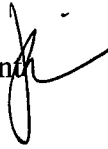



**CITY OF MANHATTAN BEACH
COMMUNITY DEVELOPMENT DEPARTMENT**

TO: Planning Commission

THROUGH: Richard Thompson, Director of Community Development 

FROM: Michael P. Rocque, Assistant Planner 

DATE: January 14, 2009

SUBJECT: Consideration of a Use Permit Amendment to Change an Alcoholic Beverage License from a Brewpub with a Restaurant (Type 75) to a Restaurant only (Type 47) at Manhattan Beach Brewery, 124 Manhattan Beach Boulevard. (Zislis)

RECOMMENDATION

Staff recommends that the Planning Commission **CONDUCT THE PUBLIC HEARING** and adopt the attached Draft Resolution **APPROVING** the subject request.

APPLICANT

Manhattan Beach Brewing Company
David Zislis, President
124 Manhattan Beach Boulevard
Manhattan Beach, CA 90266

PROPERTY OWNER

Jerico Development, Inc.
222 W. 6th Street Suite 1010
San Pedro, CA 90731

SURROUNDING LAND USES

North: CD-Restaurant/Commercial
South: CD-Commercial
East: CD-Restaurant
West: CD-Restaurant/Beach

BACKGROUND

The Planning Commission previously approved a Use Permit amendment in 1997 (PC 97-43 Exhibit B), allowing full alcohol service instead of only beer and wine for the Brewpub/Restaurant at the subject property. The Planning Commission approval allowed a change of the alcohol beverage license from a Type 23 (Small Brewers License) to a Type 75 (On-Sale General Brewpub). The current Use Permit allows for sale of all alcoholic beverages for on-site consumption only.

DISCUSSION

The Manhattan Beach Brewing Company is a full service, family-oriented brewpub which has been in operation for over eighteen (18) years and is located within the City's Downtown Commercial district (CD zone-Area District III). The subject application proposes to amend Resolution PC 97-43 to change the alcoholic beverage license from the existing Type 75 (On-Sale General Brewpub) to a Type 47 (On-Sale General for a Bona Fide Eating Place). A bona fide eating place is defined as a restaurant with food sales in excess of 50% of the total food and beverage sales. Manhattan Beach Brewing Company has always operated and will continue to operate as bona fide eating place. Both types of licenses permit the sale of beer, wine, and liquor, which the restaurant currently offers. The reason for the change in license is to replace the aging brewery equipment with a new back bar, seating area, and a cold box (Exhibit D). The cost of replacing the brewery equipment is prohibitive to the applicant as they would like to transition the current brewpub to a pub specializing in high quality food while still offering hand-crafted quality beers as well as other premium alcoholic beverages.

The subject business consists of a 2250 square-foot restaurant/bar area, 700 square-foot kitchen area and a 460 square-foot storage/office area. The applicant is not proposing to expand the existing space and the only change will be the remodeled back bar area which will fit into the space where the brewery is currently located. The project will also include a minor remodel of the interior and exterior of the building to update the look. The building occupancy is proposed to increase from 82 to 84.

The Manhattan Beach Municipal Code (MBMC) Section 10.16.020 (L) requires a Use Permit or Use Permit Amendment when there is a new alcohol license issued or amended. The existing Use Permit contains many conditions which ensure that the location always remain a bona fide eating place and at all times the business shall identify itself as a restaurant. All other conditions of the previous resolution PC 97-43 will generally remain the same, except for the ones that are specific to the brewery and its associated equipment. The project is located in the Coastal Zone but no Coastal Permit is required for alcohol licenses. A chart of all the downtown restaurants hours of operations and alcohol licenses has been provided in this report (Exhibit C).

The Manhattan Beach Police, Fire, and Public Works Departments, as well as the Building and Safety Division, had no comments or concerns regarding the proposed amendment.

Use Permit Findings

Section 10.84.060 of the Manhattan Beach Zoning Code provides the findings that are necessary to approve a Use Permit. Staff believes all findings can be met as follows:

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

The proposed amendment to the use permit is consistent with the Commercial Downtown (CD) zoning designation. The use and proposed revisions to the sales of alcoholic beverages are consistent with Section 10.16.010 of the Manhattan Beach Zoning Code which states that the district is intended to provide opportunities for a full range of retail and service businesses including restaurants and the sale of alcoholic beverages.

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.*

The existing use and proposed amendment pose no detrimental effects to public health, safety, or welfare of persons residing or working at the project site or to the adjacent neighborhood; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City, due to the conditions of approval and the fact that the site will continue to operate as a restaurant.

The General Plan of the City of Manhattan Beach poses certain goals and policies which reflect the expectations and wishes of the City with respect to land uses. The proposed amendment is consistent with these goals and policies.

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.*

The change from the current Type 75 alcohol license to a Type 47 is consistent with the existing use as a restaurant at this location. This application follows MBMC Section 10.16.020 (L) which requires a use permit amendment when there is new alcohol license being issued or amended.

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, personal safety, and aesthetic, or create demands exceeding the capacity of public services and facilities which cannot be migrated.*

The proposed amendment will not alter the fundamental use, purpose or character of the existing business and due to the fact that there will be a negligible change in occupancy and seating, the proposed amendment will not create any adverse impacts of the above mentioned.

Other Findings

The California Department of Alcoholic Beverage Control (ABC) requires the City of Manhattan Beach to find that the proposed change in license type at the subject property is a public convenience and necessity. Staff supports the proposed change in that it will provide a convenient community service.

Public Input

A public notice for the project was mailed to property owners within 500 feet of the site and published in the Beach Reporter newspaper. Staff did not receive any comments at the writing of this report.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

This application is Categorically Exempt in accordance with Class 1, Section 15301, of the California Environmental Quality Act (CEQA) Guidelines, as the subject amendment is determined to be categorically exempt from environmental review in that it is a minor change in the operation of the business and thus a negligible change of use in the existing site.

CONCLUSION

Staff recommends that the Planning Commission conduct the public hearing, consider the information presented, and adopt the attached draft resolution approving the subject Use Permit Amendment with conditions.

ALTERNATIVES

Other than the stated recommendation, the Planning Commission may:

1. **DENY** the project subject to public testimony received, based upon appropriate findings, and **DIRECT** Staff to return with a draft Resolution.

EXHIBITS:

- A. Draft Resolution PC 09-XX
- B. PC Resolution No. 97-43
- C. Chart of Downtown Restaurants with Alcohol Licenses
- D. Project applications and plans

RESOLUTION NO. PC 09-XX

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, APPROVING A USE PERMIT AMENDMENT TO ALLOW A CHANGE OF ALCOHOL BEVERAGE CONTROL LICENSE FOR AN EXISTING BREWPUB/RESTAURANT TO A RESTAURANT ONLY LOCATED AT 124 MANHATTAN BEACH BOULEVARD (Manhattan Beach Brewing Company – Zislis)

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

- A. Pursuant to applicable law, the Planning Commission of the City of Manhattan Beach conducted a public hearing on January 14, 2009 to consider an Amendment to the approved Use Permit (Resolution Nos. BZA 76-33, BZA 91-3, 4882, and PC 97-43) for the property legally described as Lots 1 and 2, Block 3, South Pacific home Tract in the City of Manhattan Beach.
- B. The applicant for said use permit Amendment is David Zislis. The owner of the subject property is Jerico Development, Inc.
- C. The public hearing was advertised pursuant to applicable law, testimony was invited and received January 14, 2009. The Planning Commission adopted Resolution No. PC 09-XX on January 14, 2009 approving the subject project. On XXXXX, XX, 2009 the City Council received and filed the Planning Commission approval.
- D. The applicant is exempt from Coastal Development Permit requirements per the provision of Section A.96.050 (B) of the City of Manhattan Beach Local Coastal Program (LCP).
- E. The subject Use Permit Amendment is Categorically Exempt (Class 1) from the provisions of The California Environmental Quality Act (CEQA) per Section 15301 "Existing Facilities".
- F. An Initial Study and Negative Declaration were prepared for the original proposal in accordance with the California Environmental Quality Act (CEQA) and City of Manhattan Beach CEQA Guidelines, finding no significant environmental impacts associated with the project.
- G. The Planning Commission finds that the project will not individually or cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the State of California Fish and Game Code.
- H. The applicant is requesting an amendment to the existing Use Permit, Resolution Nos. BZA 76-33, BZA 91-3, 4882, and PC-97-43 which govern the use of the site.
- I. On January 1, 1997 the State of California Business and Professions Code Section 23396.3 became effective. This legislation introduced the Type 75 Alcohol Beverage

Control license which allows the sale of beer, wine, and distilled spirits in conjunction with brewpub/restaurant businesses.

- J. The business currently operates with a Type 75 “On-Sale General Brewpub” which restricts the operation to the sale of beer and wine only. The current Use Permit allows the sale of beer and wine and distilled spirits.
- K. The applicant requests authorization to change the liquor license for the existing brewpub/restaurant from a Type 75 “On-Sale General Brewpub” to a restaurant only Type 47 “On-Sale General-Eating Place” license.
- L. This change in alcohol licensing to a Type 47 will allow the business to keep the full alcohol sales, including distilled spirits pursuant to the provisions of Government Code Section 22396.3.
- M. The provisions of the Type 47 license require that the subject business utilizing such license be a “bona fide public eating place” as defined in Government Code Section 23038. The subject license cannot be utilized by any other business other than those meeting the stated provisions contained in the above-referenced code Sections.
- N. The subject business is located within the “Commercial Downtown” General Plan Land Use designation and is consistent with surrounding uses, and the provisions of this Land Use Designation.
- O. The subject business is consistent with the land use and development regulations of the “CD” (Commercial Downtown) zoning district in which it is located.
- P. Use Permit Findings

The Use Permit amendment is consistent with Section 10.84.060 of the Manhattan Beach Municipal Code as follows:

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

The proposed amendment to the use permit is consistent with the Commercial Downtown (CD) zoning designation. The use and proposed revisions to the sales of alcoholic beverages are consistent with Section 10.16.010 of the Manhattan Beach Zoning Code which states that the district is intended to provide opportunities for a full range of retail and service businesses including restaurants and the sale of alcoholic beverages.

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.*

The existing use and proposed amendment pose no detrimental effects to public health, safety, or welfare of persons residing or working at the project site or to the adjacent neighborhood; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City, due to the conditions of approval and the fact that the site will continue to operate as a restaurant.

The General Plan of the City of Manhattan Beach poses certain goals and policies which reflect the expectations and wishes of the City with respect to land uses. The proposed amendment is consistent with these goals and policies.

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.*

The change from the current Type 75 alcohol license to a Type 47 is consistent with the existing use as a restaurant at this location. This application follows MBMC Section 10.16.020 (L) which requires a use permit amendment when there is new alcohol license being issued or amended.

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, personal safety, and aesthetic, or create demands exceeding the capacity of public services and facilities which cannot be migrated.*

The proposed amendment will not alter the fundamental use, purpose or character of the existing business and due to the fact that there will be a negligible change in occupancy and seating, the proposed amendment will not create any adverse impacts of the above mentioned.

- Q. The proposed use will comply with the provisions of Title 10 of the Manhattan Beach Municipal Code, the Implementation Program of the Local Coastal Program, and the conditions of this Resolution.
- R. Compliance with the following conditions will ensure that the proposed use will not adversely impact nor be adversely impacted by nearby properties.

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

1. This resolution shall amend, supersede, and replace Resolutions Nos. BZA 76-33, BZA 91-3, 4882, and 97-43.
2. Alcohol sales shall be operated consistent with the provisions and restrictions of Section 23396.3 of the State Government Code (Type 47 Alcohol Beverage Control License).

3. Future businesses utilizing the Type 47 Alcohol Beverage Control license must be a “bona fide public eating place”, and must be consistent with the provision of Government Code Section 23396.3.
4. Any future changes to the operation of the business resulting in an inconsistency with the provisions of Government Code Section 23396.3 shall require an amendment to the Use Permit, and shall require an Alcohol Beverage Control license consistent with the operation of the business.
5. Alcohol service shall be concluded only in conjunction with the service of food.
6. At all times, the business shall identify itself as restaurant and will not identify itself as a “bar” in public advertisements.
7. At no time will the business offer “happy hour” alcohol at reduced prices.
8. At no time will the business offer drink specials at reduced prices.
9. All alcohol beverages must be sold in glassware, the use of plastic cups for the service of alcohol beverages is prohibited.
10. Live entertainment and dancing is prohibited, any future entertainment or dancing at this site will require an amendment to the Use Permit.
11. The applicant shall comply with all applicable provisions of the Manhattan Beach Municipal Code including refuse enclosure and signage.
12. All noise emanating from the subject site shall comply with the standards set forth in Ordinance No. 1957.
13. The hours of operation shall be limited to:

Sunday –Thursday
7:00A.M. to 12:00 A.M.

Friday and Saturday
7:00 A.M. to 1:00 A.M.
14. Alcohol may not be sold for off-site consumption or distribution.
15. Pursuant to Public Resources Code Section 21089 (b) and the Fish and Game Code Section 711.4 (c), the project is not operative, vested, or final until the required filing fees are paid.

General/procedural Conditions

1. *Compliance.* The project shall be in compliance with the plans and project description submitted to and approved by the Planning Commission on January 14, 2009. All development must occur in compliance with the proposal as set forth in the application for said permit, subject to any special conditions set forth below. Any substantial deviation

from the approved plans and project description, except as provided in this approval, shall require review by the Director of Community Development and a determination if Planning Commission review and an amendment to the Master Use Permit is required.

2. *Lapse of Approval.* The Use Permit shall lapse two (2) years after its date of approval unless implemented or extended in accordance with Manhattan Beach Municipal Code (MBMC) Section 10.84.090.
3. *Terms and Conditions are Perpetual.* These terms and conditions shall be perpetual, and it is the intention of the Director of Community Development and the permittee to bind all future owners and possessors of the subject property to the terms and conditions. Further, the applicant shall record the conditions of approval of this Resolution with the Office of the County Clerk/Recorder of Los Angeles. The format of the recording instrument shall be reviewed and approved by the City Attorney.
4. *Effective Date.* Unless appealed to the City Council, the subject Use Permit shall become effective when all time limits for appeal as set forth in MBMC Section 10.100.030 have expired.
5. *Legal Fees.* The 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 in defending any legal action 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. The Applicant shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due.

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.

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 **January 14, 2009** 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