

PLANNING & REDEVELOPMENT DEPARTMENT STAFF REPORT PLANNING COMMISSION MEETING June 26, 2008

Prepared by: Kevin Payne, Assistant Planning Director

ITEM V-A:

APPEAL OF PLANNING DIRECTOR'S DETERMINATION – 1100 ORLANDO AVENUE – ROSEVILLE STATION AND ULTRA LOUNGE – FILE# ZI-000020

REQUEST

The applicant is appealing the Planning Director's Determination that the use of the property at 1100 Orlando Avenue for a nightclub (The Roseville Station and Ultra Lounge) is no longer permitted as a legal non-conforming use. The Planning Director has determined that the on-site nightclub activities have been expanded without securing the appropriate entitlements or permits. By expanding the use without appropriate approvals, the property has lost the prior legal non-conforming status that allowed a nightclub which was ancillary to a restaurant, at this location.

SUMMARY RECOMMENDATION

The expansion of the non-conforming nightclub activity at this location through both physical improvements and operational practices has created a zoning violation. This report addresses the zoning violation by requiring that specific physical improvements be installed to self regulate the use. The operational issues although a part of the overall violation are regulated through the dance permit, which is not under the purview of the Planning Commission.

The recommended physical improvements to the building that will help regulate the future use have been reviewed with the applicant. The applicant is not in agreement with several of these recommendations, and therefore the primary recommendation is for denial of the appeal. Given the Planning Commission's past direction to formulate conditions that would return the use to its prior non-conforming status an alternative recommendation (B), approving the project subject to conditions of approval has been provided. Based on this approach, the Planning Department recommends that the Planning Commission:

A. Deny the Appeal, thereby upholding the Planning Director's determination that the property has lost its legal non-conforming status to operate a nightclub.

Alternatively, should the Planning Commission decide to approve the appeal, the following action is recommended:

B. Approve the appeal of the Planning Director's Determination subject to the three (3) conditions of approval.

BACKGROUND

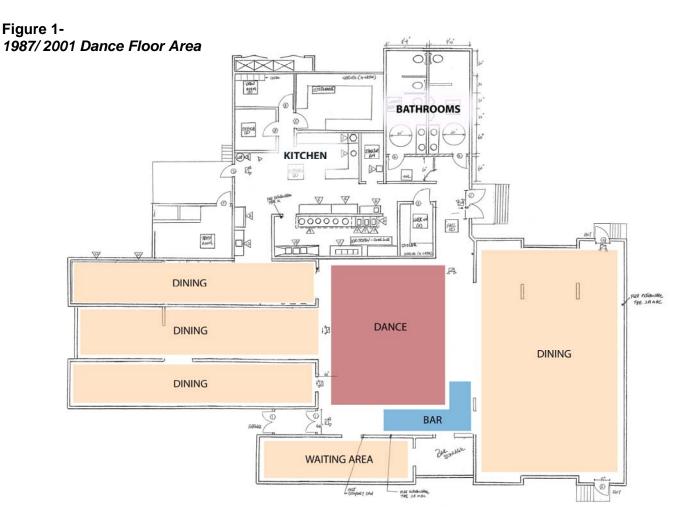
On May 22, 2008 the Planning Commission reviewed and discussed the appeal of the Planning Director's determination that the on-site nightclub activities at 1100 Orlando Avenue had been expanded beyond the prior non-conforming status that the property previously maintained. Per section 19.24.020.B(3) of the Zoning Ordinance, a legal non-conforming use cannot be expanded or modified, unless a conditional use permit is secured. If an expansion occurs without obtaining this approval then the non-conforming status is lost. The appellant has argued that the primary function of the site is still a restaurant not a nightclub. Based on the facts that were discussed and further information gathered (**Attachment 1**), this site clearly operates as a nightclub with secondary food service.

At the May meeting, the Planning Commission directed staff to work with the appellant to develop provisions that would return the use to an operation level equivalent to the prior non-conforming level. To

accomplish this, the dance floor would need to physically return to a size that was equivalent to the size it was in 1996, and the primary operation within the structure would be a restaurant, not a nightclub.

Staff met with Corey and Len Travis (applicant') on June 5, 2008 to discuss both the physical improvements and the possible future operating provisions. As part of this discussion they were presented with the physical dance floor location as it existed in 1987 and as late as 2001. **Attachment 2** documents the information that was discussed and provided by staff during this meeting. A primary focus of the discussion revolved around the use of the building being self regulating. Given the level of complaints and calls for service that have continued at this location, even after the hearing on May 22nd (**Attachments 3** and 4), it is imperative that the continued use as nightclub be self enforcing.

The original entitlements issued in 1987 to Jerry Lee were for a restaurant with maximum occupancy of 236 persons. The plans show the bar location and that the open area in front of bar was available for dancing. The dance floor area was approximately 773 square feet. **Figure 1** represents an approximation of the areas in the building and their designated activity at this time.



In 2001, a tenant improvement was filed for El Coyote Junction (BD 094294) which still reflected the original dance floor location. Based on the original plan set and this tenant improvement, the location of the dance floor would be as exhibited in Figure 1. Currently, this area has been infringed upon with the construction of the new bar area, but still provides for a dance floor area of approximately 770 square feet. This was been presented to the applicant on June 5th as the baseline condition for the returning the use to a restaurant with an ancillary nightclub/dance floor.

EVALUATION

The evaluation of this appeal is based on the two recommendations that have been presented to the Commission. The primary recommendation for this project is a denial and the alternative is approval of the appeal subject to conditions of approval. This evaluation will provide the reasoning that supports the recommendation for denial of the appeal. Also, contained within the evaluation is a list of improvements and actions that will be necessary should the Commission up-hold the appeal. These improvements are intended to return the use to the prior 1996 operational standards. The evaluation will also address the interim condition for operations that would occur if the appeal is approved.

DISCUSSION – DENIAL OF APPEAL:

The primary recommendation for this request is to deny the appeal. At the prior hearing staff presented a full justification for denying the request to continue the non-conforming nightclub use at this location. The initial recommendation was based on the following facts:

- 1. The dance floor size was increased from the original baseline non-conforming size established in 1996:
- 2. The dance floor occupies more square footage than what was allowed under the non-conforming status;
- 3. The use operates primarily as a nightclub with ancillary food service, not a restaurant with a limited dance floor;
- 4. Occupancy issues demonstrate an enlarged or increased nightclub use creating significant health and safety concerns; and,
- 5. Expansion of a non-conforming use without permits rescinds the prior non-conforming status.

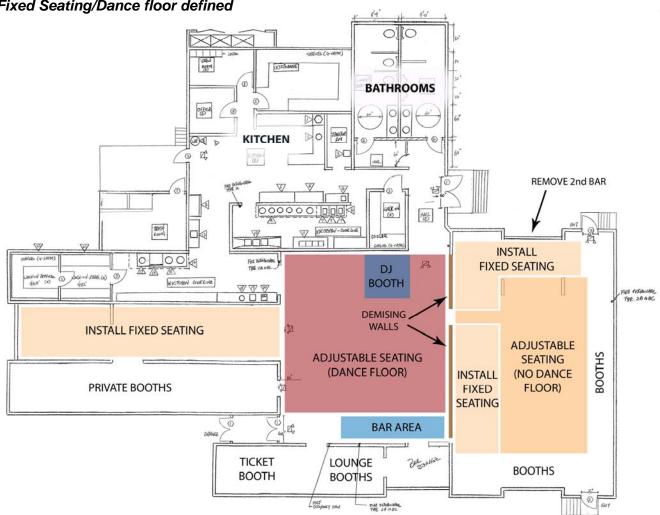
Following the direction from the Planning Commission on May 22nd, staff has developed and reviewed a list of improvements and future operating measures that would be required to return the use to a restaurant with an ancillary nightclub. The following presents the issues that continue to exist based on the applicant's response to these measures.

Self Enforcing: The premise of the required physical improvements is; 1) that they require the nightclub activities to be self enforcing, and 2) the use returns to the prior 1996 status of a restaurant with an ancillary nightclub/dance floor. Given the amount of resources that have been expended from an enforcement basis, both prior to the May 22nd meeting and following the meeting, (23 calls per service over a 4 week period, refer to **Attachment 3**) self enforcement is a critical requirement.

The physical improvements that would need to be installed to insure the use is self enforcing are summarized as follows:

1. **Fixed seating**: The majority of the tables and chairs are not currently fixed and can be easily cleared to allow the floor area to be utilized for dancing. It is important to note, that the original building plans 1987 had booth seating in the majority of the dining areas and a separate dining area that was demised from the dining area that is located on the right side of the bar and dance floor area (refer to **Attachment 6**). This controlled the open area that was set aside for the dance floor activity and established the use as being a restaurant with an ancillary dance floor.

Figure 2-Fixed Seating/Dance floor defined



The applicant has expressed concern that fixed seating does not allow for the restaurant to provide a banquet service for larger parties. To address this there are two options that the operator can pursue: 1) install booth seating, demising walls and carpeting in the area defined in Figure 2 of this report and leave the center portion open for moveable tables, or 2) demise a separate banquet room as originally incorporated into the building design. This would also require relocation of the DJ booth to the approved dance floor area.

The letter from the applicant, dated June 9, 2008 (refer to Attachment 5), does not specifically address fixed seating. It infers that they would continue to utilize moveable chairs and tables, but they would be left in place in "all dining areas". Based on this response, the improvement would not be self enforcing and control the space allowed for the dance floor. This does not meet the requirement for self enforcement.

2. Second Bar to be removed: The original plan set shows this as a cabinet area. The second bar was installed without building permits and is not necessary to support a restaurant use. The applicant has verbally expressed that removal of this improvement is not acceptable and that it is necessary for the restaurant use. This also is not directly addressed in the letter of June 9th, and is an area of disagreement. This illegal improvement is required to support a nightclub use as a primary use, not a restaurant. If it were to remain, the requirement for self enforcement would not be achieved.

- 3. **Parking lot lighting and striping**: Based on a new seating configuration the occupancy of the building maybe affected. If it is increased, then the parking facilities will need to be re-evaluated. Parking has been a continuing issue at this location, as the nightclub use demands more parking than is available on-site. This item has not been addressed in the letter of June 9th.
- 4. Noise analysis: Based on the complaints that have been received from the neighborhood regarding noise levels a noise analysis and mitigation would be required as part of a new certificate of occupancy. Neighborhood noise complaints were registered during the Planning Commission meeting of May 22nd. Since that time, there have been a continued number of complaints as documented in the petition provided and e-mail correspondence submitted since that hearing (refer to Attachments 4A -4C). These complaints are two-fold; 1) the driving bass and amplified music, and 2) noise generated by patrons in the parking lots adjacent to the residential uses that are in close proximity to this location.

In the letter of June 9th, the applicant states that they will comply with the City Noise Ordinance. It is also states that they have begun to "monitor any sounds emanating from the building" and that they will not exceed the ambient sound level by 3dBA. Although this may be well intended this is the wrong sound criteria. The sound criterion is established in Municipal Code Section 9.24.110, Amplified Sound Limits for Sensitive Receptors (Attachment 7). This section prohibits the exterior sound levels to be above 45 dBA between the hours 10 p.m. and 7 a.m. when using an A weighted scale or 70 dBC during these hours when using a C weighted scale.

In order to comply, an analysis by a qualified sound engineer to evaluate noise levels would be required. A report documenting the "amplified" noise levels affecting sensitive receptors would be required to be provided by the applicant. This report would need to provide specific mitigation in the form of operating or construction techniques to mitigate sound levels to an acceptable decibel. Identified mitigation would then be applied through physical improvements to the building, adjustment to the sound equipment or other appropriate measures. In addition to the amplified sound, measures need to be put in place to address the exterior noise levels created by patrons during the early morning hours. This was discussed as part of the meeting on June 5th, but the applicant has not committed to providing this information through a professional sound engineer, or a resolution to the noise created by patrons in the parking areas that are being utilized.

Operational Items: The operational requirements are controlled through the issuance of a dance permit. The Chief of Police is responsible for issuing this permit, and therefore these requirements are outside the purview of the Commission. The dance permit that had been in place was revoked and is under appeal to the City Manager. At the time this report was being generated the City Manager had yet to act on the applicant's appeal of the dance permit. If the appeal is denied, then the continued operation of the nightclub activities at this location will require a new dance permit.

Since the prior Planning Commission meeting, nightclub activities and operations have been closely monitored. The applicant has made attempts to address prior concerns, but there continues to be ongoing operational issues. Continued operational concerns at this location are as follows:

1. **Occupancy:** Over occupancy of the building has been one of the major concerns expressed with the nightclub use. Since May 22nd the club has done a better job of monitoring this aspect of their operations. This was confirmed on May 25th. This happened to be the same night as lingerie night. As reported by City personnel, the nightclub maintained occupancy of 205 persons. Unfortunately, there were another 200 people waiting outside of the building, and a large number of these happened to be females in lingerie. So, internal occupancy was not an issue, but the queuing outside of the building created noise impacts that then translated to neighbor complaints.

- 2. **Underage Clientele**: As an establishment with a 47 liquor license, under age individuals are allowed on-premise. As advertised by the business, there are younger clientele that can be in the club at the same time as those over 21. This creates the potential for alcohol service to minors and other potential issues.
- 3. Liquor license issued by the State of California: As identified in the prior staff report this property has a 47 liquor license. A 47 license requires that a "substantial" amount of food sales be provided as part of the business plan. This has typically been identified as 51% of the gross sales. Staff has contacted the Alcohol and Beverage Control representative and has verified that this is the standard that they would also apply. Based on the overall advertising promoting liquor sales and not food, this standard is in question. A restaurant use with an ancillary nightclub would not have this issue.
- 4. Parking plan: Due to the proximity of the use to other businesses there has been a spill over of parking into the surrounding commercial uses parking areas. Although, agreements may be in place to maintain these lots, the noise and hours in which activities are occurring have a direct impact to the residential uses abutting these commercial properties. Valet parking was discussed as an alternative to alleviate this impact, but it has not been committed to in the applicant's response letter.

In the letter of June 9th, the applicant has expressed his opinion that due to the tables being left in place during the nightclub activities they have the "ability" to increase food sales, and therefore are not subject to being classified as a "public dance". Based on the number of calls for service and the nature of the calls, the fact that there is still dancing occurring on-site in a designated dance floor area, this use certainly still qualifies as a use that would require a dance permit. If the dance permit is fully revoked then the nightclub activities would be considered an illegal use. If this occurs and the nightclub activities continue, then the City will be forced to pursue an injunction or other legal remedy bring the use into compliance.

Conclusion/Denial: The applicant has been presented with the items that the City believes are necessary for the operation to be self enforcing and returned to the prior non-conforming status. A number of significant requirements have not been accepted by the applicant and the use will continue to operate outside of the prior non-conforming restrictions. The original findings are still valid due to the physical measures not being agreed to by the applicant. Without these physical measures being installed, the nightclub use would not be restricted enough to return to the prior 1996 non-conforming operating standard.

DISCUSSION - APPROVAL OF APPEAL

If the Planning Commission decides to approve the appeal, the staff report has been structured to address the physical building and site requirements that will be necessary to ensure that the use is self enforced and functions primarily as a restaurant. Being physical improvements, they will be regulated through the issuance of a new Certificate of Occupancy (C of O) by the Building Department. As previously noted, the operational requirements would be controlled through a future Dance Permit application if issued by the Chief of Police.

The items that will be addressed as part of a new Certificate of Occupancy permit, to be issued by the Building Department, are summarized as follows:

- The baseline size and location of the dance floor is based on the original 1987 building plan set (refer to the prior **Figure 1**);
- The second bar that was installed without permits shall be removed;
- The area that was dining area in the 1987 plans that has not been converted into kitchen area will become fixed seating. In addition to the fixed seating installing demising walls and

- carpeting, and relocating the DJ Booth, as shown in **Figure 2**, will allow the use to self enforce the size of the dance floor; and
- All health and safety items such as exterior lighting, parking, noise impacts, sanitary services, exiting and other life safety improvements meet all Building and Fire Code requirements.

The applicant has been presented with the provisions for the Certificate of Occupancy and the potential Dance Permit, as part of the items outlined in **Attachment 2**. As indicated in the discussion associated with the recommendation for denial the applicant is in disagreement as to the resolution of the following items:

- The removal of the illegal bar;
- Installation of fixed seating, demising walls, carpeting and relocating the DJ Booth;
- Appropriate noise mitigation being identified and installed; and
- Application of a dance permit.

The conditions of approval have been structured to address these items based on the recommendation that the use be self enforcing.

DISCUSSION – INTERIM CONDITIONS

As the appeal has been processing the business has enjoyed the ability to continue to operate. Even with an agreement to operate under the provisions that have been established in this report, there is an interim period that will be necessary to produce and review plans for the Certificate of Occupancy. Depending on the Commission's action and the action pending on the dance permit there are four scenarios that could be anticipated. The following outlines these scenarios and the outcome of the action:

- Denial of appeal and denial of the dance permit –
 Results in shutting down the nightclub use, and operating only as a restaurant with a bar;
- 2. **Commission approval of the appeal and denial of the dance permit** Result is the same as above:
- 3. Commission approval of the appeal, shutting down the nightclub until improvements are installed and future approval of the dance permit
 - Results in shutting down the nightclub use restricting the operation to a restaurant until self enforcing improvements are installed; or,
- 4. Commission approval of the appeal, instituting interim conditions and future approval of the dance permit –

Results in instituting interim conditions until self enforcing improvements are installed as part of a new Certificate of Occupancy. Operational issues are addressed via the dance permit.

The alternative recommendation contained within the staff report anticipates scenario number four (4), and has required the following implementation measures.

- 1. Security personnel are to be licensed professionals with a guard card, wearing uniforms and shall not perform tasks other than security duties (not be a doorman, or bouncer, or manager);
- 2. The building shall maintain maximum occupancy load of 205;
- 3. Outside surveillance shall be provided as approved by the Police Department;
- 4. No one under the age of 21 shall be allowed in the club after 10 p.m.;
- 5. Off-site parking will be restricted to employee parking and valet parked;
- 6. The use shall conform to the City's noise ordinance; and,
- 7. All sprinklers and fire alarms are to be maintained in good working condition.

Per the alternative recommendation, The Station will have 90 days from this action to install the required improvements under the new C of O and implement operational requirements unless otherwise approved

by the City. The other option for the Commission is to require that the nightclub activities cease and desist until the required improvements are installed. This would require that condition three (3) of the alternative recommendation be eliminated and replaced with language that reflects the direction to temporarily close down the nightclub activities.

APPEAL CONCLUSION

Depending on the perspective and desire of the Commission, the actions that are available on the appeal are outlined below in the order of recommendation from staff.

- 1. Deny the Appeal -
 - Deny the Appeal, thereby upholding the Planning Director's determination that the property has lost its legal non-conforming status to operate a nightclub.
- 2. Approve the Appeal subject to the conditions –
 Approve the appeal of the Planning Director's Determination subject to the three (3) conditions of approval allowing the nightclub use to operate under interim conditions.
- Approve the Appeal and modify the conditions Approve the appeal of the Planning Director's Determination and direct staff to modify the conditions of approval.

ENVIRONMENTAL DETERMINATION

The proposed project is categorically exempt from environmental review pursuant to Section 15321 of the California Environmental Quality Act (CEQA) Guidelines (Enforcement Actions by Regulatory Agencies), and pursuant to Section 305 of the City of Roseville CEQA Implementing Procedures.

RECOMMENDATION

The Planning Department recommends that the Planning Commission take the following actions:

A. Deny the Appeal, thereby upholding the Planning Director's determination that the property has lost its legal non-conforming status to operate a nightclub.

ALTERNATIVE RECOMMENDATION

Alternatively, should the Planning Commission decide to approve the appeal, the following action is recommended:

- B. Support the appeal of the Planning Director's Determination subject to the three (3) following conditions of approval:
 - 1. Within thirty (30) days of this action the applicant will have made good faith efforts to secure a new Certificate of Occupancy from the Building Department. The plans and information submitted shall be in a format acceptable to the Building Department and address the following:
 - a. Baseline requirements for the dance floor area will be the original 1987 building plan set. The dance floor area shall not exceed this area (770 s.f.).
 - b. Return the use back to a restaurant with ancillary bar/dance floor.
 - c. The second bar shall be removed.
 - d. Install; fixed seating, carpeting in the dining areas, demising walls and relocate the DJ Booth as shown in Figure 2 of this report.
 - e. Parking lot lighting and striping shall meet City Standards.

- f. A noise analysis shall be completed by a qualified sound engineer, to be reviewed by the Planning Department. All recommended improvements shall be shown on the plans submitted for the Certificate of Occupancy and installed to mitigate noise to City standards.
- g. Fire sprinklers and alarms shall meet new certificate of occupancy requirements.
- h. All required improvements indicated on the new Certificate of Occupancy plan set shall be completed within a sixty (60) day period from the approval of this plan set, unless the timeframe is extended by the Chief Building Official following a formal request for extension.
- 2. The applicant shall be responsible for obtaining a Dance Permit and instituting all operational measures as required by that permit.
- 3. On an interim operational basis, until plans and improvements have been approved under a new certificate of occupancy, the applicant shall institute the following measures:
 - a. Security personnel are to be licensed professionals with a guard card, wearing uniforms and shall not perform tasks other than security duties (not be a doorman, or bouncer, or manager):
 - b. The building shall maintain maximum occupancy load of 205;
 - c. Outside surveillance shall be provided as approved by the Police Department;
 - d. No one under the age of 21 shall be allowed in the club after 10 p.m.;
 - e. The use shall conform to the City's noise ordinance; and,
 - f. All sprinklers and fire alarms are to be maintained in good working condition.

ATTACHMENTS:

- 1. Promotional Material Exhibiting prime use of site as a nightclub not a restaurant (DVD).
- 2. Memorandum of June 5, 2008 to Len and Corey Travis
- 3. Police activity and calls for service
- 4. Neighborhood Correspondence
- 5. Letter of June 9, 2008 from Len Travis
- 6. 1987 floor plan for Victoria Station.
- 7. RMC 9.24.110 Amplified Sound
- 8. Photos of The Station taken on 6/18/08 at 12:30 a.m.

Note to Applicant and/or Developer: Please contact the Planning Department staff at (916) 774-5276 prior to the Commission meeting if you have any questions on any of the recommended conditions for your project. If you challenge the decision of the Commission in court, you may be limited to raising only those issues which you or someone else raised at the public hearing held for this project, or in written correspondence delivered to the Planning Director at, or prior to, the public hearing.