

Minutes
HEARING OFFICER
JULY 21, 2009

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
Sherri Lesser, Senior Planner
Derek Partridge, Planner I
Nick Graves, Planning Intern
Steve Abrahamson, Planning & Zoning Coordinator

Number of Interested Citizens Present: 21

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 4, 2009 at 3:00 PM to the Development Services Department.

1. Mr. Williams approved the Hearing Officer Minutes for July 7, 2009.

2. Mr. Williams noted that the following case(s) had been withdrawn:

Request by **GRYPHEN SCHOOLS – TEMPE CENTER (PL090231)** (Todd Lewis/Gryphen Specialty Products & Services, applicant; D'Angelo Family 1911 Trust, property owner) located at 311 South McClintock Drive in the GID, General Industrial District for:

ZUP09101 Use permit to allow a multi-habitational facility (vocational school).
APPLICANT WITHDREW

3. Request by the **CONDER RESIDENCE (PL090224)** (Michael Conder, applicant/property owner) located at 2022 East Malibu Drive in the R1-6, Single Family Residential District for:

ZUP09096 Use permit to allow standard to reduce the front yard setback by twenty percent (20%) from twenty (20) feet to ~~sixteen (16) feet~~ **eighteen (18) feet. MODIFIED BY HEARING OFFICER**

Mr. Michael Conder 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.

Mr. Conder agreed to re-locate the A/C unit away from the west side yard and to modify the front yard setback request to eighteen (18) feet. The two trees will be replaced. He explained the history of the neighborhood and that his home was unique to the area.

Mr. Williams indicated that the design of the addition does not match the existing home and advised the applicant that the re-design be done so that the rhythm and colors and materials match.

Mr. William Haas, stated that he is the neighbor to the east and strongly supports this request as it is an improvement to the neighborhood.

Ms. Joann Kersbergen, stated that she lives across the street, and feels that the doorway metal screening into the bedrooms and higher wall makes the structure look like a commercial/office building. Design changes could be made that could approve the appearance to be more consistent with the neighborhood.

Ms. Zaharenia Tsikopoulos spoke regarding her ten (10) year old daughter's concern regarding the possible noise generated by the A/C and aesthetic concerns such as not enough windows and the height of the addition could block the sun. She did not feel that the appearance would be in context with the neighborhood.

Mr. Abrahamson, in response to a question from Mr. Williams, confirmed that although there was no indication that this request pertained to a home office, a home office was a permitted use in this area if it was operated as a single individual.

For public information, Mr. Williams explained to those present that although a home office is a permitted use there are restraints. If there were traffic concerns or activities unusual to a residence that are in violation these should be brought to the City's attention.

Mr. Williams questioned the height of the addition and the parapet wall. Mr. Conder stated that the parapet wall was three (3) different heights and the addition was approximately two (2) feet higher than the existing residence. He would be willing to reduce the height by one (1) foot. Screening would consist of metal materials to match sculptures in the yard.

DECISION:

Mr. Williams approved PL090224/ZUP09096 as modified subject to the following conditions of approval:

1. The use permit is valid for the plans as submitted to and approved by the Hearing Officer.
2. All required permits and clearances shall be obtained from the Building Safety Division.
3. The A/C unit for the proposed addition ~~shall be located either (1) on the roof, or (2) behind the masonry wall~~ **must not be located in the front or west side yard** of the residence. **MODIFIED BY HEARING OFFICER**

4. The front yard setback use permit standard to be modified to eighteen (18) foot minimum.
5. **Materials and colors of the addition to match the existing structure. ADDED BY HEARING OFFICER**
6. **Add two (2) 24" box trees to the front yard. ADDED BY HEARING OFFICER**
7. **Height of the addition limited to one (1) foot of existing structure. ADDED BY HEARING OFFICER**
8. **Fenestration of south elevation to proportionally match existing windows at the south elevation of dwelling. ADDED BY HEARING OFFICER**

4. Request by **ROYAL PALMS PLAZA - YUPHA'S THAI KITCHEN (PL090225)** (Yupha Dequenne, applicant; Pollack Enterprises LLC , property owner) located at 1805 East Elliot Road, Suite No. 115 in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP09097 Use permit to allow live entertainment.

Ms. Yupha Dequenne was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case. E-mails and phone calls of concern had been received.

DECISION:

Mr. Williams approved PL090225/ZUP09097 subject to the following conditions of approval:

1. The use permit is valid for Yupha's Thai Kitchen and may be transferrable to successors in interest through an administrative review with the Development Services Manager, or designee.
2. The entertainment to consist of 1-2 person ensembles and Thai Dancing; all entertainment to cease at 9:00 pm daily.
3. Any intensification or expansion of this use shall require the applicant to return to the appropriate decision-making body for a new use permit.
4. Noise generated from the use shall conform to the City of Tempe Noise Ordinance requirements for noise control.
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. The use permit is valid for the plans as submitted within this application.
7. The applicant shall work with the Tempe Police Department to update the Security Plan for the business. Contact the Crime Prevention Department at 480.858.6027.
8. **Back door to business to remain closed during live entertainment. ADDED BY HEARING OFFICER**

5. Request by **BROADWAY VILLAGE - ALOMDA HOOKAH (PL090227)** (Mahmoud Ahmed, applicant; Caland Management LLC, property owner) located at 818 West Broadway Road, Suite No. 111 in the CSS, Commercial Shopping and Services District for:

ZUP09098 Use permit to allow a hookah lounge.

Mr. Mahmoud Ahmed and Mr. Moataz El-Sheikh were 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. One (1) phone call of opposition related to the day care facility's hours of operation had been received. The applicant contacted the day care facility and assuaged their concerns about hours and parking.

Mr. Williams addressed the issue of building code requirements and upgrades and that the HVAC must be installed prior to the start of business operation and inspected due to health issues. Mr. Abrahamson confirmed that all building safety permits must be obtained and finalized before the business operation could begin. Mr. El-Sheikh acknowledged this requirement and asked for additional information about temporary measures to meet building codes. Mr. Williams referred him to the City's Building Safety staff.

DECISION:

Mr. Williams approved PL090227/ZUP09098 subject to the following conditions of approval:

1. The use permit is valid for Al-Omda Hookah and may be transferrable to successors in interest through an administrative review with the Development Services 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. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective. Since smoking will be permitted on the premises, the owner/management is responsible to adhere to the 2003 International Mechanical Code.
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 gross sale of beverages and snack items may not exceed that of tobacco and hookah products.
6. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8331.
7. The use permit is not valid until all ~~required~~ **final** Building Safety **inspections and** permits have been ~~finalized~~ **completed. MODIFIED BY HEARING OFFICER**
8. **The applicant shall work with the Tempe Police Department to create a Security Plan for the business. Contact the Crime Prevention Department at 480.858.6027. ADDED BY HEARING OFFICER**

6. Request by the **AUSTIN RESIDENCE (PL090228)** (Tessa Jones/the Phactory, applicant; Jon & Hiroko Austin, property owners) located at 1440 East Secretariat Drive in the AG, Agricultural District for:

ZUP09099 Use permit to allow an accessory building (pool house).

Ms. Tessa Jones of The Factory and Mr. Jon Austin were 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 petition of support had been received from the neighbors on either side and across the street from the applicant.

Mr. Williams addressed the issue of lot coverage and asked if the large patio areas was considered part of the lot coverage percentage. Ms. Lesser stated that the applicant was within the requirements allowed.

Ms. Jones noted that the ramada accessory building that was requested in the application was not included in the advertisement and the applicant will return at a future Hearing Officer hearing for approval of that request.

The maximum height of the requested structure will not exceed the height of the main structure. The existing storage structure in the back yard will be removed.

Mr. Williams asked where the public posting sign was, as it was missing today. Mr. Austin stated that it blew down in the storm last night.

DECISION:

Mr. Williams approved PL090228/ZUP09099 subject to the following conditions of approval:

1. Obtain all necessary clearances and permits from the Building Safety Division.
2. Accessory building to complement the main residence in color, form and material.
3. Accessory building is not to be used for sleeping or living purposes and shall have no cooking facilities.
4. The accessory building is not to be rented separately from the main residence as an office or accessory unit.
5. Provide a set of plans for the file with site data listing the height of existing dwelling and the proposed accessory building. The height of accessory building not to exceed the height of existing residence.

7. Request by the **KARSTEN RESIDENCE (PL090232)** (Ed Karsten, applicant/property owner) located at 5751 South Wilson Street in the R1-6, Single Family Residential District for:

ZUP09103 Use permit to allow a six (6) foot masonry wall within the front yard setback.

No one was present to represent this case. Mr. Graves noted that the applicant had notified staff that he was unable to attend today's meeting due to work commitments.

Nick Graves, 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. He noted that the applicant had a wooden fence which he replaced with this block wall fence. Because of the new code the applicant was required to apply for the use permit as the wooden fence was covered by the code which predated today's restrictions.

DECISION:

Mr. Williams approved PL090232/ZUP09103 subject to the following conditions of approval:

1. Obtain all necessary clearances from the Building Safety Division.
2. Approval is valid for plans as submitted within this application.
3. **No storage in the front yard setback exceeding the height of the wall. ADDED BY HEARING OFFICER**

8. Request by **GOODWILL OF ARIZONA (PL090233)** (Jason Morris/Withey Morris PLC, applicant; Fortuna Asset Management, property owner) located at 575 West Warner Road in the PCC-2, Planned Commercial Center General and Southwest Overlay Districts for:

ZUP09102 Use permit to allow a resale retailer (second hand store).

Mr. Jason Morris of Withey Morris PLC was present to represent this case.

Nick Graves, 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 PL090233/ZUP09102 subject to the following conditions of approval:

1. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
2. The use permit is valid for Goodwill of Arizona and may be transferrable 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.
3. No outdoor storage or inventory or donations will be allowed.
4. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8331.
5. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
6. All rear exit doors require a lexan vision panel or 180 degree rotatable viewer. Details to be approved through Building Safety Plan Review prior to issuance of building permit.
7. 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.

The next Hearing Officer public hearing will be held on **Tuesday, August 4, 2009.**

There being no further business the public hearing adjourned at **2:45 PM.**

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



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

SA:dm