



Council Meeting: May 15, 2012

SUBJECT: 2011-7719: Appeal of a decision by the Planning Commission approving with conditions a Special Development Permit (on appeal) to allow live entertainment (amplified acoustic music) at Da Kine Café located at 153 E. Fremont Ave.

REPORT IN BRIEF

Existing Site Conditions Commercial shopping center

Surrounding Land Uses

North	Multi-family residential
South	Commercial (across Fremont Ave.)
East	Multi-family residential
West	Fremont High School (across Sunnyvale-Saratoga Rd.)

Issues Neighborhood Compatibility, Noise, Public Safety

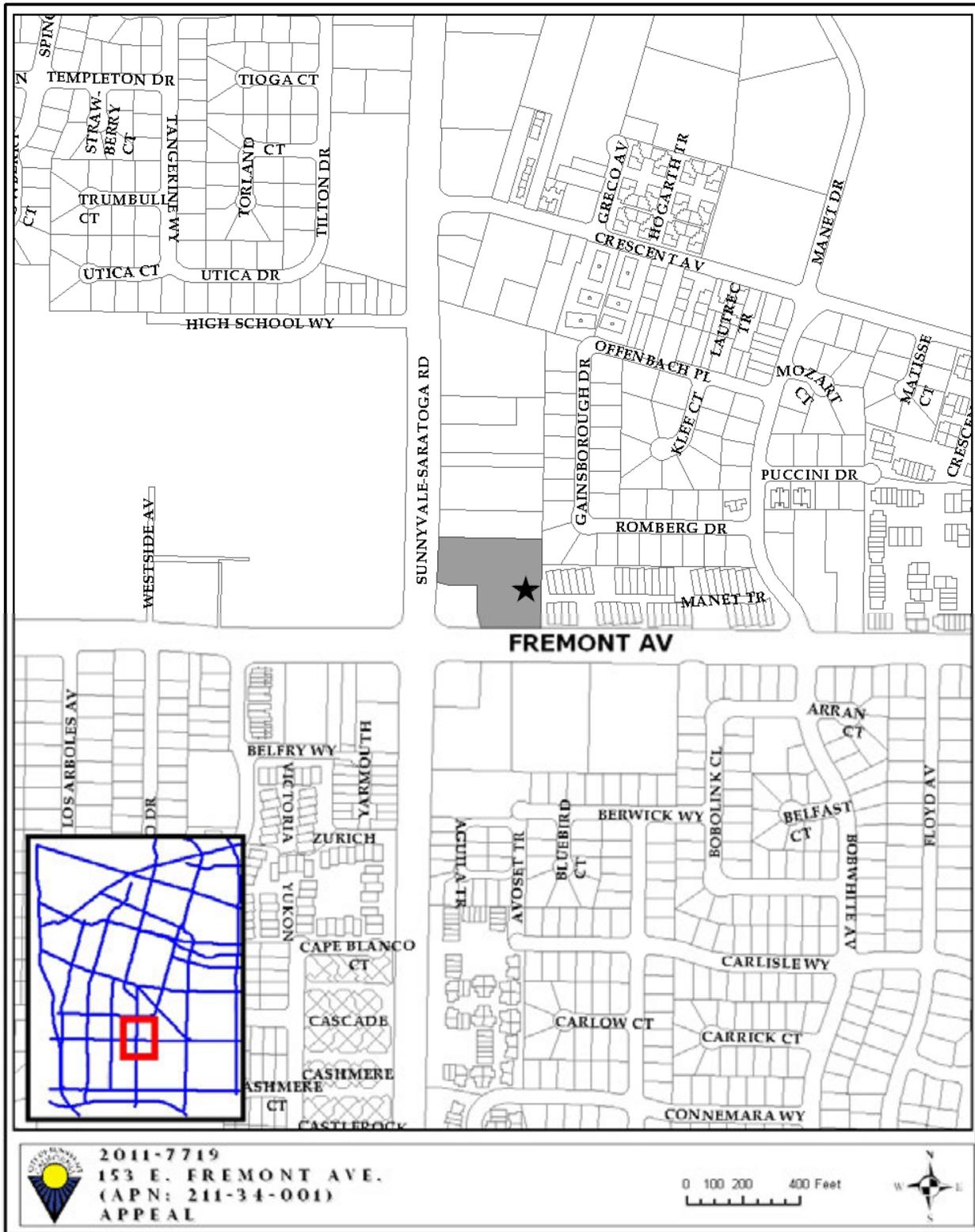
Environmental Status A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

Zoning Administrator Action Approved the Special Development Permit with modified conditions including limited hours of operation and a six-month review requirement.

Planning Commission Action Granted the appeal and approved the Special Development Permit with modified conditions including requiring a detailed security plan and specifying the types of permitted entertainment.

Staff Recommendation Grant the appeal and uphold the decision of the Planning Commission to approve the Special Development Permit, and add conditions including: requiring signage listing the maximum occupancy and clarifying that participatory entertainment (e.g. karaoke, patron dancing) is not permitted.

VICINITY MAP



PROJECT DATA TABLE

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
General Plan	Commercial Neighborhood Shopping	Same	Commercial Neighborhood Shopping
Zoning District	C-1/PD	Same	C-1/PD
Lot Size (s.f.)	94,525	Same	No min.
Gross Floor Area (s.f.)	21,540	Same	33,083 max.
Gross Floor Area of Tenant	1,340	Same	N/A
Parking			
Total Spaces	142	Same	108 min.
Standard Spaces	136	Same	93 min.
Compact Spaces/ % of Total	0 / 0%	Same	10% max.
Accessible Spaces	6	Same	5 min.

★ Starred items indicate deviations from Sunnyvale Municipal Code requirements.

BACKGROUND

Da Kine Café is an existing restaurant with beer and wine service. The applicant now proposes to add live entertainment on Thursdays, Fridays, and Saturdays. On February 15, 2012, a Special Development Permit to allow live entertainment (amplified acoustic music) was approved with conditions by the Zoning Administrator. The Planning Commission considered an appeal of the Zoning Administrator’s decision on April 9, 2012, and approved the Special Development Permit with modified conditions. This decision was appealed by a member of the City Council on April 24, 2012.

Previous Actions on the Site

The following are previous planning applications related to the project site:

File Number	Brief Description	Hearing/Decision	Date
2011-7336	Miscellaneous Plan Permit for outdoor seating at an existing restaurant	Staff / Approved	05/20/2011
2010-7555	Miscellaneous Plan Permit for beer & wine service at an existing restaurant	Staff / Approved	08/12/2010

File Number	Brief Description	Hearing/Decision	Date
2010-7231	Miscellaneous Plan Permit for a restaurant use in a tenant space previously used for food retail	Staff / Approved	04/19/2010

Neighborhood Preservation Actions

The Neighborhood Preservation Division has received several complaints regarding live entertainment activities and special events held by the applicant without permits. In November 2010, a complaint was received regarding tents and bounce houses placed in the parking lot area during a daytime event. Neighborhood Preservation provided information to the business owner regarding permit requirements for future events. A complaint was received in March 2011 from another tenant in the shopping center regarding a community event held with permits. The reporting party complained that the applicant had closed the shopping center parking area and was charging admission, which prevented customers from reaching other businesses. A third complaint was received in August 2011 regarding live music events held inside the subject business without a permit. The subject application to allow live entertainment was submitted in response to this complaint.

EXISTING POLICY

Requested Permit(s):

- Special Development Permit

A Special Development Permit is required for entertainment uses in a C-1 Zoning District, including entertainment incidental to other permitted uses such as a restaurant.

Related General Plan goals and policies include preserving the character of existing neighborhoods, supporting a full spectrum of conveniently located commercial uses, providing opportunities for neighborhood commercial services, and applying appropriate conditions to discretionary land use permits to minimize impacts such as noise. These goals and policies are discussed in the findings in Attachment A.

DISCUSSION AND ANALYSIS

Proposed Use: In addition to the existing restaurant use with beer and wine service, Da Kine Café now proposes to add live entertainment on Thursdays, Fridays, and Saturdays. Live entertainment activities would consist of acoustic music or amplified acoustic music, but would not include DJ music or amplified music for dancing. Live entertainment activities may also include

guest speakers, comedians, and other non-music entertainers. During preparation of this report, the applicant notified staff that performances by hula dancers and karaoke singing by patrons are also part of the proposed entertainment; these were not previously addressed in review of the permit. Staff finds that performances by hula dancers would fall within the non-musical entertainment originally proposed. However, karaoke singing by patrons is a participatory entertainment activity which is not similar to those previously considered. Participatory entertainment activities were not described within the public notices provided for this application and therefore cannot be added to the permit request at this time. The applicant may submit a separate Special Development Permit request to add participatory entertainment such as karaoke singing.

The applicant's initial request also included full liquor service (ABC Type 25 license) in conjunction with meals. Da Kine Café does not currently have a Type 25 license but has indicated they would be eligible to apply with the Department of Alcoholic Beverage Control (ABC) if a license becomes available in the next year. However, in response to staff concerns regarding public safety issues resulting from full liquor service, the applicant withdrew this portion of the request prior to the Zoning Administrator hearing. As a result, a request for full liquor service is not being considered at this time.

Hours of Operation: The current operating hours for Da Kine Café are Monday through Friday from 6:30 a.m. to 8:00 p.m., and Saturday and Sunday from 8:00 a.m. to 8:00 p.m. If approved for live entertainment uses, the applicant proposes to extend these hours and remain open until 1:00 a.m. on Thursday through Saturday.

Exterior Changes: No exterior changes are proposed as part of this project.

Development Standards

The proposed project complies with all applicable Development Standards as set forth in the Sunnyvale Municipal Code. The following items have been identified for clarification for the Planning Commission:

- **Site Layout**

Da Kine Café is located in a tenant space in an existing shopping center at the corner of Fremont Avenue and Sunnyvale-Saratoga Road. The subject tenant space is located on the Fremont Avenue side of the shopping center.

- **Parking/Circulation**

The shopping center is served by 142 existing parking spaces where a minimum of 105 are required. No changes to the parking lot layout are proposed at this time. The Sunnyvale Municipal Code does not require

additional parking for ancillary entertainment uses. However, a Parking Management Plan may be required as a condition of approval to address parking and circulation issues associated with special events (see Attachment B, Condition of Approval #O-9).

Environmental Review

A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class 1 Categorical Exemptions include minor changes to an existing use.

Neighborhood Compatibility

The Department of Public Safety (DPS) has expressed concern about the potential impacts of this use on the adjacent high school. As a result, staff requested the applicant move their start time for entertainment from 1:00 p.m. to 6:00 p.m. This will allow high school students to generally be out of the area before the live entertainment starts. Both the applicant and DPS have agreed to this change, and it has been incorporated into the Conditions of Approval (Attachment B). Neighboring residents and businesses have expressed concern about potential noise impacts from live entertainment lasting until 1:00 a.m. These concerns are discussed in additional detail below.

Prior to the Zoning Administrator hearing staff added recommended Conditions of Approval to address noise, public safety, and parking during events. These include prohibiting events by outside promoters, requiring a parking management plan, requiring doors to have self-closing mechanisms and be kept closed during all entertainment events, and requiring the applicant to monitor noise with a meter and address complaints promptly (see Attachment B for Conditions of Approval). The Zoning Administrator imposed additional conditions to further limit neighborhood impacts. In response to an appeal to Planning Commission, staff recommended and the Planning Commission imposed several additional conditions of approval. Detailed information on the public hearings is provided below and in the minutes of the hearings in Attachments G and H.

Zoning Administrator Hearing

On February 15, 2012, the project was considered at a Zoning Administrator public hearing. In response to public noticing for the hearing, staff received several letters and petitions from neighboring residents, property owners, and businesses opposing the project. Written comments received by staff were presented to the Zoning Administrator and are included in Attachment F. In addition, several neighbors spoke at the public hearing in opposition to the project. Comments presented to staff and at the hearing included concerns about noise and public safety. Neighboring residents and property owners

indicated that shopping center noise is already a disturbance but ends earlier in the evening, whereas the proposed live entertainment until 1:00 a.m. could increase noise impacts. Public safety concerns cited by neighbors included a potential for loitering, disturbances, crimes, and increased graffiti which are already issues in this shopping center. Concerns were also expressed about potential impacts on students of the nearby high school including access to alcohol and inappropriate entertainment if the restaurant becomes a bar or nightclub. The applicant stated that he believed the proposal had been misunderstood, as his intent is not to create a nightclub atmosphere but rather to add the type of entertainment typically found in a café.

After considering the proposal and public testimony, the Zoning Administrator approved the Special Development Permit with modified conditions. These included requiring the applicant to return with a new Special Development Permit application after six months of operating the entertainment use, at which time compliance and impacts would be reviewed. In addition, the Zoning Administrator modified the hours of operation to require entertainment to end at midnight although the business could remain open until 1:00 a.m., required food service be offered throughout the duration of entertainment, and required the property owner and applicant to better address graffiti on the site.

Planning Commission Appeal Hearing

The Zoning Administrator's action was appealed by an adjacent tenant providing afternoon child care services. The appellant expressed concern about noise impacts and indicated that while they do not object to the use, they would prefer entertainment did not commence until 7:00 p.m. when all children have left their site. After filing the appeal, the appellant and applicant reached a private agreement that entertainment would not begin until 7:00. The appeal was considered by the Planning Commission at a public hearing on April 9, 2012. Several neighbors who live in the vicinity of the project spoke at the hearing regarding noise and public safety concerns similar to the issues presented at the Zoning Administrator hearing. One Commissioner expressed concern that the six-month review period imposed by the Zoning Administrator may be too long for the neighborhood to bear if there are very significant noise impacts.

The Planning Commission approved the Special Development Permit with modified conditions including requiring adoption of a security plan to be approved by DPS (Condition of Approval PC-1), clarifying the types of entertainment permitted (Condition of Approval AT-6), and requiring review of the permit in fewer than six months if legitimate complaints about the entertainment use are received by the City for five or more separate events (Condition of Approval GC-4.b).

City Council Appeal

On April 24, 2012, the decision of the Planning Commission was appealed by a member of the City Council. The appellant expressed concern that the size of the restaurant may be insufficient to accommodate the proposed entertainment use based on permitted occupancy. The appellant also expressed concern that the proposed use will result in an overconcentration of entertainment uses and of alcohol service in the surrounding area.

Staff Comment on Appeal:

Occupancy: Staff has identified the permitted occupancy of the subject tenant space to be approximately 38 persons based on Fire and Building Code requirements for the layout shown in the proposed plans. The occupancy limit applies during entertainment events as well as normal operations and cannot be exceeded. It is the responsibility of the applicant (as with all business owners) to ensure the occupancy limits of the tenant space are observed at all times. After further review of the proposal and the limited occupancy of the tenant space, Fire Prevention staff recommends adding Condition of Approval PC-2 requiring the applicant to post a sign listing the occupancy limit within the tenant space. This posting would allow Neighborhood Preservation, Fire, and Public Safety staff to easily identify the permitted occupant load and determine whether the applicant is in compliance when responding to a complaint about an event.

Alcohol service: Within 1,000 feet of the project site there are currently five businesses with active on-sale alcohol licenses (for service on-site) and two with active off-sale alcohol licenses (retail, no on-site service). These include four restaurants providing beer and wine with meals, two liquor stores, and one bar. A list is provided in Attachment I. Staff notes that Da Kine Café was previously approved for beer and wine service in 2010. While the applicant initially proposed full liquor service, that portion of the request was withdrawn prior to the Zoning Administrator hearing. This application does not contemplate any change in Da Kine Café's service of alcohol.

Entertainment: There are no active permits for live entertainment uses within 1,000 feet of the project site. Two businesses in the vicinity have been approved to hold periodic special events: Veksler Academy of Music and Dance at 176 East Fremont Avenue (SDP #2008-0432) and the American Academy of Kickboxing at 168 East Fremont Avenue (SDP #2007-1338). These schools hold occasional recitals and tournaments; each requires approval of a staff level Miscellaneous Plan Permit prior to any highly-attended event. These activities would not typically be classified by staff as live entertainment uses. The Peacock Lounge, located across the street from the project site in the Fremont Corners shopping center, advertises weekly entertainment including karaoke singing and live music. Staff has not found evidence of a Use Permit for this

use; however, it may have been permitted as a matter of right at the time of establishment. With no other entertainment permitted in the area, the proposed use would not result in an over-concentration of live entertainment uses. While neighbors and the appellant have expressed concerns about compatibility of the use with surrounding residential and child care uses, the subject site is located in a commercial shopping center on a commercially-zoned property. Staff finds the recommended Conditions of Approval are sufficient to minimize impacts. In particular, Condition of Approval GC-4 requiring reconsideration of the use after six months of operation (or sooner if a significant number of events result in complaints) will allow the Zoning Administrator to review actual neighborhood impacts and, if needed, to add conditions or deny the Special Development Permit at that time.

Staff notes that during the permit process Da Kine Café has continued to advertise future entertainment events, including participatory entertainment and events taking place on Sundays through Wednesdays, neither of which is covered by this permit. To ensure clarity regarding the permitted uses, staff recommends modifications to Condition of Approval AT-6 (Attachment B).

FISCAL IMPACT

No fiscal impacts are anticipated other than normal fees and taxes.

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. A total of 218 notices were mailed to property owners and residents adjacent to the project site.

ALTERNATIVES

1. Grant the appeal and uphold the decision of the Planning Commission to approve the Special Development Permit with the conditions listed in Attachment B, adding new Condition of Approval PC-2 regarding signage listing the maximum occupancy and modifying Condition of Approval AT-6 to clarify that participatory entertainment (e.g. karaoke, patron dancing) is not permitted.
2. Grant the appeal and approve the Special Development Permit with other modifications.
3. Grant the appeal and deny the Special Development Permit.
4. Deny the appeal and uphold the decision of the Planning Commission to approve the Special Development Permit with the previously-imposed

conditions (not including new Condition of Approval PC-2 or modifications to Condition of Approval AT-6).

RECOMMENDATION

Alternative 1 – Grant the appeal and uphold the decision of the Planning Commission to approve the Special Development Permit with the conditions listed in Attachment B, adding new Condition of Approval PC-2 regarding signage listing the maximum occupancy and modifying Condition of Approval AT-6 to clarify that participatory entertainment (e.g. karaoke, patron dancing) is not permitted.

In Sunnyvale, an application heard on appeal receives a “de novo” hearing which means the hearing body can make adjustments to any aspect of the project. In the case of an approved application, if the hearing body approves exactly the same project and conditions then the appeal is considered denied; however, if there are any changes, including additional conditions of approval, then the appeal is considered granted. The appeal could also be granted by denying an application. As noted above, staff recommends upholding the Planning Commission’s approval of the project but making minor modifications to the conditions imposed; this would be considered a granting of the appeal.

Reviewed by:

Hanson Hom, Director, Community Development Department
Reviewed by: Trudi Ryan, Planning Officer
Prepared by: Mariya Hodge, Associate Planner

Approved by:

Gary M. Luebbers
City Manager

Attachments

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Site and Floor Plans
- D. Applicant’s Letter and Project Justifications
- E. Appeal Letters
- F. Letters from Other Interested Parties
- G. Minutes of the Zoning Administrator Hearing Dated February 15, 2012
- H. Minutes of the Planning Commission Appeal Hearing Dated April 9, 2012
- I. List of Surrounding Businesses With Alcohol Licenses

RECOMMENDED FINDINGS

Special Development Permit

General Plan Goals and Policies that relate to this project are:

Land Use and Transportation Element Goal LT-4 – *Preserve and enhance the quality character of Sunnyvale’s industrial, commercial and residential neighborhoods by promoting land use patterns and related transportation opportunities that are supportive of the neighborhood concept.*

Land Use and Transportation Element Policy LT-4.1 – *Protect the integrity of the City’s neighborhoods; whether residential, industrial or commercial.*

Land Use and Transportation Element Policy LT-4.13 – *Support a full spectrum of conveniently located commercial, public and quasi-public uses that add to the positive image of the City.*

Land Use and Transportation Element Action Statement LT-4.13c – *Provide opportunities for, and encourage neighborhood-serving commercial services in, each residential neighborhood.*

Safety and Noise Element Policy SN-9.3 – *Apply conditions to discretionary land use permits which limit hours of operation, hours of delivery, and other factors which affect noise.*

Required findings for a Special Development Permit are:

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale.

Staff is able to make this finding for the project as conditioned in Attachment B. The addition of entertainment uses to the existing restaurant will contribute to the diversity of services in the City’s commercial corridors. There is not currently a high concentration of entertainment uses in the subject shopping center or surrounding area. Due to the nature of the entertainment uses and with the Conditions of Approval in Attachment B relating to noise, operations, hours, and security, impacts of the use on surrounding properties will be minimized.

2. The proposed use ensures that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair either the orderly development of, or the existing uses being made of, adjacent properties.

Staff is able to make this finding for the project as conditioned in Attachment B. The project does not include any expansion or other modifications to the existing building, so no visual impacts are anticipated. Full liquor service is not proposed at this time. The nature of the entertainment use (amplified acoustic music) is compatible with a restaurant environment in a neighborhood commercial area, and is not likely to have significant impacts of the type which would typically be associated with a bar or nightclub use. The Conditions of Approval in Attachment B include measures to limit entertainment uses and reduce negative impacts such as noise, public safety impacts, graffiti, parking and circulation issues. As conditioned, the project is expected to be compatible with the neighborhood and to have minimal impacts on surrounding properties and uses. In addition, the Conditions of Approval require reconsideration of the Special Development Permit for the use after six months of operation. This condition provides an opportunity to address any unanticipated negative impacts if needed.

**RECOMMENDED CONDITIONS OF APPROVAL AND
STANDARD DEVELOPMENT REQUIREMENTS
May 15, 2012**

Special Development Permit: 2011-7719
153 E. Fremont Avenue

To allow live entertainment (amplified acoustic music) at Da Kine Café.

The following Conditions of Approval [COA] and Standard Development Requirements [SDR] apply to the project referenced above. The COAs are specific conditions applicable to the proposed project. The SDRs are items which are codified or adopted by resolution and have been included for ease of reference, they may not be appealed or changed. The COAs and SDRs are grouped under specific headings that relate to the timing of required compliance. Additional language within a condition may further define the timing of required compliance. Applicable mitigation measures are noted with “Mitigation Measure” and placed in the applicable phase of the project.

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following Conditions of Approval and Standard Development Requirements of this Permit:

**GC: THE FOLLOWING GENERAL CONDITIONS OF APPROVAL AND
STANDARD DEVELOPMENT REQUIREMENTS SHALL APPLY TO THE
APPROVED PROJECT.**

GC-1. CONFORMANCE WITH APPROVED PLANNING APPLICATION:

All building permit drawings and subsequent construction and operation shall substantially conform with the approved planning application, including: drawings/plans, materials samples, building colors (dance floor area, seating, etc.), approved floor plans, and other items submitted as part of the approved application. Any proposed amendments to the approved plans or Conditions of Approval are subject to review and approval by the City. The Director of Community Development shall determine whether revisions are considered major or minor. Minor changes are subject to review and approval by the Director of Community Development. Major changes are subject to review at a public hearing. [COA] [PLANNING]

GC-2. USE EXPIRATION:

The approved Special Development Permit for the use shall expire if the use is discontinued for a period of one year or more. [SDR] [PLANNING]

GC-3. PERMIT EXPIRATION:

The permit shall be null and void two years from the date of approval by the final review authority at a public hearing if the approval is not exercised, unless a written request for an extension is received prior to expiration date and is approved by the Director of Community Development. [SDR] [PLANNING]

GC-4. PERMIT REVIEW:

The approved Special Development Permit shall be subject to a six-month review period as follows:

a) The applicant shall notify the Planning Division in writing of the date the live entertainment use commences on the site.

b) Within six months after commencing operation of the live entertainment use, the applicant shall submit a new Special Development Permit application for review of the live entertainment use. If legitimate complaints about the entertainment use are received by the City for more than five separate events after the use commences, the review process shall be triggered earlier than six months. This review shall include consideration of compliance with conditions of approval, public safety issues, impacts on surrounding properties, and other information deemed appropriate by the Director of Community Development. Upon reviewing the use, the Zoning Administrator may impose additional conditions as necessary or may revoke this Special Development Permit and prohibit continuation of the live entertainment use. [Condition added by Zoning Administrator] [Modified by Planning Commission] [COA] [PLANNING]

GC-5. NON-COMPLIANCE WITH THE CONDITIONS OF APPROVAL:

Non-compliance with the conditions of approval for this planning application may trigger either reconsideration (discretionary review of new application) of the UP and the imposition of additional Conditions of Approval or the initiation of the revocation process by the Director of Community Development. [COA] [PLANNING]

PC: THE FOLLOWING CONDITIONS OF APPROVAL SHALL BE MET PRIOR TO COMMENCEMENT OF THE APPROVED USE.

PC-1. SECURITY AND SAFETY PLAN (DEPARTMENT OF PUBLIC SAFETY REVIEW) – *Prior to commencement of the approved use, obtain approval from the Crime Prevention Division of the Public Safety Department for a security and safety plan including crime prevention measures appropriate to the proposed development. The plan shall include general policies and procedures, crowd management measures, management of the transition between restaurant and entertainment*

uses, training programs, implementation and record keeping. [Condition added by Planning Commission] [COA] [PUBLIC SAFETY]

- PC-2. *OCCUPANCY LIMIT SIGNAGE – A sign shall be be posted and visible to the public within the tenant space indicating the maximum occupancy limit. The sign dimensions, language, and location shall be approved by the Building Safety Division and Fire Protection Division prior to posting. [COA] [FIRE PREVENTION]*

O: THE FOLLOWING CONDITIONS OF APPROVAL FOR RESTAURANT/BAR OPERATIONS SHALL APPLY TO THE APPROVED PROJECT.

OPERATIONS:

- O-1. GENERAL: All conditions of approval for operational issues contained here are required to be in place and operational starting the first date the business is open. [COA] [PLANNING]
- O-2. EXTERIOR DOORS: All exterior doors shall have self-closing mechanisms and shall be kept closed when not in use. Doors may be propped open during earlier hours of the day to allow in fresh air but must be kept closed when there is live entertainment. [COA] [PLANNING]
- O-3. TRASH: The applicant shall be responsible for trash clean-up resulting from the business. [COA] [PLANNING]
- O-4. EMPLOYEE MANUAL: An employee manual shall be created that informs employees the proper procedure in dealing with drunk and disorderly patrons. The manual shall address items such as outside transportation contact information for patrons leaving the club to their homes, maximum drink limits for inebriated patrons, policies on over-service of drinks, etc. [COA] [PLANNING]
- O-5. EMPLOYEE TRAINING: Employees shall be given training and education from the employee manual on a quarterly basis. [COA] [PLANNING]
- O-6. OUTSIDE EVENTS: No outside event promoters are allowed to operate at this location. All entertainment/entertainers must be hired directly by the business managers or owners. [COA] [PLANNING]
- O-7. NOISE: The business (owners or employees) shall be responsible for monitoring the noise generated by the business through the use of sound meters. [COA] [PLANNING]

- O-8. COMPLAINTS: The business (owners or employees) shall be responsible for addressing and correcting any complaints received. [COA] [PLANNING]
- O-9. PARKING MANAGEMENT PLAN: The applicant shall submit a parking management plan that is applicable during live entertainment events.

AT: THE FOLLOWING CONDITIONS OF APPROVAL AND STANDARD DEVELOPMENT REQUIREMENTS SHALL BE COMPLIED WITH AT ALL TIMES THAT THE SPECIAL DEVELOPMENT PERMITTED BY THIS PLANNING APPLICATION OCCUPIES THE PREMISES.

- AT-1. HOURS OF OPERATION:
The use, as part of this application shall comply with the following hours of operation at all times:
- a) The hours of operation *for the cafe* are limited to Sunday-Wednesday from 6:30 a.m. to 8:00 p.m. and Thursday-Saturday from 8:00 a.m. to 1:00 a.m.
 - b) *The hours of operation for live entertainment uses are limited to Thursday-Saturday from 6:00 p.m. to midnight.*
 - c) *Food service shall be offered throughout all live entertainment events and shall continue until the end of such entertainment.*
- [Modified by Zoning Administrator]* [COA] [PLANNING]
- AT-2. RECYCLING AND SOLID WASTE:
All exterior recycling and solid waste shall be confined to approved receptacles and enclosures. [COA] [PLANNING]
- AT-3. LOUDSPEAKERS PROHIBITED:
Out-of-door loudspeakers shall be prohibited at all times. [COA] [PLANNING]
- AT-4. EXTERIOR EQUIPMENT:
All unenclosed materials, equipment and/or supplies of any kind shall be maintained within approved enclosure area. Any stacked or stored items shall not exceed the height of the enclosure. Individual air conditioning units shall be screened with architecture or landscaping features. [COA] [PLANNING]
- AT-5. *GRAFFITI:*
The applicant shall be responsible for cleaning and removing graffiti in the project area prior to commencement of the entertainment use, and

shall maintain the area free from graffiti at all times. [Condition Added by Zoning Administrator] [COA] [PLANNING]

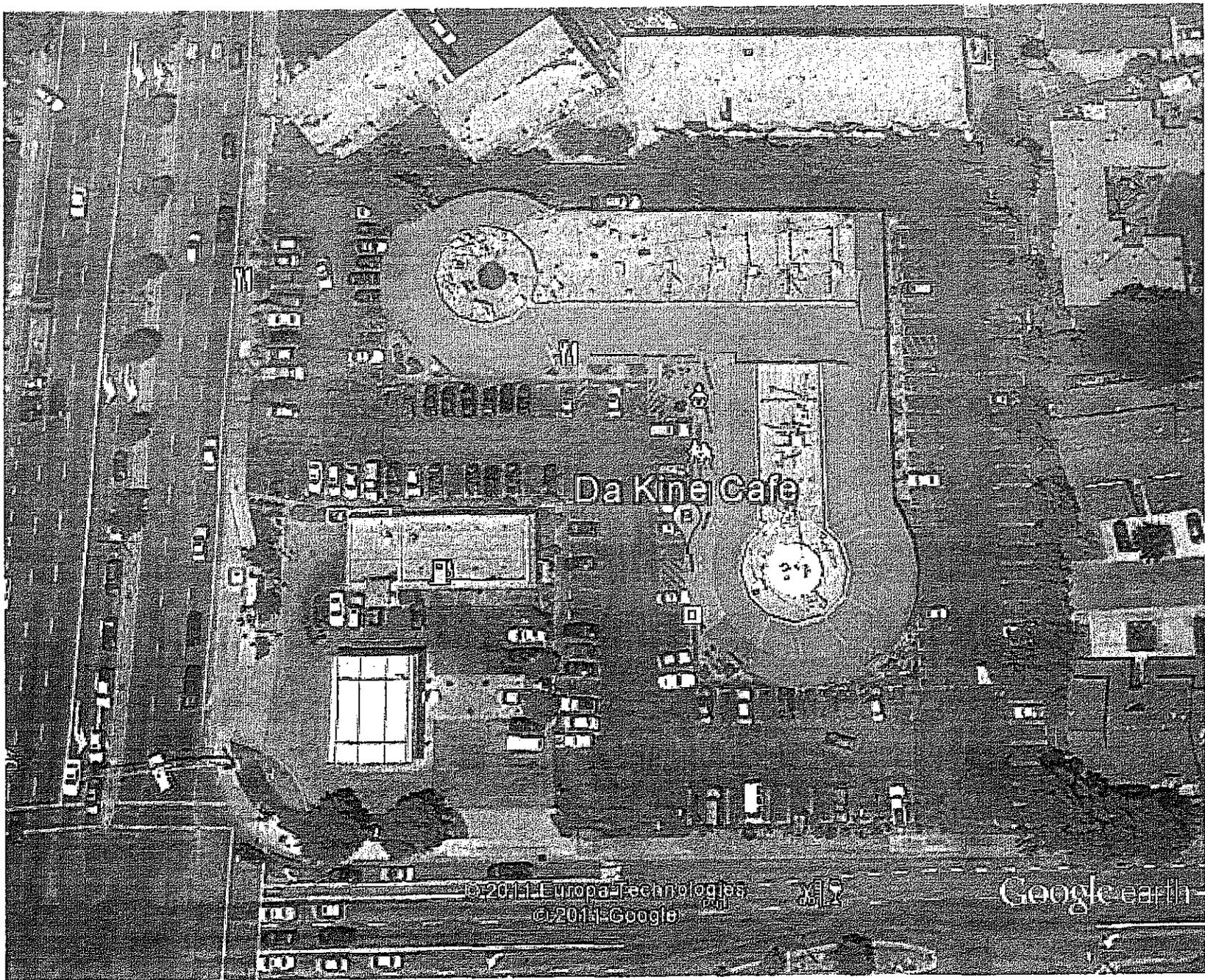
AT-6. *PERMITTED ENTERTAINMENT USES:*

Entertainment uses authorized under this Special Development Permit include live acoustic music, live amplified acoustic music, and non-musical live entertainment such as comedians and guest speakers. DJ music and/or participatory entertainment such as karaoke and patron dancing are not permitted. [Condition added by Planning Commission] [Modification recommended to City Council by staff] [COA] [PLANNING]

Da Kine Cafe
153 E. Fremont Ave.
Sunnyvale CA 94087

ATTACHMENT

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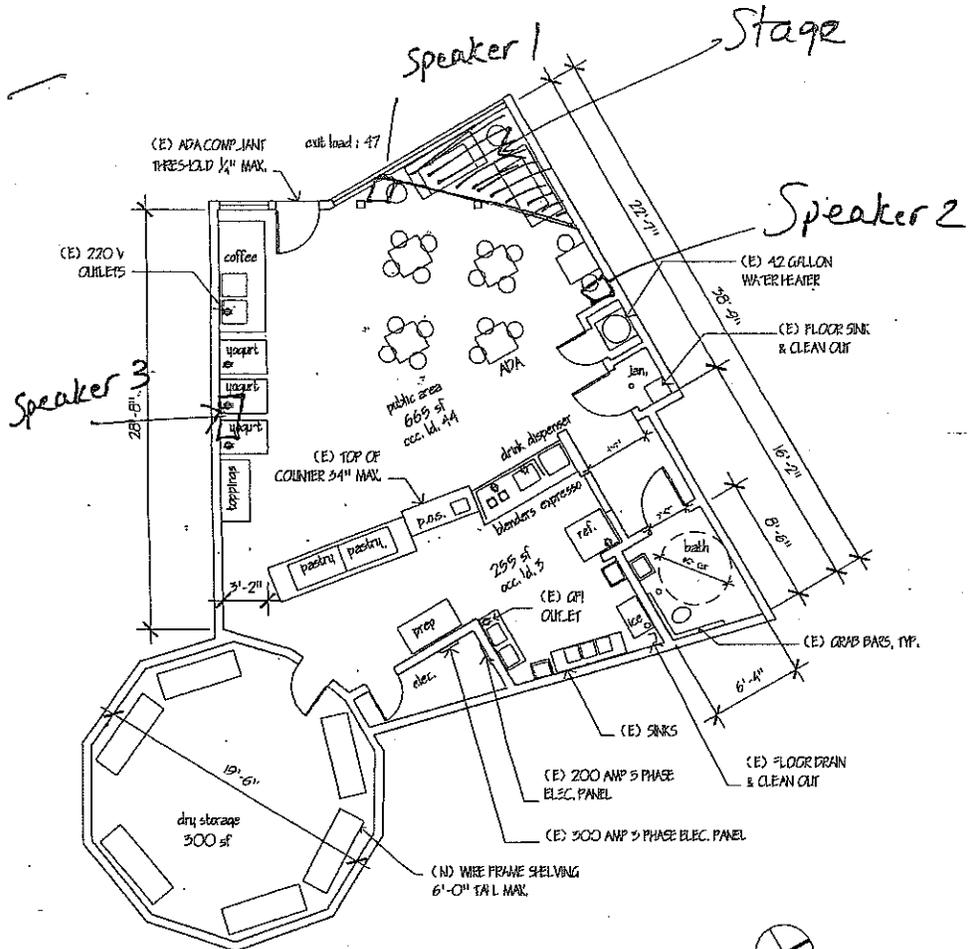


Google earth

feet
meters



DA KINE CAFE
 153 E. FREMONT AVE.
 SUNNYVALE CA 94087
 C/O PETE BE
 408 568.9700



SCOPE OF WORK:
 NEW FURNITURE AND EQUIPMENT IN EXISTING CAFE
 ALL EXISTING CONSTRUCTION TO REMAIN.
 NO DEMOLITION TO OCCUR...
 NO NEW PLUMBING.
 NO NEW ELECTRICAL
 NO NEW WALL CONSTRUCTION
 ALL EXISTING CONSTRUCTION, RESTROOM AND ENTRY ACCESSIBLE AND ADA COMPLIANT
 NO CHANGE IN (E) PARKING OR REQUIREMENTS FROM PREVIOUSLY PERMITTED USE

PUBLIC AREA:	685 SF
KITCHEN AREA:	255 SF
STORAGE:	300 SF
ELEC. RM, BATHROOM, JAN, WHL	120 SF
TOTAL	1340 SF


 Floor Plan
 scale: 1/8" = 1'-0"

 153 E. Fremont Ave.
 Sunnyvale, CA
 March 25, 2010

Entertainment Hours: 6pm to 2am
 Thursday to Saturday

Employee Manuals: YES



Da Kine Cafe, Inc.

October 3, 2011

LOCATION

153 E. Fremont Ave.
Sunnyvale, CA 94087

Re: 153 E. Fremont Ave.
Sunnyvale, CA 94087

PHONE

408.568.9700 Cell

To whom it may concern:

CAFE

408.743.5288 Cafe
408.743.5236 Fax

Da Kine Cafe is leasing and utilizing the facility mentioned above.

This permit request is to provide live entertainment for our customers. We will have up to 3 employees at a time. Our proposed hour of operations are from 8am - 12am, Monday - Wednesday; and 8am - 2am, Thursday - Saturday. We are currently closed on Sunday. The number of patrons at a given time is expected to average around 15.

*Amplified
Acoustic
music*

EMAIL

cafe@dakinecafe.com

WEB

www.dakinecafe.com

Best regards,

Pete Be

408.568.9700 Cell



USE PERMIT/SPECIAL DEVELOPMENT PERMIT JUSTIFICATIONS

ATTACHMENT D

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One of the two following findings must be made in order to approve a Use Permit or Special Development Permit application.

The Sunnyvale Municipal code states that at least one of the following two justifications must be met before granting the Use Permit or Special Development Permit. Please provide us information on how your project meets at least one of the following criteria.

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale as the project ...

OR

2. The proposed use ensures that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair either the orderly development of, or the existing uses being made of, adjacent properties as ...

NO changes will be made to proposed structures or impair the orderly development of the existing uses.

If you need assistance in answering either of these justifications, contact the Planning Division staff at the One-Stop Permit Center.

Ref : Project Number (2011-7719): To allow live entertainment (amplified acoustic music) at Da Kine Café with specific hours of operation as approved in the permit : "The hours of operation for live entertainment uses are limited to Thursday-Saturday from 6:00 p.m. to midnight"

Regarding the above project permit approval, we would like to appeal the approval.

The reason for appeal: we are an after school located in the same premise as co tenant and school age children and parents are at the premise till 0700PM M-F. We want to appeal to move the hours of operation of above permit site to be after 7PM as we think it is not appropriate for school age children to be around that time in the area.

We expect planning commission to review and take appropriate decision.

Thanks in advance,



Snehalata K/Deepti M

Tulip After School

133 E Fremont Ave

Sunnyvale, CA 94087

Mariya Hodge - Fwd: Re: Appeal of SDP 2011-7719

From: Hanson Hom
To: Hodge, Mariya; Ryan, Trudi
Date: 4/30/2012 4:25 PM
Subject: Fwd: Re: Appeal of SDP 2011-7719

*Appeal Received by
Council Member Davis*

Hanson Hom
Director of Community Development
City of Sunnyvale
P.O. Box 3707
456 W. Olive Avenue
Sunnyvale, CA 94088-3707
408-730-7450

 Save the environment. Please don't print this email unless you really need to. 

>>> On 4/24/2012 at 5:22 PM, Jim Davis wrote:
April 24, 2012

Hanson,

I am concerned regarding the location. It is a very small space and really does not have that much room for assembly let alone the placement of live music. Additionally there are several other existing entertainment venues in the area. The Long Horn Restaurant is open for food and drink. The Peacock Lounge is also an entertainment facility. Jake's Pizza is a Sports Bar. The Thi Pepper is a restaurant in the immediate area.

Additionally there is a liquor store right next door and another liquor store directly across the street.

Another night time establishment where alcohol is served seems like we are over doing that kind of service in a limited area. The size of the establishment is a real concern. The occupancy would appear to be very limited.

Jim Davis
Council Member
City of Sunnyvale
(408) 992-1863
jdavis@ci.sunnyvale.ca.us

We are one of the tenants at the location and very concerned with full time beer and wine serving and the noise due to live entertainment. This may deter other potential customers to come to the complex in the evening time due to liquor and live music etc. I feel that this is a very sensitive site opposite Fremont High school and can negatively impact students from there. We need to be careful with this.

RECEIVED

FEB 14 2012

PLANNING DIVISION

To: Sunnyvale City Council; Sunnyvale Planning Department
From: Cal Properties, LLC
P.O. Box 2392, Sunnyvale, CA 94087
Date: February 15, 2012

RECEIVED

FEB 15 2012

Re: File No. 2011-7719
Da Kine Cafe
153 E. Fremont Ave., Sunnyvale, CA 94087

PLANNING DIVISION

Dear Councilmembers and City Planners:

Cal Properties, LLC owns the property located at 1248 Sunnyvale-Saratoga Road (the "Apartments"), which is adjacent to the subject property, 153 E. Fremont Avenue ("Subject Property"). I am the Manager of Cal Properties, LLC ("Cal Properties"). I received your notice of hearing regarding Da Kine Cafe last week and would like to weigh in as both a Sunnyvale businessperson with over twenty years of experience managing rental properties in the city.

Da Kine Cafe is a popular lunch spot for Fremont High School students. It serves sandwiches and Hawaiian delicacies during the day to hungry high school students and other local residents. Now, Da Kine Cafe wishes to expand its service to the late-evening hours. Cal Properties objects to the permit that would allow live entertainment service at Da Kine Cafe.

Live music entertainment is incompatible with the neighborhood. The neighborhood surrounding the Fremont Avenue and Sunnyvale-Saratoga Road intersection (the "Neighborhood") consists of Fremont High School, various daytime businesses, and most significantly, various personal residences including apartments, condos, and single-family homes.

The Neighborhood is generally quiet. Tenants in the Apartments generally are well-asleep before 10 p.m.; I've often observed that their lights are turned off between 8 p.m. and 10 p.m. Tenants in the Apartments include Fremont High School students and senior citizens, both of whom need to sleep early and rise early.

Traffic in the Neighborhood is light after [8] p.m. The fact that the gas stations close around [10] p.m. is evidence that traffic is light in the Neighborhood after a certain hour.

Residents of the Neighborhood move to and stay in the Neighborhood because it is quiet, safe, and close to Fremont High. In fact, several of our tenants specifically chose to rent in the Apartments because they wanted their children to attend Fremont High. Da Kine plans to provide entertainment services on school nights. This is unacceptable.

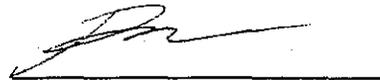
There have already been complaints about noise and nuisance from the Subject Property. I have had several tenants move out due to the noise and smell caused by one of the other restaurants on the Subject Property. The noise is caused late at night when the restaurant is shutting down and workers are dumping the trash with loud conversation. The smell is caused by the restaurant refusing to cover its garbage bins or keep the bins enclosed. Da Kine opening for live music entertainment during late evening hours would be the final straw for many of my existing tenants.

While we understand that the Subject Property is zoned for business use, we urge the City Council and Planning Department to consider that not all businesses are appropriate in quiet neighborhoods. The Apartments and other residential properties have been in the Neighborhood for longer than I can remember, and they provide a steady tax base for the City. A new nightlife business in a quiet residential neighborhood could potentially lower property values and further decrease the City's tax base. Da Kine would certainly be more appropriately located on busy commercial streets, such as El Camino Real.

Finally, as a longtime Sunnyvale resident myself (since 1984), I know that a nightlife business is exactly the type of business I chose not to live near when I moved here. I chose to live in Sunnyvale to raise my family in an area where education is a high priority. When a nightclub/lounge/cafe opens up across the street from an already struggling high school, it sends a message that education is not valued in this City. If Da Kine is granted the live entertainment permit it is applying for, the City should take responsibility for the potential increase in student truancy and corresponding decrease in student performance.

Thank you for your consideration.

Cal Properties, LLC
a California limited liability company



Robert Chen, Manager

PLANNING DIVISION

PETITION

To: Mariya Hodge, Senior Planner, City of Sunnyvale

From: Board of Directors, Manet Terrace H. O. A.

Subject: Zoning Administrator Hearing, File #2011-7719, Feb. 15, 2012
@2:00 p. m.

Ms. Hodge:

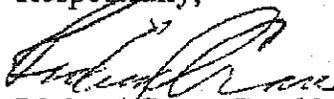
The Manet Terrace Board of Directors recently became aware of the permit application of Da Kine Café to engage in live entertainment, with amplified acoustic music, from 6:00pm until at least 1:00am (possibly 2:00am), Thursday, Friday and Saturday.

The Manet Terrace Townhouse complex is within 200 feet of the café. All bedrooms are on the second floor. ANY sounds, especially amplified music, coming from the café would make it extremely difficult to sleep.

The Manet Terrace H. O. A. Board of Directors is strongly opposed to the approval of this permit. Several Manet Terrace residents have gathered signatures to oppose the permit approval and will be presented at tomorrows hearing. The Board of Directors urges The City of Sunnyvale NOT to approve the permit, file # 2011-7719.

Note: We view this application as just one step in the Café's master plan to evolve from a quiet neighborhood café serving light food faire, coffee & soft drinks, to a full fledged night club serving hard liquor, with the multiple attendant problems associated with most night clubs.

Respectfully,



Richard Crane, President, Manet Terrace H. O. A.

4crane@msn.com

RECEIVED

ATTACHMENT

Page 5 of 10 FEB 15 2012

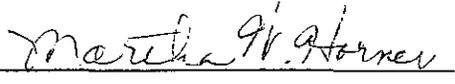
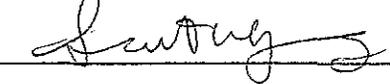
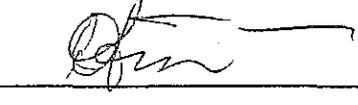
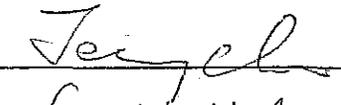
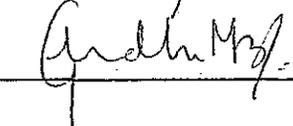
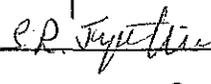
Sunnyvale City Zone Administrator
February 15, 2012

PLANNING DIVISION

Re: Public Hearing for Special Development to allow live entertainment at Da Kine Café.

From : Manet Terrace Complex.

I am a resident of the Manet Terrace complex. I am concerned about the proposed late night music at Da Kine Café until 1 AM. I think the proposal for the live entertainment at late night hours should be denied.

	<u>Name</u>	<u>Signature</u>	<u>Address</u>
1.	MARTHA W. HORNER		551 Manet Terrace
	Laxmi		
2.	RAM NEMARUGOMMULA		556 manet Terrace
3.	Hyesoo Kim		560 Manet Ter.
4.	Scott Young		554 Manet Ter
5.	Masahito Kagawa		555 Manet Ter.
6.	Olego Tunerky		557 Manet Ter.
7.	Igor Albert		557 Manet Terr.
8.	Jenny Choi		559 Manet Terrace
9.	Guridhar Malawalli		558 Manet Terrace
10.	JYOTHI SARGUR		558, manet terrace
11.	RAM NEMARUGOMMULA		556, Manet Terrace

Sunnyvale City Zone Administrator
February 15, 2012

ATTACHMENT F
Page 6 of 10

Re: Public Hearing for Special Development to allow live entertainment at Da Kine Café.

From : Manet Terrace Complex.

I am a resident of the Manet Terrace complex. I am concerned about the proposed late night music at Da Kine Café until 1 AM. I think the proposal for the live entertainment at late night hours should be denied.

	<u>Name</u>	<u>Signature</u>	<u>Address</u>
12	JAY RAMASAMY	J. Jayaraman	570 Manet Terr. 94087
13	BARBARA EVATT	Barbara Evatt	565 Manet Ter 94087
14	SANJEEV SHARMA	Sanjeev	572 Manet Terrace
15	RICHARD CRANE	Richard Crane	576 MANET TERR
16	Betty Jones	Betty K. Jones	577 Manet Terr
17	Lily Villaroman	Lily Villaroman	582 Manet Terrace 94087
18	SHARAD BHARGAVA	Shard Bhargava	587 Manet Terrace
19	MANISH MITAL	Manish	571 Manet Terrace 94087
20	Kirti Dalvi	Kirti	564 Manet Terrace
21	Sean Layne	Sean Layne	575 Manet Terrace
22	MARK SEBASTIAN	Mark Sebastian	567 Manet Terr 94087

Sunnyvale City Zone Administrator
February 15, 2012

ATTACHMENT F
Page 7 of 10

Re: Public Hearing for Special Development to allow live entertainment at Da Kine Café.

From : Manet Terrace Complex.

I am a resident of the Manet Terrace complex. I am concerned about the proposed late night music at Da Kine Café until 1 AM. I think the proposal for the live entertainment at late night hours should be denied.

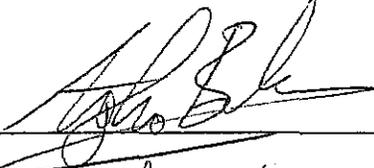
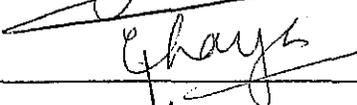
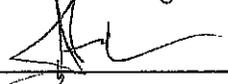
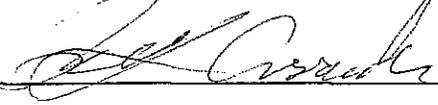
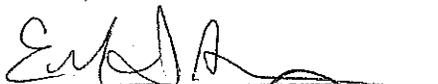
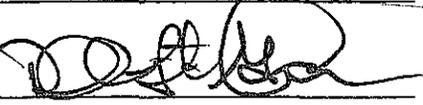
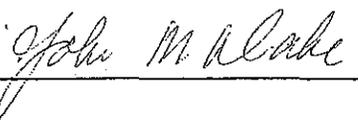
<u>Name</u>	<u>Signature</u>	<u>Address</u>
23 <u>MITALI GUPTA</u>	<u>[Signature]</u>	<u>572 Manet Terr, Sunnyvale</u>
24 <u>DENNIS DRAKE</u>	<u>P. DRAKE</u>	<u>552 MANET TERR</u>
25 <u>Tricia Palomino</u>	<u>Tricia Palomino</u>	<u>580 Manet Terr.</u>
26 <u>Sugandha Ramachandran</u>	<u>[Signature]</u>	<u>566 Manet Terr</u>
27 <u>KAVITHA RAJ</u>	<u>M. Kavitha</u>	<u>570 Manet Terrace</u>
28 <u>Prabha Rai</u>	<u>Prabha Rai</u>	<u>578, Manet Terr.</u>
29 <u>Ysabel Clarke</u>	<u>[Signature]</u>	<u>590 Manet terrace</u>
30 <u>Toji Mekkatt</u>	<u>[Signature]</u>	<u>593 Manet Terrace</u>
31 <u>Pruthy George</u>	<u>Pruthy</u>	<u>593 Manet Terrace</u>
32 <u>CHANDRASHEKHAR JOSHI</u>	<u>[Signature]</u>	<u>589 Manet Terrace</u>
33 <u>GAYATRI JOSHI</u>	<u>[Signature]</u>	<u>589 Manet Terrace</u>

Sunnyvale City Zone Administrator
 February 15, 2012

Re: Public Hearing for Special Development to allow live entertainment at Da Kine Café.

From : Manet Terrace Complex.

I am a resident of the Manet Terrace complex. I am concerned about the proposed late night music at Da Kine Café until 1 AM. I think the proposal for the live entertainment at late night hours should be denied.

	<u>Name</u>	<u>Signature</u>	<u>Address</u>
34	BAKHJIAR AOKHA		585 Manet Terrace
35	Chaya K		573 Manet Ter
36	Atul K		573 Manet Ter
37	Rumly A		573 Manet Ter
38	Sameer Nigade		564 Manet Ter.
39	ERICK AVERNA		554 Manet Terrace.
40	Richard S. Gardner		569 manet terrace
41	Donna K. Gardner		569 Manet Ter
42	John Blake		552 Manet Ter.
43			
44			

FEB 15 2012

Sunnyvale City Zone Administrator
February 15, 2012

PLANNING DIVISION

Re: Public Hearing for Special Development Permit to allow live entertainment at Da Kine Café.

My name is Yoko Drake.

I reside at 552 Manet Terrace in Sunnyvale.

After I read the public hearing notice from The City of Sunnyvale, my initial reaction was shock and concern as a home owner in the neighborhood immediately east of the proposed location.

Some of our neighbors also expressed their concern and as a result, we are requesting that the permit be denied for the following reasons:

1. Noise. We reside approximately 150 feet from Da Kine Café. One concern is the potential noise to individual residents in late night hours.
2. Hours of operation. As we understand the City of Sunnyvale staff report, the hours of operation are going to be changed to extend open time until 1 AM on Thursday through Saturday and will close at 8 PM on Sunday through Wednesday. The live entertainment starts at 6 PM in the evening of Thursday through Saturday until 1 AM. The live entertainment would be acoustical music, amplified acoustical music, but not be DJ music or amplified music for dancing. The live entertainment may also include guest speakers, comedian, or other non-music entertainers. This is Very likely to cause disruption to nearby neighbors in late night hours.
3. Close proximity to Fremont High School. We feel that this type of establishment is detrimental to youngsters who frequent the strip mall where Da Kine Café is located.

4. There are many young children living in this complex. We feel that this change would not be desirable for the healthy environment of young children.

5. The staff report indicated that the applicant do not have a Type 25 , full liquor license, but may apply if one is available in the next year. The applicant has withdrawn the original request of full liquor license which was indicated on the Sunnyvale Public Hearing notice we have received. It is a potential expansion to serve full liquor where they now serve beer and wine.

6. Property value. We are concerned that the above issues could cause a neighboring impact on surrounding individual property values.

In closing, we have lived in our present home for over 26 years, and feel that changes cited above could exacerbate problems of the noise, safety and the overall wellness of our neighborhood especially late night hours. We would like to keep our environment safe for the high school students and conducive to wholesome family life.

Thank you.


Yoko Drake



CITY OF SUNNYVALE
ZONING ADMINISTRATOR HEARING

MINUTES
Wednesday, February 15, 2012

ATTACHMENT G
Page 1 of 2

FILE #: 2011-7719
Location: 153 E. Fremont Avenue (APN: 211-34-001)
Proposed Project: Special Development Permit to allow live entertainment (amplified acoustic music) and full liquor service at Da Kine Café.
Applicant / Owner: Da Kine Café / Soo Lee et al
Environmental Review: Categorically Exempt Class 1
Staff Contact: Mariya Hodge, 408-730-7659, mhodge@ci.sunnyvale.ca.us

In attendance: Pete Be, Applicant; Raymond Loaec, Neighbor; Betty Jones, Neighbor; Yoko Drake, Neighbor; Masoud Heddad, Neighbor; Robert Chen, Neighbor; Andrew Miner, Zoning Administrator; Gerri Caruso, Project Planner; Luis Uribe, Staff Office Assistant.

Mr. Andrew Miner, Zoning Administrator, on behalf of the Director of Community Development, explained the format that would be observed during the public hearing.

Mr. Miner announced the subject application.

Gerri Caruso, Project Planner, presented the item and stated that the request for full liquor has been dropped. Staff did receive one letter and phone call opposing the project.

Mr. Miner opened the public hearing.

Pete Be, Applicant, received and reviewed a copy of the staff report. Mr. Be stated that his establishment will have live entertainment that will consist of acoustical music. Mr. Miner asked if there was amplification currently available, the applicant said yes. Mr. Miner also asked if there was a way for the City to be sure that only acoustical music will be performed. The applicant stated that they are in no way trying to create a club or dive bar environment. He also mentioned that the music will be very similar to the cuisine that is being served which is more island style music. Mr. Miner inquired about the hours of operation throughout the shopping center. The applicant stated that the pizza place is closed by 10 pm and that most of the other businesses close by 6 pm.

Raymond Loaec, Neighbor, stated that his biggest concern is with the business staying open until one in the morning. There is a lot of loitering that occurs when ever this business has an event and this shopping center has twenty instances with Public Safety a week.

Betty Jones, Neighbor, stated that she and Yoko Drake have compiled a list of written concerns which was submitted to Mr. Miner.

Yoko Drake, Neighbor, proceeded to read the list. Ms. Drake stated that she is requesting for denial of the application due to their concerns regarding noise, hours of operation and close proximity to Fremont High School. She also mentioned that there is no way to know if the applicant will no apply for a full liquor license in the future. Ms. Drake and Ms. Jones submitted a petition in opposition of the project.

Masoud Heddad, Neighbor, stated that he strongly feels that if music and liquor are allowed that and increase in crime will occur. He also wanted to mention that there is already an issue with crime in this area.

Robert Chen, Neighbor, stated that many of his tenants have children that attend Fremont High School and feels that this type of business will keep his tenants awake and will not be of any benefit to them. He also mentioned that there is a child care business in the shopping center that stays open until 8 pm and feels that children should not be exposed to this type of environment.

Pete Be stated that he feels there is a misunderstanding as to what type of business this will be. It is a restaurant that will have some music and understands the concern of kids loitering. He also mentioned that is working with Fremont High faculty to help eliminate a lot of the drug use that go on with Fremont High students. Mr. Be stated that the child care facility is in full support of his business. Mr. Miner addressed the liquor license and stated that in order to get a full liquor license the applicant would have to come in and apply for another permit. Mr. Miner asked staff about a time limit that has been used in the past to allow review of the business to see if it is a nuisance to the shopping center. Mr. Miner went on to address the concerns of the neighbors.

Mr. Miner closed the public hearing.

Mr. Miner approved the application subject to the findings and conditions of approval located in the staff report. He added a condition that the music must stop at midnight, that the graffiti be cleaned up and limited the use for 6 months.

Mr. Miner stated that the decision is final unless appealed to the Planning Commission with payment of the appeal fee within the 15-day appeal period.

The meeting was adjourned at 2:47 p.m.

Minutes approved by:



Andrew Miner, Principal Planner

3. **File #:** 2011-7719
Location: 153 E. Fremont Ave. (APN: 211-34-001)
Proposed Project: Appeal of a decision by the Zoning Administrator approving with conditions a Special Development Permit to allow live entertainment (amplified acoustic music) at Da Kine Café.
Appellant/Applicant/Owner: Tulip After School/Da Kine Café / Soo Lee et al
Environmental Review: Categorically Exempt Class 1
Staff Contact: Mariya Hodge, 408-730-7659, mhodge@ci.sunnyvale.ca.us

Trudi Ryan, Planning Officer, presented the staff report. She provided a correction, referring to page eight of the report that the language in Alternative 1 and 4 should also include the "new condition AT-6".

Comm. Sulser discussed with staff the proposed hours of operation requested by the applicant.

Vice Chair Larsson asked about the six-month review, how neighbors could find out about the review. Staff explained that an approval this evening would be granting a six-month permit and the applicant would need to apply for a new permit in six months so the standard public noticing for a Zoning Administrator public hearing would occur. Ms. Ryan said staff would remind the applicant about two months before the permit would expire that they would need to re-apply and staff would have about five months of experience to consider for the next permit.

Chair Hendricks asked staff about petitions as the report includes a petition from neighbors opposing the project. Ms. Ryan said a petition is one piece of several pieces of information to be considered and staff does not know what was discussed when the signatures were being collected. Chair Hendricks asked staff about maximum capacity, outdoor tables, and amplification. Ms. Ryan said the amplification is only allowed for inside the restaurant and the conditions of approval require the doors to be kept closed. Chair Hendricks noted that on his site visit he observed that it looks like the restaurant is already set up for amplified music. Staff said yes, and that the applicant was advised that they needed an entertainment permit. Chair Hendricks confirmed that special approvals would be needed for special events.

Chair Hendricks opened the public hearing.

Pete Be, applicant and managing director at the Da Kine Café, and provided a letter and outline of his discussion this evening. He said Da Kine Café is a Hawaiian restaurant with Hawaiian-themed music and sound would not be heard outside. He said the demographics they are targeting are families. He said this is not a high school hang out and most of the high school students are gone by 4 p.m. He said to minimize noise they have agreed to not empty trash until the music has stopped. He said a few neighbors came by and said the restaurant is not what the petition said it was, clarifying that this is not a nightclub. He confirmed that this is a Hawaiian restaurant with Island style cuisine and Tahitian and hula music and dancing.

Ram, a neighbor, said the townhome area he lives in has been a quiet area with no noise from the businesses. He expressed his concern that with approval of this project that he thinks they will have unwanted noise that will disturb the neighborhood.

Sameer Nigade, a neighbor, said this business backs up to his neighborhood, which has been a nice, quiet neighborhood. He said that if there is a restaurant with live music that he thinks there will be a noise factor not appropriate for the neighborhood. He said he is also concerned about more traffic in the parking lot and possible problems that may result. Vice Chair Larsson talked with Mr. Nigade about the neighborhood, including noise from football games, with Mr. Nigade saying the football games are okay, however he does not think the proposed entertainment is a good example for kids.

Giridhar Malavali, a neighbor, said he lives next to this site, and said he is concerned about the times of operation of the live music. He said he thinks the live entertainment during the 6 to 9 p.m. time on a school night will be noise affecting his children's study time. He said the music has already disturbed them. He said noise from the high school is occasional and does not usually go past 7 p.m. and this live entertainment would be on a regular basis. Vice Chair Larsson confirmed with Mr. Malavali that the noise and amplification has already been a problem. Chair Hendricks asked how loud the music was. Mr. Malavali said the first time he heard it, he thought it was his next-door neighbor and then he realized it was from the restaurant.

Comm. Sulser discussed the noise ordinance with staff. Ms. Ryan added the entertainment use at this restaurant was not permitted.

Chandvashekhan Joshi, a neighbor, said he had heard the restaurant noise at night. He said he feels bad for those who live closer or do not have double paned windows. He said most of the businesses in the commercial complex are closed by 9 p.m. He expressed concern about the customers this kind of entertainment may attract and in the summer, more children are around and the alcohol, music and dance could disturb the area.

Sunil Kumar Rai, a neighbor, expressed his concern about permitting alcohol and entertainment, and the noise from people leaving the restaurant late in the evening. He said there are a lot of young children and families with school-aged children in this neighborhood. He said he thinks the crime rate could go up if the entertainment is allowed. He said the neighborhood is not gated and he thinks the use could be a problem for the residential community.

Robert Chen, apartment manager next to the shopping center, discussed his concerns about noise from the shopping center operations, including noise from taking the garbage out. He said he has already had tenants move out due to the noise. He said the business owner wants to stay open later and there will be more noise in the parking lot later at night. He said when the school has activities, they are usually over by 10 p.m. He said he does not think parents want their children from the high school to come here, as there are already some problems. He said

the business owner has already started having music without a permit. Chair Hendricks asked Mr. Chen how late the nearby gas station is open. Mr. Chen said, probably 9 o'clock.

Mr. Be said he has heard the message about noise, drugs, and attracting high school kids. He said his facility faces Sunnyvale-Saratoga Road and they do not have a back door. He said he would challenge a noise meter to see if the noise the neighbors are talking about comes from his facility. He said the demographic for their business is families and that they provide a kid-friendly environment. He said they work closely with Fremont High School to eliminate potential issues. He said he has not seen drug dealing going on and they have worked with the High School to help eliminate pot smoking.

Vice Chair Larsson confirmed with the applicant that they have license to sell beer and wine. Mr. Be said that when they opened the facility that he did not know he needed a permit for entertainment and said they have worked with Neighborhood Preservation staff to correct the permit situation. He addressed previous activities at the site.

Chair Hendricks discussed with the applicant the volume of the music.

Comm. Kolchak clarified with the applicant that they would like to play Hawaiian music, and occasionally play jazz or soft rock.

Chair Hendricks confirmed with the applicant that their occupancy is 48.

Ms. Ryan clarified the noise ordinance and the decibels allowed and said the noise would be measured at the property line.

Chair Hendricks closed the public hearing.

Vice Chair Larsson moved for **Alternative 1, to grant the appeal and approve the Special Development Permit with the conditions listed in Attachment B (including new Conditions of Approval #PC-1 and AT-6).** **Comm. Sulser** seconded the motion.

Vice Chair Larsson said he could make the findings. He said the major issue seems to be noise. He said allowing this use for a six-month period should allow ample time to collect data. He said if there is a problem, neighbors should contact the City. He said regarding noise, there is only one door, which must be kept closed, and it is pointing towards Sunnyvale-Saratoga Road. He said there is a condition that prohibits dancing, or DJ music, so the establishment is not turning into a nightclub.

Comm. Sulser said he agrees with Vice Chair Larsson. He said if the applicant follows the conditions of approval, this business should not be a problem. He said if there are any problems that the public should contact City staff.

Chair Hendricks confirmed with Vice Chair Larsson that he was satisfied with the six-month review going to the Zoning Administrator hearing for review.

Comm. Kolchak offered a Friendly Amendment that if there are issues occurring that need to be addressed sooner than six months that the review occur earlier. Vice Chair Larsson discussed the Friendly Amendment with staff. **Comm. Kolchak** reworded his Friendly Amendment to add to condition GC-4.b that if there are valid complaints about more than five separate events at the Café that an earlier review process would be triggered. The Friendly Amendment was acceptable to the maker and seconder of the motion.

Chair Hendricks thanked the public for attending and providing input. He said he could make the findings and the issue here is volume. He said he is having trouble believing dinner-level music with the door closed could translate so loud to go over the complex into the housing area. He said with the Friendly Amendment that the City could review this permit earlier if there are any problems.

ACTION: Vice Chair Larsson made a motion on 2011-7719 to grant the appeal and approve the Special Development Permit with the conditions listed in Attachment B (including new Conditions of Approval #PC-1 and AT-6) and other modifications: to add to condition GC-4.b that if there are valid complaints for more than five separate events at the Café that an earlier review process would be triggered. **Comm. Sulser** seconded. Motion carried 4-0, with **Comm. Chang**, **Comm. Dohadwala** and **Comm. Travis** absent.

APPEAL OPTIONS: This action is final unless appealed to the City Council no later than April 24, 2012.

**Businesses With Active ABC Licenses Located Within 1,000 feet
 of 153 E. Fremont Ave.**

Business Name	Address	License Type
Da Kine Café	153 E Fremont Ave	On-Sale Beer & Wine - Eating Place (Type 41)
Thai Pepper Cuisine	103 E Fremont Ave	On-Sale Beer & Wine - Eating Place (Type 41)
Liquor & Food Mart	163 E Fremont Ave	Off-Sale General (Type 21)
Jake's Restaurant	174 E Fremont Ave	On-Sale Beer & Wine - Eating Place (Type 41)
Longhorn Charcoal Pit	102A E Fremont Ave	On-Sale Beer & Wine - Eating Place (Type 41)
Cole's Market & Liquor	166 E Fremont Ave	Off-Sale General (Type 21)
The Peacock Lounge	102 E Fremont Ave	On-Sale General - Public Premises (Type 48)