



June 28, 2010

**SUBJECT:**           **2010-7371 La Ronda Night Club/Maple Leaf Investments II, LLC:** Application for Miscellaneous Plan Permit for Planning Commission compliance review of the conditions of approval for a previous approval to allow 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 East Duane Avenue** in a C-1/PD Zoning District (APN: 205-12-001):

**REPORT IN BRIEF**

**Existing Site Conditions**           Neighborhood Commercial Shopping Center

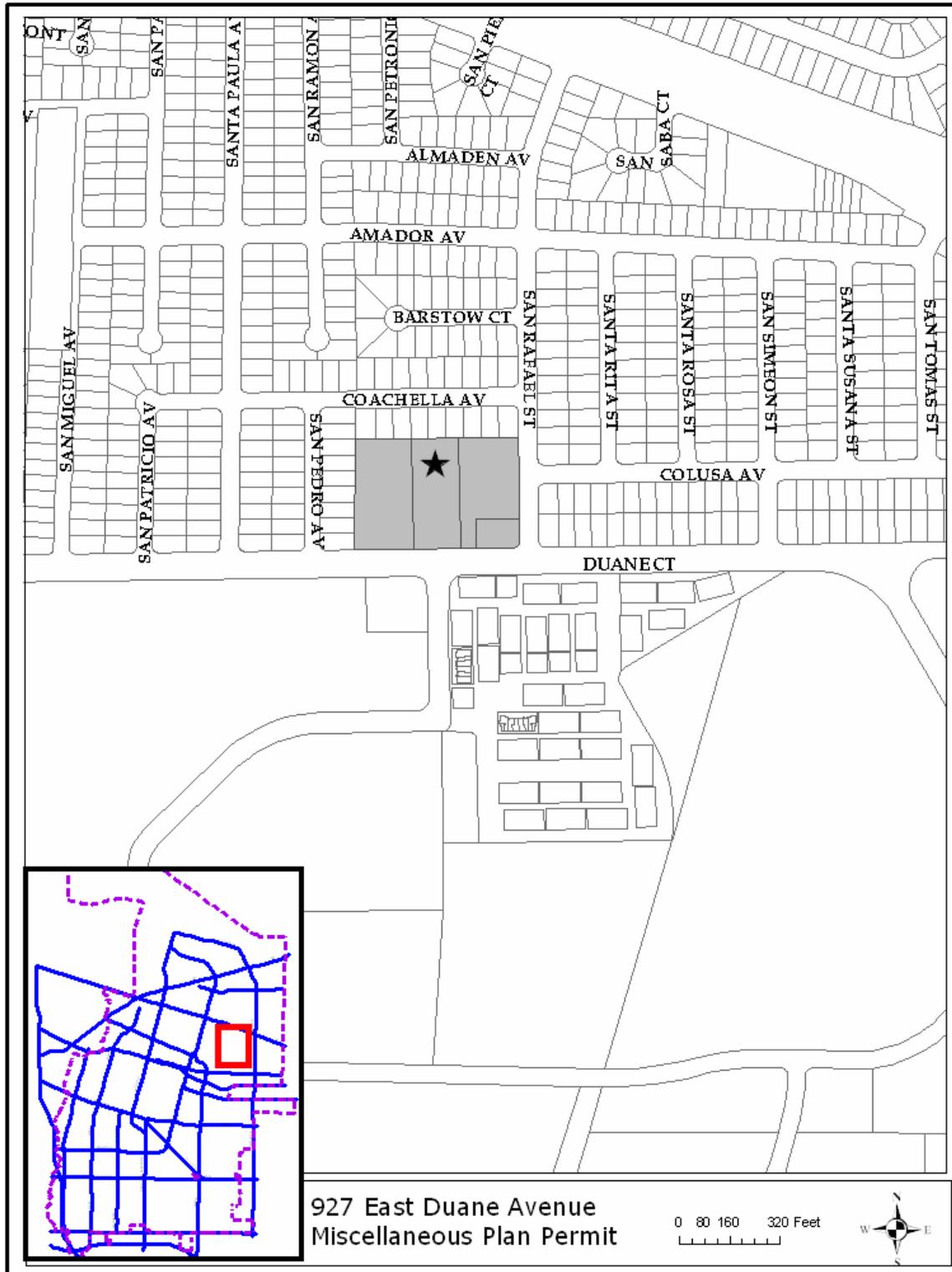
**Surrounding Land Uses**

North	Single-Family Residential
South	Industrial/Office
East	Single-Family Residential
West	Single-Family Residential

**Issues**                               Compliance with the conditions of approval.

**Environmental Status**           Categorically Exempt

**Staff Recommendation**           Refer to City Council.



## **PROJECT AND SITE DESCRIPTION**

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**Current MPP Application:** The 2009-0066 Special Development Permit (SDP) was approved for this site by the Planning Commission with several timing conditions of approval (see Final Conditions of Approval in Attachment B). 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.*

This Miscellaneous Plan Permit (MPP) application is being referred to the Planning Commission since staff determined the use is out of compliance with the SDP conditions of approval.

**Project Description:** The SDP was approved in 2009 to expand the existing business (La Ronda Night Club), which occupies a 3,000 square foot tenant space, into an adjacent 534 square foot tenant space for a total of 3,534 square feet. The project included the rebuilding of the restaurant kitchen, creation of a second bar, additional seating areas, modification of operations, and upgrades to the interior décor. The business proposed to operate as a restaurant with full liquor service and live entertainment (not a nightclub). The business was, and is, operating without approval as a nightclub with full liquor service and live entertainment (no restaurant component). The restaurant area was previously removed but was proposed to be rebuilt as part of this application.

**Project Background:** As a result of a complaint made with the Neighborhood Preservation Division in 2007 for unpermitted construction expanding the subject business into the adjacent vacant space, the business owner filed an

SDP to legalize the expansion. Since the complaint, Neighborhood Preservation staff has met with residents of the San Miguel neighborhood who expressed additional concerns about the loud music that can be heard in the residential area behind the shopping center, and the public disturbances that have been caused by patrons of La Ronda Night Club. Neighborhood Preservation staff has been working with the Public Safety Officers and the business owners to obtain all of the necessary permits for the expansion and to address other ongoing public safety issues.

The club owners applied for an SDP in 2008 that was reviewed at the May 28, 2008 Administrative Public 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.

On July 29, 2009 the club owners applied for a new SDP application that was heard before the City's Administrative Hearing Officer where it was approved with staff recommended condition of approval and 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 neighborhood compatibility and compatibility with the General Plan. On October 12, 2009 (see Attachment D for Commission Minutes), 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.

**Staff Determination:** To date, no building permits have been applied for with the City for the physical improvements required by SDP conditions of approval for the use (restaurant with live entertainment). In addition, no information or documentation has been submitted to demonstrate compliance with the operational conditions (closing times, security, noise logs, etc.). The use, therefore, is not in compliance with the approved Special Development Permit.

The following is a list of selected conditions of approval from the 2009 SDP and the status. 'Not completed' means the condition has not been addressed, addressed but without the necessary permits, and/or no evidence has been presented to staff demonstrating compliance.

<b>COA #</b>	<b>Condition Summary</b> (refer Attachment B for more details)	<b>Status</b>
<b>1.H</b>	MPP for six month compliance review.	Not submitted
<b>1.J</b>	Provide the dBA (decibel A) and dBC noise logs in six months.	Not submitted
<b>1.K</b>	All operational COAs operating within 30 days of the final approval date.	Not completed
<b>1.M</b>	Food service shall commence within 6 months.	Not completed
<b>1.N</b>	All noise mitigation improvements installed with building permit.	No information submitted to staff
<b>2.A</b>	Hours of operation 9:00am to midnight.	Not completed
<b>2.B</b>	Trash pick-up within ¼ mile of site.	No information submitted to staff
<b>2.C</b>	All doors shall have a self-closing mechanism.	Not completed
<b>2.D</b>	Rear door shut at all times.	No information submitted to staff
<b>2.E</b>	Sign on rear door stating business hours and contact information.	No information submitted to staff
<b>2.G</b>	Employee manual shall be created.	No information submitted to staff
<b>2.H</b>	Employees shall be given training and education.	No information submitted to staff
<b>2.J</b>	80% of the tables and chairs shall be set up during normal hours.	Not completed
<b>2.L</b>	Business operator shall retain private uniformed security guards (4-6 guards).	No information submitted to staff
<b>2.M</b>	Security guards shall be responsible for working closely with Public Safety.	No information submitted to staff

<b>COA #</b>	<b>Condition Summary</b> (refer Attachment B for more details)	<b>Status</b>
<b>2.P</b>	Private security guards shall be responsible for taking noise readings every hour.	No information submitted to staff
<b>2.R</b>	Install sound proofing materials to mitigate noise and vibration impacts on neighboring properties.	Not completed
<b>2.S</b>	Install a Sound Trap devise at the front entry doors.	Not completed
<b>3.A</b>	Comply with all ABC regulations and license requirements.	Not met
<b>3.B</b>	Approval from Crime Prevention Division for crime and public nuisance prevention measures.	Not completed
<b>3.D</b>	Existing fire sprinkler system shall be modified for the new use	Not completed
<b>3.E</b>	Fire alarm systems and other upgrades shall be completed per California Fire Code.	Not completed
<b>4.A</b>	Employees shall park in the rear parking.	No information submitted to staff
<b>4.B</b>	Submit a revised parking plan.	Not completed
<b>5.B</b>	Sign shall be placed near the rear entrance of the restaurant stating the hours of operation (9:00am-6:00pm) for trash and recycling activities.	No information submitted to staff
<b>5.D</b>	Submit plans for a new trash enclosure.	Not completed

## **PUBLIC CONTACT**

**Public Contact:** 110 notices were sent to surrounding property owners and residents adjacent to subject site in addition to standard noticing practice. Planning has not received any contact from the public.

**Applicant and Property Owner Contact:** After the Planning Commission hearing City staff urged the applicant and business owners to apply for building permits and make the necessary operational changes as soon as possible, given the short six month timeframe. The matter was also discussed with the club's consultant, the business owners, and the property owner several times over the phone and in writing between January 2010 and May 2010. Attachments E and F are letters sent by the City to the club owners, property owners, and their consultant reminding them of the timing of the conditions of approval.

The January 12, 2010 and April 12, 2010 dates passed without the necessary actions being completed and no contact was made with City staff to request an extension of time.

### **ENVIRONMENTAL DETERMINATION**

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

### **ALTERNATIVES**

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1. Approve the Miscellaneous Plan Permit and take no further action.
2. Approve the Miscellaneous Plan Permit and modify the conditions of approval.
3. Deny the Miscellaneous Plan Permit and direct staff to initiate the permit revocation process for City Council review.

### **RECOMMENDATION**

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Alternative 3: Deny the Miscellaneous Plan Permit and direct staff to initiate the permit revocation process for City Council review.

Reviewed by:

Trudi Ryan

Planning Officer

Prepared By: Steve Lynch, Senior Planner

Attachments:

- A. Findings
- B. Approved Conditions of Approval
- C. Project Data Table
- D. Planning Commission meeting minutes of October 12, 2009.
- E. Letter to Owners March 25, 2010
- F. Letter to Owners April 20, 2010

## **FINDINGS**

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Goals and Policies that relate to this project are:

### **Land Use and Transportation Element**

**Policy N1.1** – *Protect the integrity of the City’s neighborhoods; whether residential, industrial or commercial.*

**Action Statement N1.1.1** – *Limit the intrusion of incompatible uses and inappropriate development into city neighborhoods.*

**Policy C4.3** – *Consider the needs of business as well as residents when making land use and transportation decisions.*

In order to approve the Miscellaneous Plan Permit, either of the following findings must be made;

- (1) Attain the objectives and purposes of the general plan of the city of Sunnyvale; or
- (2) Ensure 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 was not able to make the findings to recommend approval of the MPP.**

The existing restaurant with live entertainment and full liquor service was approved in 2002. The applicant was proposing to bring the current operations (nightclub) into compliance through the 2009 SDP application, but has not been willing to comply with the conditions of approval. If the conditions are not observed, this use will continue to impact the surrounding neighborhoods and adjacent businesses.

In addition, the project proposes significant modifications to the approved use for the site, which staff anticipates will impair either the orderly development of, or the existing uses being made of, adjacent properties. At the present time, the business is continuing to operate a use that was never legally permitted. The illegal use has been in operation for over three years. The business is also continuing to operate illegally in a tenant space since the space was never permitted by the City’s Building Division, Fire Prevention Division, and Department of Public Works. This illegal operation is not in compliance with SMC or the SDP conditions of approval, and presents a life safety issue for the workers and patrons at the site.

**927 E. Duane Ave – La Ronda SDP**  
**Final Conditions of Approval**

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**2009-0066**

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 of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

**1. GENERAL CONDITIONS**

- A. Execute a Special Development Permit document prior to issuance of the building permit.
- B. Project shall be in conformance with the plans approved at the public hearing(s). Minor changes may be approved by the Director of Community Development. Major changes may be approved at a public hearing.
- C. The Conditions of Approval shall be reproduced on a page of the plans submitted for a Building permit for this project.
- D. The Special Development Permit for the use shall expire if the use is discontinued for a period of one year or more.
- E. ~~Deleted.~~
- F. The existing and proposed areas (3,534 square feet) and uses must comply with all requirements of previously approved Special Development Permit 2002-0128, unless modified herein.
- G. The Special Development Permit shall be valid for 18 months only from the date of approval by the final review authority, and the applicant must reapply for a Special Development Permit in 18 months.
- 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.
- I. A second compliance review through an MPP shall take place within one (1) year of the final approval date.
- J. As part of the compliance review, the applicant is required to provide to City staff, the dBA (decibel A) and dBC noise logs.

- K. All conditions of approval for operational issues (non-construction) contained here are required to be in place and operating within 30 days of the final approval date.
- L. Food service shall commence immediately upon completion of the kitchen and within six (6) months of the final approval date.
- M. All conditions of approval for building permits (physical construction or tenant improvements) must be submitted and issued within 90 days of the final approval date and shall be completed within six (6) months 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.
- N. All noise mitigation improvements are required to be installed at the same time as the first building permits issued for the tenant improvements.
- O. This use shall comply with all regulations and rules of Alcohol and Beverage Control (ABC).

## 2. **OPERATIONS**

### **General:**

- A. Hours of operation shall be limited to the following hours:
  - Sunday – Thursday: 9:00am to midnight.
  - Friday – Saturday: 9:00am to midnight.
- B. The applicant shall be responsible for trash clean-up resulting from the business within ¼ mile of the tenant space.
- C. All exterior doors, including the rear door, shall have a self-closing mechanism and shall be kept closed when not in use.
- D. The rear door shall be kept shut at all times.
- E. A sign shall be placed on the rear door as exit only. Business hours and contact information may also be posted on the sign. The sign shall be a maximum size of six square feet.
- F. Patrons are not allowed in the rear area (northern area) adjacent to neighboring properties, at any time.
- G. 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.
- H. Employees shall be given training and education from the employee manual on a quarterly basis.
- I. Patrons of all ages, including under 21, must be allowed.
- J. 80% of the tables and chairs shall be set up during normal hours of operation.

**Events:**

- J. No outside event promoters are allowed to operate at this location. All entertainment/entertainers must be hired directly by the business managers or owners.
- K. Private events (operated by La Ronda Night Club only) are permitted.

**Security:**

- L. The business operator shall retain private uniformed security guards (4-6 guards) who shall be responsible for monitoring noise, any patrons loitering outside of the building, and shall be on-site at all times when entertainment is occurring.
- M. The security guards shall be responsible for working closely with Public Safety to resolve problematic operational issues.
- N. Private security guards shall be responsible for removing any patrons loitering in the rear area (northern area) adjacent to neighboring properties, at all times.
- O. One private security guard shall be stationed in the front parking lot (southern area) at all times.

**Noise:**

- P. Private security guards shall be responsible for monitoring the noise generated by the club through the use of sound meters. Readings should be taken approximately every hour at the front and rear (back property line) of the business. Noise readings shall be entered into a sound log that will be kept on-site at all times. This log shall be made available to Public Safety if requested.
- Q. Private security guards shall ensure that any noise generated by patrons loitering in the front parking lot area (south side) shall not be audible at the property line of the residential development to the south of this site.
- R. Install sound proofing materials to mitigate noise and vibration impacts on neighboring properties and adjoining tenant spaces.
- S. Install a Sound Trap device at the front entry doors.
- T. Install sound proofing materials in tenant space walls to mitigate noise and vibration impacts on neighboring properties and adjoining tenant spaces.

**3. COMPLY WITH OR OBTAIN OTHER PERMITS**

- A. Comply with all ABC regulations and license requirements. Failure to comply with all ABC regulations is grounds for revoking this permit.
- B. Obtain approval from the Crime Prevention Division of the Department of Public Safety for crime and public nuisance prevention measures appropriate to the proposed development prior to issuance of a Building Permit.

- C. Tenant is responsible for ensuring customers comply with smoking regulations, per California State law.
- D. The existing fire sprinkler system shall be modified for the new use, per SMC.
- E. Fire alarm systems and other upgrades shall be completed per California Fire Code.

**4. PARKING**

- A. Employees shall park in the rear parking lot located at the northwest corner of the property.
- B. Submit a revised parking plan to the Director of Community Development for review and approval prior to issuance of a Building Permit.

**5. RECYCLING AND SOLID WASTE**

- A. All trash and recycling activities shall be conducted during daytime hours of operation (9:00am-6:00pm).
- B. A permanent sign shall be placed near the rear entrance of the restaurant stating the hours of operation (9:00am-6:00pm) for trash and recycling activities.
- C. All exterior recycling and solid waste shall be confined to approved receptacles and enclosures at all times. Containers shall not be placed in parking spaces or landscaped areas at any time.
- D. Submit plans for a new trash enclosure to the Director of Community Development for review and approval prior to issuance of a Building Permit. The enclosure shall be of masonry construction and shall match the exterior design, materials and color of the main building.
- E. The property shall remain clean and free of debris and garbage.

**6. SIGNS**

- A. All existing/new signs shall be in conformance with the Master Sign Program established for the shopping center and the Sunnyvale Municipal Code.

**PROJECT DATA TABLE**

	<b>EXISTING</b>	<b>PROPOSED</b>	<b>REQUIRED/ PERMITTED</b>
<b>General Plan</b>	Commercial Neighborhood Shopping	Same	Commercial Neighborhood Shopping
<b>Zoning District</b>	C-1/PD	Same	C-1/PD
<b>Lot Size (s.f.)</b>	173,192	Same	N/A
<b>Gross Floor Area (s.f.)</b>	46,400	Same	60,617
<b>Gross Floor Area of Tenant</b>	3,000	3,534	N/A
<b>No. of Buildings On-Site</b>	4	Same	N/A
<b>Parking</b>			
<b>Total Spaces</b>	262	Same	232 (Using 1 space/200 s.f.)
<b>Accessible Spaces</b>	4	6	Per Building Code Requirements

**PLANNING COMMISSION MINUTES OF OCTOBER 12, 2009**

**2009-0066: La Ronda Night Club** [Applicant] **Maple Leaf Investments II LLC** [Owner] - Appeal of a decision of the Administrative Hearing Officer by a Council Member for a Special Development Permit to allow the expansion of an existing restaurant with live entertainment (La Ronda Night Club) into an existing restaurant space for an additional 534 square feet. The property is located at **927 E. Duane Avenue** (in Fair Oaks Plaza Shopping Center) in a C-1/PD (Neighborhood Business/Planned Development) Zoning District. (APN: 205-12-001) SL **(Continued from September 14, 2009.)**

**Steve Lynch**, Senior Planner, presented the staff report. He said staff is recommending approval of the appeal with the new conditions to address compatibility issues and bring the restaurant back into compliance with the approved Use Permit.

**Comm. Klein** discussed with staff the existing permit for this applicant. **Trudi Ryan**, Planning Officer, said the night club is not in compliance as they are not operating as a restaurant. **Comm. Klein** confirmed with staff what was allowed by the previous permit. Staff said the question of compliance came to the attention of staff as there was an expansion done without permits. **Comm. Klein** discussed some of the conditions of approval (COAs) particularly the hours of operation and some of the Public Safety input. Staff said the reduced hours are to make the restaurant more compatible with the neighborhood and the shortened Use Permit period to 18 months is to further monitor the restaurant. **Mr. Lynch** discussed some of the proposed changes. **Comm. Klein** discussed with staff concerns about noise and monitoring of La Ronda and what the applicant is doing to be compliant with noise regulations including a sound trap door. **Comm. Klein** discussed with staff that the base noise is a concern for neighbors and the concern that the rear door should remain closed until midnight, not 9 p.m. as indicated in the conditions. Staff confirmed the conditions should have been midnight.

**Comm. Sulser** discussed COA 1.H and the applicant's lack of compliance. **Ms. Ryan** discussed different options for non compliance with the permit. **Kathryn Berry**, Senior Assistant City Attorney, further discussed options for non compliance, including revocation of the permit and said that a revocation is only heard by the City Council, and only used as a last resort.

**Vice Chair Travis** asked if there is any data on Public Safety issues with this business. **Mr. Lynch** explained that staff does not have an analysis of comparable businesses. **Deputy Chief Mark Stivers**, Department of Police Safety, discussed the number of public and officer generated calls for service for this site during September 2009. **Vice Chair Travis** asked staff about the new plans and what size kitchen is needed for the proposed number of tables.

**Comm. Hungerford** discussed typical hours for restaurants and bars and factors that can affect the hours of operation. Comm. Hungerford discussed with staff the definitions of bars and restaurants. Comm. Hungerford asked Deputy Chief Stivers if the restaurant emphasis is an attempt to tone things down versus the current night club. Deputy Chief Stivers agreed that a restaurant use may tone things down.

**Comm. Klein** asked staff about the COA regarding trash clean up. Staff discussed the reason for adding this condition and said that it is difficult to know if the garbage is coming from the La Ronda establishment. Staff said that the applicant felt they could comply with this condition. Comm. Klein discussed further with staff about how much radius would actually be encompassed by the condition.

**Chair Chang** had staff clarify the conditions regarding compliance with staff explaining there would be three separate 6 month compliance reviews where the applicant would be required to be in conformance with the conditions.

**Chair Chang opened the public hearing.**

**Vincent Rivero**, VER Consultants, representing the applicant said they are trying to change this business back into a restaurant. He said they have security on-site and will continue to meet with public safety for training. He said they are trying to come up with a better way to protect the public and to keep the business viable. He said the kitchen was removed, and now they are trying to get back into compliance with their permit and with the ABC requirements, which requires they have a kitchen. He discussed the size of the kitchen, noise, the sound trap, and vibrations. He said they are trying to be better neighbors and a better business and to be more considerate of the impacts they are having on the neighborhood. He said they would like to keep the restaurant open until midnight. He said they would be focusing on the food and would monitor trash.

**Comm. Klein** asked about the rear door that is to be kept shut. Mr. Rivero indicated the use of the door is for fire safety and trash disposal and their desire is to otherwise keep the door closed. He noted the doors would have sound traps. He said if the trash needs to be taken out during business hours that the door would be open occasionally. He said the sound traps are for minimizing the vibrations from the bass noise. Comm. Klein asked if the food to be sold would be for on-site or take out. Mr. Rivero said the goal is for the food to be primarily on-site.

**Vice Chair Travis** expressed concern about the tables being moved as the evening gets later. Mr. Rivero said the tables would need to stay in place as there is an occupancy requirement and from a fire standpoint the moving of the tables would not be allowed.

**Arthur Schwartz**, a Sunnyvale resident, discussed noise measurement and said that the noise regulations should be changed to include the measuring of low frequency noise. He said that the low frequency noise is a principal problem resulting in complaints.

**Comm. Travis** discussed with Mr. Schwartz noise measurement.

**Tara Martin-Milius**, a Sunnyvale resident, said she agrees with the concern about the low frequency noise and said the noise can be felt in the nearby homes. She said the neighbors have met and talked with the applicant and that the neighbors have very little trust in what has been said and done. She said a simple solution would be to turn down the music. She said the applicant wants to have a bar and loud music which creates a problematic environment for the neighborhood. She said she and the neighborhood board would like to see La Ronda close at 10 p.m. like other restaurants acknowledging that midnight is better than the existing 2 a.m. closure. She said she understands this hearing was delayed for the applicant to do outreach to the neighborhood, which she said she thinks did not occur.

**Kit Chan**, a Sunnyvale resident, said he lives behind La Ronda and can feel the bass music every night beginning at 9 p.m. He said no one from La Ronda has reached out to him to discuss the noise problem.

**John Withington**, a Sunnyvale resident, said the noise has not reduced in the past year and a half. He said he would like a reduction or an elimination of the bass noise, and that when sitting in his home after 9 p.m., with all the doors and windows shut, he can still hear the bass noise.

**Susanne Edgerton**, a Sunnyvale resident, said that noise problem only started when La Ronda opened. She said it seems like La Ronda is going to be called a restaurant yet it will still be a night club. She said that last night in her house about 11 p.m. she could hear and feel the bass noise.

**Elinor Sheldon**, a Sunnyvale resident, said she works with the neighborhood association and she does not live near La Ronda. She said she is disheartened when talking with young people in their association when they say they are looking to move out of this neighborhood due to concerns with La Ronda. Ms. Sheldon said the association does a lot of things to make the neighborhood better.

**Michael Flores**, a Sunnyvale resident, said he would like to see more stringent noise requirements for La Ronda especially on the low bass noise. He said it looks like La Ronda is trying to get around the requirements by making this a restaurant while still wanting to keep the facility as a bar. He suggested moving the stage to the front of

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building. He said he is concerned about minors being allowed in the facility late at night. He discussed the location of the meters measuring the noise, and said he would like the rear door kept shut at all times and not just an attempt to keep it shut.

**Mr. Rivero** addressed the complaints regarding the issues of trust and noise. He said they are also concerned about the bass noise and hope the Commission will allow them to continue moving forward to tackle the noise issue. Mr. Rivero said they would like to put the issues related to trust in writing so the applicant can be held accountable and neighbors have recourses. He addressed the concern about the hours of operation saying they need to stay open later.

**Comm. Klein** discussed issues related to noise with Mr. Rivero, including measurement, bass noise, and plans for sound proofing.

**Vice Chair Travis** confirmed with the applicant that the applicant is okay with the required conditions.

**Comm. Hungerford** discussed with Mr. Rivero a suggestion from the public to turn the sound down.

#### **Chair Chang closed the public hearing**

**Comm. Klein** moved to grant the appeal and approve the Special Development Permit subject to the conditions of approval by the Administrative Hearing Officer with modified conditions: to change the hours 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; that 80% of tables will be set up during normal hours of operation; and 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 approval. Vice Chair Travis seconded.

**Comm. Klein** said he has concerns about approving this project. He said this application is an attempt to bring the use of this property back to a restaurant, reduce the noise, and reduce the hours of operations. He said he understands the neighbors would like to see the hours be less and that the hours are a compromise. He said the biggest issue is trust of the neighborhood. Comm. Klein thanked the neighbors for their input, and said the applicant needs to reach out more to the neighbors. He said ultimately this project should affect the community less and the scheduled reviews will help keep the applicant in compliance. Comm. Klein said that the study and update of the Noise element should address the low register noise.

**Vice Chair Travis** said he has concerns about this site, he thinks there will be significant hurdles for the applicant, and that with the conditions incorporated that

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should eventually bring the site in compliance as a restaurant. He encouraged the neighbors to let the staff know if there are problems, and said he is looking forward to the next six months.

**Comm. Hungerford** said he would not be supporting the motion as he cannot approve a continuation of the situation. He said he thinks it is a good idea for this site to be a restaurant, but there are not enough safe guards. He said he could only support this if the music were turned down immediately. He said he would like the applicant to close down for a while, get the site into compliance with the Special Development permit and then reapply.

**Comm. Sulser** said he would be supporting the motion. He said if the business does not shape up, when the application comes back for review then it could be denied.

**Chair Chang** said he would be supporting the motion. He said to the applicant that they need to take care of their neighbors and comply with all the regulations and time frames. He said this is a second chance and encouraged the applicant to use it wisely.

**ACTION:** Comm. Klein made a motion on 2009-0066 to grant the appeal and approve the Special Development Permit subject to the conditions of approval by the Administrative Hearing Officer with modified conditions: to change the hours 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; that 80% of the tables will be set up during normal hours of operation; and 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. Comm. Travis seconded. Motion carried, 4-1, with Comm. Hungerford dissenting, and Comm. McKenna and Comm. Rowe absent.

**APPEAL OPTIONS:** This action is final unless appealed to the City Council no later than October 27, 2009.



March 25, 2010

Club La Rhonda  
Attn: El Magus, Inc., c/o Rogelio Arreola  
927 E. Duane Avenue  
Sunnyvale, CA 94087

Mr. Arreola,

As you remember, Club La Ronda was approved by the Planning Commission (October 12, 2009) 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 of the final approval date and shall be completed within six (6) months 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.*

To date, no building permits have been applied for with the City and no contact has been made with City staff to request an extension of time. After the Planning Commission hearing I urged you and your consultant to apply for building permits and make the necessary operational changes as soon as possible, give the short six month timeframe. I have also discussed this matter



ATTACHMENT E  
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several times with your consultant in January and December. This email serves as a reminder that the six month compliance review date (April 12, 2010) is fast approaching. If the necessary changes are not completed within the approved timeframe, the City will begin enforcement proceedings, as outlined in condition of approval H (listed above).

If you have any questions regarding this permit, please contact Steve Lynch at (408) 730-2723 or [slynch@ci.sunnyvale.ca.us](mailto:slynch@ci.sunnyvale.ca.us). Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Lynch", written over a horizontal line.

Steve Lynch  
Senior Planner

Cc: Maple Leaf Investments II, LLC, Joseph Kovalik, 1155 Redmond Avenue  
San Jose, CA 951250  
Vincent Rivero, VER Consultants, 1625 The Alameda, Ste 900  
San Jose, CA 95126  
Hanson Hom, Community Development Director



April 20, 2010

Club La Rhonda  
Attn: El Magus, Inc., c/o Rogelio Arreola  
927 E. Duane Avenue  
Sunnyvale, CA 94087

Maple Leaf Investments II, LLC, c/o Joseph Kovalik  
1155 Redmond Avenue  
San Jose, CA 951250

Dear Mr. Arreola and Mr. Kovalik:

As you are aware, the Special Development Permit for Club La Ronda was approved by the Planning Commission (October 12, 2009) with conditions of approval (copy attached). There are two conditions requiring action within specific time frames: they address the initial construction/implementation of the improvements (physical and operational) required of the project. They required submission of Building Permits within 90 days (January 12, 2010) and submitting a request for determination of compliance with the conditions of approval within six months (April 12, 2010).

The January 12, 2010 and April 12, 2010 dates have passed without the necessary actions. The business is therefore, not in compliance with the approved Special Development Permit. As outlined in the conditions of approval (#1.H), if the business is determined by staff to be out of compliance, the permit will be referred to the City's Planning Commission for their compliance review. The Planning Commission may approve additional conditions of approval as necessary, recommend the City Council revoke the permit, or take no further action.

The compliance review has been tentatively scheduled for the Planning Commission hearing on June 28, 2010. A report with City staff's recommendations will be available for your review prior to this meeting. In addition, you will receive notification of the meeting time and place prior to the meeting.

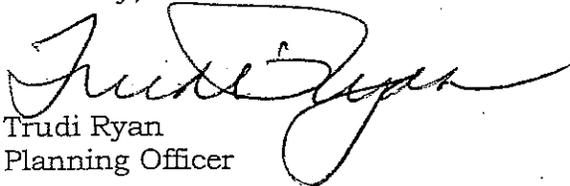
ADDRESS ALL MAIL TO: P.O. BOX 3707 SUNNYVALE, CALIFORNIA 94088-3707  
TDD (408) 730-7501

Mr. Arreola  
Mr. Kovalik  
April 20, 2010  
Page 2 of 2

ATTACHMENT F  
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If you have any questions regarding this permit, please contact me at (408) 730-7435, or Steve Lynch at (408) 730-2723 and slynch@ci.sunnyvale.ca.us. Thank you for your cooperation.

Sincerely,



Trudi Ryan  
Planning Officer

Enclosures: Final Conditions of Approval

cc: Vincent Rivero, VER Consultants, 1625 The Alameda, Ste 900  
San Jose, CA 95126  
Hanson Hom, Community Development Director  
Kathy Berry, Senior Assistant City Attorney



**927 E. Duane Ave - La Ronda SDP**  
**Final Conditions of Approval**

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2009-0066

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 of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

**1. GENERAL CONDITIONS**

- A. Execute a Special Development Permit document prior to issuance of the building permit.
- B. Project shall be in conformance with the plans approved at the public hearing(s). Minor changes may be approved by the Director of Community Development. Major changes may be approved at a public hearing.
- C. The Conditions of Approval shall be reproduced on a page of the plans submitted for a Building permit for this project.
- D. The Special Development Permit for the use shall expire if the use is discontinued for a period of one year or more.
- E. Deleted.
- F. The existing and proposed areas (3,534 square feet) and uses must comply with all requirements of previously approved Special Development Permit 2002-0128, unless modified herein.
- G. The Special Development Permit shall be valid for 18 months only from the date of approval by the final review authority, and the applicant must reapply for a Special Development Permit in 18 months.
- 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.

- I. A second compliance review through an MPP shall take place within one (1) year of the final approval date.
- J. As part of the compliance review, the applicant is required to provide to City staff, the dBA (decibel A) and dBC noise logs.
- K. All conditions of approval for operational issues (non-construction) contained here are required to be in place and operating within 30 days of the final approval date.
- L. Food service shall commence immediately upon completion of the kitchen and within six (6) months of the final approval date.
- M. All conditions of approval for building permits (physical construction or tenant improvements) must be submitted and issued within 90 days of the final approval date and shall be completed within six (6) months 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.
- N. All noise mitigation improvements are required to be installed at the same time as the first building permits issued for the tenant improvements.
- O. This use shall comply with all regulations and rules of Alcohol and Beverage Control (ABC).

## 2. OPERATIONS

### **General:**

- A. Hours of operation shall be limited to the following hours:
  - Sunday - Thursday: 9:00am to midnight.
  - Friday - Saturday: 9:00am to midnight.
- B. The applicant shall be responsible for trash clean-up resulting from the business within  $\frac{1}{4}$  mile of the tenant space.
- C. All exterior doors, including the rear door, shall have a self-closing mechanism and shall be kept closed when not in use.
- D. The rear door shall be kept shut at all times.
- E. A sign shall be placed on the rear door as exit only. Business hours and contact information may also be posted on the sign. The sign shall be a maximum size of six square feet.
- F. Patrons are not allowed in the rear area (northern area) adjacent to neighboring properties, at any time.
- G. 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.
- H. Employees shall be given training and education from the employee manual on a quarterly basis.
- I. Patrons of all ages, including under 21, must be allowed.

- J. 80% of the tables and chairs shall be set up during normal hours of operation.

**Events:**

- J. No outside event promoters are allowed to operate at this location. All entertainment/entertainers must be hired directly by the business managers or owners.
- K. Private events (operated by La Ronda Night Club only) are permitted.

**Security:**

- L. The business operator shall retain private uniformed security guards (4-6 guards) who shall be responsible for monitoring noise, any patrons loitering outside of the building, and shall be on-site at all times when entertainment is occurring.
- M. The security guards shall be responsible for working closely with Public Safety to resolve problematic operational issues.
- N. Private security guards shall be responsible for removing any patrons loitering in the rear area (northern area) adjacent to neighboring properties, at all times.
- O. One private security guard shall be stationed in the front parking lot (southern area) at all times.

**Noise:**

- P. Private security guards shall be responsible for monitoring the noise generated by the club through the use of sound meters. Readings should be taken approximately every hour at the front and rear (back property line) of the business. Noise readings shall be entered into a sound log that will be kept on-site at all times. This log shall be made available to Public Safety if requested.
- Q. Private security guards shall ensure that any noise generated by patrons loitering in the front parking lot area (south side) shall not be audible at the property line of the residential development to the south of this site.
- R. Install sound proofing materials to mitigate noise and vibration impacts on neighboring properties and adjoining tenant spaces.
- S. Install a Sound Trap device at the front entry doors.
- T. Install sound proofing materials in tenant space walls to mitigate noise and vibration impacts on neighboring properties and adjoining tenant spaces.

**3. COMPLY WITH OR OBTAIN OTHER PERMITS**

- A. Comply with all ABC regulations and license requirements. Failure to comply with all ABC regulations is grounds for revoking this permit.
- B. Obtain approval from the Crime Prevention Division of the Department of Public Safety for crime and public nuisance prevention measures appropriate to the proposed development prior to issuance of a Building Permit.

- C. Tenant is responsible for ensuring customers comply with smoking regulations, per California State law.
- D. The existing fire sprinkler system shall be modified for the new use, per SMC.
- E. Fire alarm systems and other upgrades shall be completed per California Fire Code.

**4. PARKING**

- A. Employees shall park in the rear parking lot located at the northwest corner of the property.
- B. Submit a revised parking plan to the Director of Community Development for review and approval prior to issuance of a Building Permit.

**5. RECYCLING AND SOLID WASTE**

- A. All trash and recycling activities shall be conducted during daytime hours of operation (9:00am-6:00pm).
- B. A permanent sign shall be placed near the rear entrance of the restaurant stating the hours of operation (9:00am-6:00pm) for trash and recycling activities.
- C. All exterior recycling and solid waste shall be confined to approved receptacles and enclosures at all times. Containers shall not be placed in parking spaces or landscaped areas at any time.
- D. Submit plans for a new trash enclosure to the Director of Community Development for review and approval prior to issuance of a Building Permit. The enclosure shall be of masonry construction and shall match the exterior design, materials and color of the main building.
- E. The property shall remain clean and free of debris and garbage.

**6. SIGNS**

- A. All existing/new signs shall be in conformance with the Master Sign Program established for the shopping center and the Sunnyvale Municipal Code.