

## FINAL LUPC STAFF REPORT, July 31, 2008

**Project Address:** 1697 Pacific Avenue and 41 East 17<sup>th</sup> Avenue

**Case Number:** APCW-2008-317- SPE ZV CUB SPP  
ENV 2008-318-EAF

**Applicant:** Best Western Marina Pacific Hotel & Suites LLC; Erwin and Caren Sokol, Mark Sokol; email: info@MPHotel.com, phone: (310) 452-1111;

**Applicant's Representative:** Clare Bronowski, Esq. and Paul Bennett, Esq.; Christensen, Glaser, Fink, Jacobs, Weil & Shapiro, LLP; emails: Cbronowski@ChrisGlase.com, Pbenett@ChrisGlase.com; phone: (310) 282-6254

**Nature of Application:** Applicant is requesting a Specific Plan Exception, a Zone Variance, a Conditional Use Permit, Project Permit Compliance review, and a Coastal Development Permit, as follows:

1. A Specific Plan Exception from Section 13.D of the VCZSP to allow a 2,689 square foot food and beverage service area on the roof-top deck of the hotel with zero (0) additional parking spaces in lieu of the required twenty seven (27) parking spaces, said roof deck area to utilize the hotel's existing 92 striped parking spaces and 16 valet-assisted aisle spaces, plus an additional 32 valet-assisted aisle spaces, with free valet parking attendant(s) 24/7.
2. A Zone Variance from the requirements of LAMC Section 12.14.A.1.(a)10 and 12.14.A.1.(b)(3) to allow the use of an existing roof-top deck and portions of existing patio dining areas in the hotel's front yard to serve full line alcoholic beverages and food.
3. Pursuant to Los Angeles Municipal Code section 12.24.W.1 , a Conditional Use Permit:
  - a. to allow a full line of alcoholic beverages to be served on a 2,689 square foot roof-top deck food and beverage service area with a capacity of 98 persons;
  - b. to expand the service of alcoholic beverages from beer and wine to a full line of alcoholic beverages in an existing meeting room and an existing ground floor indoor food and beverage service area and two ground floor outdoor patios;
  - c. to allow a full line of alcoholic beverages to be served via room service.

The Applicant is requesting hours of operation as follows:

Roof-top food and beverage service area:

Winter Hours (October-April):

7 A.M. to 11:30 A.M. Sunday through Thursday

7 A.M. to 12:30 A.M. Friday and Saturday

Summer Hours (May-September):

7 A.M. to 12 midnight Sunday through Thursday

7 A.M. to 1:00 A.M. Friday and Saturday

Ground floor indoor food and beverage service area and 2 outdoor patio areas:

6 A.M. to 1 A.M. Sunday through Thursday

6 A.M. to 1:30 A.M. Friday and Saturday

Meeting room:

6 A.M. to 1 A.M. Sunday through Thursday (intermittent)

6 A.M. to 1:30 A.M. Friday and Saturday (intermittent)

Room service and in-room Mini Bars:

24 hours/day or as permitted by state license

The Applicant proposes live entertainment with non-amplified sound, with no piano, and after 8:00 P.M. limited to one performer with one instrument, and low-volume background music with speakers positioned to result in no sound transmission to adjacent residences, and no television or video monitors and no paging system.

The Applicant proposes that the kitchen shall remain open and food shall be served at all times that alcohol is served, and that alcohol may be served without a food order.

4. Pursuant to the Venice Coastal Zone Specific Plan section 8. B. and LAMC section 11.5.7, Project Permit Compliance review for the above.

5. Coastal Development Permit for the above.

**Size of parcel:** 28,052.6 square feet, as per ZIMAS; 71' x 315', from Pacific Ave. to Speedway and from Windward Court to 17<sup>th</sup> Avenue, an entire block.

**Size of project:** Existing 122 room hotel, 66,058 square feet total floor area, 5 stories tall, 63 ½ feet tall.

In 2007, an addition and renovation was completed that added a fifth story, 30 new hotel rooms, and no additional parking spaces.

**Zoning:** C2-1-CA

**General Plan Land Use:** Community Commercial

**Venice Subarea:** North Venice, VCZSP Section 10.F.

**Permit Application Date:** As per Applicant, final papers filed on May 22, 2008.

(Master Land Use Permit Application filed on February 2, 2008)

**West L.A. Area Planning Commission Hearing Date:** A hearing is set before a Zoning Administrator on August 4, 2008. No WLAAPC public hearing date has been set.

**ISSUES:**

**Parking:**

The VCZSP Parking Requirement Table at Section 13.D. of the VCZSP states that a

restaurant shall provide parking spaces at the ratio of “One space for each 50 square feet of Service Floor (including outdoor service areas).” However, the Parking Requirement Table separately lists “Hotel” use under “Residential Uses,” and states that the required number of parking spaces is “One space for each 100 square feet of floor area used for consumption of food or beverages.”

The Planning Department has indicated that it will apply this latter requirement of one space per 100 square feet. The Coastal Commission is expected to apply the parking requirement of one space for each 50 square feet of Service Floor, the same requirement used in the VCZSP for restaurants not in a hotel.

The Applicant states that the Service Floor area of the roof-top deck is 2,689 square feet, such that the City will require 27 new parking space. The Coastal Commission is expected to require 54 new parking spaces.

The Applicant has represented that an additional 32 parking spaces can be created in the aisles of the existing parking garage. The Applicant acknowledges that the City will not allow these to be counted as parking spaces, and the Applicant therefore seeks a waiver of all additional parking spaces required for the addition of a food and beverage service area on the roof-top deck of the hotel. However the Coastal Commission did allow additional valet parking spaces to be “created” in the aisles of the existing parking garage when it approved the 5<sup>th</sup> story addition of 22 rooms in 2002.

Three of these aisle parking spaces approved by the Coastal Commission are located in the staging area for valet parking, in the front driveway at the lobby, and this area should be left open for circulation and should not be designated for parking spaces.

The Applicant contends that hotel guests have a historically low usage of existing parking; with many European tourists, and the community generally agrees with this assessment. The Applicant contends that the existing parking is sufficient to accommodate the expanded ground-floor and community room use and the rooftop deck food and beverage service area. The Applicant has provided a parking study which supports this assessment. However, the parking study was not conducted during peak summer parking demand.

The community is concerned that patrons of the proposed rooftop deck restaurant will park on adjacent streets, where there is already a severe shortage of parking. The Applicant has proposed 24/7 validated free valet parking.

The project is located in the Beach Impact Zone as defined in Section 5.D. of the VCZSP, and the Beach Impact Zone parking requirement is “One parking space for each 640 square feet of floor area of the Ground Floor,” as that term is defined in Section 5.M. of the VCZSP. As per the Applicant, the Ground Floor square footage is 1,906.8 square feet, which would require 3 additional BIZ parking spaces. The Applicant states that the BIZ parking requirement does not apply to this application.

### **Sound/Noise/Hours:**

Due to the noise created by patrons leaving the restaurant/bar located in the St. Mark’s building on Windward Avenue, the owners of the Marina Pacific Hotel and Suites were

instrumental in a City process which changed the closing time to 11:00. The Applicant strongly opposed a later closing time for a subsequent tenant in that space, Danny's Deli, and that closing time was upheld. Danny's Deli is an enclosed building, whereas the proposed rooftop restaurant is entirely outdoors and unenclosed on the top of the 6<sup>th</sup> floor of the building, immediately adjacent to residences. At the least, the Applicant should be held to the same standards it sought to impose on others.

The adjacent residents point out that set-up and clean-up will take place before and after the hours of operation, which could also disturb the adjacent residents.

The Applicant claims that they would never allow the rooftop restaurant to become so loud as to disturb their hotel guests. However, the Applicant originally sought a capacity of 250 persons for the rooftop restaurant, and it is reasonable to conclude that substantial soundproofing was installed as part of their recent addition and renovation, so that noise would not impact guest rooms.

The Applicant is applying for Venice Coastal Development Project Permit Compliance review. The criteria for this review is set forth in Section 8.A. of the VCZSP:

**C. FINDINGS.** In granting a Project Permit Compliance Review in the Venice Coastal Zone, the Approving Authority shall make each of the findings in Section 11.5.7 and the following findings:

1. That the Venice Coastal Development Project is compatible in scale and character with the existing neighborhood, and that the Venice Coastal Development Project would not be materially detrimental to adjoining lots or the immediate neighborhood;
2. That the Venice Coastal Development Project is in conformity with the certified Venice Local Coastal Program;
3. That the applicant has guaranteed to keep the rent levels of any Replacement Affordable Unit at an affordable level for the life of the proposed Venice Coastal Development Project and to register the Replacement Affordable Units with the Los Angeles Department of Housing;
4. That the Venice Coastal Development Project is consistent with the special requirements for low and moderate income housing units in the Venice Coastal Zone as mandated by California Government Code Section 65590 (Mello Act).

A 47-unit apartment building lies directly below, and on the same street, as the proposed rooftop restaurant, and a half-block away is a residential street with single-family homes and apartments. While the adjacent residents and the community question whether a 6<sup>th</sup> floor rooftop restaurant is compatible with the residential property in such close proximity, and question whether the noise and traffic generated by the rooftop restaurant will disturb them, a willingness exists to allow the rooftop restaurant on a trial basis, or with limited hours, and with expanded hours if there is no unreasonable disturbance.

In the early morning, and after sunset, the beachfront area is relatively quiet. Vendors on Ocean Front Walk are required to close shortly after sunset. The adjacent residents and the community wish to preserve this quiet time, and do not wish to be disturbed by a 6<sup>th</sup> floor rooftop restaurant in the early morning or much after sunset, except on weekends.

**Height:**

VCZSP section 10. F.3.a. provides for a maximum of 30' for Flat Roof, and 35' for a Varied Roofline

The Elevations that are part of the architectural plans set forth the following heights (keep in mind that **street level is 12.84'** so this number would need to be deducted to get an actual height):

elevator: **88.86'**

stairs: 82.15'

mechanical parapet: 80.86'

allowable occupied: 76.34'

clerestory: 76.29'

parapet: 76.36'

**roof deck: 72.860**

roof: 71.65'

floor level, 6<sup>th</sup> level: 60.86'

floor level, 5<sup>th</sup> level: 46.8'

floor level, 4<sup>th</sup> level: 37.02'

floor level, 3<sup>rd</sup> level: 27.94'

floor level, lobby: 16.12"

street level: 12.84'

A neighbor unsuccessfully appealed the increased height to the Coastal Commission, and then filed an unsuccessful lawsuit against the City concerning the height. The community is opposed to awnings, enclosures, covers, railings, wind screens, heat lamps, plants, or umbrellas which cause increased height or massing.

**Other Issues:**

Netting along edge of roof-top deck to catch items dropped or thrown over sides

Security

Loading area

**THE LUPC, AT ITS MEETING ON JULY 29, 2008, RECOMMENDED THAT THE APPLICATION BE DENIED.**

Below are the draft condition of approval prepared in the event that the application is conditionally approved.

## Draft Conditions of Approval

The residents adjacent to the hotel, and the Venice community, are uncertain as to how much noise will be generated by 98 persons dining and drinking alcoholic beverages on the 6<sup>th</sup> floor rooftop deck. Many factors affect sound transmission in the direction of adjacent residences, including temperature, humidity, and ambient noise. The applicant's Acoustical Engineer has conducted a study which concludes that "the project's noise will not impact the surrounding land use." Section 5 of the Acoustical Analysis dated April 15, 2008, states:

### 5.0 IMPACT ANALYSIS

The noise level contours are shown on Exhibit 7. The project's noise levels will range from an average 40 dBA to an average 45 dBA. The contours show that the project's noise levels will not exceed the allowed commercial or residential noise limits in the day or night periods, nor will they exceed the existing ambient noise levels. Thus, *the project's noise will not impact the surrounding land uses.* (emphasis added.)

The residents adjacent to the hotel, and the Venice community, do not believe that this is true, but are willing to support a rooftop restaurant on a trial basis to determine the accuracy of the Acoustical Engineer's representation that the noise will not impact the adjacent residents, and to determine the validity of the Applicant's position that sufficient parking can be created by reconfiguring the existing parking garage.

The adjacent residents and the Venice community are concerned that existing City procedures and State ABC procedures do not provide sufficient flexibility and speed to protect them in the event that the project's noise, parking, or other issues, have a negative impact on the neighbors or the community. One objective of these conditions of approval includes creating a review process which will provide swift and responsive procedures to either resolve problems as they arise, or terminate the use of the rooftop as a food and beverage service area. A periodic review with established hearing dates is not considered sufficient because the popularity of the rooftop deck food and beverage service area is expected to increase over time, and particularly over the course of one or two summer seasons. One annual review would not provide sufficient opportunity to address problems, and even quarterly periodic review would require the adjacent residents to endure problems for up to three months, which they consider too long.

If a review process cannot be created to quickly address problems as they arise, the community does not wish to have a 6<sup>th</sup> floor rooftop restaurant which is open early in the morning or late in the evening.

A proposed review process is described below.

#### **1. Noise:**

- a. The noise emanating from the hotel shall have no impact whatsoever on the adjacent residents. The sound as measured from the boundary of any residential property shall have a sound pressure level less than or equal to 40 dB(A).
- b. At the written request of any occupant of adjacent residential property, the hotel shall cause equipment to be promptly installed by an independent Acoustical Engineer to measure and record

sound pressure levels at or near the boundary of any residential property or occupied residential building, and on the rooftop deck food and beverage service area, and the hotel shall bear the expense of such study for a period of at least 30 days.

c. The hours of operation of the rooftop restaurant shall be two-tiered, with one set of “Regular Hours” during times when adjacent neighbors would expect to be disturbed by noise, and one set of hours during times when adjacent neighbors would expect relative quiet (“Undisturbed Hours”). During the Undisturbed Hours, if the hotel receives a sound-related complaint from an identified adjacent residential neighbor with a verifiable address and telephone number, the hotel shall immediately cease accepting new orders for food and beverages, and shall not resume taking such orders until the next Regular Hours. In the event of three such complaints in the course of one weekend (beginning on Friday), the hours of operation shall not include the “Undisturbed Hours” the following weekend (Friday through Sunday). The hours are as follows:

Roof-top deck food and beverage service area:

Regular Hours (when adjacent neighbors would expect to be disturbed by noise):

Every Day:

Open: 8:30 A.M.

Close: One hour after Sunset

Additional “Undisturbed Hours” (when adjacent neighbors would expect relative quiet):

Friday:

Close: Two hours after Sunset

Saturday:

Open: 7:00 A.M. through 8:30 A.M.

Close: Three hours after Sunset

Sunday:

Open: 7:00 A.M. through 8:30 A.M.

“Sunset” is defined as the time of sunset found on the chart showing the sunset for a one-year period, prepared by the Astronomical Applications Department of the U.S. Naval Observatory: [www.aa.usno.navy.mil/data/docs/RS\\_OneYear.php](http://www.aa.usno.navy.mil/data/docs/RS_OneYear.php)

d. No amplified live entertainment shall be permitted at any time. Non-amplified entertainment is permitted, but is limited to one performer with one instrument during the Regular Hours. No piano or drums are permitted.

e. Signs shall be permanently installed in each seating area saying “Please be considerate of the noise level for our neighbors” or similar language.

f. Compliance with these hours and these conditions does not preclude a review resulting in modification or termination.

g. Applicant’s proposed conditions, numbers 3, 5, 6, 7, 8, 9,10, 11.b., and 11.c., are accepted.

## **2. Neighbor or Community Initiated Review and Periodic Review**

- a. Any non-anonymous person or entity may initiate a review at any time by written request directed to the West Los Angeles Area Planning Commission, Att: James Williams. The review shall consist of a public hearing before the WLAAPC within 45 days of the date of receipt of the written request. The request need not be based upon a violation of the then-existing hours or conditions of approval. Rather, all aspects of the approvals, including but not limited to hours, noise, and parking issues, may be raised in the written request for review, and may considered and addressed by the WLAAPC.
- b. The WLAAPC shall have the authority to order the modification and/or revocation of all permits relating to serving of food and alcoholic beverages, and the revocation of the zone variance and/or the conditional use permit to the extent they allow service of food and alcoholic beverages.
- c. A periodic review shall take place one year after the date of issuance of the certificate of occupancy or similar approval for the rooftop restaurant, and a further periodic review shall take place after two years from that date.

## **3. Parking:**

- a. Validated free valet parking 24/7.
- b. No stacking/waiting/idling of cars in any public right of way while awaiting valet service.
- c. A public bike check shall be created and maintained at the hotel's Speedway garage entrance, cost is \$2.50 per day, open same days and hours as rooftop restaurant, open to public, widely publicized to become a City-wide beach access resource. Public bike check is in lieu of bicycle parking and showers as required by LAMC 12.21A
- d. The Applicant shall pay an in-lieu fee for all parking spaces not provided. The number of required parking spaces and the amount of the in-lieu fee shall be determined by the WLAAPC and/or the California Coastal Commission. The payment of the in-lieu fee shall be suspended in part, in an amount determined by the WLAAPC and/or the California Coastal Commission, for the time period that the public bike check is operating as described hereinabove.

## **4. Height and Massing:**

Awnings, enclosures, covers, railings, wind screens, heat lamps, plants, hedges, or umbrellas which cause increased height or massing shall be prohibited.

## **5. Lighting:**

Rooftop lighting must be below a certain wattage, installed with reflectors and maintained so as to reflect the light away from any street and adjacent premises, and shall be turned completely off after dark when the rooftop restaurant is closed, except to allow clean-up after closing.



**Following are the Standard Conditions for Alcoholic Beverage Conditional Use permits generally recommended by the LUPC, and tailored to the proposed project:**

7. Applicant will post on the premises a laminated copy of the conditions of approval, in a conspicuous place where the public can see them.
8. No alcohol advertisements shall be visible from the outside of the premises.
9. Hours of operation are the same as the hours of food and alcohol sales.
10. The use and development of the property shall be in substantial conformance with the floor plans submitted and marked Exhibit "A," which are the ground-floor and rooftop plans.
11. No further additions or structural alterations shall be made to the subject building unless necessary to comply with an order issued by a governmental agency in the interests of health, safety, or welfare.
12. No tobacco sales allowed on the premises.
13. In addition to the business name or entity, the name of the individual Applicants – Erwin, Caren, and/or Mark Sokol – shall appear on the alcohol license and any related permits.
14. There shall be no coin-operated games or video machines maintained upon the premises at any time.
15. Any graffiti painted or marked upon the premises or on any adjacent area under the control of the Applicant shall be removed or painted over within 24 hours of being applied, and the paint shall match the original color.
16. The Applicant shall be responsible for maintaining free of litter, the area and adjacent to the premises over which they have control.
17. Any future operator or owner for this site must file a new Plan Approval Application to allow the City of Los Angeles to review the “mode and character” of the usage;
18. The Applicant shall adhere to the Best Management Practices for restaurant/food service use.

**Applicant’s proposed conditions, numbers 1, 12, 13, 14, 15, 16, and 17 are accepted.**

Respectfully submitted,

Robert A. Aronson  
LUPC Member