

**CITY OF MANHATTAN BEACH  
[DRAFT] PLANNING COMMISSION  
MINUTES OF REGULAR MEETING  
FEBRUARY 12, 2014**

A Regular Meeting of the Planning Commission of the City of Manhattan Beach, California, was held on the 12<sup>th</sup> day of February, 2014, at the hour of 6:30 p.m., in the City Council Chambers of City Hall, at 1400 Highland Avenue, in said City.

**1. ROLL CALL**

Present: Andreani, Gross, Ortmann, Paralusz, Chairperson Conaway  
Absent: None  
Staff Present: Richard Thompson, Community Development Director  
Laurie Jester, Planning Manager  
Robert Espinosa, Fire Chief  
Diana Varat, Assistant City Attorney  
Ryan Small, Police Lieutenant  
Rosemary Lackow, Recording Secretary

**2. AUDIENCE PARTICIPATION**

Chairperson Conaway invited the public to speak on topics that are not otherwise scheduled on the agenda, with a limit of 3 minutes.

Viet Ngo, advocate for anti-corruption of City Council and the City Treasurer, addressed the Commission, stating concerns about the minutes from January 22, 2014. He added comments relating to The Shade Hotel, and was requested by the Chair to withhold those comments to the agenda item concerning The Shade Hotel.

**3. APPROVAL OF MINUTES – January 2014**

02/12/14-1. Regular meeting – January 22, 2014

A motion was MADE and SECONDED (Ortmann/Andreani) to **APPROVE** the minutes of January 8, 2014, as submitted, no changes.

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

**4. PUBLIC HEARINGS**

02/12/14-2. 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

Director Thompson explained the subject is a Use Permit Amendment submitted by The Shade Hotel and then introduced other City representatives present to assist as needed, including Assistant City Attorney Diana Varat, Fire Chief Robert Espinosa, and Lieutenant Ryan Small, representing the Police Department. Director Thompson noted that Staff does not expect a decision will be made this evening and the recommendation is to initiate the public hearing and continue to March 12<sup>th</sup> and give direction to Staff.

Planning Manager Jester presented the Staff Report, covering the background including the history of past land use approvals, and how it came to be that the governing or operative Use Permit Resolution dates to

2005 as the 2010 Use Permit was never implemented and expired. Ms. Jester also covered: the community's concerns, this application purpose (to address community concerns), with slides covering: Project Description/Applicant proposal; Background; Project Location; Surrounding Properties; Noise Mitigations Proposed; Special Events on Terrace; Full Food Service; Marketing; Roof deck Alcohol Service; Awnings, Curtains, Lighting; Complaints; Meetings 2012-2013; 50-foot distance increments Map; Police Enforcement; Code Requirements and; Public Notice and Comments.

Ms. Jester pointed out that the proposals to mitigate noise originate from a study done by an acoustic engineer (Behrens). The Terrace enclosure 2010 noise measures were found to be not acceptable to the City Fire Department, due to emergency egress requirements.

Planning Manager Jester gave the following responses to questions from Commissioner Paralusz:

- 1) The differences between the current proposal and the 2010 approval: in 2010 Shade asked for hours and increase in alcohol service (till midnight), and events of 125 people, with expanded food service being the same for both applications. There were a variety of noise mitigation measures in 2010 that were similar to the current they were based on a different approach. A height variance for the Skydeck relating to a noise mitigation measure was denied.
- 2) It is subject to interpretation as to whether events are allowed on the Terrace.
- 3) The City uses a subjective (reasonable person) vs. objective (decibel levels) standard for enforcement because: a. it is easier; b. this is the standard that is enforceable and relied on in court and c. the equipment is very technical and complicated with many variables which make them difficult to use and difficult to enforce.

Planning Manager Jester gave the following responses to questions from Commissioner Andreani:

- 1) The Resolution from 2005 did not expire, even if at least one measure (retractable wall in Lobby) was not implemented, because there were other measures deemed equivalent that were implemented.
- 2) The answer to a question regarding the current practice at Shade for food service and whether the scope of service being requested is already being done, should be addressed to the Shade owner in the public hearing.
- 3) As to whether the City has an existing occupancy load limit for the Terrace, in 2006 the Fire Department set occupancy maximums for each room, and 47 was established for seated/dining on the Terrace. Now the applicant is requesting approval for an occupancy based on the combination of people both seated and standing (90). In the effort for clarity and public review, Staff felt it was important to give the Planning Commission the opportunity to decide if this higher number would be excessive as this is clearly within their land use purview.

Planning Manager Jester and Director Thompson gave the following responses to questions from Commissioner Ortmann:

- 1) Regarding interpreting the occupancy limits for events on the Terrace, Director Thompson explained that Staff felt it was not clear in the Resolution what was permitted on the Terrace.
- 2) Regarding the 2010 amendment not being implemented, Planning Manager Jester indicated her understanding is that the proposed enclosure of the Terrace would have created a situation that would not meet Fire Department standards. Ms. Jester clarified that the approvals in 2010 by the Planning Commission and City Council were of a conceptual plan, and it was only when detailed plans were done that it was determined that the enclosure measures were not feasible in meeting Fire Department egress requirements. Commissioner Paralusz provided information as she served on the Commission in 2010, that the Planning Commission at that time was very concerned that existing noise conditions would be exacerbated.

Planning Manager Jester and Director Richard Thompson gave the following responses to questions from Commissioner Gross:

- 1) Noise studies performed include actual measurements as well as modeling, but all technical questions on the studies (and the Chair suggested they be submitted all at the same time) should be directed to the Acoustic Engineer.
- 2) Regarding standards for enforcement, the Commission has the ability to look at both objective and subjective standards, and the Acoustic Engineer will be invited to the next meeting.

- 3) As to how the Manhattan Beach ordinance compares to other cities, including a 5dB “bump” that establishes “significant change” (in the objective standards), Planning Manager Jester stated that the subjective standard is very common to cities but she is not sure how the objective standards compare to other cities. Director Thompson noted that it is difficult to break the ordinance down into categories, and the City’s approach has been simply if there’s a complaint, then this should be addressed, and this can be a problem because Staff is not always able to be present to witness the cause of the complaint.
- 4) Roof decks are allowed in commercial areas in the code; they must meet the height limit the same as residential.
- 5) Comparing Use Permits to Entertainment Permits, an Entertainment Permit cannot be more permissive than an applicable Use Permit and the Commission can include wording in the Use Permit that restricts the Entertainment Permit.
- 6) Regarding whether there has been enforcement of a 10:00 p.m. closure, Planning Manager Jester stated that this is subject to interpretation but Staff believes that this limit applies to alcohol service, not food service, as the 2005 Use Permit was for alcohol.
- 7) The equivalent noise mitigations that were implemented were reviewed by the City through the original plan-check, in accordance with Building Code sound transmission standards (STC) and not specifically by a noise engineer.
- 8) Commissioner Gross requested that Staff prepare a matrix for the next hearing, to show existing conditions versus proposed.

In response to a question from Commissioner Paralusz, Fire Chief Espinosa stated that he had inspected the Shade Hotel in October, and considered possible noise mitigation measures. While it is not uncommon to have different occupancy limits depending on the use, it’s more typical to have a single occupancy limit to ease monitoring.

Planning Manager Jester gave the following responses to questions from Chairperson Conaway:

- 1) The overall annual Entertainment Permit establishes general parameters, and when there are multiple events over the year, about once a month an event list is submitted for City review.
- 2) She can provide information to the Commission regarding how the process works.
- 3) In response to the concern that other Metlox tenants could be contributing to the noise problems, Ms. Jester indicated that there have been no acoustic studies that she knows of that address the entire Metlox complex.

Fire Chief Espinosa stated additionally that safety exiting has an influence on the occupancy limit that is set, at this time he is not sure that exiting will be in compliance with an occupancy of 90 as proposed on the Terrace.

Chairperson Conaway opened the Public Hearing, reminding of the rules of decorum such as no applause and show respect to speakers. After the applicant, Mr. Hubbard, the neighborhood liaison, will be given 15 minutes and all others will have 3 minutes so all can have a chance to be heard.

## PUBLIC HEARING

**Michael Zislis**, applicant and founding partner, Shade Hotel addressed the Commission, making these main points: 1) Shade has many investors, a majority being Manhattan Beach residents and he has tried to be a good neighbor, 2) Shade has been a great marketing opportunity for the City, with many important guests. 3) the site was once a pottery factory site that required remediation of toxic substances, and is now a source of revenue that helps pay for City services in a complex with a vibrant public space; 4) in 2005 his approach was to seek approval based only on a conceptual plan, and now he seeks approval with a fully vetted design; 5) His main goal now is clarification, not intensification. 6) He believes the hotel does not have a significant problem with substantive violations (e.g. having an outdoor menu is not a substantive violation) and sometimes other sources of noise are things like fire engine alarms which are anomalies. 7) He is sensitive to neighbors but posed the question as to how there can be a standard when the City uses a “zero tolerance” Police enforcement policy (recently being used at the Shade Hotel), noting that there have been only 2 violations over 8 years. 8) He believes that the role of the City is to be a bridge between the neighbors and the larger community. His experience with resolving issues at his restaurant Strand House has resulted in letters of appreciation from those neighbors.

In response to a question from Commissioner Paralusz, **Mr. Zislis** clarified that he wants to avoid coming back to the Commission in 3 years to explain why something was not able to be done, and instead he has been very involved with various City agencies as to fire/life safety, building code and ADA compliance before going to the Planning Commission with the Use Permit Amendment. **Mr. Zislis** also recalled that the 4-foot height variance for the roofdeck would have aided in mitigating noise, but that part of the request was denied.

In response to a question from Commissioner Andreani, **Mr. Zislis** stated that he feels that a “guest” could be intended to mean both someone paying for a room and a public person wanting to have a drink or eat at the hotel restaurant and this needs to be defined.

In response to questions from Commissioner Ortmann, **Mr. Zislis** stated that the most recent meeting he has had with neighbors was in 2010 and he has had several meetings with the City Prosecutor who suggested that noise mitigations be done and he has submitted the current application because, the “zero policy” is relatively new and he wants to be a good neighbor and believes it will benefit him to clarify the Use Permit.

**Mr. Zislis** gave the following responses to questions from Commissioner Gross:

- 1) The statement in the application about noise mitigations not being needed comes from the Acoustic Engineer.
- 2) He will be keeping the curtains because they help to mitigate sound.
- 3) He clarified that recommendations included one new wall on the south side of the Terrace facing Petros and adding gaskets to fill in gaps so that sound will not leak out in other places.
- 4) Regarding the main door with a revolving design: although there is sound leakage, he can't close it down because of ADA access requirements.
- 5) The covers over the Terrace area are for providing shade and do not relate to acoustics issues.

**Mr. Zislis** gave the following responses to questions from Commissioner Paralusz:

- 1) Regarding Strand House: this is an example of how we learn things through experiences and if he were to be building The Shade Hotel now there are a lot of things he would do differently design-wise.
- 2) He used Behrens for the acoustical study because that firm was used by the City for the 2010 noise studies.

**Mr. Zislis** responded to a question to Chairperson Conaway that he preferred a vestibule instead of a revolving door. He is now looking for solutions to control noise leakage, yet much noise comes from the City parking lot, which cannot be closed without getting permission from the Coastal Commission.

**Nate Hubbard**, 1300 N. Ardmore Avenue, recounted past City meetings he attended (8 total Planning Commission, 9 City Council). He recalled in 2010 that he came to a signed agreement with Mr. Zislis on a number of items, for example he would yield on the door issue while Mr. Zislis would implement certain noise measures. He thought things were going in the right direction and expected the Terrace would be closed off but things got worse instead with noise. The Police Chief finally explained that the applicant had elected to not implement the 2010 Resolution and the City had to fall back to use the 2005 Resolution.

**Roger Van Remman**, Director, Richstone Family Center and long-time Manhattan Beach resident stated the Shade Hotel is very effective venue for fund raisers and the current uses are far better than when the site was a manufacturing use.

**Cheryll Lynn**, lives across Ardmore, and recounted problems including amplified music and explained when people are on the Terrace, the sound goes directly to her house. Also when Behrens set up noise testing it was after Labor Day which she believes does not represent a typical circumstance.

**Brent Taylor**, nearby resident on 15<sup>th</sup> and Ardmore, has enjoyed and respects The Shade but he acknowledges that many neighbors are exhausted due to many still unresolved problems. He noted that the onus to resolve has been on the residents and he thanked Mr. Hubbard and others for their efforts, and he feels optimistic.

**Stephanie Hubbard**, 1300 Ardmore Avenue, questioned how did The Shade get to put a 50-foot bar in, how did The Shade even happen, how did the Entertainment Permit evolve and how many voices can occupy the various spaces at the hotel. If the Terrace deck sound cannot be mitigated then occupancy of that space should not be increased. Noise is not experienced every day but when it is noisy it can be intolerable, and overall she is concerned about more use and noise.

**Donald McPherson**, 1014 1<sup>st</sup> Street, addressed what he believes are the two most serious deficiencies in the application and submitted written copy of his testimony, making points: 1) the Behrens analysis shows lobby and terrace mitigations will not reduce noise adequately, much less substantially as the application claims and 2) it does not include conditions that the 2010 Use Permit required, in order to make a finding of no impact on the residential neighborhood. He tried unsuccessfully to play a recording of sound (device didn't work) and explained that he believes that more than 5dB, more like 10 dB reduction will be needed to mitigate adequately and believes there is no comparison between curtains and glass surface as installed at Strand House in terms of degree of noise mitigations. He concluded that the 2010 Use Permit Resolution should be used as a starting point in determining how to proceed.

**Wayne Partridge**, 3520 The Strand, has concern that the measures being proposed will not work and it has taken 4 years to get to an effective solution. The process seems to be stacked against the residents and favors the applicant. The Planning Commission should balance needs of business with the community in a fair and effective way.

**Viet Ngo**, advocate against Corruption of City Council and City Treasurer, informed the Planning Commission that he believes that since 2005 there has been bribery, evasion of taxes, and recommended that the matter be referred to the FBI and this hearing record would be evidence.

**Careeb McFadden**, has for 2 years had an apartment on Ardmore that faces the Terrace; believes both sides have good points, and is interested in hearing from the acoustic engineer and hopeful a resolution can be reached agreeable to both sides. He has not heard late night noises that are offensive to him. He believes that generally Shade has a good clientele and the security is good.

**Bill Victor**, resident for many years, has been around to hear all the hearings, expressed disappointment in City staff in not being able to enforce the CUP, and feels the Planning Commission can be resourceful in finding a solution.

**Laurie Greenberg**, 1012 Pacific Avenue, understands noise issue as she used to live downtown. She noted a charity fund raising event she was involved with last year at The Shade produced seed money for a foster children pilot program. She would be saddened to think she couldn't have a venue like this, whereby local retailers can be highlighted. The Shade staff disclosed noise issues that needed to be addressed for her event.

**John Strain**, attorney and representing Shade Hotel, commented: he denied that Shade can "get away with anything" noting a citation made at a recent special event. Regarding "zero tolerance" - one might think this means that when someone complains, the City will go out and file a citation. In reality the noise came from a group cheer at the end of the event at 8 at night and questioned should that be a violation? Also regarding the 5dB "bump" in the code, he believes that the subjective code standard does have an enforcement triggering bump due to the 12 criteria listed in the Code: loud unusual and unnecessary sound with factors to be considered.

**James O'Callaghan**, Manhattan Chamber of Commerce, has a lot of experiences with business owners and it's unusual for a business owner to go out of his way to seek measures. He believes that for everyone in the world wide business circuit, Shade is well known and this speaks well.

**Tiffany Mesco**, owns a downtown boutique, lives nearby on Ardmore and has a child at Pacific School and was present at Shade at a fund raiser when the Police arrived responding to a noise complaint. She has never once heard "unreasonable noise" and believes that the residents are likely overreacting. She fears that this kind of behavior will discourage business.

Chairperson Conaway closed and then reopened public hearing.

**Michael Zislis** rebutted, noting: 1) the hotel closes at 11 pm under the 2005 approval and would have closed at midnight under the 2010 approval if implemented. Petros has a 1 a.m. closing by comparison. 2) noise studies were done when big events were scheduled and he doesn't think he would have so many hotel guests if sound levels are so bad; 3) he has made lots of compromises, but closure is needed for everyone; 4) he invited the Commissioners to visit the terrace tonight.

**Don Behrens**, president of Behrens and Associates, Inc. Acoustical consultants and resident on Highview Avenue, responded to questions from Commissioner Gross as follows:

- 1) He has worked for the city and the Shade and the original work in 2009-10 was by contract with The City. He did the two week continuous noise monitoring study for the City and the contract for new solutions was with Michael Zislis. He performed tasks asked of him from Mr. Zislis including an analysis acoustical treatments/solutions for the revolving door, and Zinc Lounge.
- 2) The existing glass wall is to be converted to an "acoustic glass wall" whereby the glass would remain but gaps that leak sound will be filled, and a new portion would be added on the south side.
- 3) As to whether the number of people affects noise level, there is a "cocktail effect" whereby people sitting close to each other over-compensate and talk louder and this is typical in a "highly reflective" environment like the Zinc Lounge and Terrace. Regarding Mr. McPherson's comments about curtains: they are more for absorbing sound, not reflecting noise and absorbing noise can be effective because this lessens the cocktail effect. Options to address include sealing off the terrace, or dropping partitions. The latter may be more feasible as it would meet Fire Department standards for egress while being effective in that sound comes out of the top, where the largest gaps are located.
- 4) Regarding effectiveness of a condition that might limit the number of people: it is possible that you could limit the number of people, but also this can have an unintended result - there are examples of situations where even in a crowd of quiet people it can take only a couple of unusually loud persons to create a noise problem.

In response to questions from Chairperson Conway regarding possible relatively easy solutions, Mr. Behrens commented that his home is in an "amphitheater environment" similar to this case and he understands the issues. He summed up possible solutions examined: vestibule, partition/glass wall on eastside of lounge, with gaps sealed, and a retractable acoustical curtain/wall between the Terrace and Petros for night use to contain sound. Perhaps this could be elegant, but without obstacles that concern the Fire Department and lastly the entire Metlox plaza could be looked at to find solutions.

In response to question regarding noise studies, from Commissioner Gross, Mr. Behrens stated that (as to whether the sound measurements taken for Shade are suitable to use as benchmarks) he has listened again to the noise recordings and has not found anything that stands out as sound levels significantly above the ambient level. The readings on Ardmore are good for discerning traffic noise, but that's not noise that is the subject of complaints. This issue is really more one of land use conflicts where one quiet area is next to a noisier one with a combination of a lot of commercial and vehicle noise from a variety of sources.

In response to a question from Chairperson Conway who observed that the report does not contain a recommendation on mitigating amplified noise, Mr. Behrens noted that the solution for the roof deck would be a roof barrier but there are height compliance issues.

Chairperson Conway closed the public hearing and invited Commission discussion.

### **PLANNING COMMISSION DISCUSSION**

At the request of Commissioner Paralusz, Director Thompson confirmed that there was a request for a variance to have a vertical barrier on the roof and it was denied and he noted further that the roof deck is not the impetus for complaints now, but the major concerns are the Terrace and front door facing Ardmore.

To Commissioner Ortmann who was questioning solutions suggested by speaker Partridge, Assistant City Attorney Varat pointed out the case before them is a Use Permit Amendment, not a revocation hearing. Director Thompson suggested that the Planning Commission consider mitigation measures that are supported by the applicant as well as the neighbors, at the next (March 12) hearing.

Assistant City Attorney Varat pointed out that the 2005 Use Permit Resolution should be the starting point for building a new Resolution, with amendments as proposed by the applicant and Planning Commission.

Director Thompson stated that the direction that is needed by Staff is to answer: are you generally in support of the proposed amendment and if so, is there anything that the Commission wants to add?

Commissioner Paralusz thanked staff and all the residents for supporting their neighborhood, and not giving up. She recognizes that neighbors' points are valid and does not believe they are over-reacting and acknowledged that the business owner appears to want to alleviate the concerns. The Strand House was built not long after the 2010 Shade review and the developer intended to avoid mistakes. The Shade was originally to be a Bed and Breakfast and feels perhaps the noise problems accordingly were not anticipated. She supports full food service and marketing. She has concerns about Terrace special events and raised occupancy limits even if Fire Department egress codes can be accommodated. She has concerns also about alcohol service on the roof deck. The main concern is noise and believes increasing occupancy will raise noise levels, and is greatly concerned that the proposed measures will adequately offset effects from raising the occupancy limit. She does not favor an increase in Terrace occupancy level, unless persuaded that noise levels can be addressed by specific measures. She supports awnings, curtains and lighting changes and setting milestones for review.

Commissioner Gross stated the objective is to 1) make this Use Permit binding if they approve it and 2) clearly define terms within the Use Permit, as accomplished in 2010. He has concerns with a City policy of "Zero Tolerance" because City is setting up for failure, that there would be false expectations if the City doesn't enforce as such. He favors using the 2010 resolution which was an agreement as a conceptual starting point. Regarding the public, the Commission should identify the target and consider what the public should expect. As to noise measures, he needs to know for example, are the curtains heavy enough and whether they can be allowed to be open vs closed. Regarding the doors, the extra door for ADA access facing Ardmore needs to be controlled and perhaps the degree that the Terrace can be enclosed relates to the kinds of uses and degree of benefit that it can have.

Commissioner Paralusz suggested that they not go back to the 2010 Resolution to form a new resolution because it is not valid, to which Chairperson Conaway noted that bits and pieces of the 2010 document are valid and can be used.

Commissioner Ortmann stated his agreement with Commissioner Paralusz as to the parts of the Use Permit he would support, and believes that there is some validity to the feeling that "the goal posts have moved" and whether it's a 2010 agreement that can be the basis for going forward, that's for staff to figure out. He suggests that the applicant treat this as an opportunity, provided the two sides can come together. He would like to hear more from the residents as to measures that might be agreeable.

Commissioner Andreani noted that the Master Use Permit did not envision what the actual Shade Hotel became. It was to be a Bed and Breakfast that was to have a positive spillover effect to other businesses. She cited as an example of this the alcohol permit that actually was required for in-room mini bars. The applicant has always asked for more. Now we need something binding. We need clear definitions such as "guest" and "closing" so the Police Department can differentiate the food and alcohol service use from a 24 hour hotel. Can the main entrance be moved to the west side? She hopes they can achieve a no impact resolution and have no alcohol expansion on the roof deck and per the City Attorney, start with the 2005 resolution.

Chairperson Conaway stated that this is a different issue than typical one whereby someone has problems after moving into an established commercial area. These neighbors came first and are being impacted and Shade has evolved to be something different than originally planned, and he also recognizes that benefit of the Shade's success. His main points: he remains concerned about the revolving door, and that the side door will be overused and remain open often and regarding the Terrace: can't some noise mitigation be done at the back east wall shared with the Lobby, or perhaps Petros' north wall needs noise mitigation. Also he would like to see verification regarding the interior partitions, and wants to know whether the proposed canopies can't be made of sound absorbing materials.

Director Thompson indicated that Staff had sufficient direction that they would look at the 2010 and 2005 approvals and work with the Police Chief and all departments, and will include enforceable milestones.

#### **ACTION**

Chairperson Conaway reopened and continued the hearing to March 12<sup>th</sup>, 2014 and it was so ordered.

5. **DIRECTOR'S ITEMS** – None to report.
6. **PLANNING COMMISSION ITEMS**
  - a. Audience Participation Discussion – to be held over to a future meeting due to late hour.
  - b. Commissioner Andreani thanked the Assistant City Attorney, Fire Chief, and Police for being present in the hearing tonight.
7. **TENTATIVE AGENDA** - February 26, 2014
  - a. 900 Club – Revocation Hearing. Director Thompson explained that the City has initiated the revocation hearing and that Staff will be recommending that the Commission conduct only a hearing on this date, provide direction and continue the hearing to a future date.
8. **ADJOURNMENT**

The meeting was adjourned at 10:40 p.m. to Wednesday, February 26, 2014, in the City Council Chambers, City Hall, 1400 Highland Avenue

ROSEMARY LACKOW  
Recording Secretary

ATTEST:

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RICHARD THOMPSON  
Community Development Director