

**Minutes
HEARING OFFICER
MARCH 1, 2011**

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:

Vanessa MacDonald, Hearing Officer
Steve Abrahamson, Planning & Zoning Coordinator
Nick Graves, Planner
Sherri Lesser, Senior Planner
Diana Kaminski, Senior Planner

Number of Interested Citizens Present: 12

Meeting convened at 1:30 PM and was called to order by Ms. MacDonald. She 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 March 15, 2011 at 3:00 PM to the Community Development Department.

1. Ms. MacDonald noted that the Hearing Officer Minutes for February 15, 2011 had been reviewed and approved.
2. Ms. MacDonald noted that the following cases had been withdrawn from today's agenda:
 - Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **FEDERAL HOME LOAN MORTGAGE PROPERTY (PL110019/ ABT11001/ CE103255)** (Jack Scofield, Inspector; Federal Home Loan Mortgage Corporation, property owner) located at 1964 East Lodge Drive in the R1-7, Single Family Residential District.
WITHDRAWN BY CODE COMPLIANCE SECTION
 - Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **ROMERO PROPERTY (PL110022/ABT11003/CE103725)** (Jack Scofield, Inspector; Gabriel & Julia Romero, property owners) located at 2124 East Carson Drive in the R1-6, Single Family Residential District.
WITHDRAWN BY CODE COMPLIANCE SECTION
 - Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **PAIZ PROPERTY (PL110029/ABT11002/CE104212)** (Jack Scofield, Inspector; Christopher Paiz & Emiko Chin, property owners) located at 4432 South Juniper Street in the R1-6, Single Family Residential District.
WITHDRAWN BY CODE COMPLIANCE SECTION

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3. Request by **MIDNIGHT HOOKAH (PL110015)** (Nader Yousif, applicant; 1630 Apache LLC, property owner) located at 1630 East Apache Boulevard, Suite Nos. 103-104, in the CSS, Commercial Shopping and Services District within the Transportation Overlay District Corridor for:

ZUP11007 Use permit to allow a retail smoke shop (Hookah Lounge) offering tobacco and tobacco paraphernalia products and live indoor entertainment (dj and live music, dancing, and lingerie modeling). **MODIFIED BY APPLICANT**

Mr. Nader Yousif and Mr. Chris Doran were 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 a portion of this site was the former location of a previously approved hookah lounge with live entertainment that was revoked due to a failure to comply with conditions of approval. A parking analysis had determined that there was adequate parking available for this business.

Mr. Doran addressed Condition of Approval No. 10 regarding the landscaping, noting that some of the trees were located within the right-of-way. It was agreed to modify this condition to stipulate that the area within the right-of-way was not included within this condition.

Chris McKee, University Heights Neighborhood Association representative, addressed concerns regarding the noise and the lighting of the plaza itself. He noted that several of the street lights were not working.

Chuck Buss, University Heights Neighborhood Association, spoke of neighborhood concerns about the hours of business, lighting and possible disruption to the surrounding neighborhood due to noise and live entertainment.

Ms. MacDonald noted that Conditions of Approval Nos. 5, 7 and 8 stipulate restrictions on the noise and live entertainment. Condition of Approval No. 9 addresses lighting issues.

It was noted by the applicant's contractor that additional sound insulation and drywall was being installed to alleviate the levels of noise that may occur due to live entertainment. The placement of this additional sound proofing was indicated to Ms. MacDonald on the floor plan depiction by the contractor.

Ms. MacDonald stated that this request meets the criteria for a use permit.

DECISION:

Ms. MacDonald approved PL110015 / ZUP11007 subject to the following conditions:

1. This Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed. ~~As part of the Building Permit process, on site storm water retention may be required to be verified or accomplished on this Site.~~ **MODIFIED BY STAFF**
2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. The Use Permit is valid for MIDNIGHT HOOKAH and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.

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. No outdoor speakers shall be allowed.
6. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact William Gallauer at 480-350-8749 before April 1, 2011.
7. The live entertainment use shall take place inside only. No live entertainment will be allowed outside.
8. Live entertainment to stop at 1:55 am.
9. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review. Site lighting must remain on from dusk to dawn.
10. Replace all dead or missing trees and landscape material within the property **that are not located within the right-of-way. MODIFIED BY STAFF**
11. Provide bicycle parking to meet bicycle commute ratio requirements and replace bicycle parking racks per City of Tempe Public Works Department bicycle rack detail T-578 standard. Contact Planning Staff by April 1, 2011.
12. All business signs shall receive a Sign Permit. Contact sign staff at 480-350-8372.
13. Any intensification or expansion of use shall require a new Use Permit.
14. 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.
15. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.
16. The owner/management shall adhere to the City Adopted International Mechanical Code.
17. The gross sale of beverage and snack items may not exceed that of tobacco and hookah products for the hookah lounge tax license.
18. Any modifications to the exterior of the building requires a Development Plan Review.
19. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the use permit becoming effective.
20. **The applicant shall return to the Hearing Officer for review of this use permit in six months from the date of the Certificate of Occupancy. ADDED BY HEARING OFFICER**

4. Request by **CANTEEN MODERN TEQUILA BAR (PL110028)** (Julian Wright, applicant; Centerpoint on Mill, property owner) located at 640 South Mill Avenue, Suite No. B2-110, in the CC, City Center District for:

ZUP11009 Use permit to allow live indoor entertainment (dj, comedy, dancing, concerts).

Mr. Julian Wright 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.

Ms. MacDonald questioned where the dancing and live music is going to occur. Ms. Kaminski indicated the area(s) on the floor plan.

Mr. Wright stated he understood the Conditions of Approval.

Ms. MacDonald stated that this request meets the criteria for a use permit.

DECISION:

Ms. MacDonald approved PL110028 / ZUP11009 subject to the following conditions:

1. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications must be submitted for review by planning.
2. The Use Permit is valid for The Canteen and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
3. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
4. Dancing is limited to the area defined as Dining 102 on the floor plan, located under the wooden ramada. Furnishings currently shown within this area must be stored in a location that does not conflict with required emergency exiting.
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 to re-evaluate the appropriateness of the Use Permit.
6. Live entertainment limited to indoor entertainment: disc jockeys, solo/duet musical performances, video projection, dance, comedy, small theatrical acts in association with special events; concern assembly and outdoor entertainment not allowed.
7. Allowable noise decibel levels to comply with the Tempe City Code – Chapter 20. Noise complaints arising from the open windows/doors shall require closure of all outdoor windows and doors to mitigate noise trespass to adjacent public or private spaces.
8. Noise interference with police communication equipment shall require volume or environmental controls to mitigate condition.
9. No outdoor speakers allowed. No live entertainment allowed outdoors.
10. This use shall not violate the State Smoking Ordinance, www.smokefreearizona.com.
11. 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.
12. Live entertainment to cease at or before 1:55 AM.
13. The applicant shall contact the City of Tempe Crime Prevention Unit for an updated security plan within 30 days of this approval. Contact William Gallauer at 480-350-8749 before April 1, 2011.

5. Request by **FIXX COFFEE BAR (PL110037)** (Sandra Arthur, applicant; Tempe Mill 2 LLC, property owner) located at 11East 7th Street in the CC, City Center District for:

ZUP11011 Use permit to allow live indoor entertainment (live bands and music venues).

Ms. Sandra Arthur 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 an additional Condition of Approval No. 17 would be added to add two (2) bicycle racks per City of Tempe Detail T-578.

Ms. Arthur noted that she understood the Conditions of Approval including the new Condition of Approval No. 17.

Ms. MacDonald noted that that this request meets the criteria for a use permit.

DECISION:

Ms. MacDonald approved PL110037 / ZUP11011 subject to the following conditions:

1. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications must be submitted for review by planning.
2. The Use Permit is valid for The Fixx and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
3. Cross access and shared parking agreement required for adjacent lots to provide required 23 off-site parking spaces. Should these other site redevelop, this parking agreement must include provision of required parking in perpetuity for this use.
4. Remove painted text on exterior brick wall. Apply for sign permits for any proposed signs in conformance with the sign ordinance.
5. Within sixty (60) days, remove chain link behind the building.
6. Within sixty (60) days, repair or replace light fixtures and bring exterior of building up to code compliance with Section 4-803 Lighting Standards for the parking lot (2.0 fc), drive aisle (1.0 fc), pedestrian walkways (0.5 fc) and doorways (5.0 fc).
7. Within sixty (60) days, replace all dead and missing landscape plant material to conform to most recently approved landscape plan, or submit for a new landscape plan.
8. Comply with all requirements of the Building and Fire Codes as applicable to designated occupancy, and do not exceed 92 people within the building at any time.
9. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
10. 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.
11. Live entertainment limited to indoor entertainment by musical performances to cease at or before midnight (12:00 am).
12. Allowable noise decibel levels to comply with the Tempe City Code – Chapter 20.
13. No outdoor speakers allowed. No live entertainment allowed outdoors.
14. This use shall not violate the State Smoking Ordinance, www.smokefreearizona.com.
15. 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.
16. A security plan is not required at this time; should the Police Department determine that enhanced security is necessary to mitigate unforeseen circumstances, the business owner will be contacted for completion of a security plan.
17. **Add two (2) new bicycle racks per City of Tempe Detail T-578. ADDED BY STAFF**

The next Hearing Officer public hearing will be held on **Tuesday, March 15, 2011**.

There being no further business the public hearing adjourned at 2:08 PM.

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



Steve Abrahamson, Planning & Zoning Coordinator
for Vanessa MacDonald, Hearing Officer
SA:dm