

Staff Summary Report



Hearing Officer Hearing Date: May 1, 2007

Agenda Item Number: 9

SUBJECT: This is a public hearing for a request by **THE SETS (PL070167)** located at 93 East Southern Avenue for one (1) use permit.

DOCUMENT NAME: 20070501dssl03

PLANNED DEVELOPMENT (0406)

SUPPORTING DOCS: Yes

COMMENTS: Hold a public hearing for a request by from **THE SETS (PL070167)** (Hamid Hekmatian, applicant; Ethan Christopher LLC, property owner) located at 93 East Southern Avenue in the CSS, Commercial Shopping and Services District for:

ZUP07042 Use permit to allow a billiard parlor and sports bar with live entertainment previously granted on March 21, 2006, and required to return for review after one year.

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

REVIEWED BY: Steve Abrahamson, Senior Planner (480-350-8359)

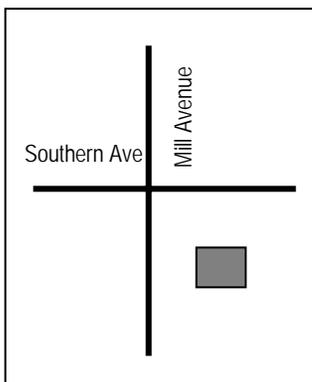
FINAL REVIEW BY: Lisa Collins, Planning Director (480-350-8989) 

LEGAL REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: Staff – Approval subject to Conditions 1-5.

ADDITIONAL INFO: The Hekmatian & Sons Inc. d.b.a. The Sets is returning to the Hearing Officer for review of their use permit to allow a billiard parlor and a sports bar with live entertainment located at 93 East Southern Ave in the CSS, Commercial Shopping and Service District. The Hearing Officer previously approved this request on March 21, 2006 and by condition of approval remanded the applicant to return the Hearing Officer for review of use permit within one (1) year. Staff recommends approval of the use permit with additional conditions. See the attached report from Mona Qureshi, Strategic Crime Analyst/Tempe Police Department, concerning the calls for service generated regarding this address from 3/1/2006 to 4/22/2007. A public hearing notification and the property was posted for this review of the use permit. To date, staff has received no public input.



ATTACHMENTS:

- 1 List of Attachments
 2. Comments; Reason for Approval
 3. Conditions of Approval; History & Facts/Description
 - 4-5. History & Facts; Description; Zoning & Development Code Reference
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- A. Location Map(s)
 - B. Aerial Photo(s)
 - C. Letter of Explanation
 - D. Site plan
 - E. Floor Plan
 - F. Calls for Service Report

COMMENTS:

The Hekmatian & Sons Inc. d.b.a. The Sets is returning to the Hearing Officer for review of their use permit to allow a billiard parlor and a sports bar with live entertainment located at 93 East Southern Ave in the CSS, Commercial Shopping and Service District. The Hearing Officer previously approved this request on March 21, 2006 and, by condition of approval, remanded the applicant to return the Hearing Officer for review of use permit within one (1) year.

Staff has attached a report from the Police Department identifying the calls for service from this address, the number and kinds of calls are consistent with a pool hall/bar location. According to the report, there were seventeen (17) calls for service complaints regarding loud music and noise. On page four (4) of the "calls for service" report there is break down on the number of calls for service by month for the given time period. Also the report identifies "fight calls"; these service calls appear to be isolated incidences with no established pattern (see monthly breakdown page 5 of report).

Use Permit

The Zoning and Development Code requires a use permit for billiard parlors serving alcohol with live entertainment. The criteria for approval of the use permit are the following:

- a. Any significant increase in vehicular or pedestrian traffic in adjacent areas;
- b. Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat, or glare at a level exceeding that of ambient conditions;
- 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;
- d. Compatibility with existing surrounding structures and uses;

Additionally, conditions of approval may be imposed by the decision making body which limit the days, hours, place and/or manner of operation.

Conclusion

This applicant is seeking approval of the use permit without additional time limits. Staff recommends approval of the request for the use permit based on the Zoning and Development Code criteria for approval. By condition of approval, staff can monitor the conduct of the business and require review of the use permit, if necessary.

REASON(S) FOR APPROVAL:

1. No apparent nuisance resulting from noise, smoke, odor, dust, vibration, or glare.
2. No apparent hazards to persons or property from possible explosion, contamination, fire or flood.
3. Traffic generated by this use should not be excessive.
4. The use appears to be compatible with the building, site and adjacent property.
5. There appears to be a demonstrated need for this use at the proposed location.

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

**CONDITION(S)
OF APPROVAL:**

1. No Noise shall emanate beyond the walls of the building. The four doors leading to the back of the shopping center shall be closed at all times and used for emergency exit only.
2. 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 set to re-evaluate the appropriateness of the use permit.
3. There shall be no live entertainment on the patio.
4. No overflow parking allowed in the alley or on adjacent properties.
5. No "car shows" or special events allowed with this use permit.

HISTORY & FACTS:

May 19, 1988.

City Council approved a major upgrade to the existing Valley Fair Shopping Center, including a new commercial pad for Checker Auto, use permit and variances subject to conditions.

August 13, 1990

City Council approved for the Carlson Realty Company, a site plan and variance for the Valley Fair Shopping Center/Pinke's with a use permit to allow a 15,438 s.f. billiards/pool hall subject to the following conditions:

1. Use permit to be valid for 2 years. The applicant must then return to the City Council for further review.
2. Use permit is for this applicant (Pinke's) only. Should the business be transferred, the new owner must reprocess to the Commission and Council for separate approval.
3. Any expansion, intensification or change in this use shall require separate re-processing through the Commission and Council prior to such change.
4. Business hours shall not extend past 1:30 AM (Sun.-Thur.) and 3:30 AM (Fri-Sat.). No minors shall be allowed at any time on the premises.
5. Any significant verifiable police complaints shall require the applicant to return to the City Council for re-evaluation of the use permit even if such re-evaluation precedes the expiration of the initial time and any extension thereto.
6. No noise shall emanate beyond the walls of the building. The four doors leading to the back of the shopping center shall be closed at all times and used for emergency exit only.
7. Parking area located at the southeast corner of center shall be designated as "employee parking" only.
8. The east property line wall (if owned by the shopping center) shall also be repaired prior to occupancy and shall be properly maintained on a continuo basis.
9. Previous applicable City Council and Design Review conditions shall be adhered to.

September 10, 1992.

City Council extended the Pinke's use permit for another two years without modifying any of the conditions of approval.

March 16, 1995.

City Council extended the use permit for Pinke's for another two years. They added five conditions of approval to address neighborhood complaints about noise created from the dumping of trash. The conditions were the following:

1. Within two years from date of approval of this extension, the applicant shall return to City Council for a public hearing to review compliance with conditions of approval on the use permit.
2. A masonry trash enclosure as depicted in the applicant's letter shall be installed within sixty days of approval, with details to be resolved with Design Review, Refuse and Police staff.

3. Pink E's shall not put trash in the City refuse container between the hours of 10:00 PM and 7:00 AM, during which time it may temporarily store trash in the above enclosure, restricting use of the Pink E's rear door only to this purpose except for emergencies.
4. Except as modified by this action, all previous applicable Council conditions of approval (8/9/90) shall be adhered to.
5. No live entertainment per the terms of Ordinance 808 may be conducted on these premises without prior issuance of a use permit by the City.

April 24, 1997.

City Council extended the Pink E's use permit for one (1) year subject to eight (3) conditions (similar to those imposed previously except for the one year time extension).

September 18, 1997.

City Council approved the request by Pink E's for compliance of condition #2 (imposed 4/24/97) and the transferring of the use permit to a new group (Hekmatian & Sons, Scott A. Swinson, Esq.) subject to eight conditions.

2. Use permit is for the current owner of Pink E's only. Should the business be transferred, the new owner must reprocess to the Council for separate approval.

November 20, 1997.

City Council approved Pink E's (Hekmatian and Sons, Inc.) for a use permit to allow live entertainment, in conjunction with a billiards establishment subject to eight conditions with a time limit of 10 months for re-review.

September 11, 1998.

City Council approved the request by Pink E's for a time limit extension of the use permit for a pool hall with live entertainment subject to (8) eight conditions with a time limit of two years for re-review.

September 21, 2000.

City Council approved the request by Pink E's (later renamed The Sets) for a time limit extension for a use permit for a pool hall with live entertainment subject to eight conditions. The following conditions were modified from previous approvals:

1. On or before September 18, 2005, the applicant shall return to the City Council for review of compliance with conditions and modification, if any.
2. Any significant verifiable police complaints (as determined by the City Attorney and Police Dept.) shall require the applicant to return to City Council for re-evaluation of the use permit at any time. (Note: Applicant has agreed to work with adjacent neighbors to resolve any potential noise problems, failure to do so could result in returning to the City Council for review).

December 18, 2001.

City Council approved the request by Pinke's for a use permit to modify the existing 15450 s.f. billiard parlor business operation and add a six-lane bowling area, subject to seven conditions.

July 16, 2002.

The Hearing Officer approved a use permit for Pinke's to build an outdoor patio subject to the following conditions:

1. Replace missing tree in parking lot landscape island adjacent to building entry by October 16, 2002.
2. Any variances or use permits not specifically requested by the applicant at this time will require separate processing.
3. The use permit is valid for the plans and business operation as submitted to and approved by the Hearing Officer/Board of Adjustment.
4. This use shall be approved by the City of Tempe Fire Marshall prior to the use becoming effective.
5. This use shall not violate the City of Tempe Noise Ordinance.
6. This use shall not violate the City of Tempe Smoking Ordinance
7. The applicant shall devise a security plan in conjunction with the CPTED officials of the City of Tempe by October 16, 2002.
8. This use permit is not transferable. Should the business be sold, the new owners must reprocess through the Hearing Officer or Board of Adjustment.

9. No outdoor speakers are allowed.
10. If there are any complaints arising from the uses herein permitted that are verified by a consensus of the complaining party and the /City Attorney's office, the use permit may be returned to the Board of Adjustment and another public hearing set to re-evaluate the use permit.
11. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
12. Any intensification or expansion of this use shall require that a new use permit be applied for and obtained.

May 28, 2003

Board of Adjustment approved a use permit for Pinke's/ The Sets to allow outdoor speakers on the patio area, subject to conditions.

January 17, 2006

The Hearing Officer approved a permit for The Sets allowing a sports bar/pool hall with live entertainment subject to conditions. By condition, the applicant to return to the Hearing Officer for review of the use permit.

March 21, 2006

The Hearing Officer approved a permit for The Sets allowing a sports bar/pool hall with live entertainment subject to conditions. By condition, the applicant to return to the Hearing Officer for review of the use permit.

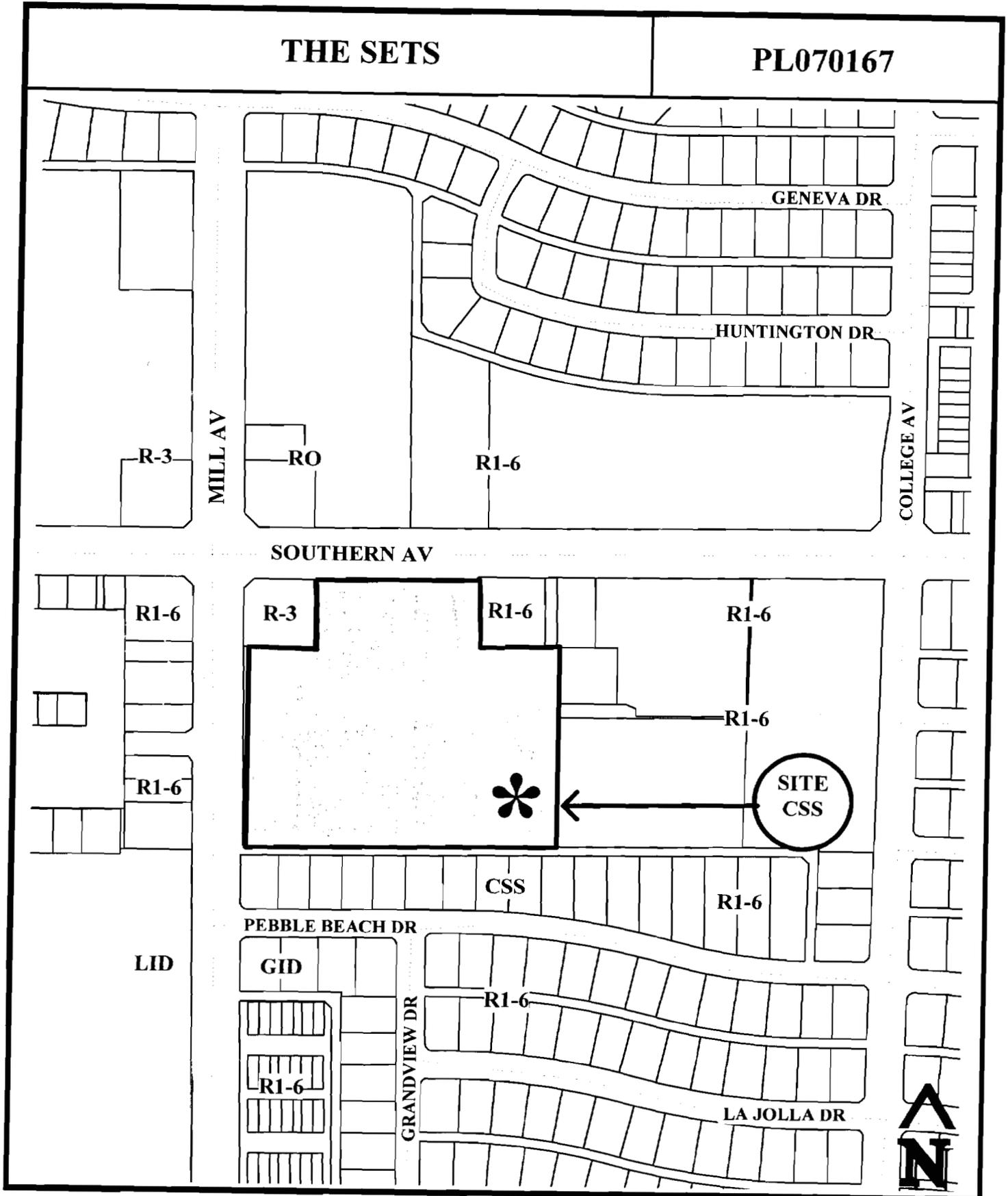
DESCRIPTION:

Owner – Ethan Christopher LLC
Applicant – Hamid Hekmatian
Existing zoning – CSS, Commercial Shopping and Services District

**ZONING AND
DEVELOPMENT**

CODE REFERENCE:

Citations of Code Requiring Use Permit(s):
Zoning and Development Code, Part 3, Chapter 2, Section 3-202 B.
Part 6, Chapter 3, Section 6-308



Location Map



THE SETS (PL070167)

April 9th 2007

City of Tempe
Development Department Services
31 East Fifth Street, Tempe, Arizona 85281

Subject: Valley Fair Center – Hekmatian & Sons Inc, d.b.a - The Sets 93 East Southern Ave,
Tempe AZ 85282 – BA 050184 – Ethan Christopher Inc, Landlord.

Dear Ms. Kelly,

Thank you for meeting with me last week.

The Intention of this letter is to request an extension to our existing use permit with it's current conditions through Dec 2013 which is when our current lease expires.

The Sets and the previous business Pinke'S has been under the ownership of Hekmatian & son, Inc. since 1997. The history of our operation and our renewals is clearly indicative of our absolute cooperation and respect for our customers, neighbors, The City and Tempe Police.

Since last March, with the blessing of the Fire Marshall, City of Tempe Inspectors, Plan reviewers and the Police we have added at an astronomical cost a tremendous amount of sound insulation to our facility. We have by any standard one of the quietest and acoustically cleanest music facilities anywhere.

Since the first application that I made to the City for the use permit, one neighbor has shown up every time and has objected to our existence. There has always been data presented by this neighbor. This year we have kept a record of every call or communication. There are other neighbors and local residence that have completely the opposite view and are grateful for our existence. We have a fantastic working relationship with The Police department and I would encourage you to obtain a reference from them.

In conclusion, The Sets with it current use has the profound privilege of being a service to the community by providing the following:

Billiards, ping pong, shuffleboard, darts, foosball, video games, leagues and tournaments

Three full service bars and a restaurant,

Live music venue, receptions and a place to meet and greet.

Neighborhood sports bar,

And finally, a specially designed patio to accommodate the patrons that smoke.

There is something for everyone to do here at The Sets.

Sincerely,

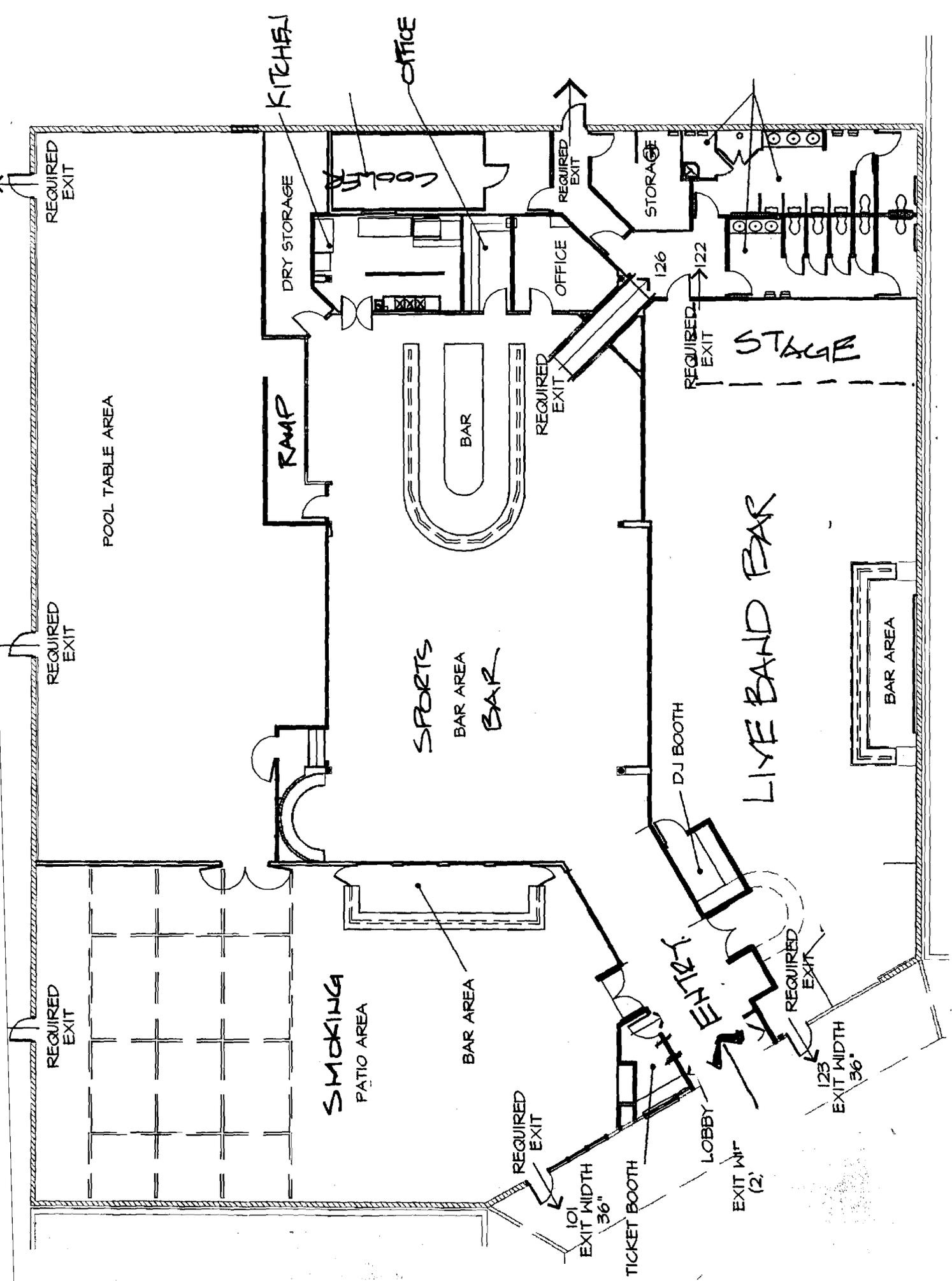


H.Hekmatian

The Sets

93 E. Southern Ave Tempe, AZ 85282

480 8291822 – after 2 PM



THESETS

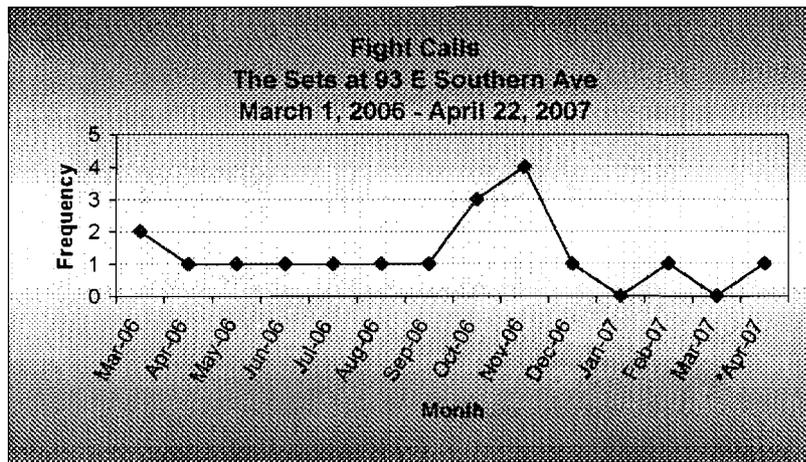
**Part I & II Crimes
The Sets at 93 E Southern Ave
March 1, 2006 - April 22, 2007**

CRIME	Frequency
AGGRAVATED ASSAULT	3
SIMPLE ASSAULT, NOT PART I	3
LIQUOR LAWS	2
THEFT	1
THEFT FROM VEHICLE	1
WEAPONS	1
DRUG SALE/MANUFACTURE	1
DRUG POSSESSION	1
DUI	1
DISORDERLY CONDUCT	1
OTHER	1
TOTAL	16

Fight Calls
The Sets at 93 E Southern Ave
March 1, 2006 - April 22, 2007

Month	Frequency
Mar-06	2
Apr-06	1
May-06	1
Jun-06	1
Jul-06	1
Aug-06	1
Sep-06	1
Oct-06	3
Nov-06	4
Dec-06	1
Jan-07	0
Feb-07	1
Mar-07	0
*Apr-07	1
Total	18

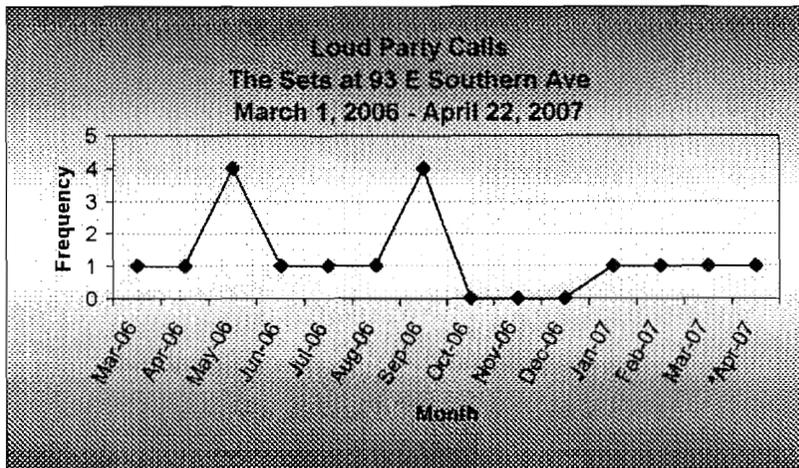
*numbers for April 2007 include April 1 - April 22 only



Loud Party Calls
The Sets at 93 E Southern Ave
March 1, 2006 - April 22, 2007

Month	Frequency
Mar-06	1
Apr-06	1
May-06	4
Jun-06	1
Jul-06	1
Aug-06	1
Sep-06	4
Oct-06	0
Nov-06	0
Dec-06	0
Jan-07	1
Feb-07	1
Mar-07	1
*Apr-07	1
Total	17

*numbers for April 2007 include April 1 - April 22 only



**Time of Day/Day of Week Analysis
The Sets at 93 E Southern Ave
Citizen CFS: March 1, 2006 - April 22, 2007**

	SUN	MON	TUE	WED	THU	FRI	SAT	Total	Percent
0000	6	0	1	0	1	1	6	15	19.5%
0100	2	0	1	0	0	1	2	6	7.8%
0200	2	0	1	0	2	0	1	6	7.8%
0300	1	0	0	0	0	0	0	1	1.3%
0400	0	0	0	0	0	0	0	0	0.0%
0500	0	0	0	0	0	0	1	1	1.3%
0600	0	0	0	0	0	0	0	0	0.0%
0700	0	0	0	0	0	0	0	0	0.0%
0800	0	0	0	0	0	0	0	0	0.0%
0900	0	0	0	0	0	0	0	0	0.0%
1000	0	1	0	1	0	1	0	3	3.9%
1100	0	0	0	0	0	0	0	0	0.0%
1200	1	0	1	1	0	0	1	4	5.2%
1300	0	0	1	0	0	0	0	1	1.3%
1400	2	0	0	0	0	1	0	3	3.9%
1500	0	0	0	0	0	0	0	0	0.0%
1600	0	1	0	0	0	0	0	1	1.3%
1700	0	0	0	0	0	0	0	0	0.0%
1800	1	2	0	1	1	0	1	6	7.8%
1900	0	1	1	0	0	0	1	3	3.9%
2000	2	0	0	0	1	0	0	3	3.9%
2100	1	1	2	1	2	0	0	7	9.1%
2200	2	3	1	1	2	2	0	11	14.3%
2300	0	1	0	0	1	1	3	6	7.8%
Total	20	10	9	5	10	7	16	77	100.0%
Percent	26.0%	13.0%	11.7%	6.5%	13.0%	9.1%	20.8%	100.0%	

