

Minutes
HEARING OFFICER
JUNE 1, 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
Kevin O'Melia, Senior Planner
Diana Kaminski, Senior Planner

Number of Interested Citizens Present: 5

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 June 15, 2010 at 3:00 PM to the Development Services Department.

1. Mr. Williams approved the Hearing Officer Minutes for May 19, 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 JUNE 22, 2010 HEARING OFFICER

- Request by **TEMPE TIME SQUARE EVENT LLC (PL100131)** (Mei Lee, Plato/Lee Trust, applicant/property owner) located at 425 South Mill Avenue in the CC, City Center District for:

ZUP10043 Use permit to allow live entertainment for entire building, including live bands, DJ's and music ensembles.
CONTINUED TO THE JUNE 22, 2010 HEARING OFFICER

- **Review of the following for possible revocation of the use permit per the City of Tempe Attorney office's direction due to non-compliance with the Condition of Approval No. 5, which reads, "All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective."**

Request by **CAFE ISTANBUL (PL080075)** (Mahmoud Ayashe, applicant; City of Tempe, property owner) located at 1310 East Apache Boulevard, Suite No. 204, in the CSS, Commercial Shopping and Services District for:

ZUP08085 Use permit to allow a hookah lounge/tobacco retailer.
(Use permit was approved by the Hearing Officer at the June 3, 2008 Hearing.)
REVOCATION PROCESS WITHDRAWN – BUSINESS IN COMPLIANCE

3. Request by **AMADO'S TAKE-OUT RESTAURANT (PL090408)** (Philip Reina/GBMA Architects LLC, applicant; Adalberto Hernandez, property owner) located at 6020 South McClintock Drive in the CSS, Commercial Shopping & Services District for:

ZUP10035 Use permit to allow a drive-thru in the CSS, Commercial Shopping and Services District.

VAR10005 Variance to partially waive the required landscape buffer between the CSS, Commercial Shopping and Services District and the R1-6, Single Family Residential District.

Mr. Philip Reina of GBMA Architects LLC 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.

In response to a question from Mr. Williams, Mr. O'Melia explained that the narrowness of the space created a uniquely constrained area which is why the variance has been requested.

Mr. Reina confirmed that both he and the property owner were aware of the Conditions of Approval and had no problems or questions concerning them.

DECISION:

Mr. Williams approved PL090408/ZUP10035/VAR10005 subject to the following conditions:

1. Development Plan Review approval shall be obtained and construction documents for site development shall be submitted for building permit by June 1, 2011 or the Use Permit and Variance approvals shall be made void. Subsequently, an expiration of the building plan check period or issued building permit will result in expiration of the Use Permit and Variance approvals.
2. Drive-through operation shall cease nightly between 10:00 PM and 6:00 AM Sunday through Monday.
3. The Use Permit is valid for the drive-through concept demonstrated on the application submittal documents. Preserve trees as indicated on documents and as described by condition of approval.
4. The Use Permit is valid for Amado's and may be transferrable to successors in interest through an administrative review with the Development Services Manager, or designee.
5. Any intensification or expansion of the drive-through shall require the applicant to return to the appropriate decision-making body for a new Use Permit.

6. Noise generated from this facility shall conform to the City of Tempe Noise Ordinance requirements for noise control. Refer to Tempe City Code – Chapter 20.
7. Drive-through order speaker shall be located on the north of the building near the northeast corner, away from residences and toward McClintock Drive. There shall be no other speakers outdoors on site, including music speakers on the dining patio.
8. If there are any complaints arising from the Use Permit approval 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.
9. Additional landscape throughout the site is part of the Use Permit and Variance approval. Details of landscape plan to be worked out during Development Plan Review.
10. Convert sit down dining to exterior covered patio space following the Site Plan Review mark-up dated April 28, 2010. Limit extent of outdoor dining patio area to match available vehicle parking quantity on site. Details to be worked out during Development Plan Review.
11. Position drive-through 'bend' at northwest building corner so mature eucalyptus at northwest site corner is preserved. Utilize the 9'-0" minimum drive aisle road bed width as allowed in ZDC Section 3-408 if necessary to allow the bend to fit in between building corner and tree. Modify elevation of drive aisle road bed and if needed substitute a metal grate for asphaltic concrete in the road bed at the 'bend' so major tree roots are preserved. Details to be worked out during Development Plan Review.
12. Protect and maintain other existing mature trees throughout site as indicated on the site plan. Where one of these trees dies or shows probability during document preparation or construction periods, replace with a minimum 48" inch box tree of minimum 4" trunk caliper size. Details of position and species of replacement tree to be worked out during Development Plan Review.
13. Maintain all current civil drainage features including existing on-site retention basins with approximately 2200 cubic feet for the 2 year storm event. Coordinate location of civil drainage features and landscape, particularly, coordinate grade and flow changes caused by addition of drive through with respect to preservation of existing tree root systems. Details of civil and landscape coordination to be addressed during Development Plan Review and finalized during construction document refinement for building and engineering permits.

4. Request by the **TRAILER PARK RESTAURANT (PL100132)** (Francis Massimiano/MBM101 LLC, applicant; Brian Roehrich/DGRE101 LLC, property owner) located at 1001 East 8th Street in the CSS, Commercial Shopping & Services District and the TOD, Transportation Overlay District for:

ZUP10044 Use permit to allow a bar with a Series 6 liquor license.

ZUP10045 Use permit to allow live entertainment including DJ's and live bands.

Mr. Frank Massimiano was present to represent this case.

Kevin O'Melia, staff planner, gave an overview of this case and stated that one phone call of concern had been received since the staff report was issued and that person was present to speak today. He explained that the business would utilize its own parking area and also had an agreement with the City of Tempe to utilize the two parking areas west of the business. Mr. O'Melia noted that staff requests modifications to Conditions of Approval Nos. 6 and 7 as noted below:

6. Live entertainment is limited to live bands and DJ's for patrons and shall be located indoors. Concert assembly is not allowed. ~~Karaoke is not allowed.~~ **MODIFIED BY STAFF**
7. ~~Outdoor speakers are not allowed.~~ **Speakers are only permitted indoors and within the enclosed patio. Speakers may not be directed to areas outside of the patio. MODIFIED BY STAFF**

Past history of bar complaints/locations in this area were discussed. A bar has been in existence in this area since 1972.

Mr. Massimiano addressed Condition of Approval No. 11 regarding the secured storage of alcoholic beverages which has existed since 2004 and noted that this is a gated and secured area. He stated that he wanted to make sure that they could continue to use this storage area as it was the only area available for this use.

Mr. Massimiano explained that a great deal of effort has gone into turning this business around into a new concept (i.e. new menu, etc.) and things are going well. They want to cater to families as well as individuals as a neighborhood restaurant. This is a family business with he and his two sons, one of which is always on site.

Mr. Massimiano addressed concern with Condition of Approval No. 9 regarding the use of DJ's after 12 AM. He would like to extend the DJ's hours to continue entertainment until 2 AM. This would be indoors and after testing the speakers at loud volume with the doors closed, the sound was minor. Mr. Williams questioned Mr. O'Melia regarding this situation and he referred to Condition of Approval No. 8 which required a closed environment during live entertainment performances.

Mr. Chuck Buss, representative of the University Heights Neighborhood Association, stated that issues pertaining to noise and parking were areas of concern based on the history of the business in this location.

Mr. Williams questioned staff if there was any question that available parking was not adequate and could cause an overflow in the surrounding residential district(s). Mr. O'Melia responded that the concern is that staff would not want to overburden the applicant with parking beyond what the ordinance requires. Staff's position is that the parking available is adequate.

DECISION:

Mr. Williams approved PL100132/ZUP10044/ZUP10045 subject to the following conditions:

1. The Use Permits are valid for Tempe Trailer Park / Francis Massimiano / MBM101 LLC and may be transferrable to successors in interest through an administrative review with the Development Services manager or designee.
2. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer with new Use Permit request(s).
3. Noise generated from this facility shall conform to the City of Tempe Noise Ordinance requirements for noise control. Refer to Tempe City Code – Chapter 20.
4. The applicant shall devise a modified Security Plan in conjunction with the City of Tempe Police Department Crime Prevention Division (480-858-6330) prior to the Use Permits becoming effective.
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 shall be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit.
6. Live entertainment is limited to live bands and DJ's for patrons and shall be located indoors. Concert assembly is not allowed. ~~Karaoke is not allowed.~~ **MODIFIED BY STAFF**
7. ~~Outdoor speakers are not allowed.~~ **Speakers are only permitted indoors and within the enclosed patio. Speakers may not be directed to areas outside of the patio. MODIFIED BY STAFF**
8. Business and service doors, windows and pass-through shall remain closed during live entertainment performances.
9. Live **band** entertainment shall cease no later than 12:00 AM on weekdays and weekends, as indicated in the Applicant's Letter of Intent. **DJ's shall cease no later than 2:00 AM. If noise complaints are**

received, reconsideration of the Use Permit for live entertainment shall be ajenized within sixty (60) days of the receipt of the complaint. MODIFIED BY HEARING OFFICER

10. This use shall not violate the State Smoking Ordinance, www.smokefreearizona.com.
11. Locate all alcoholic beverage storage inside the building or in the container within the gated, secured yard as indicated in the Applicant's First Floor Plan. Do not locate a portion of this storage in a container in the gated yard south of the building, as indicated in the Applicant's First Floor Plan. MODIFIED BY HEARING OFFICER
12. Repair broken concrete curbing in parking areas.
13. Replace two canary island pines on the south property line. Remove existing pines which have died.
14. Replace one evergreen elm to the west of 949 East 8th Street parking lot driveway. Remove existing elm, which has defoliated on one side.
15. Obtain sign permits prior to the installation of signs.

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5. Request by the City of Tempe – Code Compliance Department to abate public nuisance items in violation of the Tempe City Code for the **GREENWAY TRUST PROPERTY (PL100114/ABT10006/CE100020)** (Brandy Zedlar, Inspector; 1224 Greenway Trust, property owner) located at 1224 East Greenway Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Diana Kaminski, staff planner, stated that property issues (i.e. trash & debris, green pool, etc.) continue to remain unresolved and that the property owner is unavailable. She asked for an open abatement period of 180 days.

Brandy Zedlar, Code Compliance Inspector, stated that there is no update to the unresolved property issues, that this property had been quit-claimed to a trust and she had been unable to contact a person representing that trust. No response has been received to notices sent to the Trust.

DECISION:

Mr. Williams approved abatement proceedings for PL100114/ABT10006/CE100020 for an open period of 180 days.

The next Hearing Officer public hearing will be held on **Tuesday, June 22, 2010**.

There being no further business the public hearing adjourned at 2:27PM.

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



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