

Staff Summary Report



Hearing Officer Hearing Date: September 2, 2008

Agenda Item Number: 6

SUBJECT: This is a public hearing for a request by **GOLD BAR ESPRESSO (PL080299)** located at 3141 South McClintock Drive, Suite No. 6, for one (1) use permit.

DOCUMENT NAME: 20080902dssl02

PLANNED DEVELOPMENT (0406)

SUPPORTING DOCS: Yes

COMMENTS: Hold a public hearing for a request by **BASHAS VALLEY PLAZA CENTER – GOLD BAR ESPRESSO (PL080299)** (Karen Miller, Applicant; Weingarten Nostat Inc., property owner) located at 3141 South McClintock Drive, Suite No. 6 in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP08129 Use permit to allow live entertainment (indoor/outdoor).

PREPARED BY: Sherri Lesser, Senior Planner (480-350-8486)

REVIEWED BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359)

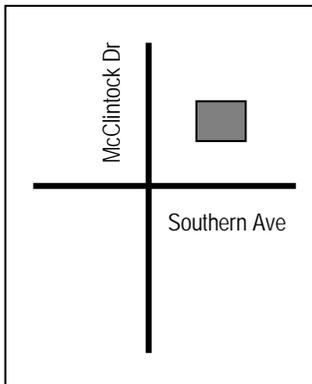
A handwritten signature in black ink, appearing to read 'SEA'.

LEGAL REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: Staff – Approval, subject to Conditions

ADDITIONAL INFO: The applicant is requesting approval for a use permit to allow live entertainment (indoor and outdoor) consisting of a small jazz band and classical guitarist for the Gold Bar Espresso in the PCC-1, Planned Commercial Center Neighborhood District. The site is located on the northeast corner of Southern Ave and McClintock Drive within the Bashas Valley Plaza. Staff supports the request with conditions of approval. To date, staff has received five (5) inquiries regarding this request.



PAGES:

1. List of Attachments
2. Comments; Reasons for Approval
3. Conditions of Approval; History & Facts/Description; Zoning & Development Code Reference

ATTACHMENTS:

1. Location Map(s)
2. Aerial Photo(s)
- 3-4. Letter of Intent
- 5-6. Site plan
- 7-11. Letter(s) of Opposition
- 12-13. Staff Photograph(s)

COMMENTS:

Gold Bar Espresso is an existing coffee shop in the Bashas Plaza. They have occupied their tenant space in the Bashas Plaza since 2002. Previously their shop was located across the street at the southwest corner of Southern Avenue and McClintock Drive. At the original location the business had a use permit to allow live entertainment. The live entertainment permit does not transfer with the new location. The applicant is seeking a use permit to allow live entertainment consisting of a small jazz band and a classical guitarist. The entertainment is performed on Friday and Sunday evenings from 7:30-11:00 pm, and the classical guitarist on Sunday mornings from 9 am to 11 am. The performers entertain indoors and in the patio area when the weather permits.

Public Input

Staff received five (5) anonymous letters from individuals who expressed concern for the control of noise, loitering, safety of the shopping center afterhours and cigar smoke emanating from the patio. Since the letters were submitted anonymously, staff or the applicant could not contact the individuals to explain the request and verify that the proposed live entertainment type and frequency would continue to be a concern for them.

Use Permit

The Zoning and Development Code requires a use permit for entertainment uses within the PCC-1, Planned Commercial Center District. This use permit request meets all applicable tests in the following manner:

Evaluating the use permit, the proposal appears to pass the use permit test listed below:

- a) Any significant increase in vehicular or pedestrian traffic in adjacent areas;
 - There will be no significant increase in vehicular or pedestrian traffic in adjacent areas. According to the applicant's letter, the live entertainment is offered to their patrons to enhance the coffee shop experience and not to be an entertainment venue. The impact to the vehicular or pedestrian traffic level within the center and surrounding area should be minimal.
- b) Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat, or glare at a level exceeding that of ambient conditions;
 - This use will not have any significant impacts of odor, dust, gas, noise, vibration, smoke, heat, or glare.
- c) 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 development would not contribute to neighborhood deterioration or downgrade property values. This use permit request is consistent with the General Plan 2030's Land Use Element. The requested use permit will not be detrimental to the surrounding area, but will further the General Plan Land Use Element Goals and Strategies.
- d) Compatibility with existing surrounding structures and uses;
 - The proposed use appears to be compatible with surrounding uses.

Conclusion

Staff recommends approval of the use permit, subject to conditions. All businesses offering live entertainment are required by the Zoning and Development Code to create a security plan with the Tempe Police Department.

REASON(S) FOR APPROVAL:

1. Traffic generated by these uses should not be excessive.
2. These uses will not result in the deterioration of the neighborhood or downgrading of property values.
3. The use appears to be compatible with the surrounding structures and uses.
4. The conditions of approval identified below will aid in the mitigation of any potential disruptive behavior both inside and outside the premises.
5. A Police Department Security Plan shall be in place and enforced at all times during business hours.

SHOULD THE HEARING OFFICER ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE FOLLOWING CONDITIONS OF APPROVAL SHOULD APPLY.

**CONDITION(S)
OF APPROVAL:**

- 1. The use permit is valid for the Gold Bar Espresso and may be transferable to successors in interest through an administrative review with the Development Services Manager, or designee.
- 2. Any intensification or expansion of this use shall require the applicant to return to the appropriate decision-making body for a new use permit.
- 3. Music generated from the use shall conform to the City of Tempe code requirements for noise control.
- 4. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
- 4. The applicant shall work with the Tempe Police Department – Crime Prevention Department (480-858-6027) to implement a Security Plan for the business.
- 6. Smoking on the patio shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.

**HISTORY &
FACTS:**

October 25, 1995. The Board of Adjustment approved a use permit for the Gold Bar Espresso a use permit to allow live entertainment at 1707 E. Southern Ave (southwest corner of Southern Avenue and McClintock Drive).

DESCRIPTION:

Owner – Weingarten Nostat Inc.
Applicant – Karen Miller
Existing Zoning – PCC-1, Planned Commercial Center Neighborhood District

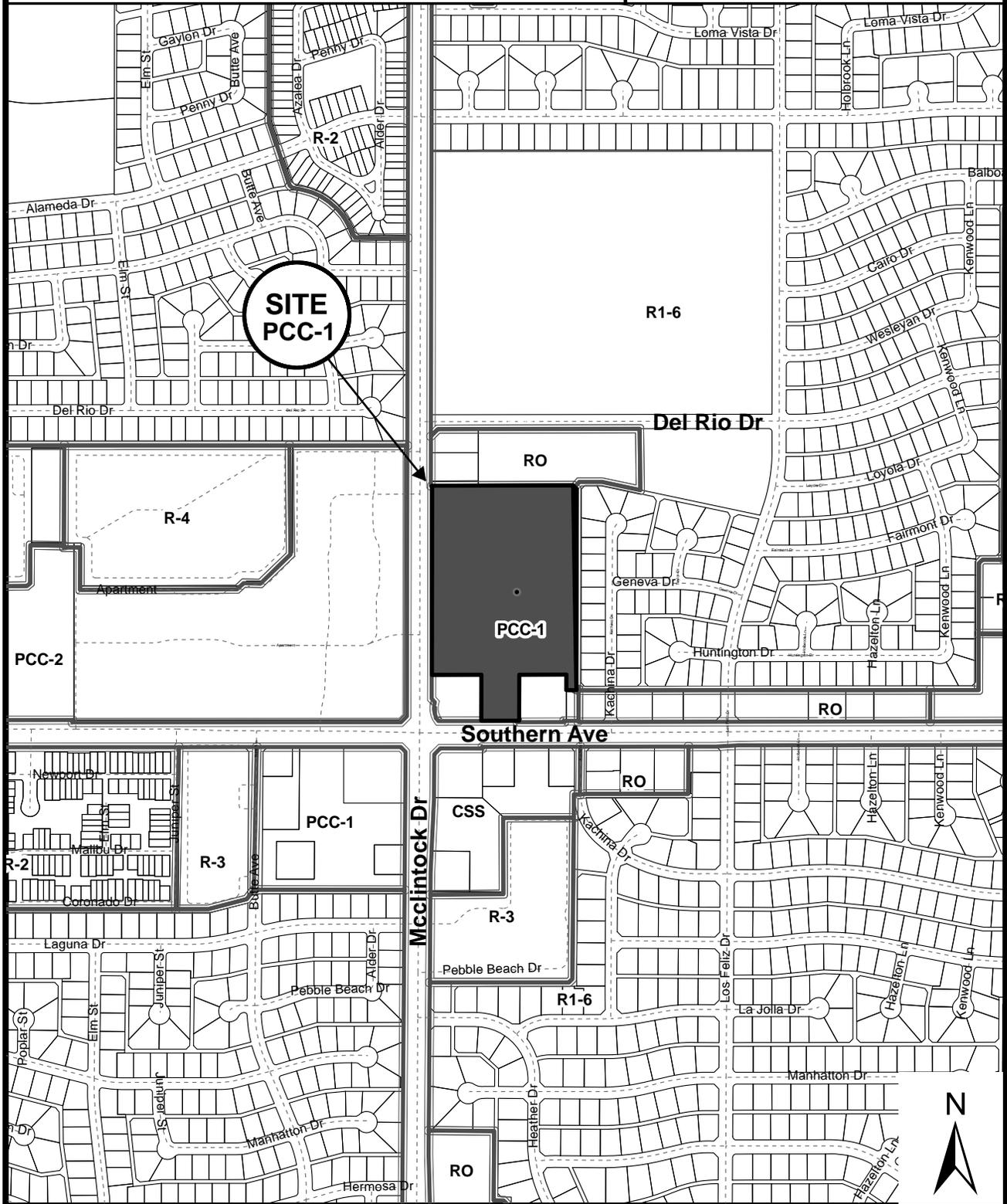
**ZONING AND
DEVELOPMENT
CODE REFERENCE:**

Part 3, Chapter 2, Section 3-202: Permitted Uses in Commercial and Mixed Use Districts.

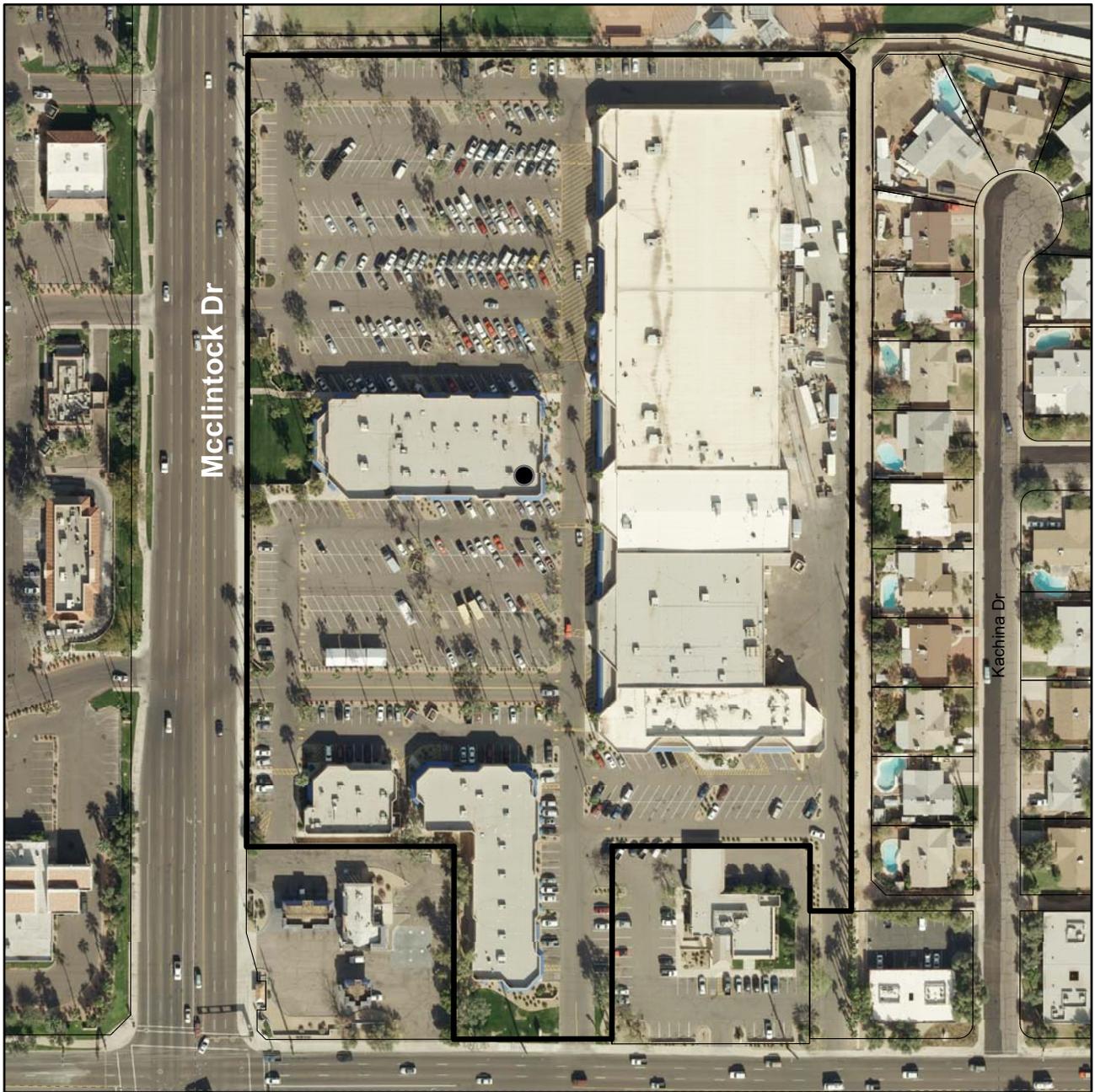
Part 6, Chapter 3, Section 6-308: Use Permit

BASHAS VALLEY PLAZA CENTER- GOLD BAR ESPRESSO

PL080299



Location Map



BASHAS VALLEY PLAZA CENTER- GOLD BAR ESPRESSO (PL080299)

REQUEST FOR VARIANCE

GOLD BAR ESPRESSO

3141 S. McClintock Dr. #6

Tempe, AZ 85282

480-839-3082

This request for variance is a request for exemption for Gold Bar Espresso from the use permit fee. Gold Bar Espresso is a local family-owned independent coffee shop which has been in Tempe for 15 years. It has occupied its current location in the Basha's Plaza since June, 2002. While Gold Bar Espresso pays all city, county, state, and federal taxes, as well as licensing fees to BMI and ASCAP, a use permit fee seems excessive for this business, which has live music two nights and one morning a week, and neither pays the musicians nor charges the patrons for this entertainment.

Gold Bar Espresso is opened from 6 AM to 11 PM seven days a week.

On Friday and Sunday, Gold Bar Espresso has a live jazz band, which plays from 7:30-11:00 PM. The band, The Jazz Alliance, is Gold Bar's "house band." The musicians, headed up by Dennis Miller, who is the owner of Gold Bar, have played together for several years, including three years before they began playing at Gold Bar Espresso. The band consists of a saxophone (Dennis Miller), vibraphone (played by US Airways art director), guitar (played by a Tempe middle school teacher), and upright bass (played by an Intel executive). These musicians are friends who play for the enjoyment of each other and whoever listens. Gold Bar's purpose is to be a coffee shop and provide excellent beverages to its patrons. The purpose is NOT to be an entertainment venue. The jazz music, as well as a classical guitarist (local guitar teacher who plays from 9-11 AM Sunday mornings), purely enhance the coffee shop environment. Many students from local high schools and colleges visit Gold Bar to observe the live music as a requirement of their musical studies. The Gold Bar musicians are always eager to spend time answering questions and sharing with these students.

Gold Bar Espresso has offered music from these same musicians for six years, and has never received a complaint nor previously had a complaint filed. Gold Bar Espresso takes its participation as a tenant of the Basha's Plaza seriously, and is an active "good neighbor," always watching activity in the center on behalf of all tenants.

At its previous location, Gold Bar had a variety of musicians, some or all of which were paid. It was under different ownership at the time. At the current location, the live music enhances, but does not change the main purpose or operation of Gold Bar Espresso. Because there is no monetary reason or exchange in connection with the live music, Gold Bar Espresso does not feel that it should be subject to a use permit. The music is confined to the Gold Bar premises:

the musicians play outside on the patio when weather permits, and play within the walls of Gold Bar the rest of the time. The music is part of the ambiance of Gold Bar, but does not affect or change the business of Gold Bar.

Respectfully submitted on 8/04/08

Dennis & Karen Miller *480-495-3586 (Karen's cell)*

Owners, Gold Bar Espresso

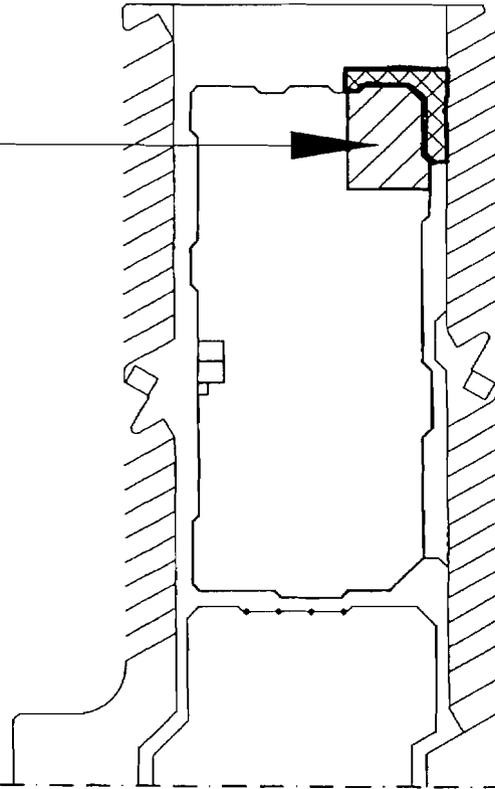
3141 S. McClintock Dr., Ste. 6

Tempe, AZ 85282

480-839-3082



"Leased Premises"
 Approx.: 1,282sf.
 3141 McClintock, Suite 6
 Tempe, Arizona



McCLINTOCK DRIVE



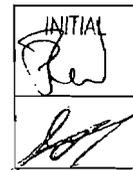
See Section 7.02 (Outside Seating)

The "Leased Premises" as shown hereon is for HEAVY HITTER, INC.

Subject to the terms of the Lease, Any future construction by the landlord within the Shopping Center will not affect the validity of the lease covering the Leased Premises. Landlord may elect to change the location, size, layout, or other details of any buildings, or Common Area in the Shopping Center and/or to construct other buildings in the Shopping Center and such changes will not affect the validity of the Lease covering the Leased Premises.

DATE: 04-30-2002
 Rev.:

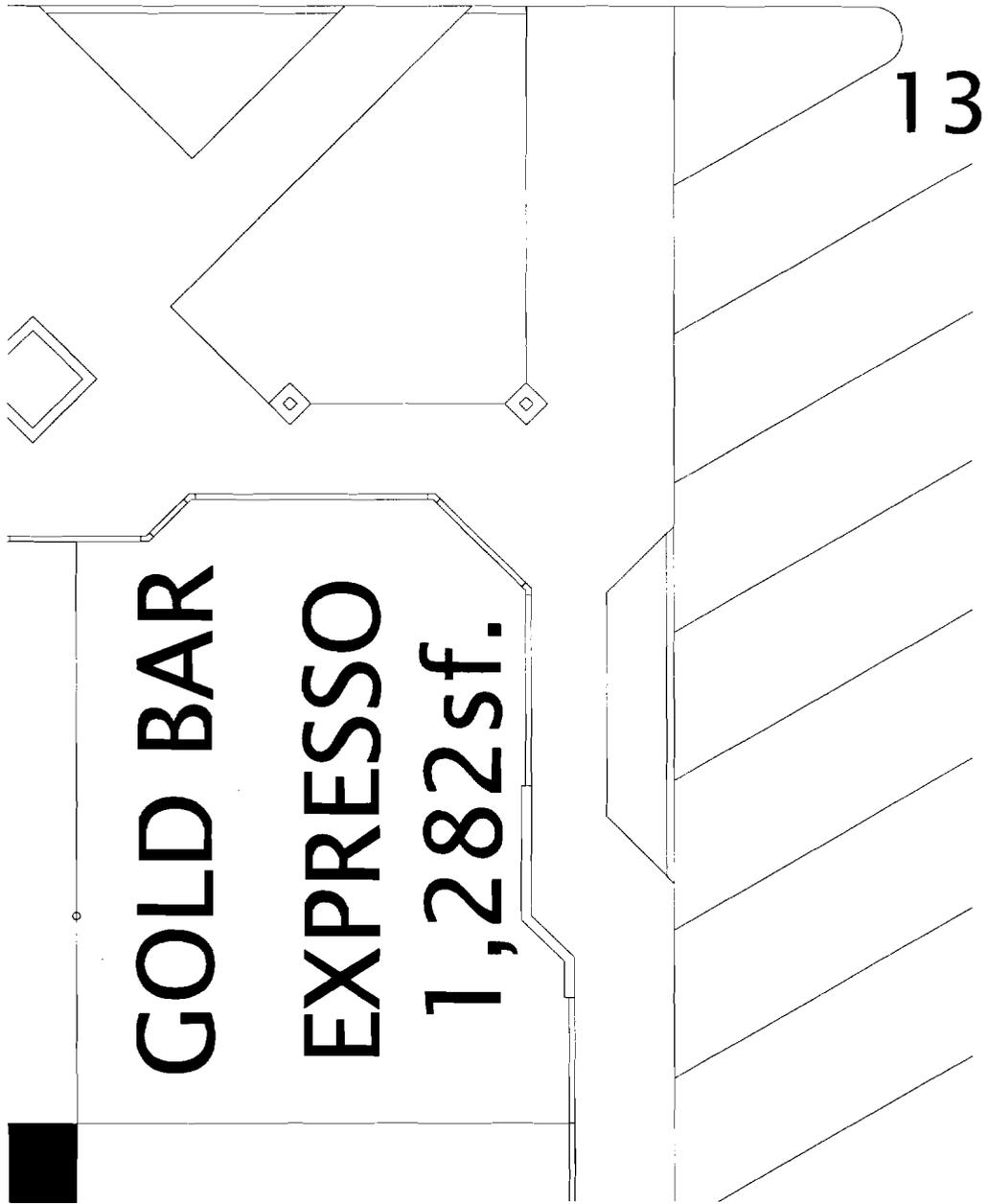
EXHIBIT "A"
 FRY'S VALLEY PLAZA



Floor No:
B00

Unit No:
B0D

Project No:
0153



Gold Bar

I live close to the Dasha Valley Plaza
I am 82 years old.
Live outdoor music worries me

Thank you
A Retired vet

RECEIVED
08 AUG 21 AM 9:22
TEMPERATURE CONTROL
SERVICES DEPARTMENT

Hearing Officer

In reference to the: Gold Bar Espresso application for outdoor entertainment

As a frequent patron of Subway, I have tried to sit outside when outdoor "concerts" were going on at Gold bar, and have been annoyed by the cigar smoke and music while trying to eat at the tables put outside by subway. If this continues, I don't think I will be able to still go to Subway for my "healthy meal". This will be a serious impact to me. Since I live nearby and don't drive, I need places where I can go to get a healthy meal. And eat in peace and quiet without having to smell cigar or cigarette smoke out there. This may be even in violation of the outdoor smoking ban which requires smoking to be at least 20 feet from a door.

Thank you for your attention to this matter.

RECEIVED
08 AUG 22 PM 3:20
HEARING OFFICER
SERVICES DEPARTMENT

To: Hearing Officer

From: Concerned Citizen

Re: Gold Bar Espresso, ZUP08129, Application for Use Permit to allow live entertainment (indoor/outdoor).

I am writing to express concern over granting a Use Permit for Gold Bar Espresso to have live indoor and outdoor entertainment. I saw the sign for the public hearing when I went shopping at Bashas the other day. I am concerned about the noise level created by live entertainment, especially outdoors. I am also concerned about the type of people that would be attracted and that it would create a lot of loitering in the area and in the parking lot. I am concerned that the outdoor entertainment would create a lot more loitering and also litter and trash in the parking lot. As a concerned resident of the neighborhood, I would be concerned about letting my children go to Bashas or Blockbuster as I have done in the past if there was live entertainment and that element there.

Signed,

A concerned citizen and parent

RECEIVED
08 AUG 22 PM 3:20
TERRITORIAL DEPARTMENT
SERVICES DEPARTMENT

To Whom It May Concern:

I am concerned about my safety at this plaza at night when I normally do my shopping because I work late and can only shop at night. If there was live entertainment at the Gold Bar, (which I can't believe because it is a coffee shop) I would be afraid for my safety due to the people that it would attract, since I have already had my purse stolen out of my car when it was parked there. I hope these people will stick to just serving coffee like Starbucks does.

RECEIVED
08 AUG 25 AM 11:43
FEDERAL BUREAU OF INVESTIGATION
SERVICES DEPARTMENT

I can not be at the hearing on September 2 to protest the use permit for gold barr, but I wanted to write to you instead. I think this would be a really bad thing. I go to some of the businesses in the plaza like the hair place and subway. I think if there were live bands there it would really be a problem with parking and traffic and etc. I would not be able to just pull in to subway and get something to eat. I think it would be really loud and bother the neighbors too; a live band? What were they thinking?

RECEIVED
08 AUG 25 AM 11:43
TERRITORIAL DEPARTMENT
SERVICES DEPARTMENT



BASHAS VALLEY PLAZA CENTER – GOLD BAR ESPRESSO

3141 S. MCCLINTOCK DR., SUITE NO. 6

PL080299

**FRONT OF BUSINESS – VIEW TO
NORTHWEST**



BASHAS VALLEY PLAZA CENTER – GOLD BAR ESPRESSO

3141 S. MCCLINTOCK DR., SUITE NO. 6

PL080299

**EXISTING OUTDOOR PATIO – VIEW TO
WEST**