



## Planning Commission Staff Report

Date: May 25, 2011

Case No.: Case 5.0749 Conditional Use Permit Amendment

Application Type: Revocation / Modification of a Conditional Use Permit

Location: 120 South Palm Canyon Drive

Applicant: Initiated by Staff; Current CUP Holder: Angelo Serio

Zone: C-B-D (Central Business District)

General Plan: CBD (Central Business District)

APN: 513-144-002

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

Project Planner: David A. Newell, Associate Planner

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### **SUMMARY**

On April 27, 2011, the Planning Commission directed staff to begin revocation proceedings on the Conditional Use Permit Amendment (Case No. 5.0749) for the cocktail lounge located at 120 South Palm Canyon Drive. In accordance with Section 94.02.00.I, the City Council may revoke an existing Conditional Use Permit if it finds that the use permitted by the CUP is not being conducted in compliance with the conditions of approval.<sup>1</sup> Staff believes that the cocktail lounge at 120 S. Palm Canyon Drive has not satisfied certain conditions associated with its CUP. Prior to submitting the item to the City Council, staff has scheduled a hearing before the Planning Commission so that

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<sup>1</sup> 94.02.00.I. Revocation or Voiding of Conditional Use Permit.

1. The council, with or without a recommendation from the planning commission, may, after notice and public hearing, revoke any conditional use permit for noncompliance with any of the conditions set forth in granting the permit.

it may review the matter, accept public comment and adopt a recommendation to the City Council.

## RECOMMENDATION

That the Planning Commission recommend to the City Council that it not revoke the CUP for the cocktail lounge at 120 South Palm Canyon Drive, but that the conditions of approval be modified to require a security plan.

## PRIOR ACTIONS

On June 18, 1997, the original CUP application for the cocktail lounge formerly known as Blue Guitar was approved by the Planning Commission.

On February 13, 2008, the Planning Commission approved an amendment to allow DJ music, expanded operating hours and outdoor music via speakers on the balcony for the cocktail lounge at 120 South Palm Canyon Drive.

On March 11, 2009, the Planning Commission reviewed the CUP as required by the Conditions of Approval and unanimously voted to allow continued operation with a review to be scheduled in one year.

On Mar 24, 2010, the Planning Commission reviewed the CUP and unanimously voted to allow continued operation with a review to be scheduled in one year.

On April 27, 2011, the Planning Commission reviewed the CUP and directed staff to initiate revocation proceedings for the CUP.

## BACKGROUND

The current cocktail lounge owner, Mr. Angelo Serio, has been in operation since October of 2009 as Space120. Prior to that, there have been multiple owners who have operated the cocktail lounge as Alternate Route, Mixie's and Blue Guitar. The owner of Mixie's submitted the amendment application in 2008 that is the subject of this hearing.

The nightclub is located within Plaza Las Flores on the second floor of the building at 120 South Palm Canyon Drive. The CUP allows for 100 seats with a maximum of ten 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          | CBD  | Retail/Commercial        |
| West  | CBD          | CBD  | Retail/Commercial        |

## ANALYSIS

On June 18, 1997, a Conditional Use Permit was granted by the City to allow a “*blues and jazz cocktail lounge*” at 120 South Palm Canyon Drive. In 2008, a new owner requested an amendment to three Conditions of Approval related to music type, expansion of operation hours and speakers on the balcony (see attached staff report for specific details of amendment). The Commission granted the amendment subject to certain conditions, including an annual review of the CUP.

At this year’s annual review, staff presented operational background updates on the business to the Commission. Within the past year, the Police Department responded to eleven calls at or adjacent to the site and there has been one noise complaint. Consequently, it was determined by the Commission that the CUP should be reviewed for consideration of revocation or modification. Staff will provide additional information related to police matters at the public hearing and a staff member of the Police Department will be present to answer questions.

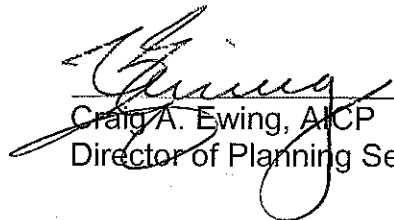
Staff believes that security concerns are the primary problems associated with the current operation. In consultation with the Police Department, staff has concluded that these problems may be resolved by requiring a security plan that is approved by the Planning and Police Departments. Staff recommends that the Planning Commission recommend the following conditions to the Council:

1. Within forty-five days of the City Council action date, the current cocktail lounge owner, Mr. Angelo Serio, shall submit a security plan to the Director of Planning Services and Chief of Police for review and approval. The plan shall include measures to address:
  - a. Security personnel training,
  - b. Number of security personnel during business operations, and
  - c. Additional measures as identified by the Police Chief.
2. Any future owner of the cocktail lounge shall receive a copy of the approved security plan and agree, in writing, to complying with all requirements of the plan, prior to issuance of a business license and commencement of business operations.

Staff has provided a notice of public hearing to all property owners within 400 feet and no correspondence has been received as of the writing of this report.



David A. Newell  
Associate Planner



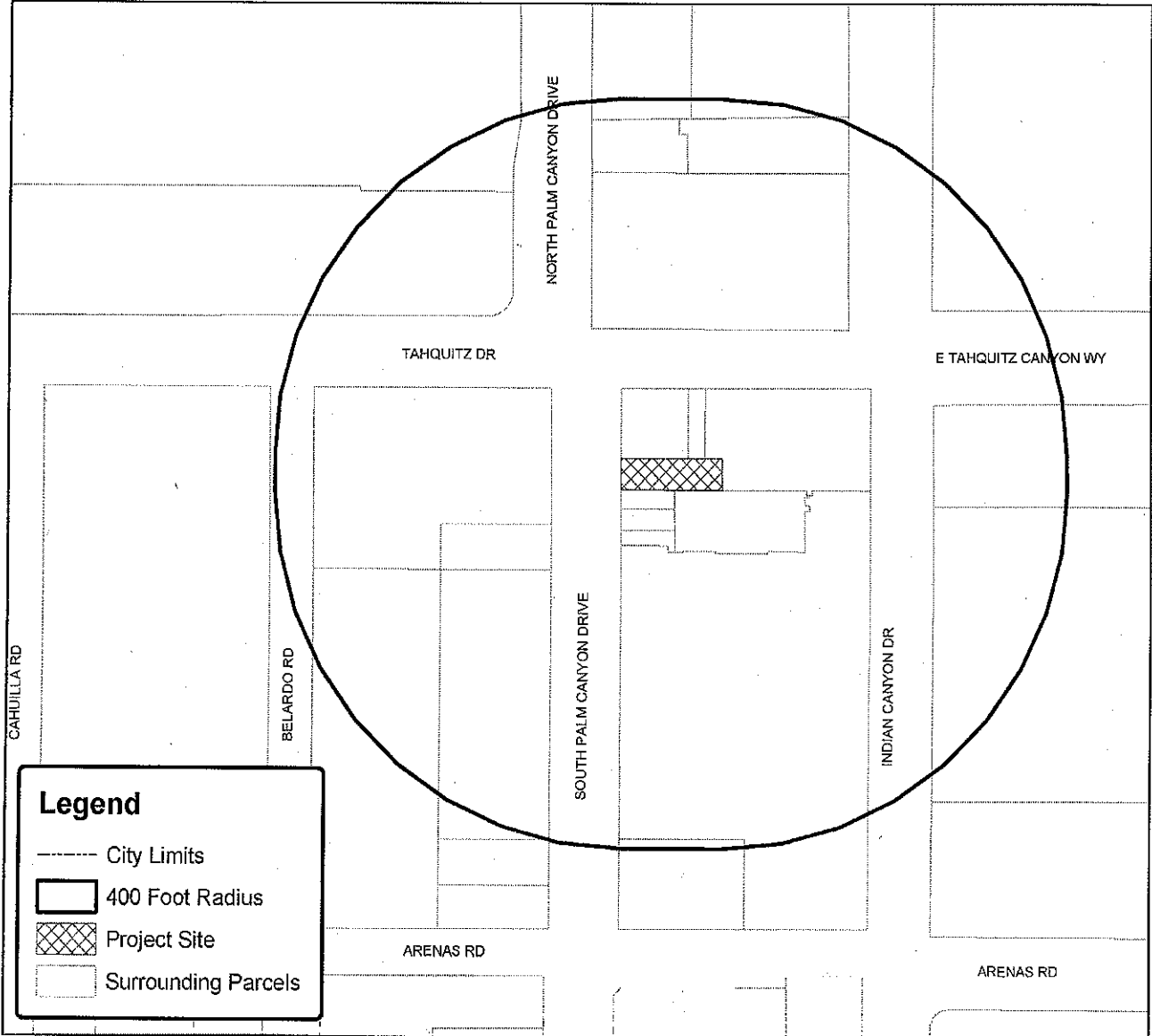
Craig A. Ewing, AICP  
Director of Planning Services

## ATTACHMENTS

1. Vicinity Map
2. Draft Resolution
3. Planning Commission Staff Report, February 13, 2008
4. Planning Commission Minutes of February 13, 2008 (excerpt)
5. Planning Commission Resolution 7115
6. Planning Commission Resolution 4535
7. Email with Police Calls in Past Year
8. Complaint received March 14, 2011



# Department of Planning Services Vicinity Map



## CITY OF PALM SPRINGS

**CASE NO:** 5.0749 CUP-A

**APPLICANT:** Space120

**DESCRIPTION:** To consider revocation or modification of 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.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PALM SPRINGS, CALIFORNIA RECOMMENDING MODIFICATION OF A CONDITIONAL USE PERMIT (CASE NO. 5.0749-CUP) DUE TO NON-COMPLIANCE WITH CONDITIONS, FOR THE COCKTAIL LOUNGE LOCATED AT 120 SOUTH PALM CANYON DRIVE.

WHEREAS, on July 30, 1997, the Planning Commission approved a Conditional Use Permit (Case 5.0749-CUP) to allow a cocktail lounge at 120 South Palm Canyon Drive; and

WHEREAS, on February 13, 2008, the Planning Commission approved an amendment request to allow DJ music, expanded operating hours and outdoor music via speakers on the balcony for the cocktail lounge at 120 South Palm Canyon Drive; and

WHEREAS, on April 27, 2011, the Planning Commission reviewed the Conditional Use Permit for the cocktail lounge and directed staff to begin revocation proceedings on the Permit (Case 5.0749 CUP-A); and

WHEREAS, notice of public hearing of the Planning Commission of the City of Palm Springs to consider a recommendation for revocation of Case 5.0749 CUP-A has been given in accordance with applicable law; and

WHEREAS, on May 25, 2011, a public hearing to consider a recommendation for revocation of Case 5.0749-CUP 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: That the cocktail lounge operational history for Case 5.0749 CUP-A has shown to require additional City policing resources, beyond that of which is normally required for such operation.

NOW, THEREFORE, BE IT RESOLVED that, based upon the foregoing, the Planning Commission hereby recommends to the City Council the modify the conditions of approval for Case 5.0749-CUP-A for the cocktail lounge use located at 120 South Palm Canyon Drive, as follows:

1. Within three months of the City Council action date, the current cocktail lounge owner, Mr. Angelo Serio, shall submit a security plan to the Director of Planning Services and Chief of Police for review and approval.
2. Any future owner of the cocktail lounge shall receive a copy of the approved security plan and agree, in writing, to complying with all requirements of the plan, prior to issuance of a business license and commencement of business operations.

ADOPTED this 25<sup>th</sup> day of May, 2011.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

CITY OF PALM SPRINGS, CALIFORNIA

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Craig A. Ewing, AICP  
Director of Planning Services



## 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

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### **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.*

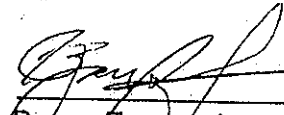
There is no change to the existing site plan. Staff has included Conditions of Approval to provide parameters and restrictions for the proposed uses.

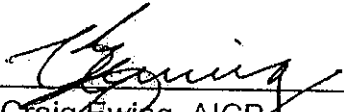
#### **CONCLUSION:**

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

February 13, 2008

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- 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.

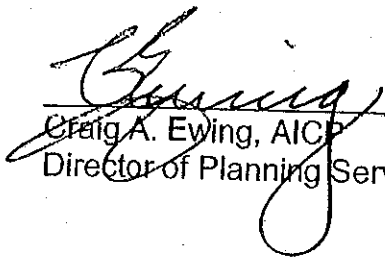
NOW, THEREFORE, BE IT RESOLVED that, based upon the foregoing, the Planning Commission hereby approves Case No. 5.0749 – CUP AMND.

ADOPTED this 13<sup>th</sup> 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**

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:

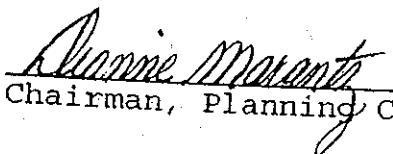
ABSENT: Raya, Foster.

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.

- 8
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.



## David Newell

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**From:** Dennis Graham  
**Sent:** Wednesday, April 27, 2011 10:04 AM  
**To:** David Newell  
**Subject:** Space 120

David,

The calls listed below have been logged within the past year in the event history for that location. PD regularly conducts "bar checks" or "stands by for closing", but those activities are not included below. The following list is of calls during the past year other than routine bar checks:

- 1104P-4482 An off-duty Border Patrol agent overheard a female talking about her fake ID. She was not located.
- 1104P-1653 Another report of fake IDs. Unable to locate again.
- 1103P-5247 A Marine was attacked in the bathroom by two suspected gang members, who then threw glass bottles at him, causing a head injury.
- 1102P-5014 Hispanic male reportedly assaulting a female. Victim was not located.
- 1102P-0783 Reported group of people fighting inside the bar. Victim declined prosecution.
- 1009P-4913 Domestic battery occurred inside the bar. Misdemeanor arrest.
- 1008P-2958 A man left the bar and was attacked by two suspected gang members. Two were issued misdemeanor cites for Disturbing the Peace.
- 1006P-4876 Grand theft. Purse & contents reportedly stolen from inside the bar.
- 1004P-5657 Officers monitoring bar closing witnessed subjects fighting nearby. One arrested for felony battery, but no indication it was related to Space 120.
- 1004P-2239 Space 120 employees flagged down police and pointed out a drunk female who had been ejected earlier. Arrested for public intoxication.
- 1004P-2230 Several subjects were causing a disturbance inside. Doorman requested help from police to have them ejected. No report.

PD has requested ABC agents to conduct compliance/enforcement details; the results of those details have not been forwarded to PD.

At the very least, the business should be required to develop a security plan for approval by the City Planning and Police Departments.

Thank you,

Dennis Graham  
Acting Captain  
Palm Springs Police Department  
Tel: 760-323-8121  
Fax: 760-323-8176

**Cindy Berardi**

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**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 Iamele'; '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 all 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