

Minutes
HEARING OFFICER
MAY 6, 2008

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

Present:

David Williams, Hearing Officer
Steve Abrahamson, Planning & Zoning Coordinator
Shawn Daffara, Planner II
Alan Como, Planner II
Nick Graves, Planning Intern
Derek Partridge, Planner I

Number of Interested Citizens Present: 16

Meeting convened at 1:30 PM and was called to order by Mr. Williams. He noted that anyone wishing to appeal a decision made today by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) days by May 20, 2008 at 3:00 PM to the Development Services Department.

-
1. Mr. Williams approved the Hearing Officer Minutes for April 15, 2008.

-
2. Mr. Williams noted that the following case(s) had been continued:

- Hold a public hearing for a request by the ~~TALIANI~~ **TAHILIANI RESIDENCE (PL080121)** (Matt Price/SW Commercial Services Inc., applicant; Harry Tahiliani, property owner) located at 1101 East Warner Road, Estate 442 151, in the R1-15, Single Family Residential District for:

ZUP08056 Use permit to allow an accessory building (ramada).

ZUP08065 Use permit to allow an accessory structure (batting cage).

CORRECTED BY DEVELOPMENT SERVICES DEPARTMENT

CONTINUED TO MAY 20, 2008 HEARING OFFICER

3. Hold a public hearing for a request by the **MATWICK RESIDENCE (PL080037)** (Michael Matwick, applicant/property owner) located at 1733 East Louis Way in the AG, Agricultural District for:

VAR08008 Variance to reduce the rear yard setback from thirty-five (35) feet to twelve (12) feet.

Mr. Michael Matwick was present to represent this case.

Alan Como, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. He noted that staff is recommending denial of this request as they do not feel it meets the requirements for a variance. Mr. Como noted that the minutes and attendance sheet from the neighborhood meeting as well as a petition of support had been given to Mr. Williams in addition to the staff report. It was noted that this applicant had been granted a use permit for an accessory building (pool house/game room) by Hearing Officer back in March of this year. Today's request for a variance is based on a new site plan submitted by the applicant.

Mr. Matwick noted this request was based on two (2) circumstances. One, that his property was smaller and did not have as much depth as the neighbors' properties to the west and south of his location and this increases density of his property. Secondly the reason why the current site plan was different from the original architectural plans was that due to a lack of coordination on his part, that he was not aware that the bridge path behind his home was a bridge path, he thought it was an alley and that they would get some relief from the setback from that alley. Additionally, the landscape designer thought the property was zoned residential, while the architect thought the property was zoned agricultural and that was the reason for the difference in the site plans.

Mr. Matwick stated that his original intent was not to build on this property however due to the decreasing property values in the current market, he found that properties in the nearby Tempe area were in the \$2.5 million dollar range compared to his current property's mortgage of \$300,000. He felt that this created a financial hardship as they could not afford to move and did not want to leave the Tempe area. He noted that the pictures of surrounding properties that he had submitted were not screened by anything other than horse fencing or chain link fencing. His proposed place includes a seven (7) foot perimeter fence as well as trees encircling the property so the line of sight of the accessory building will be screened. They have gone to the expense of bringing in mature trees that are large enough and high enough to provide maximum screening – this would minimize the visual impact on the neighboring properties. Neighbors are in support of his plans and would increase the value of neighboring homes as well.

Mr. Williams questioned the height of the accessory structure. Mr. Matwick responded that it is 15 feet 6 inches in height which meet the requirements in relation to the existing residence, and that it is a single story structure. Mr. Williams asked the size of the lot – was it an acre? Mr. Matwick responded that it was .96 acre just a hair under an acre. He confirmed that his property is not part of the subdivision or the west nor is it part of the Homeowners Association to the south. Additionally he does not have any rights or privileges on the bridge path. He explained that until he has spoken with Sherri Lesser, staff planner, he was unaware at the time of purchasing the property of the bridge path and lack of rights thereof, and the fact that it was not an alley.

Mr. Williams questioned what the current construction activity in the yard consisted. Mr. Matwick responded that there was a pool being installed and the original intent was to add a pool cabana. As construction progressed, it was decided that it would be more feasible to accommodate an at home work environment for Mr. and Mrs. Matwick from the house to an accessory building in order to free up livable space in the home. This was also part of the reason for the difference between the original site plan and the current site plan.

Mr. Williams asked staff if they had received any letters or phone calls of opposition to this request. Mr. Como responded that they had not.

Mr. Williams stated that the corner lot and location of the street in relation to that property does shorten the depth – on the other hand this is a large lot of almost an acre and typically would consider this variance request a self-imposed hardship. He does not support the entire variance request although he is sympathetic to the bridle path situation and the street alignment which shortens the lot. Mr. Williams stated that he is inclined to approve a variance based on measurements to the middle of the bridle path similar to what is normally done with an alley in that location.

DECISION:

Mr. Williams modified this variance request as follows for a sixteen (16) foot setback similar to an alley – this modification will allow an eight (8) foot reduction:

VAR08008 Variance to reduce the rear yard setback from thirty-five (35) feet to ~~twelve (12)~~ **twenty-seven (27)** feet. **MODIFIED BY HEARING OFFICER**

Mr. Matwick asked if Mr. Williams would consider a reduction by 20% to twenty-eight (28) feet rather than twenty-seven (27) feet, and take the eight (8) foot bridle path allowance from twenty-eight (28) feet which reduces the setback to twenty (20) feet. Although this might seem to be a minor point, Mr. Matwick stated that when they considered the possibility of a denial, this was the footage they determined would not require another site plan or design to be reconfigured. Mr. Williams responded that while he could appreciate their thinking, he could not support that change.

Mr. Williams approved the modified PL080037/VAR08008 for twenty-seven (27) feet subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. Comply with all conditions of the use permit to allow an accessory building (ZUP08021).

4. Hold a public hearing for a request by **BETHANY CHRISTIAN SCHOOL (PL080059)** (Scott Wunderlich/ Cityspaces, applicant; Bethany Christian School, property owner) located at 6304 South Price Road in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP08047 Use permit to allow the addition of two (2) modular buildings.

Mr. Scott Wunderlich of City Spaces was present to represent this case. He stated that he would like to increase the time limit on Condition of Approval No. 6 for the replat from 90 days to 180 days.

Shawn Daffara, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued.

Mr. Williams referred to Condition of Approval No. 6 which requires a subdivision plat and questioned its inclusion. Mr. Daffara agreed that it is not included within the Conditions of Approval too often, however due to combining parking on both lots, all parking for the school needs to be on one parcel, this is a requirement – these are different subdivision parcels and a replat would record the lot line change with the County.

DECISION:

Mr. Williams approved PL080059/ZUP08047 subject to the following conditions:

1. The use permit is valid for the Bethany Christian School and may be transferable upon Development Services staff review.
2. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing set to re-evaluate the appropriateness of the use permit.
4. Any expansion or intensification of the use shall require a new use permit to be approved.
5. All business signs shall be approved through Development Review, and permits obtained.
6. A subdivision plat is required to combine Lots 1 and 3 to form one parcel for Bethany Christian School within ~~ninety (90) one hundred eighty (180) days (August 6, 2008)~~ **(November 6, 2008)**. **MODIFIED BY HEARING OFFICER**
7. The new modular buildings shall complement the existing school buildings in color, form and material.
8. The new modular buildings and site modifications will require Development Plan Review approval within one year **(May 6, 2009)**.

-
5. Hold a public hearing for a request by **SUNSTOP PLAZA - URBAN CAFE (PL080094)** (Mohamed Elghalayini, applicant; Royal West Investments LLC, property owner) located at 1212 East Apache Boulevard, Suite No. 103 in the CSS, Commercial Shopping and Services District for:

ZUP08063 Use permit to allow a hookah lounge/tobacco retailer.

Mr. Mohamed Elghalayini was present to represent this case. He described the process by which customers could purchase and enjoy tobacco products in his establishment.

Alan Como, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued.

Mr. Williams referred to the proposed Condition of Approval No. 6 which states, "The gross sale of beverages and snack items may not exceed that of tobacco and hookah products." He asked if this was a confirmation of state law or city code. Steve Abrahamson, Planning and Zoning Coordinator, responded that the state of Arizona enforces this stipulation along with the Maricopa County Health Department – Smoke Free Arizona program. Mr. Abrahamson further noted that the Zoning Administrator's opinion was based on the requirements of hookah lounge(s) and primary and secondary school separation requirements. Urban Cafe is located directly near the New School for the Arts, Steve noted, and in July 2007 there was an amendment to the City of Tempe Zoning and Development Code which requires a 1,023 ft. separation between secondary schools and hookah lounges. The Zoning Administrator's opinion was based on the evidence that Urban Cafe had been operating a hookah lounge prior to July 2007 and as such, were grandfathered in.

Mr. Abrahamson responded to a question from Mr. Elghalayini that under the Smoke Free Arizona program, the sale of beverages and food (i.e. snacks) cannot exceed fifty percent (50%) of the sale of tobacco products by state standards. He explained that there is confusion at the state and county levels as to whether a food handler's license is required, however the City of Tempe allows the sale of beverages and snacks as long as they do not exceed fifty percent (50%) of the sale of tobacco/hookah products in an establishment.

Ms. Magda Kassel spoke and stated that according to Maricopa County, if they hold a food handler's license they are not allowed to sell hookah tobacco and products – they are not even allowed to have ice or ice machines if they have a hookah lounge.

DECISION:

Mr. Williams approved PL080094/ZUP08063 subject to the following conditions:

1. The use permit is valid for Urban Cafe and may be transferable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation.
2. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. § 36-601.01.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
4. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
5. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
6. The gross sale of beverages and snack items may not exceed that of tobacco and hookah products.
7. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review prior to issuance of building permit.
8. All doors to have illumination to meet five (5) foot candles at the door and two (2) foot candles within a 15' radius. Details to be approved through Building Safety Plan Review.
9. All business signs shall receive a sign permit. Please contact Planning staff at (480) 350-8331.
10. A security plan is required for this establishment due to the late hours of operation in conjunction with tobacco retail. Contact Tempe Police Department Crime Prevention Unit (480-350-6333).

-
6. Hold a public hearing for a request by **ARIZONA LABOR FORCE INC. d.b.a. LABOR SYSTEMS (PL080110)** (Paul Turcotte/Arizona Labor Force, applicant; BYS Company, property owner) located at 15 West Baseline Road in the CSS, Commercial Shopping and Services District for:

ZUP08055 Use permit to allow an employment agency.

Mr. Paul Turcotte was present to represent this case.

Alan Como, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued.

DECISION:

Mr. Williams approved PL080110/ZUP08055 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. Post no loitering signs at and around the main entrance.
3. The applicant shall devise a security plan with the City of Tempe Crime Prevention Unit. Please contact Sergeant Ken Harmon at (480) 350-6217.
4. All rear exist doors require a lexan vision panel. Details to be approved through Building Safety Plan Review prior to issuance of building permit.

5. All doors shall have illumination to meet five (5) foot candles at the door and two (2) foot candles within a 15' radius. Details to be approved through Building Safety Plan Review.

7. Hold a public hearing for a request by **KING TUT CAFE - MISHA'S SHEESHAS (PL080122)** (Kareem Kassel, applicant; Kassel Corporation, property owner) located at 1125 East Apache Boulevard in the CSS, Commercial Shopping and Services District for:

ZUP08064 Use permit to allow a hookah lounge/tobacco retailer.

Ms. Magda Kassel was present to represent this case. She explained her reasons for keeping the kitchen portion of this business operable (i.e. community and church relations), and that it would be separate (physical and financial) from the hookah lounge.

Shawn Daffara, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued.

Steve Abrahamson, Planning and Zoning Coordinator, noted that a caller had questioned the separation between the restaurant and the hookah lounge and his concern regarding same. Mr. Abrahamson had explained that the two would be separate and he wanted to clarify for the record that it was separate.

Mr. Williams asked Ms. Kassel if there was a patio. She responded that there was. He asked what her plans were for the patio area. Mr. Daffara explained that the patio area would be part of Misha's Sheeshas (hookah). Ms. Kassel stated that she was working with Building Safety on this issue.

Mr. Williams asked staff if the use permit request was just for the indoor space or the indoor and outdoor space? Mr. Daffara stated that the use permit request was for both – the inside space and the outdoor patio area as well. Mr. Williams asked if the Conditions of Approval covered the patio area or did staff have any concerns. Mr. Daffara responded that staff did not have any concerns over the patio area space – he noted that there was a state provision that any outdoor smoking area had to be at least twenty feet (20') separation away from any door and that this would be a provision that was imposed by the state.

Mr. Abrahamson clarified that if someone wanted to smoke on the patio they could – from the site plan it appears that the entrance door to the restaurant is beyond the twenty foot (20') separation area. He does not feel that this was not an issue for this business.

DECISION:

Mr. Williams approved PL080122/ZUP08064 subject to the following conditions:

1. The use permit is valid for King Tut and may be transferable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation.
2. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. 36-601.01.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
4. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.

5. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
6. The gross sale of beverages and snack items may not exceed that of tobacco and hookah products.
7. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review prior to issuance of building permit.
8. All doors to have illumination to meet five (5) foot candles at the door and two (2) foot candles within a 15' radius. Details to be approved through Building Safety Plan Review.
9. All business signs shall receive a sign permit. Please contact Planning staff at (480) 350-8331.
10. The applicant shall contact the City of Tempe Crime Prevention Unit for a Security Plan. Please contact Sergeant Ken Harmon (480) 858-6330.

-
8. Hold a public hearing for a request by the **PROFESSIONAL MEDICAL TRANSPORT (PMT) AMBULANCE STATION (PL080125)** (Michelle Angle/Starwest Associates LLC, applicant; BPRE Tempe Scottsdale LLC, property owner) located at 2240 North Scottsdale Road, Suite No. 5, in the CSS, Commercial Shopping and Services District for:

ZUP08057 Use permit to allow an ambulance dispatch station.

Ms. Michelle Angle of Starwest Associates LLC was present to represent this case.

Shawn Daffara, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. A phone call had been received from a neighborhood association who had a concern that responding ambulance vehicles could pose a traffic/safety hazard on College Avenue and also the route that they would take. Mr. Daffara stated that it is PMT's policy that sirens and lights are not to be used in front of or near residential areas, and that they attempt not to navigate cross streets with responding vehicles. Sirens and lights are used on major arterial/thoroughfare areas.

Mr. Williams asked Ms. Angle how many other stations does their company have; Ms. Angle responded that there were sixteen (16).

Mr. Daniel Hargest stated that he is the owner of the t-shirt business located at Suite No. 3, and he is concerned over where the ambulances would be parked, and whether the parked vehicles would block the view of the plaza. Parking spaces are at a premium at the plaza he explained, and if the ambulances could be parked across the lot it would be good.

Mr. Williams asked if there were a required number of spaces allotted for this business. Mr. Daffara responded that there would be two (2) parking spaces used for the ambulances and the employees would also be parking in the lot. Based on the square footage of this business, Mr. Daffara explained that a total of six (6) parking spaces are required. The site plan depicts two (2) parking spaces in front of the business as the allotted to the ambulance vehicles.

Ms. Angle explained that when the ambulance vehicles are not in use, they need to be parked in such a manner that they can reach power cords for recharging purposes so the equipment will be properly charged for the next call.

Mr. Williams asked if there would only be two ambulance vehicles at this location. Ms. Angle responded that there may just be one, however a maximum of two.

Mr. Williams asked about the location/safety factor of the power cords being placed on the sidewalk. Ms. Angle stated that typically there is a cover which goes over the cords so that it would not be a safety factor. Mr. Daffara noted that when the plans are submitted to the Building Safety Division that the electrical cord covering(s) would be reviewed by that department and that they would make sure it would be compliant with the ADA. He believed that it would be adequately covered by the Building Safety Review checks and balances.

Mr. Daniel Hargest returned to the podium to indicate on the proposed site plan where the handicapped accessible parking spaces were located in relation to the PMT business so that this factor could be taken into account when determining where the electrical power cords and ambulance parking would be located.

DECISION:

Mr. Williams approved PL080125/ZUP08057 subject to the following conditions:

1. The use permit is valid for PMT Ambulance and may be transferable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation.
2. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
3. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
4. The rear door shall require lighting to meet five (5) foot candles at the door and two (2) foot candles within a 15 foot radius. Light fixture cut sheets to be reviewed during Building Safety Plan Review.
5. The rear door shall have a lexan vision panel or a 180 degree "rotatable viewer". Details to be reviewed during Building Safety Plan Review.
6. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
7. Sirens shall not normally be activated until the ambulance is at least 500 feet from the facility. The only exception to this requirement will be to allow minimal use of sirens in order to gain access to Scottsdale Road.
8. **Delineate pavement markings for two (2) ambulance spaces adjacent to the suites. ADDED BY HEARING OFFICER**

-
9. Hold a public hearing for a request by the **PROFESSIONAL MEDICAL TRANSPORT (PMT) AMBULANCE STATION (PL080126)** (Michelle Angle/Starwest Associates LLC, applicant; Bama Retail LLC, property owner) located at 7520 South Rural Road, Suite A-8, in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP08058 Use permit to allow an ambulance dispatch station.

Ms. Michelle Angle of Starwest Associates LLC was present to represent this case.

Shawn Daffara, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. Two e-mails had been received – one in opposition regarding the use of sirens and one of inquiry. Ambulance parking is currently depicted on the site plan as being in the rear of the building. The subject of power cords and ADA requirements was discussed in relation to the currently planned parking area for the ambulance vehicles.

Steve Abrahamson, Planning and Zoning Coordinator, stated that there had been some concern from the neighbors over the PMT employees smoking outdoors and noise. With the ambulances parking on the western perimeter of the property, it would be helpful if the applicant could explain the issues and policies involved with that.

Mr. Williams questioned whether staff had discussed the location of the ambulance parking with the applicant. Mr. Daffara responded that this issue had been considered, however the applicant was concerned over the location of supplies and restocking the vehicles in relation to where the parking was designated. They felt that the rear parking would be most beneficial.

Ms. Angle responded that in locating the ambulance parking to the rear of the business, they were trying to accommodate the other businesses and restaurants within the plaza but moving the parking area is certainly they could look into.

Mr. Williams stated that as this is a commercial property he is inclined to position the ambulance parking in the front rather than the back where it would affect the neighbors. He asked if the applicant had any concerns about that plan or reconfiguration? Ms. Angle stated that they would look at the plan again to place the parking in the front.

Mr. Williams asked staff if they were confident that they could work out a revised parking plan for the ambulance vehicles in the front of the business without having the case reheard at a Hearing Officer hearing? Mr. Daffara stated that staff would be happy to work with PMT and that they could submit a revised site plan showing the new parking spaces out in front of the plaza subject to a condition of approval.

DECISION:

Mr. Williams approved PL080126/ZUP08058 subject to the following conditions:

1. The use permit is valid for PMT Ambulance and may be transferable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation.
2. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
3. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
4. The rear door shall require lighting to meet five (5) foot candles at the door and two (2) foot candles within a 15 foot radius. Light fixture cut sheets to be reviewed during Building Safety Plan Review.
5. The rear door shall have a lexan vision panel or a 180 degree "rotatable viewer". Details to be reviewed during Building Safety Plan Review.
6. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
7. Sirens shall not normally be activated until the ambulance is at least 500 feet from the facility. The only exception to this requirement will be to allow minimal use of sirens in order to gain access to Rural Road or Elliot Road.
8. **Relocate ambulance parking to the main parking lot of the shopping center. ADDED BY HEARING OFFICER**

10. Hold a public hearing for a request by the **PROFESSIONAL MEDICAL TRANSPORT (PMT) AMBULANCE STATION (PL080127)** (Michelle Angle/Starwest Associates LLC, applicant; Weingarten Nostat Inc., property owner) located at 1832 East Southern Avenue, in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP08059 Use permit to allow an ambulance dispatch station.

Ms. Michelle Angle of Starwest Associates LLC was present to represent this case.

Shawn Daffara, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. Ambulance parking at this facility is in the rear of the plaza behind a service corridor, located quite a bit of distance away from the residential area to the east. One phone call of inquiry was received by staff regarding the use of sirens.

DECISION:

Mr. Williams approved PL080127/ZUP08059 subject to the following conditions:

1. The use permit is valid for PMT Ambulance and may be transferable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation.
2. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
3. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
4. The rear door shall require lighting to meet five (5) foot candles at the door and two (2) foot candles within a 15 foot radius. Light fixture cut sheets to be reviewed during Building Safety Plan Review.
5. The rear door shall have a lexan vision panel or a 180 degree "rotatable viewer". Details to be reviewed during Building Safety Plan Review.
6. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
7. Sirens shall not normally be activated until the ambulance is at least 500 feet from the facility. The only exception to this requirement will be to allow minimal use of sirens in order to gain access to Southern Avenue or McClintock Drive.

11. Hold a public hearing for a request by the **JUNCK RESIDENCE (PL080129)** (Terry Thomas/Legacy Custom Building and Remodeling, applicant; Colleen Junck, property owner) located at 2138 East Calle De Arcos in the AG, Agricultural District for:

ZUP08060 Use permit to allow an accessory building (pool cabana).

Mr. Steve Price of Legacy Custom Building and Remodeling was present to represent this case.

Derek Partridge, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued.

DECISION:

Mr. Williams approved PL080129/ZUP08060 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.

2. Detached structure to be consistent in design and construction of principle structure; colors and materials to match existing dwelling.
3. The accessory building shall not be used as a separate living unit/guest quarters (no cooking facilities). Only one residential unit per lot is allowed in the AG, Agricultural District.

12. Hold a public hearing for a request by the **LIESEGANG RESIDENCE (PL080130)** (Craig Liesegang, applicant/property owner) located at 4521 South Forest Avenue in the R1-6, Single Family Residential District for:

ZUP08061 Use permit to allow an accessory building (work shop).

Mr. Craig Liesegang was present to represent this case.

Alan Como, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued.

DECISION:

Mr. Williams approved PL080130/ZUP08061 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. Detached structure to be compatible in design, materials and color with main (existing) dwelling.
3. Detached structure not to be used for living quarters. Detached carport not to be used for permanent vehicle parking.
4. Install eight inch (8") address numerals on east elevation, to provide visibility of address from alley.

13. Hold a public hearing for a request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **HAZELTON PROPERTY (PL080087/ABT08006)** (Patrick Hazelton, property owner) Complaint CE075217 located at 1219 South Maple Avenue in the R-2, Multi-Family Residential District.

No one was present to represent the property owner.

Julie Scofield, City of Tempe – Neighborhood Enhancement Department, stated that she was to return to this hearing to offer additional information on graffiti – she explained that per the City code that graffiti is prohibited and that they city can abate the property if the graffiti is not taken care of in the specified length of time (within ten (10) days). She presented the notice that was sent to the property owner and posted explaining the violation. It has been over ten days since the property owner was notified and he has not responded.

Ms. Scofield explained that her supervisor, Ms. Jan Koehn, had spoken with the City Attorney, Mr. Park about the suggestion for posting no parking signs and that her department had spoken with someone who can make those signs should the Hearing Officer approve that action today.

Mr. Williams questioned whether once the no parking signs are posted, that persons parking on that lot can be cited? Ms. Scofield stated that she had spoken with the City of Tempe Police Department's Crime Prevention person assigned to that neighborhood and that he had informed her that without the property owner filling out a

no trespassing form, the City cannot cite anyone. The no parking sign(s) might be a bluff, however it could deter persons from parking on that lot.

Mr. Williams asked what specific items were being asked to abate today? Ms. Scofield responded to (a) abate the graffiti, and (b) to post the no parking signs. Mr. Williams asked if anything could be done about the dust control which is a neighborhood concern. Ms. Scofield said not at this time.

Ms. Virginia Sandstedt of the City of Tempe, stated that if the City cannot do anything about the dust, then does someone need to contact the Maricopa County Environmental Control who deals with dust issues on construction sites.

Mr. Williams questioned staff as to what avenues could be pursued to mitigate the dust issue. Mr. Abrahamson responded that he would investigate and get back with Ms. Sandstedt on the results of his research as to what can be done on the dust issues on the property. Mr. Williams suggested that this is an air quality citation issue and for staff to determine whether this is a county or city issue to resolve the dust nuisance issue from this property.

DECISION:

Mr. Williams approved abatement proceedings for PL080087/ABT08006 to include graffiti removal.

The next Hearing Officer public hearing will be held on **Tuesday, May 20, 2008**.

There being no further business the public hearing adjourned at 3:17 PM.

Prepared by: Diane McGuire, Administrative Assistant II
Reviewed by:



Steve Abrahamson, Planning and Zoning Coordinator
for David Williams, Hearing Officer

SA:dm