



REPORT TO PLANNING COMMISSION

Hearing Date: April 9, 2012
File Number: 2011-7719

SUBJECT: **Tulip After School (Appellant) / Da Kine Café (Applicant) / Soo Lee et. al. (Owner)**: Application for a 2.2-acre shopping center site located at **153 E. Fremont Ave.** in a C-1/PD Zoning District (APN: 211-34-001):

Motion **2011-7719-** 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.

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.)

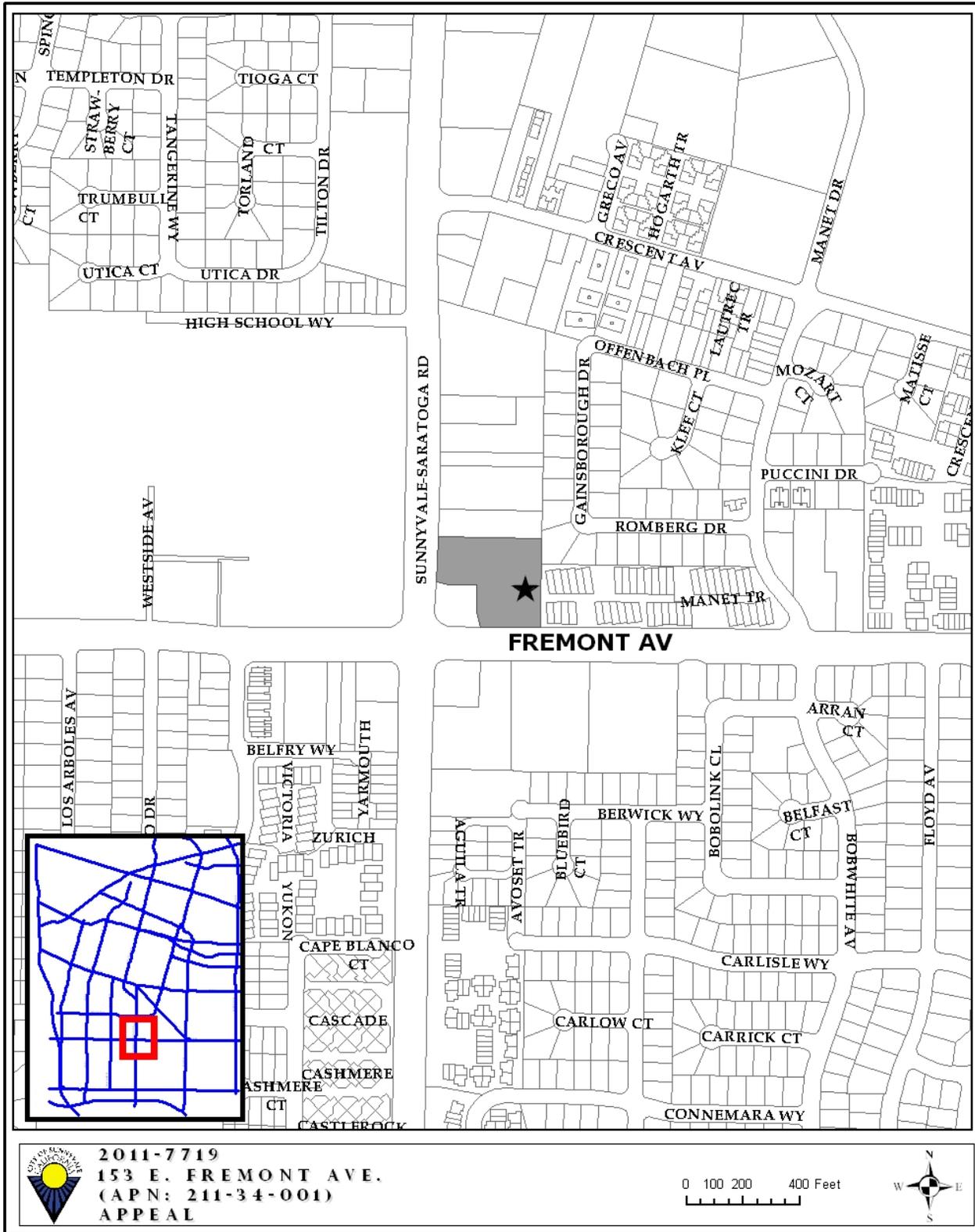
Issues Neighborhood Compatibility, Noise, Public Safety

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

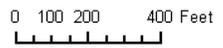
Zoning Administrator Action Approved the Special Development Permit with modified conditions including limited hours of operation and a six-month review requirement.

Staff Recommendation Grant the appeal and approve the Special Development Permit with modified conditions including an additional condition of approval requiring a security plan.

VICINITY MAP



2011-7719
153 E. FREMONT AVE.
(APN: 211-34-001)
APPEAL



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. An appeal of the Zoning Administrator’s decision was filed by a neighboring tenant on February 29, 2012.

Previous Actions on the Site

The following table summarizes previous planning application 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
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.

DISCUSSION:

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. The following items provide additional information regarding the applicant's request.

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, or other non-music entertainers.

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.

ANALYSIS:

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 as discussed below.

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., to require food service be offered throughout the duration of entertainment, and to require the property owner and applicant to better address graffiti on the site.

Appeal

On February 29, 2012, the decision of the Zoning Administrator 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 in general, 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 spoke with the applicant and they reached an agreement that entertainment would not begin until 7:00, at which time the appellant asked to withdraw the appeal. It has been the City's practice that an appeal cannot be withdrawn, since other members of the public may have chosen not to file their own appeals in reliance on the previous filing. Nevertheless, the appellant has indicated that based on their agreement with the applicant they withdraw their objections and do not wish to participate in the hearing process.

Staff Comment on Appeal: Staff does not recommend an additional condition requiring the entertainment uses to begin after 7:00 p.m. While neighbors and the appellant have expressed concerns about compatibility of the use with surrounding residential and child care uses, the subject site is in a commercial shopping center on a commercially-zoned property. There are several other businesses in the surrounding area including restaurants and bars with late hours of operation. 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 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. Based on subsequent discussions with the Department of Public Safety (DPS) regarding potential safety issues which may arise after entertainment ends, staff recommends the Planning Commission impose additional Condition of Approval #PC-1 requiring adoption of a security plan to be approved by DPS. While the previously approved conditions address security from an employee training perspective, a more comprehensive security plan is recommended by DPS. Staff also recommends the addition of Condition of Approval #AT-6 to clearly state the types of entertainment permitted. (See Attachment B for recommended Conditions of Approval.)

FISCAL IMPACT

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

PUBLIC CONTACT

Notice of Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none"> • Published in the <i>Sun</i> newspaper • Posted on the site • 229 notices mailed to property owners and residents adjacent to the project site 	<ul style="list-style-type: none"> • Posted on the City of Sunnyvale's Web site • Provided at the Reference Section of the City of Sunnyvale's Public Library 	<ul style="list-style-type: none"> • Posted on the City's official notice bulletin board • Posted on the City of Sunnyvale's Web site

At the time of completing this report, staff has not received any comments from neighbors or other interested parties regarding the appeal.

CONCLUSION

Findings and General Plan Goals: Staff was able to make the required Findings for the Special Development Permit as conditioned in Attachment B based on the project justifications. Recommended Findings are located in Attachment A.

Conditions of Approval: Recommended Conditions of Approval are located in Attachment B.

ALTERNATIVES

1. Grant the appeal and approve the Special Development Permit with the conditions listed in Attachment B (including new Condition of Approval #PC-1).
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 Zoning Administrator to approve the Special Development Permit with the previously-imposed conditions (not including Condition of Approval #PC-1).

RECOMMENDATION

Alternative 1.

Prepared by:

Mariya Hodge
Project Planner

Reviewed by:

Trudi Ryan
Planning Officer

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Site and Floor Plans
- D. Applicant's Letter and Project Justifications
- E. Appeal Letter
- F. Letters from Other Interested Parties
- G. Minutes of the Zoning Administrator Hearing Dated February 15, 2012

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
April 9, 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. 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] [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. [Staff recommends the addition of this condition by the Planning Commission] [COA] [PUBLIC SAFETY]

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 dancing are not permitted. [Staff recommends the addition of this condition by the Planning Commission] [COA] [PLANNING]

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

Google earth

feet
meters

300

100

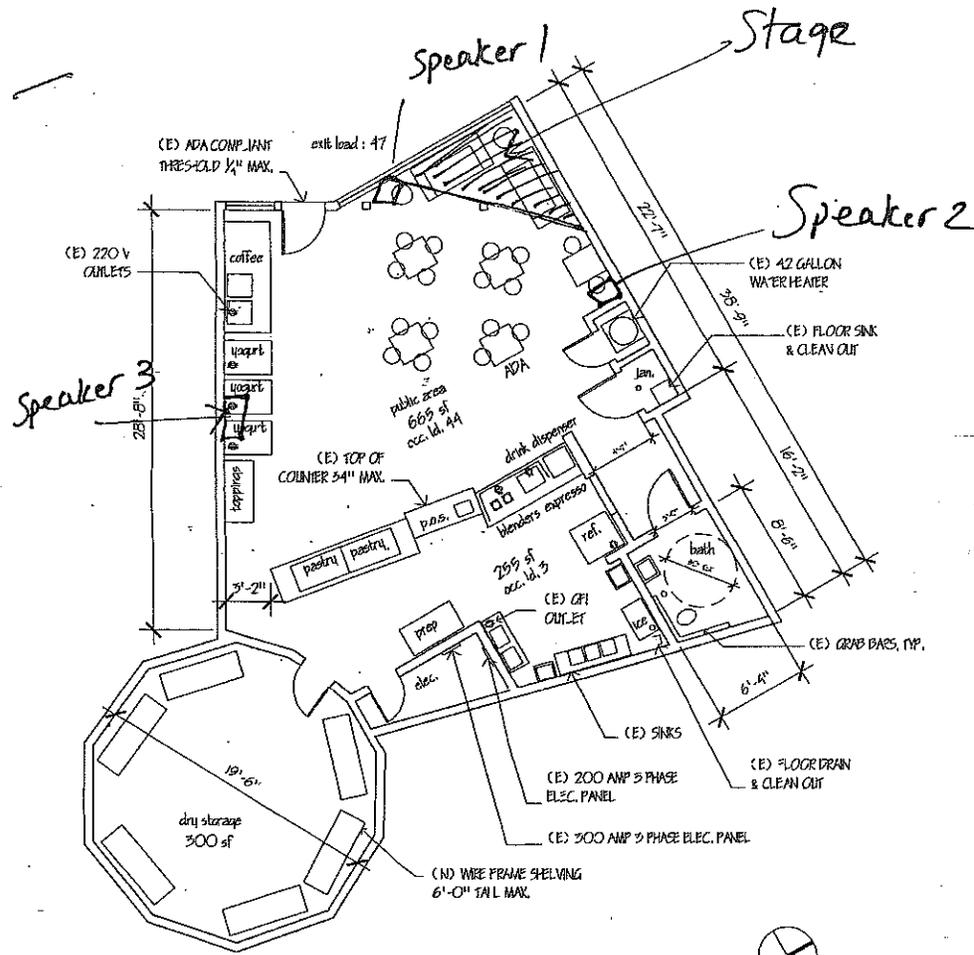


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Google earth



DA KINE CAFE
 153 E. TREMONT 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:	665 SF
KITCHEN AREA:	255 SF
STORAGE:	300 SF
ELEC. RM, BATHROOM, JAN. WH.	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
Page 2 of 2

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

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

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

RECEIVED

FEB 15 2012

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.

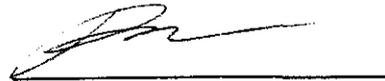
There have already been complaints about noise and nuisance from the Subject Property. I have had several tenants move out due to the noise and smell caused by one of the other restaurants on the Subject Property. The noise is caused late at night when the restaurant is shutting down and workers are 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

ATTACHMENT

F

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FEB 15 2012

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:

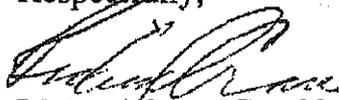
The Manet Terrace Board of Directors recently became aware of the permit application of Da Kine Café to engage in live entertainment, with amplified acoustic music, from 6:00pm until at least 1:00am (possibly 2:00am), Thursday, Friday and Saturday.

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 tomorrow's 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 fare, 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

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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. <u>MARTHA W. HORNER</u> Laxmi	<u>Martha W. Horner</u>	<u>551 Manet Terrace</u>
2. <u>RAM NEMARUGOMMULA</u>	<u>[Signature]</u>	<u>556 manet Terrace</u>
3. <u>Hyesoo Kim</u>	<u>[Signature]</u>	<u>560 Manet Ter.</u>
4. <u>Scott Young</u>	<u>[Signature]</u>	<u>554 Manet Ter</u>
5. <u>Masahito Kagawa</u>		<u>555 Manet Ter.</u>
6. <u>Olga Tunirsky</u>	<u>[Signature]</u>	<u>557 Manet Ter.</u>
7. <u>Igor Albert</u>	<u>[Signature]</u>	<u>557 Manet Terr.</u>
8. <u>Jenny Choi</u>	<u>[Signature]</u>	<u>559 Manet Terrace</u>
9. <u>Giridhar Malavalli</u>	<u>[Signature]</u>	<u>558 Manet Terrace</u>
10. <u>JYOTHI SARGUR</u>	<u>[Signature]</u>	<u>558, manet terrace</u>
11. <u>RAM NEMARUGOMMULA</u>	<u>[Signature]</u>	<u>556, Manet Terrace</u>

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	R. Jayaraman	570 Manet Terr. 94087
13	BARBARA EVATT	Barbara Evatt	565 Manet Ter 94087
14	SANJEEV SHARITA	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 BHARADWAJ	S. 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

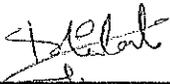
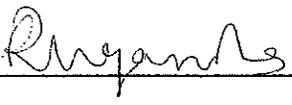
Sunnyvale City Zone Administrator
February 15, 2012

ATTACHMENT F
Page 7 of 10

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

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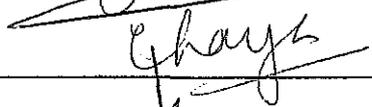
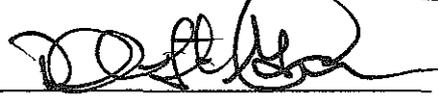
<u>Name</u>	<u>Signature</u>	<u>Address</u>
23 MITALI GUPTA		572 Manet Terr, Sunnyvale
24 DENNIS DRAKE	P. DRAKEPAD	552 MANET TERR
25 Tricia Palomino	Tricia Palomino	580 Manet Terr.
26 Sugantha Ramachandran Ranganathan		566 Manet Terr
27 KAVITHA RAJ	M. Kavitha	570 Manet Terrace
28 Prabha Rai	Prabha Rai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

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	BAKH+JAA AOKA		585 Manet Terrace
35	Chays R		573 Manet Ter
36	Atul K		573 Manet Ter
37	Rushy A		573 Manet Ter
38	Sameer Nigade		564 Manet Terr.
39	ERICK AVERNA		554 Manet Terrace.
40	Richard S. Gardner		569 Manet terrace
41	Donna K. Gardner		569 Manet Terr
42	John Mearle		552 Manet Terr.
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.


Xoko Drake



CITY OF SUNNYVALE ZONING ADMINISTRATOR HEARING

MINUTES
Wednesday, February 15, 2012

ATTACHMENT 6
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.

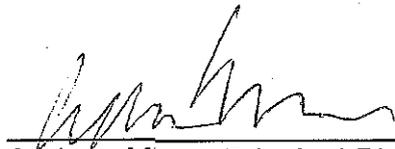
Mr. Miner closed the public hearing.

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