

**CITY OF MANHATTAN BEACH  
[DRAFT] PLANNING COMMISSION  
MINUTES OF REGULAR MEETING  
MAY 28, 2014**

A Regular Meeting of the Planning Commission of the City of Manhattan Beach, California, was held on the 28<sup>th</sup> day of May, 2014, at the hour of 6:30 p.m., in the City Council Chambers, at 1400 Highland Avenue, in said City.

**1. ROLL CALL**

Present: Andreani, Conaway, Ortmann, Chairperson Gross  
Absent: Paralusz  
Staff Present: Richard Thompson, Community Development Director  
Laurie Jester, Planning Manager  
Tim Hageman, Captain, Police Department  
Joe Aiello, Lieutenant, Police Department  
Ryan Small, Lieutenant, Police Department  
Rosemary Lackow, Recording Secretary

**2. AUDIENCE PARTICIPATION**

**Viet Ngo**, anti-corruption advocate asked that the City verify the TOT (hotel) taxes paid by Manhattan Inn Operation Company, LLC.

**3. APPROVAL OF MINUTES – May 14, 2014**

The following changes were requested by the Commission:

Commissioner Andreani revisions:

- 1) Pg. 9, second paragraph above “Open Public Hearing”, first sentence: replace “asphalt” with “permeable”.
- 2) Pg. 10, second paragraph from bottom: revise the last two sentences to read “She is fine with the signage and likes that the inflatables are prohibited and banners are limited ~~but still allowed~~. She is also eager for the project to ~~progress~~ proceed to City Council and implementation.”

Commissioner Conaway revisions:

- 1) Pg. 4, Ms. Libertucci testimony, fourth line: replace “securing” with “security” (guard)
- 2) Pg. 4, Ms. Stinson’s testimony, second line, “.....and she also believes that ~~the~~ some homes nearby are up for sale due to impacts from 900 Club.”
- 3) Pg. 10, third paragraph from bottom: add “Commissioner” before “Conaway” in the first sentence.
- 4) Pg. 10, third paragraph from bottom, third and fourth sentences revise as follows:  
“In general he doesn’t believe that Toyota is living up to its reputation of being environmentally “cutting edge” and he is having difficulty ~~with~~ making the findings. Regarding the height variance, he is not sure that everything possible has been done but acknowledges that it may be ~~impossible~~ difficult to get 2 commercial stories in the applicable 22 foot height envelope.”

Commissioner Gross revisions:

- 1) Page 6, condition 4 (back door) be revised to reflect the intent that 30 minutes before closing time all food service and alcohol shall stop. Director Thompson indicated that staff would review this.
- 2) Page 11, 5<sup>th</sup> paragraph from top, last line: "...would exceed the 30-foot limit only by about ~~15~~ 18 inches."

A motion was MADE and SECONDED (Andreani /Conaway) to **APPROVE** the minutes of May 14, 2014, as amended.

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

#### 4. PUBLIC HEARING

- 05/28/14-2. Consideration of a Master Use Permit Amendment and Possible Modifications, Including but not Limited to: Noise Mitigation Measures, Hours of Operation, Food Service, Special Events, and Alcohol Service at the Shade Hotel, Metlox Site, 1221 North Valley Drive (Manhattan Inn Operation Company, LLC-Michael A. Zislis, Owner)

Chairperson Gross announced the item and Director Thompson introduced the subject of the hearing and gave a brief status report.

Planning Manager Jester summarized the staff report with a power point presentation covering the following topics: Background (fourth public hearing and direction from Commission); Project Location; Project Description; Resolution Findings. Ms. Jester went over all revised conditions of approval in a "blue-lined" track changes draft version presented this evening, which was provided to the applicant and the neighbors representative earlier today. Ms. Jester emphasized that this draft resolution is intended to incorporate all conditions that are acceptable to staff based on the direction of the Commission, input received from the applicant and neighborhood representative, and prior conditions from the April version from Fire Department, and Police comments.

Staff responded to questions from the Planning Commission.

Planning Manager Jester responded to several questions from Commissioner Conaway: 1) The location of proposed laminated glass is near the main entry/reception desk. 2) Glass that is proposed to remain in the vestibule has acoustic qualities, but the residents want this replaced with STC 36 rated glass. 3) The original and current design has the vestibule parallel to the entry doors. 4) There is no limit in the Use Permit to the number of special events/functions. 5) The east (front) door can be used at any time by patrons. 6) Staff has proposed that the curtains be required to be re-opened to enhance visibility for the Police Department for enforcement and provide openness for emergency egress and ventilation. 7) The conference room is a fully enclosed space and there has never been any associated nuisances. 8) The occupancy limit of 159 for the Zinc Lounge was determined in 2005 by the Fire Department, based on a detailed plan submitted by the architect featuring a dance floor, tables and chairs and a bar with seating and

this is the only limit that has been approved, whereas a limit of 77 may have been noted on an application submitted to the City. 9) The 2010 permit had valet service on Morningside but at this time this was not deemed workable. 10) Conditions 36 and 38 can be struck by the Commission at their discretion, and 11) Staff considered condition 12 very carefully under the criteria of the subjective noise standard and staff believes that it is enforceable.

Tim Hageman, Police Department Captain, stated that the Police Department can enforce condition 12 under the “reasonable person” standard but it is important to also have a set cutoff time to enforce noise.

Planning Manager Jester responded to questions from Commissioner Andreani: 1) The “original use permit request” as stated in the staff report is the current 2014 application. 2) Condition 32 addresses the scope of “food service”. 3) The Courtyard area would not permit full food service and the distinctions in food service are intended to address the primary (hotel) versus secondary or complimentary (food service uses on the premises. 4) A Certificate of Occupancy does not itself list the detailed occupancy limits but rather certifies that the building is cleared to be occupied. The detailed occupancy limits are determined by the City and are required to be posted in the public use areas, and have been approved and posted only once. 5) References to the 2010 Use Permit that expired were not included in the resolution findings at the advice of the City Attorney.

Planning Manager Jester responded to questions from Chairperson Gross: 1) It is accurate that the present hotel conditions meet the objective criteria of the noise ordinance, per testing by the acoustic consultant. 2) Two violations that have occurred are related to the subjective standard. 3) There have been no complaints since a charity fashion show last year.

In response to Chair Gross, Director Thompson stated that after the applicant signs the affidavit within 30 days, and after the appeal period is over and if no appeal is filed, then the resolution adopted by the Planning Commission would be the valid Use Permit to be enforced. Further, Mr. Thompson stated his opinion that it is very unlikely that this use permit would not be implemented because conditions and mitigation measures have been thoroughly vetted beforehand.

There being no further questions of Staff, Chairperson Gross opened the public hearing and invited public testimony.

## **PUBLIC HEARING**

**Michael Zislis**, applicant for Shade Hotel, met with neighbors twice very recently and believes both sides are committed to resolving all issues. There are a couple of issues that are still not resolved to his satisfaction and he also clarified a number of items: 1) A glass wall in the lobby reception desk is no longer relevant because it relates to a revolving door solution. He is looking into having a 90 degree vestibule but hasn't completely reviewed that yet. 3) He had previously sought approval of a taxi stand on Morningside, not a valet service. 4) The occupancy limits are based on the original floor and furniture plan that was approved and reflect current use. 5) The Shade has had a total of 2 violations in 8 years and the last one was in October at a fashion show event. The two issues he would like to implement in the future with permission now if possible and that Mr. Partridge was agreeable to, include a door on the south side of the Terrace and a retractable roof on the Skydeck.

**Mr. Zislis** went over the draft conditions and noted the following issues: Condition 2: NRC .85 is the

American standard that should be used, not the SAA .55 per the acoustic engineer; Condition 8: He is against having to reopen the curtains at 11:30 pm because it makes noise to move the curtains again. Condition 9, second paragraph, regarding a requirement for a double-door locking mechanism: he investigated this and doesn't know how he can execute this; Condition 19, chart: believes 10:30 on The Terrace is limiting and would like 11:00 pm closing on weekends a) under the chart he would like 30 minutes instead of 60 minutes for last call for food and drinks. In conclusion he is not 100% happy with all conditions but feels he is close to agreement. .

Chairperson Gross noted that the 3 neighbors who wished to speak would have a total of 15 minutes, and he urged that they address the draft resolution and conditions as much as possible.

**Wayne Partridge**, resident, objected to the process because he doesn't believe he has received the revised resolution. He believes that the occupancy limits are critical not only for safety but because they address the intensity of the use. Mr. Partridge acknowledged his meeting with Mr. Zislis but noted he disagrees with Mr. Zislis regarding his statement about the south Terrace door, which he believes is very important. He urged the Planning Commission to not approve the draft resolution and suggested continuing the hearing to allow the applicant and neighbors to continue to meet and resolve issues. He doesn't believe Condition 39 is relevant as it wasn't for the 900 Club.

Director Thompson clarified that condition 39 was not relevant to 900 Club because the City initiated the process as a revocation hearing. It is relevant to The Shade Hotel because the applicant is Mike Zislis for an amendment to a use permit. Once the affidavit is signed by the applicant, the use permit is valid, but if the applicant does not sign the affidavit, then the City would likely initiate a revocation hearing.

Director Thompson further clarified that the Planning Commission, upon making appropriate findings, has the discretion to establish occupancy limits that are more restrictive than what was set by the City Building Official or Fire Department, as part of the Use Permit process. Staff recommended the limits in the resolution because these are what historically have applied.

**Nate Hubbard**, Ardmore Avenue, agreed with Mr. Partridge's statements and noted that he did not get a copy of the revised draft resolution until tonight.

**Don McPherson**, 1014 1<sup>st</sup> Street, submitted a written record of his comments, and discussed occupancies and the lobby and terrace door issue. He believes that occupancies have been greatly increased since the 2005 CUP. Regarding the south entrance to the Terrace, he disagrees with staff's interpretation of the code that requires an opening be maintained. He responded to The Chair's question by stating that he agrees that the hotel operations meet the code objective standard at the residential area not for the areas around the hotel.

Director Thompson clarified for Commissioner Ortmann that occupancies for Special Events are event specific.

**Karol Wahlberg**, resident, agreed that she doesn't believe the Resolution should be approved tonight without further resident input.

**Viet Ngo**, anti-corruption advocate, urged that the Commission consider various things, including if the

applicant has paid its taxes.

**Esther Besbris**, long-time resident, acknowledged that the hotel has evolved over time from a bed and breakfast, and she feels everyone is looking for this case to have a final resolution.

Seeing no other speakers, the Chair invited the applicant to make a rebuttal.

**Michael Zislis**, applicant stated that there was discussion with neighbors regarding installing a second door on the south side of the Terrace and he agreed to do this in the future if it can effectively mitigate noise but would ask that if noise is further mitigated then he intends to request that his hours be further extended beyond 10:00 pm. He asked if there was a way to incorporate this concept in the Resolution.

Chairperson Gross closed the public hearing.

### COMMISSION DISCUSSION

In response to Commissioner Ortmann, Development Director Thompson stated that the bulk of the Resolution being considered tonight was prepared and given to the applicant and neighbors for their meeting on Friday before Memorial Day and any last minute changes are items that both the applicant and neighbors are not only aware of but have agreed to at their meeting. Mr. Thompson also stated that he does not advise including possible changes to the south Terrace entrance in tonight's resolution or other possible future items such as coverings over the Courtyard and Skydeck. Mr. Thompson suggested that condition 12 be revised to match wording suggested by the Police Department similar to the 900 Club.

Commissioner Conaway stated that regarding the hearing process, he understands concerns but believes that the Commission can and should move forward with due diligence and carefully review each condition. As to the tax issue raised by Mr. Ngo, he does not believe that this is within the purview of the Planning Commission. He also understands that the residents felt years ago that they were going to get a bed and breakfast but instead got a boutique hotel. He believes, however, that a feeling of hospitality is very important for a hotel and that special events provide a good business for the applicant as well as a service for the community. He is concerned that boxing in the outdoor open spaces to contain noise takes away from the feeling of hospitality and he would rather address noise by curtailing hours. Commissioner Conaway also stated he would like to see the operational hours simplified, perhaps having a set closing time for each category of space (e.g. indoors vs. outdoors).

Commissioner Andreani agreed with Commissioner Conaway's comments, and supports moving this case along to the City Council.

Chairperson Gross recalled when the Metlox town square was an industrial pottery manufacturing business with active train tracks adjacent and that the area has since made much progress which has benefitted the neighborhood and City. Chair Gross reflected that it is very difficult to have everyone happy when residential and commercial uses are so close to each other. He believes that it is significant that without any new noise mitigation, the current operations meet the objective noise ordinance in the residential area and that there have been no violations in seven months. Perhaps this is due to the use of a security guard or greater awareness by the operator who is making some operational changes.

The Planning Commission reviewed the draft Resolution (blue-lined track changes version presented at the hearing ) discussed each finding and condition and directed Staff to revise the draft Resolution including making the document shorter, more concise and simplified with specific changes.

### **REOPENED PUBLIC HEARING**

After some discussion of the Resolution and conditions and prior to final action taken by the Commission, the Chair re-opened the public hearing upon being informed by the applicant, Michael Zislis, that he was not satisfied with conditions 18 and 19 as approved by straw vote. Mr. Zislis explained that the new requirement that all areas be vacated at closing hour cuts into his operational time and affects revenues. He explained that he needs at least 30 minutes to clear the outdoor areas.

In response to a question from Commissioner Conaway, Director Thompson stated that staff is trying to eliminate confusion with these types of businesses and the condition developed for 900 Club represents a relatively new step towards making things more consistent and clear.

**Michael Zislis**, stated that acceptable options include: adding 30 minutes to the operating hours, altering the definition of closed, or making the Skydeck and the Terrace the same “stop serve” time. He emphasized that in condition 18 the phrase “all areas vacated” has never been required before in a condition.

**Tim Hageman**, Police Department Captain confirmed that typically when a complaint is received the police will work with the operator to clear all patrons out without issuing a report or citation.

Director Thompson pointed out that under the new proposed definition of “closed” if premises are not vacated after the closing hour, this would constitute a violation, which is very different from the current enforcement as described.

After discussion, Commissioner Conaway suggested in the spirit of compromise, that 30 minutes (60 minutes total) be added to the time at which the Skydeck must stop service prior to the closing hour (per provision a.) under the chart in condition 19). The Commission was unanimous in agreeing with this solution if there is agreement with the neighbors.

**Nate Hubbard**, resident stated he would be in agreement with the proposed Skydeck change.

At the request of the Chair, Planning Manager Jester summarized the consensus reached by the Planning Commission for the following changes to condition 19:

- 1) Zinc Bar and lobby: 6 am to midnight (both day –to-day and special events)
- 2) Terrace/Porch: 6:00 am to 10:00 pm Sunday through Thursday and to 11:00 pm Friday, Saturday and Sundays before holidays (applies to both day-to-day and special events)
- 3) Courtyard: only for special events: 6:00 am to 11:00 pm Sunday through Thursday, and to midnight Friday, Saturday and Sundays before holidays
- 4) Skydeck: 8 am to 10:30 pm every day.

Further Ms. Jester noted that provision “ a)” below the chart would be modified to require that the Terrace and Courtyard must stop alcohol, food and drink service 30 minutes before closing but the

Skydeck, as an exception, must stop service 60 minutes prior to closing.

**Michael Zislis**, applicant stated his agreement to the changes summarized subject to the clarification that on the Skydeck (closing time of 10:30), all lights would be turned on and music will be off at 10:00 pm, with the overall expectation that at 9:30 pm all service of food and beverages would stop, at 10:00 pm all music would be off and lights turned on, and 10:30 pm all patrons would be gone. With this understanding, he indicated he would sign an affidavit.

Chairperson Gross closed the public hearing.

In summary, the following final Resolution changes, using and accepting the blue-lined tracked changes document distributed by staff that evening, were agreed to by the Planning Commission

**Findings (Section 1):**

No changes to: A through D and “new” H. through K, N, O, P, R, S through T

Changes to Findings:

E. Insert new finding (E) that documents the 2010 Master Use Permit Amendment and re-alphabetize all findings that follow.

F and G. (former E and F) Shorten to be more concise.

L. (former K): revise second sentence: “The hotel may also offer special event, function, food, and other similar support services as secondary uses, subject to conditions.”

M. (former L): clarify that facts recited pertain to a past proposed amendment and include cross references for each hotel space regulated in condition 19 (both former and current nomenclature, e.g. “Living Room” = “Zinc Bar and Lobby”, and “Porch”= “The Terrace”).

Q. (former P): correct typo (delete second “that” in fourth line)

S. (former R): add General Plan Goal LU-5 regarding protection of residential neighborhoods from inappropriate and incompatible uses.

**Conditions: (Section 2):**

No changes to: 1, 5, 6, 8, 10, 11, 14 through 17, 20- 22, 31, 34, 35, 37, 40-43.

Condition changes:

2. Revise the first paragraph as indicated below, delete subsection B and re-alphabetize the four remaining subsections.

“.....1) all new ~~acoustic~~ glass shall be acoustic glass, rated at Sound Transmission Coefficient STC-36 or better; 2) all new acoustic absorbers shall be rated at ~~Sound Absorption Average of SAA 0.55~~ Noise Reduction Coefficient (NRC) .85 or better, .....”

3. Revise as follows: “Public Areas-Venue (definition). Any area or space open to the public where sales, service and consumption of food, alcohol and other ~~alcoholic~~ beverages is permitted.”

4. Revise subsections A and B only as follows:

“A) Special events are private events in which an unaffiliated third party under contract has exclusive use of one or more venues or a portion of a venue. Attendees at special events shall have an invitation”

from the host client, with the exception of non-profit or charity types of events such as the Downtown Holiday Open House, Charity Education Wine Events, and Chamber of Commerce events.

B) Functions are generally “themed” public events.....up to twelve (12) per year, such ~~at~~ as.....and Six-Man.”

7. Revise as follows: “House sound amplification system ~~for amplified sound~~. The house sound amplification system and any changes shall.....Department.”

9. Revise first paragraph as follows: “Front (East) Main Entryway. The existing primary front entrance/exist doors shall be replaced with a double-door vestibule. ~~Laminated acoustic glass shall be installed at the front reception desk on the side facing Valley.~~” Second and third paragraphs: revise to reflect intent that doors on the vestibule shall be self-closing.

12. Revise to be consistent with wording in the recent 900 Club resolution and per the Police Chief’s suggestion.

13. Revise to clarify that the Director of Community Development has the authority to make modifications to the annual Entertainment Permit.

The Chair called for a 5 minute recess at 10:45. The Planning Commission reconvened at 10:50 pm.

18. Revise to reflect the intent that there be a phased shutting down of operations for outdoor areas starting with a “last call” 30 minutes before closing except 60 minutes for the Skydeck, at which time sales and service of food and all beverages would first stop, and then for the Skydeck all music would stop and lights would be turned up or off, and at the final closing time the premises would be required to be completely empty of all patrons. Move provisions a) and b) and d) that are below the chart in 19 into condition 18 as appropriate. As an example, the Skydeck which is to have a closing time of 10:30, at 9:30 there would be a “last call” when food and beverage service is stopped, then at 10:00 the lights would be up and music off, and then at 10:30 all patrons would have vacated the premises. Staff can remain for an hour after closing.

19. Revise the chart of operational hours for the Terrace, Courtyard and Conference Room, as shown below, and incorporate the occupancy limits from condition 21 into the chart.

Terrace/Porch – south side of Lobby outdoor	6AM to <del>10:30</del> -10:00 PM Sunday - Thursday <u>6AM to 11PM Friday, Saturday and Sundays before holidays</u>	6AM to <del>10:30</del> -10:00 PM Sunday - Thursday <u>6AM to 11PM Friday, Saturday and Sundays before holidays</u>
Courtyard – Special events and functions only allowed – outdoor	Not permitted except as pass-through	6AM to 11PM Sunday - Thursday 6AM to 12 AM (midnight) Friday – Saturday <u>and Sundays before holidays</u>



Zinc Bar and Lobby open until midnight daily, Conference Room may be open 24/7.

In addition, move provisions a), c) and d) under the chart to condition 18 and modify provision a) as discussed above.

23. Revise the first line as follows: “Public property clean up-The Shade staff shall monitor the area so that Shade patrons do not litter or loiter on adjacent public property.....property clean-up costs.”

24. Revise the second sentence to read “The Security stall shall supervise the site and surrounding area to ensure.....and doors being closed, littering, loitering, occupancy limits, and other nuisances are complied with.”

25. Revise first sentence to replace “After” with “At”.

26. Revise to replace all three “after” with “at” and “9 PM” with “10:00 PM”.

27. Revise first sentence to replace “After” with “At”.

28. Revise the last sentence to add: “.....or lots such as Lot 3 at the southwest corner of Morningside Drive and 12<sup>th</sup> Street.”

29. Revise to replace “9 PM” with “10:00 PM”.

30. Revise second sentence to read “The Applicant shall work cooperatively with the ~~Management Co~~ management company, landlord, any security personnel and the City to ensure that Shade facility patrons are not gathering in the Town Square and public areas outside of the hotel and disturbing the neighbors after the hotel public areas are closed.”

32. Revise the second and third sentences to read “The Zinc Bar and Lobby may have ~~several~~ up to 12 seats of “spill-over” from the Terrace with full food service. Full food service may be provided in all other public areas only during Special Events and Functions. Food service, primarily small-plates, may be provided in the Zinc Bar and Lobby ~~at any time~~, and on the Skydeck only during the hours of operation.”

33. Revise the first sentence to delete the first word “Any”.

36. and 38. (Expiration) and (Lapse of Service) Delete in their entirety and renumber following conditions.

39. (Terms and Conditions are Perpetual) Revise the second and third sentences to replace the words “property owner” with “applicant”.

### PLANNING COMMISSION ACTION

A motion was **MADE** and **SECONDED** (Ortmann/Andreani) to adopt the draft resolution as amended, approving the subject Master Use Amendment for the Shade Hotel at 12212 North Valley Drive.

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

Director Thompson announced that the motion has passed and this item will be scheduled on the City Council agenda as a “receive and file” item on June 17, 2014 unless prior appealed.

**5. DIRECTOR’S ITEMS** – On June 11 the two outgoing Commissioners will be acknowledged for their service.

**6. PLANNING COMMISSION ITEMS**

Chairperson Gross stated that he has been honored to serve on the Commission, including as Chair and that he will miss all the Commissioners and thanked Staff for their hard work. All the Commissioners thanked the Chair for his service and personal thanks from Commissioner Conaway for his wisdom and long tenure as a resident. Commissioner Ortmann expressed his admiration to Chairperson Gross noting his great attention to details.

**7. TENTATIVE AGENDA** – June 11, 2014  
a. 326 13<sup>th</sup> Street (Bar Au Chocolat) – Use Permit and Coastal Development Permit

**8. ADJOURNMENT**

The meeting was adjourned at 12:35 am to Wednesday, June 11, 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