



PLANNING COMMISSION MEMO

TO: Fayetteville Planning Commission

THRU: Andrew Garner, City Planning Director

FROM: Jonathan Curth, Senior Planner

MEETING: May 29, 2018

SUBJECT: **ADM 18-6225: Administrative Item (3615 N. STEELE BLVD./JBGB CUP VIOLATIONS, 173-212):** Submitted by CITY STAFF for properties located at 3615 N. STEELE BLVD. The properties are zoned C-1, NEIGHBORHOOD COMMERCIAL, and contain approximately 5.30 acres. The public hearing is for review of the approved conditional use permit (CUP 15-5250) and its amendments due to documented violations.

RECOMMENDATION:

Following substantiated violations of CUP 15-5250 and pursuant to Unified Development Code §163.14, staff has determined that the subject conditional use permit is to be referred to the City of Fayetteville Planning Commission for review. Staff does not formulate a formal recommendation to the Planning Commission. Per §163.14 however, staff does recommend that the Commission consider comment from all interested parties before making a motion to amend, revoke, or reaffirm the applicant's conditional use permit in part or whole.

BACKGROUND:

The subject property is located at the southwest corner of Steele Boulevard and Van Asche Drive and is a part of Lot 6 of the CMN Subdivision. Zoning on the property is currently C-1, Neighborhood Commercial, but is restricted by a bill of assurance that permits offices, eating places, and medium-scale retail. A current business on the property, JJ's Beer Garden and Brewery (JBGB), holds a conditional use permit for outdoor music from 6:00 PM to 9:00 PM on Thursdays. Overflow parking associated with these events is allowed on the undeveloped, grassy property to the south. Development and conditional use permit-related activities on the property are summarized as follows:

- **November 1995:** The property is rezoned by Council, subject to a bill of assurance
- **October 2015:** The bill of assurance was amended by the City Council in 2015 to allow eating places as a permitted use and outdoor music as a conditional use.
- **December 2015:** Large scale development and conditional use permit approved. The large scale development included a mixed-use structure with offices, a restaurant, and a brewery. The conditional use permit was approved and allows for once per week outdoor music performances only on Thursdays, between the hours of 6:00 PM and 9:00 PM (CUP 15-5250).

- **May 2017:** An amendment to the existing conditional use permit was approved to allow temporary, un-surfaced parking on the property to the south in association with the Thursday outdoor music events (ADM 17-5783).
 - *Documented Violations:*
 - Parking observed multiple times on the property south of JBGB that was not associated with the approved once-per-week outdoor music events.
 - An outdoor music event held on Friday, May 19, 2017, that was not permitted under the approved conditional use permit.
- **September 2017:** A second amendment was approved to the conditional use permit to allow for an additional outdoor music event for the First Tee of Northwest Arkansas children’s charity.
- **October 2017:** Large scale development approved for a parking lot expansion of approximately 130 spaces to the south of the existing mixed-use building.
- **April 2018:** A third amendment was approved to the conditional use permit to allow for an additional outdoor music event for Odom Law Firm from 5:00 PM to 9:00 PM on Friday, May 18, 2018.
- **May 2018:**
 - *Documented Violations:*
 - Parking observed multiple times on the property south of JBGB that was not associated with the approved once-per-week outdoor music events.
 - Outdoor music was played on a Thursday afternoon, outside the permitted 6:00 PM to 9:00 PM hours, for a sound check.
 - Large scale development submitted for proposed enclosure of the outdoor patio, stage, and activity space. Review and approval pending.

Surrounding land use and zoning is depicted in Table 1.

**Table 1:
Surrounding Land Use and Zoning**

Direction	Land Use	Zoning
North	Bank	C-1, Neighborhood Commercial
South	Undeveloped	C-1, Neighborhood Commercial
West	Medical Offices	C-1, Neighborhood Commercial
East	Office	C-2, Thoroughfare Commercial

Request: The City of Fayetteville has received numerous complaints regarding the property located at 3615 N. Steele Boulevard. These complaints include that JBGB is operating in violation of its approved conditional use permit by performing outdoor music beyond the permitted 6:00-9:00 PM hours on Thursdays, that there have been excessive noise levels associated with the music, and that the undeveloped lot to the south is being used for parking outside of the Thursday night concert series. Multiple complaints have been substantiated and represent violations of the property’s conditional use permit. Based on City records as described above, staff has substantiated multiple complaints about the property. Staff and the Planning Commission have also had multiple conversations with the property owner about these issues.

Within the past three weeks, the City received numerous complaints again of the same violation issues that have been previously documented with warnings issued in writing and in-person to the property owner and/or their representatives. Due to the repeat nature of the violations and apparent disregard by the owner of the warnings, pursuant to Unified Development Code §163.14, staff has determined that the conditional use permit is to be referred to the City of Fayetteville Planning Commission for review. The Planning Commission may:

- Amend or add conditions to the conditional use permit;
- Revoke the conditional use permit; or
- Reaffirm that the holder of the permit has complied.

Public Comment: Staff received significant amounts of public comment regarding this business. While one neighboring property owner is very supportive of JBGB continuing to operate as it has, several others, including both residents and business owners, have filed complaints, noted violations of the conditional use permit, and shared how the timing and noise level of outdoor music at JBGB interferes with their lives and businesses.

PLANNING COMMISSION ACTION:			
Date: <u>May 29, 2018</u>	<input type="checkbox"/> Approved	<input type="checkbox"/> Tabled	<input type="checkbox"/> Denied
Motion:			
Second:			
Vote:			

BUDGET/STAFF IMPACT:

None

Attachments:

- Unified Development Ordinance:
 - §96.04, Noise Control, Limitations by Land Use Category
 - §151.01, Definitions, Outdoor Music Establishment
 - §161.21, District C-1, Neighborhood Commercial
 - §163.10, Outdoor Music Establishments
 - §163.14, Revocation or Change of Conditional Use
- Recent Public Comment
- Approved Conditional Use Permit (CUP 15-5250)
- Approved Amendment Requests & Conditions to CUP 15-5250
 - ADM 17-5783
 - ADM 17-5907
 - ADM 18-6225
- Violation Notices
 - May 23, 2017
 - May 14, 2018
- One Mile Map
- Close-up Map
- Current Land Use Map

96.04 - Limitations By Land Use Category

- (A) No person shall operate or cause to be operated, or permit, contract or allow to be operated on premises on public or private property any identifiable source of sound in such a manner as to create a sound level within the use districts in Table 1 below which exceeds the maximum noise levels as set forth in Table 1 as measured at any point on the boundary of the property from which the sound or noise was emanating. Except between the hours of 10:00 p.m. and 1:00 a.m., a complaint under this section must be brought by a property owner or leaseholder affected by excessive noise on their property.

TABLE 1

Use Districts	Time	Maximum Noise Levels
All residential zones	7:00 a.m. to 11:00 p.m.	60 dB(A)
All residential zones	>11:00 p.m. to 7:00 a.m.	55 dB(A)
All commercial zones	7:00 a.m. to 11:00 p.m.	75 dB(A)
All commercial zones	11:00 p.m. to 7:00 a.m.	70 dB(A)
All industrial zones	7:00 a.m. to 11:00 p.m.	80 dB(A)
All industrial zones	11:00 p.m. to 7:00 a.m.	75 dB(A)

All measurements shall be taken with a sound level meter in its fast or peak level setting.

- (B) *District Boundaries.* When a noise source can be identified and its noise measured in more than one use district, the noise level limits of the most restrictive use district shall apply at that district boundary.
- (C) *Commercial Source.* Notwithstanding the zoning classification of the underlying parcel, restaurants, night clubs, private clubs, auditoriums, dance halls, and rehearsal studios are defined as commercial sound sources existing in commercial zones for the purposes of this chapter.
- (D) *Transient Source.* For a transient sound emanating in any land use category, the peak noise level shall not exceed 20 decibels above the limit set in Table 1 above.
- (E) *Construction.* Construction projects shall be subject to the limitations specified for industrial zones for the period of time allowed by the building permit.

151.01 - Definitions

For the purpose of Title XV, Unified Development Code, the following definitions shall apply to the divider sections, chapters, sections or subsections, unless the context clearly indicates or requires a different meaning.

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Outdoor music establishment (zoning). Any business or establishment that has a garden, patio, rooftop or premises not wholly enclosed by solid walls and fully roofed in which amplified or loud music is played that could be audible at nearby residences or businesses.

161.21 - District C-1, Neighborhood Commercial

(A) *Purpose.* The Neighborhood Commercial District is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas.

(B) *Uses.*

(1) *Permitted Uses.*

Unit 1	City-wide uses by right
Unit 5	Government Facilities
Unit 13	Eating places
Unit 15	Neighborhood shopping
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 25	Offices, studios, and related services
Unit 44	Cluster Housing Development
Unit 45	Small scale production

(2) *Conditional Uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 16	Shopping goods
Unit 34	Liquor stores
Unit 35	Outdoor music establishments*
Unit 36	Wireless communications facilities*
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(C) *Density.* None.

(D) *Bulk and Area Regulations.* None.

(E) *Setback Regulations.*

Front	15 feet
Front, if parking is allowed between the right-of-way and the building	50 feet
Side	None
Side, when contiguous to a residential district	10 feet

Rear	20 feet
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(F) *Building Height Regulations.*

Building Height Maximum	5 stories
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If a building exceeds the height of two (2) stories, the portion of the building that exceeds two (2) stories shall have an additional setback from any boundary line of an adjacent residential district. The amount of additional setback for the portion of the building over two (2) stories shall be equal to the difference between the total height of that portion of the building, and two (2) stories.

(G) *Building Area.* On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.

163.10 - Outdoor Music Establishments

Outdoor music establishments operating during May or June of 2002 may continue to operate at the same location without this conditional use even if the ownership or name of the outdoor music establishment changes in the future as long as the establishment does not terminate its outdoor music for twelve (12) consecutive months or longer. All other outdoor music establishments may be allowed as conditional uses where they are permitted subject to the following additional conditions:

- (A) *Site Plan*. A site plan showing the proposed location and size of the outdoor music area; location and direction of the speakers; noise absorbing walls, structures or devices; proposed days and hours of operation of the outdoor music area; and measures proposed to lessen or eliminate any adverse effects upon nearby residences and businesses.
- (B) *Planning Commission Review*. In addition to all normal considerations for a conditional use, the Planning Commission may require noise reducing measures and structures be incorporated into an outdoor music area, may limit the size, power, number and direction of speakers, and may limit the hours of outdoor music generation from the establishment.
- (C) *Fayetteville Noise Ordinance Violation*. If the establishment or any band or any person operating at such establishment is convicted of violating the Fayetteville noise ordinance (§96.06 of the *Code of Fayetteville*), such violation may constitute grounds for revocation of this conditional use to operate an outdoor music establishment.
- (D) *Fayetteville Entertainment District*. The City Council's policy is to encourage outdoor music establishments along Dickson Street from Block Avenue to Arkansas Avenue and on West Avenue from Spring Street to Lafayette Street as long as such establishments are reasonably compatible with adjoining neighborhoods.

163.14 - Revocation Or Change Of Conditional Use

- (A) Upon receipt by the Planning Department of a written complaint by a Fayetteville resident that a holder of a conditional use has substantially violated or is violating any term or condition of the conditional use, the Planning Department shall investigate this complaint to determine if it is substantiated.
- (B) If the Planning and Zoning Administrator determines that the complaint is substantiated, official notification by letter outlining the violation shall be sent to the holder of the conditional use requiring immediate compliance with all conditions and terms of approval of the conditional use and noting the substantiated complaint.
- (C) If the Zoning and Development Administrator determines that the holder has violated the terms of the conditional use and failed to promptly and voluntarily correct its failures, the Zoning and Development Administrator shall refer the existing conditional use to the Planning Commission for its review. After a hearing for all interested persons, the Planning Commission may amend or add conditions to the conditional use, may revoke a conditional use for substantial violations of the existing terms and conditions of the conditional use, or may reaffirm that the holder has complied with all terms of its conditional use.
- (D) Except in extraordinary circumstances, the Zoning and Development Administrator shall not refer any alleged violations of a specific conditional use to the Planning Commission more often than once per year.
- (E) *Periodic Review.* In addition to the consideration of substantial violation provisions of (A), (B), and (C), the Planning Commission may periodically review and reconsider a conditional use permit under the following criteria:
 - (1) Receipt of a petition to review an approved conditional use permit from an adjacent property owner and 50% or more of the property owners within 100 feet of the property boundary on which the conditional use permit has been granted, in a form provided by the Planning Division. The property owners signing the petition must provide the reasons for which they feel reconsideration is warranted and how they are adversely affected by the approved conditional use permit.
 - (2) Upon receipt of a verified petition, the Planning Commission may review the conditional use permit and either approve the conditional use as it exists or modify the conditional use with new or altered conditions to achieve a greater degree of compatibility with adjacent properties.
 - (3) Appeals from the decision of the Planning Commission under this subsection shall follow the requirements of §155 Appeals of the Unified Development Code, for conditional use permits.
 - (4) The right to a periodic review of a conditional use under this subsection may only be exercised five (5) years or longer after the conditional use permit was granted. No periodic review may be conducted more than one (1) time in a five (5) year period.
 - (5) This periodic review procedure is not applicable for wireless communication facilities and vital government facilities.