

RESOLUTION NO. 19-0111

RESOLUTION OF THE MANHATTAN BEACH CITY
COUNCIL APPROVING A USE PERMIT ALLOWING A
GROUND FLOOR OFFICE USE AT 1419 HIGHLAND
AVENUE (ZEBROWSKI)

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

SECTION 1. Brett Zebrowski. (Applicant) has submitted an application for a Use Permit for the property located at 1419 Highland Avenue (Subject Property). The Applicant seeks approval to establish a ground floor office use (Project) at the Subject Property. The Subject Property is located in Area District III and is zoned CD, Downtown Commercial. The properties to the north (across 15th Street) are zoned RM, Residential Medium Density. The property to the east (across Highland Avenue) is zoned PS, Public and Semi-Public. The property to the south (across 14th Place) is zoned CD Downtown Commercial. The properties to the west are zoned RH High Density Residential. The subject property is classified Downtown Commercial in the Manhattan Beach General Plan.

SECTION 2. The proposed ground floor office use requires a Use Permit under Manhattan Beach Municipal Code (MBMC) section 10.16.020.

SECTION 3. On October 9, 2019, the Planning Commission conducted a duly noticed public hearing to consider the Project. The Commission directed Staff to draft a resolution approving the project and return to the Commission at the continued public hearing on October 23, 2019.

SECTION 4. On October 23, 2019, the Planning Commission reopened the public hearing to consider the Project. After the public hearing was closed, the Commission adopted Resolution No. PC 19-14 to conditionally approve the Project.

SECTION 5. At the November 5, 2019 City Council meeting, two City Councilmembers called up Planning Commission's decision for review.

SECTION 6. On December 3, 2019 the City Council conducted a duly noticed public hearing *de novo* to consider the Project. Evidence, both written and oral, was presented to the Council. All persons wishing to address the Council regarding the Project were given an opportunity to do so at the public hearing.

SECTION 7. The Project is Categorically Exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to Existing Facilities Section 15301 based on Staff's determination that there is no expansion of use associated with the Project.

SECTION 8. The project will neither individually nor cumulatively have an adverse effect on wildlife resources, as defined in Fish and Game Code Section 711.2.

SECTION 9. Pursuant to the City's Local Coastal Program, A.96.050, a Coastal Development Permit is not required for the proposed Project because the proposed work is a tenant improvement in an existing commercial building that does not change the use or intensity of the structure.

SECTION 10. Based upon substantial evidence in the record presented at the public

hearing, and pursuant to MBMC Section 10.84.060 and state law, the City Council hereby finds:

- 1. The Project and its proposed location is in accord with the objectives of the Zoning Code, the purpose of the district (Downtown Commercial) in which the site is located, and is consistent with the General Plan.**

The proposed use, Business and Professional Office, is a commercial use located on a parcel that is on the northern boundary of the Downtown, and immediately adjacent to properties that are zoned and used as residential to the west and across the street to the north, in the CD Downtown Commercial zone.. Specifically, the Project is consistent with the following Goals of the General Plan:

- LU-5 Protect residential neighborhoods from the intrusion of inappropriate and incompatible uses.*
- LU-6 Maintain the viability of the commercial areas of Manhattan Beach.*
- LU-6.2 Encourage a diverse mix of businesses that support the local tax base, are beneficial to residents, and support the economic needs of the community.*
- LU-7 Continue to support and encourage the viability of the Downtown area of Manhattan Beach.*
- LU-7.4 Encourage first-floor street front businesses with retail, restaurants, service/commercial, and similar uses to promote lively pedestrian activity on Downtown streets, and consider providing zoning regulations that support these uses.*

- 2. The proposed location of the use and the proposed conditions under which it would be operated or maintained 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 Business and Professional Office use will be a commercial use consistent with the General Plan's Downtown Commercial land use designation assigned to the project lot and the neighboring lots. The proposed use is consistent and complimentary with neighboring uses, as many of the neighboring lots have also been developed with commercial uses, and there are residential uses immediately adjacent to the west and to the north across 15th Street.

- 3. The proposed use will comply with the provisions of the Zoning Code, including any specific condition required for the proposed use in the district in which it would be located.**

The proposed use will be a Business and Professional Office use that complies with all provisions of the Municipal Code's Title 10 Planning and Zoning.

- 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.**

The proposed Business and Professional Office, as conditioned, is a low-impact use that generates relatively low levels of noise, traffic, trash, and other negative impacts. The proposed use is also consistent with some of the surrounding uses in the CD Downtown Commercial zone and residential zones.

SECTION 9. Based upon the foregoing and substantial evidence in the record, the City Council hereby **APPROVES** the Use Permit for the establishment of a ground floor office use at 1419 Highland 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 December 3, 2019. Any substantial deviation from the approved plans or project description shall require approval from the City Council. 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 City Council is required.
2. Any questions of intent or interpretation of any condition will be reviewed by the Community Development Director to determine if City Council review and action is required.

Operation

3. The rooftop deck shall only be used by the tenant for their own private use for activities related to their office use. The rooftop deck shall not be offered to other parties or entities for private events and gatherings. Gatherings on the rooftop deck shall only occur during the following hours:

Sunday – Thursday: 9am – 9pm*
Friday – Saturday: 9am – 10pm

*The tenant will be allowed to hold a gathering on the rooftop deck till 9:30pm on the one Sunday in December associated with the annual Manhattan Beach Holiday Fireworks show.

4. Amplified sound shall be allowed on the rooftop deck only during the following hours:

Sunday – Thursday: 10am – 7pm
Friday – Saturday: 10am – 8pm

5. No more than 30 people can be on the rooftop deck at any one time.
6. The majority of the building's windows facing Highland Avenue will not be significantly covered. The intent of this condition is to ensure there is a relationship between the building's interior and the pedestrian activity on the street.
7. All rooftop mechanical equipment shall be screened from the public right-of-way.
8. Noise emanating from the property shall not create a nuisance to nearby property owners, and will also be within the limitations prescribed by Chapter 5.48 Noise Regulations of the Manhattan Beach Municipal Code.

9. At any time in the future, the Planning Commission or City Council may review the Use Permit for the purpose of revocation or modification 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.

Refuse

10. The management shall arrange for special on-site pickup as often as necessary to ensure that the refuse area has adequate space to accommodate the needs of the subject business.
11. 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.

Procedural

12. The Applicant shall cooperate with the Department of the Community Development in its conduct of periodic reviews for compliance of conditions of approval.
13. The applicant must submit in writing to the City of Manhattan Beach acceptance of all conditions within 30 days of approval of the Use Permit.
14. *Indemnity, Duty to Defend and Obligation to Pay Judgments, Awards of Attorney Fees and Defense Costs, Including Attorneys' Fees, Incurred by the City.* Applicant 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. Applicant 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, including any award of attorney's fees. The City shall promptly notify Applicant of any claim, action, or proceeding and the City shall reasonably cooperate in the defense, however, cooperation does not include the City having to take any action or make any decision that the City does not believe, in the exercise of its good faith judgment, is in its own best interest, and cooperation shall not be construed in a manner that requires the City to exercise its discretion in a particular manner. If the City fails to promptly notify Applicant of any claim, action, or proceeding, or if the City fails to reasonably cooperate in the defense, Applicant 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. Applicant shall reimburse the City, and the other Indemnitees, for any and all legal expenses, fees, and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Nothing in this Condition shall be construed to require Applicant 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. Applicant shall deposit that amount with the City for the payment of such expenses as they become due. Applicant shall replenish the deposit as necessary based upon notice by the City.

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. Pursuant to Public Resources Code Section 21089 (b) and the Fish and Game Code Section 711.4 (c), the project is not operative, vested, or final until the requiring filing fees are paid. This Use Permit shall lapse two years after its date of approval, unless implemented or renewed pursuant to Municipal Code Section 10.84.090.

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 Brett Zebrowski and 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 December 3, 2019

AYES:
NOES:
ABSENT:
ABSTAIN:

NANCY HERSMAN
Mayor

ATTEST:

LIZA TAMURA
City Clerk