

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

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

1. ROLL CALL

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

2. APPROVAL OF MINUTES – February 9, 2011

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

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

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

3. AUDIENCE PARTICIPATION

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

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

4. PUBLIC HEARINGS

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

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

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

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

Associate Planner Haaland summarized the staff report.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chairperson Paralusz closed the public hearing.

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

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

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

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

At 9:00 a ten minute recess was taken.

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

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

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

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

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

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

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

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

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

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

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

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

Chairperson Paralusz reopened the public hearing.

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

Chairperson Paralusz closed the public hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chairperson Paralusz opened the public hearing.

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

Chairperson Paralusz closed the public hearing.

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

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

Chairperson Paralusz reopened the public hearing.

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

Chairperson Paralusz closed the public hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Commissioner Paralusz reopened the public hearing.

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

Chairperson Paralusz closed the public hearing.

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

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

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

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

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

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

5. DIRECTORS ITEMS

6. PLANNING COMMISSION ITEMS

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

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

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

7. TENTATIVE AGENDA March 9, 2011

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

8. ADJOURNMENT

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

SARAH BOESCHEN
Recording Secretary

ATTEST:

RICHARD THOMPSON
Community Development Director