

**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

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

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.**