

**CITY OF MANHATTAN BEACH  
[DRAFT] PLANNING COMMISSION  
MINUTES OF REGULAR MEETING  
JULY 25, 2012**

A Regular Meeting of the Planning Commission of the City of Manhattan Beach, California, was held on the 25th day of July, 2012, 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: Conaway, Gross, Paralusz, Chairperson Andreani  
Absent: Ortmann  
Staff Present: Richard Thompson, Community Development Director  
Laurie Jester, Planning Manager  
Esteban Danna, Assistant Planner  
Angelica Ochoa, Assistant Planner  
Recording Secretary, Sarah Boeschen

**2. APPROVAL OF MINUTES – June 27, 2012**

Commissioner Gross said that the description of the mall project is not included in the June 27 minutes, and he does not remember whether a description of the project was included in the presentation at the hearing. He asked if staff recalled whether a description of the project that was included at the meeting and whether any language should be added to the minutes.

Director Thompson indicated that the video of the meeting and the staff report are available as part of the record. He commented that it is not a large concern for language regarding the project description to be added to the minutes.

Chairperson Andreani requested that the fourth sentence of the third paragraph on page 10 of the June 27 minutes be corrected to: "He was not clear on how this lower level ~~with~~ connects up to the main mall level."

A motion was MADE and SECONDED (Gross/Paralusz) to **APPROVE** the minutes of June 13, 2012, as amended.

AYES: Conaway, Gross, Paralusz, Chairperson Andreani  
NOES: None  
ABSENT: Ortmann  
ABSTAIN: None

**3. AUDIENCE PARTICIPATION**

**4. GENERAL BUSINESS**

**07/25/12-2 Appeal of an Administrative Decision to Remove Guardrails on a Green Roof Located at 225 John Street**

Director Thompson indicated that the Commissioners have been provided with additional information regarding the project that was provided after the staff report was prepared.

Assistant Planner Danna summarized the staff report.

In response to a question from Commissioner Paralusz, Assistant Planner Danna indicated that the approved plans for the roof included a lower portion where the planting trays would be placed and raised walking paths for maintenance personnel. He commented that the homeowners want to have a guard rail around the roof, in addition to the required deck guard rail, to ensure the safety of their children. He indicated that a 42 to 48-inch glass rail could be used around the deck that would be very difficult for a child to climb. He commented that maintenance personnel for the roof could use harnesses in order to help ensure safety. He pointed out that the roof would be flat and would allow for secure footing for any maintenance personnel.

In response to a question from Commissioner Conaway, Assistant Planner Danna said that a guard rail is not required for any roof. He pointed out that there is not a guard rail surrounding the green roof in the front of the subject home. He commented that the plans for the project included a green roof rather than a deck, as a deck was not permitted. He indicated that staff found upon inspection that the area appeared to be a deck. He said that staff's position is that the rail should be removed in order to help prevent the area from being converted into an illegal deck.

Director Thompson said that staff feels that the area is not permitted as a deck and that measures should be taken to discourage people from using it as a deck.

Assistant Planner Danna said that staff's position is that the guard rails should be removed to avoid a future Code enforcement issue.

In response to a question from Commissioner Paralusz, Assistant Planner Danna indicated that the tile that was originally installed on the roof was removed prior to the applicants receiving the temporary certificate of occupancy.

In response to a question from Commissioner Gross, Assistant Planner Danna indicated that an open style guard rail is a rail that includes an open area or clear glass and is not a solid wall.

In response to a question from Commissioner Conaway, Assistant Planner Danna commented that staff does not feel it is as important for the solid stud wall portion (about 21 inches in height) along the perimeter of the roof to be removed, and their main concern is that the glass and railings be removed.

In response to a question from Commissioner Gross, Assistant Planner Danna said that green roofs are relatively new, and there have not been many similar situations as the subject project in the past.

Director Thompson indicated that green roofs are new, and staff is learning about their design and use. He indicated that requiring a slope and prohibiting guard rails may be options for preventing a roof area from becoming a deck.

In response to a question from Chairperson Andreani, Assistant Planner Danna said that the applicant is waiting for the issue to be resolved before finalizing the roof. He indicated that the tiles, gas lines, lighting, and speakers for the outside area have been removed. He said that the planting strip at the perimeter of the deck does include irrigation; however there is no irrigation for the remainder of the roof area. He commented that roof drains have been installed since the temporary certificate of occupancy was issued.

Commissioner Andreani opened the public hearing.

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### **Audience Participation**

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**John Starr**, Starr Design Group, said that their design solution, because they were not able to incorporate a deck, was to convert it to a green roof. He said that guard rails were put in place to protect the safety of the workers at the direction of the Building Division. He said that the roof drains are installed. He commented that there is a water supply line on the roof. He indicated that the irrigation is overhead.

**Kirk Retz**, representing the applicants, said that this is the first time the applicants have built a house. He stated that the applicants intend to stay in the community for a very long time. He commented that the applicants relied on the advice of their contractor to use the tile on the roof and did not realize that it required approval from the Planning Department. He said that the contractor who installed the gas line suggested that the line be installed for the outside area because it would be very expensive and require a great deal of work for it to be added in the future. He said that the roof area is 800 square feet and includes 200 square feet of approved deck area. He commented that the approved deck area has a guard rail. He pointed out that the fence around the deck is attached to metal rods that are embedded into the roof and would not be easy to remove. He stated that the watering system had not yet been installed because it is done after the plants are placed on the roof.

**Mr. Retz** commented that green roofs are new. He stated that OSHA standards require that workers must be protected by a railing when they are exposed to fall hazards of over 4 feet. He stated that the contractor selected by the applicants to install the green roof indicated that their insurance would not cover installation and maintenance of the roof without a guard rail because of liability. He pointed out that the applicants' insurance company has also provided a letter that their homeowners' policy would be terminated if a rail is not provided. He indicated that a rail for a green roof above two stories is required by the insurance company. He pointed out that the applicants took action to remove the materials when they realized that they were not in compliance. He indicated that the applicants have signed a deed restriction that the area would not be used as a deck which has been recorded against the property. He commented that the applicants are concerned with the safety of their children if there is not a railing along the roof. He indicated that the applicants followed bad advice from contractors and have since removed the materials that are not permitted.

In response to a question from Commissioner Gross, **Mr. Retz** said that the area was built structurally strong enough to support the weight of the plants on the roof, and the intent was not for it to accommodate a deck.

In response to a question from Commissioner Paralusz, **Mr. Retz** pointed out that the deed restriction demonstrates good faith from the applicants that the area would not be used as a deck. He stated that the applicants spent a great deal of money to remove all of the materials when they realized that they were not permitted. He also pointed out that any future owners of the property would be aware of the deed restriction. He commented that there is a 200 square foot outdoor deck that would be accessible from the living area, and the concern is if the children go beyond the deck area to retrieve an object that falls past the railing. He indicated that the children have a large play area and would not be permitted to play on the roof. He said that the guard rail was required from the beginning.

In response to a question from Commissioner Paralusz, **Mr. Starr** commented that the Uniform Building Code requires a guard rail for areas of the roof where maintenance is required. He indicated that the guard rail was required by the Building Department to protect the maintenance workers. He pointed out that OSHA also has requirements for a guard rail for roofs where maintenance is required.

**Mindy Goodrich**, the applicant, commented that they were mainly concerned with the design of the house itself rather than with adding a deck. She indicated that they decided to incorporate a green roof because it would be more aesthetically pleasing from inside the house. She said that they removed the tile on the roof when they realized they were not permitted. She indicated that their contractors made suggestions to include the speakers and lighting for the outdoor area to add to the interior of the house for entertaining rather than for use outside, so they went with their advise. She commented that their concern with including the guard rail is the safety of any workers on the roof and of their children. She indicated that their children would not be allowed to play on the roof, but she is concerned that they could still get beyond the railing. She pointed out that it is a federal requirement to include railings to provide for the safety of the maintenance workers. She said that having a bare roof rather than a green roof would decrease the value of their home.

Chairperson Andreani closed the public hearing.

### **Commission Discussion**

Director Thompson pointed out that the City's Building Code does not require a railing for a roof. He stated that there are other means for providing safety for a green roof. He commented that a perimeter of 36 inches could be placed around the roof that would comply with OSHA requirements. He said that he is not certain about the requirement of the appellants' insurance company, as the letter was just submitted at the meeting and we would need to have a conversation with them.

Commissioner Paralusz asked about the penalties if a future owner of the home did not comply with the deed restriction.

In response to a question from Commissioner Paralusz, Director Thompson said that staff's main concern is that allowing the railing could set a precedent for other projects.

In response to a question from Commissioner Conaway, Director Thompson said that a property owner can ultimately be taken to court if a complaint is received and the owner refuses to comply with a deed restriction.

In response to a question from Commissioner Paralusz, Director Thompson said that there are deed restrictions that are not enforced because they are not associated with a City regulation. He indicated, however, that City Code requirements are aggressively enforced.

In response to a question from Commissioner Conaway, Director Thompson said that the main issue is whether or not the guard rail should be required to be removed. He stated that there are other solutions for the applicant to maintain a green roof and still provide protection without including the guard rail.

In response to a question from Commissioner Paralusz, Director Thompson said that staff is concerned that the area could be converted into a noncompliant deck. He said that other property owners may come before the City with similar applications if the proposal is approved for the subject applicants.

In response to a question from Commissioner Conaway, Assistant Planner Danna said that the building official found that the structural calculations that were used for the roof are typically used for deck designs. He commented that building officials consider issues of safety and whether a building is structurally sound and the Planning Department considers issues regarding whether or not the use of a space is permitted.

Commissioner Conaway commended the appellants for responding quickly when they were made aware that they were not in compliance. He said that the applicants were non-compliant because of the advice of their contractors. He pointed out that the Commission needs to consider precedence for the rest of the community and that the area could possibly be converted into a deck by a future owner of the property. He indicated that he is sympathetic to the concern regarding safety, and there is always the opportunity for someone to go across the railing unless the roof is very steep. He commented that he is not certain about the insurance company requirements. He indicated that he agrees with staff that there are multiple methods to address safety. He said that he is not aware of a requirement that every green roof must have a 42- inch guard rail, and there are green roofs across the country that do not have guard rails. He pointed out that swimming pools and fences adjacent to streets only provide one rather than two levels of separation from a safety hazard. He stated that the guard rail is not violating the Building Code; however, it is also not contributing to the Building Code. He commented that his understanding is that the guard rail can remain without violating the law. He indicated that he feels the rail should be allowed to remain because it is not in violation of the Code.

Commissioner Gross stated that there are ways to design decks to prevent people from going over them. He commented that he is very concerned about the precedent that would be set by allowing the railing. He indicated that without a railing, it is clear from the street that the area is a roof and not being used as a deck. He stated that he supports staff's position that the railing should be removed.

Commissioner Paralusz said that she echoes the comments of Commissioner Conaway in praising the applicants for designing a beautiful home and an environmentally friendly green roof. She said that she was concerned when she initially reviewed the project because the applicants originally requested a deck and then designed the area for use as a deck after they were aware that it was not permitted. She also pointed out that guard rails are not required or prohibited by the Code. She asked whether staff has the discretion to require that the guard rails be removed even though they are not prohibited by the Code. She commented that she understands the applicants' concerns regarding safety; however, she also is concerned that other property owners would convert green roofs into a deck. She stated that she would not want the applicants to lose their insurance coverage because the guard rail is removed. She indicated that she is not certain whether a requirement for guard rails is standard for insurance companies. She said that her decision regarding whether or not the guard rails should be removed would be much easier if she had further information regarding the requirements of other insurance companies. She asked regarding the possibility of staff contacting insurance companies in the area in order to find out whether they would deny coverage without guard rails.

Director Thompson pointed out that there are different types of guard rails, and the guard rail currently on the property satisfies the requirement for a deck. He said that protective railing that is typically provided around mechanical equipment has a different configuration than the existing railing. He stated that there are other methods for satisfying OSHA requirements for the safety of maintenance workers that do not require a railing. He indicated that he would need to have a discussion with the applicants' insurance agent to determine how they are evaluating the space and the reasons why insurance coverage would be denied. He said that he believes any insurance requirement could be satisfied without having the railing.

Chairperson Andreani commended the applicant for fixing the nonconforming items once they were identified. She stated that the applicant initially requested a deck and the contractors encouraged the applicants to incorporate features to utilize the area as a deck. She said that she

is concerned with approving a proposal where nonpermitted items were put in place and the applicant then apologizes after the fact. She commented that she understands the safety concerns of the applicant but feels that there are other methods for providing safety. She commented that she is concerned with the existing green roof in the front of the house that does not have a guard rail which would not satisfy the terms of the applicants' insurance policy. She indicated that she would uphold staff's decision and deny the guard rail so that roof area does not appear as an unpermitted deck.

Commissioner Paralusz commented that she would like further information regarding whether a requirement for a guard rail on such a roof is standard for insurance companies.

Chairperson Andreani said that her understanding is that green roofs are not required to include a guard rail. She stated that she does support the green roof. She indicated, however, that it would be a dangerous precedent to allow the railings.

Commissioner Paralusz said that she is concerned with the precedent that would be set by allowing the guard rail. She commented that she is also concerned regarding the ability of the City to enforce a deed restriction on the property that the area would not be used as a deck.

Director Thompson said that staff has an obligation to bring any Code enforcement issues that are brought to their attention into compliance.

Commissioner Paralusz said that she would support staff's position that the guard rails should be removed.

#### **Action**

A motion was MADE and SECONDED (Gross/Paralusz) to **DENY** an Appeal of an Administrative Decision to Remove Guardrails on a Green Roof Located at 225 John Street

AYES: Gross, Paralusz, Chairperson Andreani  
NOES: Conaway  
ABSENT: Ortmann  
ABSTAIN: None

Director Thompson explained the 15-day appeal period.

#### **5. PUBLIC HEARINGS**

**06/27/12-3 Consideration of a Use Permit Amendment for an Existing Restaurant to Request On-Site Beer and Wine Service from 6:00 a.m. to 2:00 a.m. Daily for HotDoggers, Inc. Located at 1605 North Sepulveda Boulevard**

Director Thompson commented that a petition and plans were included in the packet that the Commissioners received with the staff report.

Assistant Ochoa summarized the staff report. She provided the Commissioners with letters that were received after the staff report was distributed.

In response to a question from Commissioner Paralusz, Assistant Planner Ochoa indicated that the Resolution passed by the City Council limits the hours of operation as well as the permitted hours for beer and wine service for the establishment.

In response to a question from Commissioner Conaway, Assistant Planner Ochoa said that the establishment has the ability to operate 24 hours without a Use Permit, as a legal non-conforming use. She indicated that no previous use on the site has operated 24 hours. She indicated that the applicant has chosen not to utilize the entitlements of the Use Permit that was approved; however, the Use Permit is still valid, since it has not expired.

Director Thompson commented that the applicant has not exercised the rights for alcohol service that were granted with the Use Permit. He indicated that the recommendation of the Planning Commission regarding the current request will be reviewed by the City Council.

In response to a question from Commissioner Gross, Assistant Planner Ochoa said that the applicant is not currently able to serve alcohol regardless of the City Use Permit approval, as the ABC has not yet approved the liquor license because of a protest filed by a resident.

In response to a question from Commissioner Conaway, Assistant Planner Ochoa indicated that the Kentucky Fried Chicken that previously operated on the site was not open 24 hours to staff's knowledge.

In response to a comment from Commissioner Gross, Director Thompson pointed out that the applicant has the right to operate 24 hours rather than having been granted the ability to operate 24 hours. He indicated that the City has the ability to restrict the hours of the operation if the establishment serves alcohol.

In response to a comment from Commissioner Gross, Commissioner Paralusz pointed out that the Kettle is approved to operate 24 hours but has restricted hours for alcohol service from 11:00 a.m. until 1:00 a.m.

In response to a comment from Commissioner Gross, Director Thompson said that he is not aware of other instances similar to the subject proposal. He commented that it is important to consider what has been granted to other establishments; however, the Commission should focus on the subject site and operation in making a decision regarding the proposal.

Chairperson Andreani commented that she feels that the subject proposal should be considered as a request for a new Use Permit rather than an amendment to an existing Use Permit if it is true that Resolution No. 6322 is currently not applicable to the project as indicated in the second paragraph on page 2 of the staff report. She commented that alcohol currently is not served at the establishment, and the addition of alcohol service would be an intensification of use.

Director Thompson clarified that the Use Permit is in effect; however the applicant has chosen not to utilize the entitlements included in the Use Permit. He indicated that the applicant would need to comply with the restrictions included in the Use Permit if the entitlements were being utilized. He commented that the Commission should focus on the request itself rather than whether the request is for an amendment or a new Use Permit.

In response to a question from Chairperson Andreani, Assistant Planner Ochoa said that the proposal for 22 parking spaces when the project was previously considered by the Commission included the outdoor patio which was not built as part of the project. For this reason, the existing 18 parking spaces remained.

In response to a question from Commissioner Paralusz, Director Thompson said that the applicant could not reapply for a new request for a certain amount of time if there had been a

denial of the original application. He indicated that there is not a waiting period in this case because the project was approved.

Commissioner Gross said that his impression is that the hours that were included in the Resolution of the City Council were based on the inclusion of an outdoor patio. He indicated that he might feel that different operating hours may be appropriate without the inclusion of the patio.

Chairperson Andreani opened the public hearing.

### **Audience Participation**

**Lisa Pena**, a resident of the 2300 block of Elm Avenue, said that she is in favor of the establishment serving beer and wine. She said that she appreciates having a nearby family restaurant. She pointed out that baseball fields allow people to have a beer with their hotdog. She commented that people should be able to have a beer with their food at HotDoggers.

In response to a question from Commissioner Paralusz, **Ms. Pena** commented that she does not have an opinion regarding the hours permitted for alcohol service. She indicated that she does not have a concern with alcohol service provided that there is someone available to ensure that patrons do not get out of hand.

**Sandy Saemann**, the applicant, said that the ABC (Department of Alcoholic Beverage Control) complaint that was received regarding the establishment is related to parking and not alcohol service. He pointed out that the Resolution passed by the City Council was enacted when there was a plan to include an outdoor patio area. He said that the plan for a patio area became too expensive, and he decided not to include it as part of the restaurant. He commented that he would have built the patio and provided double the occupancy for the establishment if the intent was to become a bar. He stated that the establishment is clearly not a bar, and they are requesting beer and wine to accompany food. He indicated that the dining room is 200 feet from the nearest neighbor. He said that they are willing to have conditions included to prohibit them from having a bar area and bar equipment. He said that the establishment will never be a bar. He pointed out that the Use Permit can be revoked if it were to become a bar.

**Mr. Saemann** indicated that there has been no documentation that HotDoggers has increased traffic or accidents on the adjacent streets. He stated that there are 40 businesses on Sepulveda Boulevard in Manhattan Beach that operate 24 hours. He indicated that they have provided adequate parking for its operation per the Planning Department requirements and have caused no parking problems. He pointed out that the adjacent UPS store only has three parking spaces. He commented that the restaurant holds 36 people and has 18 parking spaces. He indicated that they have received no complaints regarding parking. He said that the Police Department has not received any complaints from residents regarding noise, traffic, or parking resulting from the operation of the establishment.

**Mr. Saemann** stated that they work under the guidelines of the City's building requirements and have not had any safety violations. He said that they have received an "A" rating from the Health Department. He indicated that they have not intensified the use and have not been detrimental to the peace and quiet of the neighborhood. He stated that they have submitted a petition to staff with 400 signatures of Manhattan Beach residents in support of the proposal. He pointed out that 23 of the residents who signed the petition live within 500 feet and 4 live directly adjacent to the establishment. He commented that they have also submitted a petition with an additional 250 signatures of other South Bay residents. He stated that the building has been on the site for 47 years and can be operated 24 hours. He said that he does not plan for



the establishment to operate 24 hours, as there is not enough business during early hours of the morning. He pointed out that Target, CVS, Speedy Mart all have the right to operate 24 hours. He indicated that he has never had any ABC violations. He stated that he is now formally changing his request for alcohol service to 1:00 a.m. daily, not 2:00 a.m. as in his written application. He pointed out that they have placed a great investment in the business and in the City. He pointed out that the City receives sales tax and property tax revenues from the business. He indicated that HotDoggers has 16 full and part-time employees. He stated that half of the employees live in Manhattan Beach.

In response to a question from Chairperson Andreani, **Mr. Saemann** said that he would like to have closing hours of 1:00 a.m. Monday through Thursday; 3:00 a.m. on Friday and Saturdays; and midnight on Sundays. He indicated that he would like to have operating hours beginning at 7:00 a.m. in the event they decide to serve breakfast.

In response to a question from Commissioner Paralusz, **Mr. Saemann** commented that the restaurant has been too great of an investment to have the restricted operating hours as established in the City Council Resolution. He pointed out that he has shown by operating without utilizing the entitlement for alcohol service that serving food is more important to the business than serving alcohol.

**Michael Lang**, a resident of Oak Avenue, said that many residents did not know about the project until it was considered at the City Council meeting. He stated that they are concerned with the implications of a liquor license on a site that has limited parking and is located next to a very busy street. He commented that they do not know the impact that alcohol service would have to the establishment because alcohol is not currently being served. He said that the City Council decided to restrict the operating hours in order to allow the service of alcohol. He commented that the request for additional hours should not be considered until after alcohol service is provided during the permitted hours established by the City Council. He indicated that there is a sign facing Oak Avenue that is aggressive towards the UPS store. He said that a chain has never been placed across the driveway of the parking lot to prevent cars from exiting onto Oak Avenue after 10:00 p.m. He commented that they are also concerned because they do not know the impact that the service of alcohol would have to the parking on the site. He indicated that they would like for as much parking as possible to be provided. He commented that they do not have an issue with the conditions imposed by the City Council but are frustrated that the applicant is back before the Commission requesting further hours just a few months after opening. He indicated that they want the restaurant to be successful under the conditions established by the City Council.

**Kay Gilbert**, a resident of the 800 block of John Street, said that the establishment is a family restaurant and would not become a bar. She indicated that she would like to be able to have a beer or glass of wine with her food at HotDoggers. She commented that she would like for there to be another restaurant in the City that is open 24 hours besides the Kettle, although she realizes that the economics do not allow for 24 hour operation. She said that she supports the hours that are being requested. She suggested that the Commission consider allowing HotDoggers to serve alcohol during the hours established by the City Council and allow extended hours for operation of the restaurant. She also suggested that the exit from the driveway onto Oak Avenue be closed and that cars only be permitted to exit onto Sepulveda Boulevard during late hours.

In response to a question from Commissioner Paralusz, **Ms. Gilbert** said allowing alcohol service during late night hours at the location would be a mistake.

**Victoria Kohn**, a resident of the 1700 block of Oak Avenue, said that she welcomes the business under the restrictions and guidelines that were approved by the City Council. She said that the impacts to noise, traffic, and safety are not known until alcohol is served at the establishment. She suggested placing reverse tread at the driveway onto Oak Avenue to prevent cars from exiting without the use of a chain across the driveway. She suggested that the applicant reach out to the neighborhood and invite the neighbors to visit the restaurant. She commented that she does not believe any of the neighbors are against having the establishment. She indicated that she believes the adjacent neighbors would welcome the applicant if they adhered to the restrictions that were established by the City Council.

**J.C. Agajanian**, a resident of the 2800 block of Tennyson Street, said that he supports the business. He said that he works unusual hours quite often and would like the opportunity to go to HotDoggers during late hours. He indicated that he is certain that there are many people that would like to have the opportunity to have a beer with their food during later hours. He commented that beer is considered as a food where he is from in Germany. He said that hotdogs and beer go together. He pointed out that patrons would not visit the establishment to have multiple beers but would like the opportunity to have a single beer with their food.

**Brad Woomer**, a Manhattan Beach resident, stated that he believes HotDoggers should retain its rights to operate 24 hours. He indicated that the site is located on Sepulveda Boulevard along with other comparable uses that have 24 hour rights. He indicated that he also believes that the restaurant should be allowed to sell alcohol during the hours as permitted by the ABC. He indicated that the applicant is passionate about HotDoggers. He commented that the establishment is a family restaurant and not a bar. He pointed out that Chili's would be considered a restaurant and includes a bar area.

In response to a question from Commissioner Paralusz, **Mr. Woomer** said that the conditions in the Use Permit would prevent any future establishment on the site from operating as a bar. He commented that there are people in the area that have careers such as doctors or airline pilots who work at unusual hours that would like to have more food choices. He commented that restricting the hours would limit the ability of HotDoggers to be successful.

**Laura Lang**, a resident of Oak Avenue, said that the applicant has been provided with the option to serve alcohol by the City Council. She indicated that the neighbors are not against alcohol service and want a business that is successful and fits within the neighborhood. She stated, however, that increased hours for alcohol service should not be approved until the impact of alcohol service is known during the hours as established by the City Council. She indicated that no other restaurants except the Kettle have 24 hour rights with alcohol service. She commented that she does not believe the City should continue to approve alcohol licenses and drug stores.

**Carol Wahlberg**, a Manhattan Beach resident, said that the applicant should not apply for additional hours for alcohol service without having served alcohol under the hours approved by the City Council. She indicated that she hopes the Commission would not consider extending the hours for alcohol service.

**Roger Williams**, a resident of the 1700 block of Oak Avenue, said that many of the residents seem to be overreacting. He indicated that the business would not operate as a bar. He pointed out that Rubios sells alcohol and is located one block north of the subject site on Sepulveda Boulevard. He stated that he has not seen any problems with the business. He pointed out that bars sell hard liquor and not just beer and wine, and HotDoggers is clearly a restaurant. He commented that there is already a bar close to the subject location.

**Bill Victor** said that Rubios is not near residences with children. He commented that children are very important to the community. He said that the residents of Oak Avenue have tried to remain a residential community as much as possible. He indicated that the adjacent residents were led to believe that the establishment would not have a license for beer and wine service.

**Brian Guevera**, a resident of 1600 Oak Avenue, said that he is concerned that drivers that have been drinking would access Oak Avenue if no chain is in place restricting access from the parking lot during later hours. He commented that whether or not alcohol is served makes a large difference. He commented that he has noticed that the restaurant has been closed by 10:00 p.m. on weeknights during the past few weeks. He indicated that beer and wine service is permitted with Use Permit that was approved by the City Council during the hours that HotDoggers is currently operating. He indicated that the alcohol service seems to be the main reason why the applicant is proposing longer operating hours. He said that the concern is not whether the establishment operates as a bar but rather whether people leave the establishment after having consumed a significant amount alcohol. He commented that the petition that was submitted in support of the proposal does not indicate whether the people who have signed would support alcohol service beyond the hours that were approved by the City Council.

**Mr. Guevera** said that he filed a complaint with the police regarding noise when the outside of the building was being powerwashed at 3:30 in the morning on a weekday. He commented that his bedroom faces the subject site. He pointed out that 24-hour operation is not a granted entitlement of the property but rather the absence of a restriction being placed on hours of operation. He said that the City Council considered an enclosed rather than an open patio, and the fact that the patio is not being included should not impact the approval of the hours of operation.

**Lelani Kowal**, a resident of Oak Avenue, said that she was not originally concerned regarding the request for alcohol service because she did not realize that the applicant would also request 24 hour operation. She indicated that they submitted a petition with 64 signatures from adjacent residents when the item was considered by the City Council. She commented that the approval that was granted by the City Council was reasonable and was responsive to the concerns that were raised by the adjacent residents and the applicant. She pointed out that HotDoggers has not been in operation with alcohol service. She commented that the conditions that the City Council included in the Use Permit were reasonable in limiting hours of alcohol service.

**Chris Ryan**, a Manhattan Beach resident, said that the Council weighed the opinions of both sides of the issue, and it is disappointing that their decision is not acceptable to the applicant. He stated that a two year review of the project under the permit that was granted would seem reasonable. He commented the applicant's statement that there are no residents located within 200 feet of the restaurant does not make sense if there were 23 residents who signed the petition in support that live within 500 feet of the subject site. He indicated that the majority of the reviews for the restaurant on Yelp have not been favorable. He said that the decision made by the City Council that would be reviewed in a year seems reasonable.

**Lori Varmega** said that she works with the applicant as his office manager, and he is a man of integrity. She stated that she does not believe that alcohol service at the establishment would cause an issue with drunk drivers or would create a concern for the safety of children in the area. She said that the establishment is a restaurant rather than a bar. She indicated that people would not go to the restaurant to have multiple drinks but rather to have a hotdog and a beer. She requested that the establishment be permitted to the hours that are conducive to the neighborhood.

**Kristin Tooms**, an employee of HotDoggers, said that the majority of their patrons are from Manhattan Beach, and their customers are not disruptive. She indicated that the customers would not come to the establishment to become drunk. She said that the customers have indicated to her that they would simply like to have a beer with their food. She commented that serving alcohol for the hours requested by the applicant would not become an issue.

**John Calliando**, a resident of the 400 block of South Sepulveda Boulevard, stated that allowing the applicant to serve alcohol until 1:00 a.m. would help the business to be economically successful. He commented that the owner of Flemings does not serve lunch because the very small amount of alcohol sales makes it unprofitable. He said that allowing the applicant to have alcohol sales until 1:00 a.m. may help allow him to be successful. He indicated that he feels the applicant is being reasonable in requesting alcohol sales until 1:00 a.m., as he could make more money by serving an extra hour until 2:00 a.m.

**Karl Avery**, a resident of the 400 block of 33<sup>rd</sup> Street, said that he would like for the establishment to sell beer along with food. He said that he is generally awake at night and would like the ability to be able to buy food during later hours at HotDoggers.

**Tuzo Jerger** said that the applicant has put an extensive amount of money into the establishment. He pointed out that hard alcohol would not be served at the establishment. He commented that he would like for HotDoggers to have the opportunity to be successful, as it is in a difficult location for attracting business. He indicated that allowing the applicant to serve beer and wine to an appropriate hour as dictated by the ABC would help him to maintain a successful business. He commented that he does not believe that patrons would come to the establishment to have multiple beers but rather to have a beer with their hotdog.

**Jim O'Callaghan**, representing the Manhattan Beach Chamber of Commerce, suggested that the decision that is made regarding the operating hours and alcohol service be reviewed after a beer and wine has already been served for a temporary period of time.

**Bruce Davy** said that he prepared the original noise study for the project. He commented that the noise study originally included a patio being located on the site. He indicated that the study determined that noise from the restaurant would not be audible from the adjacent residences on Oak Avenue. He commented that there was a police report from Sergeant Vargas dated June 18, 2012, which indicates that the project may have an impact on the community. He commented, however, that there would not be any impact from noise based on the noise impact analysis that was conducted.

**Louis Skelton**, pointed out that the General Plan does establish 24-hour operation for businesses along Sepulveda Boulevard corridor. He indicated that there have been a number of applications that have been approved in the City over the past two years for 24 hours and alcohol sales until 2:00 a.m. including for the Chevron station, Walgreens, CVS, and Rubios. He said that the ABC appeal was related to an inadequate amount of parking being provided. He stated, however, that the site meets and exceeds the parking standards for the City. He commented that the reason that Kentucky Fried Chicken left the site was because their application for a drive-thru window was denied and they chose to leave the location. He said that customers of the UPS store are no longer permitted to use the parking lot. He pointed out that a chain to block access from the parking lot onto Oak Avenue is only required if the parking for the site is nonconforming. He commented that there is an efficient traffic plan that has been developed for Oak Avenue which has not been implemented by the City. He indicated that the establishment is very much designed as a family restaurant.

Director Thompson pointed out that the Resolution that was approved requires that a chain be put across the driveway of the parking lot to block access onto Oak Avenue after 10:00 p.m. He said that the requirement would need to be met once the entitlements of the Use Permit are utilized.

**Mr. Saemann** commented that the hours that were permitted on the service of alcohol by the Council were based on concern of noise from the outdoor patio, and the patio has since been removed from the project. He indicated that he is asking the Commission to now consider the new request for hours without the patio which would have less noise and less impact to the neighbors. He commented that he is asking for alcohol service until 1:00 a.m. He said that there is not any testimony or evidence that the establishment has contributed to noise, traffic, or safety issues in the adjacent neighborhood during the five months that the establishment has been open.

Chairperson Andreani closed the public hearing.

### **Commission Discussion**

In response to a question from Commissioner Gross, Director Thompson indicated that the conditions in the existing Resolution would prevent any future establishment on the site from becoming a bar. He said that the focus of the Commission is regarding the request to extend the hours for beer and wine service and hours of operation. He pointed out that approval of the Use Permit becomes an entitlement and cannot be approved for only a six month period as was suggested by **Mr. O'Callaghan**.

In response to a question from Commissioner Conaway, Director Thompson said that staff has received complaints regarding the sign on the site facing Oak Avenue. He commented that the City Attorney has indicated that the sign falls under the applicant's First Amendment rights. He commented, however, that the Use Permit includes language that staff will review the signage for the site. He indicated that he has not consulted with the City Attorney regarding the discretion that staff has under that language to have the sign removed once the applicant utilizes the entitlements of the Use Permit.

Chairperson Andreani indicated that the request being made by the applicant for hours has changed from the original proposal, and she has difficulty understanding the reason why the request is being made as an amendment rather than for a new Use Permit.

Director Thompson commented that the project is new from the perspective of the applicant because a patio is no longer being included. He said, however, that there is not a distinction in terms of the consideration by the Commission as to whether the request is for an amendment or a new Use Permit.

Commissioner Paralusz thanked all of the speakers for participating. She said that she hopes the restaurant is successful. She stated that she is not supportive of changing the Resolution that was approved by the City Council. She pointed out that the property has an entitlement to operate 24 hours, and the City has a right to limit the operating hours with alcohol service. She pointed out that the Kettle is the only restaurant in the City that has alcohol service and has been approved 24 hour operation through a Use Permit. She pointed out that the Kettle is not abutting a neighborhood and the hours for alcohol service do not begin until 11:00 a.m. She stated that none of the other businesses on Sepulveda Boulevard that operate 24 hours are restaurants that serve alcohol. She commented that the Belamar Hotel is open 24 hours; however, their bar area is not open 24 hours. She said that the other businesses that operate 24 hours on Sepulveda Boulevard are not comparable to the subject use. She commented that the

previous businesses located on the subject site have not operated 24 hours and have not served alcohol. She indicated that it is not accurate to suggest that the residents of Oak Avenue knew that they would be located next to a 24-hour operation that serves alcohol.

Commissioner Paralusz said that the Commission and City Council have both ruled that the hours be limited if the applicant wishes to include alcohol service. She stated that she is not in favor of 24-hour operation with alcohol service. She stated that a balance needs to be reached between addressing the applicant's rights to operate his business and the rights of the residents to have a safe and quiet neighborhood. She commented that the Commission and City Council did reach such a balance in making their determinations. She indicated that the business has not yet proven itself under the conditions that were approved by the City Council for alcohol service. She pointed out that her role as a Commissioner is to weigh all sides of the issue. She commented that she may inquire further into the position that is presented by a speaker in order to help her form her own opinion in weighing the issues. She stated that she is not willing to risk the potential impacts to the adjacent neighbors of a 24-hour operation that includes alcohol service. She said that she is not speaking in terms of the current applicant but is concerned about a future business that may operate on the site with the entitlement for 24-hour operation and alcohol service. She indicated that she would not support the proposal to amend the existing Resolution.

Commissioner Conaway said that the role of the Commission is not to judge the integrity of the applicant but rather to consider the long term use of the site. He pointed out that the rights that are established remain with the property. He stated that it is critical to balance the needs of the applicant, the adjacent residents, and the community. He indicated that the City Council recently considered the density of alcohol licenses in the City. He stated that the Council determined that the City should maintain the current practice of considering alcohol licenses for each project on a case-by-case basis. He said that the Commission and Council have given a great deal of consideration to the subject project in terms of balancing the needs of the residents and the business owner. He indicated that he is not in support of changing the hours for operation and alcohol service that were granted by the City Council. He commented that the applicant should abide by the conditions of the existing Resolution before applying for additional hours. He stated that he feels the existing condition allowing operation and alcohol service from 7:00 a.m. until 10:00 p.m. weekdays and 7:00 a.m. until midnight on Fridays and Saturdays strikes a fair balance for a use that is a family-oriented restaurant.

Commissioner Gross stated that he wants to ensure that the business succeeds. He commented that the hours proposed by the applicant are important for the business to be successful. He said that the applicant does have an excellent reputation. He commented that he feels that the fact that many people want the establishment to have later hours needs to be given consideration. He indicated that the only businesses that have been very successful on Sepulveda Boulevard are those on very large properties. He stated that the applicant's intent is to accommodate people who work later hours. He commented that accommodating people who work later hours is a good business plan, and such an establishment does belong on Sepulveda Boulevard. He pointed out that the Strand House is located quite close to residents and has extended hours. He commented that the Local Yolk also has residents located behind the property and has operating hours of 6:00 a.m. until midnight with alcohol service. He indicated that he does not want to rule against the decision made by the City Council. He commented, however, that his interpretation is that the Council decided on the restricted hours for alcohol service because of the original proposal for the patio area. He suggested hours of 7:00 a.m. to 12:00 a.m. daily for alcohol service and operation. He indicated that the applicant has a strong argument for being permitted to operate 24 hours. He said, however, that the City Council did rule that the hours should be restricted for operation and alcohol. He said that daily hours of

7:00 a.m. to midnight for operation and alcohol service would be easy to enforce and for patrons to understand.

Commissioner Paralusz pointed out that she does not believe the concern of the City Council in restricting the hours was specifically related to the impact to the adjacent neighbors from the proposed patio but rather the impact of noise and alcohol service in general.

Chairperson Andreani thanked everyone who wrote letters and who came to the meeting to speak regarding the issue. She said that a thoughtful Resolution was approved after many meetings. She indicated that she is troubled that the applicant has chosen to request further hours of operation without first adhering to the conditions of the Resolution that was approved. She pointed out that the City Council Resolution restricts the 24-hour operation of the establishment in exchange for the ability to serve alcohol. She indicated that 24-hour operation and alcohol service do not both come together. She indicated that the intent of the establishment is to be a family-oriented restaurant. She said that she takes into consideration that the restaurant is located next to a residential neighborhood. She also pointed out that there has not been a use on the site previously that had 24-hour operation or alcohol service. She commented that any residents that are opposed to the establishment serving alcohol raise their concerns with the ABC, as the license for alcohol service has not yet been approved. She said that she is concerned with the density of alcohol licenses in the City. She stated that she is in favor of upholding the current Resolution but would suggest hours of alcohol service of 10:00 a.m. to 10:00 p.m. on weekdays and 10:00 a.m. to midnight on Fridays and Saturdays.

Commissioner Paralusz said that she would prefer to leave the hours in the Resolution as originally established by the City Council. She commented that she is more concerned regarding people drinking late at night and is not as concerned that people would drink excessively during morning hours.

Commissioner Conaway said that he also would support maintaining the hours as approved in the Resolution by the City Council.

Director Thompson said that the Commission may not restrict the hours for alcohol service further than the hours that were approved in the Use Permit by the City Council.

### **Action**

A motion was MADE and SECONDED (Paralusz/Conaway) to **DENY** a Use Permit Amendment for an Existing Restaurant to Request On-Site Beer and Wine Service from 6:00 a.m. to 2:00 a.m. Daily for HotDoggers, Inc. Located at 1605 North Sepulveda Boulevard

AYES: Conaway, Paralusz, Chairperson Andreani  
NOES: Gross  
ABSENT: Ortmann  
ABSTAIN: None

Director Thompson explained the 15-day appeal period and stated that the item will be placed on the City Council's Consent Calendar for their meeting of September 4, 2012. He commented that a Resolution will not be brought before the Commission, and the staff report with attachments and minutes of the meeting will be provided to the City Council.

## **6. DIRECTORS ITEMS**

## **7. PLANNING COMMISSION ITEMS**

In response to a question from Commissioner Gross, Director Thompson indicated that the comment period regarding the EIR (Environmental Impact Report) for the mall renovation project has just expired. He said that all of the comments have been provided to the consultant who prepared the report. He indicated that the report will come back before the Commission including responses to all of the comments that were received. He stated that staff is still interested in receiving any additional comments even though the comment period for the EIR has expired. He said that a hearing is tentatively scheduled to be held before the Commission regarding the project in October 3.

Commissioner Gross commented that he would like for data to be provided regarding safety concerns with multi-level parking structures. He said that he would also request that staff follow up with the developer on meeting with the residents on Oak Avenue.

Director Thompson said that the developer does have plans to meet with the residents on Oak Avenue.

In response to a question from Commissioner Gross, Director Thompson commented that staff intends to provide the Commission with a status report on the Mansionization Ordinance.

Commissioner Paralusz suggested that an evaluation regarding safety be provided for underground as well as multi-level parking for the mall project.

Chairperson Andreani said that she appreciates the comment of Director Thompson that there are many opportunities for people to provide input regarding the mall project.

## **8. TENTATIVE AGENDA August 8, 2012**

- A. Coffee Bean & Tea Leaf- 1550-1590 Rosecrans Avenue- Use Permit Amendment/Commercial Planned Development Permit Amendment and Shared Parking Reduction/New Restaurant



**9. ADJOURNMENT**

The meeting was adjourned at 11:05 p.m. to Wednesday, August 8, 2012, in the City Council Chambers, City Hall, 1400 Highland Avenue

SARAH BOESCHEN  
Recording Secretary

ATTEST:

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RICHARD THOMPSON  
Community Development Director