



# CITY OF NEWARK

## Planning Commission

City Hall, City Council Chambers

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## MINUTES

Tuesday, February 8, 2022

### A. ROLL CALL

Chairperson Aguilar called the meeting to order, via teleconference, at 7:33pm. Present were Commissioners Fitts, Otterstetter, Becker, and Bogisich (all via teleconference).

### B. MINUTES

#### B.1 Approval of Minutes of the regular Planning Commission meeting of Tuesday, December 14, 2021

#### MOTION APPROVED

Commissioner Becker moved, Commissioner Fitts seconded, to approve the Minutes of the regular Planning Commission meeting on December 14, 2021. The motion passed 5 AYES.

### C. WRITTEN COMMUNICATIONS

None.

### D. ORAL COMMUNICATIONS

None.

### E. PUBLIC HEARINGS

**E.1 Hearing to consider Night Co., a Conditional Use Permit to allow a restaurant with live entertainment within a shopping center facility at 39055 Cedar Blvd. #198 (APN 901-0188-001-00). The subject site is zoned NC: Neighborhood Commercial and has a General Plan Land-Use designation of Neighborhood Commercial – Shaveta Sharma, Contract Planner**

Contract Planner (CP) Sharma provided the project overview including the project location, zoning, applicant requests, staff findings, and recommendation. CP Sharma discussed the project proposal in greater detail, including the proposed use for live entertainment inside the restaurant and conceptual property use. CP Sharma summarized the findings made in support of the proposed project. CP Sharma also noted that the proposed project is categorically exempt from CEQA and the project received public comments regarding noise concerns. CP Sharma noted that the conditions of approval addresses soundproofing and insulation to comply with the noise ordinance. In addition to the conditions of approval, the modified conditions of approval including keeping the back door closed at all times during the operation, no alcohol allowed in the public space, and required added security once expected occupancy is to be in excess of 100 people, the project will not create detrimental impacts in the neighborhood.

Commissioner Bogisich asked that if the live singer is not accompanied by a live band, will it be acapella or if music is in the background.

Property owner, Fallon Tran, clarified that music will be in the background while the singer is performing.

Commissioner Becker asked if Condition H meant that if one noise complaint will trigger a noise study. Deputy Community Development Director (DCDD) Interiano clarified that when noise complaints are received, a Code Enforcement officer will conduct an inspection to verify the noise levels. If there are violations, then staff can request the property owner to conduct a noise study. DCDD Interiano confirmed that it is at the Community Development Director's discretion to require a noise study.

Property owner, Fallon Tran, provided a brief background on the property, biography of the applicant, Eddie Lu, steps to increase security, and minimize noise by soundproofing the restaurant. Ms. Tran clarified that it is a restaurant, not a nightclub.

Commissioner Becker asked for confirmation that if the live singer is on stage singing to background music, that it will not be at a volume where diners will not be able to converse and that the stage is not for dancing but just for the live singer to perform. Ms. Tran confirmed that there will be no dancing and that the live singer will not be amplified, and the music will be soft and subdued.

Chair Aguilar asked if at any point during the day if there will be a different type of music. Ms. Tran translated for the applicant, Eddie Lu, that the restaurant will not turn into a nightclub. Ms. Tran clarified that when there is no live performer, music will be played overhead.

Chair Aguilar asked what the hours the applicant will have a live performer. Mr. Lu answered that the restaurant would open at 5pm and intends to have live performers from 8pm-10pm. Chair Aguilar reiterated that the current Conditions of Approval states that live music must cease at 9pm. Ms. Tran asked if that condition can be amended to 10pm instead considering the Mr. Lu will soundproof the restaurant to reduce noise levels.

Chair Aguilar opened the public hearing.

Moti Jain, a resident behind the restaurant, stated he has two small children and work in the evening hours and is concerned that the noise from the restaurant will disturb him and his children.

Elizabeth Agredano of 6225 Port Pl expressed concern at the possible noise from the restaurant, the added truck traffic from deliveries, gathering in the parking lot and littering of cigarettes from restaurant patrons. Ms. Agredano asked who will inspect the restaurant to ensure the soundproofing is completed to code. DCDD Interiano answered that the Planning and Building Inspection departments will work together to ensure the improvements to the building are completed to code.

Ms. Agredano asked who the public can contact to file noise complaints. DCDD Interiano stated the public should contact the business owner first to address the noise issue. If the issue is not corrected, the public can contact the Community Development Department at [planning@newark.org](mailto:planning@newark.org).

Moti Jain stated there are a lot of wild animals in the area due to the waste from the restaurant.

Ms. Agredano concurred that wildlife dumpster diving is an issue in their area.

Chair Aguilar asked what the process for Newark residents is to report these issues. DCDD Interiano stated these issues should be brought to the attention of the City's Community Preservation department at [compres@newark.org](mailto:compres@newark.org).

Chair Aguilar closed the public hearing.

Commissioner Otterstetter asked if the current property is operating as a restaurant and that all live music will be limited to the indoor area and not outside. DCDD Interiano confirmed the property is currently a restaurant and Ms. Tran confirmed the live music will not be outdoors.

Commissioner Otterstetter asked if the applicant has conducted a sound test before investing into soundproofing the restaurant. Ms. Tran stated the applicant was waiting until the Conditional Use Permit was permitted before soundproofing the restaurant. If the Conditional Use Permit is approved, Mr. Lu will ensure that all construction and building upgrades are to code.

Commissioner Bogisich commented that in her residential neighborhood that does not have any restaurants or stores, they have a lot of wildlife as well. She does not believe that wildlife is an issue unique to areas with restaurants.

Commissioner Fitts asked if the applicant agrees to the conditions of approval besides the request to amend the live entertainment hours. Mr. Lu and Ms. Tran agrees to the conditions of approval.

Chair Aguilar asked staff what 60 decibels is equivalent to. Community Development Director (CDD) Turner replied that 60 decibels is equivalent to two people having a normal conversation about 1 meter apart. It is the average sound level of a restaurant or office.

Chair Aguilar commented that without a noise and parking study, how closely the restaurant abuts nearby homes, and how quiet 60 decibels are, he's not prepared in voting in favor or against this project. CDD Turner clarified that sound is measured at the property line and not occurring inside the restaurant itself.

Chair Aguilar asked which restaurants in the area that are similar in nature as the proposed project. Ms. Tran stated that the new restaurant will sound similar to the existing restaurant since Mr. Lu is sound proofing the restaurant.

Commissioner Fitts commented that if the new restaurant's noise level is equivalent to the current restaurant and that all conditions can be met, then he is in favor of the project.

Commissioner Bogisich concurred that if all the conditions are met and believes the soundproofing of the restaurant will help in reducing noise from the live singer.

Commissioner Becker commented that he is comfortable with supporting this application with the caveat that staff will work with the applicant to ensure all the conditions are met. He would like a commitment from the applicant that testing with a sound meter on the exterior of the restaurant will be completed prior to the opening of the restaurant.

Chair Aguilar commented that since there is currently no hard data regarding the sound level, he does not feel informed enough to approve the application.

Commissioner Becker moved, Commissioner Fitts seconded, to approve the resolution, with the amendment to change the limits of live music from 9pm to 10pm and to incorporate the conditions of approval by the Police Department. The motion passed 3 Ayes and 2 Nays.

## **F. STAFF REPORTS**

None.

## **G. COMMISSION MATTERS**

### **G.1 Report on City Council actions.**

CDD Turner reported that on January 13, 2021, City Council heard staff recommendations on Project Homekey at the Town Place Suites hotel. The staff recommendation was to allow staff to apply for the State of California Homekey grant in the amount of \$39M to convert the Town Place Suites hotel to affordable housing. The City is partnering with Allied Housing and Abode Services through the Homekey program. Staff is preparing a website with FAQs to better inform the community about project Homekey. Staff will know if we are successful in receiving the grant in mid to late March 2022. If the City receives the grant, there are necessary steps such as an affordable housing agreement and renovations, prior to converting the building to 124 units of affordable housing.

### **G.2 Election of Officers**

Commissioner Fitts moved, Chairperson Aguilar seconded, to nominate Commissioner Becker to Chair. The motion passed with 5 AYES.

Commissioner Otterstetter moved, Commissioner Becker seconded, to nominate Commissioner Fitts to Vice Chair. The motion passed with 5 AYES.

### **G.3 Amend Meeting Time in Planning Commission By-Laws**

CDD Turner explained that per the Planning Commission By-Laws that the meetings are to begin at 7:30pm. To start at a different time, the By-Laws will need to be amended. Commissioners have expressed interest in starting the meeting at 7:00pm. Amended by-laws with the red lined

changes will be presented at a regular Planning Commission meeting. Then the vote will be taken at the following meeting.

CDD Turner reminded the Commission that the League of Cities Planning Commission Academy is coming up and to sign up if they haven't done so already.

## H. ADJOURNMENT

Chairperson Aguilar adjourned the regular Planning Commission meeting at 9:15 pm.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Steven Turner", with a long horizontal flourish extending to the right.

STEVEN TURNER  
Secretary