



**PLANNING DIVISION STAFF REPORT**  
**PLANNING COMMISSION MEETING *September 12, 2013***

Prepared by: Ron Miller, Associate Planner

**ITEM VI-A: APPEAL OF PLANNING DIRECTOR'S DECISION – 411 LINCOLN STREET - McRAE OPERA HOUSE - FILE # 2012PL-067 (APP-000003).**

**REQUEST**

The appellant is appealing a condition on an approved Minor Design Review Permit (MDRP) which states that occupancy of the proposed fence enclosure by patrons of the McCrae Opera House Saloon constitutes an expansion of an existing nightclub and is not permitted without approval of a Conditional Use Permit, per the City's Downtown Code.

**BACKGROUND**

The above-referenced Appeal (APP-000003) was scheduled for two prior Planning Commission meetings (July 25, 2013 & August 22, 2013), and was continued to the September 12, 2013 meeting. The staff report, recommendation, and attachments prepared for the August 22, 2013 Planning Commission meeting are still applicable and are attached (see Attachment 1).

**Appellant Position:** Subsequent to August 22, 2013, Planning staff has received email correspondence (see Attachment 2) from the appellant regarding the California Historical Building Code (CHBC) and its intent regarding expansions and use of qualified historical buildings or property (CHBC – Sections 8-101.3 through 8-102.1.1) (see Attachment 3).

It is the appellant's position that the intent of the above-referenced CHBC sections is to allow nonhistorical expansions and continued use of Historical Buildings, regardless of any period of inactivity.

**CHBC Applicability:** Staff does not disagree that the intent of the CHBC is to allow for expansion and continued use of Historical Buildings; however, additional clarification of the CHBC is necessary, as described below.

**CHBC Section 8-102.1.1** states that "It is the intent of the CHBC to allow nonhistorical expansion or addition to a qualified historical building or property, provided nonhistorical additions shall conform to the requirements of the regular code." Chapter 8-2 of the CHBC defines Regular Code as the adopted regulations that govern the design and construction or alteration of nonhistorical buildings and properties within the jurisdiction of the enforcing agency.

As described in the attached staff report, the City's Zoning Ordinance, Downtown Code, and the California Building Code govern the design, construction and alteration of nonhistorical buildings and properties, which includes the walled enclosure at the McCrae Opera House building. Based on these codes, 1) occupancy of the walled enclosure by patrons is not permitted without approval of a Conditional Use Permit (Downtown Code Chapters 2.3.2 and 7.4B.1, and 2) to ensure that there are no health/safety issues, a building permit is required prior to occupancy by patrons of the Opera House Saloon, as the exit door at the rear of the building serves as egress for the entire building.

This has been recently confirmed (September 5, 2013) by Richard Conrad, the now retired Executive Director of the State of California Historical Board. Per Mr. Conrad, that while the Historical Code is intended to preserve the history of California, it is not intended to allow for expanded uses without adhering to current regulations. This reaffirms Mr. Conrad's finding in May 2012 which found that a nightclub is permitted in those areas where similar uses have been allowed in the past, provided that the building

otherwise conforms to all applicable requirements of the CHBC, and that any alteration or expansion is subject to current requirements of the 2010 State Building Code as well as applicable local requirements.

**CHBC Section 8-102.1.4** applies to continued use of qualified historical buildings or properties and states, “Qualified historical buildings or properties may have their existing use or occupancy continued if such use or occupancy conformed to the code or to the standards of construction in effect at the time of construction...”

**CHBC Section 8-302.1** applies to existing use of a historical building and states, “The use or character of occupancy of a qualified historical building or property, or portion thereof, shall be permitted to continue in use regardless of any period of time in which it may have remained unoccupied or in other uses, provide such building or property otherwise conforms to all applicable requirements of the CHBC.”

As addressed in the attached staff report, a nightclub is permitted in those areas where similar uses have been allowed in the past, provided that the building otherwise conforms to all applicable requirements of the CHBC. Staff agrees the nightclub use may continue within the confines of the existing historic building; however, the McRae Opera House building has no history of outside activity. Historically, all activity at the site has occurred within the building.

**CONCLUSION**

To protect nearby residents from noise and other impacts associated with nightclub operations during late night hours, the City’s Downtown Code establishes a Nightclub use as a Conditionally Permitted Use within the Downtown Specific Plan (DTSP) District DT-4 (Historic District north of Main Street). Therefore, approval of a CUP, as described in Chapter 19.74 of the Zoning Ordinance is required. The City’s Zoning Ordinance states that a CUP shall be obtained prior to modification or expansion of a Conditionally Permitted Use and/or a nonconforming use.

The patio area created by construction of the fence/wall enclosure is an expansion of the Nightclub use. Therefore, occupancy of the enclosure by patrons is not permitted without approval of a Conditional Use Permit, per the CHBC, the City’s Downtown Code Chapters 2.3.2 and 7.4B.2, and approval of a building permit, per the CHBC and California Building Code. The CUP will allow a thorough evaluation of outdoor activities in the patio area and for inclusion of operational restrictions to address impacts on adjacent residents.

**ATTACHMENTS**

- 1. Staff Report Prepared For August 22, 2013 Planning Commission Meeting
- 2. Email From Appellant
- 3. California Historic Building Code Chapters

**Note to Applicant and/or Developer:** Please contact the Planning Department staff at (916) 774-5276 prior to the Commission meeting if you have any questions on any of the recommended conditions for your project. If you challenge the decision of the Commission in court, you may be limited to raising only those issues which you or someone else raised at the public hearing held for this project, or in written correspondence delivered to the Planning Director at, or prior to, the public hearing.