

RESOLUTION NO. 22-0153

RESOLUTION OF THE MANHATTAN BEACH CITY COUNCIL APPROVING A USE PERMIT AMENDMENT TO ALLOW AN EXPANSION OF AN EXISTING EATING AND DRINKING ESTABLISHMENT USE, WITH ASSOCIATED FULL ALCOHOL SERVICE, WITHIN AN EXISTING COMMERCIAL BUILDING AT 901 AND 903 MANHATTAN AVENUE, AND MAKING AN ENVIRONMENTAL DETERMINATION IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT. (SIMMS RESTAURANT GROUP/MIKE SIMMS)

THE MANHATTAN BEACH CITY COUNCIL HEREBY FINDS, DETERMINES AND RESOLVES AS FOLLOWS:

SECTION 1. On November 9, 1983, the City's Planning Commission adopted Resolution No. 83-40, establishing a restaurant with an on-site general alcohol license and live entertainment within an existing commercial building. On January 4, 1984, the City Council adopted Resolution No. 4108, upholding the decision of the Planning Commission documented in Resolution No. 83-40, with some modifications.

SECTION 2. On July 1, 2021, The Simms Restaurant Group ("Applicant") applied for a Use Permit Amendment to: expand an "Eating and Drinking Establishment" use with full alcohol service (Arthur J - 903 Manhattan Avenue) into the adjacent vacant commercial space (formerly Door to Door Cleaners – 901 Manhattan Avenue).

SECTION 3. A Use Permit Amendment is required to expand an "Eating and Drinking Establishments" use with full alcohol service pursuant to Sections A.16.020 of the City's Local Coastal Program (LCP). A request for the establishment of an "Eating and Drinking Establishments" use in the CD zoning district requires discretionary approval of a Use Permit. Additionally, pursuant to Section A.16.020(L), a Use Permit or Use Permit Amendment is required for any new alcohol license or modification to an existing alcohol license.

SECTION 4. On August 10, 2020, the Planning Commission conducted a duly noticed public hearing to consider the Project. The Commission provided an opportunity for the public to provide evidence and testimony at the public hearing. After the public hearing was closed, the Commission adopted Resolution No. PC 22-08 to adopt an environmental determination of exemption pursuant to the California Environmental Quality Act (CEQA) and conditionally approve the Project.

SECTION 5. Donald McPherson appealed the Planning Commission's decision on August 22, 2022, during the appeal period.

SECTION 6. On October 18, 2022, the City Council conducted a duly noticed public

hearing *de novo* to consider the Project in accordance with [MBMC Chapter 10.100](#). Evidence, both written and oral, was presented to the Council, including a staff report and staff presentation. All persons wishing to address the Council regarding the Project before and during the hearing were provided an opportunity to do so in full compliance with the Brown Act. The City provided the Applicant and the Appellant with ample opportunity to submit material in advance of the meeting, and provided the Applicant and Appellant, and their respective officers and representatives, equal opportunities to speak during the public hearing. At the public hearing, neither the Applicant nor the Appellant presented testimony.

SECTION 7. The record of the public hearing conducted by the City Council shows:

- A. The legal description of the site is: Lots 10 & 11, Block 10, Manhattan Beach Tract, in the City of Manhattan Beach, County of Los Angeles. The site is located in Area District III and is zoned CD, Downtown Commercial. The surrounding properties are zoned CD to the North, CD to the South (across 9th Place), CD to the East (across Manhattan Avenue), and RH to the West (between Manhattan Avenue and Ocean Drive).
- B. The use is conditionally permitted in the CD zone subject to a Use Permit and is in compliance with the City's General Plan designation of Downtown Commercial. The General Plan designation of Downtown Commercial encourages Downtown businesses that offer "services and activities to our residents and visitors."
- C. Arthur J has been in operation since 2015 under a Use Permit Amendment approved by the City Council in 1984. The use is located in the commercial portion of Manhattan Avenue in Downtown Manhattan Beach, with some of the surrounding businesses having similar operating characteristics. Residences are located west of the building, however the conditions of approval herein serve to minimize any potential adverse impacts.
- D. The applicant is requesting approval of a Use Permit Amendment to allow an expansion of an existing 4,180 square-foot Eating and Drinking Establishment use (Arthur J restaurant) with full alcohol service, into an adjacent vacant 1,141 square-foot tenant space within an existing commercial building at 901 and 903 Manhattan Avenue.
- E. The Police Department has reviewed the request and has raised no concerns or objections.
- F. The project is specifically consistent with General Plan Policies as follows:
 - LU-6: Maintain the viability of the commercial areas of Manhattan Beach.
 - LU-7: Continue to support and encourage the viability of the Downtown area of Manhattan Beach.

SECTION 8. Based upon substantial evidence in the record, including the application, the plans as revised, all materials and testimony submitted by the Applicant, Appellants, staff, and the public prior to the close of the continued public hearing, and pursuant to the LCP Section A.84.060 the City Council hereby finds:

- 1. The proposed location of the expanded use is in accord with the objectives of Title A of the LCP and the purposes of the district in which the site is located.**

The expansion of the “Eating and Drinking Establishments” use with full alcohol service is proposed on a site located in the City’s CD zoning district, which allows “Eating and Drinking Establishments” and on-site alcohol sales contingent upon the approval of Use Permit. The City’s LCP’s stated purpose for the CD zone is to provide opportunities for residential, commercial, public and semipublic uses that are appropriate for the downtown area. This district is intended to accommodate a broad range of community businesses and to serve beach visitors. The proposed expansion of the existing Arthur J restaurant and alcohol sales is consistent with the commercial land use regulations in LCP Section A.16.020 and provides a commercial service for the community.

- 2. The proposed location of the expanded 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.**

The proposed expansion of the “Eating and Drinking Establishments” use with full alcohol service is consistent with the General Plan’s Downtown Commercial land use designation for the subject property. The General Plan encourages a “vibrant downtown” that offers “services and activities for residents and visitors”, and Arthur J is part of the downtown commercial mix of businesses that help create a dynamic and interesting Downtown. Arthur J’s expansion will only enhance the services provided to residents and visitors. The project proposes a conditionally permitted use, fully contained within the confines of an existing commercial building. The proposed project is compatible with neighboring uses, as neighboring lots to the north, south and east are also developed with commercial uses. The project also offers a service to surrounding residents. Furthermore, the project was reviewed by various City divisions and Departments, who raised no concerns or objections, subject to conditions. Therefore, the project will not be detrimental to the public health, safety or welfare of persons working on the 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.

3. The proposed use will comply with the provisions of Title A of the LCP, including any specific condition required for the proposed use in the district in which it would be located.

The proposed expansion of the Eating and Drinking Establishments use with full alcohol service is permitted with the approval of a Use Permit (or corresponding amendment) within the subject property's zoning district (CD) per LCP Section A.16.020. If the Use Permit amendment is approved, Arthur J's expansion into the space at 901 Manhattan Avenue will be in compliance with all provisions of Title A of the LCP. Furthermore, operating characteristics and conditions of approval serve to minimize the potential for adverse impacts. Additionally, no additional square-footage is proposed beyond the existing building footprint as a part of this project.

4. The expansion of the use will not adversely impact or be adversely impacted by nearby properties.

The proposed use expansion, as conditioned, will not adversely impact – nor be adversely impacted by – nearby properties. Arthur J has been operating at their current location (903 Manhattan Avenue) since January 2015, serving alcohol (beer, wine, and liquor) in conjunction with food service. The proposed expansion of the use is located on the commercial portion of Manhattan Avenue in the heart of Downtown Manhattan Beach, with some of the surrounding businesses having similar operating characteristics. Residential zoning is located west of the building. Accordingly, any potential impacts arising from the expanded space are either minimal or mitigated by conditions of approval contained in the draft resolution. The expansion will not create demands exceeding the capacity of public services and facilities, considering that the former use at 901 Manhattan Avenue was also commercial in nature and no new square-footage is proposed as part of this project. Therefore, the operating characteristics of the proposed use minimize the potential for any adverse impacts to surrounding uses.

SECTION 9. Staff has determined, and the City Council in its independent judgment finds, in light of the whole record and substantial evidence before it, that the Project qualifies for a Categorical Exemption from the California Environmental Quality Act (CEQA) Guidelines pursuant to Class 3, New Construction or Conversion of Small Structures, Section 15303 of the CEQA Guidelines, which exempts the conversion of existing small structures from one use to another, and there are no features that distinguish this project from others in the exempt class; therefore, there are no unusual circumstances. Thus, no further environmental review is necessary.

SECTION 10. Based upon the foregoing, and after considering all of the evidence in the record, the City Council hereby approves the Use Permit Amendment that allows the Applicant to expand an "Eating and Drinking Establishment" use with full alcohol service (Arthur J - 903 Manhattan Avenue) into the adjacent vacant commercial space (901 Manhattan Avenue) subject to the following conditions:

1. The project shall be in substantial conformance with the plans and project description submitted to, and approved by the City Council on November 15, 2022, as amended and conditioned. Any substantial deviation from the approved plans and project description, as conditioned, shall require review by the Community Development Director to determine if approval from the Planning Commission is required.
2. Operations for 901 and 903 Manhattan Avenue shall be governed by this resolution and City Council Resolution No. 4108, except that Conditions No. 5 and 11 in City Council Resolution No. 4108 are replaced by Condition No. 20 herein.
3. Any questions of intent or interpretation of any condition will be reviewed by the Community Development Director to determine if Planning Commission review and action is required.
4. A Construction Management and Parking Plan (CMPP) shall be submitted by the applicant with the submittal of plans building plans to the Building Division. The CMPP shall be reviewed and approved by the City, including but not limited to, the City Traffic Engineer, Planning, Fire, Police and Public Works, prior to permit issuance. The Plan shall include, but not be limited to, provisions for the management of all construction related traffic, parking, staging, materials delivery, materials storage, and buffering of noise and other disruptions. The Plan shall minimize construction-related impacts to the surrounding neighborhood, and shall be implemented in accordance with the requirements of the Plan.
5. Modifications and improvements to the tenant space shall be in compliance with applicable Building Division and Health Department regulations when applicable.

Operation

6. Maximum capacity for the expanded dining space at 901 Manhattan Avenue is 42 persons.
7. The operators of the business shall not usher food and beverage service from 903 Manhattan Avenue to 901 Manhattan Avenue across the public right-of-way.
8. The operators of the business shall police the property and all areas adjacent to the business during the hours of operation to keep it free of litter and food debris.
9. The operators of the business shall provide adequate management and supervisory techniques to prevent loitering and other security concerns outside the subject business.
10. All rooftop mechanical equipment shall be screened from the public right-of-way.

11. The subject business shall obtain approval from the California Department of Alcoholic Beverage Control.
12. The business shall be in substantial compliance with all restrictions imposed by the Alcohol Beverage Control Board (ABC) prior to service of liquor.
13. Alcohol service shall be conducted only in conjunction with food service during all hours of operation.
14. At all times the business shall identify itself as a “restaurant” and will not identify itself as a “bar” in public advertisements.
15. The operator of the business must obtain an Entertainment Permit, in accordance with Title 4, Article 4, for any live entertainment offered at the establishment within 901 and 903 Manhattan Avenue.
16. Hours of any future live entertainment shall be limited to be no later than 12:00 a.m. Sunday through Thursday, and 1:00 a.m. Friday and Saturday.
17. Noise emanating from the property shall be within the limitations prescribed by the City Noise Ordinance and shall not create a nuisance to nearby property owners.
18. The operator of the business shall control the volume of any background music.
19. Upon determination that there are reasonable grounds for revocation or modification of the Use Permit, the Planning Commission or City Council may review the Use Permit in accordance with the requirements of the MBMC Chapter 10.104. Modification may consist of conditions deemed reasonable to mitigate or alleviate impacts to adjacent land uses.
20. City staff will periodically review the approved use to determine compliance with conditions imposed and Municipal Code requirements.

Refuse

21. Plans approved through the plan check process for building permits must demonstrate a proposed trash enclosure that meets the full satisfaction of the City, as approved by the Public Works Director. Capacity requirements to be determined during the plan check process.
22. No refuse generated at the subject site shall be located in the non-alley Public Right-of-Way for storage or pickup, including the disposal of refuse in any refuse container established for public use. All refuse shall be stored within the trash enclosure.

Signage

23. All new signs and alterations to existing signs shall receive permits, and shall be in compliance with the City's sign code.
24. A-frame or other sidewalk signs in the public right-of-way shall be prohibited.
25. No temporary banner or other signs shall be placed on the site without City permit and approval.

Procedural

26. The property owner shall be required to obtain a City of Manhattan Beach right-of-way encroachment permit for any projections into the public right-of-way.
27. Terms and Conditions are Perpetual; Recordation of Covenant. The provisions, terms and conditions set forth herein are perpetual, and are binding on the owner, its successors-in-interest, and, where applicable, all tenants and lessees of the site. Further, the owner shall submit the covenant, prepared and approved by the City, indicating its consent to the conditions of approval of this Resolution, and the City shall record the covenant with the Office of the County Clerk/Recorder of Los Angeles. Owner shall deliver the executed covenant, and all required recording and related fees, to the Department of Community Development within 30 days of the adoption of this Resolution. Notwithstanding the foregoing, the Director may, upon a request by owner, grant an extension to the 30-day time limit. The project approval shall not become effective until recordation of the covenant.
28. *Indemnity, Duty to Defend and Obligation to Pay Judgments and Defense Costs, Including Attorneys' Fees, Incurred by the City.* The operator shall defend, indemnify, and hold harmless the City, its elected officials, officers, employees, volunteers, agents, and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees") from and against any claims, damages, actions, causes of actions, lawsuits, suits, proceedings, losses, judgments, costs, and expenses (including, without limitation, attorneys' fees or court costs) in any manner arising out of or incident to this approval, related entitlements, or the City's environmental review thereof. The operator shall pay and satisfy any judgment, award or decree that may be rendered against City or the other Indemnitees in any such suit, action, or other legal proceeding. The City shall promptly notify the owner of any claim, action, or proceeding and the City shall reasonably cooperate in the defense. If the City fails to promptly notify the owner of any claim, action, or proceeding, or if the City fails to reasonably cooperate in the defense, the owner shall not thereafter be responsible to defend, indemnify, or hold harmless the City or the Indemnitees. The City shall have the right to select counsel of its choice. The owner shall reimburse the City, and the other Indemnitees, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Nothing in this Section shall be

construed to require the owner to indemnify Indemnitees for any Claim arising from the sole negligence or willful misconduct of the Indemnitees. In the event such a legal action is filed challenging the City's determinations herein or the issuance of the approval, the City shall estimate its expenses for the litigation. The owner shall deposit said amount with the City or enter into an agreement with the City to pay such expenses as they become due.

SECTION 11. The City Council's decision is based upon each of the totally independent and separate grounds stated herein, each of which stands alone as a sufficient basis for its decision.

SECTION 12. This Use Permit Amendment shall lapse two years after its date of approval, unless implemented or extended pursuant to A.84.090 of the Local Coastal Program.

SECTION 13. The time within which judicial review, if available, of this decision must be sought is governed by California Code of Civil Procedure Section 1094.6, unless a shorter time is provided by other applicable law. The City Clerk shall mail by first class mail, postage prepaid, a certified copy of this Resolution and a copy of the affidavit or certificate of mailing to the Applicant, the Appellant, Donald McPherson, and to any other persons or entities requesting notice of the decision.

SECTION 14. The City Clerk shall certify to the adoption of this Resolution.

ADOPTED on November 1, 2022.

AYES:
NOES:
ABSENT:
ABSTAIN:

STEVE NAPOLITANO
Mayor

ATTEST:

LIZA TAMURA
City Clerk