

## Planning Commission Staff Report

August 12, 2009  
Item 6.a.

- SUBJECT:** PCUP-249
- APPLICANTS:** Joseph and Maricela Barone
- PROPERTY OWNER:** Joseph and Maricela Barone
- PURPOSE:** Application to modify the approved conditional use permit (UP-88-25) for the operation of Barone's Restaurant to allow outdoor music and entertainment.
- LOCATION:** 475 Saint John Street
- ZONING:** Zoning for the property is "C-C" (Central Commercial), Downtown Revitalization District.
- ATTACHMENTS:**
1. Exhibit A, Recommended Conditions of Approval
  2. Exhibit B, Proposed Site Plan and Written Narrative
  3. Exhibit C, Letter from Christine Saldivar, Pleasanton Downtown Association
  4. Exhibit D, Emails from Diane Churka, Howard Merrill, Carol and Dan Fellman, and Dana Thibodeau
  5. Exhibit E, Location Map
  6. Exhibit F, Public Noticing Map
  7. Exhibit G, Planning Commission Resolution No. PC-88-75

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### I. BACKGROUND

On June 22, 1988, the Planning Commission approved an application for a conditional use permit (Case UP-88-25) to allow a restaurant at 475 St. John Street, Casanova's, to serve alcohol from 10:00 a.m. to 11:00 p.m. daily. The conditional use permit was approved subject to three conditions of approval (see attached Planning Commission Resolution No. PC-88-75, Exhibit G). Once granted, conditional use permits run with the land and are valid upon a change of ownership.

In 1995, the Barones purchased the property and reopened the restaurant as Barone's Restaurant. The Barones received a zoning certificate from the Planning Division to operate the restaurant

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with alcohol service from 11:30 a.m. to 2:30 p.m. and from 5:30 p.m. to 10:30 p.m. on Tuesdays, Wednesdays, and Thursdays, from 11:30 a.m. to 2:30 p.m. and from 5:00 p.m. to 11:00 p.m. on Fridays, and from 5:00 p.m. to 11:00 pm. on Saturdays and Sundays based on staff's determination that the hours were consistent with hours approved for Casanova's conditional use permit. Barone's would be able to operate to 11:00 p.m. per the original conditional use permit because it was not formally amended.

On June 19, 2009, the Planning Division approved a temporary conditional use permit application by the Pleasanton Downtown Association (PDA) to allow outdoor music until 9:00 p.m. daily for any business located in Downtown. The temporary conditional use permit is valid between July 1, 2009, and December 31, 2009. The PDA's request indicated that Downtown nightlife is an integral part of creating and maintaining a dynamic and successful Downtown.

Since the temporary conditional use permit was issued, the Pleasanton Police Department has received complaints on four separate nights regarding loud outdoor and/or late-night music being played at Barone's Restaurant. The complaints were received on July 16 at 6:56 p.m. and 10:21 p.m.; July 23 at 9:20 p.m.; July 24 at 9:32 p.m.; and July 30 at 9:07 p.m. The complaints were filed by Ed and Diane Churka who live at 507 St. John Street in the nearby St. John Court townhomes to the west. Staff notes that other calls could have been received by the Police Department, but the Police Department's incident reports only list the first caller. Mr. Barone received a citation from the Police Department as a result of the July 23, 2009, incident.

On July 24, 2009, Planning Division staff met with Mr. Barone to discuss the time limits of the temporary conditional use permit. Mr. Barone indicated that he would like to have the ability to play outdoor music after 9:00 p.m. Staff informed Mr. Barone that he would need to submit an application to modify the original conditional use permit that was issued for the restaurant.

On July 28, 2009, Joseph Barone submitted an application to the Planning Division requesting to allow outdoor music and entertainment and to extend the hours of restaurant operations. The Director of Community Development may approve minor modifications to an existing conditional use permit or refer the matter to the Planning Commission if judged to be substantial. The Director of Community Development determined that the proposed modification was a substantial change and has referred this matter to the Planning Commission for review at a public hearing.

## **II. SITE DESCRIPTION**

The project site is an approximately 1.1-acre parcel at the north end of the Downtown. The subject property is located in an area of mixed land uses, which is typical of the C-C Zoning District. The site is bordered on the west by a property containing the Barone's residence and the parking lot for the restaurant. Further west are located the St. John Court townhomes. Residences are also located to the southwest of the subject property, on the opposite side of St. John Street. Office buildings and US Bank are located to the south, on the opposite side of St.

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John Street. The Pleasanton Hotel and Rose Hotel are located to the east of the subject property. The Arroyo Del Valle borders the site to the north. 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 applicants are requesting to allow live and recorded music to be played outdoors and to extend the hours of the restaurant/bar. Other outdoor entertainment, such as stand up comedians, winemaker dinners with commentary by the winemaker, and speakers for corporate events, is also proposed. The outdoor music and entertainment is proposed until 10:00 p.m., Sunday through Thursday, and until 11:00 p.m. on Fridays and Saturdays. Musicians, audio equipment, and entertainers would be located on a 16-inch tall permanent stage next to the outdoor dining area behind the restaurant or on the outdoor dining deck in front of the restaurant (see Figure 2 on the following page). Amplifiers and/or speakers would be oriented to direct music towards the east of the property away from the affected neighbors. Dancing can be

accommodated on the concrete patio area behind the restaurant. The restaurant/bar hours would be extended to 2:00 a.m., daily. No other changes to the business operation are proposed.

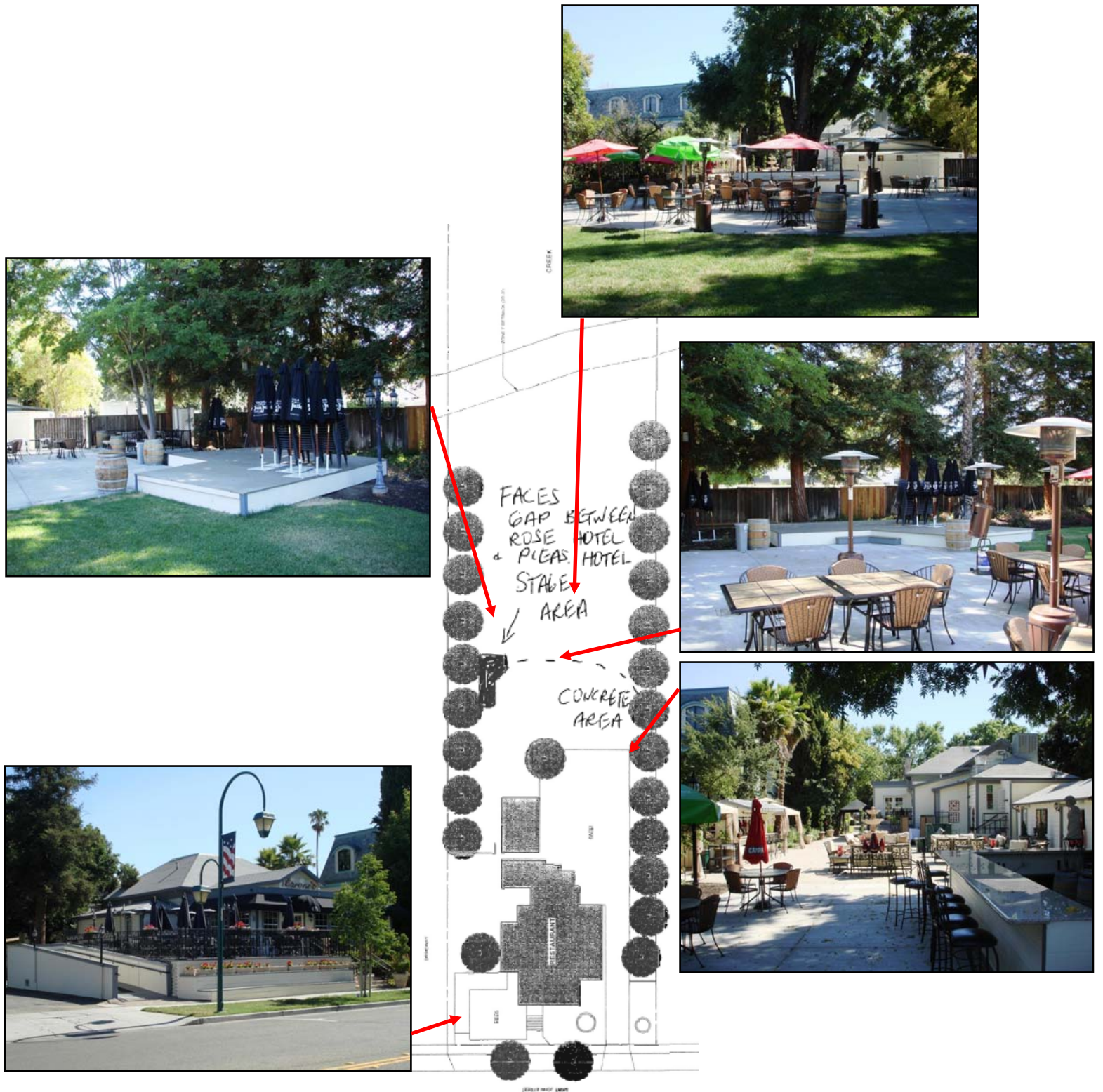


Figure 2, Site Plan and Site Photographs

#### **IV. ANALYSIS**

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 or for modifications to an existing use permit that has been referred by the Director of Community Development.

Staff is sensitive to the potential land use conflicts in the Downtown between existing residents and commercial uses which may have “spill-over” 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. In this case, the applicants would like to add nighttime outdoor music and entertainment at their business to make it more competitive in these tough economic times. Staff believes that the applicants’ request is reasonable, but does believe that the proposed 11:00 p.m. limit on Fridays and Saturdays would be too late for the proposed outdoor activities given the proximity of the residences and the Rose Hotel. Staff believes that a 10:00 p.m. limit would be more reasonable and minimize impacts on the nearby residents and guests at the Rose Hotel. In addition, since the elevated front deck would be directly visible from some of the St. John Street and Peters Avenue residences and they could be more impacted by late-night noise from this area, staff recommends that proposed outdoor music and entertainment on the front deck area cease at 9:00 p.m. daily.

The proposed activities would be 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. Staff interprets that 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 zone (which applies to the subject application) and would remain open for business after 10:00 p.m., then the business could not exceed a noise level greater than 60 dBA at the residential property line at any time after 10:00 p.m. As recommended by staff, the proposed outdoor activities would end by 10:00 p.m. so this regulation would not apply to the proposed outdoor activities if the application is approved as recommended. However, since the business would remain open past 10:00 p.m., the 60 dBA noise limit would apply to other activities at the site. Lastly, the “Daytime Exceptions” section in the Municipal Code permits noise levels of 70 dBA or less at a distance of 25 feet from the noise source to occur between the hours of 8:00 a.m. and 8:00 p.m. daily, except Sundays and holidays, when the exception applies between 10:00 a.m. to 6:00 p.m. Staff believes that compliance with these adopted regulations provide the level of noise protection to residents consistent with community values.

Regarding the proposed restaurant/bar hours, the applicants are proposing to expand the restaurant/bar hours until 2:00 a.m. daily. The applicants would also like the ability to serve breakfast as early as 6:00 a.m. and lunch. Given the close proximity to the residences, staff is recommending the following hours: Monday through Thursday, 6:00 a.m. to 12:00 midnight; Fridays and Saturdays, 6:00 a.m. to 1:00 a.m.; and Sundays, 6:00 a.m. to 11:00 p.m. In addition, staff is recommending a 1:00 a.m. closing on certain holidays (please see condition no. 2 for details). These hours are consistent with the hours that were approved for Redcoats British Pub and Restaurant on St. Mary Street which also has residences in close proximity. Should future problems arise as a result of the expanded restaurant/bar hours, the City would have the ability to bring the application back to the Planning Commission to reduce the hours of operation, if necessary.

#### Pleasanton Downtown Association

The application was referred to the Pleasanton Downtown Association (PDA). The PDA supports the applicants' request (please see attached letter, Exhibit C) and indicated that outdoor entertainment encourages people to stay Downtown after dark and it has been tremendously beneficial for expanding retail opportunities into the evening.

### **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 emails from Carol and Dan Fellman, 4180 Pleasanton Avenue, and Dana Thibodeau, who lives in St. John Court, indicating concerns with the proposal. Staff had also received an email from Howard Merrill, 568 St. John Street, indicating his support of the application. Staff also received a phone call from Patricia Hunter, 523 St. John Street, indicating her opposition to the application. As noted earlier in this report, Ed and Diane Churka complained several times to the Police Department about outdoor music at the subject property. During this same period, Diane Churka had sent two emails to the Mayor and City Council regarding her concerns. Diane Churka also sent an email regarding the current application. The neighbors' emails are attached as Exhibit D. Staff does not believe that the proposed outdoor activities would create impacts to the surrounding properties as long as the applicants cease outdoor activities at 9:00 p.m. and 10:00 p.m. for the front deck and rear patio area, respectively, and comply with the City's noise regulations. 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.

### **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 outdoor activities at the existing restaurant would not adversely impact the surrounding businesses and residences and would be consistent with these objectives.

The restaurant is located in the Downtown, which permits a variety of commercial, office, and residential uses. Allowing expanded hours and outdoor activities at Barone's Restaurant 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 operation would also be consistent with Downtown Specific Plan goals of increasing the diversity of the area and encouraging businesses to remain open at night. The existing and proposed conditions of approval give the City the appropriate controls to ensure that the use does 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 expanded hours and outdoor activities at Barone's Restaurant are not anticipated to generate adverse impacts on any of the surrounding properties due to the existing and proposed conditions of approval that will ensure that the safety and general welfare of the surrounding neighborhood is maintained. 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. Conditions have been included that would require the applicants to mitigate any future nuisances as a result of the proposed use. 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.**

The site's Central Commercial zoning conditionally permits restaurants which sell alcohol past 10:00 p.m. Staff feels that the recommended conditions of approval will help to integrate the proposed activities without detrimentally affecting the surrounding

properties and the City in general. As with any use permit, this use can be suspended or revoked if the conditions are not met. As conditioned, the proposed modification to the existing 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 15301, Existing Facilities, Class 1) from the requirements of the California Environmental Quality Act (CEQA). Therefore, no environmental document accompanies this report.

## **VIII. CONCLUSION**

The application raises the question of the appropriate interface between businesses and residences in the Downtown, and staff and the PDA believe that the applicants' proposed outdoor music and entertainment request will be a benefit to the Downtown and that businesses on or near Main Street should be allowed to conduct late-night activities as long as they operate in a manner which respects the nearby residents. While the nearby residents are entitled to reasonable enjoyment of their property, their location 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 at the residential/commercial interface 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 applicants' proposal as conditioned will be a benefit to the Downtown and that measures are in place to protect the surrounding uses from unreasonable impacts.

## **IX. STAFF RECOMMENDATION**

Staff recommends that the Commission approve Case PCUP-249 by taking the following actions:

- 1) Make the conditional use findings as listed in the staff report; and
- 2) Approve Case PCUP-249 subject to the conditions listed in Exhibit A.

### Alternative Action:

Should the Commission believe that additional measures are required beyond the enforcement of the Municipal Code and staff's recommended conditions to address the concerns of residential neighbors, staff recommends that the Commission consider further restricting the hours when music is allowed or restricting the hours of amplified music.