

Minutes  
HEARING OFFICER  
JANUARY 5, 2010

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  
Nick Graves, Planning Intern  
Sherri Lesser, Senior Planner

Number of Interested Citizens Present: 18

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 January 19, 2010 at 3:00 PM to the Development Services Department.

1. Mr. Williams approved the Hearing Officer Minutes for December 15, 2009.

2. Request by **OCEANSIDE ICE ARENA (PL090366)** (David Kenyon/David Kenyon Architect, applicant; Inland Oceans Inc., property owner) located at 1520 North McClintock Road in the GID, General Industrial District and RSOD, Rio Salado Overlay District

**ZUP09174** Use permit to allow the expansion of an entertainment/amusement use (practice room for an ice arena) in the GID, General Industrial District and RSOD, Rio Salado Overlay District.

Mr. David Kenyon of David Kenyon Architects 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 stated that Oceanside had been at this site since 1973 and that the request was a simple expansion.

Mr. Williams asked if a parking analysis had been done; Mr. Kenyon confirmed that it had.

**DECISION:**

Mr. Williams approved PL090366/ZUP09174 subject to the following conditions:

1. Obtain a Development Plan Review approval of the building elevation, site and landscape modifications associated with the building addition. Complete the Development Plan Review approval process by January 5, 2011 or the subject Use Permit approval for the expansion and intensification of an entertainment-amusement use in the General Industrial District expires.
2. The subject Use permit shall not take final effect until permits and clearances as required by the Building Safety Division and Public Works Department have been obtained.
3. If there are complaints related to this use through Development Services Planning Division-Code Compliance, Development Services Building Safety Division, the Police Department or another city agency, and the validity of these complaints are confirmed by the City Attorney's office, this use may be required to return to the Hearing Officer for review of the subject Use Permit approval.

-----

3. Request by **CLEARWIRE – AZ-PHX0552B (PL090386)** (Rulon Anderson/Clearwire, applicant; Velo Properties LLC, property owner) located at 1006 East Warner Road in the PCC-1, Planned Commercial Center Neighborhood District for:

**ZUP09175** Use permit to allow a sixty foot (60') wireless monopole (monopalm).

Mr. Rulon Anderson of Clearwire 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. Staff confirmed in response to a question from Mr. Williams that no written support or opposition had been received in reference to this case.

Mr. Anderson presented a signed acknowledgement from four (4) nearby property owners regarding this request stating that they did not have any objection. One (1) property owner was unable to be contacted.

Mr. Williams stated that based on the information from the applicant, the extensive notice of this request that was mailed and lacking any significant opposition he would approve this request.

**DECISION:**

Mr. Williams approved PL090386/ZUP09175 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. The monopalm shall be no greater than 60'-0" in height (to the top of the monopalm fronds) and 55' to the top of the monopalm.
3. The monopalm shall be designed to look like a Date Palm tree.
4. Any intensification or expansion of use, including co-location of additional antennas, will require a new use permit.
5. The wireless device shall be removed within 30 days of discontinuance of use.
6. The proposed equipment cabinet shall be constructed of similar material and color to match the existing refuse enclosure for the property.

-----

4. Request by **KYRENE MARIPOSA SCHOOL – CLEARWIRE (PL090411)** (Rulon Anderson/Clearwire, applicant; Kryene Elementary School District No. 28, property owner) located at 160 East Knox Road in the AG, Agricultural District for:

**ZUP09173** Use permit to allow a sixty-five foot (65') wireless monopole (light pole).

Mr. Rulon Anderson of Clearwire was present to represent this case.

Nick Graves, staff planner, gave an overview of this case and stated that three (3) e-mails of opposition had been received; copies of which have been given to Mr. Williams. The light pole is actually located near the basketball courts. Mr. Graves noted staff's observation regarding the trees near this site and that the Conditions of Approval #8 & #9 reflect those observations.

Mr. Anderson addressed the Condition of Approval that stipulated replacing the dead pine tree near the proposed monopole location. He stated his opposition to this item as he had discussed this landscape issue with the school personnel and it was their responsibility. It was at the school's request that this light pole is being included within this request.

Mr. Williams explained that the City does not normally regulate school properties but when it comes under a special use such as the monopole, issues arise that need to be addressed.

Mr. Mark Garrigan, Tempe resident, stated that the area is surrounded by homes. He questioned why the school did not consult with the homeowners association, which requires prior approval by an architect for new projects.

Mr. Ron Huser, Tempe resident, stated that this is not compatible with the neighborhood and affects the view and property values. He presented an aerial photograph which indicated the monopole's in a direct line of sight to his home's location. He noted that this site has no verticality at all and the school is a one story building(s) structure. He has lived in his house for 21 yrs and there is no way that this monopole structure would not affect his property values or his enjoyment of his home's location. When he purchased his property the school was already in existence, and he wanted the nice open view of the horizon that was present. He is vehemently opposed to this structure as there is no way that a 65 ft structure is compatible with a single story school. Reference was made to Attachment No. 11 provided by Clearwire which indicated incorrectly that this would be a faux palm tree structure. Mr. Huser stated that no matter the structure – whether light pole or faux palm tree – he was against it.

Ms. Karin Smith, representing the school district, stated that this is one of several school related sites and that they had been waiting to hear back from the community affected by the individual site(s) as to whether they supported the request. School funding has decreased in these economic times and they do not want to jeopardize the support of the community.

Mr. Robert Peshak, Tempe resident, stated that he had been a resident of Tempe for 17 yrs and just moved to Warner Ranch about 18 months ago. He suggested moving this tower one-half mile to the west.

Mr. Williams questioned staff as to whether HOA's were notified of these type of requests. Mr. Graves responded that any HOA within 600 ft of the location is notified.

**DECISION:**

Mr. Williams denied PL090411/ZUP09173 noting the absence of verticality in the area as well as the opposition to this request.

-----

5. Request by the **GOLD EXCHANGE (PL090465)** (Camille Massih, applicant; Western American Investments, property owner) located at 1730 East Apache Boulevard, Suite No. 113 in the CSS, Commercial Shopping and Services District for:

**ZUP09172** Use permit to allow a resale retailer (precious metal buyer).

Mr. Camille Massih was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case and stated that public input had been received on this request. COA #7 addresses the security issues for this business.

In response to a question from Mr. Williams, Mr. Massih acknowledged that he understood the seven (7) conditions of approval and had no problem with them.

**DECISION:**

Mr. Williams approved PL090465/ZUP09172 subject to the following conditions:

1. The use permit is valid for The Gold Exchange and may be transferable to successors in interest through an administrative review with the Development Services Manager, or designee.
2. All permits and clearances required by the Building Safety Division for tenant improvements shall be obtained prior to the use permit becoming effective.
3. Any expansion or intensification of the use will require a new use permit.
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. A sales tax license from the City of Tempe Tax and License Division shall be obtained prior to the use permit becoming effective.
7. The applicant shall work with the Tempe Police Department to create a Security Plan for the business. Contact the Crime Prevention Department at 480-858-6330.

6. Request by **VERIZON WIRELESS (PL090471)** (Kellie Sweat/Willmeng Construction Inc., applicant; East Group Properties, property owner) located at 3207 South Wilson Street in the GID, General Industrial District for:

**VAR09015** Variance to waive mechanical equipment screening on three (3) sides of the building.

Mr. Mike Sacco of East Group Properties 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. This request is located in an industrial area. Staff is recommending denial of this request as they do not support waiving of mechanical screening. Staff consistently requires screening of mechanical equipment to maintain the integrity of the building(s).

Mr. Williams asked if there was anything peculiar about this site that would support this request for a variance. Ms. Lesser responded that there was not.

Mr. Sacco noted that the staff summary report (Additional Information Section on the front page) indicated that the variance request was to waive the required screening of roof top equipment for three sides of the building

north, east and south but should read: north, east and west sides of the building. He explained that there were previously evaporative coolers located on this building which were 48 inches high which were replaced with fifteen (15) A/C units which were 36 inches high. He further stated that there is no visibility of these units on the north east or west sides line of sight and provided pictures that depicted the physical situation. He indicated that they were actually willing to screen the roof top units on the south side where they are slightly visible. Mr. Sacco stated that the cost of screening all four (4) sides of the building would be \$25,000. The south side will cost \$8,000 however they are trying to avoid the significant additional cost of \$17,000 as it is unnecessary.

Ms. Ladene Martin, Tempe resident, stated that she had lived in her home, located directly behind this building, for 35 years. She explained the auditorium effect that nearby buildings had on her property, and indicated her concern with the noise factor and also the material used for screening of the roof top equipment and whether it would sufficiently mitigate the noise produced from the A/C units.

Mr. Williams explained that typically these type of screens are constructed of wood or metal components and were architecturally integrated with the building. He asked staff if any particular details on the screening of this building existed. Ms. Lesser responded that the plans were currently under review by the Building Safety Department.

Ms. Kellie Sweat of Willmeng Construction Inc. described the design particulars of the screening that had been approved when the building permit was issued. She indicated that she could not comment on the sound/noise barrier that these screens would provide as she did not know. However, she stated that the A/C units that had been installed were a higher grade than what was typically installed for residential units and should be quieter. She stated that when on-site review of the building was conducted by the City, it was her understanding that it had been determined that no screening would be required at the west side as it had been 'grandfathered' in.

Mr. Williams questioned staff as to whether the City requirements on line of sight for screening included the noise factor in addition to the visual aspects. Ms. Lesser responded that while she could appreciate the applicant's point of view regarding the line of sight, typically the City requires mechanical screening to be the height of the units to adequately shield them from view. She explained that although the line of sight may be higher or lower, that is not taken that into consideration nor shielding/barrier for the noise factor.

Mr. Williams stated that while he appreciated the information presented by the applicant and property owner, and the financial aspects of providing the mechanical screening, financial hardship cannot be considered as a reason for approving the variance although it is recognized and appreciated that this is a significant cost to the property owner. He explained that other property owners are responsible to provide screening according to the code and that he did not see anything special about this property that would be applicable to special privileges or hardship. Regarding the noise factor, he agreed with the applicant that it was undetermined how much noise shielding the mechanical screening would provide but screening would be visually beneficial to the surrounding neighborhood and would provide some noise screening as well.

**DECISION:**

Mr. Williams denied PL090471/VAR09015.

-----

7. Request by **SAFeway #1535 (PL090477)** (Jeff Winter/Esencia LLC, applicant; Safeway Inc., property owner) located at 1515 East Elliot Road in the PCC-1, Planned Commercial Center Neighborhood District for:

**ZUP09178** Use permit to allow outdoor display.

Mr. Jeff Winter of Esencia LLC 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.

Mr. Winter acknowledged that the maintenance of the tables and clear zone was understood by Safeway. He presented pictures of the rolling carts that would be displaying merchandise.

**DECISION:**

Mr. Williams approved PL090477/ZUP09178 subject to the following conditions:

1. The outdoor display merchandise shall not conflict with the minimum four foot (4') pedestrian pathway across the building frontage and to all building entrances and exits. 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 permit. The Zoning and Development Code also requires a six foot (6') clear, unobstructed path on public sidewalks.
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. 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 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.
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.

-----

8. Request by **SAFEWAY #1487 (PL090478)** (Jeff Winter/Esencia LLC, applicant; Safeway Inc., property owner) located at 926 East Broadway Road in the CSS, Commercial Shopping and Services District for:

**ZUP09177** Use permit to allow outdoor display.

Mr. Jeff Winter of Esencia LLC 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.

Mr. Winter referenced discussions with staff regarding the proposed Condition of Approval No. 7 and that it actually applied to four (4) trees on the islands that were missing one or both trees. Staff acknowledged that it did only apply to four (4) trees. The Conditions was amended by the Hearing Officer to specify four (4) trees.

**DECISION:**

Mr. Williams approved PL090478/ZUP09177 subject to the following conditions:

1. The outdoor display merchandise shall not conflict with the minimum four foot (4') pedestrian pathway across the building frontage and to all building entrances and exits. 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 permit. The Zoning and Development Code also requires a six foot (6') clear, unobstructed path on public sidewalks.

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. 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 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.
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.
7. Replace a minimum of four (4) missing trees in landscape islands of the parking area. **MODIFIED BY THE HEARING OFFICER**

-----

9. Request by **RIO SALADO CENTER – HOOKAHMANIA (PL090448)** (Thomas George, applicant; Rio Salado Center LLC, property owner) located at 1290 North Scottsdale Road, Suite Nos. 111 & 112 in the PCC-1, Planned Commercial Center Neighborhood District for:

**ZUP09164** Use permit to allow a hookah lounge.

Mr. Thomas George was present to represent this case.

Nick Graves, staff planner, gave an overview of this case. One phone call of opposition had been received and notes from that phone call had been given to the Hearing Officer for his information.

Mr. George noted that he had just opened the restaurant next door, and understood the conditions of approval that have been assigned to this request.

Mr. Leland Fairbanks, MD, Tempe resident for 25 years, spoke of being called the Father of Smoke Free Tempe and that he had gathered many signatures on the petition for smoke free Tempe. He stated that the hookah business was nationally significant in the efforts to get around smoking. The claims that it is not smoking is erroneous as hookah pipes are considered to be smoking materials and that argument should not be allowed. He addressed the deviations allowed by state law regarding smoking and the sale of tobacco products. You can't monitor what goes into those pipes, he stated, and this is an issue that should be monitored by City compliance staff.

Mr. Williams explained that this is not a restaurant and is required to have a complete ventilation system. Mr. Fairbanks said it was adjacent to the restaurant and would use the same employees going back and forth and was subject in his opinion to lax requirements which allowed sneaking around the law. He stated that we need Cities that will lead a higher level of standards than what is required. He indicated that the national restaurant association has stated that the City of Tempe, a college town, has been a leader for the nation for smoke free environments. He hopes that Tempe continues to hold to higher standards and be a role model for other states.

Mr. Williams questioned staff as to whether hookah was considered smoking and regulated the same way. Mr. Abrahamson further explained the Smoke Free Arizona stipulations.

Mr. George returned to the podium and stated he was well aware of the requirements for a smoking establishment and that is why he had adhered to all requirements and regulations for a smoking environment. This place is not a restaurant and staff at the restaurant is not going to be working at the Hookah Lounge. He stated that face of the building is not even the same between the two businesses and there is a wide distance between the doors and locations. This shopping center has a lot of empty space and this business would boost the economy in the area.

The outdoor patio was discussed. Mr. Abrahamson explained the specific requirements for outdoor smoking separation and screening stipulations and that the City has very stringent requirements which the Conditions of Approval require before the use permit can be activated and Mr. George can open for business.

Mr. Williams noted that current City ordinances are on the books and that this application has met those requirements and policies. He feels that this is a reasonable and appropriate site for this business and that the Conditions of Approval will require the adherence to all requirements.

**DECISION:**

Mr. Williams approved PL090448/ZUP09164 subject to the following conditions:

1. The use permit is valid for Hookahmania and may be transferable to successors in interest through an administrative review with the Development Services Manager, or designee.
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 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. 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 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 the 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 February 5, 2010.
11. The outdoor patio shall require Development Plan Review approval.

-----

10. Request by the City of Tempe – Code Compliance Department to abate public nuisance items in violation of the Tempe City Code for the **FRAWLEY RESIDENCE (PL090457/ABT09040/CE095022)** (Julie Scofield, Inspector; Robert Frawley, property owner) located at 1103 East Palmcroft Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Julie Scofield Code Compliance Inspector, stated that this particular case has been open since August 2009 and continues to have landscape issues (i.e. grass, weeds, etc.). Several citations have been issued to the property owner including habitual offender citations.

**DECISION:**

Mr. Williams approved abatement proceedings for PL090457/ABT09040/CE095022 for an open period of 180 days (6 months) as requested by staff due persistent property violations.

-----

11. Request by the City of Tempe – Code Compliance Department to abate public nuisance items in violation of the Tempe City Code for the **BEAUCHEMIN RESIDENCE (PL090458/ABT09041/CE094348)** (Julie Scofield, Inspector; Mary & A.J. Beauchemin, property owners) located at 1404 East Del Rio Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Julie Scofield, Code Compliance Inspector, stated that this particular case has been open since July 2009 and several notices have been sent to the property owner regarding un-registered vehicle(s). This is the sixth case since 2003 regarding the same type of issue for this property owner.

Mr. Williams asked that the record reflect that this property owner has additional non-compliant items existing and should be aware that they can also be submitted to abatement.

**DECISION:**

Mr. Williams approved abatement proceedings for PL090458/ABT09041/CE094348 for the items contained in this specific abatement documentation.

-----

12. Request by the City of Tempe – Code Compliance Department to abate public nuisance items in violation of the Tempe City Code for the **CANZANO RESIDENCE (PL090459/ABT09042/CE095875)** (Julie Scofield, Inspector; Robert Canzano, property owner) located at 1133 East Concorda Drive in the R1-6, Single Family Residential District.

**WITHDRAWN BY CITY OF TEMPE – CODE COMPLIANCE DEPARTMENT**

-----

The next Hearing Officer public hearing will be held on **Tuesday, January 19, 2010.**

-----

There being no further business the public hearing adjourned at **3:10 PM.**

-----

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



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

SA:dm

APPROVED