

Staff Summary Report



Hearing Officer Hearing Date: 12/06/11

Agenda Item Number: 12

SUBJECT: This is a public hearing for a review of compliance with Conditions of Approval as assigned by the Hearing Officer at the December 7, 2010 public hearing for the request by **ARIZONA #1 GOLD BUYERS** located at 2105 South Rural Road for one (1) use permit.

DOCUMENT NAME: 20111206cdsl11 **PLANNED DEVELOPMENT (0406)**

COMMENTS: Review of compliance with Conditions of Approval as assigned by the Hearing Officer at the December 7, 2010 public hearing for the:

Request by **BROADWAY MARKETPLACE – ARIZONA #1 GOLD BUYERS (PL100172)** (Roman Babayev, applicant; Weingarten Nostat Inc., property owner) located at 2105 South Rural Road in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP10137 Use permit to allow a pawn shop at an existing gold buyer establishment.

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

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

LEGAL REVIEW BY: N/A

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

FISCAL NOTE: There is no fiscal impact on City funds.

RECOMMENDATION: **Staff – Approval, subject to previously imposed conditions**

ADDITIONAL INFO: In December 2010, Arizona Gold Buyers was granted a use permit to expand their gold buying business to a pawn shop. The Hearing Officer required the applicant to return to a public hearing for review of the use permit for compliance with conditions of approval. To date, staff has received no input from the public regarding the operation of the use. The Tempe Police Department received one call for service relating to a minor theft at the property. The business is in compliance with all conditions of approval. No further review required.



PAGES:

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

ATTACHMENTS:

1. Location Map
2. Aerial Photo
3. Letter of Intent
4. Site Plan
5. Floor Plan
- 6-7. Hearing Officer Minutes from 12/7/10

COMMENTS:

The applicant requested approval of a use permit to allow a pawn shop at an existing gold buyer establishment. The business is located southeast of the intersection of Broadway Road and Rural Road at 2105 South Rural Road in the PCC-1, Planned Commercial Center Neighborhood District. The business was approved to buy precious metals and electronics and to sell jewelry and electronics. There was to be no display or sales of firearms, knives, or other weapons of any kind. The hours of operation to be from 9:30 a.m. to 6 p.m. Sunday through Thursday, and 9:30 a.m. to 4 p.m. on Fridays.

Prior to the December 7, 2010 Hearing Officer Meeting, staff received one (1) phone call of opposition regarding the request. The neighbor in opposition had concerns with the management of the business, stating that if the business can not comply with rules regarding signage (see History & Facts), how are they to follow any rules and regulations regarding a pawn shop. The Hearing Officer granted the use permit with a condition that the use permit to return to the Hearing Office for review of compliance with conditions.

According to the police records for calls for service; one call was received in the past 5 months for a stolen cell phone which a customer left in the store. No other police or complaint activity on record.

Use Permit

The Zoning and Development Code requires a pawn shop to obtain a use permit in the PCC-1, Planned Commercial Center Neighborhood 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 should be no 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;
 - This is a commercial use and should not have any associated nuisances.
- 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 use should not contribute to neighborhood deterioration or downgrade property values;
- d. Compatibility with existing surrounding structures and uses;
 - The proposed use appears to be compatible with the surrounding uses.
- e. Adequate control of disruptive behavior both inside and outside the premises, which may create a nuisance to the surrounding area or general public:
 - The proposed use requires an update to the existing security plan with the Tempe Police Department.

Conclusion

Staff recommends approval of the use permit, subject to conditions. No return review of conditions of approval will be required.

REASONS 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. Approval of the use permit will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or the public welfare in general.

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

CONDITIONS OF APPROVAL:

1. The use permit is valid for Arizona #1 Gold Buyers and may be transferable to successors in interest through an administrative review with the Community Development Manager or designee.
2. ~~All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.~~ **COMPLETED**
3. Any expansion or intensification of the use will require a new use permit.
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.
5. ~~All business signs shall receive a Sign Permit. Please contact Planning staff at 480-350-8331.~~ **COMPLETED**
6. ~~A sales tax license from the City of Tempe Tax and License Division shall be obtained prior to the use permit becoming effective.~~ **COMPLETED**
7. ~~The applicant shall work with the Tempe Police Department to update the Security Plan for the business. Please contact Officer Dan Brown at 480-858-6330.~~ **COMPLETED**
8. No fire arms shall be sold or pawned without a new use permit.
9. ~~Applicant shall return to the Hearing Officer in six (6) months to assure that the business is in compliance with the conditions of approval.~~ **COMPLETED**

HISTORY & FACTS:

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|--------------------|---|
| September 2, 1966 | Certificate of Occupancy issued for 1 of 4 retail sales units. |
| September 25, 2002 | <u>BA020216</u> – The Board of Adjustment approved the request by Broadway Marketplace – U-Save Auto Rental for a use permit to allow car rentals (involving the storage of a maximum of fifteen (15) cars on site) located at 937 E Broadway Rd. |
| September 15, 2009 | <u>ZUP09124</u> – The Hearing Officer approved the request by Goodwill Donation Express Center for a use permit to allow a donation center located at 937 E Broadway Rd. |

July 6, 2010 The Hearing Officer approved the request by Broadway Marketplace – Arizona #1 Gold Buyers for a use permit to allow a resale retailer (precious metal buyer) located at 2105 S Rural Rd.

July 20, 2010 Complaint reported to the City of Tempe Code Compliance Division regarding illegal signs and flags/

December 7, 2010. The Hearing Officer approved a use permit for AZ #1 Gold to allow a pawn shop subject to conditions.

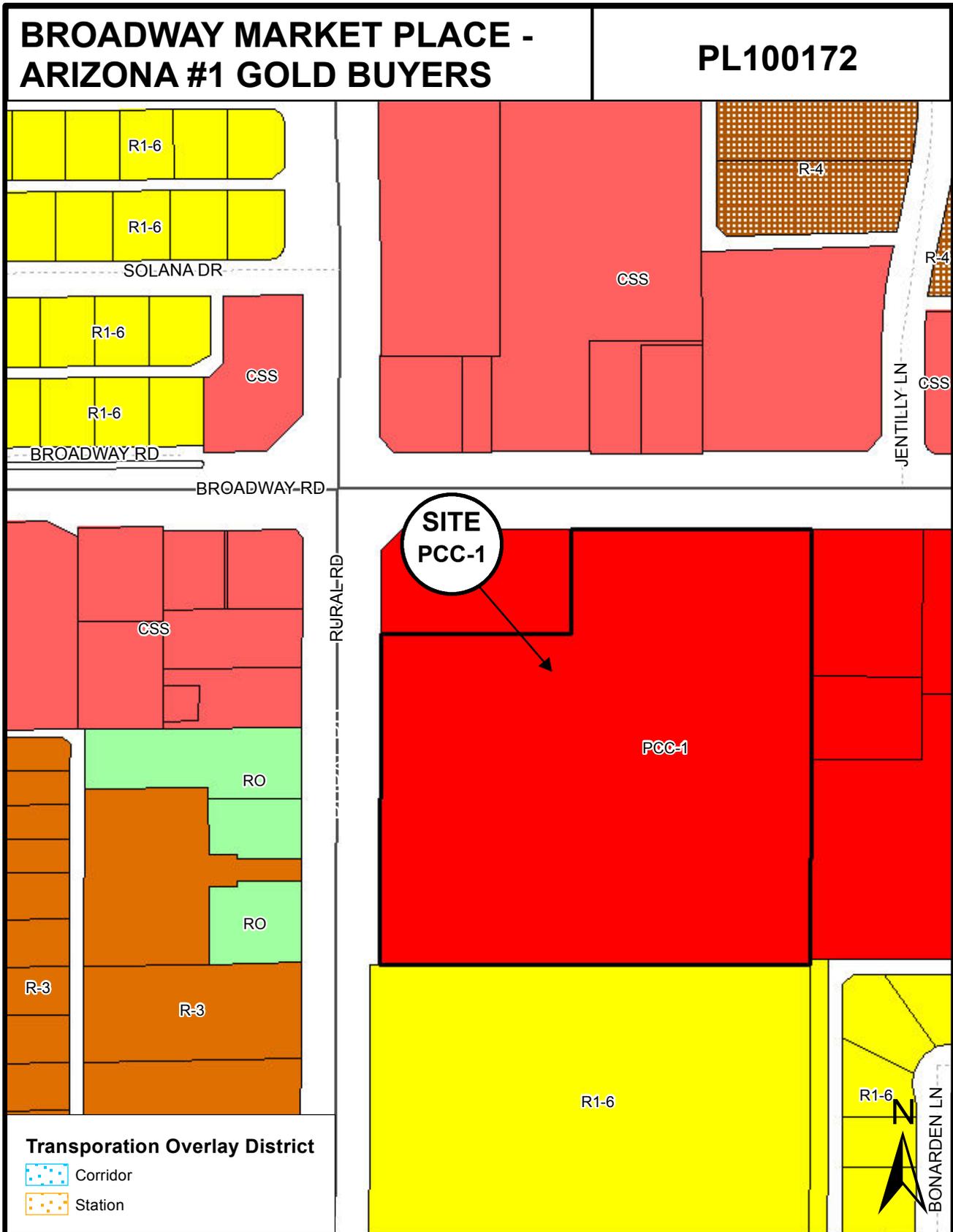
DESCRIPTION:

Owner – Weingarten Nostat Inc.
Applicant – Roman Babayev
Existing Zoning – PCC-1, Planned Commercial Center Neighborhood District
Parcel Size – 324,827 s.f. / 7.457 acres
Building Area – 88,287 s.f.
Tenant Area – 896 s.f.
Parking Required – 3 spaces
Parking Provided – 451 spaces

**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
Part 6, Chapter 3, Section 6-313 – Security Plan



Location Map



BROADWAY MARKET PLACE - ARIZONA #1 GOLD BUYERS (PL100172)

Graves, Nick

From: Mikhail Burminskiy [mburminskiy@yahoo.com]
Sent: Thursday, November 11, 2010 8:03 PM
To: Graves, Nick
Subject: AZ # 1 Gold Buyers

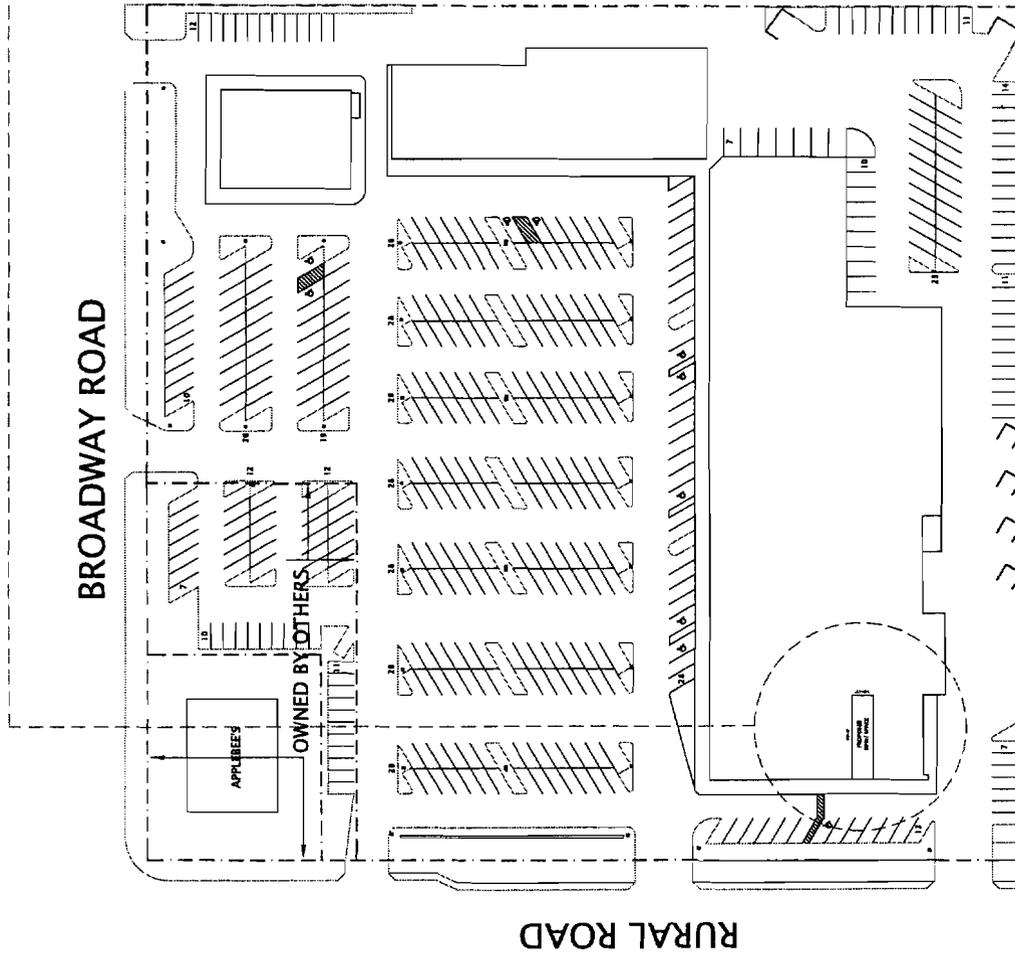
To whom it may concern,

AZ # 1 Gold Buyers buys precious metals and electronics, and sells jewelry,electronics. We currently hold a secondhand dealer license, in addition to this we would like to offer pawn shop service's, excluding display or sales of firearms, knives or other weapons of any kind, to ensure that our business is of family oriented nature. Operating hours will be the same, from 9:30 am to 6:00 pm Sunday to Thursday, and 9:30 am to 4:00 pm on Friday.

Thank you.

BROADWAY MARKETPLACE

Broadway Road & Rural Road
Tempe, Arizona 85282



60'-0"

**PROPOSED
896sf SPACE**

14'-11"

Note: All measurements to be field verified and square footage shall be subject to modifications based on actual measurements.

Land Area: 325,532 sf./ 7.47 Acres
Building Area: 82,756 sf.
Parking: 381 Spaces @ 4.60 /1000sf.

This site plan is prepared solely for the purpose of describing the approximate location and size of the building generally contemplated by this application. Building lines, site dimensions and other information shown on this plan are not intended to constitute a contract and are not intended to be used as a reference only.

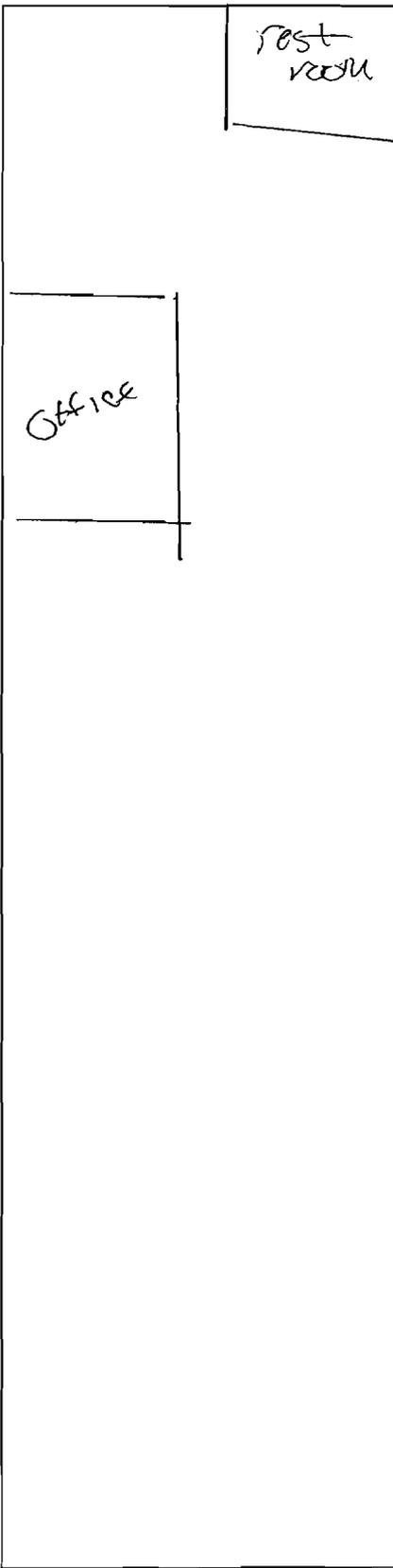
WEINGARTEN REALTY
PHOENIX OFFICE
(602) 263 1166 TOLL FREE (800) 600 0886
CORPORATE OFFICE (713) 866 6000
www.weingarten.com

Scale: NO SCALE
Rev.: 06-09-2010

0167

60'-0"

14'-11"



Scale: 3/16" = 1'

**Minutes
HEARING OFFICER
DECEMBER 7, 2010**

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

Present:

Vanessa MacDonald, Hearing Officer
Steve Abrahamson, Planning & Zoning Coordinator
Sherri Lesser, Senior Planner
Kevin O'Melia, Senior Planner
Diana Kaminski, Senior Planner
Nick Graves, Planner

Number of Interested Citizens Present: 39

Meeting convened at 1:30 PM and was called to order by Ms. MacDonald. She noted that anyone wishing to appeal a decision made today by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) days by December 21, 2010 at 3:00 PM to the Community Development Department.

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1. Ms. MacDonald noted that the Hearing Officer Minutes for November 16, 2010 had been reviewed and approved.

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2. Request by **BROADWAY MARKET PLACE – ARIZONA #1 GOLD BUYERS (PL100172)** (Roman Babayev, applicant; Weingarten Nostat Inc., property owner) located at 2105 South Rural Road in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP10137 Use permit to allow a pawn shop at an existing gold buyer establishment.

Mr. Roman Babayev was present to represent this case.

Nick Graves, staff planner, gave an overview of this case and stated that no further public input has been received since the staff report was issued. This business was approved for a pawn shop use permit on July 6, 2010. A complaint on signage had been received and is still pending resolution, Mr. Graves noted.

Ms. MacDonald questioned whether Mr. Graves had received any complaints from the neighboring businesses pertaining to this request. Mr. Graves stated that he had not.

Ms. MacDonald asked Mr. Babayev if he understood that Conditions of Approval including the two (2) additional Conditions Nos. 8 and 9.

Ms. MacDonald noted that this request is compatible with the existing businesses, will not contribute to the deterioration of the surrounding neighborhoods or affect current vehicular or pedestrian traffic in adjacent areas. There will be adequate control of disruptive behavior both inside and out.

DECISION:

Ms. MacDonald approved PL100172 / ZUP10137 subject to the following conditions:

1. The use permit is valid for Arizona #1 Gold Buyers and may be transferable to successors in interest through an administrative review with the Community Development Manager, or designee.
2. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
3. Any expansion or intensification of the use will require a new use permit.
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.
5. All business signs shall receive a Sign Permit. Please contact Planning staff at 480-350-8331.
6. A sales tax license from the City of Tempe Tax and License Division shall be obtained prior to the use permit becoming effective.
7. The applicant shall work with the Tempe Police Department to update the Security Plan for the business. Please contact Officer Dan Brown at 480-858-6330.
8. **No fire arms shall be sold or pawned without a new use permit. ADDED BY STAFF**
9. **Applicant shall return to the Hearing Officer in six (6) months to assure that the business is in compliance with the conditions of approval. ADDED BY STAFF**

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3. Request by **VINTAGE ON 8TH LLC (PL100325)** (Gavin Jacobs, applicant; Arden Properties Inc., property owner) located at 1300 East 8th Street in the GID, General Industrial, and TOD, Transportation Overlay Districts for:

ZUP10127 Use permit to allow a restaurant and bar with GID, General Industrial District, zoning.

Mr. Gavin Jacobs was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case and stated that no further public input has been received since the staff report was issued.

The parking issue was addressed and Ms. Lesser noted that the site shares available parking spaces with the Four Brewery and Restaurant. She noted that staff will require, as a Condition of Approval, that parking upgrades are completed on the Creamery Branch prior to the use permit becoming effective.

Mr. Jacobs stated that he would listen to neighborhood concerns and make every effort to accommodate those concerns. He noted on an aerial site plan where parking would be available for patrons. Ms. MacDonald noted that her site visited revealed posted signs forbidding parking except for the office building tenants.

Mr. Chris McKee, University Heights Neighborhood Association Chair, spoke in opposition, citing parking issues.

Ms. Rosa Simai, manager of Willowbrook Apartments located directly across the street from this location, spoke in opposition citing noise concerns and parking issues. There are so many people overflowing the current Four Peaks Brewery into the apartment parking lot that she has had to hire security to patrol the area.

Mr. Joe Mendes, Tempe resident and owner of Willowbrook Apartments, spoke in opposition. He stated that this business would have a negative impact on the residents and spoke of parking and noise concerns. Cars have had to be towed due to parking in unauthorized areas assigned to the apartments. He stated that the noise from Four Peaks Brewery is so loud that another business of this nature should not be permitted.

Mr. Chuck Buss, representing University Heights Neighborhood Association, noted that the current situation involved parking problems and that another business of this type would add to the existing problem(s). He noted the proximity of his neighborhood to this location on an aerial location map.