



# City of San Antonio

## Agenda Memorandum

**File Number:**21-4172

**Agenda Item Number:** 1.

**Agenda Date:** 6/7/2021

**In Control:** Board of Adjustment

Case Number: BOA-21-10300042  
Applicant: Jose Fong  
Owner: Jose Fong  
Council District: 1  
Location: 2831 Northwest Loop 410  
Legal Description: Lot 5, NCB 14064  
Zoning: "C-3 AHOD" General Commercial Airport Hazard Overlay District  
Case Manager: Mirko Maravi, Senior Planner

### Request

An appeal to the Land Development's decision of Denial for a Nonconforming Use Registration for "Live Entertainment Without Cover Charge 3 or More Days per Week", located at 2831 Northwest Loop 410.

### Applicable Code References

Sec. 35-311. - Use Regulations

Table 311-2 - Nonresidential Use Matrix

| TABLE 311-2 NONRESIDENTIAL USE MATRIX |   |            |    |     |     |     |   |   |     |     |      |                 |
|---------------------------------------|---|------------|----|-----|-----|-----|---|---|-----|-----|------|-----------------|
|                                       | PERMITTED USE   | O-1 & O-2* | NC | C-1 | C-2 | C-3 | D | L | I-1 | I-2 | ERZD | (LBCS Function) |
| Amusement                             | Live Entertainment Without Cover Charge 3 or More Days Per Week (Not Including Food Service Establishments)     |            |    |     |     | S   | P |   |     |     | P    | 5300            |
| Amusement                             | Live Entertainment <u>With</u> Cover Charge 3 or More Days Per Week (Not Including Food Service Establishments) |            |    |     |     | S   | P |   |     |     | P    | 5300            |

Sec. 35-702 - Continuing Lawful Use of Property and Structures

(b) Limitations on Nonconforming Uses

(2) Abandonment

Sec. 35-702. - Continuing Lawful Use of Property and Structures.

(b) **Limitations on Nonconforming Uses.**

- (2) **Abandonment.** If such nonconforming use is discontinued for twelve (12) months, any future use of such premises shall be in conformity with the provisions of this chapter. Abandonment of a nonconforming use shall terminate the right to operate such use.

Sec. 35-704 - Change of Use Regulations

(a) To a Conforming Use

Sec. 35-704. - Change of Use Regulations.

- (a) **To a Conforming Use.** Any nonconforming use may be changed to a use conforming with the regulations herein established for the district in which the nonconforming use is located; provided, however, that a nonconforming use so changed shall not thereafter be changed back to a nonconforming use.

APPENDIX A - DEFINITIONS AND REULS OF INTERPRETATION

Live entertainment. A use which includes any or all of the following activities, either principal or accessory: performance by musicians, dancers, stand-up comedians or other performance artists; | karaoke; live bands or musical acts; or the amplification of recorded music/entertainment by live disk jockeys.

Nightclub. A tavern with more than two thousand (2,000) square feet of building area excluding | kitchen, restrooms and storage areas. A nightclub use may include, in addition to the provision of alcohol, a dance hall, food services, and/or live entertainment as an accessory use when conducted less than three (3) days per week.

**Executive Summary**

The subject property is located east of the intersection of IH-10 and NW Loop 410. The subject property received a Certificate of Occupancy (C of O) from the City of San Antonio for a “Lounge w/Alcoholic Beverages” on November 2, 2004. On September 29, 2009, they received a C of O for a “Nightclub w/Live Music & Alcoholic Beverages for Sale”. Their C of O was amended on March 5, 2010 to a “Nightclub w/Live Entertainment & Alcoholic Beverages for Sale Cover Charge Less than 3 Days per Week”, and on October 17, 2019 a note was added to the use reading “require current health permit and TABC License”.

In 2009, the Unified Development Code was amended to update the Permitted Use Table to add Live Entertainment uses and amend Bar and Nightclub definitions in order to create a separate use category and definition for Live Entertainment due to adverse impacts on adjacent or nearby uses. The Code was specifically updated to change the definition of Nightclub to only allow live entertainment as an accessory use. Live Entertainment categories were created to separate those types of uses that charged cover charge 3 or more days per week versus those that only charged cover twice a week. These uses required an “S” or Specific Use Authorization in “C-3”. Since the use at 2831 Northwest Loop 410 was previously classified as the former Nightclub use and the property was zoned “C-3” without an “S”, the property became legal, non-conforming. A Non-Conforming Use Registration was approved on March 5, 2010 for “Live Entertainment Without Cover

Charge 3 or more days per week” for this location.

The previous tenant, Paphos, LLC, applied for a Non-Conforming Use Registration on July 10, 2020. During Zoning Staff’s review of the evidence provided in the application, evidence indicated that the property was without electrical service from June 2018 to July 2019 as confirmed by City Public Service (CPS). Sec 35-702 (b)(2) Abandonment states the following: If such nonconforming use is discontinued for twelve (12) months, any future use of such premises shall be in conformity with the provisions of this chapter. Abandonment of a nonconforming use shall terminate the right to operate such use. Since the property had no electrical service for more than a year, the use was abandoned. The registration was denied on August 27, 2020 and the decision was not appealed by that tenant.

A new application for a Non-Conforming Use Registration was submitted by the owner for the same “Live Entertainment Without Cover Charge 3 or More Days Per Week” use on March 11, 2021. No new information was provided indicating that the property had electrical service. Denial of the registration of the Non-Conforming Use was provided to the applicant on March 26, 2021. An appeal of the decision was applied for on April 14, 2021, meeting the required 20-day appeal of a decision.

The applicant states that the reason for no electrical service from June 2018 until July 2019 was ongoing litigation with the previous lease holder. On December 7, 2017, the owner locked out the individuals leasing the property due to a legal dispute. This litigation was a civil matter between the two parties. When litigation was at a juncture when the property owner was able to lease the property, the new lease holder applied for a C of O on October 17, 2019 for a “Nightclub w/Live Entertainment & Cover Charge Less than 3 Days per Week”, which is a use permitted by right in the “C-3” base zoning district. Section 35-704(a) states “Any nonconforming use may be changed to a use conforming with the regulations herein established for the district in which the nonconforming use is located; provided, however, that a nonconforming use so changed shall not thereafter be changed back to a nonconforming use”. Once the lease holder applied and attained the C of O, they became conforming, and as mentioned, cannot go back to a Non-Conforming Use Registration. On July 29, 2020, Code Enforcement revoked the C of O due to numerous zoning violations.

### **Code Enforcement History**

| <b><u>Complaint #</u></b> | <b><u>Report Date</u></b> | <b><u>Case Type</u></b>                | <b><u>Outcome of Inspection</u></b> |
|---------------------------|---------------------------|--|-------------------------------------|
| 23076932                  | 06/04/2018                | Vacant Building-overgrown              | Owner complied                      |
| 23384487                  | 01/15/2020                | Vendor investigation                   | No Violation observed               |
| 23415727                  | 03/11/2020                | Certificate of occupancy investigation | Business closed<br>7/29/2020        |
| 23467299                  | 6/26/2020                 | Emergency declaration Covid inspection | No violation observed               |
| 23467287                  | 6/27/2020                 | Emergency declaration Covid inspection | No violation observed               |
| 23492675                  | 08/30/2020                | Trash at location                      | Owner complied                      |
| OYT- 20-2550003558        | 10/22/2020                | Overgrown Weeds                        | No Violation observed               |
| GPR-INV21-<br>2940002077  | 2/21/2021                 | Graffiti -private property             | Cleaned by city                     |
| VOP - 21-2590012874       | 5/5/2021                  | Trash at location                      | Notice pending                      |

## **SAPD History**

6/14/2020 SAPD case # 20-111658 for Aggravated Assault

7/24/2020 SAPD case # 20-138444 for Prostitution

## **Certificate of Occupancy History**

| <b><u>Issued Date</u></b> | <b><u>Certificate Date</u></b> | <b><u>Description of Business</u></b>   | <b><u>Occupant</u></b>        | <b><u>DBA Name</u></b>       |
|---------------------------|--------------------------------|---|-------------------------------|------------------------------|
| 11-02-2004                | 11-02-2004                     | Lounge w/Alcoholic Beverages  | Lloyd Tausch                  | The Coast                    |
| 09-29-2009                | 09-29-2009                     | Nightclub w/Live Music & Alcoholic Beverages for Sale   | Viola J. Arnold               | Timeline                     |
| 10-06-2009                | 09-29-2009                     | Nightclub w/Live Music & Alcoholic Beverages for Sale   | LLF, Inc                      | Timeline                     |
| 10-27-2009                | 09-29-2009                     | Nightclub w/Live Music & Alcoholic Beverages for Sale   | LLF, Inc                      | Some Beach (Eff. 10/27/2009) |
| 03-05-2010                | 09-29-2009                     | Nightclub w/Live Entertainment & Alcoholic Beverages for Sale Cover Charge Less than 3 Days per Week                        | VP Times, Inc, LLF, Inc       | Some Beach (Eff. 03/05/2010) |
| 03-22-2018                | 09-29-2009                     | Nightclub w/Live Entertainment & Alcoholic Beverages for Sale Cover Charge Less than 3 Days per Week                        | Jose Fong (Eff. 03/22/2018)   | EFJFM, LLC                   |
| 10-17-2019                | 09-29-2009                     | Nightclub w/Live Entertainment & Cover Charge Less than 3 Days per Week (note: req. current health permit and TABC license) | Paphos, LLC (Eff. 10/17/2019) | Paphos, LLC                  |

## **Zoning History**

Subject property was annexed into the City of San Antonio by Ordinance 18115, dated September 25, 1952 and zoned "A" Residence District. The property was rezoned by Ordinance 34804, dated September 15, 1966 to "B-3" Business District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May

03, 2001, the property zoned “B-3” Business District converted to the current “C-3” General Commercial District.

### **Subject Property Zoning/Land Use**

| Existing Zoning   | Existing Use    |
|---|-----------------|
| “C-3 AHOD” General Commercial Airport Hazard Overlay District | Vacant Building |

### **Surrounding Zoning/Land Use**

| Orientation | Existing Zoning District(s)                                   | Existing Use                 |
|-------------|---|------------------------------|
| North       | “C-2 AHOD” Commercial Airport Hazard Overlay District         | Professional Office Building |
| South       | “ROW” Right of Way  | NW Loop 410                  |
| East        | “C-3 AHOD” General Commercial Airport Hazard Overlay District | Professional Office Building |
| West        | “O-2 AHOD” High-Rise Office Airport Hazard Overlay District   | Professional Office Building |

### **Board of Adjustment**

The Board of Adjustment is asked to determine the intent of Section 35-311 *Use Regulations* and Table 311-2 *Nonresidential Use Matrix*, Section 35-702 *Continuing Lawful Use of Property and Structures* (b) *Limitations on Nonconforming Uses* (2) *Abandonment*, Section 35-704 *Change of Use Regulations* (a) *To a Conforming Use* and APPENDIX A - *DEFINITIONS AND REULS OF INTERPRETATION*.

The Board may reverse or affirm, in whole or affirm, in whole or in part, the administrative decision brought forward by the appellant and discussed in this report.

Staff utilized the intent of Section 35-311, Table 311-2 and Section 35-702 (b)(2).

If the Board reverses Staff’s decision, and approves the appeal, the owner will be allowed to operate a “Live Entertainment without Cover Charge 3 or more days per week” use on the property. Specifically, this means a live entertainment business that can only charge cover for a maximum of 2 days a week.

### **Staff Recommendation**

Staff recommends **DENIAL** of **BOA-21-10300042**, based on the following findings of fact:

1. Use was abandoned from June 2018 to July 2019.
2. No new evidence was provided to show legal, continuous use of the property.