

PLANNING COMMISSION MINUTES OF AUGUST 23, 2010

2010-7415 - PM Entertainment Inc. [Applicant] **Jane Sun Et Al** [Owner]: Special Development Permit to allow a restaurant with on site general alcohol sales and a entertainment establishment, with dancing for 21 and older, within an existing building on a site located at **146 S. Murphy Ave.** (APN: 209-06-034) SM

Shaunn Mendrin, Senior Planner, presented the staff report. He said staff recommends approval of the Special Development Permit for a restaurant with general alcohol sales and entertainment establishment, with dancing, for 21 or older subject to the conditions in Attachment B.

Comm. Hungerford clarified with staff that the owner of this site is the same owner as it was for the previous tenant, the Abyss, however the applicant is a new business owner. Comm. Hungerford discussed with staff the enforceability and process for the proposed transition at 10 p.m. on Friday and Saturday nights making sure anyone under 21 leaves the establishment.

Vice Chair Hendricks discussed with staff the hours of operation and the 1:30 a.m. shut down, which means everyone needs to leave the site by this time. Vice Chair Hendricks discussed with staff the security cameras, and the ratio requirement of restaurant and night club use and the City requesting to inspect the sales receipts to verify that alcohol sales shall not exceed 50% of the gross revenue.

Comm. Chang discussed with staff condition 5 regarding the six (6) month compliance review confirming the language could be changed and the review could be provided by the owner "and" applicant, not "or". Comm. Chang asked staff about condition 21 confirming that after 12 months the applicant could apply to change the hours of operation to close at 2 a.m. Staff said that business hours could be later by obtaining approval for a one-time special event.

Chair Travis opened the public hearing.

Michael Hu and **Peter Lin**, applicants, addressed the plans for the 10 p.m. transition to 21 and older. Mr. Hu said the transition to dancing and 21 and over would only occur on Friday and Saturday evenings. He said information about the transition would be included on the website and on the menus, and for later reservations patrons would be advised that anyone under 21 would have to leave by 10 p.m. The applicant said the security cameras would be monitored by a manager at all times and would be positioned both on the premises and outside the premises. Mr. Wu expressed concern about condition 2, which requires that the alcohol sales not exceed 50% of the gross revenue. He said this requirement may be difficult to meet and asked for lee way, changing the food requirement to possibly 43-45% of the

gross revenue. Mr. Lin expressed concern about the hours of operation and requested they be able to serve alcohol until 1:30 a.m. and have patrons exit shortly thereafter. Mr. Hu confirmed with staff that the solid waste enclosure in the back of the property belongs to the site, 146 S. Murphy Avenue.

Vice Chair Hendricks discussed with the applicant that the maximum occupancy would be determined after the site modifications are completed and determined by the City. **Trudi Ryan**, Planning Officer, said the maximum occupancy may be close to 400, and that the site is a part of the parking district.

Comm. Hungerford asked about the transition at 10 p.m. on Friday and Saturday nights with staff discussing the roles of both the ABC (Alcohol Beverage Control) and Sunnyvale Public Safety in regard to enforcing this transition. Ms. Ryan said staff would encourage the operator to make sure this requirement is met. Comm. Hungerford suggested the applicant determine a sure way to make sure no one under 21 remains onsite after 10 p.m. suggesting possibly bracelets identifying 21 and over.

Comm. Sulser discussed with staff that the City would be enforcing the 50% gross revenue requirement; however the ABC may also look at the receipts. Mr. Mendrin said the Commission may want to specify in the conditions the timetable for checking the receipts.

Comm. Hungerford discussed with staff that the receipts would be averaged on possibly a weekly or monthly basis. Ms. Ryan added that the applicant indicated that entertainment would only occur on Friday and Saturday nights however the conditions do not specify this and the Commission may want add language to the conditions if this is important to the Commission.

Chair Travis confirmed with staff that alcohol served with dinner would apply to the alcohol receipts. Chair Travis discussed the hours of operation with the applicant saying they would like to stay open later than 1:30 a.m. Mr. Lin said the requirement to close earlier than the other establishments on Murphy Avenue would affect the business. Chair Travis explained the reason for the condition and that after a year of monitoring that the start time could be reevaluated.

Vice Chair Hendricks asked the applicant about their business model and what food to alcohol ratio would be desired. Mr. Hu explained that they are not sure how successful the steakhouse will be however they would like some flexibility as someone eating dinner would have only one meal, but could have two to three drinks with the meal, which exceeds the 50%.

Susan Walker, a business owner on Murphy Avenue and neighbor, said she would like to see the conditions modified to include patron queuing to prevent long lines to get into the club from blocking other entrances. Mr. Mendrin said that the Commission could modify condition 24 regarding security to include that the security guards be responsible to make sure that patrons do not loiter in front of entrances and exists. Ms. Ryan noted that staff is concerned about the same issue.

Mr. Hu said they would cooperate with the City on the security plan and would work with public safety to make sure they comply with the request of the nearby businesses. Mr. Lin said they are hoping Murphy Avenue will be similar to Santana Row and that the crowd attracted would be older than the previous tenants' patrons. He asked for a trial time with flexibility on the 50% food and alcohol ratio, and for permission to stay open later than 1:30 a.m. as the two conditions would be tough to meet without negatively affecting the business.

Comm. Larsson confirmed with staff that a cover charge on Friday and Saturday nights would not be considered as part of the food receipts. Comm. Larsson referred to Attachment D and expressed his concern about the viability of the business model. Mr. Wu said one of the biggest problems with the previous tenant was they did not sell food. He said they are concerned that their alcohol sales may be higher than food sales. Comm. Larsson asked about the applicant's plans if the food and alcohol percentages are not met.

Comm. Hungerford further discussed the possible options to meet the 50% food and alcohol requirement.

Comm. Dohadwala asked if the applicant could use other the revenues towards the 50% requirement. Ms. Ryan said there are other options available, and the condition is to make sure sufficient food is sold in addition to the alcohol.

Chair Travis closed the public hearing.

Vice Chair Hendricks confirmed with staff that hours could be extended for special, one-time events.

Comm. Travis discussed with staff the two, six-month compliance reviews. **Kathryn Berry**, Senior Assistant City Attorney, said the idea of the compliance review is to provide opportunity to the Commission to either modify the conditions, affirm the Use Permit, or recommend revocation to City Council which is the only body that can revoke a Use Permit.

Comm. Larsson discussed with staff condition 2, the revenue review on a quarterly basis, and how that works with the six-month compliance review by the Planning Commission.

Vice Chair Hendricks discussed with staff the 1:30 a.m. closing time and asked if the City would be putting a requirement on this business that is not on other businesses. Ms. Ryan said the City has this discretion, that the earlier closing time is an effort to obtain a balance in the area, and that similar conditions have been placed on other projects allowing the City to impose different closing times.

Comm. Hungerford moved for **Alternative 2 to approve the Special Development Permit and modify the conditions of approval. To modify the conditions: to require the applicant submit to staff for approval, outlining the transition and enforcement plans to make sure no one under 21 years of age remains on the premises after 10 p.m.; to add language to the condition regarding alcohol sales not exceeding 50% of the gross food and beverage revenues, specifying that the percentage be based on a monthly average.** **Comm. Sulser** seconded the motion.

Vice Chair Hendricks discussed with staff about adding a condition requiring the site be cleaned up and maintained between now and the proposed opening in May next year. **Vice Chair Hendricks offered a friendly amendment that a condition be added that the property be kept neat and clean as soon as possible. This was acceptable to the maker and seconder of the motion.** Ms. Ryan said there was early discussion regarding crowd queuing and asked if the Commission intended to **add to condition 24.a, the language "including crowd management and patron queuing" with Comm. Hungerford agreeing to include the amendment. This addition was acceptable to the seconder of the motion.**

Comm. Hungerford said this site has been a problem in the past and Murphy Avenue has become a nice place to spend time. He said he would hate to have a business added that set back the Murphy Avenue improvements. He said he thinks the project is set up well, that the space is currently being wasted while vacant, and that this is a project worth trying.

Comm. Sulser said that the project sounds like an attractive proposal that completes the nightlife of the downtown and he hopes it is successful. He said the conditions should help prevent a reoccurrence of the unfortunate incidences in the past.

Vice Chair Hendricks said he would be supporting the motion as he can make the findings. He said it is unfortunate that the previous use keeps coming into the conversation, however with the reviews will allow the Commission to look at the overall picture and hopefully this will be an, overall, vibrant business.

ACTION: Comm. Hungerford made a motion on 2010-7415 to approve the Special Development Permit with modified conditions: to require the applicant submit for staff approval, a plan for the transition and enforcement ensuring no one under 21 years of age remains on the premises after 10 p.m.; to add language to the condition regarding alcohol sales not exceeding 50% of the gross food and beverage revenues, specifying that “the percentage be based on a monthly average”; to add a condition that the property be kept neat and clean as soon as possible; and that condition 24.a regarding security be modified, adding the language “including crowd management and patron queuing”. Comm. Sulser seconded. Motion carried 7-0.

APPEAL OPTIONS: This action is final unless appealed to City Council no later than September 7, 2010.