

EARL, CURLEY & LAGARDE, P.C.
ATTORNEYS AT LAW

Telephone (602) 265-0094
Fax (602) 265-2195

3101 North Central Avenue
Suite 1000
Phoenix, Arizona 85012

Revised

August 7, 2018

Use Permit & Variance Narrative

On behalf of C&S Sporting Goods (“C&S”), we are seeking a use permit to allow the sale of second hand goods. After many successful years at their current location on 7th St. and Marlette Ave., C&S is expanding into a new location at 12th St. and Northern Ave. Thus, this use permit for the sale of second hand goods is required.

We are also seeking a variance from the requirement that there be at least 1,380’ of separation between second hand good stores. This requirement seeks to avoid the congregation of like uses, but C&S’s store and operation is so completely different from the thrift store nearby that the application of this standard becomes a special circumstance.

As the narrative below will detail, C&S is considered to be one of the best sporting goods stores in the valley and has earned the loyal support of the community over many years, including prominent residents like former Mayor Greg Stanton.

Use Permit Request

The new C&S location is within an existing shopping center located on the southwest corner of Northern Ave. and 12th St. The center is zoned PSC, which allows for the sale of second hand goods (under its inclusion of C-1 uses). C&S sells both new and used sporting goods, and the inventory split is approximately 70% new and 30% second hand. Accordingly, this use permit is necessary to provide C&S the ability to operate as it has at its existing location.

Accordingly, we are seeking the following use permit:

- Use permit for Second Hand or Used Merchandise Sales (622.D.154)

Use Permit Tests Are Met

The use will not cause an adverse impact on adjacent property or properties in the area

The proposed store will be located within an existing shopping center. None of the traffic, smoke, noise, light, vibration, etc. tests are implicated by this request. Looking at the broader use permit test of whether the use will have an adverse impact on the area, there is absolutely no question that C&S will be a positive for both the shopping center and the community.

In a day and age where retail centers are failing, and even sporting goods stores like Sports Authority are shutting down, C&S has thrived and is now expanding into a new location. C&S has a solid track record and boasts an A+ rating by the Better Business Bureau. Having a quality tenant like C&S come into this existing shopping center is a huge bonus for the center, the other tenants, and the neighborhood.

Moreover, C&S is the type of family owned and operated, mom and pop store that gives character and roots to an area like this. Their original location at 7th Street and Marlette Avenue was established in 2011 and has been warmly embraced by the community.

The name *C&S Sporting Goods* refers to Chad and Sarah, the married couple who owns the store and works full time to operate it—usually working 7 days a week.



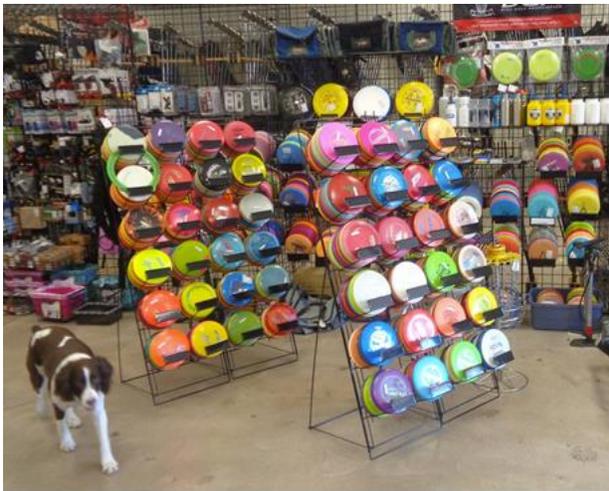
Chad was raised in Central Phoenix and is passionate about building up his community. Unlike national chains without deep local ties, C&S has those roots and it truly cares about the local community residents. C&S will continue to be a part of the fabric of the community, as it has since opening its doors at 7th/Marlette in 2011.

C&S sponsors over 20 local kids' sports teams. It also provides the equipment for several Arizona Sports leagues such as Ramms, Arcadia little League, Holiday Park, Madison School District, St Francis and many more, all at large discount to support the community.

About 70% of C&S's inventory is new and 30% is used. C&S's is very particular about the quality of the goods they purchase, including the second hand goods. This is one of

the company's strengths. Through C&S's strict buying policy, they ensure all products, including the second hand goods, are up to C&S's high standards. After reviewing the inventory, customers have often asked in confusion whether the store actually sells used equipment, because the used equipment is often hard to distinguish from the new equipment.

It's important to clarify that C&S is not a thrift store. The store receives no donations or drop offs. The majority of second hand goods come from customers exchanging equipment, such as when children outgrow cleats and need larger sizes or when a golfer wants to upgrade clubs.



C&S also keeps their online inventory updated with individual product pictures, allowing customers to shop their inventory from home before heading to the store. C&S's broad selection is one of their strongest selling points for customers.

Media Highlights of C&S's Quality

C&S has received high praise from various publications since its opening in 2011. C&S was named to Phoenix New Times' article of "8 Favorite Sporting Goods Shops in Metro Phoenix" within their second year of being open. The article stated:

If you're feeling lazy and don't like the sound of schlepping to three specialty stores, then C&S is the place to go. . . . [A]ll types of sporting goods are packed into a relatively small store located near Seventh Avenue and Bethany Home Road. . . . The shop definitely gives you the feel of a local store and with great customer service.

Best Things Arizona included C&S at the #1 spot in its list of "The 10 Best Sporting Goods Stores in Arizona!"

1. C&S Sporting Goods, Phoenix, AZ

C&S Sporting Goods is like something out of an athlete's dream. This family-owned and operated shop has new and used sporting goods for virtually ever sport. You'll find gear for baseball, football, golf, basketball, hockey, water sports, winter sports, and more at their Phoenix storefront. In addition, C&S has topline fitness equipment to stock up your personal gym. C&S is also known for selling used equipment at reasonable prices.

C&S was also featured by Local First Arizona, a prominent non-profit group. The article stated, "Local First Arizona has more than 3,000 business members, and when it comes to Recreation & Sports' members, one that stands out to me is C&S Sporting Goods. . . . The owners and employees are super friendly and will take care of you like family. Their commitment and dedication stand out like nothing else."

Not only has C&S been warmly embraced by those with a publication voice, but they have been praised by the people that matter most to Chad and Sarah: the community members. C&S's online reviews are impeccably strong:

- **4.9** out of 5 on *Facebook* (after 32 reviews)

- **4.6** out of 5 on *Google* (after 73 reviews)
- **4.5** out of 5 on *Yelp* (after 49 reviews)

All this information is simply to make this point: C&S will be a tremendous positive for the neighborhood. They are the type of successful, home grown, mom and pop store that every community wants. They operate under strict business practices to maintain their A+ rating from the Better Business Bureau, to ensure their inventory is worthy of their brand name, and to always give back to their community.

Because of the nature of this operation and because C&S will be established within an existing retail center, this request does not implicate any of the usual traffic, noise, odor, vibration, etc. concerns analyzed under other use permit requests.

Moreover, C&S is a stable, successful, and community-supported tenant that will be a great acquisition for this commercial center. The community will be improved by C&S joining this center, both directly because of the sporting goods selection they carry and the good they do for the community, and indirectly because of the stability of C&S as a tenant in this center.

For the reasons stated previously, the subject use permit will be a benefit to the community and will not cause any adverse impact.

The use will be in compliance with all provisions of the Zoning Ordinance and the laws of the City of Phoenix

C&S Sporting Goods will be in compliance with all the provisions of the Zoning Ordinance and the laws of the City of Phoenix, and thus this condition of the use permit test is met.

Variance Request

Within the PSC district (given its incorporation of C-1 uses), the following condition is attached to the allowance for the sale of second hand goods:

That no such use is located on a lot with a property line within 1,320 feet, measured in a straight line in any direction, of the lot line of another such use regardless of the zoning district.

As the crow flies, a charity thrift store is located within this radius (see aerial below).



The store is called Luv to Save Thrift Shop, but it is completely different from C&S. It is a charity thrift store that sells donated/dropped off, second hand goods with proceeds going to help dog rescue. It's only open 4 days a week for about five hours a day. But because they sell "second hand" goods, the following variance is necessary:

- Variance to allow Second Hand or Used Merchandise Sales within 1,320 feet of a similar use. Minimum 1,320 foot separation required. (622.D.154.b)

Special circumstances are present

There are several special circumstances in this case that each satisfies the first legal test for this spacing variance. Those special circumstances are described in more detail below.

1. The Two Uses Bear No Resemblance

Spacing requirements like the one here are designed to prevent the congregation of multiple instances of the same use within close proximity. Indeed, that is how the requirement is phrased. The requirement calls for 1,320' from one "such use" to "another such use."

But here, Luv to Shop Thrift Store and C&S Sporting Goods are completely different uses. Concerns about the congregation of like uses cannot be implicated if the uses are not actually “like.”

Although both stores sell second hand goods, that is where their similarities end. Consider the table below that compares the two stores with each other.

	C&S Sporting Goods	Luv To Save Thrift Shop
% of used goods	Approximately 70% new and 30% used Used goods are carefully selected for quality	100% used
How goods are acquired	Selected purchases of quality used equipment to supplement new equipment	Donations/drop offs
Type of Business	Specialty retailer	Charity thrift store
Type of Goods	Sporting Goods	Wide variety, including clothes, shoes, books, household items, jewelry, etc.
Price of goods	Competitive market rates	Discount pricing
Management	Owner operated and managed, with the assistance of paid employees. Known for its customer service to help customers find the proper equipment	Volunteer staff and management

Hours of operation	Regular retail hours	Limited days/hours
	Mon 10-7	Mon Closed
	Tue 10-7	Tue Closed
	Wed 10-7	Wed 11-4
	Thu 10-7	Thu 11-4
	Fri 10-7	Fri 11-4
	Sat 10-6	Sat 11-5
	Sun 11-4	Sun Closed

The two stores within the 1,320' radius are completely different in nearly every respect. Luv to Shop Thrift Store is a thrift store with a charity mission, volunteer employees, limited hours, and a variety of donated goods, with clothes being a main component.



In stark contrast, C&S is an owner operated, for-profit sporting goods retailer that mostly sells new equipment. The 30% of C&S's total inventory that is second hand goods is carefully selected to ensure quality. As the articles referenced above attest, C&S is known for its customer service, where knowledgeable owners and employees help customers find the right fit for desired sporting equipment.



We wish to take nothing away from Luv To Save Thrift Shop. As a thrift shop, they appear to be well loved by their customers and certainly by the many dogs this charity has rescued. We simply wish to highlight the clear differences between the two uses.

Applying a mandatory separation in this case, between two uses that bear no resemblance to each other, creates a special circumstance justify variance relief. There can be no feared congregation of like uses when the two uses are not actually "like."

The strict application of the ordinance requirement in this case would work a clear hardship to C&S with no benefit to the community. Indeed, the community would be negatively impacted by not allowing C&S to come into this existing shopping center, given its track record of success and its community following.

2. Separation Requirement Not Designed for Uses Like C&S

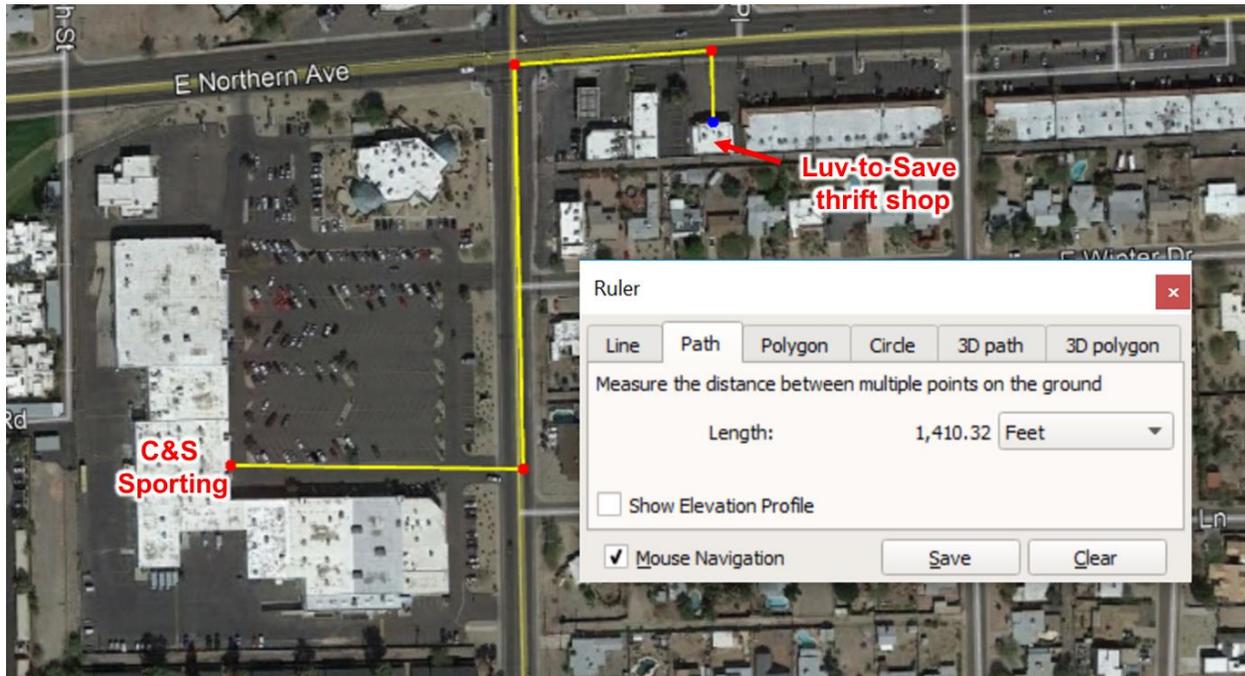
The strict application of this spacing requirement in this case creates a special circumstance and a hardship. This spacing requirement was surely never intended to target specialty retail stores like C&S, which sell mostly new equipment (70%) and some carefully selected used equipment. This requirement was likely intended to separate donation-based, discount thrift stores like Savers and Salvation Army. It is understandable (even if not entirely founded) that neighbors could grow concerned about the congregation of those stores attracting undesirable elements into a neighborhood. But the model of C&S is so completely different from the donation-based, discount thrift store model that this spacing requirement is overly restrictive.

3. True Separation Is Greater Than Required

The third special circumstance is that the true separation between C&S and Luv to Shop Thrift Store is more than the required 1,320'. When the measurement is taken as the crow flies, and measured from each property line, the distance is less than the required 1,320'. However, when one considers the intent of the spacing requirement, applying the strict measurement method creates a special circumstance in this case.

As discussed above, the spacing requirement is intended to prevent the congregation of uses, where such congregation would allow someone to walk a short distance between two thrift stores. In other words, the City seems to have intended to separate the sphere of influence for like uses. Under that intent, the question is not how far the distance is as the crow flies; the question is how far would someone have to travel to get from one store to another. That is the better measure of how close the two spheres of influence are to each other.

And under that calculation, C&S is 90' *greater* than the required 1,320' (see image below).



So while we appreciate the simplicity of the measurement method proscribed by the ordinance, it won't always be narrowly tailored for each individual situation. In this case, strictly applying the measurement method from the ordinance creates a special circumstance and a hardship because not only are the two uses dissimilar, the functional separation between the uses is +/- 1,410'.

Special Circumstances Were Not Self-Imposed

None of the special circumstances outlined above were self-imposed by the applicant. The special circumstances listed above are (1) the dissimilarity between C&S Sporting Goods and Luv to Shop Thrift Store, (2) the ordinance's likely intent to focus on donation-based, thrift stores that are dissimilar from C&S as a specialty goods retailer with select used merchandise, and (3) the practical separation between C&S and Luv To Shop being more than the required distance. None of these special circumstances was created by the applicant.

Variance Is Necessary for Reasonable Property Rights

Because of the presence of Luv To Shop, this variance is necessary for C&S Sporting Goods to be able to operate in the intended suite. In fact, this variance would be required for C&S to operate anywhere within any of the commercial centers at this intersection.

The question then is whether C&S's request to operate is reasonable. We believe that in this there can be no question. C&S is merely seeking to operate a specialty retail store within an existing commercial center. C&S is a mom & pop store that has earned every bit of its community recognition, praise, and loyalty. Although it may sound trite, it remains entirely accurate that this type of owner operated business is what our country was built on and our communities are still built on.

Is this variance necessary? Yes. Is operating a specialty retail store within an existing center reasonable? Completely. Thus, we believe this condition of the variance test is met.

Variance Will Not Harm Persons, Property or Welfare of the Area

This request will undoubtedly have a positive impact on current and future surrounding land use and zoning patterns of the area. In a time where large commercial center struggle to find and retain quality tenants, a store like C&S with a loyal following of customers and a track record of success and recognition will be overwhelmingly positive for this center.

The tenant list of a shopping center is often perpetual, either positive or negative. As good tenants are attracted and retained, other such quality tenants are willing to come. The opposite is also true. As successful tenants leave the center or avoid it, it is a challenge to attract other quality tenants. C&S's presence in this center is a win for the center and the community.

For the reasons stated above, this case is not about the congregation of discount thrift stores that rely on drop-off donations with heavy price reductions. It's about the addition of a successful specialty goods retailer that mostly sells new equipment (70%) coming into an existing shopping center within 1,320' of a small thrift store that has an entirely different operation. We do not believe the ordinance ever envisioned trying to prevent a store like C&S from going into this location.

The granting of this variance (and use permit) and allowing C&S to operate within this existing center will have no negative effect on the neighborhood. On the contrary, it will have a notable positive impact.

Finally, we would refer the hearing officer to the many support letters and petition registrations submitted on behalf of this application. The neighborhood voice is giving a resounding stamp of approval.

Conclusion

Although we are certainly a firm of advocacy, we are also a firm that carefully analyzes and contemplates cases brought before us. We put these requests through our own internal review process before ever filing this application, and we sincerely believe the requested use permit and variance are appropriate and justified. We respectfully request they be granted.

O:\INDEX\C&S Sporting Goods\Docs\Use Permit and Variance Narrative - Final - 8.7.18.docx