

Minutes  
HEARING OFFICER  
AUGUST 4, 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

Number of Interested Citizens Present: 6

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 18, 2009 at 3:00 PM to the Development Services Department.

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1. Mr. Williams approved the Hearing Officer Minutes for July 21, 2009.

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2. Request by the **DANELLE PLAZA - ARC OF TEMPE THRIFT SHOP (PL090241)** (Ellen Reiland/The Arc of Tempe, applicant; The Arc of Tempe, property owner) located at 3400 South Mill Avenue, Suite No. 39 in the CSS, Commercial Shopping and Services District for:

**ZUP09104** Use permit to allow outdoor retail display.

Ms. Ellen Reiland was present to represent this case.

Derek Partridge, staff planner, gave an overview of this case and stated that one phone call of support had been received since the staff report had been issued.

**DECISION:**

Mr. Williams approved PL090241/ZUP09104 subject to the following conditions of approval:

1. The outdoor display shall not conflict with pedestrian or vehicular traffic.
2. The use permit is valid for The Arc of Tempe Thrift Shop and may be transferable to successors in interest through an administrative review with the Development Services Manager, or designee.
3. The use permit is valid for the plans as submitted to and approved by the Hearing Officer, any expansion of the outdoor display would require a new use permit.
4. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the Development Services office, the use permit may be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
5. Any outdoor signage associated with the display shall be limited to three (3) square feet.
6. No sound amplification shall be used for the outdoor display.

7. Outdoor display to be located within the length of the exterior tenant space; abutting the exterior wall or window and must allow for a minimum six (6) foot wide pedestrian path across the building frontage, and to and from the building entrances and exits.
8. The outdoor display area may be expanded the first Saturday after Thanksgiving Day to include the parking area west of the suite, utilizing up to six parking spaces.
9. All outdoor display areas to be monitored by store personnel and all display racks and merchandise to be removed during non-business hours.

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3. Request by **MILL AVENUE SHOPS – PHO THANG LONG (PL090246)** (Lam Ngo, applicant; Mill Avenue Shops, property owner) located at 414 South Mill Avenue, Suite No. 115, in the CC, City Center District for:

**ZUP09105** Use permit to allow live entertainment.

Mr. Lam Ngo 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. Greg Swick, Tempe resident of Hayden Square Condominiums, spoke regarding his opinion that entertainment of music in the restaurant was acceptable as long as it does not create a nuisance for the neighbors in Hayden Square.

Mr. Williams asked for confirmation that the entertainment would only be indoors and that this stipulation was reflected in the conditions of approval. Mr. Partridge indicated that currently there was no condition that specifically stated indoor entertainment only. Condition No. 5 was modified accordingly.

Mr. Williams discussed the projected hours of live entertainment with Mr. Ngo and it was agreed to add a condition of approval to address those hours.

**DECISION:**

Mr. Williams approved PL090246/ZUP09105 subject to the following conditions of approval:

1. The use permit is valid for Pho Thang Long 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. Music generated from the use shall conform to the City of Tempe Noise Ordinance requirements for noise control.
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 associated with the live entertainment use will be allowed. **Live entertainment is limited to indoor use only. MODIFIED BY HEARING OFFICER**
6. Live entertainment is approved during regular business hours.
7. The applicant or business owner shall contact the City of Tempe Police Department, Crime Prevention Unit, to implement/update a Security Plan for the business. Please contact the Crime Prevention Department at 480-858-6027.
8. **Live entertainment is allowed after 9:00 PM until 2:00 AM. ADDED BY HEARING OFFICER**

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The next Hearing Officer public hearing will be held on **Tuesday, August 18, 2009.**

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There being no further business the public hearing adjourned at 2:50 PM.

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



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Sherri Lesser, Senior Planner  
for David Williams, Hearing Officer

SL:dm

APPROVED