

**Minutes
HEARING OFFICER
OCTOBER 21, 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
Sherri Lesser, Senior Planner
Shawn Daffara, Planner II
Nick Graves, Planning Intern

Number of Interested Citizens Present: 14

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 November 4, 2008 at 3:00 PM to the Development Services Department.

1. Mr. Williams approved the Hearing Officer Minutes for October 7, 2008.
2. Request by **CENTRAL PLAZA - FOOD CITY NO. 96 (PL070481)** (M. Brennan Ray/Burch & Cracchiolo, applicant; Bashas Inc., property owner) located at 1338 East Apache Boulevard in the CSS, Commercial Shopping and Services District for:

ZUP07174 Use permit to allow outdoor retailing (outdoor roasting/retail food productions).

Mr. M. Brennan Ray/Burch & Cracchiolo 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. One (1) letter of opposition had been received in February; Mr. Daffara indicated on the location map where the opposing party was situated.

Mr. Charles Buss, Tempe resident, stated that he was associated with the nearby neighborhood association, expressed concern regarding abandoned grocery carts and trash/debris.

It was noted by the applicant that the shopping carts are retrieved every hour by Courtesy Clerks who monitor the area for trash. The landlord has a daily cleanup service but the applicant will make him aware of the neighborhood's concerns regarding this issue.

DECISION:

Mr. Williams approved PL070481/ZUP071746 subject to the following conditions:

1. The outdoor roasting/cooking equipment shall not conflict with pedestrian or vehicular traffic. If any display items are moved into the sidewalk, the business may be cited and/or returned to the Hearing Officer for review, and potential revocation of the use permits. The Zoning and Development Code requires a six (6') foot clear, unobstructed path.
2. The use permit is valid for the plans as submitted to and approved by the Hearing Officer, any expansion of the outdoor display would require a new use permit.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the Development Services office, the use permit may be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
4. Any outdoor signage associated with the display shall be reviewed by the Development Services Department – Planning Division and are limited to three (3) square feet.
5. The outdoor grilling area shall require development plan review, to include temporary awnings/tents and fences.
6. No sound amplification shall be used for the outdoor display.
7. The outdoor grilling area must be maintained in a clean and orderly manner (per City Code 21-3, B1) with boxes and pallets removed immediately after unloading/loading.
8. Area will be monitored by a qualified staff member at all times.
9. Post 'No Dining' and 'No Loitering' signs.
10. Add 'No Parking' striping at the curb and on the pavement at the location of the operation.

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3. Request by **ARIZONA ALL STARS (PL080362)** (Jennifer Huot, applicant; Hollywood Equities Inc., property owner) located at 7425 South Harl Avenue, Suite No. 3 in the GID, General Industrial District for:

ZUP08153 Use permit to allow an instructional school (tumbling, cheer facility) in the General Industrial District.

Ms. Jennifer Huot and Mr. Daniel Lannon were present to represent this case.

Sherri Lesser, 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. This business has been in existence at this location since 2002. The City became aware of the need for a use permit when a sign permit request was submitted.

DECISION:

Mr. Williams approved PL080362/ZUP08153 subject to the following conditions:

1. The use permits are valid for Arizona All Stars and may be transferable to successors in interest through an administrative review with the Development Services Manager, or designee.
2. Obtain all necessary clearances from the Building Safety Division.
3. Any intensification or expansion of the use would require the use permit to be reheard by the Hearing Officer.
4. 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.
5. The use permit is valid for the plans as submitted within this application.
6. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8331.

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4. Request by **KING PLAZA - H B TOBACCO – HUBBLY BUBBLY (PL080365)** (Anis Ben Harzallah, applicant; King Plaza LLC, property owner) located at 1400 South McClintock Drive, Suite No. 3 in the CSS, Commercial Shopping and Services District for:

ZUP08155 Use permit to allow a hookah lounge/tobacco retailer.

Mr. Anis Ben Harzallah and Mr. Ernest Kurschat were present to represent this case. Mr. Kurschat presented his opinion as to why this business should not be classified as a smoking lounge that requires adherence to COA #4. Mr. Daffara suggested that a letter outlining their reasoning be presented to Mr. Mike Williams, the Manager of the Building Safety Division.

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. He described the location and use, and noted that the outdoor smoke area requires Development Plan Review for design of the patio area thru administrative review. There can be no use of the patio by this applicant until the DPR has been completed.

The applicant was made aware of Condition No. 4 regarding the stipulations of the 2003 International Mechanical Code which affects the ventilation for this type of business by Mr. Abrahamson.

DECISION:

Mr. Williams approved PL080365/ZUP08155 subject to the following conditions:

1. The use permit is valid for HB Place 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. Since smoking will be permitted on the premises, the owner/management is responsible to adhere to the 2003 International Mechanical Code.
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 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.
9. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8331.
10. The applicant shall contact City of Tempe Crime Prevention Unit for a Security Plan within 30 days of this approval. Contact Crime Prevention at (480) 858-6330 before November 21, 2008.
11. The outdoor patio shall require Development Plan Review approval. Applicant shall submit application for patio within 30 days of this approval by November 21, 2008.

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5. Request by **SMOKE WORLD (PL080366)** (Rupal Pala, applicant; Pacific West Asset Management Corporation, property owner) located at 3415 South McClintock Drive, Suite No. 109, in the CSS, Commercial Shopping and Services District for:

ZUP08154 Use permit to allow a tobacco retailer.

Mr. Rupal Pala and Ms. Dhaval Pala were 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. No smoking will be allowed onsite.

DECISION:

Mr. Williams approved PL080366/ZUP08154 subject to the following conditions:

1. The use permit is valid for Smoke World 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. Since smoking will be permitted on the premises, the owner/management is responsible to adhere to the 2003 International Mechanical Code.
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 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.
9. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8331.
10. The applicant shall contact City of Tempe Crime Prevention Unit for a Security Plan. Contact Crime Prevention at (480) 858-6330 within 30 days of this approval before November 21, 2008.

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6. Request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **SCOFIELD RESIDENCE (PL080351/ABT08028)** (Aaron Scofield, property owner) Complaint CE084478 located at 5714 South Beck Avenue in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Ms. Brandy Zedlar, City of Tempe – Neighborhood Enhancement Department, stated that this property had been brought into compliance with the City Codes and that this request for abatement has been withdrawn.

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7. Request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **DOEDE RESIDENCE (PL080355/ABT08029)** (Douglas Doede, property owner) Complaint CE084794 located at 1028 West Cornell Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Ms. Brandy Zedlar, City of Tempe – Neighborhood Enhancement Department, stated that the issues are still a concern.

Mr. Williams noted that there are concerns of this property being a fire hazard.

DECISION:

Mr. Williams approved abatement proceedings for PL080355/ABT08029.

8. Request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **TILLEY RESIDENCE (PL080358ABT08030)** (Felix Tilley, Jr., property owner) Complaint CE086028 located at 23 West Fairmont Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

No one was present from the City of Tempe – Neighborhood Enhancement Department.

DECISION:

Mr. Williams continued abatement proceedings for PL080358/ABT08030 to the November 4, 2008 Hearing Officer hearing.

The next Hearing Officer public hearing will be held on **Tuesday, November 4, 2008.**

There being no further business the public hearing adjourned at 2:28 PM.

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



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

SA:dm