

PUBLIC ANNOUNCEMENTS/PUBLIC COMMENTS

Speakers are limited to three (3) minutes. If you wish to address the Planning Commission, please complete a speaker's card and give it to the Recording Secretary or you may orally make a request to speak. If your subject is not on the agenda, you will be recognized at this time; but the Brown Act (Open Meeting Law) does not allow action by Planning Commission Members. If you wish to speak to a subject listed on the agenda, you will be recognized at the time the item is being considered by the Planning Commission.

CONSENT CALENDAR

1.A. Approval of Minutes: November 26, 2012

ACTION: Comm. Melton moved to approve the Consent Calendar. Comm. Hendricks seconded. Motion carried, 5-0, with Comm. Chang and Comm. Kolchak abstaining due to absence.

PUBLIC HEARINGS/GENERAL BUSINESS

2. **File #:** 2012-7811
Location: 146 S. Murphy Ave. (APN: 209-06-034)
Proposed Project: Special Development Permit to change the approved use to a Nightclub.
Applicant/Owner: PM Entertainment / Christopher Sun Trustee & Et Al
Environmental Review: Categorically Exempt Class 1
Staff Contact: Shaunn Mendrin, (408) 730-7429,
smendrin@sunnyvale.ca.gov

Shaunn Mendrin, Senior Planner, presented the staff report and introduced Deputy Chief Dayton Pang and Lt. Shawn Ahearn from the City of Sunnyvale Department of Public Safety (DPS). Mr. Mendrin provided a copy of an email on the dais from a neighboring business expressing that they have “no objection to the proposed change in their license.” Mr. Mendrin referred to Attachment B and provided a correction to condition AT-2 regarding occupancy, saying that the language should be changed to “The maximum occupancy (employees and patrons) for the nightclub shall be established by the Department of Public Safety Fire Marshall.”

Comm. Kolchak discussed with staff that the applicant would like to operate four days a week until 2 a.m. asking which four days a week. Staff said that the applicant could clarify the intended days of operation. **Trudi Ryan**, Planning Officer, explained that condition AT-1 in Attachment B would allow the applicant to operate 7 days a week until 1:30 a.m.; however the Planning Commission could modify the days and hours of operation.

Comm. Hendricks asked staff about the urgency of this application as related to the upcoming compliance review in January, 2013. Staff said if the Commission grants this Use Permit then the compliance review should probably be changed to June, 2013. Mr. Mendrin discussed the difficulty the applicant has had meeting the current food-to-alcohol sales ratio requirement and the contributing factors including the small kitchen. Staff said operational issues have not been a problem with this business owner and staff supports changing the use to a nightclub. Comm. Hendricks referred to Attachment A and discussed with staff the findings, the General Plan Goals LT-4 and LT-4.12, regarding Quality Neighborhoods and Districts and transportation opportunities. Comm. Hendricks asked staff about issues that could affect the quality of the downtown including the number of patrons, the remedy for handling disorderly patrons, security, unruly behavior and the patrons waiting outside the establishment. Comm. Hendricks asked how many times DPS has been called to handle incidences for this business. Deputy Chief Pang said this business has been well managed. He said DPS receives calls to attend to problems in the downtown area, but not for this business. Comm. Hendricks discussed with staff the dress code and the security plan.

Comm. Melton said this was a complicated application due to the many issues including the six month trial periods, and the food-to-alcohol ratio requirements and the applicant not even getting close to the 50% requirement. Mr. Mendrin discussed some of the difficulties of meeting the food percentage requirement. Comm. Melton discussed with staff the issues of outside event promoters, the occupancy which would be set by the Fire Marshall, current rules set that persons under 21 are not allowed after 10 p.m., and the proposed age requirement. Ms. Ryan discussed the use history of the site with a previous owner and explained what the City learned from the previous business which resulted in a revocation of the Use Permit. Comm. Melton discussed with staff the possibility and difficulties related to enlarging the kitchen.

Vice Chair Dohadwala said she likes idea of a well-run nightclub in the downtown. She discussed with staff other options that might allow the kitchen to be enlarged. Vice Chair Dohadwala discussed the findings and asked how the parking could be supported. Staff said this property is part of the parking district and there usually is an abundance of parking in evening.

Ms. Ryan provided a correction to an earlier comment clarifying that the revoked use permit of the previous owner had been approved as a restaurant with entertainment use; however it was operating as a nightclub. She said staff learned what kinds of conditions to require assuring the use is operated appropriately.

Comm. Hendricks discussed with staff whether approving this nightclub use would be bringing the same problems back that were occurring with the previous owner. Mr. Mendrin said the current owner is operating his business differently than the previous owner and discussed restrictions, the proposed change of the type of ABC (Alcohol Beverage Control) license, and conditions. Comm. Hendricks discussed the revocation process with staff and whether a condition could be added to allow a speedy revocation if needed. **Kathryn Berry**, Senior Assistant City Attorney, explained that if the Conditions of Approval (COAs) are strong and well thought out that the City should have the tools to prevent a lengthy revocation.

Chair Larsson discussed the process of the compliance reviews with staff, with Mr. Mendrin saying that staff does the review, however as an option the compliance reviews could be set up to return to Planning Commission for a public hearing. Chair Larsson discussed with staff the exterior mitigation measures. Deputy Chief Pang said a security plan has been in place and the plan would transfer over if this application is approved. Deputy Chief Pang said the applicants have been very compliant with DPS. Chair Larsson further discussed the security plans with staff.

Chair Larsson opened the public hearing.

Peter Lin and **Michael Hu**, applicants, discussed the application. Mr. Hu explained the difficulties they have had meeting the percentage of food sales to alcohol sales ratio required for the existing permit. He discussed the small kitchen, the reasons the kitchen cannot be expanded, and the various efforts made to increase food sales. Mr. Hu discussed the design and structure of the facility with the limitations of the kitchen. He discussed the many conditions required by staff including DPS conditions and ABC requirements. He said they have worked hard to meet the conditions; however they are struggling and would like to make the proposed changes. He said they would not be changing the way they operate. Mr. Lin addressed several of the commissioner's questions commenting about the lack of windows in the facility making it difficult to draw customers in, the various chefs hired in hopes of increasing business, and aggressive marketing. He discussed the business model and goal to provide a more upscale night life and clientele in the downtown area. The applicants said they are asking for the changes in order for the business to survive. Mr. Hu said their business has not been a problem for DPS.

Comm. Melton commented on the applicant's remarks and asked about no one under age 21 being allowed after 10 p.m. Comm. Melton discussed with Mr. Lin the limitations of increasing the size of the kitchen, and that it was apparent early on that the food sales to alcohol sales ratio requirements were not going to being met. Mr. Lin explained that they saw this happening, however they could not figure out how to improve the food sales situation.

Comm. Kolchak discussed with the applicant the request to extend the night club hours allowing the facility to be open until 2 a.m. Mr. Lin explained that the current ABC license restricts the hours allowed for alcohol sales to 12:00 a.m. and said that having to quit selling alcohol at midnight is not working for them.

Comm. Olevson commended the applicants for trying to make this business work and discussed further with the applicants the food sales and the efforts to change the ABC license from a 47 to a 48 license which would allow them to serve alcohol later and reduce the food sales requirement. The applicant said this would help the business survive.

Comm. Hendricks referred to condition AT-1 in Attachment B and discussed with the applicants the hours of operation in the conditions that would require the business to close by 1:30 a.m. Mr. Lin said they would prefer to be open until 2 a.m. with the applicants saying other similar businesses close at 2 a.m. The applicants discussed security. Staff commented that the 1:30 a.m. closure helps stagger closures and dispersion of patrons leaving the multiple establishments in the downtown. Comm. Hendricks asked what we have learned from previous experience with this site. Mr. Lin said currently when they stop serving alcohol at midnight, the patrons are gone by 12:30 a.m. and they tend to go to nearby bars. Mr. Lin further discussed the request for a 2 a.m. closure explaining their security plans. Ms. Ryan said that the 1:30 a.m. closure is what staff is comfortable with and recommends.

Chair Larsson discussed with the applicants the current restaurant costs, how things might change with the absence of the restaurant, the seating capacity, and that it would be very difficult to add windows to the facility.

Joel Wyrick with the Sunnyvale Downtown Association (SDA) referred to the letter of support from the SDA for this business and their application. He said that based on the past year's experience, this business has been well run and the SDA has no reservations about supporting the request to change the ABC license type or the use.

Comm. Hendricks discussed with Mr. Wyrick that businesses within a certain area are automatic members of the SDA. Comm. Hendricks discussed the email of concern in Attachment I from Anne Dugan and the supplement information provided on the dais from Ms. Dugan saying that the applicant met with her and she no longer has objection to a change in their license or the nightclub use. Comm. Hendricks and Mr. Wyrick discussed how things might change if the application and license are approved. Mr. Wyrick commented that with the current conditions and restrictions in place that the business would be destined to fail.

Mr. Hu said they hope the Commission would support the application and they have tried to follow the conditions to the letter. He said the change in the use and the license would eliminate the obstacles they are facing.

Comm. Melton discussed with staff and the applicants the closing time and what the likely time would be that the ABC would require the business to quit serving alcohol. Mr. Hu thought the ABC would likely require alcohol sales to end about 30 minutes prior to closing time. Comm. Melton discussed with the applicants whether they thought the restaurant food requirement could be met if windows could somehow be added. Mr. Hu explained there are many details that must be present to make a restaurant succeed and they have learned the hard way that they cannot meet these details at this site.

Chair Larsson closed the public hearing.

Chair Larsson asked Deputy Chief Pang about the DPS experience with closing times. Deputy Chief Pang explained that a 1:30 a.m. closing would stagger the patrons leaving Pure Lounge from the other clubs avoiding mass crowds leaving at one time. He said they have staggered the closing times with one other business in the City and it has worked out well.

Vice Chair Dohadwala discussed with staff that this is a Heritage Building and that the Heritage regulations only apply to the external portion of the building. Vice Chair Dohadwala discussed with staff the closing time and last call times for alcohol sales for other establishments in the downtown.

Comm. Hendricks moved for Alternative 2, to approve the Special Development Permit for an entertainment establishment and nightclub with alcohol sales subject to the conditions in Attachment B with modification: to add the word “use” to condition GC-2 with the first three words reading “The approved use.” Comm. Melton seconded the motion.

Comm. Hendricks said the conversations during the public hearing process helped address his concerns. He said staff’s comments regarding use definitions and the conditions of approval providing the level of controls to deal with issues were helpful. He said he could make the findings and wished the applicants the best of luck.

Comm. Melton said he echoes Comm. Hendricks’ comments. He said he is convinced the applicant tried to hit the numbers required for food and alcohol sales for a 47 license type; however reaching the required numbers appears to not be feasible. Comm. Melton said he can make the findings and thinks this project will help further the ultimate goal of a dynamic downtown.

Chair Larsson offered a Friendly Amendment as suggested by staff that condition AT-2 be modified to read “The maximum occupancy including employees and patrons shall be established by the Department of Public Safety Fire Marshall.” The Friendly Amendment was acceptable to the maker and the seconder of the motion.

Comm. Kolchak said he would be supporting the motion. He said previous issues with the site have cast some shadows over the current business; however since the current business owner has been using the site the issues have subsided. He said the applicant has worked hard to be compliant with the requirements. Comm. Kolchak agreed that there are difficulties in drawing patrons into the site as a restaurant use and said he could make the findings.

Comm. Olevson said he appreciates that the applicant explained the difficulties that they have experienced. He said the applicant has survived longer than some and he recognizes the problem of not being able to add windows which results in a cave-like feel. He said he appreciates that the applicants have come back for a modification rather than leaving the downtown. He said the downtown needs entertainment for the new businesses and he is sorry the restaurant has not worked out. He said he knows the applicants have exhibited tenacity in making this work and he appreciates their cooperation with Public Safety. He said he can make the findings and would be supporting the motion.

Vice Chair Dohadwala said she would be supporting the motion. She said it is unfortunate that the community has had a bad past experience with this site. She said that the applicants have

not been a nuisance, and she wishes them the best. She said she thinks this business will be a positive contribution to the downtown.

Comm. Chang said he could make the findings and would be supporting the motion.

Chair Larsson said he could make the findings and would be supporting the motion. He said he was concerned initially about creating another Abyss (previous use). He said he thinks the conditions capture the lessons learned and he is glad the applicant has been cooperative with DPS. He commended the applicant for speaking with Ms. Dugan and for alleviating her concerns about the business. Chair Larsson said it appears that the applicants are intent on being good neighbors and responsive to the Commission and the City.

ACTION: Comm. Hendricks made a motion on 2012-7811 to approve the Special Development Permit for an entertainment establishment and nightclub with alcohol sales subject to the conditions in Attachment B with modifications: to add the word "use" to condition GC-2 with the first three words reading "The approved use"; and to modify condition AT-2 to read "The maximum occupancy (employees and patrons) for the nightclub shall be established by the Department of Public Safety Fire Marshall." Comm. Melton seconded. Motion carried 7-0.

APPEAL OPTIONS: This action is final unless appealed to the City Council no later than December 26, 2012.

- 3. Subject: 2013 Study Issues – Review the Planning Commission’s Study Issue Ranking from 11/12/12 and break tie.**

Ms. Ryan explained that when the Planning Commission ranked the potential 2013 Study Issues on November 12, 2012 that two items tied for fourth place and the tie needs to be broken. Ms. Ryan said the two items that tied are CDD 13-02, “Consideration of useable open space in required front yards” and CDD 13-03, “Single-family Home Parking Requirements.”

Comm. Melton discussed CDD 13-03 with staff expressing that he was hoping this study would result in a better way to handle complaints regarding illegal garage conversions. Ms. Ryan said the process of handling complaints would be more of a Neighborhood Preservation code enforcement issue.

Comm. Hendricks commented that he thinks both of these Study Issues are important and he would like to see both issues studied regardless of how they are ranked.

Ms. Ryan asked which Commissioners who would prefer CDD 13-02 be ranked as fourth. Four Commissioners voted to rank 13-02 as the fourth study issue. The four commissioners were Comm. Hendricks, Chair Larsson, Vice Chair Dohadwala, and Comm. Chang. The three Commissioners that preferred to rank CDD 13-03 as fourth were Comm. Kolchak, Comm. Olevson and Comm. Melton.

Ms. Ryan said as a result of the vote, CDD 13-02 would be ranked fourth and CDD 13-03 would be ranked fifth.

NON-AGENDA ITEMS AND COMMENTS

- COMMISSIONERS ORAL COMMENTS

Comm. Hendricks asked staff if any progress had been made with the outstanding issue of the cell tower carrier that needed to bring the cell tower into compliance with the aesthetic requirements. Ms. Ryan said major modifications have been made by the cell tower carrier, and the tower is close to meeting the aesthetic requirements. She said staff would continue to work with the carrier until the aesthetics are acceptable.

- STAFF ORAL COMMENTS

City Council Meeting Report

Ms. Ryan discussed Planning-related items discussed in Study Session and public hearing items considered by City Council at their December 4, 2012 meeting. Ms. Ryan discussed upcoming items to be considered at the December 18, 2012 City Council meeting.

INFORMATION ONLY ITEMS

None.

ADJOURNMENT

With no further business, the Commission meeting adjourned 9:54 p.m.

Respectfully submitted,

Trudi Ryan
Planning Officer