

BACKGROUND

Context

The subject property consists of a 16,085 square foot (0.37 acres) pad located at 16100 N Arrowhead Fountains Center Drive, on the west side of the Arrowhead Fountains Center Drive and Stadium Way intersection (Exhibit A). The pad is located near Abuelo’s Mexican restaurant and formerly contained the Johnny Fox’s Irish restaurant.

General Plan

The subject property is designated on the General Plan Land Use Map as Sports Complex Mixed Use.

Zoning

The site is zoned Planned Area Development (PAD) and lies within the North Valley development plan and Peoria 57 Acre development plan. Both development plans allow for permitted uses identified in the PC-1, PC-2, and C-4 zoning districts. Restaurants are a permitted use within all three zoning districts, though the outdoor dining and seating areas require a Conditional Use Permit. (Exhibit B)

Adjacent Uses and Zoning

Table 1 summarizes the existing land use, General Plan designation and zoning for the surrounding areas.

Table 1 – Existing Land Use, General Plan, and Current Zoning

	EXISTING LAND USE	GENERAL PLAN	ZONING
Subject Property	Unoccupied commercial building	Sports Complex Mixed Use	PAD (North Valley & Peoria 57 Acre)
North	Harley-Davidson Commercial Building	Sports Complex Mixed Use	PAD (North Valley & Peoria 57 Acre)
South/Southeast	Texas Roadhouse Restaurant Buca di Beppo Restaurant	Sports Complex Mixed Use	PAD (Peoria 57 Acre)
East	Cheesecake Factory Restaurant	Sports Complex Mixed Use	PAD (North Valley & Peoria 57 Acre)
West	Abuelo’s Restaurant	Sports Complex Mixed Use	PAD (Peoria 57 Acre)

Other Related Policies and Project History

The original site plan for this location was approved on August 26, 2005, with case PR05-28, for the Irish pub Lis Doon Varna. Construction was complete in August of 2008 and Lis Doon Varna operated until December 31, 2011. Johnny Fox's restaurant began operating at this location in June 2011 until January 2013. The property has been vacant since.

APPLICANT'S PROPOSAL

Goal/Purpose of Request

The applicant is planning to demolish the current structure on the property and build a new restaurant of approximately 7,800 square feet in area called Bubba's 33, which is affiliated with Texas Roadhouse. The applicant is proposing an outdoor dining area of approximately 975 square feet. The location of the outdoor dining area is on the southeast corner of the building directly adjacent to glass garage doors that can open, weather permitting. (Exhibit B-D)

The outdoor dining area will operate in conjunction with the restaurant. This area will be enclosed with a black steel decorative fence. There will be no speakers, televisions, or entertainment specifically for the outdoor dining area; however, the exterior of the building will have speakers used for ambient music during business hours only, which are:

Monday – Thursday	4 pm to 10 pm
Friday	4 pm to 11 pm
Saturday	11 am to 11 pm
Sunday	11 am to 10 pm

DISCUSSION AND ANALYSIS

Applicability

The property is zoned Planned Area Development (PAD) and is situated in such a manner that it is regulated by two separate PADs - the North Valley PAD and the Peoria 57 Acre PAD. Both PADs allow land uses permitted in the PC-1, PC-2, and C-4 zoning districts. Pursuant to the Non-Residential Districts Land Use Matrix (Table 14-9-3) of the Zoning Ordinance, Outdoor Dining and Seating Areas are permitted in these districts with the issuance of a Conditional Use Permit in accordance with Section 14-39-12.

Section 14-39-12 of the Zoning Ordinance outlines the applicable criteria for evaluating Conditional Use Permits (CUP). In general, the purpose of a CUP is to mitigate any identified negative impacts on the surrounding neighborhood that may result from a specific use, and provide controls to ensure maximum compatibility between nearby land uses.

Special Limitations

Section 14-9-5-B.3 of the Zoning Ordinance provides the following limitations for Outdoor Dining and Seating Areas. Staff responses are in italics.

- Such areas shall be located immediately adjacent to the restaurant or establishment to which it is an accessory use.

The proposed outdoor dining patio will be located immediately adjacent to the restaurant.

- The use shall not interfere with pedestrian access, fire lanes, driveways or traffic visibility at driveways or street intersections.

The proposed use complies with the above conditions. The outdoor seating area has been incorporated into the building and site design which is currently in Site Plan and Design Review.

- Such areas shall not exceed 25% of the gross floor area (GFA) of the establishment. The Planning and Zoning Commission may waive this requirement if it is found that sufficient mitigating measures are provided to eliminate potential adverse impacts on adjacent properties.

The floor area of the associated existing building is 7,800 square feet, and the floor area of the total patio space would amount to approximately 12.5% of the total gross floor area; therefore the use is in compliance without the need for a waiver.

- Through the Conditional Use Permit (CUP) process, the conditions considered for imposition by the Planning and Zoning Commission may include, but is not limited to, a restriction on operating hours, additional screening, re-location of the outdoor dining and seating area, noise and visual mitigation and other measures appropriate to the relevant circumstances.

In Staff's judgment, additional conditions / restrictions beyond those proposed in this report are unnecessary since there are no expected negative impacts that would affect surrounding properties as the project is proposed.

Compatibility With Surrounding Land Uses

In staff's judgment, the proposed use is an appropriate, ancillary function to the restaurant use. The outdoor dining area is consistent with surrounding land uses and the context of the area in question. A number of restaurants are located in this vicinity, many of which contain outdoor dining patios. Impact to residential uses are not anticipated since the nearest residential development is located more than 1,300 feet to the west and east of the restaurant and separated by other commercial uses.

It is staff's opinion that the outdoor dining and activities proposed herein will complement the overall entertainment atmosphere that is desired for P83.

If any issues arise regarding the operation of the business, Section 14-39-12.1 provides the Planning Manager with continuing jurisdiction over all Conditional Use Permits. This means that the Planning Manager may recommend to the Planning and Zoning Commission that a permit may be revoked, modified or suspended should any of the following occur:

- a. The permit was obtained by fraud or misrepresentation;
- b. The use authorized by the CUP has been exercised in violation of the conditions of approval;
- c. A change in circumstances where the following has occurred:
 1. Impacts from the approved CUP to neighboring properties; and
 2. Changes in aesthetic or environmental impacts such as noise, odors or pollution.
- d. The use authorized by the CUP is operated in a manner that constitutes a nuisance to neighboring property owners, adjacent neighborhoods, or the City; or is exercised in a manner that is detrimental to the public health, welfare or safety.

COMMUNITY INVOLVEMENT

Outreach Requirements

The application was properly noticed pursuant to Section 14-39-6 of the Peoria Zoning Ordinance, which includes notification to all property owners within 600 feet of the site and registered HOA's within 1 mile, posting a sign on the site, and placing an ad in the Peoria Times; all done at least 15 days prior to the Public Hearing.

Support / Opposition

At the time of this writing, staff has not received any support or opposition to the proposal.

Proposition 207 Waiver

The voters of Arizona approved Proposition 207, which among other things requires municipalities to compensate property owners for actions which have the effect of diminishing the value of property. The City Attorney's Office has drafted an agreement which waives the applicant's rights to future Proposition 207 claims against the City. Accordingly, the applicant has furnished a signed and notarized Proposition 207 Waiver.

STAFF RECOMMENDATION

Based on the following findings:

- The proposal is limited in scope and an appropriate, ancillary function to a restaurant use; and
- The outdoor dining area is within a larger existing commercial development; and
- The proposal will not result in any detrimental impacts to the surrounding neighborhood.

Staff recommends that the Planning and Zoning Commission take the following action:

Approve the applicant's request for a Conditional Use Permit under Case CU17-01, subject to the following conditions:

1. The use shall substantially conform to the project narrative and conceptual site plan as contained in the staff report to the Planning and Zoning Commission stamped approved on April 20, 2017.
2. Per section 14-39-12.B.5 of the Peoria Zoning Ordinance (1977 Edition), the Conditional Use Permit will expire on October 20, 2018 if the use has not begun operating or a building permit has not been obtained.
3. Uses on the outdoor dining patio shall be limited to outdoor dining.
4. The hours of operation for the patio use shall be limited to those for the adjoining restaurant use.

REPORT PREPARED BY

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