ACTION: Request a Use Permit to allow live entertainment for DELICIOUS FACTORY, located at 414 South Mill Avenue. The applicant is Delicious Factory. (PL190290)

FISCAL IMPACT: N/A

RECOMMENDATION: Staff – Approve, subject to conditions

BACKGROUND INFORMATION: DELICIOUS FACTORY (PL190290) is proposing to add live entertainment as an accessory use to an existing restaurant north of West 5th Street and west of South Mill Avenue in the CC, City Center Districts, and within the TOD, Transportation Overlay District. The entertainment will occur indoors. The request includes the following:

ZUP190083 Use Permit to allow Live Entertainment

Property Owner
Mill Avenue Shops

Applicant
James Opiyo, Delicious Factory

Zoning Districts
CC TOD

Site Area
4,875 s.f.

Suite Area
1,993 s.f.

Vehicle Parking
No Change

Bicycle Parking
No Change

Hours of Operation
10 a.m. to 10 p.m., Monday – Thursday & 10 a.m. – 2 a.m. Friday & Saturday

ATTACHMENTS: Development Project File

STAFF CONTACT(S): Blake Schimke, Planning Technician (480) 350-8245

Department Director: Chad Weaver, Community Development Director

Legal review by: N/A

Prepared by: Blake Schimke, Planning Technician

Reviewed by: Steve Abrahamson, Principal Planner
COMMENTS
This site has historically been a restaurant since November 2000 and Delicious Factory has been in operation since 2017.

PUBLIC INPUT
To date, no public input or inquiries have been received by staff.

USE PERMIT
The proposed use requires a Use Permit to allow entertainment as an accessory use to an existing restaurant within the CC, City Center District.

Section 6-308 E Approval criteria for Use Permit (in italics):

1. Any significant increase in vehicular or pedestrian traffic; the proposed use is accessory to the primary use and is not anticipated to significantly increase vehicular or pedestrian traffic more than other permitted uses.

2. Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions; the proposed use is expected to emit noise but not at levels exceeding ambient conditions given that the surrounding area is renowned for being an entertainment district.

3. Contribution to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the city’s adopted plans or General Plan; the proposed use is expected to benefit the area by being an addition to the mix of entertainment/social uses that currently exists in the downtown area. The use is permitted with a use permit in this zoning district and is consistent with the designated land use of the General Plan 2040.

4. Compatibility with existing surrounding structures and uses; the proposed use is compatible with existing surrounding structures and is consistent with other restaurant/bar entertainment uses in the downtown area.

5. Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public; the use permit requires an implemented security plan to help maintain adequate control of any potential disruptive behavior related to the proposed use.

REASONS FOR APPROVAL:
Based on the information provided by the applicant, the public input received, and the above analysis staff supports approval of the requested Use Permit. This request meets the required criteria and will conform to the conditions.

SHOULD AN AFFIRMATIVE ACTION BE TAKEN ON THIS REQUEST, THE FOLLOWING NUMBERED CONDITIONS OF APPROVAL SHALL APPLY, BUT MAY BE AMENDED BY THE DECISION-MAKING BODY.

CONDITION(S) OF APPROVAL:

1. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during the building plan check process.

2. All required Federal, State, County, and Municipal permits, licenses, and clearances shall be obtained, or the Use Permit is void.

3. The live entertainment use shall take place inside only. No live entertainment will be allowed outside.

4. Live entertainment to cease at 12 midnight Monday – Thursday and 1:55 am Friday – Saturday.

5. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact 480-858-6409 before December 9, 2019.
CODE/ORDINANCE REQUIREMENTS:
THE BULLETED ITEMS REFER TO EXISTING CODE OR ORDINANCES THAT PLANNING STAFF OBSERVES ARE PERTINENT TO THIS CASE. THE BULLET ITEMS ARE INCLUDED TO ALERT THE DESIGN TEAM AND ASSIST IN OBTAINING A BUILDING PERMIT AND ARE NOT AN EXHAUSTIVE LIST.

- The Use Permit is valid for Delicious Factory and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.

- The use permit approval shall be void if the use is not commenced or if an application for a building permit has not been submitted, whichever is applicable, within twelve (12) months after the use permit is granted or within the time stipulated by the decision-making body.

- The decision-making body, upon finding that the applicant has not taken corrective actions to resolve issues related to the permit/approval and that a continuation of the permit/approval is not in the interest of the public health, safety and general welfare, can revoke the permit/approval after providing written notice of its intentions to the holder of the permit.

- Specific requirements of the Zoning and Development Code (ZDC) are not listed as a condition of approval but will apply to any application. To avoid unnecessary review time and reduce the potential for multiple plan check submittals, become familiar with the ZDC. Access the ZDC through http://www.tempe.gov/zoning or purchase from Development Services.

- All business signs shall receive a Sign Permit. Contact sign staff at 480-350-8435.

- Any intensification or expansion of use shall require a new Use Permit.

- All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the Use Permit becoming effective.

- Music, sound, or live entertainment shall not violate the City of Tempe Noise Ordinance.

HISTORY & FACTS:
November 9, 2000 City Council approved a Use Permit for a Restaurant located at 414 South Mill Avenue within the CCD, Central Commercial District (now CC, City Center) zoning district.

ZONING AND DEVELOPMENT CODE REFERENCE:
Section 3-202 Permitted Uses in Commercial and Mixed-Use Districts
Section 5-607 Permitted Uses Subject to a Use Permit in the Transportation Overlay District
Section 6-308 Use Permit
Section 6-313 Security Plan
DEVELOPMENT PROJECT FILE

for
DELICIOUS FACTORY
PL190290

ATTACHMENTS:

1. Location Map
2. Aerial
3. Letter of Explanation
4. Site Plan
Delicious Factory

Aerial Map
Dear Review Committee,

I am applying for a Use Permit to allow us to hold entertainment (music --live, DJ, etc) at Delicious Factory restaurant (414 S Mill Ave). The restaurant is located in "entertainment zone" of Mill Ave.. The entertainment will enhance our clients’ cultural experience on Mill Avenue as we hope to bring culturally diverse performance/music to the restaurant. Examples of targeted entertainment we intend to bring: Latin, African and Brazilian musicians and or music. Our aim is to have a live/DJ entertainment on Fridays and Saturdays nights.

1. We are located on Mill Avenue where there is heavy foot traffic and vehicular traffic. On Friday nights and Saturday nights, Mill Avenue transforms itself into an entertainment avenue.

2. We do not think we shall be a nuisance on Mill Ave. We are not trying to become a loud entertainment venue; we are a restaurant that would like to introduce fun and comfortable entertainment to our clients. We will be compliant with local regulations and will contain noise levels in our restaurant. Other nuisance such as smoke, bad odor, gas, etc will not be allowed in the restaurant.

3. Bringing entertainment will only enhance the quality of experience in Mill Ave neighborhoods. We will not downgrade property values as bringing culturally diverse entertainment to Mill Avenue brings a positive experience to our clients and residents of Mill Ave. In fact, we think that by bringing diverse entertainers to our restaurant, we will increase awareness of how great Mill Avenue is, and this will help improve property value on and around Mill Ave.

4. We are situated on entertainment zone of Tempe. Having entertainment in our restaurant is very compatible with Mill Avenue. Our location on Mill Ave is adjacent to bars & clubs, and introducing entertainment will will make us blend well with our surroundings. We do not intend to make any changes to the structure/building except for those minor/temporary changes that are needed to accommodate a DJ/entertainers in the restaurant. These changes are minimal and will include things like rearranging the seating so we can have a space for a DJ / entertainer on the nights we have entertainment.

5. We do have security that patrols our premises every evening/night, and if we need more security, we shall hire them as needed. However, since we are not a “club” we do not think that we shall run into issues of disruptive behaviors. Our targeted customers are those that appreciate good entertainment over great food.

Thank you.

James Opio
Owner,
Delicious Factory
414 S Mill Ave
Ste 101
Tempe, AZ

james.opio@gmail.com

October 30th 2019.