

Staff Summary Report



Development Review Commission: 01/12/10

Agenda Item Number: _____

SUBJECT: Hold a public hearing for an appeal of a previously denied Use Permit for the **WEILER RESIDENCE (PL090382)** located at 1929 East Apollo Avenue.

DOCUMENT NAME: DRCr_WeilerRes_011210

PLANNED DEVELOPMENT (0406)

SUPPORTING DOCS: Yes

COMMENTS: Request by Robert Weiler (applicant) for an appeal of a previously denied Use Permit for the **WEILER RESIDENCE (PL090382)** (Robert Weiler, property owner) located at 1929 East Apollo Avenue in the R1-6, Single Family Residential District, including the following:

UPA09003 – Appeal of a Use Permit to park an RV in the front yard setback (ZUP09160) denied by the Hearing Officer on December 15, 2009.

PREPARED BY: Sherri Lesser, Senior Planner (480-350-8486)

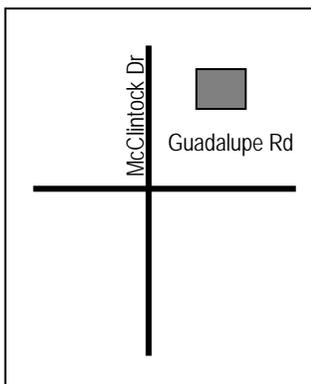
REVIEWED BY: Lisa Collins, Planning Director (480-350-8989) 

LEGAL REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: N/A

ADDITIONAL INFO: The applicant is appealing a Hearing Officer Decision to deny a Use Permit to park an RV in the front yard setback. Mr. Williams (Hearing Officer) denied PL090382/ZUP09160 stating that the request is in conflict with the General Plan and doesn't promote neighborhood preservation and enhancement.



The applicant, Mr. Weiler contends that the RV does not have a negative impact on neighborhood preservation and enhancement and is not in conflict with the General Plan. He has provided a petition of support from the surrounding neighbors and is appealing the Hearing Officer's decision to deny the Use Permit.

PAGES:

1. List of Attachments
2. Comments; Reasons for Approval;
3. Conditions of Approval; History & Facts
4. Description; Zoning & Development Code Reference

ATTACHMENTS:

1. Location Map(s)
2. Aerial Photo(s)
- 3-5. Letter of Intent
6. Site plan
7. Applicant Photo
- 8-9. Staff Photograph(s)
10. Petition of Support
11. Neighborhood Enhancement Notice
12. Applicant Letter of Appeal
- 13-15. Minutes from Hearing Officer Meeting 12/15/09

COMMENTS:

The applicant is before the Development Review Commission to appeal the decision by the Hearing Officer to deny a request for a Use Permit to allow an RV to be parked within the required front yard setback. The subject property is located on the south side of the street, mid-block at 1929 East Apollo Avenue in the R1-6, single-family residential district.

The Hearing Officer denied the Use Permit on December 15, 2009. Mr. Williams' (Hearing Officer) rationale to deny the Use Permit request was because it was in conflict with the General Plan and doesn't promote neighborhood preservation and enhancement.

Public Input

The applicant provided a petition of support signed by eighteen (18) residents from the neighborhood and two (2) neighbors spoke in support at the Hearing Officer meeting. Staff has not received any new public input for the appeal.

Use Permit

The Zoning and Development Code allows boats, trailers and recreational vehicles over twenty-one (21) in length to be parked in the front yard setback subject to a Use Permit.

SHOULD THE DEVELOPMENT REVIEW COMMISSION ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE FOLLOWING CONDITIONS OF APPROVAL SHOULD APPLY.

CONDITION(S) OF APPROVAL:

1. The Use Permit is valid for the fact situation as presented in this application and does not cover any other recreational vehicle stored on the property and becomes void with permanent removal of the RV (boat).
2. The boat shall be parked, at all times, on paved driveway; clear of public sidewalk.
5. The recreation vehicle shall be operable; maintained in clean presentable manner and have current registration.
4. Plant a tree in the front yard to soften or detract from the appearance of the trailer in the front yard setback; tree to be planted by 06/01/10.

HISTORY & FACTS:

- 1951. Zoning Ordinance 209 provided the restriction of on-site parking in front yard driveways.
- 1967. Tempe City Code was amended to prohibit overnight parking of large vehicles on Public Street.
- 1970. Tempe City code was amended to allow parking of all vehicles for a maximum of 120 consecutive hours on public streets.
- June 1, 1970 Council adopted Ordinance 405 which precluded any required parking or RV, Boat or Trailer parking from being provided in the front yard of any residential district without

obtaining a variance to do so.

September 2, 1976. Council adopted Ordinance 808 which required a variance to park RV's, boats, trailers, or provide required parking in the front yard or street side yard setbacks.

September 24, 1991 The Planning and Zoning Commission after hearing public opinion regarding the ordinance amendment to require Use Permit for RV parking for vehicles over 21' and change the definition for RV and trailer and require Use Permit for all other parking in the front or street side yard setback continued the case for further study.

October 22, 1991 The Planning and Zoning Commission recommended approval of the ordinance amendment to require Use Permit for RV parking for vehicles over 21' and change the definition for RV and trailer and require Use Permit for all other parking in the front or street side yard setback.

January 7, 1992. The City Council held a subcommittee meeting with RV owners, neighborhood representatives and staff to discuss ordinance and city code amendments regarding RV parking for front, street side yard and on street parking; provisions for loading and unloading vehicles and visitor on street parking.

February 14, 1992. The City Council approved amendment to Ordinance 808 to modify the definitions for recreational vehicle and trailer; section 6 regarding off-street parking to require a Use Permit for Recreation Vehicles over 21 feet in length and vehicles in single family residence districts to obtain a Use Permit. They amended the City Code to allow 48 hours period for loading, unloading and cleaning for RV's without Use Permit.

January 20, 2005. The City Council approved the adoption of the Zoning and Development Code carrying forward the provision to allow RV's which exceed 21 feet in length to be parked in front or street side yard subject to a Use Permit.

September 18, 2009 Neighborhood Enhancement received a complaint about the RV in the driveway, front yard setback. (CE095332)

December 15, 2009. The Hearing Officer denied the Use Permit request by the Weiler Residence noting that as Hearing Officer he cannot support this request, and although there was neighborhood support, his decision goes toward a larger picture of the City.

DESCRIPTION:

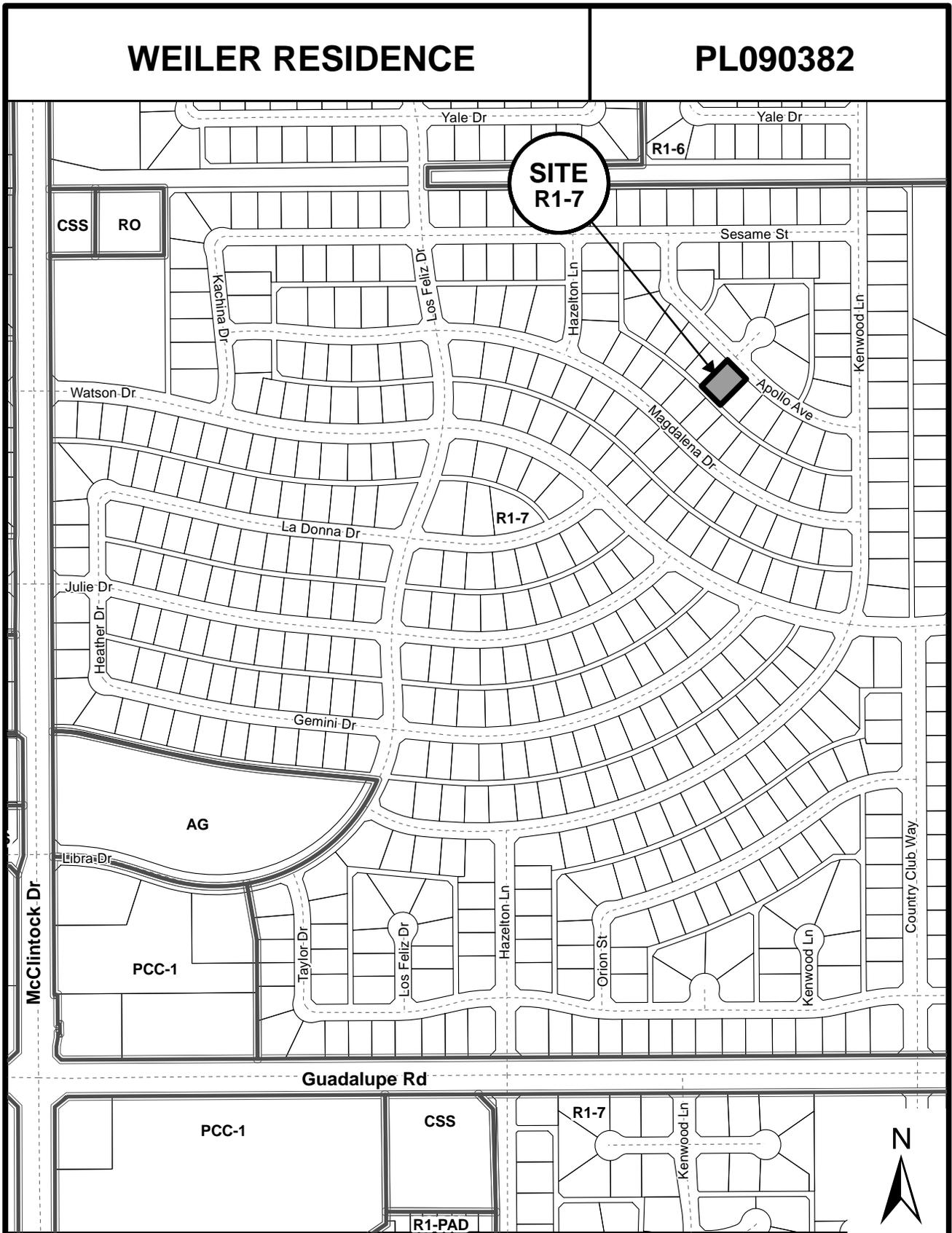
Owner – Robert Weiler
Applicant – Robert Weiler
Existing zoning – R1-6, Single Family Residential District
RV Trailer Length – 23 feet 11 inches

**ZONING AND
DEVELOPMENT
CODE REFERENCE:**

Zoning and Development Code, Part 6, Section 6-308
Zoning and Development Code, Chapter 6, Section 4-602- B - 7

WEILER RESIDENCE

PL090382



Location Map



WEILER RESIDENCE (PL090382)

Robert and Barbara Weiler
1929 E. Apollo Ave.
Tempe, AZ 85283-2304

Home Phone: 480-839-4209
Cell Phone: 602-478-3796
Email: rweiler@covad.net

September 29, 2009

City of Tempe
Code Enforcement Division
31 East Fifth Street
Tempe, AZ 85281

PURPOSE

Request the City of Tempe issue a use permit to park my travel trailer, a 1999 Arctic Fox, model 22H, in my driveway located at 1929 E. Apollo Ave., Tempe, AZ 85283.

JUSTIFICATION FOR A USE PERMIT

The presence of the trailer parked in the driveway does in no way impact the general appearance of the home, its landscaping, or the surrounding area. It does not present a safety risk and is accessible from all sides.

Also, the trailer:

- does not sit on the dirt. The parking area is constructed of concrete.
- is currently licensed and registered in the State of Arizona.
- does not contribute to the deterioration of the neighborhood, such as disabled or junk cars parked in the driveway or yard.
- does not overhang the sidewalk or curb and does not interfere with normal pedestrian and/or vehicular traffic.
- is kept in a safe and presentable manner and in a usable condition.
- is parked in a manner to not obstruct or pose a hazard to persons having rightful access to my property.
- is equipped with propane gas appliances and storage tanks that meet federal and state standards for such equipment.
- produces no odor, dust, gas, noise, vibration, smoke, heat or glare.
- is not gaudy or unsightly and does not distract from my front yard landscaping.
- has used the driveway as a parking area for 10 years with no complaints from my neighbors.

JUSTIFICATION FOR A USE PERMIT (Continued)

I contacted my neighbors to see if they had any objections to the travel trailer being parked in the driveway.

There are 19 homes on my street – Apollo Ave. The results of my poll:

- 17 - signed my petition stating they had no objections. The signed petition is attached.
- 1 - didn't want to sign the petition. The home is a rental.
- 1 - currently living with his sister. He broke back his back in an ATV accident.

TRAILER DESCRIPTION

The trailer is a 1999 Arctic Fox travel trailer, model 22H. The overall length of the trailer is 23 feet 11 inches from the end of the back bumper to the tip of the front hitch. The actual living area of the trailer is 20 feet 9 inches. If the code applies only the living area, the trailer is well within the 21 feet as prescribed in the code. The trailer has a current Arizona license – licensed through August 2011. It is insured by Farmers Insurance.

Please note the length of the driveway from the house to the edge where the side walk starts is 27 feet 10 inches. This permits the trailer to be parked in an area where the hitch does not extend onto the sidewalk plus allows for room to move behind the trailer.

BACKGROUND

My wife and I have been residents of Tempe for more than 30 years. We own our home and have lived in it since we moved to Tempe.

My wife and I purchased the trailer new in August of 1998. The current trailer is a replacement for a smaller one we had for many years. At the time of purchase I contacted the City of Tempe. They stated at that time that I could park my trailer in the driveway as long as it didn't interfere with pedestrian traffic, extend onto city property and was on a concrete slab. We had the driveway widened to accommodate the trailer plus give more room for vehicles in the driveway. The trailer has been on the driveway, other than when we are using it, since it was purchased – approximately 10 years ago. I have talked to the neighbors over the years and none of them have ever expressed an objection to the trailer. In some cases, I have given them tours of the trailer. When we return from trips and park the trailer, they ask where we have been.

The side yards are too narrow to park the trailer next to the house behind the fence. The alley is too narrow to place the trailer in the back yard.

BACKGROUND (Continued)

We use the trailer a minimum of at least one weekend a month plus all summer long. We use it to visit my daughter in Minnesota a minimum of one month in the summer. The other trips we take are within in the state of Arizona – examples include but are not limited to Big Lake in the White Mountains and Alamo State Park. I am retired and my wife will be retiring from teaching in June 2010. When my wife retires, we will be using the trailer more.

No one lives in the trailer. The only storage in the trailer is what we use when we travel, bedding, dishes, etc.

I also need it to perform maintenance, clean and keep the tires inflated. To keep the batteries charged we must plug it into the house power. Once every 6 months, we have to service and seal the roof. These tasks extend over a period of days and would be very difficult to complete if the trailer was stored in an offsite location.

Also because of its location on the driveway, we are able to insure it isn't vandalized and is secured at all time.

SUMMARY

I would appreciate your approval of my application for a use permit.

Thank you very much for your review.

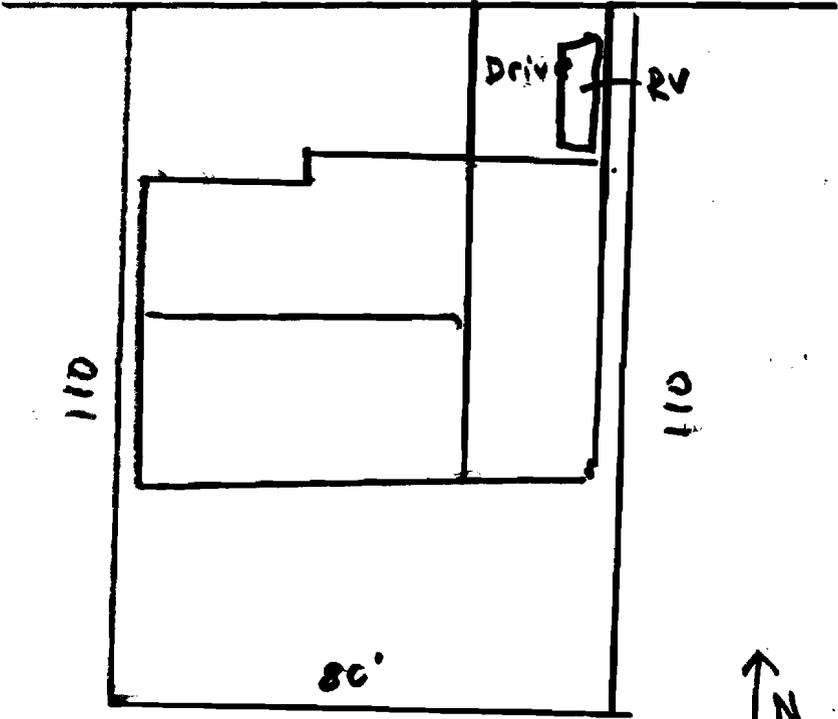
Respectfully submitted

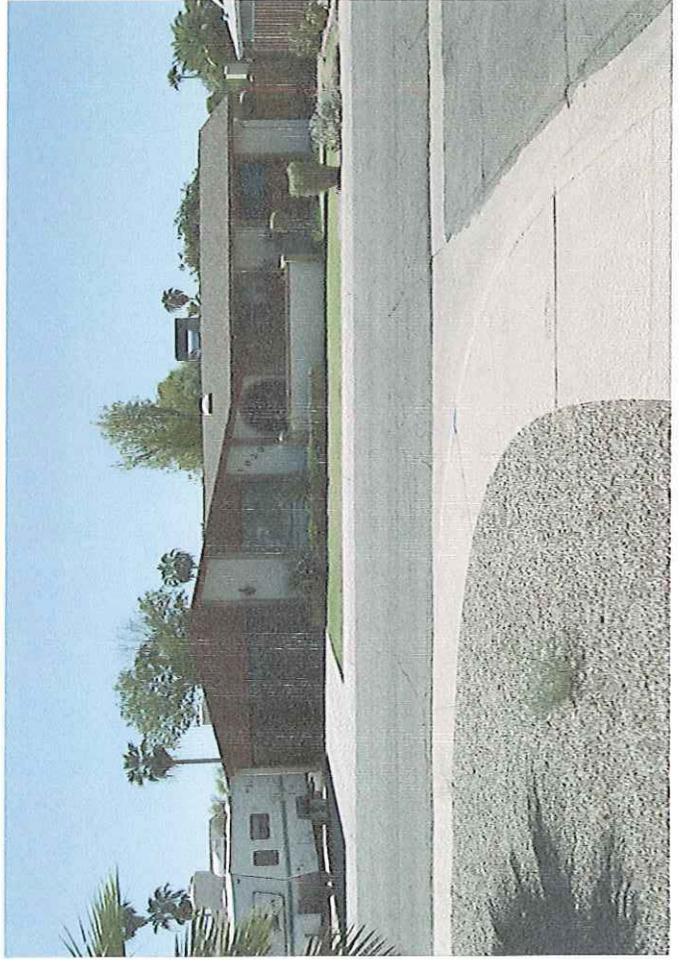
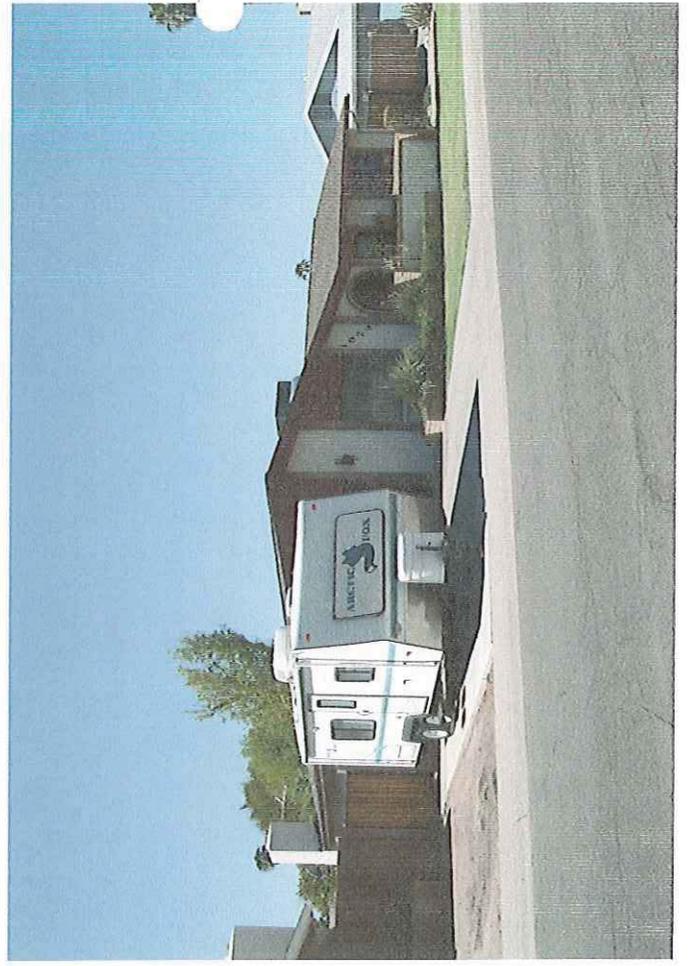
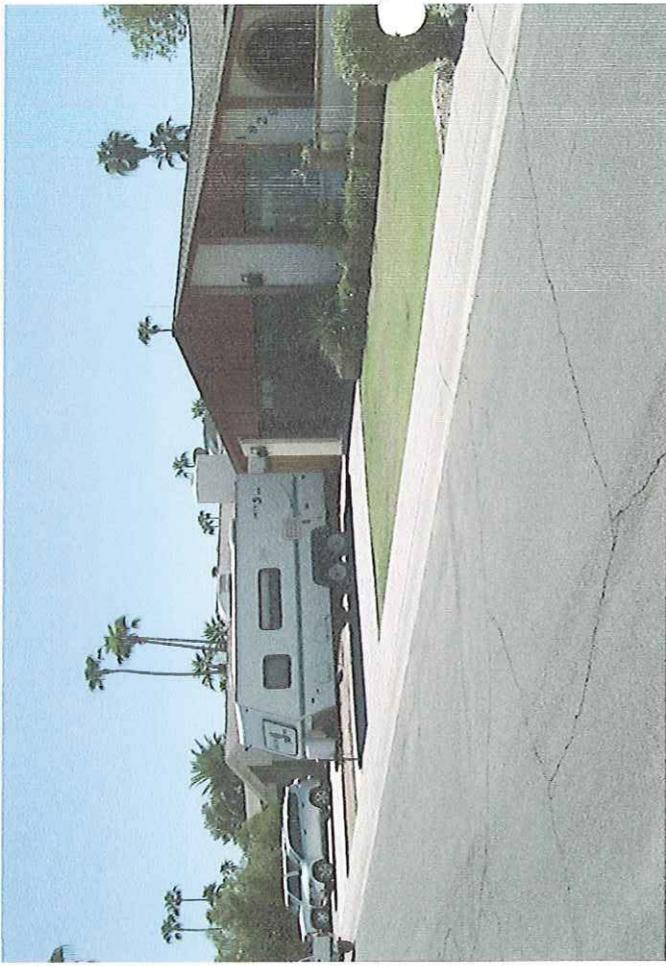
A handwritten signature in black ink, appearing to read 'Robert W. Weiler', written in a cursive style.

Robert W. Weiler

APOLLO AVE.

80'







WEILER RESIDENCE

1929 EAST APOLLO AVENUE

PL090382

FRONT OF RESIDENCE





WEILER RESIDENCE

1929 EAST APOLLO AVENUE

PL090382

RECREATIONAL VEHICLE



I, THE UNDERSIGNED, HAVE NO OBJECTIONS TO ROBERT AND BARBARA WEILER'S TRAVEL TRAILER PARKED
 IN THE DRIVEWAY OF THEIR HOME AT 1929 E. APOLLO AVE, TEMPE, AZ 85283

DATE	SIGNATURE	ADDRESS	ZIP CODE	PHONE
9/27/09	MIKE O'HARA			
9.27.09	Renee Lopez			
9/27/09	Jerry Coddington			
9/27/09	Barbara J			
9/27/09	Christine L. Dewick			
9/27/09	David Stephens			
9/27/09	Mary Ann			
9/27/09	John A. Johnson			
9-27-09	Wendy			
9.27.09	ANDREW FISCHER			
9-27-09	Sue Whitfield			
9/27/09	William Whitfield			
9/27/09	[Signature]			
9/27/09	[Signature]			
9/28/09	Martha Goodale			
9.28.09	Nautil			
9.29.09	DEREK CRON			
9-30-09	Christine			

CASE # CE095332



CODE INSPECTOR DONALD ALEXANDER
480-350-8077
E-MAIL: donald_alexander@tempe.gov
Date Mailed: 9/18/09

ROBERT WEILER
1829 E APOLLO AVE
TEMPE, AZ 85283

NOTICE TO COMPLY

**City of Tempe Code Enforcement Division
Notice to Comply: Zoning and Development Code**

This notice to comply is to inform you that on 9/17/09, 1929 E APOLLO AVE was inspected and found to be in violation of the following subsection(s) of the Zoning and Development Code of the Tempe City Code. A re-inspection will be conducted on 10/1/09 or after the date indicated to verify compliance. If the property is brought into compliance with the code you will not be subject to citations or fines for the violation(s).

4-602 General Parking Standards.

B. Parking Standards Applicable in All Zoning Districts.

7. Recreational vehicles exceed twenty-one (21) feet in length and all boats and trailers shall not be parked in the required front yard building or required street side yard, except for periods of up to forty-eight (48) hours within seven (7) consecutive days for the purpose of loading, unloading, and cleaning. Such vehicles parked or stored in the defined setbacks shall be subject to a use permit; and

Please take the following corrective action by:

Required Correction(s):

- **PLEASE REMOVE THE CAMPER/TH5WHELL PARKED WITHIN THE FRONT YARD SETBACK (FRONT DRIVEWAY) TO AVOID A \$120.00 TICKET/CITATION.**

We appreciate your cooperation in this matter. For questions or further information please contact the Code Enforcement Division at 480-350-8372. Failure to comply may result in civil citation or criminal charges against the property owner or responsible party.

Civil and Criminal Penalties

Section 1-201A: 1st occurrence \$120 dollars per violation, 2nd occurrence \$320 dollars per violation, 3rd occurrence \$770 dollars per violation.

Default Amounts: 1st occurrence \$170 dollars per violation, 2nd occurrence \$420 dollars per violation, 3rd occurrence \$820 dollars per violation.

The city prosecutor is authorized to file a criminal class 1 misdemeanor complaint in the Tempe Municipal Court for violations of this code.

ROBERT W. WEILER
1929 E. Apollo Ave
Tempe, AZ 85283-2304
Home Phone: 480-839-4209
Cell Phone: 602-478-3796
E-mail: rweiler@covad.net

*Rec'd 12/16/09
AM*

December 16, 2009

Ms. Vanessa MacDonald, Chairman
Development and Review Commission
C/O Ms. Sherri Lesser, Senior Planner
City of Tempe
Development Services Department
31 East Fifth Street
Tempe, AZ 85281

RE: ZUP09145 Hearing Officer decision to deny a use permit to allow a recreational vehicle to be parked in the front yard setback.

Dear Ms. MacDonald:

Please accept this request to appeal the decision to the Development and Review Commission of Mr. David Williams, Hearing Officer, at the Public Hearing dated December 15, 2009

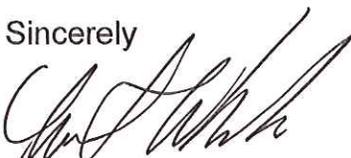
The public hearing was a request for a use permit to allow my travel trailer to be parked in the front yard setback at my residence, 1929 E. Apollo Ave, Tempe, AZ 85283-2304,

Mr. Williams denied the use permit.

I have a petition signed by my neighbors plus I had two of my neighbors attend the hearing supporting the use permit. They stated the travel trailer does not impact the general appearance of my home, its landscape, or the surrounding area.

I feel an appeal to the Development and Review Commission of Mr. Williams' decision is justified.

Sincerely


Robert W. Weiler

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7. Request by VERIZON WIRELESS – PHO POLERIO (PL090355) (Carole Parks/Reliant Land Services Inc., applicant; Lakeshore Group LLC, property owner) located at 4801 South Lakeshore Drive in the PCC-2, Planned Commercial Center General District for:

ZUP09160 Use permit to allow a sixty-five foot (65') monopole (monopine).

Ms. Carole Parks of Reliant Land Services Inc. was present to represent this case.

Derek Partridge, staff planner, gave an overview of this case and stated that no additional public input had been received since the staff report had been issued.

DECISION:

Mr. Williams approved PL090355/ZUP09160 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. The monopine shall be no greater than 65'-0 (sixty-five feet) in height (to the top of the branches) top of panel antennas at 60'-0 (sixty feet).
3. The monopine shall be designed with branches extending from twenty feet (20') to sixty-five feet (65') on the structure.
4. Any intensification or expansion of use will require a new use permit.
5. Any associated equipment or walls shall be painted to match the existing office building on the property.
6. The wireless device shall be removed within thirty (30) days of discontinuance of use.

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8. Request by the WEILER RESIDENCE (PL090382) (Robert Weiler, applicant/property owner) located at 1929 East Apollo Avenue in the R1-7, Single Family Residential District for:

ZUP09145 Use permit to allow a recreational vehicle to be parked in the front yard setback.

Mr. Robert Weiler was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case and stated that no additional public input had been received since the staff report had been issued. A complaint regarding the parking of the RV had been received and the applicant subsequently submitted this use permit request. No prior complaints had been received. She noted that staff was recommending denial consistent with staff's previous recommendations of similar requests.

Mr. Williams noted that staff had recommended denial of this request. Several signatures in support of this request had been submitted by the applicant.

Mr. Weiler noted that he had resided at this address for 33 years, since 1976. The current RV had been purchased in 1998 as a replacement for a trailer that had been parked there previously by Mr. Weiler. At that time, Mr. Weiler explained, he met with City representatives as to whether this RV would meet City regulations. He was told that he would need to meet two (2) conditions of approval: (1) that the RV not be parked on the driveway but on a gravel or concrete base and, (2) that the RV not extend into the public access (i.e. sidewalk area).

In September 2009, Mr. Weiler received a notice of complaint from the Code Enforcement Division which generated this request for a use permit. He stated that a petition of support had been circulated within his neighborhood and there were 18 signatures of support. Of the 19 neighbors on his street/cul-de-sac, 17 neighbors had signed in support of this request. The other 2 residents were a renter who did not wish to become involved and a injured neighbor living in his sister's home. He noted that there is no Homeowners Association for this neighborhood.

Mr. Weiler stated that he had met with the Code Enforcement Division and asked to see the address of the person who made the complaint and whether this person lived outside the neighborhood. He was told that the complaint was filed anonymously. Mr. Weiler asked whether this was not a public record but was informed that the address of the complaining party was not available due to it being filed anonymously.

Mr. Weiler stated that he is retired and his wife is a school teacher who plans on retiring at the end of this year. They use the trailer a lot and try to take a trip at least once a month. During the holidays, November and December, it is too cold to go anywhere. In the summertime it is gone most of the time as they go to Minnesota.

Mr. Weiler stated that the trailer would not fit thru the existing gate and the overhang of the house is in the way of the gate entrance for the trailer. There is a 16 ft. alley however there is not enough room to swing the trailer around to park the truck and trailer in the back yard. Parking the trailer in the driveway area does not extend into the public access area and does not present a safety hazard. It is currently insured and licensed appropriately.

Parking the trailer in the driveway area minimizes the possibility of vandalism. It does not detract from the landscaping or neighborhood. It has been parked there for approximately ten (10) years. Mr. Weiler noted that parking the trailer in the back yard is not an option as explained above, and that he would appreciate the Hearing Officer's consideration of his use permit request.

Mr. Williams thanked Mr. Weiler for an excellent presentation and the attention to detail. He asked Mr. Weiler to explain again why the trailer cannot be parked in the rear yard. Mr. Weiler responded that his house sits in the middle of the block and they have a long alleyway . . . the alley is only 16 feet wide while the trailer is 10 feet wide. There is not room to swing the trailer and truck without hitting the fence so it is almost impossible to enter the backyard. Mr. Williams suggested widening the gate.

It was noted by Mr. Weiler that staff had offered three (3) possible conditions should the Hearing Officer decide to approve this request. One condition stipulated the planting of a tree in the front yard. He stated that earlier trees had to be removed for various reasons and that he did not feel this was an appropriate suggestion.

Mr. William Whitfield, Tempe residence, spoke in support of this request. He lives right next door to the west of Mr. Weiler. He stated that he has been looking at that trailer for ten (10) years and had no problem with this request, that he enjoyed seeing the pleasure on the faces of the Weilers when they used the trailer. That RV offered substantial enjoyment to the quality of the Weilers. Their yard is well maintained and was one of the reasons that the Whitfield had purchased their own home. The trailer does not detract from the property or neighborhood in any way, shape or form nor does it present a safety hazard. To inflict a hardship on the Weilers on the basis of an anonymous grievance is not right, Mr. Whitfield stated, and in his opinion this use permit should be approved. Mr. Weiler is the type of resident that the City of Tempe should encourage; he is permanent and a positive influence.

Mr. Williams noted that during his site visit of this property, this was the only home which had a vehicle (i.e. trailer) of this type parked in the front yard. He asked Mr. Whitfield that if every other home had a boat or trailer parked in their front yard would he feel the same way? Mr. Whitfield stated that cannot speak to what he does not see. In ten years nobody else had tried to park a trailer or RV in front of their house. Mr. Whitfield responded that he cannot speculate on that, however this particular RV was part of that neighborhood and did not present a negative impact.

Mr. John Stevenson, Tempe resident and neighbor of Mr. Weiler, also spoke in support of this request and stated that he did not have a problem with the trailer being parked in its current location. He addressed the proposed condition of a tree and noted that the area was not conducive to the growth of a tree.

Mr. Williams questioned staff on Mr. Weiler's comments that he had received earlier approval from the City to park this trailer at this location. He asked if this had changed at some point? Ms. Lesser responded that it had not changed in the past 11 years. Prior to 1993 a RV in the front yard was only allowed by variance. In 1993 the process was changed to a RV allowed in the front yard by the use permit process.

Mr. Williams referred to the current Zoning and Development Code for this area, and noted that this request for a use permit falls under the issues of compatibility with the neighborhood and negative impact on surrounding property values (structures and uses) and whether it is compatible with the goals of the 2030 Plan.

Ms. Lesser confirmed that the rules have not changed. This use is not permitted by right, only by the process and approval of a use permit.

Mr. Williams stated that despite overwhelming support of the neighbors, this use is not permitted under the City Zoning and Development Code. He stated that in driving this well maintained neighborhood, this trailer is as out of place as it can possibly be, and that he was going to deny this request, as parking this trailer in the driveway is not consistent with the policies and regulations of the City and the General Plan 2030. It would not impact the neighborhood in a positive manner in the long range, Mr. Williams explained.

DECISION:

Mr. Williams denied the request for PL090382/ZUP09145.

9. 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 additional public input had been received since the staff report had been issued. She clarified for the record that the applicant had modified his earlier request and that the current request was for indoor entertainment only.

Mr. Sadote stated that they had been a part of the Tempe scene for 26 years.

Mr. Williams asked if Mr. Sadote had any questions regarding the assigned conditions of approval and if he understood them. A copy of the conditions were given to Mr. Sadote for his review.

Mr. Williams asked if this request involved smoking. Ms. Lesser responded that as this was a restaurant, smoking is only allowed on the patio.

Mr. Sadote returned to the podium and addressed Condition of Approval No. 9 and the time limitations imposed. He asked that the time period be adjusted to a slightly later time. Ms. Lesser stated that the Condition was based on the letter of intent submitted by the applicant and the fact that this business backed up to a residential district. Mr. Sadote explained the location of the light rail and the 150 ft dimension to the residential area.

Ms. Lesser agreed that the Condition could be modified to midnight Sunday-Wednesday and 1 AM Thursday-Saturday on a trial basis, as regardless of the 150 ft dimension this business still backs up to a single family residential district.

Ms. Beth Tom, Tempe resident, stated that she represented Hudson Manor Neighborhood Association and supports this request. This request had been the topic of discussion amongst the neighbors and that Mr. Sadote had done a good job explaining and talking with the residents. It is their feeling that if there is a problem, Mr. Sadote would make it right.