



City of Austin Planning and Development Review Department
505 Barton Springs Road / P.O. Box 1088 / Austin, Texas 78767-8835

**OUTDOOR MUSIC
 VENUE APPEAL**

If you are an applicant and/or property owner or interested party, and you wish to appeal a decision on an Outdoor Music Venue permit, the following form must be completed and filed with the Director of Planning and Development Review Department, City of Austin, at the address shown above. The deadline to file an appeal is 14 days after the decision was issued by the accountable official. If you need assistance, please contact at (512) 974-2686.

CASE NO. #50-2689-0142M

DATE APPEAL FILED 3.19.10

VENUE NAME OPA!

YOUR NAME Eleanor McKinney, ASLA

SIGNATURE Eleanor McKinney

VENUE ADDRESS 2050 S. LAMAR BLVD.

YOUR ADDRESS 2007 Kinney Ave.

AUSTIN, TX. 78704

AUSTIN, TX. 78704

CITY CONTACT CLARA HILLING

YOUR PHONE NO. (512) 445-5242 WORK

SECTION OF CODE APPEALED: 9-2-23

() SAME HOME

INTERESTED PARTY STATUS: Indicate how you qualify as an interested party who may file an appeal by the following criteria: (Check one)

- ☒ I am the notice owner of single family use
- ☐ I am the applicant or agent representing the applicant
- ☐ I am a representative of a neighborhood association and submitted my opposition in writing (date)
- ☐ I am the notice owner of a multifamily use located adjacent to the venue (new permits only)

In addition to the above criteria, I qualify as an interested party by one of the following criteria: (Check one)

- ☒ I am the notice owner of single family use located within 600 feet of the subject site.
- ☐ I am the notice owner of a multifamily use located adjacent to the venue.
- ☐ I am an officer of a neighborhood or environmental organization whose declared boundaries are within 600 feet of the subject site.

DECISION TO BE APPEALED*: (Check one)

- ☒ Approval of an Outdoor Music Venue Permit
- ☐ Denial of an Outdoor Music Venue Permit

Date of Decision: 3.9.10

Date of Decision: _____

STATEMENT: Please provide the decision being appealed and the specific grounds for the appeal. If specific grounds are not provided appeal will not be considered valid:

A.) PROXIMITY OF THE PROPOSED OUTDOOR MUSIC VENUE TO EXISTING LAND USES, INCLUDING CONSIDERATION OF THE DATE ON WHICH THE VENUE WAS ORIGINALLY PERMITTED RELATIVE TO SURROUNDING LAND USES
* PERMIT DATE: 3.9.10 / ADJACENT SF-3 OWNED SINCE 2/1982

B.) ADDITIONAL LIMITATIONS ON THE HOURS DURING WHICH SOUND EQUIPMENT MAY BE OPERATED, BEYOND THE LIMITS REQUIRED UNDER SECTION 9-2-12
 (Attach additional page if necessary.)

(SEE ATTACHED)

* OTHER PERMITS IN ZILKER NEIGHBORHOOD HAVE ADDITIONAL LIMITATIONS, SUCH AS 8:30 PM. SUN-THURS.

STATEMENT IN SUPPORT OF OMV FOR OPA!

CASE NUMBER #50-2009-0142M

Date: April 28, 2010

My name is Tony Nicholas and I am a resident of the Zilker Neighborhood.

I reside at 2114 Goodrich Avenue., Austin, Texas. I have lived there for 11 years.

My phone number is 815 550 2239

My email is [REDACTED]

I do not have any interest or agenda in this matter other than I frequent OPA! several times a week and I don't want to see the livelihood of a welcome addition to the Zilker neighborhood threatened because of opposition from the usual suspects who resist any change to the neighborhood and particularly any new businesses in the neighborhood. I frequent OPA! because of its coffee selection, Mediterranean food, wine selection, and to listen to local musicians who play there. I also enjoy OPA! because I've run into many old neighbors as well as have met new ones there. It is within walking distance of my home and homes in the Zilker neighborhood so Zilkerites don't have to drive to it. It is a family business run by husband and wife owners and their son who work hard 7 days a week. OPA! is a nice, mellow coffee house/restaurant with good energy and completely consistent with the feel and culture of South Austin and the Zilker Neighborhood.

Now down to the business of my statement...

The Outdoor Music Venue Permit ("OMV") granted by the City of Austin ("the City") to the Coffee House/Restaurant known as OPA! located at 2050 South Lamar Blvd. is proper for the following reasons:

1. The venue is a commercial location located on one of the City's busiest, and most heavily traveled thoroughfares.
2. The traffic noise from South Lamar traffic averages 78 decibels as late as 10 PM on any given night except for Sundays. I know because I have measured it.
3. The "outdoor venue" at OPA! consists of a small wooden deck with tables and stools used by patrons which is converted to accommodate 3 musicians standing up. The small wooden deck is located about 40 feet from the South Lamar in the outdoor patio at the front of the property.
4. The sound system consists of two small stand-up temporary speakers which are taken down once a performance is concluded. The speakers are pointed towards South Lamar Blvd. and the patio area. They do not point towards any residences.
5. The entire deck and outdoor patio area are canopied by a large, glorious Oak Tree reputed to be the oldest Oak Tree on South Lamar. The Oak Tree provides sound dampening to music emanating from the small wooden deck.
6. The main building and rear parking lot stand between the small wooden deck and the abutting residents located on Kinney Avenue. See attached Google Earth picture.
7. The nearest abutting residential structure is located 180 feet from the small wooden stage and is a two unit condominium building which remains abandoned and overgrown with vegetation since its construction approximately two years ago.

8. The distance from the small wooden deck to Appellant McKinney's house located at 2007 Kinney Avenue is 287 feet. The distance from the small wooden deck to Appellant McKinney's property line is approximately 200 feet. Appellant's property is heavily vegetated and treed thus dampening any sound emanating from the small wooden deck and possibly reaching the property line. See attached Google Earth picture.
9. During the playing of outdoor music, the only sound reaching Appellant's property line (at the very back of OPA!'s parking lot) is traffic noise from South Lamar and not any sound from outdoor music. I know because I have stood there and listened.

Appeals to the OMV granted by the City of Austin ("the City") to the Coffee House/Restaurant known as OPA! located at 2050 South Lamar Blvd. based on Austin City Code Section 9-2-23, should not be considered for the following reasons:

1. in granting the OMV permit, the City clearly acted in accordance with both the letter and the spirit of the requirements set out in Section 9-2-23.
2. Any Appeal made by the Zilker Neighborhood Association ("the ZNA") claiming it was not consulted by the owner of OPA! and thus in violation of the spirit of Section 9-2-23 or Council's desire for owners and NAs to engage in conversation is untrue as documents provided by the ZNA in support of its Appeal clearly state that it met with the "owner's representative" during the December, 2009 Holidays. (The owner is a Greek family and were likely visiting family in Greece during the Holidays.)
3. The ZNA speaks for a tiny minority of Zilker residents¹ and therefore its Appeal is not representative of Zilker residents and should be viewed in a highly critical light and given little, if any, weight.
4. No noise from outdoor live music is detectable at OPA!'s property line abutting Appellant McKinney or any other residence.

Respectfully submitted,

/s/

Tony Nicholas
2114 Goodrich Avenue, Austin, Texas

Footnote:

1. The agenda of the ZNA Executive Committee is driven by a clique consisting of a handful of long time, highly opinionated, vociferous, anti-business, anti-change residents who claim to speak for the almost 6,000 residents of the Zilker Neighborhood but do not. What I just stated I say based on firsthand knowledge. I served on the ZNA Executive Committee for almost one year but resigned before my term was up after concluding that it was pointless to serve as dissenting views were quashed by the aforementioned clique. Further, new blood is discouraged and only those who agree with the clique are encouraged to serve on the Executive Committee. Executive Committee elections consist of approximately 30 or so similarly opinioned residents who assemble once a year to vote the same clique back into office year in and year out. Thus, at best 1/2% of all residents (30/6,000) claim to speak for an entire neighborhood. The best evidence demonstrating the lack of support by Zilkerites for the ZNA is that the ZNA cannot fill the seats on its Executive Committee. It currently has 2 of its 9 positions empty (don't go by its website as it hasn't been updated in years). Bottom line: as the Zilker Neighborhood has changed over the years, the ZNA has not as demonstrated by its frivolous appeal in the instant matter.



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CASE NO. SO-2009-0142M

DATE APPEAL FILED March 17, 2010

VENUE NAME OPA! (aka Opa and Opa!)

YOUR NAME Bobby Rigney

SIGNATURE Bobby Rigney

VENUE ADDRESS 2050 South Lamar Blvd.
Austin 78704

YOUR ADDRESS 1902 Anita
Austin 78704

CITY CONTACT Clara Hilling

YOUR PHONE NO. (512) 471-3758 WORK

SECTION OF CODE APPEALED: 9-2-23

(512) 653-9632 HOME

INTERESTED PARTY STATUS: Indicate how you qualify as an interested party who may file an appeal by the following criteria: (Check one)

- ☐ I am the notice owner of single family use
- ☐ I am the applicant or agent representing the applicant
- ☒ I am a representative of a neighborhood association and submitted my opposition in writing (date)
December 9, 2009
- ☐ I am the notice owner of a multifamily use located adjacent to the venue (new permits only)

In addition to the above criteria, I qualify as an interested party by one of the following criteria: (Check one)

- ☐ I am the notice owner of single family use located within 600 feet of the subject site.
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DECISION TO BE APPEALED*: (Check one)

- ☒ Approval of an Outdoor Music Venue Permit
- ☐ Denial of an Outdoor Music Venue Permit

Date of Decision: March 9, 2009

Date of Decision: _____

STATEMENT: Please provide the decision being appealed and the specific grounds for the appeal. If specific grounds are not provided appeal will not be considered valid:

See Attachment

(Attach additional page if necessary.)



ATTACHMENT TO OUTDOOR MUSIC VENUE APPEAL
(DATED MARCH 17, 2010)
BY THE ZILKER NEIGHBORHOOD ASSOCIATION
OF THE PERMIT ISSUED TO OPA! ON MARCH 9, 2010.

1) **Proximity to residential property is incompatible with preexisting use.** Council decisions regarding Sustainable Waves and Little Woodrow's have established that preexisting land use places a burden on an outdoor music venue to limit sound to a level compatible with the neighborhood. OPA! (aka Opa! and Opa) shares a boundary with SF-3 homes on Kinney Avenue. This adjacency makes 70 decibels incompatible with the quiet enjoyment of property that was possible during the many years when the permittee's property was an antique store. Two of the residents sharing a border with OPA! have been in their homes for at least 28 years.

2) **No history of outdoor music venues in this part of Zilker.** Most of the outdoor venues are located in a relatively concentrated area along Barton Springs Boulevard. The ~~of the~~ music venues in Zilker nearest to OPA! (the Saxon Pub and Artz Rib House) have live music indoors only, which should be considered a precedent for OPA!

3) **Permittee does not qualify for the restaurant exemption.** The automatic granting of an initial OMV permit under 9-2-23 was intended to apply only to restaurants operating as such at the time the City Council made its latest revisions to the amplified sound ordinance. City staff may have misconstrued the intent of the city council in applying this provision to OPA!, since OPA! was not a restaurant at the time of the council revisions.

4) **Permittee did not negotiate with the neighborhood.** In addition to compatibility, another precedent established by the city council is that the applicant should negotiate with the neighborhood. Because the terms of the permit were granted without the knowledge of ZNA, there was no meaningful negotiation--only an initial meeting over the December holidays that the owner did not attend. (The owner's representative did attend. However, no City of Austin representative was present as a mediator.)

5) **Shady Grove is not a valid precedent.** The authorization to OPA! to have amplified sound seven days a week was possibly based on a similar provision that was granted to Shady Grove. The neighborhood and Shady Grove had agreed to amplified sound only on Thursday evenings to 10 p.m., so the granting of seven days a week occurred after the negotiation with the neighborhood had ended in an agreement to Thursdays only. Even so, Shady Grove plays only on Thursdays, so city staff should not rely on the terms of the Shady Grove permit as a precedent for OPA! to play live music seven days a week. Other OMV permits in the Zilker neighborhood have limited the hours to 8:30 p.m.



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CASE NO. 50-2009-0142M

VENUE NAME Opa's (also OPA!)
(and opa!)

VENUE ADDRESS 2050 South Lamar Blvd.
Austin 78704

CITY CONTACT Clara Hilling

SECTION OF CODE APPEALED: 9-2-23

DATE APPEAL FILED March 17, 2010

YOUR NAME Bobby Rigney

SIGNATURE Bobby Rigney

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Austin TX 78704

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Zilker Neighborhood Association

Austin, Texas 78704

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ZNA

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Restaurant Row Introduces Outdoor Music Permits

[Zoning](#)

The City of Austin has issued six Outdoor Music Venue (OMV) permits within the Zilker neighborhood under the new city sound ordinance approved about a year ago. These permits allow the venues (usually a restaurant or bar) to provide amplified music outdoors within certain decibel and time limits, on designated days of the week. A permit is issued for one year. If the venue violates the terms of the permit, the permit may not be renewed. The Zilker venues are all north of Barton Springs Road, on or near Restaurant Row. All but one* operate as restaurants and are therefore limited to 70 decibels, measured at the property line.

These restaurants have OMV permits to use sound equipment outdoors. Besides the times noted here, they may also play till 2 AM during SXSW.

Four can play till 8:30 PM Sun-Thu and till 10 PM Fri-Sat:

- Austin Java, 1608 Barton Springs (expires Aug 12)
- Baby Acapulco, 1628 Barton Springs (Nov 6)
- Lift Cafe, 215 S. Lamar (Sept 24)
- Uncle Billy's, 1530 Barton Springs (Aug 12).

One is limited to 8:30 PM all week:

- Coffee Bean & Tea Leaf, 221 S. Lamar (Jun 25).

One can play up to 85 db, till 10 PM every night:

- Shady Grove, 1624 Barton Springs (Oct 10).

No commercial venues within the boundaries of ZNA are permitted to play outdoors past 10 PM. This is the same time limit that the city code applies to residential uses: "A person may not use sound equipment that produces sound audible beyond the property line of a residence in a residential area between 10 PM and 10 AM." The ZNA executive committee hopes that this will make it easier for affected neighbors to report violations and for the police to enforce the permits. If you are disturbed by amplified sound after 10 PM, you can be certain that the event is not permitted and the police should be called to shut it down.

No OMV permits have been issued in our neighborhood south of Barton Springs Road, and that includes the length of South Lamar within ZNA, from Barton Springs Road to Barton Skyway. Most of the restaurants and bars along South Lamar are so close to residences that they are not eligible for sound permits (under one interpretation of city code). ZNA is working with a citywide coalition of neighborhoods to resolve some of the inconsistencies in the implementation of the new sound ordinance, especially the general restriction that says the city "may not issue a permit to operate sound equipment within 100 feet of property zoned residential."

Thanks to all the neighbors and business owners who made the effort to work together on the terms of these permits.

** Last summer, when Shady Grove was applying for a parking variance, which would allow it to operate as a cocktail lounge with louder music, the management said the changes were needed only to continue its concert series on Thursday nights, Unplugged at the Grove (see ZNews July 2009, page 5). After the variance was granted, however, the management insisted that Shady Grove needed a permit to play every night of the week. As a result, the Shady Grove OMV permit allows it to have amplified sound up to 85 decibels till 10 PM Sunday through Saturday.*