

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
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 Hermosa Beach, CA 90802-4302  
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**RECORD PACKET COPY**

**TU 19f**

Filed: 7 March 2000  
 49th Day: 25 April 2000  
 180th Day: 3 September 2000  
 Staff: JLR-LB  
 Staff Report: 18 April 2000  
 Hearing Date: May 9-12, 2000  
 Commission Action:

**STAFF REPORT: REGULAR CALENDAR**

**APPLICATION NUMBER: 5-00-015**

**APPLICANT: Conn Flatley and Gary Vincent**

**PROJECT LOCATION: 53 Pier Avenue, Hermosa Beach**

**PROJECT DESCRIPTION: Convert 1,150 sq. ft. of office space into restaurant use located adjacent to an existing 1,900 sq. ft. restaurant**

**LOCAL APPROVALS RECEIVED: Approval in Concept – City of Hermosa Beach**

**SUBSTANTIVE FILE DOCUMENTS: City of Hermosa Beach Certified Land Use Plan (LUP)**

**SUMMARY OF STAFF RECOMMENDATION:**

Staff is recommending approval with a special condition addressing parking.

**I. STAFF RECOMMENDATION, MOTION AND RESOLUTION:**

Staff recommends that the Commission **APPROVE** the permit application with a special condition by making the following motion and adopting the following resolution.

**MOTION:**

*I move that the Commission approve CDP No. 5-00-015 pursuant to the staff recommendation.*

Staff recommends a **YES** vote. Passage of this motion will result in adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

**RESOLUTION TO APPROVE PERMIT APPLICATION WITH SPECIAL CONDITIONS:**

The Commission hereby **GRANTS** a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

**II. STANDARD CONDITIONS:**

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

**III. SPECIAL CONDITIONS**

**1. Participation in the In-Lieu Fee Parking Program**

Prior to issuance of permit, the applicant shall submit evidence of purchase of five in lieu fees (\$12,500 each) in a program administered by the Downtown Business Area Enhancement District Commission, or its successor agency. The applicant shall provide evidence, for review and approval of the Executive Director, that this fund can only disburse money for the purpose of construction of new public parking spaces.

**IV. FINDINGS AND DECLARATIONS:**

The Commission hereby finds and declares as follows:

**A. Project Description, Location and Background**

The applicant proposes to convert 1,150 sq. ft. of office space into restaurant use located adjacent to an existing 1,900 sq. ft. restaurant. In addition, the City's approval requires the applicant to purchase five in-lieu parking fees. The applicant is also proposing to provide an additional 21 parking space for supplemental parking at an off-site location at 200 Pier Avenue, which is approximately 600 feet easterly from the restaurant. These supplemental spaces would be available only at night.

In 1982, the Commission certified the Land Use Plan (LUP) for the City of Hermosa Beach. This approval included an in-lieu fee parking program for older Commercial structures with little or no on-site parking. The Commission has not certified the zoning ordinances for the City's Local Implementation Plan (LUP). In 1994, the Commission approved an LUP amendment which specifically addressed parking requirements in the downtown area. Consistent with the Coastal Act, the LUP addresses the need for adequate parking to maintain beach access and requires that intensification of uses be accompanied with adequate parking. The reason adequate parking is required is that any additional demand for street parking spaces will compete with development for beach parking spaces i.e., on-street space or spaces located within the public parking lots. Adequate parking to serve new development is a public access issue because the downtown public parking lots are heavily used at certain times of the year and can not accommodate the parking needs generated by existing development.

The proposed project is located in the Downtown Commercial District of the City of Hermosa Beach. The subject site is approximately one half block inland of the Strand, a public walkway that parallels the adjacent public beach.

**B. Public Access/Development:**

The following Coastal Act policies are relevant:

Section 30211 of the Coastal Act States:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212.5 of the Coastal Act States:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30252 of the Coastal Act States:

The location and amount of new development should maintain and enhance public access to the coast ..., (4) providing adequate parking facilities ...

The above policies protect the public's ability to access the beach and ocean by requiring new development to be accompanied with adequate parking. The downtown beach/pier area is a major visitor destination for recreational purposes. Visitor access to the beach is dependent on public parking. Street parking supplies a significant amount of the spaces to serve the beach.

Build-out and subdivision patterns often make it impossible for existing structures to provide on-site parking for intensification of uses. Because it is often infeasible to provide parking on-site, the Commission certified an in-lieu fee program in the City's LUP in 1982.

The City's 1982 certified LUP allows the City to require in-lieu fees only if sufficient parking within the downtown area exists to accommodate the parking demand of new development. If there are parking spaces available, according to the provisions of the amended LUP, development may be approved if the applicant provides in-lieu fund transfers or in-lieu fees into a City fund for improvements and/or construction of parking facilities within the District and/or for acquisition of property to be utilized for parking. The in-lieu fee is based on the cost of constructing a parking space in a parking structure which is currently \$12,500 per space. No more than a total of 100 fees could be collected in lieu of parking. To date, none have been collected.

In 1997, the Commission approved a 380 car parking structure which would accommodate new development. That structure has been constructed and does provide additional parking spaces in the downtown area.

Some of these spaces are committed to certain uses, which will be described below in chart 2.

**CHART 1 IMMEDIATE AREA PARKING**

<b>LOCATION</b>	<b>No. of Spaces Prior to Pier Avenue closure without Parking structure</b>	<b>No. of Spaces After Street Closure and Construction of Parking Structure</b>
Lot C/ Structure site	135	400
Lower Pier Avenue	24	0
On-street north side of 13 <sup>th</sup> street	29	12
On-street south side of 13 <sup>th</sup> street	22	0
Lot B	44	44
<b>Total</b>	<b>254</b>	<b>456</b>

Many of the spaces in parking structure have already been considered in by the Commission approving development projects considered before the parking structure was complete. Therefore, these spaces are committed to existing or previously approved uses. Even so, the parking structure can accommodate these previously committed uses as replacement of the parking spaces removed from Pier Avenue, 13th Street, and the five spaces required for this project. The chart below summarizes the number of parking spaces in the new 380 -car parking structure that have already been committed or are proposed to be used to mitigate the impacts of this project:

**CHART 2 AVAILABILITY OF SPACES IN PARKING STRUCTURE TO SERVE PROPOSED PROJECT**

USE	ALLOCATION
Hotel	100
7,000 sq. ft. of commercial use in Structure	18
Replacement of Lot C: 135 public parking spaces displaced to construct the structure	135
Available for Replacement of loss of 63 on-street parking spaces proposed in Pier Avenue project	63
Parking allocated to 5-00-015 restaurant expansion	5
Total presently allocated, counting present project	321

According to the standards provided in the City's certified LUP, the proposed restaurant expansion requires five additional parking spaces. That calculation is based on a parking provision that requires one parking space for each 250 sq. ft. of commercial use. However, the Commission and the City have recognized that restaurants generate more parking demand than an office use. Most jurisdictions require one parking space per three seats or one space per 50 sq. ft. of customer service area. The applicant has agreed with the City to pay five in-lieu fees to the Downtown Business Area Enhancement District Commission, or its successor agency, prior to receiving a Certificate of Occupancy. However, the city's approval does not assure that those fees will be utilized to create new parking facilities. Staff is recommending a special condition to assure that the fees will be paid into a fund that can only be used for creating new parking spaces. Therefore, the Commission finds that, as conditioned, the applicant will provide adequate parking provisions consistent with the provisions of the certified LUP.

In Hermosa Beach, most crowding in restaurants occurs at night. The applicant is proposing to provide supplementary parking off-site at a private parking lot located approximately 600 feet easterly of the restaurant. The applicant signed a five-year lease for 21 parking spaces. Those spaces will be available everyday after 6:00 P. M., including weekends

Therefore, the Commission finds the proposed project, as conditioned, will not interfere with public access to the shoreline, consistent with Sections 30210-30212-5 of the Coastal Act. The Commission further finds that the proposed restaurant will provide adequate parking consistent with the parking provisions of Section 30252(4) of the Coastal Act.

**C. California Environmental Quality Act**

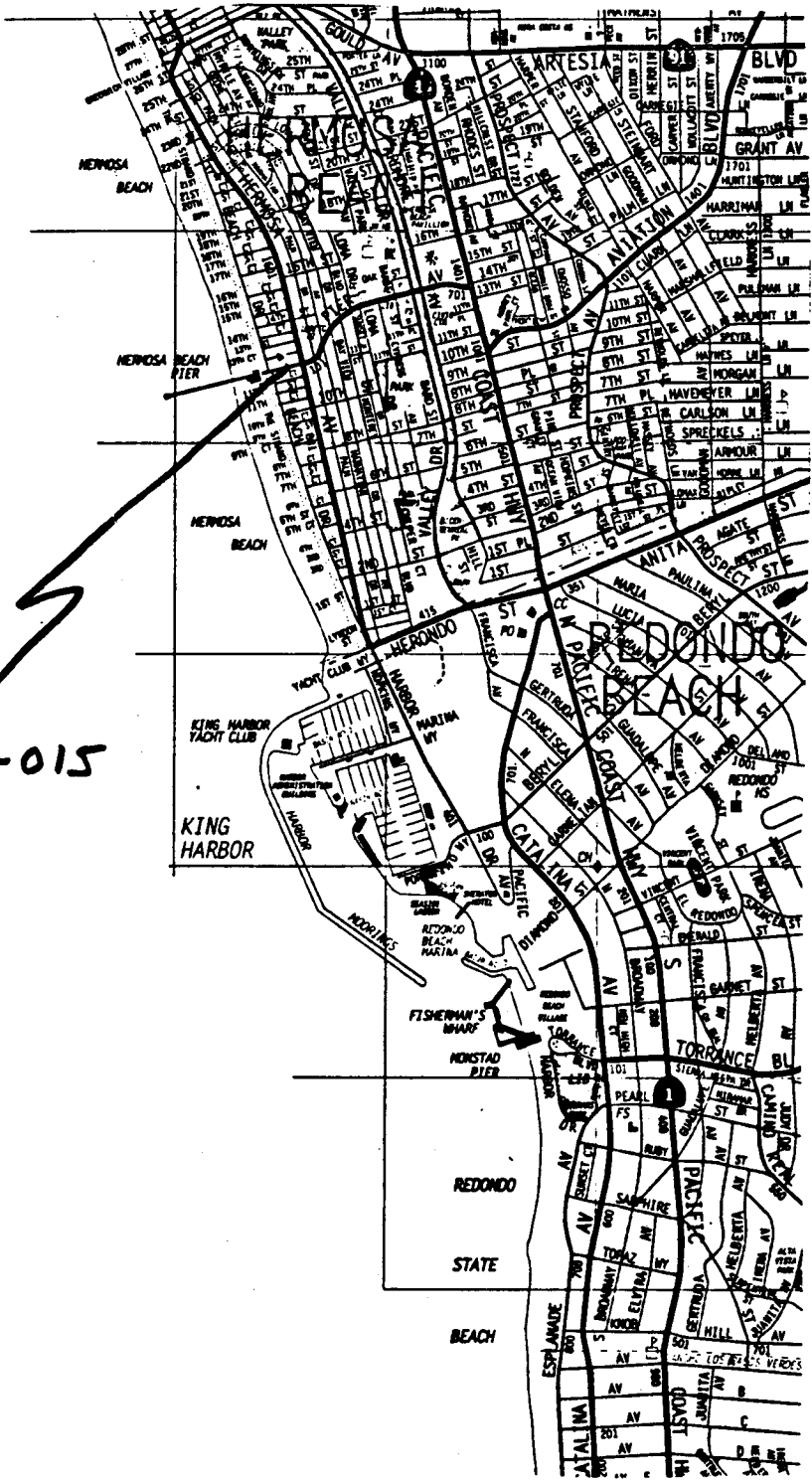
Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project has been conditioned in order to be found consistent with the policies of the Coastal Act. A mitigation measure to assure that the in-lieu fees collected will be used in a fund to create new parking facilities, will minimize all adverse impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the

Commission finds that the proposed project is consistent with CEQA and the policies of the Coastal Act.

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Exhibit A

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LEASE

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COASTAL COMMISSION

This lease supersedes and replaces that lease dated July 16, 1997 by and between Jerry L. Newton and Leslie A. Newton ("Lessor") and John L. Bowler and Falloon, Inc., a Nevada Corporation ("Lessee") which lease was assigned to Fat Face Fenner's Falloon, Ltd., a Nevada Corporation, Conn Flatley and Gary Vincent on or about December 27, 1997.

1. Basic Lease Provisions ("Basic Lease Provisions").

1.1 Parties: This Lease, dated, for reference purposes only, January 1, 1999 is made by and between Jerry L. Newton and Leslie A. Newton (herein called "Lessor") and Conn Flatley, Gary Vincent, and Fat Face Fenner's Falloon, Ltd., a Nevada Corporation (herein called "Lessee").

1.2 Premises:

a) The restaurant space located on the second floor of Loreto Plaza, 49 and 53 Pier Avenue, Hermosa Beach, California, consisting of approximately 2057 square feet and described more particularly as:

(1) Suite L, consisting of approximately 460 square feet located in the north end of 49 Pier Avenue;

(2) Suites O and P, consisting of approximately 1210 square feet located in the north end of 53 Pier Avenue, and

(3) The enclosed bridge area between Suite L and suites O and P, consisting of approximately 387 square feet, and

b) The space currently occupied by the Newton and Newton law office, consisting of approximately 1150 square feet.

The Premises do not include any portion of the exterior second floor walkways of Loreto Plaza. Lessee and Lessee's employees, guests, invitees, patrons and customers shall use the exterior walkways of Loreto Plaza for ingress and egress only and for no other purpose.

1.3 Use: Restaurant and/or office, subject to paragraph 6.

1.4 Term: The term of this lease shall be as follows:

a) For the space described in paragraph 1.2(a) above ("Space A"), five (5) years and one (1) month, commencing February 1, 1999 and ending February 28, 2004, as defined in paragraph 3.

Lessor's initials: LN  
LS

Lessee's Initials: CF  
GV

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b) For the space described in paragraph 1.2(b) above ("Space B"), five (5) years, commencing March 1, 1999 and ending February 28, 2004, as defined in paragraph 3.

On and after March 1, 1999 the term "space" shall mean both Space A and Space B and all terms and provisions in this lease shall apply to both spaces.

**1.5 Base Rent: The Base Rent is:**

a) For Space A, the sum of Three Thousand Eighty five and 50/100 Dollars (\$3,085.50). Rent shall be payable on the first (1st) day of each month, per paragraph 4.1 commencing February 1, 1999.

b) For Space B, the sum of One Thousand Seven Hundred Twenty-Five and 00/100 (\$1,725.00). Rent shall be payable on the first (1st) day of each month, per paragraph 4.1 commencing March 1, 1999.

As of March 1, 1999 Base Rent shall be the total of a) and b) above (\$4,810.50).

**1.6 Base Rent Increase:** On March 1, 2000, and on each March 1 thereafter of the term of this lease, and during any extended term of this lease as provided in Section 37 of this lease, the monthly Base Rent payable under paragraph 1.5 above shall be adjusted as provided in paragraph 4.3 below.

**1.7 Security Deposit:** Lessor is in receipt of the sum of \$3,085.50 as a security deposit. Lessee shall pay to Lessor on March 1, 1999 the additional sum of \$1,725.00 as a security deposit.

**1.8 Additional Rent:** In addition to the Base Rent described above, Lessee shall pay to Lessor a sum equal to the amount of rent Lessor is required to pay to the City of Hermosa Beach for rent of the airspace occupied by the enclosed bridge area. Said amount is currently One Hundred Sixty Two Dollars and 55/100 (\$162.55) per month. Said payments shall be payable monthly with the Base Rent and shall be considered additional rent under this lease.

**1.9 Lessee's Share of Operating Expenses:** 32.00% as defined in paragraph 4.2. For the first year of the term, operating expenses are estimated to be approximately \$.35 per square foot (\$1,122.45).

**1.10 Option to Extend Term:** Lessee shall have an option to extend the lease on the terms set forth in paragraph 37 below.

**2. Premises and Common Areas.**

**2.1 Premises.** The Premises are a portion of a two-building complex, herein sometimes referred to as the "Building" identified in paragraph 1.3 of the Basic Lease Provisions.

Lessor's initials: DM

2

Lessee's Initials: CPA

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and desire to use or occupy any portion of the Common Areas, Lessee shall notify Lessor and Lessor will, in conjunction with the City of Hermosa Beach where appropriate, determine whether or not such use or occupation shall be permitted. Any agreement between Lessor and Lessee with respect to the use or occupancy of Common Areas shall be in writing. Lessee may not make any use of the Common Areas, except for ingress and egress, without the necessary permits and approvals of the City of Hermosa Beach.

46. **Attachments.** Attached hereto are the following documents which constitute a part of this Lease.

**EXHIBIT "A" - Rules and Regulations**

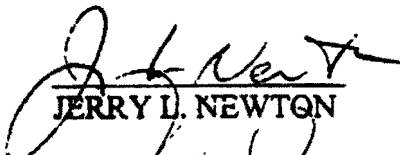
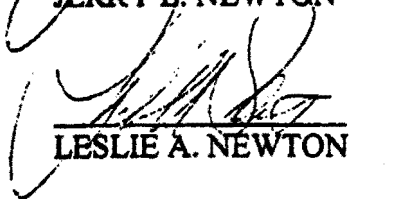
**EXHIBIT "B" - Conditional Use Permit**


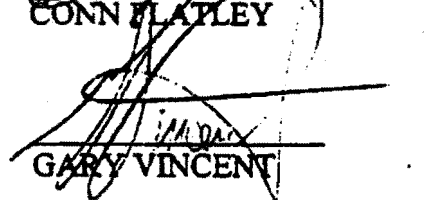
**EXHIBIT "C" - Rental Agreement for Bridge Area**

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN AND BY EXECUTION OF THIS LEASE, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.


LESSOR

LESSEE

  
JERRY L. NEWTON  
  
LESLIE A. NEWTON

  
CONN FLATLEY  
  
GARY VINCENT

FAT FACE FENNER'S FALLOON, LTD.  
A Nevada Corporation

By   
Conn Flatley, President

On February 11, 1995

On February 8, 1995

Address 53 Pine Avenue

Address 53 Pine Avenue

Hermosa Beach, CA 90254

Hermosa Beach, CA 90254

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RESOLUTION NO. 99-6015

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A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERMOSA BEACH, CALIFORNIA, SUSTAINING, IN PART, THE DECISION OF THE PLANNING COMMISSION TO APPROVE A CONDITIONAL USE PERMIT AMENDMENT AND PARKING PLAN TO ALLOW THE EXPANSION OF AN EXISTING RESTAURANT WITH ON-SALE ALCOHOL (ALLOWING THE CHANGE OF USE OF 1150 SQUARE FEET OF OFFICE TO RESTAURANT USE) AND TO ALLOW THE PAYMENT OF FEES IN-LIEU OF PARKING AND SUSTAINING, IN PART, THE APPEAL RELATIVE TO THE ALLOCATION OF PARKING CREDITS FOR OUTDOOR DINING AT 53 PIER AVENUE, LOCATED IN THE SECOND FLOOR OF THE LORETO PLAZA COMMERCIAL BUILDING, LEGALLY DESCRIBED AS LOTS 22, 23, AND 24, BLOCK 13 HERMOSA BEACH TRACT

Section 1. An application was filed by Gary Vincent, owner of the business "Fat Face Fenner's Fishack", seeking approval to expand an existing restaurant with on-sale alcohol. The applicant is proposing to expand 1150 square feet by converting existing office space to restaurant use within the building, requiring an amendment to the existing Conditional Use Permit, and requiring a Parking Plan pursuant to Section 17.44.210 of the Zoning Ordinance to allow the change of use with less than required parking based on a payment of fees in-lieu of required parking (Section 17.44.190).

Section 2. The Planning Commission on May 17, 1999 conducted a duly noticed public hearing to consider the application for amendment of a Conditional Use Permit and Parking Plan, and based on the testimony and evidence, both written and oral, which was presented to and considered by the Planning Commission, approved the requested amendment subject to conditions as contained in P.C. Resolution 99-27.

Section 3. The City Council on July 13, 1999 conducted a duly noticed public hearing to consider the appeal of the Planning Commission decision to approve the subject amendments to

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1 the Conditional Use Permit and Parking Plan, at which testimony and evidence, both written and  
2 oral, was presented to and considered by the Planning Commission.

3 Section 4. Based on evidence received at the public hearing, the City Council makes the  
4 following factual findings:

5  
6 1. On January 13, 1998, the Planning Commission approved the applicant's request for  
7 on-sale alcohol, live entertainment, and extended hours in conjunction with an existing restaurant  
8 use located within the second floor of the Loreto Plaza commercial building (previously  
9 "Casablanca" restaurant).

10  
11 2. The applicant proposes to expand the restaurant by converting 1,150 square feet of  
12 the contiguous building interior (existing office space) utilizing a shared kitchen with no through  
13 pedestrian access.

14  
15 3. The change of use to a more intense use requires additional parking pursuant to  
16 Section 17.44.140(E) of the Zoning Ordinance. The applicant proposes to contribute fees in-lieu  
17 of parking pursuant to Section 17.44.190.

18  
19 4. Given the existing lot size and building coverage it is not feasible to provide additional  
20 off-street parking on site without a complete redevelopment of the site.

21 Section 5. Based on the foregoing factual findings, the City Council makes the following  
22 findings pertaining to the application to amend the Conditional Use Permit and Parking Plan:

23  
24 1. The site is zoned C-2, and is suitable for the proposed use with the proposed  
25 amendment;

26  
27 2. The existing use with the proposed expansion is compatible with surrounding  
28 commercial and residential uses.

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1 3. The imposition of conditions as required by this resolution will mitigate any negative  
2 impacts on nearby residential or commercial properties.

3 4. Calculating the increased parking requirement based on the credit for a previous  
4 restaurant banquet use converted to office/retail within the building, and pursuant 17.44.140 (E)  
5 when the use of an existing building is changed to a more intense use, and applying a portion of  
6 the credit to outdoor dining (2 parking spaces), results in a net additional off-street parking  
7 requirement of five (5) spaces for the proposed expansion. No additional parking credits are  
8 available for the two Loreto Plaza buildings (49 and 53 Pier Avenue) as long as the applicant  
9 operates the restaurant as contemplated in this permit.  
10

11 5. In accordance with the City's outdoor dining regulations for Pier Avenue (Section  
12 12.16.100 of the Municipal Code) and in order to avoid pedestrian/food service conflicts and  
13 resulting safety hazards on the upper walkway, outdoor dining on the bridge must be adjacent to  
14 a restaurant food service area. Thus outdoor dining on the bridge must not occur until and unless  
15 a Certificate of Occupancy is issued for the approved expansion area for its use as a restaurant.  
16

17 6. The City Council, at its meeting of May 25, 1999, continued the parking in-lieu fee  
18 program, and determined that the parking in-lieu fee is \$12,500 per required parking space,  
19 payable in lump sum prior to issuance of Certificate of Occupancy.  
20

21 7. This project is Categorically Exempt pursuant to Section 15303c of the California  
22 Environmental Quality Act.  
23

24 Section 6. Based on the foregoing, the City Council hereby sustains, in part, the Planning  
25 Commission decision to approve the Conditional Use Permit Amendment and Parking Plan, and  
26 sustains, in part, the appeal relative to allocation of parking credits for outdoor dining, subject to  
27

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1 the following Conditions of Approval superseding the Conditions of Approval in P.C.  
2 Resolution 99-27:

3  
4 **CONDITIONS OF THE PARKING PLAN:**

- 5 1. The proposed expansion shall be substantially consistent with approved plans.  
6 Modifications to any of the plans shall be reviewed and may be approved by the  
7 Community Development Director.
- 8 2. In order to compensate for required parking that cannot be provided on site, the  
9 applicant shall contribute fees to the City's parking improvement fund in lieu of the  
10 required five (5) parking spaces, as set forth in Section 17.44.190 of the Zoning  
11 Ordinance, at the amount of \$12,500 per required space as set forth by resolution of  
12 the City Council. The payment of fees in-lieu of parking shall be made prior to  
13 issuance of a Certificate of Occupancy for the approved expanded area of the  
14 restaurant.
- 15 3. The parking credit of four spaces for the building based on the conversion of a former  
16 restaurant banquet room to retail/office use is specifically restricted to the Parking  
17 Plan for the subject restaurant expansion.
- 18 4. Outdoor dining on the bridge over the public right-of-way shall not be permitted, nor  
19 shall parking credits be used for outdoor dining purposes, until, or unless, a  
20 Certificate of Occupancy is issued for the approved restaurant expansion.

21 **CONDITIONS FOR THE OPERATION OF THE RESTAURANT WITH ON-SALE**  
22 **ALCOHOL AND LIVE ENTERTAINMENT:**

- 23  
24 5. The hours for live entertainment within the northerly portion of the restaurant shall  
25 be limited to the hours between 9:00 P.M. to 1:15 A.M. Monday through Friday, and  
26 from 2:00 P.M. to 1:15 A.M. on Saturday, Sundays, and Federal and State Holidays,  
27 Cinco De Mayo, and St. Patrick's day. Live entertainment shall not be permitted in

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1 the expanded restaurant area at the south end of the building which is the subject of  
2 this amendment.

3 6. The establishment shall not adversely effect the welfare of the residents, and/or  
4 commercial establishments nearby.

5 7. The business shall provide adequate staffing, management and supervisory  
6 techniques to prevent loitering, unruliness, and boisterous activities of the patrons  
7 outside the business and in nearby public areas.

8 8. Noise emanating from the property shall be within the limitations prescribed by the  
9 City's noise ordinance and shall not create a nuisance to surrounding residential  
10 neighborhoods, and/or commercial establishments.

11 9. The Police Chief may determine that a continuing police problem exists, and may  
12 authorize the presence of a police approved doorman and/or security personnel to  
13 eliminate the problem, and then shall submit a report to the Planning Commission,  
14 which will automatically initiate a review of this conditional use permit by the  
15 Commission.

16 10. The exterior of all the premises shall be maintained in a neat and clean manner, and  
17 maintained free of graffiti at all times.

18 11. Any significant changes to the interior layout, which would alter the primary  
19 function of the business as a restaurant, shall be subject to review and approval by  
20 the Planning Commission.

21 12. The project and operation of the business shall comply with all applicable  
22 requirements of the Municipal Code.

23 **CONDITIONS RELATING TO LIVE ENTERTAINMENT AND NOISE:**

24 13. If entertainment is to include amplified live entertainment, an acoustical study shall  
25 be reviewed and approved by the Community Development Director and shall be  
26 implemented in the building.

27 14. Management shall be responsible for maintaining music/entertainment volumes at  
28 reasonable levels.

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1 15. During any live entertainment and/or dancing, the exterior doors and windows  
2 shall remain closed. The building shall be equipped with air conditioning to ensure  
3 comfort of patrons during live entertainment, and compliance with this condition.

4 16. All exterior glass windows or doors shall be equipped with double-pane glass or a  
5 comparable substitute with equivalent sound dampening properties to the  
6 satisfaction of the Community Development Director.

7 17. Noise emanating from the property shall be within the limitations prescribed by the  
8 city's noise ordinance and shall not create a nuisance to surrounding residential  
9 neighborhoods, and/or commercial establishments. Noise emanating from the  
10 property shall be monitored to verify compliance with the noise ordinance in  
11 response to any complaints.

12 Section 7. This grant shall not be effective for any purposes until the permittee and the  
13 owners of the property involved have filed a the office of the Planning Division of the Community  
14 Development Department their affidavits stating that they are aware of, and agree to accept, all of  
15 the conditions of this grant.

16 The Conditional Use Permit Amendment and Parking Plan shall be recorded, and proof of  
17 recordation shall be submitted to the Community Development Department.

18 Each of the above conditions is separately enforced, and if one of the conditions of approval  
19 is found to be invalid by a court of law, all the other conditions shall remain valid and enforceable.

20 Permittee shall defend, indemnify and hold harmless the City, it agents, officers, and  
21 employees from any claim, action, or proceeding against the City or its agents, officers, or  
22 employee to attack, set aside, void or annul this permit approval, which action is brought within the  
23 applicable time period of the State Government Code. The City shall promptly notify the permittee  
24 of any claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails  
25 to promptly notify the permittee of any claim, action or proceeding, or if the City fails to cooperate  
26  
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1 fully in the defense, the permittee shall no thereafter be responsible to defend, indemnify, or hold  
2 harmless the City.

3 The permittee shall reimburse the City for any court and attorney's fees which the City may  
4 be required to pay as a result of any claim or action brought against the City because of this grant.  
5 Although the permittee is the real party in interest in an action, the City may, at its sole discretion,  
6 participate at its own expense in the defense of the action, but such participation shall not relieve  
7 the permittee of any obligation under this condition.  
8

9 The subject property shall be developed, maintained and operated in full compliance with  
10 the conditions of this grant and any law, statute, ordinance or other regulation applicable to any  
11 development or activity on the subject property. Failure of the permittee to cease any development  
12 or activity not in full compliance shall be a violation of these conditions.  
13

14 The Planning Commission may review this Conditional Use Permit and Parking Plan and  
15 may amend the subject conditions or impose any new conditions if deemed necessary to mitigate  
16 detrimental effects on the neighborhood resulting from the subject use.  
17  
18

19 **PASSED, APPROVED AND ADOPTED THIS 13TH DAY OF JULY, 1999.**

20  
21   
22 \_\_\_\_\_  
23 **PRESIDENT** of the City Council and **MAYOR** of the City of Hermosa Beach, California

24  
25 **ATTEST:**

26  
27   
28 \_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

26  
27   
28 \_\_\_\_\_  
City Attorney

Exhibit C  
2 of 8  
5-00-015

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
CITY OF HERMOSA BEACH

I, Elaine Doerfling, City Clerk of the City of Hermosa Beach, California, do hereby certify that the foregoing Resolution No. 99-6015 was duly and regularly passed, approved and adopted by the City Council of the City of Hermosa Beach at a Regular Meeting of said Council at the regular place thereof on July 13, 1999.

The vote was as follows:

AYES: Edgerton, Reviczky, Mayor Oakes  
NOES: None  
ABSTAIN: None  
ABSENT: Benz, Bowler

Dated: July 28, 1999

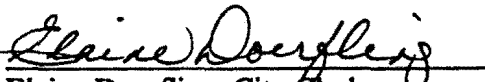
  
Elaine Doerfling, City Clerk

Exhibit C  
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5-00-015