

Minutes  
HEARING OFFICER  
AUGUST 17, 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  
Ryan Levesque, Senior Planner  
Sherri Lesser, Senior Planner  
Nick Graves, Planning Intern

Number of Interested Citizens Present: 13

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 August 31, 2010 at 3:00 PM to the Community Development Department.

1. Mr. Williams approved the Hearing Officer Minutes for August 3, 2010.

2. Review of compliance with Conditions of Approval as assigned by the Hearing Officer at the December 15, 2009 Hearing for:

Request by **THE FIREHOUSE – LONG WONG’S (PL090404)** (Avi Sadote, applicant/property owner) located at 1639 East Apache Boulevard in the CSS, Commercial Shopping & Services and TOD, Transportation Overlay Districts for:

**ZUP09142** Use permit to allow indoor live entertainment including live bands, D.J.’s, comedy acts and karaoke.

Mr. Avi Sadote 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 that two (2) calls for service had been received by the

Tempe Police Department regarding noise (i.e. back door being left open, parking lot). Additional Conditions of Approval added to address these issues.

In response to a question from Mr. Williams, Ms. Lesser stated that the Hudson Manor Neighborhood Association was responsible for this area.

Mr. Sadote stated that the noise issue(s) have been addressed to minimize the noise and the open door has been resolved. He noted that it is impossible to operate a business without clientele coming and going thru the door. They do take the door issue seriously and take all possible precautions to contain the noise and comply with the Conditions of Approval. They have never had a fight or a police incident since this use permit has gone into effect.

Mr. Mike Tamaro of the Regency Apartments stated that everyone he had spoken with was in support of this business and wanted it to be a success. He does, however, have a responsibility to his tenants some of whom rise early to attend school or work functions. This responsibility extends to his tenants 24 hrs a day 7 days a week. He does not want Mr. Sadote's success to come at his expense. Specifically his apartments are 25 to 50 ft of the back door of Long Wong's and he would like sound proofing insulation for noise abatement, better parking designations with more parking signs, as well as a bouncer to work the back door of this business. All he asks for is better control of the traffic and noise.

In response to a question from Mr. Williams, Mr. Tamaro responded that for the first time in five (5) years the apartments are not completely full. He estimated the current occupancy at 70%.

Mr. Williams explained that this hearing was scheduled to review the applicant's compliance with the assigned conditions of approval. He stated that he is in receipt of the Tempe Police Report and although there were several complaints there were no citations issued. He could understand the noise issues identified by Mr. Tamaro and noted that the Apache Boulevard was a noisy area.

Mr. Sadote responded that only two of the seven complaints generated a police visit. At that time, per Mr. Sadote, the Police officer stated that he could identify no problem(s). A fire rated wall was now in place and there is no better noise barrier reduction than that, stated Mr. Sadote. Other improvements such as new A/C units were installed. He presented photographs of the parking area(s) which had signs indicating tenant parking only, and explained that he is working to do whatever it takes to reduce the noise and other issues in his position as a responsible business owner. He indicated that he felt that Mr. Tamaro's comments were a result of a personality conflict.

Mr. Williams questioned Mr. Sadote as to the location of his designated smoking area. Mr. Sadote replied that there was an outdoor patio area, 20 ft. away from any door, that is the smoking area.

Mr. Williams stated that Mr. Sadote and Mr. Tamaro needed to resolve their personal issues and start getting along as it is nonproductive to operate businesses next door to each other and not get along. If Mr. Sadote has extra parking available it would be feasible to determine a solution such as renting space to Mr. Tamaro if possible.

Mr. Williams stated that Mr. Sadote had to operate his business according to the rules and regulations of the City of Tempe in relation to signage, parking, noise or whatever other issues may exist. This business has a history of non-compliance and a use permit is a special privilege. If the business is not in compliance, it is a problem.

Mr. Williams stated that he would have Mr. Sadote return to the Hearing Officer on the first meeting in December (December 7, 2010) and that he wished to see an improvement in his relationship with Mr. Tamaro and the issues that have been addressed today. He noted that three (3) new Conditions of Approval have been added (#12, #13 & #14) to address the noise and parking. An additional Condition was added to stipulate the return to the Hearing Officer in December to review the compliance with these Conditions. If the Conditions have not been complied with, a use permit revocation hearing will be scheduled.

**DECISION:**

Mr. Williams re-approved PL090404/ZUP09142 subject to the following modified conditions:

1. The use permit is valid for Long Wongs and may be transferable to successors in interest through an administrative review with the Community Development 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. Noise generated from the use shall conform to the City of Tempe Noise Ordinance 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. The band and/or karaoke area to maintain a minimum 3' clearance from dining area to comply with ADA accessibility requirements.
6. The use permit is valid for the plans as submitted within the application.
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. All services doors to remain closed during times of live entertainment performances.
9. Live entertainment to cease at 12 midnight Sunday-Wednesday and 1:00 am Thursday-Saturday.
10. Live entertainment approved for indoor use only.
11. ~~Administrative review will be done in six months (July 2010) to confirm compliance.~~
12. Provide sound attenuation material to the interior of the restaurant, design and details to be provided by staff. **ADDED BY STAFF**
13. Provide security personnel at back door and in the parking area during hours of live entertainment. The back door not to be propped open during hours of live entertainment. **ADDED BY STAFF**
14. To mitigate parking on adjacent properties provide an illuminated 'no parking sign' on the west side of the building. **ADDED BY STAFF**
15. **Administrative review will be done at the December 7, 2010 hearing to confirm compliance with these modified conditions. ADDED BY HEARING OFFICER**

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3. Request by **OUR LADY OF MT. CARMEL CHURCH – A. T. & T. WIRELESS X141-AA (PL100202)** (Shannon Morrelli/Bechtel Communications, applicant; Our Lady of Mt. Carmel Church, property owner) located at 2121 South Rural Road in the R1-6, Single Family Residential District for:

**ZUP10074** Use permit to allow a 65 ft tall monopole (monopalm).

Ms. Shannon Morrelli 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.

Mr. Williams requested, and received from Ms. Morrelli, a photo simulation of the proposed monopalm.

**DECISION:**

Mr. Williams approved PL100202 / ZUP10074 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. The monopole (monopalm) shall be no greater than 65' – 0" in height.
3. The proposed equipment cabinet shall be constructed of similar material and color to match the existing building.
4. Any intensification or expansion of use, including co-location of additional antennas, will require a new use permit.
5. The wireless device shall be removed within 30 days of discontinuance of use.
6. The proposed monopole (monopalm) shall maintain a twenty foot (20') separation from any existing tree.

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4. Request by **COMTECH EF DATA (PL100225)** (Mike Hall/Michael Hall Architects, applicant; Phoenix Investors #7 LP, property owner) located at 2114 West 7<sup>th</sup> Street in the GID, General Industrial District for:

**ZUP10076** Use permit wireless telecommunication equipment in the GID District, to allow a 16 ft tall roof mounted satellite dish.

**VAR10009** Variance to waive required screening of roof-mounted equipment.

Mr. Michael Hall of Michael Hall Architects 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. She noted that the existing dishes will be consolidated into this request thru a Condition of Approval. View from the street level would be minimal.

Mr. Hall noted that if they were approved today, he understood the need to get a permit for the existing satellite dish(es) on the roof.

**DECISION:**

Mr. Williams approved PL100225 / ZUP10076 / VAR10009 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. The variance is granted for the satellite dishes as presented with this request.
3. The satellite dish shall be no greater than 16' (sixteen feet) in height per plans submitted with this request.
4. Any intensification or expansion of use, including additional dishes, will require a new use permit.
5. All existing mature landscape is to be preserved and protected in place, topping or alteration of living trees for function or service of the satellite is prohibited.
6. The wireless device shall be removed within 30 days of discontinuance of use.
7. **Obtain necessary permit for the existing satellite dish(es) on the roof. ADDED BY HEARING OFFICER**

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5. Request by **ARIZONA MILLS MALL – GOLD EXCHANGE (PL100227)** (Justin Ballard/Gold Exchange Stores; Arizona Mills LLC, property owner) located at 5000 South Arizona Mills Circle in the RCC, Regional Commercial Center District for:

**ZUP10075** Use permit to a resale retailer (precious metal buyer).

Mr. Matthew Roberts 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 PL100227 / ZUP10075 subject to the following conditions:

1. The use permit is valid for Gold Exchange II AZ LLC and may be transferable to successors in interest through an administrative review with the Community Development 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.

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6. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **MINOR RESIDENCE (PL100214/ABT10012/CE101138)** (Marvin White, Inspector; Donald Minor, property owner) located at 1148 East Tempe Drive in the R-2, Multi-Family Residential District.

No one was present to represent the property owner.

Steve Abrahamson, Planning & Zoning Coordinator, stated that an emergency abatement had been completed on July 9, 2010 to remove the potential fire hazard created by tall dead weeds and ground cover in the front and back yards. Staff is requesting an open abatement period of 180 days. He noted that this is a single family residence located in a multi-family residential district.

Marvin White, Code Compliance Inspector, explained that an emergency abatement had been completed in July and that this abatement request was only for reoccurrence of the situation as needed. The property is currently in compliance.

**DECISION:**

Mr. Williams approved abatement proceedings for PL100214 /ABT10012 /CE101138 for an open period of 180 days.

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7. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **MOORE RESIDENCE (PL100215/ABT10010/CE101812)** (Brandy Zedlar, Inspector; Marilyn Moore, property owner) located at 438 West Hermosa Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Ryan Levesque, staff planner, stated that the complaint pertained to overgrown grass and weeds, trimming of back trees, and removal of inoperable vehicle and bee hive. Staff is requesting an open abatement period of 180 days.

Brandy Zedlar, Code Compliance Inspector, confirmed Mr. Levesque's information and stated that there has been no change in the condition of this property.

**DECISION:**

Mr. Williams approved abatement proceedings for PL100215 /ABT10010 /CE101812 for an open period of 180 days.

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8. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **CLYMER RESIDENCE (PL100219/ABT10013/CE101857)** (Jack Scofield, Inspector; Carl Clymer, property owner) located at 2118 East Radcliffe Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Ryan Levesque, staff planner, stated that the swimming pool was a health hazard and there were overgrown grass and weeds on the property.

Jack Scofield, Code Compliance Inspector, stated that he had no response from the property owner and explained that there was about two feet of green standing water in the pool.

**DECISION:**

Mr. Williams approved abatement proceedings for PL100219 /ABT10013 /CE101857.

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9. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **HAZELTON PROPERTY (PL100222/ABT10015/CE101373)** (Shawn Daffara, Inspector; Patrick Hazelton, property owner) located at 1219 South Maple Avenue in the R-2, Multi-Family Residential District.

No one was present to represent the property owner.

Diana Kaminski, staff planner, stated that there were overgrown grass and weeds as well as graffiti on the property. Staff is requesting an open 180 day abatement period.

Shawn Daffara, Code Compliance Inspector, stated that there had been a history of violations on this property since 2001. No response to the current complaint notices have been received from the property owner. He explained that every time an abatement is approved, a lien is placed on the property. To date there are three (3) existing liens on this property.

Mr. Williams noted that previous abatement issues had included unsecured property. The property is presently secured although the graffiti and overgrown landscape continue to exist.

Mr. Daffara explained that this property was revisited by the Compliance Department on a regular basis and that parking issues are not a current problem.

Ms. Virginia Sardstedt spoke in support of this abatement and the effect these violations have on the surrounding neighborhood.

**DECISION:**

Mr. Williams approved abatement proceedings for PL100222 /ABT10015 /CE101373 for an open period of 180 days.

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10. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **HELMERS RESIDENCE (PL100224/ABT10014/CE100898)** (Jody Benson, Inspector; Jason Helmers, property owner) located at 1838 East Riviera Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Steve Abrahamson, Planning & Zoning Coordinator, stated that there were over height grass and weeds on this property. Homes were constructed in the early 1980's in this neighborhood.

Jody Benson, Code Compliance Inspector, explained that it appeared that the owner was out of the country and that there was no change in the condition of the property.

**DECISION:**

Mr. Williams approved abatement proceedings for PL100224 /ABT10014 /CE100898 for an open period of 180 days.

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The next Hearing Officer public hearing will be held on **Tuesday, September 7, 2010.**

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There being no further business the public hearing adjourned at 2:28 PM.

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



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

SA:dm