

**Minutes
HEARING OFFICER
MARCH 2, 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
Kevin O'Melia, Senior Planner

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 March 16, 2010 at 3:00 PM to the Development Services Department.

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1. Mr. Williams approved the Hearing Officer Minutes for February 16, 2010.

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2. Request by the **TEMPE TAVERN (PL100013)** (Robert Tasso, applicant; Kathysue Halsted & Paulajean Hoots/Hoots Family Investments LP, property owner) located at 1810 East Apache Boulevard in the CSS, Commercial Shopping and Services District, TOD, Transportation Overlay (Station) District and Tempe Historic Designated Property for:

ZUP10004 Use permit to allow a bar with a Series 6 license.

ZUP10005 Use permit to allow indoor live entertainment including live bands, disc jockeys and karaoke.

Mr. Robert Tasso was present to represent this case.

Kevin O'Melia, staff planner, gave an overview of this case and stated that no further public input has been received since the staff report was issued. It was noted that this is a historical building. In response to a question from Mr. Williams, Mr. O'Melia noted that the historical preservation committee was not concerned with the use permits but rather any renovations that might be done that related to areas of historical significance.

Mr. Tasso voiced concern regarding Condition of Approval No. 9 and the 12 midnight deadline on live entertainment. He asked that this condition be modified to allow live entertainment until 1 am for all days as he felt this would enhance his business.

Mr. Williams asked if there had not been a complaint regarding this business. Mr. O'Melia explained that this was not the case, that the complaint had been made to a different business.

Mr. Williams stated that as there was a lack of any significant complaints and there was no adjacent residential properties he would modify Condition of Approval No. 9 as requested by the applicant.

DECISION:

Mr. Williams approved PL100013/ZUP10004/ZUP10005 subject to the following conditions:

1. The two (2) use permits are valid for Tempe Tavern and may be transferrable to successors in interest through an administrative review with the Development Services Manager or designee. If the business is sold, the new owners shall contact Planning Staff and the Police Department for review of the business operation.
2. The two (2) use permits are valid for the plans and elevations as submitted within the application. Any intensification or expansion of either the tavern or the entertainment venue within the tavern shall require the applicant to return to the Hearing Officer for new use permits.
3. Obtain necessary clearances from the Building Safety Division prior to use permits becoming effective.
4. Prior to the use permits becoming effective, the business owner shall prepare a Security Plan for the premises with the Crime Prevention Division of the Police Department (480-858-6330).
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 permits will be reviewed by planning staff. The review will determine if a public hearing is warranted to re-evaluate the appropriateness of the use permit approvals.
6. Use permit for live entertainment is approved for indoors only. Live entertainment venue shall be located inside the building. Live entertainment shall be limited to live bands, karaoke or DJ's for bar patrons. Concert assembly is not allowed.
7. Outdoor sound amplification including speakers is prohibited.
8. Business and service doors, windows and pass-through shall remain closed during live entertainment performances.
9. Live entertainment shall cease at ~~12:00 am (midnight) on Sundays through Wednesdays and 1:00 am on Thursdays through Saturdays~~ **1:00 am. MODIFIED BY HEARING OFFICER**
10. Live entertainment venue consisting of the band or karaoke performance area shall maintain a minimum 3'-0" clearance from dining area in accordance with accessibility provisions of the Americans with Disabilities Act.
11. Noise generation (allowable noise decibel levels) from the premises shall conform to the requirements of the Tempe City Code – Chapter 20.
12. The premises shall conform to the Arizona State Smoking Ordinance. Refer to www.smokefreearizona.com.

3. Request by **BURGER KING NO.7769 (PL100019)** (Eric Dreier/ KRAF Inc. d.b.a. Burger King, applicant; KRAF Inc., property owner) located at 25 West University Drive in the CC, City Center District for:

ZUP10010 Use permit to allow a commercial parking lot in conjunction with an existing restaurant.

Mr. Eric Dreier was present to represent this case.

Sherri Lesser gave an overview of this case and stated that no further public input has been received since the staff report was issued. She discussed the shared parking analysis and peak demand. Staff is recommending approval of this request, stating that this is a justified use for this area and would satisfy peak demand requirements.

Ms. Karen Gittis, Tempe resident of the Maple Ash Neighborhood, spoke in opposition to this request to the parking in general and this site in particular, stating that she was in opposition to this request as it would lead to congestion and inappropriate driving not following pedestrian and driving rules. This creates a hazard for drivers and pedestrians. This request is an inappropriate use of the site, she stated, for the surrounding neighborhood at the University/Ash intersection.

Mr. Dreier confirmed that he understood all the conditions of approval including the proposed additional conditions #7 & #8 relating to landscape materials and employee parking.

Mr. Williams confirmed that he had received one e-mail of opposition citing concerns with this business. Mr. Williams noted that this is a use that has been occurring without approval and that the applicant is seeking to obtain appropriate approval. He noted that this was a compatible reasonable use and parking was needed in this area.

DECISION:

Mr. Williams approved PL100019/ZUP10010 subject to the following conditions of approval:

1. The use permit is approved to allow sixteen (16) parking spaces located to the rear of the site to be used for a commercial lot and charged a fee for use.
2. Obtain a formal approval of a parking analysis with all applicable fees prior to the use permit becoming valid.
3. The use must be commenced within twelve (12) months from date of approval (**April 2, 2011**) or the use permit will be invalid.
4. Use permit valid for Burger King Restaurant only; should the business convert to another restaurant or business the use permit will become invalid.
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. Any signs associated with parking use will require a separate approval from the Development Services Commercial Code section prior to installation of signs; contact Jeff Tamulevich (480-350-8441).
7. **Replace all dead and missing landscape materials on the site. ADDED BY HEARING OFFICER**
8. **All employee parking shall be on-site only. ADDED BY HEARING OFFICER**

4. Request by the **JOHNSON RESIDENCE (PL100026)** (Anthony Johnson, applicant/property owner) located at 916 South Roosevelt Street in the R-2, Multi-Family Residential District for:

VAR10001 Variance to reduce the north side yard setback from ten feet (10') to ~~two feet (2')~~ **three feet (3')** for an accessory building (garage). **MODIFIED BY HEARING OFFICER**

Mr. Anthony Johnson was present to represent this case.

Sherri Lesser gave an overview of this case and stated that no further public input has been received since the staff report was issued.

Mr. Williams indicated that a three foot (3 ft) setback would be more acceptable. Mr. Johnson stated the three foot setback instead of the two foot (2 ft) setback would be fine and that he is now aware of the building safety setback restrictions with regard to this type of construction.

A copy of the Conditions of Approval were given to Mr. Johnson and in particular Condition #2 regarding the materials to be used was discussed. Mr. Johnson noted that he would be installing desert landscaping once the construction is completed.

Mr. Williams noted that this request met the requirements for a variance due to the unique conditions in the neighborhood.

DECISION:

Mr. Williams approved PL100026/VAR10001 subject to the following conditions of approval for the modified request:

1. The variance is valid for the plans as approved by the Hearing Officer.
2. The accessory building is to match the existing residence in form, color and material.
3. Obtain all necessary clearances from the Building Safety Division.
4. Bring property into compliance with TCC Chapter 21 Nuisance and Enhancement; regarding appearance of property, storage of materials. **The property is to be brought into compliance within thirty (30) days of the issuance of the Certificate of Occupancy. MODIFIED BY HEARING OFFICER**

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5. Request by **KINGS PLAZA - STARTERS SPORTS BAR & GRILL (PL100030)** (Douglas Chesney/Chesney Enterprises Ltd, applicant; King Plaza LLC, property owner) located at 1400 South McClintock Drive, Suite No. 15 in the CSS, Commercial Shopping and Services District and TOD, Transportation Overlay District for:

ZUP10008 Use permit to allow live entertainment including live bands, disc jockeys and karaoke.

Mr. Douglas Chesney of Chesney Enterprises Ltd. was present to represent this case.

Nick Graves gave an overview of this case and stated that no further public input has been received since the staff report was issued.

Mr. Chesney requested that a speaker be allowed for TV and recorded music (referencing Condition of Approval No. 5) on the outdoor patio as this is a sports bar so people sitting outside could hear what is going on. There would be no outdoor live bands/entertainment.

Mr. Williams agreed with the applicant's request stating that this use supports the Transportation Overlay District through outdoor activity. COA #4 covers any public complaints should this become a nuisance issue.

DECISION:

Mr. Williams approved PL100030/ZUP10008 subject to the following conditions of approval:

1. The use permit is valid for Starter's Bar and Grill and may be transferable to successors in interest through an administrative review with the Development Services Manager, or designee.
2. Any intensification or expansion of this use shall require the applicant to return to the appropriate decision-making body for a new use permit.
3. Music generated from the use shall conform to the City of Tempe code requirements for noise control.

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. ~~No outdoor speakers associated with the live entertainment use will be allowed.~~ **DELETED BY HEARING OFFICER**
6. Live entertainment is approved during regular business hours.
7. The applicant or business owner shall contact the City of Tempe Police Department, Crime Prevention Unit to implement/update a Security Plan for the business. Please contact the Crime Prevention Department at 480-858-6330.

6. Request by **CLEARWIRE – AZ – PHX0509B – APS BUTTE (PL090491)** (Rulon Anderson/Clearwire, applicant; APS, property owner) located at 1406 East University Drive in the GID, General Industrial District for:

ZUP10009 Use permit to allow the expansion of an existing monopole including an increase in the overall height from sixty-three feet seven inches (63'-7") to seventy feet eleven inches (70'-11") and the addition of ~~three (3)~~ **one (1)** antenna array with **three (3)** microwave dishes and **three (3)** radio transmitters. **CORRECTED BY DEVELOPMENT SERVICES STAFF**

Mr. Taylor Candland was present to represent this case.

Nick Graves gave an overview of this case and stated that no further public input has been received since the staff report was issued.

Mr. Williams stated that he supports the co-location in an industrial area.

DECISION:

Mr. Williams approved PL090491/ZUP10009 subject to the following conditions of approval:

1. Obtain all necessary clearances from the Building Safety Division.
2. The equipment on the existing pole shall be mounted as a maximum height of 70'-11" (seventy feet eleven inches).
3. Any intensification or expansion of use will require a new use permit.
4. A weather resistant emergency contact informational sign shall be posted on the site and shall be visible to the public.
5. The wireless device shall be removed within thirty (30) days of discontinuance of use.

The next Hearing Officer public hearing will be held on **Tuesday, March 16, 2010.**

There being no further business the public hearing adjourned at 2:19 PM.

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



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

SA:dm

APPROVED