

PLANNING COMMISSION MINUTES OF AUGUST 25, 2008

2008-0341 – Appeal by the applicant of a decision of the Administrative Hearing Officer denying a Special Development Permit to allow an existing nightclub to expand into a 534 square foot tenant space for a total of 3,534 square feet. **La Ronda Nite Club [Applicant] Maple Leaf Invs li LLC [Owner]** 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) RZ

Gerri Caruso, Principal Planner, presented the staff report. She said staff was unable to make the findings due to a history of incompatibility with the adjacent residential neighborhood. She said staff recommends the Planning Commission deny the appeal and uphold the decision of the Administrative Hearing Officer. Ms. Caruso added that if the Commission approves the appeal that staff recommends the Commission approve the permit subject to the conditions in Attachment B.

Comm. Sulser confirmed with staff that in the C-1/PD Zoning District that the decision is discretionary whether a night club is allowed. Comm. Sulser and staff discussed that in most Commercial Zoning Districts night clubs can be allowed with a Use Permit, or a Special Development Permit and in any zoning district, a night club, which includes the serving of liquor, would require some level of public hearing review. Comm. Sulser and staff discussed that if the Commission denied the appeal that the applicant could appeal the Planning Commission decision to City Council. Staff said, ultimately, if the appeal is denied by City Council, that the applicant could look at other locations for a night club in Sunnyvale, which would need to be approved through a public hearing. Comm. Sulser said the report indicates that there have been 44 complaints regarding this address between December 21, 2007 and April 21, 2008 and asked if staff has numbers comparing the complaints about this site versus other night club sites. Ms. Caruso said that staff does not have comparison numbers and commented that not all night clubs are immediately adjacent to a residential use.

Comm. Hungerford clarified with staff that the staff recommendation is to deny the expansion. Ms. Caruso said the other issue, whether the applicant should reestablish the restaurant, is a code enforcement issue. Comm. Hungerford said the report indicates that on one of the Department of Public Safety's (DPS) call for service visits that the noise level was at 58 decibels (dBA) and asked staff what the allowed night time noise level is. Ms. Caruso said the night time level allowed is 45 dBAs adjacent to residential. Comm. Hungerford referred to Attachment E which indicates noise level measurements from several DPS calls. Ms. Caruso commented that the

applicant has made efforts to reduce the noise levels. Comm. Hungerford asked about two other sites nearby that have live entertainment. Ms. Caruso said there is a pizza parlor and banquet hall that have permits and confirmed that the history of complaints are not for these establishments and are for complaints specific to the La Ronda Nite Club.

Comm. Klein asked staff for clarification about the allowed dBA levels for this site and the different allowed levels for day and night. **Kathryn Berry**, Senior Assistant City Attorney, said that the allowed dBA levels would be 60 dBAs in the day and 50 dBAs at night, with the exception of certain operational noise, which includes music, which only 45 dBAs are allowed. Ms. Berry explained that the type of operational noise that only 45 dBAs would be allowed would be steady, audible tones such as a whine, staccato, or intermittent noise that includes music or speech. Comm. Klein and Ms. Ryan further discussed operational noise with staff explaining that the zoning code addresses all types of noise that are operational noise and with certain types of operational noise only allow 45 dBAs would be allowed. Comm. Klein commented about noise and how the noise has been considered for past projects. Comm. Klein referred to Attachment B, condition 1.G and confirmed with staff that the condition is the same as the code and that the applicant would be held to the code standard whether this condition were included or not.

Comm. Travis referred to pages 6 and 7 of the report regarding calls for service to DPS confirming with staff that there were 44 calls from December 21, 2007 to April 21, 2008 and an additional 62 calls between April 21, 2008 and August 7, 2008.

Chair Rowe opened the public hearing.

Joseph T. Padilla, Management Consultant and resident of Sunnyvale, represented the appellant. He addressed an earlier comment regarding nearby venues that generate noise including the Filipino club that features Latin music every weekend, and the Pizza Depot which features Karaoke contests primarily on Fridays and Saturdays. He said that both locations keep their doors open and neighbors have complained about the other two venues, with more complaints regarding the Pizza Depot. He said the La Ronda Club features live music seven days a week, have listened to the concerns of the neighborhood, and made efforts to mitigate and monitor the noise, clean up the parking lot, and keep the doors closed. He explained some of the efforts that have been made including sound proofing the back doors, the HVAC (Heating, Ventilating and Air Conditioning) vents, and the ceiling. He said a mobile food cart was immediately removed when it became an issue. He said the Club has hired professional security staff which is on site, monitors the entire interior area and also periodically patrols the parking lot with dBA sound meters. He said

security also helps disperse patrons at closing time. Mr. Padilla said the applicant has blacktopped and striped the parking lot, and have worked with the landlord for enhancement upgrades with the tenants. He said the owners have been flexible and responsive to meet the City's requirements. He said the change of use has detained the permit process. Mr. Padilla commented that he feels this is one of the best uses for the location. He said the permits were not immediately obtained for the additions due to some personal situations. He said he would like the Planning Commission to allow the applicants the opportunity to continue making improvements and continue redeveloping the center. Mr. Padilla said he spoke with DPS' Lieutenant Vinny Mata, asking him if the La Ronda Nite Club was a real serious problem, and he said no. He said other areas have more complaints. He said no statistic can be valued unless it is quantified. He said unless the Commission has information on calls for service to DPS for other clubs to compare to the calls for service for this club, then the Commission would not be making a decision with valid information. He said there is an error in the report on page 3 and page 5 that indicates that the expansion includes a second bar, and said the second bar was constructed under a different permit in 2007. He said the owners are continuing to make other improvements to control the noise. He said he hopes the Commission will find the reasons he has given to justify the approval of the appeal.

Comm. McKenna confirmed with Mr. Padilla that he understood that the application is merely for the expansion. Comm. McKenna said that she has a difficult time understanding why Mr. Padilla, as a consultant, did not advise his client to delay the expansion until there was time to obtain the proper permits. Mr. Padilla said when he first spoke with the City about the expansion that he was told it would only take a 35 or 40 minutes to bring in the plans and get the permits. He further explained the sequence of events including efforts to pull building permits, the change in use and the involvement of the Neighborhood Preservation Division. Comm. McKenna asked Mr. Padilla if the applicant had already started the expansion before applying for the permit. Mr. Padilla said part of the expansion had begun and that he is aware of other projects where work, due to different circumstances, has started before the permits are obtained. Mr. Padilla responded that he does not recommend beginning work before the permits are obtained.

Comm. Travis asked Mr. Padilla how long the security upgrades have been in place. Mr. Padilla said there has always been security and that when the concerns came up that he worked with his clients to upgraded the security. Mr. Padilla said that now the orders are that security remains until the parking lot is completely clear, adding that security has been monitoring dBA levels with meters for the past three months. **Trudi Ryan**, Planning Officer, commented that Comm. Travis previously asked about the number of calls for services indicated in the report, clarifying that DPS officers visited

this site on 62 occasions between April 21, 2008 and August 7, 2008. Ms. Ryan said that 36 of the visits were calls for service and 26 were initiated as security checks. Mr. Padilla commented that he requested that DPS patrol around 1:30 p.m. or later to help eliminate some of the problems and that they welcome the DPS visibility.

Comm. Klein asked Mr. Padilla about the security sound monitoring and what the dBA levels have been. Mr. Padilla said if the security staff finds the levels to be excessive, as each band is different, that they go into the club and adjust the volume levels accordingly. He said the applicant is working on mitigating the noise on an ongoing basis.

Vice Chair Chang asked Mr. Padilla if the owner knows that even if this appeal is approved that they will need to reestablish the restaurant. Mr. Padilla said they would like to avoid reestablishing the restaurant, and would rather pursue a permit for a bar only as the zoning would allow a bar only. Vice Chair Chang said he wants to make sure the applicant understands there are two situations to be addressed. Vice Chair Chang said the applicant needs to have the proper permits, and that the current permit is for live entertainment with a restaurant, and the applicant is currently in violation of the code, which needs to be corrected.

Richard Walrod, a Sunnyvale resident and neighbor, said the super market and pizza parlor do not have live bands. He said the reasons for calls for service to the police range from fights, to drunk driving, and noted that since the security has been upgraded that the DPS has had to make more calls for service. He said the club does not help the neighborhood, and listed more problem situations that the club and patrons bring to the neighborhood. Mr. Walrod said the applicant started building without a permit. He said there are residential neighborhoods on all sides of the establishment. He said he does not feel the problems are resulting from other establishments. Mr. Walrod urged the Commission to deny the expansion of club as there are residential neighborhoods on all sides and there are many problems for the neighborhood because of the club's presence. He said if the Commission is in support of this expansion that he would like the club moved to the Commissioner's neighborhoods.

Comm. McKenna asked Mr. Walrod about the Filipino club located near the La Ronda Nite Club. Mr. Walrod said he thinks the Filipino club closes at 11 p.m. and said he has never had a problem with the Filipino club. He said they do not have live music, just a little Karaoke singing.

Susanne Edgerton, a Sunnyvale resident and neighbor, said she lives on the street behind the La Ronda Nite Club. She said the bass can be very loud and she has noticed improvement. She said she does not know why a night club use was ever

permitted in the residential neighborhood. She said she thinks night clubs should be other places than so close to residential neighborhoods. She said there are problems on their street late at night including, cars racing, and pedestrians walking through the neighborhood and breaking bottles.

John Withington, a Sunnyvale resident and neighbor, said his main concern is about the sound levels. He said Mr. Padilla said that every step has been taken to reduce the sound levels, and they have improved, but he can still hear the bass noise. Mr. Withington referred to Attachment B, condition 1.H regarding the installation of sound proofing materials, and asked if the neighbors could be assured that the standard or sound proofing levels would be provided. Ms. Ryan stated that the objective would be to address the noise levels on adjacent properties to comply with the 45 dBA standard.

Amelia Chacen (with her daughter providing interpretation), owner of a restaurant near the La Ronda Nite Club, said that the noise does not bother her. She said that she stays open until 3 a.m. and sells food to patrons of the La Ronda Nite Club. She said there is noise, but it is typical noise for a club and that the owner's have the noise controlled. Ms. Chacen said different people interpret noise levels differently and invited the Commission to come to the area to see for themselves. She said the reason she stays open late is to serve people who may have been drinking at La Ronda and want to eat before they leave which can help reduce the affects of alcohol. She said this is a pretty good neighborhood.

Vice Chair Chang asked Ms. Chacen if she has witnessed any of the activities that that neighbor spoke of, i.e. police activity, cars screeching. Ms. Chacen said she has occasionally seen the police at the site, and feels that police presence is normal for clubs. She said she has not noticed other problems in the neighborhood.

Comm. McKenna asked Ms. Chacen what days her business is open until 3 a.m. Ms. Chacen said she is open Wednesday, Friday, Saturday and Sunday until 3 a.m. Ms. Chacen said that the club closes around 1:30 and patrons come to and eat, adding that she does not serve alcohol at her establishment.

Bob Vargo, a Sunnyvale resident and neighbor, said he lives behind the Pizza Depot. He said the previous bar at this site, the Raven, was worse with a lot of noise in the back parking lot. He said when La Ronda moved in that the only problem was the bass noise. He said the owners have reduced that noise by about 75% and that he can occasionally hear bass noise. He commented that he has no problem with the Pizza Depot, except for bad karaoke singing and people playing in the back parking lot during football season. He said he never hears noise from the Filipino club.

Mr. Padilla said it is fortunate that there have been a couple of neighbors testifying that some of the complaints are not real and that some of the calls for service to the police are not quantified. He said he also questions how some of the neighbors who have complained about the noise know that the noise is coming from La Ronda. He said the club keeps close watch and will deny entry to those without proper identification, or those inappropriately dressed. He said some of the things that happen in an entertainment venue are sometimes out of the operator's control, quoting two newspaper stories of problems at facilities owned by the City of San Mateo and the City of San Jose. Mr. Padilla said the demographics in different part of the City vary, providing example of different qualities of people, and said that some of the problems reported by the neighbors are not necessarily related to La Ronda. Mr. Padilla asked the Commission to please consider the issues he has discussed and said the applicant would follow the procedures required by the City and that the owners are willing to work with the community. Mr. Padilla said he hopes the Commission will set aside hearsay and treat his clients properly. He said, like Comm. McKenna, he lives on the west side of Sunnyvale and they do not have the same kind of problems due to the demographics. He said he sees the problems as part of the issues of society in different areas. He said that the La Ronda Nite Club provides a valuable community need. Mr. Padilla said he would continue to work with everyone to straighten out this situation.

Chair Rowe closed the public hearing.

Comm. McKenna moved for Alternative 1, to deny the appeal and uphold the decision of the Administrative Hearing Officer to deny the Special Development Permit. Comm. Klein seconded the motion.

Comm. McKenna said she would like to disassociate herself from the comments Mr. Padilla made about neighborhoods and the quality of different people in different neighborhoods. She said you can live in what is labeled "the best or worst of neighborhoods" and have or not have problems. She said the people who live in this neighborhood deserve the best that they can have. She said several of the people who spoke live on Coachella Avenue which is very close to this site. Comm. McKenna said the real issue is that the appellant did not get a permit for the expansion. She said the Planning Commission has to deal with whether a permit should be granted after the construction is already done, and she thinks, no. She said a permit needs to be approved before an expansion. Comm. McKenna said staff is recommending denial and her motion is the same as staff's recommendation.

Comm. Klein said he would be supporting the motion. He said he agrees with what Comm. McKenna said and said that the Planning Commission is being asked to approve an expansion of use. He said, from a nuisance standpoint, there are from other issues, i.e. sound. Comm. Klein agreed that the Commission does not have

complaint numbers to compare this establishment with other similar establishments. Comm. Klein said he applauds the applicant for trying to improve security and working on lowering the dBA levels. Comm. Klein said even with the improvements that there are still complaints. He said it is correct to fix problems, but it would be difficult to grant an expansion to this site where there are already existing problems. He said he hopes the applicant can fix whatever code and usage issues exist with the existing site.

Comm. Sulser said he would be supporting the motion. He said his concerns are land use issues. He said this is zoned Neighborhood Business and he does not find the expansion to be compatible with the zoning.

Vice Chair Chang said he would be supporting the motion. He said he thinks the current size of the business is challenging. He said that even with the efforts of the applicant to improve conditions that the neighbors still have to deal with the same issues. Vice Chair Chang said it is difficult to support this expansion and said that work should not have been done without permits. He encouraged the applicant to work with City staff to mitigate the current issues.

Comm. Hungerford said he would be supporting the motion. He said there is an allowable noise standard on the books of 45 decibels. He said this night club is violating this noise standard, has been for a long time, and still does on occasion. He said he cannot see expanding a use that is violating a noise standard set in the Municipal Code.

Chair Rowe said she would be supporting the motion. She said she feels like a permit was granted for one use and the owner changed the use. She commented that there is no need to quantifying figures for all bars as these are complaint based problems from neighbors. Chair Rowe addressed a comment about neighbors that might have sleep problems acknowledging that some people are sensitive sleepers and others are not. She said that she thinks the whole permit process for this restaurant needs to be looked into.

ACTION: Comm. McKenna made a motion on 2008-0341 to deny the appeal and uphold the decision of the Administrative Hearing Officer to deny the Special Development Permit. Comm. Klein seconded. Motion carried unanimously, 7-0.

APPEAL OPTIONS: This action is final unless appealed to City Council no later than September 9, 2008.