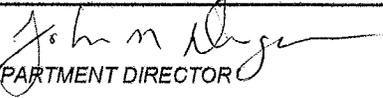


AGENDA ITEM NO. VIII-B
COMMISSION MEETING 5-4-11

APPROVED BY


DEPARTMENT DIRECTOR

May 4, 2011

FROM: KEVIN FABINO, Planning Manager
Planning Division

BY: SOPHIA PAGOULATOS, Planner
Planning Division

SUBJECT: **EXTENSION REQUEST FOR CONDITIONAL USE PERMIT C-09-230 (TWIST RESTAURANT AND ULTRA LOUNGE)**

RECOMMENDATION

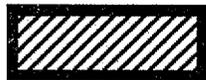
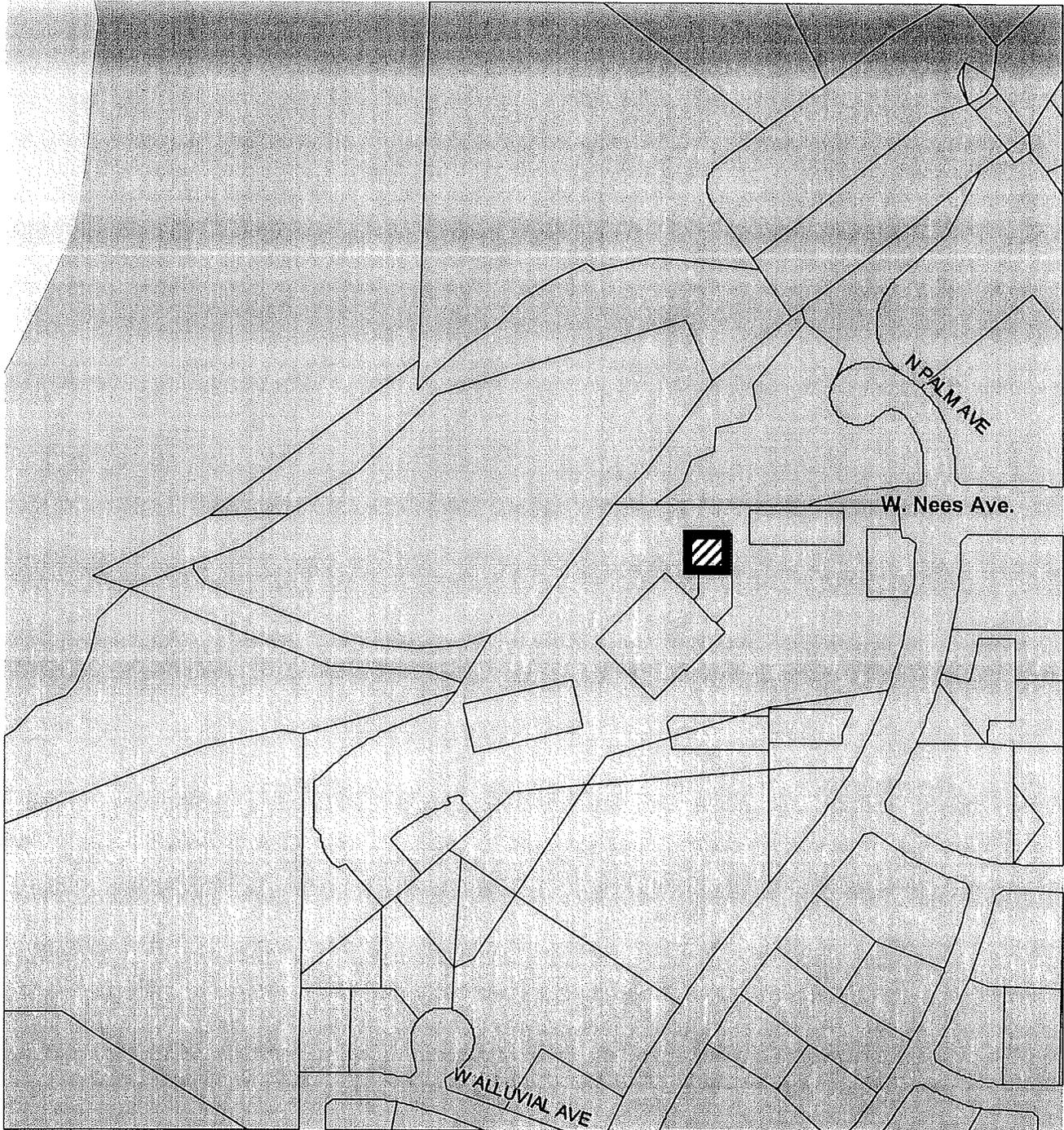
Consider applicant's request for an extension of special permit entitled Conditional Use Permit No. C-09-230, extending the expiration of the Conditional Use Permit from May 6, 2011 to July 6, 2011. This request is related to the nightclub use at 7835 North Palm Avenue, Suite 106 (the Twist Restaurant and Ultra Lounge). If the request is approved the special permit shall be set to expire on July 6, 2011, unless the applicant has obtained subsequent approval from the Planning Commission on or before July 6, 2011, to remove the condition of expiration ("Sunset clause"). All other conditions of approval shall remain in effect.

BACKGROUND

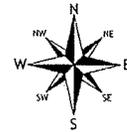
At its April 21, 2010 meeting, the Planning Commission approved Conditional Use Permit C-09-230 which amended an existing conditional use permit by adding a nightclub component for the Twist Restaurant and Ultra Lounge. The Planning Commission conditioned the special permit that the nightclub use would expire, or sunset, twelve (12) months after approval. The applicant was entitled to file an application for a revised exhibit that, if approved, would remove the condition prior to the expiration of the special permit. The current expiration date is May 6, 2011.

Staff supports the granting of an extension in order to allow additional time for thorough evaluation of the facts in preparation for a final recommendation on the sunset clause.

Attachments: Exhibit A - Vicinity Map
Exhibit B - Extension Request Letter
Exhibit C - Conditions of Approval for C-09-230



Subject Property



Not To Scale

VICINITY MAP

Conditional Use Permit No.
C-09-230

PROPERTY ADDRESS

7835 North Palm Avenue, Suite 106

DEVELOPMENT AND RESOURCE MANAGEMENT DEPARTMENT

APN: 405-530-67

Zone District:

C-2 (Community Shopping Center)

By: S. Pagoulatos, May 4, 2011

Exhibit A

**LAW OFFICES OF
NUTTALL COLEMAN & WILSON**

ROGER T. NUTTALL, INC.
MARK W. COLEMAN
ROGER D. WILSON
GLENN KOTTCAMP
ROGER S. BONAKDAR
TODD D. EILERS

2445 CAPITOL STREET, #150
FRESNO, CALIFORNIA 93721

TEL: (559) 233-2900
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NUTTALLCOLEMAN.COM

April 8, 2011

Via Email: Shannon.Chaffin@fresno.gov

Mr. Shannon Chaffin, Esquire
Senior Deputy City Attorney
2600 Fresno Street, Room 2031
Fresno, California 93721

RE: Twist Restaurant & Lounge

Dear Mr. Chaffin,

I write to you regarding the impending Planning Commission hearing, regarding a review of the "sunset provision" in my clients' CUP, as it relates to "dancing" in and about the premises commonly referred as "Twist," in North-West Fresno.

Unfortunately, my clients were not notified that the Planning Department would be recommending denial of my clients' petition to remove the "Sunset Clause" on dancing (the "petition"), from my clients' CUP, until March 30, 2011. As you know, the Hearing on the petition is set for April 20, 2011, and my clients have made a series of FOIA requests, seeking (in essence) the source documents, and correspondence, which relate to the Police & Planning Departments' recommendation of denial. To further confound the issues, we are advised that the documents requested under the FOIA will not be available for another two weeks. Best case scenario, this would only potentially allow for one to two days of lead time to review and analyze (what we are advised will be) hundreds of pages of documents, and prepare an intelligent response to the same.

In light of the impending "Sunset Date," the recently stated positions of the Police and Planning Department, and the unavailability of the source/FOIA documents requested, it would be entirely impracticable for my clients to proceed to the hearing, as scheduled. As such, please accept this letter as my clients' formal request to continue the hearing and effective date on the "sunset" provision of my clients' CUP, for a reasonable period, so as to allow for a bona fide opportunity to respond to the Police

Exhibit B

Mr. Shannon Chaffin, Esquire
April 8, 2011
Page 2

and Planning Departments' concerns. To that end, I respectfully submit that a continuance of 60 days of each said date is appropriate. To force my clients to proceed to the hearing, as set, and/or to allow the "sunset" provisions of their CUP to (excuse the redundancy) sunset, would cause significant and irreparable injury to my clients and their operations, and deprive them of due process.

It is no secret that my clients have faced significant challenges over the course of the last few years; many of which involved (at least in part) the unique burden they were forced to bear by being required to "pioneer" an entirely new ordinance—the "night-club ordinance." In recognition of foregoing circumstances (the late notice of adverse recommendation, immediate and irreparable harm to my clients, unavailability of source documents, history of cooperation and hardship), I submit that the requested continuance (of the hearing on the petition filed by my clients) and extension (of the effective date of the "sunset" clause) is reasonable, and equitable.

As time is of the essence in this matter, your immediate attention and response is greatly appreciated. I thank you in advance for your anticipated courtesy and cooperation.

Very truly yours,

NUTTALL COLEMAN & WILSON

ROGER S. BONAKDAR

RSB:ltt

**CITY OF FRESNO
PLANNING AND DEVELOPMENT DEPARTMENT**

**CONDITIONS OF APPROVAL
APRIL 21, 2010**

**CONDITIONAL USE PERMIT AMENDMENT
APPLICATION No. C-09-230
7835 NORTH PALM AVENUE, SUITE 106**

Conditional Use Permit Amendment Application No. C-09-230 is approved by the Fresno Planning Commission on April 21, 2010 subject to the following conditions of approval:

A. General Conditions

1. Development shall take place in accordance with the C-2 (*Community Shopping Center*) zone district as defined in Section 12-218 of the Fresno Municipal Code;
2. Development shall comply with Fresno Municipal Code (Sections 12-326, 327) related to restaurants, taverns and night clubs;
3. Exercise of the special permit shall comply with Exhibit A (Floor Plan), dated November 10, 2009;
4. Exercise of the special permit shall comply with Exhibit O, Operational Statement dated March 10, 2010;
5. Exercise of the special permit shall comply with the Restaurant/Tavern/Nightclub CUP Conditions dated April 7, 2010;
6. Exercise of the special permit shall take place in accordance with all city, county, state and federal laws and regulations, including ABC licensing requirements.

B. Expiration or Amendment of Special Permit

1. The special permit entitled Conditional Use Permit Amendment Application No. C-09-230 shall expire twelve (12) months after final approval.
2. Six (6) months after final approval City staff shall place on the agenda a recommendation that the Planning Commission meet and review compliance with the conditions of the special permit.
3. Not later than ninety (90) days before expiration of the special permit, applicant may file an application for a revised exhibit to remove the condition of expiration.

4. At any time prior to expiration or revocation of the special permit, an application for a special permit to convert use of the property to eliminate the "Night Club" designation shall be considered a revised exhibit to the existing special permit.
5. Nothing in these conditions shall preclude the applicant from filing for a new special permit as otherwise authorized by law. The Planning Commission or decision making body may consider applicant's compliance or failure to comply with the conditions of this special permit in connection with a subsequent application for amendment, minor amendment or other special permit as a factor whether the proposed use will be detrimental to the public welfare or injurious to property or improvements.
6. In the event special permit Conditional Use Permit Amendment No. C-09-230 expires, and no other application for a new special permit has been approved, the terms and conditions of the existing Conditional Use Permit No. C-08-270 shall be applicable.