

Minutes
HEARING OFFICER
SEPTEMBER 1, 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
Derek Partridge, Planner I
Nick Graves, Planning Intern
Sherri Lesser, Senior Planner
Steve Abrahamson, Planning & Zoning Coordinator

Number of Interested Citizens Present: 10

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 September 15, 2009 at 3:00 PM to the Development Services Department.

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1. Mr. Williams approved the Hearing Officer Minutes for August 18, 2009.

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

Request by **DANELLE PLAZA - 23 WEST (PL090295)** (Rodney Hu/Huniversity Properties, applicant/property owner) located at 23 West Southern Avenue in the CSS, Commercial Shopping and Services District for:

ZUP09117 Use permit to allow live entertainment.
CONTINUED TO SEPTEMBER 15, 2009 HEARING OFFICER

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3. Request by the **DANELLE PLAZA - YUCCA TAP ROOM (PL090294)** (Rodney Hu/Huniversity Properties, applicant/property owner) located at 29 West Southern Avenue in the CSS, Commercial Shopping and Services District for:

ZUP09118 Use permit to allow the expansion of an existing Series 6 Bar.

Mr. Rodney Hu was present to represent this case.

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. There had been phone calls of support received for this request.

Mr. Hu explained the expansion was due to the existing business that was next door was going out of business, giving him the opportunity to expand the existing Yucca Tap Room and offer music. He has been working with the Tempe Police Department on the modified security plan.

DECISION:

Mr. Williams approved PL090294/ZUP09118 subject to the following conditions of approval:

1. The use permit is valid for the Yucca Tap Room and may be transferable with approval from the Board of Adjustment staff. Should the business be sold, the new owners must contact the Board of Adjustment staff for review of the business operation.
2. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer/Board of Adjustment for further review.
3. The applicant shall devise a modified security plan in conjunction with the City of Tempe Crime Prevention Department (480-858-6027) prior to the use permit becoming effective.
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 set to re-evaluate the appropriateness of the use permit.
5. Any new business signs are to have Development Plan Review approval, and permits are to be obtained prior to the installation of signs.
6. This use shall not violate the State Smoking Ordinance www.smokefreearizona.com.
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. Live entertainment to adhere to all previous conditions of approval per BA040098.

3. Request by **KING PLAZA – H B TOBACCO - HUBBLY BUBBLY - V.I.P. ROOM (PL090297)** (Anis Ben Harzallah, applicant; King Plaza LLC, property owner) located at 1400 South McClintock Drive, Suite No. 5 in the CSS, Commercial Shopping and Services District for:

ZUP09119 Use permit to allow a hookah lounge/tobacco retailer.

Mr. Anis Harzallah, the applicant, and Mr. Joshua Oehler of Arc One Associates LLC were present to represent this case. Conditions of Approval were reviewed and questions answered regarding rear exit doors require a lexan vision panel as stated in Condition of Approval No. 7.

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. A use permit for the neighboring suite was issued to this applicant in October 2008 to allow a hookah lounge.

Mr. Williams questioned whether the applicant was in compliance with the conditions of approval for his existing business. Mr. Graves stated that they were, and that there had been no complaints issued against the business to date.

Mr. Williams questioned whether the applicant understood the HVAC requirements for this type of business. Mr. Harzallah indicated affirmatively.

DECISION:

Mr. Williams approved PL090297/ZUP09119 subject to the following conditions of approval:

1. The use permit is valid for HB Tobacco 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 this 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 the City of Tempe Crime Prevention Unit for a Security Plan within 30 days (October 1, 2009) of this approval. Contact Crime Prevention at (480) 858-6027.
11. Any outdoor patio shall require Development Plan Review approval.

4. Request by City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **ANDERSON RESIDENCE ABATEMENT (PL090275/ABT09017)** (Don Anderson, property owner) Complaint 092084 located at 1123 East Palmcroft Drive in the R1-6, Single Family Residential District.

Mr. Anderson was present to represent the property owner.

Julie Scofield, Neighborhood Enhancement Inspector, stated that this case was opened in March 2009 due to a complaint and notices were sent regarding grass, weeds, gravel, junk and debris and inoperable vehicle(s). In April 2009 final notice(s) were sent regarding the landscaping and junk/debris in the front yard, as well as bees located in the shed area in the back yard. In June 2009 the landscaping items had been corrected, however there was still junk/debris located in the rear yard. There have been no changes to the property's condition since the June 2009 inspection.

Mr. Williams questioned the vehicle(s) located in the front yard area. Ms. Scofield responded that the vehicle(s) had covers and inspectors were not permitted to view covered vehicles to see if they were registered, as long as the tires were inflated.

Mr. Anderson stated that he was making continuing efforts to clean up the property and bring it into compliance.

Mr. Williams indicated his inspection of the property had indicated progress was being made. He questioned Mr. Anderson as to the period of time which was expected to complete/finish the work. Mr. Anderson stated he needed an additional 3 to 4 weeks to complete the work required. At the end of that time the vehicle(s) in the drive would also be registered.

Ms. Scofield indicated that no neighborhood complaints had been received since June 2009, however she indicated concern that this property has had open abatement cases since 2003 for various items and that additional extension(s) of time may not accomplish the compliance by Mr. Anderson. She had been informed by Mr. Anderson in July 2009 that the property would be brought into compliance and, although he turned down offers of assistance by volunteers, the property issue(s) remain uncompleted. Although Mr. Anderson's intentions may be good, the back yard may be a bigger project than he realizes.

It was confirmed by Ms. Scofield that this was the first time this property has been to the Hearing Officer for abatement. Mr. Williams stated that he would approve a 4 week extension for Mr. Anderson however if the property was not cleaned up in that period of time, it would be returned to the Hearing Officer for abatement.

DECISION:

Mr. Williams continued abatement proceedings for PL090275/ABT09017 to the October 6, 2009 Hearing Officer hearing.

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5. Request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **MCCABE RESIDENCE ABATEMENT (PL090276/ABT09018)** (James & Patricia McCabe, property owner) Complaint 088114 located at 1301 East Broadmor Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Julie Scofield, Neighborhood Enhancement Inspector, stated that notice(s) were sent in March 2009 for unregistered vehicles and landscaping. Continuing notice(s)/citation(s) were sent in May and June 2009. Although the landscape issue(s) have been addressed, the unregistered vehicle(s) remain.

DECISION:

Mr. Williams approved abatement proceedings for PL090276/ABT09018 subject to the removal of the landscaping costs.

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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 **BERGER RESIDENCE ABATEMENT (PL090282/ABT09019)** (Edward & Betty Berger, property owner) Complaint 094176 located at 809 South Wilson Street in the R-3, Multi-Family Residential Limited District.

Mr. Abrahamson, Planning and Zoning Coordinator, stated that staff is requesting a continuance of this abatement case. There has been some progress made on the property.

Mr. Michael Stabnick, stated that he was a neighbor to the south of this property and that the owner had adequate time to bring the property into compliance as it had been over 90 days since notice(s) had been

issued. Tenants in the past had played loud music and left the property in disrepair – the back lot is completely dirt.

Mr. Williams explained that today's case was related to the condition of the property not the use. He asked Mr. Stabnick if he had made any complaints to the City regarding the use. Mr. Williams noted that there had been a large amount of cleaning done to the property when he inspected it today. He asked Mr. Stabnick what, in his opinion, remained to be done. Mr. Stabnick stated that there was a 50 ft RV trailer that needed to be removed. He felt that health and safety issues existed.

Mr. Abrahamson responded to a question from Mr. Williams that staff discussion in the past few days had determined that this abatement should be continued. He felt that a 2 week continuance would be too brief.

Mr. Williams noted that this property had not been abated to the Hearing Officer before. However, there is a concerned neighbor, and he would continue this case to a date specific time of the October 6, 2009 Hearing Officer.

DECISION:

Mr. Williams continued abatement proceedings for PL090282/ABT09019 to the October 6, 2009 Hearing Officer hearing.

The next Hearing Officer public hearing will be held on **Tuesday, September 15, 2009.**

There being no further business the public hearing adjourned at 2:10 PM.

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



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

SA:dm