

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: 28R
Amend No. _____

Date prepared: August 11, 2009

Council Meeting Date: August 25, 2009

TO: Carl Swenson, City Manager

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

THROUGH: Glen Van Nimwegen, AICP, Community Development Director 

PREPARED BY: Chris M. Jacques, AICP, Planning Manager 

SUBJECT: CU 09-09, Cabo Joe's - APPEAL
Reverse, affirm or modify a unanimous decision by the Planning and Zoning Commission to deny a Conditional Use Permit for a bar/tavern use within an existing suite at the Deer Valley Marketplace, located at the northeast corner of Deer Valley Road and 83rd Avenue.

REQUEST:

The Mayor and Council make a final determination to reverse, affirm or modify a unanimous decision by the Planning and Zoning Commission to *deny* 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 83rd Avenue.

In accordance with Section 14-39-10.H of the Zoning Code, the applicant filed a valid appeal on August 10, 2009 of the Planning and Zoning Commission's decision to deny the Conditional Use Permit.

AUTHORITY AND PROCEDURE:

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

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: _____

shall direct the City Attorney to prepare written findings setting 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.

PLANNING & ZONING COMMISSION ACTION (August 6, 2009):

On August 6, 2009 the Planning and Zoning Commission voted unanimously (7-0) to accept the findings and recommendation of staff and deny the Conditional Use Permit (CUP) for the bar/tavern use.

The staff report to the Planning & Zoning Commission (attached) had indicated a recommendation of approval subject to twelve (12) conditions, provided that the City received a new Proposition 207 Waiver reflecting said conditions. The City contended that all twelve conditions were necessary to make a finding that the use was compatible

with adjoining areas.

The applicant was not agreeable to all twelve conditions and therefore decided against signing the new waiver. Accordingly, staff revised its recommendation to denial citing CUP decision criteria (14-39-10.E, #6c) prohibiting the Planning Manager from recommending approval absent a signed and notarized Proposition 207 Waiver.

Public Correspondence

As of the date of this report, the City had received emails or letters from seventy-six (76) households. Of these, 74 are in opposition to the request, one is in support and one is characterized as neutral, meaning no clear position was taken in either direction. The public correspondence is attached as Exhibits H1-H76 in the staff report.

Public Testimony

There were approximately eight-five (85) people in attendance at the August 6, 2009 public hearing. Twenty-three (23) people spoke in opposition to the request, none in favor. The draft minutes from the August 6, 2009 public hearing (attached) summarize the concerns articulated by residents. The concerns generally align with the topical themes identified in the Staff Report.

Applicant Testimony

The applicant stated agreement with all 12 conditions, except Condition #8 requiring 40% of gross receipts in a six-month period to be from the sale of food; and Condition #10 which would limit the hours of operation to 11am-10pm(Sun-Thur) and 11am-11pm (Fri-Sat). Although Condition #8 aligns with the applicant's current lease restriction, he was concerned that this condition limited future flexibility in the lease terms and had concerns about the accounting methodology outlined here (6 month period) versus the State method.

With regard to Condition #10, the applicant expressed concerns that this business would be treated differently from other restaurants and bars, including the Top Shelf across the street which has the same hours with the exception of the cantina which is open until 2am. In his remarks, the applicant stated that if a Series #12 was sought (restaurant liquor license), there would be no such limitations on hours and no Conditional Use Permit would be required. He maintains that the purpose of the Series 6 license is to accommodate pool tables, dart boards and the flexibility that the license permits. In staff's analysis, the Top Shelf and this establishment have different contextual and operational factors. This establishment is only 46 feet from residences. The Top Shelf is approximately 530 feet from the nearest occupied residential unit and 380 feet from the nearest subdivided residential lot. The close proximity creates potential late-night disturbances to residents (i.e. car stereos, car alarms, slamming of doors, squealing of tires, loitering, yelling etc.); hence the need for limited hours.

There are currently seventeen (17) active Series #6 licenses within the City. As the following table illustrates, the majority of the establishments are located within entertainment areas or venues or are long-standing establishments.

Active Series #6 Licenses (City of Peoria)

Business	Address	Start Date
McDuffy's	15814 N. 83 rd Avenue	5/5/08
Skye Supper Club	16844 Arrowhead Fountains Dr.	3/21/06
Fox and Hound	8320 W. Mariners Way	5/22/01
Sandbar Mexican Grill	9868 W. Northern (Park West)	7/5/07
Funugyz Grill	8378 W. Thunderbird (NWC T-Bird/83 rd)	3/3/08
Country Meadows Golf Club	8411 N. 107 th Ave	8/15/00
Trilogy Golf Club	12575 Golf Club Dr. (Vistancia)	2/14/04
Trilogy @ Vistancia	Kiva Club – Trilogy Vistancia	9/17/04
Pleasant Harbor Marina	40202 N. 87 th Ave	2/17/96
Bevmo!	24650 N. Lake Pleasant (SWC LPP/Happy Valley)	6/14/07
Fair Lanes Bowling Alley	8475 W. Olive Ave	7/2/01
Wild Horse West	8415 W. Carefree Highway	12/15/89
The Curve on Peoria	8455 W. Peoria Ave	8/19/08
Q Bar and Grill	6750 W. Olive (NWC 67 th /Olive)	8/24/87
Neighbors	7530 W. Peoria (NWC 75 th /Peoria)	1/1/95
Enoch's Sports Lounge	6750 W. Peoria (NWC 67 th /Peoria)	11/28/96
Deli Sportsbar	9635 W. Peoria (SWC 96 th /Peoria)	11/29/00

APPEAL OF PLANNING & ZONING COMMISSION DECISION:

On August 10, 2009, the City received a valid appeal from the applicant contesting the Planning & Zoning Commission decision to deny the Conditional Use Permit. The applicant cited his refusal to sign the Proposition 207 Waiver (with conditions 1-12 attached) as the basis for the Commission decision. In the appeal, the applicant mentions that he did initially sign a Proposition 207 Waiver.

The applicant is correct that a Proposition 207 Waiver was initially received. After the case was remanded back to the Planning & Zoning Commission, staff re-evaluated the bar/tavern use in light of significant public opposition. Clearly, the scope and magnitude of neighborhood concern was not understood in its earlier evaluation. After reviewing the physical and operational attributes of the use at this particular location, staff drafted twelve (12) conditions to ensure maximum compatibility with adjoining uses. In light of these new conditions, staff requested a new Proposition 207 Waiver from the applicant. As a matter of form, the conditions are attached to the waiver.

Because the applicant was not agreeable to two (2) of the Conditions and hence, signing the Proposition 207 Waiver, staff modified its recommendation to denial in accordance with Section 14-39-10.E (CUP decision criteria). Please note that the absence of a Proposition 207 Waiver only affects the ability of staff to make a positive recommendation. It does *not* preclude the ability of the Planning & Zoning Commission (and City Council) to arrive at a different decision on the matter.

ATTACHMENTS:

- Appeal of Planning & Zoning Commission decision (dated 8/10/09)
- Draft August 6, 2009 Planning and Zoning Commission Minutes
- August 6, 2009 Planning and Zoning Commission Staff Report
 - Amended Conditions 1-12 (Condition #5 amended)
 - Exhibits H51 through H76 (Letters received after P&Z Staff Report)

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