

**CITY OF MANHATTAN BEACH
COMMUNITY DEVELOPMENT DEPARTMENT**

TO: Planning Commission

FROM: Richard Thompson, Director of Community Development
Laurie B. Jester, Planning Manager

DATE: February 12, 2014

SUBJECT: Consideration of a Master Use Permit Amendment and Possible Modifications, Including but not Limited to: Noise Mitigation Measures, Full Food Service and Marketing, Special Events on the Terrace, and Later Alcohol Service on the Roofdeck, at the Shade Hotel, Metlox Site, 1221 North Valley Drive (Manhattan Inn Operation Company, LLC- Michael A. Zislis, Owner)

RECOMMENDATION

Staff recommends that the Planning Commission **CONDUCT THE PUBLIC HEARING, DISCUSS, and PROVIDE DIRECTION.**

PROPERTY OWNER

City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

APPLICANT

Manhattan Inn Operation Company
1221 North Valley Drive
Manhattan Beach, CA 90266

PROJECT OVERVIEW

A Master Use Permit for the Metlox project was approved by the City Council in July 2002 (Attachment A) and includes a two-story subterranean public parking structure accommodating approximately 460 cars with a public Town Square on top of the parking deck, as well as a commercial development approximately 63,850 square feet in area. The commercial development includes a 38-room hotel, the Shade Hotel. An Amendment to the Master Use Permit was approved in 2005(Attachment B), a 2010 Amendment(Attachment C) was never implemented and it expired, and therefore the 2002 Use Permit, as amended in 2005, is still in effect.

The Shade Hotel is requesting that several changes be made to the existing Master Use Permit for the site as follows:

- 1- **Noise Mitigation Measures**-Revolving front door adjacent to Valley Drive (and a non-revolving door for disabled access), laminated sound glass enclosure on the southeast corner of the Terrace located from floor-to-ceiling, acoustic absorbent panels on the ceiling and suspended acoustic panel “clouds” below the ceiling of the Terrace, and curtains surrounding the Terrace in the areas where there is not a glass enclosure.

- 2- **Full Food Service and Marketing**-Throughout the entire Hotel, breakfast, lunch and dinner open to the general public as well as hotel guests. In the Lounge and Terrace from 6 AM to 11 PM daily, and the Courtyard and Skydeck 8 AM to 10 PM.; currently limited to breakfast and evening appetizers with limited hours. Allow posting of menus in front of the Terrace, and advertising, marketing and promotion of the full food service as well as the Lounge component of the Hotel; currently outside menu posting is not permitted and marketing is limited to attracting Hotel guests and event planners.
- 3- **Special Events on the Terrace**-Events until 11 pm Sunday through Thursday and until midnight Friday and Saturday; currently special events are not specified on the Terrace. Plans show a proposed occupancy of 90 occupants; currently the area is posted for 47 occupants.
- 4- **Later Alcohol Service on the Roofdeck**- Alcohol service on the roof (Skydeck) until 9:30 PM; currently the roof deck can serve alcohol until 9:00 PM, closing to remain at 10:00 PM.
- 5- **Awnings, curtains and decorative lighting**- Decorative metal shade awnings on the south side of the Terrace extending over the walkway and partially over the Terrace, curtains floor to ceiling except shorter over the exit steps, and lights on support posts. Addition of a fiberglass canopy over the existing metal arches at the front entry off of Valley Drive is proposed.

The applicant's submittal, including the project description, Noise Mitigation Report, plans, and renderings, provides more information on the request (Attachments D, E, F and G). Additionally, in response to concerns expressed by a number of residents at several City Council meetings, the City had a two week Continuous Sound Monitoring Report prepared in September 2013, which is included as Attachment H. The plans and application materials are still in the concept stage and require fine-tuning based on Commission direction.

The neighbors and residents have raised a number of concerns where they believe that the Shade Hotel is in violation of the current 2002 and 2005 Use Permit approvals. A summary chart of their concerns is provided as Attachment I. This proposed Use Permit Amendment is intended to address all of these concerns.

The objective of tonight's meeting is to hear public input, discuss and provide direction so the applicant can work with staff and the neighbors to refine the proposal and bring back those revisions to the Planning Commission for further review, input and action. Review by other Departments will be required through this process to ensure Building Safety and Fire Code requirements can be met, as well as to incorporate comments from Police and other Departments.

BACKGROUND

Use Permit

The Shade Hotel is operating under the original Metlox Use Permit, Resolution No. 5770, that was approved by the City Council July 16, 2002 (Attachment A) and the Amendment, PC Resolution No. 05-08, that was approved by the Planning Commission May 25, 2005 (Attachment B). On September 7, 2010 the City Council approved another Amendment to the Use Permit ("2010 Amendment", Attachment C), Resolution No. 6275. The Owner did not fully satisfy the conditions of the 2010 Amendment and thus could not exercise the privileges of the

2010 Amendment. As a result, the Shade is entitled to operate only under the original Use Permit, as amended in 2005. Additionally, since the Shade was unable to satisfy the 2010 Amendment conditions by September 7, 2013 (condition #43), it lost the opportunity to exercise any rights and privileges conferred by the 2010 Amendment. The Amendment expired and is not able to exercise new rights and privileges without seeking a new Amendment.

If the Owner had satisfied the conditions of the 2010 Amendment, the Shade could have extended hours of operation, larger special events, and expanded food service. However, the conditions attached to the 2010 Amendment require specific noise mitigation measures to be installed including an entry vestibule, and south Terrace enclosure, as well as valet and entry-exit queue requirements. While working with Building Safety staff on the design of the south Terrace enclosure, Code issues arose and the owner determined that construction of the enclosure would be unrealistic, due to Building Safety and Fire exiting requirements and the expense associated with complying with those requirements. Conceptual plans for the improvements were reviewed and discussed at meetings with the Shade architect and staff, but no formal drawings were submitted to plan check or to staff.

In sum, none of the improvements required by the 2010 Amendment have been installed and thus the owner cannot exercise any of the privileges granted by the Use Permit.

Neighbor and Shade owner meetings

Starting in summer 2012 staff met with the Shade owner, Mr. Zislis, and the City Prosecutor regarding neighbor complaints. Through a series of meetings, Mr. Zislis agreed to install noise mitigation measures to address the concerns as outlined in this Use Permit Amendment application. Throughout 2013 the neighbors and other residents attended several City Council meetings and voiced their concerns with the Shade Hotel. Police, Community Development, the City Prosecutor and Mr. Zislis also met and it was again confirmed that the Police Department will take appropriate action including citing and prosecuting any violation. Staff had several meetings throughout the middle and end of 2013 with the neighbors and other residents to discuss their concerns and to explain the Use Permit Amendment process. In addition, the City Prosecutor has had a number of conversations with the neighbors over during the same time frame. A status report on the Shade Hotel was provided to the City Council on September 7, 2013.

The neighbors and other residents have suggested that establishing a radius around the Shade Hotel, where as long as noise cannot be heard beyond the established radius the Shade would be in compliance with the Use Permit and noise regulations. This condition was used for The Strand House with a 75 foot distance and has been effective. A radius map with 50 foot increments from the Shade Hotel is provided as Attachment J.

Police enforcement

During the summer of 2012 the Police responded to four complaints and the last complaint received was in September of 2012. In September 2012, the swing shift Watch Commander met with Shade Hotel management to discuss Police Department protocol and our zero tolerance position regarding verified noise complaints. Officers responding to each of the calls and one resulted in a violation of our noise ordinance. Since September 2012 staff is aware of eight other

complaints, only one of which was found to be Use Permit or Noise violation. In April and July 2013, there were two loud party/noise calls that were unfounded. In August 2013, the weekend of the 6-man volleyball event, was a Fire medical call. In December 2013 there was one noise and overcrowding call that was unfounded and a second call that was a family dispute unrelated to the Hotel. In January 2014 there were two calls which were not related to the Use Permit or a noise violation. The one substantiated complaint was from November 2013. On November 14, 2013 there was a noise violation complaint during a Fashion Show which resulted in the City Prosecutor filing a misdemeanor complaint which is in the court process and is scheduled to return to court next month. In conclusion, for the past year and a half staff is only aware of two substantiated Use Permit or noise violations related to the Shade Hotel.

Police staff has also been proactive by patrolling the neighborhood occasionally during evening hours, particularly on Thursday through Saturday. The Police will continue to maintain a “no tolerance” policy responding to any neighbor complaints in a timely manner. A Police representative will be present at the Planning Commission meeting.

DISCUSSION

Master Use Permit

The applicant addressed the required Use Permit findings in their application (Attachment D). In accordance with Chapter 10.84 of the MBMC the Planning Commission conducts a public hearing and has the authority to approve, approve with conditions or deny the Use Permit Amendment. With any action the Use Permits findings must be considered (10.84.060) , and conditions (10.84.070) may be placed on an application. Below is a link to MBMC Code Section 10.84 that regulates Use Permits:

http://library.municode.com/HTML/16473/level3/TIT10PLZO_PTVMIRE_CH10.84USPEVAM_IEX.html . The Commission has the ability to approve all or only some of the request and modify the proposal to meet the Use Permit purpose, findings and criteria.

Entertainment Permit

The Master Use Permit, Condition No. 40 of Resolution No. 5770, (Attachment A) regulates entertainment on the site by requiring an annual Entertainment Permit for any entertainment other than non-amplified background-type music, with a maximum of 2 entertainers. The Entertainment Permit is required to be submitted to the Director of Community Development for review and approval, with input from the Police and Fire Departments. Appropriate conditions are placed on the Permit to minimize potential negative impacts including, but not be limited to, hours, number of guests, size and location of performance or dance area, size of band and number of performers, numbers of performance days per week, type and location of amplification, speakers and soundproofing, and volume of amplification. The Permit is reviewed annually to determine if it is appropriate to renew the permit, deny the permit, or modify the conditions of approval. Since issues may arise with the combination of the alcohol and entertainment, this condition provides the tools to assure that any potential issues are addressed. The Entertainment Permit conditions may be more restrictive than the Use Permit. Below is a link to MBMC Code Section 4.20 that regulates Entertainment Permits:

http://library.municode.com/HTML/16473/level2/TIT4PUWEMOCO_CH4.20AMANCAEN.html and the most recent 2013 Entertainment Permit (Attachment K), that was issued on November 15, 2013, and is valid until March 1, 2014.

Noise Standards

The Manhattan Beach Municipal Code provides two standards for evaluating noise. The first is a decibel level standards, and as an objective standard this is the standard that is used to evaluate impacts and mitigation in the Behrens reports (MBMC Section 5.48.160). A subjective, or “reasonable person standard”,(MBMC Section 5.48.140) is also provided in the Code and these technical noise reports do not address the subjective standard. For land use decisions, such as this Master Use Permit Amendment, it is appropriate for the Planning Commission to consider all sorts of evidence. The Commission will consider the noise studies (the objective standards), as well as the neighbors and patrons testimony (the subjective standard). The Use Permit and General Plan purpose, findings, criteria, goals and policies should also be considered by the Commission when making the decision. Below is a link to the MBMC Section 5.48 that regulates Noise:

http://library.municode.com/HTML/16473/level2/TIT5SAHE_CH5.48NORE.html

Revocation and Modification

At the request of a resident, the Commission requested staff to explain certain Zoning Code provisions—Section 10.104.030—regarding revocation and modification of discretionary permits initiated by the City. As a threshold issue, such provisions do not apply here because the present application was initiated by the owner, not the City. However, at least with respect to modifications of a Master Use Permit(MUP), it could be just a matter of semantics: an application to amend the MUP is, by its very essence, an application to modify the MUP. The key here is that the Commission can impose conditions to the amendment to address the concerns of the City and the residents.

Another issue is whether the City has the power to enforce any conditions imposed in connection with the Amendment. In light of the comments about the expired 2010 amendment, staff and the City Attorney have discussed attaching milestones and consequences to certain of the conditions. In the event the Planning Commission directs staff to return in the future with a conditional approval of the amendment, staff will include conditions requiring deadlines for compliance with the conditions and consequences in the event of noncompliance.

The City Attorney’s Office will be present at the Commission meeting.

Noticing and comments

Notices of the public hearing were mailed to all property owners within a 500 foot radius of the project site, to residents within 100 feet of the property and published in the Beach Reporter. Public comments are included as Attachment L. A comment from Don McPherson dated January 31, 2014 was previously sent to the Planning Commission via e-mail and is not attached to this report as it is over 400 pages in size. A copy of the document will be provided at the Planning Commission meeting. Concerns raised by the public largely focus on noise, alcohol, occupancy limits, hours and operations.

Environmental Review

An Environmental Impact Report for the Metlox/Civic Center project was certified by the City of Manhattan Beach City Council on April 17, 2001 (State Clearinghouse No. 99121090), which

includes the environmental clearance for the Metlox project. There have been no substantial changes to the project, the surrounding area or environment, and the facts associated with the project have not substantially changed from those evaluated in the certified EIR from an environmental impact viewpoint. Therefore, the existing certified EIR is a valid environmental document that adequately evaluates the environmental impacts of the project in accordance with the requirements of CEQA and the project can rely upon this document for conformance with the requirements of CEQA. The EIR includes Mitigation Measures and a Mitigation Monitoring and Reporting Program in accordance with the requirements of CEQA. The Environmental Impact Report is on file and available for public review at the City of Manhattan Beach Community Development Department, City Clerks office, and on the City's website.

CONCLUSION:

The project before the Planning Commission is an Amendment to the Master Use Permit for the Shade Hotel. The objective of tonight's meeting is to hear public input, discuss and provide direction so the applicant can work with staff and the neighbors to refine the proposal and bring back those revisions to the Planning Commission for further review, input and action.

Attachments:

- A. Metlox Use Permit- Resolution No. 5770-July 16, 2002
- B. Shade Use Permit Amendment- PC Resolution No. 05-08- May 25, 2005
- C. Shade Use Permit Amendment- Expired-Resolution No. 6275- September 7, 2010
- D. Master Application and Environmental Information Forms and Proposed Master Use Permit Amendment Description
- E. Shade Hotel Noise Mitigation Evaluation Report- February 4, 2014
- F. Proposed Concept Plans
- G. Proposed Concept Renderings
- H. Continuous Sound Monitoring Reports- September 30 and October 7, 2013
- I. Neighbors Summary Chart- December 8, 2013
- J. Radius map with 50 foot increments from Shade Hotel
- K. Shade Hotel 2013 Entertainment Permit
- L. Public comments

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- c: Mike Zislis- Shade Hotel
- Katie Kruff Richardson- Shade Hotel
- Jon Tolkin- Tolkin Group
- Glenn Loucks- Tolkin Group
- Eve Irvine- Police Chief
- Diana Varat- Richards, Watson, Gershon