

**CITY OF MANHATTAN BEACH
[DRAFT] PLANNING COMMISSION
MINUTES OF REGULAR MEETING
JANUARY 26, 2011**

A Regular Meeting of the Planning Commission of the City of Manhattan Beach, California, was held on the 26th day of January, 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: Lesser, Paralusz, Seville-Jones, Chairman Fasola
Absent: Andreani
Staff Present: Richard Thompson, Director of Community Development
Eric Haaland, Associate Planner
Recording Secretary, Sarah Boeschen

2. APPROVAL OF MINUTES – December 8, 2010

Chairman Fasola requested that the second paragraph of page 5 of the December 8 minutes be revised to read: “Mr. Favaro said that the comments from the community are that the height of the building should not reach above City Hall.”

A motion was MADE and SECONDED (Seville-Jones/Paralusz) to **APPROVE** the minutes of December 8, 2010, as amended.

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

3. AUDIENCE PARTICIPATION

Viet Ngo, a United States citizen, requested that Commissioners Paralusz disclose her relationship with Mayor Richard Montgomery.

Chairman Fasola commented that this hearing is not the forum to discuss political issues.

Mr. Ngo indicated that Commissioners Paralusz and Lesser have a responsibility to disclose any relationship that they have with any donors who have made political contributions that could appear to create a conflict of interest as members of the Commission in considering projects.

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, 2011, 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 approved 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.

8. TENTATIVE AGENDA February 9, 2011

- A. Planning Commission Reorganization
- B. Coastal Development Permit/Minor Exception – 3520 The Strand

9. ADJOURNMENT

The meeting was adjourned at 10:15 p.m. to Wednesday, February 9, 2011, in the City Council Chambers, City Hall, 1400 Highland Avenue

SARAH BOESCHEN
Recording Secretary

ATTEST:

RICHARD THOMPSON
Community Development Director