

**CITY OF MANHATTAN BEACH  
[DRAFT] PLANNING COMMISSION  
MINUTES OF REGULAR MEETING  
FEBRUARY 13, 2013**

A Regular Meeting of the Planning Commission of the City of Manhattan Beach, California, was held on the 13<sup>th</sup> day of February, 2013, 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, Ortmann, Chairperson Andreani  
Absent: Paralusz  
Staff Present: Quinn Barrow, City Attorney  
Antonio Gardea, Assistant Planner  
Laurie Jester, Planning Manager  
Rosemary Lackow, Recording Secretary  
Angelica Ochoa, Assistant Planner

**2. APPROVAL OF MINUTES – January 12, 2013**

A motion was MADE and SECONDED (Conaway/Ortmann) to **APPROVE** the minutes of January 13, 2013, with no changes.

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

**3. AUDIENCE PARTICIPATION**

Mark Neumann, 3208 Laurel and a property owner of a Manhattan Village Shopping Center building, spoke with regard to the Commission's upcoming review of the shopping center project. Mr. Neumann requested that the Commission pay close attention to: traffic, project phasing in general and in particular, whether the corner parcel at Rosecrans should be included in phase one. He also informed that he has not yet given his required approval for the current center design, noting that the plan he approved features two story parking structures. Last, he noted the project has been going on for eight years.

**4. COMMUNITY ANNOUNCEMENT**

Presentation by Chevron regarding the Coker Drum Transport Project (No written staff report)

Planning Manager Jester introduced Jeff Wilson who, on behalf of Chevron, gave a detailed update and powerpoint presentation on the Coker Transport project. In response to inquiries from the Commission, Mr. Wilson explained the role of the coker and drum, the recycling of parts and materials, as well as the traffic plan that will be implemented for its movements between February 18 and 20, February 27<sup>th</sup> and March 6<sup>th</sup>.

Chairperson Andreani thanked Mr. Wilson and commended Chevron on a very thorough planning process.

**5. PUBLIC HEARING**

02/13/13-2 Consideration of a Use Permit to allow an Eating and Drinking Establishment/Restaurant (Leafy Greens) at 308 Manhattan Beach Boulevard.

Planning Manager Jester introduced Antonio Gardea, recently hired as Assistant Planner. Chairperson Andreani welcomed Assistant Planner Gardea who proceeded with the staff report, giving an overview

and concluding that, although the use classification would change from “Food and Beverage Sales” to “Eating and Drinking Establishment”, the existing use of the business will not change significantly. Basically only a few incidental tables and chairs for sit down dining would be provided.

In response to questions from Commissioner Gross, Mr. Gardea explained how the use classifications of “Eating and Drinking Establishments” and “Food and Beverage Sales” differ, noting that a Food and Beverage Sales use (many of which are deli’s) can have limited amount of on-site tables where food is consumed, and retail is the primary use. Assistant Planner Gardea also explained the difference in the parking requirements, noting that in the downtown area there is a parking exemption. Assistant Planner Gardea also responded that in this case, the use change would not increase parking demand downtown because the project still complies with the code and reiterated that the existing primary food to go use will not change.

Planning Manager Jester further explained how, since dining is not the primary use, the net change is actually minimal. Assistant Planner Gardea responded that the number of tables and chairs is limited in terms of both number and square feet per the floor plan. Commissioner Gross raised the concern that he sees a discrepancy in the number of tables and chairs in the staff report, compared to the graphic provided by the applicant and requested that the applicant explain this.

In response to a question from Chairperson Andreani, Planning Manager Jester stated that staff has not included a condition that tables and chairs not be allowed on the public sidewalk because this is already addressed in the City’s outdoor dining program, and by health/safety and building code regulations that will be applied during plan check.

Chairperson Andreani opened the public hearing, and invited the public to address the Commission.

**Rich Weber**, 324 2<sup>nd</sup> Place, owner of Leafy Greens, gave a history of the business. He noted that the main purpose of the business is to provide healthy self-prepared salads mainly for off-site consumption. However, requests for seating have been made by a few customers who want to stay and eat on-site. **Mr. Weber** emphasized there is no alcohol involved and he is not trying to change the nature of the business. **Mr. Weber** concluded that he has read and accepts all proposed conditions, and acknowledged the discrepancy in the number of tables and chairs in the application but this is an inadvertent “typo”.

In response to questions from Commissioners Gross and Ortmann, **Mr. Weber** stated he would accept conditions that require a barrier separating the sidewalk from the outdoor patio, and a requirement for the seating to be limited in number and incidental to the overall use. Planning Manager Jester advised the Commission that staff is agreeable to the applicant placing a barrier. As to the number of tables, she noted the number would be ultimately affected by applying building codes in plan check. Commissioner Gross noted that there is a condition that addresses this concern.

In response to a follow up inquiry from Chair Andreani as to whether stools as opposed to chairs could be used, the applicant stated that chairs/tables are preferred so customers can comfortably converse. Planning Manager Jester suggested that, to give flexibility, the wording of the condition include the words “plus an outdoor counter with up to 4 stools”. The applicant consented to this.

Chairperson Andreani invited comments from the audience.

The following persons spoke in support of the project:

**Richard Walker**, resident of Redondo Beach, and a lunch customer.

**John Armato**, local resident and doctor.

**Janet**, a local realtor Shorewood on MBB, and lunch customer.

**Matt Tafoya**, a long term resident, who helped applicant with his building project.

**Peter Evans**, Redondo Beach resident, who works downtown, noted that customers stay only about 15 minutes.

There being no further testimony, Chairperson Andreani closed the public hearing.

Commissioner Conaway stated he fully supports the project and he likes the outlined conditions of

approval. Commissioner Gross supports with a condition that a barrier be required to separate the sidewalk and outdoor seating area. Commission Ortmann stated his consensus with his colleagues with no further conditions. Chairperson Andreani noted she also supports, but has concerns about possible encroachment of tables or chairs onto sidewalk. Planning Manager Jester stated that staff would ensure that any outdoor dining in the public right of way complies with the Sidewalk Dining requirements.

A motion was MADE and SECONDED (Gross/Ortmann) to **APPROVE** the application, with modified conditions as stated adding the counter and up to 4 stools and a barrier to separate the sidewalk and outdoor seating area

Planning Manager Jester announced that the Leafy Greens application would be placed on the City Council agenda on March 6<sup>th</sup>, 2013, with a recommendation to “Receive and File” the Commission’s recommendation of approval. If in the event the application is appealed, the application would be set for public hearing before the City Council at the earliest possible date.

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

02/13/13-3. Appeal of a Height Determination for a Coastal Permit for a New Single Family Residence at 301/303 25<sup>th</sup> Street.

Planning Manager Jester gave the staff report and called attention to a number of handouts that were delivered to the Commission after meeting packet distribution. Planning Manager Jester explained that the initial application by the property owner is for a Coastal Development Permit which is not eligible for appeal to the Coastal Commission and this is an appeal of the Community Development Director’s determination of maximum building height. The staff recommendation is to uphold the Community Development Director’s determination, which would, in effect deny the appeal.

The Commission made several inquiries of staff. Planning Manager Jester responded that the appeal has to do with the maximum height that can be achieved for the project, a new single family home. In response to a question from Commissioner Ortmann, Assistant Planner Ochoa, the project planner, explained the “20% Rule” and the City’s building height calculation. She noted that in the basic calculation the maximum height of 30 feet is added to the average elevation of the property corners. A secondary height, measured from the top of the roof down to the local grade, limits the maximum vertical height of any exposed or visible building wall to the height limit (30 feet in this case) plus 20% (6 feet) for a total visible wall dimension of 36 feet. Assistant Planner Ochoa further explained that the maximum 36 foot dimension is applied to “local grade” which is by code, the existing or finished grade, whichever is lower.

Discussion followed concerning the survey information and different benchmark elevations used by the Development Director. In response to questions from Conaway, Planning Manager Jester explained that as is routine, the 2012 survey was commissioned by the applicant and is verified in the field by City building inspectors. The benchmarks used by the surveyor, included a 100.0 elevation at a designated corner, and the remaining 3 lot corner elevations were determined using the 100.0 corner elevation as a reference. Referring to slides, Planning Manager Jester explained that a 1989 survey on record for the property used a different initial corner benchmark elevation, however, the 2012 survey accounts for this, and the two surveys are consistent in the values and yield the same allowed building height. Neither the 1989 or 2012 surveys use sea level as a reference point. Staff looked at all surveys and plans on record, and concluded that all are consistent not only in terms of the differentials (in reconciling data for both surveys) but also in the starting, or reference points. Basically the city records for the last 100 years are consistent and show that the property corners have not changed significantly.

At the request of Chairperson Andreani, Planning Manager Jester explained the differences between the terms “existing grade”, “finished grade” and “natural grade” and that people use various terms. However, Planning Manager Jester stated that staff applies the terms strictly as defined in the zoning regulations. In response to a request by Commissioner Gross, Planning Manager Jester confirmed that “natural grade” is the grade unaltered by construction, and this is basically the grade that is used for height calculations.

Methods of measuring height has changed over the years. Planning Manager Jester further explained that under the current code, compared to the full size lot on the street such as immediately to the north, the existing front half lot (building site) has a lower height limit, and, conversely, the rear half lot (that owned by the appellant) has a higher height limit.

In response to questions by Commissioner Ortmann, Planning Manager Jester explained that the lowest level of a building becomes a “story” in the code if it sticks out of ground 6 feet at any point along its perimeter, if not then it is basement, and further the code allows a maximum of 3 stories stacked. The top level becomes a 4<sup>th</sup> story if it is directly above 3 stories and if the ground floor is Story 1, and not a basement. With regard to the proposed structure, Planning Manager Jester showed, using slides, that there will not be more than 3 levels stacked at any point and the garage because of the garage door opening is a first story. Decks are allowed above the third story in limited steep slope situations, such as this project.

No being further questions for staff; Chair Andreani opened the public hearing requesting that speakers stay focused on the issues and stated the ground rules, that the appellant speaking first be allowed 15 minutes, then the project owner will be allowed 15 minutes and, the audience will each be allotted 3 minutes each.

**Joe DiMonda**, attorney representing the appellant spoke. He believes the data used to calculate height from the surveys is inaccurate, and he believes the half lot condition which creates 6 lot corners results in an inconsistent height for the neighborhood. He also made the following main points: he believes past plans are not reliable because they are taken after original grade was disturbed and filled and he believes that the Director should have taken an elevation at the bottom of two retaining walls on the north and south side yards, which would have lowered the height about 2-3 feet overall. He was denied a copy of the applicants 1966 survey until recently, and this is withholding evidence.

Referring to a number of his Exhibits, he believes this shows that the proposed structure will appear as an anomaly, that the retaining walls, side yards and rear yard were artificially filled. **Mr. DiMonda** concluded by stating the appeal should be approved, on the basis that he believes the data used was bad and will result in a bad conclusion.

**John Armato**, 2504 Highland, stated he believes that the grade of the street on 25<sup>th</sup> and 26<sup>th</sup> is natural and that the grade in between is not, and asked the Commission to not perpetuate an error.

**Joe Paunovich**, owner of the front property to be developed, explained the background of how he performed due diligence before purchasing including that he commissioned a survey and met with staff to discuss. He understood what can be built under the code and they are very excited to start their project. **Mr. Paunovich** commented on points made by the attorney for the appellant, and noted that he has not had sufficient time to address input submitted by the appellant in a letter dated February 6. **Mr. Paunovich** suggested that his architect will speak to the notion that the drawing Mr. DiMonda presented does not accurately reflect the information on the 1966 survey. This survey shows an even up slope to the lot, not fill. He urged the Commission to use the surveys which are detailed records, as evidence and these are what Staff used to determine height. Mr. Paunovich stated he believes that the appellant in the past got an advantage from past surveys, and now they are attempting to use those past surveys to prevent him from building under the current code.

**Bruce Bolander**, the architect for property owner Paunovich, addressed the Commission making the following points; the benchmark elevations for the 1966 and 2012 surveys are the same; the building will stack as three stories maximum as they go up the slope towards Crest, similar to the appellant’s home; and lastly the purpose of the retaining wall in the north side yard is not to contain fill dirt, but only to hold back the existing dirt to provide access to a crawl space on that side of the house.

Chairperson Andreani invited testimony from others in the audience.

**Mark Abramson**, 2513 Crest, asked that the Commission consider whether the proposed building will be consistent with the neighborhood and the goals of the General Plan, indicating that he thought possibly not.

**Dr. John Armato**, asked that the Commission support the appellant.

**Rosario Armato**, 2501 Crest Drive, the appellant, explained the history of his ownership and the development of his and the adjoining lot, the human aspect of the impact on his family and urged the Commission to carefully consider the points made and approve his appeal.

**Tom Courtney**, 2417 Alma Avenue asked that the Commission approve the appeal on the basis that the proposed building will be a four-story building on a half lot which is not allowed.

**Claude Tirman**, 319 25<sup>th</sup> Street, stated that although the proposed building will negatively affect his view, he supports the owner because he feels that he has exercised due diligence and also, density is reduced from 2 to 1 unit allowed overall for the original whole lot, by virtue of the half lot.

**Bruce Beckett**, 2014 Sepulveda, is an architect for 37 years and believes that the City's code should have some provision for protecting adjoining property owners.

Chairperson Andreani invited rebuttal testimony, one time each from the appellant and the applicant.

**Joe DiMonda** cited legal evidence codes. He believes that the Director has the discretion to determine an alternate (lower) height, and he believes that to not do so would set an undesirable precedent for half lots.

**Joe Paunovich** referenced a City Attorney opinion and denied the appellant's allegation that access to documents has been denied – rather all records are at City Hall and are available to review. He wants to exercise his rights to build to pursue a home for his family. Please consider his letter recently sent. **Mr Paunovich** addressed the 4-story issue and concluded by pointing out that every citizen should be able to rely on the code and exercise their development rights.

Chair Andreani noted the action before the Commission is solely to vote on the Directors determination of height, not whether the code should be changed.

Responding to the Chairperson's invitation to address issues, Planning Manager Jester emphasized that retaining walls can be used for cut as well as fill situations, and this situation is clearly a cut. Ms. Jester made the following additional points: on the south side, the elevation that is suggested by the appellant would put the lot corner 4 feet below the adjacent walkstreet grade which is not reasonable; the Director always considers the actual corner elevation, but considers several factors, an in this case averaged one rear concern for consistency with the Armato's 1989 survey; this proposed structure is 3 not 4 stories, pointing out that the uppermost deck area does not constitute a story, although placed above the third story.

Quinn Barrow, City Attorney emphasized the Chairperson's point that the focus is on height determination and whether the Director determination is correct and proper.

Chairperson Andreani closed the public hearing.

Commission Ortmann indicated he wanted to address the appellant and Chairperson Andreani re-opened the public hearing.

Commission Ortmann asked the applicant to respond to the issue of equity in terms of applying code.

**Joe DiMonda** responded for the appellant that he doesn't see this as an issue, that the past determination was based on past (historical) grade and the same should be done now.

Chairperson Andreani closed the public hearing and invited discussion from the Commission.

Commissioner Gross cited his years living at the beach during which he has observed a great deal of construction, and he knows many retaining walls are used to support cut. The 2012 survey is valid and accurate and the evidence of all of the consistent surveys and plans over decades, supports this. He feels the 2012 survey is the only appropriate evidence for calculating building height, and he supports the Director's determination of height.

Commissioner Conaway acknowledged this is a very difficult issue, but it is critical that staff adhere to the current code. He made the following points: half-lots are not uncommon in this area and over time many will be re-developed; the City does not have a view ordinance; being that buildings are so close to each other, the human element is much at play – he hopes these parties can put aside differences; staff has applied the data of the 2012 survey’s properly, and the 1966 survey and other documents support this, plus staff has made some adjustment lowering the maximum total possible height. He supports staff decision.

Commissioner Ortmann stated he believes Conaway summed it all up very well. He does has questions on the number of stories and square footage, but that is not what is before the Commission. Based on the focus of the appeal, he has not questioned that staff has applied code properly, and has been conservative with their corner elevation determinations, therefore he feels he must support staff.

Chairperson Andreani concurred with the other Commissioners.

Commissioner Gross added that he understands that change that comes when a property sells and redeveloped is hard when it changes how other enjoy their properties, but he upholds property rights, and to not utilize the code is not proper.

A motion was MADE and SECONDED (Gross/Ortmann) to **UPHOLD** the Director’s decision and **DENY** the subject appeal.

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

Planning Manager Jester announced that this item would be placed on the March 6<sup>th</sup> City Council agenda, with a recommendation to “Receive and File” the Commission’s recommendation of approval. If in the event the application is appealed, the application would be set for public hearing before the City Council at the earliest possible date.

## **6. PLANNING COMMISSION ITEMS - None**

## **7. TENTATIVE AGENDA**

Planning Manager Jester reported the following tentative future agenda items: the Housing Element and the Manhattan Village Shopping Center applications will be on the March 13, 2013 agenda and the Civic Center Library and the code amendments discussed by the Commission in January will be on the February 27<sup>th</sup> agenda.

**8. ADJOURNMENT**

The meeting was adjourned at 9:15 p.m. to Wednesday, February 27, 2013, in the City Council Chambers, City Hall, 1400 Highland Avenue.

ROSEMARY LACKOW  
Recording Secretary

ATTEST:

\_\_\_\_\_  
RICHARD THOMPSON  
Community Development Director