

AGENDA ITEM NO. VIII-B
COMMISSION MEETING 12-1-10

December 1, 2010

FROM: KEVIN FABINO, Planning Manager
Development and Resource Management Department


DEPARTMENT DIRECTOR

THROUGH: MIKE SANCHEZ, Planning Manager
Development Services Division

BY: JACK VAN PATTEN, AICP, Planner II
Development Services Division

**SUBJECT: CONSIDERATION OF CONDITIONAL USE PERMIT APPLICATION NO. C-10-178
AND ENVIRONMENTAL FINDING FOR ENVIRONMENTAL ASSESSMENT
NO. C-10-178**

RECOMMENDATION

Staff recommends that the Planning Commission take the following actions:

1. APPROVE the finding of a Categorical Exemption for Environmental Assessment No. C-10-178 issued October 18, 2010.
2. APPROVE Conditional Use Permit Application No. C-10-178 to establish *Club Habanos*, as a nightclub with dancing and a State of California Alcoholic Beverage Control Type 48 license (*bar/nightclub – sale of beer and wine for consumption on the licensed premises where sold*) for the establishment, subject to the following conditions:
 - a. Development shall comply with Exhibits A and F dated August 25, 2010.
 - b. Development shall comply with the operational statement for the project dated August 25, 2010.
 - c. Development shall comply with the Conditions of Approval dated October 18, 2010.

EXECUTIVE SUMMARY

The applicant, Adela Padron, filed Conditional Use Permit Application No. C-10-178 requesting authorization to establish *Club Habanos*, a nightclub with dancing and a State of California Alcoholic Beverage Control Type 48 license (*bar/nightclub – sale of beer and wine for consumption on the licensed premises where sold*) for the establishment.

The project is located within the North Pointe Center located on the west side of North Palm Avenue at the southwest corner of West Herndon and North Palm Avenues. The site is zoned C-2/EA/UGM/cz, *Community Shopping Center District, Expressway Area, Urban Growth Management, Conditions of Zoning*.

The project is being processed under the provisions of the recently adopted text amendment that governs restaurants serving alcohol, taverns, and nightclubs. Pursuant to that text amendment, this project has been scheduled for review by the Fresno City Planning Commission.

Staff recommends that the Planning Commission approve Conditional Use Permit Application No. C-10-178, subject to the conditions of approval noted above. The conditional use permit is appropriate for the site and all findings required by Fresno Municipal Code (FMC) Section 12-405-A-2 can be made. In addition, granting of the requested special permit would not result in a significant impact under the California Environmental Quality Act (CEQA).

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PROJECT INFORMATION

PROJECT	Conditional Use Permit Application No. C-10-178 requests authorization to establish <i>Club Habanos</i> , a nightclub with dancing and a State of California Alcoholic Beverage Control Type 48 license (<i>bar/nightclub – sale of beer and wine for consumption on the licensed premises where sold</i>) for the establishment.	
APPLICANT	Adela Padron	
LOCATION	6759 North Palm Avenue, located on the west side of North Palm Avenue at the southwest corner of West Herndon and North Palm Avenues (APN: 407-672-43) (Council District 2, Councilmember Borgeas)	
SITE SIZE	2800 square foot tenant space (40' X 70' site) in a 0.82-acre building within a 9.95 commercial property	
LAND USE	Existing	- Bar in a neighborhood commercial planned land use designated development.
	Proposed	- Night club in a neighborhood commercial planned land use designated development.
LAND USE	Existing	- Bar in a neighborhood commercial planned land use designated development.
ZONING	Existing	- C-2/EA/UGM/cz, <i>Community Shopping Center District, Expressway Area, Urban Growth Management, Conditions of Zoning</i>
PLAN DESIGNATION AND CONSISTENCY	Conditional Use Permit Application No. C-10-178 is proposed in accordance with the neighborhood commercial planned land use identified in the Bullard Community Plan and the 2025 Fresno General Plan.	
ENVIRONMENTAL FINDING	A determination of Categorical Exemption, Section 15301/Class 1 Section 15332/Class 32 of California CEQA Guidelines was made and Environmental Assessment No. C-10-178 (Categorical Exemption) was completed for this project and filed on October 18, 2010.	
PLAN COMMITTEE RECOMMENDATION	The District 2 Plan Implementation Committee reviewed the subject application at their meeting on Monday, November 22 2010.	
STAFF RECOMMENDATION	Staff recommends approval of Conditional Use Permit Application No. C-10-178 subject to compliance with Exhibits A and F dated August 25, 2010 and the conditions found in the Conditions of Approval, dated October 18, 2010.	

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BORDERING PROPERTY INFORMATION

	Planned Land Use	Existing Zoning	Existing Land Use
North	Light Industrial	<i>C-M, Commercial and Light Manufacturing District</i>	Light Industrial – Motor vehicle sales
South	Medium Low Density Residential	<i>R-1, Single Family Residential District</i>	Medium Low Density Residential
East	Community Commercial	<i>C-2/EA/UGM/cz, Community Shopping Center District, Expressway Area, Urban Growth Management, Conditions of Zoning</i>	Community Commercial
West	Medium Low Density Residential	<i>R-1, Single Family Residential District</i>	Medium Low Density Residential

ENVIRONMENTAL FINDING

The initial study prepared for Environmental Assessment No. C-10-178 considered potential environmental impacts associated with the conditional use permit application request. The California Environmental Quality Act (Public Resource Code Section 21000 et seq.) permits a public agency to determine whether a particular project is exempt from CEQA. A determination of a Categorical Exemption, Section 15303/Class 3 Section 15332/Class 32 of California CEQA Guidelines was made and Environmental Assessment No. C-10-178 (Categorical Exemption) was completed for this project and filed on October 18, 2010.

BACKGROUND / ANALYSIS

Conditional Use Permit Application No. C-10-178 has been filed by Adela Padron DBA Club Habanos requesting authorization to requesting authorization to amend existing conditional use permits to operate a night club, and to permit dancing (ABC Type 48 License).

The subject site, 6759 North Palm Avenue, is approximately 2800 square foot (40' X 70' tenant space) and is located on the west side of North Palm Avenue at the southwest corner of West Herndon and North Palm Avenues The property is currently zoned *C-2/EA/UGM/cz, Community Shopping Center District, Expressway Area, Urban Growth Management, Conditions of Zoning*. The Bullard Community Plan and the 2025 Fresno General Plan designate the land use of the site as *neighborhood commercial*.

The project is being processed under the provisions of the recently adopted text amendment as related to restaurants, taverns and nightclubs. Pursuant to that text amendment, a nightclub proposed within the C-2 zone district is required to be considered by the Fresno City Planning Commission. Therefore, staff has scheduled this matter for consideration by the Planning Commission and noticed the surrounding property owners of this hearing.

A nightclub as defined under the recently adopted text amendment is required to close no later than 2:00 a.m. The applicant is requesting that the business be approved as a "nightclub" as defined in the text amendment, in order to allow dancing and a closing time of 2:00 a.m.

A nightclub is defined as a facility that provides a dance floor and live or recorded music for customer dancing, and may or may not provide entertainment, such as live performances of the arts (music, comedy, readings, dance, plays, etc.). A nightclub differs from either a restaurant or tavern in that dancing by the customer is permitted. The serving of food or alcoholic beverages is optional.

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Based on the applicant's operational statement, the nightclub will operate 365 days per year between 10:00 a.m. and 2:00 a.m. daily, with special early openings for sporting events.

The appropriateness of the proposed project has been examined with respect to its consistency with the goals and policies of the 2025 Fresno General Plan and the Bullard Community Plan; its compatibility with surrounding existing or proposed uses; and, its avoidance or mitigation of potentially significant adverse environmental impacts. Conditional Use Permit Application No. C-10-178 will comply with all applicable codes, including parking, landscaping, walls, etc.

DISTRICT 2 PLAN IMPLEMENTATION COMMITTEE

The District 2 Plan Implementation Committee reviewed the subject application at their meeting on November 22, 2010. Any recommendations from the committee will be presented to the Planning Commission.

NOTICE OF PLANNING COMMISSION MEETING

The Development and Resource Management Department mailed notices of this Planning Commission hearing to all surrounding property owners within 500 feet of the North Pointe Center, pursuant to Section 12-326-G-2 of the FMC. The Department received a letter from Mr. Bill Richards, a resident, expressing concern about the adequacy of the safeguards contained in the City's Bars and Nightclubs ordinance.

Expressed Concerns and Response Thereto

- (1) A concern that the definition of a "night club" is too broad.

RESPONSE:

- a. The Bars and Nightclubs Ordinance was adopted by the Fresno City Council after lengthy public debate. As adopted, the Bars and Nightclub Ordinance expresses the satisfaction of the public in regard to, among other things, the definition of a nightclub.
- b. Mr. Richards has not provided evidence for the record concerning the definition of a nightclub.

- (2) A concern that a nightclub might not be an appropriate use for this location because of its proximity to the abutting residential neighborhood.

RESPONSE:

- a. As adopted, the Bars and Nightclub Ordinance expresses the satisfaction of the public in regard to, among other things, the processes and procedures established to determine the appropriateness of a nightclub in any location in which a conditional use permit for such use is granted.
- b. Mr. Richards has not provided evidence for the record concerning the appropriateness of the nightclub use in North Pointe Center.

- (3) A concern that the conditional use permit is unenforceable because there is no language within the conditional use permit that addresses what happens in the event that the nightclub operates outside of the stated conditions of approval, that is, violates those conditions.

RESPONSE:

- a. The City has the necessary authority, programs, and provisions in place to enforce all laws within its jurisdiction by means of the Police Department, the Development and Resource Management Department's Code Enforcement Division, and other remedies in law.

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- b. As adopted, the Bars and Nightclub Ordinance expresses the satisfaction of the public in regard to, among other things, the enforceability of the conditions of approval of any conditional use permit granted for any 'conditional use'. The conditional use permit process, as well as State Law and the Municipal Code, has procedures in place for enforcement of the conditions of approval contained within each conditional use permit granted.
- c. Mr. Richards has not provided evidence for the record that this conditional use permit (C-10-178) is, in fact, unenforceable.

(4) A concern about noise issues in the event that other nightclubs open in North Pointe Center.

RESPONSE:

- a. State Law and the Municipal Code, have procedures in place for enforcement of the Noise Ordinance.
- b. Mr. Richards has not provided evidence for the record that noise from nightclubs is, or has been, an issue in North Pointe Center, nor evidence for the record that the Noise Ordinance is unenforceable.

(5) A concern that the conditional use permit process does not consider cumulative impacts; that a 'Master Nightclub Permit', so to speak, (perhaps analogous to the City's Master Sign Permit process for shopping centers) be developed for North Pointe Center.

RESPONSE:

- a. Among the purposes of 'conditional uses' is that of considering the specific situation of each use that is subject to a conditional use permit. This includes cumulative impacts of uses and their associated activities at a given locale. In effect, each conditional use permit issued within a given locale is the next iteration of an evolving 'Master Use Permit' for that locale.
- b. As adopted, the Bars and Nightclub Ordinance expresses the satisfaction of the public in regard to, among other things, the ability of the City to address the issue of cumulative impacts through the conditional use permit and other processes and procedures.
- c. Mr. Richards has not provided evidence for the record pertaining to the inadequacy of the conditional use permit process to address cumulative impacts.

(6) A concern that the nightclub would not be accountable for the behavior of patrons who go outside to smoke.

RESPONSE:

- a. State Law and the Municipal Code, have laws and procedures in place for enforcement of public behavior.
- b. Mr. Richards has not provided evidence for the record that business establishments are accountable for the behavior of persons beyond the business premises.

CONDITIONS OF APPROVAL

Standard conditions of approval for restaurants, taverns and nightclubs were developed after the adoption of the text amendment to ensure uniform application of requirements on a citywide basis. Those conditions are included in, and shall be applied to, Conditional Use Permit Application No. C-09-178. These conditions address a myriad of issues related to the operation of alcohol-related uses, including employee education, security, video surveillance, and enforcement procedures. The applicant must show compliance with all conditions prior to commencing the new nightclub operations.

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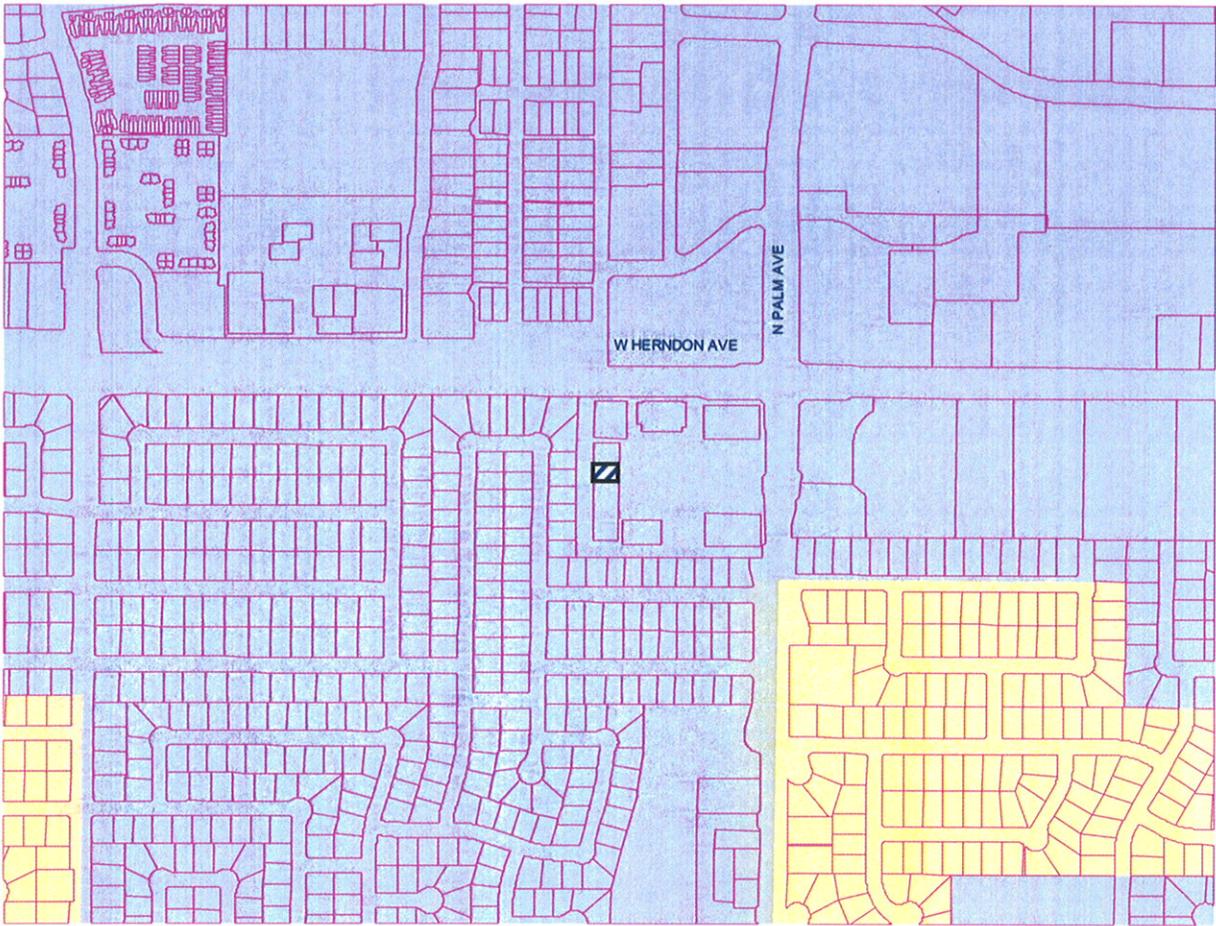
FINDINGS

No special permit may be issued unless it is found that the privilege exercised under the permit, conforms to the findings of 12-405-A-2 of the FMC. Based upon analysis of the conditional use permit application, staff concludes that all of the required findings can be made for Conditional Use Permit Application No. C-10-178.

Findings per Fresno Municipal Code Section 12-405-A-2	
<i>a. All applicable provisions of this Code are complied with and the site of the proposed use is adequate in size and shape to accommodate said use, and accommodate all yards, spaces, walls and fences, parking, loading, recycling areas, landscaping, and other required features; and,</i>	
Finding a:	Conditional Use Permit Application No. C-10-178 will comply with all applicable codes, including parking, landscaping, walls, etc., given that the conditions of project approval will ensure that all conditions are met prior to the site being occupied.
<i>b. The site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use; and,</i>	
Finding b:	Adjacent streets were assessed during the initial development of the subject site to ensure that the development would have less than significant impacts on traffic and the surrounding community.
<i>c. The proposed use will not be detrimental to the public welfare or injurious to property or improvements in the area in which the property is located. The third finding shall not apply to uses which are subject to the provision of Section 12-306-N-30 of the FMC.</i>	
Finding c:	The proposed nightclub will not have a negative impact on either the subject site, or neighboring properties given that there are no residential uses in the immediate abutting the nightclub. Furthermore, the subject site was intended to function with commercial recreational uses, such as the proposed nightclub. In addition, the applicant will be required to comply with the operational statement submitted for the project and the conditions of approval as required by the Police Department that will stipulate certain requirements that must be met by the applicant. These conditions are intended to help protect the public health, safety and welfare of patrons and neighbors, alike.

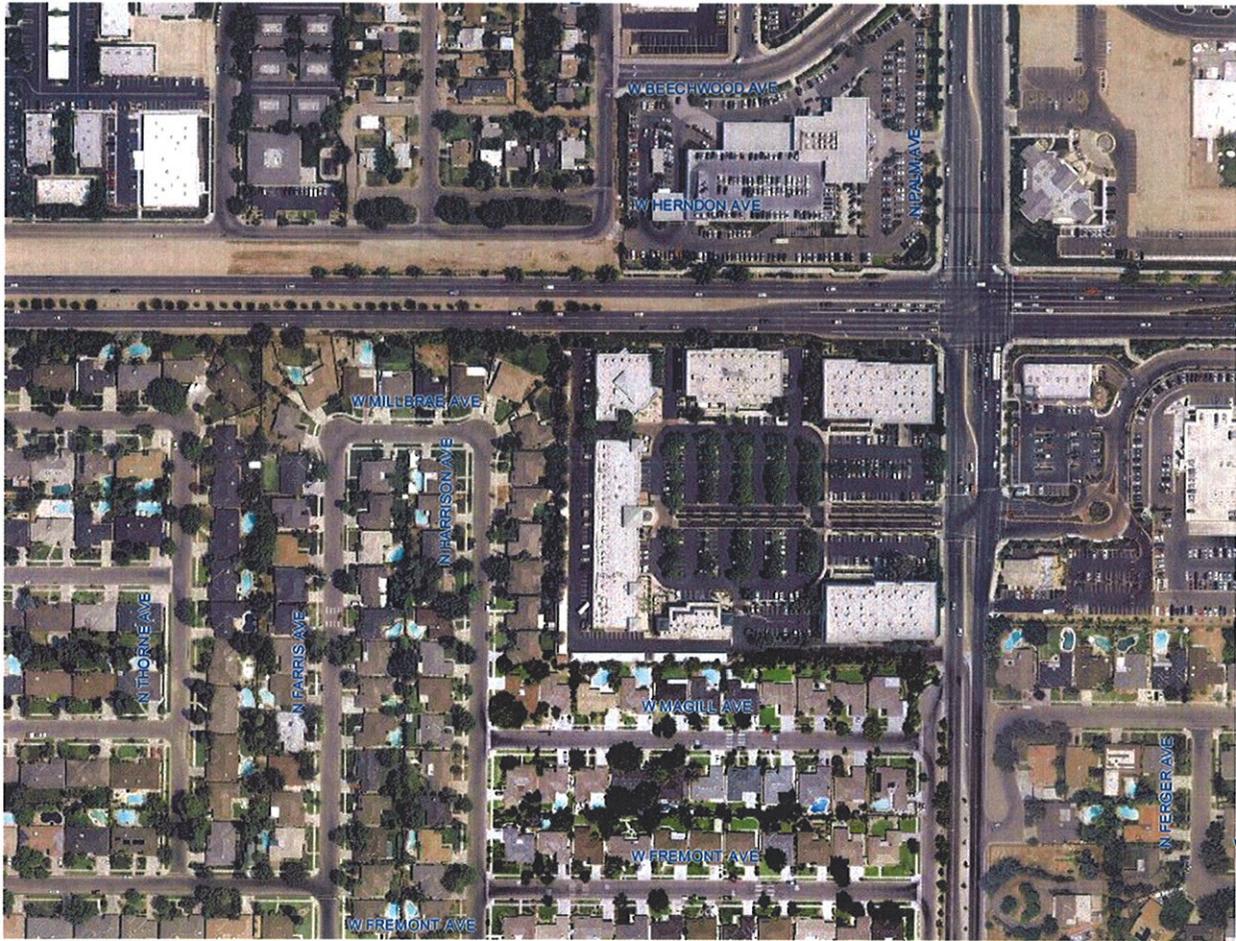
- Exhibits:
- Vicinity Map
 - 2008 Aerial Photograph of site
 - Noticing Map (500 foot radius)
 - Exhibit A, Site Plan, dated August 25, 2010
 - Exhibit F, Floor Plan, dated August 25, 2010
 - Operational Statement dated August 25, 2010
 - Conditions of Approval dated October 18, 2010
 - Environmental Assessment No. C-10-178 dated October 18, 2010

VICINITY MAP

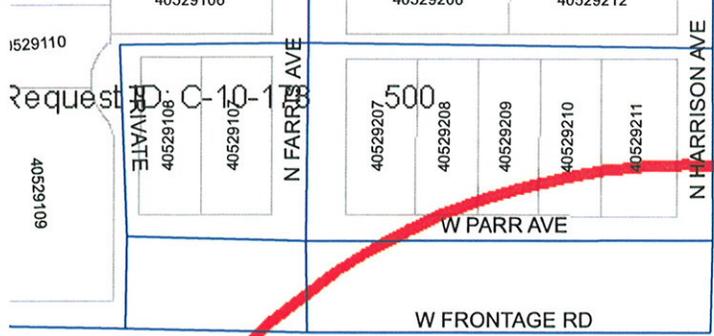


Club Habanos, North Pointe Center

AERIAL PHOTOGRAPH



Club Habanos, North Pointe Center



W. HERNDON AVENUE

PROJECT LOCATION

EXISTING H.C. PARKING AND SIGNAGE

APPL. NO. **C-10-138** EXHIBIT **A** DATE **8-25-10**
 PROJ. ENG. _____ DATE _____
 TRAFFIC ENG. _____ DATE _____
 COND. APPROVED BY _____ DATE _____
 CITY OF FRESNO DEVELOPMENT DEPARTMENT

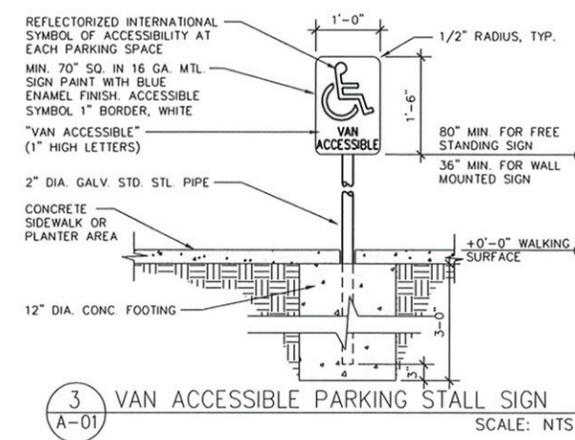
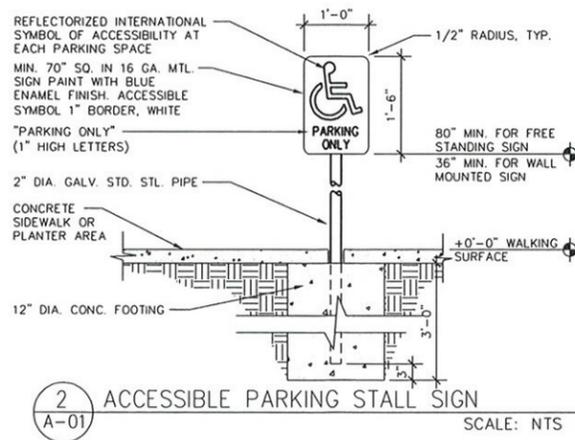
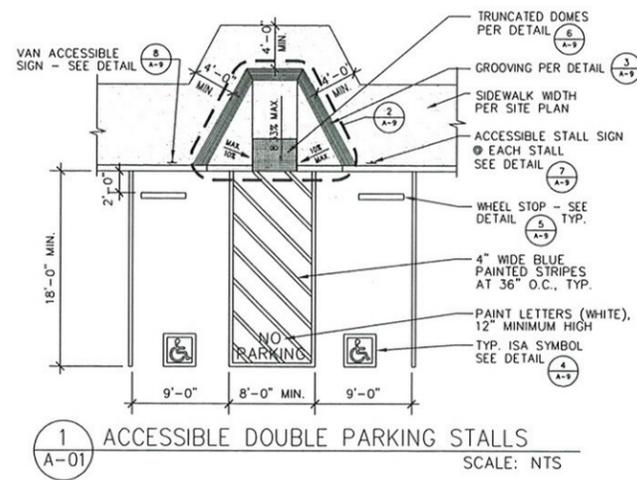
W. PALMDON DR.

N. PALM AVENUE



PROJECT SITE PLAN

NO SCALE



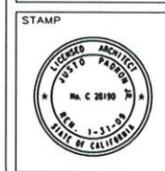
Ownership of Documents
 The information and design shown on this drawing is the property of Studio 5 Architects, Inc. The information shown on this drawing is for the project and site only and is not to be used for any other project without the written authorization of Studio 5 Architects, Inc.
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CONSULTANTS:

ARCHITECTURE
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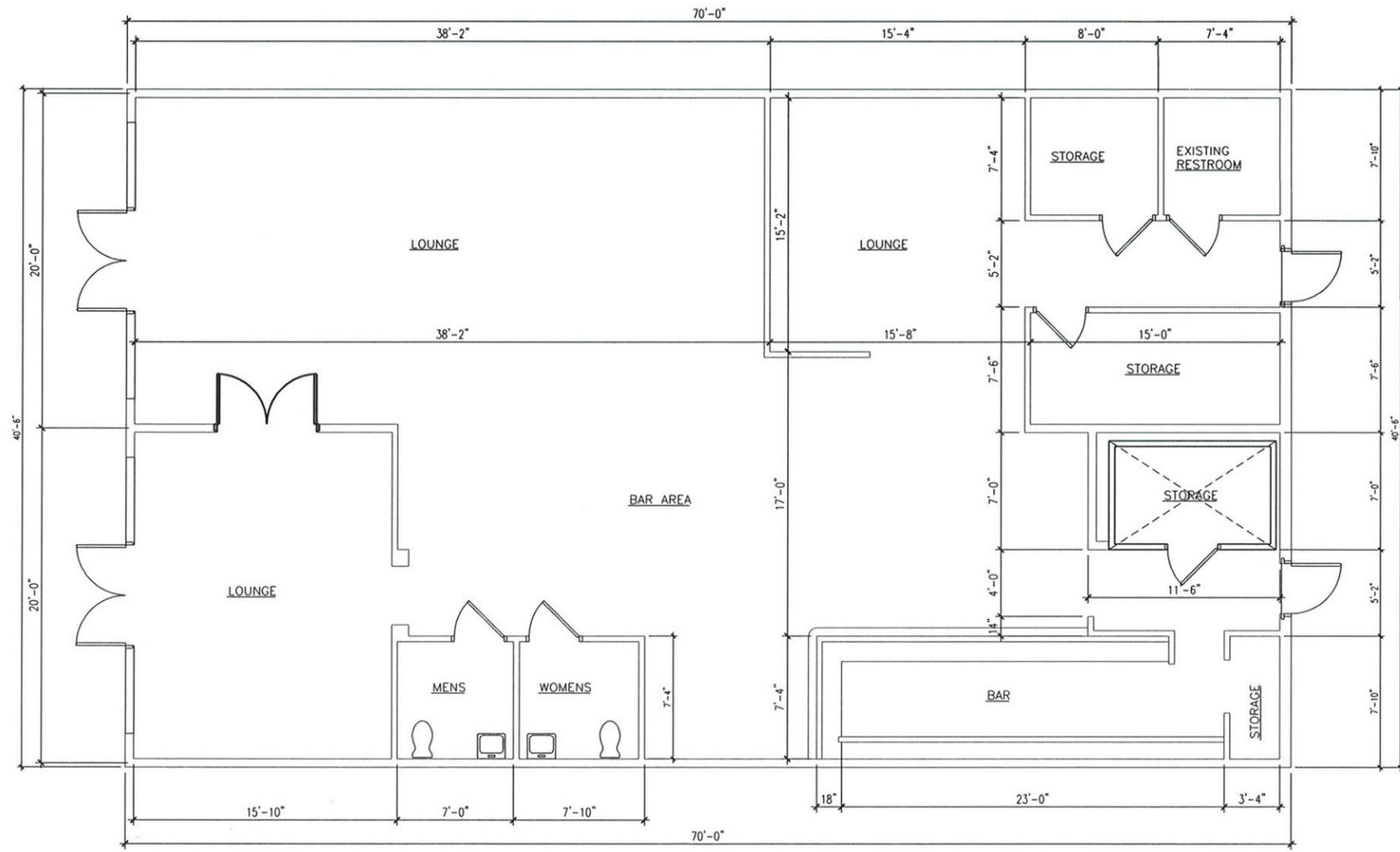


SITE PLAN

CLUB HABANOS
 CIGAR SHOP & MEMBERS LOUNGE
 6759 N. PALM, FRESNO, CA

Date
Scale
Drawn
Design
Job No.
Sheet No.

A-01



HABANOS - FLOOR PLAN

SCALE: 1/4" = 1'-0"

— EXISTING WALLS

⤵ NEW DOORS

APPL. NO. C-10-178 EXHIBIT F DATE 8-25-10
 PROJ. ENG. _____ DATE _____
 TRAFFIC ENG. _____ DATE _____
 COND. APPROVED BY _____ DATE _____
 CITY OF FRESNO DEVELOPMENT DEPARTMENT

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FLOOR PLAN
CLUB HABANOS
CIGAR SHOP & MEMBERS LOUNGE
 6757 N. PALM, FRESNO, CA

Date
Scale
Drawn
Design
Job No.
Sheet No.

A-2

Project Description:

This Operations Statement is being submitted by Club Habanos, inc. of Fresno, CA on behalf of the shareholders and pertains to the existing business located at 6759 N. Palm, Fresno CA, 93704. APN 407-672-43 and is zoned as a C2 with an existing land use as a bar/tavern is requesting to revise the existing CUP to include dancing on the premise. The hours of operation will remain 10:00am to 2:00am 365 days a year.

Operational Narrative:*Existing business*

Club Habanos Inc is requesting to continue to operate as it has been for the past decade. The purpose of this operations statement is to bring Club Habanos Inc. in compliance with the new dancing ordinance of 2010 and to articulate the operations methods of Club Habanos Inc, to ensure the safety of its patrons and the public.

Hours of Operation

- 365 days per year, 10:00am - 2:00am daily, with special early openings for sporting events.

Tobacco Products

- Club Habanos was formerly a cigar lounge. Cigar or cigarette smoking is no longer allowed inside any area of Club Habanos. Smoking is allowed outside only.

ABC Requirements

- Club Habanos is committed to maintaining the highest level of compliance with Alcohol Beverage Control laws and regulations. All employees at Club Habanos Inc. are required to attend LEAD training and renew their training every 5 years.
-

Safety Requirements

- Club Habanos will ensure that all security and management staff obtain certification from the City of Fresno for crowd control and public safety as required by the City of Fresno and Fresno PD.
- All employees shall attend annual safety training
- The incident log shall be completed in detail anytime there is an incident or near/miss with a customer or the general public.
- Employees shall immediately contact FPD if there are terrorist threats, brandishing of weapons of any kind, or behavior that appears unsafe or severely irrational.



Employees

- Club Habanos employs 10 - 30 employees (including security staff) depending on the season or the event.

Special Events

- Club Habanos carries an annual ABC event license that allows 4 events per year held adjacent to or outside of the existing licensed area (FPD approval is required). Club Habanos may, at its discretion, apply for additional event permits as allowed by ABC, The City of Fresno and Fresno PD. Security for said events will be provided as required by FPD.

Security

- As a guideline, Club Habanos will employ one security guard for every 50 customers, with up to 5 security personnel on anticipate high traffic night and accordingly for special events.
- All security personnel must be approved by the security manager and have current certifications are required by the City of Fresno and Fresno PD.
- Security is responsible for checking id's and allowing patrons in the bar.
- Security is responsible for preventing admittance of customers who may not behave appropriately due to intoxication, use of other substances, and general behavior.
- Security is responsible to diffuse situations by using diplomacy and motivational tactics.
- It is not the policy of Club Habanos to allow, endorse, or require that security personnel engage in physical activity or combat with the public. Aggressive behavior is explicitly prohibited and will result in termination. Diplomacy, verbal persuasion, and non violence are the expectations of Club Habanos Inc, and its shareholders.

Customer Traffic

- Club Habanos maximum occupancy is 191 people, with standard practice of maintaining capacity at 180. The total traffic on a weekly basis can range from 400-1000 customers weekly.

Noise

- Club Habanos is committed to maintaining appropriate level of noise and ensuring that windows, doors and exits have appropriate sound absorption to prevent external noise complaints or issues.
- Customers and employees are not allowed to loiter, linger or create disruptions in the back of Club Habanos, to ensure that we are not disturbing our residential neighbors.



C-10-178 CONDITIONS OF APPROVAL

October 18, 2010

1. Development shall take place in accordance with the C-2/EA/UGM/cz, *Community Shopping Center District, Expressway Area, Urban Growth Management, Conditions of Zoning*, as defined in Section 12-218 of the Fresno Municipal Code.
2. Development shall take place in accordance with Exhibits A and F, dated August 25, 2010. The correct address for the subject application is 6759 North Palm Avenue. All exhibits shall reflect the correct address.
3. Development shall take place in accordance with the Standards Specifications and Standard Drawings of the City of Fresno Public Works Department. Transfer all red line notes, etc., shown on all original site plan exhibits dated August 25, 2010, to the final site plan. CORRECTIONS SHALL INCLUDE ALL THOSE LISTED IN THIS DOCUMENT AND THOSE LISTED IN THE CORRECTION LIST PROVIDED BY THE PLAN CHECK PROCESS.
4. Development shall take place in accordance with all city, county, state and federal laws and regulations.
5. Development shall comply with the requirements of the City of Fresno, Police Department memo dated October 7, 2010. For comments, questions, or details, Contact Detective Chris Franks, Northwest Policing District, (559) 621-6532.
6. The exercise of rights granted by this special permit must be commenced no later than four years from the date of approval). **There is no extension.**

**CITY OF FRESNO
CATEGORICAL EXEMPTION
ENVIRONMENTAL ASSESSMENT NO. C-10-178**

THE PROJECT DESCRIBED HEREIN IS DETERMINED TO BE CATEGORICALLY
EXEMPT FROM THE PREPARATION OF ENVIRONMENTAL DOCUMENTS
PURSUANT TO ARTICLE 19 OF THE STATE CEQA GUIDELINES.

APPLICANT: Adela Padron
DBA Club Habanos
6759 North Palm Avenue
Fresno, CA 93704

PROJECT LOCATION: 6759 North Palm Avenue, located on the west side of North Palm Avenue at the southwest corner of West Herndon and North Palm Avenues (APN: 407-672-43)

(Council District 2, Councilmember Borgeas)

PROJECT DESCRIPTION: Conditional Use Permit Application No. C-10-178 has been filed by Adela Padron, DBA Club Habanos, Inc. requesting authorization to amend existing conditional use permits to operate a night club, and to permit dancing (ABC Type 48 License).

This project is exempt under Section 15301/Class 1 and Section 15332/Class 32 of the State of California CEQA Guidelines.

EXPLANATION:

Section 15301/Class1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

Section 15332/Class 32 consists of projects characterized as in-fill development meeting the conditions described in this Section. (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations. (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses. (c) The project site has no value, as habitat for endangered, rare or threatened species. (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. (e) The site can be adequately served by all required utilities and public services.

By current standards, this subject site and surrounding neighborhoods are identified as "in-fill" within an urban setting.

The proposed project consists of a proposed nightclub use in an existing building within the City limits and is consistent with the 2025 Fresno General Plan policies. The property is zoned C-2/EA/UGM/cz, *Community Shopping Center District, Expressway Area, Urban Growth Management, Conditions of Zoning* which is consistent with the 2025 General Plan and the Bullard Community Plan land use designation of neighborhood commercial pursuant to section 12-607-A-1 of the FMC. The operation of a night club on this 2800 square foot tenant space

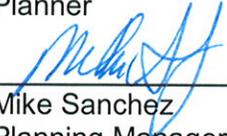
(40' X 70' site) in a 0.82-acre building within a 9.95 commercial property is allowed within the designated zone district. The site has no value as habitat for endangered, rare, or threatened species and complies with the conditions of the Class 1 and Class 32 Categorical Exemptions. No adverse environmental impacts would occur as a result of the proposed project.

Finally, there is no substantial evidence in the record that any of the exceptions to these Categorical Exemptions, set forth in CEQA Guidelines section 15300.2, apply to this project

Date: October 18, 2010

Prepared By: Jack Van Patten, AICP
Planner

Submitted By: _____


Mike Sanchez
Planning Manager
City of Fresno
Development and Resource Management
Department
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