

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

A Regular Meeting of the Planning Commission of the City of Manhattan Beach, California, was held on the 12th day of March, 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
Eric Haaland, Associate Planner
Rosemary Lackow, Recording Secretary

2. AUDIENCE PARTICIPATION

Rosanna Libertucci, 9th Street resident, who had testified at the 900 Club revocation hearing on February 26, stated that she felt she appeared very flustered and confused at that hearing. This was because certain presentations that she had expected to be made by City representatives were not presented. She had put a lot of time over six weeks into preparing for the hearing, but felt she had been misled and requested that the Planning Commission look into this matter.

Chairperson Conaway stated that the request by Ms. Libertucci will be taken up in the Planning Commission Items section later on in the meeting.

Viet Ngo, advocate for anti-corruption of the City Council and City Treasurer stated that the Planning Commission is unfairly singling out the owner of the 900 Club for prosecution for a crime, and is making an unfair and inaccurate record through the minutes. He also stated that it is a criminal act to vote on items if there is a conflict of interest.

Seeing no other speakers for any items not on the agenda, Chairperson Conaway closed the public participation.

3. APPROVAL OF MINUTES – February 26, 2014

The following amendments were made by the Commission:

Commissioner Gross:

Referring to page 7, in the fourth paragraph starting “To Commissioner Gross, the Chief responded...” Commissioner Gross expressed concern that the entire second sentence regarding other bars and restaurants did not accurately reflect Chief Irvine’s response to him. Director Thompson suggested revising as follows: “When compared to other Downtown bars and restaurants, generally other establishments ~~do not~~ have ~~as many~~ similar issues arising before 9 or 10 pm.” The Commission directed that Staff review the tape of the meeting and verify of the Director’s suggested wording reflects what was said.

Page 7, in the last paragraph, insert a new sentence after the first sentence as follows:

“In response to Commissioner Gross as to how unusual is this case, Director Thompson indicated it is very unusual to get to a revocation hearing, because normally there is a willing owner who works with staff to mitigate or eliminate impacts. This is the first one in his 18 years with Manhattan Beach. Sometimes compliance takes some time. At this time everyone is cooperating and willing to resolve the issues.”

Page 9, third paragraph: revise the second sentence as follows:

“Commissioner Gross thanked all for attending and expressing heartfelt feelings. As a City resident for 53 years he recognizes that they have an outstanding city government and community and this is about the City, ~~normally well run, but~~ running into a problem that they can’t seem to solve. This issue is not the result of a few neighbors complaining. He believes this is the fault of the business owner and not our government which has worked hard to avoid this hearing.

Page 9, second paragraph from the bottom, revise the second sentence as follows:

“Assistant City Attorney Varat pointed out that there are differences between the Shade situation, for example, in that ~~in that~~ case, conditions were imposed.....”

Page 11, Planning Commission Items, last paragraph, revise the last sentence as follows:

“Mr. Thompson further reported that the Council.....with the applicant ~~on the~~ per the Council’s direction.”

Commissioner Paralusz:

Page 8, last paragraph: revise the last 2 sentences as follows:

“She has concerns regarding the owner’s acknowledged failures to comply with the Use Permit and stated that the owner needs to comply with the Conditional Use Permit and Municipal Code. She recognizes ~~that~~ it’s not easy for people to voice complaints and mainly these occur in the evening- after 10:00 p.m.

Page 9, fourth paragraph, revise as follows:

“Commissioner Paralusz cautioned that care must be taken to not repeat the mistake made on the last nuisance case, and ~~let’s~~ that the City make sure that mitigations measures are properly vetted with the City, prior to adopting changes to the Use Permit.

Chairperson Conaway:

Page 1, Roll Call: revise staff present names for Lieutenant Ryan Small, and Sergeant Vargas of the Police Department, and the Fire Chief to be consistent with the way other staff names appear, as follows:

Eve Irvine, Police Chief, ~~Lieutenant Ryan Small and Sargent Vargas~~
Ryan Small, Lieutenant (Police Department)
Chris Vargas, Sergeant (Police Department)
~~Fire Chief Robert Espinosa, Fire Chief~~
Rosemary Lackow, Recording Secretary

Page 4, W. Hampton testimony: in the last sentence change “sated” to “stated” that.....

Page 5, R. Busley and A.Trejo testimony: change “Dave’s” (for Busley) and “David R.” (Trejo) to “David Rohrbacher”.

Page 5, at the bottom, change “Bren Stoke” to “Bryn Stroyke”

Page 9, last paragraph, second sentence to be revised as follows:

“His primary concern is the characterization that only one or two neighbors are being negatively affected. whereas the Planning Commission received 16 letters from neighbors tonight and a significant amount of information from the Manhattan Beach Police Department and City Prosecutor.

Commissioner Andreani requested: Page 10, Planning Commissioner Items, last line to be revised as follows:

“...has been identified, but he ~~it~~ believes it will be retail on the ground floor.”

A motion was MADE and SECONDED (Gross/Ortmann) to **APPROVE** the minutes of February 26, 2014, as amended.

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

4. PUBLIC HEARING

03/12/14-2. 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 (Manhattan Inn Operation Company, LLC- Michael A. Zislis, Owner)

Planning Manager Jester gave a brief oral presentation, summarizing the written report and status/update of this item. Ms. Jester noted that the Staff recommendation is to open the continued public hearing and continue the hearing to April 23, 2014. Ms. Jester summarized several meetings that the planning staff has participated in recently, including with Building and Safety and Fire Department staff, the noise consultant, the Applicant, and three concerned neighbors/residents where Staff listened to their input and provided them an update on the project. Ms. Jester also confirmed that preliminary plans are in plan-check and are the same plans that the Commission reviewed at the last hearing and added that the Staff Report includes clarifications on the ABC license and a list of events that occurred at the Hotel in 2013. Planning Manager Jester concluded by recommending continuance to April 23 and that testimony tonight be limited to brief comments, or regarding process issues and that lengthy commentary or comments about the merit of the application be withheld until April 23rd, when we have more information on the project.

In response to a question from Commissioner Andreani, Associate Planner Haaland noted that the Shade Hotel has applied for a new Entertainment Permit, which is reviewed at the Staff level, but that review will be withheld until this application is finalized.

Commissioner Gross requested that at the next meeting, the Acoustic Engineer be prepared to explain “selective hearing/selective attention” and how it affects this situation because he believes this is very important. Commissioner Gross also requested that the phrase “zero tolerance”, which arose several times at the last hearing should be explained. He stated that from his point of view, Shade Hotel is an important asset for the City and community and would like to see that it achieve a full complement of uses, comparable to other similar uses in the City, but also noted there must be a tradeoff on the part of the applicant because the hotel design established before the applicant started his business, is less than perfect than it could be for the use and the mitigations have to be balanced with the operations and use.

PUBLIC HEARING

Chairperson Conaway opened the public hearing, requesting that speakers not to get into lengthy and detailed material tonight.

Nate Hubbard, resident on Valley Drive, requested that the Behrens noise report be made available April 16, and informed that Don McPherson will be requesting some modifications to the acoustical report

format. Previously the staff report did not get posted early as requested by the Commission for the February 12th meeting. It is requested that the Staff report for April be posted early. He concluded that everyone needs sufficient time to review all materials. He clarified that he is a resident near the hotel and acknowledged for six years Mr. McPherson has assisted him.

Don McPherson, 1014 First Street, submitted his testimony in writing. Mainly he requested that, given how important the acoustic report is, that the Commission direct four changes in that analysis. He emphasized he has been working on the issue of acoustic fabrics for six months. Mr. McPherson emphasized that the changes he is requesting would make the report more useful for the Commission and that everything he is requesting is in his email sent Monday.

Michael Zislis, applicant, stated he has submitted plan for plan check, has done everything the city and planning has requested and wants to resolve as quickly as possible. He urged that all potential mitigation measures including those from neighbors be vetted. He emphasized that Mr. McPherson has said his ideas will work but this should be proven in plan check. He briefly discussed the concept of “selective hearing” and Commissioner Gross indicated that he wants input on this from an expert.

Chairperson Conaway closed the public hearing and invited the Commissioners to ask questions and discuss.

Commissioner Paralusz asked whether an April 16th posting of the Staff Report and Noise Report is feasible, and Director Thompson indicated that staff tries its best to get the reports out as early as possible, but he cannot promise a specific date. The Commission always has an option to continue an item if more time is needed.

Commissioner Andreani inquired as to who submitted the chart on page 35 of the Staff Report (Exhibit C) and if this same report will be submitted at the next hearing and Planning Manager Jester responded that the chart was prepared by the Shade and Staff only reformatted it and Staff has not verified the attendance numbers.

COMMISSION DISCUSSION

Commissioner Gross indicated to Mr. Hubbard that his comment about the other residents and help he has gotten is appropriate, and it will be helpful to know at the next meeting, the number of residents he is representing. Commissioner Gross asked Staff to be prepared to tell the Commission what is the goal, that is what should be achieved sound-wise, noting that there’s both a subjective and objective standard in the code. If the Commission can understand the code objectives, then he feels the Commission can ask the applicant how that can be resolved. Director Thompson indicated that Staff can clarify this. Finally Commissioner Gross requested that the colors used in the acoustic report be contrasting to aid interpretation and that Staff indicate the zoning districts in the area where residents live versus what they are adjacent to (CD, OS, etc).

In response to a question from Chair Conaway, whether the changes to the acoustic report scope being requested are within the existing scope of the report as commissioned by the City, or are reasonable, Director Thompson stated that Staff will look at the proposals submitted tonight by Mr. McPherson and, if believed to be reasonable, will discuss with the noise consultant. Mr. Thompson also confirmed that all mitigation options are being considered including the drapes and related issues raised by Mr. McPherson.

Commissioner Paralusz informed that she believes it is very unlikely she will be present at the April 23rd meeting due to an out of state work commitment. She was very hopeful she could be present to help bring this issue to closure but thanked Staff for all their hard work and lots of thanks to the neighbors for being tireless advocates for their neighborhood. And also give credit to Mr. Zislis for working things out. Shade Hotel is very important but so is the neighborhood and both need to thrive. She wished everyone good luck.

Commissioner Andreani, based on Attorney John Strain's letter attached to the Staff Report, wanted to clarify her remarks relative to alcohol licensing as she believes there has been misinterpretation by both staff and the applicant. She did not mean that they could or should operate only with a Type 66 ABC license. She contacted the ABC in 2005, 2010 and most recently on March 6, 2014, she did so because she wanted to understand about the options with a Type 66 license. The ABC confirmed there are other options other than the Type 47 license that can be used along with the Type 66 license. She doesn't want anyone to think that she wants the hotel to operate only with Type 66. There are other options.

In response to a question from Commissioner Gross, Staff confirmed its intent is to bring a draft Resolution for review on 4/23 and again, the Commission has the ability to continue the item again. Mr. Thompson also noted Staff will work towards the goal that the resolution be written to make it binding and they are headed in that direction.

ACTION

Chairperson Conaway reopened the public hearing and continued it to April 23rd, 2014.

- 03/12/14-3. Consideration of a Use Permit Amendment and Variance for Proposed Market Use With Off-Site Alcohol Sales and On-Site Tasting, Parking Deck and other Site Alterations to an Existing Retail Center, Manhattan Place, at 1133 Artesia Boulevard (McKently Malak Architects, Inc.)

Chairperson Conaway announced this item and invited Staff to present. After a brief introduction from Director Thompson, Associate Planner Haaland gave a detailed report with a powerpoint presentation. Several topics were covered including the Proposal, Site Analysis, Issues, Location and surrounding sites, Parking Plan and a recommendation to: Conduct the public hearing, discuss and provide direction to Staff. A Variance and Use Permit Amendment including new alcohol components are requested and additional noticing will be made related to the alcohol licenses.

To Commissioner Paralusz, Associate Planner Haaland responded that construction staging for the project will be determined later on when the City reviews a construction management plan during plan-check. The Traffic Engineer and Construction Officer would be part of that review.

To Commissioner Andreani, Associate Planner Haaland explained the parking structure and clarified that there will still be access directly off of Tennyson and reciprocal access from inside the site to the adjoining sites would continue via private agreements.

Commissioner Ortmann suggested that at the next meeting, that the architect provide more plans to show clearly how access etc. works and Mr. Haaland stated that the architect can discuss this when he makes his comments to the Commission.

To Commissioner Gross, Associate Planner Haaland responded that this project will replace one tenant (Fitness Club) with two tenants, this is an amendment to an existing Use Permit, not a new Master Use Permit (MUP) because the site is existing and already has a Use Permit. A MUP is not required due to the degree of new work proposed. Mr. Haaland explained further that any type of retail use and tenant configuration is permitted through the existing Use Permit. Regarding the wall on the west side that diminishes westerly and is visible from Sepulveda, Mr. Haaland stated that more information will be provided at the next meeting. In response to Commissioner Gross's comment that the tower parapet seems an ideal place for a sign, and the suggestion that this issue be addressed in the Use Permit amendment, Mr. Haaland assured that details about signs will be included in the next meeting submittal and can be addressed in the Resolution as a site condition of approval. Mr. Haaland confirmed that there is one primary alcohol license (tasting secondary) proposed for the market, and if an additional restaurant were to open on the site, it would have to obtain its own Use Permit Amendment.

Director Thompson indicated that Staff does not have a formal position on whether signs should be prohibited on the parapet, but would like to see a proposal first to evaluate.

PUBLIC HEARING

Chairperson Conaway opened the public hearing and invited testimony.

Hany Malak, project architect and applicant, described the project which they have worked on for 1 ½ years. In response to some questions from the Commission he stated: 1) The west wall will be properly enhanced and shown on the next plans; 2) Regarding access, the intent is to maintain all existing street access points. There will be a driveway on Tennyson, but will now come straight into a subterranean parking level; 3). There is a lot of leveling of slopes because, with the market use, people will have shopping carts that need a level area; 4) Parking spaces will be shared by the market and a secondary smaller tenant. 5) While he cannot state the market name, it will be upscale, offering organic food; 6) Regarding the tower and signs: there is no intent to put signage on it, the intent is to be an architectural element that gives identity and character to the building and the height variance is needed mainly as a result of the topography. The plans submitted show possible sign locations.

Viet Ngo, advocate for anti-corruption, asked that the Planning Commission to disclose such and not vote on or discuss this project and disclose any ex-parte communications. He asked that staff verify and explain if this is a new Use Permit and if not why since there was a prior different use. His concerns are about alcoholic beverage uses and urged that everything be in compliance with the state alcoholic beverage laws.

Seeing no other speakers, Chairperson Conaway closed the public hearing.

COMMISSION DISCUSSION

Commissioner Gross asked and it was confirmed by Director Thompson that a new Use Permit would be required for a restaurant.

Chairperson Conaway asked and Mr. Haaland responded that there is no current alcohol license still active from the prior Safeway market and that any previous alcohol entitlement has expired.

Commissioner Paralusz noted her support and regrets she will not be able to attend the April 23rd Planning Commission meeting. She knows the site well, and believes the project will be a beautiful addition and she welcomes the leveling of the slopes to provide additional parking. She believes the market use will be very appreciated by residents, although there may be impacts during construction. She is not opposed to the height variance.

Commissioner Ortmann agreed with Commissioner Paralusz's comments and stated he is not opposed to the tower height variance but is opposed to signs on the parapet and hopes that the applicant is amenable to a restriction. Commissioner Ortmann also asked that a better more informative rendering be provided at the continued hearing to better understand the parking structure and ramping.

Commissioner Andreani understands that leveling the slopes will be costly, but likes the project. She had questions and concerns about comments 6 and 15 in the Traffic Engineer's memo. One concern relating to comment 6 is that the market employees, if not allowed or encouraged to park in the structure, may intrude into the neighborhood. She also was unsure of the meaning of "may be required" in comment 15 about disabled parking. She would like these 2 issues addressed. She has some concern about off-premise liquor sales but believes that might be able to be addressed in the conditions as was done with the Target Use Permit. More concern is about the alcohol tasting, and suggested perhaps regulating the hours or not allowing tasting are options to consider. She is not concerned about the height variance, when considering the total project and design. She would not say no to signs on the tower because a purpose of the tower is to attract attention.

Commissioner Gross noted his strong support and is guessing that the market tenant will function as a center anchor. He agrees with Commissioner Andreani that he is not sure that should be NO signage on it because it will help make the whole project work by drawing people into the center. He also likes that 18 extra (beyond required) parking spaces will be provided. He has no problems with the alcohol uses or the height variance.

Commissioner Paralusz suggested that the owner, out of sensitivity to neighbors, reach out to neighbors beyond the standard requirements for public noticing and discuss construction duration and management of the construction impacts.

Chairperson Conaway stated he likes the project which will refresh the site. He shares Commissioner Andreani's concerns about the alcohol, not in association with the market, but is concerned if the alcohol use can be transferred to another use. He is glad to hear that the Use Permit and alcohol use stays with the specific market tenant space and not the overall site. He acknowledged that the City does not have a specific code that requires a minimum distance from a high school but this is a sensitive issue and some public input was received. He believes the tower element is plain and could use some form of enhancement, graphics or articulation, but not necessarily signage. He is not concerned about its height or the related variance. He suggested that the continuance date be April 9th if agreeable by the Applicant.

Director Thompson indicated that the tenant use could be specified as a market selling liquor in the conditions which may address the Commission's concerns and also noted that the Staff can bring back this item to the April 9th meeting if so desired.

ACTION

With no objections, Chairperson Conaway **REOPENED** and **CONTINUED** the public hearing to its April 9, 2014 meeting.

5. DIRECTOR'S ITEMS – none.

6. PLANNING COMMISSION ITEMS

Commissioner Gross commented for benefit of the public that the Commissioners as with all public officials attend at least one mandatory annual conflict of interest training and sometimes they get more training. The training is professional, and they take it very seriously. Chairperson Conaway added that each Commissioner completes and files for public review, a Form 700 which is a public disclosure statement.

Commissioner Andreani responded to comments by Mr. Ngo about abstaining from the public participation and input by Ms. Libertucci. She abstained from the approval of the February 26 minutes but she had no way of knowing that Ms. Libertucci was going to attend tonight's meeting and speak. She made no comments on Ms. Libertucci's public comments tonight, and concluded that the Commission is well versed and in compliance with conflict of interest regulations.

Chair Conaway raised Ms. Libertucci's request to the Commission tonight that they give her another opportunity to make a full presentation on behalf of neighbors at the next 900 Club hearing. He is concerned and asked for input from the Commission. Commissioner Gross commented that he thought what happened is that at the last minute the City Attorney advised about the presentations and set some ground rules, and, by happening at the last minute this resulted in the appearance that testimony was very lopsided. Commissioner Paralusz stated her disappointment in how things went, and recommended that Ms. Libertucci be provided an opportunity for another presentation. Commissioner Ortmann agreed with Commissioner Paralusz.

Director Thompson suggested that all further comment wait until the next hearing and reminded that, if the public has any questions about the 900 Club, they have the right to attend the next hearing and speak on this item.

Chairperson Conaway suggested that the neighbors be allowed to have a presentation, as deemed appropriate by Staff. Director Thompson stated that Staff will as they do routinely, make every effort to ensure the next 900 Club be balanced and in legal compliance.

7. TENTATIVE AGENDA - March 26, 2014

Mr. Thompson reported that there are no items at this time.

8. ADJOURNMENT

The meeting was adjourned at 8:30 p.m. to Wednesday, March 26, 2014, in the City Council Chambers, City Hall, 1400 Highland Avenue.

ROSEMARY LACKOW
Recording Secretary

ATTEST:

RICHARD THOMPSON
Community Development Director