

Minutes  
HEARING OFFICER  
JULY 7, 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: 23

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 July 21, 2009 at 3:00 PM to the Development Services Department.

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1. Mr. Williams approved the Hearing Officer Minutes for June 2, 2009.

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2. 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 Williams noted that the following case(s) had been withdrawn: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 **CROW RESIDENCE (PL090168/ABT09011)** (Jacquelyn Crow, property owner) Complaint CE085550 located at 2149 East Minton Drive in the R1-4, Single Family Residential District.  
**WITHDRAWN BY NEIGHBORHOOD ENHANCEMENT DEPARTMENT**

Request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **DICKIE RESIDENCE (PL090206/ABT09014)** (Leland Dickie, property owner) Complaint CE085356 located at 2 West Fairmont Drive in the R1-6, Single Family Residential District  
**WITHDRAWN BY NEIGHBORHOOD ENHANCEMENT DEPARTMENT**

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3. Request by **CHRIST LIFE CHURCH (PL090213)** (Phillip Goldsberry, Sr., Senior Pastor, applicant; Christ Life Church, property owner) located at 1137 East Warner Road in the AG, Agricultural District for:

**ZUP09093** Use permit to allow two (2) accessory (modular) buildings.

Pastor Phillip Goldsberry was present to represent this case.

Steve Abrahamson, 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 noted that in the past, this applicant had been granted use permit(s) for previous periods of time for the same issue. Mr. Abrahamson noted that one call of opposition had been received and that person was present to voice her opinion at today's hearing.

Mr. Williams asked if there had been any complaints regarding these modular buildings since the last use permit was issued. Mr. Abrahamson responded that although there had been complaints regarding other issues pertaining to this property, none had been specific to the modular buildings. When the request for last use permit had been addressed at the Hearing Officer hearing, there was opposition present at that time.

Pastor Goldsberry explained that there had been permitting issues that needed to be resolved and which had contributed to the delay in the construction of the permanent structure; anticipated construction is expected to be complete by the end of this year.

Ms. Mary Garrett, Tempe residence, spoke in opposition, stating that she is a resident of the neighborhood which is on the east side of the church property. She noted that it was her understanding that a couple of years ago Christ Life Church elected to erect these modular building without first conferring with the City. Neighborhood opposition generated the original request by the Church to obtain the City's approval to leave the modular buildings in place while a more permanent structure was erected. She explained that these buildings are an eyesore to the neighborhood, and were not removed as scheduled within a short period of time. The buildings are placed close to the property line, and existing lighting & spotlight(s) illuminates them and shine into the neighboring properties requiring the homeowner(s) to install blackout sheets in order to sleep at night. Enjoyment of personal property has been compromised by the lighting and the ugly structures, she stated. They appear to becoming permanent.

Mr. Williams asked Ms. Garrett if there were any aesthetic issues that might make these buildings more acceptable to the neighborhood. Ms. Garrett responded that had the applicant abided by the original stipulations (Conditions of Approval) that called for specific landscaping and trees along the perimeter (east boundary) adjacent to the neighborhood, these buildings might not have been such an issue. However, she noted, that the trees that were planted were not in accordance with the size specified. Due to the parking lighting and lack of vegetation it continues to be a problem. She suggested that a compromise might be to relocate the structures to another location on the property where they might not be as intrusive. She has spoken to Mr. Abrahamson several times about the issues and the neighborhood concern.

Mr. Williams noted that parking lot lighting appears to be intrusive on the east side of the property and asked if the lighting met safety requirements or was there some reason for the type of lighting being used. Mr. Abrahamson questioned Ms. Garrett if she was referring the pole lighting; she confirmed that it was. Mr. Abrahamson explained that the pole lighting was in place when the church purchase the property and was part of the original construction. Inspection has revealed, Mr. Abrahamson stated, that the lights are in compliance with the City's Zoning and Development Code. Landscape is required to be maintained and replaced as necessary. Commercial Code Compliance staff can review the property and determine the status. Previous inspection(s) by Commercial Code indicated that the dead and missing landscape had been replaced based on complaints that had been received. Shawn Daffara confirmed that there were no open complaints and that the landscaping had been replaced.

Pastor Goldsberry stated that the dead and missing landscaping trees had been replaced with 36 inch box trees within the time frame required by the City's Commercial Code Compliance Department back in February.

Watering and staking of the trees was updated and are in compliance. Placement of the permanent building and landscaping are planned to be completed within the first phase of construction; the second phase would include the interior offices at which time the modular buildings would be removed.

Ms. Garrett noted that it takes about ten (10) years for newly planted trees to become a adequate landscape barrier/screen.

Mr. Williams noted that he would approve this use permit for a period of eighteen (18) months; if at that time no substantial construction has been completed the use permit would not be renewed for an additional period of time as this temporary use has gone on for too long.

**DECISION:**

Mr. Williams approved PL090213/ZUP09093 subject to the following conditions of approval:

1. Obtain all necessary clearances from the Building Safety Division.
2. This use permit is limited to ~~24~~ 18 months (~~July 7~~ January 7, 2011). Continuation of this use beyond ~~24~~ 18 months will require a new use permit. **MODIFIED BY HEARING OFFICER**

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4. Request by **VERIZON WIRELESS – PHO BENKO (PL090005)** (Chad Ward/Pinnacle Consulting Inc., applicant; The Center, property owner) located at 201 East Southern Avenue in the CSS, Commercial Shopping and Services District for:

**ZUP09062** Use permit to allow a sixty (60) foot wireless antenna (monopalm).

Mr. Chad Ward 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. One (1) letter of opposition had been received from the neighbor to the south of this location and this was included with the staff report documentation.

Mr. Williams questioned whether other locations on this property site had been considered for this request. Mr. Daffara responded that although there had been discussion of alternate locations, the property owner leasing this area to the applicant did not want the monopalm placed elsewhere on the site. A utility easement conflicted with one potential alternate location.

Mr. Williams asked if any complaints had been received on the existing pole; Mr. Daffara responded that no complaints had been received since its installation.

Ms. Alicia Summers, Tempe resident, stated that she spoke in opposition to the initial tower and was opposed to this additional tower. She lives south of this location and presented a letter of opposition to this request from her husband regarding decreasing property/home values due to the cell tower location in the vicinity. They feel that the additional cell tower would be an over-saturation of cell tower(s) in the area.

Mr. Dave Masenova, Tempe resident, spoke in opposition to this request citing concerns of radiation, over-saturation and decreasing home/property values.

Ms. Summers stated that she had not received a public hearing notice or notification of any type. Mr. Daffara stated in response to a question from Mr. Williams that the applicant had held a neighborhood meeting and notified nearby residents. In addition mailing notifications to residents within 300 feet had been sent by the City and all notifications had been in accordance with what is required.

Mr. Ward explained that the need for the additional tower was due to increasing coverage needs/capacity requirements in the area and surrounding locations. The existing site cannot handle the increasing capacity needs.

Mr. Williams stated that there was enough distance to buffer the cell phone tower from the residents as it is 270 ft. away from the nearest neighborhood.

**DECISION:**

Mr. Williams approved PL090005/ZUP09062 subject to the following conditions of approval:

1. Obtain all necessary clearances from the Building Safety Division.
2. Landscape planter to be installed along north side of enclosure, to enhance landscape around the perimeter of the enclosure. Details to be reviewed and approved during Building Safety plan review.
3. The new lights fixtures for the access gates shall be full cut off, dark sky compliant. Light fixture cut sheets shall be reviewed and approved during building safety plan review.
4. The monopalm shall be no greater than 60'-0" (T-Mobile height of 58') in height (to the top of the monopalm fronds) as per plans submitted with this request.
5. Any intensification or expansion of use, including co-location of additional antennas, will require a new use permit.
6. The wireless device shall be removed within 30 days of discontinuance of use.

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5. 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)~~ **fifteen (15)** feet.

**MODIFIED BY HEARING OFFICER**

**VAR09009** Variance to reduce the south street side yard setback for a lot adjacent to a key lot from thirty (30) feet to ~~twenty (20)~~ **twenty-seven (27)** feet. **MODIFIED BY HEARING OFFICER**

Mr. James Allison was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case and stated that additional public input had been received since the staff report had been issued in opposition in the form of one (1) phone call and one (1) e-mail. A letter of support had been received also. She noted that the request as originally advertised was modified to include the additional variance due to setback issues related to a key lot and re-advertised.

Mr. Allison stated that they had purchased the house in March 2009. His research revealed that there were three (3) key lots in the neighborhood – two (2) other key lots in addition to his own. Previous variance(s) had allowed a reduction in the setback from thirty (30) feet to twenty (20) feet and from thirty (30) feet to twenty-one (21) feet at these other locations. He presented photographs, location maps and related information pertinent to his request as to what was existing at other neighboring properties in comparison to his request. He felt that staff was holding him to a higher standard than that was allowed on these other properties.

Ms. Lesser explained that there had been earlier versions of the Zoning and Development Code that had different restrictions and guidelines than what was currently required by the present code and that may have affected those earlier setbacks that were granted.

Mr. Tom Reynolds, stated that he lived next door and also had a key lot. He was opposed to this request as it would affect the enjoyment of his property due to noise and other factors. He stated that Mr. Allison had informed him that he had \$10,000 worth of car parts which Mr. Reynolds was concerned might be involved in a resale venture in this proposed garage. The proposed garage is too high and would adversely affect his property values as well as involve safety issues, said Mr. Reynolds.

Mr. Steve Shidt, nearly resident of Mr. Allison, stated that he purchased his property in 1987 and had selected the neighborhood because it was a custom neighborhood with wide open streets. He opposes this request for a reduction in setback from thirty (30) feet because it would take away from the neighborhood. The existing setback examples in the neighborhood presented by Mr. Allison are camouflaged by trees and landscaping and one would not know that they existed, said Mr. Shidt. Due to their location, the garage structures on other properties depicted by Mr. Allison, were not nearly as obstructive due to their location (near a canal, etc.) as this one which juts out into the street.

Ms. Karen Martin, resident that lives directly across this property on Knox Road and supports this request. She and her husband supports this request and does not find the proposed structure detrimental to the neighborhood property values as it will be the same style and materials as the house. They do not feel that there would be a driving hazard as there is already an existing driveway between the structure and the corner – there is an existing attached garage on the south side of this house.

Ms. Dawn Bullriss stated that she is a neighbor to the north and has lived in the area for fifteen (15) years. While she can understand the need for additional space, her concern was for the size of the proposed structure which would substantially reduce the yard space. This would affect future property buyers and home values. The neighborhood is based on large lots and spaces between the homes, if the setbacks are not maintained a precedent for crowding the homes could occur. She asked if the applicant had considered expanding the existing garage(s) or reconfiguring the existing garage space. Regarding safety concerns, she noted that a very serious accident had occurred on the corner when a vehicle was traveling too fast and smashed into the block wall – entering and departing the proposed structure would add to the existing safety hazards. She is opposed to this request.

Mr. Evan Curtis, neighboring resident, is opposed to these request(s) and the proposed placement of this garage and setbacks.

Mr. Williams explained that the purposes of variances are to bring properties onto equal footing with other properties but not to grant special privilege. He noted that he is aware of the placement of the lot and the restriction that it places on structure(s).

Mr. Williams questioned staff as to whether the height of the proposed garage meet code requirements and the height of the house. Ms. Lesser responded that she has requested that the applicant specify the height of the garage and the height of the house when they submit their plans for a building permit and that it matches the height of the house. The plans as submitted with this request, do not specify the height of the existing house.

Mr. Allison was questioned as to the height of the existing structure (i.e. home). He stated that he estimated that it was sixteen (16) feet and that he would not be opposed to lowering the height of the proposed garage if necessary to match the existing home. He stated that the pitch of the roof would match that of the existing structure.

Mr. Williams explained that this was a large structure and that he was concerned over how it would fit with the character of the neighborhood with the original design and layout of the subdivision.

Mr. Williams stated that he would approve the use permit as requested and approve modified variance(s) in accordance with staff recommendations as follows:

**VAR09004** Variance to reduce the rear yard setback from thirty (30) feet to ~~eight (8)~~ **fifteen (15)** feet.  
**MODIFIED BY HEARING OFFICER**

**VAR09009** Variance to reduce the south street side yard setback for a lot adjacent to a key lot from thirty (30) feet to ~~twenty (20)~~ **twenty-seven (27)** feet. **MODIFIED BY HEARING OFFICER**

**DECISION:**

Mr. Williams approved PL090157/ ZUP09070 and modified VAR09004 / VAR09009 subject to the following conditions of approval:

1. Provide a set of plans for the file with site data listing the height of existing dwelling and the proposed accessory building. The height of accessory building not to exceed the height of the existing residence.
2. The rear yard setback variance to be modified to fifteen (15) foot setback minimum.
3. The street side yard setback variance to be modified to a twenty-seven (27) foot setback minimum.
4. Obtain all necessary permits and clearances from the Building Safety Division.
5. The accessory building to match the existing residence in color and material.

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6. Request by the **HANSON RESIDENCE (PL090184)** (Robert Hanson, applicant/property owner) located at 6694 South Rockford Drive in the R1-7, Single Family Residential District for:

**ZUP09092** Use permit to allow an accessory building (workshop).

Mr. Robert Hanson was present to represent this case. He noted that this would not be a business but just for his own personal use.

Derek Partridge, staff planner, gave an overview of this case and stated that one e-mail of inquiry had been received regarding the possible noise factor of this 650 s.f. structure which will be used for woodworking.

**DECISION:**

Mr. Williams approved PL090184/ZUP09092 subject to the following conditions of approval:

1. Obtain necessary clearances from the Building Safety Division.
2. The use permit is valid for the plans as submitted to the Hearing Officer.

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7. Request by the **SMITHERAN RESIDENCE (PL090189)** (Eric Stadmler, applicant; John Smitheran, property owner) located at 335 East Loma Vista Drive in the R1-6, Single Family Residential District for:

**ZUP09091** Use permit to park in the front yard setback.

Mr. Eric Stadmler was present to represent this case.

Steve Abrahamson, 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. The applicant wants to create livable space out of the existing garage area to house an assistant/caregiver for health issues.

Ms. Liz Welch, neighbor to the south, has a concern over the parking which might create a cluster of cars and not be visibly attractive. She suggested that it should be located off of the alley. She stated that she had spoken with many of the neighbors and no one, including her, had any objection to the basic concept of this use permit request.

Mr. Williams stated that this is a beautifully maintained property and that the design of the neighborhood is intact as it was originally planned/built – there are virtually no carports enclosed for living space. For this reason he cannot support this request as presented as it does not support the neighborhood as a whole.

**DECISION:**

Mr. Williams denied PL090189/ZUP09091.

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8. Request by the **MCCALL RESIDENCE (PL090198)** (Jeff McCall, applicant/property owner) located at 543 West 17<sup>th</sup> Street in the R1-6, Single Family Residential District for:

**ZUP09090** Use permit to allow parking in the front yard setback.

Mr. Jeff McCall 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. This carport had been converted to livable space (bedroom and bath) in the year 2000. The applicant did not realize when purchasing the home that it had been done without a permit.

Mr. Williams stated that he had noticed that in this neighborhood a lot of the carports had been converted into livable space.

Mr. Williams asked what had happened to the red and white City sign posting at this location; the applicant replied that it had been there Sunday. Later investigation revealed that the sign was still in place.

**DECISION:**

Mr. Williams approved PL090198/ZUP09090 subject to the following conditions of approval:

1. Obtain all necessary clearances from the Building Safety Division.
2. The converted carport shall be compatible with the principal residence in color, form, texture and material.
3. The enclosed bedroom shall not be converted into or used as a separate living unit.

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9. Request by **THE GOLD RUSH STORE (PL090216)** (Kelly Carlucci, applicant; Juan Cruz, property owner) located at 814 North Scottsdale Road in the GID, General Industrial District for:

**ZUP09094** Use permit to allow a gift shop, jewelry and second hand retail store.

Ms. Kelly Carlucci was present to represent this case.

Steve Abrahamson, 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 asked that staff review the zoning for this area to see if it was correctly zoned as industrial rather than retail in compliance with the City's General Plan.

Mr. Williams advised the applicant that use of live walkers for advertisement (sign carriers) they need to be in compliance with City and State regulations. He suggested that the applicant check with staff as to what was allowed (i.e. seated vs walking).

**DECISION:**

Mr. Williams approved PL090216/ZUP09094 subject to the following conditions of approval:

1. The use permit is valid for The Gold Rush Store and may be transferable with approval from the Development Services staff. Should the business be sold, the new owners must contact the Development Services staff for review of the business operation.
2. Obtain all necessary clearances from the Building Safety Department for tenant improvement plans.
3. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
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 receive a Sign Permit. Please contact Planning staff at (480) 350-8331.
6. Obtain a sales tax license from the City of Tempe Tax and License Division.
7. The use permit is valid for the plans as submitted within this application.

8. The applicant shall work with the Tempe Police Department to update the Security Plan for the business. Contact the Crime Prevention Department at (480) 858-6027.

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10. Request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **RADCLIFF RESIDENCE (PL090207/ABT09015)** (Toby Don Radcliff, property owner) Complaint CE084541 located at 3612 South Margo Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Jody Benson, City of Tempe – Neighborhood Enhancement Department, stated that this property was now in compliance and withdrew this request for abatement.

**DECISION:**

Mr. Williams noted that the request for abatement proceedings for PL090207/ABT09015 has been withdrawn by the Neighborhood Enhancement Department.

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11. Request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **LOPEZ RESIDENCE (PL090208/ABT09016)** (Jesus Amador Lopez, property owner) Complaint CE091879 located at 3829 South Roosevelt Street in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Jody Benson, City of Tempe – Neighborhood Enhancement Department, stated that this property is vacant and in foreclosure. Overgrown landscape and weeds exist.

**DECISION:**

Mr. Williams approved abatement proceedings for PL090208/ABT09016 for an open period of 180 days (6 months).

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12. Request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **YOUNG PROPERTY (PL090209/ABT09012)** (Laura Young, property owner) Complaint CE092832 located at 104 East Huntington Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Jody Benson, City of Tempe – Neighborhood Enhancement Department, stated that this property is vacant and in foreclosure. Overgrown landscape and weeds exist.

**DECISION:**

Mr. Williams approved abatement proceedings for PL090209/ABT09012 for an open period of 180 days (6 months).--

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The next Hearing Officer public hearing will be held on **Tuesday, July 21, 2009.**

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**There being no further business the public hearing adjourned at 3:20 PM.**

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Prepared by: Diane McGuire, Administrative Assistant II

Reviewed by:



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

APPROVED