




CITY OF PALM SPRINGS
DEPARTMENT OF PLANNING SERVICES

MEMORANDUM

Date: March 11, 2009
To: Planning Commission
From: Craig A. Ewing, AICP, Director of Planning Services 
Project Planner: David A. Newell, Associate Planner *D.N.*
Subject: Case No. 5.0749 – CUP-AMND (Mixie's Boy Bar)

On February 13, 2008, the Planning Commission approved an amendment to the above-referenced Conditional Use Permit for a cocktail lounge at 120 South Palm Canyon Drive. The amendment was to allow DJ music, expand operating hours and broadcast music on speakers on the balcony. During the meeting, the Commission expressed concerns about the amplified noise impacting adjacent neighbors. Consequently, the project was approved by the Commission subject to a one-year review and reconsideration or revocation of the Conditional Use Permit. The Commission also requested that all property owners within 400 feet of the site be notified of the review.

Staff has notified all property owners within the 400 feet of the site and coordinated with the Police Department (PD) to determine the amount of complaints at the site. A report generated by the PD shows that there were no noise complaints since February of 2008. Since the project was approved, however, the business has undergone some changes. The applicant for Mixie's Boy Bar is no longer operating, and City records indicate that a business license was not renewed this past December. The owner of the previous bar (the Blue Guitar) stated that they have taken over the tenant space under a new business name, Alternate Route. They intend to operate under the same Conditional Use Permit that was granted for Mixie's.

Staff recommends that the Conditional Use Permit remain in effect and that the bar continue operation. Should it be determined that the tenant is in violation of the Conditional Use Permit or City Ordinances, staff will report to the Planning Commission and the Commission may at that time consider revoking the CUP pursuant to Section 94.02.00 of the PSZC.

Attachments:

- 1) February 13, 2008 Planning Commission Staff Report and Exhibits
- 2) Planning Commission Minutes of February 13, 2008 (excerpt)
- 3) Planning Commission Resolution 7115



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



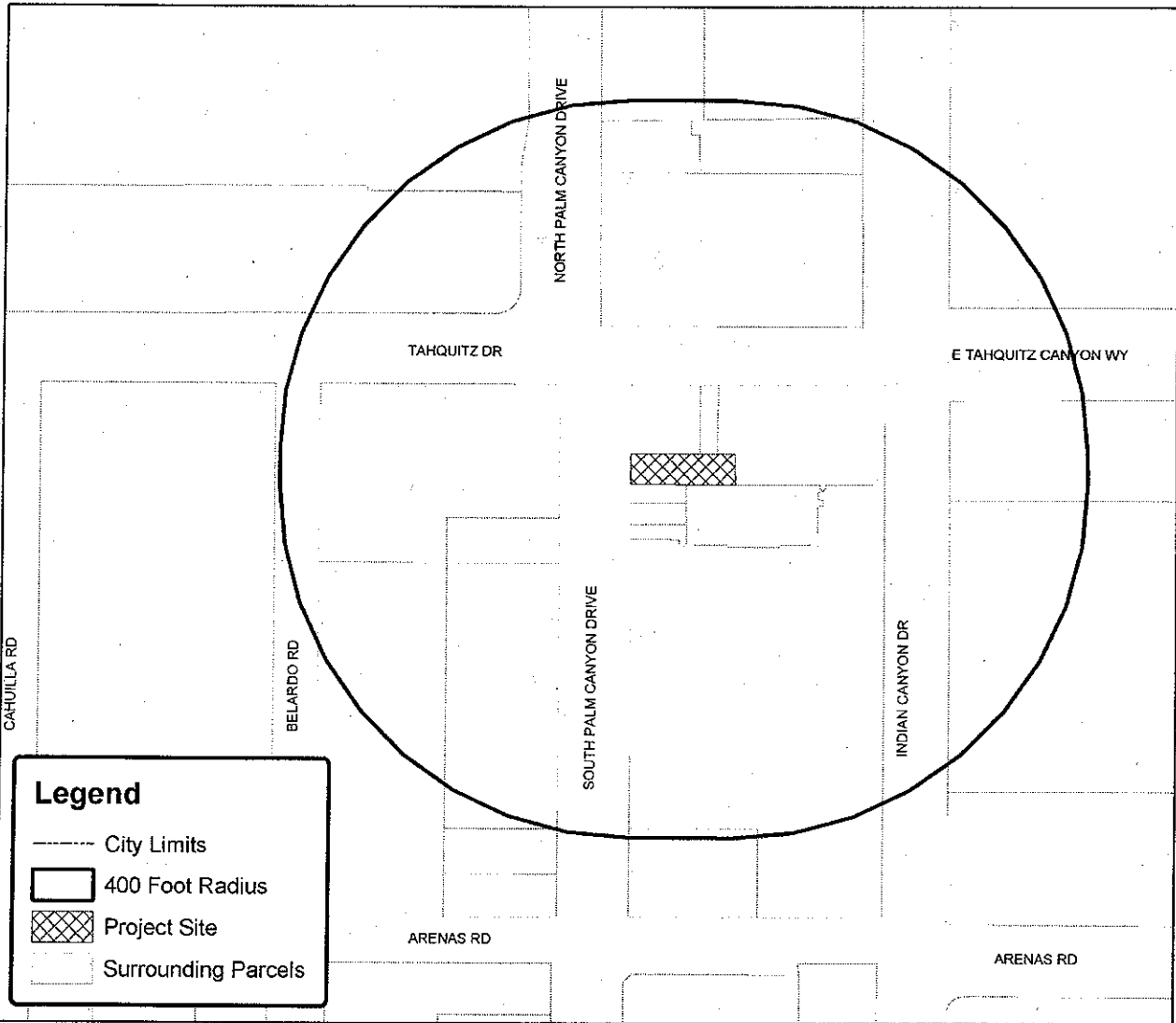
Craig Ewing, AICP
Director of Planning Services

Attachments:

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



Department of Planning Services Vicinity Map



CITY OF PALM SPRINGS

CASE NO: 5.0749 CUP AMND

APPLICANT: Victoria Rendall
Mixie's Boy Bay

DESCRIPTION: To consider an application by Victoria Rendall for Mixie's Boy Bar for an amendment to an existing Conditional Use Permit to change club music format, extend operating hours, and allow placement of speakers in the patio 120 South Palm Canyon Drive, zoned CBD, Section 15. APN: 513-144-002.

Request for Amendment to CUP 5.0749 – Cocktail Lounge

Mixie's Boy Bar ("Mixie's") was created as a destination nightclub and video lounge. The target audience is the LGBT market, and within that, primarily the Gay Male population from both within the Coachella Valley, and outside of it, i.e., the many tourists visiting the valley from destinations worldwide.

It is clear that for downtown Palm Springs to be successful, it must create entertainment venues that can attract not only Palm Springs residents and tourists, but also residents of other cities in the Coachella valley, and residents of nearby Riverside county communities. It is also clear that Mixie's target audience - the gay male community - has expanded well beyond the traditional boundaries of Palm Springs, Cathedral City and Rancho Mirage. It should, therefore, be possible to attract these consumers, and their friends, to a new venue in the heart of downtown Palm Springs.

The Downtown Location

For quite some time, the city has understood that entertainment venues in the downtown corridor hold real potential for the revitalization of downtown. Mixie's agrees with this premise and has based its business plan largely on that belief. However, having said that, Mixie's is also aware of its responsibility to its neighbors, and to the many small hotel properties located within walking distance. To that end, Mixie's has made, and will continue to make, outreach to those businesses to establish a dialogue, and to request input from those business owners. Additionally, representatives from Mixie's will meet with Small Hotels of Palm Springs ("SHOPS") a local organization to which many of these small hotel properties belong; and Mixie's is in the process of joining the Main Street Merchants Association and the Palm Springs Chamber of Commerce.

The Blue Guitar – Prior Owners

The previous owners of the Blue Guitar, Hugh and Stacy Carson, while maintaining the "live" performance format had already departed somewhat from the strict adherence to "jazz and blues" called for in the CUP in question. In addition to some jazz and blues performances they also hosted **Jimi Hendrix** and **Doors** tribute bands, southern rock and "Alternative Mondays." Their house band, **City Block**, played a variety of music including KC & The Sunshine Band and other "retro" favorites. Despite having purchased The Blue Guitar about a year ago, the Carsons' were not aware of the restrictions imposed by the CUP.

Noteworthy here is that as a visitor to the Blue Guitar I was surprised at the sound levels within the club which were significant. The "live" performances were quite loud.

In changing the format of the club from "live" to "DJ" music, we were able to remove several of the speakers that were necessary for the live performances which resulted in a significant drop in the sound level both within and without the club.

Summary

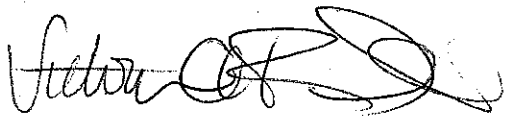
Mixie's wants to be a part of the revitalization of the downtown corridor by offering an upscale gay nightclub and video lounge designed to bring visitors to downtown Palm Springs to enjoy a complete experience – dining and entertainment, all within walking distance. To accomplish its goals, Mixie's requests that it be allowed to offer its patrons a musical selection that will include the classics (Frank Sinatra, Shirley Bassey, Ella Fitzgerald, etc.); show tunes (from Oklahoma to Sound of Music, etc.); 50's, 60's, 70's and 80's popular music (including "disco," R & B, etc.), and the more current Top 40 music (Beyonce, Rhianna, Shakira, Justin Timberlake, etc.)

It is with this philosophy in mind that Mixie's requests that Paragraph 1 of the CUP be amended to revise the prior restrictions. Mixie's also requests amendment to the provisions of Paragraph 1 governing hours of operation, from the currently unstated hours to 11am to 2am daily.

Additionally, Mixie's requests the amendment of Paragraphs 4 and 5 of the CUP to allow for the inclusion of the broadcast of its music on speakers located on the balcony of the club as well as via open windows and doors – all at a level that is not intrusive or disruptive to neighboring businesses. This will serve to attract walking traffic to the venue by creating a fun and interesting environment for visitors to enjoy the downtown corridor.

The outdoor experience and the energy of Palm Canyon Drive is at the heart of the Palm Springs experience, and to limit any businesses' ability to participate in either of those would severely hamper its ability to succeed.

Respectfully submitted,



Victoria A. Rendall
Mixie's Boy Bar

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:

CITY OF PALM SPRINGS, CALIFORNIA


Secretary, Planning Commission


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.

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.

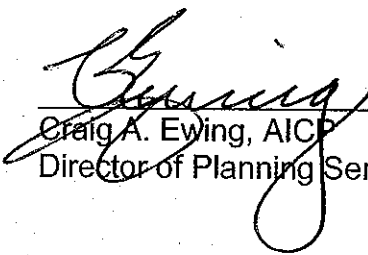
NOW, THEREFORE, BE IT RESOLVED that, based upon the foregoing, the Planning Commission hereby approves Case No. 5.0749 – CUP AMND.

ADOPTED this 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 _____
Resolution # _____ Ordinance # _____
CASE 5.0749-CUP AMND
MIXIE'S BOY BAR
120 S. PALM CANYON DRIVE

APPROVAL SUBJECT TO ALL REQUIRED CONDITIONS OF APPROVAL
CONDITIONS BY ABOVE BODIES

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