

**CITY OF MANHATTAN BEACH  
PLANNING COMMISSION  
MINUTES OF REGULAR MEETING  
OCTOBER 9, 2019**

**A. CALL MEETING TO ORDER**

A Regular Meeting of the Planning Commission of the City of Manhattan Beach, California, was held on the 9<sup>th</sup> day of October, 2019, at the hour of 6:00 p.m., in the City Council Chambers, at 1400 Highland Avenue, in said City.

Chair Burkhalter called the meeting to order.

**B. PLEDGE TO FLAG**

**C. ROLL CALL**

Present: Fournier, Morton, Thompson, Ungoco, Chairperson Burkhalter  
Absent: None  
Others Present: Jeff Gibson, Interim Director of Community Development  
Brendan Kearns, Assistant City Attorney  
Ted Fatueros, Assistant Planner  
Rafael Garcia, Assistant Planner  
Rosemary Lackow, Recording Secretary

**D. APPROVAL OF AGENDA**

It was moved and seconded (Thompson/Morton) to approve the agenda with no change. No objection, it was so ordered.

**E. AUDIENCE PARTICIPATION (3-minute limit) - None**

**F. APPROVAL OF THE MINUTES**

10/09/19-1. Regular Meeting – August 28, 2019

It was moved and seconded (Thompson/Morton) to approve the minutes based on the following changes in last paragraph, bottom of page 7, requested by the Chair:

**“Commissioners Thompson, Fournier, Ungoco and Chair Burkhalter** joined in support of the project, with the following additional comments: .....architect has made great effort to mitigate its size and the building is actually under the height limit overall; pride is taken in the fact the City has .....the new fire house is a welcome culmination of years of planning; ....and finally, as a mitigation measures to help the neighbor to the south, rather than move the building, if the building cannot be moved, even an inch to the north, then it is was suggested that the drying tower be moved away from the south property line and that privacy or obscured glass be installed for all windows facing south.”

Roll Call:

Ayes: Fournier, Morton, Thompson, Ungoco, Chairperson Burkhalter  
Noes: None  
Absent: None  
Abstain: None

## G. PUBLIC HEARING

10/09/19-2. Consideration of a Use Permit to Allow an Office Use on the Ground Floor of a Building Previously Occupied by a Bank at 1419 Highland Avenue (Brett Zebrowski)

**Chair Burkhalter** opened the public hearing and invited a staff presentation. Director Gibson introduced Assistant Planner Ted Fatusos who gave a slide presentation summarizing the written staff report (full report:

[http://cms6ftp.visioninternet.com/manhattanbeach/commissions/planning\\_commission/2019/20191009/agenda.htm](http://cms6ftp.visioninternet.com/manhattanbeach/commissions/planning_commission/2019/20191009/agenda.htm)). Mr. Fatusos highlighted: Project description/request (Use Permit to allow office use at 1419 Highland Avenue; applicant Zebrowski); Background and location; Zoning and use permit requirement; project details and Staff Recommendation to: conduct hearing, accept public input, and direct staff to prepare a Resolution either approving or denying based on appropriate findings (Staff – neutral). The latter included points for both approving and denying the project.

**Chair Burkhalter** invited questions of staff from the Commission.

**Commissioner Thompson** referred to the applicant's letter and noted that the applicant is arguing in favor of his application, that he would be freeing up ground floor space for new retail at his current location (1145 Highland); Commissioner Thompson asked whether a Use Permit would be required for a new tenant at that space? Mr. Fatusos responded that a Use Permit would **not** be required for a ground floor office as long as the space was not vacant for more than six straight months. Mr. Fatusos also confirmed Commissioner Thompson's understanding that there is no assurance that a retail space will replace Mr. Zebrowski's office and the space could be used as office or retail.

The Chair invited the applicant to address the Commission.

**Brett Zebrowski**, applicant, made the following points in favor of his project: 1) he is a long term resident who loves and supports the community; 2) understands the purpose of a Use Permit in this case; 3) believes that will be an appropriate use; 3) has a low parking demand; 4) does not rely on foot traffic; 5) will be a great neighbor; 6) generates very little trash and, lastly his business will be quiet and fit in well with the nearby residences.

**Commissioner Thompson** asked Mr. Zebrowski how he intends to use the second level roof deck; Mr. Zebrowski stated his intent to have a low-level use, such as for office meetings (15-20 persons typically), a place to take a break or talk on phone - uses typically related to a real estate office.

### PUBLIC INPUT

**Mr. Zebrowski** responded to **Vice Chair Morton** that he would be agreeable to a condition that sets "common sense limits" on the roof top deck's use and to **Chair Burkhalter**, that he intends to do only non-structural physical changes to the building interior which includes an area formerly used as the bank vault. These changes will likely not require permits.

The Chair invited the public to testify.

**Jill Lamkin**, Executive Director, Downtown Business and Professional Association, stated she has submitted a letter; understands the land use issue as a former businessperson, with the mix of retail and offices, and the desire to preserve retail, but she wholeheartedly supports this case in that she believes it is a good location for an office, located at the end of a block of solid offices; and actually she believes this site is not so good for retail as such would be isolated; and lastly she believes the applicant will be a great neighbor.

There being no further speakers, Chair Burkhalter closed the public hearing and opened the floor to Commission discussion.

## COMMISSION DISCUSSION

**Commissioners Ungoco and Fournier** disclosed individually that they have real estate licenses and in checking with the City Attorney, it was determined that there was no conflict of interest for either Commissioner. Both Commissioners provided statements, assuring that they can assess the application objectively, without bias, and act fairly and equitably.

**Vice Chair Morton** stated he fully supports the proposed change in use, and is compelled by: 1) site in the past was a real estate office; 2) adjoining spaces have a pattern of offices and if this were to be retail that retail would be disconnected from other retail uses which is not desirable and makes the space difficult to lease; 3) the applicant is a strong support in the community; and 4) it will be a great non-impactful use. In addition, he feels that the City can attach some common sense restrictions on use of the roof deck which will serve to avoid disturbance calls as has occurred in the past.

**Commissioner Thompson** stated he normally has concern with opening a new office on the ground floor Downtown, but he supports this application due to its location on the perimeter, not the core of the Downtown; he believes staff can suggest appropriate conditions that restrict use of the deck such as not renting out for parties, or limiting hours in the evening, which can mitigate neighborhood concerns. He would like to make sure the Resolution clearly states the importance of the specific location of the site and why that has an effect on the use.

**Commissioner Fournier** appreciates staff's position, in that is sensitive to the issues Downtown, and without reliving that – he appreciates that staff is deferring to the Commission to hear the community's input and then make a decision. He agrees with the position that the specific location is a unique factor and had this case been asking to be closer to the core of Downtown, near restaurants and lively uses, it would be a tougher decision for him. He does not recall the site being used for retail in the past, but rather as a small professional office. He sees this case as an exception and supports approval; as to deck restrictions, he suggests 11:00 P.M. as a cut-off but is open to discussing.

The Commission focused on a possible limitation on the roof deck, suggestions included: an early (9:00 or 10:00 P.M.) hour limit, with cut off at 9:00 P.M. for any amplified music or sound.

**Chair Burkhalter** stated his support and suggested a limitation on the maximum number of persons who can be assembled on the deck – i.e. fewer than the 49-maximum established by the Fire Department as an occupancy load.

**Assistant Planner Fatuross** responded to the Commission that this site has not had a use permit or had binding use conditions for the deck; as such the site is bound solely by City wide Noise Ordinance and entertainment regulations.

**Commissioner Ungoco** commented that there is a break in the cadence of pedestrian traffic in Downtown, starting with the parking lot opposite the library and he feels this use would restore day time vitality to the corner and part of the Downtown.

## COMMISSION ACTION

**Vice Chair Morton** suggested a motion could be made to approve with direction to staff to work out appropriate restrictions on a roof deck and a draft resolution would be brought back for Commission review at the next meeting.

**Chair Burkhalter** asked for clarification on a procedural land use issue: if an office use is approved here and then is discontinued, then a six-month threshold would apply, but if another office came through, can he conclude that the new office would not be required to go through a discretionary permit process? Planner Fatuross confirmed, that the Chair's understanding is correct – that the Use Permit “runs with the land” as an entitlement – if the use remains an office with the first office and succeeding offices uses established within 180 days of the prior use, conceivably under the current law, this space could be an office use forever.

**Chair Burkhalter** asked whether, given the sensitivity to office space on ground floors, if there's any merit to also including a condition that restricts the use or requires the site to come back under review by the Commission in the future?

**Assistant City Attorney Kearns** advised that he thinks such a condition would be legally vulnerable and he does not recommend it.

**Director Gibson** stated he did not think a formal motion was needed, and summarized the Commission direction to: return a draft resolution approving the project –staff will work with the applicant to establish reasonable conditions that could include: limitation in the hours of the deck use, restriction of amplified sound, and a lowering of occupancy to less than 49 on the deck and the clarification as to replacement or change of use in the future - that conditions would continue to apply along with the entitlement. The draft resolution will come back at the next or a subsequent meeting.

10/09/19-3. Request for a Master Use Permit Amendment to allow Personal Improvement Services Limited to Fitness Studios and to Allow up to Four Restaurants to have Ancillary Off-Site Alcohol Sales in connection with the Master Use Permit for the remodel and expansion of the Manhattan Village Shopping Center located at 2600 through 3600 North Sepulveda Boulevard and 1180 through 1200 Rosecrans Avenue (Manhattan Village Shopping Center)

**Chair Burkhalter** opened the public hearing and invited a staff presentation.

**Director Gibson** introduced Assistant Planner Rafael Garcia who gave a slide presentation summarizing the written staff report, available in full at the following City website location: [http://cms6ftp.visioninternet.com/manhattanbeach/commissions/planning\\_commission/2019/20191009/agenda.htm](http://cms6ftp.visioninternet.com/manhattanbeach/commissions/planning_commission/2019/20191009/agenda.htm).

**Mr. Garcia** summarized the project, a Master Use Permit Amendment (MUPA) that would allow the shopping center owner, RREEF America REIT Corp, to change two conditions of approval on the current MUP that were imposed by the City Council in 2014. The first request, to allow up to 25,000 sq. feet of fitness studio space (5,000 sq. ft/studio) is based on an ongoing leasing strategy, a strong market demand and a desire to incorporate smaller fitness studios, which in turn will compliment future tenants lined up for the center with the center's redevelopment. The second request is to allow four additional ancillary off-sale alcohol licenses in conjunction with restaurants, based on industry trends for upscale restaurants, which is being felt at the Center. Staff recommends that the Commission conduct the public hearing and adopt the attached resolution, conditionally approving the application and adopting the third addendum to the EIR.

After going into project details including the definition of a "fitness studio" and "personal improvement services" uses. Chair Burkhalter invited questions from the Commission. Planner Garcia emphasized that Commission would still retain discretion as to the location of the additional alcohol licenses. Mr. Garcia noted representatives of the applicant are present.

**Chair Burkhalter** invited questions of staff from the Commission.

**Commissioner Thompson** asked if staff had read the letter submitted by Mr. Mark Neumann, for 3500 Sepulveda L.L.C; **Mr. Garcia** responded that staff has read the letter and he stated that 3500 Sepulveda site would be able to take advantage of the changes in the MUP, but how that happens is a civil matter between Mr. Neumann/tenants and property owner. Mr. Garcia assumes it would be on a "first come, first served" basis through the owner. He clarified that the four additional off-sale alcohol uses can only be conducted within restaurants. He explained how staff review of such requests at the center would be processed. He also indicated that the overall restaurant square footage allowance has not been exceeded. As such, any new restaurant requests with alcohol can be administratively approved. Also, during the review, staff reviews floor plans and business descriptions to ensure that the new use will be consistent with the with the MUP. The draft Resolution up for adoption tonight includes the verbiage within the conditions of approval that the alcohol licenses be limited to restaurants and incidental to the primary restaurant operation. The amendment does not limit the type of alcohol (e.g. beer/wine vs. distilled spirits) but the Commission has the discretion to be more restrictive.

The applicant was invited to address the Commission.

**Jason Giannantonio**, representative for RREEF, presented the application addressing questions from Commissioner Thompson. He emphasized the size of the studios was carefully considered and the target market was affluent persons who embrace a healthy lifestyle. He pointed to condition 20 where changes would allow additional sites for off-sale alcohol consumption. The request covers 3500 Sepulveda as well as the entire Shopping Center site. The three fitness studios are to be located along Cedar Way – two within the Village Shops (under construction) and one across from the Shops that will go into an existing space but with an entrance on Cedar. So far, they are looking only at beer/wine (private label) not distilled spirits.

**Peter Gutierrez**, attorney for RREEF, clarified that the applicant prefers to have no limitation on the alcohol license such as beer/wine only, for flexibility - to avoid the need in the future to have to come back before the Commission.

#### PUBLIC INPUT

Chair Burkhalter opened the floor to other interested parties.

**Mike Simms**, resident, and owner, Tin Roof Bistro, 3500 Sepulveda, indicated he would like to add a private label wine and have scotch/whiskey tastings as incidental to their restaurant similar to when you go to a winery in wine country. He appreciates his building owner and the property owner working together.

**Mark Neumann**, 3208 Laurel Ave for 20 years, represents the investors of 3500 Sepulveda, explained the history of his investment. He and others together purchased the building (in portion) 10 years ago unaware of a planned expansion in a poorly worded entitlement (Reso. PC 01-27), and this has cost him millions of dollars. He heard of this application only 8 days ago. He was surprised to see changes in the parking plan on page 133 of 137. His main issue with the project is that he feels he has suffered harm in losing parking in terms of the total amount (loss of 6 spaces) as well as convenient location for his tenants. He is not against the application and in fact thinks it will help his tenants, but he seeks protection in that in the past he was promised more parking from the owner and in reality, he has or will have less. He asked that the City ensure that: 1) the application has the proper legal description in the adopted Resolution (he believes his property description is left out); 2) that the approval applies to the entire site including 3500 Sepulveda; 3) that staff can approve alcohol licenses administratively; and 4) that “fitness studios” are properly being implemented as a defined land use. He concluded that he supports allowing hard spirits in the entitlement.

The Chair opened the floor to questions from the Commission.

**Commissioner Thompson** asked of the City Attorney representative whether any issues raised tonight have an effect on whether the Commission can act tonight.

**Brandon Kearns**, Assistant City Attorney, indicated that the letter from Mr. Neumann has been discussed at length with Community Development staff and advises that the Commission direct staff to ensure that the legal descriptions are correct, but as to the signatures on the application – the City’s policy is that for these amendments, it is not necessary. The burden is going to be on RREEF as the benefits will be enjoyed more widely on the site, and this has been the practice that has occurred in the past without incident. As to comments and discussion about an old (2008) MUP, he does not think that it needs to be modified – it is silent on this point. It should also be noted that the COA’s (conditions) for that MUP suggest that potentially in the future, off-site alcohol consumption would be occurring.

**Commissioner Thompson** asked how many MUPs have there been? **Mr. Garcia** is not sure of the past. Mr. Thompson explained he believes there is only one MUP and all other actions have been amendments to that. **Chair Burkhalter** suggested that, that being the case, this application for example would apply to all properties on the entire center site. It was clarified that the Commission should rely on staff for the parking requirement and supply and this is always reviewed with changes in the Center.

**Mr. Garcia** clarified that the current entitlement request would allow for up to four restaurants have incidental off-site alcohol consumption and up to 25,000 sq. feet of personal improvement services (5,000 sq. feet max each) and once the site reaches the limit no additional square footage will be allowed for said use. Further, the two amended conditions will apply to all properties in the Center. There is a wide variety of square footage limitations as part of the MUP, but again, once the limit of square footage is reached no additional square footage is allowed. In response to Commissioner Thompson, Mr. Garcia noted that staff did not have any significant concerns with regard to “hard” liquor in addition to beer/wine, but is mainly interested in limiting the alcohol to incidental and as part of restaurants, but this is at the discretion of the Commission.

There being no further questions or speakers, Chair Burkhalter **closed the public hearing** and opened the floor to Commission discussion.

#### COMMISSION DISCUSSION

**Commissioner Thompson** stated he believes that the Commission has the discretion to say where in the center the off-site sales can occur. He is presently not prepared to support allowing off-site sale for hard liquor – he would like more information for example from the Police Department. He would be ok with allowing the entitlement only as beer and wine for the entire site, but at this point would have the applicant come back with a subsequent request as needed. He supports the fitness studio request and believes that a mall needs flexibility for uses.

**Vice Chair Morton** supports the request, feeling that personal improvement services are a good fit, and also the alcohol request, for beer and wine and hard liquor, providing this is an incidental use (as described by Mr. Simms) and is subject to approval of the Community Development Director who would have enforcement authority. Summarily, he supports the staff recommendation “as is” with direction that Staff check the legal descriptions.

**Commissioner Fournier** inquired as to the specific concern of Commissioner Thompson with regard to alcohol.

**Commissioner Thompson** responded that he doesn’t feel comfortable only because he doesn’t know if hard alcohol was being anticipated by staff when the application was filed. **Commissioner Fournier** stated that if that is the issue, then he would like staff input.

Chair Burkhalter **re-opened** the public hearing for additional staff input.

#### Public Input (Re-opened)

**Assistant Planner Garcia** provided input: when the application was filed, it was specifically to allow relief from existing restrictions – for the purchases of bottles of wine. But as the staff processed the application, it became clear that the main issue was whether consumption would be off-site. Staff ultimately was not overly concerned with the distilled vs beer/wine distinction. Further, because alcohol sales (off-site) was involved, the application was forwarded to the Police Department and MBPD indicated it did not have any objection. He believes that Commissioner Thompson has valid points and again, the Commission can narrow the condition to apply only to non-hard spirits, but staff supports the draft Resolution “as-is” (silent on the type of alcohol being sold off-premise).

**Mark Neumann** requested clarification that, first he never signed the MUPA application, but it is being said that it will apply to 3500 Sepulveda Boulevard.

**Assistant Planner Garcia** reiterated that the MUPA will apply to the entire center and **Chair Burkhalter** stated more specifically, it will apply to 3500 Sepulveda Boulevard.

**Mark Neumann** questioned why this MUPA is different from a prior MUP, adding that he feels he has been “put through the ringer”.

**Commissioner Thompson** responded that he is relying on the City Attorney’s opinion tonight which has been given. He pointed out that the prior MUP was a different situation and staff received a different opinion from the City Attorney then. He feels that this is the same with all of the Commissioners – that they rely on the City Attorney for legal counsel.

**Mr. Neumann** accepted this explanation, recognizing it is favorable to his property, and requested further clarification as to the definition of a “fitness studio” which is not *per se* in the zoning code.

**Assistant Planner Garcia** stated that a fitness studio is indirectly defined in the Code, as a sub-category of “Personal Improvement Service” which applies to a use that involves instructional services of a personal nature. In the draft Resolution, the condition reads that personal improvement services are allowed, but limited to fitness studios only. He feels in his experience, this is fairly simple and straightforward.

Chair Burkhalter **closed the public hearing** and invited Commission discussion.

**COMMISSION DISCUSSION**

**Commissioner Thompson** noted that he is in support, but still has concerns about hard liquor. He suggests changing the condition to restrict off-sale of hard liquor.

**Commissioner Fournier** while he had concern about the type of liquor, he feels that if the Director represents that staff is comfortable with the Resolution as written, he supports.

**Commissioner Ungoco** is generally in support and feels that the application shows foresight in terms of the evolving nature of retail. He feels it is important to drive pedestrian traffic and, as dining changes, looking to the future, there is a movement towards hard liquor – the “spirits world” is abuzz with news of South Bay distilleries as in El Segundo where small batches are produced and sold. He feels it is even ironic that the South Bay area is getting a reputation for distilled spirits and this discussion is about excluding them from a key location that could be distributing them.

**Chair Burkhalter** stated he agrees and pointed out that the two changes apply to experiences, and enhancing of such at the Center. They are going with trends, but slightly holding them off a bit. The trend is that retail must be “experiential”. He believes the Commission should err on the side of being less, not more restrictive. He supports leaving the condition as is, silent on the type of alcohol. And, although not part of this application, he feels parking trends and how people access dining is a tangential issue that should be studied and accommodated (including app-based delivery service) in that these trends do not figure in parking calcs. He supports both of the changes as in the draft Resolution.

**Commissioner Fournier** stated he is very concerned with the free attitude with ride sharing which he thinks has gotten somewhat out of control. He does not want to re-open the public hearing but would caution the applicant and builders about this and would like to emphasize this, and referred to a big change recently at LAX restricting rideshare vehicles in the horseshoe.

**Chair Burkhalter** called for a motion.

It was subsequently moved and seconded (Thompson/Morton) to approve and adopt the attached resolution conditionally approving the application and adopting the third addendum to the EIR.

Roll Call:

Ayes:	Fournier, Morton, Thompson, Ungoco, Chairperson Burkhalter
Noes:	None
Absent:	None
Abstain:	None

Commissioner Thompson added that his motion included direction that staff check that all legal descriptions are accurate.

Chair Burkhalter called for a recess at 7:25; and at 7:30, he re-convened the meeting.

10/09/19-4. Appeal of the Director's Building Height Determination and Approval of Coastal Development Permit No. CA 19-06 for the Demolition of a Single-Family Residence and Construction of a new Three-story Single-Family Residence with a Two-Car Garage and Basement at 3009 Manhattan Avenue (Appellant McPherson)

**Chair Burkhalter** opened the hearing and invited a staff presentation. Assistant Planner Rafael Garcia gave a slide presentation summarizing the written staff report (full report at <https://www.citymb.info/departments/boards-and-commissions/planning-commission>, October 9<sup>th</sup>). **Mr. Garcia** covered: Background (lot size and location, zoning, existing 1926 home to be demolished), Proposal (new 30 story with garage and basement) and Coastal Permit Approval (July 2019). Mr. Garcia also provided details as to surrounding properties (120/121 30<sup>th</sup> Street to south and properties 3000 thru 3008 Manhattan Avenue to east), zoning height methodology (simple average of 4 corner lot elevations, based on survey), the basis of the appeal and the staff analysis and recommendation: that the Commission hold a public hearing, uphold the Community Development Director's administrative building height determination and decision, (approval of construction including height) and deny the appeal filed by Mr. McPherson.

**Mr. Garcia** emphasized that the Director's decision was based on Department policy and practice. It has been standard practice for staff to use the same corner elevations if available in the records, used for construction of an adjoining property. In this case Staff found a survey on file for the abutting half lot (at 30<sup>th</sup> St/Manhattan Avenue) that revealed that construction for that home did in fact use the same elevation shown at the Southwest property corner on the survey for the current application.

**Chair Burkhalter** questioned and Mr. Garcia confirmed that the historical survey shown is a legitimate survey and was used in a plan-check report; and is relevant to the case. In working with the appellant, **Mr. Garcia** asked for some proof or evidence that the adjoining property has been artificially raised which could give an advantage, as opposed to being artificially lowered, which can also happen when earth at a corner is lowered. Mr. Garcia agreed that a surveyor will provide the existing grade, and staff does not document "natural grade" – that is not what the code mandates. To truly establish a "natural grade" it would be imperative in all cases, to have a history of prior surveys. He feels that in order to justify requiring a lower height elevation, he would have had to have seen evidence from a prior survey, and this was not the case.

The Chair invited the Appellant to address the Commission.

**Edwin McPherson**, owner, 3000 Manhattan Avenue, characterized his position: feels that there have been several mis-statements by Mr. Garcia. He has lived in the Manhattan Beach sand area for 36 years and understands and accepts that views can be blocked by construction. His property is a full lot, oriented east/west and in constructing his own home, found that the height of his building at Bayview was pinched lower due to the height methodology; he accepted that. He believes that 3 of the 4 property corners have been measured to have equal elevations and he feels that this is counter to natural conditions and the way sand dunes are. He feels that this one corner has been artificially raised and this gives the building an advantage that he shouldn't have. He feels that the elevation in fact used for the property in the '90's also was wrong or against natural conditions and as a result that building appears as a monolith and now with this new construction that full lot will appear as a "duolith". He cited the relevant Code, 10.60.050 and showed photographs of the 3009 Manhattan Avenue property and feels that this case is a perfect example of the intent of the code, to use an alternative elevation that reflects a site's topography; he requested that the Commission reverse the administrative decision and direct staff to have new measurements taken consistent with the "letter and spirit of City rules and common sense".

**Commissioner Thompson** asked Mr. McPherson what elevation he thinks would be fair and should be used? Mr. McPherson responded, he is not absolutely sure, but in his opinion that staff should have easily determined that an elevation at that corner should be about four to five feet lower, or the northwest side of the lot should be comparable to the southwest side; after a brief discussion with the Chair, he agreed this would result after averaging all corners, in a building that would be about 1-foot lower.



**Chair Burkhalter** commented that what is important is Department policy and not just what conceptually should be applied. The policies that staff relies on do not use interpolation, but he explained, if the elevations were to be interpolated there would be a change of 4-feet and an overall reduction of 1-foot in the overall height.

**Chair Burkhalter** asked for clarification about a special provision in the City's Zoning Code that allows exception to the height limit of 12-inches for solar panels. **Mr. Garcia** noted that to utilize this exception a builder must submit a study that proves that without the exception, solar efficiency is compromised to a certain degree – but this had never been proven by any builder to his knowledge and it is staff policy to grant an exception of 6-inches only when installing solar on an existing building that is already built to the maximum height limit. In this case, as this is a new building, the applicant if desiring solar, should design to accommodate the panels to achieve the efficiency needed.

The Chair invited the Applicant to address the Commission.

**Louis Tomaro**, architect for 3009 Manhattan Avenue has designed many homes throughout the city, including other areas where there is a lot of topography. He explained that in cases as this where a half lot is involved, it is common for a center of a lot with to have a mounding or higher elevation to be consistent with “natural grade” because the corners have been cut to accommodate a street (or walk-street) or alley. He explained that the corner elevations are highly scrutinized and the City process involves not only a detailed survey that shows much detail as to conditions at the corners, but the City inspector also confirms the elevations in the field. In this case the survey shows that the center of the half lot is elevated and there is nothing around the corner such as a retaining wall that indicates the corner to be built up. Discretion is always used by staff to use an elevation, often averaging, when appropriate. In summary, he asks that the Commission confirm and uphold the Director's decision based on the existence of a historic survey for the southwest corner, fact that the survey does not indicate any proof of an artificially raised condition, and in keeping with long-standing policy and practice. He cautioned that if the Appellant is granted his appeal, this would potentially encourage other appeals to come forward, making building height by default, a frequent discretionary decision before the Commission.

**Michael Zivec**, 1256 6<sup>th</sup> Street is the owner/developer of 3009 Manhattan Avenue. He has been building in the City since 1964 and has never encountered a problem such as this regarding building height. He has designed a building “according to the rules” and urged that the Commission not “change the rules” now. He feels that the City cannot “go backward” and should move forward and asked that the Commission deny the appeal in accordance with City rules.

**Juan Ruiz**, owner, 3008 Manhattan Avenue for 16 years, supporting the Appeal, wanted to correct a staff statement that no comments other than the appeal were submitted, in that he had come to City Hall and expressed concerns on multiple occasions. He asked that staff look for all surveys for prior construction for the including one done in 1998

**Commissioner Thompson** inquired whether there is or did staff look for a survey for the full lot directly to the west? He would be interested in knowing the elevations on that lot along the east property line, and wondered if there is value to looking at this information.

**Mr. Garcia** responded that typically staff only looks at adjoining property elevations if there is/are shared corners used to average height, which is not the case here. If the Commission wishes, staff could look at this, but noted this approval was granted in July and staff has been working diligently on the case.

**Chair Burkhalter** noted that in this case staff followed policy but the code allows for some discretion to take an alternate elevation. Mr. Garcia iterated that in many cases they average shared corners, but again staff strictly followed policy to only apply shared corner elevations.

**Dep Nguyen**, 3008 Manhattan Avenue, wife of prior speaker Ruiz urged that the Commission understand that the proposed height will impact their family, and urged that the Commission look carefully and if there is a wall that has caused the ground to be raised artificially, that it is its duty to approve the Appeal. She feels the staff decision is counter to natural very steep conditions and is afraid if the administrative decision is upheld – that two wrongs will have occurred this would compound rather than correct a bad situation.

Discussion ensued about whether to ask for a survey for the west property. **Vice Chair Morton** stated he felt if such a survey were to be found and analyzed it would likely support the rationale of the appeal. **Mr. Garcia** reiterated that he does not disagree with the Appellant's rationale. However, he feels there is no value to resurrecting that survey (as asked by Commissioner Thompson, if you make a decision based on existing Department policy and protocol). But, again, staff can do this research, if requested. **Vice Chair Morton** noted his concern is that this might be something the Commissioner should consider including establishing whether that 1990's survey was in error or not and if the prior decision for height was wrong, perhaps staff is putting too much reliance on that. **Mr. Garcia** cautioned that this may create a precedent. **Chair Burkhalter** asked whether to ask for more research would not be so much going against Department policy, but is in fact authorized in the Code - that staff would be considering as an alternate policy. **Mr. Garcia** emphasized that, going back to Commissioner Thompson's point, this has no value if the Commission is to base its decision on whether staff followed policy and protocol.

**Commissioner Fournier** noted that as Mr. Tomaro has pointed out, staff does these analyses very frequently and he is concerned that if you go back and look at another survey, this will get very complicated.

**Chair Burkhalter** closed the hearing and redirected discussion among the Commissioners.

#### COMMISSION DISCUSSION

**Commissioner Fournier** continued, noted that if they go back and get another historical survey for the adjoining lot to the west, this begs the question - how far back to go? Is it prudent to start now basing a decision on natural vs. existing finished grade? He feels this would "open a can of worms". The City needs consistency and it concerns him that this could be a real policy laden decision that would take months to figure out. He appreciates the issues but feels that staff has done a great job, and the City was not developed as a mass-graded tract all built at the same time – each lot is a unique situation. Further, we are learning that the difference would be 1-foot in height and should the policy be changed to accommodate this? As to the question: do we have enough facts? Procedurally, he feels staff has done as much as they can.

**Vice Chair Morton** noted that again he feels that the code as written provides for discretion in the Code and he feels that the 4<sup>th</sup> corner is definitely an anomaly and defies logic and its clear that it was built up. He feels the key question is how to address that 4<sup>th</sup> corner. You have 2 surveys that put the corner at that elevation and this may be wrong. He feels possibly the Director should take another look at it just using the language of the code. There is too much of a discrepancy (between this and the other corners) to not look at again and it feels unfair.

**Commissioner Thompson** stated that he feels the Applicant made a very strong case - that the corner elevation is not an anomaly – because sand dunes go up and down all over the beach area. He doesn't believe, if they support the Director's decision, that this would be supporting an inaccuracy. It's true that the alleys and streets when cut into the natural topography can make it appear that the ground is raised and because this is a half lot, its very plausible that a corner occurs on a naturally high point or mounded area of the lot. He believes that equity is served by the Director's approval and the staff position is based on accuracy. He supports the Director's decision.

**Commissioner Ungoco**, made the points that, he feels that staff has done the best job in following existing code and policy and secondly, the current ocean view cannot be preserved as much as existing. He feels he must step back and look at the charge of the Commission is - to preserve the neighborhood character within the existing code, and he agrees that this building will actually appear as an average between nearby properties (between monolith and others), so it will be getting back closer to the scale of the area.

**Chair Burkhalter** noted that the City rule has different results depending on the size of the lot and the smaller the lot, the more extreme the resulting height limit could be. To be clear, even if using an alternate permitted methodology, using interpolation, the net building height would be affected by one only foot. But, we are not here tonight to re-write the code.

Commissioner Thompson called for a motion; it was subsequently moved and seconded (Thompson/Ungoco) to DENY the appeal.

Roll Call:

Ayes: Fournier, Thompson, Ungoco,  
Noes: Morton, Chairperson Burkhalter  
Absent: None  
Abstain: None

**H. DIRECTOR’S ITEMS** – None

**I. PLANNING COMMISSION ITEMS** – None

**J. TENTATIVE AGENDA** – October 23, 2019

The Chair noted that two condominium projects are to be considered.

**K. ADJOURNMENT TO** – The meeting was adjourned at 8:45 p.m. to Wednesday, October 23, 2019 at 6:00 P.M. in the City Council Chambers, City Hall, 1400 Highland Avenue.

/s/Rosemary Lackow  
ROSEMARY LACKOW  
Recording Secretary

/s/Benjamin Burkhalter  
BENJAMIN BURKHALTER  
Chairperson

ATTEST:

/s/Jeff Gibson  
JEFF GIBSON  
Interim Community Development Director