



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: June 2, 2009

Approved

Date

6-4-09

COUNCIL DISTRICT: 1
SNI AREA: N/A

SUBJECT

CP08-085. APPEAL OF THE PLANNING COMMISSION'S DECISION TO APPROVE A CONDITIONAL USE PERMIT TO ALLOW AN ENTERTAINMENT ESTABLISHMENT (KARAOKE ONLY) WITH AFTER MIDNIGHT OPERATION (UNTIL 2:00 AM FRIDAYS AND SATURDAYS) AND AN ALTERNATING PARKING ARRANGEMENT IN A PORTION OF A COMMERCIAL BUILDING LOCATED ON THE SOUTHEAST CORNER OF SOUTH DE ANZA BOULEVARD AND VIA VICO.

RECOMMENDATION

The Director of Planning, Building and Code Enforcement recommends the City Council uphold the Planning Commission's decision and approve the subject Conditional Use Permit.

OUTCOME

Should the City Council deny the proposed Conditional Use Permit, the retail tenant space would remain vacant. Should the City Council approve the subject request, the site would be permitted to acquire an entertainment license for karaoke use and to operate past midnight on Friday and Saturday nights.

EXECUTIVE SUMMARY

On June 25, 1991, (last amended February 23, 1993), the City Council adopted Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars. The City considers nightclubs (which are establishments that stay open late at night and provide entertainment, dancing, food and drink and are no ancillary to a full-service restaurant) through the Conditional Use Permit (CUP) process to ensure that they conform to the City's policy and Zoning Ordinance. On April 26, 1994 the City Council adopted Policy 6-27: Evaluation of 24-Hour Uses. The City considers uses that operate between the hours of 12 midnight through 6:00 a.m. through the Conditional Use Permit (CUP) process to ensure that they conform to the City's policy and Zoning Ordinance. Both these Guidelines state that proposals are examined on a case-by-case basis to account for the unique circumstances of each property and proposal. To facilitate the evaluation

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process for individual permit applications, the Guidelines identify the project characteristics necessary for approval. The proposed project conforms to these Guidelines.

The subject Conditional Use Permit, to allow an entertainment use (karaoke only) with operation until 2:00 a.m. on Friday and Saturday nights, was reviewed by staff, which in turn recommended approval of the proposal. A public hearing was conducted by the Planning Commission, which considered the staff recommendation and public testimony. The Planning Commission recommended approval of the project. An appeal of this decision (on the basis of the use being too close to residential uses) was filed by an area resident to have this matter decided by the City Council.

BACKGROUND

Planning Commission Hearing

On April 22, 2009, the Planning Commission held a public hearing to consider the proposed Conditional Use Permit (File Nos. CP08-085). The Director of Planning recommended approval of the Conditional Use Permit. As stated in the original staff report (see attached), staff believes the addition of entertainment uses (karaoke) to the existing commercial retail uses would have a minimal land use impact, and offers an opportunity for revitalizing a currently weak commercial center.

Commission Discussion

In their initial testimony, the applicant (Yen Chen) noted there is a similar facility operating in Richmond that has had no issues. He outlined the on-site security procedures (cameras, ID's required, etc.) and stated that a noise study was performed that indicated that no noise from karaoke would be audible on the exterior.

Four neighbors (residents of the Vista de Saratoga housing development immediately to the east of the subject site) spoke in opposition to the project. They cited a number of concerns with the proposal including: lack of parking, concern that patrons would park in the residential portion of Via Vico, concern with noise from patrons, loitering, litter, possible rats and pests from the food service and concern that the proposed use was simply too close to residential uses. They cited current issues with noise stemming from the Britannia Arms on the opposite side of De Anza Boulevard and noted that Police rarely responded to noise complaints. Commissioner Kamkar questioned a number of them regarding whether operation until 11:00 p.m. during the week or operation until 2:00 a.m. on the weekend would be worse and the neighbors stated that the late night weekend operation was more problematic.

Yen Chen, on behalf of the applicant, responded to the public testimony stating that similar facilities (adjacent to residential use and not serving alcohol) in Cupertino and Santa Clara had not generated any complaints to law enforcement. Commissioner Zito asked about how the operations of the facility would work. Mr. Chen noted that rooms were normally reserved in hour blocks and no alcohol was permitted inside. The rooms would be insulated to prevent sound interference between rooms and thus would be inaudible from the exterior. Commissioner Kamkar then asked whether it would be acceptable to operate only until midnight for the first

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year. Mr. Chen stated that would have to check with the business owner. After that, the public hearing was closed.

Commissioner Zito stated that a "Disturbance Coordinator" provision might be appropriate to add to the resolution. Commissioner Jensen noted that the complaints made by the neighbors regarding the Britannia Arms were of concern, but was a separate issue from the proposed project. She directed staff to look at this issue separately. She then made a motion, which was seconded by Commissioner Do, to approve the proposed Conditional Use Permit with the addition of a condition regarding establishing a "Disturbance Coordinator." Commissioner Kamkar asked to make a friendly amendment to require that the use closed at midnight for the first two years of operation, which Commissioner Jensen accepted. Commissioner Do then noted that he had a concern with limiting the hours for an excessive amount of time and suggested to reduce it to one year or six months. After further discussion, September 1, 2010 was agreed to, by the Commission, recognizing that judging the applicant based on the alleged performance of Britannia Arms, which is a very different business (a bar with live music and an outdoor patio as opposed to an indoor karaoke facility without alcohol sales) was not appropriate. Commissioner Campos stated that the motion was discriminatory, as the nearby Britannia Arms already had operation past midnight. Commissioner Zito noted that he felt that the motion was a fair compromise. The motion did not pass, with a vote of 3-3-1, with Commissioners Campos, Do and Platten opposed and Commissioner Cahan absent. Commissioner Jensen then made another motion, which was seconded, to approve the project as recommended by staff, with the addition of the disturbance coordinator. After no further discussion, the Planning Commission approved the motion by a vote of 6-0-1, with Commissioner Cahan absent.

Appeal

On May 4, 2009, a neighbor, June Oberdorfer of 7160 Via Vico (on behalf of Vista de Saratoga Homeowners Association), appealed the Planning Commission decision to approve the subject proposal (see attached Notice of Appeal and associated documentation from June Oberdorfer). The appellant cited the following reasons for the appeal:

1. Inconsistencies with the Guidelines for Evaluation of Nightclubs and Bars Policy.
2. Inconsistencies with the Evaluation of 24-hour Uses Policy.
3. Concern regarding conditions in the draft resolution.
4. Lack of environmental review for project.

Ms. Oberdorfer's letter did not provide any feedback on how the proposed use could become compatible with the neighborhood.

ANALYSIS

The original staff report (see attached) provides a full analysis of this project with respect to conformance to the General Plan and City Council Policies 6-23 and 6-27. The report identified that the proposed project meets the on-site parking requirements as prescribed by the Zoning Ordinance through the use of an alternation parking arrangement. A noise study was prepared and

concluded that the proposed project would not have any significant noise impacts to the adjacent residential uses.

As identified in the section above, the appellant cited the following reasons for her appeal. Provided below is a summarized statement (in italics) identifying the concern by the appellant followed by a response from staff.

1. The project is inconsistent with City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars.

- a. The proposed site is in close proximity to the Britannia Arms (1087 S De Anza Blvd) on the opposite side of De Anza which currently has late night use and live music. The proposed use would double the concentration of nighttime uses.*

Response: Concentration is not an issue according to the Policy. While Council Policy 6-23 does cite that bars should be dispersed, the proposed project is not a bar. No alcohol will be served or consumed on site. The business model is substantially different than Britannia Arms, which is a bar, has outdoor seating and live music.

- b. The proposed site is directly adjacent to residential uses. The Policy states that new nightclubs and bars should be discouraged from located adjacent to or near and existing residential uses.*

Response: Based on the noise report prepared and the conditions imposed in the draft resolution (such as the closure of the rear parking area after 6:00 p.m.), staff believes that the project will have no significant impacts on the adjacent residential uses.

- c. The policy requires monitoring of noise on a monthly basis. No conditions are included in the resolution regarding that.*

Response: This use does not propose any outdoor uses, any live music or the consumption of any alcohol. Staff does not anticipate the need for monthly monitoring, nor have similar permits in the past been conditioned to require monthly monitoring. However, staff has added a condition requiring that noise measurements be monitored over the first six months that the use is in operation.

- d. Entertainment uses that do not serve alcohol may be open to patrons 18-20. The proposed use is said to cater to high school students. There is no minimum age requirement included in the resolution.*

Response: The use is a more family oriented entertainment use, since it does not involve alcohol, dancing or live music. Staff has incorporated a condition (agreed to by the applicant) regarding how underage patrons are permitted in the establishment.

- e. *Time limits for Conditional Use Permits for bars and nightclubs should be 5 years; the proposed resolution is for ten years.*

Response: Staff has revised this condition to be for five years.

2. *The project is inconsistent with City Council Policy 6-27: Evaluation of 24-Hour Uses.*

- a. *24 hour uses should operate without detriment to nearby residential uses. Rowdy patrons will park on the street near the residences rather than in the commercial parking lot because it is closer and will cause noise disturbances.*

Response: No alcohol is being served on the project site, which should decrease the likelihood of rowdy behavior from patrons. In the late evenings, when the other uses in the commercial center are closed, there is more than adequate parking in the lot on site. Patrons are much more likely to park in the commercial lot than on the street. Only some of the spaces in the most southern portion of the parking lot would be a longer walk than parking along Via Vico adjacent to residences.

- b. *24 hour uses should be separated from residential uses by 300 feet. There has been strong neighborhood opposition to the proposal, including a petition signed by approximately 70 people.*

Response: The proposed project provides physical separation of about 60 feet from the nearest residentially zoned property/residence. The distance between the front door of the entertainment establishment (likely the only area noise may emanate from) and the nearest residence is approximately 150 feet. The entrance is oriented on the opposite side of the building from the residences and the entire commercial building, as well as an eight-foot masonry wall separates the entrance from the residentially zoned property. As stated above, based on the noise report prepared and the conditions imposed in the draft resolution (such as the closure of the rear parking area after 6:00 p.m.), staff believes that the project will have no significant impacts on the adjacent residential uses.

- c. *Patrons leaving late at night will be talking, loitering and being boisterous along the residential side streets.*

Response: As discussed above, no alcohol is served on premises and on-site parking will be more convenient to patrons than parking along the streets by the residences.

- d. *Noise will result from conversations, doors slamming and car stereos as patrons depart the premises.*

Response: The commercial building will effectively screen the residential area from noises occurring in the parking lot, such as stereos or slamming doors. The resolution requires the operator to clear people from loitering on the premises.

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3. *Condition 10 in the draft resolution, which states: "**Loitering Prohibited.** Loitering by the patrons within a 250-foot radius of the doors of the premises is prohibited during hours of operation or after closure. The operator shall proactively work to clear this area (250-foot radius of the doors of the premises) within half an hour of closure of their operation on all days of the week," will not be effective, as it will allow people to loiter until 2:30 and will encourage people to continue their parties outside of the 250 foot range.*

Response: The intent of this condition is not to encourage people to loiter on site until 2:30 a.m., but rather to give a set, realistic time that all people must be off site. It seems unlikely that people would specifically move 250 feet off-site to continue to loiter; rather they would move on to another location.

4. *Environmental clearance can't be given to this proposal since this is a very different use than previous uses at this facility.*

Response: This project is exempt from CEQA under the provisions of section 15301, which is for existing facilities. The prior use on the site was a full-service restaurant. No exterior construction is proposed; the only changes will be interior with the addition of sound insulated rooms for karaoke use. The additional hours of operation are only a negligible change of use under CEQA. In addition, the exemption has been supplemented with a noise report which gives technical answers to the most salient environmental effect from the proposed use.

CONCLUSION

Based on the above analysis and the analysis provided in the original staff report, staff concludes that the proposed entertainment use (karaoke only) with after midnight operation on Friday and Saturday nights is in substantial conformance with City Council Policies 6-23 and 6-27 and that the site is a suitable location for the proposed use.

ALTERNATIVES

The City Council in their review of the project can take the following actions:

1. Uphold the Planning Commission's decision to approve the subject Conditional Use Permit and allow the karaoke/entertainment use to open as proposed by the applicant, or
2. The City Council could deny the Conditional Use Permit outright and retain the site for uses permitted in the CP Commercial Pedestrian district, or
3. Approve an alternate proposal different from any of the above.

PUBLIC OUTREACH



Criteria 1: Requires Council action on the use of public funds equal to \$1 million or greater. (Required: Website Posting)

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- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was published, posted on the City's web site, and distributed to the owners and tenants of all properties located within 500 feet of the project site. A sign has been posted on the project site. A community meeting was held for the project on January 29, 2009. Approximately 31 people attended the meeting, consisting of mostly local residents. The residents were largely in opposition to the proposed project. A number of issues were brought up as concerns including the following:

- a lack of parking on site and that customers would park in the residential neighborhood,
- noise generated by patrons,
- drinking would occur on-site,
- litter and smoking would occur on-site,
- the types of patrons the use would attract,
- potential fights occurring, and
- increase in rats and other pests because of the addition of a food/restaurant use.

Approximately 16 letters and e-mails have been received by the Planning department since the community meeting opposing the project, including one with a petition signed by approximately 70 people. An additional three e-mails were received in support of the project.

The proposed resolution as drafted by staff includes permit conditions to address the public concerns that are land use issues subject to City regulation.

Shortly after the application was filed with the City, a sign was posted on-site to notify neighbors of the proposed development. A notice of the public hearing for both the Planning Commission and City Council Hearings were distributed to the owners and tenants of all properties located within 1,000 feet of the project site and posted on the City website. This staff report and City Council memo is also posted on the City's website. Staff has been available to respond to questions from the public.

COORDINATION

Preparation of this memorandum has been coordinated with the City Attorney's office.

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CEQA
Exempt



JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Darryl Boyd at 408-535-7800

Attachments:

- Draft City Council Resolution
- Planning Commission Staff Report & Attachments
- Notice of Appeal and Associated Petition.
- Plans

c: Applicant/Appellant

RESOLUTION NO. 09-

Resolution of the City Council of the City of San José granting, subject to conditions, a Conditional Use Permit to allow an entertainment establishment (karaoke only) with after mid-night operation until 2:00 a.m. Fridays and Saturdays in portion of a commercial building and an alternating parking arrangement on a 2.4 gross acre site.

FILE NO. CP08-085

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSÉ:

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on November 18, 2008, an application (File No. **CP08-085**) was filed for a Conditional Use Permit for the purpose of allowing an entertainment establishment (karaoke only) with after mid-night operation until 2:00 a.m. Fridays and Saturdays in portion of a commercial building, on that certain real property (hereinafter referred to as "subject property"), situate in the CP Commercial Pedestrian Zoning District, located on the Southeast corner of South De Anza Boulevard and Via Vico (1132 South De Anza Boulevard), San José, and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this City Council conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this City Council gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this City Council received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a development plan for the subject property entitled, "Music Tunnel KTV," dated November 18, 2008. Said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said

development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San José Municipal Code and the rules of this City Council;

NOW, THEREFORE:

After considering evidence presented at the Public Hearing, the City Council finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram. The proposed use is consistent with this designation.
2. The site is zoned currently zoned CP Commercial Pedestrian Zoning District.
3. The site is 2.4 gross acres in size.
4. The proposed tenant space is approximately 5,122 square feet in size.
5. The project proposes to allow an entertainment establishment (karaoke only) with after midnight operation until 2:00 a.m. Fridays and Saturdays in portion of an existing commercial building.
6. The project is surrounded by commercial uses and the north, south and west and single-family attached residential uses to the east.
7. A Conditional Use Permit is required to permit entertainment uses and 24 hour uses in the CP Commercial Pedestrian Zoning District.
8. The primary policy applicable for the review and analysis of this project is the City Council Policy 6-23 for the Evaluation of Nightclubs and Bars.
9. Council Policy 6-23 specifies that the Chief of Police evaluate all nightclub proposals and recommend conditions necessary to ensure the safety of patrons and citizens. The nightclub is required to obtain a public entertainment permit from the Police Department.
10. This project is subject to Council Policy 6-27: Evaluation of 24 hour uses.
11. The proposed project provides physical separation of about 60 feet from the nearest residentially zoned property/residence. The distance between the front door of the entertainment establishment (likely the only area noise may emanate from) and the nearest residence is approximately 150 feet. The entire commercial building, as well as an eight-foot masonry wall separates the entrance from the residentially zoned property.
12. A noise report was prepared for the project which indicated that there would be no significant noise impacts as a result of the project.
13. The proposed entertainment establishment is oriented away from the adjacent residences

14. The subject site is not located in an area that is over the 20% crime index.
15. All entertainment will cease at 11:00 p.m. Sunday through Thursday and 2:00 a.m. Friday (Saturday morning) through Saturday (Sunday morning).
16. No alcoholic beverages are proposed to be served on site.
17. The proposed use results in a parking demand of 53 parking spaces.
18. 22 parking spaces are available at all times for the use.
19. Three separate existing uses on the site close at 6:00 p.m. at which time an additional 34 spaces are available. Up until this time, only a limited amount of rooms will be usable.
20. The rear parking area will have a gate installed to prevent access to the area after 6:00 p.m.
21. Notices of the public hearing for this project were sent to all property owners within 1,000 feet of the subject property. The City Council Agenda is posted on the City of San José website, which includes a copy of the staff report. Staff has been available to discuss the project with members of the public.
22. Planning Commission approved the proposed project at a Public Hearing on April 22, 2009.
23. The Planning Commission's decision to approve the project was appealed to the City Council by a neighbor, June Oberdorfer, on May 4, 2009

This City Council concludes and finds, based upon an analysis of the above facts that:

1. The proposed project conforms to the City's General Plan.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed project conforms to Council Policy 6-23 Guidelines for Evaluation of Nightclubs and Bars.
5. The proposed project conforms to Council Policy 6-27 Evaluation of 24-Hour Uses.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and

2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features in this title, or as otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This City Council expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
2. **Conformance with Plans.** Construction and development shall conform to approve development plans entitled, "Music Tunnel KTV," dated November 18, 2008, on file with the Department of Planning, Building and Code Enforcement.
3. **Fire Safety.** The applicant shall meet all requirements of the Fire Department at the Building Permit stage.
4. **Additional Permits.** Obtain all applicable permits required per the San José Municipal Code including but not limited to a public entertainment permit from the Police Department.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-
enumerated conditions throughout the life of the permit:

1. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
2. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
3. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
 - a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontage.
 - b. The operator of the proposed use shall clean the public right-of-way adjacent to the subject site before 8:00 a.m. each day.
 - c. Mechanical equipment used for outside maintenance, including blowers and street sweepers may not be used between 10:00 p.m. and 6:00 a.m. daily.
 - d. The facility operator shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the adjacent rights-of-way, nor create a nuisance for adjoining businesses.
4. **Alcohol.** No alcohol is to be served or consumed on premises.
5. **Hours of Operation.** Stated hours of operation are 11:00 a.m. to 11:00 p.m., Sunday through Thursday and 11:00 a.m. through 2:00 a.m. Friday through Sunday morning. Any extension of these operating hours will require a Conditional Use Permit Amendment.
6. **Entertainment.** All entertainment shall cease at 2:00 a.m. Entertainment shall be limited to karaoke.
7. **Entertainment Permit.** The project operator shall obtain and maintain the appropriate public entertainment permit from the City of San José Police Department.
8. **Security:** A minimum of one security officers shall be on duty for every 100 patrons using the entertainment facility (during the hours of operation.) The applicant shall maintain state licensed security to effectively control crime, gang, drug and other police problems that may arise.
9. **Noise and Acoustics:**
 - a. During the hours of operation, amplified sound shall be carefully regulated to ensure compatibility with adjacent uses.
 - b. Windows and doors for the facility shall remain shut, during periods in which amplified music is played, to insure compatibility with the surrounding neighborhood and conformance with the General Plan noise policies.

10. **Noise Measurements.** For the first six months that the use is in operation, noise levels at the property line shall be monitored by a qualified noise consultant once a month at midnight on a Friday or Saturday night.
11. **Loitering Prohibited.** Loitering by the patrons within a 250-foot radius of the doors of the premises is prohibited during hours of operation or after closure. The operator shall proactively work to clear this area (250-foot radius of the doors of the premises) within half an hour of closure of their operation on all days of the week.
12. **Age Restriction.** All patrons under the age of 18 must be accompanied by an adult.
13. **Community Relations Manager.** The permittee shall implement the following:
 - a. Provide an on-site community relations manager during all hours of operation;
 - b. Post contact information for the community relations manager in a prominent location within the establishment near the primary entrance;
 - c. On an annual basis, mail owners and tenants of properties located within 200 feet of the establishment and owners and tenants of the project site a notice containing contact information for the establishment's community relations coordinator, including a phone number, and provide the Director of Planning a copy of the notice and mailing list clearly marked with the Permit File No. CP08-085.
 - d. Maintain a complaint log including the time and content of all complaints and a summary of the time and nature of the establishment's response to each complaint.
 - e. Ensure that the log is kept current and is available on the project site for inspection by City staff.
14. **Mechanical Ventilation.** Since doors and windows shall remain shut during amplified music, the tenant space shall have adequate HVAC to ensure comfort of patrons without the need to leave doors open on warm evenings.
15. **Rear Parking Area Gate.** A gate shall be added to the rear parking area to restrict access to this area after 6:00 p.m. The gate shall allow access for staff to enter and allow exiting the site through use of a sensor. A permit adjustment shall be filed within 60 days of approval of this permit to implement this.
16. **Security Cameras.** Security cameras will be placed to monitor the rear parking area.
17. **Alternating Use Parking Arrangement.**
 - a. From 11:00 a.m. until 6:00 p.m., 22 spaces are available for the use. During this time period, only limited operation is allowed on the premises. Operations are only permitted in the following rooms: small rooms 6 and 7, medium rooms 1 and 2, large room 1 and super large room 2. Small rooms 4 and 5 may be allowed to operate if large room 1 is closed and small rooms 3, 4 and 5 may be allowed to operate if super large room 2 is closed.
 - b. From 6:00 p.m. until close, an additional approximately 12,000 square feet of retail uses on site cease operation. By making use of these additional parking spaces,

the entire facility may operate. Any reduction in this available parking may require specific rooms to be removed from operation.

18. **Lighting.** This permit allows no new on-site lighting.
19. **Rear Exit Doors.** The rear exit doors shall be used for staff and emergencies only and shall remain closed during business hours.
20. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
21. **Compliance Review.** Due to the neighborhood concerns over the operation of this facility and the proposed alternating parking arrangement, the Director of Planning, over the course of the first two (2) years after the issuance of this permit, will monitor the use for compliance with said permit. At the end of the two (2) year period, the Director of Planning will determine if there is sufficient evidence based on public input, staff investigation and staff review of all of the information received to initiate an "order to show cause" process pursuant to Title 20 of the San Jose Municipal Code.
22. **Nuisance:** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.

CONDITIONS SUBSEQUENT

1. **Time Limit.** This Conditional Use Permit for entertainment expires and has no further force or effect five (5) years from the date of its approval.

Please note that this conditional use permit has been granted for a period of 5 year(s) only. You are being specifically and separately advised of this time limitation so that you will consider this time limitation in your decision to accept this permit or as you make any investment decision related to this property.
2. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal Conditional Use Permit application. In order to be timely, an application for renewal must be filed more than ninety (90) calendar days but less than one hundred eighty (180) calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.
3. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or

- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance

In accordance with the findings set forth above, a Conditional Use permit to use the subject property for said purpose specified above is hereby **approved**.

ADOPTED this 16th day of June 2009, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

VACANT:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

NOTICE OF PERMIT APPEAL

TO BE COMPLETED BY PLANNING STAFF

FILE NUMBER CP08-085	RECEIPT # _____
PROJECT LOCATION	AMOUNT 101-
	DATE 5/4/09
	BY _____

TO BE COMPLETED BY PERSON FILING APPEAL

PLEASE REFER TO PERMIT APPEAL INSTRUCTIONS BEFORE COMPLETING THIS PAGE. THIS FORM MUST BE ACCOMPANIED BY THE APPROPRIATE FILING FEE.

THE UNDERSIGNED RESPECTFULLY REQUESTS AN APPEAL FOR THE PROPERTY WHICH IS LOCATED AT:
1132 S De Anza Blvd., San Jose, CA 95129

REASON(S) FOR APPEAL (For additional comments, please attach a separate sheet.):
Please see attached sheets (2)

PERSON FILING APPEAL

NAME June A. Oberdorfer (on behalf of Vista de Saratoga Homeowners Assn)	DAYTIME TELEPHONE (408) 257-1803
ADDRESS 7160 Via Vico	CITY STATE ZIP CODE San José CA 95129
SIGNATURE <i>June A. Oberdorfer</i>	DATE May 2, 2009
RELATIONSHIP TO SUBJECT SITE: (e.g., adjacent property owner, property owner within one thousand (1,000) feet) of Vista de Saratoga Homeowners Assoc. adjacent property owner / vice president	

CONTACT PERSON (IF DIFFERENT FROM PERSON FILING APPEAL)

NAME alternately if J. Oberdorfer is out of town:	
ADDRESS Deepak Sabnis at deepak_sabnis@yahoo.com	CITY STATE ZIP CODE
DAYTIME TELEPHONE ()	FAX NUMBER ()
E-MAIL ADDRESS joberdor@earthlink.net	

PROPERTY OWNER

NAME	DATE
ADDRESS	CITY STATE ZIP CODE

PLEASE CALL THE APPOINTMENT DESK AT (408) 535-3555 FOR AN APPLICATION APPOINTMENT.
THIS APPLICATION APPOINTMENT IS LOCATED ON THE 3RD FLOOR OF CITY HALL.

TRACT N° 3985

WEYBURN

1033	1057	1061	1065	1069	1073	1077
48.90	65	65	65	65	65	65
1	2	3	4	5	6	7
81.18	100	38	37	36	35	34
39						33
69.63						64.66

R.O.S. 232-M-30
424.20

1.72 AC. NET

PCL. A

25' EASEMENT

474.35

1.05 AC.
LOT 2

LOT I
0.75 AC

PCL. 1

0.607 Ac.

PCL. 2
2.49 AC. GR
2.39 AC. NE

Project Site

TRACT N° 7708
CONDO. PLAN

P.M. 329-M-6

1120-1140
P.M. 411-M-30

S. DE ANZA

(FMLY. SARATOGA - SUNNYVALE RD.)
R.O.S. 419/24

BK 359

ROLLINGDELL DR.

ST.

CLARENDEN

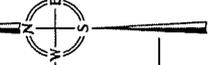
CHIALA LANE

VIA VICO CHIALA LN

VIA (FMLY CHIALA LN)

GOLDEN GATE DRIVE

BLUE HILL DRIVE



1" = 100'

(26)

(30)

(31)

(33)

(29)

(27)

(24)

CEN. SEC. 24
TWP. 7S-R2W

FALLENLEAF LN.

TRA DET. MAP 86
LAWRENCE E. STONE — ASSESSOR
Cadastral map for assessment purposes only.
Compiled under R. & T. Code, Sec. 327.
Effective Roll Year 2008-2009

June A. Oberdorfer on behalf of the Vista De Saratoga Homeowners Association, Appeal of Conditional Use Permit CP08-085

Reasons for Appeal:

Approval violates several city ordinances and policies, because of being too close to a residential area (affecting quality of life, safety and property values negatively), having strong neighborhood opposition (31 people at community meeting, 16 letters and e-mails, and 70 people signing a petition), possessing limited parking onsite, and creating a concentration of late night uses:

1. Council Policy 6-23, Guidelines for Evaluation of Nightclubs and Bars

Background: "The intent of this policy is to avoid a concentration of nighttime uses in any one area." There is already a bar with live music operating about 500 ft across De Anza Blvd. within the City of San Jose. The Britannia Arms pub has live music at times and outdoor seating in the summer, with 24-hour uses. The neighborhood is already putting up with noise from that establishment, noise that is particularly bothersome during the summer months. Adding a second establishment so close by that would be a 24-hour entertainment establishment would double the concentration of nighttime uses in the immediate vicinity of a residential area.

Policy 1.b. "New nightclubs and bars should be discouraged from locating adjacent to or near any existing residential uses..." This new facility immediately abuts an existing residential area in direct contradiction of Policy 1.b. The residences have been at this location for 30 years.

Policy 2.d. This policy requires monitoring of noise levels at least once per month. There are no provisions in the Conditional Use Permit stating this requirement. Specifics about how these noise measurements should be obtained (ex., on the residential side of the facility, at closing time on a weekend) should be noted so that the level of nuisance created for the adjacent residents can be quantified.

Policy 5.d. "Entertainment uses that serve no alcohol may be open to patrons 18 to 20 years and older." The proponent of this project portrayed this as a family activity and stated that many high school students use the proponent's current facility in Richmond, CA. There is no mention in the Conditional Use Permit about a minimum age for patrons.

Policy 5.g. "Time limits for Conditional Use Permits for nightclubs and bars should generally be five years..." The proposed permit length is 10 years, doubling the normal time.

2. Council Policy 6-27, Evaluation of 24-hour Uses

Background: The purpose of this ordinance is "to assure compatibility of late night and early morning uses (e.g., bars, nightclubs ...) with surrounding land uses." Having a late night, entertainment facility immediately adjacent to a residential area where excited, worked-up patrons will be leaving, loitering, going to their cars at 2 to 2:30 a.m. on weekends does not assure "neighborhood compatibility" which is the intent of this ordinance.

Policy 1.a. "Twenty-four-hour uses should not be approved unless the facility can operate without detriment to nearby residential uses..." Because of limited parking at this facility and the fact that parking along the adjacent residential side street, Via Vico, is close to the facility than some of the more distant commercial area parking, patrons are likely to be parking in front of residences along Via Vico. The Karaoke facility will have no control over where their patrons park. Having rowdy patrons in a celebratory mood going to their vehicles parked in front of residences in the early morning hours will almost certainly be detrimental to nearby residential uses.

Policy 1.b. “Generally, 24-hour uses should not be located with 300 feet (measured from the building entrance and “Designated Parking Area”...to the residential property line.” The proposed facility is 60 feet from a residential property line and the rear parking area (which will be operated with a mechanical gate by staff, creating its own noise) is 0 feet from a residential property line. This proximity to a residential area is in direct contradiction to the stated City policy. “The 300-foot separation requirement may be increased or decreased on a case-by-case review of the specific circumstances of the city and proposed use based on...neighborhood input.” There has been very strong neighborhood opposition to this proposed use: approximately 31 people attended the community meeting, the Planning Staff received 16 letters and e-mails, and a petition signed by approximately 70 people (Public Outreach section of Staff Report on the project). That neighborhood input should have increased the separation, not reduced it to 20% of normal. The Staff recommendation to approve makes a mockery of the Public Outreach process when strongly-voice neighborhood concerns are not taken into account.

Policy 1.d. “The likelihoods of impacts caused by the disorderly conduct of late night patrons on the surrounding neighborhood should be considered in the review process, especially as it relates to proximity of residential uses.” As stated above, patrons leaving late at night, talking, loitering, and being boisterous along the residential side street are highly likely, particularly given the restricted parking and the nearness of the residential side street.

Policy 1.f. “Special attention should be paid to the possibility of noise at late night hours such as car stereos, cars starting, and conversations which may not be quantifiable, but can reasonably be expected to occur.” There are precisely the neighborhood concerns in the very likely case that cars park along the public street instead of in the facilities parking lot. People leave a Karaoke establishment in a party mood. That mood will almost certainly carry over to the street. These noise types of nuisances are addressed later in Policy 2.d which states “these problems, even in anticipated, are generally very difficult to mitigate effectively.” Even if the security guard is kept on site until the last patron departs (this is not a requirement of the Conditional Use Permit), the guard’s ability to control disturbance on the public street is limited. This same policy states that, where loitering is likely, “the separation from residential uses for these facilities should be carefully evaluated, and may be increased...” Conversely, at this project the separation has been decreased to a small fraction of the normal separation contradicting the City’s stated policy.

Resolution No. 09-, Concurrent Condition 10 (draft Resolution from Staff before the Planning Commission). The proposed Resolution for this project states that “loitering by patrons within a 250-foot radius of the doors of the premises is prohibited during hours of operation or after closure. The operator shall proactively work to clear this area (250-foot radius of the doors of the premises) within half an hour of closure....” This means that conceivably patrons could be loitering, making noise, and partying until 2:30 a.m. on weekends next to residences. If they were to move further up the street (beyond the 250-foot radius) to avoid by controlled by the security guard that loitering could conceivably continue much longer. This would be highly detrimental to the peace, well-being, safety, and property values of the residential neighborhood. As stated earlier in the City policy, such impacts are “very difficult to mitigate effectively”, making this entertainment use incompatible with this residential neighborhood.

3. The Environmental Impact study cannot be waived because this is a very different use than previous uses at this facility.