

**CITY OF TEMPE  
DEVELOPMENT REVIEW COMMISSION**

**Meeting Date: 2/9/2021  
Agenda Item: 1**

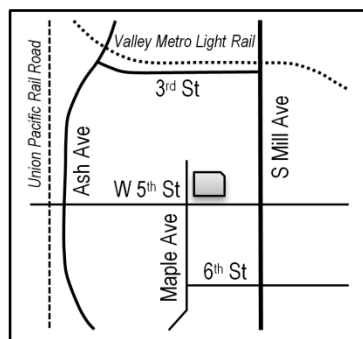
**ACTION:** Hold a public hearing for a review of compliance with assigned conditions of approval for two (2) use permits to allow a Series 6 bar and entertainment (indoor) for SUNBAR, located at 24 West 5th Street. The applicant is Huellmantel and Affiliates.

**FISCAL IMPACT:** N/A

**RECOMMENDATION:** N/A

**BACKGROUND INFORMATION:** SUNBAR (PL180006), previously known as 5TH ST PREPARED FOOD MARKET & BAR, is a restaurant with a full-service bar and indoor live entertainment, located in the Barmeier Building 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. On February 6th, 2018, the Hearing Officer conditionally approved two (2) use permits to allow entertainment (indoor) and a bar (Series 6) for 5TH ST PREPARED FOOD MARKET & BAR. The Hearing Officer added a condition requiring the operator to return for a review of compliance with assigned conditions of approval within six (6) months of opening for business. Shortly after, Mark Davis, a condominium unit owner of Hayden Square Condominiums who previously commented in opposition to the use permit requests, appealed the Hearing Officer’s decision to the Development Review Commission on March 27th, 2018 and was denied. The same appellant then appealed the Development Review Commission’s decision to the City Council on May 17th, 2018 and was denied. The request for a review of compliance with assigned conditions of approval is for the following items:

- ZUP180004 Use Permit to allow entertainment (indoor).
- ZUP180005 Use Permit Standard 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: Shelly Seyler, Interim Community Development Director  
 Legal review by: N/A  
 Prepared by: Lee Jimenez, Senior Planner  
 Reviewed by: Steve Abrahamson, Principal Planner

## COMMENTS

The business opened for business on October 19<sup>th</sup>, 2019.

## PUBLIC INPUT

Staff received an email from a resident of The Emerson (apartment building located across 5<sup>th</sup> Street to the southwest of SUNBAR) via City Council Communicator citing continual noise issues from the business. A copy of the email is provided in the attachments along with a follow-up email by the same resident.

## POLICE INPUT

In 2020, there were 15 calls for service regarding a noise complaint for the business Sunbar, located at 24 W. 5th St., Tempe. On 11/8/20, the noise complaint that night found the noise from Sunbar could cause discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area (TCC 20-11). The business was not cited for this incident, but the incident was documented. This noise complaint was brought to the attention of the business owner, Scott Price. He took it upon himself to reposition some of the speakers on the patio to mitigate noise traveling away from his business. The other reported noise violations were either found not to be a violation or to be originating from a different business. So far in 2021, there have been no noise complaints reported to the Tempe Police Department for Sunbar.

## CODE COMPLIANCE INPUT

Any complaints received by the Code Compliance Division regarding noise concerns at Sunbar were forwarded to Tempe Police Department. No police incident reports have been sent to the Code Compliance Division, essentially meaning there have been no confirmed noise violations at Sunbar.

## USE PERMIT (Analysis from February 6<sup>th</sup>, 2018 Hearing Officer Staff Report)

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 Permits (*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 (Staff recommendation from February 6<sup>th</sup>, 2018 Hearing Officer Staff Report):**

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.

**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.
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.

**CONCLUSION:**

Based on the information provided by the operator and police input received, staff supports the continuation of the approved use permits. Staff believes the operation conforms to the required criteria and complies with the conditions of approval.

**CODE/ORDINANCE REQUIREMENTS:**

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

**USE PERMIT:**

- The Use Permit is valid for SUNBAR and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
- The decision-making body, upon finding that the applicant has not taken corrective actions to resolve issues related to the permit/approval and that a continuation of the permit/approval is not in the interest of the public health, safety and general welfare, can revoke the permit/approval after providing written notice of its intentions to the holder of the permit.
- Specific requirements of the **Zoning and Development Code (ZDC)** are not listed as a condition of approval but will apply to any application. To avoid unnecessary review time and reduce the potential for multiple plan check submittals, become familiar with the ZDC. Access the ZDC through <http://www.tempe.gov/zoning>.

- Any intensification or expansion of use shall require a new Use Permit.
- 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 for the following located at 24 West 5<sup>th</sup> Street: (SIP.90.15)</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 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. (BA010312)
December 23, 2002	Hearing Officer approved use permit request by M.L.J. UNIVERSAL CORPORATION d.b.a. UNIVERSAL DESIGN to allow temporary retail sale of sports souvenirs, located at 24 West Fifth Street in the CCD, Central Commercial District. (BA020318)
December 21, 2004	Hearing Officer approved request by TRAILS – UNIVERSAL DESIGN 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. (RRC04059)
February 20, 2013	Community Development Department staff approved use permit transfer from Trails Department Store (SIP-90.15) to HMSS LLC to allow retail sales for tobacco and tobacco accessories, located at 24 West 5 <sup>th</sup> Street, Suite 101 in the CC, City Center District. (PL130043)
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, located at 24 West 5 <sup>th</sup> Street within the CC, City Center District and TOD, Transportation Overlay District. (PL170154)
February 6, 2018	Hearing Officer approved two (2) use permits to allow entertainment (indoor) and a bar (Series 6) for 5TH ST PREPARED FOOD MARKET & BAR, located at 24 West 5 <sup>th</sup> Street within the CC, City Center District and TOD, Transportation Overlay District. (PL180006)
March 14, 2018	Community Development Department Planning Division staff administratively approved a Development Plan Review for minor site and elevation modifications consisting of a new covered patio bar, a new screened outdoor patio and storage areas, and new landscaping for 5TH ST PREPARED FOOD MARKET & BAR, located at 24 West 5 <sup>th</sup> Street within the CC, City Center



March 27, 2018            Development Review Commission denied an appeal of the Hearing Officer's February 6<sup>th</sup>, 2018 decision to approve two (2) use permits to allow entertainment (indoor) and a bar (Series 6) for 5TH ST PREPARED FOOD MARKET & BAR, located at 24 West 5<sup>th</sup> Street within the CC, City Center District and TOD, Transportation Overlay District. (PL180006)

May 17, 2018            City Council denied an appeal of the Development Review Commission's decision to uphold the Hearing Officer's February 6<sup>th</sup>, 2018 decision to approve two (2) use permits to allow entertainment (indoor) and a bar (Series 6) for 5TH ST PREPARED FOOD MARKET & BAR, located at 24 West 5<sup>th</sup> Street within the CC, City Center District and TOD, Transportation Overlay District. (PL180006)

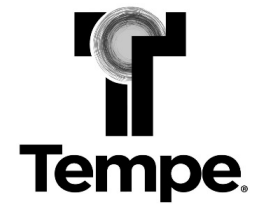
October 19, 2019        5TH ST PREPARED FOOD MARKET & BAR opened for business under the name SUNBAR.

**ZONING AND DEVELOPMENT CODE REFERENCE:**

Section 3-202 Permitted Uses in Commercial and Mixed-Use Districts

Section 6-308 Use Permit

Section 6-313 Security Plan



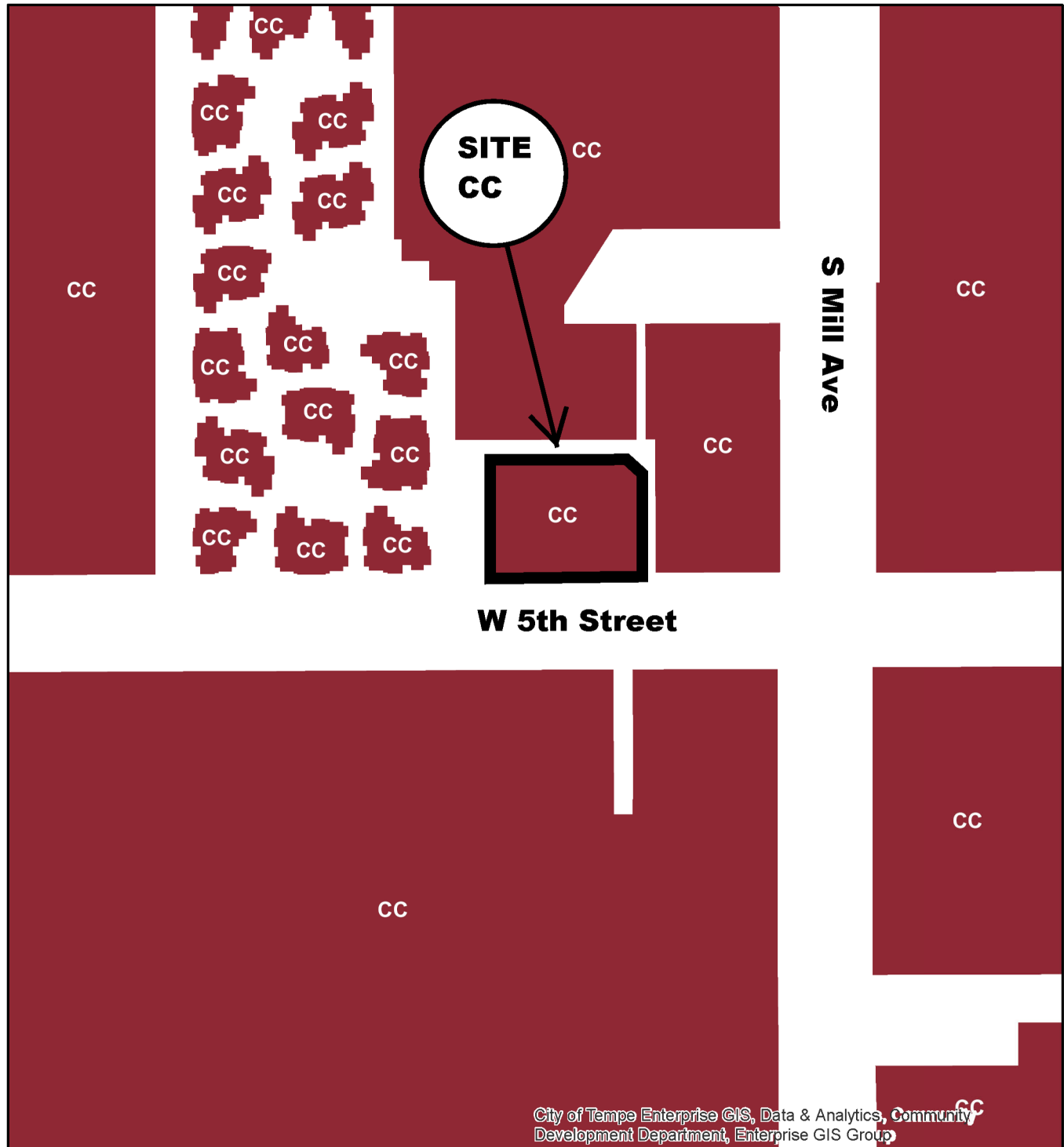
**DEVELOPMENT PROJECT FILE**  
for  
**SUNBAR**  
**(PL180006)**

**ATTACHMENTS:**

1. Location Map
2. Aerial
- 3-4. Memo of Compliance from Applicant dated January 21, 2021
- 5-7. Use Permits Approval Letter from February 6, 2018 Hearing Officer
- 8-25. Meeting Minutes from February 6, 2018 Hearing Officer
- 26-32. Development Plan Review Approval Letter dated March 14, 2018
- 33-38. Public Comments

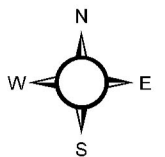
# 5th Street Prepared Food Market and Bar

PL 180006



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

 City Center (CC)



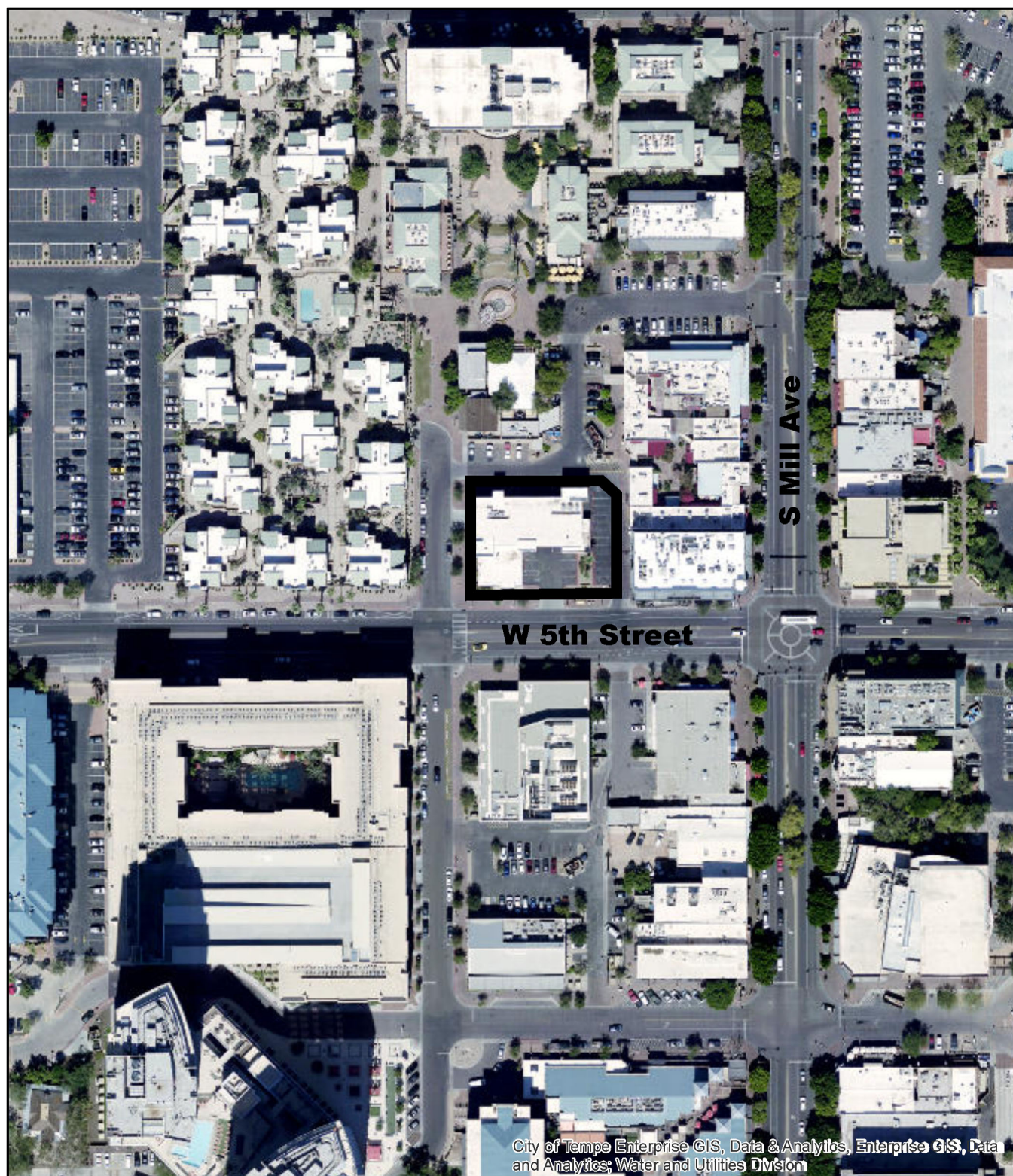




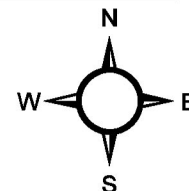
Tempe

PL 180006

# 5th Street Prepared Food Market and Bar



Aerial Map



# HUELLMANTEL AFFILIATES

January 21, 2021

Development Review Commission  
City of Tempe

To Whom It May Concern:

By way of reference, Sunbar Tempe was approved by the Tempe Hearing Officer on February 6, 2018 (as 5<sup>th</sup> Street Prepared Food Market and Bar) and opened for business on October 19, 2019. We seek a finding from the Development Review Commission that Sunbar Tempe has complied with the requirements of the Use Permits. As we all know, the Covidian Era has been the most challenging time operate a restaurant in our lifetime, but Sunbar is proud of the adjustments it has been able to make to stay in business, when sadly many other restaurants in Downtown Tempe have not. The owner, Scott Price, has poured his heart, soul, time and resources into turning this empty building to one of Tempe's favorite spots. It has become an important part of the downtown (and I personally recommend the Sunbar Hot Chicken Sandwich as the best chicken sandwich I know of).

The building and business is located at 24 West 5<sup>th</sup> Street, formerly a dilapidated smoke shop on the first floor and office space on the second floor, and required new use permits and a Development Plan Review (PL180006 / ZUP180004 / ZUP180005) for bar operations and indoor live music. Per Condition of Approval #10, Sunbar is required to return to the Hearing Office / Development Review Commission for review of compliance with the Conditions of Approval.

Sunbar Tempe trained management and staff to ensure compliance with the conditions of approval set forth for these use permits. Scott Price, Sunbar Tempe owner, has operated bars and restaurants in Tempe since 2007 and employs experienced management team.

The bar and server staff at Sunbar are all trained in Arizona Liquor Law and Sunbar requires all service staff to maintain Title 4 liquor law certification and training with Arizona Liquor Industry Consultants. All staff are required to attend the City of Tempe Bike Squads annual liquor course and the staff employed at Sunbar are trained at time of hiring and receive additional liquor, security, service and conduct trainings throughout their employ.

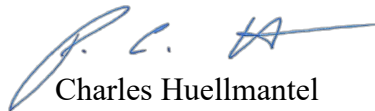
Per the Conditions of Approval for ZUP180004 and ZUP180005, all live entertainment on premise occurs indoors and ends at 1:55 a.m. Sunbar Tempe has not received any liquor violations or infractions. There has been a single noise complaint that Tempe

Police Department attributed to the patio at Sunbar Tempe. This occurred on the night of Friday, November 7, 2020. Officer Conway from the Tempe PD and Scott Price discussed the complaint and how to mitigate excess noise from leaving the Sunbar patio space. The patio speakers were adjusted and angled away from any residential buildings and Sunbar staff received training to ensure proper volume levels for the patio speakers.

No additional complaints have been received since these mitigation efforts and training took place.

Thank you for your consideration in this matter. Please feel free to contact me with any questions or to discuss Sunbar Tempe. I can be reached through email at [charles@huellmantel.com](mailto:charles@huellmantel.com) or at (480) 921-2800.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Huellmantel", with a long horizontal flourish extending to the right.

Charles Huellmantel



Community Development Dept.  
Planning Division

February 8, 2018

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

**RE: 5<sup>TH</sup> STREET PREPARED FOOD MARKET AND BAR  
24 WEST 5<sup>TH</sup> STREET  
PL180006 / ZUP180004 / ZUP180005**

Dear Mr. Huellmantel:

You are hereby advised that at the hearing held February 6, 2018, the Hearing Officer of the City of Tempe, acting in accordance with Section 1-305, Paragraphs C and D, of the Zoning and Development Code:

Approved the requests by **5<sup>th</sup> STREET PREPARED FOOD MARKET AND BAR (PL180006)** located at 24 West 5<sup>th</sup> Street, in the CC, City Center and TOD, Transportation Overlay Districts for the following:

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

This approval was subject to the following assigned 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**

**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.

Approvals are specifically conditioned upon the applicant proceeding with the proposed use(s) and/or variance(s) within twelve (12) months of the date of the approval by the Hearing Officer and required by the Zoning and Development Code.

In addition to proceeding with the approvals granted, it is understood that any and all conditions, as stipulated by the Hearing Officer and indicated above, shall be fully complied with. If the action of the hearing Officer was required for the purpose of rectifying any violations of the Zoning and Development Code, the violations shall be the responsibility of the applicant/owner to fully correct and achieve conformance.

5<sup>th</sup> Street Prepared Food Market and Bar  
PL180006  
February 8, 2018

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In sign related violations, corrections shall be made within five (5) days of the Hearing Officer action; in all other matters, corrections shall be made within fifteen (15) days of Hearing Officer action, unless specifically conditioned otherwise by the hearing Officer. You are further advised that the above does not waive the requirements for obtaining building permits and other clearances as may be necessary.

If you have any questions, please contact me at (480) 350-8486.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lee Jimenez". The signature is fluid and cursive, with a large initial "L" and "J".

Lee Jimenez  
Senior Planner

cc: File

## MINUTES HEARING OFFICER FEBRUARY 6, 2018

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

### **STUDY SESSION 4:30 PM**

**Present:**

David Williams, Hearing Officer  
Steve Abrahamson, Principal Planner  
Lee Jimenez, Senior Planner  
Diane McGuire, Administrative Assistant II

**There were 19 interested citizens present at the study session.**

- Staff and Hearing Officer discussed overview of scheduled cases.
- Mr. Williams referred to the Boyd Residence request (Agenda Item No. 2), and asked if the back of the sidewalk is where the property line is located. Lee Jimenez responded that it is about 2 feet behind the sidewalk.
- Mr. Williams referred to Agenda Item No. 3, Habitat for Humanity Restore (3210 S McClintock Drive) and expressed his concern that the donation area may pose a problem due to drop off items. Mr. Abrahamson explained that, in the past, a Goodwill Store had occupied the area where Planet Fitness was now located at this address.
- Mr. Williams referred to the 5<sup>th</sup> Street Prepared Food Market & Bar (Agenda Item No. 4) and asked what was located to the north of that location. Lee Jimenez responded that Hackett House was to the north. Mr. Williams asked if there was adequate parking to support this venue. Mr. Jimenez confirmed that a parking analysis had indicated that the parking was sufficient.
- Lee Jimenez gave Mr. Williams an additional email of concern from Jai & Suzanne Choi who were unable to attend tonight's public hearing. They requested that their concerns be read into the record.

### **REGULAR SESSION 5:00 PM**

**Present:**

David Williams, Hearing Officer  
Steve Abrahamson, Principal Planner  
Lee Jimenez, Senior Planner  
Diane McGuire, Administrative Assistant II

**There were 26 interested citizens present at the regular session.**

**Meeting convened at 5:00 PM and was called to order by Mr. Williams. He stated that anyone wishing to appeal a decision made by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) calendar days, by February 20, 2018 at 3:00 PM, to the Community Development Department.**

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1. The following was noted:

- **Agenda Item No. 1**

**January 16, 2018 Hearing Officer Minutes**

David Williams, Hearing Officer, stated that the January 16, 2018 Hearing Officer Minutes had been reviewed and were approved.

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2. Request approval of a variance to reduce the front yard building setback from 20 feet to 2 feet for the **BOYD RESIDENCE (PL170377)** located at 1520 North Saguardo Drive. The applicant is Ron Boyd.

Lee Jimenez, Senior Planner, gave the following overview of this request:

- The Boyd Residence is located on Lot 141 of the Cavalier Hills 1 subdivision south of East Hancock Avenue and west of North Saguardo Drive within the R1-6, Single Family Residential District.
- The applicant, Ron Boyd, is requesting a variance to reduce the required front yard building setback from 20 feet to 2 feet for a two-car garage addition.
- According to City records, the home was originally constructed in 1960 with a two-car carport that was later converted into a den in 1964.
- The required off-street parking was shifted to a carport in 1969, and was later converted into a garage in 1989 when a variance was obtained to reduce the required side yard setback from 7 feet to 0 feet.
- A neighborhood meeting was held at the Boyd Residence on Wednesday, December 20, 2017 at 6 PM. Three (3) neighbors attended the meeting. None were opposed to the variance.
- To date, no public input has been received by staff.
- Based on the information provided by the applicant, the public input received, and the analysis provided in the staff report, staff does not support this variance request.
- Staff does not believe that the application meets all the required criteria for a variance.
- The proposed garage addition is a prime candidate for a use permit standard wherein the front yard building setback may be reduced by 20% from 20 feet to 16 feet. Staff can support such a request.
- Should an affirmative action be taken on this request, the assigned Conditions of Approval provided in the staff report shall apply, unless amended at this hearing.

Mr. Williams questioned what were the existing setbacks were once carport was converted into a garage. Mr. Jimenez responded that a variance was obtained at that time to reduce the required side yard setback from 7 feet to 0 feet.

Mr. Ron Boyd was present to represent this case. He acknowledged receipt of the Staff Summary Report and his understanding of the assigned Conditions of Approval.

Mr. Boyd presented a before and after photo simulation of the proposed garage. He explained that he had been the victim of burglaries, and that not only would the garage provide safety and security features, but would also enhance the appearance of his property and that of the neighborhood.

Mr. Williams referred to the proximity of Mr. Boyd's property to the alley and expressed his concern about the closeness of the proposed garage to the street and sidewalk areas. He noted that it appeared that the new garage would be almost double in size from the existing garage structure, and may cause loss of vision in that area.



Mr. Boyd responded that although the proposed structure was larger, he did not feel that it would present a safety hazard to the alley or sidewalk areas.

Mr. Williams asked if there were any members of the audience who wished to address this request.

Sherri Lesser, Lane Carraway, and Charles Paine, all spoke in support of this request. All live in the neighborhood, and feel that the request was in keeping with existing structures within that area. Ms. Lesser stated that properties of this type present a challenge, and this project would enhance the neighborhood thereby providing a benefit to nearby property owners. Mr. Carraway stated that they fully support this project, and noted that the applicant has perfect landscaping in place. Mr. Paine stated that he felt this request would add to the neighborhood.

Mr. Williams stated that he had done a drive by inspection of the property and reviewed the material(s) presented by staff and the applicant. He noted that this request had the support of the neighborhood.

Mr. Williams stated that while he would not support a reduction from 20 feet to 2 feet, he would support a reduction of 20 feet to 8 feet if Mr. Boyd was agreeable to that compromise. Mr. Boyd responded that he would accept that decision.

Mr. Williams referred to the Zoning and Development Code Section 6-309 D. Variance Approval Criteria (*in italics*) as follows:

1. *That special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings;*

The special circumstance applicable to this property is its teardrop shape wherein the front property line is the longest of the lot lines, limiting developable lot area since it is the most restrictive of required setbacks.

2. *The strict application of this Code will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district;*

Properties in this neighborhood consist of a mixture of one to three-car carports, and one or two-car garages.

3. *The adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located;*

Mr. Williams stated that he was satisfied that this criteria had been met.

4. *A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner;*

Mr. Williams stated that the shape of the property is not self-imposed by the property owner.

**DECISION:**

Mr. Williams approved the request for a **modified** variance to reduce the front yard building setback from 20 feet to **8 feet** for the Boyd Residence (PL170377) located at 1520 North Saguaro Drive subject to the following assigned Conditions of Approval:

1. This variance 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. This variance is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.

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3. Request approval of a use permit (ZUP180003) to allow resale items for **HABITAT FOR HUMANITY RESTORE (PL180004)** located at 3210 South McClintock Drive. The applicant is Lane Stumme of Habitat for Humanity Central Arizona.

Lee Jimenez, Senior Planner, gave the following overview of this request:

- Habitat for Humanity Restore is proposing to operate a building materials thrift store in retail space previously occupied by an office supply retailer at the South Palms Shopping Center located on the northwest corner of South McClintock Drive and East Southern Avenue within the PCC-2, Planned Commercial Center General District.
- The applicant, Lane Stumme, explains that the thrift store will sell new and used building materials and home furnishings as a means to raise extra funds to support the mission of Habitat for Humanity in Central Arizona.
- To date, one (1) phone call in support and one (1) email inquire has been received by staff. The inquiry expressed concern for afterhours donation collections at the rear of the building. Noise had been an issue for another donation facility that previously operated in the retail space of the existing fitness facility.
- 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 conditions provided in the staff report.

Lane Stumme of Habitat for Humanity Central Arizona was present to represent this case.

Mr. Williams asked Mr. Stumme if he understood the assigned Conditions of Approval.

Mr. Stumme appeared to be unaware of those Conditions. Mr. Abrahamson provided Mr. Stumme with a hard of the Staff Summary Report including the assigned Conditions of Approval.

After reading that material, Mr. Stumme responded to an inquiry by Mr. Williams that he did not have any questions and understood those assigned Conditions of Approval.

Mr. Williams asked Mr. Stumme if he had any additional materials he wished to present. Mr. Stumme stated that he did not.

Mr. Williams noted his concern regarding the possibility of noise and disruptive behavior of the donation drop off location, and questioned whether there would be surveillance cameras installed in that area.

Mr. Jimenez responded that due to the concern of noise from afterhours drop off, based on the previous vendor (i.e. Goodwill), these factors were addressed by the assigned Conditions of Approval Nos. 5, 6 and 7. Condition of Approval No. 8 addresses the illumination of the collection area, explained Mr. Jimenez.

Mr. Williams asked if there was any member of the audience who wished to speak on this case. There was no one.

Mr. Williams explained that this request meets the Zoning and Development Code Section 6-308E approval criteria for a use permit as follows;

1. *Any significant increase in vehicular or pedestrian traffic;* the proposed use should not significantly increase vehicular or pedestrian traffic no greater than other retail and service uses permitted by right in this zoning district.
2. *Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions;* all sales items will be stored within the premises and no part of the store operations will consist of refinishing furniture, manufacturing items, or performing large scale recycling.
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;* allowing the proposed use will reduce the vacancy rate of the shopping center while providing a service beneficial to the community.
4. *Compatibility with existing surrounding structures and uses;* the proposed use will operate out of existing retail space and the truck dock and truck court behind the store will be used for donation collections along with delivery of purchased inventory.
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 nature of the retail component of the store is not expected to create disruptive behavior, however, staff is concerned with the location and hours of the donation collections at the rear since the adjacent use consists of multi-family residential.

**DECISION:**

Mr. Williams approved the use permit request (ZUP180003) to allow resale items for Habitat for Humanity Restore (PL180004) located at 3210 South McClintock Drive subject to the assigned Conditions of Approval as follows:

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.
2. All required State, County and Municipal permits or licenses shall be obtained or the Use Permit is void.
3. 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.

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).

- A neighborhood meeting was held at the Bleu Dragon Vapor (PL170384) on Monday, December 18, 2017 at 5 PM. The applicant, Tracey Moore, and City staff attended the meeting. No one from the neighborhood attended.
- To date, staff has received 2 phone calls in opposition to the variance request, citing that the shop is not fitting in this area considering how close it is to schools and the volume of high school students who frequent the coffee establishment within the same shopping center.
- Based on the information provided by the applicant, the public input received, and the analysis provided in the staff report, staff does not support the variance request and believes that the application does not meet any of the required criteria for a variance. Without the variance, staff cannot support the use permit request.
- Should an affirmative action be taken on the variance and use permit requests, the assigned Conditions of Approval provided in the staff report shall apply, but may be amended by the Hearing Officer.

The applicants, Tracey Moore & David Barno were present to represent this case. They acknowledged receipt of the Staff Summary Report.

Mr. Barno presented a location map indicating all lots 1,320 feet from the Blue Dragon Vapor location. He also stated that he understood the misgivings others had towards vape as he initially felt the same way. However, he said as he became more familiar with the process, he learned that vape was a healthy alternative to smoking and tobacco activities.

Ms. Moore stated that they had opened their shop to help people refrain from using tobacco and smoking cigarettes; to save lives. She explained that they had been doing business at their current location for the past 3 years and had begun their operation after receiving their license. Their intent was to comply with all the City's rules and regulations, and back in 2015, they had inquired as to what was required to open their business. At that time, Ms. Moore stated, they were informed that they need to submit an application, pay the fees and wait for the license. Once that license was received they opened their doors and began to sell vaping products.

Ms. Moore explained that she did not consider their business to be a tobacco retailer, but that there was currently no other category within the City to define their business operation. They are not a tobacco or smoke shop, she said.

Ms. Moore expressed her frustration when, after their initial opening at this location, when they had been in operation for 5 months, they received a City issued non-compliance letter stating that they needed to acquire a use permit. They paid the submittal fee of \$1,237 and were placed on a Hearing Officer agenda for a use permit request. The Community Development Director at that time, Dave Nakagawara, then informed them that they were not required to obtain a use permit and cancelled the public hearing for that request. Since no further notification was given, they assumed that they were in compliance until recently.

Mr. Williams questioned City staff as to the difference in City determination between tobacco and vape uses. Lee Jimenez responded that currently both activities fell under the Section 7-121 of the Zoning and Development Code which, in addition to the tobacco retailer use, also includes businesses that are dedicated to the use of tobacco or other substances emitting smoke.

Steve Abrahamson explained that over two years ago (November 17, 2015) the request for a use permit by Blue Dragon Vapor at this location was removed from the Hearing Officer agenda due to concerns that it did not meet the use permit criteria as it is located within 1320 feet of a school.

Mr. Abrahamson further explained that Mr. Nakagawara is no longer with the City and that, frankly, this original case got lost in time, once it had been withdrawn from that agenda. Recently the file was retrieved and staff determined that a use permit needed to be processed if Blue Dragon Vapor was to continue to be in business at this location. The separation requirements are still a concern, which is why we are here today, Mr. Abrahamson stated.

Mr. Williams noted that he was in receipt of email correspondence sent by Jai and Suzanne who are in opposition to this request. As they were unable to attend tonight's public hearing, they asked that their concerns be read into the record. Mr. Williams acknowledged receipt of this email from a neighbor who is opposed to the requests, stating that the email was a page long.

Mr. Williams asked if there were any members of the audience who wished to speak on this request.

Clair Lane, Tempe resident, spoke in opposition to this request. He spoke of his concerns including that students feel vaping is a social activity and have 'vaping contests'. He referred to the earlier use permit request (2015) and noted that although the request was withdrawn from the agenda due to the inability to meet the use permit criteria, the businesses continued to operate. He said that although Blue Dragon Vapor states that there is no evidence that vaping leads to smoking cigarettes, he feels that it is actually the other way around.

Brittany Hughes, Tempe resident, spoke in opposition to this request. She referred to the history of nicotine addiction and how the tobacco industry has dominated society for many years. E-cigarettes, which were originally marketed as a healthy alternative to the traditional cigarette and designed to help smokers quit, has had an overwhelming number of new, young users. In her opinion, vape shops serve one purpose – creating and maintaining nicotine addiction. Users are enticed by the atmosphere, prize-driven vape competitions and marketing tactics. As an elementary teacher, Ms. Hughes has a unique perspective and has seen children as young as 11 years old (5<sup>th</sup> grade) come to school with a vape pen & nicotine to encourage other children to participate. Conversations between students have been overheard that vaping is 'cool'. She also noted that proximity of other vape shops in the area and addressed the issue of over saturation. Her own brother has tragically become addicted to vaping due to an interest that developed when he was just 14 years old and he became an active participant at age 17. It has led to lung infections and other areas of medical concern. Ms. Hughes stated that vaping is no different than any other drug on the street, except that it is allowed to openly take place. She asked that this request be denied.

Sherri Toussaint, Tempe resident, spoke in opposition to this request. She indicated that she lives in the neighborhood and is also an educator. She does not see the need for the applicant to overcome the use separation restrictions. She noted that there is a lot of student traffic in this area. Tempe neighborhoods are known for their schools, and this reputation needs to be protected, she stated.

Terrie St. Michel, Tempe residence, spoke in opposition to this request. She noted that on a recent stop at this location, she became aware of the Blue Dragon Vape Shop. She was particularly aware of the increase of kids and more activity in this particular area. She stated that she noticed the odor of smoke in the vicinity of the shop, which smelled just like tobacco smoke. She stated that this area is very popular with kids from the nearby schools and asked that these requests be denied as the operation of a vape shop in this area is very determinantal to the neighborhood and their youthful members.

Cindy Kominska, Tempe resident, spoke in opposition to this request. She expressed health concerns for kids who are attracted to the novelty of the vape shop. She indicated that the Blue Dragon Vape Shop website encourages the use of vaping and their marketing efforts encourage the youthful segment of the population to participate. She stated that the wall of the school is literally parallel to that property and asked that these requests be denied.

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

Mr. Williams acknowledged that there was a lot of testimony in opposition, and asked the applicants if they had any other additional comments they would like to offer in response.

David Barno and Tracey Moore returned to the podium.

David Barno stated that what their shop was offering (i.e. vaping) was actually saving lives by offering a healthy alternative to tobacco use.

Tracey Moore stated that the main thing here is that their goal is that they want to help people get off of tobacco addiction and leave more healthy lifestyles. She stated that she and Mr. Barno had been operating their business at this location in 'good faith' that they were in compliance, and had been paying all the required taxes during this time.

Mr. Williams noted that this is a tough case, which includes the different aspects of tobacco use versus vape use. He stated that if Blue Dragon Vapor was located outside the separation requirements, he would have no concerns, however he could not support this variance request, and the use permit request was based on meeting the separation requirements. He noted that although there was a smoke shop located across the street, the vape shop location does not meet the separation criteria for this use as identified by the City's Zoning and Development Code. He stated that based on the Staff Summary Report and supporting documentation, as well as staff's recommendation to deny these requests, he would deny the request for the variance. Mr. Williams stated that as the variance request for the separation reduction was denied, he would therefore not hear the request for the use permit.

Mr. Williams stated this variance request did not meet the requirements of the Zoning and Development Code Section 6-309 D. Variance Approval Criteria (*in italics*):

1. *That special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings;* the applicants indicate that their special circumstance or condition is that vape products are not considered tobacco products and should be categorized as general retail items. This special circumstance has no kin to the property's size, shape, topography, location, or surroundings as it relates to the use separation requirement for a tobacco retailer (vape shop).
2. *The strict application of this Code will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district;* on June 28, 2007, City Council adopted Ordinance No. 2007.36, a code text amendment establishing use separation requirements for a tobacco retailer. Therefore, any new tobacco retailer that began operations after the effective date of the ordinance is subject to use separation requirements. As explained by the applicant, the establishment began operations on May 1, 2015. Other property of the same classification in the same zoning district must conform to the use separation requirements unless considered legal non-conforming.
3. *The adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located;* no other tobacco retailer that began operations after the effective date of the Ordinance No. 2007.36 has been granted a variance to reduce the use separation requirements in this vicinity and zone; therefore, this adjustment shall be considered a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.
4. *A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner;* there are no special circumstances applicable to the property as it relates to the use separation requirements for a tobacco retailer.

**DECISION:**

Mr. Williams made the following decisions for the requests by Blue Dragon Vapor (PL170384) located at 6473 South Rural Road:

**DENIED** Variance to reduce the use separation requirement for a tobacco retailer from 1,320 feet to 210 feet.

**NO ACTION** **Mr. Williams stated that as the variance request has been denied, the request for a use permit would not be heard.**

Use Permit to allow a tobacco retailer (vape shop).  
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6. Request approval of a use permit for the **WAKE RESIDENCE (PL170420)** located at 1940 East Citation Lane as follows:

Use Permit to increase the maximum height of freestanding walls within the required front yard building setback from 4 feet to 4 feet 8 inches above the highest adjacent finished surface of the ground, paving or sidewalk within 20 feet.

The applicant is Samantha Wake.

Lee Jimenez, Senior Planner, gave the following overview of this request:

- The Hearing Officer continued this item from the January 16, 2018 public hearing as the applicant was not present.
- The Wake Residence is located on the northeast corner of South Los Feliz Drive and East Citation Lane within the R1-7, Single Family Residential District.
- The applicant, Samantha Wake, constructed block wall fencing 8 inches taller than the maximum 4-foot height allowed within the required front yard building setback.
- This use permit request is the result of a code violation, where the applicant was provided the option to either reduce the height to a maximum of 4 feet or apply for a use permit to exceed the maximum height.
- One email in opposition was received at the time the staff report was written.
- Since that time, one (1) email and one (1) letter in support, nine (9) e-mails and five (5) phone calls in opposition have been received by staff.
- The neighbors in support do not believe that the wall height is detrimental to the neighborhood or that it is an eye sore.
- The consensus of the neighbors in opposition cite concern that the wall is a hazard since it blocks the view of oncoming traffic at the intersection of Los Feliz. They believe that approval of this request will set an unwarranted precedence of a walled-off neighborhood, giving a nonfriendly appearance. Two (2) of the neighbors in opposition also spoke at the original hearing on January 16, 2018, during the public comment period for the Wake Residence.
- Staff supports this request and believes that the application meets the required criteria and will conform to the assigned Conditions of Approval.

Samantha Wake was present to represent this case. She acknowledged receipt of the Staff Summary Report and his understanding of the assigned Conditions of Approval.

Ms. Wake explained that this was a corner lot with a lot of traffic. Since they do not have much of a back yard, the wall enables them to utilize their front yard area for personal enjoyment. She cited reasons of safety and privacy that this wall provided to her residence.

Mr. Williams asked if there were any members of the audience who wished to address this case.

Tim Sweeney, Tempe resident, spoke in opposition to this request, stating that the height of this wall does not promote a 'friendly neighbor' atmosphere and does not make sense in this area. He agreed that while there was a fair amount of traffic, he felt that the speed bumps provided any necessary reduction of vehicle speed.

Mr. Williams thanked Mr. Sweeney for his comments and questioned whether he understood that the City code did allow a four (4) foot wall. Mr. Sweeney responded that yes, he did understand that.

Ms. Wake returned to the podium. She noted that people pull up to that stop sign multiple times a day and the wall provided a barrier to the constant traffic. She noted that she has landscaping that goes beyond the wall; a patch of palm trees.

Mr. Williams asked Ms. Wake if she understood Condition of Approval No. 2, which pertains to the removal of all trees located within the clear vision triangle northeast of East Citation Lane and South Los Feliz Drive intersection.

Ms. Wake asked if she was expected to remove the trees at her own expense.

Mr. Williams asked City staff for their input on the subject.

Mr. Jimenez responded that the trees need to be removed to provide a line of sight at this intersection, but at this point, he was unsure as to who is responsible for the expense of that removal.

There was discussion between Mr. Williams, City staff and Ms. Wake as to whose responsibility it was to remove the trees. Mr. Jimenez suggested contacting the City's Transportation Department to determine the responsibility for the tree removal. Mr. Williams asked if this might not be more of a safety vs aesthetics issue.

Ms. Wake questioned whether it was her responsibility to contact these various departments.

Mr. Abrahamson stated that the City's planning staff would contact the Traffic Department to resolve the issue of responsibility for the tree removal and advise Ms. Wake of that determination.

It was agreed to add a Condition of Approval No. 3 to address this responsibility.

Mr. Williams indicated that he would like to see the addition of low level landscaping to soften the appearance of the wall. Staff added Condition of Approval No. 4 to provide for this landscaping.

Mr. Williams stated that while he fully understands the neighbors' concerns, the City code does permit a 4-foot wall. He noted that continual traffic at the stop sign is a concern for this residence, and this request goes back to common sense about safety issues.

Mr. Williams stated that he had reviewed the staff summary report and staff recommendation(s) for approval of this request. Mr. Williams stated that the request satisfies the City code requirements for a use permit.

Mr. Williams explained that this request(s) meet the use permit criteria of the Zoning and Development Code Section 6-308E as follows:

1. *Any significant increase in vehicular or pedestrian traffic*; increasing the maximum height of block wall

fencing by 0'-8" within the front yard setback will not generate additional 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*; increasing the maximum height of block wall fencing will not generate emissions that may cause a nuisance.
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*; increasing the maximum height of block wall by 8 inches will allow for improvements that are expected to make the house more appealing.
4. *Compatibility with existing surrounding structures and uses*; for many years, the clear vision triangle for westbound traffic on Citation onto southbound Los Feliz has been obstructed by a cluster of palm trees and shrubs on the northeast corner of Citation and Los Feliz behind the stop sign within the right-of-way. The Hearing Officer supports the height increase of 8 inches, as the additional height is not a significant impact on traffic visibility. Removal of the palm trees in the right-of-way would serve to improve traffic visibility.
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 additional height of 8 inches does not impede on the natural surveillance into and out of the property.

**DECISION:**

Mr. Williams approved the use permit to increase the maximum height (4 ft.) of freestanding walls within the front yard building setback from 4 feet to 4 feet 8 inches above the highest adjacent finished surface of the ground, paving or sidewalk within 20 feet for the Wake Residence (IPL170420) located at 1940 East Citation Lane, subject to the following assigned Conditions of Approval:

1. 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.
2. Remove all trees located within the clear vision triangle northeast of the East Citation Lane and South Los Feliz Drive intersection. Obtain all proper permits and clearances from the Building Safety Division for any work performed within the right-of-way.
3. **Provide ground cover along the base of the new perimeter wall; a minimum of two (2) shrubs for each panel section of wall. ADDED BY HEARING OFFICER**
4. **Planning staff shall contact Public Works Traffic Engineering Department to determine responsibility for the removal of landscaping pertaining to the clear vision triangle and the trees located in the right-of-way as identified in Condition of Approval No. 2. ADDED BY STAFF**

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**ANNOUNCEMENTS**

- Mr. Williams noted that the next Hearing Officer public hearing is scheduled for Tuesday, February 20, 2018 at 5:00 PM with a study session scheduled for 4:30 PM.

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With no further business, the public hearing adjourned at 7:30 PM.

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Prepared by: Diane McGuire, Administrative Assistant II  
Reviewed by:



Steve Abrahamson, Principal Planner  
For David Williams, Hearing Officer

SA:dm



Community Development Dept.  
Planning Division

March 14, 2018

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

**RE: 5<sup>TH</sup> STREET PREPARED FOOD MARKET & BAR**

*minor site and elevation modifications*

24 W 5<sup>th</sup> St

**DS170488 / PL170154 / DPR180036**

Dear Mr. Huellmantel:

The Community Development Planning Division has approved the Development Plan Review request for the above-referenced project. The request meets the Approval Criteria for a Development Plan Review; refer to Zoning and Development Code Section 6-306 D for the criteria.

On February 6, 2018 the Hearing Officer approved two Use Permits to allow a bar (Series 6) and entertainment for 5<sup>th</sup> Street Prepared Food Market & Bar (PL180006), located at 24 West 5<sup>th</sup> Street within the CC, City Center District, and the TOD, Transportation Overlay District. This approval will allow minor site and elevation modifications consisting of a new covered patio bar, a new screened outdoor patio area, a new screened outdoor storage area, new landscaping and street trees in grates, new bicycle parking racks, and addition of new exterior finished materials such as clear sealed redwood slats, stone veneer, and touch-up painting.

Approval is subject to the following conditions:

**General**

1. Except as modified by conditions, development shall be in substantial conformance with the site plan and building elevations received February 27, 2018 and landscape plan received February 27, 2018. Minor modifications may be reviewed through the plan check process of construction documents; major modifications will require submittal of a Development Plan Review.

**Site Plan**

2. Utility equipment boxes for this development shall be finished in a neutral color (subject to utility provider approval) that compliments the coloring of the buildings.
3. Place exterior, freestanding reduced pressure and double check backflow assemblies in pre-manufactured, pre-finished, lockable cages (one assembly per cage). If backflow prevention or similar device is for a 3" or greater water line, delete cage and provide a masonry or concrete screen wall following the requirements of Standard Detail T-214.

### **Floor Plans**

4. Provide visual surveillance by means of fire-rated glazing assemblies from stair towers into adjacent circulation spaces.
5. Public Restroom Security:
  - a. Lights in restrooms:
    - 1) Provide 50% night lights
    - 2) Activate by automatic sensors, key or remote control mechanism
  - b. Single user restroom door hardware:
    - 1) Provide a key bypass on the exterior side

### **Building Elevations**

6. The materials and colors are approved as presented:  
Primary Building – Painted Slump Block Masonry – Dunn Edwards – Sand Castle #DEC740  
Accent – Stone Veneer – Salado Quarry – Chateau Gold  
Parking Screen Wall – Painted Slump Block Masonry – Dunn Edwards – Sand Castle #DEC740  
Patio, Stairs, and Ramp Railings – Painted Metal – Dunn Edwards – Tea Bag #DE6062  
Patio Canopy – 6-inch x 6-inch Clear Sealed Redwood Posts and 2X Redwood fascia with 6-inch gap  
Shade Cover – Outback ‘Coolaroo’ Fabric #16105 - Walnut  
Mechanical Screening – 2-inch x 6-inch Clear Sealed Redwood Horizontal Slats with 1-inch gaps between slats

Provide primary building colors and materials with a light reflectance value of 75 percent or less. Additions or modifications may be submitted for review during building plan check process.

7. The outdoor storage area shall be screened with 2-inch x 6-inch clear sealed redwood horizontal slats with a maximum of ½ inch gaps between slats.
8. The outdoor patio screening (converted from breezeway) shall consist of 2-inch x 6-inch clear sealed redwood horizontal slats with a maximum of ½ inch gaps between slats.
9. Provide secure roof access from the interior of the building. Do not expose roof access to public view.
10. Conceal roof drainage system within the interior of the building. Minimize visible, external features, such as overflows, and where needed design these to enhance the architecture of the building.
11. Incorporate lighting, address signs, and incidental equipment attachments (alarm klaxons, security cameras, etc.) where exposed into the design of the building elevations. Exposed conduit, piping, or related materials is not permitted.
12. Locate the electrical service entrance section (S.E.S.) inside the building or inside a secure yard that is concealed from public view.
13. Upper/lower divided glazing panels in exterior windows at grade level, where lower glass panes are part of a divided pane glass curtain-wall system, shall be permitted only if laminated glazing at these locations is provided.

### **Lighting**

14. This project shall follow requirements of ZDC Part 4, Chapter 8, Lighting, unless otherwise conditioned.
15. Illuminate building entrances and underside of open stair landings from dusk to dawn to assist with visual surveillance at these locations.

### **Landscape**

16. Street trees shall be a minimum of 36" box specimens and a minimum of 1 ½" caliper trunk.
17. Irrigation notes:
  - a. Provide pipe distribution system of buried rigid (polyvinylchloride), not flexible (polyethylene). Use of schedule 40 PVC mainline and class 315 PVC ½" feeder line is acceptable. Class 200 PVC feeder line may be used for sizes greater than ½". Provide details of water distribution system.
  - b. Locate valve controller in a vandal resistant housing.
  - c. Hardwire power source to controller (a receptacle connection is not allowed).
  - d. Controller valve wire conduit may be exposed if the controller remains in the mechanical yard.
  - e. Repair existing irrigation system on site or in the adjacent public right of ways where damaged by work of this project. Provide temporary irrigation to existing landscape on site or in these frontages for period of time that irrigation system is out of repair. Design irrigation so existing plants on site or in frontages are irrigated as part of the reconfigured system at the conclusion of this construction.
18. Include requirement to de-compact soil in planting areas on site and in public right of way and remove construction debris from planting areas prior to landscape installation.
19. Top dress planting areas with a rock or decomposed granite application. Provide rock or decomposed granite of 2" uniform thickness. Provide pre-emergence weed control application and do not underlay rock or decomposed granite application with plastic.

### **Building Address Numerals**

20. Provide address sign(s) on the building elevation facing the street to which the property is identified.
  - a. Conform to the following for building address signs:
    - 1) Provide street number only, not the street name
    - 2) Compose of 12" high, individual mount, metal reverse pan channel characters.
    - 3) Self-illuminated or dedicated light source.
    - 4) On multi-story buildings, locate no higher than the second level.
    - 5) Coordinate address signs with trees, vines, or other landscaping, to avoid any potential visual obstruction.
    - 6) Do not affix numbers or letters to elevation that might be mistaken for the address.
  - b. Utility meters shall utilize a minimum 1" number height in accordance with the applicable electrical code and utility company standards.

### **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.

**SITE PLAN REVIEW:** Verify all comments by the Public Works Department, Community Development Department, and Fire Department given on the 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.

**DEADLINE:** Development plan approval shall be void if the development is not commenced or if an application for a building permit has not been submitted, whichever is applicable, within twelve (12) months after the approval is granted or within the time stipulated by the decision-making body. The period of approval is extended upon the time review limitations set forth for building permit applications, pursuant to Tempe Building Safety Administrative Code, Section 8-104.15. An expiration of the building permit application will result in expiration of the development plan.

CC&R'S: The owner(s) shall provide a continuing care condition, covenant and restriction for all of the project's landscaping, required by Ordinance or located in any common area on site. The CC&R's shall be reviewed and placed in a form satisfactory to the Community Development Manager and City Attorney.

STANDARD DETAILS:

- Access to Tempe Supplement to the M.A.G. Uniform Standard Details and Specifications for Public Works Construction, at this link: <http://www.tempe.gov/city-hall/public-works/engineering/standards-details> or purchase book from the Public Works Engineering Division.
- Access to refuse enclosure details DS116 and DS118 and all other Development Services forms at this link: <http://www.tempe.gov/city-hall/community-development/building-safety/applications-forms>. The enclosure details are under Civil Engineering & Right of Way.

BASIS OF BUILDING HEIGHT: Measure height of buildings from top of curb at a point adjacent to the center of the front property line.

WATER CONSERVATION: Under an agreement between the City of Tempe and the State of Arizona, Water Conservation Reports are required for landscape and domestic water use for the non-residential components of this project. Have the landscape architect and mechanical engineer prepare reports and submit them with the construction drawings during the building plan check process. Report example is contained in Office Procedure Directive # 59. Refer to this link: [www.tempe.gov/modules/showdocument.aspx?documentid=5327](http://www.tempe.gov/modules/showdocument.aspx?documentid=5327). Contact the Public Works Department, Water Conservation Division with questions regarding the purpose or content of the water conservation reports.

HISTORIC PRESERVATION: State and federal laws apply to the discovery of features or artifacts during site excavation (typically, the discovery of human or associated funerary remains). Contact the Historic Preservation Officer with general questions. Where a discovery is made, contact the Arizona State Historical Museum for removal and repatriation of the items.

POLICE DEPARTMENT SECURITY REQUIREMENTS:

- Refer to Tempe City Code Section 26-70 Security Plans.
- Design building entrance(s) to maximize visual surveillance of vicinity. Limit height of walls or landscape materials, and design columns or corners to discourage ambush.
- Maintain distances of 20'-0" or greater between a pedestrian path of travel and any hidden area to allow for increased reaction time and safety.
- Follow the design guidelines listed under appendix A of the Zoning and Development Code. In particular, reference the CPTED principal listed under A-II Building Design Guidelines (C) as it relates to the location of pedestrian environments and places of concealment.
- The Owner is required to prepare a security plan for the residences, live/work and commercial components of the project with the Police Department. The architect should be involved to verify any modification that would require design revisions. To avoid revisions to permitted construction documents, initial meetings with the Police Department regarding the security plan are recommended before building permits are issued. At a minimum, the Owner shall contact the Police Department to begin security plan process approximately eight weeks prior to receipt of certificate of occupancy.
- Provide a security vision panel at service and exit doors (except to rarely accessed equipment rooms) with a 3" wide high strength plastic or laminated glass window, located between 43" and 66" from the bottom edge of the door.

TRAFFIC ENGINEERING:

- Provide 8'-0" wide public sidewalk along arterial roadways, or as required by Traffic Engineering Design Criteria and Standard Details.

- Incorporate brick sidewalks for all off-site pedestrian paving. Follow City of Tempe Public Works Department Detail T-353, when designing all sidewalk areas in the Right-of-Way. Alternative paver materials may be considered subject to review, and approval, by the Engineering and Planning Departments. Any alternative patterns should be used in small amounts to create accent areas at entrances, or to demarcate architectural features of the building. Do not propose a wholesale change of material. These materials shall be compatible with the Americans with Disabilities Act, ADA, and the Building Code.
- Construct driveways in public right of way in conformance with Standard Detail T-320. Alternatively, the installation of driveways with return type curbs as indicated, similar to Standard Detail T-319, requires permission of Public Works, Traffic Engineering.
- Correctly indicate clear vision triangles at both driveways on the site and landscape plans. Identify speed limits for adjacent streets at the site frontages. Begin sight triangle in driveways at point 15'-0" in back of face of curb. Consult Intersection Sight Distance memo, available from Traffic Engineering if needed [www.tempe.gov/index.aspx?page=801](http://www.tempe.gov/index.aspx?page=801). Do not locate site furnishings, screen walls or other visual obstructions over 2'-0" tall (except canopy trees are allowed) within each clear vision triangle.

#### FIRE:

- Clearly define the fire lanes. Ensure that there is at least a 20'-0" horizontal width, and a 14'-0" vertical clearance from the fire lane surface to the underside of tree canopies or overhead structures. Layout and details of fire lanes are subject to Fire Department approval.
- Provide a fire command room(s) on the ground floor of the building(s). Verify size and location with Fire Department.

#### CIVIL ENGINEERING:

- An Encroachment Permit or License Agreement must be obtained from the City for any projections into the right of way or crossing of a public utility easement, prior to submittal of construction documents for building permit.
- Maintain a minimum clear distance of twenty-four (24) feet between the sidewalk level and any overhead structure.
- Underground utilities except high-voltage transmission line unless project inserts a structure under the transmission line.
- Coordinate site layout with Utility provider(s) to provide adequate access easement(s).
- Clearly indicate property lines, the dimensional relation of the buildings to the property lines and the separation of the buildings from each other.
- Verify location of any easements, or property restrictions, to ensure no conflict exists with the site layout or foundation design.
- 100 year onsite retention required for this property, coordinate design with requirements of the Engineering Department.

#### SOLID WASTE SERVICES:

- Enclosure indicated on site plan is exclusively for refuse. Construct walls, pad and bollards in conformance with standard detail DS-116.
- Contact Public Works Sanitation Division to verify that vehicle maneuvering and access to the enclosure is adequate. Refuse staging, collection and circulation must be on site; no backing onto or off of streets, alleys or paths of circulation.
- Develop strategy for recycling collection and pick-up from site with Sanitation. Roll-outs may be allowed for recycled materials. Coordinate storage area for recycling containers with overall site and landscape layout.
- Gates for refuse enclosure(s) are not required, unless visible from the street. If gates are provided, the property manager must arrange for gates to be open from 6:00am to 4:30pm on collection days.

#### PARKING SPACES:

- Verify conformance of accessible vehicle parking to the Americans with Disabilities Act and the Code of Federal Regulations Implementing the Act. Refer to Building Safety ADA Accessible Parking Spaces Marking/Signage on Private Development details.

- At parking areas, provide demarcated accessible aisle for disabled parking.
- Distribute bike parking areas nearest to main entrance(s). Provide parking loop/rack per standard detail T-578. Provide 2'-0" by 6'-0" individual bicycle parking spaces. One loop may be used to separate two bike parking spaces. Provide clearance between bike spaces and adjacent walkway to allow bike maneuvering in and out of space without interfering with pedestrians, landscape materials or vehicles nearby.

ZONING AND DEVELOPMENT CODE: 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 [www.tempe.gov/zoning](http://www.tempe.gov/zoning) or purchase from Community Development.

LIGHTING:

- Design site security light in accordance with requirements of ZDC Part 4 Chapter 8 (Lighting) and ZDC Appendix E (Photometric Plan).
- Indicate the location of all exterior light fixtures on the site, landscape and photometric plans. Avoid conflicts between lights and trees or other site features in order to maintain illumination levels for exterior lighting.

LANDSCAPE:

- Trees shall be planted a minimum of 16'-0" from any existing or proposed public utility lines. The tree planting separation requirements may be reduced to no less than 8'-0" from utility lines upon the installation of a linear root barrier. Per Detail T-460, the root barrier shall be a continuous material, a minimum of 0.08" thick, installed to a minimum depth of 4'-0" below grade. The root barrier shall extend 6'-0" on either side of the tree parallel to the utility line for a minimum length of 12'-0". Final approval is subject to determination by the Public Works, Water Utilities Division.
- Prepare an existing plant inventory for the site and adjacent street frontages. The inventory may be prepared by the Landscape Architect or a plant salvage specialist. Note original locations and species of native and "protected" trees and other plants on site. Move, preserve in place, or demolish native or "protected" trees and plants per State of Arizona Agricultural Department standards. File Notice of Intent to Clear Land with the Agricultural Department. Notice of Intent to Clear Land form is available at [www.azda.gov/ESD/nativeplants.htm](http://www.azda.gov/ESD/nativeplants.htm). Follow the link to "applications to move a native plant" to "notice of intent to clear land".

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

DUST CONTROL: Any operation capable of generating dust, include, but not limited to, land clearing, earth moving, excavating, construction, demolition and other similar operations, that disturbs 0.10 acres (4,356 square feet) or more shall require a dust control permit from the Maricopa County Air Quality Department (MCAQD). Contact MCAQD at <http://www.maricopa.gov/aq/>.

If you have any questions, please contact me at (480) 350-8486 or [Lee\\_Jimenez@tempe.gov](mailto:Lee_Jimenez@tempe.gov). If there are any issues which remain after discussion with staff, the applicant has the opportunity to have the case heard before the Development Review Commission. A written request must be submitted to staff in order to have the application placed on the next available agenda.

If permits are required, your next step is to submit construction plans to the Development Services Division. 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 Development Services at 480-350-8341 or visit <http://www.tempe.gov/city-hall/community-development/building-safety>.

If permits are not required, once the site improvements are complete, please schedule the Final Planning Inspection. Call the City Inspections Line IVR at 480-350-8072, option #6, and using the PL number, schedule the Planning Inspection #699.

Sincerely,



Lee Jimenez  
Senior Planner

LOJ/dm

Copy: Shawn Daffara ([Shawn\\_Daffara@tempe.gov](mailto:Shawn_Daffara@tempe.gov)) / COT CD  
Dee Dee Kimbrell ([DeeDee\\_Kimbrell@tempe.gov](mailto:DeeDee_Kimbrell@tempe.gov)) / COT CD  
Steve Abrahamson ([Steve\\_Abrahamson@tempe.gov](mailto:Steve_Abrahamson@tempe.gov)) / COT CD

**From:** [David Romaih](#)  
**To:** [CM - Council Communicator](#)  
**Cc:** [smromaih@gmail.com](mailto:smromaih@gmail.com)  
**Subject:** Tempe Noise Ordinance/Sunbar  
**Date:** Thursday, January 28, 2021 1:03:45 AM

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Members of the Tempe city council,

There has been a growing problem for the past few months, that keeps escalating and remains unresolved, concerning the city's noise ordinance. Particularly relating to the residential area at the corner of 5th street/Maple, and Sunbar Tempe.

The Emerson Mill Ave apartments residents have filed numerous noise complaints with the management company of the building, TPD and even Tempe city's Code Compliance Division. We achieved some progress, as a result.

However, there is still a pressing issue regarding the weekend brunch at Sunbar offering live entertainment in the patio in defiance of their city permit.

So far, TPD have taken the role of issuing complaints, forward them to Code compliance, and maintained little effort to enforce the noise ordinance code. Once Code compliance was contacted, they referred us to TPD, on the other hand TPD refer us to code compliance in what seems to be a slow and ineffective process.

At this point, we would like to direct this issue to the members of the city council to put an end to this nuisance, and avoid any expensive legal action against Sunbar.

Thank you and looking forward to your response.

S. David Romaih





## Jimenez, Lee

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**From:** David Romaih <sdr90401@gmail.com>  
**Sent:** Tuesday, February 2, 2021 11:48 AM  
**To:** Jimenez, Lee  
**Subject:** RE: Tempe Noise Ordinance/Sunbar  
**Attachments:** Notes city meeting 2-9-2021.pdf; Notes for City meeting 2-9-2021.docx

I have attached brief notes in both word and PDF formats.  
Thank you.

S. David Romaih  
[REDACTED]

---

**From:** Jimenez, Lee <Lee\_Jimenez@tempe.gov>  
**Sent:** Monday, February 1, 2021 4:43 PM  
**To:** David Romaih <sdr90401@gmail.com>  
**Subject:** RE: Tempe Noise Ordinance/Sunbar

Mr. Romaih,

We're publishing the staff report tomorrow afternoon. Do you wish to include comments? If so, simply send me a separate email identifying your concerns and I can include it in the staff report attachments. Anything received after tomorrow afternoon and prior to the hearing will be shared with the Commission in advance of the hearing.

Thanks.

Sincerely,

Lee Jimenez



**LEE JIMENEZ**  
Senior Planner  
Community Development, Planning Division  
31 East 5<sup>th</sup> Street Tempe, Arizona 85281  
Direct Phone: 480.350.8486 Email: [Lee\\_Jimenez@tempe.gov](mailto:Lee_Jimenez@tempe.gov)  
Web: <http://www.tempe.gov/planning>

***PLEASE NOTE: City of Tempe offices are currently closed to the public due to the COVID-19 pandemic. If at any time hand delivery or pick-up of physical items such as material sample boards, mylars, parking affidavits, and/or CC&Rs is required, please contact the Permit Center to arrange an appointment for delivery or pick-up at [permitcenter@tempe.gov](mailto:permitcenter@tempe.gov) or (480) 350-4311. Thank you.***

---

**From:** David Romaih <[sdr90401@gmail.com](mailto:sdr90401@gmail.com)>  
**Sent:** Monday, February 1, 2021 4:24 PM  
**To:** Chin, Alex <[Alex\\_Chin@tempe.gov](mailto:Alex_Chin@tempe.gov)>; CM - Council Communicator <[councilcommunicator@tempe.gov](mailto:councilcommunicator@tempe.gov)>  
**Cc:** [smromaih@gmail.com](mailto:smromaih@gmail.com); Enright, Molly <[Molly\\_Enright@tempe.gov](mailto:Molly_Enright@tempe.gov)>; Tamulevich, Jeffrey <[Jeffrey\\_Tamulevich@tempe.gov](mailto:Jeffrey_Tamulevich@tempe.gov)>; 'Kate Borders' <[kate@downtowntempe.com](mailto:kate@downtowntempe.com)>; Jimenez, Lee <[Lee\\_Jimenez@tempe.gov](mailto:Lee_Jimenez@tempe.gov)>  
**Subject:** RE: Tempe Noise Ordinance/Sunbar

Hi Alex,

I really appreciate all the help and prompt follow up.

I already filled and submitted the comment card and will follow up with a brief document within the next couple of days highlighting some of the communication history for this issue.

Thank you.

S. David Romaih

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**From:** Chin, Alex <[Alex\\_Chin@tempe.gov](mailto:Alex_Chin@tempe.gov)>  
**Sent:** Thursday, January 28, 2021 2:32 PM  
**To:** David Romaih <[sdr90401@gmail.com](mailto:sdr90401@gmail.com)>; CM - Council Communicator <[councilcommunicator@tempe.gov](mailto:councilcommunicator@tempe.gov)>  
**Cc:** [smromaih@gmail.com](mailto:smromaih@gmail.com); Enright, Molly <[Molly\\_Enright@tempe.gov](mailto:Molly_Enright@tempe.gov)>; Tamulevich, Jeffrey <[Jeffrey\\_Tamulevich@tempe.gov](mailto:Jeffrey_Tamulevich@tempe.gov)>; Kate Borders <[kate@downtowntempe.com](mailto:kate@downtowntempe.com)>; Jimenez, Lee <[Lee\\_Jimenez@tempe.gov](mailto:Lee_Jimenez@tempe.gov)>  
**Subject:** RE: Tempe Noise Ordinance/Sunbar

Hello David,

I have a quick update. Sunbar has a review of their two (2) use permits to allow a Series 6 bar and live entertainment in the upcoming Development Review Commission (DRC) meeting on Feb 9, 2021 @ 6 pm. The Project Planner assigned is Lee Jimenez. I will be forwarding your email to him for his files when he presents to the DRC commissioners.

I highly recommend for you to attending the DRC meeting on Feb 9 @ 6 pm, be involved, and voice your concerns. The meeting is virtual. You will find meeting information and how to attend at <https://www.tempe.gov/virtualplanning> or by visiting [www.tempe.gov/planning](http://www.tempe.gov/planning) once it is officially posted, most likely in the next few days or so.

To voice your concerns, please submit a public comment to the assigned Project Planner by email or phone no later than 5:00 p.m. on February 8, 2021. Email Lee at [Lee\\_jimenez@tempe.gov](mailto:Lee_jimenez@tempe.gov) or call him at 480-350-8486.

Here is the official agenda: <https://www.tempe.gov/Home/ShowDocument?id=87384> It is item number 1.

**Alex Chin**

**Council Aide**

City of Tempe | Mayor and Council  
31 E 5<sup>th</sup> St, 3<sup>rd</sup> Floor Tempe, AZ 85281  
Phone: 480-350-8545

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**From:** Chin, Alex <[Alex\\_Chin@tempe.gov](mailto:Alex_Chin@tempe.gov)>  
**Sent:** Thursday, January 28, 2021 1:09 PM  
**To:** David Romaih <[sdr90401@gmail.com](mailto:sdr90401@gmail.com)>; CM - Council Communicator <[councilcommunicator@tempe.gov](mailto:councilcommunicator@tempe.gov)>  
**Cc:** [smromaih@gmail.com](mailto:smromaih@gmail.com); Enright, Molly <[Molly\\_Enright@tempe.gov](mailto:Molly_Enright@tempe.gov)>; Tamulevich, Jeffrey <[Jeffrey\\_Tamulevich@tempe.gov](mailto:Jeffrey_Tamulevich@tempe.gov)>; Kate Borders <[kate@downtowntempe.com](mailto:kate@downtowntempe.com)>  
**Subject:** RE: Tempe Noise Ordinance/Sunbar

Hello David,

Thank you for emailing the Mayor and Council regarding this incident. Please be assured they received your email and are copied on this reply.

If you observe this loud noise from Sunbar again, please continue to report our Tempe Police Non-Emergency is 480-350-8311.

I am forwarding your incident to our PD correspondent, Code compliance division as well as the Downtown Tempe Authority for their consideration and response.

Thank you,

**Alex Chin**  
**Council Aide**

City of Tempe | Mayor and Council  
31 E 5<sup>th</sup> St, 3<sup>rd</sup> Floor Tempe, AZ 85281  
Phone: 480-350-8545

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**From:** David Romaih <[sdr90401@gmail.com](mailto:sdr90401@gmail.com)>  
**Sent:** Thursday, January 28, 2021 1:04 AM  
**To:** CM - Council Communicator <[councilcommunicator@tempe.gov](mailto:councilcommunicator@tempe.gov)>  
**Cc:** [smromaih@gmail.com](mailto:smromaih@gmail.com)  
**Subject:** Tempe Noise Ordinance/Sunbar

Members of the Tempe city council,

There has been a growing problem for the past few months, that keeps escalating and remains unresolved, concerning the city's noise ordinance. Particularly relating to the residential area at the corner of 5th street/Maple, and Sunbar Tempe.

The Emerson Mill Ave apartments residents have filed numerous noise complaints with the management company of the building, TPD and even Tempe city's Code Compliance Division. We achieved some progress, as a result. However, there is still a pressing issue regarding the weekend brunch at Sunbar offering live entertainment in the patio in defiance of their city permit.

So far, TPD have taken the role of issuing complaints, forward them to Code compliance, and maintained little effort to enforce the noise ordinance code. Once Code compliance was contacted, they referred us to TPD, on the other hand TPD refer us to code compliance in what seems to be a slow and ineffective process.

At this point, we would like to direct this issue to the members of the city council to put an end to this nuisance, and avoid any expensive legal action against Sunbar.

Thank you and looking forward to your response.

S. David Romaih



What we have right now is lack of code enforcement, inconsistency during the weekend brunch, with daytime entertainment with live DJs & musicians on the patio, and following 'quite time' rules on Friday/Saturday nights.

Loud music usually starts close to 10:00p.m. and continues to get louder until closing time at 2:00a.m. every Friday and Saturday night. In addition to the

These issues are clear violations of both the scope of Sunbar's permit and the noise ordinance.

Understandably, with CV-19 the large indoor dancefloor at Sunbar cannot be operated, however live music is not allowed outdoors, and pre-recorded music remains subject to the city's noise ordinance.

(below is sample of advertising outdoor entertainment and DJs line up for brunch)



We have filed several complaints with TPD, and on 4 separate times no officers responded. On one of the calls the dispatcher told my wife that the sergeant on duty decided arbitrarily not to send any officers.

On 3 other occasions officers came into our apartment and agreed that the noise was disruptive and intrusive. The officers filed a complaint, but made it clear that the only recourse is to try to ask Sunbar to turn the music down. On the last visit, one of the officers stated that TPD cannot enforce city code, as loud music is not a felony crime.

Other statements made by TPD officers included:

- most callers filing complaints will not allow officers into their apartments to investigate the noise level.
- Sunbar pay city fees to permit them to play music as they please.
- Sunbar have a business to run and costumers to keep happy.
- Mill avenue is noise exempt (even though Sunbar is on the corner of 5<sup>th</sup> & Maple).

(below is part of TPD response to the building manager)

Please feel free to share this with the resident. The business owner is committed to creating to working with your residents, but at the same time is trying to create an enjoyable environment for his customers to keep him in business. If we can prove a violation has occurred, a citation can be issued. Please be patient to know there may not an immediate fix to the complaint, since these violations are sometimes hard to prove.

We also filed a couple of separate complaints with code enforcement. The respondents have told me and my wife that there has been a large number of complaints about Sunbar. However, no follow ups were made.

Not to be negative, there has been some progress since December, after the manager of Sunbar was contacted by Mark Taylor's corporate office. Subsequently, we noticed very normal and acceptable levels of music during the week.

Eventually, due to low turnout during the week, Sunbar changed their schedule and only operated Thursday - Sunday for the past few weeks.