

**COUNTY OF EL DORADO
PLANNING AND BUILDING DEPARTMENT
PLANNING COMMISSION
STAFF REPORT**



Agenda of: April 9, 2020

Staff: Tom Purciel

CONDITIONAL USE PERMIT

FILE NUMBER: CUP19-0010/Poor Reds BBQ Live Music

PROPERTY

OWNER/APPLICANT: Jeff Genovese

REQUEST: A conditional use permit to allow up to 35 live music events per year for patrons of the Poor Red's restaurant, from March to November, in an existing semi-enclosed outdoor dining patio. Amplified music for each event would be limited to the hours of 6:00 pm to 10:00 pm on weekdays and 12:00 pm to 10:00 pm on weekends and holidays.

LOCATION: On the north side of Pleasant Valley Road at the intersection with State Route 49 in the El Dorado area, Supervisorial District 3. (Exhibits A, B & C)

APN: 331-113-013 (Exhibit D)

ACREAGE: 0.46 acres

GENERAL PLAN: Commercial (C) (Exhibit E)

ZONING: Main Street Commercial (CM) (Exhibit F)

ENVIRONMENTAL DOCUMENT: Categorically Exempt Pursuant to Section 15305 (Minor Alterations in Land Use Limitations) of the CEQA Guidelines

RECOMMENDATION: Staff recommends the Planning Commission take the following actions:

1. Find the project Exempt from CEQA pursuant to Section 15305 of the CEQA Guidelines (Minor Alterations in Land Use Limitations); and

2. Approve Conditional Use Permit CUP19-0010 based on the Findings and subject to the Conditions of Approval as presented.

EXECUTIVE SUMMARY

Approval of Conditional Use Permit CUP19-0010 would allow up to 35 live music events per year for restaurant patrons, from March to November, in an existing semi-enclosed outdoor dining patio (Exhibit C). Amplified music for each event would be limited to the hours of 6:00 pm to 10:00 pm on weekdays and 12:00 pm to 10:00 pm on weekends and holidays, and event noise levels will remain below Zoning Ordinance noise thresholds. Event sound system speakers would be located on the north edge of the dining patio and be oriented to face south, toward the restaurant seating in the center of the patio and away from the closest residential uses (Refer to the project Site Plan, Exhibit L.). No signage or event materials are proposed as part of the project. As proposed and conditioned, the project will be consistent with all applicable Zoning regulations and General Plan policies.

OTHER PROJECT CONSIDERATIONS

Noise: Noise from outdoor amplified music has historically been a public concern throughout the unincorporated County. As noted in Zoning Ordinance Section 130.37.050 (Acoustic Analysis Requirements), an acoustic analysis, prepared by an acoustic specialist, shall be required prior to discretionary permit approval when new noise generating uses could potentially exceed the noise limits found in Zoning Ordinance Table 130.37.060.1 (Noise Level Performance Standards for Noise Sensitive Land Uses Affected by Non-Transportation Sources). Due to potential noise conflicts associated with the project, an Environmental Noise Assessment was completed on September 24, 2019 by Bollard Acoustical Consultants (Exhibit G). The noise assessment found that, as proposed, noise from outdoor amplified music events would not exceed the noise level limits in Table 130.37.060.1. Further, the noise assessment also found that noise levels at the closest residential properties would remain below the maximum thresholds in the table. As noise levels would be below the required limits, the study further noted that no noise mitigation measures would be warranted for this project. To ensure ongoing compliance with noise limits in perpetuity, the noise assessment recommended restaurant management procure a sound level meter and limit the average and maximum sound output of the amplified music and speech to an average of 75 dB at a position 50 feet in front of the speakers. This recommendation has been incorporated into the project as Condition of Approval No. 4.

Traffic and Parking: Zoning Ordinance Section 130.35 (Parking and Loading) requires a parking plan be reviewed and approved prior to permitting any new development or uses on a parcel. However, for purposes of parking regulations, outdoor live music events are not considered new development or a new use because live music would be presented to existing restaurant and bar patrons only, and therefore, occupancy limits for the establishment, recently reviewed and approved by County agencies in 2015 (building permit No. 237795) would not be exceeded. Therefore, the existing parking spaces will be sufficient for the proposed use and no additional parking review is required for this permit. The Department of Transportation (DOT) also reviewed the project application and determined that, based on the scope of the project,

there would be no significant public safety or transportation-related impacts as a result of the project.

Intersection Safety:

On January 16, the project was presented to the Diamond Springs and El Dorado Community Advisory Committee (CAC) for review and advisory comments. The CAC expressed unanimous support for the project. However, in response to comments by a member of the public, the CAC raised questions about crosswalk safety at the intersection of State Route 49/Pleasant Valley Road south of the project site (Refer to CAC comments, Exhibit H).

DOT reviewed the CAC comments and suggestions concerning intersection safety as well as public records regarding existing intersection conditions near the project site. This analysis is discussed below. Based on information supplied by the applicant, DOT found that crosswalk lighting was less than recommended by Caltrans in rural areas, however, DOT elected not to require Poor Reds to improve the lighting at this crosswalk. First, DOT determined intersection lighting was an existing problem within the Caltrans Right of Way and not related to the Poor Reds establishment. Second, the addition of live music would not increase the service capacity of the restaurant or the occupant capacity of the building, and therefore, there would be no relationship (nexus) between existing intersection lighting and this CUP request.

Further, DOT reviewed Caltrans and County accident records for the adjacent crosswalk and found no records of pedestrian-involved collisions to date. In addition, DOT also reviewed the CAC suggestion to consider installing a “YIELD TO PEDESTRIANS IN CROSSWALK” sign within the crosswalk. DOT determined this type of sign would not be allowed because use of such signs is not permitted based on regulations in the California Manual on Uniform Traffic Control Devices (CAMUTCD). In summary, DOT recommended that no intersection or crosswalk safety improvements, including signage or lighting, be required as part of this project. For additional details, please refer to the DOT response to CAC comments, dated February 26, 2020 (Exhibit I).

SETTING

Historic Setting

The project parcel is located in the west-central portion of El Dorado County on the north side of Pleasant Valley Road at the intersection with State Route 49 (Exhibits A and B). The project site is located in and adjacent to a historic structure in the central portion of the historic El Dorado townsite (Exhibit C). Located on the southwest side of the project parcel, the primary building was originally constructed in 1857 as a Wells Fargo stage stop. In 1927, the building was converted to a bar and barbeque establishment and received its current name from a previous owner known as “Poor Red” in 1945. The establishment has remained in mainly-continuous operation as a bar and grill since 1927. In 2014, the current owners purchased the establishment, completed necessary repairs and renovated the historic bar and restaurant in order to preserve the restaurant’s unique history and meet current public health, safety and fire regulations. The establishment reopened to the public in the spring of 2016.

Existing Conditions/Adjacent Uses

The project parcel is located in the historic townsite of El Dorado, approximately 1,600 feet above sea level. The parcel is mainly flat, however, the rear of the parcel (north side) gently slopes upwards to adjacent residential uses. The project parcel is fully developed with a restaurant/bar, semi-enclosed outdoor dining patio area and rear parking lot. (Refer to the site aerial photo, Exhibit C.) The project parcel is surrounded by other Main Street Commercial (CM) - zoned parcels (Refer to the Zoning Map, Exhibit F). The parcels to the north and west are currently developed with nonconforming residential uses. The parcels to the south of the project, across State Route 49/Pleasant Valley Road, are developed as a parking lot and automobile repair shop, while the parcels to the east are developed with professional offices and retail stores. The closest residential uses to the project site (outdoor dining patio) are located approximately 75 feet to the west and 90 feet to the north (Exhibit C).

Project Background:

Live music events have historically been associated with restaurant establishments in El Dorado County. Prior to adoption of the 2015 Zoning Ordinance Update (ZOU), places of entertainment (when not fully enclosed in a building) were previously allowed by Special Use Permit (now Conditional Use Permit) in all commercial zones (except for the Professional Office Commercial [CPO] zone, not located in the project vicinity). However, after adoption of the ZOU in December 2015, the outdoor entertainment use was inadvertently omitted from the allowed use tables for the CM zone (previous Table 130.22.020), and the CUP option was no longer available for outdoor entertainment.

After the 2015 ZOU, a Temporary Use Permit (TUP), as allowed in Zoning Ordinance Chapter 130.52.060 (Temporary Use Permit) remained the only option to allow outdoor entertainment events in the CM zone. However, pursuant to Section 130.52.060(E)(1) (Temporary Use Permit-Requirements for Approval), a TUP can only allow up to six special events per calendar year. Therefore, TUP applicants desiring to hold repeating/ongoing special events are required to re-apply for a new TUP at the beginning of each calendar year for anticipated events to be held during that year.

In July, 2018, the Board of Supervisors adopted a package of minor amendments to the Zoning Ordinance, which included an amendment to Zoning Ordinance Table 130.22.020 (Allowed Uses and Permit Requirements for the Commercial Zones) to correct the previously discussed omission of outdoor entertainment in the CM zone; outdoor entertainment was added as an allowed use by CUP for the CM zone.

While waiting for the above-discussed Zoning Ordinance amendments to be completed, the owner requested two TUPs (TUP18-0004 and TUP19-0003, attached as Exhibit J) to allow a series of live music events during 2018 and 2019 for restaurant patrons at the restaurant's outdoor dining patio. These permitted events occurred with no complaints of excessive noise, traffic, pedestrian safety concerns or other issues as a result of the outdoor music events.

PROJECT DESCRIPTION

Conditional Use Permit CUP19-0010 would allow up to 35 live music events per year for Poor Red's restaurant patrons, from March to November, in an existing semi-enclosed outdoor dining patio (Exhibit C). Amplified music for each event would be limited to the hours of 6:00 pm to 10:00 pm on weekdays and 12:00 pm to 10:00 pm on weekends and holidays. Event sound system speakers would be located on the north edge of the dining patio and be oriented to face south, toward the restaurant seating in the center of the patio and away from the closest residential uses to the north (Exhibit L). To ensure live music events comply with Zoning Ordinance noise limits in perpetuity, the project will be conditioned to require restaurant management procure a sound level meter and limit the average and maximum sound output of the amplified music and speech to an average of 75 dB at a position 50 feet in front of the speakers. For monitoring purposes, records of measured sound levels during each event would be required to be documented and recorded in a log kept on the premises, and made available to County staff upon request. No signage or event materials are proposed as part of the project.

STAFF ANALYSIS

Environmental Review: Staff reviewed the project and found it exempt from CEQA pursuant to Section 15305 of the CEQA Guidelines (Minor Alterations in Land Use Limitations), applying to projects with minor alterations in land use limitations in areas with average slopes of less than 20 percent and which do not result in any changes to land use or density.

General Plan Consistency: Staff has reviewed the project for consistency with all applicable General Plan policies including Policy 2.2.1.2 (appropriate land use types and density), Policy 2.2.5.2 (General Plan Consistency), Policy 2.2.5.21 (compatibility with adjoining land uses), Policy 6.5.1.2 (noise from new non-residential uses near noise-sensitive uses) and Policy 10.1.6.1 (promotion of local businesses). Staff has determined that the project is consistent with these policies and related requirements in the El Dorado County General Plan, as discussed in more detail in Section 2.0 of the Findings.

Zoning Ordinance Consistency: Staff has determined that the project is consistent with applicable regulations in Title 130 of the County Ordinance Code, including the CUP requirement for outdoor entertainment in the CM zone (Table 130.22.020 – Allowed Uses and Permit Requirements for the Commercial Zones), Chapter 130.35 (Parking and Loading) and Chapter 130.37 (Noise Standards). For details, please refer to the discussion in Section 3.0 of the Findings.

Public and Agency Comments: The project was distributed to all applicable public agencies and organizations for review and comment including the County Department of Transportation (DOT), the Diamond Springs and El Dorado Community Advisory Committee (CAC), the County Environmental Management Division (EMD), the Diamond Springs and El Dorado Fire Protection District and the El Dorado Disposal waste management company. Of these agencies and organizations notified of the project, comments were received from DOT, the Diamond Springs and El Dorado CAC and the County EMD. With the exception of the CAC, none of these agencies or organizations had any significant issues or concerns regarding the project. Of

the reviewing agencies, only the County EMD recommended one standard condition of approval (waste and recycling disposal) to ensure the project will comply with solid waste regulations. Comments from the CAC, and DOT's response, are discussed previously in this report. To date, no public comments have been submitted for the project.

Public Outreach:

County Staff: No formal public outreach was conducted by the County, and a public outreach plan was not required for this project pursuant to the County Zoning Ordinance. However, the project was duly noticed for a Planning Commission public hearing with a public notification range of 1,000 feet and legal advertisement was published in applicable local newspapers. In addition, project notification was also sent to the County's Planning Commission email subscription list and posted on the Planning Services Planning Commission webpage. No physical sign posting is required for Conditional Use Permits.

Property Owner/Applicant: While not required as part of the County process, the owner/applicant conducted his own public outreach, meeting with adjacent property owners on the east, west and north sides of the project site. Letters of support from those adjacent property owners are attached as Exhibit K.

Conditions of Approval: With the exception of comments from the CAC, discussed previously in this report, none of the reviewing agencies and organizations expressed significant issues or concerns regarding the project. Of the commenting County agencies, only the County EMD recommended a standard condition of approval (waste and recycling disposal) which has been incorporated into the project as Condition of Approval No. 5. In addition to the EMD comments, the project noise assessment recommended regular noise monitoring during live music events to ensure noise levels remain below the thresholds in the Zoning Ordinance. Planning Services has incorporated this requirement into the project as Condition of Approval No. 4.

SUPPORT INFORMATION

Attachments to Staff Report:

Findings
Conditions of Approval

Exhibit A.....Vicinity Map
Exhibit B.....Location Map
Exhibit C.....Site Aerial Photo
Exhibit D.....Assessor’s Parcel Map
Exhibit E.....General Plan Land Use Map
Exhibit F.....Zoning Map
Exhibit G.....Environmental Noise Assessment, September 2019
Exhibit H.....Comments from the Diamond Springs and El
Dorado Community Advisory Committee (CAC),
Dated January 17, 2020
Exhibit I.....DOT Response to CAC Comments, Dated February
26, 2020
Exhibit J.....Previous Temporary Use Permits TUP18-0004 and
TUP19-0003
Exhibit K.....Adjacent Property Owner Letters of Support
Exhibit L.....Site Plan