

**Minutes of the
Development Review Commission
REGULAR MEETING
August 25, 2020**

Minutes of the Regular Meeting of the Development Review Commission, of the City of Tempe, was held in
Council Chambers
31 East Fifth Street, Tempe, Arizona

Present:

Chair David Lyon
Vice Chair Michael DiDomenico
Commissioner Scott Summers
Commissioner Don Cassano
Commissioner Andrew Johnson
Commissioner Steven Bauer
Alt Commissioner Barbara Lloyd for #3
Alt Commissioner Michelle Schwartz for #4 & #5

City Staff Present:

Chad Weaver, Director, Community Development
Ryan Levesque, Deputy Director, Community Development
Suparna Dasgupta, Principal Planner
Steve Abrahamson, Principal Planner
Lee Jimenez, Senior Planner
Robbie Aaron, Planner II+
Joanna Barry, Administrative Assistant II

Absent:

Commissioner Philip Amorosi

Hearing convened at 6:01 p.m. and was called to order by Chair Lyon

Consideration of Meeting Minutes:

- 1) Development Review Commission – Study Session 07/28/20
- 2) Development Review Commission – Regular Meeting 07/28/20

Motion: Motion made by Commissioner Cassano to approve Regular Meeting minutes and Study Session Meeting minutes for July 28, 2020 and seconded by Vice Chair DiDomenico.

Ayes: Chair Lyon, Vice Chair DiDomenico, Commissioners Summers, Cassano, Johnson and Bauer

Nays: None

Abstain: Commissioner Lloyd

Absent: Commissioners Amorosi

Vote: Motion passes 6-0

The following items were considered for **Consent Agenda**:

- 4) Request a Use Permit to allow a tobacco retailer for **AOUFE ENTERPRISES, LLC D.B.A. SKY HIGH SMOKE SHOP**, located at 3231 South Mill Avenue, Suite No. 102. The applicant is Archi-CAD Architects, PLLC. (PL200123)
- 5) Request a Use Permit to increase the maximum wall height in the required front yard building setback from four (4) feet to six (6) feet for **UNITED METAL PRODUCTS**, located at 1842 East Encanto Drive. The Applicant is Peter Kinkel of United Metal Products. (PL190301)

NOTE: Commissioner Lloyd recused herself from the AOUFE ENTERPRISES, LLC D.B.A. SKY HIGH SMOKE SHOP agenda item so Commissioner Schwartz replaced her for the Consent Agenda vote only.

Motion: Motion made by Commissioner Cassano to approve the Consent Agenda and seconded by Vice Chair DiDomenico.

Ayes: Chair Lyon, Vice Chair DiDomenico, Commissioners Sumners, Cassano, Johnson, Bauer and Schwartz

Nays: None

Abstain: None

Absent: Commissioners Amorosi

Vote: Motion passes 7-0

The following items were considered for **Public Hearing:**

- 3) Request a Use Permit to allow live entertainment for **THE HIVE ARIZONA**, located at 1400 South McClintock Drive, Suites 11 and 12. The applicant is The Hive Arizona Music Venue, LLC. (PL200077)

PRESENTATION BY APPLICANT:

Mr. Darryl A. Stevenson, applicant, went over his request for the Use Permit. He explained that he did a lot of radio shows for various radio stations and he now does them himself. He stated that he does a lot of fundraising in the community. He understands that a couple of mistakes were made during the process that allowed a few people to do some things that went against what they were trying to do, and he takes full responsibility for that. He stated that this was his first business so there were a lot of things that he was not aware of and now that he is going through the process, he is starting to learn a lot more.

Commissioner Bauer stated that there are several procedural issues that need to be addressed regarding Mr. Stevenson's request, with this being one of them, and another being the Arizona Department of Liquor Licenses and Control if they plan to serve alcohol. Commissioner Bauer also addressed the Fire Department and Building Safety concerns that need to be addressed. He stated he had been to the site the prior day and it appeared that some interior modifications were being done. He asked that if that is the case, are they being done to address the fire code issues and where the applicant stands with their liquor use application. Mr. Stevenson stated that they addressed all the fire department and safety issues several months ago, and did the latches and exit signs, fire extinguishers, etc. Regarding the liquor license, they have not been trying to pursue that yet as they do not want to get into that part of it. Commissioner Bauer stated he would like Fire to update the Commission on any interior renovations that may have been done and where it stands from an occupancy standpoint.

Chair Lyon stated to the applicant that he was a little concerned to hear that they were not pursuing their liquor license since based on what the Commission has heard alcohol has been served at the location and continues to be served as well as there being a bar in place. Mr. Stevenson stated they are not doing any construction on anything right now. As far as the liquor license, he wants to pursue it but is waiting for an investor. He stated they do not serve liquor. The one instance where it did happen, an employee was having a birthday party and he was not there but takes responsibility for it. He does not allow liquor on the premises.

PRESENTATION BY STAFF:

Mr. Lee Jimenez, Senior Planner, gave an overview of the request and presented a staff report. He stated that applicant is requesting a Use Permit for live entertainment as an accessory use as a result of several code compliance complaints dating back to October of 2018. The establishment is known to be operating without a live entertainment use permit, serving alcohol without a liquor license, and violating building and fire code by exceeding the maximum occupant load, among other fire code related violations. Mr. Jimenez advised that the applicant is currently under investigation by Tempe Police, Tempe Fire & Medical Rescue, and the Arizona Department of Liquor Licenses and Control. He advised the Commission that Mr. Ryan Conway, Tempe Police, and Mr. Brandon Siebert, Tempe Fire & Medical Rescue, were available for any questions they may have regarding ongoing issues related to the business.

Mr. Jimenez stated that a neighborhood meeting was not required for this request. The applicant has received 12 emails/comments from friends and acquaintances of the applicant. Staff has received one phone call and one email in opposition to the request. Both comments in opposition cite a history of noise complaints stemming from nearby businesses that provide live entertainment. Based on input from Tempe Police, Fire and the Arizona Department of Liquor Licenses and Control, they witnessed 57 people occupying the leased space, which is 67% over capacity. Code Compliance has issued several violation notices to both the operator and the property owner, the first being in December 2019 and the second and final notice on April 2, 2020. Code Compliance, Tempe Police and Tempe Fire continue to have ongoing issues with the business. The business owner has shown a pattern of non-compliance and lacks communication with these entities. The most recent call for service was due to loud music that was received by police in May of 2020, on the 9th and the 11th. These dates coincided with the Governor's "Stay Home, Stay Healthy, Stay Connected" Executive Order which issued guidance including cancelling or postponing gatherings of ten or more people. Based on the information received, staff does not recommend approval of the Use Permit.

Mr. Brandon Siebert, Tempe Fire & Medical Rescue, advised the Commission that Tempe Police, Tempe Fire & Medical Rescue, and the Arizona Department of Liquor Licenses and Control formulated a task force and conducted two (2) separate operations at the location, once in 2018 and another in 2019. These were preceded by notifications from other City of Tempe staff that there was notice of a special event that was to take place at the establishment. Based on this information, City Staff, Mr. Siebert, and other City inspectors notified the responsible parties, including the applicant, that they would not be able to have that special event without clearing up numerous fire code violations. The next event they went out for was because they had information that there was a gathering at that establishment, which there was. They noted numerous fire code violations. It was their opinion that those violations were never fixed because in the 2019 operation which was similar in nature, they found most of the same violations including being very over-capacity. Mr. Siebert advised that in the 2018 operation, they had posted an official City of Tempe "DO NOT OCCUPY" signs on business and that the 2018 signs were still on the door during the 2019 operation. They posted another sign during the 2019 operation which had also been ignored since the police department has had calls to service since that time. Mr. Siebert stated that Tempe Fire does have some critical code concerns with the Use Permit application. One concern is that the application is for a Group A-1 occupancy however the property is currently coded as B-2 according to the most recent Certificate of Occupancy. To move from a group B to a group A, based on fire building codes, would require significant upgrades and changes to the building as far as safety is concerned. Regarding Commissioner Bauer's comment about any upgrades, Mr. Siebert stated he looked in the Community Development database and there are no construction permits for this business so as far as the Fire Department is concerned all code violations still exist. Mr. Siebert also noted that on the floor plan it shows an existing dance floor and he stated that is not legal per code so he takes issue with the work "existing", and where it states there is a countertop it is actually a permanent bar. He has full evidence of this but is not presenting it tonight since there is an ongoing criminal investigation related to the fire code violations in addition to what the state liquor board has.

Mr. Ryan Conway, Tempe Police, stated that there was no Tempe Police Department investigation during the 2018 event. He stated that during the December 2019 event, the Liquor Board assisted with that operation and went inside in an undercover capacity, paid a \$5 cover charge, and did purchase alcohol from the bar that was serving there. That investigation is still ongoing and the criminal charges they are looking at for that incident were operating the establishment without a liquor license. He advised that according to the Liquor Board, they have tried to reach out to Mr. Stevenson multiple times, but he has not responded. After the State went under lockdown for Covid-19, on March 29th there was a noise complaint of a large party at the location. When officers arrived, people had left the area prior to being contacted and when officers tried to make contact at the door the person refused to acknowledge them or open the door at that time. Since everyone had already left the officers departed as there were no more people or noise going on. On May 9, 2020 they receive another noise complaint which was not substantiated but there was a following complaint on May 11, 2020. As soon as police arrived in the parking lot the music was turned off and there was no response from the business. Mr. Conway stated that since all those complaints were issued, they have not had a good dialogue with the business owner or any communications of what is expected on the PD side, such as if they are hosting special events or things of that nature. He noted that the December 2019 event that Mr. Stevenson stated was a birthday party that it was actually advertised on social media indicating there was a cover charge but they would take toy donations and for that a special event license would have been needed if they

were serving alcohol. Based on the ongoing persistence of events occurring at this property it is major concern for the Police Department as they believe they are going to continue especially regarding the layout of the business with the dance floor, DJ booth, and the bar being the prominent focus of the business. They also have concerns regarding the applicant's letter referencing wanting to expand the radio station, as the studio is a very small portion of that business and he was just going to have a guest audience. It does not appear to PD that this would be a live entertainment Use Permit for a radio station with an audience, but rather for a night club use.

Chair Lyon asked Mr. Conway about the bar being a permanent installation. Mr. Conway stated he was not present on those violations but as it was described to him by the Liquor Board it was a fully stocked bar that he purchased alcohol from.

Regarding the loud noise complaints, Vice Chair DiDomenico asked Mr. Conway if there was a way that if the live events were indoors this would not cause a problem. Mr. Conway stated he does not have records of who the noise complaints came from, or whether they were coming from residential areas or other businesses that were trying to operate in the area. One officer noted on the March incident that as he arrived, he could hear music from inside, close to 300 feet way from the business.

Chair Lyon asked Mr. Siebert to physically describe the bar. Mr. Siebert stated that it is a permanent bar and reiterated that he could not present an image of it during the public hearing due to the ongoing criminal investigation. He stated that the bar was what one would typically see with a standard night club bar. It was a permanent installation with a countertop surrounded by bar stools. On the bartender side there was basically a wet bar setup with tubs to handle beverage containers with ice in them which they did see and documented at that time. Behind the bar are several inlaid shelves with specialized multi-colored lighting and additional bottles of alcohol were on those shelves and there were also televisions on the wall behind the bar. During the last contact there was a bartender behind the bar who was serving, and he believes there was a cash register as well.

Commissioner Lloyd asked staff if the live entertainment request was not approved would the applicant still be able to conduct their live radio show. Mr. Jimenez stated that they would still be able to do that.

PUBLIC COMMENT: NONE

APPLICANT RESPONSE:

Mr. Stevenson stated that they do not have a cash register at the location. He was not at the location during the date of that event so all he heard is what he had been told. He stated he has never received a call from anyone about liquor. He believes that the girl that was there, his employee, was throwing a party so it was all on her and they were investigating her on the sale of alcohol instead of him personally. He mentioned that every time PD or Fire came, he was not at the location, he was either out of town or at home. He stated he has not heard from anyone. Mr. Stevenson said he thinks there were a few times when his DJ was at the location and probably playing music and the police came and assumed it was a party, but it was not.

Chair Lyon asked Mr. Stevenson to tell the Commission about the bar as it appears it is a permanent installation with lighting and the works. Mr. Stevenson stated his goal was to give people a live podcast where they could come in and his goal was and still is to get the liquor license, but he is still waiting on an investor. Other than that, he stated they no longer do parties. He also believes that when they were supposedly holding parties in May it was probably his DJ playing some music and he did not open the door because he did not know what was going on. Chair Lyon asked Mr. Stevenson that if this is his establishment and he is the proprietor, why was he not there when all these events were happening. Mr. Stevenson stated that there were a couple of times when he was out of town and one when he was at home and he came afterwards when everything was done. He thought his employee was just having a party for a couple of people. Chair Lyon asked Mr. Stevenson how he allowed a bar to be placed in the facility when he knew he did not have a liquor license. Mr. Stevenson stated he built the bar because his goal was to get a liquor license, but he does not stock it, it is just a bar.

Commissioner Cassano stated that as the owner Mr. Stevenson is responsible for the use of this property and he has all of these violations, but he is not responding to Tempe Police and Fire about them. Commissioner Cassano asked why none of the issues are being taken care of. Mr. Stevenson said that regarding the Fire Department he did all the things for the safety measures. Regarding the police, he stated they contacted the property owner regarding all of that and he contacted him about it. As for the Liquor Board, they were contacting his employee about that since she was throwing a party and they never said anything about him or try to contact him. Commissioner Cassano stated that knowing these violations were out there and stickers on the door along with communication, it appears Mr. Stevenson is not taking responsibility for that and it concerns him and he does not see the applicant taking the steps necessary in the future if a Use Permit was granted that he would obey the rules of it. Mr. Stevenson stated he understands that, and he is getting better and learning.

Commissioner Bauer again stated that there are so many steps that need to be addressed regarding this use. He does not think this type of use at this location is objectionable on its face, however he believes Mr. Stevenson needs someone to assist him with the existing issues relating to the Fire and Police Departments. If there are not active building permits, then the location cannot be inspected to see if the Fire Life and Safety criteria has been addressed. Without that they cannot get an occupancy limit or any size for the suite. Obtaining a liquor license will also be a long process. Commissioner Bauer wanted to know if the applicant was willing to take those steps in order to establish this Use Permit on the property. Mr. Stevenson stated he is willing to do whatever it takes. He reiterated they made some mistakes and he takes responsibility for them.

COMMENTS AND DISCUSSION FROM THE COMMISSION:

Chair Lyon stated that despite his passion for music Mr. Stevenson appears to be a long way from starting this up as a business. He stated that if this is the applicant's property and business then no one can come in the door without him knowing about it, and nothing can happen inside without him being responsible for it. Chair Lyon advised Mr. Stevenson that if he is serious about this, he may want to get a business partner who is familiar with setting the business up and he can handle the music. Chair Lyon concurs with Commissioner Bauer that he does not feel that there could not be a live music venue at the location, however it feels like Mr. Stevenson is demonstrating how he does not know how to take responsibility, follow rules, and stay in contact with the authorities, so he cannot support this application.

Commissioner Sumners stated that he has no doubt Mr. Stevenson is very active in the community and is very talented, but based on the Use Permit criteria, adequate control of nuisance behavior is something that has been mentioned multiple times tonight because it is not there. He cannot support this application.

Commissioner Lloyd understands that past mistakes were made and she commends the applicant for coming forward and trying to do the right thing and follow the right process, however she has major concerns about capacity and how it will be enforced and the risk of tragedy due to overcapacity.

Commissioner Johnson stated that he hopes Mr. Stevenson is able to get this on track and when some of the other steps are made that need to be made he can come back before the Commission, however at this time he cannot support the Use Permit.

Commissioner Bauer asked staff how long Mr. Stevenson would have to wait to file another Use Permit request if this one was denied and was advised that it would be one year.

Motion: Motion made by Commissioner Cassano to deny PL200077 and seconded by Vice Chair DiDomenico.

Ayes: Chair Lyon, Vice Chair DiDomenico, Commissioners Sumners, Cassano, Johnson, Bauer and Lloyd

Nays: None

Abstain: None

Absent: Commissioners Amorosi

Vote: Motion passes 7-0

Staff Announcements:

Ms. Dasgupta advised the Commission that the next meeting would be on September 8, 2020 and went over the agenda items.

There being no further business the meeting adjourned at 7:39pm.

Prepared by: Joanna Barry

Reviewed by: Suparna Dasgupta, Principal Planner

A handwritten signature in cursive script, appearing to read "Suparna Dasgupta".