

**CITY OF TEMPE  
DEVELOPMENT REVIEW COMMISSION**

Meeting Date: 3/27/2018  
Agenda Item: 4

**Q.J.**

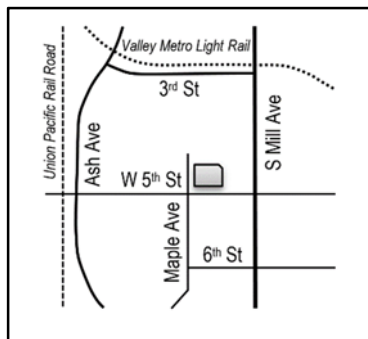
**ACTION:** Request an appeal of the February 6, 2018 Hearing Officer’s decision to approve two use permits to allow entertainment (indoor) and a bar (Series 6) for 5<sup>TH</sup> ST PREPARED FOOD MARKET & BAR, located at 24 West 5th Street. The appellant is Mark Davis on behalf of the Hayden Square Condominiums.

**FISCAL IMPACT:** There is no fiscal impact on City funds.

**RECOMMENDATION:** Not applicable.

**BACKGROUND INFORMATION:** 5<sup>TH</sup> PREPARED FOOD MARKET & BAR (PL180006) is proposing to operate on the northeast corner of South Maple Avenue and West 5<sup>th</sup> Street in the CC, City Center District, and the TOD, Transportation Overlay District. On February 6, 2018, the Hearing Officer heard and approved a use permit to allow entertainment (indoor) and a bar (Series 6). On February 16, 2018, an appeal to the Hearing Officer’s decision was submitted by appellant, Mark A. Davis on behalf of the Hayden Square Condominiums. \*NOTE: THIS ITEM IS A QUASI-JUDICIAL MATTER. PRE-MEETING CONTACT WITH THE COMMISSION ON QUASI-JUDICIAL MATTERS IS PROHIBITED. ANY MATERIALS OR CONVERSATION CONCERNING THE ITEM SHALL ONLY BE PRESENTED TO THE COMMISSION AT THE SCHEDULED PUBLIC HEARING. The request includes the following:

- ZUPA180001 Appeal of approved Use permit (ZUP180004) to allow entertainment (indoor).
- ZUPA180002 Appeal of approved Use permit (ZUP180005) to allow a bar (Series 6).

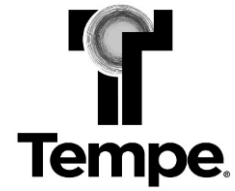


Existing Property Owner	Antipesto Real Estate Holdings, LLC
Applicant of Entitlement	Charles Huellmantel, Huellmantel & Affiliates
Appellant	Mark A. Davis, Hayden Square Condominiums
Zoning District	CC (TOD)
Site Area	18,552 s.f.
Building Area	12,008 s.f.
Indoor Floor Area	11,419 s.f.
Patio Bar	2,842 s.f.
Patio	561 s.f.
Vehicle Parking	29 spaces (19 min. required)
Bicycle Parking	22 spaces (22 min. required)
Restaurant Hours of Operation	6am to 2am, Daily
Bar Hours of Operation	10am to 2am, M-F; 8am to 2am, Sa-Su
Building Code Occupancy	A-2, B

**ATTACHMENTS:** Development Project File

**STAFF CONTACT(S):** Lee Jimenez, Senior Planner (480) 350-8486

Department Director: Chad Weaver, Community Development Director  
 Legal review by: N/A  
 Prepared by: Lee Jimenez, Senior Planner  
 Reviewed by: Suparna Dasgupta, Principal Planner



**DEVELOPMENT PROJECT FILE**  
for  
**5<sup>TH</sup> STREET PREPARED FOOD MARKET & BAR**  
**(PL180006)**

**ATTACHMENTS:**

1. Letter of Appeal, dated February 16, 2018
- 2-3. Follow-up Letter from Appellant, dated March 15, 2018
- 4-6. Applicant's memo in response to Appellant's Follow-up Letter, dated March 19, 2018
- 7-10. Letter to Hearing Officer from Appellant, dated February 6, 2018
- 11-16. Minutes of the February 6, 2018 Hearing Officer
- 17-20. Staff report from the February 6, 2018 Hearing Officer (in original order and pagination).
- 21-43. Original Development Project File

HAYDEN SQUARE CONDOMINIUMS  
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16625 S. DESERT FOOTHILLS PARKWAY  
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PHONE: (480)759-4945 FAX: (480)759-8683

February 16, 2018

City of Tempe  
35 E. 5<sup>th</sup> Street  
Tempe, Arizona 85281

Re: Appeal Use Permit (ZUP180004) and (ZUP180005)

Dear City of Tempe ,

On February 7<sup>th</sup>, 2018 the board of directors for the Hayden Square Condominiums voted to appeal the results of the February 6<sup>th</sup> hearing based on the following initial facts;

- 1) The hearing officer stated on the record that he did not read our complete letter and therefore our concerns as the direct neighbor were not incorporated into the decision.
- 2) The applicant attended our homeowner's association meeting on February 7<sup>th</sup> and refused to address the specific issues addressed in our letter.
- 3) On the record, while answering the hearing officer's question about the use of the proposed 2<sup>nd</sup> story North double doors, the applicant mischaracterized the doors as the "Emergency Exits". The site plan clearly defines the doors at Main Entrance.

We reserve the right to provide additional information to our appeal request. Please provide a copy of the draft minutes of the Feb 6<sup>th</sup>, 2018 meeting upon the completion of preparing them.

Sincerely,



Mark A Davis for the Board of Directors of Hayden Square Condominiums



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March 15, 2018

Huellmantel Affiliates (Via E-mail) [charles@huellmantel.com](mailto:charles@huellmantel.com) &  
Scott Price (Via E-mail) [s.wesley.price@gmail.com](mailto:s.wesley.price@gmail.com)  
PO Box 1833  
Tempe, AZ 85280

Re: Use Permit (ZUP180004) and (ZUP180005)

Dear Mr. Huellmantel & Mr. Price,

First, thank you for attending our association meeting on February 7<sup>th</sup>. At the meeting, we were hoping that it would have been the opportunity to cooperatively discuss and brainstorm the details of the proposed building modifications as well as operations of the bar and entertainment venue. Unfortunately, you did not wish to get into the details of the conditions. As you may recall, we listed ten proposed conditions in our letter to the hearing officer dated February 7<sup>th</sup>, 2018.

In the longstanding spirit of our association's **cooperative relationship** with the various operator of businesses around our community, we voluntarily refined the list of ten conditions to only **five conditions** and further modified many of these to encourage a solution that can be agreed upon prior to the March 27<sup>th</sup> appeal hearing before the City of Tempe Development Review Commission. We would appreciate your review of these proposed conditions and provide feedback to us in writing. Further, we would like a legible copy of the latest plans of the proposed modifications to the existing building.

- 1) Hours of use permit for indoor entertainment limited to the following:
  - a. Sunday – Thursday: No Uses from 11pm – 7am
- 2) Trash shall not be emptied from the project into trash containers or trash collected from the project from 11pm – 7am on all days.
- 3) No outdoor speakers on the project
- 4) Applicant shall have professional security monitor the exterior premises of the project during operating hours and for one hour after closing
- 5) Relocate Main Entrance of second floor to East side of building.



Thank you for your consideration on the above conditions and we look forward to continuing to establish a **cooperative relationship** with your operation.

Sincerely,



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Mark A Davis for the Board of Directors

Cc: Board of Directors of Hayden Square Condominiums  
Development Review Commission of the City of Tempe via Lee Jimenez

# HUELLMANTEL AFFILIATES

## MEMORANDUM

To: Lee Jimenez, Senior Planner – City of Tempe Community Development Department  
From: Charles Huellmantel, Huellmantel & Affiliates  
Re: 5<sup>th</sup> Street Prepared Food Market & Bar – DRC Appeal  
Date: March 19, 2018

Lee:

As you know, I represent 5<sup>th</sup> Street Prepared Food Market & Bar regarding its applications for Use Permits for Live Entertainment (indoor) and a Bar (Series 6). The Hearing Officer granted our requests on February 6, 2018. Subsequently, an appeal was filed. This memorandum analyzes the appeal under the Tempe Zoning and Development Code (“ZDC”) Section 6-803 governing appeals. First, this memorandum will explore the adequacy of the petition for appeal and then consider the issues raised in the petition.

Appeals of decisions made by public bodies within the City of Tempe are subject to three specific appeal criteria outlined in the ZDC. 6-803-A. Specifically, the appeal criteria applicable to appeals of decisions by the Hearing Officer – as is the case with the appeal filed here – are enumerated in ZDC 6-803.A.1. The ZDC requires that

“[t]he petition for appeals to the City of Tempe shall contain: (a) the name of the applicant and the city case file number; (b) the name, address and signature of each petitioner; and (c) the specific grounds for appeal. The appeal shall be limited to the issue(s) raised in the petition..” ZDC 6-803.A.1.a-c.

While the appeal to the Development Review Commission appears to have been appropriately filed under the ZDC standards for subsection a, the appeal should not be considered as coming from the Hayden Square Condominium Board of Directors because appellant Davis was the only person whose name is included on the petition for appeal and he is the sole signatory.

The appeal filed by appellant Davis does include the name of the applicant as well as the City case file number as indicated by the Project Submittal Application form submitted with the appeal. However, appellant Davis is the only individual whose name appears on the petition for appeal and the letter included with the petition. Furthermore, appellant Davis is the only individual whose signature appears on the application and letter. Per ZDC 6-803.A.1.a-c, appellant Davis’ petition for appeal does not meet the requirements to be filed on behalf of the Hayden Square Condominium Board of Directors and therefore is filed on his behalf only.

Appellant Davis' petition for appeal included the specific grounds (as required by the ZDC) for his appeal. The petition for appeal cites the three following reasons for appeal:

- (1) The hearing officer stated on the record that he did not read the Hayden Square Condominium Board of Directors letter that was provided at the hearing and did not take its concerns into consideration in his decision to grant the Use Permit requests;
- (2) The applicant attended a homeowners association meeting on February 7, 2018 – the day after the hearing – and refused to address specific issues in the letter; and
- (3) The applicant mischaracterized doors on the north side of the building as emergency exits when they are labeled as a main entrance on the site plan.

Despite appellant Davis' note in his petition of appeal that he “reserve[s] the right to provide additional information to our appeal request . . .” the ZDC is clear on this issue. According to the appeal criteria, “the appeal shall be limited to the issue(s) raised in the petition.” ZDC 6-803.A.1.c. Appellant Davis' appeal is limited to the three issues raised in his petition of appeal filed on February 16, 2018.

First, appellant Davis asserts that the Hearing Officer did not take into consideration “direct neighbor” concerns because the Hearing Officer stated he did not read the complete letter. Not only is this a misleading assertion, appellant Davis incorrectly draws a conclusion about the Hearing Officer's decision to approve our requested Use Permits. Appellant Davis presented the 4-page letter at the hearing. Of critical importance is the fact that appellant Davis was permitted to speak at the hearing along with Michael Mueller – who appeared at the podium together – and he did indeed read a significant portion of the letter into the record at the hearing. Appellant Davis was permitted to speak for more than 8 minutes, well beyond the 3-minute limit for public comment. The Hearing Officer granted Appellant Davis this additional time to present his concerns, and furthermore asked the appellant additional questions after his nearly 9-minute speech and also allowed Mr. Mueller the opportunity to speak on the record as well. The Hearing Officer reiterated the concerns raised by Appellant Davis and asked the appellant if he should make note of any additional concerns, clearly indicating that the Hearing Officer was aware of the appellant's concerns. Additionally, notice was mailed to all adjacent property owners as required by the ZDC, and the site was posted with the request on a large hearing notice sign. Appellant Davis had ample time to submit information ahead of the hearing to be included in the Hearing Officer's staff report and indeed did reach out to the City to voice his concerns on the record. Appellant Davis' claim that the Hearing Officer did not consider his concerns is completely untrue.

Second, appellant Davis raised as an issue the applicant's (now appellee's) voluntary attendance at a meeting held by the Hayden Square Condominium Board of Directors the day after the Hearing Officer hearing. The applicant's voluntary attendance at a non-City meeting the day after the Hearing Officer's decision is not relevant to an appeal of the Hearing Officer's decision as it had no bearing on the Hearing Officer's decision. There is no requirement for a private citizen to agree to additional restrictions on a use that is expressly allowed by the City, and the Hearing Officer reviewed these same conditions at the meeting the day prior and specifically chose not to impose these additional restrictions. However, it is important to note that the applicant has an existing Use Permit for a Bar (Series 6) and that following the approval of that

Use Permit, appellant Davis reached out to the applicant on July 20, 2017, and requested modifications to the design to mitigate the impact on his rental property at Hayden Square. The main concerns, taken directly from his e-mail which we have included as an attachment to this memorandum, requested the following: relocate the patio on Maple to 5<sup>th</sup> Street and no amplified music facing Maple and near the West end of the project. The applicant made these changes and moved the patio to the easternmost portion of the property. Appellant Davis is now demanding far more restrictive conditions on the project that are unreasonable and do not take into consideration the building's unique construction with 16"-thick block walls to keep noise inside the building as well as the building location within the downtown City Center entertainment district. The use is already permitted, and the request for a Use Permit for a Bar was required to expand the proposed use onto the 2<sup>nd</sup> story. The original Use Permit request (PL170154) was considered and approved by the Development Review Commission in 2017.

Third, appellant Davis alleges that the applicant mischaracterized the use of a set of doors to a staircase for the 2<sup>nd</sup> level at the hearing. This assertion is factually inaccurate and also has no bearing on the decision to grant or deny our requested Use Permits. The statement at the hearing, that these doors could only be accessed from the easternmost portion of the site – the side furthest from Hayden Square Condominiums – is true, despite the fact that the staircase is located on the northeastern side of the building. The stairs can only be accessed from entering through the patio entrance on the easternmost portion of the site as the staircase has an internal entrance (they cannot be accessed from outside). Furthermore, the staircase is labeled on the 2<sup>nd</sup> level floor plan as “main entrance” doors for building code purposes related to occupancy requiring two entrances to the 2<sup>nd</sup> level. The staircase closest to 5<sup>th</sup> Street will likely serve as the main access point for the 2<sup>nd</sup> level. There is an additional staircase on the north side of the building that is an emergency exit only, and perhaps this is the source of confusion about the use of the northern doors. However, the use or location of an access stairwell to the 2<sup>nd</sup> level is not relevant to the granting of a Use Permit and appellant Davis has not stated how he believes this information is relevant to the Hearing Officer's decision to grant our requests. Therefore, this issue appears to stem more from a misunderstanding than misrepresentation and has no bearing on the appropriateness of the Use Permits.

We believe that the Hearing Officer appropriately granted our requests for the two Use Permits on the basis that we meet all of the criteria for the granting of a Use Permit. The appellant's appeal hearing is limited to the three issues raised in his petition of appeal, and none of his assertions have factual or relevant bearing on the Hearing Officer's decision. Accordingly, we request that the DRC uphold the Hearing Officer's granting of our Use Permits and deny the appellant's request.

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February 6, 2018

Hearing Officer for the City of Tempe  
35 E. 5<sup>th</sup> Street  
Tempe, Arizona 85281

Re: Use Permit (ZUP180004) and (ZUP180005)

Dear Hearing officer,

The Hayden Square Condominium Owner's Association in downtown Tempe is a condominium community with 118 units with a mix of one, two and three-bedroom units. Our community was a leading project of its time, having been built in the mid-1980's, as one the re-urbanization projects of Downtown Tempe. Our community is not a typical condominium project, we include urban features such as shared/community parking in our garage and units that embrace the street scape. Our board is engaged and has publicly supported the new Westin hotel and new Whole Foods projects. Our community population is becoming more and more homeowners as many college renters have moved on to rental complexes. We see these new projects as setting the tone of high quality projects that support a new and denser urban community in Downtown Tempe where we can live, play and work.

The proposed project and the use permits are of great concern to our 118-member units / property owners as the location is less than 60 feet from our community. Our history with other bars that surrounded our community over the decades has allowed us to understand how to build a **cooperative relationship** with our community and the operators.

The first step in building the **cooperative relationship** is to have a dialog. Our community was not at the table to engage in dialog when the applicant filed their initial use permits. The applicant did not reach out to our community and by the time we caught up with him, he was awarded the June 2017 use permits. Upon receiving the public notice of the new use permits, our homeowner's association asked the applicant to attend our planned monthly board which is scheduled for February 7<sup>th</sup>, 2018 (tomorrow) and doing so, we asked the applicant to respectfully continue this hearing. The applicant told us "it is not necessary to delay his hearing". In response to the applicant's refusal to delay the hearing and participate in a **cooperative relationship** with our community our association held a Special Meeting of the Board of Directors afforded by our governing documents to discuss this issue and draft this letter (just a few hours before this hearing).

Our community believes the applicant will **NOT** meet the Section 6-308 E approval criteria for the Use Permit:

- 1) *Any significant increase in vehicular or pedestrian traffic*; the proposal is designed as a maximum capacity intense assembly project that will drastically increase the vehicular traffic on Maple and the alley behind the project. In fact, the project is designed to remove some existing on-site parking spaces and the traffic will likely overflow into our communities' parking privileges in the West lot of Hayden Square.
- 2) *Nuisance arising from the emission of odor, dust, gas, vibration, noise, smoke, heat or glare at a level exceeding that of ambient conditions*; the proposed bar is replacing a building that previously was occupied by retail and office uses. The retail and office building previously buffered the excessive noise from Mill Ave bars. The new uses will have substantial vibrations from the amplified bass and the flashing lighting from the entertainment will glare out of the windows and into our homes. The bar will cause noise well in excess of the City of Tempe's noise ordinance as the proximity from our community to the project is less than 60 feet away. The simple act of opening and closing the door during a raging bar night with blasting music as well as the operations of the dumping of garbage late in the evening closing creates noxious smells and noise will be well in excess of the ambient. Further, the proposed use will disrupt the peace and tranquility afforded by residents. We have experienced and continued to experience many issues with many bars.
- 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*; our community was built and designed when single pane glass was the normal standard and given this issue our community is highly vulnerable to excessive noise and bass from surrounding properties. Our community property values will decrease as this use is not designed as a quaint restaurant that can act as a neighborhood gathering spot, rather this use is a Series 6 bar only liquor license that will blare excessive noise into our community regularly.
- 4) *Compatibility with existing surrounding structures and uses*; the proposed project and use are **NOT** compatible with our adjacent community. This use is better situated to front Mill Ave rather than being less than 60 feet from someone's bedroom.
- 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 type of liquor sales license is designed to allow for unlimited amounts of alcohol sold to as many people as possible. This type of use belongs along the bars fronting Mill Ave or where it is **NOT** situated less than 60 feet from someone's bedroom. As stated on Matthew Lopez Law website, <https://matthewlopezlawyer.com/getting-fights-tempe-bars-lead-assault-charges/>, Getting in Fights at Tempe Bars Lead to Assault Charges and specifically sites one of the applicants other bars in the article.

Our community understands that it is Mill Ave's lively activity makes Hayden Square interesting, but we also have abundant experience with operators not living up to their promises. Further, city staff and police resources are not robust enough to monitor and in many cases enforce the typical conditions for approval. Our community is looking for conditions of approval with teeth so the operator faces use permit revocation should they not live up to the commitments. We have listed a number of conditions of approval that we request be added or amended to the staff proposed conditions for approval:

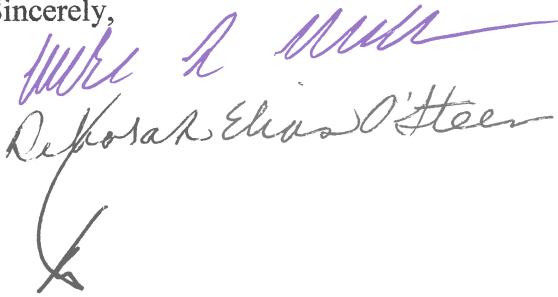
- 1) Hours of use permits operation limited to the following:
  - a. Sunday – Thursday: No Uses from 10pm – 7am (corresponds with City of Tempe noise ordinance)
  - b. Friday – Saturday: No Uses from midnight – 7am
  - c. Consideration outside these hours for no more than five (5) special event days per year will be permitted.
  - d. Trash shall not be emptied from the project or collected from the project from 11pm – 7am on all days.
  - e. Building Maintenance shall be not performed at the project from 11pm – 7am on all days.
- 2) Use permit must be reviewed one (1) year after C of O and applicant must return to extend the use permits for a set period of time after the first year.
- 3) Applicant to pay for a City of Tempe Police Department approved data logging sound level meter and to install meter at Hayden Square or have Hayden Square representative monitor noise levels during operating hours. Should noise levels exceed the City of Tempe limits of 45 db(A) from 10pm – 7am and 55 db(A) 7am – 10pm, the data logging output will be submitted to the City of Tempe and will result in an immediate revocation of the Use Permits.
- 4) All openings, including doors and windows, are not permitted to be propped open in the open position. Photographs of the doors or windows propped open and submitted to the City of Tempe will result in an immediate revocation of the use permits. Applicant shall post signs in a visible location near the openings to remind patrons and employees to not prop open any openings during operating hours.
- 5) Windows on the proposed project shall be replaced with non-operable noise mitigating materials (thicker glass) and flashing lights shall be prevented from glaring through.
- 6) No illuminated business signs shall face towards Hayden Square.
- 7) Amend Staff proposed condition of approval item 4) to exclude needing city attorney's office to be a party to a verified complaining party.
- 8) No outdoor speakers on the project

9) No deliveries along Maple

10) Applicant shall have professional security the exterior premises of the project during operating hours

Thank you for your consideration on the above use permits and we look forward to Tempe's help in establishing a cooperative relationship with the applicant.

Sincerely,

A handwritten signature in purple ink, which appears to read "Deborah Elias O'Hearn". The signature is written in a cursive style with a long horizontal flourish at the end.

Board of Directors of Hayden Square Condominiums



4. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
5. No outdoor storage of inventory or donations allowed, including recyclables such as soda cans, plastic bottles, white office paper, mixed paper (phone books, magazines, newspaper, catalogs).
6. Collection and storage trailers to be parked at the rear of the building when present.
7. To control the possibility of disruptive behavior, donation collection hours shall be limited to business operating hours. Provide proper signage prohibiting drop-off of donations outside of business hours.
8. Donation collection area shall be illuminated from dusk to dawn with four (4) foot-candles of light at finish grade.
9. A development plan review is required for any exterior modifications.
10. Any intensification or expansion of use shall require a new Use Permit.
11. All rear exit doors require a security vision panel or a 180-degree rotatable viewer. Details to be approved through Building Safety Plan Review.

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4. Request approval for the 5<sup>TH</sup> STREET PREPARED FOOD MARKET AND BAR (PL1800006) located at 24 West 5<sup>th</sup> Street for the following:

ZUP180004 Use permit to allow entertainment (indoor)

ZUP180005 Use permit to allow a bar (Series 6).

Lee Jimenez, Senior Planner, gave the following overview of these requests:

- 5<sup>th</sup> Street Prepared Food Market and Bar (PL180006) is requesting a use permit to allow a restaurant with a full-service bar and entertainment (indoor) in the Barmier Building located on the northeast corner of West 5<sup>th</sup> Street and South Maple Avenue in the CC, City Center District and within the TOD, Transportation Overlay District.
- The restaurant and bar will provide a market style establishment with a large kitchen serving fast casual meals on weekdays with a full breakfast/brunch offered on weekends.
- The establishment anticipates employing 60 – 75 persons.
- The original use permit for a bar (Series 6) was heard by and approved by the Development Review commission on June 13, 2017. The scope of the permit included a wrap-around outdoor patio with the landscape areas along the intersection of Maple Avenue and 5<sup>th</sup> Street.
- The applicant has since modified the plans to remove this patio area and replace with screened outdoor storage and landscaping.
- All proposed site and elevation modifications have not been approved, but are currently under review per a concurrent development plan review application.

- All modifications will be evaluated by staff to ensure conformance with these use permits, should both be approved.
- A security plan is required for both use permits through the Tempe Police Crime Prevention Unit.
- To date, two (2) inquiries were received from two (2) condo owners at Hayden square condominiums.
- The first inquirer noted unhappiness with the application, but did not provide specific concerns.
- The second inquirer requested more information and a link to the staff report was provided by email, as well as a link to the Noise Chapter of the City Code as requested.
- Based on the information provided by the applicant, the public input received and the analysis provided in the staff report, staff supports this request and believes that the application meets the required criteria and will conform to the assigned Conditions of Approval provided in the staff report.

Mr. Williams asked Mr. Jimenez if there would be any entertainment on the second floor. Mr. Jimenez responded that the entertainment would be indoor only and would include both the first and second floor areas.

Charles Huellmantel, of Huellmantel & Affiliates, was present to represent this case. He acknowledged receipt of the Staff Summary Report and his understanding of the assigned Conditions of Approval.

Mr. Huellmantel presented a power point presentation identifying the following points of interest:

- He explained that a use permit allowing a bar on the first floor had been approved by the DRC on June 13, 2017.
- A site aerial map indicated the names of business enterprises in the vicinity (approximately 42 entities).
- Photographs of the location from the east, west, south and north sides.
- Drawings of both the 5<sup>th</sup> Street elevation and the Maple Street elevation.
- Photographs of the 16-inch block walls.
- First floor drawing of the intended bar area.
- Second floor drawing of the intended bar area.
- Drawing of floor plan for the 1<sup>st</sup> floor entertainment area (indoor).
- Drawing of floor plan for the 2<sup>nd</sup> floor entertainment area (indoor).

Mr. Huellmantel reviewed the Zoning and Development Code criteria for a use permit, noting that an existing use permit for a bar is already in place (1<sup>st</sup> floor only). He also noted that the increasing the use to the 2<sup>nd</sup> floor would not cause a significant increase in traffic and the thick block walls will help keep noise generated from indoor entertainment contained in the building. These requests meet all the criteria, Mr. Huellmantel stated.

Mr. Williams questioned Mr. Huellmantel as to whether they were going to change entrance area as well. Mr. Huellmantel conferred with Scott Price (business owner), who was sitting in the audience, and returned to the podium to indicate that the south side of the building was the area that had caused the most concern. Due to the recent plan modifications (i.e. removing the wrap around outside patio area and replacing it with screened outdoor storage and landscaping), the plans now allow for better operation, as the old entrance was on the south side and had been relocated to the east side where it faced the parking lot.

Mr. Williams thanked Mr. Huellmantel for that information.

Mr. Williams asked if there was any member of the audience who wished to address these requests.

Bryce Buchanan, Tempe resident, stated that he was a nearby homeowner who lives across the street. He is in support of this request.

Mark Davis and Michael Mueller, Tempe residents, approached the podium together. Mr. Davis read from a four (4) page letter from the Hayden Square Condominium Owner's Association. This letter identified areas of concern such as:

- The condominium community has 118 units and the location of this project is less than 60 feet from their community.
- They do not feel that there is a cooperative relationship between the applicant and the condo association. In particular, they had requested that the applicant to postpone tonight's public hearing appearance in order to attend their monthly Board meeting scheduled for February 7<sup>th</sup>.
- Their concerns regarding this project are increased traffic, diminishing on-site parking spaces and excessive noise due to music vibrations and the opening and closing of doors as patrons enter and exit the establishment.
- The distance of 60 feet from their homes is not compatible due to liquor sales at the bar, and they feel it is not conducive to a peaceful home atmosphere.
- They requested several items to be included within the assigned Conditions of Approval pertaining to:
  - Hours of Operation
  - Hours of Trash Removal
  - Hours of Building Maintenance
  - No Open Doors & Windows with accompanying signs indicating need for compliance
  - No illuminated business signs facing Hayden Square
  - No outdoor speakers
  - COT Police Department installed sound meter with designated monitoring
  - 6-month COA Compliance Review
  - No deliveries along Maple Avenue
  - Professional security on exterior premises during operating hours

Mr. Davis additionally stated that their condominium community was not a typical development, that it includes urban features such as shared/community parking in the garage as well as supporting urban renewal of the downtown Tempe area. He indicated that the association does not feel that these requests meet the criteria for use permits as depicted within the City's Zoning and Development Code. He felt that the applicant did not participate in meaningful dialogue with members of their association regarding the specifics of this project.

Mr. Williams asked Mr. Mueller if he had anything he would like to add to Mr. Davis' comments. Mr. Mueller responded that he was in agreement with the above-mentioned remarks and concurred with Mr. Davis.

Mr. Williams explained that Mr. Davis and Mr. Mueller needed to understand that time is against them, as this project has been in development for quite some time, and numerous meetings and notifications regarding the particulars had occurred prior to tonight's public hearing.

Anthony Rice, Tempe resident, spoke stating that although he was in support of this request, his patio faced the venue and he had concerns about the noise factor.

Mr. Williams thanked the speakers for attending tonight's public hearing and sharing their concerns and opinions.

Mr. Williams questioned staff as to whether the proposed parking would support this venue. Mr. Jimenez responded that there is adequate parking to support this project.

Mr. Williams asked about legal notifications for these requests. Mr. Jimenez responded that the public hearing agenda(s) are advertised 15 days in advance of the scheduled public hearing. Additionally, large red and white signs are posted at the site, and postcard notifications are sent to all registered homeowners within 600 feet of the project. All neighborhood and homeowners' associations within 1320 feet of the project also receive a postcard notification, as well as an e-mail notification.

Mr. Huellmantel returned to the podium. He acknowledged the concerns of tonight's speakers and presented an additional power point presentation that highlighted the numerous areas where the applicant had worked to accommodate the neighbors. This presentation indicated the following:

July 20, 2017

- The applicant received request to modify the design that included relocating the patio area on Maple to 5<sup>th</sup> Street; and to frame in the patio closest to Maple with trellis/landscaping.
- Neighbors requested operations courtesies including:
  - No amplified music facing Maple.
  - Limit amplified music patio levels to a lower level – Sunday – Thursday.
  - Good neighbor signage on patio areas closest to Hayden Square.
  - Provide gift cards to nearest neighbors who may be impacted by construction noise.
  - Reach out to neighbors 3 – 6 months post-opening for feedback.

Mr. Huellmantel noted that, in response to these requests, the patio adjacent to Hayden Square along Maple has been eliminated. Efforts to accommodate the amplified music have also been addressed and the business owner removed the western patio and revised the entrances to reduce the impact of bar and entertainment uses on Hayden Square residents. Mr. Huellmantel indicated on an aerial map where the trash location would be situated.

Mr. Huellmantel also addressed the 'lack of meaningful dialogue' comment. He provided a time line beginning with June 13, 2017 when the DRC approved the use permit to allow a bar. Since that time, the business owner has repeatedly tried to work with residents by addressing e-mail concerns, providing revised elevations and floor plans, and attempting to schedule a meeting with the Hayden Square Board. The business owner did engage in a telephone conversation with the Hayden Square HOA President on January 29, 2018 which resulted in a positive on-site meeting with no outstanding concerns identified.

Mr. Williams asked whether the outside staircase on the northwest side of the building would be use for patrons to enter and exit the venue. Mr. Huellmantel responded that these stairs were intended to be used as an emergency exit only; that the new stairwell on the east side and the stairwell located near the breezeway would be the primary entrance/exit for patrons.

In conclusion, Mr. Huellmantel acknowledged that this project has been in development for a long time, and discussions and reviews with interested

Mr. Williams stated that he was sensitive to the concerns regarding noise and parking as well as consideration of the neighborhood community. His review of the Staff Summary Report and documentation presented by staff and the applicant indicated that these uses are compatible and consistent with other uses in the area.

After discussion with staff, it was agreed to add a Condition of Approval No. 11, requiring the applicant to return to the Hearing Officer for a 6-month review of compliance with the assigned Conditions of Approval. The 6-month period will begin once the business is actively in operation.

Mr. Williams explained that these requests meet Section 6-308E approval criteria for a use permit as follows:

1. *Any significant increase in vehicular or pedestrian traffic;* the proposed uses will cater to the existing business and residential population in the downtown area and will therefore not significantly increase vehicular or pedestrian traffic.
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 uses are consistent with surrounding restaurant and bar uses and will not generate emissions greater than that of ambient conditions. Entertainment will be provided indoor only and the building itself will act as a barrier between the patio bar and the residential use across South Maple Avenue to the west.
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 uses will provide another unique dining/bar and entertainment experience in the downtown area while reducing the commercial vacancy rate, which is not in conflict with the City's goals, objectives, policies or adopted plans.
4. *Compatibility with existing surrounding structures and uses;* the proposed building/site modifications and uses are compatible with the downtown area which is renowned for its entertainment offerings of bars and restaurants, both indoor and outdoor.
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 establishment plans to implement a strict security plan that will proactively address potential disruptive behavior and administer policies to prevent behavior from occurring and causing nuisances to the surrounding area or general public.

**DECISION:**

Mr. Williams approved the following requests for 5<sup>TH</sup> Street Prepared Food Market and Bar (PL180006) located at 24 West 5<sup>th</sup> Street subject to the assigned Conditions of Approval:

ZUP180004 Use Permit to allow entertainment (indoor).

ZUP180005 Use Permit to allow a bar (Series 6).

**CONDITIONS OF APPROVAL:**

1. The Use Permits are valid only after a Building Permit has been obtained and 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 building plan check process.
3. All required State, County and Municipal permits or licenses shall be obtained or the Use Permit is void.
4. If there are any complaints arising from the Use Permits that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permits will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permits, which may result in termination of the Use Permits.
5. Any intensification or expansion of uses shall require new Use Permits.
6. Entertainment use shall take place inside only. No live entertainment will be allowed outside.
7. Entertainment to cease at one fifty-five in the morning (1:55 a.m.) daily.
8. 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 March 8, 2018.
9. A development plan review is required for all exterior modifications.
10. **Return to the Hearing Officer for review of compliance with Conditions of Approval within six (6) months. The timing for the six-month review period to commence when the business is in full operation. Advise Community Development staff when in full business operation. If the full business activity is not initiated within one (1) year from date of approval, the use permits will lapse.**  
**ADDED BY HEARING OFFICER**

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5. Request approval of the following for **BLUE DRAGON VAPOR (PL170384)** located at 6473 South Rural Road:
  1. Variance to reduce the use separation requirement for a tobacco retailer from 1,320 feet to 210 feet.
  2. Use Permit to allow a tobacco retailer (vape shop).

Lee Jimenez, Senior Planner, gave the following overview of these requests:

- Blue Dragon Vapor operates in a shopping plaza located on the southeast corner of East Guadalupe road and south Rural Road within the PCC-1, Planned Commercial Center Neighborhood District.
- The applicants, Tracey Moore and David Barno, are seeking relief from the use separation requirements for tobacco retailers.
- Tobacco retailers shall not be located on a lot within 1,320 feet, measured by a straight line in any direction, from the lot line of a charter school, private school, or public school which provides elementary or secondary education.
- The vape shop is sited on a lot located approximately 210 feet from Gethsemane Lutheran School, and 1,004 feet from Marcos De Niza High School.
- Contingent upon approval of the variance request, the applicants are also requesting a use permit to allow a tobacco retailer (vape shop).

**CITY OF TEMPE  
HEARING OFFICER**

**Meeting Date: 2/6/2018  
Agenda Item: 4**

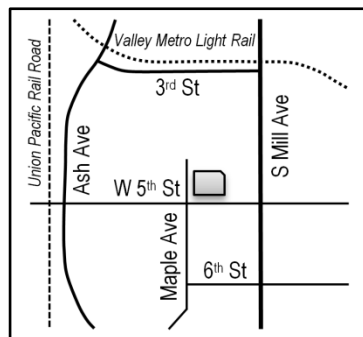
**ACTION:** Request approval of a use permit (ZUP180004) to allow entertainment (indoor) and a use permit (ZUP180005) to allow a bar (Series 6) for 5TH ST PREPARED FOOD MARKET & BAR (PL180006) located at 24 West 5<sup>th</sup> Street. The applicant is Charles Huellmantel of Huellmantel & Affiliates.

**FISCAL IMPACT:** N/A

**RECOMMENDATION:** Staff – Approve, subject to conditions

**BACKGROUND INFORMATION:** 5TH STREET PREPARED FOOD MARKET & BAR (PL180006) is requesting a use permit to allow a restaurant with a full-service bar and entertainment (indoor) in the Barmeier Building located on the northeast corner of West 5th Street and South Maple Avenue in the CC, City Center District and within the TOD, Transportation Overlay District. The restaurant and bar will provide a market-style establishment with a large kitchen serving fast casual meals on weekdays with a full breakfast/brunch offered on weekends. The establishment anticipates employing 60-75 persons. The request includes the following:

- ZUP180004 Use permit to allow entertainment (indoor).
- ZUP180005 Use permit to allow a bar (Series 6).



Property Owner	Antipesto Real Estate Holdings, LLC
Applicant	Charles Huellmantel, Huellmantel & Affiliates
Zoning District	CC (TOD)
Site Area	18,552 s.f.
Building Area	12,008 s.f.
Indoor Floor Area	11,419 s.f.
Patio Bar	2,842 s.f.
Patio	561 s.f.
Vehicle Parking	29 spaces (19 min. required)
Bicycle Parking	22 spaces (22 min. required)
Restaurant Hours of Operation	6am to 2am, Daily
Bar Hours of Operation	10am to 2am, M-F; 8am to 2am, Sa-Su
Building Code Occupancy	A-2, B

**ATTACHMENTS:** Development Project File

**STAFF CONTACT(S):** Lee Jimenez, Senior Planner (480) 350-8486

Department Director: Chad Weaver, Community Development Director  
 Legal review by: N/A  
 Prepared by: Lee Jimenez, Senior Planner  
 Reviewed by: Steve Abrahamson, Planning & Zoning Coordinator



## COMMENTS

5<sup>TH</sup> STREET PREPARED FOOD MARKET & BAR (PL180006) plans to occupy the entire building. The first floor consists of 4,332 s.f. of indoor kitchen, dining, storage, and multi-purpose space, and 3,403 s.f. of outdoor patio and bar space. The second floor consists of 4,000 s.f. of multi-purpose space with two bars and a small section of office space. The site provides adequate off-street vehicle parking but is short two (2) bicycle spaces wherein staff has conditioned to add another bike rack.

The original use permit for a bar (Series 6) was heard and approved by the Development Review Commission on June 13, 2017. The scope of the permit included a wrap-around outdoor patio within the landscape areas along the intersection of Maple Avenue and 5<sup>th</sup> Street. The applicant has since modified the plans to remove this patio area and replace it with screened outdoor storage and landscaping. All proposed site and elevation modifications have not been approved but are currently under review per a concurrent development plan review application. All modifications will be evaluated by staff to ensure conformance with these use permits should both be approved.

## PUBLIC INPUT

To date, one (1) inquiry was received from a condo owner at Hayden Square Condominiums. He noted unhappiness with the application but did not provide specific concerns. He is requesting that the item be continued to allow the HOA to deliberate at their board meeting scheduled for Wednesday, February 7, 2018. The original approved bar use permit and these two (2) use permits were public noticed in accordance with Section 6-404, Notice for Public Hearings, of the Zoning & Development Code.

## POLICE INPUT

Security plan required for both bar and entertainment use permits.

## USE PERMIT

The proposed uses require use permits to allow entertainment (indoor) and a bar (series 6) within the CC, City Center District. 5<sup>TH</sup> STREET PREPARED FOOD MARKET & BAR (PL180006) is proposing to operate a restaurant and bar with indoor entertainment. Use permits are required to ensure the orderly use of land in conformance with the General Plan and applicable city standards where uses are proposed that may require special limitations or conditions to provide compatibility with other uses.

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

1. *Any significant increase in vehicular or pedestrian traffic*; the proposed uses will cater to the existing business and residential population in the downtown area and will therefore not significantly increase vehicular or pedestrian traffic.
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 uses are consistent with surrounding restaurant and bar uses and will not generate emissions greater than that of ambient conditions. Entertainment will be provided indoor only and the building itself will act as a barrier between the patio bar and the residential use across South Maple Avenue to the west.
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 uses will provide another unique dining/bar and entertainment experience in the downtown area while reducing the commercial vacancy rate, which is not in conflict with the City's goals, objectives, policies or adopted plans.
4. *Compatibility with existing surrounding structures and uses*; the proposed building/site modifications and uses are compatible with the downtown area which is renowned for its entertainment offerings of bars and restaurants, both indoor and outdoor.
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 establishment plans to implement a strict security plan that will proactively address potential disruptive behavior and administer policies to prevent behavior from occurring and causing nuisances to the surrounding area or general public.



**REASONS FOR APPROVAL:**

Based on the information provided by the applicant, the public input received and the above analysis staff recommends 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:**

1. The Use Permits are valid only after a Building Permit has been obtained and 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 building plan check process.
3. All required State, County and Municipal permits or licenses shall be obtained or the Use Permit is void.
4. If there are any complaints arising from the Use Permits that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permits will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permits, which may result in termination of the Use Permits.
5. Any intensification or expansion of uses shall require new Use Permits.
6. Entertainment use shall take place inside only. No live entertainment will be allowed outside.
7. Entertainment to cease at one fifty-five in the morning (1:55 a.m.), daily.
8. 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 March 8, 2018.
9. A development plan review is required for all exterior modifications.

**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.

- The Use Permit is valid for 5<sup>TH</sup> STREET PREPARED FOOD MARKET & BAR and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
- 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.
- **SITE PLAN REVIEW:** Verify all comments by all departments on each Preliminary Site Plan Review. If questions arise related to specific comments, they should be directed to the appropriate department, and any necessary modifications coordinated with all concerned parties, prior to application for building permit. Construction Documents submitted to the Building Safety Division will be reviewed by planning staff to ensure consistency with this Design Review approval prior to issuance of building permits
- All business signs shall receive a Sign Permit. Contact sign staff at 480-350-8435.

- 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.
- Music, sound, or live entertainment shall not violate the City of Tempe Noise Ordinance.

**HISTORY & FACTS:**

July 19, 1968	Construction of the commercial building located at 24 West 5 <sup>th</sup> Street passed final inspection.
May 24, 1990	<p>City Council approved the request for TRAILS DEPARTMENT STORE (SIP.90.15) for the following located at 24 West 5<sup>th</sup> Street:</p> <ol style="list-style-type: none"> <li>1. <u>Variances:</u> <ol style="list-style-type: none"> <li>a. Reduce front yard setback from 10' to 0'.</li> <li>b. Reduce street side yard setback from 10' to 0'.</li> <li>c. Reduce minimum front and street side yard landscaping from 15' to 0' at building only.</li> <li>d. Allow parking to encroach into the front and street side yard setbacks.</li> <li>e. Reduce on-site drive from 20' to 5'.</li> <li>f. Reduce aisle width from 23' to 18' for parking area underneath building.</li> <li>g. Reduce minimum required on-site landscaping from 15% to 8%.</li> <li>h. Waive requirement for 7' landscaping islands at end of parking rows.</li> <li>i. Waive required parking screen wall on the street side yard and replace with landscaping.</li> <li>j. Reduce required parking from 42 spaces to 35 spaces.</li> </ol> </li> <li>2. <u>Use Permit:</u> <ol style="list-style-type: none"> <li>a. Allow non-residential uses (general office and general retail) in the CCD Commercial District.</li> </ol> </li> </ol>
December 18, 2001	Hearing Officer approved use permit request by MLJ UNIVERSAL CORPORATION (BA010312) to allow the temporary sales of officially licensed Fiesta Bowl merchandise located at 24 West 5 <sup>th</sup> Street in the CCD, Central Commercial Zoning District.
December 23, 2002	Hearing Officer approved use permit request by M.L.J. UNIVERSAL CORPORATION d.b.a. UNIVERSAL DESIGN (BA020318) to allow temporary retail sale of sports souvenirs located at 24 West Fifth Street in the CCD, Central Commercial District.
December 21, 2004	Hearing Officer approved request by TRAILS – UNIVERSAL DESIGN (RRC04059) for a use permit to allow temporary outdoor displays and sales during the Fiesta Bowl Football games and special events located at 24 West 5 <sup>th</sup> Street in the CCD, Central Commercial District.
February 20, 2013	Community Development Department staff approved use permit transfer from Trails Department Store (SIP-90.15) to HMSS LLC (PL130043) to allow retail sales for tobacco and tobacco accessories at 24 West 5 <sup>th</sup> Street, Suite 101 in the CC, City Center District.
June 13, 2017	Development Review Commission approved use permit to allow a bar (Series 6) for 5 <sup>TH</sup> STREET PREPARED FOOD MARKET & BAR (PL170154) located at 24 West 5 <sup>th</sup> Street within the CC, City Center District and TOD, Transportation Overlay District.

**ZONING AND DEVELOPMENT CODE REFERENCE:**

- Section 3-202 Permitted Uses in Commercial and Mixed-Use Districts
- Section 6-306 Development Plan Review
- Section 6-308 Use Permit
- Section 6-313 Security Plan

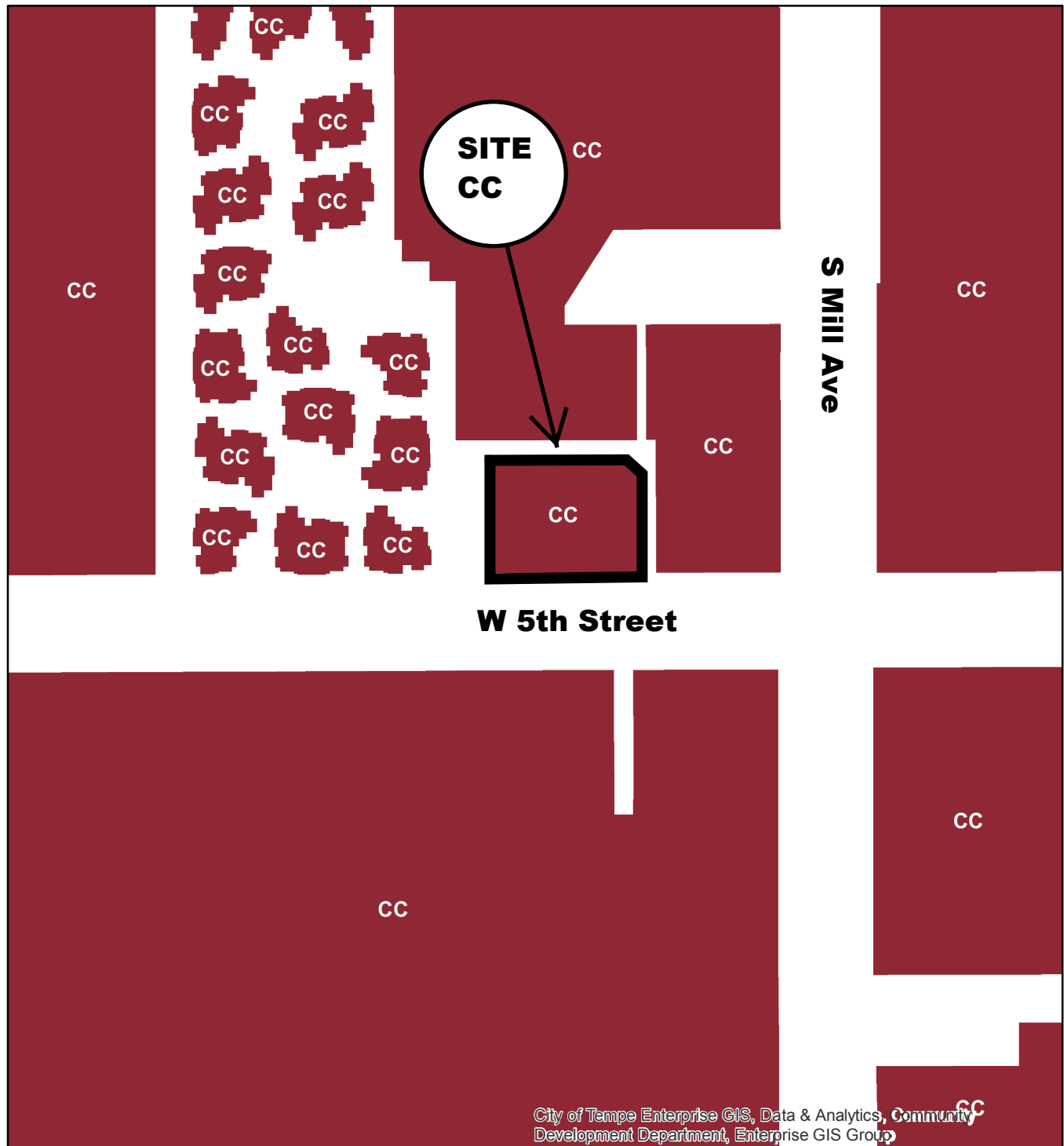
**DEVELOPMENT PROJECT FILE**  
for  
**5<sup>TH</sup> STREET PREPARED FOOD MARKET & BAR**  
**(PL180006)**

**ATTACHMENTS:**

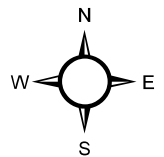
1. Location Map
2. Aerial
- 3-9. Letter of Explanation
10. Site Plan
- 11-12. Floor Plan
13. Building Elevations
14. Roof Plan
15. Ceiling Plan
- 16-17. Use Permit Approved by Development Review Commission on 6/13/17
- 18-22. Public Input

# 5th Street Prepared Food Market and Bar

PL 180006



City of Tempe Enterprise GIS, Data & Analytics, Community Development Department, Enterprise GIS Group



 City Center (CC)

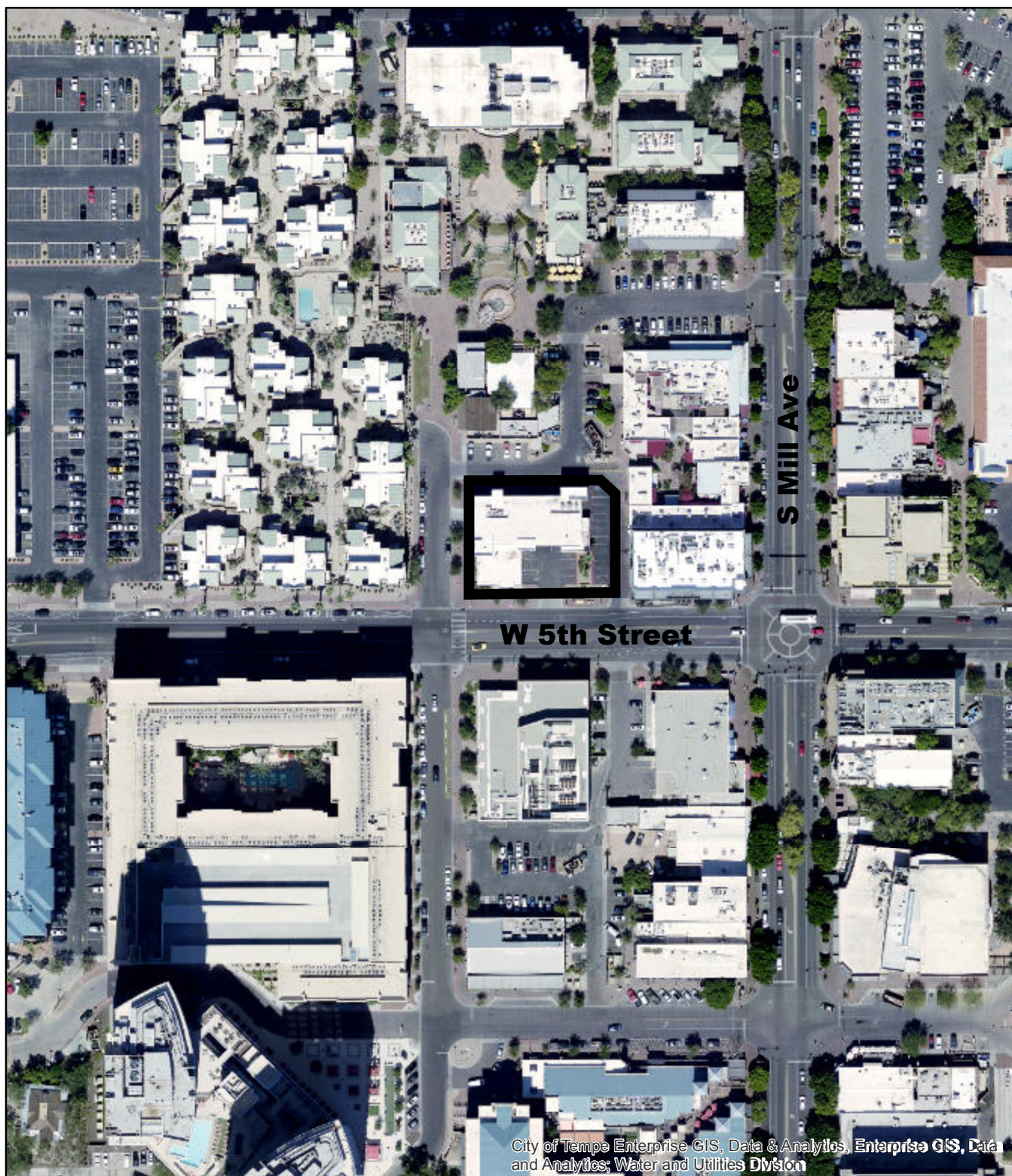




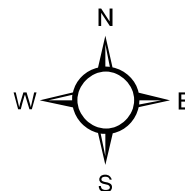
Tempe

PL 180006

# 5th Street Prepared Food Market and Bar



Aerial Map





# LETTER OF EXPLANATION

## USE PERMIT FOR BAR AND USE PERMIT FOR ENTERTAINMENT (INDOOR)

TO ALLOW A RESTAURANT & BAR WITH A SERIES 6 LIQUOR  
LICENSE IN THE CITY CENTER

### FIFTH STREET PREPARED FOOD MARKET & BAR

24 W. 5<sup>TH</sup> STREET  
TEMPE, ARIZONA 85281



**APPLICANT:**

**H**UELLMANTEL  
AFFILIATES

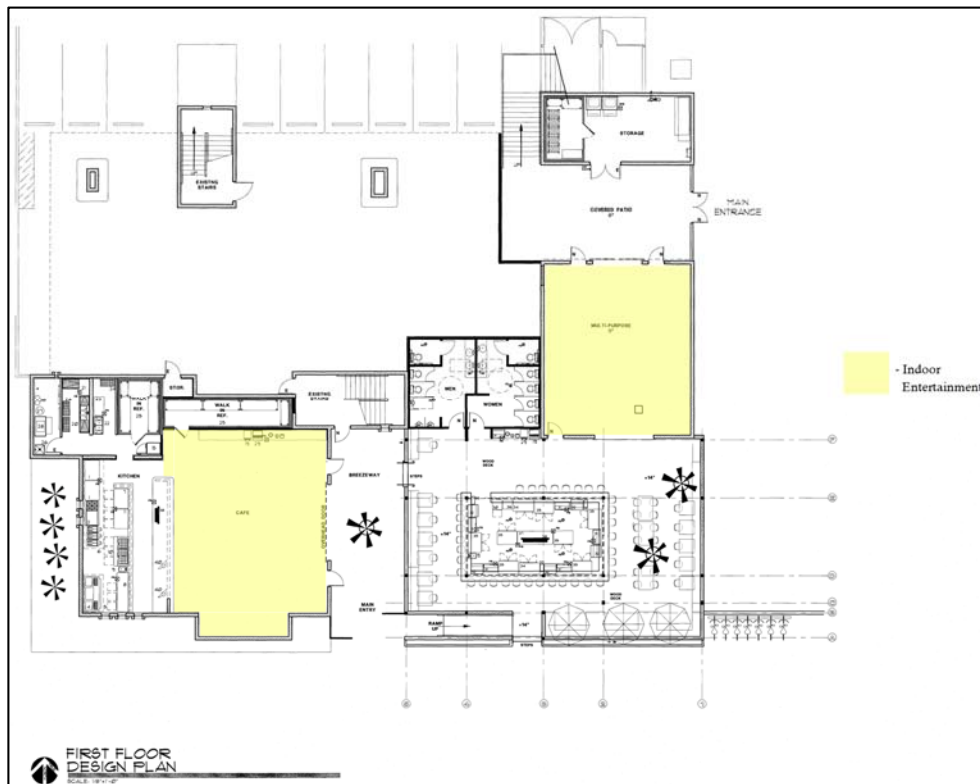
P.O. Box 1833 ✦ Tempe, Arizona 85280-1833 ✦ 480.921.2800 ✦ [charles@huellmantel.com](mailto:charles@huellmantel.com)

## SUMMARY

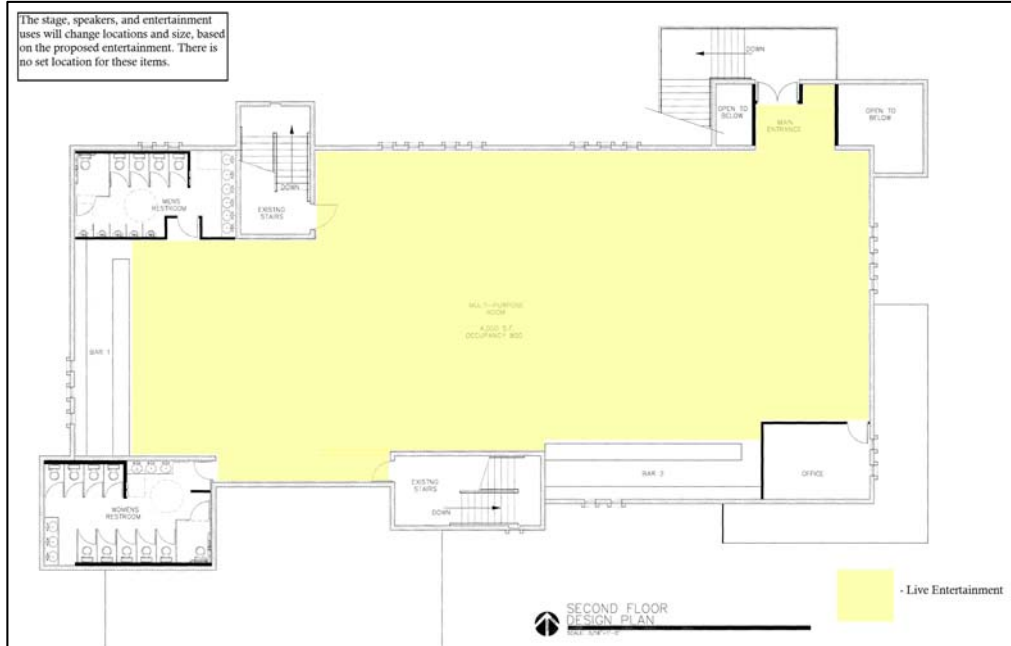
The purpose of this request is to apply for a Use Permit to allow a restaurant/bar with a Series 6 (Bar) Liquor License in the City Center (CC) zoning district and to apply for a Use Permit to allow Entertainment (Indoor) for the proposed location at 24 West 5<sup>th</sup> Street.

The proposal will include a request for the Use Permit for Entertainment (Indoor) on both the 1<sup>st</sup> and 2<sup>nd</sup> floor of the existing building, as shown in yellow below:

### First Floor:



## Second Floor:



This request for a Use Permit is part of a pending adaptive reuse project that will bring new life to a long vacant property in the heart of downtown and the pending DPR submittal for this building will significantly renovate both the first and second floors of 24 West 5<sup>th</sup> Street. Previously, the building served a head shop (Trails) with a decidedly non-urban and pedestrian unfriendly configuration. The proposed reuse is both urban and pedestrian in nature.

The restaurant/bar – Fifth Street Prepared Food Market & Bar – will have a large, modern kitchen serving fast casual meals at affordable prices, as well as coffee, juice, espresso, and baked goods on weekdays with a full breakfast/brunch offered on weekends.

The current parking area on the southern portion of the site will be converted into an outdoor dining area.

Our proposed hours of operation for the building will be from 6:00 a.m. to 2:00 a.m. daily. Bar operations will be from 8:00 a.m. to 2:00 a.m. on weekends and from 10:00 a.m. to 2:00 a.m. on weekdays. The Fifth Street Prepared Food Market & Bar plans to employ 60-75 employees.



**USE PERMIT CRITERIA AND JUSTIFICATION FOR BAR USE ON 1<sup>ST</sup> AND 2<sup>ND</sup>  
FLOOR**

Fifth Street Prepared Food Market & Bar is located in the CC zoning district. Restaurants with liquor licenses are permitted by right in the CC zoning district per the Tempe Zoning and Development Code. However, bars are considered clubs under the ZDC and require a use permit to operate in the CC. Because we will be operating under a Series 6 Liquor License, which permits full liquor service, we requested a Use Permit, PL170154, approved in June 2017. We would like a use permit to allow liquor service on the first and second floor of the building.

Because we will continue to satisfy the use permit conditions below, we believe the granting of our use permit request is appropriate:

*a. The granting of this Use Permit will not cause any significant vehicular or pedestrian traffic in adjacent areas:*

There will be no increase in vehicular or pedestrian traffic to the adjacent areas as a result of the granting of our use permit for bar use on the first and second floor. The proposed restaurant / bar is located in the City Center (CC) zoning district and is walking distance from multiple residential uses and entertainment and restaurant uses along Mill Avenue. We believe that many patrons will walk from Mill Avenue or their residences, which will not increase vehicular traffic.

Additionally, the location at 24 West 5<sup>th</sup> Street had previously functioned as a retail outlet with significant vehicular and foot traffic throughout the day. We do not feel that conversion from a retail outlet to a bar will have a material increase above and beyond what already existed. Additional bicycle parking will also be provided, in line with any increase in occupancy per code requirements.

*b. The granting of this Use Permit will not cause any nuisance (odor, dust, gas, noise, vibration, smoke, heat or glare, etc.) exceeding that of ambient conditions:*

The granting of the Use Permit to allow for bar use on the first and second floors of the building at 24 West 5<sup>th</sup> Street will not exceed the ambient noise, odor, or other related conditions in the area, and is consistent with other surrounding uses. The location at 24 West 5<sup>th</sup> Street is adjacent to two existing restaurant uses and the amendment of the use permit in this location will not cause any additional nuisances that exceed ambient conditions.

*c. The granting of this Use Permit will not contribute to the deterioration of the neighborhood or be in conflict with the goals, objectives and policies of the City:*

The proposed uses for the 5<sup>th</sup> Street Prepared Food Market and Bar are allowed under the Tempe Zoning and Development Code, with a Use Permit. The existing building has been used for a head shop, Trails, in the past and the exterior of the building has not been updated in decades. The proposed DPR and Use Permit for 24 West 5<sup>th</sup> Street will energize the building, and modernize and update the elevations. The use is consistent with the goals, objectives and policies of the City and will not contribute to the deterioration of the neighborhood. By granting a Use Permit that has previously been approved by the Development Review Commission, we will not create any further conflict with the City of Tempe goals, objectives and policies.

Furthermore, we are transforming the former Trails building – which has been vacant for several years – into a well landscaped and thoughtfully designed space with outdoor dining. Fifth Street

Prepared Food Market & Bar will turn this neglected building into a vibrant public space, which we believe enhances the surrounding area.

*d. The granting this Use Permit will allow the proposed building to be compatible with existing surrounding structures:*

The Use Permit to allow a bar/restaurant in the City Center is compatible with the surrounding structures. In this case, the structure has been around for some time and the project will take advantages of the City of Tempe's goal of repurposing older buildings. Dozens of other bars and restaurants are located in close proximity to the proposed Fifth Street Prepared Food Market & Bar. Additionally, a number of urban residents and office tenants are located in buildings within a short distance and would be well-served by the addition of a unique dining opportunity nearby, created by the implementation of the Use Permit to the first and second floors of the building. This will allow the business owner to rent out the second floor space a provide a unique public space in the City.

*e. The granting of this Use Permit will not result in any disruptive behavior which may create a nuisance to the surrounding area or general public.*

We believe that the approval of the Use Permit to allow for bar uses will not result in disruptive behavior or create a nuisance to the surrounding are or general public. The design of the project is as a restaurant with a market atmosphere. Fifth Street Prepared Food Market & Bar will implement a strict security plan in conjunction with and approved by the Tempe Police Department aimed at proactively addressing potentially disruptive behavior. Additionally, our staff will be well trained at identifying the types of behavior that may become disruptive and have policies in place to prevent disruptive behavior from occurring and creating a nuisance to the surrounding area or general public.

## **USE PERMIT – ENTERTAINMENT (INDOOR)**

The requested Use Permit for Entertainment (Indoor) in these locations meets the criteria for a use permit because it will:

a. not cause any significant increase in vehicular or pedestrian traffic in adjacent areas

There will be no increase in vehicular or pedestrian traffic to the adjacent areas as a result of the granting of a use permit for live indoor entertainment. The proposed restaurant / bar is located in the City Center (CC) zoning district and is walking distance from multiple residential uses and entertainment and restaurant uses along Mill Avenue. We believe that many patrons will walk from Mill Avenue or their residences, which will not increase vehicular traffic.

Additionally, the location at 24 West 5<sup>th</sup> Street had previously functioned as a retail outlet with significant vehicular and foot traffic throughout the day. We do not feel that conversion from a retail outlet to a restaurant and bar will have a material increase above and beyond what already existed. Additional bicycle parking will also be provided, in line with any increase in occupancy per code requirements.

b. not cause any nuisance (odor, dust, gas, noise, vibration, smoke, heat or glare, etc.) exceeding that of ambient conditions

Granting a Use Permit to allow Entertainment (Indoor) for the space at 24 West 5<sup>th</sup> Street will not exceed the ambient noise, odor, or other related conditions in the area, and is consistent with other surrounding uses. The location at 24 West 5<sup>th</sup> Street is adjacent to two existing restaurant uses and the implementation of the use permit for live indoor entertainment in this location will not cause any additional nuisances that exceed ambient conditions.

c. not contribute to the deterioration of the neighborhood or be in conflict with the goals, objectives and policies of the City

The proposed uses for the 5<sup>th</sup> Street Prepared Food Market and Bar are allowed under the Tempe Zoning and Development Code, with a Use Permit. The existing building has been used for a head shop, Trails, in the past and the exterior of the building has not been updated in decades. The proposed DPR and Use Permit for 24 West 5<sup>th</sup> Street will energize the building, and modernize and update the elevations. The use is consistent with the goals, objectives and policies of the City and will not contribute to the deterioration of the neighborhood.

d. be compatible with existing surround structures

The proposed uses are similar with adjacent businesses in the area, such as Cabin Tempe. The distance from the proposed use of the building to the adjacent residential use is approximately 55 feet, approximately 20 feet further than the existing Cabin bar on Maple and 4<sup>th</sup> Street is from Hayden Square apartments. Many other bar and restaurant establishments along Mill Avenue also feature live entertainment both indoors and well as outdoors and also play recorded music at levels meeting or exceeding those created by live music. Music is a part of the culture on Mill Avenue and in Downtown Tempe, and approving a use permit for live indoor entertainment at this location will be compatible with the surrounding structures and businesses.

e. not result in any disruptive behavior which may create a nuisance to the surrounding area or general public

The 5<sup>th</sup> Street Prepared Food Market and Bar plan to work closely with the Tempe Police Department to minimize disruptive behavior in the area. A security plan will be implemented and

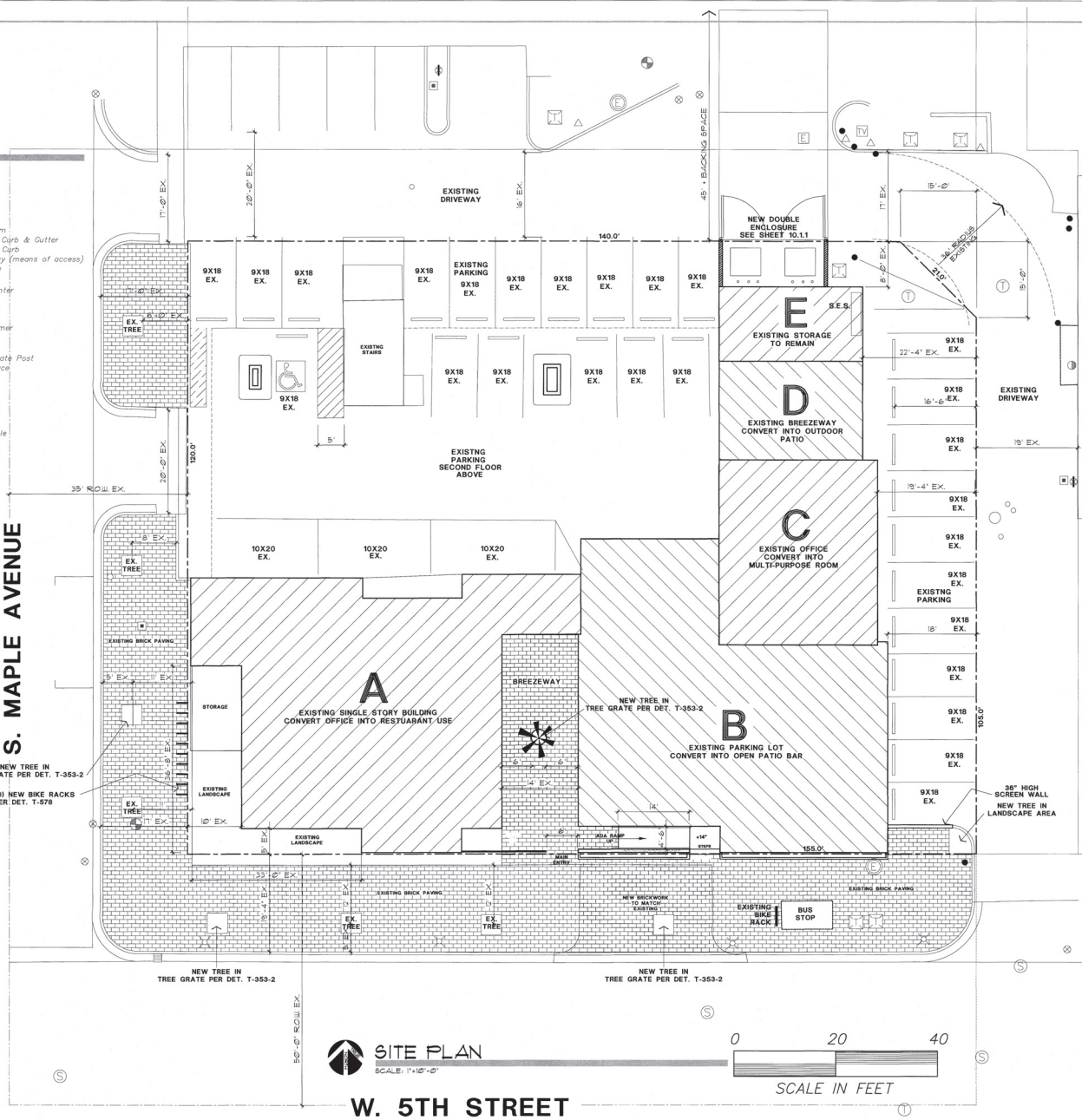
will be amended appropriately to take into account any changes that arise from this proposal to continue the proper management this restaurant / bar.

Live music will be contained indoors and will not cause disruptive behavior that will create a nuisance to the surrounding area or general public. On the contrary, we would like to incorporate live indoor music into our establishments to enhance the area and the experience of our customers.

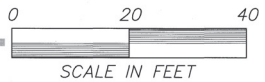
**LEGEND**

- Property Line
- Schedule "B" Item
- ▬ 24 inch Vertical Curb & Gutter
- ▬ 6 inch Concrete Curb
- ▬ Indicates Driveway (means of access)
- ▬ Concrete Surface
- ▬ Wall
- ▬ Back Flow Preventer
- ▬ Electric Box
- ▬ Electric Manhole
- ▬ Electric Meter
- ▬ Electric Transformer
- ▬ Fire Hydrant
- ▬ Gas Meter
- ▬ Guard Post or Gate Post
- ▬ Handicapped Space
- ▬ Light Pole
- ▬ Manhole
- ▬ Sewer Clean Out
- ▬ Sewer Manhole
- ▬ Parking Meter
- ▬ Telephone Manhole
- ▬ Telephone Riser
- ▬ TV Junction Box
- ▬ Water Meter
- ▬ Water Valve

**S. MAPLE AVENUE**



**SITE PLAN**  
SCALE: 1"=10'-0"

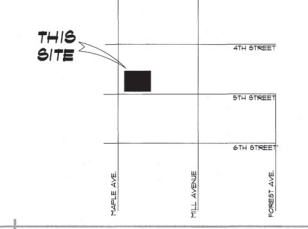


**W. 5TH STREET**

**PROJECT DATA**

NAME:	5TH STREET RESTAURANT BAR
OWNER:	ANTIFESTO REAL ESTATE HOLDINGS LLC 1400 E MC DONALD DR. #01 SCOTTSDALE, ARIZONA 85251
APPLICANT:	HUELLMANTEL 4 AFFILIATES P.O. BOX 1833 TEMPE, ARIZONA 85280-1833
USE:	FIRST FLOOR: RESTAURANT BAR SECOND FLOOR: EXISTING OFFICES
ADDRESS:	24 WEST 5TH STREET TEMPE, ARIZONA 85281
APN NO.:	131-29-913
LEGAL DESCRIPTION:	TEMPE MSR 2/26 LOTS 11, 18, 19, 20, 21, AND 22 BLK 51 EX. 15' X 15' TRIANGLE N NE CORNER
LOT AREA:	18592 SF. (0.426 ACRES) NET 32792 SF. (0.739 ACRES) GROSS
BLDG. AREA:	FIRST FLOOR: 2790 SF. AREA A (EXISTING) AREA B (NEW) AREA C (EXISTING) AREA D (NEW) AREA E (EXISTING) TOTAL: 1,135 SF.
SECOND FLOOR:	OFFICE (EXISTING): 6,526 SF.
BLDG. USE:	FIRST FLOOR: AREA A: ASSEMBLY: 848 SF. KITCHEN: 122 SF. STORAGE/OTHER: 710 SF. EXTERIOR PATIO: 567 SF. BREEZEWAY: AREA B: ASSEMBLY: 1780 SF. AREA C: ASSEMBLY: 131 SF. RESTROOMS: 51 SF. AREA D: ASSEMBLY: 113 SF. AREA E: ASSEMBLY: 561 SF. STORAGE: 425 SF.
ZONING:	CC CITY CENTER TRANSPORTATION OVERLAY DISTRICT
LOT COVERAGE:	12,008 SF. / 18,552 SF. = 65%
LANDSCAPE:	385 SF. 385 SF. / 18,552 SF. = 2%
PARKING REQUIRED:	CC DISTRICT PARKING STANDARDS, TABLE 4-6.01A 1ST FLOOR: 500 SQ. FT. UNPAVED 1 SPACE PER 500 SQ. FT. THEREAFTER 2ND FLOOR: 1739 SF. = 3,500 SF. / 500 = 8.41 6,526 SF. / 500 = 13.05 19 PARKING STALLS REQUIRED
PARKING PROVIDED:	29
PARKING REQUIRED:	PER TABLE 4-6.03E BICYCLE COMPUTE AREA OFFICE: 6,516 / 8,000 = 0.82 RESTAURANT INTERIOR: 3,754 / 500 = 7.51 EXTERIOR: 721 / 2,000 = 0.36 TOTAL = 9.42
BICYCLE PROVIDED:	40
ALLOWABLE HEIGHT:	25'-0" EXISTING TOP OF PARAPET
FIRE PROTECTION:	SPRINKLERS (AFES): YES FIRE ALARMS: NO EMERGENCY LIGHTS: YES
CONSTRUCTION TYPE:	EXISTING TYPE IA PROPOSED: TYPE VB (AFES) NON-SEPARATED
ALLOWABLE AREA:	TABLE 5.03: A-1 OCCUPANCY 6,000 SF. AFES INCREASE X 3 TOTAL: 18,000 SF.
OCCUPANCY:	1ST FLOOR: AREA A: RESTAURANT SEATING FOR 48 PATIO: SEATING FOR 26 BREEZEWAY: SEATING FOR 20 AREA B: A-2 BAR SEATING FOR 101 AREA C: A-2 RESTAURANT SEATING FOR 48 2ND FLOOR: B OFFICE (EXISTING)
SETBACKS:	NORTH: 9'-0" EXISTING SOUTH: 0'-0" EXISTING EAST: 20'-0" EXISTING WEST: 0'-0" EXISTING

**LOCATION MAP**



7330 EAST EARL DRIVE #A  
SCOTTSDALE, ARIZONA 85251  
PHONE: 480-990-2120  
FAX: 480-990-2130

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REMODEL FOR:  
**24 W. 5TH STREET**  
TEMPE, ARIZONA

Job no: 17106  
date: 6-19-17  
revisions:

sheet **11.1**

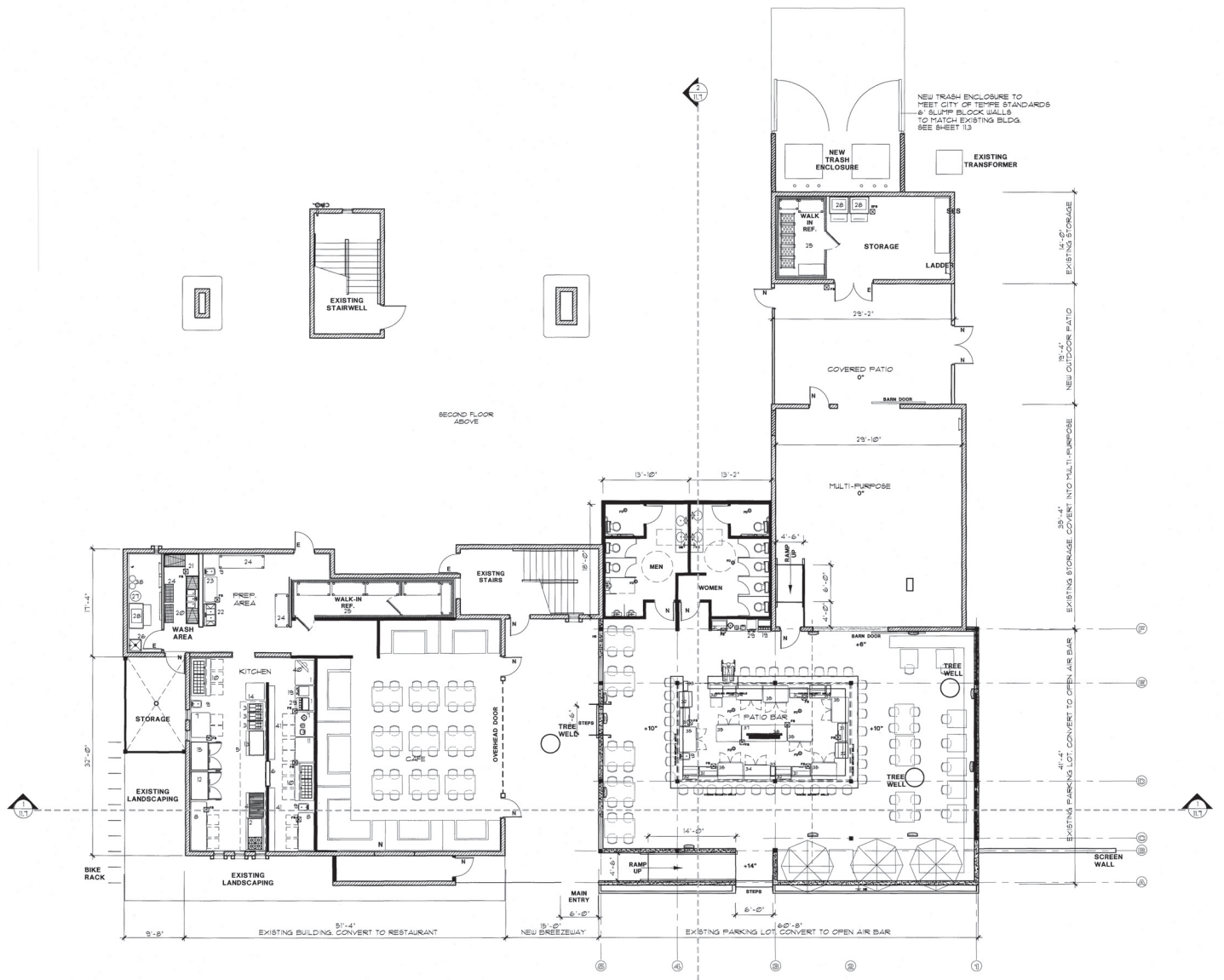




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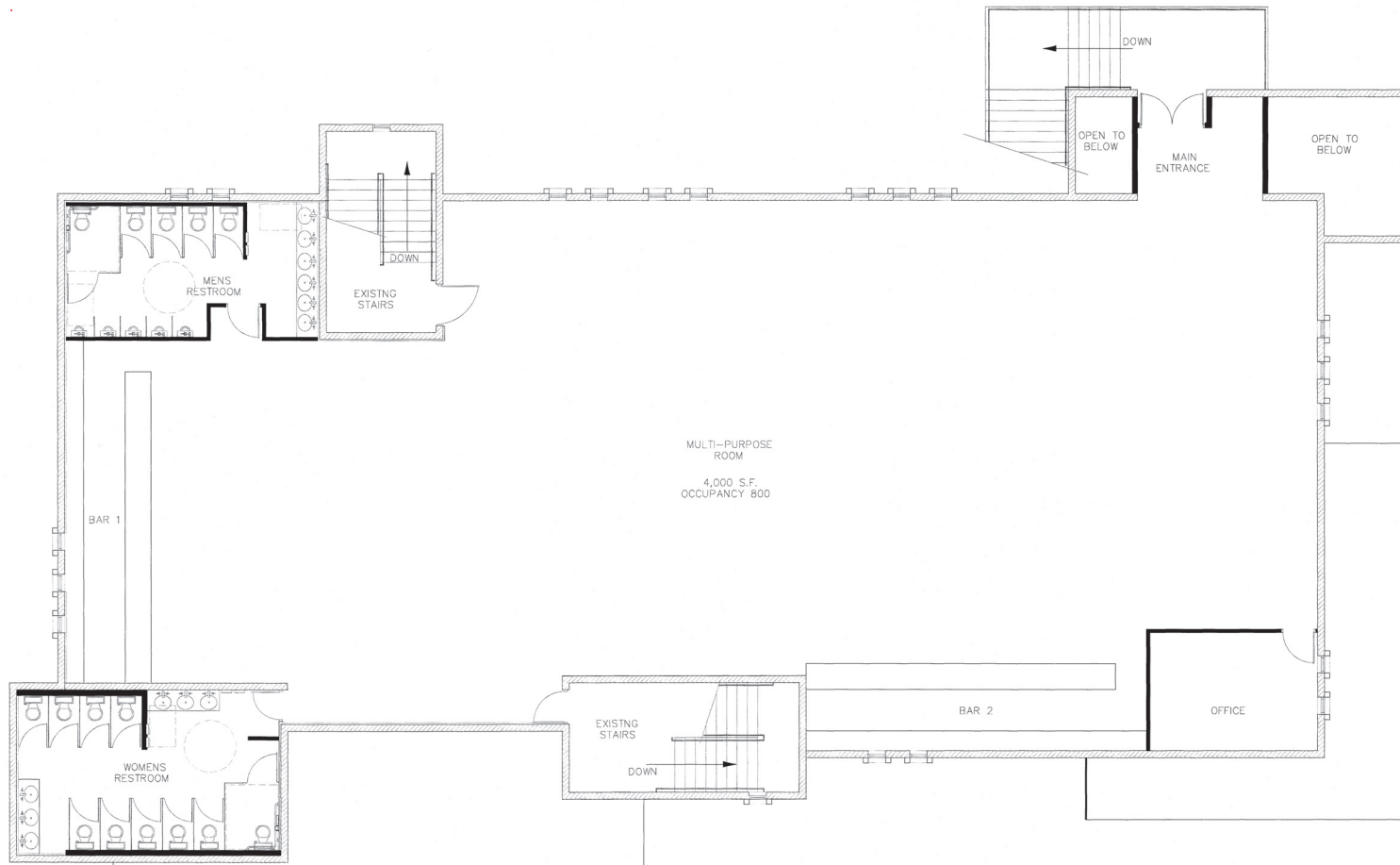
**FLOOR PLAN**  
SCALE: 1/8"=1'-0"

DESIGN FLOOR PLAN

REMODEL FOR:  
**24 W. 5TH STREET**  
TEMPE, ARIZONA

Job no: 17106  
date: 6-19-17  
revisions:

sheet **11.2**



SECOND FLOOR  
 DESIGN PLAN  
 SCALE: 3/16"=1'-0"



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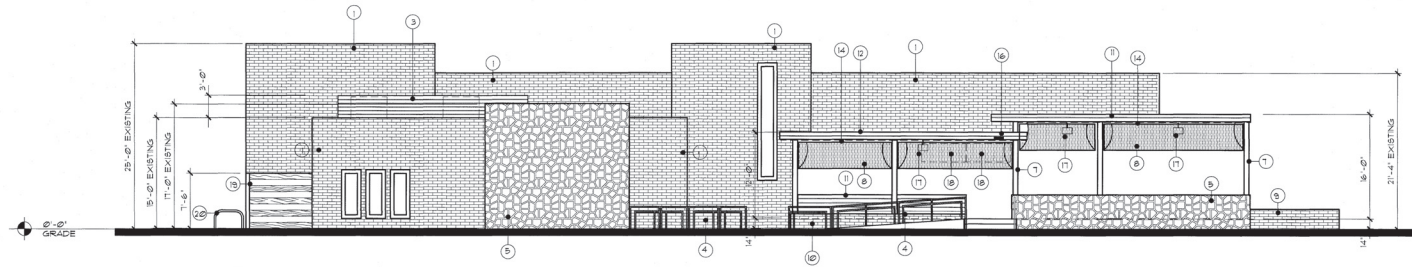
SECOND FLOOR REMODEL:  
 24 W. 5TH STREET  
 TEMPE, ARIZONA

job no: 17158  
 date: 12-14-17  
 revisions:

sheet 1.2

DO NOT SCALE DRAWINGS

2ND FLOOR DESIGN PLAN

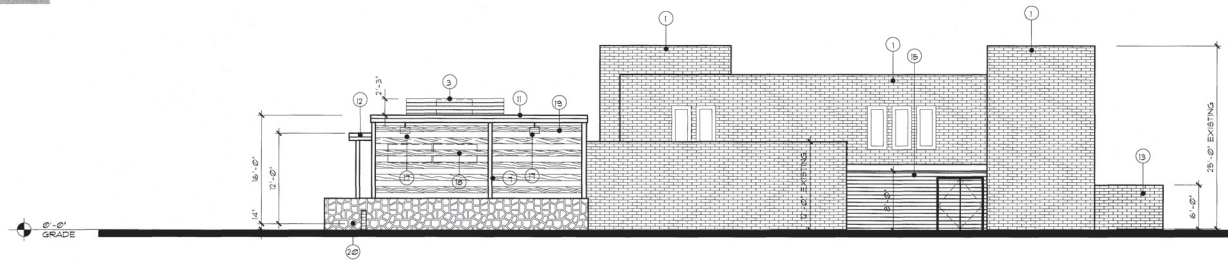


**SOUTH ELEVATION**

SCALE: 1/8"=1'-0"

**FINISH LEGEND**

- 6X6X6 SLUMP BLOCK MASONRY  
MATCH COLOR OF EXISTING SLUMP BLOCK  
DIAN EDWARDS DECT140 SANDCASTLE LRV 65
- STONE VENEER  
SALADO QUARRY, CHATEAU GOLD  
DIRTY STACK
- EXPOSED WOOD  
2X REDWOOD, CLEAR FINISH
- SHADE COVER  
OUTBACK COOLARDO FABRIC #6105  
COLOR WALNUT
- METAL RAILINGS  
PAINTED DIAN EDWARDS 6062 TEA BAG LRV 12

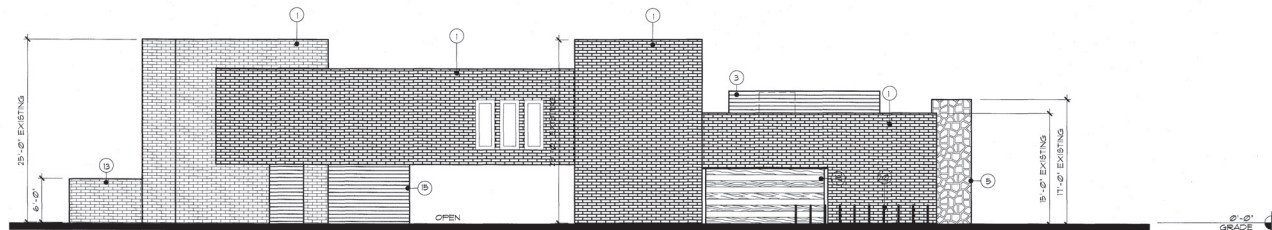


**EAST ELEVATION**

SCALE: 1/8"=1'-0"

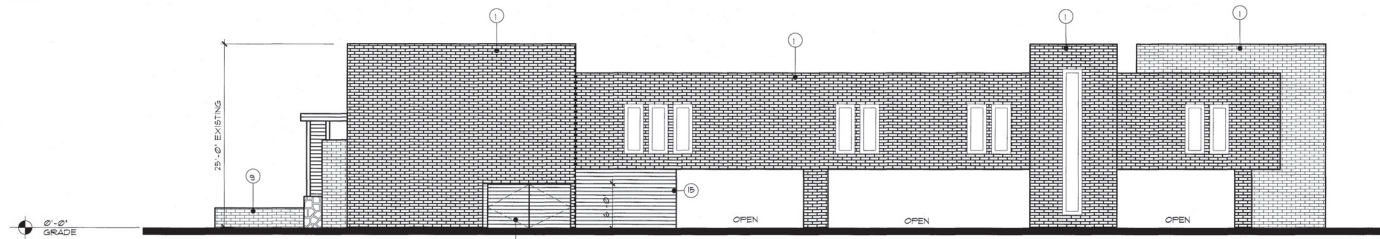
**KEY NOTES**

1. EXISTING SLUMP BLOCK WALL WHITE
2. MECHANICAL SCREEN WALL TO FULLY SCREEN EQUIPMENT. HORIZONTAL REDWOOD PLANKING
3. PAINTED METAL RAILINGS BRONX
4. STONE VENEER, TUSCANY GOLD
5. 6X6 REDWOOD POST
6. CANVAS SHADE SCREEN (MANUAL) COLOR TAN
7. 3/4" HIGH SLUMP BLOCK SCREEN WALL, COLOR TO MATCH BUILDING
8. NEW SLUMP BLOCK WALL, COLOR WHITE
9. HORIZONTAL 2X REDWOOD PLANKING W/ 1/2" GAP
10. LINEAR PLANTER BOX ALONG TOP OF ROOF
11. NEW TRASH ENCLOSURE PER CITY OF TEMPE STANDARDS
12. MIST LINE ALONG BUILDING FASCIA
13. FRAMED SCREEN WALL, HORIZONTAL WOOD SIDING
14. WALL LIGHT FIXTURE TYPICAL, AT ENTRIES
15. CEILING MOUNTED SPEAKER, INSIDE OF SHADE SCREEN, POINTED INWARD. SEE CEILING PLAN
16. T.V. MONITOR OVER BAR. SEE CEILING PLAN
17. 2X4 REDWOOD HORIZONTAL SLATS WITH 6" GAP BETWEEN SLATS
18. (10) BIKE RACKS, 7' X 6' CLEAR SPACE FOR EACH BIKE



**WEST ELEVATION**

SCALE: 1/8"=1'-0"



**NORTH ELEVATION**

SCALE: 1/8"=1'-0"

**DESIGN ELEVATIONS**

RECYCLED FOR:  
**24 W. 5TH STREET**  
 TEMPE, ARIZONA

Job no: 17106

date: 6-19-17

revisions:

sheet **11.5**

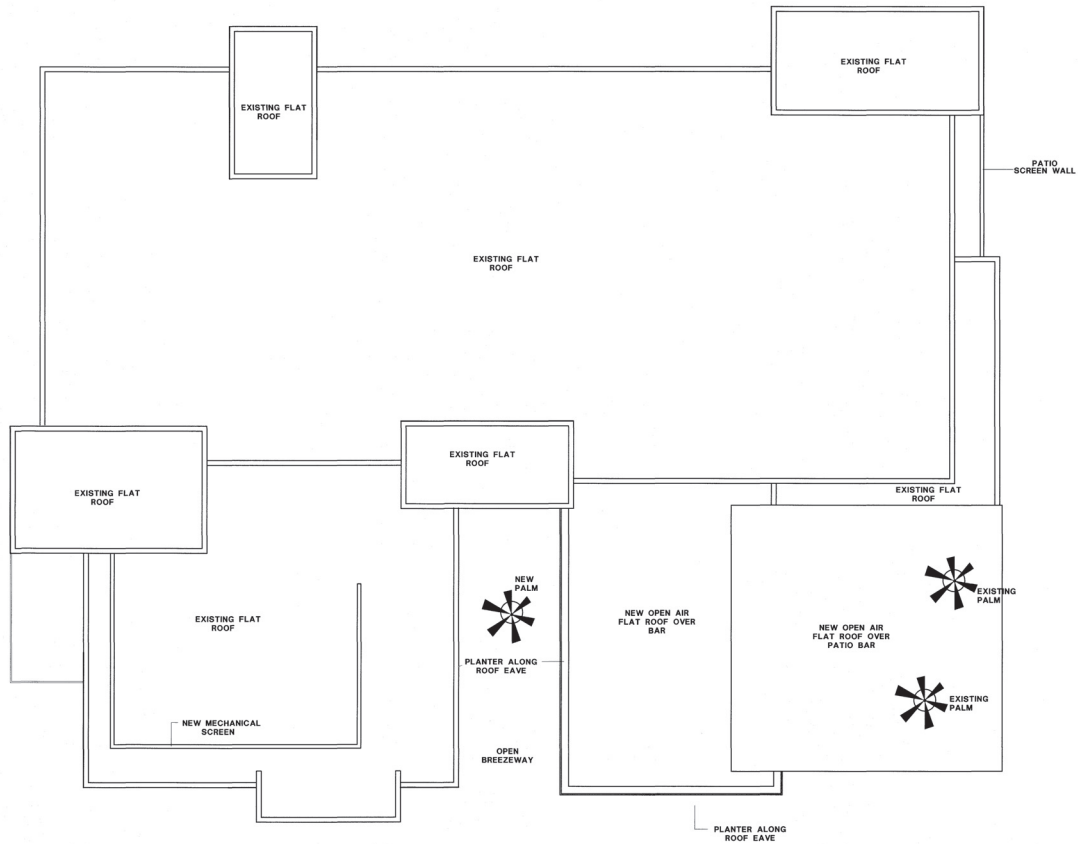




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 **ROOF PLAN**  
SCALE: 1/8"=1'-0"

REMODEL FOR:  
**24 W. 5TH STREET**  
TEMPE, ARIZONA

Job no: 17106

date: 6-19-17

revisions:  
9-1-2017

sheet **11.4**

DESIGN ROOF PLAN










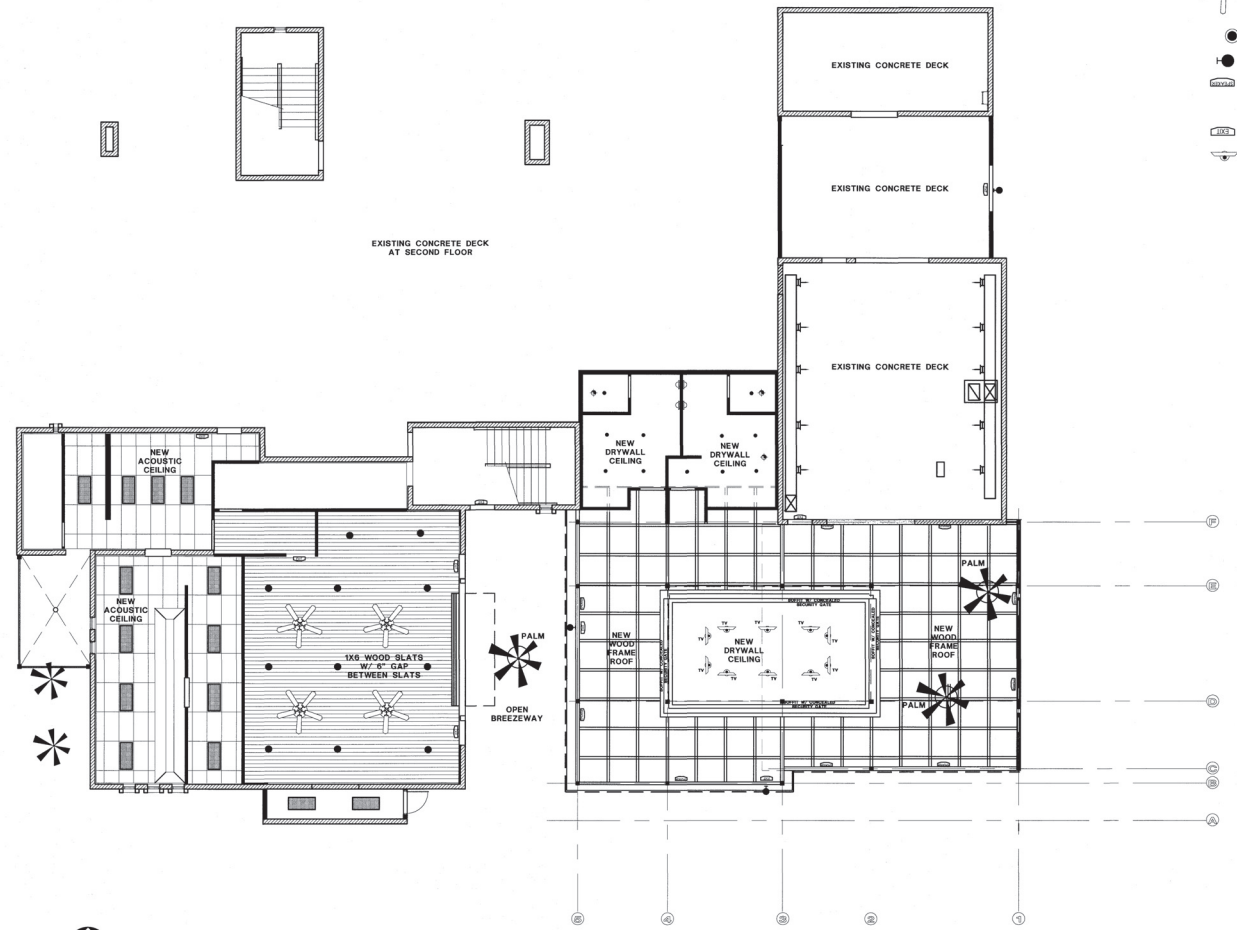
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### LEGEND

-  2X4 LAY-IN LED LIGHT FIXTURE.
-  CEILING FAN
-  RECESSED LED CAN LIGHT
-  WALL MOUNTED LED LIGHT
-  CEILING MOUNTED SPEAKER, DIRECT INWARD.
-  EXIT SIGN
-  CEILING MOUNTED TV MONITOR



**CEILING PLAN**  
SCALE: 1/8" = 1'-0"

**DO NOT SCALE DRAWINGS**

**DESIGN CEILING PLAN**

REMODEL FOR:  
**24 W. 5TH STREET**  
TEMPE, ARIZONA

Job no: **17106**  
date: **2-1-18**  
revisions:

sheet **11.8**

Community Development Dept.  
Planning Division

June 16, 2017

Mr. Charles Huellmantel  
Huellmantel & Affiliates  
P.O. Box 1833  
Tempe, AZ 85280  
charles@huellmantel.com

**RE: 5<sup>TH</sup> STREET PREPARED FOOD MARKET & BAR  
24 West 5<sup>th</sup> Street  
PL170154**

Dear Mr. Huellmantel:

You are hereby advised that at the hearing held June 13, 2017, the Development Review Commission approved the request by **5<sup>TH</sup> STREET PREPARED FOOD MARKET & BAR (PL170157)** located at 24 West 5<sup>th</sup> Street in the CC (TOD) zoning district for the following:

1. Use permit to allow a bar (Series 6).

**USE PERMIT CONDITIONS OF APPROVAL:**

1. This Use Permit is valid only after a Building Permit has been obtained and 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 building plan check process.
3. All required State, County and Municipal permits or licenses shall be obtained or the Use Permit is void.
4. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
5. 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 July 13, 2017.

**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.

- The Use Permit is valid for 5<sup>TH</sup> ST PREPARED FOOD MARKET & BAR and may be transferable to

successors in interest through an administrative review with the Community Development Director, or designee.

- 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/city-hall/community-development/planning/zoning-and-development-code> 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.
- Music or sound shall not violate the City of Tempe Noise Ordinance.
- Live entertainment (indoor or outdoor) requires a separate Use Permit.

This Development Plan Review approval is based on compliance with the plans submitted as part of the application with such modifications as may be required by any conditions listed above. This approval is valid until **June 13, 2018**. In the event you desire to appeal the conditions of approval to the City Council, you must submit an appeal fee and letter to the Tempe Community Development Department within fourteen (14) calendar days of the above hearing date. The letter must identify the conditions(s) upon which you are basing your appeal.

Your construction plans must still be submitted to and approved by the Community Development Department before a building permit may be issued. Your next step is to submit construction plans to the Development Services Division. Please submit a completed Project Submittal Application, two (2) complete sets of drawings, and the required plan check fee for processing. Submittal checklists are available here: <http://www.tempe.gov/city-hall/community-development/building-safety/permit-issuance-plan-review/submittal-checklists>. If you have any questions about this process, please contact the Permit Service Center at 480-858-2065 or visit <http://www.tempe.gov/city-hall/community-development/building-safety>.

If you have questions, please contact me at (480) 350-8486 or [Lee\\_Jimenez@tempe.gov](mailto:Lee_Jimenez@tempe.gov).

Sincerely,



Lee Jimenez  
Senior Planner

LJ/cj

cc: [steve.schramm@optumas.com](mailto:steve.schramm@optumas.com); [pricelink@cox.net](mailto:pricelink@cox.net); file

## Jimenez, Lee

---

**From:** Mark Davis [REDACTED]  
**Sent:** Monday, January 29, 2018 5:57 PM  
**To:** Jimenez, Lee  
**Subject:** RE: Case No PL170154

Lee, Hayden Squire HOA board and I are not happy about this application. We were not informed last time and our HOA wants enforceable stipulations to address the changes.

Applicant is refusing to continue the meeting date to allow our HOA to deliberate on our scheduled meeting next Wednesday.

Regards,

Mark Davis

On Jan 29, 2018 3:43 PM, "Jimenez, Lee" <[Lee\\_Jimenez@tempe.gov](mailto:Lee_Jimenez@tempe.gov)> wrote:

Mr. Davis,

I called you back at 1pm last Tuesday and left a voice message with details regarding the two use permits. The applicant is now occupying both the first and second floors of the building. The original bar use permit was only for the first floor which included patio area along the west side of the building and an outdoor bar and patio area within the existing parking area at the center of the lot. Attached are their proposed set of plans.

Adding the second floor is considered an intensification of the original bar use permit and requires a whole new use permit. In addition, the applicant is applying for a live entertainment use permit (indoors only). As you can see on the revised site plan, the patio area along the west has been removed. If you have any input to provide, today would be the last day wherein the staff report would notate it. Otherwise, I can provide it as late coming information to the Hearing Officer at study session.

Thanks.

Sincerely,

Lee

[\(480\) 350-8486](tel:(480)350-8486)

[Lee\\_Jimenez@tempe.gov](mailto:Lee_Jimenez@tempe.gov)

**From:** Mark Davis [REDACTED]  
**Sent:** Monday, January 29, 2018 2:05 PM  
**To:** Jimenez, Lee <[Lee\\_Jimenez@tempe.gov](mailto:Lee_Jimenez@tempe.gov)>  
**Subject:** Re: Case No PL170154

Lee, I left you a v-mail last week and have not heard back. Would you please let me know a time we can discuss Case # PL180006?

Regards,

Mark Davis  
[REDACTED]

Mark A. Davis

On Wed, Jul 19, 2017 at 5:59 PM, Jimenez, Lee <[Lee\\_Jimenez@tempe.gov](mailto:Lee_Jimenez@tempe.gov)> wrote:

Mr. Davis,

Staff only makes recommendations, the Development Review Commission approved the use permit. Although there was some late-coming opposition, the commission voted unanimously (7-0) to approve the use permit. There are no code-required separation requirements between restaurant/bar patio and residential uses; however, bar uses require a use permit that is processed through the public hearing process.

Unfortunately, the appeal period has already passed (14 calendar days from the approval date). Nevertheless, all use permits may be reviewed in the future if there are any complaints arising from the use permit. Should that occur, the permit may be reviewed by the City to determine the need for a public hearing to re-evaluate the appropriateness of the use permit, which may result in termination of the use permit. This particular use permit contained a condition as such (condition of approval #4). In addition to the use permit, a Development Plan Review (basically a design review)

is required to modify the site and building elevations. Through this process, staff and police will work with the applicant to mitigate potential noise concerns by design. At this time, there are no patio speakers proposed along the smaller patio area that wraps around the corner of Maple and 5<sup>th</sup>.

The following link will lead you to the video archive of Development Review Commission hearings: [http://tempe.granicus.com/ViewPublisher.php?view\\_id=6](http://tempe.granicus.com/ViewPublisher.php?view_id=6).

Let me know if there is anything else that I can assist you with.

Thank you.

Sincerely,

**Lee Jimenez**

Senior Planner

[City of Tempe Community Development Planning Division](#)

31 East Fifth Street Tempe, Arizona 85281

Ph: [\(480\) 350-8486](tel:4803508486) (direct) Fax: [\(480\) 350-8872](tel:4803508872)

**From:** Mark Davis [REDACTED]  
**Sent:** Wednesday, July 19, 2017 5:26 PM  
**To:** Jimenez, Lee  
**Subject:** Re: Case No PL170154

Lee, Why would you approve a patio adjacent to my residential unit? Do I have any protections by way of setbacks? What structure does Tempe have to protect residential property owner's rights.

I am asking that this case be revisited. How do I file an appeal?

Regards,

Mark Davis

Mark A. Davis

On Wed, Jul 19, 2017 at 3:36 PM, Jimenez, Lee <[Lee\\_Jimenez@tempe.gov](mailto:Lee_Jimenez@tempe.gov)> wrote:

Mr. Davis,

You didn't receive the post card because the post office returned it back to sender. Attached is the mailing list that we create through the Maricopa County Assessor's website. As you can see, you were included on the mailing list.

The staff report can be found at the following link: <https://www.tempe.gov/Home/ShowDocument?id=51126>.

You may want to contact the post office about this circumstance. Other than receiving the returned post card, we have no way of knowing why it was returned.

Let me know if there is anything else that I can assist you with.

Thanks.

Sincerely,

**Lee Jimenez**

Senior Planner

[City of Tempe Community Development Planning Division](#)

31 East Fifth Street Tempe, Arizona 85281



Ph: [\(480\) 350-8486](tel:4803508486) (direct) Fax: [\(480\) 350-8872](tel:4803508872)

**From:** Mark Davis [REDACTED]  
**Sent:** Wednesday, July 19, 2017 3:18 PM  
**To:** Jimenez, Lee  
**Subject:** Case No PL170154

Dear Mr Jimenez, I was surprised to receive an e-mail from a neighbor regarding the notice on the postcard in the picture. I have owned my unit for many years but, did not receive this notice.

I am interested in learning more about the case. Would you please send the file ASAP?

Also, how can we fix the error that is causing public notices to not be communicated?

Regards,

Mark A. Davis  
[REDACTED]

My Property address is below:

154 W 5th Street #119

Tempe, AZ 85281