



Council Meeting: November 9, 2010

SUBJECT: Special Development Permit #2009-0066 for Club La Ronda allowing the expansion of an existing restaurant with live entertainment (La Ronda Night Club) into an existing restaurant space for an additional 534 square feet located at 927 E. Duane Avenue (Information Only)

BACKGROUND

In 2007, the City's Neighborhood Preservation Division received a complaint for unpermitted construction and expansion of Club La Rhonda into the adjacent vacant space. It was determined that the business had removed the kitchen from the existing tenant space and moved into the adjacent space without permits. The original Special Development Permit (SDP 2002-0128) was to allow live entertainment at a restaurant with full liquor service but the removal of the kitchen changed the use to a nightclub.

In 2008 the business owner filed an SDP (2008-0341) to legalize operations and the expansion. The SDP was reviewed at the May 28, 2008 Administrative Hearing. At that time the subject business was proposing to operate as a nightclub with full liquor service and live entertainment (no restaurant component) and expand the hours of operation. The Administrative Hearing Officer denied the SDP due to the inability to make the required findings because of ongoing public safety and noise issues that occur at the subject business site and the possible intensification of these issues if the business were to expand. This decision was appealed by the applicant to the Planning Commission on August 25, 2008. The Commission denied the appeal based on similar concerns about impacts to the neighborhood. The Commission's decision was not appealed.

Current Permit

On July 29, 2009 the business owners applied for a new SDP (2009-0066) to allow for the expansion of the existing 3,000 square foot business into the adjacent 534 square foot tenant space for a total of 3,534 square feet. The project included the rebuilding of the restaurant to a full-service kitchen, creation of a second bar, additional seating areas, modification of operations, and upgrades to the interior décor. The applicant was no longer seeking approval to operate as a night club. The SDP application was heard before the City's Administrative Hearing Officer where it was approved with staff recommended conditions of approval (including timelines to complete a number

of the improvements and a requirement for formal compliance reviews); the Hearing Officer added the following:

1. The Special Development Permit shall be valid for two (2) years only from the date of approval by the final review authority, and the applicant must reapply for a Special Development Permit in two (2) years.
2. Friday-Saturday Hours of Operation are 9:00am to midnight.

The approval was appealed on July 30, 2009 by a City Councilmember. The reason for appeal was concern with neighborhood compatibility and compatibility with the General Plan. On October 12, 2009 the appeal was heard before the Planning Commission which granted the appeal and approved the SDP with modified conditions of approval as follows:

1. Hours of operation in condition 2.D that the rear doors shall be kept shut at all times from "9:00 a.m. to midnight" all days of the week.
2. 80% of the tables will be set up during normal hours of operation.
3. As part of the compliance review, that the applicant be required to provide dBA (decibel A) and dBC noise logs as part of the six month review.

The 2009 SDP was approved for this site by the Planning Commission with several timing conditions of approval. There are two conditions addressing the initial construction/implementation of the improvements (physical and operational) required of the project. They state:

- H. Within six (6) months of the final approval date (October 12, 2009), the applicant shall apply for a compliance review with City staff to determine if the business has successfully complied with all conditions of approval and applicable Municipal Codes. The review shall be through a Miscellaneous Plan Permit (MPP). If staff determines the use is out of compliance with the Special Development Permit, the MPP shall be referred to the Planning Commission for their discretionary review. The Planning Commission may approve additional conditions of approval as necessary, recommend the City Council revoke the permit, or take no further action, and
- M. All conditions of approval for building permits (physical construction or tenant improvements) must be submitted and issued within 90 days (January 12, 2010) of the final approval date and shall be completed within six (6) months (April 12, 2010) of the final approval date. The Community Development Director has the authority to extend this

timeline if a good faith effort has been shown to complete these improvements.

On April 12, 2010 staff determined the applicant had not fulfilled the requirements of the conditions of approval and therefore, was not in compliance with the approved SDP. At that time staff based this on the fact that no building permits had been applied for with the City for the physical improvements required by SDP conditions of approval. In addition, no information or documentation has been submitted to demonstrate compliance with the operational conditions (closing times, security, noise logs, etc.).

Staff initiated a Miscellaneous Plan Permit (MPP) application that was referred to the Planning Commission on June 28, 2010 for their review. The Commission was provided a list of the conditions of approval from the 2009 SDP and the status of each. The Commission voted 7-0 to deny the MPP and directed staff to initiate the permit revocation process for City Council review (see Planning Commission Minutes of June 28, 2010, attached).

Applicant Response Since Commission Hearing

After the June 2010 Planning Commission the property and business owners have attempted to bring the business into compliance. A number of physical and operational modifications have been made including the following:

- Building permit was applied for and issued to rebuild the kitchen. At the time of the writing of this memo, Club La Ronda is closed for remodeling.
- Information was submitted by the applicant that demonstrates they have met the conditions of approval.
- Staff visited the club on September 30th and determined the conditions of approval for physical modifications are met or under construction. When the Building Permit is finalized staff will follow-up with a final site visit around the time of the club's reopening.
- The Department of Public Safety (DPS) conducted a 30-day compliance review at the club (July 17th -August 17th) and found only minor conditions of approval violations such as, noise log not on-site and less than three security guards.

At this time, staff is not moving forward with the permit revocation hearing since the business has taken the necessary steps to bring the use into compliance with the SDP. Planning staff and DPS will continue to monitor the club for any violations and will continue to work with the club owners to rectify any remaining issues. Another compliance review is required after the kitchen is installed and a subsequent review will occur. This is required as part of the

2009 SDP conditions of approval. If staff determines the site is not in compliance the applicant may appeal the determination to the Planning Commission. The Planning Commission may determine compliance, amend the conditions or recommend formal revocation proceedings.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

Approved by:

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