

Staff Report

Special Review Use

June 1, 2010 Planning & Zoning Commission Meeting



Report date: May 28, 2010
Project type: Special Review Use (SRU) – Amplified Sound
Legal description: Lot 2, Filing 1, Village at Avon
Address: 101 Fawcett Road, Suite 100
Prepared By: Matt Pielsticker, Planner II

I. Summary

The applicant, Cody Kennedy, the manager of ZaccaZa, is requesting a Special Review Use (SRU) Permit to allow the use of amplified sound for live music on the outdoor deck at the ZaccaZa restaurant (the Property), located in the Traer Creek Plaza building. At the September 1, 2009 Planning and Zoning Commission meeting, the applicant received approval for a Special Review Use permit with the condition that the permit be reviewed by the Commission again prior to recommencing said use in 2010.

Attached for reference as Exhibit A to this report is a scaled aerial vicinity map depicting the general location of the Traer Creek Plaza building and its immediate surroundings. The applicant is requesting to operate amplified sound on the outdoor deck of the restaurant daily, from 12:00 noon, until 10:00 pm. Additionally, a site plan showing the proposed location and direction of amplified sound on the patio of the restaurant is included as Exhibit B. The outdoor location of the live music venue has not changed since the first review.

II. Process

The Property is located in Planning Area K of the Village at Avon PUD. Planning Area K is zoned for Regional Commercial which permits restaurants and entertainment uses and specifies amplified sound as a Special Review Use (SRU).

A Special Review Use is reviewed accordance with Section 17.48.040 of the Avon Municipal Code (AMC).

III. Background

The restaurant has been playing outdoor amplified music in this location since 2008 under the terms of an amplified sound permit, issued by the Avon Town Clerk's Office in accordance with Chapter 5.24, Amplified Sound Systems, (AMC). After receiving noise complaints from a resident of Eagle-Vail, Planning staff received direction to research the zoning and discovered that amplified sound is called out as a SRU in Planning Area K. The applicant received approval from the Commission for this SRU for this amplified

sound use on September 1, 2009, with the condition that it be reviewed by the Commission on an annual basis to ensure compliance with pertinent codes.

IV. Review Criteria

According to the Sec 17.48.040, AMC, the following criteria shall be used when reviewing a Special Review Use permit application:

1. Whether the proposed use otherwise complies with all requirements imposed by the Zoning Code.

Staff Response: The subject “use” complies with all the applicable requirements found in the Zoning Code and the applicant has adhered to the time constraints for amplified sound permits.

2. Whether the proposed use is in conformance with the Town Comprehensive Plan.

Staff Response: According to the 2006 Town of Avon Comprehensive Plan, the Property is located in District 8, *the Village at Avon East District*. District 8 comprises the region’s commercial center and is intended to provide the Village with supporting commercial development and regional commercial uses associated with the I-70 and Post Boulevard interchange.

3. Whether the proposed use is compatible with adjacent uses. Such compatibility may be expressed in appearance, architectural scale and features, site design and the control of any adverse impacts including noise, dust, odor, lighting, traffic, safety, etc.

Staff Response: The Police Department received one noise complaint from an Eagle Vail resident last summer. Accordingly, the Police Department monitored the sound decibel readings last year during a live music performance to determine whether the sound levels produced by amplified sound on the Property were within the acceptable range of 65 decibels or less as measured from the property line.

The decibel readings were 65 decibels or less at the property line and thereby indicated that the sound level produced by the live music did not exceed the maximum decibel levels permitted for outdoor amplified sound, as stated above.

The site plan shows where the musicians will be located on the patio of the Property. The speakers are pointed toward the Wal-Mart building. Staff does not foresee any compatibility issues with the adjacent uses in the immediate area.

Public Benefit Criteria

According to Sec 17.28.085, AMC, the granting of an SRU permit requires evidence of substantial compliance with the public purpose provisions as codified and copied for your reference as follows:

A. The application demonstrates a public purpose which the current zoning entitlements cannot achieve.

B. Approval of the zoning application provides long term economic, cultural or social community benefits that are equal to or greater than potential adverse impacts as a result of the changed zoning rights.

C. The flexibility afforded in approval of the zoning application will result in better siting of the development, preserving valued environmental and cultural resources, and increasing the amount of public benefit consistent with the community master plan documents.

Staff Response: Outdoor dining and entertainment add a level of vitality that enriches a visitor's experience. Allowing the Property to include amplified music on their outdoor patio during the summer will bring that vitality to the shopping center and restaurant which could not otherwise be achieved without the SRU permit. Staff recommends **APPROVAL** of the applicant's request to extend this SRU permit for amplified sound through 2010 with the finding that it adheres to all the applicable criteria for granting an SRU.

V. Recommended Motion

"I move to approve Resolution 10-02, thereby approving the request for amplified sound at Suite 100, Lot 2, Filing 1, Village at Avon, with the finding that all the applicable approval criteria have been met, and subject to the following conditions:

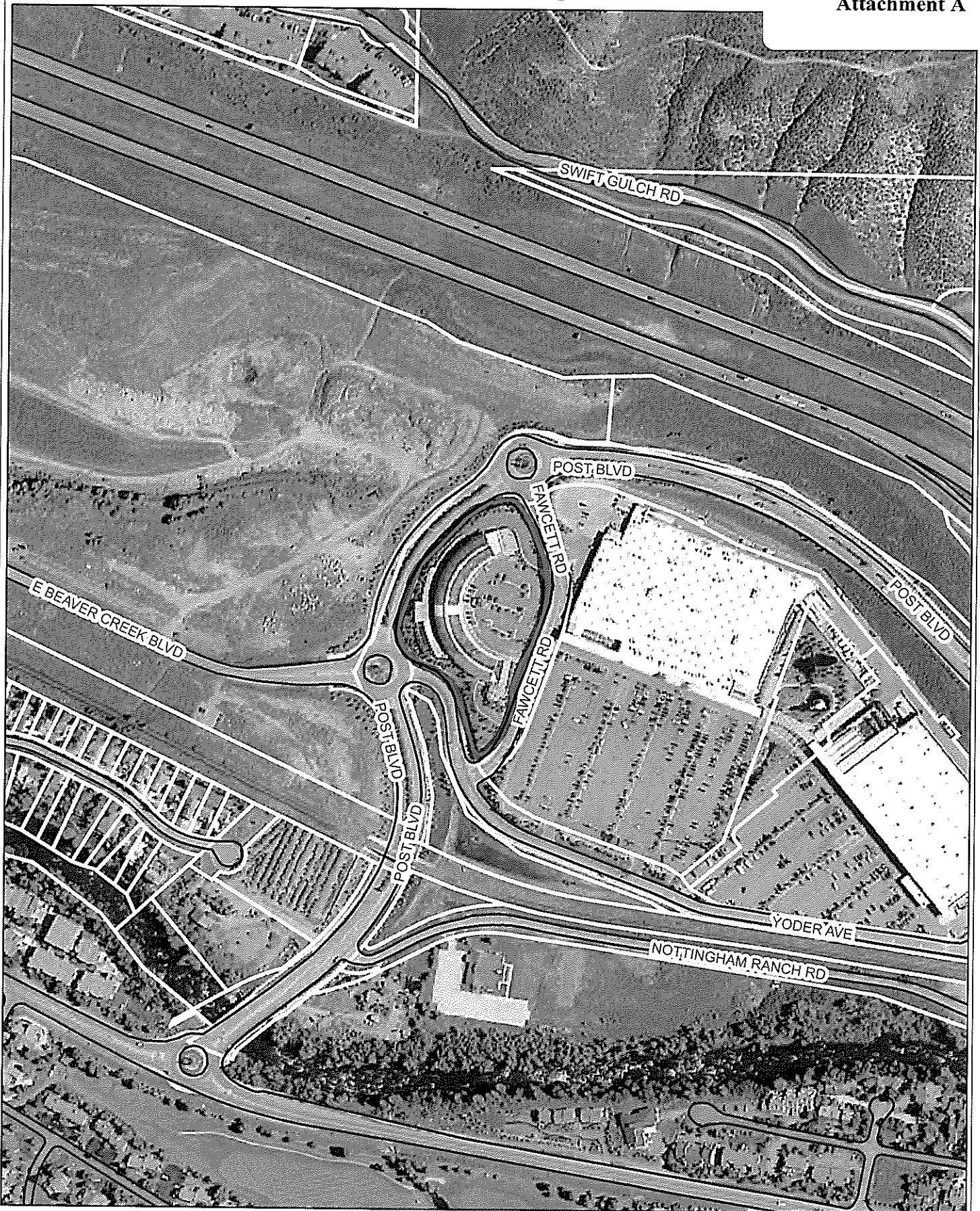
1. The hours of operation are limited to between 12:00 pm and 10:00 pm;
2. This permit is valid through 2010 and will be reviewed again prior to a further extension into 2011;
3. An Amplified Sound Permit must be obtained from the Avon Town Council, pursuant to Chapter 5.24 of the Avon Municipal Code, prior to commencing such use; and,
4. Except as otherwise modified by this permit approval, all material representations made by the applicant or applicant representatives in this application and in public hearings shall be adhered to and considered binding conditions of approval."

VI. Attachments

- A: Vicinity Map
- B: Site Plan
- C: Resolution 09-08
- D: Proposed Resolution 10-02

Zacca Za, Lot 2, Village at Avon

Attachment A



Feet

0 125 250

— Residential Streets

▭ Property Boundaries



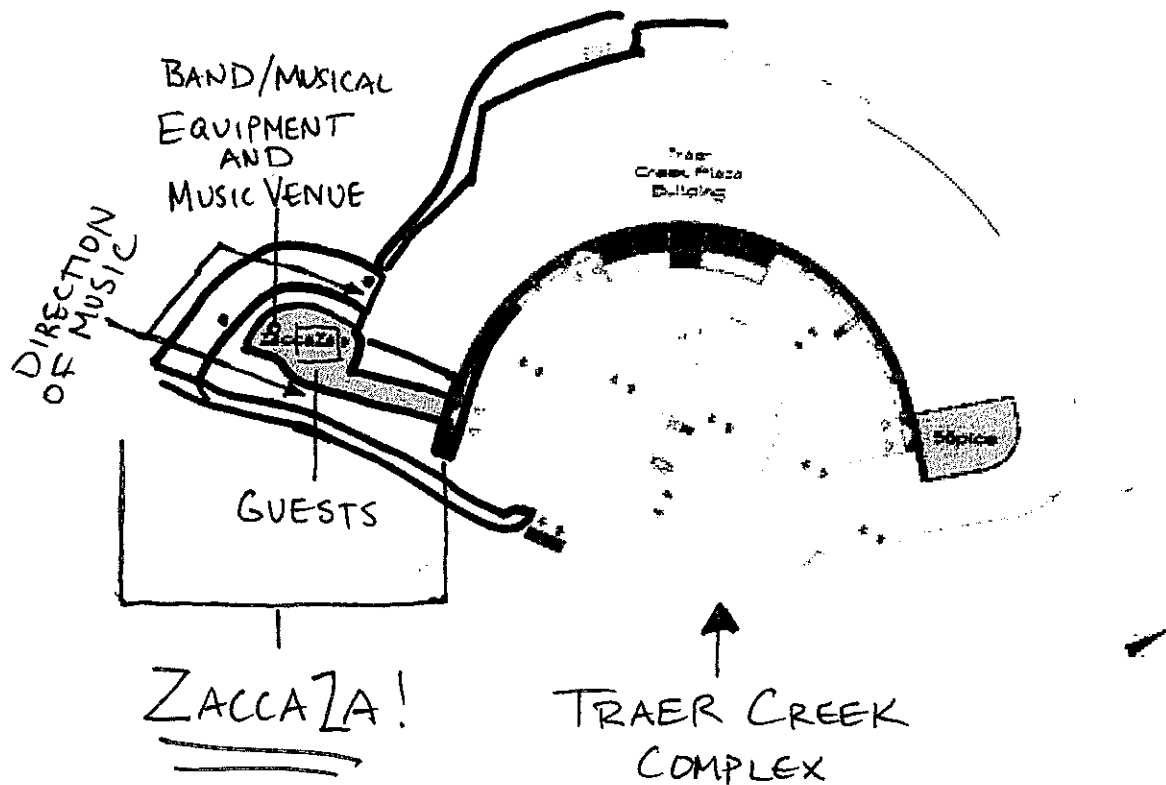
This map was produced by the Community Development Department. Use of this map should be for general purposes only. Town of Avon does not warrant the accuracy of the data contained herein.

Created by Community Development Department

POTENTIAL PLANTS

FOR

ZaccaZa PATIO



WAL-MART (HERE)



VAg, Inc.
Architects & Planners
Post Office Box 1734
Vail, CO 81658-1734
(970) 949.7034
fax: (970) 949.8134
email: general@vagarchitects.com
90 Benchmark Road Suite 202
Avon, CO 81620

PROJECT NAME:
ZaccaZa

DRAWING TITLE:
Plant Cut Sheets
SCALE:

PROJECT NO:
2613.00

PHASE:

SHEET:

RE:

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ISSUE DATE:

TOWN OF AVON
PLANNING & ZONING COMMISSION
RESOLUTION NO. 09-08

A RESOLUTION APPROVING A SPECIAL REVIEW USE PERMIT
TO PERMIT AMPLIFIED SOUND FOR LIVE MUSIC ON LOT 2,
FILING 1, VILLAGE AT AVON, TOWN OF AVON, EAGLE
COUNTY, COLORADO

WHEREAS, Cody Kennedy has applied for a special review use permit to operate amplified sound for live music, as described in the application dated June 25, 2009; *and*

WHEREAS, a public hearing has been held by the Planning & Zoning Commission of the Town of Avon on July 21, 2009 and September 1, 2009, pursuant to notices required by law, at which time the applicant and the public were given an opportunity to express their opinions and present certain information and reports regarding the proposed Special Review Use application; *and*

WHEREAS, the Planning & Zoning Commission of the Town of Avon has considered the following review considerations:

- A. *Whether the proposed use otherwise complies with all requirements imposed by the zoning code; and*
- B. *Whether the proposed use is in conformance with the town comprehensive plan; and*
- C. *Whether the proposed use is compatible with adjacent uses.*
- D. *Whether the proposed use provides evidence of compliance with the Public Purpose provisions outlined in the Avon Municipal Code.*

NOW, THEREFORE, BE IT RESOLVED, that the Planning & Zoning Commission of the Town of Avon, Colorado, hereby approves a Special Review Use permit for outdoor amplified sound of live music, as described in the application dated June 25, 2009; as stipulated in Title 17, of the Avon Municipal Code for Lot 2, Filing 1, Village at Avon Subdivision, Town of Avon, Eagle County, Colorado.

SUBJECT TO THE FOLLOWING CONDITIONS:

1. Hours of operation are limited to between 12pm and 10pm.
2. This permit is valid through 2009, and will then be re-reviewed prior to use in 2010.
3. An Amplified Sound Permit must be obtained and maintained, pursuant to Chapter 5.24, Avon Municipal Code.
4. Except as otherwise modified by this permit approval, all material representations made by the applicant or applicant representatives in this application and in public hearings shall be adhered to and considered binding conditions of approval

ADOPTED THIS 1st DAY OF SEPTEMBER, 2009

Signed: 

Chair

Date: 9.1.09

Attest: 

Secretary

Date: _____

TOWN OF AVON
PLANNING & ZONING COMMISSION
RESOLUTION NO. 10-02

**A RESOLUTION APPROVING EXTENSION OF A SPECIAL
REVIEW USE PERMIT TO PERMIT AMPLIFIED SOUND FOR
LIVE MUSIC ON LOT 2, FILING 1, VILLAGE AT AVON, TOWN
OF AVON, EAGLE COUNTY, COLORADO**

WHEREAS, Cody Kennedy has applied for a special review use permit to operate amplified sound for live music, as described in the original application dated June 25, 2009;

WHEREAS, public hearing have been held by the Planning & Zoning Commission of the Town of Avon on July 21, 2009, September 1, 2009, and June 1, 2010, pursuant to notices required by law, at which time the applicant and the public were given an opportunity to express their opinions and present certain information and reports regarding the proposed Special Review Use application;

WHEREAS, at their public hearing held on September 1, 2009, the Planning & Zoning Commission voted to approve Resolution No. 09-08 thereby approving the subject Special Review Use permit with four conditions, one of which required this SRU to be reviewed again prior to commencement of the use for the 2010 season; *and*

WHEREAS, the Planning & Zoning Commission of the Town of Avon has considered the following review considerations:

- A. *Whether the proposed use otherwise complies with all requirements imposed by the zoning code; and*
- B. *Whether the proposed use is in conformance with the town comprehensive plan; and*
- C. *Whether the proposed use is compatible with adjacent uses.*
- D. *Whether the proposed use provides evidence of compliance with the Public Purpose provisions outlined in the Avon Municipal Code.*

NOW, THEREFORE, BE IT RESOLVED, that the Planning & Zoning Commission of the Town of Avon, Colorado, hereby approves a Special Review Use permit for outdoor amplified sound of live music, as described in the application dated June 25, 2009; and as stipulated in Title 17, Avon Municipal Code, for Lot 2, Filing 1, Village at Avon Subdivision, Town of Avon, Eagle County, Colorado.

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1. Hours of operation are limited to between 12pm and 10pm;
2. This permit is valid through 2010, and will then be re-reviewed by the Commission prior to use in 2011;
3. An Amplified Sound Permit must be obtained and maintained, pursuant to Chapter 5.24, Avon Municipal Code; and
4. Except as otherwise modified by this permit approval, all material representations made by the applicant or applicant representatives in this application and in public hearings shall be adhered to and considered binding conditions of approval

ADOPTED THIS 1st DAY OF JUNE, 2010

Signed:

Date: _____

Chair

Attest:

Date: _____

Secretary