbox"/> 2 CONDOMINIUM | 3 HARBOR/PIER | 3 REAR | 2 BODILY FORCE | 2 ALCOHOL ON BREATH |
| | <input type="checkbox"/> 3 DUPLEX | 4 PARK/YARD | 4 SIDE | 3 HID IN BUILDING | 3 ATE/DRANK ON PREMISES |
| | <input type="checkbox"/> 4 MOBILE HOME | 5 PARKING LOT | 5 GROUND LEVEL | 4 KICKED | 4 CASSED LOCATION |
| | <input type="checkbox"/> 5 SINGLE FAMILY | 6 RESIDENTIAL | 6 UPPER LEVEL | 5 KNOB TWIST | 5 CASH DEMANDED |
| | <input type="checkbox"/> 6 TOWN HOUSE | 7 SHOPPING CENTER | 7 ADJACENT BUILDING | 6 LOCK BOX | 6 CAT BURGLAR |
| | COMMERCIAL | 8 STREET/ALLEY | 8 BASEMENT | 7 LOCK CUT/BROKEN | 7 DEFECATED |
| | <input type="checkbox"/> 10 BANK/FINANCE | 9 DOOR | 9 DUCT/VENT | 8 LOCK PICKED | 8 DEMAND NOTE USED |
| <input checked="" type="checkbox"/> 11 BAR | 10 FLOOR | 11 FLOOR | 9 LOCK PUNCHED | 9 EXIT PREPARED | |
| <input type="checkbox"/> 12 BUSINESS OFFICE | 12 GARAGE | 12 GARAGE | 10 LOCK SLIPPED | 10 GLOVES WORN | |
| <input type="checkbox"/> 13 ENTERTAIN/RECREATION | 13 LOUVRE | 13 LOUVRE | 11 OPEN/UNLOCKED | 11 KNEW LOC OF HIDDEN CASH | |
| <input type="checkbox"/> 14 FAST FOOD | 14 PET DOOR | 14 PET DOOR | 12 PRIED | 12 LOOKOUT USED | |
| <input type="checkbox"/> 15 GAS/AUTO REPAIR | 15 ROOF | 15 ROOF | 13 REMOVED | 13 MASK WORN/FACE HIDDEN | |
| <input checked="" type="checkbox"/> 16 HOTEL/MOTEL | 16 SLIDING GLASS DOOR | 16 SLIDING GLASS DOOR | 14 SMASHED | 14 MATCHES USED FOR LIGHT | |
| <input type="checkbox"/> 17 INDUS/MFG/WHSE. | 17 WALL | 17 WALL | 15 TUNNELED | 15 MASTURBATED | |
| <input type="checkbox"/> 18 JEWELRY/COIN/PAWN | 18 WINDOW | 18 WINDOW | TOOLS USED | 16 MULT SUSPECTS INDICATED | |
| <input type="checkbox"/> 19 LIQUOR STORE | 22 TARGET | VEHICLE ONLY | 20 UNKNOWN | 17 PHONE DISABLED | |
| <input type="checkbox"/> 20 MARKET | 1 ATTIC | 23 CONVERTIBLE TOP | 21 BOLT CUTTER | 18 PILLOWCASE TAKEN/USED | |
| <input type="checkbox"/> 21 MINI MART | 2 BASEMENT | 24 DOOR | 22 BRICK/ROCK | 19 POWER DISABLED | |
| <input type="checkbox"/> 22 PHARM/MEDICAL/DENTAL | 3 BATHROOM | 25 HOOD | 23 CHANNEL LOCK/PLIERS | 20 PRETENDED TO BE: | |
| <input checked="" type="checkbox"/> 23 RESTAURANT | 4 BEDROOM | 26 SUNROOF | 24 GLASS CUTTER | 21 RANSACKED | |
| <input type="checkbox"/> 24 RETAIL GOODS | 5 CASH REG/DRAWER | 27 TRUNK | 25 HANGER/SLIP DEVICE | 22 SELECTIVE IN LOOT | |
| <input type="checkbox"/> 25 RETAIL SERVICES | 6 COIN OP MACHINE | 28 WINDOWING | 26 KEY | 23 SMOKED ON PREMISES | |
| <input type="checkbox"/> 26 SCHOOL/PUBLIC BUILDING | 7 CUSTOMER | 29 WINDOW | 27 PRY TOOL | 24 TOOK ONLY TV/STereo | |
| <input type="checkbox"/> 27 VEHICLE | 8 DINING ROOM | | 28 SLIM JIM | 25 TOOK ONLY MONEY | |
| | 9 DISPLAY ITEMS | | | 26 TOOK ONLY CONCEALABLES | |
| | 10 FAMILY ROOM | | | | |
| | 11 GARAGE/CARPORT | | | | |
| | 12 KITCHEN | | | | |
| | 13 LIVING ROOM | | | | |
| | 14 OWNER/EMPLOYEES | | | | |
| | 15 SAFE/BOX | | | | |
| | 16 STORAGE/SHED | | | | |
| | 17 VENDING MACHINE | | | | |

| | | | | | | | | | | | | | |
|--|--|-------|-----|------|-----|-----|-----|--|------|-----------------------|-------|------------|-------|
| SUSPECT IN FO | 26 SUSPECT NO. 1 (LAST, FIRST, MIDDLE) | (AKA) | SEX | RACE | AGE | HT. | WT. | BUILD | HAIR | EYES | DOB | | |
| | SUSPECT'S ADDRESS, KNOWN HANGOUTS | | | | | | | | | | B- | P/J. | |
| | 27 SUSPECT NO. 2 (LAST, FIRST, MIDDLE) | (AKA) | SEX | RACE | AGE | HT. | WT. | BUILD | HAIR | EYES | DOB | | |
| | SUSPECT'S ADDRESS, KNOWN HANGOUTS | | | | | | | | | | B- | P/J. | |
| 28 VEHICLE | | | | | | | | LICENSE/STATE | YEAR | MAKE | MODEL | BODY STYLE | COLOR |
| ADDITIONAL VEHICLE IDENTIFIERS (DAMAGE, CHROME WHEELS, ETC.) | | | | | | | | 29 VEHICLE IMPOUNDED/LOCATION | | DETECTIVE(S) ASSIGNED | | | |
| | | | | | | | | <input type="checkbox"/> YES <input type="checkbox"/> NO | | N/A | | | |

| | | | | | | | | | | |
|-------------------------|---|--|---|--|--|--|---------------------------|------------|--|------------------|
| REVIEW | 30 SOLVABILITY FACTORS PRESENT | | | | | | 31 CASE SCREENING OFFICER | | | C O P I |
| | <input checked="" type="checkbox"/> 1 WITNESS(ES) | <input type="checkbox"/> 4 DESCRIBED SUSPECT | <input type="checkbox"/> 7 PHYSICAL EVIDENCE | <input type="checkbox"/> ACTIVE <input type="checkbox"/> INACTIVE <input type="checkbox"/> CLOSED | | | 32 RELEASE OK | | | |
| | <input type="checkbox"/> 2 MAJOR INJURY/SEX CRIME | <input type="checkbox"/> 5 NAMED SUSPECT | <input type="checkbox"/> 8 IDENTIFIABLE STOLEN PROPERTY | <input type="checkbox"/> PROPERTY <input type="checkbox"/> REPORT <input type="checkbox"/> VEHICLE | | | | | | |
| 33 OFFICER(S) REPORTING | | SERIAL NO. | DATE | 34 OFFICER(S) OF APPROVAL | | | SERIAL NO. | DOJ | | |
| Cavalone | | 302 | 9-27-09 | Page 1 of 4 | | | 100 | 11/12/2009 | | |

EXHIBIT B: POLICE REPORT FORMAT

Manhattan Beach Police Department Information Report

Source:

On 9-27-09 at 1951 hours, I was detailed to a noise complaint at Shade Hotel, 1221 Valley Dr.

Investigation:

On arrival, I met with Lt. Dye and Sgt. Walker at Valley Dr. / 13th St. I could hear loud amplified music coming from the Shade Hotel. The music was audible from the Police parking lot across the street from the north side of the Shade Hotel. I measured by rototape, and found the distance between the two to be about 220 feet. We activated our MVS and audio recorders and walked to the front of the business. I walked inside, and noticed about ten to fifteen patrons in the bar area of the hotel. They were engaged in normal conversation, and there was no music being played inside the bar. I walked into the courtyard area, and heard loud amplified music being played by a live three member band. There were about thirty subjects inside the courtyard area listening to the band. I spoke to the owner of Shade (Mike Zislis) who stated the following:

Zislis stated in essence an employee of his filed an event notification (see attached) for the live entertainment. He told me the music was for a once a year "Oktoberfest" party. He stated the party was going to end at 9 pm. We advised Zislis the music was too loud and had to be turned down. In addition, it was now 2015 hours and the event notification form indicated the party would end at 2000 hours. Zislis complied and lowered the music. Shortly thereafter the band stopped playing completely.

I left Shade and contacted the reporting party, Steve Wible. While standing in front of Wible's house, I could hear a faint sound of music coming from the area of Shade. Wible told me he first heard loud music coming from Shade at about 1600 hours. He told me the music continued and was loudest at around 1930 hours, shortly before he called to complain. He told me the loud amplified sound was his primary complaint, because he had to turn up the television in his house to drown out the noise. I asked Wible if there was anything else he wanted me to include in the report, and he told me no.

Evidence:

I booked a CD containing three audio recordings from recorders belonging to Lt. Dye and myself into evidence, tag number 42127.

EXHIBIT B: POLICE REPORT FORMAT

MANHATTAN BEACH POLICE PROPERTY TAG

320-23 (09-06)

TAG NO. 42127

ITEM NO.

OK BY

SEARCH WARRANT

DATE

FINAL DISPO

DR NO.

09-4072

BY

DATE

| | | | |
|----------------------------------|--|--|--|
| DISPOSE <input type="checkbox"/> | | | |
| RELEASE TO: | | | |
| DISPOSE <input type="checkbox"/> | | | |
| RELEASE TO: | | | |
| DISPOSE <input type="checkbox"/> | | | |
| RELEASE TO: | | | |

MANHATTAN BEACH POLICE - PROPERTY TAG LAB RECEIPT # _____

NAME OF OWNER VICTIM FINDER SUSPECT UNKNOWN

NAME: SHADE HOTEL TEL NO. _____

ADDRESS 1221 VALLEY DR.

CITY MB ZIP 90266

1. DVD CONTAINING AUDIO FILES

2. _____

3. _____

4. _____

PHYSICAL EVIDENCE FOUND PROPERTY PROPERTY FOR SAFEKEEPING PROPERTY FOR DESTRUCTION

CRIME CODE INFO. REPORT DR NO. 09-4072

CRIME CLASS _____ FEL MISD OTHER

EMPLOYEE Cavallone DATE 9-27-09 TIME 2220

| | | |
|------------------------------------|--------------|--------------|
| CARD SENT <input type="checkbox"/> | DATE MAILED | |
| TO COURT | TO COURT | TO COURT |
| OUT TO: | | |
| DATE: | | |
| IN FROM: | | |
| DATE: | | |
| TO CRIME LAB | TO CRIME LAB | TO CRIME LAB |
| OUT TO: | | |
| DATE: | | |
| IN FROM: | | |
| DATE: | | |
| TO OTHER | TO OTHER | TO OTHER |
| OUT TO: | | |
| DATE: | | |
| IN FROM: | | |
| DATE: | | |
| PROP ROOM | BIN NO. | |

42127

REVIEW DATE:

FILED BY _____

APPROVED _____

25 of 33 DOWNTOWN PREMISES CLOSE BY MIDNIGHT, SUN - THU

| SURVEY OF DOWNTOWN EATING AND DRINKING ESTABLISHMENTS | | | | | CLOSING HOURS SUN - THU |
|---|---------------------------|--|-----------------------|---------------------|-----------------------------------|
| Establishment | Address | Hours of Operation | Alcohol License | Reso. # | |
| 900 Manhattan Club/Sidedoor | 900 Manhattan Ave. | M-Th 11am-12 am F 11am-1 am Sat 9am-12am Sun 9am-12am | Full Liquor | CC Reso. 5155 | 10 PM -12 AM Sun - Thu |
| Crème de la Crepe | 1140 Highland Ave. | Su-Th 6am-10pm F-Sa 6am-11pm | Beer and Wine | 02-14 | |
| Beaches | 117 Manhattan Beach Blvd. | M-F 10am-1am Sa-Sun 8 am-1am | Full Liquor | CC Reso 5087 PC 243 | |
| Café Pierre | 317 Manhattan Beach Blvd. | 9am-1am Daily | Full Liquor | 94-20 | |
| Pasta Pomodoro | 401 Manhattan Beach Blvd. | Sun-Wed 9am-11pm Thu-Sat 7am-12am | Beer and Wine | 03-05 | 11 PM-12 AM Sun - Thu |
| Simmzy's | 229 Manhattan Beach Blvd. | M-Th 6am - 11pm F-Sa 6am-12am | Beer and Wine | 03-20 | |
| El Sombrero | 1005 Manhattan Ave. | Su-Th 7am-11pm F-Sa 7am-12am | Beer and Wine | 07-09 | |
| Ercoles | 1101 Manhattan Ave. | 11am-2am Daily | Full Liquor | 85-32 | |
| Fonzs | 1017 Manhattan Ave. | Su 9am-9pm M-Th 5:30am-10pm F-Sa 5:30am-11pm | Full Liquor | 01-04 | 9 PM-12 AM Sun - Thu |
| Mr. Cecils California Ribs | 1209 Highland Ave. | Sun-Th 7am-11pm F-Sat 7am-12am | Beer and Wine | 99-09 | |
| Hennesseys | 313 Manhattan Beach Blvd. | 11am-2am Daily | Full Liquor | 83-18 | |
| Fusion Sushi | 1150 Morningside Dr. | Su-W 9am -11pm Th-Sa 7am-12am | Full Liquor | 03-05 | 11 PM-12 AM Sun - Thu |
| Kettle | 1138 Highland Ave. | 24 Hours Daily | Beer and Wine | 83-06 | |
| Le Pain Quotidien | 451 Manhattan Beach Blvd. | M-Sun 7 am -7:30 PM- (alcohol 10 am) | Limited beer and wine | 08-08 | 7:30 PM Everyday |
| Mama D's | 1125 A Manhattan Ave. | 7am-2am Daily | Beer and Wine | CC Reso. 5175 | |
| Mangiamo | 128 Manhattan Beach Blvd. | 8am-12am Daily | Full Liquor | 83-28 | 12 AM Sun - Thu |
| Brewco | 124 Manhattan Beach Blvd. | Su-Sa 7am-12am F-Sat 7am-1am | Full Liquor | 97-43 | |
| SHARKS WITH DREW THEIR USE PERMIT APPLICATION IN 2003 COUNCIL HEARING | | | | | |
| Sharks Cove | 309 Manhattan Beach Blvd. | 7am-2am Daily | Full Liquor | 03-24 | |
| Manhattan Pizzeria | 133 Manhattan Beach Blvd. | 6am-2am Daily | Beer and Wine | CC Reso. 5175 86-38 | |
| Mucho | 903 Manhattan Ave. | Su-T 11am-12am F-Sat 11am-2am | Full Liquor | CC Reso. 4108 | |
| Izaka-Ya | 1133 Highland Ave. | Su-W 11:00am-11pm Th-Sa 11:00pm-12am | Beer and Wine | 10-04 | 10:30 PM to 12 AM Sun - Thu |
| Old Venice/El Sombrero | 1001 Manhattan Ave. | Sun-Thu 7am-11pm Fri-Sat 7am-12am | Beer and Wine | 07-09 | |
| Penny Lane | 820 Manhattan Ave. | Su-Th 7am-10:30pm F-Sa 7am-11:30pm | Beer and Wine | 89-23 | |
| Rock N Fish | 120 Manhattan Beach Blvd. | Su-Th 7am-12am F-Sa 7am-1am | Full Liquor | 99-04 | |
| Shellback | 116 Manhattan Beach Blvd. | No Reso | Full Liquor | No Reso | |

ALL EIGHT PREMISES WITH SUN-THU HOURS LATER THAN MIDNIGHT, PREDATE CITY CRACKDOWN ON DOWNTOWN BAR SCENE

EXHIBIT D
PC 1/2/04

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INTENTIONALLY

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STRUMWASSER & WOOCHEE LLP

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BRYCE A. GEE
BEVERLY GROSSMAN PALMER
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†Also admitted to practice in New York
‡Also admitted to practice in Massachusetts

March 31, 2011

Manhattan Beach City Council
1400 Highland Avenue
Manhattan Beach, CA 90266

Re: Appeal of Planning Commission Approval of Strata (117 Manhattan Beach
Boulevard)

Dear Councilmembers:

We write on behalf of Don McPherson, a resident of Manhattan Beach who wishes to maintain and preserve the quality of life in the downtown community. The appeal before you today involves the approval of a use permit for a significantly expanded and intensified nightclub appended to a restaurant to be known as Strata (hereinafter, the Project), which is proposed to be located in the former Beaches location at 117 Manhattan Beach Boulevard. The applicant would have the City Council believe that its proposal constitutes trivial cosmetic alterations and minor operational changes to the existing business operations. A closer look at the Project reveals that the applicant's plans will significantly increase the intensity of the planned use on the site, turning a previously enclosed operation into a restaurant and nightclub that can be nearly fully opened to the street. The applicant proposes to substantially rearrange the interior spaces to create more room for nightclub operations; seeks additional days on which dancing is permitted and expanded hours of operation generally; and proposes to externalize all of the noise impacts of these operations through retractable windows, sliding doors, and balconies encroaching the public right-of-way. And the City Planning Commission resolution would permit the applicant to do nearly all of this, without even the benefit of environmental review or a Coastal Development Permit (CDP).

A separate letter from Felix Tinkov of Lounsberry, Ferguson, Altona, and Peak LLP, we explain how the City's approval violates the California Environmental Quality Act. The focus of this letter is to make clear that the approval of the Project will also violate the Coastal Act, as set forth in the City of Manhattan Beach Local Coastal Program (LCP).¹ As required by the Coastal

¹In addition to the illegalities inherent in approving the Project without a legally required CDP, the City has demonstrated a disturbing reticence to disclose the contents of the LCP pursuant to the Public Records Act. (Gov't Code, § 6250 et seq.) Mr. McPherson requested a copy of the entire LCP, including all amendments, on March 10, 2011. Although the City

Act and the LCP, the City Council should send this project back to the Planning Commission and require the applicant to obtain a Coastal Development Permit before proceeding with construction and operation of the Project.

The Coastal Act and Coastal Development Permit

The Project's location lies less than 300 feet from the beach, within eyesight – and earshot – of the Manhattan Beach Pier, as well as numerous residences located in the downtown community. Development and activities on land located in this highly unique and sensitive area are subject to special restriction and oversight by the California Coastal Commission. Pursuant to section 30603 of the Coastal Act (Public Res. Code, § 30603) and the Local Coastal Plan (LCP § A.96.030), *any* approvals of a development within the “area between the sea and the first public road paralleling the sea or within three hundred (300) feet of the inland extent of any beach” may be appealed to the Coastal Commission if the proposed development does not conform to the terms of the certified LCP. Because the Project lies in the appealable zone, any action taken by the City Council may be appealed to the Coastal Commission for its determination whether the proposed project conforms to the requirements and objectives of the LCP.

The Coastal Act is intended to be liberally construed to accomplish its purposes and objectives, which include protection of the California coastline, promotion of public access, and appropriate planning and management in the utilization of coastal resources. (Pub. Res. Code, §§ 30001 & 30009; see also *Ojavan Investors, Inc. v. California Coastal Comm'n* (1997) 54 Cal.App.4th 373, 386; *California Coastal Comm'n v. Quanta Investment Corp.* (1980) 113 Cal.App.3d 579, 609.) It reflects “strong rules of public policy adopted for the public's benefit that implicate matters of vital interest.” (*McAllister v. California Coastal Comm'n* (2009) 169 Cal.App.4th 912, 924.) In order to uphold and properly implement the intent of the Coastal Act, a CDP is required for the Project.

The Coastal Act provides “a comprehensive scheme to govern land use planning for the entire coastal zone of California.” (*Yost v. Thomas* (1984) 36 Cal.3d 561, 565.) The goal is to “protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.” (Pub. Res. Code, § 30001.5(a).) To achieve this goal, the Coastal Act maintains specific policies governing public access, land

Clerk's office responded promptly, once the question was referred to the Planning Division, the request was returned with the implausible explanation that the Division does not even possess a single copy of the updated LCP that it could reproduce for Mr. McPherson. According to the Planning Division, it would have to consult with individual planners to locate all of the amendments and that the process would take beyond the statutory 10 days to provide a response or copies. (Gov't Code, § 6253, subd. (c).) The City's failure to promptly comply with the Public Records Act in this case has hindered Mr. McPherson's ability to analyze the Project's compliance with the LCP.

resources, and development along the coast. (Pub. Res. Code, §§ 30210-30265.5.) “The Coastal Act creates a shared responsibility between local governments and the Coastal Commission for the planning of coastal development.” (*McAllister, supra*, 169 Cal.App.4th at 922.)

Unfortunately, the City has abdicated its responsibility to uphold the Coastal Act when it comes to Strata, erroneously exempting the Project from obtaining a CDP and approving a development that is inconsistent with numerous policies and requirements of the LCP.

Strata Requires a Coastal Development Permit

The LCP requires that all development in the Coastal Zone be pursuant to a CDP, unless certain specified exceptions are met. The Planning Commission incorrectly concluded that the Project was exempt from the CDP requirement because the applicant does not plan to enlarge the building’s floor area or increase its height. The Planning Commission overlooked the clear requirement in the LCP that an exemption is *not available* for “[a]ny improvement to a structure that *changes the intensity or use* of the structure.” (LCP § A.96.050 (B)(1).) The Planning Commission ignored the many ways in which the applicant’s proposal will intensify the use of the former Beaches site. Similarly, the Planning Commission’s Resolution and Use Permit turn a blind eye to these changes in an effort to mask the appearance of environmental impacts from the project. Among the significant changes proposed for the Project are:

- 1) Installation of large roll-up windows and doors over the bulk of Strata’s frontage along Manhattan Beach Boulevard exposing the surrounding community to increased noise levels relative to the existing use and impacting the aesthetic nature of the structure and the neighborhood;
- 2) Construction of external balconies which encroach over the public right-of-way along Manhattan Beach Boulevard exposing the surrounding community to increased noise levels relative to the existing use, creating potential health and safety risks from overhead falling objects, and impacting the aesthetic nature of the structure and the neighborhood;
- 3) Enlarging the kitchen by nearly 50 percent, thereby increasing the need for additional staff, contractor and delivery parking spaces and increasing traffic impacts;
- 4) Development of a basement which may create geological instability for the premises and neighboring properties;²
- 5) Extension of the morning and late night operating hours of the business beyond that permitted under the existing use permit;

²The Coastal Act prohibits the creation of additional geologic instability. (Pub. Res. Code, § 30253, subd. (b).)

- 6) Doubling the number of large events permitted on the premises relative to that allowed under the existing use permit; and
- 7) Increasing, by 104 evenings, the number of dance nights permitted on the premises over the existing use permit's limit.

The magnitude of these changes, individually and cumulatively, renders a conclusion that the Project will not change the "use or intensity" of the site entirely implausible. The proposed Project requires a CDP.

Courts construing the Coastal Act have confirmed that a broad interpretation of the term "development" that takes into account the intended use of a site is appropriate in light of the purpose and intent of the measure. Courts have rejected the idea that it is permissible to rely exclusively upon "sheer quantitative measures irrespective of the qualitative changes in use" to determine whether a development must obtain a CDP. (*Stanson v. San Diego Coast Regional Commission* (1980) 101 Cal.App.3d 38, 47.) In reaching this conclusion, the Court of Appeal relied upon the "clear legislative directive 'that priceless coastal resources are not irreversibly committed to uses which would be inconsistent with the plan.'" (*Ibid.* (quoting *State of Calif. v. Superior Court* (1974) 12 Cal.3d 237, 253.)

The Planning Commission's premise that a less than 10 percent increase in floor area exempts the Project from CDP review relies upon erroneous assumptions regarding the extent of the remodel and entirely ignoring the significant encroachment on the public-right-of-way that would result from the construction of the proposed balconies. The applicant claims that the Project will decrease customer floor service area; however it will do so in the service of expanding the kitchen, which will likely result in increased employees and deliveries — increasing parking and local truck traffic in the vicinity of this project, which is directly adjacent to the Pier and sensitive residential areas. The new use permit allows dancing on Thursday and Sunday nights (in addition to the already-permitted Friday and Saturday nights), and attempts to "offset" this intensification of use by requiring the premises to "close" an hour earlier on Thursday and Sunday (a midnight closing instead of 1 a.m.). However, the City has refused to define the term "closed," in the use permit and appears to accept the applicant's contention that he may serve alcohol until the designated closure hour and then have *an additional hour* to vacate the premises. This approach virtually guarantees that the noise impacts will continue well beyond the specified "closing" time. Thus the additional dancing permitted on Thursday and Sunday will have an intensification impact that is not offset by a reduction in operating hours. Moreover, the addition of fully retractable doors and windows that open to the street — and to the area surrounding the Pier — will expose the community, residents, and beach-goers to increased noise, particularly from the increased entertainment and patrons dancing and socializing in the bar environment. The Project contains no mitigation for these noise impacts.

The Project, as outlined in the City staff report and the attached applicant's description of the Project, specifically seeks to permit the intensification of the use of the premises by expanding hours of operation, escalating the permitted uses onsite, and exposing the surrounding community to

augmented noise levels without proffering any sort of mitigation for these activities. As described above, these elements trigger the need for a CDP for the Strata project.

Not only is there a need for a CDP, but construction should not commence until the CDP is effective, at the expiration of any Coastal Commission appeals, per LCP section A.96.160. ["Development pursuant to an approved Coastal Development Permit shall not commence until the Coastal Development Permit is effective. The Coastal Development Permit is not effective until all appeals, including those to the Coastal Commission, have been exhausted."] It appears that the City, in order to ensure that the applicant can open its business in time for the 2011 beach season, permitted construction to commence without a CDP, leading the City by necessity now to contend that a CDP was not required in the first place. This approach is entirely backward, and reveals how the City has bent its procedures and ignored the requirements of the LCP in order to accommodate the applicant's desire to expedite the Project's approval. This approach simply cannot be countenanced.

Moreover, the City has not followed the protocol established in its own LCP to obtain the advice of the Coastal Commission regarding the applicability of an exemption to the need for a CDP. The LCP states, in pertinent part, the following:

“§A.96.080(D). Where an applicant, interested person, or a local government has a question as to the appropriate designation for the development, the following procedures shall establish whether a development is exempt, categorically excluded, non-appealable or appealable:

...

(2) If the determination of the local government is challenged by the applicant or *an interested person*, or if the local government wishes to have a Commission determination as to the appropriate designation, the local government shall notify the Commission by telephone of the dispute/question and shall request an Executive Director's opinion.”

Per the clear terms of the LCP, upon invocation of LCP §A.96.080(D)(2), the City must immediately contact the Commission by telephone and must request a formal written opinion of the Commission's Executive Director (the requirement is mandatory due to use of the term “shall”). Further, this requirement that the City seek the advice of the Commission is clearly intended to run from the time a request is made by an interested party - rather than waiting until after the City approves the project, which provides a separate opportunity to appeal the Council's decision to the Commission pursuant to LCP §A.96.160(B). Yet in spite of being made specifically aware of Mr. McPherson's request for a Coastal Commission determination of the need for a CDP by letter on March 16, 2011, to our knowledge, and in spite of communications with City Attorney Wadden regarding this issue prior to his administrative leave, the City has neither requested a determination from the Coastal Commission nor informed Mr. McPherson as to when it intends to do so. The City obviously intends to delay resolution of this question, abrogating Mr. McPherson's rights under the procedures set out in the LCP. The failure to follow these established procedures is not the only way

that the City has abdicated its responsibilities under the LCP, for the Project fails to conform in many ways to the policies and requirements established in the certified LCP.

Strata Does Not Conform to the Local Coastal Program

Under the Coastal Act, the elements of a city's LCP are the means of affecting statewide policy at the local level. (*Charles A. Pratt Const. Co., Inc. v. Calif. Coastal Comm'n.* (2008) 162 Cal.App.4th 1068, 1075.) The Coastal Commission's certification of the LCP ensures that the plan adequately embodies the requirements of the Coastal Act and implements protective measures necessary to protect sensitive coastal resources. (*Ibid.*) The City cannot approve any project in the Coastal Zone that is not consistent with the LCP; and any such approval may be appealed to the Coastal Commission for further review. The approval of the Project is quite vulnerable to such a challenge because it fails to adhere to the LCP in numerous respects.

Strata Will Not Conform to Noise Standards

The Planning Commission did not require the Project to include any physical mitigation measures for the noise impacts of its entertainment operations. The LCP specifically incorporates the requirement that all development in the Coastal Zone comply with the City's code provisions regarding noise. (See A.60.120.(A) ("Noise. All uses and activities shall comply with the provisions of the Manhattan Beach Noise Regulations (Title 5, Chapter 7 of the Municipal Code).") The Municipal Code contains clear cut standards for exterior noise: section 5.48.160, which sets forth detailed exterior noise standards and the procedures by which City staff are required to undertake investigations regarding potential violations of the standards. Mr. McPherson has presented evidence to the Planning Commission that other establishments in Manhattan Beach — including those with retractable facades, as proposed for Strata — regularly exceed these noise standards during night time operation. The Municipal Code also provides that "it shall be unlawful for any person to willfully make or continue, or cause to be made or continued, any loud, unnecessary and unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness." (M.B.M.C. § 5.48.140.A.) The evidence gathered by Mr. McPherson and the history of other operations in the neighborhood suggests a strong likelihood that the Project will violate both the quantitative and qualitative noise standards.

In spite of the near certitude that the Project will exceed noise standards, the City has imposed no conditions on the Project to mitigate the impacts created by the noise from its patrons and other amplified sounds such as television — all of which will be augmented by the retractable windows. Not only has the City failed to require any physical mitigation for noise impacts, its own staff admit that it does not even know whether the Project, as designed and without physical mitigation, will be able to meet the City's noise standards. The City instead plans to shift the onus to mitigate noise to citizens and to its police department, contending that law enforcement can respond to complaints and require appropriate operational measures. This approach is not supported by the Municipal Code, which establishes specific exterior noise standards. Moreover, the wait-and-see-if-they-complain attitude violates the LCP's command that the noise standards be met, in order

to ensure that sensitive coastal resources — including residential communities as well as visitors to the Pier — are routinely protected from noise intrusion.

Strata Will Interfere With Use and Enjoyment of Coastal Resources

As set forth above, evidence before the City reveals that the Project will not adhere to noise standards set forth in the LCP. The failure to abide by these standards affects the public's ability to use and enjoy the coastal resources in the vicinity of the Project — the area directly adjacent to the Manhattan Beach Pier. The Coastal Act provides that development must be conducted in a manner that "protect[s] special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses." (Pub. Res. Code, § 30253.) The development of the Strata project will clearly have significant impacts, both day and night, on this special attraction by allowing significant levels of noise to escape through its open-air façade directly facing the Pier and restricting parking availability in the area. Notably, the Pier area is the primary point of beach access in Manhattan Beach. To access the area, beach-goers typically pass nearby the commercial establishments lining Manhattan Beach Boulevard, which include in closest proximity to the Pier the subject premises.

The evidence before the City — including the comments of a City Planning Commissioner — reveals that other establishments with open facades regularly exceed the noise standards established in the Municipal Code. However, the City Planning Commission did not require any mitigation to reduce noise on the sidewalk, along which numerous beach goers will pass.

Additionally, other businesses in the City demonstrate that open-front bars like the Project draw people to loiter out in front, impeding passage, a condition that will likely be exacerbated by the fact that Strata will have a sports bar on one of its street level floors. The open facades on the sports bar will permit people on the sidewalk to view and hear games on television, encouraging more crowds.³ The noise and crowds during sports events will impact beach goers on weekend days, a prime time for the public to access the coastal resources at the beach.

After sundown, the noise from the Project will impact beach goers who seek the tranquility of the beach and ocean in the evening. The Pier is the only means of access to the beach after 10 p.m., because the sand and shoreline are closed for safety reasons. After 10 p.m., the Strata nightclub will constitute the dominant noise source at the foot of the pier. The purpose of the LCP is to protect coastal resources and allow the public to enjoy the coast without undue disturbance. The Project, without permanent, physical noise mitigation, fails to adhere to this policy.

³The televisions will likely have high levels of amplified sound, to be audible above the patrons' vocal din. Such noise will also violate Manhattan Beach Municipal Code section 4.20.020, Amusements-Dances and Cafe Entertainment, by permitting amplified audio entertainment audible at the property line.

Strata Provides Insufficient Parking and Increases the Demand for Parking in the Coastal Zone

By failing to require a CDP for Strata, the City has not analyzed how the Project fails to conform to the parking requirements of the Coastal Act and the LCP. The Coastal Act requires that developments “enhance public access to the coast by ...providing adequate parking facilities....” (Pub. Res. Code, § 30252.) The LCP furthers that policy by requiring that “off-street parking and loading facilities are provided for . . . major alterations and enlargements of existing uses in proportion to the need for such facilities created by each use.” (A.64.010 (A).)⁴

Instead of analyzing the subject development’s parking requirements in an already constrained and heavily used portion of the coastline, the City has opted to find that the four existing onsite parking spaces are sufficient for the 368-person maximum occupancy permitted in the redeveloped nightclub (not to mention the augmented staffing and service deliveries expected due to the developer’s planned use of the premises). No attempt has been made by the City to address where the public should park, whether onsite or at a nearby parking garage. Nor has the developer been required to contribute any consideration towards the parking deficiencies. In fact, the project seeks to permit additional hours of operation and dancing, per the Entertainment Permit in place for Beaches, as well as large-scale events further stressing limited parking resources. The additional hours of operation include an 8 a.m. opening on holiday morning (per the Entertainment Permit), a time when many beach-goers also visit the coast. Beach parking at the state beach is the most convenient available parking for the Project, and the earlier opening time for Strata will likely increase demand for this parking by restaurant goers.

Strata is Inconsistent with Regulation of Development in the Commercial Zone

The City has also failed to examine whether the Project meets the LCP’s requirements for developments in the Commercial Zone. The Public Resources Code section 30251 requires that “[t]he scenic and visual qualities of coastal areas be considered and protected as a resource of public importance. Permitted development shall be ...visually compatible with the character of surrounding areas.” The LCP includes a number of general policies aimed at ensuring that developments are appropriately designed given their location and proximity to other land uses:

“A.1 Preserve the character and quality of residential neighborhoods consistent with the character of the two area districts of the Coastal Zone.

⁴Moreover, LCP A.96.040 requires a CDP for any project that reduces availability of short- or long-term parking. As discussed *infra*, the earlier opening time on holidays will increase the demand for parking in the vicinity of the beach. The applicant has also testified that it intends to discontinue the practice of busing in patrons as Beaches did. Requiring all patrons to find their own transportation to the premises will increase the demand for parking.

A.2 Foster convenient, harmonious, and workable relationships among land uses; [. . .]

B. Promote the economic stability of existing land uses that are consistent with the Local Coastal Plan and protect them from intrusions by inharmonious or harmful land uses. [. . .]

F. Require the provisions of adequate off-street parking and loading facilities, and promote a safe, effective traffic circulation system.” (LCP A.01.030.)

Additionally, the LCP contains specific regulations governing land use and development in the Commercial District, designed to ensure that commercial operations do not impose inappropriate impacts on nearby residential neighborhoods:

“C. Create suitable environments for various types of commercial and compatible residential uses, and protect them from the adverse effects of inharmonious uses.

D. Minimize the impact of commercial development on adjacent residential districts.

E. Ensure that the appearance and effects of commercial buildings and uses are harmonious with the character of the area in which they are located. . . .

F. Ensure the provision of adequate off-street parking and loading facilities. [. . .]

H. Encourage commercial buildings that are oriented to the pedestrian, by providing windows and doors accessible from city sidewalks at or near sidewalk level, protecting pedestrian access along sidewalks and alleys and maintaining pedestrian links to parks, open space, and the beach.” (LCP A.16.010.)

The Project achieves none of these objectives. Because the Planning Commission did not require the applicant to appropriately utilize physical mitigation measures for the noise impacts of its operations, the noise of patrons will emanate over the adjacent residences when the fully retractable windows and doors are open. The noise intrusion will impact the character of the residential neighborhood, and create an inharmonious land use in the adjacent Commercial District.

The lack of any consideration of parking also violates the requirements of the LCP, by failing to provide adequate off-street parking. The applicant has not been required to participate in any parking management program or provide any payment in-lieu of parking. Even upon the applicant’s testimony that it plans to discontinue providing bus service to patrons, the City has

insisted that parking demand will not increase from the operations of this new nightclub. The conclusion is not borne out by the record. The failure to address the need for parking generated by the Project violates the Commercial District development standards.

Finally, the proposed installation of fully retractable roll-up doors and windows and the construction of protruding balconies over the public right-of-way break from the visual character of the surrounding neighborhood. Additionally, the Strata balconies would constitute the first such encroachments in the city, thereby creating a precedent for future intrusions by commercial properties into the public right-of-ways, a failure to adequately protect pedestrian access and an impingement on pedestrian use of the sidewalk.

Conclusion: Remand the Project to the Planning Commission

The City Council should grant Mr. McPherson's appeal, and send this project back to the Planning Commission for issuance of a Coastal Development Permit in the first instance, and further review and analysis of the significant problems raised by this application.

Sincerely,



Beverly G. Palmer

cc: Robert Wadden, Esq., City Attorney (rwadden@ci.manhattan-beach.ca.us)
Felix Tinkov, Esq. (fmt@lfap.com)
Chuck Posner, California Coastal Commission (cposner@coastal.ca.gov)

Eric Haaland

From: jim quilliam [jimquilliam@hotmail.com]

Sent: Wednesday, March 23, 2011 3:11 PM

To: Eric Haaland

Cc: mike zislis

Subject: Strata rooftop screening

Eric,

As I mentioned in my earlier e-mail message we had an opportunity to walk the rooftop and review the location of the A/C units on March 12th with the Strata team. Strata was supportive of the neighbors desire to minimize loss of views etc.. from rooftop screening and recommended that we express this to the city staff. I am requesting that the items below be added into the Strata use permit (These were the conditions from the initial summary of general understanding established with Strata prior to the Jan 26th planning commission meeting).

1. The A/C and other roof equipment will be screened ONLY if approved by neighbors
2. The view corridor for Center Place residents will be protected.

If you could please let me know that you received this message. Thanks

Regards, Jim Quilliam
310-546-6276

EXHIBIT F
CC MTG 4-5-11

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State of California, George Deukmejian, Governor

California Coastal Commission
South Coast District
245 West Broadway, Suite 380
P.O. Box 1450
Long Beach, California 90801-1450
(213) 590-5071

COASTAL DEVELOPMENT PERMIT NO. 5-83-152

Page 1 of 2

Handwritten signature and initials

On May 12, 1983, The California Coastal Commission granted to Grand Finale, Inc., 117 Manhattan Beach Blvd., Manhattan Beach, CA 90266 this permit for the development described below, subject to the attached Standard and Special conditions.

The applicant proposes to remodel an existing restaurant/bar. The remodel will consist of a second story addition over the existing structure plus a two story addition where the patio now exists. Four parking spaces will be provided on-site.

SITE: 117 Manhattan Beach Blvd., Manhattan Beach

117 MB

Issued on behalf of the California Coastal Commission by

Handwritten signature of Michael L. Fischer

MICHAEL L. FISCHER
Executive Director
and

Handwritten signature of Gary D. ...

GP/mm

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGEMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE.

ACKNOWLEDGEMENT

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

**EXHIBIT G
CC MTG 4-5-11**

Date

Signature of Permittee



STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgement. The permit is not valid and construction shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If construction has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Construction shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All construction must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the development during construction, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS: None

THIS PERMIT IS VALID FOR THE PERIOD OF TWO YEARS FROM THE DATE OF THE COMMISSION'S VOTE ON THE APPLICATION AND SHALL BE EXTENDED TO THE COMMISSION OFFICE FOR REVIEW AND APPROVAL PRIOR TO THE EXPIRATION DATE.

- L. Only existing tables used inside the restaurant may be used for sidewalk dining unless additional parking and zoning approval is provided in accordance with the Municipal Code.
- M. The portion of sidewalks used for dining must be cleaned regularly and consistently kept free of litter by the applicant.
- N. The applicant must provide an insurance endorsement and complete a Hold Harmless agreement, to the satisfaction of the City Risk Manager.
- O. The applicant must submit an application for a permit and pay an established permit fee as set forth by resolution of the City Council.
- P. Permits are issued to business owners rather than property owners and are not considered an entitlement to the adjacent private property. New business owners must apply for a new permit.

(§ 1, Ord. 2039, eff. February 18, 2003)

7.36.170 Long-term commercial use encroachment permits.

- A. Commercial use of the public right of way requires City Council approval.
Exceptions. The Director of Community Development may approve the following:
 - a. Sidewalk dining permits applicable to vehicular streets in conformance with Section 7.36.110 of this chapter.
 - b. Building projections such as eaves, awnings, signs or elements that benefit the public and comply with applicable codes.
 - c. Roof access or other elements for existing buildings that are required by applicable codes, when alternative on-site locations are not feasible.
- B. Commercial use of a walk street is prohibited. Existing long-term uses conducted on a walk street under the authority of an Encroachment Permit approved prior to January 21, 2003 may continue to operate provided the use is not expanded or intensified. Expansion of intensification includes but is not necessarily limited to: increase of floor area or expansion of hours of operation, or addition of alcohol beverage service.

(§ 1, Ord. 2039, eff. February 18, 2003)