

Planning Commission Staff Report

February 8, 2012
Item 6.a.

SUBJECT: UP-90-43/PCUP-273

APPLICANT: City of Pleasanton

PROPERTY OWNER: FFHA Associates

BUSINESS OWNER: Diamond Pleasanton Enterprise

BUSINESS OPERATOR: Jennifer Wolfes

PURPOSE: Consideration of a possible modification of conditions of approval or revocation of a Conditional Use Permit for the operation of Club NEO

GENERAL PLAN: Business Park (Industrial / Commercial and Office) and Mixed Use

ZONING: PUD-I/C-O (Planned Unit Development- Industrial/Commercial – Office) District

LOCATION: 4825 Hopyard Road, Suite F10

EXHIBITS:

- A. Draft Modified Conditions of Approval
- B. Excerpts of the minutes of the August 25, 2010, Planning Commission Meeting for PCUP-273
- C. Excerpts of the minutes of the October 10, 1990, Planning Commission Meeting for UP-90-43
- D. Planning Commission Resolution No. PC-2010-18 approving PCUP-273
- E. Planning Commission Resolution No. PC-90-93 approving UP-90-43
- F. Planning Commission staff report for PCUP-273
- G. Planning Commission staff report for UP-90-43
- H. Notice of Violation letter dated December 21, 2011, from the Planning Division
- I. Police Activity Overview for Club NEO prepared by Police Lieutenant Knox for October 1, 2011, to January 26, 2012

- J. Previous approvals for Teen Night (Information Packet)
 - K. Public Comments
 - L. Location Map
 - M. Noticing Map
-

BACKGROUND

The 88,589-square-foot Gateway Square Shopping Center was approved by City Council in 1986 (case PUD-81-30-35D). In 1990, the Planning Commission approved a conditional use permit for Sh Boom (case UP-90-43), a 1950's themed dance club with alcohol service, to be operated in a 10,746-square-foot tenant space. The approved hours of operation were from 5:00 p.m. to 2:00 a.m., seven days a week with limited food service for 643 people. The original approval allowed the club to utilize a limousine to drive patrons to and from the club. The original approval also allowed private parties for groups up to 300 patrons and catering services provided by the dance club on weekends only, between the hours of 1:00 p.m. and 5:00 p.m. Between the mid 1990's and 2003 a Teen Night was approved, operated, and discontinued. A request to operate Teen Night again (in 2003) was approved. Teen Night provided a venue for kids ages 14 to 18 to socialize and dance in a controlled environment on specified times during the year and for limited hours. Teen Night was voluntarily discontinued at some point after the 2003 reinstatement and the changes to the floor plan in 2004 rendered the Teen Night approval invalid. Staff has provided an informational packet on the previous approvals for Teen Night for the Planning Commission's reference (Exhibit J).

In 2004, the business underwent cosmetic changes and the name was changed to Aura. While cosmetic changes were made to the facility, it continued to operate as a dance club/bar and no changes were made to the existing use permit. Once granted, Conditional Use Permits (CUP) run with the land and remain valid during changes of ownership.

On August 25, 2010, Diamond Pleasanton Enterprise, represented by Ms. Wolfes, received approval from the Planning Commission for modifications to the existing Use Permit to increase the occupancy and to allow outdoor dining (PCUP-273). Diamond Pleasanton Enterprise renamed the club Status, and recently renamed it again as Club NEO. The applicant made the modifications to the interior to increase the maximum occupancy from the 643 to 812 (patrons and employees combined) and added the outdoor patio area with a barrier.

In August 2011, Diamond Pleasanton Enterprise filed an application to further modify the existing CUP to allow activities for patrons under the age of 21 years old (Case P11-0647), however, the processing of this application has been postponed at the request of the applicant.

Recent Incidents requiring Police Intervention

Several incidents have occurred over the last six weeks that have led staff to bring the CUP to the Planning Commission to consider possible modifications to the existing conditions of approval (Exhibit D) and/or a revocation of the Use Permit. See Exhibit I prepared by the Pleasanton Police Department for a summary of activity at the Club between October 1, 2011 and January 26, 2012.

Although the overview of Police activity (Exhibit I) provides a more complete summary of recent incidents requiring police intervention, two incidents stand out. On December 17 & 18, 2011, the Pleasanton Police Department (PPD) encountered a large crowd of people loitering in the parking lot and engaging in fights, “sideshow” vehicle activity (i.e. reckless driving in the parking lot), littering of alcohol bottles and other items. The incident resulted in the allocation of all available officers from the PPD and PPD had to request mutual aid from surrounding law enforcement agencies (i.e., the City of Dublin Police and the Alameda County Sheriff’s Department). After law enforcement managed to get patrons to finally leave the parking lot, PPD dispatch received a call that a large group of persons had congregated at the Shell gas station on Hopyard Road near I-580 and were shoplifting items from the convenience store.

On December 20, 2011, the City called a meeting with Ms. Wolfes and her head of security. Members of the Police Department, the Planning Division, and the City Attorney’s office attended the meeting to discuss the events of December 17/18 and prior incidents at the Club. The Planning Division discussed the conditions of approval for the applicant’s Conditional Use Permit and noted the following violations of the conditions:

1. *Condition Of Approval [COA] #13: The business owner/operator shall adhere to a “good neighbor” policy, meaning that the operator and employees must respect the rights of neighboring properties and, to the best of their ability, shall ensure their patrons’ compliance with the City’s noise and smoking regulations and any applicable conditions of approval for the subject business relating to parking location, noise, loitering, etc.*
 - The Incident Report (2011-00055619) on record indicates that Club NEO failed to use its best efforts, including COA #19, below, resulting in this condition of approval being violated in regards to loitering, and impacts to other businesses.
 - Based on the Police Department’s Watch Report, it appears that a portion of the crowd moved from the Club NEO site to:
 - The Shell Gas Station on Hopyard Rd. and proceeded to “mob” that establishment. Officers responded to emergency calls from the Shell Station seeking assistance to vacate the relocated Club NEO crowd from that site.
 - The Kelly Moore Paints parking lot area, where Officers had to intervene to stop physical confrontations.
 - The Eddie Papas parking lot area, where Officers had to intervene to stop additional physical confrontations.

The Police Department's Watch Report described above demonstrates that the situation at the establishment resulted in impacts to the surrounding property owners and business operators. Therefore, this establishment has not been operating in compliance with the intent of this condition of approval for the business to maintain a "good neighbor" relationship.

2. *COA#17: Within four (4) weeks of the start of employment and every six (6) months following the start of employment, employees that serve alcohol and security personnel shall undergo a security and alcohol training program, such as TIPS (Training for Intervention Procedures), designed to prevent intoxication, underage drinking, and drunk driving.*
 - At the December 20, 2011, meeting, Ms. Wolfes stated that not all of the employees had obtained this training within four weeks of the start of their employment. Therefore, the establishment has not been operating in compliance with this condition of approval.
3. *COA#19: The business owner/operator shall provide security staff during operating hours subject the satisfaction of the Chief of Police. The business owner/operator shall submit a security plan for the business specifying the numbers of security staff, frequency and area of outside patrols, security staff uniforms, etc. Said security plan shall also include how staging of patrons in queue for admission will be handled. The final security plan shall be submitted to and approved by the Chief of Police prior to operation of the business.*
 - A Final Security Plan was not submitted to the Chief of Police prior to operation of the business. Therefore, the establishment has not been operating in compliance with this condition of approval inadequate security was a significant contributing factor to the incidents on Dec. 17th. As of the date this report was written, the operator does not have an approved plan; however, the operator has been working with PPD staff to get a plan approved.
4. *COA#20: The business owner/operator (or designated representative) shall regularly monitor the area outside of the business to ensure peace and quiet.*
 - As stated above, the operator's security staff has been unable to control the large crowds and fights within the club and in the parking lot. Therefore, the establishment has not been operating in compliance with this condition of approval.
5. *Standard COA#2: The applicant shall maintain the area surrounding the tenant space in a clean and orderly manner at all times.*
 - PPD presented photographs at the meeting on December 20, 2011, showing the presence of trash, glass alcohol bottles, and other items that were discarded throughout the site and the Officer reports indicate that the discarding of trash was by the patrons of the establishment and loiterers who

had tried to enter the establishment. Therefore, the establishment has not been operating in compliance with this condition of approval.

The December 20, 2011, meeting was held to discuss the incident, the conditions of approval for the CUP, and to find a resolution. Efforts were made to identify ways to improve security for the establishment and to avoid future problems. Following the meeting, the Planning Division prepared a Notice of Violation (Exhibit H) to memorialize the meeting and to restate which conditions of approval had been violated by the operator. The Notice also clarified the process by which the CUP could be automatically suspended or revoked if there were future incidents or violations of the CUP conditions.

On January 14 & 15, 2012, another incident, similar to the one that occurred on December 17 & 18, 2011, took place at the establishment, including numerous large fights that started inside the club and that spilled out into the parking lot. Within minutes of the crowd exiting the club, the fights escalated and a shooting occurred with a patron being shot in the leg in front of Kinder's restaurant. The Pleasanton Police Department had to provide 15 police officers at the club that night and call in backup assistance from Livermore (sent 8 officers), Dublin (sent 6 officers), Alameda County (sent 3 officers), and the California Highway Patrol (sent 7 officers). Additionally, the Livermore Pleasanton Fire Department and an ambulance had to respond to the Club to care for the shooting victim.

Given the melee that erupted and subsequent shooting, on January 20, the City issued a letter automatically suspending the club's conditional use permit. The Club's attorney filed a Temporary Restraining Order (TRO) in federal court to prevent the City from being able to suspend the Club's CUP absent a hearing. The federal court judge ruled in favor of the club, and set aside the City's suspension of the CUP absent a hearing. This ruling does not affect the City's ability to hold a hearing and consider modifying the conditions of approval or revoking the club's conditional use permit via a public hearing process. As stated in condition #9, the Director of Community Development may submit the CUP to the Planning Commission for review at a public hearing if the operation of the use results in conflicts pertaining to parking, interior or exterior noise, traffic/circulation, public disturbances, or other factors. Given the incidents detailed above, the Director is submitting the CUP to the Planning Commission for consideration.

SITE DESCRIPTION

The subject property is a 9.7-acre parcel, known as Gateway Square, located at the northeast corner of Hopyard Road and Stoneridge Drive in Hacienda Business Park (HBP). The one-story structure is one of five (5) on-site with a large parking lot (432 spaces) that serves the existing buildings. This is a multi-tenant building with approximately 10,746 square feet of area designated for the existing establishment.

The subject site contains tenants such as: AppleOne, Callahan Tile & Stone, Chili's, City Dry Clean, Diamond Pleasanton Enterprises, Eddie Papa's, Fast Frame, Gateway

Beauty Salon, Gateway Dental Care, Golden Apple Learning Store, Hacienda Park Optometry, Hertz, Huntington Learning Center, Kelly-Moore Paints, Kinder's, La Petite Fleur, Mills, NCAL Computer Source, Professional Nails, Randstad, Round Table Pizza, Tanning Island, The Cheese Steak Shop, The UPS Store, and Ume Sushi. The other uses in the general area are office and hotels. The nearest residential properties are located to the southwest, across Hopyard Road, approximately 600 feet away (Figure 1.1).

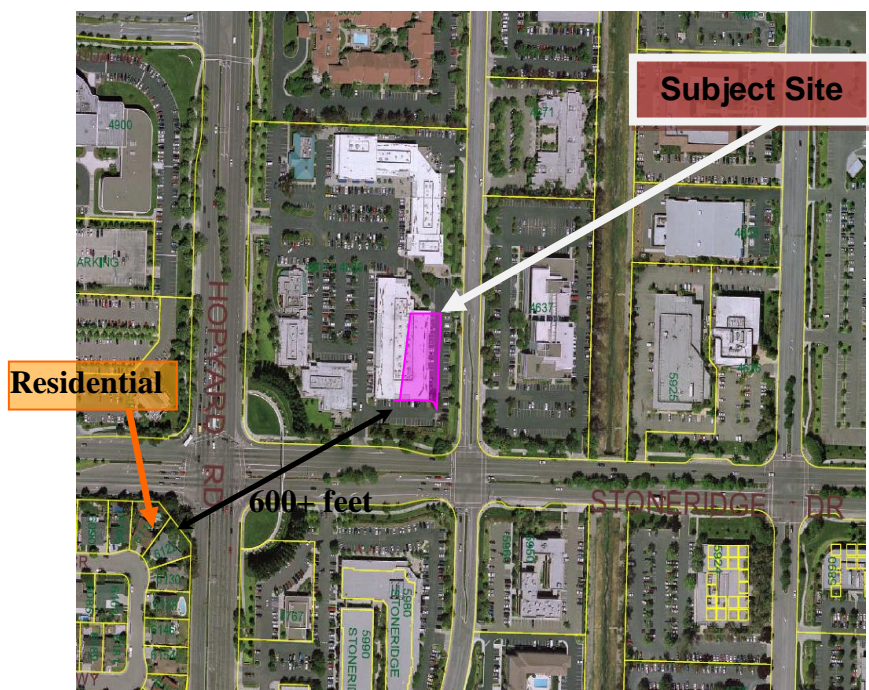


Figure 1.1 – Vicinity Map

Access to the site is provided by four driveway entrances (one off of Hopyard Road, one off of Stoneridge Drive, and two off of Chabot Drive). The existing establishment has direct parking lot access. The front entry of the night club faces Chabot Drive.

DISCUSSION

The conditions of approval clearly specify the manner in which the business must operate. The meeting with the operator following the first significant incident provided the operator with information on the seriousness of the situation and allowed the City to offer additional support to the operator to ensure that additional incidents would not occur.

Ultimately, on January 14/15, Club NEO was not successful in controlling its patrons which resulted in several public safety and general welfare nuisances, injury to patrons, criminal activity, and increased costs to the City for additional law enforcement staffing, and a general drain on City resources.

The PCUP-273 approval allowed the establishment to modify the interior floor plan to accommodate 812 occupants (patrons and employees combined) (UP-90-43 previously allowed 643 patrons) and allowed the establishment of the outdoor patio area with a barrier (PDR-912) to accommodate up to 80 people standing or 12 people seated.

Staff supported the initial application to increase the number of patrons allowed in the club based on the positive history of dance clubs at this location (under different ownership) and because the new operator's stated experience with other night clubs which indicated that the business would be operated in a well controlled manner.

Occupancy

The UP-90-43 staff report noted that the "facility would accommodate a maximum total of 643 people." With the modification to the Use Permit (PCUP-273) to increase the occupancy, the establishment was allowed a maximum occupancy of 812 (patrons and employees combined). The outdoor patio area was allowed a maximum of 80 patrons standing or 12 patrons sitting, but these patrons are already counted at the entry of the facility and, therefore, are not in addition to the maximum allowed occupancy for the business.

OPTIONS FOR CONSIDERATION

The Planning Commission may keep the current conditions of approval, modify the conditions of approval, or may choose to revoke the CUP. In this section of the report, staff discusses various options to modify the conditions of approval including limiting the occupancy and imposing other operating requirements related to improving security.

Staff has met with the Police Department to determine what modifications to the conditions of approval could be recommended to support this establishment continuing its operations. Based on comments from the Police Department staff has prepared draft modified conditions of approval (Exhibit A) if the Commission is inclined to modify the CUP rather than revoke it in its entirety.

Options for Consideration

The Planning Commission may wish to consider and/or discuss the following four options:

Option 1: Revoke the Use Permit.

Should the Planning Commission believe that the business has been given sufficient time and opportunity to rectify the problems and comply with the conditions of approval, the Planning Commission may revoke the CUP per §18.124.130 of the Pleasanton Municipal Code (PMC).

If the Commission is inclined to revoke the CUP, note that a revocation will preclude a future application for a nightclub in the same or substantially the same

site for a period of one year per Pleasanton Municipal code §18.124.140 which states:

18.124.140 Denial—New application.

Following the denial of a use permit application or the revocation of a use permit, no application for a use permit for the same or substantially the same conditional use on the same or substantially the same site shall be filed within one year from the date of denial or revocation of the use permit. (Prior code § 2-11.15)

Option 2: Modify the conditions of approval as recommended in Exhibit A but limit the maximum number of patrons allowed to 250. (This would require specific modification to condition #4 which addresses patron limits.)

Option 3: Modify the conditions of approval as recommended in Exhibit A but limit the maximum number of patrons allowed to 300. (This would require specific modification to condition #4 which addresses patron limits.) Note that Option number 3 is the Option recommended by the Chief of Police and the Community Development Director.

Option 4: Modify the conditions of approval as recommended in Exhibit A but limit the maximum number of patrons allowed to 300. (This would require specific modification to condition #4 which addresses patron limits.) If there are no incidents over the next 30 days and the Club complies with all of the conditions of approval, planning staff will schedule a meeting for the Planning Commission to consider increasing the number of patrons.

PUBLIC NOTICE

Notices regarding the proposed application and related public hearing were mailed to property owners and tenants within 1,000 feet of the subject property.

As of the publication of this staff report, staff received one email pertaining to this application (Exhibit K). Staff has provided the noticing map as Exhibit M for the Commission's reference.

Hacienda Business Park

The Hacienda Business Park Association was contacted by staff in regards to modifying the conditions of approval for the business. The modifications of the conditions of approval for the Conditional Use Permit has been determined by the Hacienda Business Park Association as being consistent with or less intensive than the operations that were previously approved by the Association and, therefore, they have no additional comments.

FINDINGS

The Planning Commission made the required findings prior to granting the original Use Permits. Staff believes that the modified conditions are consistent with the previously approved findings.

ENVIRONMENTAL ASSESSMENT

This project is categorically exempt from environmental review pursuant to California Environmental Quality Act Guidelines, Section 15301, Existing Facilities, Class 1 which allows the operation of a uses, permitted or conditionally permitted, within an existing building. Therefore, no environmental document accompanies this report.

CONCLUSION

The recent events occurring as a result of the operations of this establishment have had adverse impacts on the public health, safety, and general welfare. The original conditions of approval proved ineffective in mitigating impacts to the immediate neighbors as well as the community as a whole. The outreach that the Police Department and Planning staff has done was not effective in avoiding additional incidents. Staff believes that the conditions of approval related to occupancy and operations of the nightclub must be modified to avoid incidents similar to what we've seen in recent weeks.

Staff believes that Option 3 and the proposed modified conditions of approval (Exhibit A) will provide the appropriate levels of patrons, security staff, security measures, and operating measures necessary for the establishment to operate without incident.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission modify the conditions of approval for UP-90-43 and PCUP-273 per Exhibit A as outlined in Option 3.

Staff Planner: Rosalind Rondash, Associate Planner, (925) 931-5613, rondash@ci.pleasanton.ca.us