

**Minutes  
HEARING OFFICER  
MAY 19, 2010**

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  
Sherri Lesser, Senior Planner  
Shawn Daffara, Planner II

**Number of Interested Citizens Present: 8**

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 June 2, 2010 at 3:00 PM to the Development Services Department.

1. Mr. Williams approved the Hearing Officer Minutes for May 4, 2010.  
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2. Mr. Williams noted that the following case(s) had been removed from this agenda:
  - Request by the **ROBERTS RESIDENCE (PL100097)** (Don Roberts, applicant/property owner) located at 902 South Maple Avenue in the R-3, Multi-Family Residential Limited District for:  
  
**ZUP10031** Use permit to allow a single family residence to add a second story addition.  
**CONTINUED TO THE JUNE 22, 2010 HEARING OFFICER**
  
  - Request by the **SEXTON RESIDENCE (PL100110)** (Timothy Sexton, applicant/property owner) located at 1317 East Watson Drive in the R1-6, Single Family Residential District for:  
  
**ZUP10037** Use permit to allow a twenty-seven foot (27') long recreational vehicle in the front yard setback.  
**CONTINUED TO THE AUGUST 17, 2010 HEARING OFFICER**
  
  - Request by the City of Tempe – Code Compliance Department to abate public nuisance items in violation of the Tempe City Code for the **FREAND RESIDENCE (PL100085/ABT10004/CE096451)** (Jody Benson, Inspector; Lee Roy Freand, property owner) located at 3120 South Dromedary Drive in the R1-6, Single Family Residential District.  
**CASE WITHDRAWN BY THE CODE COMPLIANCE DEPARTMENT**

- Review of the following for possible revocation of the use permit per the City of Tempe Attorney office's direction due to non-compliance with the Condition of Approval No. 4, which reads, "All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective."

Request by **KING TUT CAFE – MISHA'S SHEESHAS (PL080122)** (Kareem Kassel, applicant; Kassel Corporation, property owner) located at 1125 East Apache Boulevard, in the CSS, Commercial Shopping and Services District for:

**ZUP08064** Use permit to allow a hookah lounge/tobacco retailer.  
(Use permit was approved by the Hearing Officer at the May 6, 2008 Hearing.)  
**REVOCATION PROCESS WITHDRAWN – BUSINESS IN COMPLIANCE**

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3. Request by **CITYWIDE PLUMBING – CLEARWIRE AZ-PHX0613A (PL100048)** (Rulon Anderson/Realand Consulting, applicant; Citywide Plumbing, property owner) located at 401 West Orion Street in the GID, General Industrial District for:

**ZUP10036** Use permit to increase the height of an existing monopole from 60 ft to 70 ft to allow co-location of new antennas.

Mr. Rulon Anderson of Realand Consulting was present to represent this case.

Shawn Daffara, staff planner, gave an overview of this case and stated that no further public input has been received since the staff report was issued. Mr. Daffara presented the site plan and described points of interest.

**DECISION:**

Mr. Williams approved PL100048/ZUP10036 subject to the following conditions:

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

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4. Request by the **BALKEN RESIDENCE (PL100113)** (Nicholas Balken, applicant/property owner) located at 2082 East Minton Drive in the R1-6, Single Family Residential District for:

**ZUP10038** Use permit standard to reduce the required front yard setback by twenty percent (20%) from 20 feet to 16 feet for a carport to garage conversion.

Mr. Nicholas Balken and Mr. Stan Balken were present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case and stated that no public input had been received since the staff report was issued. She explained that this was a technical variance since the carport structure exists, they are just enclosing it. It will be a side entrance garage.

The applicant requested that the Conditions of Approval be modified to allow a 4 foot wide sidewalk.

**DECISION:**

Mr. Williams approved PL100113/ZUP10038 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Department.
2. The existing driveway to be demolished and removed prior to 'final' inspection of the building permit, **except for a 4 foot wide portion to be used as a sidewalk. MODIFIED BY HEARING OFFICER**
3. Obtain all necessary clearances from the Engineering Department for on-site retention for expansion of building area and pavement in front yard.
4. Per Tempe City Code; improved paved areas shall not exceed 35% of the front and side areas visible from the street.
5. The enclosed carport to match the existing dwelling in color, form and material.

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5. Request by the **GOLD EXCHANGE (PL100117)** (Camille Massih/KC Jewelry Inc., applicant, BYS Company, property owner) located at 13 West Baseline Road in the CSS, Commercial Shopping and Services District for:

**ZUP10039** Use permit to allow a resale retailer (precious metal buyer).

Mr. Camille Massih was present to represent this case.

Steve Abrahamson, Planning & Zoning Coordinator, gave an overview of this case and stated that no public input has been received since the staff report was issued.

Mr. Williams questioned whether there was any special method of permitting access. Mr. Massih explained the locations of the security cameras that have been installed.

Mr. Williams addressed the fire code compliance issue(s) and the applicant confirmed that he would be in compliance.

**DECISION:**

Mr. Williams approved PL100117/ZUP10039 subject to the following conditions:

1. The use permit is valid for the Gold Exchange 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 applicant shall work with the Tempe Police Department to create a Security Plan for the business within 30 days; by **June 18, 2010**. Contact the Crime Prevention Department at 480-858-6330.
8. Replace nonconforming building lighting at the rear of the building with compliant light fixture. Details can be resolved during Building Safety Plan Review.

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6. Request by the **DUPLEX AT THIRD STREET (PL100119)** (Glenn Odegard/Nordic Builders Inc., applicant /property owner) located at 839 West 3<sup>rd</sup> Street in the R-3, Multi-Family Residential Limited District for:

**ZUP10040** Use permit standard to reduce the north and south side yard setbacks by twenty percent (20%) from 10 ft to 8 ft.

Mr. Glenn Odegard was present to represent this case.

Sherrri Lesser, staff planner, gave an overview of this case and stated that no public input has been received since the staff report was issued. She noted that the current address of 324 South Carney Avenue will be changed to 839 West 3<sup>rd</sup> Street in the near future. This request is to support a second story addition, she explained.

Mr. Williams questioned whether a use permit was required for this second story addition. Ms. Lesser responded that it was not.

**DECISION:**

Mr. Williams approved PL100119/ZUP10040 subject to the following conditions:

1. Obtain a separate Development Plan Review approval for the design of the addition.
2. Obtain all necessary clearances and permits from the Building Safety and Engineering Divisions.

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7. **Review of the following for possible revocation of the use permit per the City of Tempe Attorney office's direction due to non-compliance with the Condition of Approval No. 4, which reads, "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."**

Request by **HAREM NIGHTS (PL090148)** (Kahlil Abulaban, applicant; 1630 Apache LLC, property owner) located at 1630 East Apache Boulevard, Suite No. 103, in the CSS, Commercial Shopping and Services District for:

**ZUP09063** Use permit to allow a hookah lounge.  
(Use permit was approved by the Hearing Officer at the May 19, 2009 HO hearing.)

Mr. Kahlil Abulaban was not present at this hearing.

Shawn Daffara, staff planner, gave a brief overview of the history of this business and the chronology of events to date. He noted that there was an attempt to submit plans in March 2010 however they were incomplete and were rejected. Mr. Abulaban requested a continuance due to a death in the family and this continuance was granted. Currently, no plans have been submitted or building permits issued.

In response to a question from Mr. Williams, Mr. Daffara confirmed that this business has been opened since the May 19, 2009 hearing.

Mr. Morena was present to represent this case and requested that the proceedings be continued. Mr. Williams asked when plans would be submitted in accordance with the submittal requirements. Mr. Morena was indicated an undetermined time.

Mr. Williams stated that this use permit with the accompanying conditions of approval was approved a year ago and since that date Mr. Abulaban has been enjoying the benefits without complying with the conditions. This is unfair to other applicants who go to the time and expense to comply with assigned conditions.

**DECISION:**

Mr. Williams approved revocation proceedings for PL090148 and revoked ZUP09063.

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The next Hearing Officer public hearing will be held on **Tuesday, June 1, 2010.**

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