



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 19, 2011

SUBJECT: Consideration of an Encroachment Permit for Outdoor Dining Over the Sidewalk at 117 Manhattan Beach Boulevard.

RECOMMENDATION:

Staff recommends that the City Council adopt Resolution No. 6304 approving the request for an Encroachment Permit for outdoor dining above the public sidewalk and receive and file this report.

FISCAL IMPLICATION:

The City will charge rent for commercial use of the public right-of-way consistent with previous examples of permanently encroaching restaurant dining.

DISCUSSION:

The City Council, at its regular meeting of April 5, 2011, approved (3-0 vote, 1 abstention-Lesser, 1 absent-Tell) a use permit amendment to remodel an existing 6,750 square foot restaurant building with some business operational changes. Additionally, the City Council granted the applicant's request for two dining balconies extending 5 feet into the public right-of-way above the Manhattan Beach Boulevard sidewalk. The Planning Commission had approved the project, but the City Council must approve this type of encroachment, which is not a routinely permitted type of commercial encroachment such as awnings and canopies over the sidewalk.

Staff has provided the attached resolution for the City Council's formal approval of the special encroachment, which will allow the Community Development Department to issue an encroachment permit for balcony construction, indemnification, and insurance.

ALTERNATIVES:

The alternatives to the staff recommendation include:

1. Remove the item from the Consent Calendar, modify the proposed resolution, and approve the encroachment.

Attachments:

- A. Resolution No. 6304
- B. Balcony plan excerpt

cc: Michael Zislis, Applicant Representative

RESOLUTION NO. 6304

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, APPROVING AN ENCROACHMENT PERMIT REQUEST FOR AN EXISTING RESTAURANT BUILDING ON THE PROPERTY LOCATED AT 117 MANHATTAN BEACH BOULEVARD IN THE CITY OF MANHATTAN BEACH (MB Dining LLC/Strata)

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

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

- A. The City Council conducted a public hearing on the proposed restaurant remodel project that included a request for 5-foot wide dining balconies, and testimony was invited and received, on April 5, 2011.
- B. The applicant for the use permit amendment and encroachment permit is MB Dining LLC/Strata.
- C. A commercial dining balcony encroachment requires separate City Council approval pursuant to Section 7.36.170 M.B.M.C. The applicant appealed the Planning Commission's approval of February 23, 2011, in order to obtain the special encroachment approval from the City Council.
- D. The City Council, at its regular meeting of April 5, 2011, conducted an appeal hearing, approved the use permit amendment for the restaurant remodel, and indicated support for the special encroachment request for two 5-foot wide balconies, and directed that a resolution for encroachment approval be prepared.
- E. The Planning Commission and City Council determined that a coastal development permit is not required for the project, since it consists of an alteration to an existing restaurant building with no change in land use intensity.
- 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 proposed encroachment, as conditioned herein, shall be implemented by issuance of an Encroachment Permit by the Community Development Director subject to the appropriate procedures, as it is in accordance with the encroachment objectives of the Manhattan Beach Municipal Code as follows:
 - a) The permit will not be materially detrimental to the public health, safety, convenience, and welfare or injurious to property and improvements in the same vicinity and zone in which the property is located; since sidewalk dining is permitted in the right of way, and a similar size balcony projection is located adjacent to the project.
 - b) The granting of the encroachment permit will be in conformity with the policies and goals of the General Plan.
 - c) The proposed encroachment will comply with the provisions of MBMC Chapter 7.36, including any conditions required.
 - d) The proposed encroachment will not encroach into the area of the right of way occupied by an improved paved sidewalk or pedestrian or vehicular accessway or stairway, since the balconies will be above the public sidewalk in conformance to Building Code standards for vertical clearances.

EXHIBIT A
CC Mtg. 4/19/11

- e) The proposed encroachment will not reduce or adversely impact public pedestrian access along the paved and improved portion of the sidewalk, walk street, alley or stairway and does not reduce or adversely impact the vehicular access along the improved alley since the balconies will be above the public sidewalk in conformance to Building Code standards for vertical clearances.
- f) The proposed encroachment will not impact public access to the shoreline, adequate public access is provided and shall be maintained in the public right of way adjacent to the subject property since the balconies will be above the public sidewalk in conformance to Building Code standards for vertical clearances.
- g) The present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area as the Manhattan Beach Boulevard roadway is built to its full width, and there is no anticipated need for widening.

SECTION 2. The City Council of the City of Manhattan Beach hereby approves the request for a dining balcony encroachment into the Manhattan Beach Boulevard right of way for an existing restaurant building, subject to the following conditions:

- 1. The project shall be in substantial conformance with the plans submitted to, and approved by the City Council, on April 5, 2011.
- 2. The project shall conform to the procedures and standards of the Manhattan Beach Municipal Code, Manhattan Beach Local Coastal Program, and California Building Code.
- 3. No sidewalk dining or other normally permitted encroachments shall be permitted while the balcony encroachments are in place.

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

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

PASSED, APPROVED and ADOPTED this 19th day of April, 2011.

Ayes:
Noes:
Absent:
Abstain:

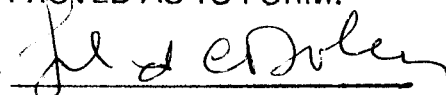
Mayor, City of Manhattan Beach, California

ATTEST:

City Clerk

APPROVED AS TO FORM:

By



City Attorney

117 Manhattan Beach Blvd Appeal 5-Foot Wide Balcony Dining Encroachments

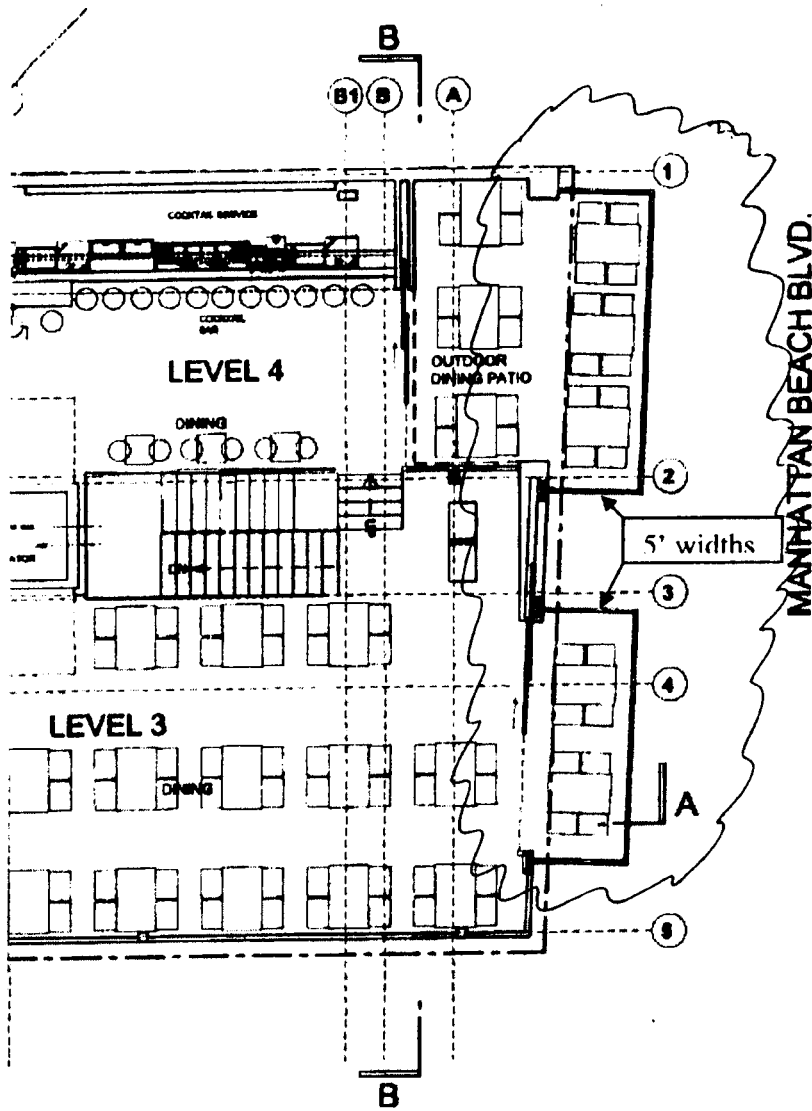


EXHIBIT B
CC Mtg 4/19/11