

Minutes  
HEARING OFFICER  
JUNE 2, 2009

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  
Sherri Lesser, Senior Planner  
Shawn Daffara, Planner II  
Derek Partridge, Planner I  
Nick Graves, Planning Intern  
Steve Abrahamson, Planning & Zoning Coordinator

Number of Interested Citizens Present: 25

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 June 16, 2009 at 3:00 PM to the Development Services Department.

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1. Mr. Williams approved the Hearing Officer Minutes for May 19, 2009.

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

Request by the **ALLISON RESIDENCE (PL090157)** (James Allison, applicant/property owner) located at 9338 South Dateland Drive in the R1-15, Single Family Residential District for:

**ZUP09070** Use permit to allow a detached accessory building (garage).

**VAR09004** Variance to reduce the rear yard setback from thirty (30) feet to eight (8) feet.

**CONTINUED TO JULY 7, 2009 HEARING OFFICER**

Request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **CROW RESIDENCE (PL090168/ABT09011)** (Jacquelyn Crow, property owner) Complaint 085550 located at 2149 East Minton Drive in the R1-4, Single Family Residential District.

**CONTINUED TO JULY 7, 2009 HEARING OFFICER**

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3. Mr. Williams noted that the following case(s) had been withdrawn:

Request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **FRAWLEY RESIDENCE (PL090155/ABT09009)** (Richard Frawley, property owner) Complaint 086331 located at 1103 East Palmcroft Drive in the R1-6, Single Family Residential District.

**WITHDRAWN BY CITY OF TEMPE – NEIGHBORHOOD ENHANCEMENT DEPARTMENT**

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4. Request by the **PARKER RESIDENCE (PL090159)** (Lawrence Parker, applicant/property owner) located at 4814 South Calle Los Cerros Drive in the R1-6, Single Family Residential District for:

**ZUP09071** Use permit to allow a detached accessory building (storage).

**ZUP09072** Use permit standard to reduce the east front yard setback by twenty percent (20%) from twenty (20) feet to sixteen (16) feet.

**VAR09005** Variance to reduce the on-site driveway length from twenty (20) feet to sixteen (16) feet.

**VAR09006** Variance to reduce the west rear yard setback from ~~fifteen (15) feet~~ **twelve (12) feet** to three (3) feet. **MODIFIED BY PLANNER**

Mr. Lawrence Parker was present to represent this case. He stated that these structure(s) had been built last winter.

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

Mr. Williams established, with staff's confirmation, that there was adequate space between the property line, driveway and curb locations. He noted that these are relatively small structure(s) of less than 200 s.f. Mr. Graves explained that the height of the structure(s) were 8 ½ to 9 feet. The Zoning and Development Code does not require anything less than 8 ft to have a use permit.

Mr. Parker depicted which neighbors had been contacted using the location map, and who was in support of the project.

**DECISION:**

Mr. Williams approved PL090159/ZUP09071/ZUP09072/VAR09005/VAR09006 (as modified) subject to the following conditions of approval:

1. Obtain all necessary clearances from the Building Safety Division.
2. The accessory building shall compliment the main residence in color, design and material.

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5. Request by the **SAINT DOMINIC SAVIO ACADEMY LLC (PL090160)** (Corinna Siegler/St. Dominic Savio Academy LLC, applicant; Desert Palm United Church of Christ, property owner) located at 1230 East Guadalupe Road in the R1-6, Single Family Residential District for:

**ZUP09073** Use permit to allow a elementary school for Grades K-5 ancillary to a church.

Ms. Corinna Siegler was present to represent this case.

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

Pastor John Herman of Desert Palm United Church of Christ spoke in support of this request. He stated that there was strong support from the church congregation for this request.

Mr. Williams asked staff if it was necessary to indicate a benchmark number of students for future reference – at this point it is anticipated by the applicant that there will be a total of sixteen (16) or fewer students. Mr. Daffara responded that it was not necessary as this information was contained in the letter of explanation.

**DECISION:**

Mr. Williams approved PL090160/ZUP09073 subject to the following conditions of approval:

1. The use permit is valid for the St. Dominic Savio Academy 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 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.

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6. Request by the **GIPSON RESIDENCE (PL090164)** (Kathy Gipson, applicant/property owner) located at 2002 West Garden Drive in the R1-6, Single Family Residential District for:

**VAR09007** Variance to reduce the east street side yard setback from ten (10) feet to six (6) feet.

Ms. Kathy Gipson and Mr. Ruben Galan were present to represent this case.

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

Mr. Williams noted that there were special circumstances unique to this property relating to corner location and the width of the adjacent public right-of-way.

**DECISION:**

Mr. Williams approved PL090164/VAR09007 subject to the following conditions of approval:

1. Obtain necessary clearances from the Building Safety Division.
2. Building addition and foundation shall be painted to match the existing residence.

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7. Request by **FLOOR AND DECOR (PL090166)** (David Miller/Floor & Decor, applicant; Jahan Realty Management Corporation, property owner) located at 7500 South Priest Drive in the PCC-1, Planned Commercial Center Neighborhood and Southwest Overlay Districts for:

**ZUP09074** Use permit to allow outdoor retail display.

Mr. David Miller was present to represent this case. He explained that the intention is to only have a couple of small displays and there would be no outside storage of materials.

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

**DECISION:**

Mr. Williams approved PL090166/ZUP09074 subject to the following conditions of approval:

1. The outdoor display merchandise 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 use would require a new use permit.
3. The outdoor display of merchandise shall not be located in the public right-of-way, parking spaces and landscape areas.
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. 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.
6. No sound amplification shall be used for the outdoor display.

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8. Request by **ARIZONA FIGHT CLUB (PL090169)** (Randy Robles, applicant; McClintock Center LLC, property owner) located at 617 South McClintock Drive, Suite No. 3 in the GID, General Industrial District for:

**ZUP09075** Use permit to allow a fitness facility (boxing gym).

Mr. Randy Robles was present to represent this case.

Derek Partridge, staff planner, gave an overview of this case and stated that no additional public input had been received since the staff report had been issued. He asked that Condition of Approval No. 7 be removed as parking at this center had been approved.

**DECISION:**

Mr. Williams approved PL090169/ZUP09075 subject to the following conditions of approval:

1. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
2. The use permit is transferable. Should the business be sold, the new owners must reprocess for administrative review.
3. The use permit is valid for the plans and business operation as submitted to and approved 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. All business signs shall be Development Review staff approved and permits obtained.
6. The applicant shall contact and work with Development Services Development Review staff to upgrade non-compliant lighting at the proposed property (building-mounted fixtures). Further, a 6" x 6" lexan or laminated glass vision panel shall be centered and installed at 63" above finished grade in the north elevation main door. These upgrades shall provide for the safety, security and code compliancy of the proposed business.
7. ~~An updated tenant list and respective uses shall be provided to the Development Services Department to update the change in required parking within sixty (60) days (August 1, 2009).~~ **DELETED BY PLANNER**

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9. Request by the **WEED RESIDENCE (PL090170)** (Andrew Weed, applicant/property owner) located at 1111 South Ash Avenue in the R-3R, Multi-Family Residential Restricted District for:

**ZUP09076** Use permit to increase the allowable fence height in the front yard setback from four (4) feet to eight (8) feet.

Mr. Andrew Weed was present to represent this case.

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

**DECISION:**

Mr. Williams approved PL090170/ZUP09076 subject to the following conditions of approval:

1. Obtain all necessary clearances from the Building Safety Division.
2. Approval is valid for plans as submitted within this application.

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10. Request by **RIO SALADO COURTYARD – ATHENA'S TEMPLE LLC (PL090171)** (Heather Allen, applicant; Rio Salado Center LLC, property owner) located at 1290 North Scottsdale Road, Suite No. 101 in the PCC-1, Planned Commercial Center Neighborhood District for:

**ZUP09077** Use permit to allow a massage therapy establishment.

Ms. Heather Allen was present to represent this case.

Shawn Daffara, staff planner, gave an overview of this case and stated one (1) letter of concern had been received from the North Tempe Neighborhood Association since the staff report had been issued.

Mr. Williams questioned the timing required for licenses in relation to the use permit. Mr. Daffara responded that the requirement for a use permit comes first; that a massage license will need to be obtained by the applicant from the City of Tempe Tax and License Department if this use permit is approved. Licenses for this applicant are currently pending.

Staff noted that the hours of operation are indicated by the letter of intent submitted by this applicant and that COA #3 authorizes those hours of operation. Should a change occur the applicant is required to notify staff and adjust the use permit.

Ms. Allen responded to the individual issues raised by the letter of concern submitted by the NTNA.

Mr. Williams asked if licenses were required for the other services other than massage (i.e. hair, etc.). Mr. Daffara stated the City of Tempe does not require licenses for services other than massage.

Ms. Darlene Justus, representing the North Tempe Neighborhood Association, addressed the hours of operation and asked that they be a reasonable time frame. She encouraged the City to do a final inspection of plumbing, wastewater, and other utilities before the license was issued. She questioned whether each individual was required to obtain a massage license or if the license was issued to the establishment as a whole. Mr. Daffara responded that the business would be the one to whom the massage license was issued, the massage therapists would not be required to obtain individual licenses. State and County licensing requirements would also need to be met. Should a complaint be made to the City regarding inadequate State or County licensing by individuals, that complaint would be forwarded to the licensing body (i.e. State or County) by the City, Mr. Daffara explained. The business has to obtain an overall massage license and the individual therapists that are hired by the business have to get their separate license(s) thru the County and State.

Mr. Lane Caraway, Tempe resident, spoke of his concern over unspecified business hours in the Conditions of Approval as well of the saturation factor in this area of liquor stores, lingerie stores, another massage parlor and the inexperience of this applicant for management of this type of business as well as whether she has the financial stability required.

Mr. Williams explained that the City, as a government agency, does not review the financial aspects of applicants.

Mr. Williams asked the applicant if she had any problem with a Condition of Approval being added to limit/define the hours of operation for her business. She responded that she did not. She added that she is working with Building Safety to comply with all requirements.

**DECISION:**

Mr. Williams approved PL090171/ZUP09077 subject to the following conditions of approval:

1. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
2. The use permit is transferable. Should the business be sold, the new owners must reprocess for administrative review.
3. The use permit is valid for the plans and business operation as submitted to and approved by the Hearing Officer/Board of Adjustment.
4. Any expansion or intensification of use shall require a new use permit to be approved.
5. 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.
6. All required State, County and Municipal permits shall be obtained or the use permit is void.
7. All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the use permit becoming effective.
8. All business signs shall require a sign permit.
9. **Hours of operation are limited to Monday thru Saturday, 7 Am to 9 Pm and Sunday 10 Am to 4 Pm.**

**ADDED BY HEARING OFFICER**

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11. Request by the **BARMORE RESIDENCE (PL090177)** (Richard Barmore, applicant/property owner) located at 2941 South Fairway Drive in the R1-6, Single Family Residential District for:

**ZUP09079** Use permit to allow a detached accessory building (garage).

~~**VAR09008** Variance to reduce the northeast side yard setback from five (5) feet to three (3) feet.~~

**WITHDRAWN BY APPLICANT**

Mr. Richard Barmore was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case and stated that a couple of calls from neighbors had been received since the staff report had been issued. A neighborhood meeting had been held and a petition of support obtained.

Mr. Bruce Turner, neighboring Tempe resident, spoke of concern over utilizing the property, alley use and the need to match the new construction with the existing home, as well as possible use by the applicant to tinker on cars in the garage. This could generate noise that would degrade property values and enjoyment of nearby property owners, Mr. Turner stated.

Mr. Williams stated that he did not feel that this garage would generate an unusual amount of traffic in the alley.

There was discussion between Mr. Williams and the applicant over the five (5) foot area between the proposed building and the property line/wall and whether this area could support screening shrubbery or if it had to be kept clear for utility lines. Although this is not being made a requirement, Mr. Williams suggested doing so in order to accommodate the neighbor's request for screening.

**DECISION:**

Mr. Williams approved PL090177/ZUP09079 subject to the following conditions of approval:

1. Provide an updated site plan depicting a five (5) foot minimum setback for the file.
2. Obtain all necessary clearances from the Building Safety Division.

3. **Garage shall match the existing home with regard to roof pitch, colors and materials. ADDED BY HEARING OFFICER**

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12. Request by **SOUTHERN AVENUE GARDEN OFFICES – DAVID LEWIS, DDS (PL090178)** (David Lewis, applicant; Sojourner Investment Group, property owner) located at 408 East Southern Avenue in the R/O, Residential/Office District for:

**DSM09024** Minor modification of a previously approved PAD for the Southern Avenue Garden Offices to eliminate or modify Condition of Approval No. 11 of Case Z-79.30 which reads:

11. Medical Offices shall be prohibited.

Mr. David Lewis was present to represent this case. He noted he celebrated twenty-eight (28) years of business yesterday.

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

**DECISION:**

Mr. Williams approved PL090178/DSM09024 subject to the following condition of approval for all Southern Garden Offices on the site:

1. All future medical uses must provide sufficient parking to support their use.

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13. Request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **ROE RESIDENCE (PL090167/ABT09010)** (Christopher Roe, property owner) Complaint 087577 located at 2906 South Price Road in the R-3R, Multi- Family Residential Limited District.

No one was present to represent the property owner.

Brett Barnes, City of Tempe – Neighborhood Enhancement Department, stated that there is a vehicle with expired plates (as of February 9, 2009) in the driveway and appears to be inoperable. The pile of dead palm fronds have since been removed.

**DECISION:**

Mr. Williams approved abatement proceedings for PL090167/ABT09010.

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The next Hearing Officer public hearing will be held on **Tuesday, July 7, 2009.**

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**There being no further business the public hearing adjourned at 3:24 PM.**

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

SA:dm

APPROVED