

June 6 2007

**Honorable Chairman and Members of the
Hermosa Beach Planning Commission**

**Regular Meeting of
June 19, 2007**

SUBJECT: CONDITIONAL USE PERMIT 07-07

LOCATION: 727 PACIFIC COAST HIGHWAY

APPLICANT: CHARLES JEWELL
 PEEKAY, INCORPORATED
 901 WEST MAIN, SUITE A
 AUBURN, WA 98001-5280

REQUEST: CONDITIONAL USE PERMIT FOR A RETAIL BUSINESS IN WHICH SOME,
 BUT NO GREATER THAN 20%, OF ITS STOCK-IN-TRADE MATERIALS ARE
 DEFINED AS "X-RATED" AND/OR "ADULT PARAPHERNALIA" IN AN
 EXISTING COMMERCIAL BUILDING

Recommendations:

To approve Conditional Use Permit 07-07 and adopt the attached Resolution.

Background:

- GENERAL PLAN: Commercial Corridor (CC)
- ZONING: Specific Plan Area No. 7 (SPA-7)
- LOT SIZE: 9,272 Square Feet
- TOTAL BUILDING AREA: 4,150 Square Feet
- PARKING REQUIRED: 17 Stalls
- PARKING PROVIDED: 15 Stalls (Existing Non-conforming)
- ENVIRONMENTAL DETERMINATION: Exempt

The subject site is located at the southwest corner of Pacific Coast Highway and 8th Street. The site has fifteen (15) designated parking stalls including one handicap stall located directly behind (west) the building with egress from 8th Street (Attachment 4). The primary entry is located on the east side along Pacific Coast Highway, with an additional entry from the parking area. Currently the subject site is a home furnishing retail business (Mortise and Tenon).

The applicant is proposing 3,873 square feet of retail sales floor area within the existing building of which 748 square feet (19.31%) is restricted to patrons eighteen (18) or older. Zoning Ordinance Section 17.40.060 states that in lieu of the standard criteria used for evaluating a Conditional Use Permit, the Planning Commission shall approve an application for a Conditional Use Permit for any retail business in which some, but not greater than twenty percent (20%), of its stock-in-trade material meets the "X-rated"¹ and/or "adult paraphernalia"² definitions, where evidence presented substantiates all of the following findings:

- A. The public interior areas shall be fully and brightly lighted and arranged so that every portion of the premises is visible immediately upon entrance and so that the entire body of any patron is also visible immediately upon entrance to the premises.
- B. All stock-in-trade materials, either for sale or rental, which have exterior covers that display specified anatomical areas or specified sexual activities, shall be adequately covered with an opaque material so as not to expose any display of specified anatomical areas or specified sexual activities to the general public.
- C. The area designated for adult videos shall be partitioned and screened from view, accessible only to persons eighteen (18) years of age and over. A sign stating "Adults Only-No Minors Permitted" or equivalent wording shall be conspicuously located at the entrance to the designated adult area.
- D. The store shall be managed in a manner that anything illegal for a minor to view shall not be displayed from an area where a minor could view such objects.
- E. Advertisements, displays or other promotional exhibits of any materials depicting specified anatomical areas or specified sexual activities shall be prohibited.
- F. The area designated for adult paraphernalia shall be partitioned and screened from view, accessible only to persons eighteen (18) years of age and over. A sign stating "Adults Only-No Minors Permitted" or equivalent wording shall be conspicuously located at the entrance to the designated adult area.

Analysis:

The applicant is proposing a 3,125-square foot unrestricted general retail sales area with a cashier and wrapping station located in the center of the retail floor area (Floor Plan, Pg. 4). Unrestricted retail items (i.e. lingerie) will be displayed throughout the store on numerous étagère and throne slot wall fixtures. The 748-square foot (19.3% of the total retail floor area) is located in the northwest corner of the building and screened by a free-standing partition wall (Floor Plan, Pgs. 4, 8). Items will be display on a series of free-standing racks and tables. Entry into the restricted retail area is located directly north of the cashier station. There is an unobstructed view between the restricted retail sales entrance and the cashier station. Thus, Patron entry into the restricted retail area can be easily monitored from the cashier station. The applicant is also proposing two small dressing rooms adjacent to the existing office area. No other interior or exterior improvements are being proposed at this time.

The required parking for the 4,150-square foot building is seventeen (17) stalls including one handicap stall. Currently there are only fifteen (15) off-street parking stalls provided. Despite the parking non-conformity, the existing home furnishing retail sales business is required to have the same parking ratio (one stall for every 250 square feet of gross floor area) as the subject retail business. Therefore, the proposal will not intensify parking demand.

The existing parking area has numerous cracks and striping is faded (Attachment 4). Should the Planning Commission approve the Conditional Use Permit, Staff recommends adding a Condition of Approval requiring the applicant to surface seal, slurry, and re-stripe the existing parking area prior to issuance of the Certificate of Occupancy.

Neither the Fire or the Public Works Departments, in addition to the Building and Safety Division had concerns in regard to the proposed project. Furthermore, the Chief of Police was reassured that the applicant can properly monitor access into the restricted retail area due to the close proximity and unobstructed from the cashier station.

Conclusion:

The Commission's authority is limited to determining if the applicant satisfactorily addresses all the requirements of Zoning Ordinance Section 17.40.060. The plans show that the restricted retail area is adequately screened from view and does not exceed the 20% maximum of adult paraphernalia sales permitted. Enforcement of the operational requirements will be monitored by the standard code enforcement procedures over the life of the business as opposed to architectural and/or structural modifications typically addressed by Commission. Therefore, Staff recommends approval of the proposed Conditional Use Permit request.



Richard Denniston
Associate Planner

CONCUR:



Ken Robertson, Acting Director
Community Development Department

Attachments

1. Resolution
2. Location and Radius Map
3. Poster Verification
4. Photo Survey

¹ "X-rated" refers to any materials or services which include the depiction or description of specified sexual activities.

² "Adult paraphernalia" means any instruments or devices that are designed for use in connection with specified sexual activities, including but not limited to the following:

1. Any lotions, ointments, oils or similar preparations primarily intended to induce or enhance sexual arousal through external application;
2. Any product for internal consumption that is primarily intended to induce or enhance sexual arousal;
3. Any apparatus depicting the human body and/or specified anatomical areas intended to induce or enhance sexual arousal; and
4. Any apparel primarily intended to accentuate specified anatomical areas in order to induce or enhance sexual arousal.

P.C. RESOLUTION NO. 07-

1
2 A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF
3 HERMOSA BEACH, CALIFORNIA, APPROVING A CONDITIONAL USE
4 PERMIT FOR A RETAIL BUSINESS IN WHICH SOME, BUT NO GREATER
5 THAN 20%, OF ITS STOCK-IN-TRADE MATERIALS ARE DEFINED AS "X-
6 RATED" AND/OR "ADULT PARAPHERNALIA" IN AN EXISTING
7 COMMERCIAL BUILDING AT 737 PACIFIC COAST HIGHWAY LEGALLY
8 DESCRIBED AS PORTION OF LOT 1 AND ALL OF LOTS 2, 3 AND 4, BLOCK A,
9 REDONDO HERMOSA TRACT

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

12 Section 1. An application was filed by Peekay, Incorporated, for a Conditional Use Permit
13 for the sale of less than 20% of x-rated and/or adult paraphernalia in conjunction with a retail
14 business at 737 Pacific Coast Highway.

15 Section 2. The Planning Commission conducted a duly noticed public hearing to consider
16 the application for the Conditional Use Permit on June 19, 2007.

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

- 19
- 20 1. The subject site is located at the southwest corner of Pacific Coast Highway and 8th Street.
21 The site has fifteen (15) designated parking stalls including one handicap stall located
22 directly behind (west) the building with egress from 8th Street. The primary entry is located
23 on the east side along Pacific Coast Highway, with an additional entry from the parking area.
 - 24 2. The applicant is proposing 3,873 square feet of retail sales floor area of which 748 square
25 feet (19.31%) is restricted to patrons eighteen (18) or older.

26 Section 4. Based on the factual findings, the Planning Commission makes the following
27 findings pertaining to the application for a retail business in which some, but no greater than 20%,
28 of its stock-in-trade materials are defined as "x-rated" and/or "adult paraphernalia" in an existing
29 commercial building:

1. The applicant has provided sufficient evidence to demonstrate compliance with Section
17.40.060 of the Zoning Ordinance.
 - a. The restricted retail area is adequately screened from view and will be less than 20%
of the floor area for retail sales, which demonstrates that not more than 20% of its
stock-in-trade material will be x-rated and/or adult paraphernalia.
 - b. There is an unobstructed view between the restricted retail sales entrance and the
cashier station. Thus, Patron entry into the restricted retail area can be easily
monitored from the cashier station and access will only be granted to persons
eighteen years of age or older.

1 Section 5. Based on the foregoing, the Planning Commission hereby approves the
2 Conditional Use Permit for a retail business in which some, but no greater than 20%, of its stock-
3 in-trade materials are defined as "x-rated" and/or "adult paraphernalia" in an existing commercial
4 building subject to the following Conditions of Approval:

- 5 1. Any significant changes to the interior layout, which alter the primary retail function
6 of the business with some, but not greater than 20%, x-rated and/or adult
7 paraphernalia stock-in-trade, (i.e. modifying the proportion of floor area dedicated to
8 sales of x-rated and/or adult paraphernalia materials) shall be subject to review and
9 approval by the Planning Commission and require amendment to this Conditional Use
10 Permit.
- 11 2. The project and operation of the business shall comply with all applicable
12 requirements of the Municipal Code.
- 13 3. The applicant shall slurry, seal, and re-stripe the parking area prior to the issuance of
14 the Certificate of Occupancy.
- 15 4. The public interior areas shall be fully and brightly lighted and arranged so that every
16 portion of the premises is visible immediately upon entrance and so that the entire
17 body of any patron is also visible immediately upon entrance to the premises.
- 18 5. All stock-in-trade materials, either for sale or rental, which have exterior covers that
19 display specified anatomical areas or specified sexual activities, shall be adequately
20 covered with an opaque material so as not to expose any display of specified
21 anatomical areas or specified sexual activities to the general public.
- 22 6. The area designated for adult videos shall be partitioned and screened from view,
23 accessible only to persons eighteen (18) years of age and over. A sign stating "Adults
24 Only-No Minors Permitted" or equivalent wording shall be conspicuously located at
25 the entrance to the designated adult area.
- 26 7. The store shall be managed in a manner that anything illegal for a minor to view shall
27 not be displayed from an area where a minor could view such objects.
- 28 8. Advertisements, displays or other promotional exhibits of any materials depicting
29 specified anatomical areas or specified sexual activities shall be prohibited.
9. The area designated for adult paraphernalia shall be partitioned and screened from
view, accessible only to persons eighteen (18) years of age and over. A sign stating
"Adults Only-No Minors Permitted" or equivalent wording shall be conspicuously
located at the entrance to the designated adult area.

Section 6. This grant shall not be effective for any purposes until the permittee and the
owners of the property involved have filed at the office of the Planning Division of the Community
Development Department their affidavits stating that they are aware of, and agree to accept, all of
the conditions of this grant.

1 The Conditional Use Permit shall be recorded, and proof of recordation shall be submitted to the
2 Community Development Department prior to the issuance of a building permit.

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

5 Permittee shall defend, indemnify and hold harmless the City, it agents, officers, and employees
6 from any claim, action, or proceeding against the City or its agents, officers, or employee to attack,
7 set aside, void or annul this permit approval, which action is brought within the applicable time
8 period of the State Government Code. The City shall promptly notify the permittee of any claim,
9 action, or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly
10 notify the permittee of any claim, action or proceeding, or if the City fails to cooperate fully in the
11 defense, the permittee shall no thereafter be responsible to defend, indemnify, or hold harmless the
12 City.

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

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

22 The Planning Commission may review this Conditional Use Permit and may amend the subject
23 conditions or impose any new conditions if deemed necessary to mitigate detrimental effects on the
24 neighborhood resulting from the subject use.

25 VOTE: AYES:
26 NOES:
27 ABSTAIN:
28 ABSENT:

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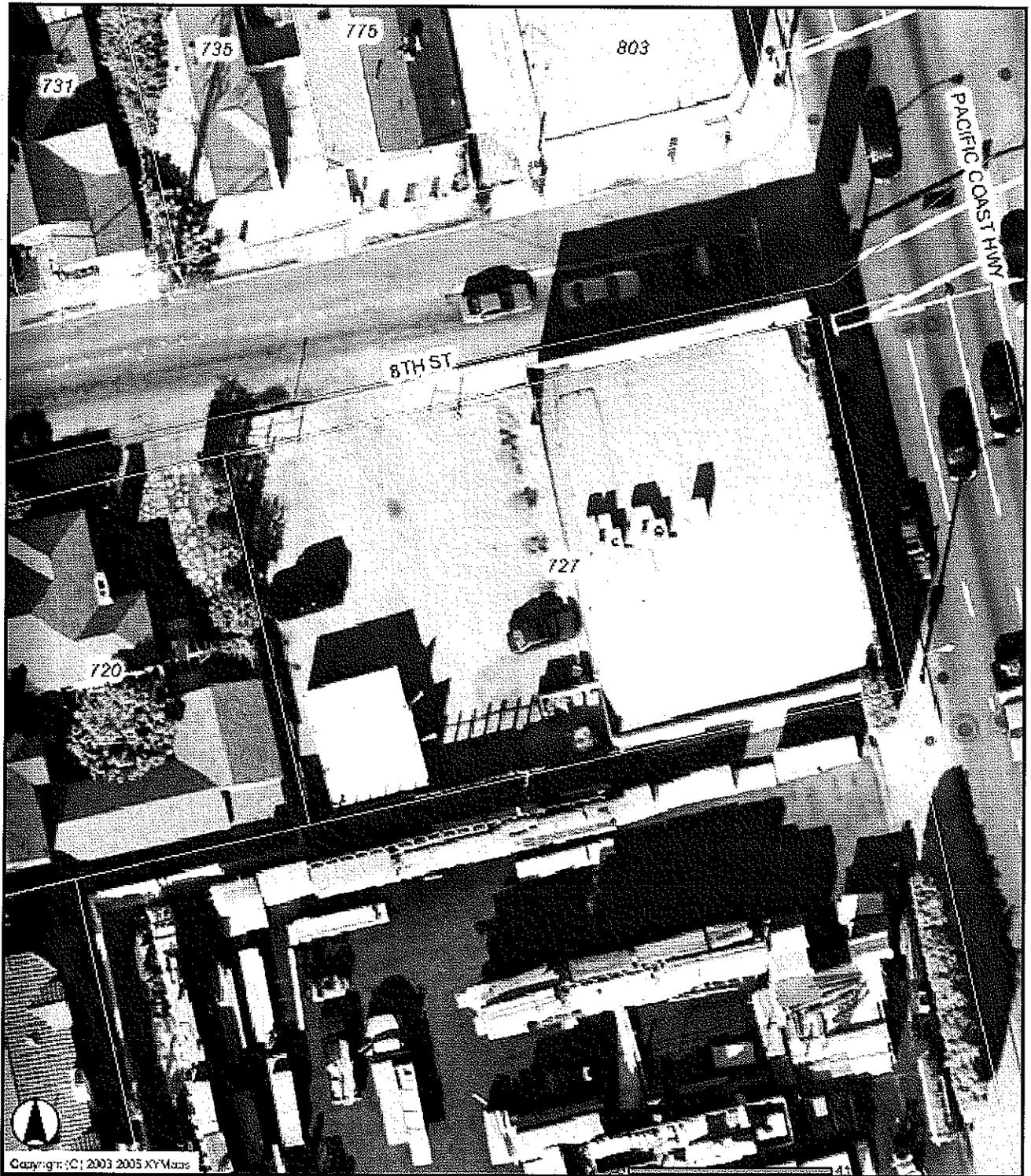
I hereby certify the foregoing Resolution P.C. 07- is a true and complete record of the action taken
by the Planning Commission of the City of Hermosa Beach, California, at their regular meeting of
June 19, 2007.

Kent Allen, Chairman

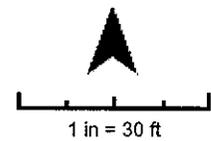
Ken Robertson, Secretary

June 19, 2007

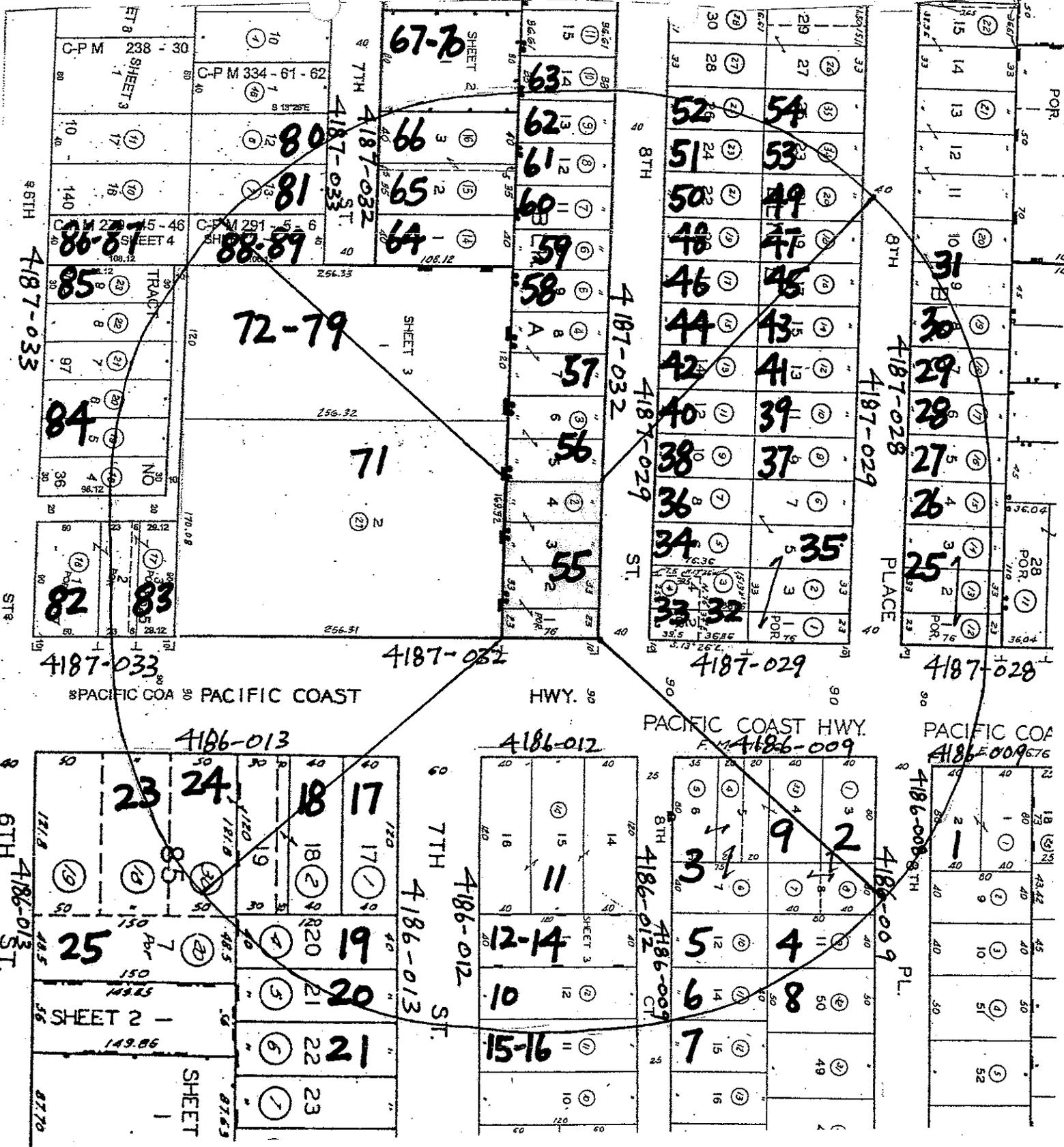
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727 Pacific Coast Highway
 City of Hermosa Beach



Date Printed: 6/11/2007



ADDRESS: 727 PACIFIC COAST HWY.

SCALE 1" = 100'

8

727 PACIFIC COAST HIGHWAY POSTER VERIFICATION

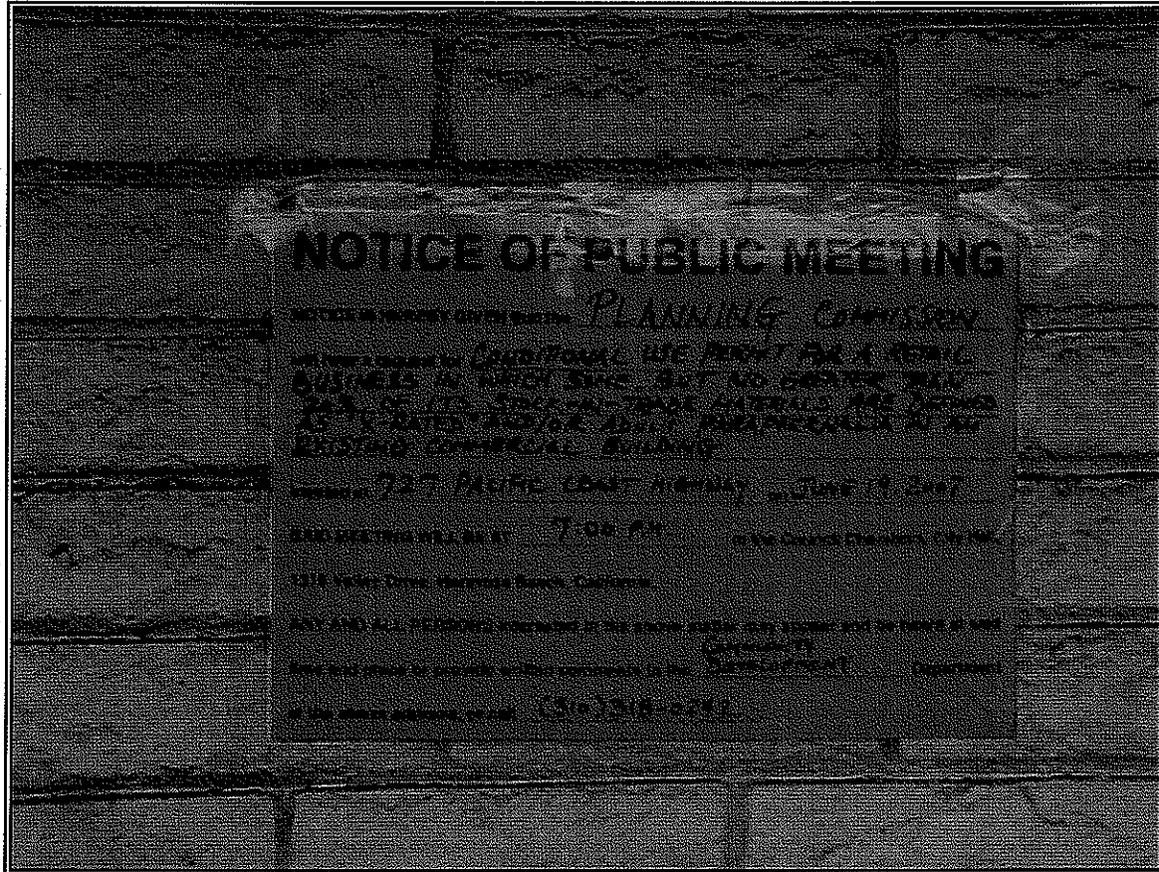
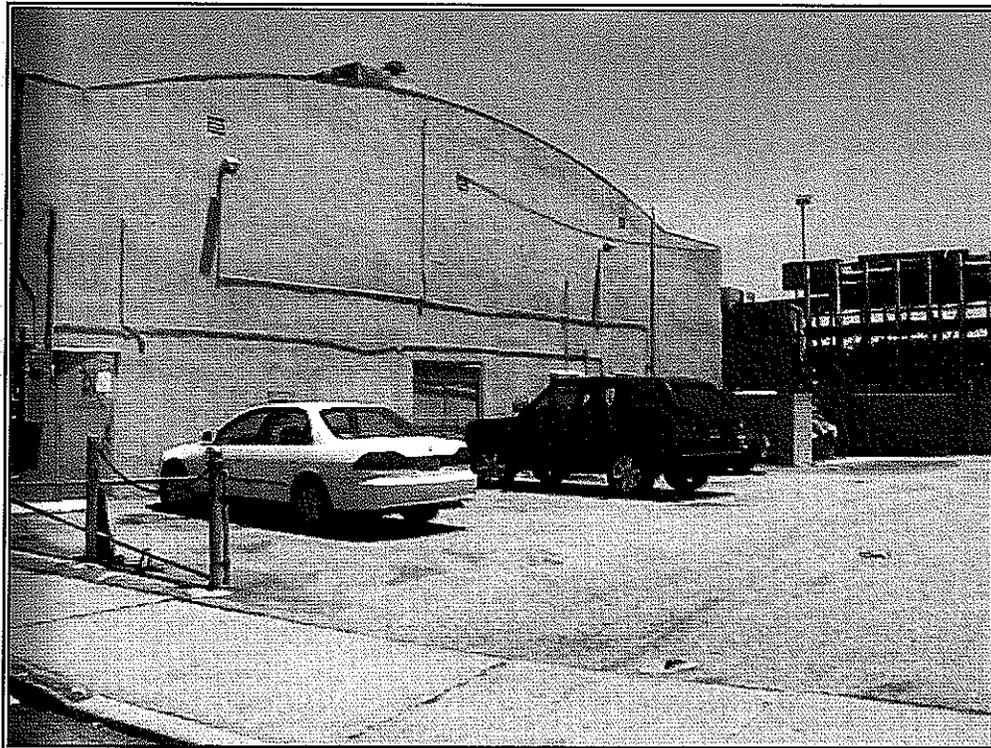


PHOTO SURVEY
727 PACIFIC COAST HIGHWAY



Ron Arias
Joan Arias

720 8th Street
Hermosa Beach, CA
90254-3950

Phone: 310-798-8797
Ron's email: ronarias@msn.com
Joan's email: Joana@us.ibm.com

RECEIVED

JUN 13 2007

COMMUNITY DEV. DEPT.

June 13, 2007
Community Development Department, Planning Division
City Hall
1315 Valley Drive
Hermosa Beach, CA 90254

Subject: Important Public Notice - 727 Pacific Coast Highway

To whom it may concern:

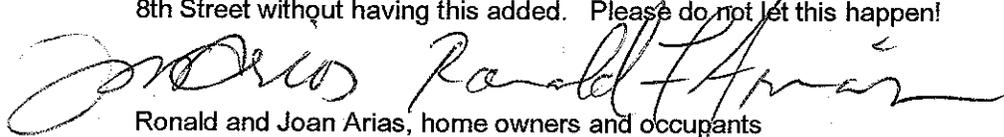
We are writing to express our concern over the development of 8th Street as a pornography site in Hermosa Beach. Our property backs up on the parking lot to the current site of Mortise & Tenon (729 - not 727 PCH). We have two TWO concerns:

1. The expansion of the Tender Box which seems to be proceeding apace and which seems to be adding another whole building to its current facility - with additional viewing booths. That means the entire northwest corner of PCH will be a shop that sells pornographic ("adult") films and paraphernalia. We have coexisted with the smaller shop but now it will occupy the entire corner with the related increase in traffic and parking problems.
2. AND a new retail business on the southwest corner that will include up to 20% pornographic materials.

So both west corners of 8th Street will now be occupied by businesses related to pornography? We are very nervous about what might begin to occur in that parking lot - the kind of people who frequent those shops are NOT the people we want in my back yard.

Children pass the corner of 8th Street and PCH in the morning and in the afternoon on their way to and from school; we even have a crossing guard posted there to help them. This is not what we want them to see on their way to school.

We don't want the image of Hermosa Beach to be one of "the porn capital" of the South Bay. We don't want 8th Street frequented day and night by people seeking pornography. We have enough troubles on 8th Street without having this added. Please do not let this happen!



Ronald and Joan Arias, home owners and occupants
720 8th Street
Hermosa Beach, California 90254-3950
310-798-8797

Mike Miller
830 8th Pl
Hermosa Beach, CA 90254

RECEIVED

JUN 14 2007

COMMUNITY DEV. DEPT.

June 13, 2007

Ken Robertson, Acting Director
Community Development Department
City of Hermosa Beach
1315 Valley Drive
Hermosa Beach, CA 90254

Re: 727 Pacific Coast Highway

Dear Ken:

I am a resident of Hermosa Beach and Vice President of the Hermosa Beach Kiwanis Club. While the Tender Box has been a quiet neighbor in the past, I am adamantly opposed to any additional "x-rated" materials being sold in the area. Hermosa Beach is a family oriented community and allowing more "adult paraphernalia" to be sold in businesses directly adjacent to residential properties would be a big mistake from a community planning perspective. The Pacific Coast Highway corridor in our city is slowly improving and allowing more "x-rated" businesses would be a step backward.

Sincerely,



Mike Miller
Hermosa Beach Resident

June 14, 2007

Community Development Department, Planning Division
City Hall
1315 Valley Drive
Hermosa Beach, CA 90254

RECEIVED

JUN 14 2007

COMMUNITY DEV. DEPT.

Dear Planning Commissioners:

We are personally opposed to the Condom Revolution development in our neighborhood. We are concerned about the safety of the children who utilize 8th Street to walk to and from school. The children must pass by the parking lot of this establishment and we are enabling potential predators' access to our children. We also believe the establishment will add to traffic congestion, bring an undesirable element to our family oriented neighborhood, and detract from our property values.

A few suggestions for Conditions that we may put on their permit include:

1. Reduce the hours of operation to daylight hours, to mitigate concerns of undesirable elements at night.
2. Required closing on Sundays out of respect of church going residents.
3. Provide security guards on site and in the parking lot during business hours to mitigate concerns of undesirable elements during the day.
4. Extend no parking hours on 8th street for a longer rush hour.
5. Limit their display signage to non-electrified, no more than 6" high X 12" long.
6. Complete background checks on all employees and customers (we don't want any sex offenders in the neighborhood)

Please let us know if there is anything additionally that we can do to protect our community. Thank you for your time and consideration.

Sincerely



Michael & Kim Bailey

654 7th Street

Hermosa Beach, CA 90254

(310) 372-3414