

RESOLUTION NO. 6322

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH APPROVING, SUBJECT TO CONDITIONS, A USE PERMIT TO ALLOW A REAR ADDITION AND ON-SITE BEER AND WINE CONSUMPTION AT AN EXISTING RESTAURANT LOCATED AT 1605 NORTH SEPULVEDA BOULEVARD (HOTDOGGER'S)

THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, DOES
HEREBY FIND, ORDER AND RESOLVE AS FOLLOWS:

SECTION 1. The City Council of the City of Manhattan Beach, California, hereby makes the following findings:

- A. This appeal is from a decision of the Planning Commission decision on an application for a Use Permit. The subject property is legally described as Tract No. 1638 (ex of sts) Lot 1 Block 58 and (ex of st) Lots 23 and Lot 24 located at 1605 North Sepulveda Boulevard in the City of Manhattan Beach.
- B. The property owner is Debbi Saunders as agent for RRSS Properties, LLC. The applicant/business owner is Sandy Saemann, Hotdoggers, Inc.
- C. The property is located within Area District II and is zoned General Commercial (CG) (Lots 23 and 24) and Residential Single Family Design Review Oak Avenue (RS D-6) (Lot 1). The properties to the North are zoned Commercial General and Single Family Residential, to the South (Commercial General, Mixed-Use Commercial and Single Family Residential with Oak Avenue Design Review), to the East, (Commercial General) and to the West, (Single Family Residential)
- D. The General Plan designation for the property is General Commercial (front on Sepulveda Boulevard) and Mixed-Use Commercial (rear on Oak Avenue).
- E. The existing subject property includes a building of 1612 square feet. There are a total of 18 parking spaces. The existing restaurant is non-conforming as it does not currently have a use permit.
- F. The applicant sought a use permit for a project that consisted of the following: 1) a 24-hour restaurant in an existing structure to be remodeled; 2) a new outdoor rear patio of 336 square feet for outdoor dining to operate between the hours of 7:00 am and 10:00 p.m. Sunday to Thursday and 7:00 a.m. and Midnight Friday and Saturday; 3) beer and wine service for on-site consumption between the hours of 11am and Midnight daily.
- G. The Planning Commission of the City of Manhattan Beach conducted public hearings on March 23, 2011 and April 27, 2011 to consider the application for a Use Permit on the subject property as described in paragraph F. The hearings were publicly noticed, testimony was invited and received. Those testifying expressed a variety of viewpoints, including support for the project as proposed and concern over the proposal due to the potential for noise to emanate from the patio, traffic on Oak to increase beyond a residential-neighborhood level, and secondary impacts from a drinking-establishment introduced or intensified in the neighborhood. After consideration of the whole record, the Planning Commission conditionally approved the application on April 27, 2011 and adopted Resolution No. PC 11-06 memorializing the Commission's decision and setting forth the conditions of approval.
- H. The project approved by the Planning Commission provided a fast casual family style restaurant with menu items such as hot dogs, specialty sausages, hamburgers, salads and Hawaiian style meals for breakfast, lunch and dinner. The operation of the restaurant will function as a take-out restaurant with counter order service only. No table service will be provided, except food only (not drinks) may be served to customers at tables after having been ordered at the counter.
- I. The project will not individually nor cumulatively have an adverse effect on wildlife resources, as defined in Section 711.2 of the Fish and Game Code.



**Certified to be
a true copy of
said document
on file in my
office.**

TCA

**City Clerk of
the City of
Manhattan
Beach**

J. The Resolution approved by the Planning Commission conditionally allowed, among other things, the following: 1) Operating hours for the restaurant to be 7am to Midnight daily; 2) Operating hours for the outdoor rear patio to be 8am to 9pm daily; 3) Alcohol service to be allowed per hours of operation for restaurant and outdoor patio; and 4) Outdoor patio not to exceed 336 square feet.

K. On April 29, 2011, the applicant submitted an appeal of the Planning Commission's decision memorialized in Resolution No. PC 11-06. The appeal request letter and strike-out resolution submitted with the appeal addressed a number of issues including restaurant hours, patio hours, music on the patio, noise mitigation measures, beer and wine service hours, "take-out" restaurant operation, and outside waiting/seating areas. Appellant also requested a waiver of the appeal fee. The applicant proposed to operate the restaurant 24 hours, with the patio open and alcohol service from 7am to 10pm Monday through Thursday and 7 am to midnight on Friday and Saturday. During the public hearing, the applicant offered various alternatives and compromises with respect to the operation of the restaurant, including enclosing the patio and further limiting the alcohol service hours.

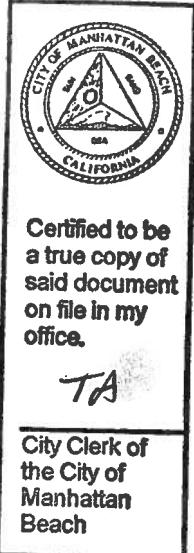
L. The City Council of the City of Manhattan Beach conducted a duly noticed public hearing on June 7, 2011, received public testimony, and considered an appeal of the conditions imposed on the proposed project and an application for a use permit to allow 24 operating hours and service of beer and wine and an outdoor patio with limited hours at an existing restaurant located at 1605 N. Sepulveda Boulevard in the City of Manhattan Beach.

M. The City Council heard testimony on behalf of the applicant from the business owner, his architect, his sound engineer and his chef. A number of business owners and business associates of the business owner and a representative from the Manhattan Beach Chamber of Commerce also testified in support of the application. The City Council also heard testimony from a number of residents, particularly those living on or in the vicinity of Oak Avenue who expressed concern about noise from the outdoor patio, traffic circulation, ingress and egress via Oak Avenue, late night congregation in the parking lot and the secondary effects to the neighborhood of alcohol service.

N. Among other evidence submitted in the record, Bruce Davy, Davy and Associates, Acoustic consultant hired by the applicant submitted a sound study dated June 7, 2011 and testified that the only way that he believed that the business could meet the standards in the City's noise ordinance was to enclose the patio. During the hearing, the business owner indicated a willingness to accept the conclusion and recommendation of his sound expert.

O. Based upon State law, and MBLCP Section A.84.060, relating to the Use Permit application for the proposed restaurant, the City Council hereby further finds as follows:

1. The proposed location of the use as conditioned is in accord with the objectives of this title and the purposes of the district in which the site is located, is consistent with the Commercial Districts Chapter, Section A.16.010-Specific Purposes, since the subject proposal: a) is adding to and creating a vibrant mixture of uses in the area which provides a full range of office, retail commercial, and service commercial uses needed by residents of, b) strengthens the City's economic base, but also protect small businesses that serve city residents, c) creates a suitable environment for various types of commercial and compatible residential uses, and protects them from the adverse effects of inharmonious uses and minimizes the impact of commercial development on adjacent residential districts through the conditions of approval, d) ensures that the appearance and effects of commercial buildings and uses are harmonious with the character of the area in which they are located and ensures the provision of adequate off-street parking and loading facilities, through the conditions of approval, e) encourages commercial buildings that are oriented to the pedestrian, by providing windows as well as doors that are accessible from city sidewalks at sidewalk level, protecting pedestrian access along sidewalks and alleys and maintaining pedestrian links to parks, open space, and the beach, and f) carries out the policies and programs of the certified Land Use Plan. In addition the project is consistent with the purpose of the CG General Commercial District which states the purpose is to provide opportunities for the full range of retail and service business deemed suitable for location in Manhattan Beach. Additionally, although the project is located within the D-6 Design Overlay District there are limited sections that apply to the project. The purpose of the D-6 Design Overlay District,



Section A.44.010- Specific purpose and applicability, is to provide a mechanism to establish specific design standards, landscaping and buffering requirements to allow commercial and use of property in a residential area adjacent to Sepulveda Boulevard. Also, existing development with non-conforming access on Oak Avenue, when developed for commercial parking purposes used in conjunction with business fronting upon and having vehicular access to Sepulveda Boulevard shall not utilize vehicular access to Oak Avenue between the hours of 10pm to 6am daily. As conditioned by this Use Permit, the project conforms with this restriction.

2. The proposed location of the use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or working on the proposed project site or in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the city, since the project is designed as a fast casual family style restaurant with a limited menu and complete meals, no dancing, no entertainment, no exterior music or exterior dining, waiting or seating areas, no bar type items, not a sports bar, no alcohol without a meal, no screens, videos, music or amplified sound outside, no counter bar seats, and the extensive conditions of approval will ensure that there are not detrimental impacts to the neighborhood or City.

3. The proposed use will comply with the provisions of this title, including any specific condition required for the proposed use in the district in which it would be located, since the required notice and public hearing requirements have been met, all of the required findings have been addressed and conditions will be required to be met prior to the issuance of a certificate of occupancy and start of business operations. Letters were received from neighbors in objection of the subject proposal for 24 hour operation of the restaurant, noise from outdoor patio, parking impacts to neighborhood, increase in traffic from business, beer and wine service at outdoor patio and close proximity to residential. The closest residential uses area 30 feet to the southwest and 90 feet to the northwest away, the prior uses on the site, fast food and ice cream store, closed prior to midnight for over 35 years, and Sepulveda Boulevard traffic is relatively quite at nighttime.

4. The proposed use will not adversely impact nor be adversely impacted by nearby properties. Potential impacts are related but not necessarily limited to: traffic, parking, noise, vibration, odors, resident security and personal safety, and aesthetics, or create demands exceeding the capacity of public services and facilities which cannot be mitigated, since the project is designed as a small family style take-out use and is consistent with the surrounding businesses, no entertainment, or amplified sound will be allowed outside, and the extensive conditions of approval will ensure that there are not detrimental impacts to the neighborhood or City.

P. A determination of public convenience and necessity is made for the proposed Type 41 alcohol license to allow on-site beer and wine (as conditioned below), which shall be forwarded to the California Department of Alcohol Beverage Control.

SECTION 2. The City Council of the City of Manhattan Beach hereby **DENIES** the appeal of the conditions imposed by the Planning Commission without prejudice (in accordance with Section 10.100.070 of the MBMC), **DENIES** the request for a fee waiver, and **APPROVES** the subject Use Permit, subject to the following revisions and conditions:

General Conditions

1. The proposed project shall be in substantial conformance with the plans submitted and the project description, as approved and conditioned by the City Council on July 5, 2011. Any substantial deviation from the approved plans and description must be reviewed and approved by the Planning Commission. The applicant may reduce the size of the new rear addition.
2. In the event that the business known as the Hotdoggers should vacate the premises, the tenant space at 1605 North Sepulveda Boulevard, may be occupied by another similar use, if upon its review, the Department of Community Development determined that the replacement use has the same use characteristics as the subject fast casual family-style sit-down restaurant. The intent of this condition is to ensure that any replacement restaurant tenant, would be a use similar to Hotdoggers.

**Certified to be
a true copy of
said document
on file in my
office.**

**City Clerk of
the City of
Manhattan
Beach**

3. The property owner shall obtain approval from the State Department of Alcoholic Beverage Control for a Type-41 on-site beer and wine license and shall comply with all related conditions of approval.
4. This permit and rights conferred in this approval shall not be effective until the property owner signs and returns an affidavit accepting the conditions of approval. The property owner shall file this affidavit with the Community Development Department within 10 days of this approval and prior to issuance of any development or building permits pursuant to this approval.

Operational

5. Operations shall comply with all South Coast Air Quality Management District Regulations and shall not transmit excessive emissions or odors across property lines.
6. The management of the property shall police the property and all areas adjacent to the business during the hours of operation to keep it free of litter.
7. The operators of the facility shall provide adequate management and supervisory techniques to prevent loitering and other security concerns outside the subject business.
8. The rear addition and walkway shall be totally enclosed and limited to a maximum of 336 square feet in dining area and 30 seats, to comply with the required total parking spaces shown on the plans. No loitering or outside tables, seating or waiting areas shall be allowed along any outdoor area.
9. All proposed rooftop mechanical equipment shall be screened from the public right-of-way and any abandoned rooftop equipment shall be removed prior to building final.
10. The hours of operation including delivery/catering of food shall be permitted as follows:
7:00 am to 10:00 pm Sunday to Thursday
7:00 am to Midnight Friday and Saturday

11. The business shall provide complete meals so as to not become a sports bar, no bar type food items, no outdoor waiting or gathering areas, no beer and wine served without a meal, no screens, videos, music or amplified sound allowed outside and no counter bar seats.

Noise

12. The rear addition shall be designed, constructed and operated to comply with the Manhattan Beach Municipal Code noise standards, in accordance with a noise mitigation study.
13. No dancing or entertainment shall be permitted on the premises or outside at any time.
14. All interior music shall be limited to background music and/or television/videos only. The restaurant management shall control the volume of the music or any amplified sound. Exterior music or amplified sound systems or equipment is prohibited.
15. Noise emanating from the site shall be in compliance with the Manhattan Beach Municipal Code Noise Ordinance, Chapter 5.48.

Signage

16. A-frame or sidewalk signs in the public right-of-way shall be prohibited.
17. No temporary signs (banners) shall be erected on the site without City permit and approval.
18. The applicant shall submit a complete sign program including new signage and pole sign for review and approval of the Director of Community Development.



Certified to be
a true copy of
said document
on file in my
office.

TA

City Clerk of
the City of
Manhattan
Beach

1 *Design*

2 19. Outdoor lighting on the rear parking lot, building, and entire site shall be minimized and shielded
 3 to minimize impacts to nearby residential.

4 20. The restaurant shall install, maintain in good working condition, and use a garbage disposal, a
 5 trash compactor, and a mop sink.

6 21. A landscape and irrigation plan must be submitted for review and approval and installed per the
 7 approved plan before issuance of a certificate of occupancy. Every effort shall be made to
 8 preserve the existing ficus tree next to the proposed rear addition along 17th Street. The
 9 applicant shall submit an arborist report for review and approval of the City arborist, and all
 10 recommendations shall be complied with prior to issuance of a building permit.

7 *Parking and Access*

8 22. The applicant shall provide parking spaces on-site as shown on the approved plans.

9 23. Applicant shall provide a chain and a sign at the Oak Avenue parking lot driveway. The sign
 10 shall state no vehicle access between 10pm and 6am daily and the chain shall be closed across
 11 the driveway during these hours. The chain and sign are subject to review and approval by the
 12 Community Development and the Fire Departments.

13 24. All employees must park on-site.

13 *Procedural*

14 25. All provisions of the Use Permit are subject to review by the Community Development
 15 Department 6 months after occupancy and yearly thereafter.

16 26. Unless appealed by the City Council, the subject Use Permit shall become effective after
 17 expiration of the time limits established by the Manhattan Beach Municipal Code.

18 27. Pursuant to Public Resources Code Section 21089 (b) and Fish and Game Code Section 711.4
 19 (c), the project is not operative, vested, or final until the required filing fees are paid.

20 28. The applicant agrees, as a condition of approval of this project, to pay all reasonable legal and
 21 expert fees and expenses of the City of Manhattan Beach, in defending any legal action
 22 associated with the approval of this project brought against the City. In the event such a legal
 23 action is filed against the project, the City shall estimate its expenses for the litigation. Applicant
 24 shall deposit said amount with the City or enter into an agreement with the City to pay such
 25 expenses as they become due.

26 **SECTION 3.** Pursuant to Government Code Section 65009 and Code of Civil
 27 Procedure Section 1094.6, any action or proceeding to attack, review, set aside, void or annul this
 28 decision, or concerning any of the proceedings, acts, or determinations taken, done or made prior to
 29 such decision or to determine the reasonableness, legality or validity of any condition attached to this
 30 decision shall not be maintained by any person unless the action or proceeding is commenced within 90
 31 days of the date of this resolution and the City Council is served within 120 days of the date of this
 32 resolution. The City Clerk shall send a certified copy of this resolution to the applicant, and if any, the
 33 appellant at the address of said person set forth in the record of the proceedings and such mailing shall
 34 constitute the notice required by Code of Civil Procedure Section 1094.6.

35 **SECTION 4.** This resolution shall take effect immediately. The City Clerk shall make
 36 this resolution readily available for public inspection.



Certified to be
 a true copy of
 said document
 on file in my
 office.

TA

City Clerk of
 the City of
 Manhattan
 Beach

SECTION 5. The City Clerk shall certify to the adoption of this resolution and thenceforth and thereafter the same shall be in full force an effect.

PASSED, APPROVED AND ADOPTED this 5th day of July, 2011

Ayes: Powell, Lesser, Howorth, Tell and Mayor Montgomery.
Noes: None.
Absent: None.
Abstain: None.

/s/ Richard Montgomery
Mayor, City of Manhattan Beach, California

ATTEST:

/s/ Liza Tamura
City Clerk



Certified to be a true copy
of the original of said
document on file in my
office.

[Signature]
Sr. Deputy City Clerk of the City of
Manhattan Beach, California