

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
200 East Santa Clara Street
San Jose, CA 95113

Hearing Date/Agenda Number
P.C. 4-11-07 Item: 4.

File Number
CP07-011

Application Type
Conditional Use Permit

Council District SNI
3 None.

Planning Area
Central

Assessor's Parcel Number(s)
259-40-049

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Steven Rosen

Location: North side of Post Street, approximately 160 feet westerly of South First Street (39 Post Street)

Gross Acreage: 0.03 Net Acreage: n/a Net Density: n/a

Existing Zoning: DC Downtown Commercial Existing Use: Drinking establishment

Proposed Zoning: No change Proposed Use: Drinking establishment and late night use from 12:00 a.m. to 2:00 a.m.

GENERAL PLAN

Completed by: SR

Land Use/Transportation Diagram Designation
Core Area

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: SR

North: Retail sales, goods and merchandise DC – Downtown Commercial

East: Pawn Shop DC – Downtown Commercial

South: Parking garage above retail sales and dry cleaner DC – Downtown Commercial

West: Public eating establishment DC – Downtown Commercial

ENVIRONMENTAL STATUS

Completed by: SR

Environmental Impact Report found complete
 Negative Declaration
 Negative Declaration adopted on

Exempt
 Environmental Review Incomplete
 Use of Downtown Strategy 2000 EIR

FILE HISTORY

Completed by: SR

Annexation Title: Original City

Date: March 27, 1850

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date: _____

Approved by: _____
 Action
 Recommendation

APPLICANT/DEVELOPER

Gail Chandler-Croll
207A Shelley Avenue
Campbell, CA 95008

OWNER

Gail Chandler-Croll and John
Croll
207A Shelley Avenue
Campbell, CA 95008

ARCHITECT

Police Department memorandum

Other Departments and Agencies

No Comments.

GENERAL CORRESPONDENCE

Letter from applicant describing operations. Photographs of site.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

On September 10, 1997, the Planning Commission adopted a resolution to approve Conditional Use Permit (CUP) file number RCP97-07-005 to allow a drinking establishment and late night use until 2:00 AM, and denial of off-sale alcohol in an existing building located on the north side of Post Street, approximately 160 feet westerly of South First Street (39 Post Street), on a 0.03 gross acre site in the C-3 Commercial Zoning District. This CUP expired on September 10, 2002. On February 8, 2007, the applicant, Gail Chandler-Croll, submitted a Conditional Use Permit application to allow the existing drinking establishment and late night use in the DC Downtown Commercial Zoning District.

The subject drinking establishment, Mac's Club, occupies a tenant space in an existing two story building. It occupies the entire ground floor of the building, approximately 20'4" in width. The second floor contains an office. Mac's Club comprises approximately 15'8" of the building's frontage along Post Street. The remainder of the building frontage provides access to the office staircase. The rear of the lot contains a small patio, approximately 20'4" by 16'10" in size. A detached restroom structure is located in the rear patio.

A Determination of Public Convenience or Necessity is not required because the State of California Department of Alcoholic Beverage Control (ABC) license is not being changed, moved, or transferred.

No parking is required for drinking establishments in the DC Downtown Primary Commercial Zoning District. Surrounding land uses consist of a furniture store to the north; a public eating establishment to the west; a parking structure with street front retail across Post Street to the south; and a pawn shop to the east.

Project Description

The existing drinking establishment currently operates from 12:00 noon to 12:00 a.m., daily. The Conditional Use Permit application requests late night use until 2:00 a.m., daily. It proposes no exterior changes to the structure.

Mac's Club's customer area consists of a 633.3 square foot bar area inside the building and a 342.3 square foot patio. There is also a basement used only for storage and not open to customers. There is one restroom within the building and one restroom in the detached structure in the rear patio. The maximum occupancy of the bar is 49 persons. One bartender works each shift. No food is served.

The applicant has an existing Type 48 license from the Department of Alcoholic Beverage Control to allow the on-sale consumption of alcoholic beverages at a general public premises.

GENERAL PLAN CONFORMANCE

The subject site is designated Core Area on the San José 2020 General Plan Land Use/Transportation Diagram. This designation includes office, retail, service, residential, and entertainment uses in the Downtown Core Area. Such entertainment uses as nightclubs, dance halls, and comedy clubs should be located within the Core Area provided that such uses do not adversely impact existing or planned residential uses or conflict with other General Plan goals and policies. The proposed project is consistent with the Core Area designation because no residences exist or are planned in the surrounding area and the General Plan's goals and policies promote a 24 hour downtown as the center of entertainment and social activity in the city.

The proposal also furthers the General Plan Downtown Revitalization Major Strategy, which encourages new investment in and around the Downtown to create a prominent and attractive place with a vibrant mix of uses. The proposed use serves to make the Downtown more prominent and attractive by providing a gathering place, contributing to Downtown's reputation as the South Bay's hub of social activity.

ENVIRONMENTAL REVIEW

This project uses the Environmental Impact Report adopted for San Jose's downtown strategy plan, "Strategy 2000: San Jose Greater Downtown Strategy for Development." Pursuant to Section 15162 of the CEQA Guidelines, the City of San Jose has determined that the project described below is pursuant to or in furtherance of the Downtown Strategy Plan and does not involve new significant effects beyond those analyzed in the Final Environmental Impact Report (EIR) for the Downtown Strategy Plan. Therefore, the City of San Jose can take action on the project as being within the scope of "Strategy 2000: San Jose Greater Downtown Strategy for Development." and the Final EIR.

ANALYSIS

The key issues analyzed for the proposed late night use are conformance to the General Plan, consistency with *Council Policy 6-27, Evaluation of 24-hour Uses*, and consistency with *Council Policy 6-23, Guidelines for Evaluation of Nightclubs and Bars*.

City Council Policy 6-27: Evaluation of 24 Hour Uses

City Council Policy 6-27, *Evaluation of 24-Hour Uses*, is intended to assure compatibility of uses operating between 12:00 midnight and 6:00 a.m. with surrounding land uses. In regard to nightclubs/bars, the Policy states that uses under this category should meet the City Council Policy on the Guidelines for Evaluation of Nightclubs and Bars. Please see the discussion below.

City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars

City Council Policy 6-23, *Guidelines for Evaluation of Nightclubs and Bars*, was written to facilitate the evaluation process for individual permit applications by identifying the needed project characteristics that

are necessary for approval. The following discussion cites applicable policy followed by an analysis of how the proposed project conforms to the policy.

Land Use Compatibility

- a. *Nightclubs should be encouraged throughout the Downtown Core to promote a diversity of uses provided that they do not adversely impact existing or planned residential uses, or conflict with other General Plan Goals and Policies.*

The subject site is located in the Downtown Core and is adjacent to the uses retail sales, dry cleaner, public eating establishment, pawn shop, parking facility, and office. These adjacent uses are non-residential and active only during the day. The proposed hours of operation are 12:00 p.m. to 2:00 a.m., daily. Therefore, the adjacent uses are compatible with the proposed drinking establishment.

- b. *It is the responsibility of the Chief of Police to evaluate all bar and nightclub proposals to ensure the safety and security of both patrons and citizens. Conditions may be imposed to monitor bars and nightclubs and to discourage nuisance activities. These conditions may include such requirements as interior or exterior security guards, additional lighting, limited occupancy, and modifications or controls or procedures to increase effective law enforcement.*

The Police Department reviewed the crime statistics and license concentration, inspected the site, and issued a memorandum commenting on this proposal. The Police Department found that reported crime statistics are considered unduly concentrated and that the ratio of on-sale licenses in the subject census tract does exceed the ratio of on-sale licenses in Santa Clara County. The Police Department concluded that it is neutral to granting Mac's Club a Conditional Use Permit, and did not recommend additional conditions of approval to discourage nuisance activities.

Garbage and Litter

- a. *Nightclub and bar operators should provide daily cleaning of the public right-of-way up to 200 feet from the property lines of the site of the facility. This cleaning should occur before 8:00 a.m. each day.*

Staff recommends the Planning Commission include the following condition in its resolution to ensure the public right-of-way is cleaned regularly:

The facility operator shall maintain the site and surrounding area within 200 feet so it is free of litter, trash, cigarette butts, and garbage and shall include weekly washing of all exterior walls and sidewalks along the site's edge. Cleaning shall occur before 8:00 a.m. each day.

This condition requires the applicant to conform to the above maintenance requirement of the Policy.

- b. *Mechanical equipment used for outside maintenance, including blowers and street sweepers, etc., should not be used between 10:00 p.m. and 6:00 a.m. if the clean up occurs within 500 feet of existing residential uses.*

No residential uses or hotels exist within 500 feet of the site. Thus, no condition limits the use of mechanical equipment.

Conclusion

The subject site is located in the Downtown Core Area, where 24-hour and nightclub uses are generally encouraged. The use “drinking establishment” is allowed in the DC Downtown Primary Commercial Zoning District with a Conditional Use Permit. The proposal conforms to the City Council Policies pertaining to the proposed use because (a) there are no residential or hotel uses within 500 feet of the site, (b) the permit will be conditioned to require conformance to conditions regarding maintenance and cleanliness, and (c) the Police Department is neutral to allowing these uses to continue on this site.

For the reasons stated above, staff supports of the subject Conditional Use Permit application to allow the drinking establishment’s continued operation.

PUBLIC OUTREACH

Notices of the public hearing for this project were sent to all property owners within 500 feet of the subject property. The Planning Commission 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.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the proposed Conditional Use Permit and include the following facts, findings, and conditions noted in the attached Resolution.