



Minutes of the Development Review Commission REGULAR MEETING February 9, 2021

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

Present:

Chair David Lyon
Vice Chair Michael DiDomenico
Commissioner Scott Summers
Commissioner Don Cassano
Commissioner Philip Amorosi
Commissioner Andrew Johnson
Commissioner Steven Bauer

City Staff Present:

Ryan Levesque, Deputy Director, Community Development
Suparna Dasgupta, Principal Planner
Steve Abrahamson, Principal Planner
Lee Jimenez, Senior Planner
Ryan Conway, Tempe Police Department
Jeff Tamulevich, Tempe Code Compliance Administrator
Dalton Guerra, Planner I
Joanna Barry, Administrative Assistant II

Absent:

Alt Commissioner Barbara Lloyd
Alt Commissioner Michelle Schwartz
Alt Commissioner Linda Spears

Hearing convened at 6:00 p.m. and was called to order by Chair Lyon

ITEM CONTINUED OR WITHDRAWN FROM AGENDA:

~~7. Request a General Plan Density Map Amendment from "High Density" (up to 65 du/ac) to "High Density- Urban Core" (more than 65 du/ac), an Amended Planned Area Development Overlay to modify development standards, a Use Permit to allow tandem parking, and a Development Plan Review for a new eight story mixed-use development containing 367 dwelling units and commercial uses for **DOWNTOWN FLATS**, located at 433 South Farmer Avenue. The applicant is Huellmantel & Affiliates. (PL200275) **POSTPONED TO MARCH 23, 2021 DRC HEARING (REQUESTED BY APPLICANT)**~~

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

2. Request a Use Permit to allow a massage establishment for **RM MEDICAL MASSAGE**, located at 8400 South Kyrene Road. The applicant is RM Medical Massage. (PL200202)
3. Request a Use Permit to allow a gun shop for **SONORAN ARMORY, LLC**, located at 2011 East 5th Street, Suite No. 10. The applicant is Patrick Shriner. (PL200310)
4. Request a Use Permit to allow a tobacco retailer for **HIGH MAINTENANCE**, located at 411 South Mill Avenue, Suite 103. The applicant is HMSS, LLC. (PL210009)

5. Request two (2) Use Permits to allow a bar (Series 6) and entertainment (indoor live music) for **C.A.S.A.**, located at 5 & 15 East 6th Street and 601 & 603 South Mill Avenue. The applicant is Huellmantel & Affiliates. **(PL200311)**
6. Request a Use Permit Standard to reduce the side yard setback by 20% from seven (7) feet to five (5) feet seven (7) inches for the **LARSON RESIDENCE**, located at 1408 East Todd Drive. The applicant is New Area Developers. **(PL200314)**

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

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

Nays: None

Abstain: None

Absent: None

Vote: Motion passes 7-0

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

1. 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. **(PL180006)**

PRESENTATION BY APPLICANT:

Mr. Charles Huellmantel, Huellmantel and Affiliates, went over the ten (10) conditions of approval for the initial approval of the Use Permits and how the applicant has complied with each of them.

Commissioner Amorosi noted that it appears the outside patio bar is 2,800 SF but the patio is only 500 SF. He asked if they were connected, and if so, how many people were allowed outside on the patio. Mr. Huellmantel did not know the exact number but did state that the applicant had removed some tables, so they were now at 50% occupancy. "Standing room" is also no longer allowed so patrons would have to be at one of the tables. Commissioner Amorosi noted 50% does not give an idea of the exact number of people. He stated that the number of patrons outside could be the reason for the noise complaints that have been called in on this establishment. Mr. Huellmantel advised that he would look into getting that number for the Commission. Commissioner Amorosi asked why the applicant needs speakers outdoors if the entertainment is inside the establishment. Mr. Huellmantel noted that the issue before the Commission was whether the applicant has complied with the initial conditions of approval, which he feels they have. He stated if they did not have speakers outside, you would hear all the other establishments.

Chair Lyon asked Mr. Huellmantel to go over the noise incident that occurred on November 8, 2020 and if the client was cited for that incident. Mr. Huellmantel advised that Mr. Ryan Conway, Tempe Police Department, could elaborate more on that incident. He did note that the applicant has not been cited though.

PRESENTATION BY STAFF:

Mr. Lee Jimenez, Senior Planner, advised that he received two (2) comments in opposition and eight (8) in support of the business. The letters of support are from residents in the downtown Tempe area. Mr. Jimenez stated that he could go over the timeline of when the permits were issued through to the current day if the Commission wanted him to, however the Commission did not think that was necessary.

Mr. Ryan Conway, Tempe Police Department, advised that since the business first opened there have been no issues or citations for noise violations. There have been noise complaints called into the police department for the location during the peak times late at night. One of the calls received was deemed to possibly be a violation of the noise ordinance, however the police officer did not issue one that night as he had been working with the bouncers at

the location regarding noise. He documented the event so that Mr. Conway could work with the business owner, Scott Price, on this issue. After this November 8th noise complaint came in, Mr. Conway reviewed the officer's body camera video of the event. At approximately 1:30 a.m. the windows were open so you could hear the music from inside, however once they were closed and mitigation efforts were taken, there was higher than normal noise coming in than typical for the downtown area. Mr. Conway advised Mr. Price that he had reviewed the body worn camera and that he could hear the noise after mitigation efforts. Mr. Price took it upon himself to reposition some of the outdoor speakers. Since that time the police department has received noise complaints, but have not deemed them to be a violation. Chair Lyon asked Mr. Conway if he believed they were in compliance and he stated that he does.

Commissioner Summers stated that when he first read the staff report it appeared there were 15 noise complaints, however after he reread it, it appears there were 15 calls for one incident on the same night. He asked Mr. Conway to clarify if he was understanding it correctly. Mr. Conway advised that since January 1, 2020 they have received 15 calls for service throughout the year. Of those 15 complaints, one was found to be a potential violation. The others were investigated and found not to be in violation or to be coming from other bars in the area. Also, depending on how busy the police are in downtown Tempe when the call comes in, they may not be able to respond to the noise complaint.

Mr. Jeffrey Tamulevich, Tempe Code Compliance Administrator, stated that the Code Compliance Division has fielded complaints in the past for this establishment, however those complaints occur hours after going directly to the police department. He stated that the Code Compliance Division does not currently have any pending cases for this establishment or Mr. Price. Investigators have visited the location and met with Mr. Price twice since the opening of the business. At those times inspectors noted sign issues and graffiti issues, both of which were addressed by Mr. Price in a very short time. With respect to noise, they do not act on noise violations unless they receive an incident report from the police department.

PUBLIC COMMENT:

Ms. Suparna Dasgupta, Principal Planner, read into the record the public comment from Mr. Merrill Darcy who is representing the Riverside neighborhood: "The residents of the Riverside Neighborhood welcome the adaptive reuse of this property and supported the conceptual purpose of the Fifth St Market and was quite dismayed that this morphed into the Sunbar as it is now with no regard to the neighborhood residents. This business has not redeemed itself to the community, but to exist only for its profit at the expense of nuisance calls for police and Code Enforcement. The vagueness and ambiguity regarding the premises permits resulting in non-enforceable noise and sound emissions outside of code standards. Sure... indoor live entertainment can be regulated. Now remove 1 exterior wall or open a bay door, is it still indoors? Patrons outside unable to hear inside DJ ... Do we move or install Loudspeakers outside to accommodate them, what about the extension of premises on sidewalks? On public right of ways? Now add the hours of operation from 9AM to 2AM. By all definitions this is an outdoor type patio establishment. Where is the indoors? The Kitchen, Restrooms, and Business Office are indoors, the customers are outside. This is not an indoor venue, but by all definitions a "Pavilion" with an outdoor bar, outdoor dining and outdoor entertainment including televisions and outdoor sound system. As noted by others, the complaints were tossed off from TPD to Code Enforcement back to PD and back to Code, this is the purpose of Use Permits and Noise Ordinances. Indoors or Outdoors, what is allowed what is not and is very vague on dealing with more patios, rooftop, and sidewalk customer areas. To remind this Commission, this is also the new Transportation Overlay and with it are allowed Residences and Mixed Uses and not a strict entertainment district. Now we have this problem as more businesses like this are forthcoming. The City encourages more Apartments, more Lodging more Businesses but with little regulations, and with it more complications and more complaints due to the Overlay Permissions. As stated, the purpose of Tempe Transportation Overlay is to provide a safe, accessible, comfortable, and pleasant environment for people and promote and develop livable and sustainable neighborhoods. We are requesting the Conditions of no outdoor amplified entertainment from loudspeakers past 10PM in consideration of Tempe Noise Ordinances. As well as the Condition of Indoor Entertainment allowed within the premises and only within closed Doors and Windows as per City allowances by code. Anyone on this Commission would never be subjected to this nuisance at 1-2 AM like we do in living here in this Area".

Mr. David Romaih, Tempe resident, disagrees with the number of noise complaints that were said to be made on this location. He noted that he has made at least eight complaints just in the past year, and his neighbor has done about the same amount. He stated that the police department did not show up for at least half of those complaints. He advised that the live music outside is completely in violation of the permit for indoor entertainment only. After the speaker system was adjusted outside, they did notice a bit of an improvement, however they are inconsistent with how they use the system. A bigger problem he is finding is that the code enforcement is very weak and at an unacceptable level. He has called the Tempe Police Department who states they are opening an investigation but he does not know what kind they do because according to Officer Conway they rely completely on the video that they record. When he has called the non-emergency line the person on the other end says that the sound does not actually carry through a speaker very well on a phone or a camera like that, somebody actually has to be present in-person to check the level of noise. The actual sergeant that was on duty said there was no need to send someone to check the sound and they refused to send someone. He stated that the four times officers actually did show up they gave him erroneous information about the noise ordinance and how it is actually enforced to the level of saying they could not literally enforce the code because it is not a felony crime. The noise is affecting the quality of work, home, etc. of the community. He has spoken to the police department who refers him to Code Enforcement, who in turn refer him back to the police department. When Code Enforcement got back to him their advice was simply to report it to the police department. After 10:00 p.m. the noise is unacceptable as defined in Section 20. The owner of this establishment needs to adhere to the Use Permit and better law enforcement to enforce the code.

Mr. Philip Yates, Riverside Neighborhood Association President, has had a lot of complaints coming to him about the noise permits and how they have or have not been enforced. There have been 15 noise violations reported to the police department and they need to be addressed as there will be more noise when the speakers are blasting until 2:00 a.m. When people get permits for special events in the area, they have to comply with the permits so he does not understand why the businesses do not have to comply. The community has to deal with the noise in the area until 2:00 a.m. and then people walking around thereafter. He hopes the Commission listens to the previous people who commented and appreciate their concerns. He does not find it acceptable that the applicant could not provide the number of patrons who are allowed on the patio at one time. He hopes the Commission votes no as this is not what the community wants. Chair Lyon asked Mr. Yates if he has personally experienced noise from this established. He stated that he has and he has been asked what can be done. He advised them to call the police and 15 people have done just that only to be direct to Code Enforcement. Mr. Yates stated he has a 10-year-old son who is schooling from home due to the pandemic and he does not want him being woken at all hours of the night and morning due to the noise from the patio.

RESPONSE FROM APPLICANT:

Mr. Huellmantel addressed some of the concerns that were voiced by the residents of the area. He noted that there are a lot of challenges living in a downtown/urban environment. However, he noted that Officer Conway is a trained observer and has told the applicant that they are in compliance. The vast majority of the people who provided public comments on the item have stated their public support. He noted that while Mr. Yates is concerned about the noise from downtown, he lives a half a mile away from Sunbar. He is aware of this as he has visited Mr. Yates' home before. He does not believe he could be at his home and know that the sound came from Sunbar. Mr. Huellmantel noted that Varsity Tavern, or other names it has gone under, has been the main source of noise over the last few years as it is louder, higher, and outdoors. Mr. Huellmantel read an email he received from Mr. Michael Mueller that stated "Sandbar and Mr. Price have demonstrated good faith and being a good neighbor to Hayden Square condominiums during their trial period: "I am writing this as just a neighbor but I am also the president of Hayden Square Condominiums and Scott has contacted me throughout this time to ensure that things were going well and in fact they have. I personally see no issue with continuing his use permit as it is. please contact me if you have any questions or concerns thank you for your time." He noted that Mr. Mueller was the one who was opposed to the original application for Sunbar and being the nearest neighbor, he is the one who would be most affected. Mr. Huellmantel stated it sounds like all 15 of the calls came from both Mr. Romaih and his neighbor collectively.

Mr. Huellmantel wanted to get back to the original reason the item is before the Commission tonight, as he thinks it is getting a bit far afield, and that is to hold a public hearing for review of compliance to the signed conditions of approval for the two Use Permits. It is not on the agenda tonight to decide if they are allowed to have live music until 1:59 a.m. Item #7 states they are to be in conformance with that and no one has stated that they have not been.

ADDITIONAL PUBLIC COMMENT:

Ms. Katie Branch, Emerson Units across from Sunbar, is neighbors with David Romaih and she stated there have been more than 15 complaints. She stated she has called and had officers come into her home and they deemed that it was noisy. She noted that the Sunbar turns down the volume when they see the police cars arriving, which she does not feel is fully ethical. She stated that her phone number was blocked by Sunbar because she would call them and ask them politely to turn the music down. She noted that when you go to Sunbar's website it is advertised as a "patio bar", not as indoor entertainment, and they have pictures of over 100 people on their patio which is what the neighbors see a lot. There is no social distancing, some people are in line without a mask on, etc. At the times she was able to speak to staff they told her it was not their problem and to simply shut her door. She was initially happy to see Sunbar open, but it has not turned out to be a happy addition. She stated that the Varsity Tavern is a half mile away from Sunbar and they have not been open recently so the noise is coming from Sunbar. She is disappointed in how the owner has been very dismissive of the concerns of the neighbors.

COMMENTS AND DISCUSSION FROM THE COMMISSION:

Chair Lyon stated he does want to take neighbor's comments seriously. He asked Officer Conway if he wanted to comment on the situation based on the feedback from the residents that was received. Officer Conway stated that it highlights the challenges that they face as police officers. Moving forward they are subject to what they can enforce through City code and the noise statute is what they hold these bars to. He has personally cited many bars for this and when an officer writes up the citation they write it knowing they can win that citation in court. It may not work out that way and a judge may overrule it, but when they fill out the citation they are confident in the case they are presenting. Since November 8th they have not received a noise complaint that could be determined to be generating from Sunbar or that is a violation of the City code.

Mr. Tamulevich agreed with Officer Conway. Code Compliance has also issued violations in the past for noise under Section 20-11. They have worked closely with the city prosecutors on how to determine if a violation is going to actually going to be passed by the judge or not. This area is in the entertainment district so it can be difficult and they have to determine if the excessive noise is higher than what is expected of that area.

Vice Chair DiDomenico asked Officer Conway if when an officer does respond to a noise complaint do they have a sound meter in hand as there seems to be some confusion in recording sound on a body-worn camera. Officer Conway stated that a previous comment said the noise does not carry wall on body cameras, so if the camera does pick up sound that is a good indicator that the noise is actually louder in person. The responding officers also include their observations on top of the camera. With the noise ordinance as it is, they have to record the noise at the time of the complaint and sometimes those calls are anonymous or the police do not have their address. If they cannot go to the specific location where the complaint is being generated it is very hard for them to complete the investigation and issue a citation that is winnable in court. In regard to some of the public comments that were made in the chat room, Officer Conway noted that where the bars are located is in relation to each other. When he states Mill Avenue, he is including the general area from Ash Avenue to Forest Avenue, sometimes up to College Avenue. Vice Chair DiDomenico asked for clarification of the calls logged and whether they were from the same people. Office Conway stated his log only states that there were 15 calls made against that address.

Commissioner Bauer stated that as Mr. Huellmantel pointed out, tonight's decision is whether Sunbar has complied with the original 10 Use Permit conditions of approval. The City of Tempe Police Department, Code Enforcement and Community Development have all stated that the applicant has complied with them. He noted that when you choose to live in an urban environment there are many benefits and also many challenges, and noise greater than you would expect in a suburban environment is one of those potential challenges. Based on what he has heard from City staff he believes the applicant has met all of the conditions of approval.

Ms. Suparna Dasgupta, Principal Planner, asked that Chair Lyon advised the public that they only get three minutes to speak as there is a lot of chatter going on in the chat log that would not be allowed in the meeting unless the Chair allowed it. Chair Lyon advised the public that the Commission is subject to the same rules as they would be if the hearing was in person which is where each person is only allowed the allotted three minutes.

Mr. Steve Abrahamson, Principal Planner, reminded everyone that this is a hearing to review the compliance of Sunbar to the conditions of approval and that were originally agreed upon. Due to Covid, things have changed and the City of Tempe allowed for the expansion of premises for many businesses, especially restaurants and bars. Sunbar did take advantage of this allowance and were approved through the Special Events Commission for the expansion. If the Commission wants to make any changes to the conditions of approval they can do that and then they will vote on the item tonight. If no changes are made and the Commission feels they are in compliance, no vote is needed.

Commissioner Amorosi understands they have to review the conditions but he concurs with Mr. Darcy that some bars are blurring the lines if they leave doors and windows open and have speakers outside. If the permit is for indoor entertainment it should be sealed within doors, not outside. He has personally walked by there and it looks packed, and not at 50% capacity and many were not wearing masks. When it gets to 100% capacity it will be a lot louder.

Vice Chair DiDomenico clarified that the conditions of approval are somewhat boilerplate for these types of businesses in the district. This is not a condition that does not allow speakers, it is for live entertainment which means you can have a band outside on the patio. Almost every bar in the area has a speaker system outside. Condition #6 was not meant to say you could not have speakers playing music. In the past this location had an indoor component with live music inside with speakers on the patio. He does not see any violation of condition #6.

Motion: Motion made by Commissioner Bauer to approve PL180006 is in compliance of previously stipulated conditions of approval and seconded by Commissioner Sumners.

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

Nays: Commissioner Amorosi

Abstain: None

Absent: None

Vote: Motion passes 6-1

Staff Announcements:

Ms. Dasgupta advised the Commission of the items that will be on the Study Session and Regular Meeting for the upcoming meeting on February 23, 2021.

There being no further business the meeting adjourned at 7:16 p.m.

Prepared by: Joanna Barry, Administrative Assistant II

Reviewed by: Suparna Dasgupta, Principal Planner

