

Agenda Item: 3

Meeting Date: 10/26/2021

CITY OF TEMPE DEVELOPMENT REVIEW COMMISSION

ACTION: Request two (2) Use Permits to allow an expansion of a bar (series 6), and an expansion of live entertainment (indoor) for DARKSTAR / TRUMBULL'S, located at 526 South Mill Avenue. The applicant is Mill Workers Union,

LLC.

FISCAL IMPACT: N/A

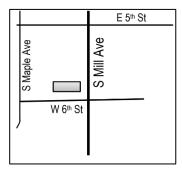
RECOMMENDATION: Staff – Approve, subject to conditions

BACKGROUND INFORMATION: DARKSTAR / TRUMBULL'S (PL210239) is an existing bar with live entertainment that operates in the historic Tempe National Bank Building, located on the northwest corner of West 6th Street and South Mill Avenue in the CC, City Center District and TOD, Transportation Overlay District. The applicant is proposing to expand the bar into the 2,125 s.f. adjacent commercial space, located at 522 South Mill Avenue, formerly occupied by a bank. No use may be modified, changed, altered, or increased in intensity, in a manner that conflicts with the use permit and/or required conditions of approval, without approval of a new use permit. The expansion will also require a Minor Development Plan Review to replace a portion of the glass storefront of the expansion space with a new rollup overhead door. The request includes the following:

ZUP210075 Use Permit to allow an expansion of a bar (series 6).

ZUP210082 Use Permit Standard to an expansion of live entertainment (indoor).

Property Owner



Applicant	Scott Price, Mill Workers Union, LLC	
Zoning District	CC (TOD)	
Site Area	9,301 s.f.	
Existing Building Area	6,552 s.f.	
New Building Area	2,125 s.f.	

Proposed Total Building Area 8,677 s.f.
Patio Area 1,242 s.f.
Lot Coverage 70% (no standard max. required)

Building Height 25'-3" (50'-0" maximum allowed)

Building Setbacks 0' front, 0' side, 0' street side, 31' rear (0', 0', 0', 0'

Tempe 526 S Mill Ave. LLC

min. required)

Vehicle Parking 7 spaces (7 min. required)
Bicycle Parking 8 spaces (12 min. required)
Hours of Operation 6 a.m. to 2 a.m., Daily

Building Code Occupancy A-2

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 existing business operates in the Tempe National Bank Building, a registered historic building, where no exterior modifications are proposed. Only the expansion space will be subject to an exterior modification to replace a portion of the glass storefront system with a new overhead rollup door. There will be no new patio area other than what exists today.

PUBLIC INPUT

As of the publishing date of this report, no public comments have been received by staff.

POLICE INPUT

No concerns with the expansion. The Crime Prevention Unit will work the applicant to either modify the existing security plan or implement a new plan.

USE PERMITS

The proposed use requires two (2) use permits to allow an expansion of a bar (Series 6), and live entertainment (indoor) in the CC, City Center District, and within the TOD, Transportation Overlay District.

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

- Any significant increase in vehicular or pedestrian traffic; the proposed expansion is not expected to increase
 vehicular or pedestrian traffic at a significant level. Pursuant to the downtown parking standards, both the previous
 retail use and the proposed uses are classified under the umbrella of commercial uses, both requiring the same
 parking demand. Additionally, the site is in the downtown area and the TOD which provide easy access to multimodal transportation options such as the automobile, bicycle, light rail, streetcar, bus, neighborhood circulators,
 ride-share, and walking.
- 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 expansion is not expected to generate emissions at a level exceeding ambient conditions given that the proposed site is consistent with existing venues throughout the downtown area.
- 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 do not conflict with the City's adopted plans and will provide opportunity for continued success of the business establishment and complement the other dining and entertainment uses in the downtown area.
- 4. Compatibility with existing surrounding structures and uses; the proposed uses and minor elevation modifications are compatible with the downtown area which is renowned for its entertainment offerings of bars and restaurants.
- 5. Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public; the business plans to work closely with the City of Tempe Police Department to manage potentially disruptive behavior inside and outside of the premise. The existing business already has a security plan in place and anticipates including the new area into the plan.

REASONS FOR APPROVAL:

Based on the information provided by the applicant, the public input received, and the above analysis, staff supports approval of the requested Use Permits. The requests meet the required criteria and will conform to the conditions.

SHOULD AN AFFIRMATIVE ACTION BE TAKEN ON THIS REQUEST, THE FOLLOWING NUMBERED CONDITIONS OF APPROVAL SHALL APPLY, BUT MAY BE AMENDED BY THE DECISION-MAKING BODY.

CONDITION(S) OF APPROVAL: (Non-standard conditions are identified in bold)

EACH NUMBERED ITEM IS A CONDITION OF APPROVAL. THE DECISION-MAKING BODY MAY MODIFY, DELETE OR ADD TO THESE CONDITIONS.

1. The Use Permits are valid only after approval of a Minor Development Plan Review, a building permit has been obtained, the required inspections have been completed and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.

- 2. The Use Permits are valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during the building plan check process.
- 3. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact 480-858-6330 before November 29, 2021.
- 4. The bar hours of operation shall begin no earlier than six o'clock in the morning (6:00 a.m.) and end no later than two o'clock in the morning (2:00 a.m.), daily.
- 5. The live entertainment hours of operation shall begin no earlier than nine o'clock in the morning (9:00 a.m.) and end no later than two o'clock in the morning (2:00 a.m.), daily.
- 6. The live entertainment use shall take place inside only. No live entertainment will be allowed outside.
- 7. Outdoor speakers are only allowed above patio areas, directed in a downward manner.
- 8. Indoor speakers near windows and doors shall be directed inward, away from the exterior of the building.
- 9. No speakers are permitted on the exterior of the 522 South Mill Avenue storefront. Any proposed new speakers located near building openings shall be placed in the interior of the business, projecting away from the exterior.
- 10. Live entertainment broadcast to the outdoor patio speakers shall begin no earlier than nine o'clock in the morning (9:00 a.m.), daily, and end no later than midnight (12:00 a.m.) Sunday through Thursday, and two o'clock in the morning (2:00 a.m.) Friday and Saturday. The outdoor speakers shall be limited to ambient background music for patio patrons, which are to be provided by a stereo or recorded system with a volume control, during all other times of business operation.
- 11. Provide four (4) additional bicycle spaces per City of Tempe bicycle rack detail (T-578) or equivalent design prior to the Use Permit becoming effective. Details to be approved through the Minor Development Plan Review.

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 DARKSTAR / TRUMBULL'S and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
- The use permit approval shall be void if the use is not commenced or if an application for a building permit has not been submitted, whichever is applicable, within twelve (12) months after the use permit is granted or within the time stipulated by the decision-making body.
- The decision-making body, upon finding that the applicant has not taken corrective actions to resolve issues related to the permit/approval and that a continuation of the permit/approval is not in the interest of the public health, safety and general welfare, can revoke the permit/approval after providing written notice of its intentions to the holder of the permit.
- Specific requirements of the Zoning and Development Code (ZDC) are not listed as a condition of approval but
 will apply to any application. To avoid unnecessary review time and reduce the potential for multiple plan check
 submittals, become familiar with the ZDC. Access the ZDC through http://www.tempe.gov/zoning or purchase from
 Development Services.
- All business signs shall receive a Sign Permit. Contact sign staff at 480-350-8435.
- Any intensification or expansion of use shall require a new Use Permit.
- All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the Use Permit becoming effective.
- All required Federal, State, County, and Municipal permits, licenses, and clearances shall be obtained, or the Use Permit is void.
- Music, sound, or live entertainment shall not violate the City of Tempe Noise Ordinance.

HISTORY & FACTS:	
June 28, 1912	Tempe National Bank opened new building at the northwest corner of Mill Avenue and 6th Street.
March 1, 2005	Redevelopment Review Commission approved the request for Design Review (rehab and modification) of building elevations, site plan and landscape plan for TEMPE NATIONAL BANK BUILDING, located at 526 South Mill Avenue.
March 21, 2006	Redevelopment Review Commission recommended approval of historic designation request for TEMPE NATIONAL BANK BUILDING (RRC060003) Ordinance No. 2006.19 #HPO-2006.16, located at 526 South Mill Avenue, in the CC, City Center District
May 4, 2006	City Council approved the request for TEMPE NATIONAL BANK BUILDING (RRC060003) (526 Mill LLC, owner / City of Tempe, applicant) Ordinance No. 2006.19 #HPO-2006.16 for the historic designation of the Tempe National Bank Building, consisting of approximately 0.21 acres, located at 526 South Mill Avenue, in the CC, City Center District.
January 17, 2012	Hearing Officer approved two (2) Use Permits to allow a bar (series 7), and to allow live entertainment for WORLD OF BEER (PL110433), located at 528 South Mill Avenue, Suite No. 101, in the CC, City Center District, and within the TOD, Transportation Overlay District.
October 15, 2012	Community Development Department Planning Division approved a Development Plan Review for a patio addition for WORLD OF BEER (PL110433), located at 526 South Mill Avenue, Suite No. 101, in the CC, City Center District, and within the TOD, Transportation Overlay District.
October 18, 2012	Community Development Department Planning Division approved the request for WORLD OF BEER (PL120335), consisting of a shared parking study of an existing bar use and a two-phased patio design, with the addition of occupied space within the existing building located at 526 South Mill Avenue, Suite No. 101, in the CC, City Center District, and within the TOD, Transportation Overlay District.
November 3, 2016	Community Development Department Planning Division approved a transfer of two (2) Use Permits to allow a bar (series 7), and to allow live entertainment for WASTED GRAIN (PL160325), located at 526 South Mill Avenue (previously addressed as 528 South Mill Avenue), Suite No. 101, in the CC, City Center District, and within the TOD, Transportation Overlay District.
January 17, 2017	Hearing Officer approved two (2) Use Permits to allow a bar (series 6) and live entertainment for WASTED GRAIN (PL160461), located at 526 South Mill Avenue in the CC, City Center District, and within the TOD, Transportation Overlay District.
May 2, 2018	Community Development Department Planning Division approved a transfer of two (2) Use Permits to allow a bar (series 6), and to allow live entertainment (indoor only with outdoor patio

speakers) for MILL WORKERS UNION (PL180120), located at 526 South Mill Avenue in the CC,

City Center District, and within the TOD, Transportation Overlay District.

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 DARKSTAR / TRUMBULL'S (PL210239)

ATTACHMENTS:

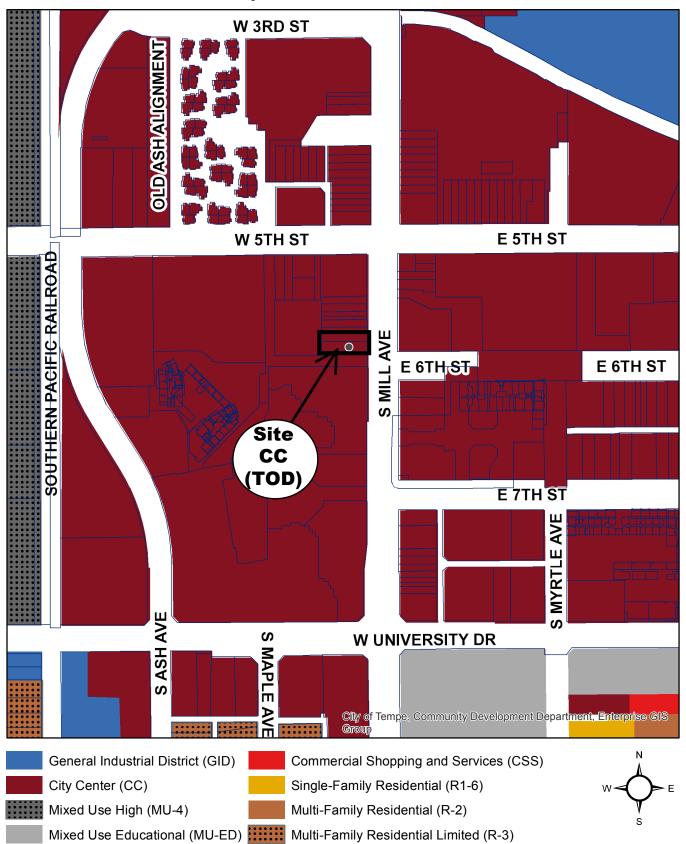
1.	Location	Mag	

- 2. Aerial
- 3-9. Letter of Explanation
- 10. Site Plan
- 11. Floor Plan
- 12. Elevations
- 13-17. Site Context Photos



526 S Mill - Darkstar / Trumbull's

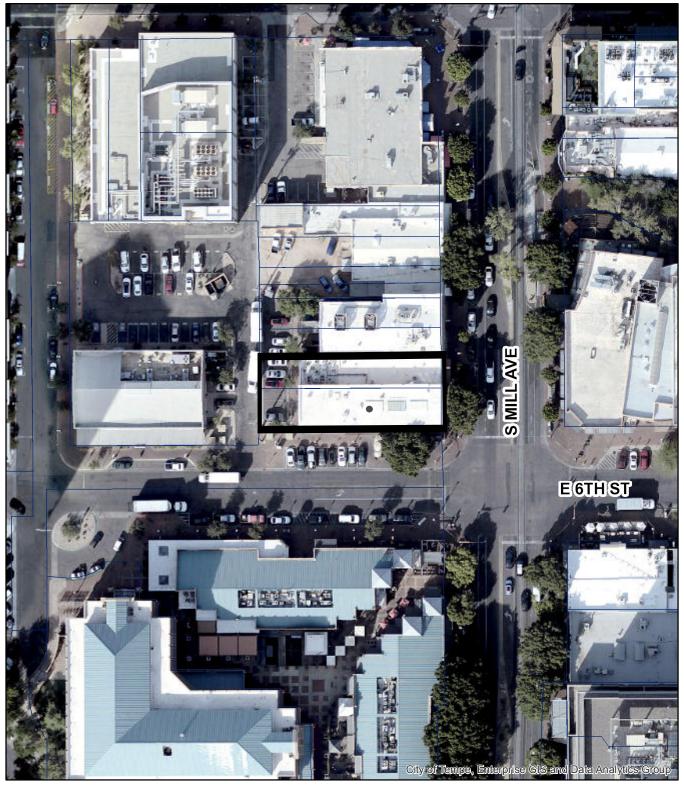
PL210239





526 S Mill - Darkstar / Trumbull's

PL210239



Aerial Map



MILL WORKERS UNION LLC

(DBA DARKSTAR RESTAURANT AND BAR)
526 S. Mill Avenue

LETTER OF EXPLANATION

USE PERMIT EXPANSION FOR ZUP 180048 & ZUP180049



SUMMARY

Mill Workers Union LLC (DBA "Darkstar") is requesting an expansion of its existing Use Permits. The Use Permits in place today allow the existing business to operate as a bar/restaurant with live indoor entertainment. The request is to expand the use into the building recently vacated by BMO Harris Bank at 526 S. Mill Avenue. Specifically, Darkstar seeks to modify the existing Use Permit ZUP180048 to allow a Bar (Series 6) in the CC – City Center District with outdoor patio seating to expand the ability to operate as a bar into the adjacent space. Additionally, Darkstar seeks to modify the existing Use Permit ZUP180049 to allow Live Entertainment (indoor only with outdoor speakers) in the adjacent space.

The existing space is depicted below in green highlighting with the expansion area highlighted in yellow:



Concurrently, with this request to expand the existing Use Permits at Trumbull's, we are requesting an administrative modification to the Development Plan Review for minor Tenant Improvements at the former BMO Harris space. This expansion will add approximately 2,000

square feet of space at the suite directly adjacent to (and north of) the existing Trumbull's. Most of the expansion will be to incorporate two separate kitchen areas so that Darkstar can expand its food offerings, provide additional restrooms for customers, and modify the bar service area indoors.

With the request to expand the existing Use Permit for Live Indoor Entertainment, we are requesting that Condition #11 be removed so that advance ticket sales can be offered for live entertainment. While many nights live music will be offered as part of the ambience of Darkstar, there may be instances in which we would like to limit the capacity of Darkstar by restricting the number of people who can attend live music performance through the sale of advance tickets. This allows Darkstar to continue serving its restaurant and bar customers while providing the live musical experience for which Mill Avenue is known.

Additionally, we have learned from the covid pandemic that incorporating a reservation system, such as advanced ticket sales, is critical to be able to control the number of guests that can attend certain events at Darkstar. We also believe the incorporation of advance sales allows us to better plan how to accommodate our patrons and staff appropriately to ensure compliance with our Tempe PD security plan.

The hours of operation at the existing Trumbull's will remain the same -6:00 a.m. to 2:00 a.m. – with the expansion as the new area will become a part of the existing business.

USE PERMIT - BAR

The requested Use Permit expansion to allow a bar in the space adjacent to the existing space meets the criteria for a use permit because it will:

a. not cause any significant increase in vehicular or pedestrian traffic in adjacent areas. The existing space has operated as a restaurant and bar since approximately 2006 and has operated under the existing Use Permits with the current ownership since 2018. The proposed expansion will take over a commercial space directly adjacent to the existing space. Neither business provides public parking (this is common with many of the businesses in Downtown Tempe). It is worth noting that the proposed expansion will take over a previous business location that generated its own vehicular and pedestrian traffic.

Mill Avenue is a destination where many visitors take alternative modes of transportation (bus, light rail, ride share, etc.) and frequent various businesses within the entertainment district. The proposed Darkstar expansion seeks to capture those existing visitors and provide them with another opportunity for food, beverages, and entertainment in Downtown Tempe.

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

The expansion of the existing space into the adjacent space will not cause any odor, dust, gas, noise, vibration, smoke, heat or glare exceeding that of ambient conditions. Mill Avenue between Rio Salado and University Drive is arguably Downtown Tempe and the entertainment district's most active area with activity occurring nearly all hours of the day and night. People seek to live, work and play in this area specifically because of all the amenities located in close proximity. Many other bars and restaurants operate along this stretch of Mill Avenue and patrons often visit more than one establishment during their time downtown. The expansion of the existing bar/restaurant space will not produce odor, dust, gas, noise, vibration, smoke, heat or glare in excess of ambient conditions.

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

Our request to expand the scope of the existing Use Permit to allow Darkstar to include the former BMO Harris suite directly adjacent to the existing space will not contribute to the deterioration of the neighborhood or be in conflict with the goals, objectives, and policies of the City.

In conjunction with the request to expand into the adjacent space, Darkstar is proposing to renovate the former BMO Harris space and rejuvenate it. The space has sat vacant since BMO Harris shut its doors in March of 2020 due to the COVID-19 pandemic, but the bank had become an underutilized space along Mill Avenue long before the doors were formally shut.

Mill Workers Union LLC seeks to revitalize the former BMO Harris space to help reactivate this part of Mill Avenue, which has been seeing a decline in occupancy (west

of Mill along 6th Street with the closing of Whiskey Row and El Hefe, and north of 6th Street along Mill Avenue with the closing of the temporary leasing space directly north of the former BMO Harris building, the closing of The Real Estate Broker's office next to Sparky's Creamery, and the generally not operational Old Town Books store. These vacant or essentially un-utilized spaces create functional "dead zones" along Mill Avenue that disrupt the flow of activity throughout the entertainment district and ultimately harms businesses that are on the other side of these underutilized areas. We believe that the activation of the former BMO Harris space will serve as an amenity to the area and combat deterioration that is occurring nearby.

d. be compatible with existing surrounding structures

The proposed expansion is compatible with the existing surrounding structures, uses and area. Mill Workers Union LLC has operated in the current space since 2018, which has for many years been located within close proximity to dozens of other bars, restaurants and clubs. Mill Avenue is within the City's planned entertainment district for the downtown area, and accordingly the expansion of Darkstar is consistent with the surrounding area just as the current business is.

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

Mill Workers Union LLC staff members and management have worked very closely over the years with the Tempe Police Department to minimize disruptive behavior in the area. A security plan has been in place and will be amended appropriately to take into account any changes that arise from this proposal to continue the proper management at the existing location. This permit will not result in any disruptive behavior or create any nuisances to the surrounding area or general public.

<u>USE PERMIT – LIVE INDOOR ENTERTAINMENT (MUSIC)</u>

The requested Use Permit expansion to allow live indoor music in the space adjacent to the existing space meets the criteria for a use permit because it will:

a. not cause any significant increase in vehicular or pedestrian traffic in adjacent areas. The expansion of the Use Permit for live indoor entertainment will not cause any significant increase in vehicular or pedestrian traffic in adjacent areas. The expansion into the adjacent former BMO Harris space is mainly intended to provide support for the existing occupied space. Improving and incorporating the former BMO Harris space allows the existing business to provide an enhanced customer experience that includes additional restrooms, multiple kitchens, increased cooler/storage space, and additional seating at increased table space and a new bar service area. The expansion of the Use Permit for Live Indoor Entertainment will allow for the same amount of Live Indoor Entertainment but within a larger area.

Because the expansion into the adjacent space serves as support for the existing space, it will not cause any significant increase in vehicular or pedestrian traffic – particularly as it relates to the request to expand the Use Permit for Live Indoor Entertainment into the new space as the expansion area caters more to the bar/restaurant operations.

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

The expansion of live indoor entertainment to the adjacent space will not cause any odor, dust, gas, noise, vibration, smoke, heat or glare exceeding that of ambient conditions. Existing ambient levels of certain elements above – including noise and vibration – tend to occur at higher levels in designated entertainment districts and Downtown Tempe/Mill Avenue are no exception. As is expected with an active entertainment district, many of the businesses incorporate music both indoors and out both recorded and live.

Mill Workers Union LLC currently has a Use Permit for Live Indoor Entertainment and is located along Mill Avenue, which features several other businesses that host Live Indoor and Outdoor Entertainment and many others that play recorded music at similar levels both inside and outside of their respective establishments. Accordingly, the expansion of the existing Use Permit for Live Indoor Entertainment to the adjacent space will not produce odor, dust, gas, noise, vibration, smoke, heat or glare in excess of ambient conditions. The expansion of the existing Use Permit will accommodate the same level of sound as the current use does but will encompass a larger indoor area.

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

The expansion of the existing Use Permit to allow Live Indoor Entertainment in the space directly adjacent is consistent with the goals, objectives and policies and will not contribute to the deterioration of the neighborhood. Downtown Tempe has long been known for its live music scene and Mill Workers Union LLC is proud to be a part of that tradition. Expanding the existing space into the adjacent former BMO Harris suite

provides a more efficient business model with an expanded kitchen, additional restrooms and seating to enhance the experience for our patrons. These improvements will help Darkstar to be a part of the City's goals of providing a live, work, play environment that features live entertainment in the downtown.

Additionally, to combat deterioration of the neighborhood Darkstar is proposing tenant improvements to renovate the vacant former BMO Harris space. The COVID-19 pandemic has been especially hard on the businesses along Mill Avenue. By renovating the space, we are combatting deterioration of the neighborhood by further activating Mill Avenue and keeping the spirit of Downtown Tempe alive.

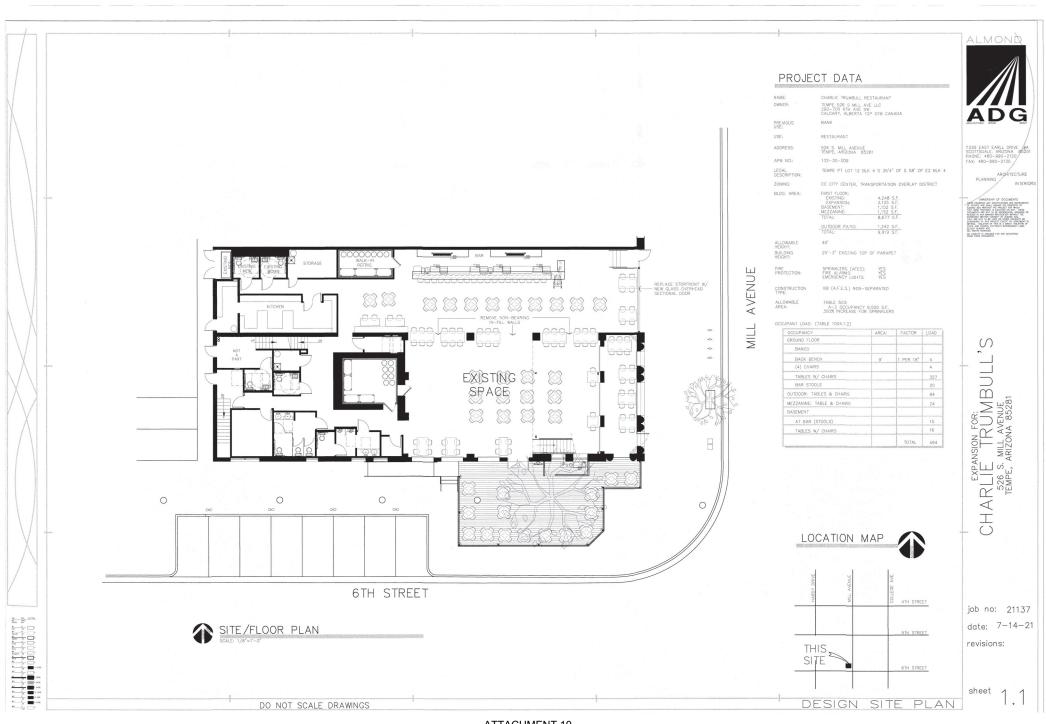
d. be compatible with existing surround structures

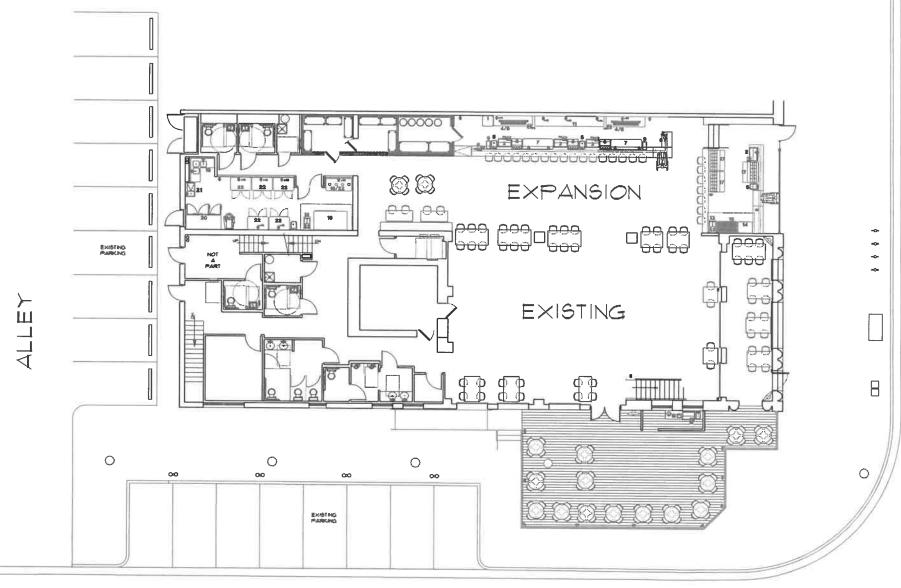
The expansion to allow live indoor entertainment is compatible with the existing surrounding structures, uses and area. The majority of the existing structures that surround the existing and the proposed spaces have operated as bars, restaurants and clubs for many years and play music (both recorded and live) inside and outside. Accordingly, the expansion to allow indoor live entertainment at Darkstar is consistent with the surrounding area just as the current business is.

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

Because the live entertainment will be indoors, the expansion to allow indoor live entertainment at Darkstar will not result in any disruptive behavior which may create a nuisance to the surrounding area of general public. Mill Workers Union LLC staff members and management have worked very closely over the years with the Tempe Police Department to minimize disruptive behavior in the area. A security plan has been in place and will be amended appropriately to take into account any changes that arise from this proposal to continue the proper management at the existing location.

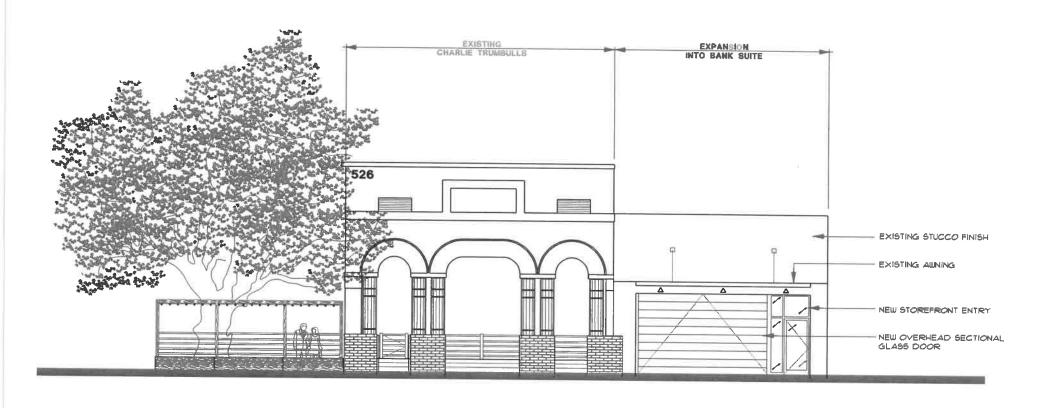
Based on the justifications above, we respectfully request the granting of our requests to expand the existing Use Permits for a Bar in the CC (City Center) and for Live Indoor Entertainment to allow Mill Workers Union LLC to expand its current operations into the adjacent former BMO Harris space.



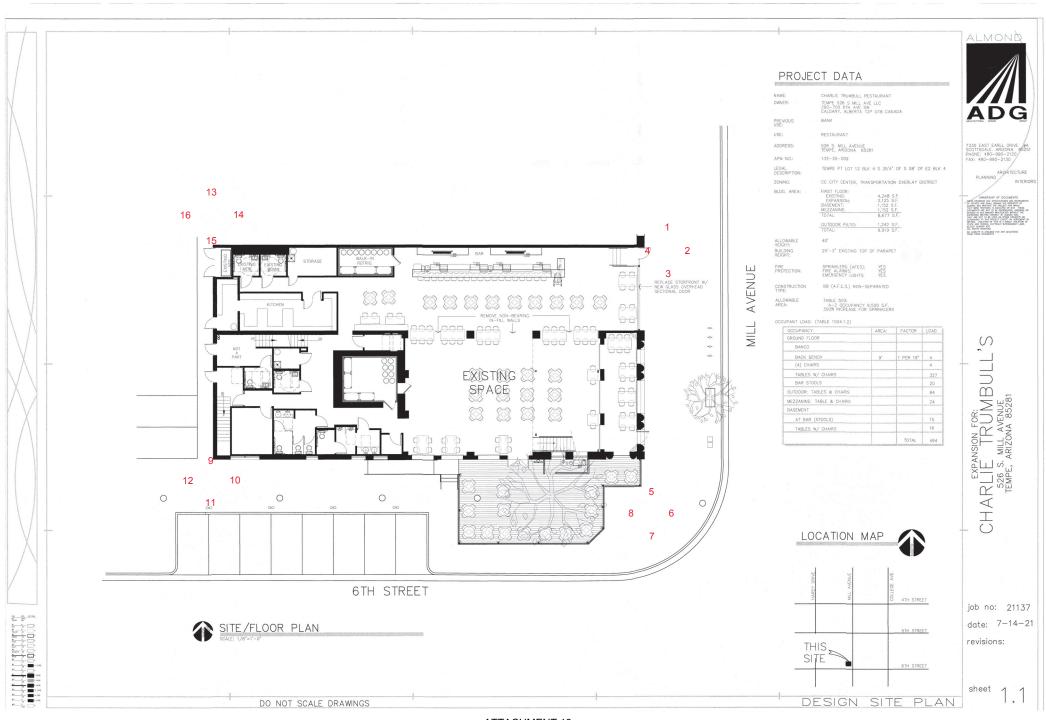


6TH STREET



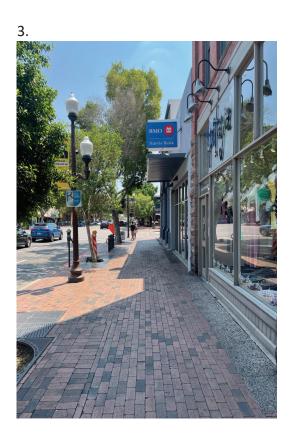


MILL STREET FACADE





















10.



11.



12.







