

RESOLUTION NO. PC 20-01

RESOLUTION OF THE MANHATTAN BEACH PLANNING COMMISSION OF THE CITY OF MANHATTAN BEACH APPROVING A USE PERMIT AMENDMENT FOR AN EXISTING RESTAURANT WITH FULL ALCOHOL SERVICE (MANHATTAN BEACH POST) TO ALLOW: AN EXPANSION OF THE USE INTO AN ADJACENT VACANT RESTAURANT SPACE (FORMERLY SUBWAY); AND AN EXTENSION OF OPERATING HOURS AT 1142 AND 1144 MANHATTAN AVENUE (SIMMS RESTAURANT GROUP/SIMMS)

THE MANHATTAN BEACH PLANNING COMMISSION DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. On December 14, 1982, the City's Board of Zoning Adjustment adopted Resolution No. 82-41, establishing a restaurant, juice bar, and deli service inside an existing retail health food store located at 1144 Manhattan Avenue, subject to a number of conditions. On October 19, 1999, the City Council adopted Resolution No. 5513, approving a Use Permit Amendment to allow full service of alcoholic beverages and limited entertainment at an existing restaurant located at 1142 Manhattan Avenue, subject to a number of conditions.

SECTION 2. The Simms Restaurant Group ("Owner") has applied for an Use Permit Amendment to: expand the floor space of its existing restaurant (Manhattan Beach Post or MB Post) located at 1142 Manhattan Avenue into the adjacent space formerly occupied by Subway located at 1144 Manhattan Avenue (collectively the "site"); and to extend operating hours at the site (the "Project").

SECTION 3. On March 11, 2020, the Planning Commission conducted a duly noticed public hearing to consider the application. The Commission provided an opportunity for the public to provide evidence and testimony at the public hearing.

SECTION 4. 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 negligible expansion of use associated with the Project, as the existing restaurant is taking over an existing restaurant space. The project will neither individually nor cumulatively have an adverse effect on wildlife resources, as defined in California Fish and Game Code Section 711.2.

SECTION 5. The record of the public hearing indicates:

A. The legal description of the site is: Lots 2 & 3, Block 66, Manhattan Beach Division No. 2, 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 Center Place), CD to the East (across Bayview Drive), and CD to the West (across Manhattan Avenue).

B. The use is 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 for the property is Downtown Commercial. The General Plan encourages Downtown businesses that offer "services and activities to our residents and visitors."

C. MB Post has been operating since 2011 under a Use Permit Amendment approved by the City Council in 1999. 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. Significant buffers exist between Manhattan Beach Post and residents in nearby blocks, with Manhattan Avenue, Bayview Drive, Center Place, City Parking Lot 2 (between Bayview Drive and Highland Avenue), and other businesses providing barriers that help minimize any impacts associated with the use.

D. The Use Permit Amendment allows for full alcohol service in conjunction with food service, as well as limited entertainment. The approved operating hours under its existing entitlement are 11:00 a.m. to 11:00 p.m. Monday through Wednesday, 11:00 a.m. to 12:00 a.m. Thursday through Friday, 7:00 a.m. – 12:00 a.m. on Saturdays, and 7:00 a.m. to 11:00 p.m. on Sundays. The applicant is requesting to expand their allowed operating hours, with a

proposed opening time of 6:00 a.m. every day and to extend closing time to 1:00 a.m. on Thursdays through Sundays. The proposed hours of operation are 6:00 a.m. – 11:00 p.m. Sunday through Wednesday, and 6:00 a.m. - 1:00 a.m. Thursday through Saturday.

E. The adjacent vacant restaurant space operated under the Board of Zoning Adjustment Resolution No. 82-41 (Attachment C). BZA 82-41 allowed for a “restaurant, juice bar and deli service” with onsite consumption of food. No alcohol service was allowed by BZA Resolution No. 82-41.

F. The applicant is requesting to expand its existing 3,283 square-foot restaurant into the adjacent vacant 1,447 square-foot tenant space formerly occupied by a Subway restaurant. The applicant also proposes to partially enclose a small 148 square-foot front patio area, bringing the total square footage of the expanded restaurant to 4,878 square feet. The applicant is proposing to use the expanded floor space to add seating and bar area in a rearranged floorplan that will also include additional bathrooms and storage area.

G. The Police Department has reviewed the request and has no concerns or objections. The City has received one complaint about noise from MB Post since it began operating in 2011. The Police Department has not suggested any additional conditions of approval.

H. 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 6. Based upon substantial evidence in the record, and pursuant to Manhattan Beach Municipal Code Section 10.84.060, the Planning Commission hereby finds:

1. The proposed location of the expanded use is in accord with the objectives of this title and the purposes of the district in which the site is located.

Manhattan Beach Post is a commercial use located in the CD Downtown Commercial zone, and its expansion is likewise appropriate for its zoning classification.

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.

Manhattan Beach Post’s restaurant use is 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 with neighboring uses, as the neighboring lots have also been developed with commercial uses, many of which are eating and drinking establishments that serve alcohol. The General Plan encourages a “vibrant downtown” that offers “services and activities for residents and visitors”, and Manhattan Beach Post is part of the downtown commercial mix of businesses that help create a dynamic and interesting Downtown. Manhattan Beach Post’s expansion will only enhance the services provided to residents and visitors.

3. The proposed expanded use and expanded hours will comply with the provisions of the City’s Planning and Zoning Title, including any specific condition required for the proposed use in the district in which it would be located.

Manhattan Beach Post is an eating and drinking establishment use complies with all provisions of Municipal Code Title 10 Planning and Zoning and specific conditions imposed previously. Likewise, its expansion and additional hours of operation will fully comply with Municipal Code’s Title 10 Planning and Zoning and specific conditions imposed.

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

Manhattan Beach Post has been operating at their current location since April 2011, serving craft beer, small-production wine, and craft cocktails in conjunction with food service revolving around an artisan menu of shared plates. 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. Significant buffers exist between Manhattan Beach Post and residents in nearby blocks, with Manhattan Avenue, Bayview Drive, Center Place, City Parking Lot 2 (between Bayview Drive and Highland Avenue), and other businesses providing barriers that help minimize any impacts associated with the use. Accordingly, any potential impacts arising from the expanded space and hours related to traffic, parking noise, vibration, odors, resident security and personal safety, and aesthetics are either minimal or mitigated by conditions of approval contained herein. The expansion will not create demands exceeding the capacity of public services and facilities.

SECTION 7. Based upon the foregoing, the Planning Commission hereby **APPROVES** the Use Permit Amendment to allow the expansion and expanded hours 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 Planning Commission on March 11, 2020 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. 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.
3. 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.
4. All electrical, telephone, cable television system, and similar service wires and cables shall be installed underground to the appropriate utility connections in compliance with all applicable Building and Electrical Codes, safety regulations, and orders, rules of the Public Utilities Commission, the serving utility company, and specifications of the Public Works Department

Operation

5. The restaurant's windows facing Manhattan Avenue shall be closed no later than 10:00 p.m. every day in order to minimize any noise generated by the restaurant.
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 and food debris.
7. The operators of the business shall provide adequate management and supervisory techniques to prevent loitering and other security concerns outside the subject business.
8. All rooftop mechanical equipment shall be screened from the public right-of-way.
9. All mats shall be cleaned on the premises with no outside cleaning of mats permitted. If any floor mats cannot be cleaned within the premises, a service company must be contracted.

10. Hours of operation for the establishment shall be permitted as follows:

Sunday – Wednesday	6:00 a.m. – 11:00 p.m.
Thursday – Saturday	6:00 a.m. – 1:00 a.m.*

*No alcoholic beverages can be ordered by customers past 12:00 a.m., Thursday through Saturday. Customers who have ordered alcohol beverages before 12:00 a.m. can still consume their alcoholic beverages between 12:00 a.m. and 1:00 a.m.

- 11. The owner shall be in substantial compliance with all restrictions imposed by the Alcohol Beverage Control Board (ABC) prior to service of liquor.
- 12. Alcohol service shall be conducted only in conjunction with food service during all hours of operation.
- 13. Food service shall be available at all seats, and no specific bar area serving exclusively alcohol shall be permitted.
- 14. At all times the business shall identify itself as a “restaurant” and will not identify itself as a “bar” in public advertisements.
- 15. Live entertainment is prohibited.
- 16. 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. Noise shall not be audible beyond the premises.
- 17. The restaurant management shall control the volume of any background music.
- 18. At any time in the future, the Planning Commission or City Council may review the Use Permit Amendment 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.
- 19. The Community Development Department staff shall be allowed to inspect the site at any time.

Refuse

- 20. A trash enclosure(s) with adequate total capacity shall be provided on the site, subject to the specifications of the Public Works Department, Community Development Department, and City’s waste contractor. The expanded portion of the restaurant shall not be allowed to start operations until the trash enclosure structure has been constructed.
- 21. 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.
- 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.

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. Staff will provide a report to the Planning Commission one year after the commencement of operations after Manhattan Beach Post's expansion. The report will detail any complaints the City has received that can be traced back to the operations of the restaurant. The report will be a general business item on the Planning Commission's agenda. The owner, at their own expense, will be required to notify all property owners within 500 feet of the site that the Planning Commission will be receiving the one-year report. The notice shall be mailed at least 10 days prior to the hearing date. The notice will give the date and time of the Planning Commission hearing, as well as the contact information of the Planning Commissioners.
27. The 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.
28. 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.
29. *Indemnity, Duty to Defend and Obligation to Pay Judgments and Defense Costs, Including Attorneys' Fees, Incurred by the City.* The owner 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 owner 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 8. The Planning Commission'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 9. This Resolution shall become effective when all time limits for appeal as set forth in MBMC Section 10.100.030 have expired.

SECTION 10. The Secretary of the Planning Commission shall certify to the adoption of this Resolution and shall forward a copy of this Resolution to the owner. The Secretary shall make this resolution readily available for public inspection.

SECTION 11. This Use Permit Amendment shall lapse two years after its date of approval, unless implemented or extended pursuant to 10.84.090 of the Municipal Code.

March 11, 2020

/s/Benjamin Burkhalter
Planning Commission Chair

I hereby certify that the following is a full, true, and correct copy of the Resolution as **ADOPTED** by the Planning Commission at its regular meeting on **March 11, 2020** and that said Resolution was adopted by the following vote:

- AYES:** **Fournier, Morton, Thompson, Ungoco, Chair Burkhalter**
- NOES:** **None**
- ABSTAIN:** **None**
- ABSENT:** **None**

/s/Carrie Tai
Carrie Tai, AICP,
Secretary to the Planning Commission

/s/Rosemary Lackow
Rosemary Lackow,
Recording Secretary