

**Minutes
HEARING OFFICER
DECEMBER 21, 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
Ryan Levesque, Senior Planner
Nick Graves, Planner

Number of Interested Citizens Present: 5

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 January 4, 2011 at 3:00 PM to the Community Development Department.

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1. Ms. MacDonald noted that the Hearing Officer Minutes for December 7, 2010 had been reviewed and approved.

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2. Ms. MacDonald noted that the following case(s) had been removed from today's agenda:

- Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **GARCIA PROPERTY (PL100386/ABT10038/CE103600)** (Jack Scofield, Inspector; Garcia Rosalba, property owner) located at 1112 East Fremont Drive in the R1-6, Single Family Residential District.

WITHDRAWN BY CODE COMPLIANCE SECTION

Ms. MacDonald stated that Item Nos. 6 and 7 of these Minutes would be heard first to accommodate Mr. Jack Scofield, the Code Inspector' schedule.

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3. Request by the **BOYETT RESIDENCE (PL100332)** (Katrina Boyett, applicant/property owner) located at 8526 South Newberry Lane in the AG, Agricultural District for:

ZUP10148 Use permit standard to reduce the required side yard setback by twenty percent (20%) from 20 ft. to 16 ft. to allow an additional 35 ft. extension to the previous garage addition approval.

Ms. Katrina Boyett was present to represent this case.

Ryan Levesque, staff planner, gave an overview of this case and stated that no further public input has been received since the staff report was issued. He explained that the applicant was constructing a slightly larger garage addition than previously submitted.

Ms. Boyett acknowledged the assigned Conditions of Approval, and stated that she understood them.

Ms. MacDonald noted that this request meets the criteria for a use permit standard.

DECISION:

Ms. MacDonald approved PL100332 / ZUP10148 subject to the following conditions:

1. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit standard becoming effective.
2. The use permit standard is granted based on the plans as submitted for this request. The 16' – 0 " side setback is applicable only to the proposed garage addition and shall not encroach within the required front yard building setback.
3. The roof design shall be maintained, utilizing the existing 'hip roof' detail for the addition.

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4. Request by **MCCLINTOCK FOUNTAINS SOUTH TEMPE FARMERS MARKET (PL100387)** (Merissa Vazquez-Ramos/Market Consultants LLC; West Valley Properties, property owner) located at 1840 East Warner Road in the PCC-1, Planned Commercial Center Neighborhood District for:
(BUSINESS TITLE MODIFIED BY APPLICANT)

ZUP10149 Use permit to allow outdoor retailing (farmers market).

Ms. Merissa Vazquez-Ramos 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. He noted that a shared parking analysis had been reviewed, and adequate parking was available for this farmers market.

Ms. MacDonald stated that this request meets the criteria for a use permit and parking is not an issue at this location.

DECISION:

Ms. MacDonald approved PL100387 / ZUP10149 subject to the following conditions:

1. The outdoor display and vending shall not conflict with pedestrian or vehicular traffic.
2. The use permit is valid for the plans as submitted to and approved by the Hearing Officer, any expansion of the outdoor display and vending area would require a new use permit.
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. A clear path for pedestrians must be maintained. All maneuvering areas shall meet the provisions of the Americans with Disabilities Act.
5. No sound amplification shall be used for sales demonstrations.

6. No outdoor display and/or vending shall be permitted within landscape areas.
7. The location of outdoor display areas shall not impede vehicular traffic, parking or sight visibility triangles.
8. The use permit is valid for weekends only.
9. All displays shall be located on private property and may not encroach into the City Right-of-Way.
10. The use permit is valid for South Tempe Farmers Market and may be transferable to successors in interest through an administrative review with the Community Development Manager, or designee.
11. Obtain the necessary clearances from the Maricopa Health Department for the handling and disposal of produce.
12. All display materials, including tables, stands or crates to be removed at close of business. The display area must be kept neat, clean and hazard free during hours of operation.
13. Any signage for the outdoor display and vending area to receive clearance from the Community Development Department sign section. Please contact Dean Miller at 480-350-8435.
14. Each vendor shall obtain a sales tax license from the City of Tempe Tax and License Division.
15. Shall not include the sale of the following commodities or provide the following services on the premises: vehicle sales which have more than three (3) vehicles on display, vehicle washing or detailing, or motor vehicle repair.

5. Request by **FLANNYS BAR AND GRILL (PL100104)** (John Flanagan, applicant; Pollack Royal Palm Plaza LLC, property owner) located at 1805 East Elliot Road, Suite Nos. 104 -105, in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP10152 Use permit to allow live indoor entertainment (live bands, small combos & comedy acts).

Mr. John Flanagan 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. He clarified that the live entertainment would occur 2 or 3 times a week not 2 or 3 times a month as initially thought. He asked that an additional Condition of Approval be assigned to address the rear doors that are to remain closed during live entertainment.

Mr. Flanagan explained that he had a family oriented business and was trying to add another level of entertainment for his clientele. He confirmed that he was in agreement with the Conditions of Approval.

Ms. MacDonald stated that this request meets the criteria for a use permit.

DECISION:

Ms. MacDonald approved PL100104 / ZUP10152 subject to the following conditions:

1. The use permit is valid for Flanny's and may be transferable to successors in interest through an administrative review with the Community Development Manager, or designee.
2. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
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. **During live entertainment, the rear doors to the business are to remain closed. ADDED BY STAFF**

6. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **FLAGSTAR BANK, FSB PROPERTY (PL100385/ABT10037/CE103783)** (Jack Scofield, Inspector; Flagstar Bank, FSB, property owner) located at 2014 East Rice Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Jack Scofield, Code Inspector explained that there was over height weeds and grass as well as dead trees in the front and rear yards. This property is currently vacant, and staff is requesting an open abatement period of 180 days to prevent repeated property neglect and neighborhood decline.

DECISION:

Ms. MacDonald approved abatement proceedings for PL100385 /ABT10037 /CE103783 for an open period of 180 days.

7. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **BURKE RESIDENCE (PL100394/ABT10039/CE104082)** (Shawn Daffara, Inspector; John, Helen & Donna Burke, property owners) located at 1134 West Second Street in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Jack Scofield, Code Inspector explained that the property has had six (6) complaints within the last five (5) years. Violations exist pertaining to deteriorated landscaping, peeling and missing paint, deteriorated fencing, an abandoned vehicle, damaged doors, unsecured storage sheds and building. The owners of the property are deceased and the oldest daughter who had power-of-attorney is also deceased. Due to public health and safety concerns, Tempe Police inspected the property and an emergency abatement was conducted in November 2010 due to homeless trespassing on the property and living in the storage sheds. Staff is requesting an open abatement period of 180 days to prevent repeated property neglect and neighborhood decline.

DECISION:

Ms. MacDonald approved abatement proceedings for PL100394 /ABT10039 /CE104082 for an open period of 180 days.

The next Hearing Officer public hearing will be held on **Tuesday, January 4, 2011.**

There being no further business the public hearing adjourned at 1:50 PM.

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

A handwritten signature in blue ink that reads "Steve A. Abrahamson". The signature is written in a cursive style with some capital letters.

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

SA:dm

APPROVED