

# Staff Summary Report



Hearing Officer Hearing Date: 3/01/11

Agenda Item Number: 7

**SUBJECT:** This is a public hearing for a request by **FIXX COFFEE BAR** located at 11 East 7<sup>th</sup> Street for one (1) use permit.

**DOCUMENT NAME:** 20110301cddk3 **PLANNED DEVELOPMENT (0406)**

**COMMENTS:** Request by **FIXX COFFEE BAR (PL110037)** (Sandra Arthur, applicant; Tempe Mill 2 LLC, property owner) located at 11 East 7<sup>th</sup> Street in the CC, City Center District, Transportation Corridor, for:

**ZUP11011** Use permit to allow live indoor entertainment (live bands and music venues).

**PREPARED BY:** Diana Kaminski, Senior Planner (480-858-2391)

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

**LEGAL REVIEW BY:** N/A

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

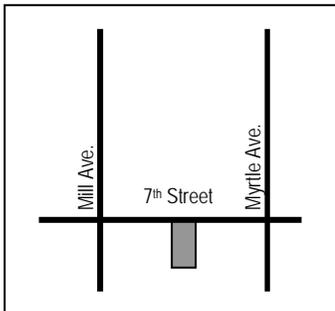
**FISCAL NOTE:** There is no fiscal impact to City funds.

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

**ADDITIONAL INFO:**

The property is located on the south side of 7<sup>th</sup> Street, east of Mill Avenue, there are vacant lots to the west and east of the property, and parking available from the same property owner who owns several lots in the immediate area. The use permit request is for live entertainment in the form of musicians and artists performing indoors. Painters or multi-media artists may showcase their work in the front coffee house area, and bands would be booked for the back performance room.

Building size: 3,000 square feet  
Parking Required: 30 spaces (750 s.f. reduction in TOD corridor)  
Parking Provided: 7 on site, off-site parking available on adjacent vacant lots



**PAGES:**

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

**ATTACHMENTS:**

1. Location Map
2. Aerial Photo
- 3-4. Letter of Intent
5. Floor plan
6. Staff Photograph

## COMMENTS:

Located on the south side of 7<sup>th</sup> street, midblock between Mill and Myrtle avenues, the site has a long history of diverse uses, including a residence that was converted to a bank, and then later to an internet café; the current tenant is operating a coffee bar. The site is challenged by vacant land on the east and west sides, and the wall of a parking garage to the south, limiting pedestrian traffic that occurs with adjacent businesses. The proposed use permit would allow live indoor entertainment for artists and musicians showcasing new talent, providing an opportunity for exposure and promotion. The applicant was unaware of the required use permit process, and when notified, provided an application and letter of intent. The request is for the addition of live indoor entertainment to an existing coffee house, no alcohol is served on site.

The Orchidhouse Condominiums located on the south side of 6<sup>th</sup> Street Park, north of the Governor Moeur House and Artisan Square building, are the closest residences to the property. ASU has offices and classrooms in the Brickyard building directly across the street. There is a non-profit use in the building to the east, and another building that is vacant. There is a fast-food restaurant on Mill Avenue to the south west of the site, but little other retail or restaurant activity within the immediate area. The former coffee house on this site had a variance for on-site parking, and the temporary bank received an additional variance to reduce parking specific to the temporary bank use. There currently is parking available in the shared parking lot of the adjacent vacant properties. However, at such time that these sites were to sell or redevelop, the existing on-site lot would not meet required parking standards, even within the Transportation Overlay District. A condition of approval has been included to assure shared parking with adjacent parcels for this current use.

## USE PERMIT

The proposed use requires a Use Permit, to allow live indoor entertainment within the City Center CC Zoning District.

Section 6-308 E Approval criteria for Use Permit:

1. The manner of conduct and the building for the proposed use will not be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general, and that the use will be in full conformity to any conditions, requirement or standards prescribed therefore by this code.

The proposed use would not impact the adjacent vacant parcels. The business plan does not include alcohol, and is designed as an all-ages venue, serving the younger college and professional population of Tempe. Upgrades will be required of the property owner to assure the safety of customers using the parking lot in the rear of the property.

2. Any significant increase in vehicular or pedestrian traffic. Describe any part of the use applicable to conformance with this.

The area has experienced a significant decrease in vehicular and pedestrian traffic due to the demolition of the former Long-Wong's bar on Mill Avenue, and other nearby businesses. The size of this one free-standing building has a maximum occupancy of 92 people, and is not large enough to significantly increase vehicle or pedestrian traffic beyond what the area formerly enjoyed when the block was full of other businesses. The coffee bar and live entertainment creates a new use for the Mill Avenue area and helps revitalize the 7<sup>th</sup> Street block.

3. Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions. Describe any part of the use applicable to conformance with this.

The building was significantly remodeled for the former bank use, including indoor walls and windows that help buffer sound to the exterior. The proposed live entertainment would end at midnight. The only potential for nuisances arising from the use would be if the live entertainment became so successful as a destination that they exceeded their occupancy limits or parking availability. However, this could be mitigated through cover charges and parking fees to control where vehicles parked and prevent parking on the unimproved (dirt) lots. The applicant has also indicated that they have indoor security staff available during live venues.

4. Contribution to the deterioration of the neighborhood or to the downgrading of property values, the proposed use is not 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. Describe any part of the use applicable to conformance with this.

The proposed use returns an historic use to the 7<sup>th</sup> Street block, promoting local artists and musicians in a venue that does not serve alcohol. There are no foreseen conditions of this use permit that would contribute to the deterioration of the neighborhood. Having a new and successful business in this location would help provide security and vitality back to the area, in full support of the goals and objectives of the General Plan. The Police Department has indicated support for this request, as a means of providing more activity in an area lacking eyes on the street.

5. Compatibility with existing surrounding structures and uses. Describe any part of the use applicable to conformance with this.

The building is relatively small in scale compared to the Brickyard Development to the north. The building is a free-standing brick structure and the use is similar to other uses in the downtown that offer live entertainment as part of the downtown experience. The structural design of the former bank lends itself to this type of use, with an interior sound partition wall and solid masonry exterior walls without windows.

6. Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public. Describe any part of the use applicable to conformance with this.

Lighting will be required to be fixed in the parking area for security on site. The Police Department did not require a Security Plan for this request; staff from fire, police, and community development toured the facility and met with the manager on site. The size and nature of the business plan, the proposed use of security personnel, proposed announcements of curfew times to help customers comply with local laws, proposed hours of live music to end at midnight prior to bar closures, and no plans to serve alcohol indicates adequate control of behavior. The applicant has indicated that if a security plan is necessary in the future, they will be willing to work with staff to meet any additional requirements.

## **Conclusion**

Based on the information provided by the applicant and the above analysis staff recommends approval of the requested Use. This request meets the required criteria and will conform to the conditions 1-12.

## **REASONS FOR APPROVAL:**

1. The project meets the General Plan Projected Land Use for this site.
2. The project will meet the development standards required under the Zoning and Development Code.
3. The proposed project meets the approval criteria for a Use Permit and is compatible with the downtown environment.
4. The proposed project meets will help re-establish vitality to the area.

**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 the plans as submitted within this application. Any additions or modifications must be submitted for review by planning.
2. The Use Permit is valid for The Fixx and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
3. Cross access and shared parking agreement required for adjacent lots to provide required 23 off-site parking spaces. Should these other sites redevelop, this parking agreement must include provision of required parking in perpetuity for this use.
4. Remove painted text on exterior brick wall. Apply for sign permits for any proposed signs in conformance with the sign ordinance.

5. Within sixty (60) days, remove chain link behind the building.
6. Within sixty (60) days, repair or replace light fixtures and bring exterior of building up to code compliance with Section 4-803 Lighting Standards for the parking lot (2.0 fc), drive aisle (1.0fc), pedestrian walkways (0.5 fc) and doorways (5.0 fc).
7. Within sixty (60) days, replace all dead and missing plant material to conform to most recently approved landscape plan, or submit for a new landscape plan.
8. Comply with all requirements of the Building and Fire Codes as applicable to designated occupancy, and do not exceed 92 people within the building at any time.
9. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
10. 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.
11. Live entertainment limited to indoor entertainment by musical performances to cease at or before midnight (12:00 am).
12. Allowable noise decibel levels to comply with the Tempe City Code – Chapter 20.
13. No outdoor speakers allowed. No live entertainment allowed outdoors.
14. This use shall not violate the State Smoking Ordinance, [www.smokefreearizona.com](http://www.smokefreearizona.com).
15. 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.
16. A security plan is not required at this time; should the Police Department determine that enhanced security is necessary to mitigate unforeseen circumstances the business owner will be contacted for completion of a security plan.

**HISTORY & FACTS:**

January 27, 1993	Board of Adjustment approved a use permit to allow a coffee house as a new use in the CCD Zoning, and a variance to decrease the required on-site parking from 23 spaces to 11 spaces.
February 17, 1993	Design Review Board approved building elevations, site plan and landscape plan for Java Road.
April 2, 1997	Hearing Officer approved a change of ownership Use Permit transfer to allow the continued coffee shop use within the Central Commercial District.
December 18, 1998	Design Review Board approved site plan, landscape plan and elevations.
January 7, 1999	City Council approved a Use Permit to allow the temporary relocation of an existing bank within the CC District, a site plan modification, and two variances specific to the temporary relocation of Bank of America.
January 16, 2003	Development Review staff approved sign application for E-Joy a new internet café.

**DESCRIPTION:**

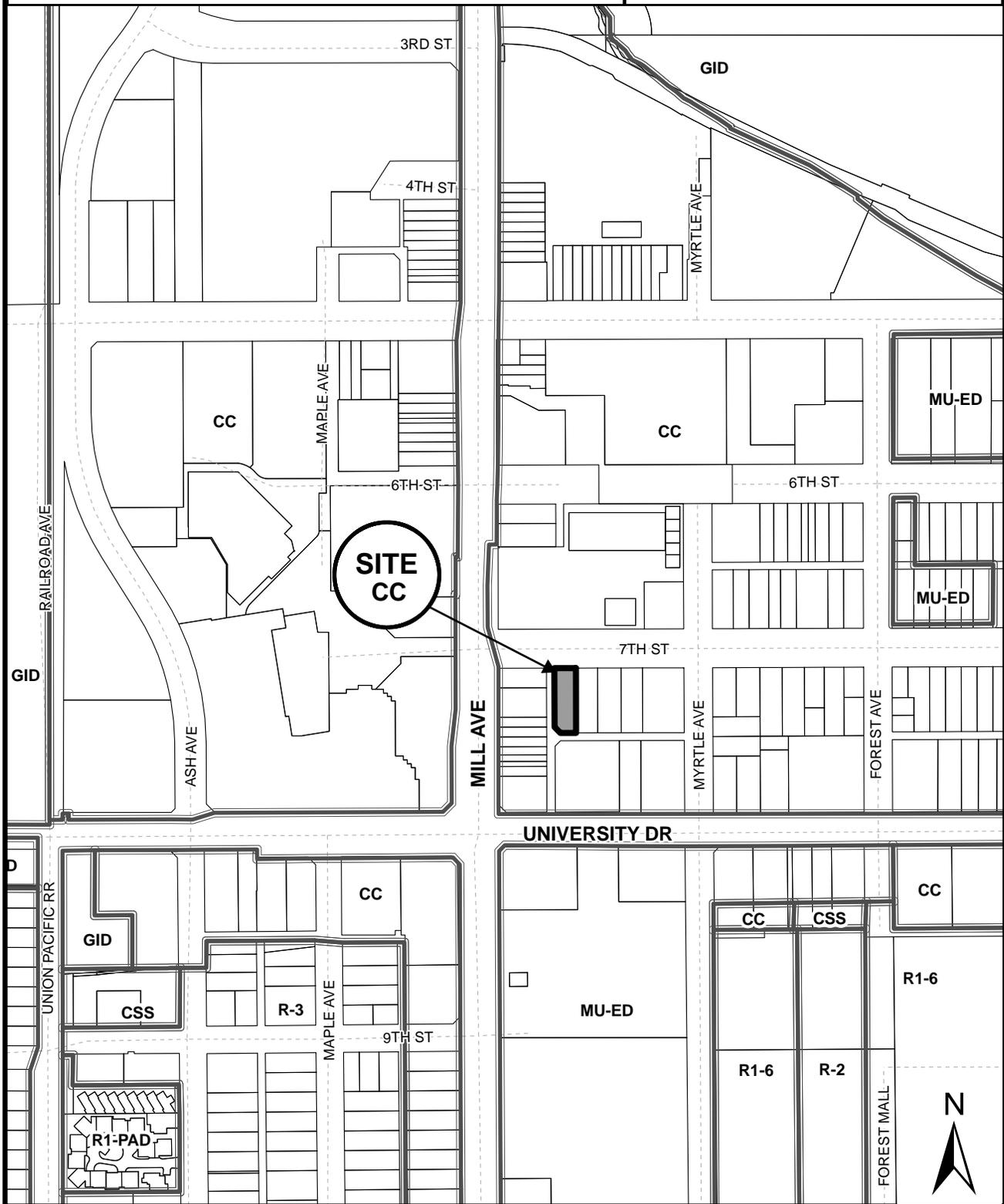
Owner – Tempe Mill 2 LLC  
 Applicant – Sandra Arthur  
 Existing Zoning – CC, City Center District

ZONING AND DEVELOPMENT

CODE REFERENCE: Section 6-308 Use Permit

# FIXX COFFEE BAR

# PL110037



## Location Map



**FIXX COFFEE BAR (PL110037)**

City of Tempe

Developmental Services

31 East Fifth Street

Tempe, AZ 85280

Re: Use Permit

Dear City of Tempe,

We are proud to introduce the Fixx Coffee Bar on 7<sup>th</sup> as the newest business on Mill Ave. We are very excited to offer a great cup of coffee, wonderful breakfast sandwiches, tasty lunch specials all included in a hip, artistic atmosphere for business professionals, college students and Tempe locals. We are currently open Monday through Friday 7am to 8pm and Saturday's from 12pm-Midnight. We have 4 great barista's that are pleasant to talk to, knowledgeable about coffee, art, and music. As a customer you are always welcomed with a big smile and leave with a gracious thank you.

Our business plan also includes art and live entertainment. Our walls are covered with paintings from local artists which can be purchased right off the walls. We also would like to offer live music. Not only are we supporting local musicians to show off their talents, we are providing a non-alcoholic venue for all ages to come and enjoy.

We feel that Mill Avenue needs a non-alcoholic venue for everyone to be invited to. Mill is saturated with bars and night clubs for your drinking pleasure. The Fixx provides a place for people who are not interested in going to a bar or are not the legal drinking age. The property is perfectly equipped for live music considering that the brick walls and safety glass keeps the outside of the building quiet. Even with a full band playing inside, none of the other businesses should be bothered by excess noise.

We are hoping that the live music venues will add to the ambiance to Mill Avenue and entice more people to come and enjoy the different shops, restaurants, bars, pubs, and coffee spots that you don't experience at Tempe Marketplace. The building allows 92 patrons at one time and we currently have the use of 55 to 60 parking spaces which do not include public parking structures around Mill Ave. and meter parking that is available in the front of the building. We currently do not offer bike racks, but we are located directly across the street from the school of engineering which offers them. We do anticipate the increase in pedestrian traffic due to public transportation, which we think will be a good

thing for Mill Ave. It will give Mill Ave. to show off its charm and increase revenue around the community.

We realize that the city of Tempe has rules and regulations about noise, live music and nuisance. Our building is fairly sound proof and we do not anticipate live music past midnight. We do plan on making announcements for different curfews and making sure that all underage customers are out at the appropriate times. We currently do have indoor security. In the future we plan on charging for some of the live music shows but would really like to offer free events. Since we are in a building, not a suite, we will not be a nuisance to fellow businesses but in hopes that neighboring businesses come in and enjoy sweet sounds and a delicious cup of coffee.

Our goal as new business owners is to enhance Mill Ave. We hope that you will kindly review our application and approve our business plan. Please come in and see for yourself what a great fit The Fixx Coffee Bar on 7<sup>th</sup> is to Mill Ave

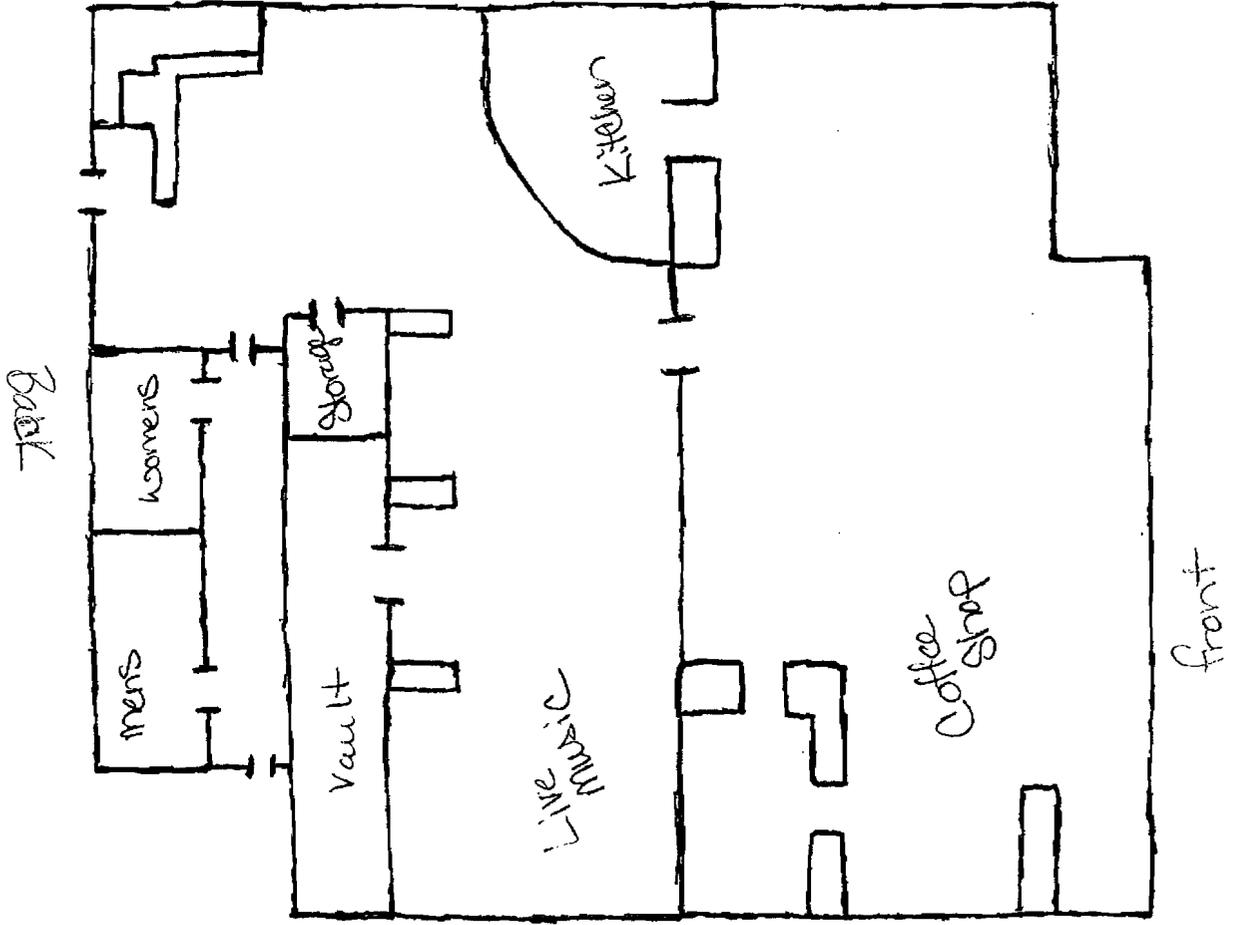
Sincerely Yours,

Sandra E. Arthur

Vice President

The fixx Coffee Bar on 7th.

To: Diane





**FIXX COFFEE BAR**

**11 EAST 7<sup>TH</sup> STREET**

**PL110037**

**FRONT OF BUSINESS**

