

P.C. RESOLUTION NO. 10-1

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERMOSA BEACH, CALIFORNIA DENYING A CONDITIONAL USE PERMIT AMENDMENT FOR A LIVE ENTERTAINMENT AND/OR MUSIC ACADEMY WITH ON-SALE BEER AND WINE, WITH LIMITED FOOD SERVICE AND CATERED EVENTS, IN THE HERMOSA PAVILION AT 1601 PACIFIC COAST HIGHWAY #285, LEGALLY DESCRIBED AS A PORTION OF LOTS 13 AND 14, BLOCK 81, SECOND ADDITION TO HERMOSA BEACH.

The Planning Commission of the City of Hermosa Beach does hereby resolve and order as follows:

Section 1. An application was filed by Barry A. Wilson to operate a live entertainment and music education venue, with on-sale beer and wine, limited food service and catered events in Unit No. 285 within the Hermosa Pavilion at 1601/1605 Pacific Coast Highway.

Section 2. The Planning Commission conducted a duly noticed public hearing to consider the application for Conditional Use Permit Amendment 09-10 on November 17, 2009, at which time testimony and evidence, both written and oral, were presented to and considered by the Planning Commission.

Section 3. Based on the evidence received at the public hearing, the Planning Commission makes the following factual findings:

1. The applicant is proposing to operate a live entertainment and music education venue, with on-sale beer and wine, limited food service and catered events, open 11:00 a.m. to 11 p.m. daily within a 2,925 square foot tenant space in Hermosa Pavilion. Existing improvements include a stage for performances, booth seating and an open auditorium area with tables and seating, 'warming' kitchen and restroom facilities. The establishment can accommodate approximately 123 persons.

2. The City's Zoning Ordinance requires a Conditional Use Permit in the Specific Plan Area No. 8 zone to operate a music academy (instruction/lessons), live entertainment and on-sale establishments open later than 10:00 p.m.

3. The prior use, a music and performing arts academy for children aged 4 to 18, including children's parties and special performances, open between 11:00 a.m. to 11 p.m. known as 'Kids Kabaret', has ceased to be in business. That business operated pursuant to a Conditional Use Permit approved by Planning Commission Resolution No. 05-13, and an amendment to that CUP to eliminate the requirement for valet parking was recently approved by Planning Commission Resolution No. 09-25.

4. On November 17, 2009 the applicant stated that live entertainment venue and music education would be delivered in a variety of methods, such as in conjunction with food,

individual or group music lessons, dance lessons, comedy and other live entertainment shows, large screen video events, special events, etc.

Section 4. Based on the foregoing findings, the Planning Commission makes the following findings pertaining to the application for an amendment to Conditional Use Permit 05-13, pursuant to Subsections A, H, I and K of Section 17.40.020 and Subsection A of Section 17.40.080 of the Municipal Code:

1. The proposed business is incompatible with the surrounding area and will impact city services because it would contribute to a concentration of similar outlets in the area and expand the 'entertainment district' and conditions to fully mitigate these impacts cannot be identified. There are nine on-sale establishments permitted by a CUP on upper Pier Avenue (one must close by 10 p.m. daily; five must close by 11:00 p.m., and three may be open until 2:00 a.m. daily). Several other restaurants serve alcoholic beverages and close by 10:00 p.m. Live entertainment is allowed at two establishments (Club 705 and Union Cattle). On Pacific Coast Highway, 13 on-sale establishments are permitted under CUP. Of those, three are located between 21st Street and Aviation Boulevard (including Brix@1601 in the same building (Hermosa Pavilion) open until 12:00 midnight), and two associated with restaurants open until 10:00 p.m.

The City Council has indicated a policy of limiting concentration or intensification of on-sale establishments in the downtown and upper Pier Avenue. The addition of live entertainment venues with on-sale alcoholic beverages on the outskirts of the downtown/upper Pier Avenue areas expands and intensifies the character of this area as an entertainment district, which can have adverse impacts to the surrounding uses and city services.

Since the primary proposed use is in fact a 'nightclub' combining live entertainment and on-sale alcohol, its character and impacts are highly dependent on the specifics of its operation, management and patronage. Since a conditional use permit runs with the land, rather than ownership, it can be expected that its operation, patronage and impacts will change over time and the use, regardless of operator, must be determined to be compatible with surrounding uses and the City's land use goals and policies.

Since the proposed use is not a restaurant with incidental on-sale alcohol, it would not be subject to controls on food versus alcohol sales applicable to restaurants under Section 17.04.050 of the Hermosa Beach Municipal Code, and could operate as a nightclub. Restrictions that would confine the type and delivery of live entertainment to such a degree as to guarantee that problems will not occur have not been identified or would be overly restrictive and unduly difficult to enforce.

The applicants have conveyed that the business would employ variable types of entertainment and methods as times change. The City has experienced problems with other nightclub type venues, some of which were originally 'jazz' clubs wherein the character has changed over time, such as the Poop Deck, Club 705 and the Lighthouse and caused significant impacts such as noise, disturbances, or other incompatibility with residential neighbors.

Therefore, the proposed use may require additional police services due to live entertainment and service of alcoholic beverages. The Police Chief additionally states that officer and occupant load checks are more time-consuming within this building than for businesses in storefronts or concentrated with other such businesses because the proposed use is located within a shopping center.

2. The proposed business would operate after 10:00 p.m. when there is heightened sensitivity to noise as established by Section 8.24.040(B) and (I) of the City's Noise Ordinance. Disturbances to residential uses (R-3 zoned property located immediately to the north and west, R-1 located about 250 feet east of the tenant space, and the mobile home park located about 550 feet from the tenant space) may occur as people patronizing the establishment walk or drive through neighborhoods, open and close car doors, etc.

Section 5. Based on the foregoing, the Planning Commission **hereby denies** the subject Conditional Use Permit Amendment.

Section 6. Pursuant to the Code of Civil Procedure Section 1094.6 any legal challenge to the decision of the Planning Commission, after a formal appeal to the City Council, must be made within 90 days after the final decision by the City Council.

VOTE:	AYES:	Comms.Allen,Darcy,Perrotti,Pizer,Chmn.Hoffman
	NOES:	None
	ABSENT:	None
	ABSTAIN:	None

CERTIFICATION

I hereby certify that the foregoing Resolution P.C. 10-1 is a true and complete record of the action taken by the Planning Commission of the City of Hermosa Beach, California at their regular meeting of November 17, 2009 and memorialized on January 19, 2010.



Pete Hoffman, Chairman



Ken Robertson, Secretary

January 19, 2010

Date