

Minutes
HEARING OFFICER
NOVEMBER 3, 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:

Vanessa MacDonald, Hearing Officer
Steve Abrahamson, Planning & Zoning Coordinator
Sherri Lesser, Senior Planner
Kevin O'Melia, Senior Planner
Nick Graves, Planning Intern

Number of Interested Citizens Present: 11

Meeting convened at 1:30 PM and was called to order by Ms. MacDonald. She 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 17, 2010 at 3:00 PM to the Community Development Department.

1. Ms. MacDonald noted that the Hearing Officer Minutes for September 21, 2010 had been reviewed and approved.

2. Ms. MacDonald noted that the following cases have been removed from today's agenda:

- Request by **DOS GRINGOS – A. T. & T. WIRELESS P456 (PL100321)** (Joe Engbrocks/Bechtel Communications, applicant; Dos Gringos, property owner) located at 8000 South Priest Drive in the GID, General Industrial District for:

ZUP10122 Use permit to allow a new 65' wireless telecommunication facility (permanent monopalm).
(This will replace the existing temporary 65 ft cell tower at this location).

CONTINUED TO NOVEMBER 16, 2010 HEARING OFFICER

- Request by the **PAPPANO RESIDENCE (PL100322)** (Michael Pappano, applicant/property owner) located at 207 West Alameda Drive in the R1-6, Single Family Residential District for:

VAR10010 Variance to reduce the front yard setback from 15 ft to 6 ft for an open structure (carport).
CONTINUED TO NOVEMBER 16, 2010 HEARING OFFICER

- Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **RANGEL RESIDENCE (PL100316/ABT10030/CE101987)** (Brandy Zedlar, Inspector; Gilbert Rangel, property owner) located at 2612 West Carter Drive in the R1-6, Single Family Residential District.

WITHDRAWN BY CITY OF TEMPE – CODE COMPLIANCE SECTION

3. Review of compliance with Condition of Approval No. 18, assigned by the Hearing Officer at the 5/4/10 HO, which reads ' The applicant is to return to the Hearing Officer on November 3, 2010 for review of compliance with these conditions' for the following:

Request by **RIO SALADO CENTER - TEEN DANCE CLUB (PL100060)** (Thomas George, applicant; Rio Salado Center LLC, property owner) located at 1290 North Scottsdale Road, Suite Nos. 120 – 122 in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP10020 Use permit to allow a teen dance hall with live indoor entertainment (live bands, DJ).

Mr. Thomas George was present to represent this case.

Nick Graves, staff planner, gave an overview of this case and stated that no further public input has been received since the staff report was issued. Two (2) phone calls of inquiry and one (1) phone call of concern were received prior to the report, Mr. Graves noted. Mr. Graves stated that staff would like to add one additional Condition of Approval, COA No. 19, to state that all conditions shall be completed prior to the use permit becoming effective.

In response to a question from Ms. MacDonald, Mr. Graves confirmed that this business had not yet opened for business.

Mr. George explained that he would be picking up his building permit today as the red line drawings had been approved. The landlord has begun on the required landscaping improvements. The lighting requirements had been included in the red lined drawings. There will be no exterior sound other than what might occur when the door(s) opens and closes. The security plan will be reviewed on site prior to opening the business. Mr. George noted that the plaza had recently been remodeled and the lighting upgraded. His security personnel will be escorting individuals as they leave and they will be encouraged to exit the premises and not loiter. Clientele would be from the ages of 16 to 20.

Mr. George confirmed that he understood the added Condition of Approval No. 19 and had no problem(s) with any of the assigned Conditions of Approval.

Mr. Lane Caraway, of the North Tempe Neighborhood Association, spoke in opposition stating that they did not want this business. He noted that issues with drugs, alcohol and prostitution were present at the Santa Fe Court Apartments. Ms. MacDonald responded that they were not here to discuss the Santa Fe Apartment Complex which had been addressed in the early hearing for this use permit. Mr. Caraway stated that the Complex was only 100 ft away from this venue's location and that he felt it would be conducive to a younger generation being led astray. Nearby liquor stores added to the location problems. He did not feel that the security personnel employed by Mr. George would be able to accommodate the number of people leaving the Dance Club at one time. NTNA will protest this venue until it closes, Mr. Caraway stated.

Mr. George responded to Mr. Caraway's comments stated that the issues had been addressed previously. His concern is his business and not the apartment complex. There will be no drinking at the teen club. He is not there to monitor someone else's children patronizing liquor stores or participating in activities at the apartment complex. He has done his research and complied with all of the City's stipulations.

Ms. MacDonald stated that although Mr. George does not have a track record as yet on which to base a decision, he has made every effort to comply with the City regulations. Condition of Approval No. 18 has been modified to require Mr. George to return to the Hearing Officer for a review in 6 months (May 3, 2011). There is no reason to believe that Mr. George would not be a good neighbor at this location and she would uphold the previous Hearing Officer's decision based on the modified conditions.

DECISION:

Ms. MacDonald re-approved PL100060 / ZUP10020 subject to the following modified conditions:

1. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
2. The use permit is valid for Teen Dance Club and may be transferable to successors in interest through an administrative review with the Community Development Manager, or designee.
3. Any intensification or expansion of this use shall require the applicant to return to the appropriate decision-making body for a new use permit.
4. Music/sound/noise generated from the 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.
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.
7. All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the use permit becoming effective. Applicant must obtain a Teen Dance Hall license per City Code, Chapter 16A-140, prior to this use permit becoming effective.
8. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review.
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 a Security Plan for the business. Please contact **William Gallauer at 480-350-8749**. This security plan shall specifically address issue of parking lot monitoring and staffing, lighting improvements that might be necessary, identification training for employees, review of the parking lot escort plan and screening control at the door of the participants.

MODIFIED BY STAFF

11. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350- ~~8331~~ **8372**.

MODIFIED BY STAFF

12. Replace all missing trees along the north landscape area and in the north landscape islands; along with any other missing landscape material.
13. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review.
14. Provide ten inch (10") vinyl suite/address numbers on proper suites.
15. Replace bicycle parking racks per City of Tempe Public Works Department bicycle rack detail T-578 standard.
16. Hours of operation to end no later than 11:30 p.m. on a daily basis.
17. Applicant is responsible for trash pickup in the parking lot adjacent to the club.
18. The applicant is to return to the Hearing Officer on ~~November 3, 2010~~ **May 3, 2011** for review of compliance with these conditions. **MODIFIED BY STAFF**

19. All conditions shall be completed prior to the use permit becoming effective. ADDED BY STAFF

4. Request by **CROWN CASTLE PUBLIC STORAGE – A. T & T. WIRELESS W252-BB (PL100195)** (Grettel Keane/Westtower Communications, applicant; Lori Kind, Leasing Agent/Crown Castle Public Storage, property owner) located at 1737 East McKellips Road in the GID, General Industrial and RSOD, Rio Salado Overlay Districts for:

ZUP10084 Use permit to increase the height of an existing monopole from 58 ft to 75 ft to allow the co-location of wireless antennae.

ZUP10085 Use permit standard to allow a 25 percent reverse front yard setback reduction along Larkspur from 25.0 ft to 18.75 ft for placement of an 8 ft tall equipment screen wall.

Ms. Grettel Keane of Westtower Communications was present to represent this case.

Kevin O'Melia, staff planner, gave an overview of this case and stated that no further public input has been received since the staff report was issued.

Ms. MacDonald noted that this request meets the criteria for use permit and use permit standards.

DECISION:

Ms. MacDonald approved PL100195 / ZUP10084/ ZUP10085 subject to the following conditions:

1. Obtain all necessary clearances and permits from the Building Safety Division. Protect all existing civil features in place. No drainage clearance is required if project is developed as shown.
2. The use permit for intensification and co-location of an existing monopole is granted based on the presentation made with this request. The features of this request include a maximum 17'-4" monopole height increase and the addition of one antennae array above the two existing antennae decks. Match proposed monopole material and finish to that of the existing monopole.
3. Any intensification or expansion of use beyond that presented, including additional height and/or antennae, will require a new use permit.
4. The use permit standard for reduction of reverse front yard setback in order to insert a mechanical yard between the existing south building elevation and the reverse front yard setback line is granted based on the presentation made with this request.
 - a. The building features of this request include the concealment of coaxial cables within the storage facility compound. A surface-applied, tamper-proof chase for the co-axial cable is not proposed that is visible from the exterior of the compound. Remove the outdated note on the site plan that indicates a co-axial cable on the south elevation of the exterior to the compound. Do not locate the co-axial cable bridge near the southwest corner of the compound or the entry ports for the cables into the storage building at a height that is above the height of the storage compound wall.
 - b. The landscape features of this request include removal of an existing dead tree and stump on the frontage facing Larkspur and replacement with a thornless mesquite (*Prosopis* x 'Phoenix') of 24" box size at installation, refurbishment of automatic irrigation system on site, replacement of bare earth in frontage with a 2" application of decomposed granite (Madison Gold, ½" minus size), and the addition of a continuous swallow swale adjacent to Larkspur to prevent decomposed granite runoff into the street.
5. As part of landscape installation on Larkspur, ensure that trees are provided along this frontage in quantity to meet or exceed one tree per 30 lineal feet of frontage. Existing trees may be utilized in this quantity. Additional trees shall be thornless mesquite (*Prosopis* x 'Phoenix') of 24" box size at installation. Extend existing automatic irrigation system to additional trees.

6. The mechanical yard enclosure wall shall be minimum 8'-0" in height and as much higher as needed to equal or exceed in height the full height of the equipment enclosed including equipment applied to the exterior wall of the lease space. Provide access to the mechanical enclosure yard consisting of a tight metal mesh gate and steel frame or a hollow metal door and frame. Provide gate and (optionally) a masonry lintel over the gate that together match the height of the enclosure wall. The access gate and frame shall be painted to match the existing building wall.
7. The enclosure door as well as the equipment room door entrance to combined space 15 and 16 within the storage facility shall be illuminated by means of a sun-sensitive photo cell from dusk to dawn with minimum 5.0 foot candles of light. Do not expose conduit for the light on the exterior of the compound.
8. The wireless device shall be removed within 30 days of discontinuance of use.

5. Request by the **DARNELL RESIDENCE (PL100299)** (Lyle Leslie/Leslie Custom Homes, applicant; David Darnell, property owner) located at 1850 East Carver Road in the R1-7, Single Family Residential District for:

ZUP10120 Use permit to allow an increase in the maximum allowable wall height within the front yard setback from 4 ft. to 6 ft.

Mr. Gary Snyder was present to represent this case.

Nick Graves, 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. Graves referred to the elevation drawings and that the majority of the wall will not exceed 4 ft. He stated that staff would like to add a condition stipulating that the height of the wall shall be no greater than 5 feet 6 inches.

Mr. Snyder noted that he was the General Manager of the project, and that the wall would be between 4 to 5 ½ feet.

Ms. MacDonald noted that Condition of Approval No. 2 stipulates that the wall needs to meet the depictions on the plans as submitted with this application. Condition of Approval No. 4 limits the wall height to 5 ½ feet. Mr. Snyder stated that he had no problem with this requirement.

DECISION:

Ms. MacDonald approved PL100299 / ZUP10120 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. Approval is valid for plans as submitted within this application.
3. Obtain all necessary clearances from the Public Works Department for on-site retention and paving. Design patio to conform to Tempe Engineering Standards.
4. **The height of the wall shall be no greater than 5 feet 6 inches. ADDED BY STAFF**

6. Request by **BROADWAY SQUARE - ROLL YOUR OWN TOBACCO (PL100313)** (Mike Gallagher/ODM Marketing LLC, applicant; Red Mountain Asset Fund I LLC, property owner) located at 1845 East Broadway Road, Suite No. 102 in the CSS, Commercial Shopping & Services District for:

ZUP10118 Use permit to allow a retail smoke shop offering tobacco and tobacco paraphernalia products.

Mr. Mike Gallagher was present to represent this case.

Sherri Lesser, 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. Gallagher stated that he had read the Conditions of Approval and had no problem with them.

The requirement of adequate ventilation, reference Condition of Approval No. 4, was discussed.

Ms. MacDonald noted that this use was compatible with other neighborhood businesses and meets the use permit criteria.

DECISION:

Ms. MacDonald approved PL100313 / ZUP10118 subject to the following conditions:

1. The use permit is valid for ~~Smoke World~~ **Roll Your Own Tobacco** and may be transferable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation. **CORRECTED BY STAFF**
2. The use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.
3. 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.
4. 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.
5. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
6. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8331.
7. The applicant shall submit a security plan to the City of Tempe Crime Prevention Unit. Contact Crime Prevention at 480-858-6330 within 30 days of this approval (December 3, 2010).

-
7. Request by **HOUSE OF GLASS PIPES & GIFTS LLC (PL100326)** (Joshua Gault/House of Glass Pipes & Gifts LLC, applicant; 1630 Apache LLC, property owner) located at 1630 East Apache Boulevard, Suite No. 101 in the CSS, Commercial Shopping & Services District for:

ZUP10123 Use permit to allow a retail smoke shop offering tobacco and tobacco paraphernalia products.

Mr. Joshua Gault was present to represent this case.

Nick Graves, 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. Chuck Buss, of University Heights Neighborhood Association, spoke in opposition, stating that this was a negative use for this area. The lighting in the parking lot has been a problem for years, he stated. The bus stop which is about a 100 ft away encourages transits in the area.

Mr. Ernest Kurschat, leasing agent & Tempe resident, left comments in support to be read into the record, stating that he had been a Tempe resident for 14 years and that this business will bring vitality to the area.

Mr. Gault returned to explain that the lighting problem was being addressed by the landlord and improvements made. The store will offer high end products for sale. They have worked to make this a presentable, safe environment for the community.

Mr. Buss returned to ask about hours of operation and if a security plan had been provided. Ms. MacDonald read from the staff report which stated the intended hours of operation will be Monday to Thursday from 10:00 a.m. to 9:00 p.m., Friday and Saturday from 10:00 a.m. to 2:00 a.m., and closed on Sundays. Mr. Buss questioned the late hours on the weekend (i.e. Friday and Saturday).

Mr. Gault explained that Long Wongs bar and restaurant kept late hours and their customers would be able to patronize his store during that time period. This is a service which he wanted to provide to those individuals.

Mr. Abrahamson noted for the record that the nearby Harem Nights, which had extended hours, has closed their business.

Ms. MacDonald noted that this business would not add to the existing foot traffic already in existence to the adjacent businesses, nor that it would contribute to the deterioration of the neighborhood, and that it was compatible to the existing structures.

DECISION:

Ms. MacDonald approved PL100326 / ZUP10123 subject to the following conditions:

1. The use permit is valid for House of Glass Pipes and Gifts LLC and may be transferable to successors in interest through an administrative review with the Community Development Manager, or designee.
2. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.
3. 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.
4. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective. Should smoking be permitted on the premises, the owner/management is responsible to adhere to the 2003 International Mechanical Code.
5. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
6. The gross sale of beverage and snack items may not exceed that of tobacco and hookah products.
7. All doors shall have illumination to meet five (5) foot candles at the door and two (2) foot candles within a 15' radius. Details to be approved through Building Safety Plan Review.
8. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8372.
9. The applicant shall contact City of Tempe Crime Prevention Unit for a Security Plan. Contact Crime Prevention at (480) 350-8311 within 30 days of this approval (December 3, 2010).

8. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **BANK OF AMERICA PROPERTY (PL100273/ABT10028/CE102618)** (Brandy Zedlar, Inspector; Bank of America, property owner) located at 2401 West Vineyard Road in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Brandy Zedlar, Code Compliance Inspector, explained that plants and weeds in excess of 12" in height exist in the front, side and back yard areas and dead landscape bushes in front of the residence exist.

DECISION:

Ms. MacDonald approved abatement proceedings for PL100273 /ABT10028 /CE102618 for an open period of 180 days.

9. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **LAUX PROPERTY (PL100282/ABT10026/CE101267)** (Jack Scofield, Inspector; Margaret Laux, property owner) located at 1965 East Lodge Drive in the R1-6, Single Family Residential District.)

No one was present to represent the property owner.

Jack Scofield, Code Compliance Inspector, explained that trash, litter and landscape debris, including dead plants and grass/weeds in the gravel area of front and side yards exist.

DECISION:

Ms. MacDonald approved abatement proceedings for PL100282 /ABT10026 /CE101267 for an open period of 180 days.

10. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **J. P. MORGAN CHASE BANK PROPERTY (PL100283/ABT10029/CE102235)** (Brandy Zedlar, Inspector; J. P. Morgan Chase Bank, property owner) located at 6103 South College Avenue in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Brandy Zedlar, Code Compliance Inspector, explained that over height weeds and grass are present in the front and street side yards, along with debris and grass growing in the side yard.

DECISION:

Ms. MacDonald approved abatement proceedings for PL100283 /ABT10029 /CE102235 for an open period of 180 days.

11. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **GUTIERREZ RESIDENCE (PL100303/ABT10027/CE102786)** (Jack Scofield, Inspector; Luciano & Lisa Gutierrez, property owner) located at 4419 South Alder Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Jack Scofield, Code Compliance Inspector, explained that a dead tree and stump in the front yard needed to be removed or cut to ground level.

DECISION:

Ms. MacDonald approved abatement proceedings for PL100303 /ABT10027 /CE102786.

The next Hearing Officer public hearing will be held on **Tuesday, November 16, 2010.**

There being no further business the public hearing adjourned at 2:40 PM.

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



Steve Abrahamson, Planning & Zoning Coordinator
for Vanessa MacDonald, Hearing Officer

SA:dm

APPROVED