

Minutes
HEARING OFFICER
JULY 6, 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
Diana Kaminski, Senior Planner
Levesque, Ryan, Senior Planner
Lesser, Sherri, Senior Planner
Graves, Nick, Planning Intern
Jeff Tamulevich, Code Compliance Administrator

Number of Interested Citizens Present: 16

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 20, 2010 at 3:00 PM to the Development Services Department.

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1. Mr. Williams approved the Hearing Officer Minutes for June 22, 2010.

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2. Request by the **CHURCH OF CHRIST (PL080474)** (Abed Danganan, applicant; Church of Christ, property owner) located at 1967 East Palmcroft Drive in the R1-6, Single Family Residential District for:

ZUP09001 Use permit to increase the allowable maximum fence in the front yard setback from four (4) feet to six (6) feet.

Review of compliance with Condition of Approval Nos. 2 & 3, assigned by the Hearing Officer at the February 17, 2009 HO, which read:

COA No. 2: Install a lock on the gate that allows for fire personnel access during non-business hours; contact Jim Walker, Tempe Fire Inspector at (480) 350-8341.

COA No. 3: Obtain Development Plan approval for expansion of the parking area with paving, striping, lighting and landscape. All approvals and installations to be completed within one year (February 17, 2010).

Mr. Donovan Rhodes was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case and stated that no further public input has been received since the staff report was issued. She noted the purpose of this hearing was to obtain a progress update on conditions of approval that remain unresolved.

Mr. Rhodes explained that he had met with planning staff a couple of weeks ago regarding the parking situation and the conditions of approval that remain unresolved.

Mr. Williams referred to the discussion at the original hearing for this use permit and the requirements for on and off site parking. He questioned whether the adjacent unpaved vacant lot was being utilized for parking. Mr. Rhodes responded that it was not and that he absolutely understood that they were not permitted to do so. Mr. Williams asked if Mr. Rhodes thought in the foreseeable future this area would be used for off site parking. Mr. Rhodes responded that it would not, that, in fact, the congregation would be reduced by almost a 100 members and the parking needs would also be reduced considerably.

Mr. Rhodes stated that he had placed a call to Mr. Jim Walker regarding Condition of Approval No. 2 but his call was not returned. Mr. Williams noted that it was Mr. Rhodes responsibility to follow up on the unreturned call.

Ms. Lesser explained that she had spoken with Mr. Walker and that Mr. Rhodes should contact Mr. Walker directly regarding the specifics of the lock requirement(s).

Mr. Bruce Bishop, Tempe resident, spoke with respect to curb improvements, Knox lock, overgrown weeds, dust and lack of a sidewalk. Mr. Bishop stated that he wanted to verify that he had spoken directly with Mr. Jim Walker and had no problems reaching him on the phone. He noted that several members of the congregation had received citations for parking.

Mr. Williams asked staff if there were any pending complaints on the vacant lot. Mr. Tamulevich stated that there were no active violations at this point. Mr. Bishop was advised to file a complaint with the code compliance staff if problems or nuisance issues existed so that an inspection could be scheduled.

Mr. Williams noted that the City is satisfied at this point since there will be no parking on the vacant lot per Mr. Rhodes. The wrought iron fence is a visible entity and the 6 ft fence is acceptable as is. The lock situation is not acceptable and needs to be resolved within 60 days.

Mr. Bishop returned to the podium and addressed the lack of the sidewalk, stating that missing portion of the sidewalk affected the safety of students at the nearby school. Ms. Lesser stated that she will contact the City's Public Works Department and try to resolve this issue.

DECISION:

Mr. Williams re-approved PL080474/ZUP09001 subject to the following conditions:

1. Approval is valid for the plans as submitted ~~within this application~~ and constructed. **MODIFIED BY HEARING OFFICER**

2. Install a lock on the gate that allows for fire personnel access during non-business hours; contact Jim Walker, Tempe Fire Inspector at (480) 350-8341 **within 60 days (August 6, 2010). MODIFIED BY HEARING OFFICER**
- ~~3. Development Plan approval for expansion of the parking area with paving, striping, lighting and landscape. All approvals and installations to be completed within one year (February 17, 2010). REMOVED BY HEARING OFFICER~~

3. Request by **ARIZONA MILLS MALL - CLEARWIRE – AZ PHX0506A (PL090298)** (Rulon Anderson/Realand Consulting, applicant; American Tower, property owner) located at 1403 West Baseline Road in the GID, General Industrial District for:

ZUP10063 Use permit to increase the height of an existing monopole from 59 feet to 69 feet to allow co-location.

Mr. Rulon Anderson of Realand Consulting 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.

DECISION:

Mr. Williams approved PL090298/ZUP10063 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. The monopole shall be no greater than 69'-0" (sixty-nine feet) in height.
3. Any intensification or expansion of use will require a new use permit.
4. The wireless device shall be removed within thirty (30) days of discontinuance of use.

4. Request by **CLEARWIRE – AZ PHX129E (PL100063)** (Rulon Anderson/Realand Consulting, applicant; Dresden Family Limited Partnership, property owner) located at 1006 East Guadalupe Road in the R/O, Residential/Office District for:

ZUP10066 Use permit to allow a new 60 foot wireless antenna (monopalm).

Mr. Rulon Anderson of Realand Consulting 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 addressed non-compliant issues such as the travel trailer located at this property, indicating that while he understood Mr. Anderson was not the property owner, he was still reluctant to approve this request which these issues remained. Mr. Anderson responded that he had no problem with an additional Condition of Approval that addressed this concern.

Ms. Denise Philips, representative of Harvest for Humanity volunteers, which has been in existence for the past 20 years, stated that all produce raised on that property is donated. She explained that currently property

improvements are underway. The travel trailer is currently being used as an office and a meeting area for the volunteers and will be moved in the near future.

DECISION:

Mr. Williams approved PL100063/ZUP10066 subject to the following conditions:

1. The use permit is valid for Clearwire 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. The monopalm shall be no greater than sixty (60) feet in height (top of palm fronds).
4. Any intensification or expansion of use will require a new use permit.
5. The wireless device shall be removed within 30 days of discontinuance of use.
6. The enclosure gates shall require lighting to meet five (5) foot candles at the gate and two (2) foot candles within a 15' radius.
7. Place emergency information placard with a weather resistant cover visible from outside the equipment enclosure.
8. Provide one (1) additional Palm Tree of a compatible species and size on site, located within the front yard, west of the western-most driveway entrance.
9. **Trailer and all materials shall be removed and/or screened within 90 days (October 6, 2010). ADDED BY HEARING OFFICER**

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5. Request by **CLEARWIRE – AZ PHX5608I (PL100096)** (Rulon Anderson/Realand Consulting, applicant; John W. Horne Investments LLC, property owner) located at 700 East Baseline Road in the R/O, Residential/Office District for:

ZUP10067 Use permit to allow a new 65 foot wireless antenna (monopalm).

Note: COA #3 limits the height of this monopalm to 62 feet to the top of the palm fronds.

Mr. Rulon Anderson of Realand Consulting 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. One phone call of concern had been received on this case.

DECISION:

Mr. Williams approved PL100096/ZUP10067 subject to the following conditions:

1. This use permit is valid for Clearwire and may be transferable to successors in interest though an administrative review with the Development Services Manager, or designee.
2. Obtain all necessary clearances from the Building Safety Division.
3. The mono-palm shall be no greater than 62'-0" (sixty-two feet) in height (to the top of the palm fronds).
4. Any intensification or expansion of use, including co-location of additional antennas, will require a new use permit.
5. All existing mature landscape is to be preserved and protected in place.
6. Provide a landscape island with required plants and a shade tree (fruitless olive as specified on plan) for the parking row east of the walled compound.
7. The wireless device shall be removed within 30 days of discontinuance of use.
8. The enclosure gates shall require lighting to meet five (5) foot candles at the gate and two (2) foot candles within a 15' radius.

9. Place emergency information placard with a weather resistant cover (lexan) to be visible from outside the equipment enclosure.

6. 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.
VAR10008 Variance to reduce the required on site driveway length and parking setback from 20 feet to 10 feet. (20 feet available driveway distance behind sidewalk)

No one was present to represent this case.

Sherri Lesser, 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 neighborhood meeting has held on May 31st. Several phone calls had been received regarding this request.

Mr. Williams questioned the requirements for unrelated individuals living at this address. Ms. Lesser responded that this property is located within the multi-family district and, as such, had no restrictions. Mr. Williams noted that that there was a single family residential district located directly across the street which did have restrictions on the residence of unrelated individuals.

Mr. Williams asked if there had been any parking violations for this address. Ms. Lesser responded that there had been citations issued.

Ms. Karen Gittis, Tempe resident, spoke about her concerns regarding development in the neighborhood and objected to the second story due to the number of bedrooms, student living and parking. Upkeep of the property is good, quality of construction is good, design is good, she stated. Ms. Lesser indicated on the site plan that the future garage will align with the existing house.

DECISION:

Mr. Williams continued PL100097/ ZUP10031/ VAR10008 to the July 20, 2010 Hearing Officer hearing. *(Note: Discussion with the applicant following this hearing re-assigned this continuance to the August 3 Hearing Officer hearing.)*

7. Request by the **MAZZEO RESIDENCE (PL100170)** (Jaime Mazzeo, applicant/property owner) located at 815 West 12th Street in the R1-6, Single Family Residential District for:

- ZUP10065** Use permit to allow a second and third story addition on a single family residence.

Ms. Jaime Mazzeo was present to represent this case.

Sherri Lesser, 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 work was done by the previous owner without a permit; the new owner has submitted this request in order to have the property in compliance.

DECISION:

Mr. Williams approved PL100170/ZUP10065 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. 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.

8. Request by **BROADWAY MARKETPLACE – ARIZONA #1 GOLD BUYERS (PL100172)** (Roman Babayev, applicant; Weingarten Nostat Inc., property owner) located at 2105 South Rural Road in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP10064 Use permit to allow a resale retailer (precious metal buyer).

Mr. Roman Babayev 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.

Ms. Deborah Brand, representing the property owner, spoke in support and noted that the missing landscape had been replaced. It was agreed to remove Condition of Approval No. 8.

DECISION:

Mr. Williams approved PL100172/ZUP10064 subject to the following conditions:

1. The use permit is valid for Arizona #1 Gold Buyers 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. 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.
8. ~~Replace missing landscaping in front of tenant space with another dwarf cultivar of natal plum.~~ **DELETED BY HEARING OFFICER**

The next Hearing Officer public hearing will be held on **Tuesday, July 20, 2010.**

There being no further business the public hearing adjourned at 2:52 PM.

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



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

SA:dm

APPROVED