



City of Apache Junction
Development Services Department



**PLANNING AND ZONING COMMISSION
PUBLIC HEARING STAFF REPORT**

DATE: September 16, 2020

CASE NUMBER: CUP-3-20

REQUEST: Approval of a Conditional Use Permit ("CUP") to be allowed to operate an outdoor concert venue with lawn seating and drive-up parking, on a temporary basis, during the COVID 19 pandemic.

LOCATION: 2275 E. Old West Highway, just west of Cortez Road, on the south side of Old West Highway.

PROPERTY OWNER: Barleen Family LLC

REPRESENTATIVE: Jeff Barleen

**GENERAL PLAN/
ZONING DESIGNATION:** Commercial; currently zoned B-1 (General Commercial District).

**SURROUNDING
LAND USES/ZONING:**

NORTH: Old West Highway and vacant commercial zoned properties;

SOUTH: Sundance West RV Park, zoned RVP;

EAST: Old West Machine & Welding, zoned B-1;

WEST: RV and boat storage lot, B-1.

BACKGROUND

Barleen's is a music and dinner theater venue which has been an attraction in Apache Junction and the east Phoenix valley for residents and visitors alike, for many years. Assessor's information shows that the building was constructed around 1987 and it has always housed the Barleen's venue.

Like so many businesses, especially restaurants, bars and entertainment/concert venues, Barleen's has been affected by the COVID 19 pandemic. Many businesses have suffered temporary closures and have found themselves trying to adjust to a changing and confusing situation. Sadly, many businesses have had to let go of their employees and/or close their doors permanently. Currently, restaurants are under orders by the governor's office to operate at reduced capacities to mitigate and stop the spread of COVID.

It is under this backdrop that Barleen's has come up with an innovative solution to try and salvage their winter visitor season and continue to safely serve as many of their guests and fans as possible, during the pandemic.

PROPOSAL DESCRIPTION

This is a request by the Barleen Family LLC, represented by Jeff Barleen, for approval of a Conditional Use Permit ("CUP") to be allowed to utilize an existing +/-11,000 square foot yard area, directly west of and adjacent to the west side of their building, for an outdoor concert area. A south facing mobile stage unit will be used for the shows and people will be allowed to sit on lawn chairs in the yard area. The parking lot to the south of the yard will also be used for drive-in patrons who can watch the shows from their cars (see narrative and photos provided).

Barleen's patrons will be served meals in to-go containers prior to the concerts. They are also looking into the possibility of incorporating a limited range FM signal, which could allow people to listen to the concerts on their car radios and to keep the overall sound level as low as possible. The building will be open for people needing to use the restrooms and for people who may want an adult beverage at the bar. Liquor cannot be served or taken outside, unless an extension of premises is

applied for and approved first, through the Arizona state liquor board.

The temporary CUP is mainly for the purpose of helping the business survive this season, October through May. However, because the future is still uncertain, a two year time limit is being requested. In the B-1 General Commercial zoning district, the city's zoning ordinance requires approval of a CUP for "restaurants/bars/clubs (with amplified outdoor music)".

ANALYSIS

The Barleen's property is bordered by an RV, boat and mini-storage business on its west side. Chain link fences, a wash and natural landscaping provide a buffer between the two properties. The Sundance West RV Park lies to the south. It is separated from the subject site with a 5 or 6-foot high slatted chain link fence. Old West Machine and Welding shop to the east does not have a fence separating the properties. Lastly, to the north is the 300-foot-wide, Old West Highway right-of-way and vacant commercial and residential zoned properties to the north of the highway (see attached neighborhood aerial image).

As part of their public outreach, Barleen's spoke to their surrounding neighbors. Property managers and owners to the west and east did not have any negative concerns and should not be negatively affected by the outdoor concerts. Planning staff has not heard any comments from property owners across the highway to the north, but those properties are at least 300 feet away. The managers of the RV park to the south, who also depend on the winter visitor season, did express some concerns about noise. After speaking to the managers and in an effort to mitigate noise impacts, Barleen's agreed to end their shows by 9pm.

More recently, on September 16, planning staff received an e-mail (see attached) from Jon Gillespie, who represents the owner of the RV park to the south, Mr. McGavin. Additional concerns and suggestions were expressed in the e-mail, including:

1. Winter concerts (Dec 1 to Feb 28) ending at 8pm (spring, summer and fall concerts ending at 9pm).
2. Install temporary berm or fence along property line to alleviate glare of headlights and taillights.
3. Locate cars away from the parking stalls which border the shared property line.

4. Place an expiration on the CUP so that it expires say August 31, 2021?
5. Provide a mechanism for voicing noise or traffic complaints.
6. Provide clear direction on what nights the concerts can be held (Preferably Fridays and Saturdays).

Staff will address some of the neighbors' concerns in our further analysis of the CUP request below. Zoning Ordinance Section 1-16-12-D-3 lists the following land use-related criteria for the Commission to consider when evaluating CUP requests (staff comments in *italics*):

- a) Adequacy of roadways, off-street parking, public facilities and services to accommodate the proposed use. [*Old West Highway is a developed major capacity roadway which has always served the property very well. The property itself is fully developed and has more than adequate facilities for its patrons, as well as plenty of paved parking.*]
- b) Negative impacts arising from the emission of odor, dust, gas, noise, lighting, vibration, smoke, heat or glare. [*Negative impacts related to noise or loud music should be mitigated by the 9pm cut-off time and by the limited season. The parking lot is already located to the south of the building and to the north of the RV park. Headlight and tail light glare should not be any worse than normal. That impact is already there. The existing slatted chain link fence further shields the RV park from car lights. An additional berm should not be necessary. Concert lighting shall be focused on the stage. Additional ambient parking lot lighting may be provided by light strings.*]
- c) Contribution to the deterioration of the neighborhood or the negative impact on neighborhood property values. [*Staff anticipates no negative neighborhood impacts from the temporary outdoor concert venue.*]
- d) Compatibility with surrounding uses and structures. [*With sensitivity to the neighborhood, the temporary concert venue can be a good neighbor. The CUP can be brought back to the Commission for further review if problems arise.*]
- e) Conformance with the General Plan and City policies. [*The property conforms with the general plan. The City Council's policy is to support our businesses during COVID.*]

- f) Screening and buffering of uses. *[Staff does not believe that additional screening and buffering is necessary for the temporary use. But once again, if the use becomes problematic, the CUP can be brought back to the Commission for further review and possible additional buffering requirements.]*
- g) Unique nature of the property, use and/or development's physical characteristics. *[There are no physical property constraints. The CUP is needed to help this business through an extraordinary, unprecedented situation, the management of which seems to be evolving continuously.]*

PUBLIC OUTREACH

The P&Z Commission public hearing was advertised in the newspaper 15 days prior to the meeting and letters were mailed to all property owners within 300 feet of the site. The property was also posted with a sign notifying any interested parties of the CUP request and the public hearing date. The applicants conducted their own public outreach with their neighbors. Other than Mr. Gillespie, representing Mr. McGavin, staff has received no other public comments or inquiries.

PLANNING DIVISION RECOMMENDATION

Planning Staff recommends in favor of the Barleen Family LLC, CUP request for a temporary outdoor concert venue, subject to the conditions listed under the recommended motion. If the Commission wishes to further address Mr. McGavin's concerns, they may do so with their decision, including with additional conditions.

RECOMMENDED MOTION

I move that the Planning and Commission (APPROVE/DENY) case CUP-3-20, a Conditional Use Permit application by Barleen Family LLC, represented by Jeff Barleen, to be allowed to utilize an existing +/-11,000 square foot yard area, directly west of and adjacent to the west side of the Barleen's building, for a temporary outdoor concert venue with a mobile stage unit, outdoor lawn seating and drive-in parking for patrons, to be located on a B-1 (General Commercial)-zoned property located at 2275 E. Old West Highway, in accordance with the following findings:

- a) The site (has/does not have) adequate roadways, off-street parking, public facilities and services to accommodate the proposed use.
- b) Negative impacts (are/are not) expected from from the emission of odor, dust, gas, noise, lighting, vibration, smoke, heat or glare. *[Negative impacts related to noise or loud music should be mitigated by the 9pm cut-off time and by the limited season. Headlight and tail light glare should not be any worse than normal. The existing slatted chain link fence further shields the RV park from car lights.]*
- c) The use (will/will not) contribute to the deterioration of the neighborhood or have a negative impact on neighborhood property values.
- d) The use (is/is not) compatible with surrounding uses and structures. *[With sensitivity to the neighborhood, the temporary concert venue can be a good neighbor. The CUP can be brought back to the Commission for further review if problems arise.]*
- e) The use (conforms/does not conform) with the General Plan and City policies.
- f) The site (provides/does not provide) for adequate screening and buffering of uses. *[If the use becomes problematic, the CUP can be brought back to the Commission for further review and possible additional buffering requirements.]*
- g) There (is/is not) a unique nature to the property, use and/or development's physical characteristics. *[The CUP is needed to help this business through an extraordinary situation, being the COVID 19 pandemic.]*

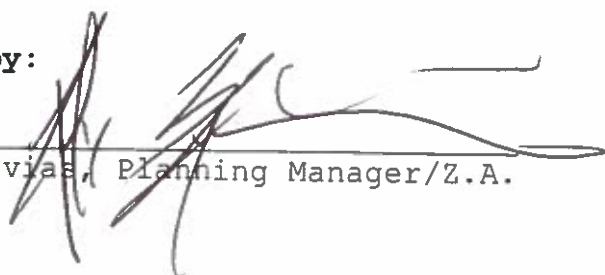
And subject to the following conditions of approval:

- 1) CUP-3-20 for Barleen's temporary outdoor concert venue is valid for a maximum of two years/two seasons (October-May), from the date of approval and shall expire on May 31, 2022.
- 2) The outdoor concert venue and associated activities shall be operated as depicted in the drawings submitted with case CUP-3-20, as described in the applicant's narrative and as otherwise conditioned herein.

- 3) For the purpose of protecting their guests and patrons, and for the purpose of helping to prevent the spread of COVID 19, Barleen's owners and staff shall actively encourage social distancing and mask wearing practices, especially in the open seating lawn area and inside the building.
- 4) The applicants shall secure any necessary inspections and approvals from the Pinal County health department to serve food outside, to their patrons.
- 5) No liquor shall be served or consumed outside the Barleen's building unless the necessary approvals are secured from the Arizona state liquor board, through an extension of premises application.
- 6) Barleen's shall provide the proper personnel to direct traffic and/or drive-in parking for the outdoor music shows; and to monitor for possible liquor violations.
- 7) Any lighting needed for the outdoor music venue shall be directed at the stage. Additional ambient lawn or parking lot lighting may be provided in the form of light strings, or by other non-intrusive, dark sky compliant, lighting sources. All lighting shall be shut off nightly.
- 8) All outdoor concerts shall end no later than 9pm, Arizona time, to mitigate neighborhood noise impacts or concerns.
- 9) Should the COVID 19 restrictions be lifted prior to the end of the two year time period for CUP-3-20, outside shows/ concerts shall be discontinued and shall resume inside the building, as in the past.
- 10) The Planning and Zoning Commission shall reserve the right to review for further conditions, reconsider or overturn the Conditional Use Permit approval at a new public hearing, for non-compliance with any condition prescribed as part of said CUP-3-20 permit approval or if the use is demonstrated to be a neighborhood nuisance.
- 11) This CUP is conditionally approved pursuant to the Apache Junction City Code, Volume II, Land Development Code, Chapter 1, Zoning Ordinance, Article 1-16, Administration, Section 1-16-12, Conditional Use Permits.

The Commission's decision is final, unless an aggrieved individual or party appeals said decision (in writing, with reasons and accompanied by all applicable appeal fees) to the City Council within 20 calendar days of the Commission action, and in accordance with the applicable procedures set forth in the Apache Junction Zoning Ordinance, Section 1-16-12.

Prepared by:



Rudy Esquivias, Planning Manager/Z.A.

Attachments:

- Application for CUP-3-20
- Applicant's Narrative, Outreach Summary and Exhibits
- E-mail dated 9-16-20 from Gillespie, representing McGavin
- CUP-3-20 Neighborhood Aerial Map



City of Apache Junction
Development Services Department
Conditional Use Permit Application



Exhibit A: Planning and Zoning Application Form

Type of application:

- ☐ Residential use/extension/amendment
☒ Non-residential use/extension/amendment
☐ Comprehensive Sign Package
☐ Landscape Ordinance Appeal

SITE INFORMATION

SITE ADDRESS/LOCATION 2275 E. OLD WEST HWY
APACHE JUNCTION, AZ ASSESSORS PARCEL NO 103-20-012B

GROSS AREA: 2.34 ACRES NET AREA _____ EXISTING ZONING COMMERCIAL

LEGAL DESCRIPTION OF PROPERTY: (found on County Tax Bill Notices or Warranty Deed) _____

A PRT OF W 1/2 SE NE SW; BEG AT SE COR OF SAID W 1/2, TH W-330.74'
TH N-204' TH N-28 DEG E-272.19' TH S-54 DEG E-247.23' TH S-299.78'
TO TP08 INCLUDING W-33' + S-33' + E-33' OF ABND ADJ R/W SEC 27-1N-3E 2.34 AC

BRIEF DESCRIPTION OF THE PROPOSED PROJECT/USE FOR CONDITIONAL USE PERMIT REQUEST:

UTILIZING EXISTING YARD ADJACENT TO THEATRE BUILDING
FOR AN OUTDOOR CONCERT AREA (THIS AREA IS APPROX.
11,000 SQUARE FEET) ALSO MAKING USE OF PARKING LOT FOR
DRIVE-IN CONCERTS.

APPLICANT INFORMATION

Property Owner(s) BARLEEN FAMILY, LLC

Address 2275 E. OLD WEST HIGHWAY, APACHE JUNCTION, AZ 85119

Phone Number 602-568-6562 Fax Number _____ Email BRENDA@BARLEENSDINNERSHOW.CO

Applicant Contact Person/Project Manager JEFF BARLEEN

Address 6811 S HOLLAM WAY GOLD CANYON, AZ 85118

Phone Number 575-937-2282 Fax Number _____ Email JEFFBARLEEN@GMAIL.COM

For Dept Use only	Case Number <u>CUP-3-20</u>
PLN Number <u>PN2020-00081</u>	Date Submitted: _____
Approved By: _____	Date Approved: _____

Exhibit B: Ownership Certification

I/We certify that:

I/We are the owner(s) of the property described in this application for a Conditional Use Permit and have submitted copies of deeds or title reports as proof of ownership.

I/We have read the application instructions and have truthfully completed this application. I/We understand that this Permit is conditional upon time requirements, that the filing and investigation fee is non-refundable, and that the City has the option of either approval or denial of this request following conduct of a Public Hearing.

I/We, being the owner(s) of the property in this application, have appointed JEFF BARLEEN as my/our representative agent. I/We have authorized him/her to do whatever is necessary to have this request considered favorably by the City of Apache Junction and agree that all correspondence relation to this matter should be delivered to him/her.

PLEASE PRINT

1) Brenda J. Doehring
Property Owner Name

Brenda J. Doehring
Signature

Street Address

6277 J. Alhambra Way

City, State, Zip

2) Gold Canyon AZ 85118

Property Owner Name

Barbara J Staerkel

602-568-6562

Telephone

Brenda J. Doehring

Signature

Barbara J. Staerkel

Street Address

2275 E. Old West Highway

City, State, Zip

3) JEFF BARLEEN

Agent Name

6811 S. HODOKAM WAY

480-231-0796

Telephone

Jeff Barleen

Signature

Street Address

Gold Canyon, AZ 85118

City, State, Zip

Colorado

STATE OF ARIZONA)

) SS

COUNTY OF PINAL) Larimer

575-937-2282

Telephone

The foregoing instrument was acknowledged before me this 16 day of June, 2020

Bridget Moreau

Notary Public

My Commission Expires: 12/9/2023

BRIDGET MOREAU

Notary Public

State of Colorado

Notary ID: 20194045769

My Commission Expires 12/9/2023

BARLEENS

DINNER ★ SHOW

Always Your Home for Great Entertainment

July 28, 2020

RE: Conditional Use Permit for outdoor/drive-in concerts, Parcel #103-20-012B

To Whom It May Concern:

In response to Covid-19 and likely restrictions of crowd sizing in indoor settings, Barleens Dinner Show feels it is crucial to have an alternate plan in place to take the dinner theatre operation outdoors if necessary. This would be accomplished via an outdoor/drive-in concert configuration. Fortunately, the theatre grounds can accommodate this plan given the existence of a large rear parking lot and adjacent yard area for a mobile stage.

Patrons would be served a meal in to-go containers directly to their vehicle followed by a live concert. We anticipate being able to accommodate approximately 80 vehicles of the 144 available parking spaces.

We are also exploring the possibility of incorporating a limited range FM signal which would enable patrons to tune in on their car radios and help keep the overall sound level as low as possible.

Thank you for your consideration. Any questions can be directed to Jeff Barleen at 575-937-2282 or email jeffbarleen@gmail.com.



Jeff Barleen

2275 E. Old West Highway, Apache Junction, AZ 85119
480-982-7991 barleensdinnershow.com

BARLEENS DINNER SHOW

ADDITION OF MOBILE STAGE FOR OUTDOOR AND DRIVE-IN CONCERTS

JEFF BARLEEN MEETINGS WITH NEIGHBORING BUSINESSES JULY 10, 2020

OLD WEST MACHINE AND WELDING: Met with the owner, Brad Williamson, at his business location. I provided him with a copy of the proposed outdoor stage area. He did not anticipate any conflicts with his business operations.

APACHE JUNCTION BOAT, RV AND SELF STORAGE: Met with the on-site employee, Greg Wyke. Discussed our plans with him and he did not foresee any conflicts with their business. I left a copy of the plan with Greg and he said he would show it to the manager, Sharon Stokey. This business is owned by Portfolio LP of Sacramento, CA

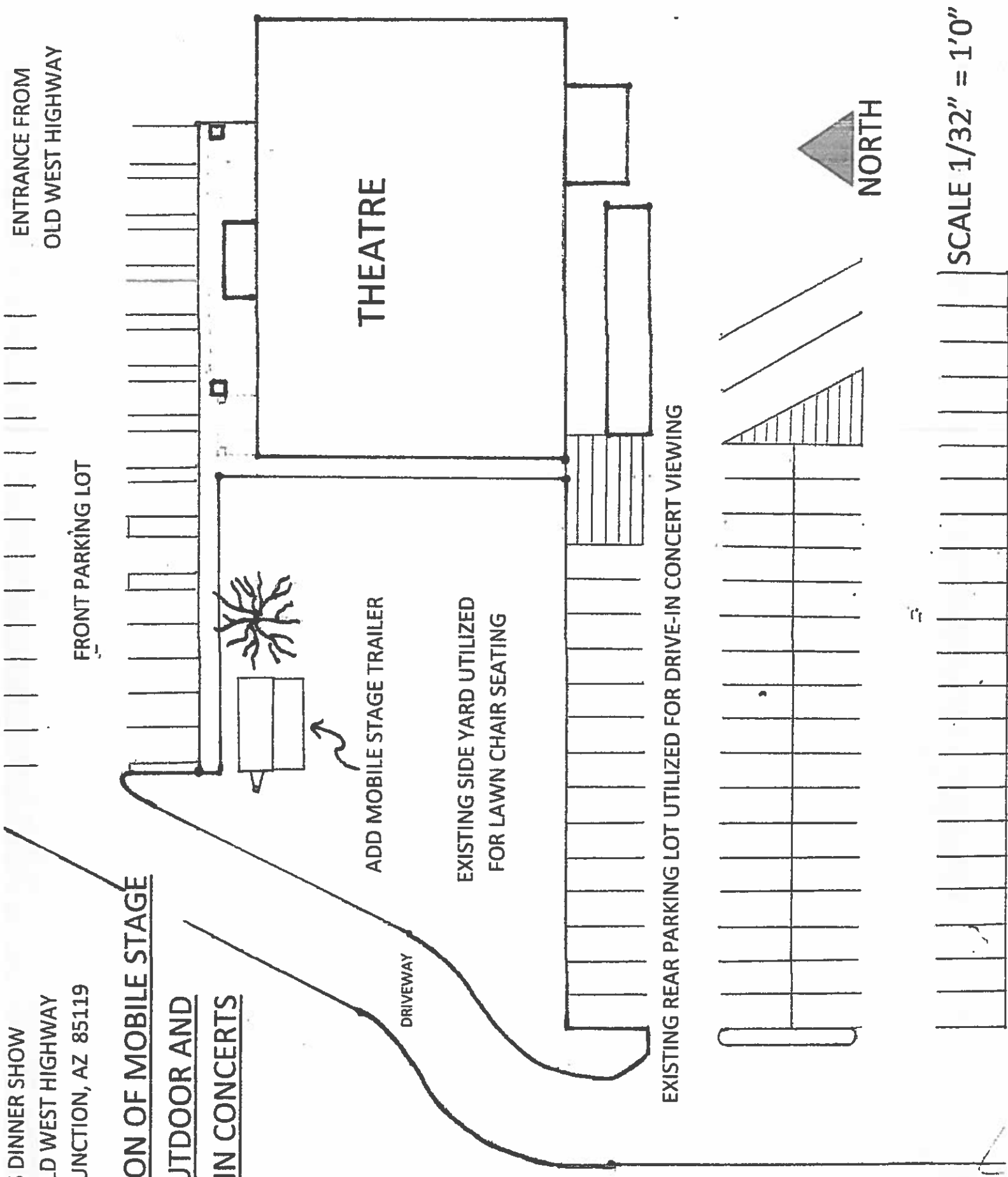
SUNDANCE WEST RV RESORT: Met with the managers, Randy and Donna York, at their office. Discussed overall concept of the drive-in concerts including the location of the mobile stage and the area of parking lot we would be using for the drive-in concerts. Their main concern was that the concerts would not go past 9 P.M. as that is their designated quiet time for the resort. They also asked for a copy of the concert schedule so they could provide that information to the resort residents. I told him we would provide that as soon as the schedule is completed.

There will be new managers at Sundance West in August as the Yorks will be managing a new resort in Apache Junction for this same owner. They asked that we keep the new managers apprised of any changes to our plans that might affect them. I left a copy of the plan with the Yorks..

After consulting with the majority owner of Barleens Dinner Show, Brenda Doebling, she agreed to accommodate Sundance West's request and end the concerts by 9:00 P.M. instead of the usual 9:45 P.M. I emailed Randy and Donna York at sundancewestrv@gmail.com and let them know we were in agreement on the end time of 9 P.M.

BARLEENS DINNER SHOW
2275 E. OLD WEST HIGHWAY
APACHE JUNCTION, AZ 85119

ADDITION OF MOBILE STAGE
FOR OUTDOOR AND
DRIVE-IN CONCERTS



ENTRANCE FROM
OLD WEST HIGHWAY

FRONT PARKING LOT

THEATRE

ADD MOBILE STAGE TRAILER

EXISTING SIDE YARD UTILIZED
FOR LAWN CHAIR SEATING

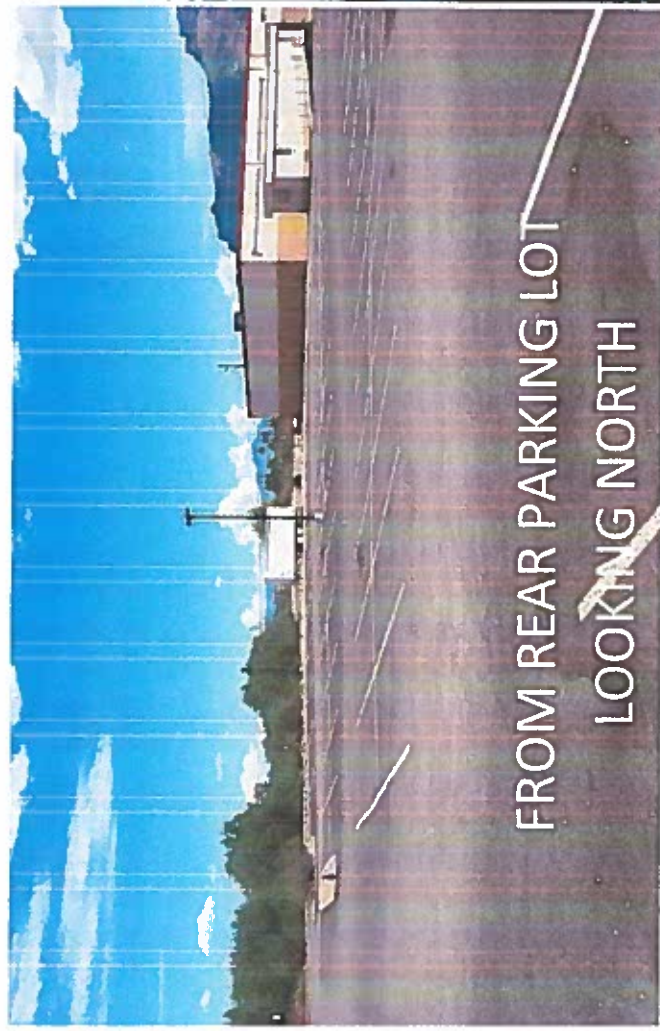
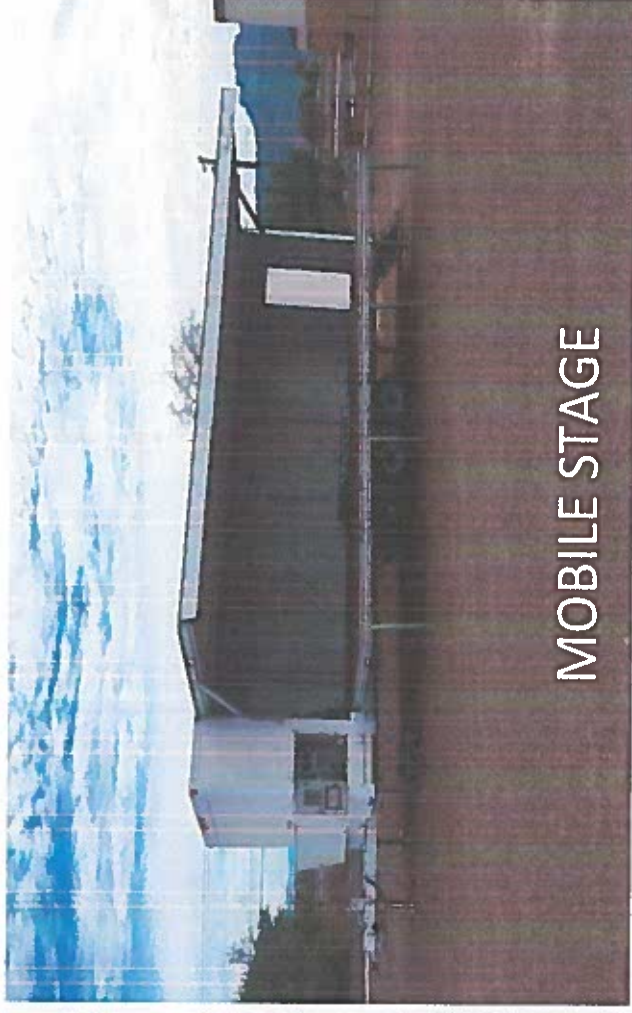
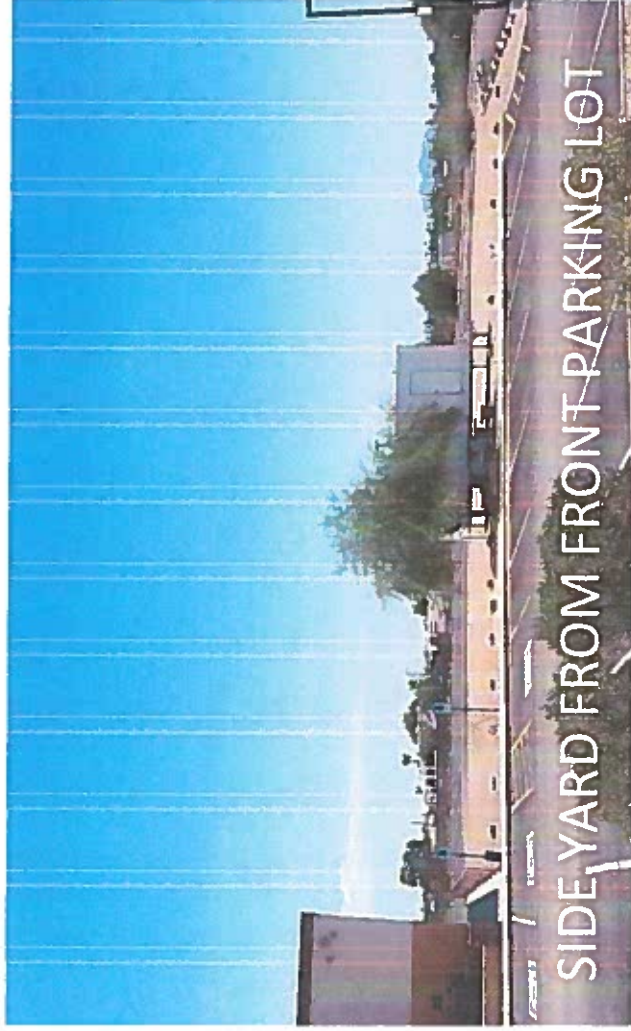
DRIVEWAY

EXISTING REAR PARKING LOT UTILIZED FOR DRIVE-IN CONCERT VIEWING



SCALE 1/32" = 1'0"

SITE PICTURES FOR BARLEENS DRIVE-IN CONCERTS





Rudy Esquivias

From: Jon Gillespie <jon.gillespie@pewandlake.com>
Sent: Wednesday, September 16, 2020 1:36 PM
To: Rudy Esquivias
Cc: Kelsey Schattnik
Subject: RE: [External] CUP-3-20 Outdoor Concert Venue Inquiry

Hi Rudy,

Thank you for getting back to me. I have talked with George McGavin who owns the RV Park directly south of the Barleen CUP. I would like to list his primary concerns and see if there is some common ground which can be reached. We appreciate the Barleens reaching out to the site managers but hope to also communicate these requests to the Barleens. I would be happy to contact them directly as well if that would be preferable. Do you have contact information for them or would you mind passing mine on to them?

Once I see the CUP Conditions I will have a better grasp on the protections already in place for residents at the RV Park and some of these may already be addressed.

1. Winter concerts (Dec 1 to Feb 28) ending at 8pm (spring, summer and fall concerts ending at 9pm).
2. Install temporary berm or fence along property line to alleviate glare of headlights and taillights.
3. Locate cars away from the parking stalls which border the shared property line.
4. Place an expiration on the CUP so that it expires say August 31, 2021?
5. Provide a mechanism for voicing noise or traffic complaints.
6. Provide clear direction on what nights the concerts can be held (Preferably Fridays and Saturdays).

Overall George wants to provide his support for the CUP but he also wants to protect the interests of tenants in the RV Park, many who are considered "Early risers". He understands the need to be helpful to business owners in the COVID era and wants to be a good neighbor. We look forward to discussing these requests with the Barleens and supporting their outdoor concert effort.

Jon

From: Rudy Esquivias
Sent: Tuesday, September 15, 2020 5:50 PM
To: Jon Gillespie
Cc: Kelsey Schattnik
Subject: RE: CUP-3-20 Outdoor Concert Venue Inquiry

Jon:

I hope to have my staff report done tomorrow, Thursday morning at the latest. In the meantime, here is some of the application information submitted by the Barleens. They did speak with the RV park managers, the Yorks, and agreed to shut off the music by 9pm at the Yorks' request.

Rudy

From: Jon Gillespie [<mailto:jon.gillespie@pewandlake.com>]
Sent: Tuesday, September 15, 2020 12:59 PM

To: Rudy Esquivias
Cc: Kelsey Schattnik
Subject: [External] CUP-3-20 Outdoor Concert Venue Inquiry

Hi Rudy,

Sad I was under the weather and missed the Tadevossian P&Z...but I was watching from afar and thank you for your work. George McGavin asked me to request more information on CUP-3-20. Do you mind sending me over the narrative/site plan/materials? If you don't mind giving me a call maybe that will help him get the answers he is looking for too. His RV Park is south of the site so he wants to make sure the use is compatible with his existing operations.

Thanks much.

Jon Gillespie
Attorney/Land Use Planner
Pew & Lake, P.L.C.
1744 South Val Vista Drive
Suite 217
Mesa, Arizona 85204
480/461-4670 (telephone)
480/461-4676 (facsimile)
jon.gillespie@pewandlake.com

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GIS Map

DISCLAIMER: This map was produced without benefit of a field survey and is not the intended use. The use of this map is for informational purposes only and the City of Apache Junction makes no warranty expressed or implied, regarding the reliability of the information provided.



LEGEND

NEIGHBORHOOD AERIAL

Municipal Boundary Parcels

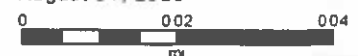
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|---|---|
|  Apache Junction |  CITY OF APACHE JUNCTION |
|  Pinal County |  PINAL COUNTY |

Addresses

City of Apache Junction



August 31, 2020



CUP-3-20