

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 09/12/07 Item:

File Number
CP07-034

Application Type
Conditional Use Permit

Council District Planning Area
3 Central

SNI
None

Assessor's Parcel Number(s)
259-35-051

PROJECT DESCRIPTION

Completed by: Michelle Stahlhut

Location: 69 N. San Pedro Street

Gross Acreage: 0.45

Net Acreage: 0.45

Net Density: N/A

Existing Zoning: DC Downtown
Primary Commercial District

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

Proposed Zoning: No change

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

GENERAL PLAN

Completed by: MS

Land Use/Transportation Diagram Designation
Core Area

Project Conformance:
 Yes No

SURROUNDING LAND USES AND ZONING

Completed by: MS

North: Commercial – 71 Saint Peters

DC Downtown Primary Commercial

East: Parking Garage

DC Downtown Primary Commercial

South: Commercial – Tied House

DC Downtown Primary Commercial

West: Commercial – Cuchinni's

DC Downtown Primary Commercial

ENVIRONMENTAL STATUS

Completed by: MS

Reuse of EIR, "San Jose Downtown Strategy 2000", Certified June 21, 2005
 Negative Declaration circulated on

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: MS

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

Christopher Shaffer
539 N. Genevieve
San Jose, CA 95128

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: MS

Department of Public Works

- None.

Other Departments and Agencies

- San José Police Department (see attached).

GENERAL CORRESPONDENCE

- None.

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

On May 7, 2007, the applicant, Christopher Shaffer of Flying Martini Brothers, filed a Conditional Use Permit (CUP) application to allow a public eating and drinking establishment and late night use until 2:00 a.m. seven days a week. The Flying Martini Brothers is an existing restaurant and bar with an expired CUP. On August 25, 1999, a CUP (File No. RCP99-07-012) for late night use was issued for The Shark & Rose, which occupied the tenant space at 69 N. San Pedro prior to the current tenant. Conditional Use Permits run with the land and not the operator, therefore a different “like” use may be allowed without an amendment to the CUP. However, this CUP expired on August 25, 2004.

The subject site is located within the DC Downtown Primary Commercial Zoning District. The Zoning Ordinance requires a Conditional Use Permit for a drinking establishment and late night use. The Zoning Ordinance does not require parking for a public eating or drinking establishment in the DC Downtown Primary Commercial District.

The commercial building that Flying Martini Brothers is located in is listed as a “Contributing Structure” on the City of San José’s Historic Resource Inventory. The applicant is not proposing any exterior changes to the structure with this Conditional Use Permit Amendment.

Site Conditions and Context

The subject site is located in a multi-tenant commercial building at 69 N. San Pedro Street. The site is surrounded with a mixture of restaurant, nightclub, and entertainment uses, and is located within San Pedro Square. The subject site is bounded by 71 St. Peters public eating establishment to the north; Cuccini’s public eating and drinking establishment to the west; Tied House public eating and drinking establishment to the south; and a parking garage to the east.

The total area of the subject site is 19,602 square feet. The Flying Martini Brothers occupies a 2,875 square foot tenant space that is approximately 115 feet deep and 25 feet wide, and includes an outdoor patio area and sidewalk cafe along the project frontage on N. San Pedro Street.

The project proposes hours of 6:00 a.m. to 2:00 a.m., seven days per week, with general operation occurring between the hours of 11:00 a.m. and 2:00 a.m. The project proposes to serve food until closing time. The project employs a total of 14 employees.

GENERAL PLAN CONFORMANCE

The subject site is designated Core Area on the San José 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 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 furthers the San José Downtown Strategy 2000 Plan because it would continue to activate a retail space in Downtown. The proposed project is covered by the Downtown Strategy 2000 Plan Final Environmental Impact Report because (1) issuance of entitlements for use and development such as Conditional Use Permits is listed as a specific use of the EIR, and (2) the proposed project would not result in new environmental impacts or an increase in the severity of impacts previously analyzed in the Final EIR that would require preparation of a Supplemental EIR pursuant to CEQA Guidelines 15162.

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 project proposes a public eating and drinking establishment only. 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 public eating and drinking establishment with late night use. In addition, the area immediately surrounding the proposed project 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 in the form of a restaurant and bar.

The subject site itself is located approximately 300 feet away from the nearest residential use, the Axis Tower, which is currently under construction at the northwest corner of Carlysle and North Almaden. However, the tenant space for the Flying Martini Brothers is located approximately 515 feet away from the Axis Tower.

- 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 is neutral to the issuance of this CUP and states that the establishment must obtain and comply with a sidewalk café permit for any use of the public right of way.

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 subject site is not located within 500 feet of existing residential uses.

Typical Use Restrictions

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

The project does not propose amplified sound in any outdoor area. In addition, the applicant must apply to the Police Department for an Entertainment Permit and any other requisite permits or licenses.

Sidewalk Café

The project proposes an approximately an outdoor patio in front of the building along San Pedro Street. Currently, the building is setback slightly from the front property line, which means a portion of the existing patio area is located on private property and the rest within the public right-of-way. Staff has included a condition in the permit stating that the applicant must secure a Sidewalk Café Permit

prior to continued operation of the front outdoor patio that is in the public right-of-way.

PUBLIC OUTREACH

Notices of the public hearing for this project were sent to all property owners within 500 feet of the subject property. The public hearing notice stated that the project is proposing entertainment; however, the applicant is not proposing entertainment at this time.

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 and include facts, findings and conditions as noted on the attached resolution.