



Planning Commission Staff Report

April 28, 2010
Item 6.a.

- SUBJECT:** PCUP-266
- APPLICANT:** Robert Byrd
- PROPERTY OWNER:** James Byrd
- PURPOSE:** Application for a conditional use permit to operate a bar/lounge and a restaurant with alcohol service after 10:00 p.m. on the second floor of the existing building.
- LOCATION:** 328 St. Mary Street
- ZONING:** Zoning for the property is Central Commercial (C-C), Downtown Revitalization, Core Area Overlay District.
- ATTACHMENTS:**
1. Exhibit A, Recommended Conditions of Approval
 2. Exhibit B, Proposed Written Narrative, Site Plan, and Upper Floor Plan
 3. Exhibit C, Location Map
 4. Exhibit D, Public Noticing Map
 5. Exhibit E, Hours of Operation for Selected Downtown Restaurants and Bars

I. BACKGROUND

The second floor of the “Odd Fellows” building at 328/336 St. Mary Street has been vacant since the applicant and his brother, James Byrd, completed the building’s refurbishment in 2007. The applicant desires to lease the space to an upscale restaurant and bar/lounge, but thus far has been unsuccessful in his attempts to attract a suitable tenant. The applicant indicated that some of the prospective tenants are concerned with the uncertainty of obtaining the necessary conditional use permit approval from the City. Therefore, the applicant has applied for a conditional use permit which would allow both a bar/lounge and a restaurant with alcohol service past 10:00 p.m. to occupy the second floor.

II. SITE DESCRIPTION

The subject property is located on the south side of St. Mary Street and contains an approximately 7,685-square-foot, two-story building. Redcoats British Pub and Restaurant is located in the approximately 3,172-square-foot first floor tenant space. The approximately 3,981-square-foot second floor is currently unoccupied. The property is bordered on the south by a 72-space City parking lot, on the west by Fernando's Restaurant, and on the east by the 320 St. Mary Street (State Farm Insurance) and 641 Main Street (Wine Steward) buildings. Commercial buildings are located to the north, across St. Mary Street. The nearest residence is located approximately 30 feet to the east on the second floor of the 312 St. Mary Street building (Al's Hair Design is on the first floor). This second floor residence was constructed in 2005-06. Other residences are located at 363 St. Mary Street (behind a doctor's office) and on the west side of Peters Avenue. Two driveways on Peters Avenue lead to the City parking lot behind the building. The aerial photograph below (Figure 1) shows the project site (outlined in red) and the adjoining land uses.



Figure 1, 2005 Aerial Photograph of the Site and Surrounding Area

III. PROPOSED PROJECT

The proposed restaurant would occupy an approximately 1,150-square-foot tenant space (labeled as “Dining” on the upper floor plan, Exhibit B) and the bar/lounge would occupy an approximately 2,000-square-foot tenant space (labeled as “Bar-Lounge” on the upper floor plan). An approximately 360-square-foot kitchen area would be located at the rear (southern end) of the building. The existing second floor terrace on the east side of the building would be used by bar/lounge patrons, weather permitting. The remainder of the upper floor is occupied by men’s and women’s restrooms and a reception lobby with staircase and elevator.

The restaurant and bar/lounge could be operated as a single business or could be operated as two separate businesses. Proposed hours of operation are Monday through Thursday, 6:00 a.m. to 12:00 midnight; and Friday through Sunday, 6:00 a.m. to 1:00 a.m. (staff notes that these are revised hours proposed by the applicant, superseding the proposed hours listed in the narrative). The applicant estimates the dining area would seat 38 patrons and the bar/lounge could accommodate approximately 120 patrons. Full alcohol service would be allowed at the restaurant and bar/lounge. The applicant’s narrative indicates that music would be allowed on weekends. However, the applicant recently informed staff that he also desires music on some weekdays. Other possible activities include comedy nights, wedding receptions, business meetings, holiday parties, and other social gatherings.

The second floor of the building is accessed by the first floor lobby door located midway on the east side of the building. From the lobby, a staircase or elevator is used to access the second floor. The two existing second-floor doors on the west side of the building would be used for emergency egress only. Proposed tenant improvements are unknown at this time, but as shown on the upper floor plan, could include installing a new doorway/opening between the dining and bar-lounge areas.

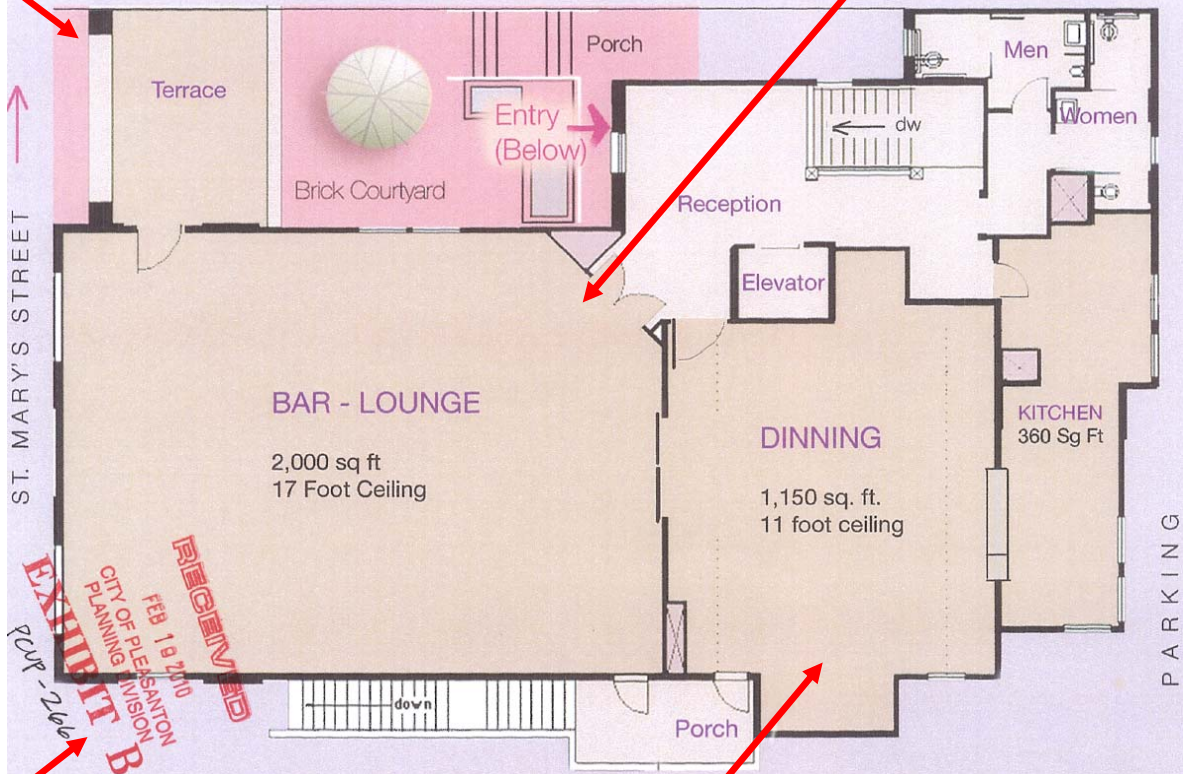


Figure 2, Upper Floor Plan and Photographs

IV. ANALYSIS

Bars and restaurants that serve alcohol past 10:00 p.m. are both conditionally permitted uses in the C-C district. Conditional uses are those uses which, by their nature require special consideration so that they may be located properly with respect to the objectives of the Municipal Code and with respect to their effects on surrounding properties. In order to achieve these purposes, the Planning Commission is empowered to approve, conditionally approve, or deny applications for use permits.

The proposal is unique compared to “typical” conditional use permit applications in that the actual tenant(s) are unknown at this time and a detailed business operation, detailed floor plan, food and drink menus, etc. are unavailable at this time. Staff believes this is not problematic as long as the City is able to review and approve these items before issuance of a tenant improvement permit or operation of the business. Conditions of approval have been included to address this item.

Land Use

One of the primary concerns in reviewing a conditional use permit application is the effect of a proposed use on surrounding uses. The proposed restaurant/bar and bar/lounge is located in the Central Commercial zoned area of Downtown Pleasanton, containing a mix of land uses including retail, office, hotel, and residential uses. There are potential adverse impacts that could occur as a result of locating bars with late-night hours and music near residential uses. In addition, staff notes that some of the existing bars in the Downtown have created problems from time to time due to disorderly patrons, noise, and related issues. Most recently, the Commission heard about smoking, litter, and loitering problems expressed by neighbors when it reviewed Redcoats’ application to expand its music and dancing hours.

Staff is sensitive to the potential land use conflicts in the Downtown between existing residents and commercial uses which may have spillover effects on those residents, such as traffic, parking, noise, or similar issues. In evaluating use permits which have potential impacts, staff has looked carefully at the specifics of proposed operations and has tried to achieve a balance between maintaining a reasonable quality of life for Downtown’s residents and the objective of having a successful Downtown that accommodates a variety of businesses and activities which draw people to the area both during the day and at night. The two closest residences, 312 and 363 St. Mary Street, are located in a commercial zoning district where mixed residential and commercial uses are encouraged. Other nearby residences are located on residentially zoned properties on the west side of Peters Avenue. While the nearby residents are entitled to reasonable enjoyment of their property, their location in or near the Downtown commercial district means they are exposed to a greater degree of spillover impacts such as traffic, parking, noise, etc. than a typical residential neighborhood. The City tries to minimize these impacts, but at times some impacts are difficult to avoid, and it may not be realistic for residents in or near

the Downtown to expect the same level of peace and quiet as those who live further from Downtown.

With the current application, staff believes that the applicant's proposal will be a benefit to the Downtown and that the recommended conditions of approval would ensure that the surrounding uses are not unreasonably impacted due to noise, litter, or other nuisances. For example, a condition of approval requires the business owner(s)/operator(s) to implement a nightly closing procedure each evening to clean up any litter, beverage containers, or other items that were likely to have been left by patrons of the subject businesses. In addition, to ensure appropriate behavior of its patrons both within and outside of the businesses, a condition requires security staff be provided subject to the satisfaction of the Chief of Police. Additional conditions addressing hours of operation, noise, smoking, and food and alcohol service are discussed below. Should future problems arise from either the bar/lounge or restaurant/bar uses, a condition allows the City to bring the use permit back to the Planning Commission for additional conditions to mitigate impacts caused by either the restaurant/bar and/or bar/lounge. Therefore, from a land use perspective, staff finds the proposed uses to be acceptable, as conditioned.

Hours of Operation

The proposed hours of operation are Monday through Thursday, 6:00 a.m. to 12:00 midnight; and Friday through Sunday, 6:00 a.m. to 1:00 a.m. Staff generally believes that the applicant's proposed hours are reasonable, but is uncomfortable with supporting a 6:00 a.m. opening time without knowing the specific business activities that would occur. Therefore, staff is recommending that the businesses be allowed to open at 8:00 a.m. daily. In addition, staff believes that an 11:00 p.m. closing on Sundays would be a more reasonable closing time than 1:00 a.m. and would be consistent with the Sunday closing time approved for Redcoats and Barone's (for a list of the hours of operation for some of the Downtown restaurants and bars, please see Exhibit E). Staff is also recommending that the businesses be allowed to remain open until 1:00 a.m. on certain holidays, as was allowed for Barone's and Redcoats. Regarding the second floor terrace, staff believes its use should end at 9:00 p.m. in order to minimize potential late-night noise impacts on the nearby residents.

The applicant has requested to allow music on weekends and some weekdays. Staff believes it would be acceptable to allow music on weekends as well as the same weekdays as was permitted for Redcoats: Wednesdays, Thursdays, and Fridays. Therefore, staff is recommending that music be allowed Wednesday through Sunday from 9:00 a.m. until closing. Please see the "Noise" section below for further discussion regarding music.

A trash enclosure for this site is located in the City parking lot near the southeast corner of the property. In order to reduce potential noise impacts on the adjacent neighbors, staff feels that time limits should be established for garbage/recycle dumping by the businesses. Staff

recommends that garbage/recycle dumping not be allowed prior to 8:00 a.m. or after 10:00 p.m. A condition has been included to address this item.

As conditioned, staff believes that the proposed hours are acceptable and would not adversely impact the adjacent uses provided noise is properly controlled to prevent impacts on surrounding properties (please see the “Noise” section below for further discussion). Any proposed changes to the hours of operation by either business would require review and approval by the Director of Community Development and/or Planning Commission. Furthermore, should the hours of operation create adverse impacts on the adjacent residences or businesses, a recommended condition of approval would allow the City to reduce the hours of operation.

Noise

As recommended by staff, music would be allowed Wednesday through Sunday from 9:00 a.m. until closing. Other potential noise-generating activities include comedy nights, wedding receptions, holiday parties, and other social gatherings. No soundproofing currently exists within the second floor exterior walls of the building and the applicant has not proposed any.

Staff notes that there have been occurrences in Pleasanton where bars impacted adjacent residences, with noise impacts being one of the most common problems. Staff is proposing several conditions to address potential noise impacts on the surrounding residents and businesses. For example, staff recommends that the outside doors remain closed when not being used for ingress/egress purposes, that the doors self close, and that the windows be closed during business hours. A condition of approval requires that the business owner(s) install small signs near the exit doors requesting that customers not loiter outside and to be courteous and quiet when leaving the business and parking area. The business owner(s) (or designated representative) would be required to regularly observe the area outside of the building to ensure peace and quiet. A condition also requires the business owner(s) encourage their patrons via flyers or small signs in the interior of the establishment to not utilize the on-street parking spaces in the residential area west of Peters Avenue after 10:00 p.m.

Music details (e.g., type, location, etc.) are unknown at this time. Since there is no soundproofing in the second floor walls and the staff-recommended hours of operation would allow music until 12:00 midnight on Wednesdays and Thursdays, until 1:00 a.m. on Fridays and Saturdays, and until 11:00 p.m. on Sundays, staff is recommending that the music be limited to indoor acoustic (non-amplified) instruments and amplified singing only. No disc jockey (DJ)/recorded music would be allowed.

The proposed activities are also required to comply with the noise regulations of the City’s Municipal Code that were designed to protect the peace, health, safety, and welfare of the citizens. The Municipal Code does not allow a commercial property to exceed a noise level of 70 decibels (dBA) at the property line. However, if a business is located within 300 feet of a residential zoning district and remains open for business at anytime between the hours of 10:00

p.m. and 6:00 a.m., then the business cannot exceed a noise level greater than 60 dBA at the residential zoning district property plane during the hours of 10:00 p.m. and 6:00 a.m. The nearest residential zoning district, located on the west side of Peters Avenue, is approximately 225 feet away. Therefore, the businesses could not exceed a noise level greater than 60 dBA at the residential property line along the west side of Peters Avenue between the hours of 10:00 p.m. and 6:00 a.m. Staff notes that the 60 dBA limit would not apply to the residences located at 312 and 363 St. Mary Street as these residences are located in a commercial zoning district. Staff believes that compliance with these adopted noise regulations provide the level of noise protection to residents consistent with community values. In order to help ensure the businesses comply with the City's noise standards (and help prevent potential noise complaint calls to the Police Department), staff is recommending that the business owner(s) (or designated representative) be required to monitor the outdoor noise levels with a calibrated sound meter at least three times during events with indoor music and to take immediate action should the noise level exceed City noise regulations.

With the conditions described above, staff believes that noise impacts on the surrounding properties would be mitigated to meet City standards. As discussed above, staff has conditioned the project so that if there are any future complaints regarding noise from either the bar/lounge or restaurant/bar, the use permit can be reviewed again to add mitigating conditions of approval. Furthermore, staff has proposed a condition of approval requiring the review of the use permit in six months, at which time noise (and other potential issues) will be evaluated.

Parking

For property zoned C-C and located within the Downtown Revitalization District, the Municipal Code does not require any additional parking for a change in use if the building in which the use is located is greater than five years old, even if the new use generates a higher parking demand. However, the Planning Commission may require additional parking spaces for a use if deemed necessary through the review of a conditional use permit.

The subject property does not contain any on-site parking spaces, however, a 72-space, City owned public parking lot is located immediately to the rear of the building. The subject property was one of several properties on the block bounded by Peters Avenue, St. Mary Street, Main Street, and Division Street that participated in the 1974 parking assessment district that established this parking lot. Staff believes that the adjacent public parking lot and nearby on-street parking would provide adequate parking for the proposed uses.

Staff acknowledges that there is a potential that the residents in the residential area west of Peters Avenue could be disturbed by late-night patrons parking in the public on-street parking spaces in front of their residences, particularly if the patrons were disorderly or loud. Therefore, staff recommends a condition that requires the future business owners to encourage their patrons via flyers or small signs in the interior of the establishment to not utilize the on-street parking spaces in the residential area west of Peters Avenue after 10:00 p.m. Staff believes that there

would be adequate on-street parking along or east of Peters Avenue to accommodate any late-night parking that couldn't be accommodated by the public parking lot, reducing the likelihood of patrons parking west of Peters Avenue.

Staff believes that there would be adequate parking for the proposed uses and that the potential parking-related impacts on the adjacent residents and businesses would be minimized, as conditioned. Nevertheless, should parking-related problems occur, staff has included a condition of approval which allows the Director of Community Development to refer the use permit back to the Planning Commission for possible mitigation measures.

Food and Alcohol Service

In order to provide patrons with late-night menu options other than alcoholic beverages, for the past few years the City has been including a "standard" condition of approval for bar use permits which requires that at least a limited food menu be available until closing. The applicant has indicated that hors d'oeuvres or light food would be available to bar/lounge patrons. Staff's recommended condition requires that the bar/lounge and restaurant/bar provide at least limited food service available to patrons during the operating hours of the respective business. The business owner(s) would be required to submit a food menu with food service hours, which would be subject to the final review and approval by the Director of Community Development.

Heavily discounted alcohol prices could lead to increased intoxication of patrons. Therefore, a condition of approval prohibits the business owner(s) from heavily discounting alcoholic beverage prices and requires that an alcoholic drink menu with pricing be submitted for the review and approval by the Director of Community Development and Chief of Police. Staff has also included the "standard" condition of approval requiring employees serving alcohol to undergo a training program, such as TIPS, that is designed to prevent intoxication, underage drinking, and drunk driving.

Smoking

As a result of smoking complaints directed at Redcoats' customers by Gene and Genie Finch, the adjacent residents at 312 St. Mary Street, staff had worked with the Finches, the owner of Redcoats, and the applicant to install a smoking area (ash receptacle and bench) on the west side of the building. Staff believes smokers from the subject businesses should also use this area and a condition of approval requires the business owner(s)/operator(s) to direct patrons and employees wishing to smoke to use this area, that signs be installed to help direct patrons to the smoking area, and that the business owner(s)/operator(s) request smoking customers to be quiet while smoking outside and to not loiter outside after smoking.

Pleasanton Downtown Association

The application was referred to the Downtown Vitality Committee of the Pleasanton Downtown Association (PDA). The Committee passed a motion supporting the applicant's request subject to the same conditions of approval as Redcoats.

V. 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. At the time this report was written, staff had received a phone call from Dee Braley, resident at 4336 Pleasanton Avenue, stating that intoxicated people litter and sleep in her yard and, due to Downtown patrons parking on her street, it is difficult to place garbage cans in front of her property the night before garbage pick up. She indicated that she is opposed to allowing additional bars Downtown. In addition, staff received a phone call from Chris Beratlis, owner of several Downtown properties including 347/351 St. Mary Street, indicating that bars should be dispersed throughout Downtown and not concentrated in one location.

VI. FINDINGS

The Commission needs to make the following findings prior to the granting of a use permit:

- A. That the proposed location of the conditional use is in accordance with the objectives of the zoning ordinance and the purpose of the district in which the site is located.**

Objectives of the zoning ordinance include: protecting existing land uses from inharmonious influences and harmful intrusions; fostering harmonious, convenient, workable relationships among land uses; and insuring that public and private lands ultimately are used for the purposes which are most appropriate and beneficial to the City as a whole. As conditioned, staff believes that the proposed bar/lounge and restaurant/bar uses would not adversely impact the surrounding businesses and residences and would be consistent with these objectives.

The proposed bar/lounge and restaurant/bar are located in the Downtown, which permits a variety of commercial, office, and residential uses. Allowing the proposed bar/lounge and restaurant/bar is in accordance with the purposes of the Central Commercial zoning district to provide locations to offer commodities and services to the residents of Pleasanton and surrounding areas. The proposed uses would also be consistent with Downtown Specific Plan goals of increasing the diversity of the area and encouraging businesses to remain open later at night. The proposed conditions of approval give the City the appropriate controls to ensure that the uses do not have any negative impacts on the surrounding residences and businesses. If necessary, the application could be brought

back to the Planning Commission for additional conditions to mitigate and/or prevent any nuisances that were identified. In summary, staff feels this finding can be made.

B. That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the vicinity.

The proposed bar/lounge and restaurant/bar are not anticipated to generate adverse impacts on any of the surrounding properties due to the proposed conditions of approval that will ensure that the safety and general welfare of the surrounding neighborhood is maintained. The proposed music activities would be located inside of the building. In addition, the proposed activities would also need to comply with the City's noise regulations, which were designed to protect the peace, health, safety, and welfare of the citizens of the City. Staff feels that any areas of possible concern have been conditioned so that the proposed uses will meet all applicable Municipal Code requirements and would be operated in a non-nuisance manner. Conditions have been included that would require the business owner(s)/operator(s) to mitigate any future nuisances as a result of the proposed uses. Therefore, staff feels this finding can be made.

C. That the proposed conditional use will comply with each of the applicable provisions of the zoning ordinance.

Chapter 18.124 of the Municipal Code states that, because of their unusual characteristics, conditional uses require special consideration so that they may be located properly with respect to their effects on surrounding properties. The site's Central Commercial zoning conditionally permits bars, which include restaurants which sell alcohol past 10:00 p.m. Staff finds that the recommended conditions of approval will help to integrate the proposed bar/lounge and restaurant/bar uses without detrimentally affecting the surrounding properties and the City in general. As with any use permit, this use can be revoked if the conditions are not met. As conditioned, the proposed use permit would comply with all applicable provisions of the Zoning Ordinance. Therefore, staff believes this finding can be made.

VII. ENVIRONMENTAL ASSESSMENT

Projects of this nature are categorically exempt (Section 15303, New Construction or Conversion of Small Structures, Class 3) from the requirements of the California Environmental Quality Act (CEQA). Therefore, no environmental document accompanies this report.

VIII. CONCLUSION

Staff and the PDA believe that the proposed bar/lounge and restaurant/bar in the Downtown will be a benefit to the area and that businesses on or close to Main Street should be allowed to

remain open late as long as they operate in a manner which respects the nearby residents. As proposed by the applicant and conditioned by staff, staff believes that the uses will be compatible with the surrounding businesses and will not detrimentally affect the surrounding uses or properties. Conditions of approval have been included which will ensure that the safety and general welfare of the surrounding area, and the City in general, is maintained.

IX. STAFF RECOMMENDATION

Staff recommends that the Commission approve Case PCUP-266 by taking the following actions:

- 1) Make the conditional use findings as listed in the staff report; and
- 2) Approve Case PCUP-266 subject to the conditions listed in Exhibit A.

For comments or questions concerning this project, please call: Steve Otto, Senior Planner (phone: 931-5608 or email: sotto@ci.pleasanton.ca.us)