

**Minutes
HEARING OFFICER
MAY 3, 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
Sherri Lesser, Senior Planner
Nick Graves, Planner

Number of Interested Citizens Present: 5

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 May 17, 2011 at 3:00 PM to the Community Development Department.

1. Ms. MacDonald noted that the Hearing Officer Minutes for April 19, 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 MacDonald noted that the following cases had been withdrawn from today's agenda: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 **BANK OF AMERICA PROPERTY (PL110114/ABT11007/CE110099)** (Brandy Zedlar, Inspector; Bank of America, property owner) located at 2 West Erie Drive in the R1-6, Single Family Residential District.

CONTINUED TO MAY 17, 2011 HEARING OFFICER AT THE REQUEST OF CODE COMPLIANCE

3. Request by **REGATTA POINTE CONDOMINIUMS - KNOTS AWAY MASSAGE STUDIO (PL110135)** (Meg Bokhair, applicant; ADAIR I & C Systems Inc., property owner) located at 430 West 1st Street, Suite No. 104 in the MU-4, Mixed Use High Density District for:

ZUP11025 Use permit to allow a massage therapy business.

Ms. Meg Bokhair was present to represent this case.

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

Ms. Bokhair acknowledged her understanding of the Conditions of Approval.

Ms. MacDonald stated that this request meets the criteria for a use permit for this live/work location.

DECISION:

Ms. MacDonald approved PL110135 / ZUP11025 subject to the following conditions:

1. The use permit is valid for Knots Away Massage Studio and may be transferable. Should the business be sold, the new owners must reprocess for administrative review with the Community Development Manager or designee.
2. The use permit is valid for the plans and business operation as submitted to and approved by the Hearing Officer/Board of Adjustment.
3. Any expansion or intensification of use shall require a new use permit to be approved.
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 set to re-evaluate the appropriateness of the use permit.
5. All required State, County and Municipal permits shall be obtained or the use permit is void.
6. 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.
7. All business signs shall be Development Review approved and permits obtained.

4. Request by **JOE'S CRAB SHACK (PL110143)** (Pam Westmoreland/Ignite Restaurant Group); CP6SP LLC, property owner) located at 1604 East Southern Avenue in the PCC-2, Planned Commercial Center General District for:

ZUP11026 Use permit to allow live entertainment (small ensembles & karaoke) within the building interior and on the patio.

Ms. Pam Westmoreland 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.

Ms. Westmoreland acknowledged her understanding of the Conditions of Approval.

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

DECISION:

Ms. MacDonald approved PL110143 / ZUP11026 subject to the following conditions:

1. The use permit is valid for Joe's Crab Shack and may be transferable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation.
2. 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.

3. Allowable noise decibel levels to comply with the Tempe City Code – Chapter 20.
4. Live entertainment to cease at or before 11 pm (per hours previously approved in the security plan).

5. Request by **THE PITA PIT - THE ALTERNATIVE PRINT AND COPY (PL110148)** (Steve Biscoe/Alternative Print & Copy, applicant; Dimitri Soris, property owner) located at 222 East University Drive in the CC, City Center District for:

ZUP11027 Use permit to allow an outdoor retailing/service use (book buy back).

Mr. Steve Biscoe 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. He explained that the proposed use will be situated within the front courtyard of the Pita Pit in the southwest corner of the property along the street frontage. This will be a seasonal operation involving the activities during the end of each ASU semester; mainly in the Spring and in the Fall, and will consist of a 10 x 10 tent and a 6 ft. table with two (2) employees operating the buyback table. He noted that staff would like to add an additional Condition of Approval No. 11 to identify the periods allowed for this activity.

Mr. Biscoe acknowledged his understanding of the Conditions of Approval, including #11, and explained his desire to offer students the opportunity to purchase the used books during specific periods of the year.

Ms. MacDonald questioned staff as to what signage requirements existed. Mr. Graves responded that the Zoning and Development Code allows one (1) sign of a predetermined size.

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

DECISION:

Ms. MacDonald approved PL110148 / ZUP11027 subject to the following conditions:

1. The outdoor display and vending shall not conflict with pedestrian or vehicular traffic.
2. The use permit is valid for the plans as submitted to and approved by the Hearing Officer. Any expansion of the outdoor display and vending area would 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 to re-evaluate the appropriateness of the use permit.
4. A clear path for pedestrians must be maintained. All maneuvering areas shall meet the provisions of the Americans with Disabilities Act.
5. No sound amplification shall be used for sales demonstrations.
6. No outdoor display and/or vending shall be permitted within landscape areas.
7. All displays shall be located on private property and may not encroach into the City right-of-way.
8. The use permit is valid for The Alternative Print and Copy and may be transferable to successors in interest through an administrative review with the Community Development Manager, or designee.
9. All display materials, including tables, stands or crates to be removed at close of business. The display area must be kept neat, clean and hazard-free during hours of operation.
10. Any signage for the outdoor display and vending area to receive clearance from the Community Development Department sign section. Please contact Dean Miller at 480-350-8435.

11. This permit is valid for four (4) two (2) week periods per year to coincide with ASU's academic calendar. The applicant must notify the Planning Division thirty (30) days prior to the two (2) week outdoor retailing period. ADDED BY STAFF

The next Hearing Officer public hearing will be held on **Tuesday, May 17, 2011.**

There being no further business the public hearing adjourned at 1:47 PM.

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



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

SA:dm

APPROVED