

## ATTACHMENT A

### CITY COUNCIL SPECIFIC FINDINGS FOR THE DISAPPROVAL OF EXPRESSIVE USE PERMIT #4955

#### Expressive Use Permit: to Relocate and Expand a Dance Floor

1. *The proposed use will not provide and maintain police services and crime prevention services to establish and maintain minimum response time for police calls for service as established by the City's approved General Plan.* Under the existing conditions of approval (which include a limited dance floor size and hours of alcohol sales), 61 N. Raymond Avenue can be serviced by the Pasadena Police Department. These conditions help ensure the business will operate as a bonafide restaurant and not be dominated by the entertainment use. However, relocating the dance floor to the main dining room will create a business which is dominated by its entertainment component and function more like a nightclub. Nightclubs, in general, generate greater police calls for service. The Pasadena Police Department received a substantial increase in calls to service and arrests for the business when the dance floor was relocated and enlarged without the necessary City approvals. Allowing the dance floor to be relocated to the main dining room would increase the response time and negatively impact the overall service provided by the Pasadena Police Department.

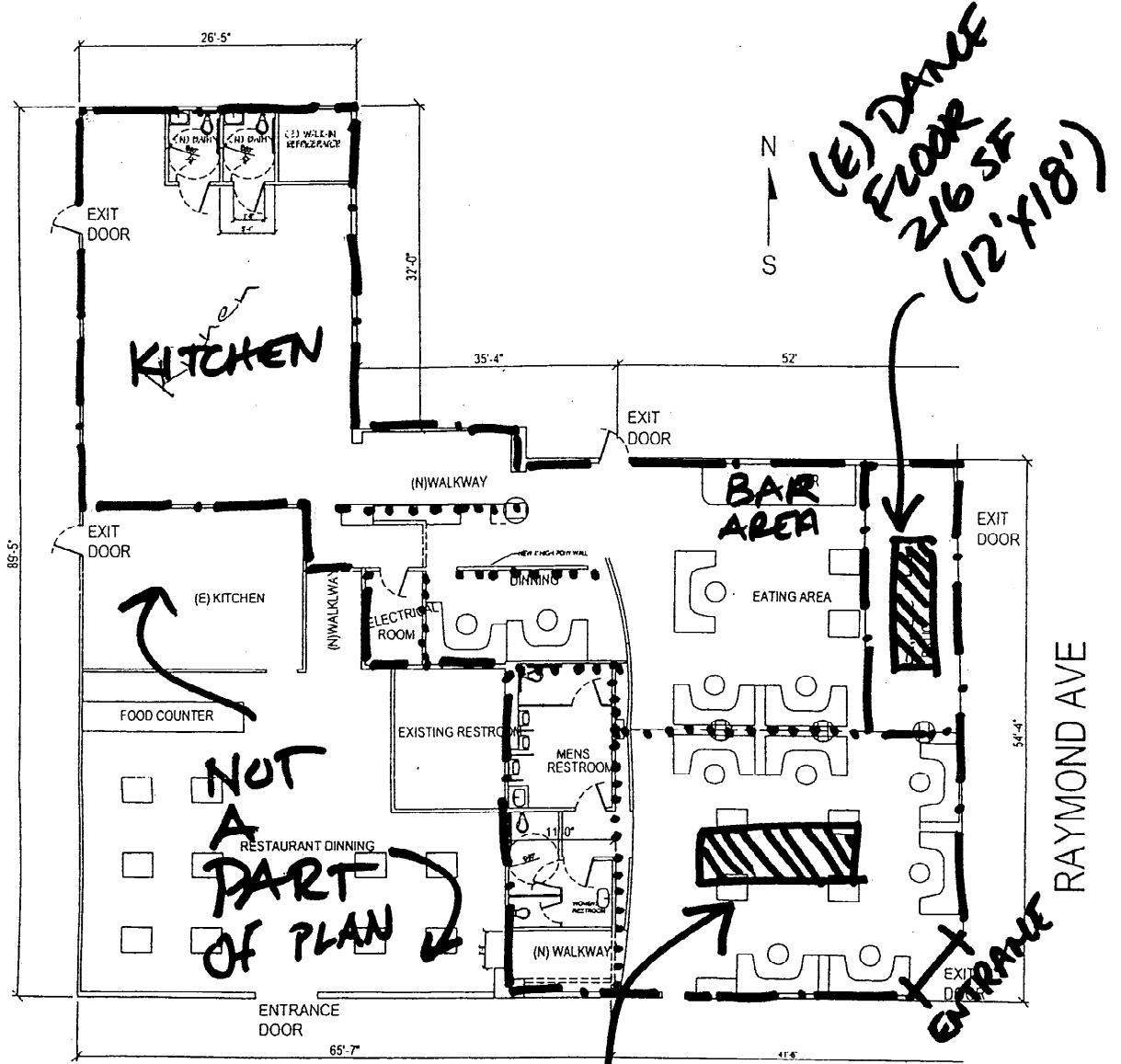
#### Modification to Conditional Use Permit # 2051 to extend the hours of alcohol sales

2. *The use, as described and conditionally approved, would be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.* Under the existing conditions of approval (which include a limited dance floor size and hours of alcohol sales), 61 N. Raymond Avenue can be serviced by the Pasadena Police Department. These conditions help ensure the business will operate as a bonafide restaurant and not be dominated by the entertainment use. The Pasadena Police Department received a substantial increase in calls to service and arrests for the business when the dance floor was relocated and enlarged without the necessary City approvals. Extending the hours of alcohol sales will further exasperate the number of calls for service. The increased noise and pedestrian traffic generated by the extended hours of alcohol sales will have a negative impact on the surrounding area, including the mixed-use residential units directly to the east and Memorial Park to the northeast.

ATTACHMENT B

EXP # 4955  
3/5/08

VIVE RESTAURANT



UNION ST.

RAYMOND AVE

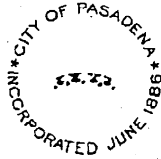
(N) New Proposed location of dance floor 216 SF

RECEIVED  
FEB 14 2008

**ATTACHMENT C**

**HEARING OFFICER DECISION LETTER AND FINDINGS FOR DISAPPROVAL**

**MARCH 7, 2008**



PLANNING & DEVELOPMENT DEPARTMENT  
PLANNING DIVISION

March 7, 2008

John Pena  
61 N Raymond Ave.  
Pasadena, CA 91103

**RE: Expressive Use Permit #4955  
61 N. Raymond Ave.  
Council District #3**

Dear Mr. Pena:

Your application for an **Expressive Use Permit** at **61 N. Raymond Ave.** was considered by the **Hearing Officer** on **March 5, 2008.**

**EXPRESSIVE USE PERMIT:** Expressive Use Permit: To relocate the dance floor area for an existing restaurant at 61 N. Raymond Avenue (Vive). The original Conditional Use Permit for live entertainment and dancing was approved in 1991 per Conditional Use Permit #2421 and modified per 1994 as Minor Conditional Use Permit #2863.

**Modification to Conditional Use Permit #2051 (CUP# 2051 approved in 1989 and modified in 1991):** To extend the hours of alcohol sales to 1:30 a.m. daily. The original Conditional Use Permit for alcohol sales was approved in 1989 and modified in 1991, which limited the hours of alcohol sales to 11:00 p.m. Sunday through Thursday and 1:00 a.m. Friday and Saturday.

After careful consideration of this application, and with full knowledge of the property and vicinity, the Hearing Officer made the findings as shown on Attachment A to this letter.

Based upon these findings, it was decided by the Hearing Officer that the Expressive Use Permit be **disapproved** in accordance with submitted plans stamped **March 5, 2008.**

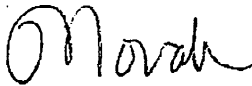
You are hereby notified that, pursuant to Pasadena Municipal Code Chapter 17.72, any person affected or aggrieved by the decision of the Hearing Officer has the right to appeal this decision within **ten days (March 17, 2008)**. The effective date of this case will be **March 18, 2008**. Prior to such effective date, a member of the City Council or Planning Commission may stay the decision and request that it be called for review to the Board of Zoning Appeals. However, if the tenth day falls on a day when City offices are closed, the appeal deadline shall be extended through the next day when offices are open. The decision becomes effective on the eleventh day from the date of the decision.

The regular Appeal fee is \$2,811.23. The Appeal fee for Non-profit Community-based Organizations pre-registered with Neighborhood Connections is \$1,405.62.

For a period of twelve months following the effective date of disapproval of a land use permit, no application for the same or substantially the same permit shall be filed except on grounds of new evidence, proof of changed circumstances, or if the disapproval was without prejudice. A disapproval is statutorily exempt from the California Environmental Quality Act.

For further information regarding this case please contact **Jason Mikaelian** at **(626) 744-6754**.

Sincerely,



Paul Novak  
Hearing Officer

Enclosures: Attachment A

xc: City Clerk, City Council, Building Division, City Manager, Acting City Manager, Public Works, Power Division, Water Division, Design and Historic Preservation, Hearing Officer, Code Enforcement-Ellen Clark, Case File, Decision Letter File, Planning Commission (9)

## ATTACHMENT A

### **SPECIFIC FINDINGS FOR THE DISAPPROVAL OF EXPRESSIVE USE PERMIT #4955**

#### Expressive Use Permit: to Relocate and Expand a Dance Floor

1. *The proposed use will not provide and maintain police services and crime prevention services to establish and maintain minimum response time for police calls for service as established by the City's approved General Plan. Under the existing conditions of approval (which include a limited dance floor size and hours of alcohol sales), 61 N. Raymond Avenue can be serviced by the Pasadena Police Department. These conditions help ensure the business will operate as a bonafide restaurant and not be dominated by the entertainment use. However, relocating the dance floor to the main dining room will create a business which is dominated by its entertainment component and function more like a nightclub. Nightclubs, in general, generate greater police calls for service. The Pasadena Police Department received a substantial increase in calls to service and arrests for the business when the dance floor was relocated and enlarged without the necessary City approvals. Allowing the dance floor to be relocated to the main dining room would increase the response time and negatively impact the overall service provided by the Pasadena Police Department.*

#### Modification to Conditional Use Permit # 2051 to extend the hours of alcohol sales

2. *The use, as described and conditionally approved, would be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City. Under the existing conditions of approval (which include a limited dance floor size and hours of alcohol sales), 61 N. Raymond Avenue can be serviced by the Pasadena Police Department. These conditions help ensure the business will operate as a bonafide restaurant and not be dominated by the entertainment use. The Pasadena Police Department received a substantial increase in calls to service and arrests for the business when the dance floor was relocated and enlarged without the necessary City approvals. Extending the hours of alcohol sales will further exasperate the number of calls for service. The increased noise and pedestrian traffic generated by the extended hours of alcohol sales will have a negative impact on the surrounding area, including the mixed-use residential units directly to the east and Memorial Park to the northeast.*

**ATTACHMENT D**  
**HEARING OFFICER STAFF REPORT**  
**MARCH 5, 2008**

**HEARING OFFICER  
STAFF REPORT  
March 5, 2008**

**SUBJECT:** Expressive Use Permit #4955

**LOCATION:** 61 N. Raymond Avenue and 53 E. Union Street

**APPLICANT:** John Pena

**ZONING DESIGNATION:** CD-1, AD-1 (Central District Specific Plan, Sub-area 1, Old Pasadena, Alcohol Density overlay 1)

**GENERAL PLAN DESIGNATION:** Central District Specific Plan

**CASE PLANNER:** Jason C. Mikaelian

**STAFF RECOMMENDATION:** Adopt the Environmental Determination and the Specific Findings in Attachment A to **disapprove** the Expressive Use Permit application and related entitlements.

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**PROJECT PROPOSAL:** Expressive Use Permit -- To relocate the dance floor area for an existing restaurant at 61 N. Raymond Avenue (Vive).

Modification to the original Conditional Use Permit (CUP# 2051 approved in 1989 and modified in 1991) for Alcohol Sales -- To extend the hours of alcohol sales to 1:30 a.m. daily.

**ENVIRONMENTAL DETERMINATION:** This project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(9); Administrative Code, Title 14, Chapter 3, §15303, Class 3, New Construction or Conversion of Small Structures). This section specifically applies to the conversion of existing small structures from one use to another such as restaurants where there are only minor modifications to the structure and the square footage is less than 10,000 square feet.

**BACKGROUND:**

**Site characteristics:** The 13,857 square foot subject property is located at the northwest corner of N. Raymond Avenue and E. Union Street and is developed with a 2-story 38,573 square foot building. Vive has a gross floor area of 4,800 square feet and is located directly at the street corner.

**Adjacent Uses:**

- North – Commercial (retail and restaurant)
- East – Commercial (retail and restaurant)
- South – Commercial (retail and office)
- West – Commercial (retail)



**Adjacent Zoning:** North – CD-1, AD-1 (Central District Specific Plan, Sub-area 1, Old Pasadena, Alcohol Density overlay 1)  
East – CD-1, AD-1  
South – CD-1, AD-1  
West – CD-1, AD-1

**Previous Cases:** CUP #2051 – For full alcohol sales at a restaurant. Approved by the Hearing Officer in 11/1989.  
CUP #2421 and Modification to CUP #2051 – For live entertainment in conjunction with a restaurant and to extend the hours of alcohol sales until 1:00 a.m. on Friday and Saturday respectively. Approved by the Hearing Officer in 10/1991.  
Modification to CUP #2421 (through a Minor CUP) – For live entertainment with dancing in conjunction with a restaurant. Approved by the Hearing Officer in 6/1994.

#### **PROJECT DESCRIPTION:**

The applicant, John Pena, on behalf of Vive Restaurant and Lounge, is requesting an Expressive Use Permit to relocate a dance floor area for an existing restaurant and to modify an existing Conditional Use Permit to extend the hours of alcohol sales.

The original application was scheduled for the January 10, 2008 Hearing Officer meeting. It included additional entitlement requests including an enlargement of the dance floor area, a Conditional Use Permit to expand full alcohol sales to additional square footage (the restaurant to the west, Brenart) and a Conditional Use Permit to convert an existing kitchen to a banquet room. Staff's recommendation was to disapprove the entitlement requests. The applicant subsequently requested the item be continued to February 20, 2008 and March 5, 2008.

The applicant has modified the scope of the entitlement requests. The applicant is only requesting to relocate the dance floor and extend the hours of alcohol sales. The applicant no longer proposes to enlarge the dance floor, expand full alcohol sales to additional square footage or establish a banquet room. However, staff still has significant concerns with the modified entitlements, and does not support the request. The reasons for staff's recommendation for disapproval are outlined further in this report.

#### Previous Entitlements

There have been several alcohol and entertainment related entitlements for the restaurant at 61 N. Raymond Avenue. In November 1989, the Hearing Officer approved Conditional Use Permit #2051 to establish full alcohol sales for the restaurant. The conditions of approval prohibited live entertainment and limited the hours of alcohol sales to 11:00 p.m. Sunday through Thursday and to 12:00 a.m. on Friday and Saturday. In October 1991, the Hearing Officer approved Conditional Use Permit #2421 to allow live entertainment in conjunction with the existing restaurant. The live entertainment was limited to traditional folk style Irish music performed by groups of not more than four members. In addition, the Hearing Officer approved a modification to Conditional Use Permit #2051 to extend alcohol sales to 1:00 a.m. Friday and Saturday.

In 1994, the Hearing Officer approved a modification to Conditional Use Permit #2421 to expand the type of live entertainment to include all types of music, dancing with amplified music and disc jockeys and to establish a dance floor in the northeast corner of the restaurant (Vive).

### Current Entitlements

Earlier in 2007, the restaurant at 61 N. Raymond Avenue relocated and expanded the size of the dance floor without City approval. The Pasadena Police Department and Code Compliance were made aware of this and told the applicant to meet with the Planning Division. The Planning Division met with the applicant and stated the dance floor would need to be located in its original location and the applicant would need to apply for an Expressive Use Permit to relocate and expand the dance floor (since entertainment uses are no longer established or modified through the Conditional Use Permit, an Expressive Use Permit is now required).

The applicant then submitted the current application, which includes the following entitlement requests:

- An Expressive Use Permit to relocate the dance floor area for 61 N. Raymond Avenue (Vive);
- A Modification to the original Conditional Use Permit (CUP# 2051 approved in 1989 and modified in 1991) to extend the hours of alcohol sales to 1:30 a.m. daily.

### **ANALYSIS:**

#### Expressive Use Permit: to Relocate the Dance Floor

An Expressive Use Permit is required when commercial entertainment is provided. Commercial entertainment includes establishments that provide live entertainment including patron dancing or entertainment in an area exceeding 75 square feet of floor area. In 1994, the business received a permit to provide live entertainment and a 216 square foot dance floor (18 feet by 12 feet) in the northeast corner of the restaurant in an enclosed room. One of the existing conditions of approval stated that the dance floor shall substantially conform to the plans submitted and any modifications to the size or location of the dance floor shall be subject to the review and approval of the Zoning Administrator.

Originally, the applicant requested the dance floor be enlarged to 432 square feet (24 feet by 18 feet) and relocated to the southeast portion of the restaurant in the middle of the main dining area. The modified application still calls for the dance floor to be relocated to the middle of the main dining area, but to limit its size to 216 square feet. The applicant proposes to construct low walls around the dance floor area, to distinguish the dance floor area from the rest of the main dining room.

However, staff does not support the request to relocate the dance floor. One of the existing conditions of approval is that the use is to operate as a bonafide eating establishment at all times and the sale of alcohol and presence of live entertainment is to be subsidiary to the sale of food. This is important because the standards for a restaurant with entertainment and alcohol sales is different compared to a nightclub with alcohol sales. If the use were to be reclassified as a nightclub with alcohol sales, it would be subject to the Alcohol Density Overlay requirements, which requires a 250 foot separation to any other bar, billiard parlor or nightclub with alcohol sales or use with off-site alcohol sales. The current area approved for dancing is located in a separate room in the northeast corner of the restaurant. The dance floor occupies the majority of the small room, which limits the potential for dancing to overflow into other areas

of the restaurant. Since the dance floor is located away from the entrance in a separate room, it does not dominate the restaurant use.

The proposed dance floor would be located in the main dining room near the entrance of the restaurant. The main dining room is significantly larger than the proposed dance floor and it would be difficult to physically separate dancing from the other areas of the restaurant. Staff does not feel that low walls would be enough to separate the dancing from the other areas of the restaurant. Since the dance floor would be located near the main entrance, it would dominate the restaurant use. Thus, when the dance floor is in use, staff finds the use would operate more like a nightclub, rather than a restaurant. The Pasadena Police Department also expressed concerns regarding the request, which will be discussed further in this report.

Therefore, staff recommends disapproval of the Expressive Use Permit to relocate the dance floor.

#### Modification to Conditional Use Permit #2051 to Extend Hours of Alcohol Sales

In 1989, the Hearing Officer approved Conditional Use Permit #2051 for 61 N. Raymond Avenue, which limited alcohol sales to 11:00 p.m. Sunday through Thursday and midnight on Friday and Saturday. In 1991, the Hearing Officer approved a modification to the original hours of alcohol sales, and extended the hours of alcohol sales to 1:00 a.m. on Friday and Saturday. The applicant is now requesting to modify the original Conditional Use Permit and extend the hours of alcohol sales to 1:30 a.m. daily.

However, staff does not support the request to extend alcohol sales. Alcohol sales for other restaurants in the Old Pasadena area range from midnight to 1:30 a.m. However, most of the restaurants with alcohol sales until 1:30 a.m. do not also have live entertainment or dancing. Furthermore, most of those businesses are located along Colorado Boulevard or Fair Oaks Avenue, the two main streets in the Old Pasadena area. The subject tenant spaces are located two blocks north of Colorado Boulevard and in close proximity to mixed-use residential units and Memorial Park. The Pasadena Police Department also expressed concerns regarding the request, which will be discussed further in this report.

Within a 250-foot radius of the expanded location, eight other establishments currently provide on-site alcohol sales. No establishments provide sales for off-site alcohol consumption. Based on the analysis provided by the Department of Alcoholic Beverage Control, the subject site is located within Census Tract #4619, which has 48 businesses with alcohol sales for on- or off-site consumption. This is considered an undue concentration of establishments that sell alcohol. A request to extend the hours of alcohol sales would further compound the undue concentration of the surrounding area.

Therefore, staff recommends disapproval of Modifying the Conditional Use Permit to extend the hours of alcohol sales.

#### **POLICE DEPARTMENT AND OTHER CITY DEPARTMENT COMMENTS:**

In reviewing the application, the Pasadena Police Department does not support the modified entitlements. The Police Department has specific concerns regarding the business at 61 N. Raymond Avenue. Police calls for service for the restaurant increased substantially over the past year, from 13 calls for service in 2005 and 11 in 2006 to 38 in 2007 (through October 29, 2007). The number of arrests have also increased from one each in 2005 and 2006 to seven in

2007 (through October 29, 2007). A large number of the calls for service and arrests were related to public drunkenness. The Police Department attributes the increase in calls and arrests to two main changes which occurred in 2007 – the dance floor was relocated and made more visible attracting more customers and activity in the area and there were increased police foot patrols in the Old Pasadena area.

The Police Department is concerned that the past record of the business (increased calls for service), the type and extent of the current entitlement requests (a more visible dance floor with extended hours of alcohol sales) and the proposed site plan design (dance floor in the middle of the main dining room) would result in the business operating like a nightclub rather than a bonafide restaurant. The Police Department is concerned that if the requested entitlements were approved, calls for service and arrests will continue to increase and compromise police response times and overall service for the Old Pasadena area.

The Police Department recommends the live entertainment component should continue only as original approved (i.e. with the dance floor away from the main dining room and earlier hours of alcohol sales) with all existing conditions of approval maintained and enforced.

The Fire Department, Building Division, Health Department and Public Works Department provided general comments on the project. No other Departments had comments related to the proposed application.

**ENVIRONMENTAL REVIEW:**

This project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act (Public Resources Code §21080(b)(9); Administrative Code, Title 14, Chapter 3, §15303, Class 3, New Construction or Conversion of Small Structures). This section specifically applies to the conversion of existing small structures from one use to another such as restaurants where there are only minor modifications to the structure and the square footage is less than 10,000 square feet. No trees are proposed for removal.

**CONCLUSION:**

It is staff's assessment that the findings cannot be made for approval of the Expressive Use Permit and related entitlements. The existing conditions of approval for the alcohol sales, entertainment and dancing shall be maintained and enforced. Therefore, staff recommends that the Hearing Officer disapprove the Expressive Use Permit and modification to the original Conditional Use Permit, with the findings in Attachment A.

**ATTACHMENT E**  
**EXISTING COMBINED CONDITIONS OF APPROVAL**  
**61 N. RAYMOND AVENUE**

Conditional Use Permit #2051 (for alcohol sales for a restaurant, approved 11/3/1989)

1. No customer waiting shall be permitted outside of the restaurant.
2. No live entertainment shall be provided unless an additional use permit is obtained. (*MODIFIED in 1991 & 1994 by approval of new entitlements for entertainment use*).
3. The applicant shall meet the conditions of all other City departments.
4. The applicant shall provide evidence to the satisfaction of the Zoning Administrator that all parking requirements are met (*SUPERSEDED in 1994 per Condition #7*).
5. The hours of operation shall not be later than 11:00 p.m. Sunday through Thursday and not later than midnight on Friday and Saturday (*MODIFIED in 1991 per Condition #4*).

Conditional Use Permit #2421 (for live entertainment, approved 10/22/1991)

1. The sale of alcoholic beverages shall be considered subsidiary to the sales of food.
2. The live entertainment shall be limited to traditional and folk style Irish music performed by groups of not more than four members (*MODIFIED in 1994 per Condition #2*).
3. The music shall be amplified to a level which could be heard throughout the restaurant but not disturbing to conversation. Amplification of the music shall comply with the regulations of Chapter 9.36 of the Municipal Code.
4. The business hours of operation shall be 11:00 a.m. until 11:00 p.m. on Sunday through Thursday and from 11:00 a.m. until 1:00 a.m. (the following day) on Fridays and Saturdays. Live entertainment may occur on not more than four days per week.
5. Loitering outside the restaurant shall not be permitted.
6. Any signs erected to advertise live entertainment must comply with the regulations of Section 170.33.070(P) of the Municipal Code. Signs advertising the sale of any alcoholic beverage shall not be visible from any location off the subject site unless the sign is exempt from the regulations under Section 17.33.070(P2) of the Municipal Code.
7. Parking for the use shall be located in the parking structure located at 48 N. Raymond Avenue. The number of parking credits allowed under Variance 10956 shall not be exceeded.

8. The operator of the use shall comply with all the conditions of Conditional Use Permit #2051 except as modified herein.
9. The applicant shall meet the applicable code requirements of all other City Departments (*duplicate condition*).

Modification of Conditional Use Permit #2421, through Minor Conditional Use Permit #2863 (for live entertainment with dancing, approved 6/16/1994)

1. All conditions of approval imposed under Conditional Use Permit #2421 shall remain in effect, except as modified herein.
2. Live entertainment shall be limited to dancing with amplified music and disc jockeys, live musical acts performed by groups of not more than four members and other similar activities subject to the review and approval of the Zoning Administrator.
3. The use shall be maintained as a bonafide eating establishment and shall remain open for the lunch and dinner clientele. Food service shall be made available during all hours of business operation.
4. Establishment of the dance floor area shall substantially conform to the plans submitted for this application. Any modification to the size or location of the dance floor shall be subject to the review and approval of the Zoning Administrator (*note: the site plan shows a dance area of 18 feet by 12 feet in the northeast corner of the restaurant space*).
5. The applicant shall meet the applicable code requirements of all other City Departments (*duplicate condition*).