

**Minutes  
HEARING OFFICER  
MAY 17, 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  
Diana Kaminski, Senior Planner  
Nick Graves, Planner

**Number of Interested Citizens Present: 19**

**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 31, 2011 at 3:00 PM to the Community Development Department.**

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1. Ms. MacDonald noted that the Hearing Officer Minutes for May 3, 2011 had been reviewed and approved.

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2. Request by **SIGMA ALPHA EPSILON FRATERNITY HOUSE (PL110145)** (Eric Leibsohn/Eric Leibsohn & Associates Ltd, applicant; ~~Syndicate Group LLC~~ **Salt River Valley Sigma Alpha Epsilon Alumni Association Inc.**, property owner) located at 2090 East Apache Boulevard, in the CSS, Commercial Shopping and Services and R-4 Multi-Family Residential Districts for: **CORRECTED BY STAFF**

**ZUP11028** Use permit to allow a Fraternity (Residential Use) in the CSS, Commercial Shopping and Services and R-4 Multi-Family Residential Zoning Districts.

Mr. Eric Leibsohn was present to represent this case. Mr. Stan Strom and Mr. David Couton were present as representatives of the fraternity.

Diana Kaminski, staff planner, gave an overview of this case. She read changes to the Conditions of Approval into the record due to redundancies and corrections to verbiage. In response to a question from Ms. MacDonald she explained the potential uses of a multi-family residential district. She noted that the Conditions of Approval address issues specific to this use by a fraternity.

Mr. Leibsohn explained the scope of the proposed project to those present. Currently there are three (3) existing freestanding vacant buildings. Fraternity members have been diligent in cleaning up the site, Mr. Leibsohn stated, and the proposed project involves common areas and individual studio apartment units with small kitchenettes. There would be no community cooking taking place on the site. Social occasion would have meals catered from the outside. Although there is a small kitchen area, it would not be utilized for every day use.

Mr. Strom gave the history of this fraternity, and spoke of how this fraternity would be beneficial to the community and enhance the area. He referred to past behavioral issues related to fraternities such as drinking, drugs and sexual abuse and stated that this fraternity was held to high standards of conduct. Detrimental behavior is not allowed within this entity. He acknowledged that complete adherence to the assigned Conditions of Approval would be utilized.

Mr. Dan Frank, Tempe resident, spoke in opposition, based on his past experience with students in his neighborhood. Parties and disrespect of residents caused several individuals to sell their homes and relocate. The presence of students causes the neighborhoods to deteriorate. He has had the police come in several times to try to control the situation, but students do what they want to do. He stated that he lives on Bonarden Lane, which is about 1.5 miles from this location.

Ms. Kaminski noted that if the fraternity did not abide by the conditions assigned to this use permit, and this was documented, the use permit can be revoked. Ms. Kaminski then read all of the conditions.

Ms. MacDonald questioned Condition of Approval No. 12 and asked what 'intensification or expansion of use' would involve. Ms. Kaminski responded that would be any modification(s) to the floor plan, site or use beyond what was represented in the original plan(s)/document(s).

Ms. Cynthia Morena, Tempe resident, spoke in opposition to this request, citing the proximity of the nearby elementary school and that the possibility of drugs, parties or deviant behavior would jeopardize the area.

Ms. Sandra Quijas, Tempe resident, spoke in support of this project. She stated that she lived directly across the street from this proposed project. She purchased her house in 2002. Transients and feral cats are presently a problem. Her concerns regarding parties or loudness have been addressed by the Conditions of Approval.

Mr. Strom re-addressed those present stating that accountability would be practiced and a 24 hour contact number would be available should problems occur. He acknowledged that there are problem(s) with resident students within Tempe, largely due to the number of rental properties that have residents that are uncontrolled by a larger entity. This would not be the case with the fraternity as chapter president(s) and members are held accountable to the national organization's rules and regulations. Mr. Strom stated they are a progressive organization and intend to be good neighbors. He again acknowledged their understanding of the assigned Conditions of Approval.

Ms. MacDonald stated that the use permit process allows for public input, and that this request meets the criteria for a use permit. The Conditions of Approval adequately address control of behavioral issues, she noted.

**DECISION:**

Ms. MacDonald approved PL110145 / ZUP11028 subject to the following conditions:

1. Music, sound or entertainment shall not violate the City of Tempe Noise Ordinance Chapter 20 and Large Party/Event Ordinance Article III. Violation of these codes may result in revocation of the Use Permit.
2. Development Plan Review process must be completed with two (2) months of this approval (July 17, 2011).  
The use permit is valid for Sigma Alpha Epsilon Fraternity and may be transferrable to successors in interest

~~through an administrative review with the Community Development Director of designee.~~ **CORRECTED BY STAFF**

3. This Use Permit is valid only after Building Permits have been obtained and the required inspections have been completed and a Final Inspection and Certificate of Occupancy have been issued.
  4. 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.
  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. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review.
  7. Provide bicycle parking racks per City of Tempe Public Works Department bicycle rack detail T-578 standard.
  8. There shall be no parking on the lot on the east side of River Drive, and the west side of River Drive shall be signed for no parking north of the driveway entrance.
  9. Specific requirements of the Zoning and Development Code (ZDC) are not listed as a condition of approval, but will apply to any application. To avoid unnecessary review time and reduce the potential for multiple plan check submittals, become familiar with the ZDC. Access the ZDC through [www.tempe.gov/planning/documents.htm](http://www.tempe.gov/planning/documents.htm) or purchase from Community Development.
  10. **SITE PLAN REVIEW:** Verify all comments by the Public Works Department, Community Development Department, and Fire Department given on the Preliminary Site Plan Reviews dated April 27, 2011. If questions arise related to specific comments, they should be directed to the appropriate department, and any necessary modifications coordinated with all concerned parties, prior to application for building permit. Construction Documents submitted to the Building Safety Department will be reviewed by planning staff to ensure consistency with this ~~Design Review~~ **Use Permit** approval prior to issuance of building permits.
- CORRECTED BY STAFF**
11. All signs shall receive a Sign Permit. Contact sign staff at 480-350-8372.
  12. Any intensification or expansion of use shall require a new Use Permit.
  13. The use permit is valid for Sigma Alpha Epsilon Fraternity House and may be transferable to successors in interest through an administrative review with the Community Development Manager, or designee.

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3. Request by **THE FIRE HOUSE SMOKE SHOP (PL110152)** (Jason Lapenna, applicant; Haechler Trust, property owner) located at 764 West Broadway Road, Suite No. 101, in the CSS, Commercial Shopping and Services District for:

**ZUP11031** Use permit to allow a retail smoke shop offering tobacco and tobacco paraphernalia products.

Mr. Jason Lapenna was present to represent this case.

Nick Graves, staff planner, gave an overview of this case and stated that no public input has been received.

Mr. Lapenna acknowledged his understanding of the Conditions of Approval.

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

**DECISION:**

Ms. MacDonald approved PL110152 / ZUP11031 subject to the following conditions:

1. The use permit is valid for The Fire House Smoke Shop Inc. and may be transferable to successors in interest through an administrative review with the Community Development Manager, or designee.
2. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.
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. All permits and clearances required by the Building Safety Division shall be obtained prior the use permit becoming effective. Should smoking be permitted on the premises, the owner/management is responsible to adhere to the 2003 International Mechanical Code.
5. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
6. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review.
7. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review.
8. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8372.
9. The applicant shall contact the City of Tempe Crime Prevention Unit for a Security Plan. Contact Crime Prevention at (480) 350-8311 within 30 days of this approval by June 17, 2011.

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4. Request by **CENTERPOINT - FAT TUESDAY (PL110127)** (Michael Kelly/M W Kelly Architects Ltd, applicant; Centerpoint Holdings LLC, property owner) located at 680 South Mill Avenue, Suite No. 106, in the CC, City Center District for:

**ZUP11030** Use permit to allow live entertainment.

Mr. Michael Kelly and Mr. Chad Wilford 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 read changes to the Conditions of Approval due to correction(s) and redundancies.

Mr. Wilford acknowledged his understanding of the Conditions of Approval and addressed concern(s) with Condition of Approval No. 3. He asked for a clarification on the restrictions as noted in the wording of this Condition. Based on discussion with Mr. Wilford, Ms. Kaminski adjusted the wording for Condition of Approval No. 3.

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

**DECISION:**

Ms. MacDonald approved PL110127 / ZUP11031 subject to the following conditions:

1. The 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.
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. Live **outdoor** entertainment to cease at 12 midnight Sunday-Wednesday and at 1:55 am Thursday-Saturday, and **live indoor entertainment shall be allowed until 1:55 am. Outdoor live entertainment**

- ~~for with the exception of specific holidays: New Year's Eve, Fat Tuesday, St. Patrick's Day, Cinco De Mayo, Fourth of July and Halloween shall cease at 1:55 am. MODIFIED BY HEARING OFFICER~~
4. 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 June 17, 2011. **CORRECTED BY STAFF**
  5. The use permit is valid for the plans as submitted within this application.
  6. ~~The applicant shall work with the Tempe Police Department to implement a Security Plan for the business (contact Crime Prevention Department at 480-858-6027). DELETED BY STAFF~~
  7. The Use Permit is valid for Fat Tuesday and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
  8. SITE PLAN REVIEW: Verify all comments by the Public Works Department, Community Development Department, and Fire Department given on the Preliminary Site Plan Review. If questions arise related to specific comments, they should be directed to the appropriate department, and any necessary modifications coordinated with all concerned parties, prior to application for building permit. Construction Documents submitted to the Building Safety Department will be reviewed by planning staff to ensure consistency with this ~~Design Review~~ Use Permit approval prior to issuance of building permits. **CORRECTED BY STAFF**
  9. All business signs shall receive a Sign Permit. Contact sign staff at 480-350-8372.
  10. ~~Any intensification or expansion of use shall require a new Use Permit. DELETED BY STAFF~~
  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. Music, sound, or live entertainment shall not violate the City of Tempe Noise Ordinance.
  13. ~~Any intensification or expansion of this use shall require the applicant to return to the appropriate decision making body for a new use permit. DELETED BY STAFF~~
  14. Music generated from the use shall conform to the City of Tempe code requirements for noise control.
  15. 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.
  16. No live entertainment permitted on the Mill Avenue frontage patio.

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5. Request by **EVERGREEN TEMPE (PL110131)** (Dan Tilton, Tilton Development Company, applicant for Clay Toombs/Evergreen Development Inc.; Mark Winkleman, ZDCI Loan, LLC and ML Manager LLC., property owners) located at 600 West First Street, in the MU-4, Mixed Use District for:

**ZUP11033** Use permit to allow outdoor retailing.

Mr. Dan Tilton and Mr. Clay Toombs were present to represent this case.

Diana Kaminski, staff planner, gave an overview of this case and stated one (1) negative e-mail and one (1) e-mail of support has been received. Ms. Kaminski read corrections to the Conditions of Approval into the record.

Mr. Tilton explained the background and advantages of outdoor retailing provided by truck vendors.

Mr. Clay Toombs expressed his hope that they could begin providing services before all the building(s) were completed. Based on discussion, it was agreed by Ms. MacDonald, based on input from Ms. Kaminski, to modify Conditions of Approval Nos. 1 and 8 to indicate Building A.

Mr. Jason Comer, Tempe resident, stated that this is a beneficial use for the neighborhood that he fully supports.

Mr. Paul Loverme, the closed adjacent neighbor to this address, spoke in opposition to this request and asked if this revised (preliminary) site plan has been approved. The site plan depicted in today's meeting does not include approval of any traffic impact study, he stated, and the proposed plan would infringe on his privacy. How can this request for a use permit be considered when it is not on an approved site plan, he asked.

Ms. Kaminski explained the background of this project, explaining that the current proposed plan which had been reviewed by staff in the Site Plan Review process, actually had less impact than the originally proposed project for this property. Since this project has less intensity than the originally proposed project, it was determined by staff that an additional traffic impact study would not be required. The second request for the COW (cell tower on wheels) has been administratively approved. The PAD (Planned Area Development) will be processed and reviewed for site plan, elevations and landscape components by the DRC (Development Review Commission). She further explained the Rio Salado and adjacent property agreement requirements and future plat processing procedures.

Ms. MacDonald noted that Mr. Loverme would have additional opportunities to address any concerns he may have during the processing of the PAD.

Mr. Tilton further explained that the reason for processing this request for a use permit at this time, was so that they can proceed with further design of the project based on the approval of the truck vendors in the food plaza area and related parking access.

Ms. MacDonald noted that although there are a lot of processes going on, a neighborhood meeting is not required although she encouraged the applicant(s) to reach out to the neighborhood and public.

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

#### **DECISION:**

Ms. MacDonald approved PL110131 / ZUP11033 subject to the following conditions:

1. The Use Permit or Variance is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed **for Building A**. 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 HEARING OFFICER**
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 food trucks may only park in designated parking spaces within the food court identified on this plan.
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 live entertainment shall be allowed. Live entertainment requires a separate Use Permit.
6. Hours of operation shall be from 8 am to midnight on a daily basis.
7. Provide a grease trap interceptor and commercial sink for vendors to access for waste disposal. In order to authorize a discharge into publicly owned treatment works (POTW) a discharge permit must be issued. A primary permit to the owner will require the owner to register each user. The permit would address discharge of liquid waste into a grease interceptor; best management practices (BMPs) to prevent violations of the storm water code, and BMP's for connection to the potable water system. Contact Michael Golden, Environmental Compliance Supervisor, Public Works Department/Water Utilities Division (480) 350-2674.
8. All required planning processes must be completed and construction and Certificate of Occupancy of the Building **A** must be complete prior to operation of the truck food court. **MODIFIED BY HEARING OFFICER**

9. The Use Permit is valid for Evergreen Tempe and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
10. Specific requirements of the Zoning and Development Code (ZDC) are not listed as a condition of approval, but will apply to any application. To avoid unnecessary review time and reduce the potential for multiple plan check submittals, become familiar with the ZDC. Access the ZDC through [www.tempe.gov/planning/documents.htm](http://www.tempe.gov/planning/documents.htm) or purchase from Community Development.
11. Site Plan Review: Verify all comments by the Public Works Department, Community Development Department, and Fire Department given on the Preliminary Site Plan Reviews dated April 6, 2011. If questions arise related to specific comments, they should be directed to the appropriate department, and any necessary modifications coordinated with all concerned parties, prior to application for building permit. Construction Documents submitted to the Building Safety Department will be reviewed by planning staff to ensure consistency with this ~~Design Review~~ **Use Permit** approval prior to issuance of building permits.  
**CORRECTED BY STAFF**
12. All business signs shall receive a Sign Permit. Contact sign staff at 480-350-8372.
13. Any intensification or expansion of use, ~~including~~ shall require a new Use Permit. **CORRECTED BY STAFF**
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.

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The next Hearing Officer public hearing will be held on **Tuesday, June 7, 2011.**

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There being no further business the public hearing adjourned at 2:59 PM.

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



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

SA:dm