




CITY OF PALM SPRINGS


DEPARTMENT OF PLANNING SERVICES

MEMORANDUM

Date: April 27, 2011

To: Planning Commission

From: Craig A. Ewing, AICP, Director of Planning Services 

Project Planner: David A. Newell, Associate Planner 

Subject: Case No. 5.0749 – CUP-AMND (*Space 120*); 120 South Palm Canyon

On February 13, 2008, a Conditional Use Permit (CUP) amendment was granted by the Planning Commission for the existing bar located at 120 South Palm Canyon Drive. The CUP amendment allowed for indoor and outdoor amplified music at the establishment. The Commission imposed a Condition of Approval requiring a one year review of the permit. This requirement has been imposed each subsequent year since 2009.

Staff contacted various City departments, including Police, Fire and Code Enforcement, for input on the subject use. The Police Department stated there are multiple concerns with this business and they have responded to over 200 calls in the past year. Additional information on the nature and frequency of issues will be presented to the Commission at the meeting.

Additionally, a complaint was received from the Historic Tennis Club Neighborhood Chair regarding the noise at the facility on March 14, 2011. Staff has attached the complaint to this report for the Commission's review.

The Commission may:

1. Allow continued operation as is with no further review unless it is determined at a future date that the operator is not complying with the conditions;
2. Allow continued operation as is with a review in one year; or
3. Initiate a hearing to consider revocation or modification of the Permit in accordance with Palm Springs Zoning Code Section 94.02.00.I.

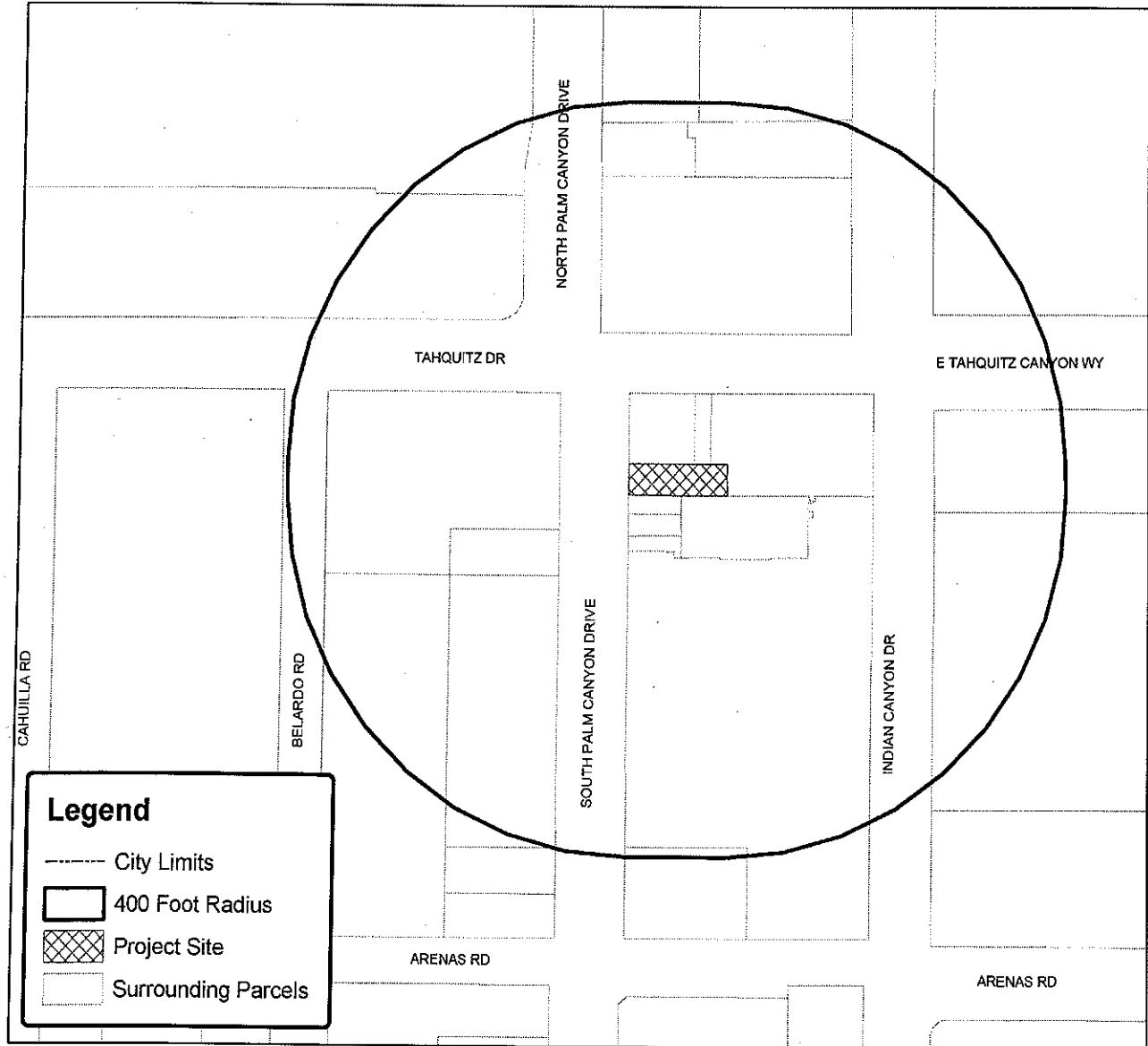
The original staff report and resolution granting approval of the Conditional Use Permit are attached, including the associated conditions of approval contained in the Resolution of Approval.

Attachments:

- 1) 400' Radius Map
- 2) February 13, 2008 Planning Commission Staff Report
- 3) Planning Commission Minutes of February 13, 2008 (excerpt)
- 4) Planning Commission Resolution 7115
- 5) Planning Commission Resolution 4535
- 6) Complaint received March 14, 2011



Department of Planning Services Vicinity Map



Legend

- City Limits
- 400 Foot Radius
- ▣ Project Site
- Surrounding Parcels

CITY OF PALM SPRINGS

CASE NO: 5.0749 CUP AMND

APPLICANT: Space120

DESCRIPTION: To review a previously approved amendment to an existing Conditional Use Permit to change club music format and allow placement of speakers in the patio area at 120 South Palm Canyon Drive zoned CBD, Section 15. APN: 513-144-002.



Planning Commission Staff Report

Date: February 13, 2008

Case No.: 5.0749 – CUP AMND

Type: Conditional Use Permit Amendment

Location: 120 South Palm Canyon Drive

APN: 513-144-002-6

Applicant: Victoria Randall, Owner

General Plan: Central Business District

Zone: CBD

From: Craig A. Ewing, AICP, Director of Planning Services

Project Planner: Bryan Fernandez, Assistant Planner

PROJECT DESCRIPTION:

The applicant has requested to amend an existing Conditional Use Permit (CUP) to allow DJ music, expansion of operating hours, and broadcast music on speakers on the balcony located at 120 South Palm Canyon Drive.

RECOMMENDATION:

That the Planning Commission approve Case 5.0749 – CUP AMND, amending the Conditional Use Permit for the proposed nightclub use subject to Conditions of Approval.

BACKGROUND:

The existing nightclub has approximately 2,335 square feet of floor area located on the second floor within the mixed-use commercial/retail center known as Plaza Las Flores.

The original CUP application for the nightclub formerly known as Blue Guitar was approved by the Planning Commission on July 30, 1997.

According to the applicant, the maximum number of customers during business hours will be 235, seating will total about 100. There will be a maximum of 10 employees at any one time.

Table 1: The surrounding Land Uses are tabled below:

	General Plan	Zone	Land Use
North	CBD	CBD	Welwood Memorial Library
South	CBD	CBD	Retail/Commercial
East	CBD	C-2	Retail/Commercial
West	CBD	CBD	Retail/Commercial

ANALYSIS:

The applicant has requested to amend three conditions of the existing Conditional Use Permit (CUP) related to DJ music, expansion of operation hours, and speakers on the balcony. The site is located in the CBD zone. Pursuant to Section 92.09.01(D)(5), nightclubs and cocktail lounges with or without dancing are permitted with the approval of a CUP. The General Plan designation of CBD also allows for entertainment venues such as the proposed nightclub.

I. Type of Music

Condition of Approval #1 of the original CUP restricts the type of music played at the nightclub to jazz and blues:

- 1. The proposed development of the premises shall conform to all applicable regulations of the Palm Springs Zoning Ordinance, Municipal Code, or any other City Codes, ordinances and resolutions which supplement the zoning district regulations. Additionally, the hours of operation and type of music, jazz and blues, shall be maintained for the life of this permit.*

The original staff report mentioned no reason why this restriction was put in place. The applicant has requested to allow a broader format that includes contemporary "pop" acts, classics, show tunes and oldies. Staff has concluded that establishing the type of music to be played is outside the City's regulatory authority. However, the Noise Ordinance regulates noise and nuisance coming from the nightclub.

II. Hours of operation

The applicant has requested to operate the nightclub until 2 A.M. Condition of Approval #1 states that the hours of operation, stated in the original staff report to be from 11 A.M. to 2 A.M., be maintained for the life of the permit. Thus, the request does not represent a change in the condition of approval and no action is required. Additionally, pursuant to Section 5.12.020 of the Palm Springs Municipal Code (regulating establishments where public dancing occurs), the extension of hours of operations for the proposed use is allowed within the City until 2 A.M.

III. Outdoor Speakers

The applicant's final request is to amend the original Conditions of Approval #4 and #5 which restricts the operation of the nightclub in the following manner:

4. *No sirens, outside paging or amplified music shall be permitted on the outdoor balcony area.*
5. *All exterior openings (doors and windows) shall remain closed during business hours and/or while music is being played.*

The applicant is requesting to amend the above-referenced conditions to broadcast music from speakers on the balcony and also via open windows and doors. Staff is concerned about this request because the previous owners were cited on November 18, 2002 for persistent Noise Ordinance violations. In the citation, the speakers on the patio were loud enough that they could be heard from the Historic Tennis Club Hotel District. Staff believes that the original conditions sufficiently protect surrounding hotels and residents from the noise. The applicant's request to play music out of speakers on to the open air in the balcony could increase the possibility of noise violations.

However, staff recognizes that reasonable accommodations can be made that allows the nightclub to add to the aural ambience of Downtown that enhances nightlife. Therefore, staff supports an alternative to Conditions #4 and #5, as follows: to allow music on speakers via open windows and doors only and not on the balcony from 6:30 P.M. to 12 A.M. Speakers are to be kept indoors at all times. Sirens and outside paging are to be prohibited on the outdoor balcony area.

According to the applicant, the nightclub will keep the number of originally approved 100-person seating. The original staff report remarked that since the existing structure will be kept and there is no increase in floor area, no additional parking will be required.

Staff concludes that the request in this case does not represent an intensification of use that will require increased scrutiny of the parking standards.

REQUIRED FINDINGS:

The Conditional Use Permit process outlined in Section 94.02.00 of the Zoning Code requires the Planning Commission to make a number of findings for approval of the permit. Those findings are analyzed by staff in order below:

- 1) *That the use applied for at the location set forth in the application is properly one for which a conditional use permit is authorized by this Zoning Code.*

The nightclub and cocktail lounge use per Section 92.09.01(D)(5) is permitted with the approval of a Conditional Use Permit in the CBD zone.

- 2) *That the use is necessary or desirable for the development of the community, and is in harmony with the various elements or objectives of the general plan, and is not detrimental to existing uses or to future uses specifically permitted in the zone in which the proposed use is to be located.*

The existing nightclub use has existed in the same location since 1997. The General Plan designation of CBD also allows for entertainment venues such as the proposed nightclub. The proposed uses are necessary and desirable for the development of the community as they add to the nighttime activities available in downtown.

- 3) *That the site for the intended use is adequate in size and shape to accommodate such use, including yards, setbacks, walls or fences, landscaping, and other features required in order to adjust such use to those existing or permitted future uses of land in the neighborhood.*

The project does not propose any exterior changes to the site. Minor tenant improvements may be required to conform to the requirements of the Alcoholic Beverage Control (ABC) license. Any adjustments to the project site will be internal and the existing conditions are adequate to the use.

- 4) *That the site for the proposed use relates to streets and highways properly designed and improved to carry the type and quantity of traffic to be generated by the proposed use.*

The project site is located along South Palm Canyon Drive, which is designated as a major thoroughfare on the General Plan Circulation Element. The nightclub will keep the number of originally approved 100-person seating. The original staff report remarked that since the existing structure will be kept and there is no increase in floor area, no additional parking will be required. Staff concludes that the request in this case does not represent an intensification of use that will require increased scrutiny of the parking standards.

- 5) *That the conditions to be imposed and shown on the approved site plan are deemed necessary to protect the public health, safety and general welfare and may include minor modification of the zone's property development standards. Such conditions may include:*
- a. *Regulation of use*
 - b. *Special yards, space and buffers*
 - c. *Fences and walls*
 - d. *Surfacing of parking areas subject to city specifications*
 - e. *Requiring street, service road, or alley dedications and improvements or appropriate bonds*
 - f. *Regulation of points of vehicular ingress and egress*
 - g. *Regulation of signs*
 - h. *Requiring landscaping and maintenance thereof*
 - i. *Requiring maintenance of grounds*
 - j. *Regulation of noise, vibrations, odors, etc.*
 - k. *Regulation of time for certain activities*
 - l. *Time period within which the proposed use shall be developed*
 - m. *Duration of use*

 - n. *Dedication of property for public use*
 - o. *Any such other conditions as will make possible the development of the city in an orderly and efficient manner and in conformity with the intent and purposes set forth in this Zoning Code, including but not limited to mitigation measures outlined in an environmental assessment.*

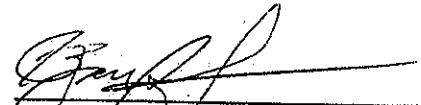
There is no change to the existing site plan. Staff has included Conditions of Approval to provide parameters and restrictions for the proposed uses.

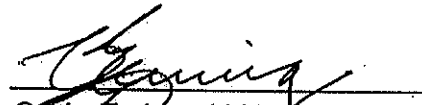
CONCLUSION:

The proposed request is consistent with the use on the site and is compatible with the General Plan and Zoning Ordinance land uses. Required findings necessary for the issuance of a Conditional Use Permit have been made and staff is therefore recommending approval of Case 5.0749 – CUP AMND subject to the attached Conditions of Approval.

ENVIRONMENTAL DETERMINATION:

Pursuant to the California Environmental Quality Act (CEQA) Guidelines, the project is Categorically Exempt as a Class I exemption per Section 15301(Existing Facilities).


Bryan Fernandez
Assistant Planner


Craig Ewing, AICP
Director of Planning Services

Attachments:

- ~~400' Radius Map~~
- ~~Draft Resolution~~
- ~~Exhibit A: Conditions of Approval~~
- ~~Letter of request~~
- ~~Original Condition of Approval approved June 18, 1997~~

PUBLIC HEARINGS:

6. **Case 3.3157 MAJ / 7.1285 AMM (Rosa Gardens) - An application by Desert Highland Associates, LP for construction of a 2-story, 59-unit affordable housing apartment complex on approximately 4.54 acres located at the northwest corner of Mc Carthy Road and Radio Road, Zone R-2, Section 34, APN: 669-420-009. (Project Planner: Christopher Brown, Contract Planner)**

Edward Robertson, Principal Planner, provided background information as outlined in the staff report dated February 13, 2008.

Chair Marantz opened the Public Hearing:

-Brian Peulicke, Coachella Valley Housing Coalition, provided further details and addressed the LEED certification, playground safety, the bicycle storage facility and solar implementation for the common areas.

-Gwen Pugh, architect for the project, provided details on the building, ventilation and mechanical equipment.

-Brian Peulicke, applicant, stated condition #90 regarding the drainage on this property would be a burden and requested this condition remain open for discussion.

-Gwen Pugh, architect, requested a change in the bedroom count (a reduction in the two-bedroom units by one (from 23 to 22 units) and an increase in the three-bedroom units by one (from 23 to 24 units) and emphasized that the parking is more than adequate.

There being no further appearances, the Public Hearing was closed.

Mr. Robertson requested deletion of condition #2 since the applicant has met the condition. Mr. Ewing noted that staff does not have a problem with the request to change the bedroom count since staff will be following-up on the required parking during plan check process.

M/S/C (Ringlein/Cohen, 7-0) To adopt Mitigated Negative Declaration and approve Case 3.3157 MAJ and Case 7.1285 AMM, subject to Conditions of Approval, as amended:

-Delete condition #2.

-Change in bedroom count to 22 two-bedrooms and 24 three-bedrooms.

7. **Case 5.0749 CUP AMND - An application by Victoria Randall on behalf of Mixie's Boy Bar to amend an existing Conditional Use Permit to change club music format, extend operating hours and allow broadcast music on speakers in the patio located at 120 South Palm Canyon Drive, Zone CBD, Section 15, APN: 513-144-002. (Project Planner: Bryan Fernandez, Assistant Planner)**

Bryan Fernandez, Assistant Planner, provided background information as outlined in the staff report dated February 13, 2008.

Chair Marantz noted that she can hear the music from the street when driving by.

Commissioner Conrad provided a background history on the conditions placed on the previous business.

Commissioner Ringlein noted her concern with second level amplified music and requested further review of the noise ordinance.

Chair Marantz opened the Public Hearing:

-Victoria Rendall, applicant, provided further details on the music format, volume control, the outdoor speakers, and the expense to maintain the doors open.

There being no further appearances, the Public Hearing was closed.

Commissioner Caffery noted that he served on the Planning Commission when the original Conditional Use Permit came before them and an acoustic study was conducted which identified the bass tone from the second level source as a distraction for the neighbors. Mr. Caffery stated that he is not opposed to the project as long as the volume is controlled during the late hours of operation, a maximum of one year term is imposed on the Conditional Use Permit and that proper noticing to the neighborhood is provided.

M/S/C (Conrad/Cohen, 7-0) To approve, subject to Conditions of Approval, as amended:

- One (1) year review and reconsideration or revocation of the Conditional Use Permit.
- The Conditional Use Permit to go before the Planning Commission if three (3) or more noise complaints are received or at Commission request.

8. COMMISSION WORK PROGRAM: * Work Program Priorities and Subcommittee Assignments

Mr. Ewing provided details on a future study session consisting of an orientation to discuss the zoning ordinance.

9. COMMISSION/STAFF REPORTS AND REQUESTS:

None were reported.

RESOLUTION NO. 7115

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PALM SPRINGS, CALIFORNIA FOR APPROVAL TO AMEND AN EXISTING CONDITIONAL USE PERMIT (CUP) TO ALLOW DJ MUSIC, EXPANSION OF OPERATING HOURS, AND BROADCAST MUSIC ON SPEAKERS ON THE BALCONY LOCATED AT 120 SOUTH PALM CANYON DRIVE, ZONE CBD, SECTION 15, APN: 513-144-002.

WHEREAS, Victoria Randall ("Applicant") has filed an application with the City pursuant to Section 94.02.00 of the Zoning Ordinance to amend an existing Conditional Use Permit to allow DJ music, expansion of operating hours, and broadcast music on speakers on the balcony located at 120 South Palm Canyon Drive, Zone CBD, Section 15; and

WHEREAS, notice of public hearing of the Planning Commission of the City of Palm Springs to consider Case No. 5.0749 – CUP AMND was given in accordance with applicable law; and

WHEREAS, on February 13, 2008, a public hearing on the application was held by the Planning Commission in accordance with applicable law; and

WHEREAS, the proposed project is considered a "project" pursuant to the terms of the California Environmental Quality Act ("CEQA"), and has been determined to be Categorically Exempt as a Class III exemption (Existing Facilities) pursuant to Section 15301 of the CEQA Guidelines; and

WHEREAS, the Planning Commission has carefully reviewed and considered all of the evidence presented in connection with the hearing on the project, including, but not limited to, the staff report, and all written and oral testimony presented.

THE PLANNING COMMISSION HEREBY FINDS AS FOLLOWS:

Section 1: Pursuant to the requirements of Section 94.02.00(B)(6), the Planning Commission finds:

The Conditional Use Permit process outlined in Section 94.02.00 of the Zoning Code requires the Planning Commission to make a number of findings for approval of the permit. Those findings are analyzed by staff in order below:

- 1) *That the use applied for at the location set forth in the application is properly one for which a conditional use permit is authorized by this Zoning Code.*

The nightclub and cocktail lounge use per Section 92.09.01(D)(5) is permitted with the approval of a Conditional Use Permit in the CBD zone.

- 2) *That the use is necessary or desirable for the development of the community, and is in harmony with the various elements or objectives of the general plan, and*

is not detrimental to existing uses or to future uses specifically permitted in the zone in which the proposed use is to be located.

The proposed nightclub use has existed in the same location since 1997. The General Plan designation of CBD also allows for entertainment venues such as the proposed nightclub. The proposed uses are necessary and desirable for the development of the community as they add to the nighttime activities available in downtown.

- 3) *That the site for the intended use is adequate in size and shape to accommodate such use, including yards, setbacks, walls or fences, landscaping, and other features required in order to adjust such use to those existing or permitted future uses of land in the neighborhood.*

The project does not propose any exterior changes to the site. Minor tenant improvements may be required to conform to the requirements of the Alcoholic Beverage Control (ABC) license. Any adjustments to the project site will be internal and the existing conditions are adequate to the use.

- 4) *That the site for the proposed use relates to streets and highways properly designed and improved to carry the type and quantity of traffic to be generated by the proposed use.*

The project site is located along South Palm Canyon Drive, which is designated as a major thoroughfare on the General Plan Circulation Element. The nightclub will keep the number of originally approved 100-person seating. The original staff report remarked that since the existing structure will be kept and there is no increase in floor area, no additional parking will be required. Staff concludes that the request in this case does not represent an intensification of use that will require increased scrutiny of the parking standards.

- 5) *That the conditions to be imposed and shown on the approved site plan are deemed necessary to protect the public health, safety and general welfare and may include minor modification of the zone's property development standards. Such conditions may include:*

- a. *Regulation of use*
- b. *Special yards, space and buffers*
- c. *Fences and walls*
- d. *Surfacing of parking areas subject to city specifications*
- e. *Requiring street, service road, or alley dedications and improvements or appropriate bonds*
- f. *Regulation of points of vehicular ingress and egress*
- g. *Regulation of signs*

Planning Commission Resolution
Case 5.0749 – CUP AMND 120 S. Palm Canyon Drive

- h. *Requiring landscaping and maintenance thereof*
- i. *Requiring maintenance of grounds*
- j. *Regulation of noise, vibrations, odors, etc.*
- k. *Regulation of time for certain activities*
- l. *Time period within which the proposed use shall be developed.*
- m. *Duration of use*
- n. *Dedication of property for public use*
- o. *Any such other conditions as will make possible the development of the city in an orderly and efficient manner and in conformity with the intent and purposes set forth in this Zoning Code, including but not limited to mitigation measures outlined in an environmental assessment.*

There is no change to the existing site plan. Staff has included Conditions of Approval to provide parameters and restrictions for the proposed uses.

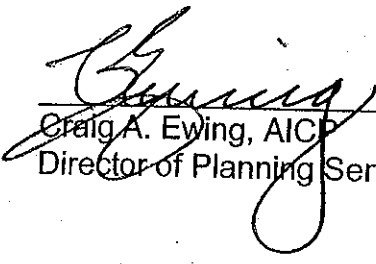
NOW, THEREFORE, BE IT RESOLVED that, based upon the foregoing, the Planning Commission hereby approves Case No. 5.0749 – CUP AMND.

ADOPTED this 13th day of February, 2008.

- AYES: 7, Conrad, Cohen, Marantz, Hochanadel, Ringlein, Caffery and Scott
- NOES: None.
- ABSENT: None.
- ABSTAIN: None.

ATTEST:

CITY OF PALM SPRINGS, CALIFORNIA



 Craig A. Ewing, AICP
 Director of Planning Services

CITY OF PALM SPRINGS

APPROVED BY PLANNING COMMISSION

Case # 5.0749-CUP Date 2/13/08 Initial [Signature]

EXHIBIT A

APPROVED BY CITY COUNCIL

Case # _____ Date _____ Initial _____

CASE 5.0749-CUP AMND

MIXIE'S BOY BAR

Resolution # _____ Ordinance # _____

120 S. PALM CANYON DRIVE

APPROVAL SUBJECT TO ALL REQUIRED
CONDITIONS BY ABOVE BODIES

CONDITIONS OF APPROVAL

FEBRUARY 13, 2008

Before final acceptance of the project, all conditions listed below shall be completed to the satisfaction of the City Engineer, the Director of Planning, the Chief of Police, the Fire Chief or their designee, depending on which department recommended the condition.

Any agreements, easements or covenants required to be entered into shall be in a form approved by the City Attorney.

Project Specific

1. No sirens or outside paging shall be permitted on the outdoor balcony area.
2. Amplified speakers are allowed on the outdoor balcony area.
3. Doors and windows may be open during business hours and when music is playing. The Noise Ordinance of the Palm Springs Municipal Code shall remain applicable at all times.
4. Allow hours of operation from 11 A.M. to 2 A.M., Sunday through Saturday.
5. Maximum of 100-person seating.
6. In order to assure compliance with the conditions of approval, the Planning Commission may review this Permit under any of the following circumstances:
 - a. One year following the date of the approval of this Permit.
 - b. Upon receipt of three or more complaints about the project's impact on surrounding properties.
 - c. Upon the request of any Planning Commissioner.

Following review, the Commission may initiate a hearing to consider revocation or modification of the Permit in accordance with Palm Springs Zoning Code Section 94.01.00.1.

7. All other Conditions of Approval found in Resolution 4535 adopted on June 18, 1997 and not modified in this section shall remain in effect.

PLANNING DEPARTMENT

1. The proposed development of the premises shall conform to all applicable regulations of the Palm Springs Zoning Ordinance, Municipal Code, or any other City Codes, ordinances and resolutions which supplement the zoning district regulations.
 - 1a. The owner shall defend, indemnify, and hold harmless the City of Palm Springs, its agents, officers, and employees from any claim, action, or proceeding against the City of Palm Springs or its agents, officers or employees to attach, set aside, void or annul, an approval of the City of Palm Springs, its legislative body, advisory agencies, or administrative officers concerning Case 5.0749-CUP AMND. The City of Palm Springs will promptly notify the applicant of any such claim, action, or proceeding against the City of Palm Springs and the applicant will either undertake defense of the matter and pay the City's associated legal costs or will advance funds to pay for defense of the matter by the City Attorney. If the City of Palm Springs fails to promptly notify the applicant of any such claim, action or proceeding or fails to cooperate fully in the defense, the applicant shall not, thereafter, be responsible to defend, indemnify, or hold harmless the City of Palm Springs. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without the applicant's consent but should it do so, the City shall waive further indemnification hereunder, except, the City's decision to settle or abandon a matter following an adverse judgment or failure to appeal, shall not cause a waiver of the indemnification rights herein.
2. Use shall commence on this Conditional Use Permit within two (2) years of the date of approval or the permit shall become void. Extensions of time may be granted by the Planning Commission upon demonstration of good cause.
3. The appeal period for a Conditional Use Permit application is 15 calendar days from the date of project approval. Permits will not be issued until the appeal period has concluded.

END OF CONDITIONS

8 8

RESOLUTION NO. 4535

OF THE PLANNING COMMISSION OF THE CITY OF
PALM SPRINGS, CALIFORNIA, APPROVING CASE
5.0749 TO ALLOW A BLUES AND JAZZ COCKTAIL
LOUNGE AT 135 EAST TAHQUITZ CANYON WAY (PLAZA
LAS FLORES), CBD ZONE, SECTION 15.

WHEREAS, Kal David and Lauri Bono, (the "Applicants") filed an application with the City pursuant to section 9402.00 of the Zoning Ordinance for a Conditional Use Permit to allow a blues and jazz cocktail lounge at 135 East Tahquitz Canyon Way, CBD Zone, Section 15; and

WHEREAS, Notice of a Public Hearing of the Planning Commission of the City of palm Springs to consider an application for Conditional Use Permit 5.0749 was published in accordance with applicable law; and

WHEREAS, on June 18, 1997, a public hearing on the application for Conditional Use Permit 5.0749 was held by the Planning Commission in accordance with applicable law; and

WHEREAS, the Planning Commission has carefully reviewed and considered all of the evidence presented in connection with the hearing on the project, including but not limited to the staff report, and all written and oral testimony presented.

THE PLANNING COMMISSION HEREBY FINDS AS FOLLOWS:

Section 1: Pursuant to CEQA, the Planning Commission finds that this project is categorically exempt from California Environmental Quality Guidelines (CEQA).

Section 2: Pursuant to Zoning Ordinance Section 9402.00, the Planning Commission finds that:

- a. The use applied for at the location set forth in the application is properly one for which a conditional use permit is authorized by the City's zoning ordinance.
- b. The use applied for is necessary or desirable for the development of the community, and is not detrimental to the existing or future uses specifically permitted in the zone in which the proposed use is to be located.
- c. The proposed use is consistent with the General Plan and will complement existing and proposed uses in the vicinity.
- d. The site for the intended use is adequate in size and shape to accommodate said use, including yards, setbacks, walls or fences, landscaping and other features required in order to adjust said use to those existing or permitted future uses of the land in the neighborhood.

e. Although the Department of Alcoholic Beverage Control has determined that there is an over-concentration of liquor licenses in the downtown, the proposed use is a service that will provide for the necessity and convenience of the community. Furthermore, this use is in keeping with the festival retail development plan for the downtown area.

f. The conditions to be imposed are deemed necessary to protect the public health, safety and general welfare, of the existing neighborhood in which this project is situated.

NOW, THEREFORE, BE IT RESOLVED that, based upon the foregoing, the Planning Commission hereby approves Conditional Use Permit 5.0749 subject to those conditions set forth in the attached Exhibit A, which are to be satisfied prior to the issuance of a Certificate of Occupancy unless otherwise specified.

ADOPTED this 18 day of June, 1997.

AYES: Jursky, Fontana, Marantz, Duffy.

NOES:

ABSENT: Raya, Foster.

ABSTENTIONS: Mills

ATTEST:


Secretary, Planning Commission

CITY OF PALM SPRINGS, CALIFORNIA


Chairman, Planning Commission

EXHIBIT

CASE 5.0749-CUP
CONDITIONS OF APPROVAL

**AS APPROVED
BY PLANNING COMMISSION**

Before final acceptance of the project, all conditions listed below shall be completed to the satisfaction of the City Engineer, the Director of Planning, the Chief of Police, the Fire Chief or their designee, depending on which department recommended the condition.

Any agreements, easements or covenants required to be entered into shall be in a form approved by the City Attorney.

1. The proposed development of the premises shall conform to all applicable regulations of the Palm Springs Zoning Ordinance, Municipal Code, or any other City Codes, ordinances and resolutions which supplement the zoning district regulations. Additionally, the hours of operation and type of music, jazz and blues, shall be maintained for the life of this permit.
- 1a. The owner shall defend, indemnify, and hold harmless the City of Palm Springs, its agents, officers, and employees from any claim, action, or proceeding against the City of Palm Springs or its agents, officers or employees to attach, set aside, void or annul, an approval of the City of Palm Springs, its legislative body, advisory agencies, or administrative officers concerning Case 5.0749-CUP. The City of Palm Springs will promptly notify the applicant of any such claim, action, or proceeding against the City of Palm Springs and the applicant will either undertake defense of the matter and pay the City's associated legal costs or will advance funds to pay for defense of the matter by the City Attorney. If the City of Palm Springs fails to promptly notify the applicant of any such claim, action or proceeding or fails to cooperate fully in the defense, the applicant shall not, thereafter, be responsible to defend, indemnify, or hold harmless the City of Palm Springs. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without the applicant's consent but should it do so, the City shall waive further indemnification hereunder, except, the City's decision to settle or abandon a matter following an adverse judgement or failure to appeal, shall not cause a waiver of the indemnification rights herein.
2. Separate architectural approval and permits shall be required for all signs. A detailed sign package shall be submitted for review and approval by the Planning Commission prior to issuance of building permits. All signs shall comply with Section 9320.00 of the Zoning Ordinance.
3. The street address numbering/lettering shall not exceed eight inches in height.

4. No sirens, outside paging or amplified music shall be permitted on the outdoor balcony area.
5. All exterior openings (doors and windows) shall remain closed during business hours and/or while music is being played.
6. No outside storage of any kind shall be permitted.
7. Any exterior modifications or improvements shall be submitted under an Architectural Review Application for review and approval prior to work being done.
8. All entertainment noise (indoor and outdoor) shall comply with the City's Noise Ordinance at all times. A registered acoustical consultant, acceptable to the City, shall evaluate the proposed site, building improvements, and conditions, and shall recommend acoustic mitigation measures for the interior space to ensure the project complies with the Noise Ordinance. Such report shall be submitted and approved by the Building Official prior to issuance of a building permit.
9. This CUP is issued exclusively for the owners listed in this application and any ownership change is subject to review and approval by the City.

POLICE DEPARTMENT:

10. Developer shall comply with Section II of Chapter 8.04 of the Palm Springs Municipal Code.

WASTE DISPOSAL SERVICES:

11. The location of the trash enclosure is acceptable subject to approved construction details approved by the Director of Building and Safety consistent with approved City details.

BUILDING DEPARTMENT:

12. Prior to any construction on-site, all appropriate permits must be secured.

Cindy Berardi

From: Marshall Roath [roathdesign@earthlink.net]
Sent: Friday, March 11, 2011 10:55 AM
To: CityClerk
Cc: 'Harlan, Jim'; 'Larry Pilcher'; 'Laws, Richard'; 'Roath, Marshall'; 'Ron lamele'; 'Sheryl Hamlin'; 'Tysen, Frank'; 'Van Dyck, Cristina'; 'Wachs, Brian'
Subject: To the Planning Commission

Planning Commissioners,

I have attached a paragraph from the notice regarding addition of speakers to the deck and extending the hours of operation for Space 120.

I have a few questions about this application. I was under the impression that the noise ordinance would not allow outside speakers. The ordinance also restricts music to be played until 10:00PM. The noise ordinance was established because of complaints from the HTCNO and amplified entertainment has been a major concern of the neighborhood. I believe that I remember the former tenant of this space applying for amplified music and being denied. Since we have a law that directs business and planners on how to operate in this area isn't changing or adding to the CUP planning by exception? We have to remember that this business is on the second floor and faces west.

Marshall Roath, Chair HTCNO

The purpose of the hearing is to update the Planning Commission on a previously approved amendment to an existing Conditional Use Permit to change club music format and alk placement of speakers in the patio at 120 South Palm Canyon Drive, Zoned CB. Additionally, the owner has submitted a new amendment to allow modified operating hours beyond 2:00 A.M.

RECEIVED
CITY OF PALM SPRINGS
2011 MAR 14 AM 8:27
JAMES THOMPSON
CITY CLERK