

**Minutes
HEARING OFFICER
DECEMBER 15, 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
Sherri Lesser, Senior Planner
Derek Partridge, Planner I

Number of Interested Citizens Present: 10

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 29, 2009 at 3:00 PM to the Development Services Department.

-
1. Mr. Williams approved the Hearing Officer Minutes for December 1, 2009.

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 Williams noted that the following case(s) had been withdrawn from today's agenda:

- Request by **CLEARWIRE – AZ – PHX129B – ATC MARCOS DE NIZA (PL090285)** (Rulon Anderson/Clearwire, applicant; Tempe Unified School District #213, property owner) located at 6000 South Lakeshore Drive in the R1-6, Single Family Residential District for:

ZUP09161 Use permit to allow the addition of one (1) antenna array and increase the height of an existing monopole from sixty-five feet (65') to seventy-five feet (75').

WITHDRAWN BY APPLICANT

- Request by **FRY'S COMPLEX – CLEARWIRE – AZ – PHX0512 (PL090326)** (Rulon Anderson/Clearwire, applicant; WRI Retail Pool, LP, property owner) located at 1855 East Guadalupe Road in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP09157 Use permit to allow a seventy-two foot (72') monopole (monopalm).

CONTINUED TO JANUARY 19, 2010 HEARING OFFICER HEARING

- Request by **COMPADRE HIGH SCHOOL – CLEARWIRE – AZ-PHX0613C (PL090376)** (Rulon Anderson/Clearwire, applicant; Tempe Union School District, property owner) located at 510 West Guadalupe Road in the AG, Agricultural District for:

ZUP09156 Use permit to allow a sixty-five foot (65') monopole (light pole).

CONTINUED TO JANUARY 19, 2010 HEARING OFFICER HEARING

- Request by **CORONA DEL SOL HIGH SCHOOL – CLEARWIRE – AZ-PHX5545C (PL090389)** (Rulon Anderson/Clearwire, applicant; Tempe Unified School District #213, property owner) located at 1001 East Knox Road in the AG, Agricultural District for:

ZUP09159 Use permit to allow a seventy-six foot (76') monopole (light pole).

CONTINUED TO JANUARY 19, 2010 HEARING OFFICER HEARING

- Request by **WAGGONER ELEMENTARY – CLEARWIRE – AZ-PHX0704 (PL090396)** (Rulon Anderson/Clearwire, applicant; Kyrene School District #28, property owner) located at 1062 East Carver Road in the AG, Agricultural District for:

ZUP09155 Use permit to allow a sixty-five foot (65') monopole (light pole).

CONTINUED TO JANUARY 19, 2010 HEARING OFFICER HEARING

- Request by **MOUNT CARMEL RECTORY - CLEARWIRE – AZ-PHX150D (PL090426)** (Rulon Anderson/Clearwire, applicant; Our Lady of Mt. Carmel Catholic Parish, property owner) located at 2115 South Rural Road in the R1-6, Single Family Residential District for:

ZUP09163 Use permit to allow a seventy-three foot (73') monopole (monopine).

CONTINUED TO JANUARY 19, 2010 HEARING OFFICER HEARING

- Request by **VALLEY WEST SHOPPING PLAZA – CLEARWIRE – AZ-PHX0501C (PL090432)** (Rulon Anderson/Clearwire, applicant; Pollack Investments, property owner) located at 1811 North Scottsdale Road in the CSS, Commercial Shopping and Services District for:

ZUP09165 Use permit to allow a ~~sixty three foot (63')~~ **sixty foot (60')** monopole (~~monopine~~) (**monopalm**).

CORRECTED BY DEVELOPMENT SERVICES DEPARTMENT

CONTINUED TO JANUARY 19, 2010 HEARING OFFICER HEARING

- Request by **WATER AND ICE (PL090434)** (Volker Eckert, applicant; Seven BL LLC, property owner) located at 5082 South Price Road, Suite No. 101, in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP09153 Use permit to allow vehicle rentals (U-Haul rentals).

CONTINUED TO JANUARY 5, 2010 HEARING OFFICER HEARING

- Request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **WEIR PROPERTY (PL090427/ABT09037)** (Dolores Weir, property owner) Complaint CE093893 located at 825 West Manhattan Drive in the R1-6, Single Family Residential District.

WITHDRAWN BY CITY OF TEMPE – CODE COMPLIANCE DEPARTMENT

-
3. Request for the reconsideration of Condition of Approval No. 6 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 which reads:

"The carport enclosure shall ~~be compatible with~~ **match** the main residence in color, form, texture and material."
MODIFIED BY HEARING OFFICER AT NOVEMBER 17, 2009 HEARING

Mr. Lawrence Roos was present to represent this case.

Steve Abrahamson, 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. Roos stated that they were intending to make the addition 'compatible' and will have the home color match with the wood framing and wood siding.

DECISION:

Mr. Williams approved the appeal, and noted that the Condition of Approval No. 6 for PL090407/ZUP09141 will now read:

"The carport enclosure shall be compatible with the main residence in color, form, texture and material."

-
4. Request by **ALLSTATE SELF STORAGE – A. T. & T. WIRELESS – X141-B (PL090200)** (Melissa Parker/Bechtel Corporation, applicant; Levine Investments, property owner) located at 1019 East Broadway Road in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP09154 Use permit to allow a sixty foot (60') monopole (monopalm).

Ms. Shannon Morelli 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.

Mr. Williams asked if there had been any complaints regarding the other cell tower on the site; Mr. Graves responded that there had not been any.

DECISION:

Mr. Williams approved PL090200/ZUP09154 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. The monopalm shall be no greater than 60'-0 (sixty feet) in height (to the top of the monopalm fronds) Antenna RAD Center at 53'-0 (fifty-three feet).
3. The monopalm shall be designed to resemble the existing monopalm located on site.
4. Any intensification or expansion of use, including co-location of additional antennas, will require a new use permit.
5. The wireless device shall be removed within 30 days of discontinuance of use.

-
5. Request by **CLEARWIRE – AZ- PHX5618 (PL090336)** (Rulon Anderson/Clearwire, applicant; Thomas & Jane Frankel, property owner) located at 9020 South McClintock Drive in the CSS, Commercial Shopping and Services District for:

ZUP09162 Use permit to allow a sixty-five foot (65') monopole (monopalm).

Mr. Rulon Anderson was present to represent this case.

Derek Partridge, staff planner, gave an overview of this case. He noted that three (3) phones of inquiry had been received and one (1) e-mail of opposition. The e-mail of opposition addressed health concerns.

Mr. Williams asked Mr. Partridge to explain the City's role in addressing these health concerns. Mr. Partridge responded that those types of issues were under the domain of the FCC, not the City. The City addresses issues of design, location and height of these type of requests.

Mr. Anderson gave a lengthy explanation of the configuration of these type of cell towers and how they all interconnect. He noted that this request included three (3) four inch (4") microwave dishes.

Mr. Williams asked staff if they had the depiction of the cell tower configurations that Mr. Anderson referred to. Mr. Abrahamson confirmed that they had this information.

DECISION:

Mr. Williams approved PL090336/ZUP09162 subject to the following conditions:

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

-
6. Request by **KALIL BOTTLING – CLEARWIRE – AZ PHX0516D (PL090353)** (Rulon Anderson/Clearwire, applicant; Kalil Bottling Company, property owner) located at 2927 South Hardy Drive in the GID, General Industrial District for:

ZUP09158 Use permit to allow a eighty-one foot (81') monopole with one (1) antenna array.

Mr. Rulon Anderson 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. Williams stated that he supports the co-location of these cell towers; it was noted that this is a primarily industrial location.

DECISION:

Mr. Williams approved PL090353/ZUP09158 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. The monopole shall be no greater than 81'-0 (eighty-one feet) in height with one (1) antenna array.
3. Any intensification or expansion of use will require a new use permit.
4. The wireless device shall be removed within thirty (30) days of discontinuance of use.

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.

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 Weiler 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.

DECISION:

Mr. Williams approved PL090404/ZUP09142 subject to the following conditions:

1. The use permit is valid for Long Wongs 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. Noise 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. The band and/or karaoke area to maintain a minimum 3' clearance from dining area to comply with ADA accessibility requirements.
6. The use permit is valid for the plans as submitted within the application.
7. The applicant shall work with the Tempe Police Department to create a Security Plan for the business. Contact the Crime Prevention Department at 480-858-6330.
8. All services doors to remain closed during times of live entertainment performances.
9. Live entertainment to cease at ~~11 pm~~ **12 midnight** Sunday-Wednesday and ~~12:30 am~~ **1:00 am** Thursday-Saturday. **MODIFIED BY HEARING OFFICER**
10. Live entertainment approved for indoor use only.
11. **Administrative review will be done in six months (July 2010) to confirm compliance. ADDED BY STAFF**

10. Request by the **KLETT RESIDENCE (PL090445)** (Steve Klett, applicant/property owner) located at 8424 South Stanley Place in the AG, Agricultural District for:

ZUP09166 Use permit to allow a second story addition.

Mr. Steve Klett 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.

Mr. Williams noted that there are more two story homes than single story homes in this neighborhood.

Mr. Klett explained that the addition is 25 feet 6 inches in height from the slab.

DECISION:

Mr. Williams approved PL090445/ZUP09166 subject to the following conditions:

1. Obtain all necessary clearances and permits from the Building Safety Division.
2. Second story addition to complement the main residence in color, form and material.

11. Request by **RIO SALADO CENTER – HOOKAHMANIA (PL090448)** (Thomas George, applicant; Rio Salado Center LLC, property owner) located at 1290 North Scottsdale Road, Suite Nos. 111 & 112 in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP09164 Use permit to allow a hookah lounge.

No one 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 continued PL090448/ZUP09164 to the January 5, 2010 Hearing Officer due to lack of representation by the applicant. This request does not apply to the outdoor patio but only to the indoor area.

12. Request by the **GERSTEN RESIDENCE (PL090452)** (David Gersten, applicant/property owner) located at 227 East Taylor Street in the R1-6, Single Family Residential District for:

ZUP09167 Use permit to allow parking in the front yard setback.

Mr. David Gersten 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. He noted that the nearby residents had no objection to this request.

Mr. Williams asked if, after the construction is done, if there would be at least twenty feet (20') available for parking in the driveway. Mr. Graves stated that from the applicant's site plan that there would be more than twenty feet available.

Mr. Gersten stated that once construction is complete, there will be thirty-six feet (36') available for parking in the driveway.

DECISION:

Mr. Williams approved PL090452/ZUP09167 subject to the following conditions:

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 parked on the premises must be actively registered and in operable condition at all times.
5. The garage conversion shall match the main residence in color, form, texture and material.
6. 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.

13. Request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **ORRAS RESIDENCE (PL090428/ABT09038)** (Jamie Orras, property owner) Complaint CE087014 located at 26 West Erie Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Mr. Jody Benson, Code Compliance Inspector, stated that he would like to continue this case to the January 19, 2010 Hearing Officer. He spoke with the property owner yesterday and that they are making an effort to bring the property into compliance.

DECISION:

Mr. Williams continued abatement proceedings for PL090428/ABT09038/CE087014 to the January 19, 2010 Hearing Officer.

14. Request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **TILLEY PROPERTY (PL090429/ABT09039)** (Felix Tilley Jr., property owner) Complaint CE095001 located at 23 West Fairmont Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Mr. Jody Benson, Code Compliance Inspector, stated that there had been no change in the property's condition. Several notices had been sent regarding the over height grass and weeds in the front yard and dead growth on trees and/or bushes in the front yard. The owner lives in Tucson and rarely visits or maintains this property. Mr. Benson requested that this abatement be approved for 180 day period.

DECISION:

Mr. Williams approved abatement proceedings for PL090429/ABT09039/CE095001 for an open abatement period of 180 days (6 months).

The next Hearing Officer public hearing will be held on **Tuesday, January 5, 2010.**

There being no further business the public hearing adjourned at **3:00 PM.**

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



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

SA:dm

APPROVED