

Comments for Planning Commission's consideration regarding the submittal from CPP Kimball LLC addressing City Council Remand to the Planning Commission on the Appeal of a CUP for Private Events Facility at 638 Park Avenue (Historic Kimball Garage)

Submitted by: Sanford Melville

The starting point for this CUP review must be the City Council's Remand letter itself, dated April 14, 2017. Council remanded the Private Event Facility CUP for failure to meet the requirements of LMC 15-1-10, both for the indoor and outdoor portions of the proposed event facility. Council's Remand provided specific directions which are stated in the numbered paragraphs of the Remand letter. On May 11, 2018 the applicant submitted a Response to the City Council remand on an item by item basis corresponding to the numbered paragraphs of the Remand letter. These are all summarized below under the six specific topics of unmitigated noise, traffic, parking, incompatibility, visibility, and required City monitoring.

It should be noted that this proposed CUP is for the operation of a permanent indoor/outdoor rooftop private event center at the site of the historic Kimball Garage adjacent to a residential neighborhood. The occupant capacity for this private event facility is up to 480 people. The event center has a large outdoor component – it includes as part of the event facility an outdoor rooftop terrace of 2,530 square feet over the historic Kimball garage, plus a 477 square foot outdoor balcony overlooking the Heber Avenue-Main Street corner – over 3,000 square feet of outdoor event space. Requested allowable operating hours for this nightly event center would be between 8am and midnight, with outdoor speakers and music allowed 11am to 10pm.

Unlike all others who must obtain administrative CUP's for outdoor events and who are subject to City review for continuing approval of events, this applicant seeks permanent CUP approval of their private event center before a single event has been held.

There are good reasons why the Code was expressly written not to allow such permanent pre-approval, as explained by Chair Strachan in the Work Session on September 17, 2017. See minutes of 9/17/17 Work Session.

1. Unmitigated Noise Impacts from Outdoor Rooftop Event Space

In Remand paragraphs 3 & 15, Council found that the impacts from noise from the proposed outdoor second level event space were not mitigated, and did not meet the CUP criteria of LMC 15-1-10(E)(12). This included noise from amplified outdoor music and human chatter, and Council found that "the glass railing and open space on the deck would amplify the noise and create noise impacts on the roof deck which cannot be mitigated." Remand para. 4 & 5.

Council remanded the CUP for further review by Planning Commission to mitigate the impacts of sound and noise created by the use of the outdoor space so that these sounds do not unduly impact neighbors and suggested a number of specific restrictions on use. Remand para. 20 & 21. Council asked Planning Commission to *closely* review impacts related to CUP

criteria 12 (i.e., noise). Remand para. 22 & 25. Council stated it “is unable to find a way to mitigation for noise”, and asked Planning Commission to find a better way to mitigate or to restrict the event usage to limit the noise. Remand para. 25 & 27.

In Response 3 applicant discusses a study applicant commissioned by a professional third-party expert in environmental noise to determine the noise impacts to be mitigated. The applicant refers to this as the “Henderson Study”. A review of the Henderson Study shows some significant deficiencies. The study measured ambient noise during a quiet period of the Park City season (March 28 and 29) and then made a theoretical prediction of what the noise would be from 150 people (75 talking), and 2 acoustic musicians on the outdoor deck. While interesting, this is an academic analysis at best. How would this compare to 150 or more people partying, accompanied by a band with amplified music?

In Response 3 applicant has provided a complex noise management plan coupling electronic technology with procedures for staff to prevent the noise from exceeding the City’s noise ordinance requirements. In my opinion this proposed complex plan will be unworkable and likely ineffective. It relies on neighbors to complain and will not prevent intrusive noise from events on the open rooftop deck.

In Response 3 the applicant references a sound trap designed into the soffit of the western façade which applicant states will “diffuse sound waves from the outdoor terrace.” Note that the Henderson Study does not make any reference to the sound trap or its effectiveness. One can only assume that this is because the expert was not comfortable commenting on the theoretical effectiveness of this minor architectural feature. In addition, since the entire western façade adjacent to the rooftop deck appears to be glass, it seems inevitable that this glass façade itself will be a “sound amplifier”.

In Response 3 the applicant cites the historic barrel roof that was retained on the western half of the historic structure as a line of sight sound barrier. The Henderson Study takes a sound reduction credit for this roof. However, line of sight only applies, at most, only to adjacent buildings. Even a casual observer knows that sound travels uphill in the bottom of a canyon and that the neighbors impacted by the noise on the deck are mostly physically located above the barrel roof of the historic building.

In Response 5 the applicant indicates that the glass railings will not amplify the noise impacts on the deck but would in fact diminish the impacts. Again, the Henderson Study is silent on this claim by the applicant, likely because this is simply speculation by the applicant’s lawyer.

2. Unmitigated Traffic Impacts and Lack of Loading Zone

In Remand para. 6 & 15, Council found that the traffic impacts of the proposed use had not been mitigated, and did not meet the CUP criteria of LMC 15-1-10(E)(2), (4), (6), and (13). Council found the “impacts included likely bottlenecking on the corners of Heber Avenue and Main Street as well as Heber Avenue and Park Avenue, particularly during peak load-in and load-out times.” Remand para. 6. Council also found that “unmitigated impacts included the lack of a load-in and load-out zone or a clear traffic mitigation plan for events.” Remand para. 8.

Council remanded for further review, including of the Indoor use of the private event facility, and required additional mitigation evaluation by the Planning Commission on loading

areas and traffic. Remand para. 16. Council also remanded the CUP for further review to mitigate the impacts due to traffic from deliveries loading and unloading for events and load in/load out areas, and due to patron use including loading and unloading and pick up. Remand para. 19. Council requested Planning Commission to “closely” review the impacts related to CUP criteria 2, 6, and 13 (i.e., traffic circulation, and load/unload zones), and Council stated that “More specific conditions are needed to mitigate current [loading traffic] impacts.” Remand para. 22 & 24.

In applicant’s Response 6, 7, 8 and 15 there is no new information provided to address Council’s concerns for mitigation. Further, it should be noted that the Kimball Art Center’s previous existing loading area in its parking lot was built over and eliminated by this project.

3. Unmitigated Increased Parking Demand

In Remand para. 7 & 15, Council found that the impact of the increased parking demand from the proposed Events Facility use was not mitigated, and did not meet the criteria of LMC 15-1-10(E)(5).

Council remanded the CUP for further review of the private event facility, including the indoor use, and required additional mitigation evaluation by Planning Commission on the parking issue. Remand para. 16. Council asked Planning Commission to *closely* review and address impacts related to CUP criteria 5 [parking], and stated that “more specific conditions are needed to mitigate current impacts.” Remand para. 22 & 24.

In applicant’s Response 7, 8 and 15 there is no new information provided to address Council’s concerns for mitigation. Further, it should be noted that the Kimball Art Center’s previously existing parking lot was built over and its parking spaces were eliminated by this project.

4. Incompatibility of Use of Roof Deck as Event Space

In Remand para. 9 & 10, the Council found that the proposed use of the second level roof deck as Private Event Space was not compatible with the surrounding residential uses, since it was very visible due to its geographic location at the bottom of the street and too public and impactful to the surrounding neighborhood. See LMC 15-1-10.

Council remanded the CUP for further review by the Planning Commission to mitigate the impacts of the Outdoor space on compatibility, suggesting a number of restrictions on use. Remand para. 21.

The applicant in Response 9 provides no new information to address Council’s concerns for mitigation. Further, applicant incorrectly states that on appeal to the Board of Adjustment (“BoA”) that the BoA approved the proposed “use” as a private outdoor event facility. The BoA had a narrow scope in which to work and could not in fact consider “use” in its review.

5. Visibility of Use of Roof Deck

Council found that the use of the proposed roof deck on the second level was very visible due to its geographic location at the bottom of the street, and that such use conflicted with the BoA's findings that activities on the deck should be visually minimized. Remand para. 10 & 11.

Council suggested that possible mitigation of impacts could include limitation on the number of days and times the roof deck would be in use, and on-going monitoring with the Planning Commission to ensure compliance with conditions of approval. Remand para. 12 & 13. Council also suggested mitigations including "reducing the visibility of the roof deck", and "at a minimum a strong re-evaluation of the design" to reflect the BoA's requirements in their decision. Remand para. 14, 17, 21, & 26.

The applicant's current proposal has withdrawn the request for a CUP for the tent. The applicant will go through an Administrative CUP process for tents. However, this does not address the rest of the visibility issues of the proposed use of the rooftop deck mentioned by Council, and which concern was an important part of the BoA's findings. Anyone standing just above the site on Main Street and on Park Avenue can see that the rooftop deck is very visible. The applicant in responses 10, 11, 12, 14, 15 and 26 provides no new information to address Council's concerns for mitigation.

6. Unrestricted Use of Roof Deck and Monitoring by City

Council found that the use of the proposed second level roof deck was too unrestricted. Remand para.10. Council remanded the CUP for further review by Planning Commission to mitigate the impacts of the Outdoor space, such as further limits on its use and to focus on strong mitigation of impacts. Remand para. 21. Council also suggested on-going monitoring with the Planning Commission to ensure compliance with conditions of approval, and affirmative review by the City incrementally by the use, and more frequently than once per year. Remand para. 13 & 23. Council was concerned that it should not be up to the neighbors to file complaints to assure compliance with any conditions of approval.

The applicant in Response 10 and associated items provides no new information to address Council's concerns to mitigate impacts and ensure compliance.

Further, there is simply no good reason to grant this applicant's request to bypass the reasonable ongoing oversight that the City applies to all others who wish to stage outdoor events in Park City.

7. Conclusion

I urge the Planning Commission to carefully consider City Council's many concerns, as stated in Council's Remand letter about this CUP, and accordingly deny the requested CUP.

Respectfully submitted,

Sanford Melville