

**CITY OF PEORIA, ARIZONA  
COUNCIL COMMUNICATIONS**

CC: 3TR  
Amend No. \_\_\_\_\_

Date prepared: June 22, 2009

Council Meeting Date: July 7, 2009

**TO:** Carl Swenson, City Manager

**FROM:** Susan J. Daluddung, AICP, Deputy City Manager *SJD*

**THROUGH:** Glen Van Nimwegen, AICP, Community Development Director *GM*

**THROUGH:** Chris M. Jacques, AICP, Planning Manager *CJ*

**PREPARED BY:** Cody Gleason, Planning Technician *CG*

**SUBJECT:** CU 09-09, Cabo Joe's - APPEAL  
Reverse, affirm, modify or remand back to the Planning and Zoning Commission for further consideration for their decision to approve a Conditional Use Permit for a bar/tavern use within an existing suite at the Deer Valley Marketplace. The site is a commercially-zoned parcel within the Fletcher Heights Planned Area Development (PAD) and is located at the northeast corner of Deer Valley Road and 83<sup>rd</sup> Avenue.

**REQUEST:**

The Mayor and Council make a final determination to reverse, affirm, modify or remand back to the Planning and Zoning Commission for further consideration their decision to approve a Conditional Use Permit for a bar/tavern use with a Series 6 Liquor License. The establishment proposes to locate within an existing suite at the Deer Valley Marketplace. The development is zoned Fletcher Heights Planned Area Development (PAD – commercial) and is located at the northeast corner of Deer Valley Road and 83<sup>rd</sup> Avenue.

In accordance with Section 14-39-10.H of the Zoning Code, those in opposition filed valid appeals of the Planning and Zoning Commission's decision to approve the Conditional Use Permit. Fourteen (14) written appeals were received as of the date of this report.

**AUTHORITY AND PROCEDURE:**

Pursuant to Section 14-39-10.H any member of the public, including the applicant, may

**CITY CLERK USE ONLY:**

- Consent Agenda
- Carry Over to Date: \_\_\_\_\_
- Approved
- Unfinished Business (Date heard previous: \_\_\_\_\_)
- New Business
- Public Hearing: No Action Taken

ORD. # \_\_\_\_\_ RES. # \_\_\_\_\_  
LCON# \_\_\_\_\_ LIC. # \_\_\_\_\_  
Action Date: \_\_\_\_\_

appeal a decision of the Planning and Zoning Commission to the City Council. The City Council shall base its decision on the written findings previously issued by the Planning and Zoning Commission, applicable law, the review criteria stipulated in Section 14-39-10 of the Zoning Ordinance, and guidelines promulgated by the Department.

If the City Council reverses or modifies the decision of the Commission, the Council shall direct the City Attorney to prepare written findings setting for the basis for the reversal or modification.

#### **CONDITIONAL USE PERMIT DECISION CRITERIA:**

Pursuant to Section 14-39-10.E, Conditional Use Permits must be reviewed against the following decision criteria:

1. Whether the use is designated as a permitted Conditional Use within the zoning district in which the property is located.
2. Whether the use meets the locational and development standards provisions, as applicable for the Conditional or Special Use Permit, for the zoning district in which the property is located.
3. Whether the use is consistent with the goals, policies, and future land use map of the General Plan and specific elements of the General Plan and any adopted Specific Plan applicable to the site where the proposed use is located.
4. Whether the use is consistent with documentation and recommendations provided by reviewing City Departments.
5. Whether the use complies with all applicable city codes, standards, and guidelines governing such use.
- 6a. Compliance with specific standards established by the Planning Manager that are designed to mitigate any identified impacts that arise out of the proposed use for which the Conditional Use Permit is sought upon the surrounding area, including residential neighborhoods adjacent to the proposed site as determined by the Planning Manager; and
- 6b. Compliance with specific standards established by the Planning Manager that are designed to ensure compatibility with existing principal permitted uses and conditional uses by addressing the factors set forth in the *Intent* provision of Section 14-39-10.
- 6c. The Planning Manager shall not approve or recommend approval of any Conditional Use Permit unless the Planning Manager has received a Waiver of Proposition 207 from the Owner or Owners of the property that is the subject of the Conditional Use Permit or has determined that the absence of such Waiver of Proposition 207 is consistent with the City's General Plan and Zoning goals and regulations.

#### **SUMMARY:**

##### ***Planning & Zoning Commission Public Hearing (June 18, 2009)***

On June 18, 2009 the Planning and Zoning Commission voted unanimously (4-0) to

accept the findings and recommendation of staff and approve the Conditional Use Permit (CUP) for the use. In the course of the hearing, the Commission was presented with information from staff and the applicant in regards to the appropriateness of the proposed use.

#### *Staff Analysis*

In the staff report and presentation, staff indicated that the proposed use will meet the criteria established for CUP's because the use was contained within a commercial center and would not have an outdoor portion at this time and therefore would not contain operational impacts which may have negatively affected the adjacent residential properties. Additionally, the site complies with all other development requirements and use-specific standards. Staff recommended approval of the request subject to the condition that the applicant substantially conform to the narrative identified as Exhibit A contained within the staff report to the June 18, 2009 Planning and Zoning Commission.

#### *Public Testimony*

An opposition phone call and letter were received one day prior to the meeting. However no specific reason was provided as to why the establishment should not be permitted to operate at the subject location. No member of the public requested to speak during the Planning and Zoning Commission Hearing.

#### ***Appeal of Planning & Zoning Commission Action***

Subsequently, staff received fourteen (14) written appeals of the Planning and Zoning Commission's decision to approve this request in accordance with Section 14-39-10.H

The concerns raised in the appeals included: (1) Appropriateness of the bar/tavern use at this location; and (2) Proximity to schools and churches in the area; and (3) Safety / concerns regarding intoxicated patrons. The applicant provided a follow-up email responding to concerns and offering contact information. That email was forwarded to the appellants including written information from staff outlining the process. This response is attached to the Council Communication.

#### **ATTACHMENTS:**

- June 18, 2009 Planning and Zoning Commission Staff Report
- Opposition email received June 17, 2009
- Draft June 18, 2009 Planning and Zoning Commission Minutes
- Public appeal requests (14 received)
- Response from Applicant (June 19, 2009)

**SUPPORTING DOCUMENTATION  
PERTAINING TO THIS  
AGENDA ITEM IS ON FILE IN THE  
OFFICE OF THE CITY CLERK**