

DOS DIABLOS

Conditional Use Permit for Live Entertainment

Project Narrative

For its Project Narrative, in accordance with the requirements of the City of Scottsdale Use Permit Application, SMC Food Services, LLC dba Dos Diablos respectfully requests that the City approve this application for a Use Permit to allow entertainment and patron dancing. Dos Diablos proposes to have entertainment through pre-recorded music played by a disc jockey and/or live band performances on three nights per week (Thursday, Friday and Saturday) between 10pm until 2am. Dos Diablos also requests patron dancing as customers may occasionally want to dance while a band is performing. Restaurant food service will be provided seven days a week until 11pm.

Background

On March 31, 2009 SMC Food Services LLC, dba Dos Diablos submitted an application for a Restaurant Liquor License at the restaurant location formerly known as Mancuso's at the Summit located at 32527 N. Scottsdale Rd Scottsdale, Arizona 85262. This location has been a restaurant since approximately 2003.

The property located on the northeast corner of North Scottsdale Rd. and East Ashler Hills Drive is a 1,037,561 square feet parcel of land. It was purchased by the current landowners, Donahue Schriber Realty Group L.P. in 1999. The owners of the property are supportive of Dos Diablos obtaining a Use Permit for Live Entertainment and patron dancing.

This shopping center has two main anchor retailers; Target and Safeway. The remainder of businesses is clothing, service oriented, miscellaneous shops, restaurants and personal services. Some of the retail spaces are vacant. The entire shopping center has landscaping buffers and block walls on the perimeter of the property. Dos Diablos is located near the center portion of the Summit at Scottsdale Shopping Center. The owners of Dos Diablos obtained appropriate building permits to remodel and update the existing restaurant. The restaurant subsequently opened on September 4, 2009.

Proposal

The primary use of this establishment is to provide quality food to the clientele and create an upscale yet relaxing environment for the customers. It is a family oriented business serving high quality authentic Mexican dishes. This establishment is a full service restaurant with an extensive menu and experienced staff. It will meet all pre-requisites of the city and state as a restaurant.

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It is our desire as owners to entice our customers to remain at the restaurant after dinner by providing entertainment and allowing patron dancing on Thursday, Friday and Saturday nights between 10 pm and 2am. The style of music we wish to provided will include top 40 and 70's, 80's and 90's music.

Dos Diablos is currently open seven days a week as follows. It should be noted that on Sunday only, alcohol service will not commence until 10:00am even though the restaurant opens at 9:00am; in compliance with Arizona Liquor Law; A.R.S. 4-244.17.

Sunday	9am – 12am
Monday	11am – 12am
Tuesday	11am – 12am
Wednesday	11am – 12 am
Thursday	11am – 2am
Friday	11am – 2am
Saturday	11am – 2am

As responsible servers of alcoholic beverages, all of the owners have attended basic and management alcohol awareness training. The entire staff will also be attending the basic training (not mandatory but required by the owners). All servers will validate the identification of any young looking customer who requests alcoholic beverages as well as implementing other security devices to check for fake identification.

Since its grand opening on September 4, 2009, Dos Diablos has conducted business within the guidelines of all City, State, and County laws resulting in no violations. The owners are committed to the city and the community. As responsible business owners, they are mindful of other business owners and residents in the area. Since the opening of the restaurant there have not been any complaints from any business owner(s) or residents from the surrounding area.

The neighborhood was notified of the proposed live entertainment and patron dancing application via postcard mailing. To date of this revised narrative, the applicant has not received any communication regarding the proposal. Personal contact with individual tenants within the Summit at Scottsdale has been initiated by the owners and to date there have been no complaints about the operation of Dos Diablos. All of the tenants contacted to date are supportive of the City of Scottsdale issuing Dos Diablos a Use Permit for live entertainment and patron dancing.

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Conditional Use Permit Criteria

1. The site plan shall demonstrate that:

a. Buffering by a wall and/or landscaping will be provided in a manner which physically separates and restricts access from the establishment and its required parking area to residential districts.

There are no immediate residential homes adjacent to Dos Diablos. It is surrounded by other retail shops including Safeway and Target which provide a buffer to the northeast and southeast. The nearest residential property line is approximately 626 feet to the west. Between Dos Diablos and the nearest residence there is an interior driveway running north and south through the shopping center, approximately 346 feet of desert landscaping, a block wall (which surrounds the Summit at Scottsdale), additional natural desert landscape which abuts the east side of North Scottsdale Road, Scottsdale Road, additional desert landscape followed by the residential district. Similarly, there is landscaping, retail spaces and block wall to the north, south, and east.

b. All patron entrances will be well lit and clearly visible to patrons from the parking lot or a public street.

All interior and exterior lighting previously approved by the City of Scottsdale shall remain unchanged from the previous tenants and no additional lighting shall be implemented. The overall parking lot lighting and building entrance lighting were approved with the overall Shopping Center Development. The shopping center as well as Dos Diablos complies with all of the lighting regulations implemented by the City of Scottsdale. Dos Diablos has adequate and safe lighting to illuminate entrances and exits for the safety of their patrons without negatively impacting surrounding residential properties.

2. The applicant has provided written evidence that all sound resulting from business activities will be contained within the building, except where external speakers are permitted.

The proposal is to allow live entertainment and dancing activity within the confines of the building. All doors and windows will be closed but not locked when live entertainment is present to maintain peace and tranquility with neighboring retailers and residents. In addition to the closed windows and doors, as previously stated, there are numerous buildings, parking lots, drive-ways, landscaping and block walls surrounding Dos Diablos affording additional buffering of any sound from the establishment. There will not be any external speakers on the premises.

3. The applicant has provided a written public safety plan which the city police and fire departments have approved as complying with the written guidelines of the Planning and Development Department.

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The applicant provides a complete public safety plan as part of the submittal. In addition to the required documentation requested by the City of Scottsdale, Dos Diablos has implemented an internal security plan to protect the safety and welfare of her customers and their staff should an unforeseen incident occur.

a. Security

All employees are required to read and commit to memory the Employee Policies and Procedures, and train for a minimum of five days with a Lead employee. During late hours should the primary purpose of Dos Diablos change to alcohol consumption versus food, employees will not allow any patron to enter who does not have a valid form of identification according to Arizona Revised Statutes 4-241(A) documenting they are at least twenty-one years old. Dos Diablos will not host after hour activities. The establishment ceases all sales of alcohol at 2am. During the hours of operation, Dos Diablos is responsible for the security of all parking areas utilized by its patrons. Patrons accessing Dos Diablos utilize the parking areas on the north side of the building. During peak hours (Friday and Saturday 6 pm – 2 am hours) the parking lot areas utilized by patrons of Dos Diablos, shall be patrolled by Dos Diablos employees at least once every hour for a period beginning at least one half hour before 10 pm and ending no less than one half hour after closure.

Dos Diablos will not knowingly permit any patron in possession of a deadly weapon or dangerous instrument pursuant to A.R.S. § 4-229 to enter or remain on the property.

b. Management

Members of Dos Diablos attend thorough liquor training before they are permitted to work the floor and are also required to participate in ongoing training thereafter. Most importantly, the management staff is charged with the responsibility of hiring and training employees and making sure that each staff member is knowledgeable and well-versed in all of Dos Diablos' policies and procedures including those that pertain specifically to security, liquor sales and public safety. Each employee must attend alcohol awareness training.

c. Dress Code

Dos Diablos does not have a dress code implemented at this time since its primary purpose is restaurant. If there is a need to implement a dress code in the future it will be addressed. Management shall reserve the right at all times to refuse entry to any potential patron for failure to conform to typical dress code regulations so as not to interfere with business and or the comfort of its clientele. Under no circumstances will patrons be allowed to enter wearing clothing that contains an insignia of gang or group affiliation.

d. Patron Conduct – Zero Tolerance Policy

Dos Diablos will maintain a zero tolerance policy toward drug use, as well as disorderly or disruptive conduct. No person will be allowed to enter who

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exhibits the appearance of drug use or obvious intoxication. Dos Diablos will immediately remove any patron from the property if he or she appears to be under the influence of drugs, is obviously intoxicated or is disorderly or disruptive. All efforts shall be made to provide safe transportation to patrons who are exhibiting signs of intoxication.

e. Acts Immediately Reportable to Scottsdale Police Department

Dos Diablos shall immediately notify by telephone or in person the Scottsdale Police Department of any disturbance, acts of violence, acts of intimidation or incidents involving patrons in or on the Property or parking lots using illegal drugs. "Acts of Violence" shall mean an incident consisting of a riot, a brawl or a disturbance, in which bodily injuries are sustained by any person and such injuries would be obvious to a reasonable person, or tumultuous conduct of sufficient intensity as to require intervention to restore normal order, or an incident in which a weapon is brandished, displayed or used. Dos Diablos and its employees and other staff shall be made available to and cooperate with Scottsdale Police Department for investigative and prosecution purposes. Dos Diablos shall also maintain an accurate log of all reportable acts. The log shall be available to the Community Development Director for inspection upon demand.

f. Procedures and Duties – Personnel procedures will be as follows:

- a) Designate, and monitor waiting entrance and exits
- b) Check proper identification of all youthful looking patrons if primary purpose becomes sale of spirituous liquor or when requesting alcohol during normal restaurant hours. No patron will be served alcoholic beverages who displays an identification that appears to be invalid or suspicious
- c) Enforce dress code dictated by Dos Diablos
- d) Guard all exit doors and secure the Property

g. Patron Control and Ejection

All patrons involved in violent behavior, disorderly or disruptive behavior, or fighting shall be ejected from the property.

The ejection shall be by a means and timing that prevents the behavior from reoccurring in any parking area utilized by facility patrons. Employees of Dos Diablos will act as the complaining party when required by law enforcement officers to talk to effectuate the arrest and prosecution of any patron or non-patron. Dos Diablos shall authorize such action and grant such authority to the employee.

h. Crime Prevention

The Property shall have a Crime Prevention through Environmental Design and fire department inspection. The inspections will be conducted by the Scottsdale Police and Fire Departments. Dos Diablos shall implement all reasonable recommendations.

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i. *Provide written documentation of Emergency Contact*

Dos Diablos shall provide written documentation disclosing the name, and address of each owner, principal, employee, agent and independent contractor connected directly or indirectly with any operation located at 32527 N. Scottsdale Rd. Any changes to this information shall be reported in writing to the City of Scottsdale Police Department within seven (7) days of the change.

4. *The applicant has provided a written lighting plan which addresses exterior lighting on and surrounding the property, in accordance with section 7.600 of the zoning ordinance and with the public safety plan guidelines.*

The applicant, owner, and property owner of Summit at Scottsdale are all in compliance with the lighting requirements set forth within the approved DRB case. The lights along the adjacent public streets (Scottsdale Rd., Ashler Hills Dr., and Dove Valley Rd.) are all in place and provide for a safe environment in and around the shopping center. The shopping center meets all lighting requirements of Section 7.600 of the City's zoning ordinance. The parking areas in and around Dos Diablos are well lit for the safety of their customers entering and leaving the establishment.

The employee entrance is located at the southwest corner of the building and is well lit for the safety of our staff.

5. *The applicant shall provide a written exterior refuse control plan which must be approved by the Planning and Development Department staff as complying with the written guidelines of the department, prior to the issuance of a business license. The review will be conducted as provided in Section 1.305.*

This submittal includes a written refuse plan. The live entertainment use shall not greatly increase the current restaurant's refuse amount. The refuse is currently handled in the closest dumpster to the restaurant which is located near the employee entrance at the southwest corner of the building. This access way provides employees a safe route to remove refuse without impacting the patrons of the restaurant, surrounding retail shops, and residential neighborhoods.

6. *The applicant has provided a floor plan which identifies the areas for the primary use and for ancillary functions, which include but are not limited to patron dancing areas and/or stages for performances.*

The floor plan demonstrates the stage area and proposed dancing area which are minor as compared to the primary purpose of the establishment as an upscale Mexican food restaurant. There is a stage is approximately 147 square feet and the dance area will encompass approximately 150 square feet within the restaurant.

7. *If access to the establishment is from a street other than one classified by the General Plan as minor collector or greater, or classified by the downtown General Plan as local street or greater, the applicant has provided a traffic analysis which complies with*

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transportation planning department written guidelines. The plan shall demonstrate to the satisfaction of the transportation department that the level of service on all streets accessed by the use shall meet the standard set by the city.

The main access to the Summit at Scottsdale is from Scottsdale Road. There are additional driveways off of Ashler Hills Drive. None of the entrances and/or exits requires driving through any residential property. The access to the center is safe and provides customers with direct access to Dos Diablos. The proposed live entertainment use is planned during late evenings three nights a week. There are no perceived access or traffic impacts created by the addition of live entertainment and dancing to an already existing and operational restaurant.

8. If the Zoning Administrator determines that a study is necessary the applicant shall provide a parking study which complies with the written guidelines of the Planning and Development Department.

9. The applicant has provided any additional information required by city staff in order to evaluate the impacts of the proposed use upon the area.

Located in the central most part of the Summit at Scottsdale, Dos Diablos is surrounded by retail properties, most of which operate exclusively during the daytime hours. Dos Diablos is open seven days a week and is only open until the legal hour (2:00 am) on three nights per week; Thursday, Friday and Saturday. On Saturday and Sunday the restaurant opens at 9:00 am closing by midnight. On Monday through Wednesday Dos Diablos opens at 11:00 am and closes at midnight or earlier. The nighttime flow of customers while occasionally higher in volume on Friday and Saturday (Peak hours 6pm – 2am), causes no interference with other business activity occurring in the area since the majority of retail businesses in the Summit Plaza are closed. During the day, the flow of customers within Summit Plaza is orderly and not negatively impacted by Dos Diablos which is open primarily for lunch and dinner as well as breakfast on Saturday and Sunday. The issuance of a live entertainment use permit and patron dancing permit will not disrupt the existing balance of daytime and nighttime uses.

Dos Diablos meets the required parking criteria. A breakdown of the parking requirements is attached as a supplemental document. According to the calculations, there is sufficient parking for Dos Diablos to secure a Use Permit for live entertainment and patron dancing.

Dos Diablos first and foremost operates as a restaurant, it is compatible with businesses within the Summit at Scottsdale. On the peak days and during peak hours, the majority of businesses are closed. To the east of Dos Diablos are additional commercial suites, a Safeway Grocery store and Target Store. The south side of Dos Diablos is buffered by additional commercial businesses and additional parking between those building and Ashler Hills Drive. To the north are additional commercial buildings and parking. There are interior roadways within the Summit and especially to the west of Dos Diablos as well as landscaping and other commercial properties. Beyond those

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commercial properties to the west is desert landscaping which borders the east side of Scottsdale Road. There is residential neighborhood on the west side of Scottsdale Rd., south of Ashler Hills Drive and northeast of the Safeway which on the northeast portion of the Summit at Scottsdale. There is no reason for patrons to access the Center through the neighborhoods since the retail center is accessed directly off of Scottsdale Road.

10. The following operational standards must be met by the use throughout its operation:

a. All external doors shall be closed but not locked during business hours.

Dos Diablos will comply with this provision.

b. No external speakers will be permitted on the premises of a use permitted under this section, which is located within five hundred (500) feet of a residential district.

No external speakers for the live entertainment will be utilized by Dos Diablos.

c. The applicant/operator shall comply with all plans approved as provided herein.

The applicant/operator fully intends to comply with all of the submittal documents for the live entertainment and patron dancing conditional use permit and any additional stipulations related to the proposal as the City of Scottsdale deems necessary.

Summary

As indicated in the submittal items, the proposal is to add live entertainment and patron dancing as a component to an existing restaurant. The business recently opened and has received many rave reviews from newspaper and television media as well as the public. The addition of live entertainment and patron dancing on three nights per week will merely enhance the business and will not negatively impact surrounding businesses or residents. Many of the retailers within the Summit at Scottsdale are closed when the live entertainment and patron dancing will occur. Therefore, the parking availability is increased during those timeframes. Additional vehicular traffic and parking can be handled by the existing design of the shopping center. This proposal meets all of the City's conditional use permit criteria. We respectfully and eagerly await the request for approval from the City.