



**PLANNING COMMISSION MEETING
COUNCIL CHAMBERS AND VIRTUAL (ZOOM)
PARTICIPATION
Thursday, October 27, 2022, 7:00 p.m.**

The Planning Commission meeting was called to order at 7:00 p.m. by Chair Oquenda. The Planning Commission held a hybrid meeting in the Council Chambers and virtually via Zoom.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: COMMISSIONERS: Ali-Sullivan, Goldstein, Lowe, Roche, Stevens
CHAIRPERSON: Oquenda
Absent: COMMISSIONER: Bonilla Jr.
CHAIRPERSON: None

Staff Members Present: Harvie, Lochirco, Kowalski, Madhukansh, Nguyen, Tabari, Vigilia

PUBLIC COMMENTS

There were none.

PUBLIC HEARING

1. Proposal to Operate a Cabaret with Live Entertainment and Dancing at the Dirty Bird Lounge at 926 "B" Street (Assessor Parcel No. 428-0056-062-00), Requiring Approval of Conditional Use Permit Application No. 202202177. Applicant: Aric Yeverino; Property Owners: Dinesh and Chandrika Shah

Associate Planner Kowalski provided a synopsis of the staff report and noted that staff received correspondences from the Hayward Chamber of Commerce and the Hayward Police Department (HPD) expressing their support of the project.

Project Applicant Yeverino commented that he was available to address any questions that the Planning Commission may have about the Dirty Bird's operations.

Commissioner Lowe indicated that in Attachment III Conditions of Approval, critical incidents had been defined, however, "extreme severity" had not been defined. She wondered if it was clear to the applicant what was meant by "extreme severity". Mr. Yeverino responded that it was his understanding that the determination of whether or not a critical incident was of "extreme severity" was at the discretion of the Police Chief. He noted that the city already had an ordinance in place which all bars and restaurants have to abide by. Mr. Yeverino shared that there was only one establishment that had gone to court over this, and that it was his understanding that if there were two critical incidents of "severity", then this would reflect on his establishment doing something wrong.



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Commissioner Lowe asked for clarification on the number of security guards that would be on premises and at what times. Mr. Yeverino responded that his establishment already had ten security guards present Friday and Saturday nights from 8:00 p.m. to after 1:30 a.m. to ensure seamless operations.

Commissioner Lowe asked if a deposit of \$3,000 was the typical rate for private events and whether the deposit combined with the signing of a contract were sufficient safeguards to prevent questionable activity. Mr. Yeverino stated that \$3,000 would strictly be the deposit fee with liability falling on the organizer of a private event. He elaborated that his establishment does not work with outside promoters, underscoring that his goal was not to bring an influx of people for money in a night. He stated that larger crowds tend to be rougher, which may result in incidents which have greater costs. Mr. Yeverino commented that the downstairs space was planned for uses such as weddings or corporate parties. He added that per the conditions, fashion parties would not be permitted as other bars in the City use this event type for lingerie nights, and this was not his intention.

Mr. Yeverino confirmed for Commissioner Lowe that private parties would not be permitted to provide their own security and that the outdoor patio would close at 12:30 a.m. nightly with entertainment concluding around 1:15 a.m.

Commissioner Roche asked if law enforcement would need a warrant to obtain surveillance footage from the establishment. Mr. Yeverino responded that if any issues arose, whether inside the establishment or outside and unrelated to the Dirty Bird, his establishment would cooperate with HPD in providing the footage. He shared that his establishment had high quality surveillance cameras and his security staff scanned identification cards, both of which could assist HPD in locating an offender of an egregious crime.

Commissioner Roche commented that in the layout of the basement floor plan, it appeared the areas were broken up into cozier sections and asked how the crowd would be situated for an event like a comedy show. Mr. Yeverino stated that the basement would not have built-in booths, but moveable furniture to accommodate orientation towards a performer. He stated that the space would not be used for massive concerts due to acoustics and height requirements needed for live musical performances.

Commissioner Roche stated per the CUP, no persons under the age of twenty-one would be permitted in the basement and asked if this restriction would apply to wedding parties as well. Mr. Yeverino shared that his venue was recently used for a wedding event that was hosted on the upper patio during the daytime and stressed that minors should not be in the establishment after 8 p.m., and that he believed the basement should be restricted to individuals over the age of twenty-one since it was intended to serve as an upscale lounge for adults.



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Mr. Yeverino noted for Commissioner Roche that the Turf Club was open until 1:30 a.m. and that its outdoor venue had the infrastructure to hold mini concerts, adding that the Funky Monkey was another establishment open until 1:30 a.m., however they were experiencing some issues with the cabaret license due to critical incidents that had occurred at this location.

Commissioner Roche requested that the applicant speak to his responsibility in regulating activities around the perimeter of the establishment. Mr. Yeverino shared that patrons were not permitted to go back and forth in entering and exiting the rear parking lot, that he was going through the permitting process to erect a gate outside of the back entrance to the building, and that HPD was good at patrolling the area on Friday and Saturday nights.

Associate Planner Kowalski noted that per Sgt. Carpenter, in the event of a critical incident, HPD would request that the applicant provide surveillance video footage and shared that Mr. Yeverino had been cooperative thus far. In the event the applicant did not cooperate during an investigation, HPD would then need to get a court-approved warrant to obtain surveillance footage.

Mr. Yeverino confirmed for Commissioner Ali-Sullivan that the basement was currently empty and used for storage, and that they were in the process to pull a demolition permit to prepare it for construction of the new basement lounge.

Commissioner Ali-Sullivan asked how the application for a cabaret license will change the establishment's security apparatus. Mr. Yeverino responded that the security plan would remain the same, as his establishment already uses ten security guards on weekends. He shared that the conditions described in the security plan being considered were already in effect at his establishment, that the establishment would include more security once the basement lounge commences operations, and that the activity in the basement would not be different than existing activities.

Commissioner Ali-Sullivan asked the applicant what type of events were anticipated in being conducted with the cabaret license. Mr. Yeverino responded that the cabaret license would open his establishment to hosting events such as comedy shows, cultural events like Mariachi, and that he would be mindful and respectful with event types. He shared that current regulations do not allow his establishment to charge a cover fee and that this was one of the underlying reasons why live music was not widely played in the Bay Area as it was cost-prohibitive for businesses. Mr. Yeverino has hired blues artist, Shane Hall, to play at his venue before, but such renowned artists charge \$600-\$800 per night and this was immensely expensive as he could not currently charge a cover fee. Under the conditional use permit and cabaret license, if approved, he would be able to charge a cover charge to help offset the cost of bringing live acts.



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Commissioner Ali-Sullivan asked staff if there were concerns with the operations, what mechanisms did the city have to revoke the cabaret license and wondered if the revocation would be a cumbersome or lengthy process. Associate Planner Kowalski stated that there were provisions built into the conditional use permit that give a broad ability to revoke the permit as needed. Mr. Kowalski added that revocation of a use permit would be the last resort, as the city would make a concerted effort to work with the applicant to address any issues that had arisen.

Planning Manager Lochirco added that once a conditional use permit is established and revocation is being sought, due process is afforded to the applicant through a public hearing that would be required to come before the Planning Commission for consideration of revocation. Other things could be considered if problems emerge, such as the applicant could work collaboratively with HPD to change operational hours. Mr. Lochirco stated that revocation of a use permit was atypical, and the preference was to work with the operator to ensure that the conditions of approval are adhered to. He shared that another option would be to modify the cabaret portion of the activities being allowed and this could be done through the cabaret license that HPD has the authority to issue and modify.

Senior City Attorney Vigilia stated that the cabaret ordinance has a built-in process for revocation and hearings, where the cabaret license holder is entitled to a hearing, underscoring that this process was set out in the Hayward Municipal Code.

Commissioner Goldstein commented that the applicant had a history of running similar successful operations throughout the East Bay, requesting that he share this with the Commission. Mr. Yeverino stated that the Dirty Bird was founded in 2009 and the establishment moved to its newer location on B Street in 2016, he had opened a cocktail bar in Oakland and a wine bar in Alameda, opened Yoga Sociale adjacent to the Dirty Bird one year ago, and was looking forward to opening other establishments in Hayward in the future.

Mr. Yeverino noted for Commissioner Goldstein that his bar in Oakland had its cabaret use grandfathered in and that his establishment in Alameda featured live bands frequently because the City of Alameda's regulations governing live entertainment were more permissive.

In response to Commissioner's Goldstein's question about adding acoustic dampening in the basement, Mr. Yeverino affirmed that he would do this as there would be increased echo in the basement, however he noted that music would not be emanating from the basement that would be bothersome to the general public on the street.

Commissioner Goldstein commented that as was noted by HPD, there would be no significant traffic or parking concerns with the addition of the cabaret entertainment at the establishment.



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Chair Oquenda opened the public hearing at 7:40 p.m.

Ms. Carol Rivera, Hayward resident, stated that in regards to community building and fostering relationships, the reputation of the Dirty Bird precedes itself. She added that the project applicant was supportive of the community and participated in a fundraiser benefiting vulnerable populations in the city, that he contracts with HUSD to provide yoga classes to families at Yoga Sociale, shared that the applicant was passionate and had a vision to expand the Hayward community, and aimed to create healing spaces in the city.

Ms. Sabrina Aranda, a Hayward resident, participated via Zoom, spoke in support of the new plans to expand the Dirty Bird as the establishment had brought life to the downtown. She stated that the business has proven to be a safe and inviting establishment, it supports opportunities for adults of all ages to socialize, and could be used for events such as fundraisers for education, campaign parties for future politicians, and celebrations such as birthdays and retirement parties. Ms. Aranda stated that the expansion will support additional recreational opportunities for night life in the downtown area.

Chair Oquenda closed the public hearing at 7:43 p.m.

Commissioner Stevens made a motion to approve the staff recommendation, the motion was seconded by Commissioner Goldstein.

Commissioner Ali-Sullivan stated that he was initially curious about what a cabaret license involved and what the operations of the Dirty Bird would look like, but it seemed a well-thought-out and graduated approach. He supported the increased hours of operation and the addition of food earlier in the day. He highlighted that the project would add life and vibrancy to Downtown Hayward, was inclined to support the project, and thanked the applicant for supporting the growth of businesses in the downtown.

Commissioner Roche stated that the Dirty Bird was already a popular destination for mixed age groups and that the proposal would add to the establishment's offerings in the downtown. She felt that the project met Downtown Specific Plan goals and will serve as a catalyst for other potential businesses to support the downtown.

Commissioner Lowe stated that terms should be spelled out in the proposal, and that the words "extreme severity" should be defined in the document. She expressed her support of the project, noting that it would bring another good lunch venue in the downtown, emphasized that it was great that the applicant was committed to working with HPD, and committed to ensuring patrons are restricted to twenty-one years and older after 8 p.m. Commissioner Lowe expressed that the project would bring vitality and diverse entertainment options and businesses which was lacking in the downtown.



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Chair Oquenda agreed with the comments expressed by his fellow commissioners, acknowledged that he has been to the Dirty Bird and enjoyed the atmosphere, looked forward to seeing a comedy show at the venue, and concluded that he looked forward to the expansion of the business.

The motion passed with the following roll call vote:

AYES: Commissioners Ali-Sullivan, Goldstein, Lowe, Roche, Stevens
Chair Oquenda
NOES: None
ABSENT: Commissioner Bonilla Jr.
ABSTAIN: None

APPROVAL OF MINUTES

2. Minutes of the Planning Commission Meeting on September 22, 2022

Commissioner Roche made a motion to approve the staff recommendation, Commissioner Goldstein seconded the motion.

The motion passed with the following roll call vote:

AYES: Commissioners Goldstein, Lowe, Roche, Stevens
Chair Oquenda
NOES: None
ABSENT: Commissioner Bonilla Jr.
ABSTAIN: Commissioner Ali-Sullivan

COMMISSION REPORTS

Oral Report on Planning and Zoning Matters

Hayward Residential Design Study Update (Previously Named Residential Objective Standards and Zoning Consistency Update)

Planning Manager Lochirco shared that staff had notified Planning Commissioners about the residential design study that staff had been working on and shared that follow-up discussions were planned for January 2023.

Oral Report on Planning and Zoning Matters

Planning Manager Lochirco stated that the Planning Commission meeting on November 10,



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2022 would include an update on the Density Bonus project, that there would be no meeting on November 24, 2022 due to the Thanksgiving Holiday, noted that the election of officers would occur in January, and wished everyone a safe and happy Halloween.

Commissioners' Announcements, Referrals

Commissioners' Announcements, Referrals

Commissioner Roche announced that a Trunk or Treat event would be held on Saturday, October 29, 2022, in the Heritage Plaza.

ADJOURNMENT

Chair Oquenda adjourned the meeting at 7:53 pm

APPROVED:

Brigitte Lowe, Secretary
Planning Commission

ATTEST:

Avinta Madhukansh-Singh
Interim Planning Commission Secretary
Office of the City Clerk