

**Minutes
HEARING OFFICER
JUNE 22, 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
Levesque, Ryan, Senior Planner
Lesser, Sherri, Senior Planner
Graves, Nick, Planning Intern
Daffara, Shawn, Planner II

Number of Interested Citizens Present: 27

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 July 6, 2010 at 3:00 PM to the Development Services Department.

1. Mr. Williams approved the Hearing Officer Minutes for June 1, 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 JULY 6, 2010 HEARING OFFICER

- Request by **PAPPAS RESIDENCE (PL100157)** (Tessa Jones/the Phactory, applicant; Michael Pappas, property owner) located at 55 West 13th Street in the R-2, Multi-Family Residential District for:

VAR10007 Variance to reduce the required on site driveway length and parking setback from 20 feet to 11 feet 5 inches. (Twenty (20) feet available driveway distance behind sidewalk.)
WITHDRAWN BY APPLICANT

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3. Request by the **LOWRANCE RESIDENCE (PL100112)** (John Lowrance, applicant/property owner) located at 965 East Vaughn Street in the R1-8, Single Family Residential District for:

VAR10006 Variance to reduce the east side yard setback from 9 ft to 0 ft for a 15 ft tall existing accessory building.

Mr. John Lowrance was present to represent this case.

Ryan Levesque, staff planner, gave an overview of this case and stated that no further public input has been received since the staff report was issued. He noted that this request was generated by a complaint.

Mr. Mike Bertola, Tempe resident, spoke in opposition and stated that no permit had been obtained for this accessory building before starting the project. It would change the character of the neighborhood and set a precedent.

Ms. Tanya Moulton, Tempe resident, spoke in support of this request, stating that she lives two doors away from the applicant. She stated that this building could be shielded with landscaping and that she and her husband have no objection to this request.

Mr. Williams explained that there is a strict criteria for variances and that this request was a self-imposed hardship. The side yard separation meets no criteria.

DECISION:

Mr. Williams denied PL100112/VAR10006.

4. Request by **KYRENE BUSINESS PARK - BEEMER HAUS (PL100144)** (Charbel Antoun, applicant; Grubb & Ellis/BRE Commercial LLC, property owner) located at 6315 South Kyrene Road, Suite No. 103, in the GID, General Industrial District for:

ZUP10054 Use permit to allow automotive sales in the GID, General Industrial District.

Mr. Charbel Antoun was present to represent this case.

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

DECISION:

Mr. Williams approved PL100144/ZUP10054 subject to the following conditions:

1. The use permit is valid for Beemer Haus 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 shall be obtained prior to the use permit becoming effective.
3. The Beemer Haus shall have no more than 30 vehicles on site at any time. Intensification of the use on this site will require a new use permit and proof of sufficient parking.

4. Provide signage and enforcement of no parking in non-designated spaces, including fire lane, maneuvering area and refuse enclosure.
5. Parking to be allocated as follows:
 - Suite 101 – 19 spaces
 - Suite 104 – 10 spaces
 - Suite 105 – 10 spaces on the southern side of the site for vehicle sales, 5 additional allowed for employees and customer parking, with the remaining 1 space required by parking per code (16 total required) parking inside in the showroom/warehouse.

5. Request by the **INDOOR SPORTS FACILITY (PL100149)** (Jay Jolley/K & I Architects & Interiors, applicant; RREFF, property owner) located at 9100 South McKemy Street in the GID, General Industrial District and the SWOD, Southwest Overlay District for:

ZUP10055 Use permit to allow an indoor sports facility in the GID, General Industrial District.

Mr. Jay Jolley of K & I Architects and Interiors was present to represent this case.

Diana Kaminski, 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 asked what plans had been made to accommodate overflow parking. Ms. Kaminski stated that the applicant had spoken with adjacent businesses regarding additional parking area(s) as they are not open on weekends.

In response to a question from Mr. Williams, Mr. Jolley introduced Mark Dyer as the owner of this business. Ages of participants would range from 12 to 18.

DECISION:

Mr. Williams approved PL100149/ZUP10055 subject to the following conditions:

1. The use permit is valid for the Indoor Sports Facility 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 shall be obtained prior to the use permit becoming effective.
3. No more than 8 courts shall be allowed on site, and no more than 6 courts used during tournaments; with no more than 350 total occupants of the building at any one time.
4. Any intensification or expansion of use will require a new use permit.
5. Any complaints arising from parking off-site will result in a reconsideration of this use permit and the accompanying parking reduction allowed by the shared parking model.
6. A Shared Parking Analysis of the facility will be updated six (6) months after certificate of occupancy, with parking counts taken during peak days and times of use and during tournament play.
7. The code requirement for parking is 98 spaces; the parking analysis (dated 5/18/10) identifies the peak demand for parking spaces for all uses as approximately 75 spaces, Monday through Friday; and 51 spaces on Saturday and Sunday; a minimum of 75 parking spaces on the Tempe Indoor Sports Facility site must be maintained to support all uses.
8. All business signs shall receive a Sign Permit. Please contact Planning staff at 480-350-8331.

6. Request by **VERIZON – PHO DROMEDARY (PL100151)** (Ryan Rawson/In Command Communications, applicant; RBI Industrial Properties LLC, property owner) located at 528 West 21st Street in the GID, General Industrial District for:

ZUP10053 Use permit to allow co-location of wireless antennas on an existing 107 ft monopole.

Mr. Ryan Rawson of In Command Communications 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.

DECISION:

Mr. Williams approved PL100151/ZUP10053 subject to the following conditions:

1. Obtain all necessary permits and clearances from the Building Safety Division.
2. Any intensification or expansion of use, including co-location of additional antennae, will require a new use permit.
3. The wireless devices shall be removed within 30 days of discontinuance of use.
4. The antennas and dishes shall be painted to match the existing monopole.

7. Request by **ARIZONA GOLD RUSH LLC (PL100152)** (David Wolff, applicant; L & G Camery LLC, property owner) located at 707 South Forest Avenue in the CC, City Center District and TOD, Transportation Overlay District for:

ZUP10052 Use permit to allow a resale retailer (precious metal buyer).

Mr. Chris Rufo 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 questioned whether there was any additional security addressed; Mr. Graves referred to Condition of Approval No. 7 which addressed this issue.

DECISION:

Mr. Williams approved PL100152/ZUP10052 subject to the following conditions:

1. The use permit is valid for Arizona Gold rush LLC 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 improvement 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 Licensing 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.
8. Replace nonconforming building lighting at the front of the building with compliant light fixture. Details can be resolved during Building Safety Plan Review.

8. Request by the **GIERON-WIDELKA RESIDENCE (PL100153)** (Robert Klob/Robert Klob Designs, applicant; Jan Gieron, property owner) located at 2421 East Cairo Drive in the R1-6, Single Family Residential District for:

ZUP10050 Use permit to allow vehicle parking in the front yard setback.

Mr. Robert Klob of Robert Klob Designs and Ms. Widelka were 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. The applicant intends to enclose the garage and convert it to livable space. He explained the restrictions of on-street parking.

Ms. Nancy Savoy, stated that she was a 32 yr resident of Tempe, stated that it is her understanding that if this use permit is approved that up to 10 residents could occupy this house which would cause parking problems. She also had concerns regarding the upkeep and appearance of the home which would affect the neighborhood.

Mr. Roger Siefreer, Tempe resident, asked what the intended use of this house. He was informed that the intent is for a group home for 10 residents which is allowed by the zoning code under certain restrictions.. Traffic is required to be normal for residents. Mr. Abrahamson clarified that no other group home is allowed within 1200 ft and that the State of Arizona regulates group homes; any number of cars is allowed as long as they are not blocking the driveways. However, normal use relating to group homes is usually 2 to 3 cars for visitors and staff. Cars are not allowed to be parked there longer than 48 hrs.

Mr. Charles Davidson, Tempe resident, stated his concerns over the proposed use of this home and related traffic that would occur.

Mr. Robert Sturges, Tempe resident, stated his concerns regarding parking and appearance related to this home.

It was noted by Mr. Abrahamson that any problems or issues regarding parking (amount of cars, length of time, etc.) could be addressed to the Tempe Police Department.

DECISION:

Mr. Williams approved PL100153/ZUP10050 subject to the following conditions:

1. Parking shall take place on impervious surfaces only.
2. Obtain all necessary clearances from the Building Safety Division.
3. All vehicles parked on the premises must be actively registered and in operable condition at all times.
4. The garage conversion shall match the main residence in color, form, texture and material.
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. Landscape shall be maintained as required per city code of Tempe (Chapter 21, Art. I – Nuisances, §§ 21-1 – 21-20).

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9. Request by the **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:

ZUP10051 Use permit to allow live entertainment (DJ and live entertainers).

Mr. Anton Midessa 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 questioned the lack of condition regarding keeping the doors closed during the live entertainment. Mr. Graves noted that there were no nearby occupied properties at this time. Discussion decided that COA#3 would address any problems with noise that may occur.

DECISION:

Mr. Williams approved PL090448/ZUP10051 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. 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. 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.
 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. The use permit is valid for the plans as submitted within this application.
 6. Music generated from the use shall conform to the City of Tempe code requirements for noise control.
 7. No outdoor speakers will be allowed.
 8. All rear exit doors require a lexan vision panel; details to be approved through Building Safety Plan Review before September 20, 2010.
 9. 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 before September 20, 2010.
 10. The applicant shall contact City of Tempe Crime Prevention Unit to implement/update a Security Plan within 60 days of this approval. Contact Crime Prevention at (480) 858-6330 before August 21, 2010.
 11. The live entertainment use shall take place inside only. No live entertainment will be allowed outside in the patio area.
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10. Request by **GRAND CANYON PREPARATORY ACADEMY (PL100159)** (Ward Hollon/Hollon Design Associates LLC, applicant; Easley Sunland/Tujungua LLC, property owner) located at 5301 South McClintock Drive in the R/O, Residential/Office District for:

ZUP10056 Use permit to allow a charter school.

Mr. Ward Hollon of Hollon Design Associates LLC and Mr. David Borden were present to represent this case.

Ryan Levesque, 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. Lloyd Platz, stated that he was the neighbor directly to the east of this property. He presented a petition of nine (9) signatures against this request citing reasons of traffic, safety, parking, trash, trespassing, smoking, noise and funding for charter schools vs public schools.

Mr. Bruce Brimacombe, stated that he is a parent. He did not feel that parking is a problem and that the academy provides a quiet environment.

Mr. Borden stated that there are between 60 to 70 students and peak traffic occurs between 7 AM to 8 AM which drop off of students occur. One-third of the students take the Valley Metro, while others bike, walk, or car pool.

On street parking and the criteria of the Zoning and Development Code was discussed in addition to compatibility issues. Mr. Levesque pointed out that Condition of Approval No. 8 addresses the parking issue.

It was established that there was a strict no smoking policy for staff/employees and students.

DECISION:

Mr. Williams approved PL100159/ZUP10056 subject to the following conditions:

1. The use permit is valid for Grand Canyon Preparatory Academy 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 the use will require a new use permit.
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 set to re-evaluate the appropriateness of the use permit.
4. All required permits and clearances shall be obtained from the Building Safety Division prior to installation of tenant improvements.
5. All dead and missing landscape shall be provided prior to the opening of the facility, including but not limited to, perimeter trees and any shrubs as identified on the original approved landscape plan.
6. Provide new bike parking loops distributed on the site in visible proximity to the main entrance.
7. Roof top mechanical screening shall be repainted to match existing or any proposed paint colors for the building.
8. The school, and any successors in interest, shall enforce its student/employee parking and prohibit any on-street parking within the adjacent residential neighborhood.
9. **All exterior doorways shall provide standard lighting levels of five (5) foot candles per the Zoning and Development Code. ADDED BY STAFF**
10. **Designate an outdoor break area for students subject to Development Services staff approval. ADDED BY HEARING OFFICER**

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11. Request by the **RHODES RESIDENCE (PL100164)** (Jose Sanchez & John D. Hunt/Hunts Custom Homes, applicant; Lawrence Rhodes, property owner) located at 6500 South Terrace Road in the R1-8, Single Family Residential District for:

ZUP10057 Use permit to allow a second story addition.

Mr. John Hunt of Hunts Custom Homes and Mr. Rhodes was present to represent this case.

Ryan Levesque, 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 the two story portion of the structure is on the north side away from the other homes.

Mr. Rhodes explained that the reason for the addition is that his family is cramped for space and they had limited options to expand. Therefore the decision was made to build up.

DECISION:

Mr. Williams approved PL100164/ZUP10057 subject to the following conditions:

1. Property owner(s) shall sign a real covenant, which shall be recorded with the land restricting the use of the second story building from being rented or leased independently from the main residence. The City of Tempe shall be parties to such covenant and shall be binding to all subsequent owners. This condition shall be completed prior to receiving a building permit.
2. The second story roof shall be designed using a 'hip' style roof, to similarly match the existing.
3. Reposition the east elevation window to be centered with the peak of the existing roof top.

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12. Request by the City of Tempe – Code Compliance Department to abate public nuisance items in violation of the Tempe City Code for the **DAVIDSON PROPERTY (PL100138/ABT10007/CE100838)** (Jack Scofield, Inspector; Keith Davidson, property owner) located at 1100 East Knox Road in the AG, Agricultural District.

No one was present to represent the property owner.

Ryan Levesque, staff planner, stated that issues relating to a green pool, which the City had performed an emergency abatement. and overgrown weeds on the property and along the street existed.

DECISION:

Mr. Williams approved abatement proceedings for PL100138/ABT10007/CE100838.

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13. Request by the City of Tempe – Code Compliance Department to abate public nuisance items in violation of the Tempe City Code for the **GANEV PROPERTY (PL100143/ABT10008/CE100813)** (Marvin White, Inspector; Alex & Vania Ganev, property owners) located at 1143 North Oleander Street in the R-2, Multi-Family Residential District.

No one was present to represent the property owner.

Kevin O'Melia, staff planner, stated that issues existed relating to overgrown grass and weeds, junk and debris.

DECISION:

Mr. Williams approved abatement proceedings for PL100143/ABT10008/CE100813.

14. Request by the City of Tempe – Code Compliance Department to abate public nuisance items in violation of the Tempe City Code for the **BARTON PROPERTY (PL100156/ABT10009/CE096257)** (Jody Benson, Inspector; Margaret Scalizi Barton, property owner) located at 3232 South Evergreen Road in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Sherrri Lesser, staff planner, stated that issues relating to draining the pool, securing windows, doors and garage door, removing debris, overgrown grass and weeds existed.

Jody Benson, Code Compliance Inspector, requested that an open abatement period of 180 days be approved.

DECISION:

Mr. Williams approved abatement proceedings for PL100156/ABT10009/CE096257 for an open period of 180 days.

The next Hearing Officer public hearing will be held on **Tuesday, July 6, 2010.**

There being no further business the public hearing adjourned at 2:58 PM.

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



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

SA:dm