

**CITY OF MANHATTAN BEACH
[DRAFT] PLANNING COMMISSION
MINUTES OF REGULAR MEETING
OCTOBER 28, 2009**

The Regular Meeting of the Planning Commission of the City of Manhattan Beach, California, was held on the 28th day of October, 2009, at the hour of 6:35 p.m., in the City Council Chambers of City Hall, at 1400 Highland Avenue, in said City.

A. ROLL CALL

Present: Andreani, Fasola, Lesser, Paralusz, Chairperson Seville-Jones
Absent: None
Staff Present: Richard Thompson, Director Community Development
Laurie Jester, Planning Manager
Recording Secretary: Sarah Boeschen

B. APPROVAL OF MINUTES – October 14, 2009

A motion was MADE and SECONDED (Fasola/Lesser) to **APPROVE** the minutes of October 14, 2009.

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

C. AUDIENCE PARTICIPATION

Viet Ngo, a United States citizen and Manhattan Beach resident, said that he is a victim of public corruption from Michael Zislis and Jonathan Tolkin. He stated that a complaint has been filed with the United States Department of Justice, and the matter has been referred to the FBI. He indicated that the matter involves ongoing activity that is prohibited by federal statute. He indicated that the Commissioners have been informed and are aware of the ongoing activity. He requested that the Commissioners and staff disclose any financial interest they have in Metlox LLC or Manhattan Inn Operation Company LLC. He requested that the Chief of Police refer the matter to the FBI to protect public rights and money.

D. PUBIC HEARINGS

10/28/09-2 Consideration of a Master Use Permit Amendment for Modifications to the Existing Approvals for Hours of Operation, Size of Special Events, Food Service, and Installation of a Glass Wall Between the Lobby Bar and Hotel Rooms at the Shade Hotel, Metlox Site, 1221 North Valley Drive

Commissioner Fasola stated that he is recusing himself from consideration of the item.

Planning Manager Jester summarized the staff report. She commented that the Commissioners were provided with correspondence that was received after the staff report was written. She indicated that the Commissioners have been provided with several e-mails that were received from Nate Hubbard; an addendum to the noise impact study from the noise consultant; and a series of surveys that were received by staff. She commented that the proposal is for an amendment to the existing Use Permit for the Metlox site to allow for the Shade hotel to have

special events of up to 125 people rather than 99 people without providing prior notification to the City; to increase food service to allow breakfast, lunch and dinner service; to install a wall partition between the interior courtyard and the Zinc Lounge; and to extend the hours of operation. She said that staff is requesting that the discussion of the Commission focus on mitigation of the noise impacts and whether they would support extending the hours. She commented that staff's understanding from the last hearing is that there was a general consensus of the Commission supporting the increase for the maximum number of people at special events without prior notification; supporting the increase in food service; and supporting the wall partition. She stated that there were concerns raised regarding extending the hours of operation, and the Commission requested further information from a noise consultant.

Planning Manager Jester indicated that increasing the capacity for special events up to 125 people without prior notification would not increase occupancy but rather would only change the limits for the requirement of notification to the City. She commented that the food service is currently limited to breakfast, 24 hour room service, evening appetizers and full food service only for special events. She said that the proposal is to allow full food service for the general public. She stated that there is currently an open walkway between the bar and the interior courtyard of the hotel. She indicated that the proposal is to create an enclosed walkway with an accordion glass wall similar to walls that separate other areas within the hotel. She stated that currently the hours of operation are limited to 11:00 p.m. for the hotel bar and terrace; 10:00 p.m. for the sky deck; and midnight on Friday and Saturday nights only for special events in the interior courtyard. She indicated that the proposal is to operate until 11:00 p.m. Sunday through Wednesday evenings, 11:30 p.m. on Thursday evenings; and midnight on Friday and Saturday evenings and on holidays. She stated that the sky deck is proposed to have hours of operation to 10:00 p.m. Sunday through Thursday evenings and 11:00 p.m. on Friday and Saturday evenings and holidays.

She indicated that objective standards regarding noise are specific DBA levels which staff uses as a reference in making land use decisions, and subjective standards are the impact of noise to a reasonable person based on public input. She commented that the police use the subjective standard in enforcing the Noise Ordinance. She indicated that the City Attorney has advised that the Commission and City Council should consider both the subjective and objective noise standards when making a land use decision along with the Use Permit and General Plan findings.

Planning Manager Jester commented that staff has concerns with enclosing the rooftop deck, as it is already at the height limit. She indicated that staff feels keeping the existing limit on the hours for the rooftop deck is appropriate for mitigating noise. She commented that staff feels enclosing the terrace and relocating the customer queue to the west side of the site would be beneficial. She stated that staff is also recommending that a wall be installed to separate the lobby bar from the interior courtyard. She said that staff feels it may be appropriate to extend the hours of operation to midnight on Friday and Saturday evenings and 1:00 a.m. on New Years Eve if the noise is mitigated by enclosing the terrace, relocating the customer queue, installing a wall between the lobby bar and the interior courtyard, and limiting the hours on the rooftop deck. She indicated that staff would not recommend any changes to the existing hours of operation for the rooftop deck.

She commented that the hearing was noticed to the properties within 500 feet of the site and advertised in the Beach Reporter. She indicated that staff did receive a number of public comments. She pointed out that the Use Permit requires compliance with the STC 50 (sound transmission control) noise standards as indicated by one of the adjacent residents. She indicated that the applicant was able to reach the STC 50 standards with the use of certain

construction materials rather than building a wall. She commented that the hotel does not completely close down after designated hours, as there are hotel guests at the facility 24 hours. She introduced the noise consultant, Don Behrens.

Don Behrens, Behrens and Associates, said that the Shade was in compliance with the objective portion of the Noise Ordinance during the period of September in which they performed their study. He said that they were asked to provide an assessment of the effects on noise level of various noise control solutions by means of three-dimensional modeling. He indicated that the study does not consider the subjective impacts of noise and does not recommend specific sound mitigation solutions.

Tom Corbisley, Behrens and Associates, summarized the findings of the noise study that was conducted for the subject site relative to the Manhattan Beach noise standards. He stated that they did not consider interior noise limit standards. He played an audio recording of the noise level from 1300 Ardmore Avenue that was recorded on a Saturday evening at approximately 10:00 p.m. He indicated that measurements were taken on a Saturday evening when there was a lot of noise from the hotel and on a Monday evening when the hotel was quiet. He said that the Shade hotel is in compliance with the City's Municipal Code objective noise standard limits. He stated, however, that there is potential for the noise limit to be exceeded if the hours for the hotel are extended due to lower ambient noise levels during later hours. He commented that there is not an increase of noise levels at the neighboring residential properties when the noise levels at the hotel are increased, and the noise from the hotel on average is below the ambient level of the noise in the adjacent area.

In response to a question from Commissioner Lesser, **Mr. Behrens** said that their study looked at the objective standards for noise levels, which is the standard used by the City in evaluating the impact that a certain property has on the environment.

Planning Manager Jester pointed out that the objective standard includes the measurement of DBA levels. She indicated that the subjective standard is the standard at which a reasonable person would be impacted by noise levels as determined through public testimony and input. She indicated that the Commission needs to consider both the objective and subjective noise standards in making a land use decision. She said that the subjective standard is used by the police in enforcing the Noise Ordinance.

In response to a question from Commissioner Lesser, **Mr. Behrens** stated that the ambient noise level in the adjacent neighborhood drops significantly after midnight because the level of traffic on Valley/Ardmore and Manhattan Beach Boulevard drops significantly. He said that decrease in traffic noise can increase the impact of other sources of noise. He commented that there are no low frequency sound levels or pure tones emanating from the hotel.

Mr. Corbisley said that the three major sources of noise from the hotel are the rooftop deck, the front entrance and the south terrace. He stated that the contribution of the impact from each source changes with the location within the residential community and height above ground level. He said that in modeling different noise mitigation measures, their conclusions are that an interior wall inside the lobby would be more effective in reducing the noise level than a vestibule at the front entrance; relocation of the customer queue may be effective in reducing noise levels if the terrace is enclosed; the wall in the Shade/Petros corridor would be effective in reducing noise but not as effective as enclosing the terrace; and noise from the rooftop deck would be mitigated effectively if it were enclosed. He said that noise control solutions should be applied at all three major noise sources. He stated that enclosing areas of the hotel may have an effect on the noise generated within that area.

Lieutenant John Dye indicated that the Police Department responded to 124 calls related to the Shade during the 15 months between July of 2008 and October 25 of this year. He stated that 37 of the calls were related to noise from music or a party, with an average of 2 or 3 calls per month. He commented that the other calls were related to issues such as credit card fraud or traffic stops in front of the hotel. He commented that the responding officer will take into account the subjective criteria established in the code such as the level of the noise; whether the nature of the noise is typical; whether the origin of the noise is natural or unnatural; the level and intensity of the background noise; the proximity of the noise to residential bedrooms; the nature and the zoning area at the location of the noise; the density of the area within which the noise emanates; the time of day and duration of the noise; whether the noise is recurrent, intermittent, or constant; whether the noise is produced by a commercial or non commercial entity; and whether the noise occurs on a weekend, weekday or holiday. He said that the police want to provide fairness to the community as well as to the operators of businesses within the City. He stated that he is not aware of an officer citing the hotel for a noise violation.

In response to a question from Commissioner Lesser, Lieutenant Dye indicated that the majority of noise complaints have occurred primarily later in the evening on Friday and Saturday nights.

Commissioner Andreani pointed out that item 2 under “Special Events” on page 3 of the staff report incorrectly indicates the request for the number of people permitted for special events without prior approval as being 150 rather than 125 as is actually proposed.

John Strain, representing the applicant, said that the hotel consists of three functions; the operation of the lodging business, a venue for special events, and a lounge business. He indicated that all three parts of the operation are important in order for them to operate as a premier facility, to pay their employees, and to pay taxes and rent to the City. He said that the Commission must consider the specific standards as reflected in the Municipal Code and General Plan. He commented that they were confident that the hotel met the noise standards of the Municipal Code and paid \$10,000 for the City to have Behrens and Associates to prepare the sound report. He said that the report indicates that the hotel is in compliance with the objective standards of the Code. He pointed out that page 5 of the report shows that the difference in decibel levels between residences ranges by about 15 decibels. He said, however, that the incremental decibel level between the measurement when the hotel was quiet and the measurement when there was a lot of activity was about 2 decibels. He indicated that the specific location within the adjacent neighborhood from where the noise is being measured makes much more difference in terms of the noise impact than whether there is a lot of activity within the hotel.

Mr. Strain pointed out that many of the complaints submitted to staff by **Mr. Hubbard** date back to the period before the Shade hotel was in operation and are not a result of current operation. He said that part of operating a lodging business is having guests who enter and exit the facility during all hours. He stated that people enter and leave the hotel independent of the lounge operation or special events. He stated that the concept of having a venue for special events at the facility was written into the original Master Use Permit for the Metlox development, and cheering for weddings and similar occasions is part of such events. He pointed out that the hotel has not been cited for violations of the Noise Ordinance. He said that the police officers are professional and make appropriate determinations when responding to complaints. He said that the resolution of the Planning Commission in 2005 indicates that the proposed closing time for the hotel is 11:00 p.m. daily. He said that he believes that no specific operating hours were originally imposed for the proposed wine bar. He stated that all of the approved hours for the Metlox development indicated midnight on Friday and Saturday and

11:00 p.m. during the week. He commented that Resolution 05-08 also includes in the conditions that alcohol service shall stop 30 minutes before the hotel closes, or 11:30 p.m. on weekends and 10:30 p.m. during the week. He said that the language of the condition would indicate that the closing hours of the hotel are midnight on weekends and 11:00 during the week. He indicated that the hotel lobby bar currently closes at 11:00 p.m.; however, their understanding is that they are able to close at midnight on Friday and Saturday nights. He commented that it does not appear necessary to enclose the rooftop deck.

In response to a question from Chairperson Seville-Jones, **Mr. Strain** said that the noise report indicates that the ambient noise level drops after midnight which may result in more noise from the hotel impacting the adjacent neighborhood. He commented that he believes that the noise level from the hotel would be a concern if they were proposing to remain open until 1:00 a.m. rather than midnight as is proposed.

Michael Zislis, the applicant, said that dinner service would consist of small plates. He commented that they need the wall separating the interior courtyard from the lobby bar if they are required to exit people from the rear door. He pointed out that the recording of noise from 1300 Ardmore Avenue demonstrates that the noise of cars driving past is louder than the noise of people at the hotel. He also pointed out that the recording was made on a very busy weekend at the hotel. He stated that they do not allow any use of microphones after 9:00 p.m. He indicated that the sound study indicates that the sound level does not increase in the adjacent neighborhood as sound is increased at the hotel. He said that requiring all of the patrons to leave at one time results in more noise than if patrons leave over a longer period. He indicated that the sound study demonstrates that the hotel is not in violation of the Sound Ordinance, and the City should stand by the findings of the study. He said that the study also indicated that the staff of the hotel works diligently to keep the noise from reaching the adjacent neighborhood.

Mr. Zislis commented that it is not justified to limit the use of the penthouse, limit the use of the conference room, or limit room service as has been suggested by **Mr. McPherson**. He indicated that he does not want to have his rights to do business denied. He commented that enclosing the rooftop deck would be prohibitively expensive. He said that they want to operate for an hour longer on weekends and would not wish to reduce their hours. He indicated that a 4 foot glass rail or noise curtain around the deck would prevent noise from reaching the adjacent neighborhood, as suggested to be studied by the sound engineer. He indicated that he would not want for a wall to be placed in the lobby in the middle of the hotel check-in area. He said that the sound engineer also suggested that a double door system for the front door would eliminate sound from the front of the hotel. He said that he would prefer for a 12 foot barrier to be placed around the Zinc terrace rather than having a movable barrier placed in the corridor between the hotel and Petros. He commented that the best way to help the neighbors is by mitigating the noise issue rather than by limiting his business by restricting the hours.

Chairperson Seville-Jones opened the public hearing.

In response to a question from Chairperson Seville-Jones, **Mr. Behrens** indicated that the ambient noise level from traffic drops dramatically after midnight.

Nate Hubbard showed a recording taken from his home of an Oktoberfest event in the courtyard of the hotel on Sunday, September 27. He indicated that the existing Use Permit and Entertainment Permit contain the requirements necessary to control the use of the hotel. He stated that the hotel does not comply with many of the requirements, and they are not enforced by the City. He commented that the use and entertainment permits require that the Zinc bar be soundproofed, which would solve many of the noise issues. He stated that both permits also

require that the terrace close at 11:00 p.m.; however there often are patrons on the terrace until midnight or later. He said that there has been an indication by the Police Department that they are enforcing the 11:00 p.m. closing time for the terrace. He said that similar enforcement needs to be done for the noise of special events. He indicated that until the City stops the existing noise disturbances to the neighbors, they do not feel the findings can be met that extended hours for the hotel would not create a further impact. He said that they propose to work with staff and **Mr. Zislis** to address the concerns. He indicated that they wish to remain informed and involved with staff in any revisions to the Use Permit.

Theresa Cho, a resident of the 500 block of 12th Street, stated that Municipal Code Section 5.14.140 prohibits noise which causes discomfort or annoyance to any reasonable person of normal sensitiveness and prohibits noise which disturbs the peace and quiet. She said that it is the subjective rather than objective standard of the Noise Ordinance which governs in a court of law. She indicated that there is indisputable evidence that noise from the hotel causes discomfort and annoyance to any person of reasonable sensitivity and disturbs the peace and quiet of the adjacent neighborhood. She pointed out that the Commissioners have heard testimony from numerous residents and received formal complaints. She said that the Police Department has received 94 calls regarding the hotel over the period of time that it has been in operation, and 19 residents have sent in their opposition to the proposed extension of hours. She stated that the graphics included with the noise study demonstrate that the noise of the hotel extends out into the adjacent neighborhood.

Ms. Cho commented that although the hotel is operating within the commercial zone, it was originally intended to be an inn with a lobby bar that catered to guests staying at the facility rather than to the general public. She indicated that the Police Department has been called to the hotel 94 times in the past four years and has not issued a single citation. She indicated that the officers have sided with the hotel on every occasion. She said that the adjacent residents have provided statements that the hotel does not close on time. She stated that there should be clarification so that there is no ambiguity as to the required closing time. She indicated that it is also undisputed that the applicant has not notified the City until recently of special events that exceed the maximum required for notification. She said that the noise from the hotel does cause disturbances in the adjacent neighborhood and results in lowering of property values of the adjacent homes. She commented that the proposed extension of hours should not be approved, as the hotel currently creates a disturbance.

Mike Welsh, a resident of the 600 block of 13th Street, said that the hotel provides a great service to the community and brings much needed revenue to the City. He indicated, however, said that he is unclear of the findings in the sound report. He commented that it is possible to tune out the noise of cars driving down the street; however, it is not possible to tune out loud music and noise and people screaming. He said that he feels the main question is whether it is acceptable for the hotel to make loud noise that disturbs the neighbors. He said that the proposal to extend the hours of operation should only go forward at this time if it is acceptable for the hotel to generate noise that disturbs the neighborhood. He said that otherwise, mitigation measures need to be put in place before consideration is given to extending the hours. He indicated that extending the hours cannot be considered until it is proven that the hotel is in compliance with the Municipal Code. He stated that the residents are simply asking that the Shade comply with the same rules required of all members of the community. He commented that the issue is the close proximity of the site to adjacent residences. He indicated that he does not have an issue with the other uses in the Metlox development staying open until later hours. He suggested that a height Variance be granted for a barrier around the rooftop deck which would help to keep the noise from reaching the adjacent neighbors.

Chairperson Seville-Jones clarified that the issue before the Commission at this hearing is the

extension of hours for the Shade and not whether the hotel is in compliance with the existing Use Permit. She said that the Commission does not have the power to impose additional conditions on the current Use Permit.

Director Thompson said that issues of violations of the Noise Ordinance are addressed on an administrative level with the Police Department and the City's Code Enforcement team. He indicated that it is not the jurisdiction of the Planning Commission to make interpretations regarding the existing Use Permit or to impose additional restrictions unless an Amendment to the Use Permit is approved.

Demira Bosic, a resident of the 400 block of 10th Place, stated that the comments have been very long and suggested that the speakers limit their comments, and not be repetitive.

Stephanie Hubbard, 1300 Ardmore Avenue, said that she is confused by the results of the sound study. She stated that she is a reasonable person and has been disturbed from the noise at the hotel. She commented that the subject site is unique in that it is located 170 feet from residences. She stated that the hotel needs to comply with more noise regulations than other businesses in the Metlox development that are not located as close to residential properties. She indicated that she can hear noise from the rooftop deck, the interior corridor, and the front door of the hotel from her home. She commented that special events at the hotel routinely continue past permitted hours. She said that she does not understand the reason for considering longer hours for the bar area when her understanding is that a bar was not originally permitted. She also requested that a Variance be approved for a 4 foot barrier along the rooftop deck which would help to reduce noise to the adjacent neighborhood. She commented that her concern is not with the operation of the hotel but rather with the noise spilling over into the adjacent neighborhood.

John Li, a resident of the 500 block of 15th Street, said that he can hear music from his second story often between 8:00 p.m. and 10:00 p.m., although he cannot confirm whether it is from the hotel. He pointed out that sound does carry, and he would want to be certain that any mitigation measures that are intended to reduce sound to one area do not result in more noise disturbances to other areas. He said that the mitigation measures need to be effective for all properties around the subject site. He stated that he would be opposed to extending the service of alcohol for any additional hours beyond what is currently permitted. He commented that he recently was nearly hit by a car when he was running in the area of the hotel in front of the hotel drop off. He said that there is not a pedestrian walkway along the hotel, and increasing the time for alcohol service increases the chances that someone in the area can be hurt by a drunk driver.

Dan Levin, a resident of the 600 block of 11th Street, said that he enjoys utilizing the hotel. He indicated that people leaving the hotel over a longer period creates less of a noise disturbance than if they are all required to leave at one specific time. He said allowing the hotel to continue in its normal course of business would allow for a more orderly flow of patrons exiting the establishment. He pointed out that the residents on the street did make the decision to live adjacent to a commercial area.

Constantine Diamond, a resident of the 400 block of 10th Place, said that he specifically chose to move to the downtown area because of its charm. He indicated that the hotel is a great place to entertain clients. He said that along with the charm of the downtown area also comes noise. He indicated that there is a great amount of energy downtown, which is the reason he has chosen to live there.

Viet Ngo said that the subject site is on public property, and the Commission has authority over

the use of the land. He commented that the property was acquired in part with federal funds. He indicated that Resolution PC 05-08 and the minutes of the meeting of May 25, 2005, state that the original permit does not allow for a bar and that alcohol service is limited to beer and wine. He said that the hotel does not have a permit to have a bar. He said that there is clear evidence that City staff misused public funds and channeled funds to Metlox LLC and Manhattan Inn Operation Company. He said that the Commission should stop the racketeering enterprise and will be responsible for their actions.

Rod Ragle, a Manhattan Beach resident, said that it is good that there are successful businesses in the downtown area. He stated that forcing patrons of the hotel to leave at 11:00 p.m. results in people congregating in front of the hotel to decide where they will go next. He pointed out that the modernization of the City results in greater noise. He stated that the hotel has taken many steps to mitigate the noise impacts to the neighbors. He said that he would ask whether the adjacent neighbors have taken any measures on their properties to mitigate noise, considering that they have chosen to live across from a very large commercial property.

Peter Gombrect, a resident of 19th Place, said that the residents of Manhattan Beach live in a very dense City. He said that the interests of the residents must be balanced with the interests of the businesses. He commented that there is a limited amount of public space in the City, and there are rules established for the enjoyment of those areas for all of the residents. He indicated that 11:00 p.m. is not a reasonable closing time for such a business in a commercial area and is not equal to the hours permitted for other establishments. He indicated that there are noise ordinances that can be enforced if the hotel is not in compliance. He said that the interests of the residents would be better served by suggesting changes to the existing Noise Ordinance. He stated that the hotel is in compliance with the Noise Ordinance. He commented that some of the adjacent residents would not be happy with any commercial business at the subject site.

Rich Walker, a Manhattan Beach resident, thanked **Mr. Zislis** for providing a location like the Shade within the City. He said that he is proud to have friends and business associates stay at the hotel. He indicated that it is a great asset to the City and should be supported.

Steve Wible, a resident of the 1200 block of North Ardmore Avenue, said that several residents went to speak to **Mr. Zislis** several times, and his response was that it was the City who originally built the hotel. He indicated that residents in the adjacent neighborhood have moved as a result of the noise generated from the hotel. He commented that the noise which reaches his home is from the hotel terrace and the front entrance. He indicated that it would help for the noise to be reduced for the bar area to be soundproofed. He commented that he is opposed to allowing any extension of hours. He said that he would also like for the City to investigate past violations of non compliance with notification to the City of special events.

Tony Doriko, a Manhattan Beach resident, indicated that there has been concern expressed by the residents who are being impacted by the noise from the hotel. He said that he understands that it is not up to the Commission to enforce the conditions of the existing Use Permit. He commented that if the residents were in agreement to support the hotel operating two additional hours on weekends, **Mr. Zislis** would implement the additional noise mitigation measures as has been recommended.

Nancy Gilombardo, a resident of the 1100 block of North Ardmore Avenue, said that she is opposed to increasing the operating hours for the hotel, as it would only worsen the existing problems with the noise from the current operation. She said that extending the hours is not a solution to the problem. She stated that she has to close her windows at night and run a fan in order to reduce the level of noise from the hotel, and she has been woken up after 11:00 p.m. when she did leave her window open.

Jeff Dooley, a resident of the 1100 block of North Ardmore Avenue, indicated that placing a partition to separate the bar area would solve a great deal of the noise issues from the patio. He commented that he heard pounding music at his home coming from the hotel at 11:00 p.m. the following night after the previous hearing regarding the subject proposal. He said that he does not feel comfortable with **Mr. Zislis** being responsible for implementing the noise mitigation and would hope that the City would help to solve the issue.

Don McPherson, a resident of the 1000 block of 1st Street, indicated that he stands behind the comments that he has provided to the Commissioners that the methodology used for the sound study is incorrect. He commented that if the noise from the hotel is less than the ambient noise level in the adjacent area as suggested by the noise report, then the noise from the hotel should not be audible from the neighborhood. He indicated that the recording played by **Mr. Hubbard** and the testimony of the residents demonstrate that the hotel noise is audible from the neighborhood. He said that the Use Permit and Entertainment Permit for the hotel contain the requirements that if enforced will control the noise problem. He said that the Use Permit requires a retractable wall between the Zinc bar and the lobby as part of the STC 50 standards. He indicated that the Entertainment Permit indicates that the Zinc bar will have soundproofing treatments on the wall, the partition and the ceiling. He said that no additional hours need to be approved for those requirements to be enforced. He said that there is the possibility of negotiating if the applicant works with staff and the neighbors to resolve the noise issues.

Karol Wahlberg, a Manhattan Beach resident, commented that there is not only an issue with noise from the patrons but also with employees who leave the downtown businesses an hour after closing and generate noise. She indicated that she believes the residents are significantly impacted by the noise from the hotel. She commented that she feels it would set a very bad precedent to consider the request for additional hours for the hotel before addressing the concerns regarding noise.

Daryl Nisnick, a resident of 15th Street, said that although he does not hear noise at his home from the Shade, he hears noise from police and fire vehicles and general traffic. He commented that noise is part of life in a close community. He indicated that the sound engineer has concluded that the hotel is not in violation of the Sound Ordinance. He said that noise in the area cannot be completely eliminated, and it is a fact of life living near a commercial area. He stated that the applicant has offered to provide additional mitigation, but the noise cannot be completely eliminated. He said that there would be blight if the subject site was vacant, and the community would suffer. He said that he enjoys being able to go downtown and visit the Shade. He said that he feels the additional hours should be approved and that a requirement be included that **Mr. Zislis** provide additional mitigation measures as suggested.

Michelle Patterson, a resident of 23rd Place, commented that she does not feel the applicant should be rewarded when they are not able to address existing issues regarding noise. She indicated that several downtown establishments that are open later depend on the overflow of hotel patrons after the Shade closes. She said that the impact to other businesses should be considered in discussing any extension of hours for the hotel.

Chairperson Seville-Jones closed the public hearing.

Mr. Zislis commented that the Oktoberfest party that was recorded by **Mr. Hubbard** only occurs once a year. He indicated that they file a permit with the City for the party, and it ends at 8:00 p.m. He said that the general public is allowed at the Zinc bar. He stated that the hotel is not in violation of the City's objective noise standards. He pointed out that there is generally

noise associated with living next to a commercial zone. He said that he was up front with the City regarding the design of the hotel. He indicated that he is willing to do a barrier to completely surround the rooftop deck; however, the main concern is regarding the noise that emanates towards the neighborhood rather than toward the adjacent commercial area. He pointed out that special events currently are permitted until midnight, inside the hotel.

In response to a question from Commissioner Lesser, **Mr. Zislis** said that it would be much more aesthetically pleasing to put a double vestibule barrier as proposed at the front door rather than in the middle of the lobby.

At 9:15, a 10 minute recess was taken.

Discussion

In response to a question from Commissioner Lesser, Director Thompson said that the Police Chief has indicated that the officers have been instructed to respond immediately and take appropriate action to any complaints that are received regarding the Shade. He indicated that it is the practice of the Police Department to attempt to resolve issues before issuing citations.

Commissioner Andreani indicated that after looking at City Council Resolution No. 5770, Planning Commission Resolution No. 05-08, the Entertainment Permit for the hotel, the noise evaluation study, and the request of the residents for conditions for the Use Permit, it appears to her that the problem of noise emanating from the Shade hotel to nearby residents is primarily a result of the hotel not being in compliance with the original Use Permit and of the City's lack of enforcement. She said that the Metlox development was intended to provide a full range of office, retail and commercial activities while being mindful of being located near a residential neighborhood. She commented that the applicant knew that they would be opening the hotel near a residential area. She stated that the City is primarily a residential community, and the businesses are to be supported in ways that are not detrimental to the local residents. She indicated that extending the hours will exacerbate the noise and diminish the small town atmosphere of the downtown area.

Commissioner Andreani said that PC Resolution 05-08 states that the primary use and purpose of the hotel is to serve the community as a hotel offering first class accommodations to visitors; that all advertising, marketing and promotions will be focused on potential hotel guests and not the general public; and that the inn may provide wedding party and other special events in the courtyard, meeting room and living room as a secondary service to the primary inn use. She indicated that PC Resolution 5770 states that the availability of the inn for special events shall not be marketed as a primary use. She suggested that guests for special events be required to stay overnight and that special events not be marketed as a primary use. She pointed out that PC Resolution 05-08 provides no change of hours of operation for alcohol sales or special events. She said that the Resolution also states that all advertising, marketing and promotions will be focused on hotel guests and not the general public. She stated that there has been advertising for events at the Shade that were not paid for by clients of the hotel. She said that the hotel should not be promoted as a bar. She indicated that it was originally promoted to be a lodging establishment with only limited breakfast service for hotel guests only; however, breakfast has been served to the general public. She indicated that the hotel was not to provide lunch service; however, lunch has been advertised and provided to the public. She indicated that the retractable wall that was originally required for the "living room" area, the Lobby bar, has not been installed, and the noise study indicated that it is one of the areas of concern. She indicated that the operating hours, special events, hotel guests, and closing times all need to be more clearly defined. She said that she could not support additional hours of operation based upon compliance with the current permitted hours of operation.

Commissioner Lesser said that there is no question that the neighbors have been disturbed and annoyed by the noise from the Shade. He said that he toured the hotel at later hours on a busy weekend. He stated that the Commissioners have received numerous e-mails documenting the noise that emanates from the hotel into the adjacent area. He commented that the challenge is that the applicant is under no obligation to implement additional mitigation measures unless the additional hours of operation are approved. He said that the subject site is in a commercial zone located near residents, many of whom were living there before the Metlox development was built. He commented that he would support allowing the applicant to further review specific options to address the issues regarding noise.

Commissioner Paralusz thanked the members of the audience who have participated in the issue. She said that the Commission does not have the authority to require enforcement of the existing Use Permit. She commented that she agrees that the hotel may be in compliance with the objective noise standard; however, they may not be in compliance with the subjective standard. She commented that she feels it is reasonable for adjacent residents to be annoyed when they hear music from the hotel at 11:00 p.m. She commented that she wants to help the adjacent residents without hurting the applicant by denying any extension of hours. She said that she would be in favor of allowing the applicant to further consider additional mitigation measures including double doors. She suggested that the sound engineer provide input on measures that would be the most effective. She said that if she could be convinced that mitigation measures would be effective, she would be in favor of requiring that they put in place before she would consider allowing an extension of the hours.

Chairperson Seville-Jones commented that the neighbors have demonstrated that there is a noise issue in the adjacent neighborhood resulting from the hotel. She indicated that there has been testimony from residents at three hearings regarding the issue. She said that the sound report indicates that there is no issue regarding compliance with the objective noise standards. She commented, however, that the subjective standard is not met, as reasonable people living in the adjacent area are being impacted by the noise. She said that the hotel is located in a commercial area; however, it needs to coexist with the adjacent residential area. She said that although the hotel has not been cited, the fact that there have been numerous calls to the police suggests that there is a problem.

Chairperson Seville-Jones commented that implementing additional mitigation measures at the same time as extending the hours for the hotel may be a benefit; however it would still be allowing additional hours of operation. She indicated that the residents have indicated that they do not want additional hours of operation for the hotel. She commented that regardless of any additional mitigation measures, there would still be noise emanating from the hotel. She said that given the current complaints, she cannot support any additional hours of operation for the hotel. She commented that she is unlikely to approve the request given that she is applying the subjective noise standard. She also said that she is uncertain that any additional mitigation measures would be effective. She indicated that she would rather vote against the application at this point rather than asking the applicant to continue to spend money to prove further mitigation measures would work. She indicated that she did not hear from the neighbors that they would be willing to support additional hours of operation in exchange for additional mitigation measures.

The commissioners indicated that they agreed that the current permitted operating hours for the sky deck should not be extended.

Commissioner Paralusz said that she is in favor of reducing notification for special events to 125 people; extending food service; and granting the request for the interior accordion wall as

proposed.

Commissioner Andreani said that she is in support of allowing special events of up to 125 people without requiring City notification; allowing full food service with the same hours as the hotel; and requiring installation of the accordion wall between the lobby and interior courtyard. She commented that she is concerned about the material used for the wall, as glass does not absorb noise.

Mr. Zislis commented that the accordion wall would be constructed to mitigate noise. He said that he wants for the rooftop deck to remain open an additional hour, particularly in the summer during wedding season. He said that he would like to work with the neighbors, staff and the sound engineer. He said that he would not want to spend additional money to work further with the sound engineer if the proposal is ultimately going to be denied. He said that they would like to do all of the proposed mitigation measures while being allowed to have two additional hours of operation on weekends. He indicated that there could be a review of the permit in a year at which time the additional hours of operation could be revoked.

Commissioner Andreani said that the applicant has indicated previously that 70 percent of the revenue is generated from the hotel rooms rather than from the Zinc lounge or from special events. She indicated that she fails to see how two additional hours of operation for the sky deck, lounge and terrace on the weekends would significantly increase the hotel's revenue, and it would potentially disrupt the adjacent neighborhood.

Mr. Zislis said that the Commission can require that the operation of the hotel be reviewed after a year and can revoke the two extra hours at that time if it is determined to be an issue. He pointed out that other establishments in the area do not close at 11:00 p.m.

Commissioner Andreani suggested the possibility of allowing the Zinc bar to remain open until midnight on weekends for hotel guests only and that the current hours for the sky deck and terrace not be extended.

Director Thompson suggested that the item be tabled so that it can be readvertised when it is ready to come back before the Commission.

Chairperson Seville-Jones said she would like further clarification of the definition of special events and public advertising.

A motion was MADE and SECONDED (Lesser/Paralusz) to **TABLE** a Consideration of a Master Use Permit Amendment for modifications to the existing approvals for hours of operation, size of special events, food service, and installation of a glass wall between the lobby bar and hotel rooms at the Shade Hotel, Metlox Site, 1221 North Valley Drive.

AYES: Andreani, Lesser, Paralusz, Chairperson Seville-Jones

NOES: None

ABSTAIN: Fasola

10/28/09-3 Consideration of Code Amendments to Allow All Restaurants, Bars, Hotels, Facilities Within Hotels, and Similar Commercial Businesses to Remain Open Until 1:00 a.m. on New Years

Planning Manager Jester summarized the staff report. She said that the Downtown Business and Professional Association originally submitted a request to the City Council to extend hours for businesses on specific holidays. She indicated that the Council did amend the Code

to allow business to remain open to their permitted weekend hours on New Years Eve when it falls during the week. She indicated that the Commission at the last hearing indicated that they would not support allowing extended hours for other holidays but did feel that it may be appropriate for New Years Eve. She stated that the Commission requested further information regarding support in the community for businesses remaining open on New Years Eve and regarding the ordinances of other neighboring cities. She said that the Chamber of Commerce and Downtown Business Association have indicated that they would like for businesses in the City to have more flexibility for extended hours on New Years Eve. She indicated that no neighboring cities have specific ordinances to allow extended hours, although some cities include conditions on their Use Permits to allow extended hours on New Years Eve or other holidays. She said that other cities do enforce the conditions of the Use Permits and ABC (Alcoholic Beverage Control) regulations for New Years Eve and holidays. She said that several cities indicated that enforcement on New Years Eve has never been an issue, but that they will follow up if there is a complaint.

Planning Manager Jester commented that the Police Department expressed a concern that extending the hours could be a violation of ABC regulations. She indicated that the smallest shift for the Police Department is late at night. She indicated that the Police Department also expressed a concern regarding the possibility for increased criminal activity and that there would not be a sufficient number of taxis to meet the demand of patrons leaving the bars. She indicated that Police also has a concern that businesses may feel they are not being treated fairly under an administrative approval process. She said that one possible option is to provide for Temporary Use Permits to allow an extension of hours for New Years Eve, which would be an administrative approval with no notification. She commented that Temporary Use Permits are typically issued for such uses as circuses, carnivals, and Christmas tree lots. She said that there is an application fee, process, findings, and conditions. She said that such permits are reviewed by other City departments for their input. She indicated that the decision of the Community Development Director for Temporary Use Permits is appealable to the Commission. She said that the permit is an annual permit with a fee of \$450.00. She indicated that another option is to provide for a Use Permit process. She indicated that a Use Permit has similar findings and conditions as a Temporary Use Permit but would require noticing and a hearing before the Commission. She said that the decision of the Commission is forwarded to the Council for their final decision. She commented that the Use Permit is transferred with the property and applies to any future businesses on the site.

Chairperson Seville-Jones commented that she would be concerned that allowing an administrative approval for extended hours on New Years Eve would result in businesses requesting amendments to their Use Permits for other events.

Planning Manager Jester said that allowing a Temporary Use Permit process would be a very specific Code amendment that would apply only for New Years Eve. She said that any other requests to allow for Temporary Use Permits for other events would have to come before the Commission and City Council as an amendment to the Code.

In response to a question from Chairperson Seville-Jones, Planning Manager Jester said that a fee study could be done to determine whether a lower fee would be appropriate specifically for a Temporary Use Permit to allow extended hours on New Years Eve. She pointed out that the fee is intended only to cover staff time and costs.

Lieutenant Dye said that business operators and the public expect businesses to stay open until 1:00 a.m. on New Years Eve. He said that currently the Police Department must enforce the regular operating hours for businesses on New Years Eve if a complaint is received from a resident.

In response to a question from Commissioner Lesser, Lieutenant Dye stated that there currently is not a problem with enforcement on New Years Eve. He indicated that if a complaint is received, however, the Police Department is required to enforce the established hours of operation for the business.

Director Thompson pointed out that it is not an issue of enforcement but rather that restaurants and bars are interested in being permitted to have extended hours without being in violation. He commented that there was a complaint received last New Years Eve, which is the reason the request was made. He said that the complaint was not based on a disturbance but rather because the New Years Eve event was advertised as extending beyond the permitted hours for the establishment.

Chairperson Seville-Jones opened the public hearing.

Mr. Zislis, representing the Downtown Business Association, said that many businesses do stay open until after midnight on New Years Eve, and there are several people who will make it a point to call the police to shut down a New Years Eve event after 11:00 p.m. or midnight. He said that when New Years Eve falls in the middle of the week, it must be enforced as a regular week night rather than as a weekend. He commented that he would not want for an additional fee to be imposed on businesses. He stated that there are many restaurants that are currently only permitted to operate until 11:00 p.m. that would wish to have a New Years Eve event. He said that restaurants that are in good standing with the ABC and that have no violations want to legally be permitted to stay open past midnight on New Years Eve. He said that they would like for the Commission to allow New Years Eve to be a special celebrated event in the City as it is around the world.

In response to a question from Commissioner Lesser, **Mr. Zislis** commented that many businesses would not make enough revenue from the extended operating hours to cover a fee of \$450.00, although he would support a Temporary Use Permit for a fee of \$100.00. He said that any business that was in violation could be denied a permit.

Mary Ann Varni, representing the Downtown Business Association, stated that they submitted the proposal in order to request that the City acknowledge certain holidays as weekends. She said that the request was modified by the Commission to only include New Years Eve, which is a logical holiday to allow extended operating hours. She commented that New Years Eve is a holiday that is celebrated all over the world. She stated that the operators of several businesses that are in support of the request were not able to attend the meeting. She commented that given the nature of the holiday, people celebrate New Years Eve until past midnight regardless of whether it falls on a weekend or during the week. She said that the intent is to allow people to stay in local restaurants and not be asked to leave at midnight.

Chris Bredesen, the operator of Memphis at the Beach, indicated that they do not want to have to tell their customers they have to leave their restaurant exactly at midnight just as it is time to make the toast for New Years. He said that any additional hour where they have the opportunity to generate revenue would help their business. He commented that there has never been an issue regarding noise from their establishment. He stated that a \$450 fee for a Temporary Use Permit would not be feasible for them, and a fee of \$100.00 would be much more reasonable.

Planning Manager Jester pointed out that the fees are designed to cover staff time.

Kevin Berry, Vice President of the Downtown Business Association, stated that the request is not to allow an outdoor public event but rather to allow a handful of establishments to remain open past midnight on New Years Eve. He commented that he is also speaking for his business partner Ken Stickney.

Don McPherson said that he supports the request to allow businesses to have additional operating hours for New Years Eve with a Temporary Use Permit rather than with a permanent change to Use Permits. He commented that there would not be very many establishments that would request a Temporary Use Permit for New Years Eve, and the process could be made very efficient. He said that he does not feel there should be a fee for granting such a permit, but he would support bringing the fee down to \$100.00.

Tony Duriko, the operator of Bella Beach, indicated that it is important for residents to be able to visit local bars and restaurants on New Years Eve rather than having to go to other cities. He said that he understands that the fees cover the City's administrative costs; however, the process could be streamlined. He pointed out that when New Years Eve falls on a Friday or Saturday, there would not be an issue with allowing Temporary Use Permits for businesses that currently are permitted to remain open until 1:00 a.m. on weekends.

Chris Makurdoriko, a Manhattan Beach resident, said that there are currently only a limited number of places that are open on New Years Eve, and people are forced into only a few establishments. She indicated that extending the hours for responsible businesses would mean a great deal to the owners and patrons.

Chairperson Seville-Jones closed the public hearing.

Discussion

In response to a question from Chairperson Seville-Jones, Director Thompson said that the issue of fees is the purview of the City Council. He stated that the Council is conducting a fee study to ensure that the appropriate fees are being charged for permits. He indicated that a Temporary Use Permit for extended hours on New Years Eve could possibly be considered as a permit that should have a lower fee.

Commissioner Fasola said that he is glad to hear testimony in support of the proposal, as there was no public input at the last hearing. He pointed out that businesses are currently able to remain open until their weekend hours on New Years Eve when it falls during the week, which was just granted this year. He commented that there is not a lack of restaurants that remain open late in the City on weekends. He stated that it is not unreasonable to ask businesses to pay \$450 for a Temporary Use Permit, and it would be up to the discretion of the individual establishment to determine if it is worth the additional cost. He commented that he would support allowing a Temporary Use Permit process for additional operating hours on New Year Eve and would suggest that staff determine the appropriate fee.

Commissioner Paralusz said that she would also support allowing a Temporary Use Permit process for additional operating hours on New Year Eve. She recommended that the fee for a Temporary Use Permit for extended hours on New Years Eve be reduced.

Commissioner Lesser said that he is in support of a Temporary Use Permit process to allow extended hours on New Years Eve and would also support a reduction in the fee for such a permit. He indicated that he would support a Temporary Use Permit process rather than a blanket approval of extended hours, as the Police Department has expressed concerns that there can be difficulties with enforcement; that a single closing time could result in a large

number people being on the street at one time; that too high of a demand could be placed on taxi service which could result in more people driving their own vehicles after leaving the bars; and that extending the hours may violate the regulations of the ABC. He also pointed out that the permits would be reviewed annually.

Commissioner Andreani stated that she is reluctant to support extending operating hours; however, thoughtful consideration has been given to allowing extended hours for New Years Eve in particular. She commented that extending hours on New Years Eve should be done through a Temporary Use Permit process. She indicated that she does not feel that a \$450.00 fee for such a Temporary Use Permit would be excessive, as there is considerable staff time that is involved. She said that she would support the proposal with allowing extended hours on New Years Eve through a Temporary Use Permit process.

Chairperson Seville-Jones said that she would reluctantly support the proposal. She indicated that business owners would have to actively apply for a Temporary Use Permit, and it would be reviewed on an annual basis. She said that the City should be sensitive to any concerns of residents that are raised regarding extended hours on New Years Eve. She indicated that she does recognize that New Years Eve is one night of the year when people do celebrate, and it would be nice for residents to be able to spend it at local establishments. She also pointed out that only a small number of businesses are likely to apply.

A motion was MADE and SECONDED (Seville-Jones/Paralusz) to **APPROVE** an Amendment to Section 10.84.110 of Chapter 10.84 of the Municipal Code to allow Temporary Use Permits to be issued with respect to New Years Eve for restaurants, bars, hotels, facilities within hotels, and similar commercial businesses to remain open until 1:00 a.m. and that consideration be given to reducing the fees for granting such Temporary Use Permits.

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

Director Thompson stated that the item will be scheduled for a public hearing before the City Council in the near future.

E. DIRECTORS ITEMS

F. PLANNING COMMISSION ITEMS

G. TENTATIVE AGENDA November 12, 2009

1. 113 and 119 South Poinsettia Avenue- Variance
2. 500 South Sepulveda Boulevard- Parking Reduction

H. ADJOURNMENT

The meeting was adjourned at 12:00 a.m. to Thursday, November 12, 2009, in the City Council Chambers, City Hall, 1400 Highland Avenue

SARAH BOESCHEN
Recording Secretary

ATTEST:

RICHARD THOMPSON
Community Development Director