

**Minutes
HEARING OFFICER
NOVEMBER 20, 2007**

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.

Present:

David Williams, Hearing Officer
Steve Abrahamson, Planning and Zoning Coordinator
Shawn Daffara, Planner II
Alan Como, Planner II
Derek Partridge, Planning Intern
David Park, Assistant City Attorney

Number of Interested Citizens Present: 29

Meeting convened at 1:30 PM and was called to order by Mr. Williams.

1. Mr. Williams approved the Hearing Officer Minutes for November 6, 2007.

2. Hold a public hearing for a request by **TEMPE VILLAGE - LUCKY MAN PRODUCTIONS LLC (PL070412)** (Stephen Duncan, Esquire/applicant; White Knight Investments, ACC /property owner) located at 5004 South Price Road in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP07146 Use permit to allow a bar (Series 6).

ZUP07153 Use permit to allow live entertainment (venue).

Six new letters / e-mails were received in opposition; copy of shared parking analysis for Tempe Village which approved on November 18, 2007; and a copy of the acoustic report for the decibel readings at this property.

Stephen Duncan was present to represent this case.

Stephen Duncan spoke regarding the project. He indicated that this would be a small venue, located on the northwest corner of Price Road and Baseline Road on the 101 freeway. The existing building is currently vacant and would be well suited to this project. This location would also house the Lucky Man Productions corporate office, which has about 20 full-time employees, and is a locally owned business. Local and international entertainment will be brought in.

Brian Kern, Leasing Agent for this property, spoke about this request. This property has been family-owned for about 10 years; they have seen the plaza decline in recent years and crime has escalated as well. Locating Lucky Man Productions in this plaza may help mitigate crime. They would really like to locate this business in their plaza because they know they would be a long-term tenant, and they feel it would help them with current leasing efforts.

Thomas LaPenna, owner of Lucky Man Productions, spoke regarding this project. He and his former partners took over the bankrupt Red River Opry in 2001, and since 2003 he alone has owned the business, now called the Marquee Theater. Marquee Theater has turned into a very successful venture, and they are seeing a need for growth. They are trying to centralize their business in Tempe. He feels they are an asset to Tempe.

Martin Ball, architect with CCBG Architects, next spoke about this project. He has designed the existing buildings and site to accommodate Lucky Man and their needs, as well as working within the City Code. They propose to have a small music venue, a larger venue and the corporate offices of Lucky Man Productions. They have planned to modify the interior of the venues with several soundproofing elements, due to comments and concerns heard at the neighborhood meeting. They have conducted an acoustic study in the surrounding areas. The lowest ambient noise level was found to be 47 dB, attributable to the freeway and the usual neighborhood noises, such as dogs barking, cars starting, etc. The standard ambient noise level in many cities is 45 dB for a residential neighborhood in the evening.

The following people spoke in opposition regarding this project:

Frank Binkley, 2163 E. Ellis Dr. – Lives directly behind the old Sinbad building. Main concerns were excessive noise, insufficient parking, and resultant traffic through the surrounding neighborhood after concerts.

Gary Lieberman, PO Box 25401, Tempe – Lives about 10 feet from the buildings involved. Main concerns were excessive noise, insufficient parking and increase in crime.

Paul Scorza, 2167 E. Ellis Dr. – Lives across the alley from venue. Sent two letters; concerned about excessive noise and health issues it would create. Doesn't believe it is an appropriate use so close to a residential area.

John Keeler, 2116 E. Minton – Concerned about traffic hazards that this use would create.

Robert Van Buhler, 2121 E. Donner Dr. – Concerned about traffic hazards and increase in crime. Concerned by locating this type of venue in a center which also holds an accelerated high school whose classes sometime extend into the evening.

Patrick Flynn, 2129 E. Minton Dr. (address of father-in-law Patrick Resnick) – Concerned about traffic hazards and insufficient parking. Also, use of alcohol by concert attendees and issues that result.

Mr. Williams asked the applicant if he would like the opportunity to address some of these concerns. Mr. Duncan responded that he would like his acoustician speak regarding the noise issues.

Tony Sola spoke regarding the noise issues and the acoustic study. He mentioned that the City of Tempe's noise ordinance is most likely the most restrictive in the nation. Also spoke about the sound mitigation measures the architect will be taking. His study included the use of a large sound system with speakers directed to the back doors, nearest the residential area. This was not how the concerts' sound systems will be directed, but exactly opposite, which would mean the increase of 13 dB mentioned by the architect was under those opposite conditions. He also indicated that they were working on roof modifications to control noise.

Mr. Williams asked what the square footage of the standing area, average or max, two venues together. Mr. Ball responded that within the large venue, there was 3116 s.f. in the all ages area (624 occupants); smaller area in the larger venue there is 1880 s.f. (378 occupants). Occupant load is considered one occupant per seven square feet. Mr. Williams asked Mr. LaPenna what the expected number of attendees would be. Mr. LaPenna stated the smaller space in the larger venue would be limited to 175 and the larger space to 650.

Donald Johnson, the manager of the Marquee Theater, spoke next regarding the traffic and parking issues as well as security, and how they propose to address those issues. No parking will be allowed in the back or on the side of the buildings. Have roaming security teams in uniforms all the time during the shows and until about a half hour after concert is finished. They also control loitering.

DECISION:

Mr. Williams stated that although he thought this was a good use for the City of Tempe, it was a bad location. He explained his concern that a music venue, attracting 600-700 customers, is not a good fit in a small commercial center (under 10 acres). A smaller music venue could work, but that was not part of this application. It would be difficult to regulate or control the size of the shows. He noted that he had an extensive report from the Tempe Police Department, but was more concerned with the incompatible use, not so much safety concerns. Mr. Williams noted that regarding traffic concerns, that there would be traffic there no matter what the use. The nature of the traffic is peak hours, people coming at the same time, and leaving at the same time, with the potential of 400 to 500 cars. Mr. Williams stated that he was more concerned with the incompatibility of uses; the close proximity of the building to the neighbors to the north was his biggest concern.

In consideration of the factors outlined above, Mr. Williams denied PL070412/ZUP07146/ZUP070153.

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3. Hold a public hearing for a request by the **COCONUT CLUB BAR AND GRILL (PL070459)** (Jaong Woo, Applicant; Peter Crocoll/Mill Avenue Shops, property owner) located at 414 South Mill Avenue, Suite No. 215 in the CC, City Center District for:

ZUP07172 Use permit to allow live entertainment.

Jaong Woo and Duane Sherry was present to represent this case.

Mr. Abrahamson indicated there had been no additional public input since the report was published.

Mr. Jaong Woo, the applicant, indicated they agreed with conditions of approval, but his partner, Duane Sherry, would like to ask some questions about conditions #8 and #9. Mr. Sherry asked for clarification about the restriction on speakers (condition #8), and Mr. Williams stated that this meant that speakers were not to blast their music during the events to increase interest. Mr. Sherry asked if the use of speakers in this manner after 11:30 pm, as well as using outdoor speakers on the back patio. Mr. Williams indicated the conditions, as written, would not allow that, and then asked for staff comment. Mr. Sherry also asked for clarification on the open windows (condition #9) indicating they would like to open the windows for ventilation during warmer months.

Mr. Abrahamson indicated the applicant did not mention in this case the request to use outdoor speakers. He felt the request regarding outdoor speaker use should be a separate Hearing Officer request so that there was opportunity for the public to provide input. Mr. David Park, Assistant City Attorney, agreed that it should be a separate issue and advertised to allow public input.

Mr. Williams asked for public input at this time.

Doug Collins, 21 W. 9th St. – Owner of Tavern on Mill at 404 S. Mill Ave, Suite C-101, stated that he felt considering the recent changes on Mill Avenue that an empty space was not desirable. He supported the request and indicated that the Coconut Club Bar and Grill business was an asset to Tempe and surrounding businesses on Mill Avenue.

Mr. Woo advised that they did mention outdoor music on their patio after 6:00 pm. Mr. Williams asked Mr. Abrahamson to comment regarding the use of outdoor speakers, and he responded that a complaint had been received by staff opposing this request regarding the noise of outdoor speakers.

Mr. Williams then indicated that condition #8 would remain as stated. He would offer that condition #9 could be modified.

DECISION:

Mr. Williams approved PL070459/ZUP07172 subject to the following conditions:

1. This use permit is valid for the "Coconut Club Bar and Grill" and is non-transferable. Should the business be sold, the new owners must contact the Board of Adjustment/Hearing Officer staff and apply for a new use permit.
2. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
3. The live entertainment shall be indoors only, no live entertainment will be allowed on the exterior patio.
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.
5. Any expansion or intensification of the use will require review of the use permit.
6. The use permit is valid for the plans as submitted within this application.
7. The restaurant Coconut Club Bar and Grill will adhere to the City of Tempe Noise Ordinance.
8. No speakers will be allowed outdoors, nor directed towards an open door or window.
9. No open windows will be allowed during performances **except between the hours of 12:00 am and 2:00 am May 1st through September 30th. (Modified by the Hearing Officer)**
10. The applicant shall work with the Tempe Police Department to implement a Security Plan for the business by **December 21, 2007**. (Contact Derek Pittam 480-858-6341)

The next Hearing Officer public hearing will be held on **Tuesday, December 4, 2007**.

There being no further business the public hearing adjourned at 3:45 PM.

Prepared by: Diane McGuire, Administrative Assistant II/Dianne Garrett, Administrative Assistant II
Reviewed by:

A handwritten signature in blue ink that reads "Steve A. Abrahamson". The signature is written in a cursive, flowing style.

Steve Abrahamson, Planning & Zoning Coordinator
for David Williams, Hearing Officer

SA:dm:dg