



**CITY OF TEMPE
DEVELOPMENT REVIEW COMMISSION**

**Meeting Date: 04/09/2024
Agenda Item: 2**

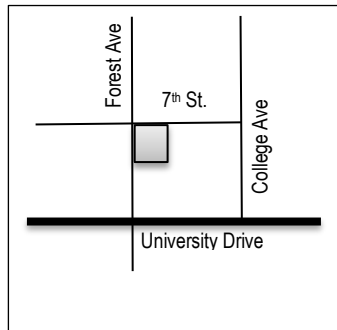
ACTION: Request a Use Permit to allow Entertainment (live music) for RUSTY TACO, located at 707 S Forest Avenue, Suite No. 112. The applicant is Brandon Risk of Rusty Taco.

FISCAL IMPACT: N/A

RECOMMENDATION: Staff – Approve, subject to conditions

BACKGROUND INFORMATION: RUSTY TACO (PL240042) is located within the mixed-use Atmosphere building at the southeast corner of 7th Street and Forest Avenue in the City Center (CC) zoning district. Rusty Taco has operated since August 2022, and operates with a Series 12 (Restaurant) liquor license. The applicant is requesting a Use Permit to allow live entertainment within the restaurant. The request includes the following:

ZUP240028 Use Permit to allow live entertainment.



Property Owner	Trinitas Ventures LLC
Applicant	Brandon Risk, Rusty Taco
Zoning District	CC TOD (Corridor)
Building Area	2,850 s.f. (Indoor) 770 (Outdoor patio)
Hours of Operation	11 a.m. to 2 a.m., Daily
Building Code Occupancy	A-2

ATTACHMENTS: Development Project File

STAFF CONTACT(S): Chris Jasper, Senior Planner (480) 350-8096

Department Director: Jeff Tamulevich, Community Development Director

Legal review by: N/A

Prepared by: Chris Jasper, Senior Planner

Reviewed by: Michelle Dahlke, Principal Planner

COMMENTS

Rusty Taco is an existing restaurant located in the northwestern-most suite of the Atmosphere mixed-use building, the PAD and development plan for which were approved by City Council in late 2020, and was constructed in 2021. The restaurant includes a bar and two outdoor seating areas, including a patio at the corner of Forest Avenue and 7th Street and additional seating along the Forest Avenue frontage. Adjoining commercial tenants include a restaurant and a coffee shop. Four and a half levels of above ground parking separate the ground-floor retail spaces from 252 multi-family dwelling units. Surrounding uses include the Birchett House to the north, a parking lot to the east that is entitled as a future mixed-use apartment complex, retail uses to the south, and mixed-use developments to the west.

The business was cited by the Code Compliance Division for hosting live music without a Use Permit in May of 2023 through case number CM231085.

Per the applicant's letter of explanation, live music will be provided both during the week and on weekends and will include performances by a DJ.

PUBLIC INPUT

At the time of this staff report, staff has not received public input regarding this case.

POLICE INPUT

The City of Tempe Police Department reviewed the case and identified restrictions associated with outdoor entertainment and impacts to residential units, which have been incorporated into the conditions of approval. A security plan is required for live entertainment uses and shall be reviewed concurrent with the Building Permit application.

USE PERMIT

The proposed use requires a Use Permit to allow Entertainment (live music) within the CC zoning district.

Section 6-308(E) Approval criteria for Use Permit (*in italics*):

1. *Any significant increase in vehicular or pedestrian traffic;* The live entertainment use is not anticipated to generate additional vehicular or pedestrian traffic to the site.
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 proposed use is not anticipated to generate nuisances at a level exceeding ambient conditions, as it is consistent with existing venues and uses in the downtown district. Additionally, conditions of approval have been identified to mitigate excess noise for residents within and around the subject building.
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 proposed use does not conflict with the City's adopted plans.
4. *Compatibility with existing surrounding structures and uses;* The proposed use is compatible with the downtown area, which features numerous dining and entertainment venues.
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 operator has committed to coordinating with the City of Tempe Police Department to manage potentially disruptive behavior within and outside of the subject location. Additionally, a security plan to be submitted to and reviewed by the Tempe Police Department shall be required.

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 Permit. 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 Permit is 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 Permit is 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 live entertainment use shall take place inside only. No live entertainment will be allowed outside.
4. Live entertainment to cease at 1:55 a.m. daily.
5. Hours of operation to end no later than 1:55 a.m. on a daily basis.
6. 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 May 9, 2024.
7. **No new speakers are permitted on the exterior of the suite. Any new speakers located near building openings shall be placed interior to the business and projecting away from the exterior.**
8. **Outdoor speakers shall only be allowed above patio areas and must be directed in a downward manner. No speakers are permitted on the exterior of the storefront.**
9. **Live entertainment broadcasts to the outdoor patio speakers shall begin no earlier than four o'clock in the afternoon (4:00 p.m.), daily, and end no later than midnight (12:00 a.m.) daily, and shall be on a volume-controlled system such that the broadcasted audio levels complies with Chapter 20, Noise, of the Tempe City Code.**
10. **During all other times of business operation, outdoor speakers shall be limited to ambient background music or audio for patio patrons, which are to be provided by a stereo or recorded and volume-controlled system.**
11. **Overhead doors shall be closed during live performances after midnight (12:00 a.m.) daily.**

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 Rusty Taco 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.
- The decision-making body, upon finding that the applicant has not taken corrective actions to resolve issues related to the permit/approval and that a continuation of the permit/approval is not in the interest of the public health, safety and general welfare, can revoke the permit/approval after providing written notice of its intentions to the holder of the permit.
- 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.
- Any intensification or expansion of the 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.
- Music, sound, or live entertainment shall not violate the City of Tempe Noise Ordinance.

SIGNS: Separate plan review process is required for signs in accordance with requirements of ZDC Part 4 Chapter 9 (Signs). Refer to www.tempe.gov/signs.

POLICE DEPARTMENT SECURITY REQUIREMENTS:

- If the development includes a use listed in [City Code Section 26-70\(c\)](#), the Owner is required to prepare a security plan with the Police Department. The architect should be involved to verify any modification that would require design revisions. To avoid revisions to permitted construction documents, initial meetings with the Police Department regarding the security plan are recommended before building permits are issued. At a minimum, the Owner shall contact the Police Department to begin security plan process approximately eight weeks prior to receipt of certificate of occupancy.

HISTORY & FACTS:

August 20, 2009	City Council approved a Planned Area Development (PAD) for 707 SOUTH FOREST for a 20-story mixed-use building with 168 multi-family residential dwelling units, 5,000 s.f. in ground-floor retail space, and 1,163 s.f. of retail/office space.
December 3, 2010	Staff administratively approved an amendment to the Planned Area Development to allow 15,753 square feet of existing floor space to be utilized as Phase I of the development. The approval included a time extension.
April 16, 2015	City Council approved a time extension for 707 SOUTH FOREST.
February 22, 2018	City Council approved a time extension for 707 SOUTH FOREST.
October 22, 2019	The Development Review Commission approved the request for 707 SOUTH FOREST APARTMENTS to allow for the construction of a new 20-story mixed-use project containing 252 dwelling units and ground-floor commercial uses.
November 25, 2019	Staff administratively approved the 2 nd Amended Planned Area Development (PAD) Overlay for 707 SOUTH FOREST. The approval includes the following modifications: <ul style="list-style-type: none"> • Increase the total quantity of dwelling units from 168 to 252 units as follows: <ul style="list-style-type: none"> ○ Increase the quantity of studio units from 0 to 56 units ○ Increase the quantity of one-bedroom units from 28 to 56 units ○ Increase the quantity of two-bedroom units from 28 to 56 units ○ Reduce the quantity of five-bedroom units from 28 to 0 units • Increase the density from 329 to 492.2 dwelling units per acre • Increase the building lot coverage from 20,389 to 21,136 square-feet • Increase the landscape area from 4,098 to 4,895 square-feet • Increase the minimum east side setback distance from 0 to 3 feet • Increase the quantity of provided vehicle parking spaces from 200 to 203 spaces • Increase the quantity of provided bicycle parking spaces from 212 to 290 spaces • Increase the floor area of apartments/amenities from 240,162 to 298,059 square-feet • Reduce the floor area of commercial space from 6,163 to 4,656 square-feet • Reduce the floor area of commercial outdoor patio from 1,000 to 0 square-feet • Increase the floor area of parking garage/utility/storage from 64,682 to 93,218 square-feet • Increase the total building area from 311,007 to 344,462 square-feet

August 16, 2021 Certificate of Occupancy issued for Atmosphere Apartments, located at 707 S. Forest Ave.

August 17, 2022 Certificate of Occupancy issued for Rusty Taco, located at 707 S. Forest Ave., Ste. 112.

May 8, 2023 Code Compliance issues a notice of violation for live music performances without a Use Permit at Rusty Taco. The case is closed on June 8, 2023.

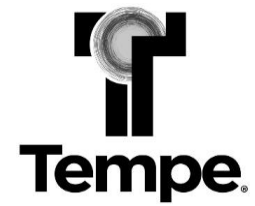
April 9, 2024 The Use Permit request is scheduled to be heard by the Development Review Commission.

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](#)

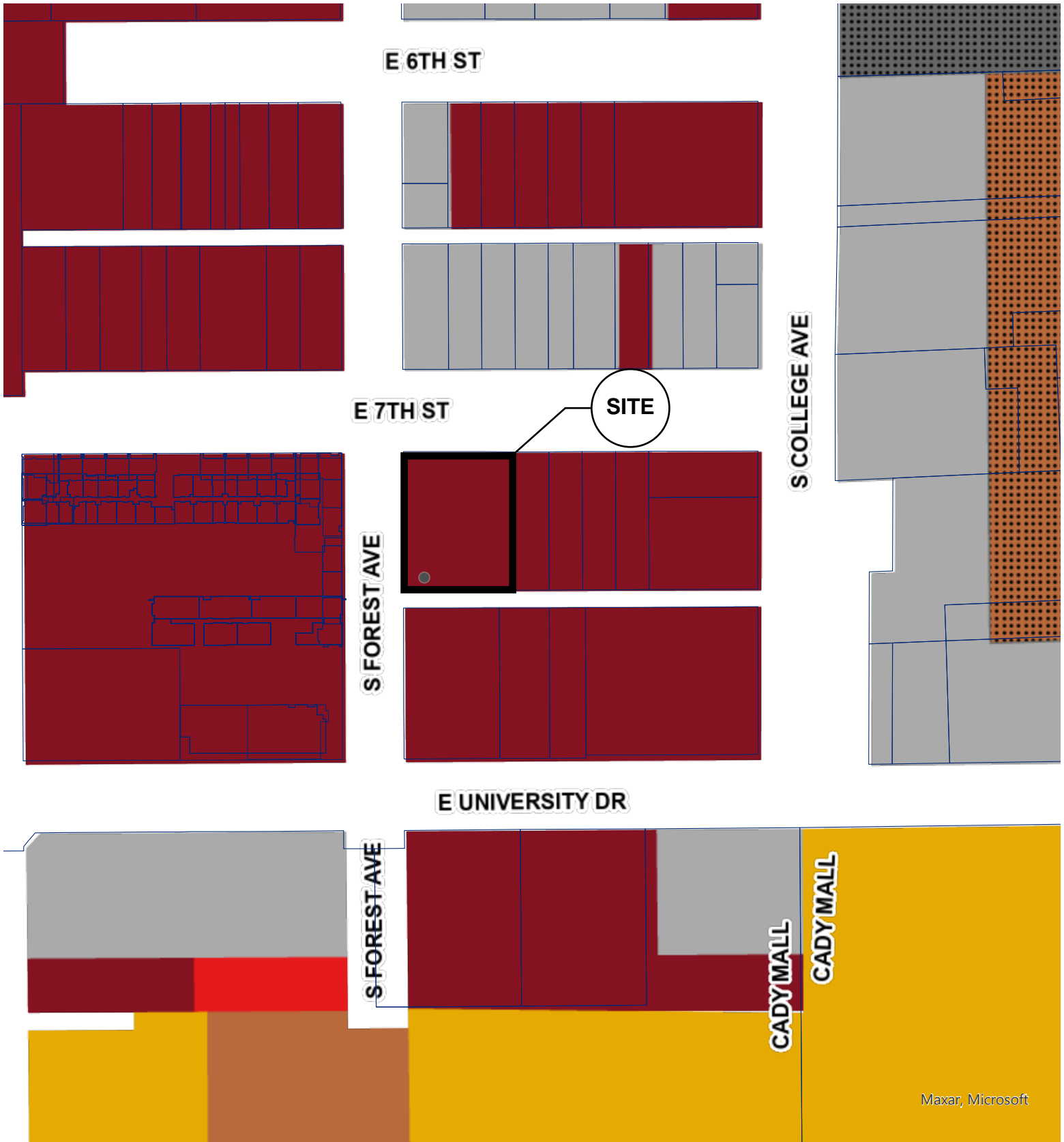


DEVELOPMENT PROJECT FILE

for
RUSTY TACO
(PL240042)

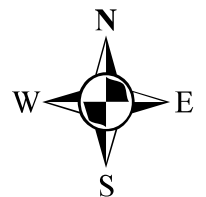
ATTACHMENTS:

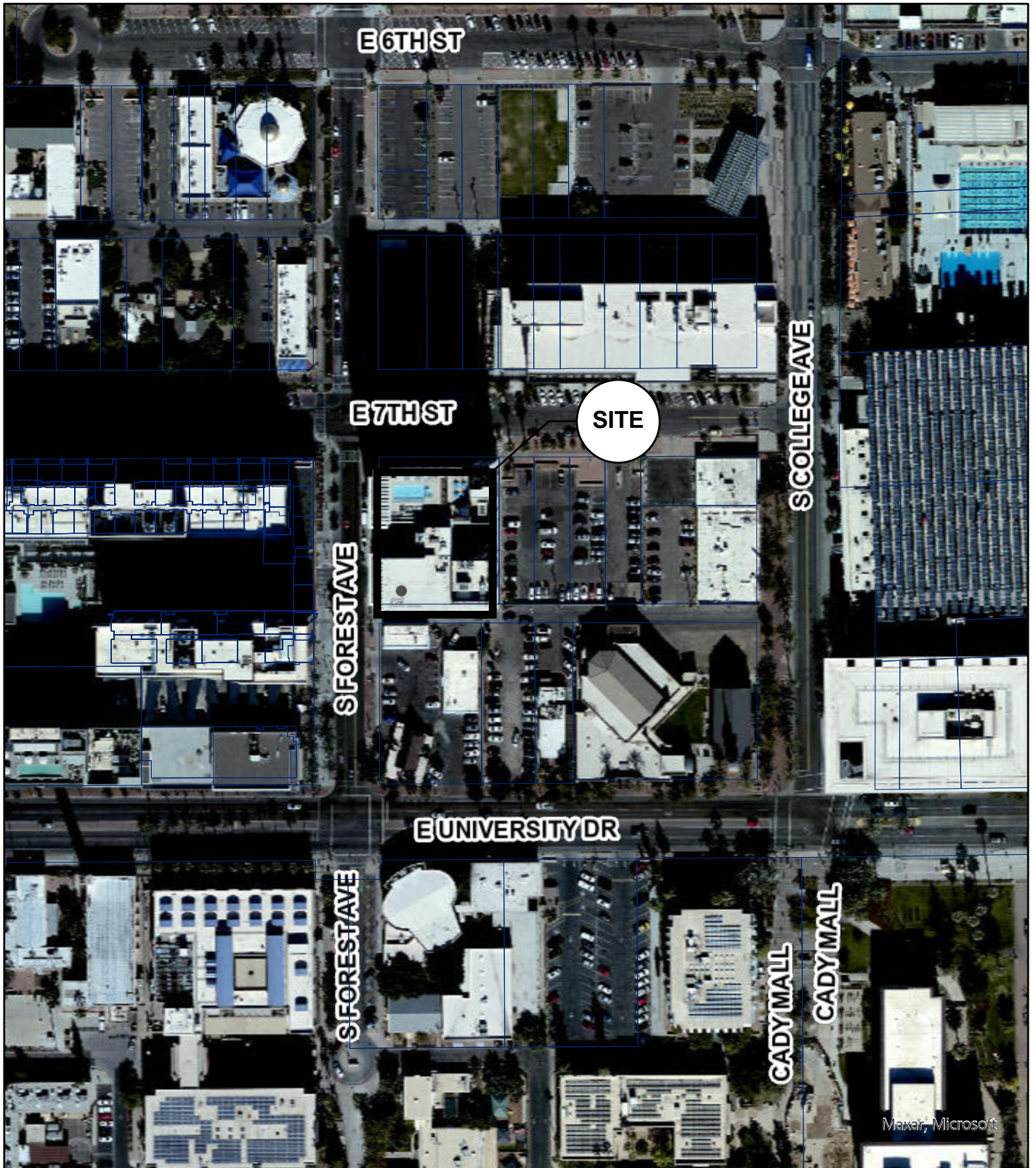
1. Zoning Map
2. Aerial Map
- 3-4. Letter of Explanation
- 5-6. Floor Plans
7. Suite Elevations
- 8-13. Site Context Photos



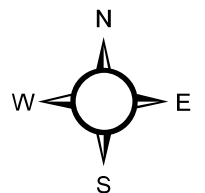
- City Center (CC)
- Mixed Use High (MU-4)
- Mixed Use Educational (MU-ED)
- Commercial Shopping and Services (CSS)

- Single-Family Residential (R1-6)
- Multi-Family Residential (R-2)
- Multi-Family Residential Limited (R-3)





Aerial Map



For your consideration,

This application is on behalf of Sonoran Restaurant Group #3, LLC dba Rusty Taco in Tempe, located at 707 S Forest Ave, suite 112 in the Atmosphere building. We are applying to get a live music permit for our location to drive additional traffic and customers to our venue and ensure that we have an equal opportunity to compete with other bars and restaurants in our area. This live music permit would be used to provide entertainment to our patrons and all compliance and regulations will be followed to ensure that having this permit will provide added value to the area and give local artists an opportunity to perform in their community. We believe that having live music is important to developing the arts and culture of an area and are committed to using this permit responsibly and with respect to our neighbors and surrounding communities.

Rusty Taco is a midsize taco shop restaurant and bar with three locations in Arizona under our ownership. The location applying for this permit is located near the heart of ASU's campus on Forest and 7th St. at the base of the Atmosphere building and has been open since Mid July of 2022. Our operating hours are 11:00AM to 2:00AM daily. We have successfully built a reputation of quality food and drinks and a safe, clean, and fun environment that the residents of Tempe have come to love. We have worked very hard at making sure our business adds value to the experience and offerings of Downtown Tempe. Throughout 2023 we were fortunate enough to partner with various local and student-led fundraising groups to raise over \$10,000 in charitable giving to organizations like Keep Tempe Beautiful, Best Buddies, Make-A-Wish, and many more. We are a valued member of the Tempe Chamber of Commerce and were a finalist in the 2023 Business Excellence Awards. By receiving a live music permit, we feel that we can do add even more to the experience of our guests and continue to build on this reputation and stay competitive with some of the other bars and restaurants in our area.

We plan to utilize our live music permit by having local DJ's and musicians provide entertainment on weekends and throughout the week depending on special events such as fundraisers, holidays, ASU home football games, and other similar events. The artists would utilize our current sound system, and not provide any additional speakers, lights, smoke machines, or anything of that nature and the venue would remain unchanged during their performance. The decibel level of our speakers would be no different than it has been for the 1 year and 7 months we have been in operation and to date we have received no noise complaints from the residents of Atmosphere, any of the other surrounding buildings, or from the Tempe Police Department.

The building management has given us their full support in pursuing this permit and agrees that it would add value to the residents of the building. We are very conscientious of the importance of being a considerate neighbor as these are also our customers and we make sure that our outdoor facing speakers are kept at a level where residents are not disrupted by them. Our suite is also surrounded by 3 stories of cement parking structure that insulated any of the indoor speakers from reaching any of the residents of the building and keeping all low end bass frequencies from escaping our premise.

We also understand and take very seriously our responsibility to control disruptive behavior both inside and outside our premises and our staff and management work very hard to ensure not only the safety and positive experience of our guests but also the community around us. All liquor laws regarding the consumption of alcohol on our premise are taken very seriously and we have been and will remain in full compliance of all standards. Having a live music permit would not change our diligence on this

matter and if anything will increase our ability to staff and employ safety team members that can assist in making sure any disruptive behavior is not tolerated.

Below are a few specific questions/ criteria outlined in the application, which we will address directly:

a. **Any significant vehicular or pedestrian traffic in adjacent areas.**

There would be no changes to vehicular or pedestrian traffic.

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

There would be no odor, dust, gas, smoke, heat or glare. Noise and vibration will be monitored and controlled by the Rusty Taco managers in compliance with standards for the Atmosphere building and municipal noise regulations.

c. **Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is conflict with the goals, objectives or policies of the city's adopted plans for General Plan.**

There will be no deterioration of the surrounding buildings or affect on the property values of surrounding properties and having this permit will bring additional traffic and tax revenue to our venue increasing its value to the community. It is also in alignment with the cities plans for increasing arts and culture in downtown Tempe.

c. **Compatibility with existing surrounding structures and uses.**

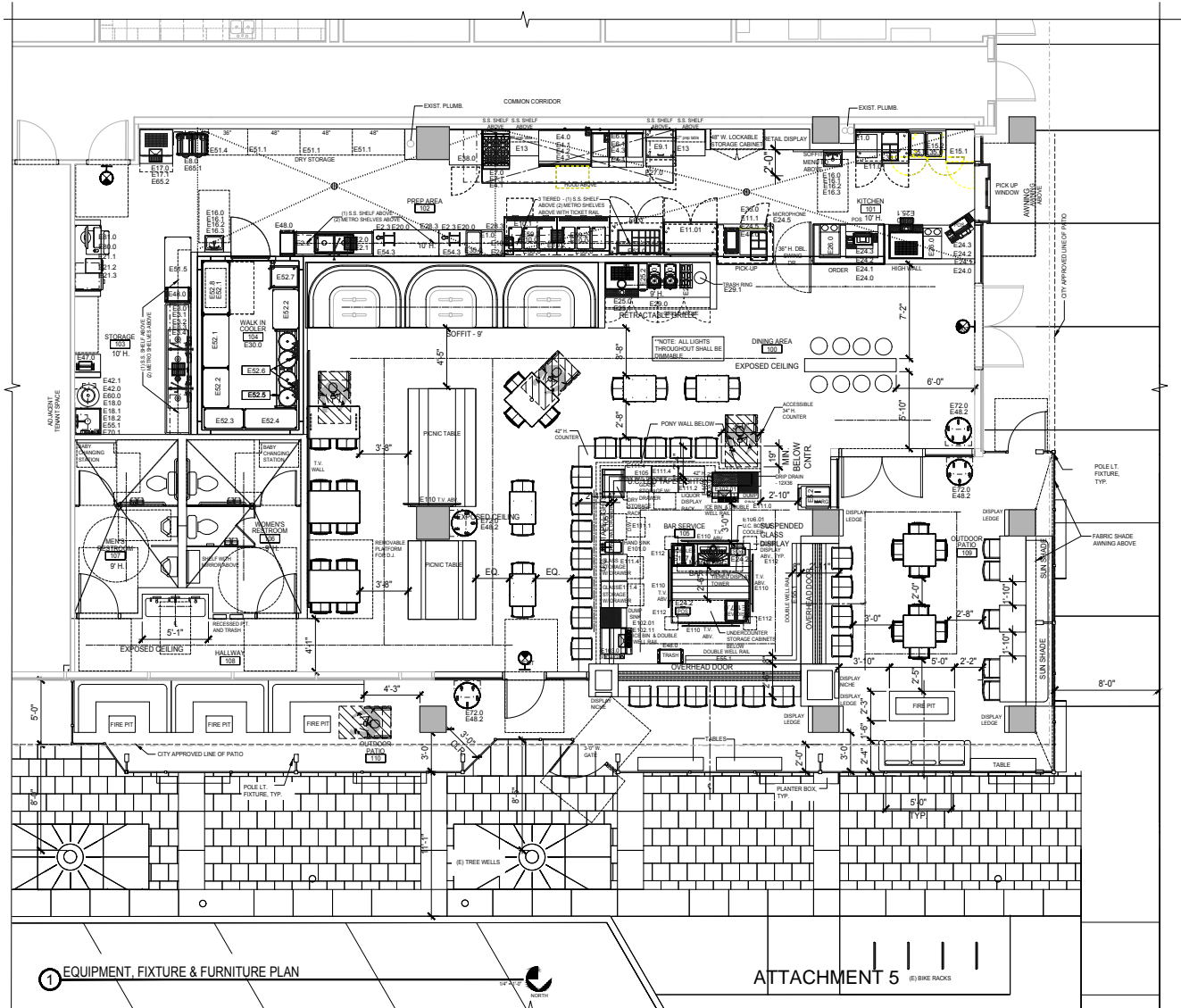
We have been in business since July of 2022, and have been and would continue to be compatible with surrounding structures.

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

Staff and management will regulate customers and patrons inside and outside the premises in accordance with Arizona laws and liquor regulations and will continue to ensure that our venue is taking the utmost care in protecting our guests and community.

In summary, we feel that having a live music permit adds value to our business and the surrounding area and keeps us competitive with neighboring establishments that currently offer this experience. We recognize that volume levels and the behavior of our patrons play a critical role in being a good neighbor and not creating a nuisance or disruption, and we will work extremely hard to utilize this permit in a way that adds value to our business and neighborhood. Our goal since opening this venue is to be a good member of the Downtown Tempe community and contribute to making Tempe a great destination for people to come and enjoy food and drinks. We appreciate your time in reading this application and look forward to hearing back from you soon!

Brandon Risk
Operating Partner
(928)308-2287
brandon@sonoranrg.com

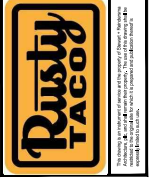


1 EQUIPMENT, FIXTURE & FURNITURE PLAN

ATTACHMENT 5 (E) BIKE RACKS

architect: NOT FOR CONSTRUCTION

consultant: NOT FOR CONSTRUCTION



Project: RUSTY TACO RESTAURANT T.I.
707 S. FORREST AVE.
TEMPE, ARIZONA

date: 08/XX/23

issued for: PERMIT SUBMITTAL

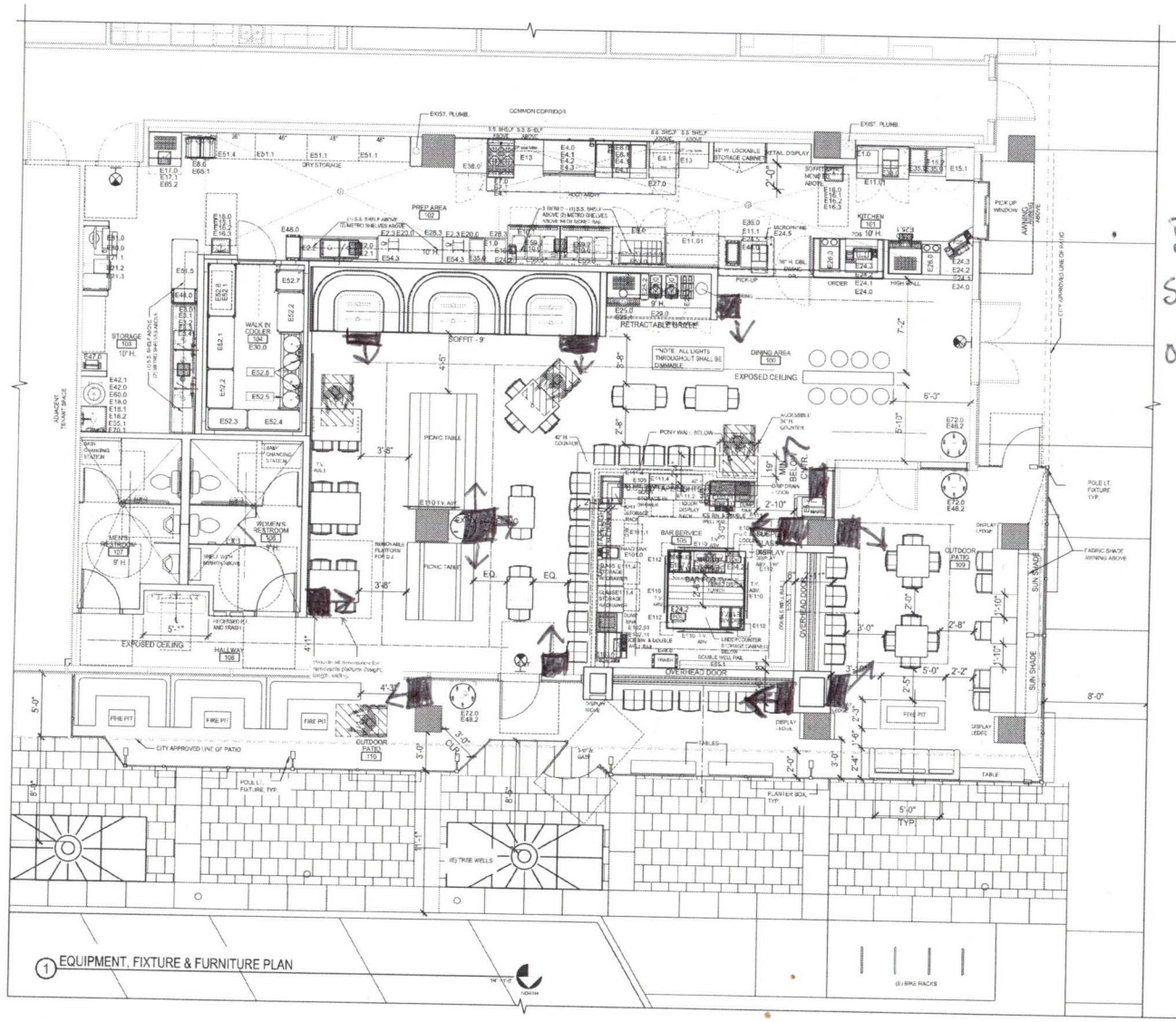
revision no.	date

job no.: 21-104

sheet title: EQUIPMENT, FIXTURE & FURNITURE FLOOR PLAN

sheet no.: A1.0

S:\2021\1104 - Rusty Taco - Tempe_A2108 Design Development\1104 - A1.0 Equipment, Furniture, & Fixture Plan.dwg Aug 16, 2021 4:28pm B03ar



Black boxes indicate speakers and direction of sound

- Identify any measures for soundproofing.
 - Clearly call out location of speakers, including outdoor speakers, to be used for purposes of broadcasting live music. If speakers are on separate volume control system, call out accordingly.



STEWART + REMDERSMA
 ARCHITECTURE, PLLC
 8145 E. Indian Bend Rd.
 Scottsdale, Arizona 85260
 480.515.4121
 www.sr360.com

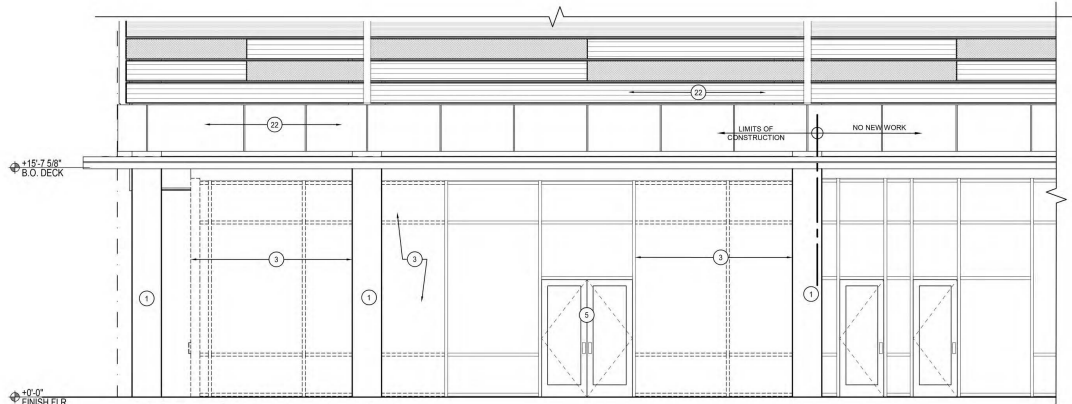


PATIENT:
RUSTY TACO RESTAURANT T.I.
 707 S. FORREST AVE.
 TEMPE, ARIZONA

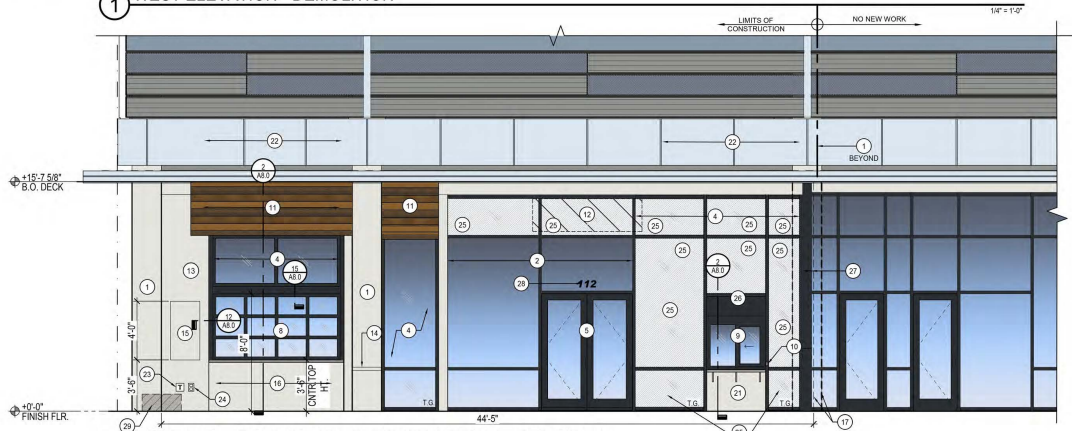
date:	080X21
issued for:	PERMIT SUBMITTAL
revision no.:	date:
job no.:	21-104

sheet title:
 EQUIPMENT, FURNITURE &
 FURNITURE FLOOR PLAN

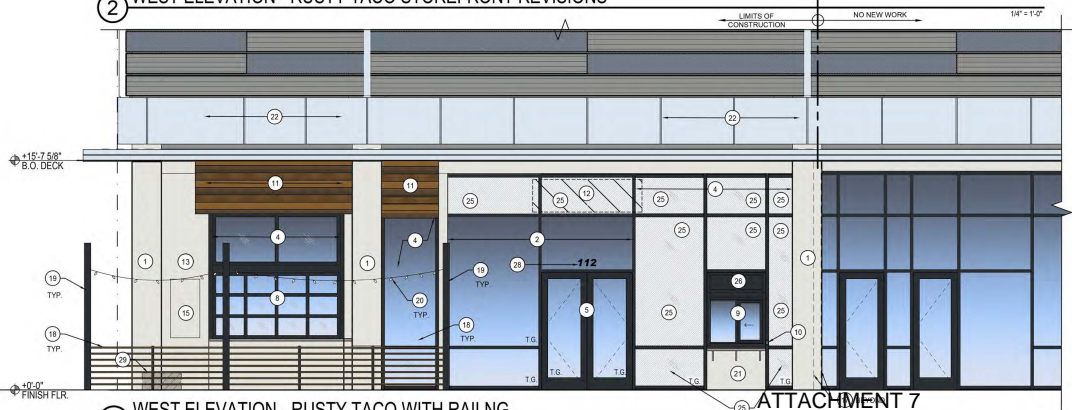
sheet no.:
A1.0



1 WEST ELEVATION - DEMOLITION



2 WEST ELEVATION - RUSTY TACO STOREFRONT REVISIONS



3 WEST ELEVATION - RUSTY TACO WITH RAILING

ATTACHMENT 7

KEY NOTES	
1	EXISTING COLUMNS.
2	EXISTING STOREFRONT SYSTEM TO REMAIN.
3	EXISTING STOREFRONT SYSTEM TO BE REMOVED - STORE FOR REUSE.
4	NEW STOREFRONT SYSTEM TO MATCH EXISTING - JAP ENCLOSURE SYSTEMS, LLC SERIES 10.00 - REUSE EXISTING STOREFRONT PIECES WHERE POSSIBLE.
5	EXISTING STOREFRONT DOORS TO REMAIN.
6	REMOVE AND REUSE EXISTING STOREFRONT DOORS.
7	NEW STOREFRONT DOOR TO MATCH EXISTING.
8	NEW ALUMINUM AND GLASS OVERHEAD GARAGE DOOR - FINISH TO MATCH EXISTING STOREFRONT.
9	NEW PICK-UP SLIDER WINDOW WITH DOUBLE INSULATED GLASS AND ACCESSIBLE SERVICE COUNTER.
10	DOOR BELL AND SIGN - SIGN TO READ "PLEASE RING BELL FOR ASSISTANCE" AND HAVE THE DISABILITY ACCESS SYMBOL. SIGN TO BE PLACED IN ADJACENT AREA NEAR THE DOOR BELL.
11	FASTPLANK PANEL SYSTEM CEILING AND SOFFIT TO MATCH EXISTING.
12	BUILDING SIGNAGE UNDER SEPARATE PERMIT AND SHALL CONFORM TO SIGNAGE CRITERIA GUIDELINES FOR ATMOSPHERE IN THE TENANT CRITERIA MANUAL. PROVIDE BLOCKING FOR ANCHORAGE.
13	NEW FRAMED WALL WITH STUCCO FINISH TO MATCH EXISTING COLUMNS.
14	NEW DISPLAY LEDGE MOUNTED TO WALL.
15	DISPLAY NICHE IN NEW WALL.
16	NEW PONY WALL AND BAR COUNTER UNDER OVERHEAD GARAGE DOOR.
17	LINE OF DEMISING WALL.
18	NEW FENCE, RAILING, & GATE - SHALL CONFORM TO THE GUIDELINES FOR ATMOSPHERE IN THE TENANT CRITERIA MANUAL.
19	NEW POST LIGHTS.
20	NEW STRING LIGHTS MOUNTED ON LIGHT POSTS.
21	NEW PONY WALL WITH PICK-UP SLIDING WINDOW.
22	EXISTING PARKING DECK - NO CHANGE.
23	HOSE BIBB.
24	ELECTRICAL OUTLET.
25	SPANDREL GLASS - FROSTED GLASS APPEARANCE.
26	WALL ABOVE PICK-UP WINDOW.
27	EXISTING WALL.
28	SUITE NUMBER - 6\"/>

NOTE: T.G. = TEMPERED GLASS PANEL.

ADDITIONAL NOTES:

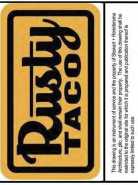
NOTE: ALL EXTERIOR MODIFICATIONS SHALL MATCH EXISTING FINISHES, NAMELY THE STOREFRONT TYPE AND FINISH, PAINT COLOR AND FINISH OF THE EXTERIOR WALLS TO MATCH THE EXISTING CONCRETE COLUMNS AND THE APPLIED FAUX WOOD CEILING PANELS.

NOTE: FESTOON / FESTIVAL STRING ACCENT LIGHTING SHALL FALL BELOW 600 LUMENS, AND BE HARD-WIRED FOR THE SPACE. STRING LIGHTING SHALL BE CONNECTED BY CABLE TO KEEP IT AS TAUT AS POSSIBLE. NO EXTREME SAG IS ALLOWED.

NOTE: NO EXTERIOR GAS LINES, PIPES, CONDUIT, OR RELATED MATERIALS SHALL RUN ALONG BUILDING ELEVATIONS OR WALL. ALL SHALL RUN ON INTERIOR OR INSIDE WALLS.



vertical text: 11/19/21



Project: RUSTY TACO RESTAURANT T.I. 707 S. FOREST AVENUE, SUITE #112 TEMPE, ARIZONA

date:	10/09/21
issued for:	PERMIT SUBMITTAL
revision no.:	date:
OWNER COMMENTS	11/19/21
CITY COMMENTS	11/19/21
job no.:	21-104

sheet title: EXTERIOR ELEVATIONS

sheet no.: A5.1







ARIZONA STATE



"KEEP IT SIMPLE: LOVE, LAUGH & EAT TACOS"



Sauces from Scratch

MADE FRESH EVERY DAY
(THAT'S WHY IT'S SO GOOD)



TIRE RACK
.com

The Way Tire Buying Should Be.™

TIRE RACK
.com

The Way Tire Buying Should Be.™

Only at TIRE

MAXIMUM
OCCUPANCY 69



FOOD ARE THE MOST IMPORTANT



ARIZONA STATE