

**CITY OF TEMPE
DEVELOPMENT REVIEW COMMISSION**

**Meeting Date: 10/24/2023
Agenda Item: 4**

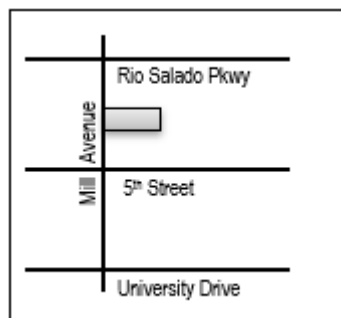
ACTION: Request a Use Permit to allow a series six bar and a Use Permit for live entertainment for DEVIL’S HIDEAWAY, located at 401 South Mill Avenue. The applicant is Line Lab.

FISCAL IMPACT: N/A

RECOMMENDATION: Staff – Approve, subject to conditions

BACKGROUND INFORMATION: DEVIL’S HIDEAWAY (PL230251) is located in the historic Andre Building at the north end of Mill Avenue, on the east side. The ground floor was previously occupied by Rula Bula restaurant and has been vacant since 2021. The request includes the following:

- ZUP230058 Use Permit to allow live entertainment in the CC District.
- ZUP230061 Use Permit Standard to allow a Series Six Bar in CC District.



Property Owner	Angela Topolosek, Tempe 401 S Mill Ave LLC
Applicant	Wesley James, Line Lab
Zoning District	CC, City Center
Site Area	9,375 s.f.
Building Area	9,526 s.f. (two floors)
Building Height	30’ (two stories)
Vehicle Parking	0 spaces
Bicycle Parking	0 spaces
Hours of Operation	11am to 2am daily for bar use 3pm to 6pm for live entertainment on patio requested
Building Code Occupancy	A-2

ATTACHMENTS: Development Project File

STAFF CONTACT(S): Diana Kaminski, Senior Planner (480) 858-2391

Department Director: Jeff Tamulevich, Community Development Director
 Legal review by: N/A
 Prepared by: Diana Kaminski, Senior Planner
 Reviewed by: Mailen Pankiewicz, Principal Planner

COMMENTS

The site is located on the east side of Mill Avenue in the former Rula Bula restaurant suite. The proposed bar would be 4,901 square feet of interior space and 2,210 square feet of outdoor patio area located on the ground floor of the Historic Andre Building at the north end of Mill Avenue on the east side of the side. To the north of the property is a common area and large parking lot owned by Tempe Mission Palms, which is located east of the site. The 3rd Street light rail station is located to the north west of the site. To the south of the building is a vacant commercial building and a nightclub. The prior restaurant Rula Bula operated under a Series 12 liquor license and had a use permit for live acoustic entertainment with limited hours. Rula Bula closed in 2021 and the use permit expired without active use. Devil's Hideaway is requesting the Development Review Commission approve a Use Permit for a Series 6 liquor license bar and a use permit for both indoor and outdoor live entertainment.

Proposed alterations to the building's façade, including the character-defining recessed bay doors, would be detrimental to the historic integrity of the building and constitute a major change to the historic appearance of the building, which was restored in 1981. Because the building is listed on the National Register of Historic Places, the State Historic Preservation Office (SHPO) would be tasked with determining whether the proposed alterations would result in the building being delisted from the National Register and deemed ineligible for federal or state historic tax credits. SHPO already informally determined that a previous, less invasive change to the building's historic fabric would potentially threaten the building's National Register status.

PUBLIC INPUT

Upon completion of this report, staff has received one email of inquiry regarding this request.

POLICE INPUT

A security plan will be required for the Series 6 Liquor License and Live Entertainment.

USE PERMIT

The proposed business requires a Use Permit to allow a Series 6 bar with live entertainment within the CC City Center Zoning District.

Section 6-308(E) Approval *criteria* for Use Permit for Series 6 Bar in the CC District:

1. *Any significant increase in vehicular or pedestrian traffic;* The bar is 4,901 s.f. which is the same as the prior restaurant. Parking is waived for the first 5,000 s.f. of commercial use on each lot and the property has no onsite parking. Patrons to this site would be taking light rail or ride share service or parking in the downtown area and walking to the site. It would be expected that an increase in pedestrian traffic would occur with the intensification of the bar use, which is part of the downtown attraction.
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions;* The change from series twelve to series six liquor license is not anticipated to generate any greater nuisance than the surrounding conditions.
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan;* The objectives of the Economic Development Chapter of General Plan 2040 which are implemented by this request are: ED1. Sustain a business climate that fosters private business investment, ED2 Develop an increased tax base, and ED4 Remain flexible in a constantly changing economy. Maintaining the historic integrity of the building with a viable business helps implement goals of the Land Use Chapter LU7 Encourage preservation of significant and archeological resources and Historic Preservation Chapter HP1 Identify, preserve and protect significant historic properties and archaeological sites.
4. *Compatibility with existing surrounding structures and uses;* there are approximately 13 series 6 and 27 series 12 liquor licenses within the immediate downtown area within a block of and along Mill Avenue. The existing structure is one of the oldest remaining buildings in the area and the use is similar to and compatible with other bars and restaurants within the area.
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the*

surrounding area or general public; The business owner has a demonstrated history of business operation and management on Mill Avenue and is aware of all requisite regulations for operation of a bar. A security plan will be required.

Section 6-308(E) Approval *criteria* for Use Permit for live entertainment:

1. *Any significant increase in vehicular or pedestrian traffic*; The proposed addition of live entertainment is ancillary to the main use, there are no proposed ticket sales for the entertainment, therefore it is not a destination use. Pedestrian and transit and ride share traffic is expected as part of the downtown entertainment experience.
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions*; The applicant has proposed hours of entertainment for indoor and outdoor to mitigate ambient noise in the evening hours that would impact hotel guests next door, the proposed entertainment would end at 10pm on the patio. The applicant is working on design modifications to the patio to further address this criterion. Any modifications to the patio will require a separate Development Plan Review process with staff review and approval.
3. *Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan*; The site has a history of live entertainment and supports goals and objectives of General Plan 2040 by encouraging land use and development that creates a sense of community and place, promotes the creative class, supports the arts and encourages a mix of uses including entertainment.
4. *Compatibility with existing surrounding structures and uses*; There are approximately 4 use permits for live entertainment in the immediate area. Live entertainment is encouraged as part of the downtown character. The site has functioned with live entertainment for the past 20 years.
5. *Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public*; The proposed entertainment use requires a security plan through the City of Tempe Police Crime Prevention Unit which will help the operator plan for potential disruptive behavior that may result from the proposed use.

REASONS FOR APPROVAL:

Based on the information provided by the applicant, the public input received and the above analysis staff supports approval of the requested Use Permits This request meets the required criteria and will conform to the conditions.

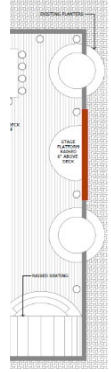
SHOULD AN AFFIRMATIVE ACTION BE TAKEN ON THIS REQUEST, THE FOLLOWING NUMBERED CONDITIONS OF APPROVAL SHALL APPLY, BUT MAY BE AMENDED BY THE DECISION-MAKING BODY.

CONDITION(S) OF APPROVAL: (Non-standard conditions are identified in bold)

EACH NUMBERED ITEM IS A CONDITION OF APPROVAL. THE DECISION-MAKING BODY MAY MODIFY, DELETE OR ADD TO THESE CONDITIONS.

1. The Use Permits are valid only after a Building Permit has been obtained, the required inspections have been completed and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.
2. The Use Permits are valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during the building plan check process.
3. **The Use Permits do not approve any tenant improvements or design modifications to the Andre Building, a separate Development Plan Review is required for any proposed building elevation or patio modifications.**
4. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the use permit becoming effective.

5. **The wall behind the stage area shall be a maximum of 6' tall above finished floor for sound mitigation behind the entertainment area only, the remainder of the patio wall shall be 4'6" as shown on the plans.**
6. **Live entertainment shall begin no earlier than 11am and cease at 9:00 pm on the patio and 1:55 am indoors.**
7. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact 480-858-6409 before November 11, 2023.
8. Bar hours of operation to end no later than 2:00 am on a daily basis.
9. Any nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review.



CODE/ORDINANCE REQUIREMENTS:

THE BULLETED ITEMS REFER TO EXISTING CODE OR ORDINANCES THAT PLANNING STAFF OBSERVES ARE PERTINENT TO THIS CASE. THE BULLET ITEMS ARE INCLUDED TO ALERT THE DESIGN TEAM AND ASSIST IN OBTAINING A BUILDING PERMIT AND ARE NOT AN EXHAUSTIVE LIST.

USE PERMIT:

- The Use Permit is valid for DEVIL’S HIDEAWAY and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
- The use permit approval shall be void if the use is not commenced or if an application for a building permit has not been submitted, whichever is applicable, within twelve (12) months after the use permit is granted or within the time stipulated by the decision-making body.
- Specific requirements of the **Zoning and Development Code (ZDC)** are not listed as a condition of approval but will apply to any application. To avoid unnecessary review time and reduce the potential for multiple plan check submittals, become familiar with the ZDC. Access the ZDC through <http://www.tempe.gov/zoning> or purchase from Development Services.
- All business signs shall receive a Sign Permit. Contact sign staff at 480-350-8435.
- **Any intensification or expansion of use shall require a new Use Permit.**
- All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the Use Permit becoming effective.
- All required Federal, State, County, and Municipal permits, licenses, and clearances shall be obtained, or the Use Permit is void.

HISTORY & FACTS:

- 1888 Original Andre Building erected.
- 1899 Original Andre Building burned down in a fire.
- 1900 The Andre Building was rebuilt as a brick structure. It is one of the oldest buildings in Tempe, an iconic component of the city’s historic downtown, and one of Tempe’s finest examples of Victorian and Neo-Classical architecture.
- 1902 Andre sold the property to C.G. Jones, whose family owned it until 1977. In addition to Andre’s hardware and harness shop, the Andre Building has housed a number of businesses, including Price Wickliffe’s Furniture and Undertaker (1912-1929), the Southside Progress newspaper (1939-1942), and the Arizona Cotton Growers Association (1919). The second floor has been a boarding house and apartments. The

	building has also been the location for the U.S. Post Office (1917-1947) and the Masonic Lodge (1917-1953).
1977	City of Tempe purchased the building.
August 10, 1979	Andre Building individually listed in the National Register of Historic Places and the Arizona Register of Historic Places.
February 21, 1980	Design Review Board approved the building elevations, site plan and landscape plan for the rehabilitation of the Andre Building at 401 S. Mill Avenue in the CCD Central Commercial District.
February 28, 1980	Board of Adjustment approved a variance to reduce the required off-street parking from 45 spaces to 12 spaces and a variance to reduce the minimum width for one end parking stall from 12'6" to 9'.
1981	The exterior of the building was restored to its original appearance. The building suffered fire damage in 1999, but structural and fire safety improvements in the 1981 rehabilitation contributed to its survival.
December 18, 1981	Board of Adjustment approved a variance to reduce the number of off-street parking spaces from 107 to 8, a variance to reduce the required width of off-street parking stalls from 9' to 7.5', a variance to reduce the required width of two end off-street parking stalls from 12' 6" to 9' and a variance to reduce the required landscape strip between the parking area and the street property line from 10' to 8'.
December 22, 1981	Design review Board approved building elevations, site plan and landscape plan for the Andre Building.
November 22, 1982	Final Certificate of Occupancy issued for the Andre Building for retail, office and restaurant uses.
December 4, 1985	Design Review Board approved building elevation modifications for PARADISE BAR AND GRILL, including outdoor patio dining for nine tables.
March 5, 1986	Design Review Board approved building elevations, site plan and landscape plan for PARADISE BAR AND GRILL.
June 4, 1986	Design Review Board approved building elevations, site plan and landscape plan for PARADISE BAR AND GRILL.
1999	Paradise Bar and Grill had a fire, requiring restoration of the building.
2000	Cactus Sports remodeled a suite for a retail use that operated until recently in 2013.
August 1, 2000	Hearing Officer approved a Use Permit for RULA BULA IRISH PUB for live entertainment in the form of live Irish musical groups using acoustic equipment. Days and hours of entertainment were specified as follows: Sunday afternoons, Monday, Tuesday, Friday and Saturday nights. The restaurant was open from 11am to 2am seven days a week.
August 12, 2010	The Historic Preservation Commission classified the property as Historic Eligible (i.e., eligible for designation in the Tempe Historic Property Register).
October 1, 2013	Hearing Officer approved a Use Permit for Tobacco Retail for an electronic cigarette store for BUTT OUT, located at 401 S. Mill Avenue, Suite #106.
December 17, 2015	City Council approved zoning code text amendments establishing new parking standards for the City Center district, waiving parking for the first 5,000 square feet of commercial use on each lot.

June 2021 Rula Bula Restaurant closed; the site has remained vacant. The prior use permit for live entertainment expired after one year without use.

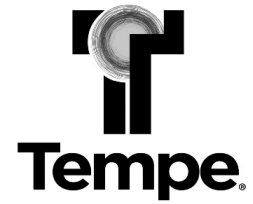
October 24, 2023 Development Review Commission is scheduled to hear a request for a bar with live entertainment.

ZONING AND DEVELOPMENT CODE REFERENCE:

[Section 3-202, Permitted Uses in Commercial and Mixed-Use Districts](#)

[Section 6-308, Use Permit](#)

[Section 6-313, Security Plan](#)



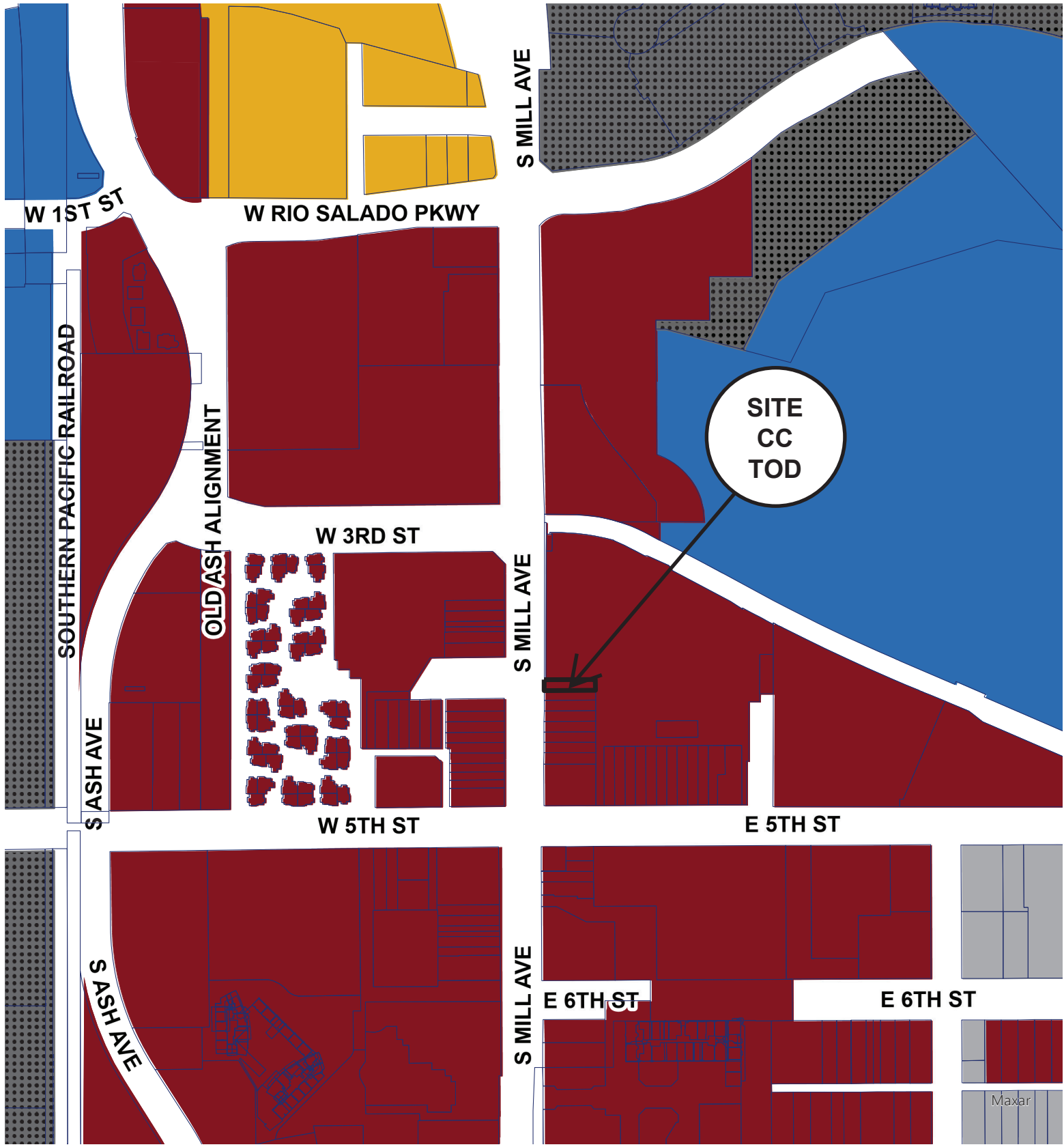
DEVELOPMENT PROJECT FILE
for
DEVIL'S HIDEAWAY
(PL230251)

ATTACHMENTS:

- 1-7. Site Context (Location Map, Aerial and Site Photos)
- 8-10. Applicant's Letter of Explanation
- 11. Site Plan (For Reference)
- 12-13. Floor Plan & Patio Design (For Reference)
- 14. Elevations (For Reference)



401 S Mill Ave



- General Industrial District (GID)
- City Center (CC)
- Mixed Use High (MU-4)
- Mixed Use Educational (MU-ED)
- Single-Family Residential (R1-6)
- Override 1

- Twelve Point**
CenterlineSubType
- ADOT
 - Canal
 - Monument
 - Private

- Railroad
 - Street
 - <all other values>
- Zoning District**
- Light Industrial District (LID)
 - General Industrial District (GID)
 - Heavy Industrial District (HID)

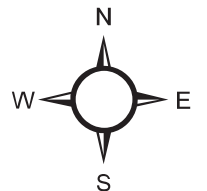
ATTACHMENT 1



401 S Mill Ave



Aerial Map



DEVIL'S HIDEAWAY
CONTEXT PHOTO MAP
USE PERMIT
8/17/23



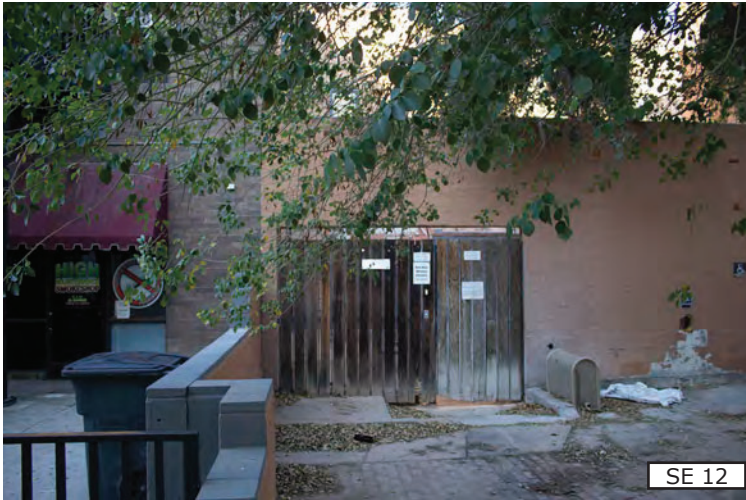
CONTEXT PHOTO MAP
NORTH WEST CORNER



CONTEXT PHOTO MAP
NORTH EAST CORNER



CONTEXT PHOTO MAP
SOUTH EAST CORNER



CONTEXT PHOTO MAP
SOUTH WEST CORNER



Devil's Hideaway
401 S Mill Ave Tempe AZ 85281

LETTER OF EXPLANATION

Project Description:

Devil's Hideaway is a bar/restaurant with a patio located at 401 S. Mill Avenue. Our goal is to bring a unique immersive experience to downtown Tempe. Devil's Hideaway has a commercial kitchen and will offer a full-service menu. This location has operated as a bar/restaurant for at least two decades, and future operations will not alter the use significantly.

Hours of operation: 11a - 2a (7 days/week)

Number of Employees: 50

Interior Size of Bar/Restaurant:	4,901 SF Gross 1,688 SF Service Area
Patio Size:	4,402 SF Gross 2,202 SF Patio Guest Area 2,200 SF Service Yard and Circulation to 2nd floor

Use Permit: Bar

Proposed Series 6 bar liquor license. The establishment is proposed to be a bar/restaurant and is in keeping with the site's historical use. The prior operation at this location was also a bar/restaurant, albeit with a different series liquor license.

Use Permit Live Music:

Proposed interior and patio areas for performers to play. This would be in keeping with the site's history of live music. No ticket sales will be used for live entertainment, it is intended as ancillary to the bar use, not as an event venue.

Section 6-308.E Use Permit approval criteria:

1. Any significant increase in vehicular or pedestrian traffic.

The Series 6 bar liquor license or live music will not significantly increase vehicular or pedestrian traffic on the Property in adjacent areas. This location has historically operated as a bar/restaurant with live music and will continue to do so. The occupancy of the property will not change dramatically so as to increase either vehicular or pedestrian traffic in adjacent areas.

2. Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions.

The Series 6 bar liquor license or live music will not generally cause a nuisance arising from the emission of odor, dust, gas, vibration, smoke, heat or glare at a level exceeding that of ambient conditions. Regarding noise, Devil's Hideaway is located on an active commercial

street at a location that has historically operated as a busy bar/restaurant with a live music scene. This operation will continue without any increase in noise as historically experienced at this location. Outdoor live music will be limited to the hours of 11a - 10p except on holidays in which case it will be limited to 11a - Midnight.

3. Contribution to the deterioration of the neighborhood or to the downgrading of property values, the proposed use of not in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan.

The Series 6 bar license or live music will not contribute to the deterioration of the neighborhood or to the downgrading of property value. The prior tenant at this location ceased operations over two years ago and the building has since been vacant. The prior use will continue with a different series of liquor license, but the business will still operate as a bar/restaurant. Having a profitable tenant in the building will maintain the location's property value.

4. Compatibility with existing surrounding structures and uses.

The Series 6 bar license and live music is compatible with existing surrounding structures and uses. This property is located in the City Center Zoning District which has a variety of commercial activity including numerous bar/restaurants with Series 6 bar license and live music. This location has operated as a bar/restaurant with live music for several decades.

5. Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area and general public.

The addition of a Series 6 bar license and a live music use permit will not create disruptive behavior which would result in a nuisance to the surrounding area and general public. The surrounding area and general public is well-adapted in having this location operate as a bar/restaurant. Devil's Hideaway will be required to comply with all City and State requirements, including those requirements prohibiting nuisances.

Wesley James / Line Lab
3626 E Indian School Rd
Phoenix AZ 85018

wesley@thelinelab.com

602.692.3988

Wesley James



October 11, 2023

To Whom It May Concern:

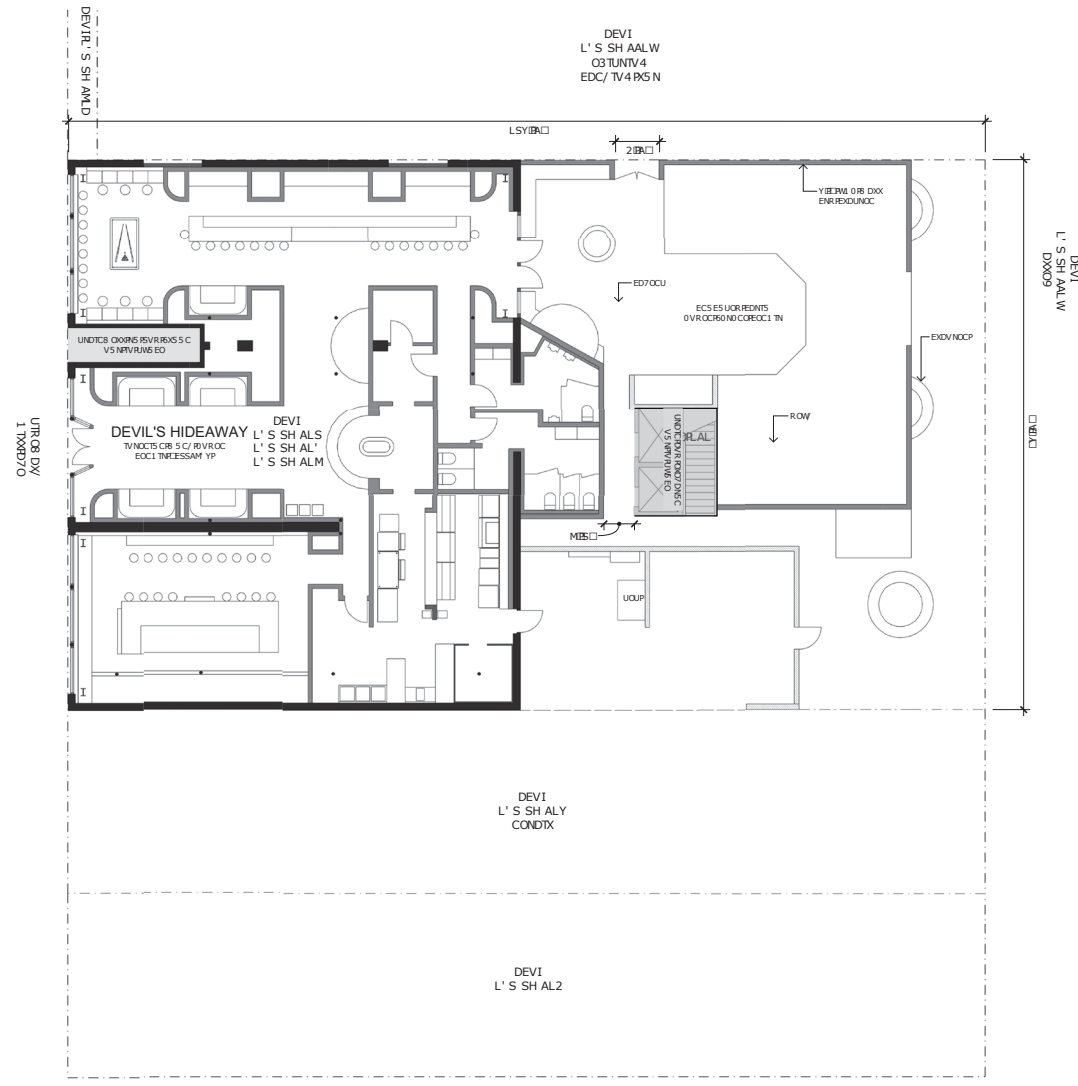
Our intention with live music on the patio at Devil's Hideaway is to offer amplified live music from 3pm to 6pm on Saturdays and Sundays on a small stage on the east side of the building facing west. We also plan to grow ivy up the side of the building to mitigate sound reflection.

We've been doing this in DT PHX for two years without any complaints from our residential neighbors or nearby hotels.

Sincerely,

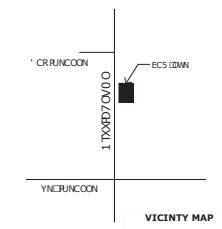
Handwritten signature of Julian Wright in black ink.

Julian Wright
480.239.7114



PROJECT INFORMATION

VDCDN70	ECS CDWNRK5 VUTUNJF5 6DRNDV/DV N T1 ECS 70L OV/NRS RDV/R3 TUNTV 4 COUNDO CDV/NP 0 UO/ECC1 TNEPK7 OPL 0 UTW 0 UO/ECC1 TNEPK7
DRR/COU	MALRUB1 TXRD7 OV/0 ORF5 5 CHLBU0 TNORLAL LA2 NO1 EOBDC1L5 VDRHYSHL
V5 VNDWN	8 OUX09PDI OUREKTV OPRD ' 2' 20PVR TDV/RJLCS 5 XCR ECS OV/T3BDI HVALH 2AS2LCS CH 8 OUX09 INCDX TV OXDC1M 1
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CD TVR TV4 RCDT4 CN	' AIBN8 5 RUNS C9□
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EDC/ TV4 REC5 7TROR	8 DT7 OR REOCR M 2ALR65 CR6TCUNR6X5 5 CRDVR P5 0 NR 5 5 CRDCCD V5 RCDCCD/ TV4 R64 C001 OVNR65 CP UOW5 VR R6X5 5 CR UO
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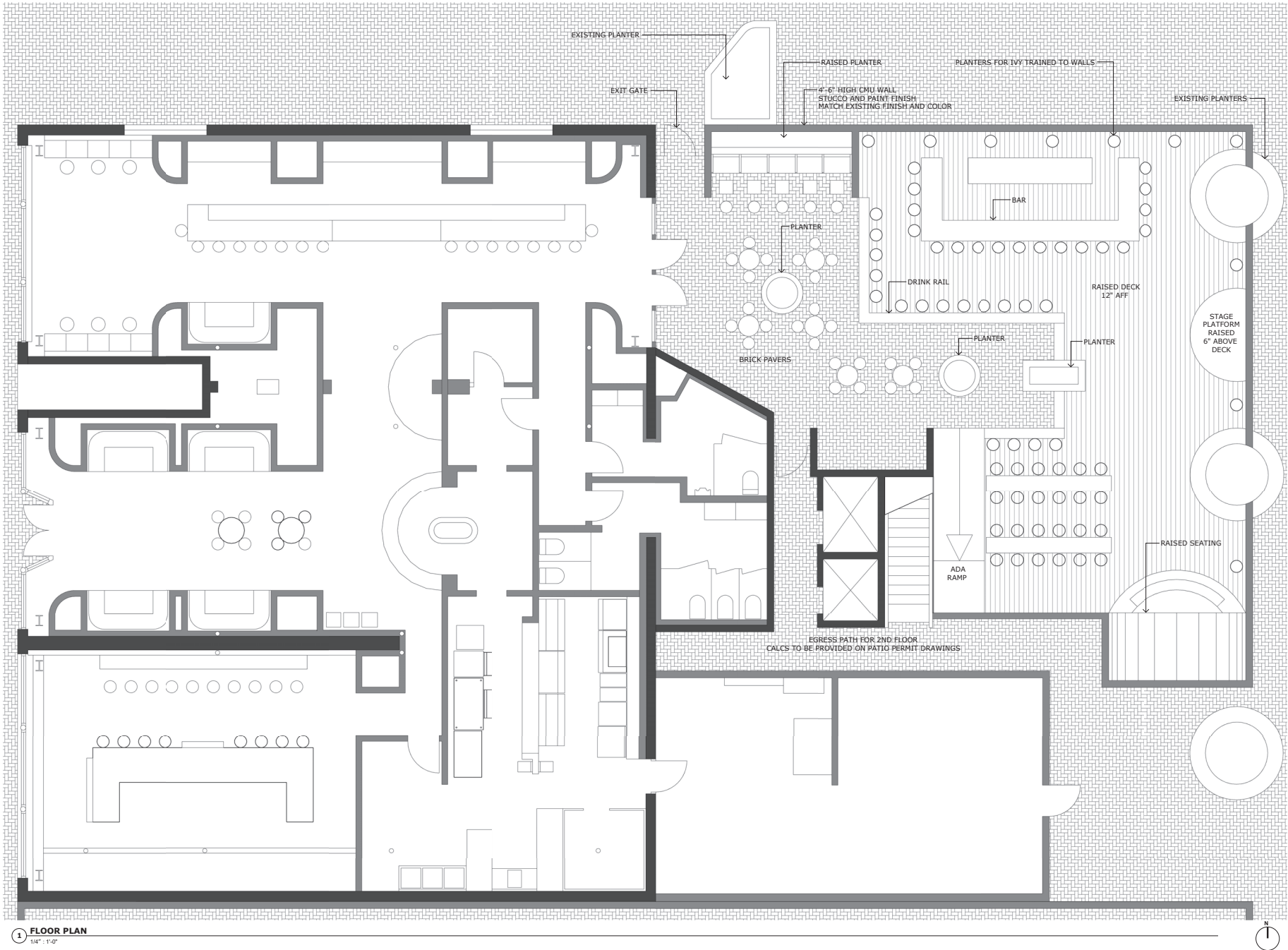
DEVILS HIDEAWAY @ ANDRE BUILDING

MALRUB1 TXRD7 OV/0 ORF5 5 CHLBU0 TNORLAL
NO1 EOBDC1L5 VDRHYSHL



DATE	REMARKS

SITE PLAN
A-101



DEVILS HIDEAWAY PATIO @ ANDRE BUILDING

401 S MILL AVENUE FLOOR 1, SUITE 101
 TEMPE, ARIZONA 85281

DATE	REMARKS

FLOOR PLAN

A-101

1 FLOOR PLAN
 1/4" = 1'-0"



KEY NOTES

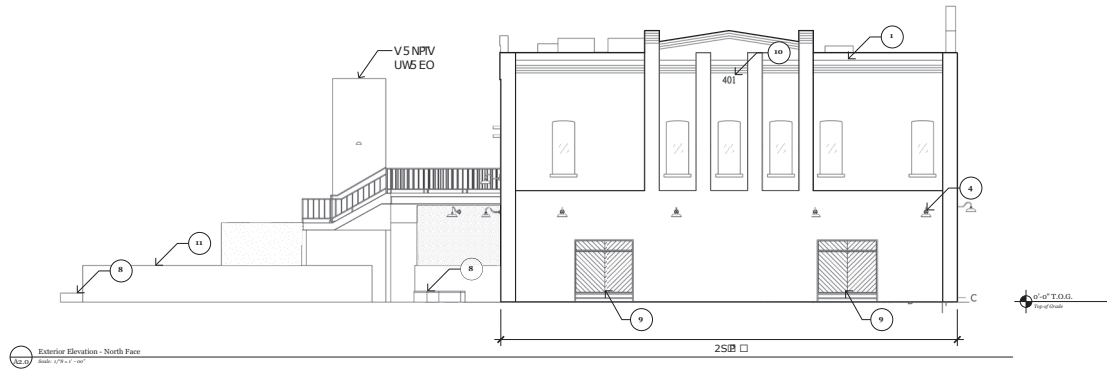
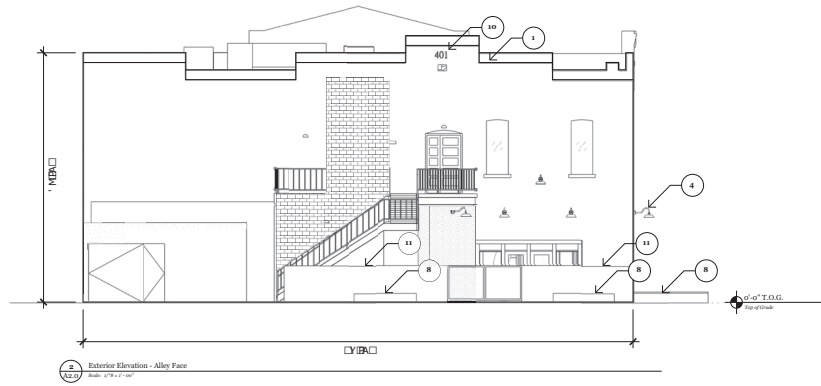
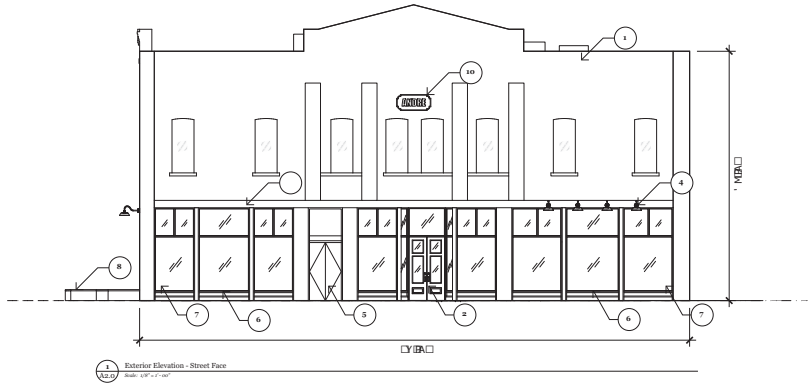
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- S C3TUNIV4 R5 S CRNS FC01 TV
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- M C3TUNIV4 R14 C1NIV4 RNS FC01 DTW
- Y C3TUNIV4 R5 S R0VRR5 S CRNS F5VRR6X5 S CR3V5 NRV RVW5 E00
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NOTES

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LINE LAB

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 36 VNRCDWRNS V
 ' 2' 2R0VRR TVRNRNCS 5 XCR
 E0CS 0V13B0C
 HVALH



DEVILS HIDEAWAY @ ANDRE BUILDING

MALRPL TXXR07 0V0 0RFX5 5 CFL LB10 TNOR AL
 NOI E0BDC1L5 VDPHYSHL



DATE	REMARKS

EXTERIOR
 ELEVATIONS
A-201