

Minutes
HEARING OFFICER
MAY 4, 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
Sherri Lesser, Senior Planner
Diana Kaminski, Senior Planner
Shawn Daffara, Planner II
Nick Graves, Planning Intern

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 May 18, 2010 at 3:00 PM to the Development Services Department.

1. Mr. Williams approved the Hearing Officer Minutes for April 20, 2010.

2. Mr. Williams noted that the following case(s) had been removed from this agenda:

- Request by the **ROBERTS RESIDENCE (PL100097)** (Don Roberts, applicant/property owner) located at 902 South Maple Avenue in the R-3, Multi-Family Residential Limited District for:

ZUP10031 Use permit to allow a single family residence to add a second story addition.
CONTINUED TO THE MAY 19, 2010 HEARING OFFICER

3. Request by **TEMPE CORPORATE CENTER - CLEARWIRE – AZ-PHX0725E (PL090492)** (Rulon Anderson/Realand Consulting; Wilshire Enterprises Inc., property owner) located at 4515 South McClintock Drive in the CSS, Commercial Shopping and Services District for:

ZUP10024 Use permit to allow a sixty foot (60 ft) monopole (monopine).

Mr. Rulon Anderson of Realand Consulting was present to represent this case.

Shawn Daffara, staff planner, gave an overview of this case and stated that no further public input has been received since the staff report was issued. Mr. Daffara presented the site plan and related photo simulations to those present.

Mr. Anderson explained that the intent was to have this structure as a co-locatable pine tree with space available for a second carrier. This was the reason for the height request, he stated.

DECISION:

Mr. Williams approved PL090492/ZUP10024 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. The monopine shall be no greater than 72' – 0" (seventy-two feet) in height (to the top of the tree).
3. Any intensification or expansion of use will require a new use permit.
4. The proposed enclosure shall be constructed of similar material and color to match the existing refuse enclosure for the property.
5. The monopine shall be designed to blend in with the "Aleppo Pine" species. Details can be worked out with staff prior to Building Permits being issued.
6. The enclosure gate shall require lighting to meet five (5) foot candles at the gate.
7. Light fixture to be full cut off design and match the existing light fixtures on site.
8. The wireless device shall be removed within thirty (30) days of discontinuance of use.

4. Request by **RIO SALADO CENTER - TEEN DANCE CLUB (PL100060)** (Thomas George, applicant; Rio Salado Center LLC, property owner) located at 1290 North Scottsdale Road, Suite Nos. 120 – 122 in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP10020 Use permit to allow a teen dance hall with live indoor entertainment (live bands, DJ).

Mr. Thomas George was present to represent this case.

Nick Graves, staff planner, gave an overview of this case and stated that no further public input has been received since the staff report was issued. A shared parking analysis was submitted by the applicant and approved by staff. Mr. Graves referred to security concerns expressed by the Police Department.

Mr. Williams noted to those present that the Tempe Police Department had been requested to attend today's hearing, however were unable to do so.

Mr. George stated that he recognized the assigned conditions of approval, and that the security team would be walking patrons to the cars. There would be assigned security personnel to the parking area and a no loitering policy. Only sodas, water and snacks would be available inside and there would be a no tolerance of drugs or alcohol. Acceptable ID would be required of patrons. Mr. George stated that he would be responsible for all

security which he would provide. He has been in contact with the Tempe Police Department regarding an acceptable security plan. New lighting has just been installed in the parking lot. Most of the opposition is based on problems in the neighborhood or police issues, Mr. George explained.

Mr. George stated that it was anticipated that there would be from 400 to 500 with the target audience from the ages of 16 to 21 so everyone would be subject to the same curfew. Legal ID accepted by the State of Arizona would be adequate to confirm the age of attendees. He stated the hours of operation would be from 6 PM to 11:30 PM.

Lane Carraway, Tempe resident, stated that he did not feel this location was adequate to support this venue if 400 to 500 kids were expected. That area is well know for drugs, alcohol, homeless and transient population. Efforts are being made to clean up the neighborhood and Mr. Carraway feels that this venue would only escalate the problems. The statement made by Mr. George regarding that security would be walking out every patron is ludicrous, he stated. He does not feel that the parking situation is adequate to support this type of activity. This is going to increase the need for the Tempe Police Department and increase their workload. Previous clubs in this location have had to shut down due to drinking, drug and prostitution problems. Mr. Carraway presented additional signatures in opposition to this request. Even granting a temporary use permit for a period of 90 days would not be fair to the neighborhood in this area. The neighbors should not have to be subjected to increased traffic and noise generated by this venue, Mr. Carraway stated. Sound from the kids, club and patrons coming and going will be a big problem.

In response to a question from Mr. Williams, Mr. Carraway showed on the site plan where his neighborhood is located, which is less than a block to the north of this proposed club.

Darlene Justus, North Tempe Neighborhood Association representative, the proximity to the apartments nearby is an issue. In April 2009, the community began meeting with the police on a regular basis because of issues with the apartment complex (Santa Fe Court). An interdepartmental task force with the City of Tempe was formed at that time. The apartment complex is under criminal abatement, Ms. Justus, explained. Since November 2009 to March 2010 there have been 49 arrests and there are a lot of transients that have been congregating in that area. To have a teen center in close proximity directly across from this apartment complex which is well known for drug problems is not a good location. The area is infested with crime. The neighborhood needs a break. To put up a Teen Dance Club in this location is to aggravate the situation with noise and security issues.

Mr. Williams asked Ms. Justus if there was an area in North Tempe that she felt would be better suited to this type of venue. Ms. Justus responded if the location was changed to possibly the Curry Road area it would then be away from the residential homes and would not escalate the problems of noise, traffic and sound problems.

The available square footage would be subject to Building Code regulations. Mr. George emphasized that drugs and alcohol would not be allowed inside the club, and that if someone appeared to have been drinking they would be denied admittance. Everything that was addressed here by the opposition pertains to the area, Mr. George said, and should not be held against his proposed business. Although the back of his building may be across the street from the Santa Fe Apartments, there is still a sizeable amount of area between the apartments and his club. There are 8 suites between his club and the street. He did not feel that the number of opposition signatures submitted were representative of the large population in that area . . . there should have been at least 100 to 200 signatures if the residents were really in opposition to this request. At the close of the evening, when everyone has exited the building, the security force which will number 15 or 20 individuals .. whatever is recommended by the security plan . . will all go out to the parking lot and make sure that all the patrons leave – there will be no loitering in the parking lot allowed.

Mr. George noted that he would like the option to be open 7 days a week in case there is someone who would like to hold a special event such as a birthday party at his location. The amount of business will determine how many days he will be open . . . 2 days, 3 days, etc. The youth at this age restriction will attract a more mature type of individual, Mr. George stated.

Mr. George noted that this shopping center had been recently renovated and that being there for several evenings a week for his restaurant, he does not see a lot of homeless persons.

Mr. Williams asked what was Mr. George's parking lot monitoring plan. He responded that his security team would be responsive to make sure that no negative behavior such as loitering, drinking, etc. would be present. The shared parking analysis was done by a registered engineer and approved by the City, Mr. George stated.

Mr. Williams noted that the Tempe Police Department did not recommend denial of this use permit request but recommended that strict adherence to security plan stipulations be followed by the applicant. Mr. Williams acknowledged the problems the neighborhood has been experiencing with Santa Fe Court apartments and their particular concern with a teen venue. The intent is not to mix adults with teenagers at this venue. It is not fair to penalize all teenagers for the percentage that causes problems with their behavior. This business deserves a chance stated Mr. Williams.

DECISION:

Mr. Williams approved PL100060/ZUP10020 subject to the following conditions:

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 valid for Teen Dance Club and may be transferable to successors in interest through an administrative review with the Development Services Manager, or designee.
3. Any intensification or expansion of this use shall require the applicant to return to the appropriate decision-making body for a new use permit.
4. Music/sound/noise generated from the use shall conform to the City of Tempe code requirements for noise control.
5. The live entertainment use shall take place inside only. No live entertainment will be allowed outside.
6. 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.
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. **Applicant must obtain a Teen Dance Hall license per City Code, Chapter 16A-140, prior to this use permit becoming effective. MODIFIED BY STAFF**
8. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review.
9. The use permit is valid for the plans as submitted within this application.
10. The applicant shall work with the Tempe Police Department to implement a Security Plan for the business. Please contact the Crime Prevention Department at 480-858-6330. **This security plan shall specifically address issues of parking lot monitoring and staffing, lighting improvements that might be necessary, identification training for employees, review of the parking lot escort plan and screening control at the door of the participants. MODIFIED BY HEARING OFFICER**
11. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8331.
12. Replace all missing trees along the north landscape area and in the north landscape islands; along with any other missing landscape material.
13. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review.

14. Provide ten inch (10") vinyl suite/address numbers on proper suites.
15. Replace bicycle parking racks per City of Tempe Public Works Department bicycle rack detail T-578 standard.
16. Hours of operation to end no later than 11:30 p.m. on a daily basis.
17. **Applicant is responsible for trash pickup in the parking lot adjacent to the club. ADDED BY HEARING OFFICER**
18. **The applicant is to return to the Hearing Officer on November 3, 2010 for review of compliance with these conditions. ADDED BY HEARING OFFICER**

5. Request by the **ARREDONDO RESIDENCE (PL100089)** (Ruthann Arredondo, applicant/property owner) located at 2310 South Gary Drive in the R1-6, Single Family Residential District for:

ZUP10030 Use permit standard to reduce the front yard setback for an open structure by twenty percent (20%) from 15 ft to 12 ft.

ZUP10034 Use permit to allow the required parking to be located in the front yard setback.

Mr. Charles Huellmantel was present to represent this case. He presented signatures of support and a location map of their residences.

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

DECISION:

Mr. Williams approved PL100089/ZUP10030/ZUP10034 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.

6. Request by the **WOODMANSEE RESIDENCE (PL100098)** (Richard Hamilton/Hamilton Architecture PLLC, applicant; Bill Woodmansee, property owner) located at 155 West Caroline Lane in the R1-7, Single Family Residential District for:

ZUP10032 Use permit standard to reduce the front yard setback by twenty percent (20%) from 20 ft to 16 ft for a room addition.

Mr. Richard Hamilton of Hamilton Architecture was present to represent this case.

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

Mr. Williams noted that this front yard addition is very visible and that he would like to see the same window detail (arched detail) should be used for this addition to match the existing residence.

DECISION:

Mr. Williams approved PL100098/ZUP10032 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. The building addition shall match the existing dwelling in form, color and materials.

3. There shall be no separate metering for utility services and no separate mailing address for the room addition.
4. Access to the room addition shall be provided internally through the main residence of which such room is an integral part.
5. The use permit standard is valid for the plans as submitted within this application.
6. **Window style and treatment is to match the existing mullion and arch style on the front elevation and is to be reviewed and approved by staff. ADDED BY HEARING OFFICER**

7. Request by **FLANNYS LLC (PL100104)** (John Flanagan, applicant; Pollack Royal Palm Plaza LLC, property owner) located at 1805 East Elliot Road, Suite Nos. 104 -105, in the PCC-1, Planned Commercial Center Neighborhood District for

ZUP10033 Use permit to allow a restaurant/bar with a Series 6 liquor license.

Mr. John Flanagan was present to represent this case.

Nick Graves, staff planner, gave an overview of this case and stated that one phone call of opposition had been received from a Mr. Gutos due to noise concerns. Mr. Graves noted that should the applicant wish to include live entertainment, he would be required to return to the Hearing Officer for a use permit for live entertainment.

Mr. Williams stated that he had a letter from Mr. Gutos regarding his concerns.

Mr. Flanagan stated that he was a responsible businessman and sensitive to the neighbors concerns. He explained that the actual name of this business would be Flannys LLC, and would like the record to reflect that this use permit will be granted to that business name. He confirmed that he was aware of the assigned Conditions of Approval and understood them.

In response to a question from Mr. Williams, Mr. Flanagan stated that there would no live entertainment at this time. He felt it was more important to establish himself with the neighborhood, and let them get to know him. If the clientele and neighborhood indicate that they would like live entertainment, it will be addressed at a later time thru the Hearing Officer process. There is no outdoor patio or outdoor seating at the present time.

DECISION:

Mr. Williams approved PL100104/ZUP10033 subject to the following conditions:

1. The use permit is valid for Flannys LLC and may be transferable to successors in interest through an administrative review with the Development Services Manager, or designee.
2. Obtain all necessary clearances from the Building Safety Division.
3. Any intensification or expansion or 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. Any new business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8331.
6. The applicant shall work with the Tempe Police Department to implement a Security Plan for the business. Please contact the Crime Prevention Department at 480-858-6330.

8. Request by the City of Tempe – Code Compliance Department to abate public nuisance items in violation of the Tempe City Code for the **BENSON RESIDENCE (PL100095/ABT10005/CE100205)** (Brandy Zedlar, Inspector; Edwin Benson, property owner) located at 4411 South McAllister Avenue in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Diana Kaminski, staff planner, gave an overview of this case and stated that the property is unsecured and has had continuing landscaping, condition of the swimming pool and noncompliance issues.

Mr. Williams addressed the estimate of charges for this abatement; Ms. Zedlar confirmed that the amount indicated was correct.

Ms. Zedlar stated that this property is still under the ownership of Mr. Benson however it has been abandoned and staff is requesting a 180 day open abatement period.

DECISION:

Mr. Williams approved abatement proceedings for PL100095/ABT10005 for an open period of 180 days.

The next Hearing Officer public hearing will be held on **Wednesday, May 19, 2010**.

There being no further business the public hearing adjourned at 2:45 PM.

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



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

SA:dm