

Minutes
HEARING OFFICER
NOVEMBER 17, 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
Steve Abrahamson, Planning & Zoning Coordinator
Nick Graves, Planning Intern

Number of Interested Citizens Present: 2

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 December 1, 2009 at 3:00 PM to the Development Services Department.

1. Mr. Williams approved the Hearing Officer Minutes for November 4, 2009. He noted that his decision for the Garcia Residence Abatement case read as follows:

Mr. Williams continued abatement proceedings relating to the landscape issue(s) for PL090359/ABT09031 to the December 1, 2009 Hearing Officer hearing. The expenses for securing the side door/window in the amount of \$150.00 were approved by Mr. Williams for processing.

2. Mr. Williams noted that the following case(s) had been withdrawn from today's agenda:
 - 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.
CONTINUED TO DECEMBER 15, 2009 HEARING OFFICER

- 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 live entertainment including live bands, D.J.’s, comedy acts and karaoke.
CONTINUED TO DECEMBER 1, 2009 HEARING OFFICER

- 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 13th Street in the R1-6, Single Family Residential District.

WITHDRAWN BY CITY OF TEMPE – NEIGHBORHOOD ENHANCEMENT DEPARTMENT

- Request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **RICHARDSON RESIDENCE (PL090400/ABT09036)** (Edna Richardson, property owner) Complaint CE091549 located at 1553 West 5th Place in the R1-6, Single Family Residential District.

WITHDRAWN BY CITY OF TEMPE – NEIGHBORHOOD ENHANCEMENT DEPARTMENT

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- Request by **CLEAR WIRE – AZ-PHX142C (PL090284)** (Rulon Anderson/Clear Wire, applicant; Crown Castle International, property owner) located at 731 East Hermosa Drive in the R/O, Residential/Office District for:

ZUP09144 Use permit to allow an increase and expansion to an existing monopole from eighty feet (80') to eighty-three feet (83') in height.

Mr. Taylor Canlon of Clear Wire 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. It was noted that this case is a co-location and panels and micro-wave dishes to the existing monopole.

Mr. Ernest Kurschat, citizen of Tempe, spoke in opposition stating that this would be an eyesore.

Mr. Williams noted that the aesthetics of these type of cases were considered, however the use of existing verticality by co-location was encouraged.

DECISION:

Mr. Williams approved PL090284/ZUP09144 subject to the following conditions of approval:

- Obtain all necessary clearances from the Building Safety Division.
- Any intensification or expansion of use, including co-location of additional antennae, will require a new use permit.
- The wireless devices shall be removed within thirty (30) days of discontinuance of use.
- The antennae shall be painted to match the existing monopole.

4. Request by the **KING PLAZA – H B TOBACCO - HUBBLY BUBBLY CAFE - (PL090403)** (Anis Ben Harzallah, applicant; King Plaza LLC, property owner) located at 1400 South McClintock Drive, Suite Nos. 3 & 4, in the CSS, Commercial Shopping and Services and TOD, Transportation Overlay Districts for:

ZUP09143 Use permit to allow live entertainment including D.J.'s, belly dancers and karaoke.

Mr. Anis Ben Harzallah and Mr. Ernie Kurschat were 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. He confirmed, in response to a question from Mr. Williams, that the V.I.P. Lounge is a separate establishment and that there would be no outdoor speakers. He stated that there have been no complaints regarding the actual business itself, although there have been issues such as signage.

The Conditions of Approval were discussed. Mr. Harzallah and Mr. Kurschat stated that they understood them. Mr. Kurschat noted that he felt that the increase in pedestrian traffic due to the development of this request would be a positive thing.

Mr. Williams agreed that an increase in pedestrian traffic in the light rail area was advantageous as they supported the local businesses. He concurred with staff's recommendation for approval.

Mr. Harzallah and Mr. Kurschat returned to the podium and addressed the Conditions of Approval. Following discussion, Mr. Williams modified the Conditions as noted below.

DECISION:

Mr. Williams approved PL090403/ZUP09143 subject to the following conditions of approval:

1. The use permit is valid for Hubbly Bubbly Cafe and may be transferable 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. **If any All permits and clearances required are needed** by the Building Safety Division **they shall be obtained prior to the use permit becoming effective. MODIFIED BY HEARING OFFICER**
4. Music generated from this use shall conform to the City of Tempe code requirements for noise control.
5. The live entertainment use shall take place inside only. No live entertainment will be allowed outside in the patio area **other than a single billiard table. MODIFIED BY HEARING OFFICER**
6. No outdoor speakers will be allowed.
7. ~~Remove The outdoor pool table from outdoor patio to~~ **shall** comply with (A.D.A.) Americans with Disabilities Act requirements. **MODIFIED BY HEARING OFFICER**
8. 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.
9. The use permit is valid for the plans as submitted within this application.
10. The applicant shall work with the Tempe Police Department to implement/update a Security Plan for the business. Please contact the Crime Prevention Department at 480-858-6027.

5. Request by the **BRINKERHOFF RESIDENCE (PL090407)** (Lawrence Roos, applicant; Timothy Brinkerhoff, property owner) located at 502 East Watson Drive in the R1-6, Single Family Residential District for:

ZUP09141 Use permit to allow the required parking to be located in the front yard setback.

Mr. Lawrence Roos 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. One e-mail of inquiry had been received on this case.

Mr. Williams noted, with staff confirmation, that there was no parking on the lawn allowed per the Tempe City Code. The issue of adequate parking space and the required footage was discussed. Mr. Roos stated that there were currently three (3) cars parked at this location every night. Mr. Williams noted that if this request was approved there would only be two (2) parking spaces in the driveway and that no parking on the lawn or blocking the sidewalk was allowed. Mr. Roos noted his understanding of those requirements and also the Conditions of Approval.

DECISION:

Mr. Williams approved PL090407/ZUP09141 subject to the following conditions of approval:

1. The required parking on-site shall be used for single family residential use only.
2. Parking shall take place on impervious surfaces only.
3. Obtain all necessary clearances from the Building Safety Division.
4. All vehicles parking on the premises must be actively registered and in operable condition at all times.
5. One (1) additional tree of a fifteen (15) gallon size shall be planted in the front yard to help screen parking in the front yard setback.
6. The carport enclosure shall be compatible match with the main residence in color, form, texture and material. **MODIFIED BY HEARING OFFICER**
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.

6. Request by City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **MECRAY AND SCHENDEL PROPERTY (PL090392/ABT09034)** (Mecray & Schendel Appraisal Group LLC, property owner) Complaint CE084920 located at 1123 West 9th Street in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Don Alexander, Neighborhood Enhancement Inspector, stated that condition of the green pool still exists.

DECISION:

Mr. Williams approved abatement proceedings for PL090392/ABT09034.

7. Request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **STEFANIAK RESIDENCE (PL090401/ABT09035)** (Thomas Stefaniak, property owner) Complaint CE095290 located at 1849 East Harvard Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Don Alexander, Neighborhood Enhancement Inspector, stated that this property has chronic violations.

DECISION:

Mr. Williams approved abatement proceedings for PL090401/ABT09035.

The next Hearing Officer public hearing will be held on **Tuesday, December 1, 2009.**

There being no further business the public hearing adjourned at 2:07 PM.

Prepared by: Diane McGuire, Administrative Assistant II

Reviewed by:



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

SA:dm

APPROVED