

Minutes  
HEARING OFFICER  
NOVEMBER 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  
Derek Partridge, Planner I  
Sherri Lesser, Senior Planner  
Steve Abrahamson, Planning & Zoning Coordinator

Number of Interested Citizens Present: 9

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

1. Mr. Williams approved the Hearing Officer Minutes for October 20, 2009.

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 Williams noted that the following case(s) had been withdrawn from today's agenda:

Request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **TROUT RESIDENCE (PL090377/ABT09030)** (Brian/Colita/Dustin Trout, property owners) Complaint CE087959 located at 1533 West 5<sup>th</sup> Street in the R1-6, Single Family Residential District.

**WITHDRAWN BY CITY OF TEMPE – NEIGHBORHOOD ENHANCEMENT DEPARTMENT**

3. Request by **SCALES ACADEMY - A. T. & T. WIRELESS – SITE P476-D (PL090383)** (Randy Pridgeon/Reliant Land Services, applicant; Tempe School District No. 3, property owner) located at 1115 West 5<sup>th</sup> Street in the R1-6, Single Family Residential District for:

**ZUP09138** Use permit to allow a ~~sixty five foot (65')~~ **sixty foot (60')** wireless antenna (monopalm).  
**MODIFIED BY HEARING OFFICER**

Mr. Randy Pridgeon of Reliant Land Services 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. Jeff Heg, Tempe resident, spoke in opposition to this request stating that this structure would be an eyesore and located too close to the school. He considers this structure to be a health hazard.

Mr. Williams questioned staff if there was any objection to modifying the total height of this structure to sixty feet (60'). Staff did not have any objection(s). Mr. Pridgeon stated that he would find the sixty foot limitation acceptable if so imposed by the Hearing Officer.

Mr. Williams noted that the issue(s) of health concerns (i.e. radiation, etc.) is often raised with cases of this type and asked that staff respond to this subject. Mr. Abrahamson responded that local governments are not allowed to discuss the health attributes of these cases (i.e. wireless facilities) due to the stipulations imposed by the Federal government by the Telecommunications Act of 1996.

**DECISION:**

Mr. Williams approved PL090383/ZUP09138 subject to the following conditions of approval:

1. Obtain all necessary clearances from the Building Safety Division.
2. The monopalm shall be no greater than ~~65' 0" (sixty five feet)~~ **sixty feet (60')** in height (to the top of the monopalm fronds) top of panel antennas at ~~62' 0" (sixty two feet)~~ **sixty feet (60')**. **MODIFIED BY HEARING OFFICER**
3. The monopalm shall be designed to resemble a Mexican fan palm tree (not Date palm tree). Fronds and pole to be designed to match Mexican fan palm trees to be located on site.
4. Two (2) Mexican fan palm trees shall be planted adjacent to the equipment enclosure.
5. Any intensification or expansion of use will require a new use permit.
6. The proposed enclosure shall be constructed of similar material and color to match the existing refuse enclosure for the property.
7. The wireless device shall be removed within thirty (30) days of discontinuance of use.

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4. Request by the **ZUST RESIDENCE (PL090387)** (Fred Zust, applicant/property owner) located at 243 West Jeanine Drive in the R1-15, Single Family Residential District for:

**VAR09013** Variance to reduce the east side yard setback from fifteen feet (15' 0") to eight feet (8' 0") for a garage addition.

Mr. Fred Zust was present to represent this case. He noted that he had the support of the nearby neighbors and that the configuration would preserve a large existing tree.

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 noted that a previous variance had reduced the west side yard setback. Staff recommends approval of this request due to special circumstances of this property and the odd shaped lot.

Mr. Williams asked the applicant if the garage was going to be used to house vehicle(s) and Mr. Zust confirmed that it would be.

Mr. Williams stated that he concurred with the staff recommendation to approve this request due to the special circumstances of this irregularly shaped lot.

**DECISION:**

Mr. Williams approved PL090387/VAR09013 subject to the following conditions of approval:

1. The variance is valid for the plans as approved by the Hearing Officer.
2. The addition to match the existing residence in form, color and material.
3. Obtain all necessary clearances from the Building Safety Division.

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5. Request by **THE GOLD GUY (PL090390)** (Larry Cohen, applicant; Kirk Edward & Diane Heiser Trust, property owners) located at 840 East Southern Avenue, Suite No. 102 in the CSS, Commercial Shopping and Services District for:

**ZUP09137** Use permit to allow a second hand retailer (gold buying business).

Mr. Larry Cohen 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. One phone call of concern had been received, she stated.

Mr. Williams asked for a depiction of the site plan and an indication of the parking. Ms. Lesser did so.

Mr. Williams questioned the ID/buzzer system to be used; Mr. Cohen described the particulars noting that it would control the ingress and egress from the premises.

Ms. Lesser noted that the applicant would be working the Tempe Police Department to provide a security plan for the parking lot and premises.

Mr. Paul Hubbel, representing the Brentwood Cavalier Neighborhood Association, noted that they were opposed to a pawn shop in that location. However, due to Condition of Approval No. 7 they were not opposed to this request.

Mr. Williams noted that Condition of Approval No. 7 was being modified as noted below. Mr. Cohen confirmed that he understood all of the conditions of approval as modified.

**DECISION:**

Mr. Williams approved PL090390/ZUP09137 subject to the following conditions of approval:

1. The use permit is valid for The Gold Guy and may be transferable to successors in interest through an administrative review with the Development Services Manager, or designee.
2. All permits and clearances required by the Building Safety Division for tenant improvements shall be obtained prior to the use permit becoming effective.
3. Any expansion or intensification of the use will 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 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. All business signs shall receive a Sign Permit. Please contact Planning staff at 480-350-8331.

6. A sales tax license from the City of Tempe Tax and License Division shall be obtained prior to the use permit becoming effective.
7. The use permit is valid for the purchasing of gold and jewelry items only. No resale of any items will be allowed. ~~and all items must be sent to a refinery after a determined amount of time.~~ **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.

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6. Request by City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **GARCIA RESIDENCE (PL090359/ABT09031)** (Sixto Garcia, property owner) Complaint 092925 located at 2052 East Don Carlos Avenue in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Michelle Arneri, Neighborhood Enhancement Inspector, stated that there were overgrown landscaping and weeds. She noted that she would like to add an additional item at \$150.00 to the original abatement items (which amounted to \$352.00) as there was an unsecured window. Mr. Williams questioned if this was a public nuisance. Ms. Arneri responded that it was Code 23-3-B-9 – a public nuisance and safety hazard. This is a vacant property she stated.

Mr. Williams stated that since this abatement was not generated by a neighborhood complaint, he was going to continue the proceedings for thirty (30) days. He noted that he would like to meet with staff to discuss the process for abatement cases that were being handled pro-actively by the neighborhood enhancement staff.

**DECISION:**

Mr. Williams continued abatement proceedings for PL090359/ABT09031 to the December 1, 2009 Hearing Officer hearing except for the expenses/work related to securing the side door/window which presented a dangerous condition. The expenses for securing the side door/window in the amount of \$150.00 were approved by Mr. Williams for processing.

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7. Request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **OVIEDO PROPERTY (PL090384/ABT09033)** (Audrey Oviedo, property owner) Complaint CE091623 located at 2037 East Lemon Street in the R-4, Multi-Family Residential General District.

No one was present to represent the property owner.

Michelle Arneri Neighborhood Enhancement Inspector, stated that landscaping issues such as overgrown grass still exist. Ms. Arneri noted that she had numerous conversations with Ms. Oviedo (in California) who stated that she no longer had ownership of this property. On several occasions Ms. Arneri had provided Ms. Oviedo with the office fax number(s) so she could provide staff with documentation that she was no longer the property owner. No documentation had been received to date; country records still indicate that she is the property owner.

**DECISION:**

Mr. Williams approved abatement proceedings for PL090384/ABT09033.

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8. Request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **ALDRIDGE RESIDENCE (PL090385/ABT09032)** (Shannon Aldridge & Shirlee Chars, property owners) Complaint CE083188 located at 738 West 13<sup>th</sup> Street in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

**DECISION:**

Mr. Williams continued abatement proceedings for PL090385/ABT09032 to the November 17, 2009 Hearing Officer hearing.

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The next Hearing Officer public hearing will be held on **Tuesday, November 17, 2009.**

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There being no further business the public hearing adjourned at 2:12 PM.

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



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

SA:dm