

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
200 E. Santa Clara Street
San José, California 95113

STAFF REPORT

Hearing Date/Agenda Number
P.C 05/02/07 Item:

File Number
CPA00-005-01

Application Type
Conditional Use Permit Amendment

Council District
3

Planning Area
Central

Assessor's Parcel Number(s)
264-29-118

PROJECT DESCRIPTION

Completed by: Lesley Xavier

Location: West side of S. 1st Street, approximately 30 feet north of San Salvador Street (389 S. 1st Street)

Gross Acreage: 0.14

Net Acreage: 0.14

Net Density: N/A

Existing Zoning: DC Downtown
Primary Commercial District

Existing Use: Public eating, drinking, and entertainment establishment and late night use until 2:00 a.m. seven days a week.

Proposed Zoning: No change

Proposed Use: Permit renewal for a public eating, drinking, and entertainment establishment and late night use until 2:00 a.m. seven days a week

GENERAL PLAN

Completed by: LX

Land Use/Transportation Diagram Designation
Core Area

Project Conformance:
 Yes No

SURROUNDING LAND USES AND ZONING

Completed by: LX

North: Retail establishment

DC Downtown Primary Commercial

East: Entertainment/drinking establishment

DC Downtown Primary Commercial

South: Surface parking lot and a restaurant/drinking establishment

DC Downtown Primary Commercial

West: Residential mixed-use project under construction

DC Downtown Primary Commercial

ENVIRONMENTAL STATUS

Completed by: LX

Environmental Impact Report adopted
 Negative Declaration circulated on

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: LX

Annexation Title: Original City

Date: March 27, 1850

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial

Date:

Approved by: _____
 Action
 Recommendation

OWNER/APPLICANT

Jacek Rosicki
1835 Middlefield Road
Palo Alto, CA 94301

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: LX

Department of Public Works

- None.

Other Departments and Agencies

- San Jose Police Department (see attached).

GENERAL CORRESPONDENCE

- None.

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

On January 18, 2007, the applicant, Jacek Rosicki of Agenda Annex, filed a Conditional Use Permit Amendment (CPA) application to renew an approved Conditional Use Permit (CUP). On May 22, 2002, the Planning Commission approved the existing CUP, file no. RCP00-005, that allowed construction of a new building containing 8,500 square feet for a public eating, drinking, and entertainment establishment and late night use. The previous CUP is set to expire on May 22, 2007. A 7,817 square foot building has been constructed on the site. The Agenda Annex plans to open in June 2007 upon completion of interior improvements. The proposed amendment would renew the CUP for a public eating, drinking, and entertainment establishment and late night use for another five years.

Pursuant to AB2897 (the Caldera Bill), a Liquor License Exception Permit is required for liquor license applicants that have been denied or that may be denied by the Department of Alcoholic Beverage Control (ABC). In this case, since this project is for a renewal of a CUP from 2002, a Liquor License Exception Permit is not required according to ABC. The ABC has indicated that the applicant has filed an application for a new liquor license and although the permit has not formally been issued, it will not be denied.

The subject site is located within the DC Downtown Primary Commercial Zoning District. The Zoning Ordinance requires a Conditional Use Permit or Amendment for (1) a drinking establishment, (2) an entertainment establishment, and (3) late night use. The Zoning Ordinance does not require parking for a public eating, drinking, or entertainment establishment in the DC Downtown Primary Commercial District.

Site Conditions and Context

The subject site is located at 389 South 1st Street. The proposed Agenda Annex, located next to the Agenda Restaurant and Lounge, occupies a single, two-story, "L" shaped building that faces S. 1st Street and has its rear entry and services on San Salvador Street. An outdoor patio is located in front of the building on S. 1st Street. A mix of public eating, drinking, and entertainment uses within the South First Area (SoFA) District surround the subject site. The subject site is bounded by retail uses to the north; the GLO nightclub across S. 1st Street to the east; and the Agenda restaurant and nightclub is to the south. In addition, the Director of Planning has approved a Site Development Permit/Amendment on the former Dimensions site to the west for the Three Sixty Residences high-rise project containing 213 residential condominium units, and 11,223 square feet of ground floor commercial.

GENERAL PLAN CONFORMANCE

The subject site is designated Core Area on the San Jose 2020 General Plan Land Use/Transportation Diagram. The Core Area designation includes office, retail, service, residential, and entertainment uses in the Downtown Core Area. The proposed use is consistent with the Core Area designation in that entertainment uses are an intended use under the designation in the Downtown core area. The proposed use also furthers the City's 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.

ENVIRONMENTAL REVIEW

The Director of Planning, Building, and Code Enforcement has determined that this project is exempt from environmental review requirements under Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act (CEQA). Pursuant to Section 15301 of the CEQA Guidelines, permitting of existing private facilities involving negligible or no expansion of use are exempt from environmental review. The proposed project qualifies for this exemption in that the project involves the permitting of a previously approved eating, drinking, and entertainment establishment and late night use in an existing commercial building, which involves no expansion of use beyond that of what exists on the site.

ANALYSIS

The primary policies applicable for the review and analysis of this project are City Council Policy 6-27 for the Evaluation of 24 Hour Uses, City Council Policy 6-23 for the Evaluation of Nightclubs and Bars. The analysis of each of these issues is discussed below.

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

The City Council Policy, 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

The City Council Policy, 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 and is adjacent to commercial, nightclub, and restaurant uses. These adjacent uses are similar and thus compatible with the proposed entertainment use. In addition, the area immediately surrounding the proposed nightclub/bar is designated Core Area on the General Plan Land Use/Transportation Diagram. The Core Area designation envisions a mix of office, retail, service, high density residential, and entertainment uses in the Downtown Core Area to facilitate a vibrant urban environment. The proposed use furthers this intent because it would provide entertainment uses.

Since the Core Area land use designation does allow for residential uses and there is a high-rise residential project (Three Sixty Residences) currently under construction to the north and west of the subject site, the draft resolution contains a condition allowing amplified sound in the outdoor patio until 12:00 a.m. provided that it is not audible at the adjacent residential project. This condition will avoid conflict with future the residential uses in the area. Allowing some amount of amplified sound on the outdoor patio will provide those entertainment activities that are integral in creating a vital "24-hour" downtown, which is a goal of the San Jose 2020 General Plan Downtown Revitalization Major Strategy.

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 provided crime statistics in regards to Conditional Use Permit Amendment. The subject site is located in an area that is over the 20% crime index and therefore unduly concentrated. The site is also located in a census tract that does exceed the ratio of on-sale retail licenses to population in the County. However, the memo states that the Police Department is neutral to the issuance of a renewal of the Conditional Use Permit. In addition, the draft resolution contains a condition that requires uniformed security guards to monitor the nightclub activities until 2:00 a.m.

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.

The draft resolution contains a condition of approval that requires the operator of the proposed use to clean the public right-of-way within 200 feet of the subject site before 8:00 a.m. each day.

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.

The draft resolution prohibits use of mechanical equipment used for outside maintenance from 10:00 p.m. to 6:00 a.m. daily adjacent to the Three Sixty Residences project located north and

west of the subject site.

Typical Use Restrictions

a. Amplified sound, amusement games, and pool/billiard tables may be restricted based on potential incompatibility with adjacent uses.

The draft resolution contains a condition prohibiting amplified sound in the outdoor patio after 12:00 a.m. In addition, the applicant must apply to the Police Department for an Entertainment Permit and any other requisite permits or licenses.

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 requested Conditional Use Permit Amendment and include the following findings and conditions in its resolution.