

**Minutes
HEARING OFFICER
MARCH 15, 2011**

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
Nick Graves, Planner
Sherri Lesser, Senior Planner

Number of Interested Citizens Present: 22

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 March 29, 2011 at 3:00 PM to the Community Development Department.

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1. Ms. MacDonald noted that the Hearing Officer Minutes for March 1, 2011 had been reviewed and approved.

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2. Ms. MacDonald noted that the following cases had been withdrawn from today's agenda: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 **PAOLUCCI PROPERTY (PL110036/ABT11005/CE103972)** (Marvin White, Inspector; Roger & Emma Paolucci, property owners) located at 730 East Cavalier Drive in the R1-6, Single Family Residential District.

WITHDRAWN BY CODE COMPLIANCE SECTION

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3. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **RIVERA PROPERTY (PL110034/ABT11004/CE103698)** (Brandy Zedlar, Inspector; Enrique Rivera, property owner) located at 5433 South College Avenue in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Brandy Zedlar, Code Inspector explained that the property is being foreclosed. Over height weeds and grass in the front, side and back yard areas, a dead palm tree in the front yard, trash and debris in the back yard, and a green swimming pool exist. Staff is requesting an open abatement period of 180 days to prevent repeated property neglect and neighborhood decline.

Ms. MacDonald noted that this request meets the criteria for properties in disrepair.

DECISION:

Ms. MacDonald approved abatement proceedings for PL110034 /ABT11004 /CE103698 for an open period of 180 days.

4. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **BURGESS RESIDENCE (PL110043/ABT11006/CE104430)** (Jack Scofield, Inspector; Harry Burgess, property owner) located at 5840 South Kenwood Lane in the R1-7, Single Family Residential District.

No one was present to represent the property owner.

Jack Scofield, Code Inspector explained that the property has a large amount of trash, over height grass & weeds and landscape debris in the rear yard as well as a pool with green stagnant water. Staff is requesting an open abatement period of 180 days to prevent repeated property neglect and neighborhood decline.

Ms. MacDonald noted that this request meets the criteria for properties in disrepair.

DECISION:

Ms. MacDonald approved abatement proceedings for PL110043 /ABT11006 /CE104430 for an open period of 180 days.

5. Request by **REDDEN BOWERS PROPERTY (PL110032)** (Brian Johnson/Patton Johnson Inc., applicant; Judy Bowers, property owner) located at 1217 South Wilson Street in the R-2, Multi-Family Residential District for:

ZUP11014 Use permit to expand a non-conforming use/building up to twenty-five percent (25%). (Note: This use permit will bring into compliance a previous expansion of the structure (carport) along the north property line at the non-conforming setback of 0 ft.)

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. She explained that this is a request for a use permit to expand the dwelling to the legal non-conforming setback of 0' from the north property line. The applicant is the trustee for the estate and trying to legalize existing structures on the property for the estate. The original structure was built in the 1940's with a main dwelling and detached garage. In 1992 a carport was added to the existing structure at the same setback from the north property as the garage (0').

Mr. Stan Patton was present to represent this case.

Ms. MacDonald clarified with Mr. Patton that, despite the use of the word 'expansion' in the use permit, this use permit would not give rise to any expansion in the square footage of the non-conforming structure. Mr. Patton explained that the only modification to the structure that would take place as a result of the use permit would be

the improvement of the north wall of the storage room in order to bring it into compliance with current code requirements.

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

DECISION:

Ms. MacDonald approved PL110032 / ZUP11014 subject to the following conditions:

1. The use permit is valid for the ~~plans as submitted~~ **existing construction** and does not include any other expansions or additions at the non-conforming setback. **MODIFIED BY STAFF**
2. All structure to meet building code requirements, with valid building permits and inspections. All work to be approved and finalized by 03/15/2012 or use permit will become invalid.

6. Request by **EAUTOPROS LLC (PL110039)** (Kevin Plush/Eautopros LLC, applicant; Third Street Commerce Center LLC, property owner) located at 1930 East 3rd Street, Suite No. 15, in the GID, General Industrial District for:

ZUP11013 Use permit to allow internet car sales in the GID, General Industrial District.

Mr. Kevin Plush 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. Plush acknowledged his understanding of the assigned Conditions of Approval. Discussion regarding non-compliant lighting was held between Mr. Graves and Mr. Plush.

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

DECISION:

Ms. MacDonald approved PL110039 / ZUP11013 subject to the following conditions:

1. The use permit is valid for EAutopros LLC and may be transferable to successors in interest through an administrative review with Community Development Manager, or designee.
2. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
3. The use permit is valid for the plans reviewed and approved by the Hearing Officer.
4. The display of the vehicles shall not be located in public right-of-way or landscape areas.
5. All business signs shall require a sign permit. Please contact staff at (480) 350-8372 for all sign permitting application and questions.
6. Any intensification or expansion of this use shall require the applicant to return to the appropriate decision-making body for a new use permit.
7. Provide a full cut-off light fixture above garage bay door.
8. Rear doors shall require lighting to meet five (5) foot candles at the doors and two (2) foot candles within a 15' radius of the doors. Details to be approved through Building Safety Plan Review.
9. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review.

7. Request by **PETSMART (PL110042)** (Michael Paddison/Petsmart, applicant; Pacific Castle Property Management, property owner) located at 1180 West Elliot Road in the PCC-2, Planned Commercial Center General District for:

ZUP11012 Use permit to allow overnight boarding in conjunction with a pet store.

Mr. Michael Paddison was present to represent this case. Conditions of Approval were acknowledged as understood.

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.

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

DECISION:

Ms. MacDonald approved PL110042 / ZUP11012 subject to the following conditions:

1. The use permit is valid for ~~Job Fitness~~ **Petsmart** 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. All business signs should be Development Plan Review approved and permits obtained.
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. Obtain all necessary clearances and permits for tenant improvement from the Building Safety Division.
5. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review. Site lighting must remain on from dusk to dawn.

8. Request by **RADFORD CHILD CARE (PL110047)** (James Radford, applicant/property owner) located at 512 East Riviera Drive in the R1-6, Single Family Residential District for:

ZUP11015 Use permit to allow in home child care for up to ten (10) children.

Ms. Debbie Radford 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) letters of support were submitted with this application. He noted that staff would like to add an additional Condition of Approval No. 7 to address the requirement for a pool fence.

Ms. Radford acknowledged her understanding of the Conditions of Approval, including the new Condition of Approval No. 7 regarding the pool fence/gate.

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

DECISION:

Ms. MacDonald approved PL110047 / ZUP11015 subject to the following conditions:

1. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
2. Obtain all necessary licenses, certifications and/or clearances from the State of Arizona.
3. No more than five (5) children under the age of 2 ½ years shall be permitted on the premises for the purpose of childcare according to building code.
4. No overnight childcare shall be allowed.
5. No more than ten (10) children maximum shall be allowed for the purpose of childcare.
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. **Provide a pool fence with a locking mechanism on gate that is locked during business hours.**
ADDED BY STAFF

9. Request by **PETER PIPER PLAZA - WIGGLES AND WAGS PET RESORT (PL110049)** (Howard & Tammy Teeter, applicants; Pollack Investments, property owner) located at 1811 East Baseline Road, Suite No. 1811, in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP11016 Use permit to allow a dog day care facility with overnight boarding.

Mr. and Mrs. Howard Teeter were present to represent this case.

Sherrri 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. and Mrs. Teeter noted his understanding of the assigned Conditions of Approval.

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

DECISION:

Ms. MacDonald approved PL110049 / ZUP11016 subject to the following conditions:

1. The use permit is valid for Wiggles and Wags and may be transferable to successors in interest through an administrative review with the Community Development Manager, or designee.
2. Animal waste to be removed from the premises immediately and on a continual basis throughout the day. The dog walking area to be kept clean at all times.
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. Obtain separate approval for modified site plan from the Development Review Commission and Building Safety Division prior to use permit becoming effective.
5. Update parking record for center.

10. Request by **CORNERSTONE CENTER – VENUE 104 (PL110052)** (Michael Peck/New Brave Arts & Entertainment LLC, applicant; Cornerstone Center 99 LLC, property owner) located at 940 East University Drive, Suite No. 102, in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP11017 Use permit for a cafe/performing arts center with live entertainment (theatrical performances & concerts with amplified sound).

Ms. Kari Granville, attorney for Mr. Michael Peck; Ms. Debbie Kocour, representing the property manager; and Mr. Scott Merritt, representing the architect, were present to represent this case.

Sherry 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. Staff has not received any public input regarding this request prior to this Hearing.

Ms. Granville explained that Mr. Peck had an out-of-town emergency and was unable to attend this Hearing. She acknowledged the assigned Conditions of Approval, and indicated that Mr. Peck was familiar with the stipulations.

Mr. Mark Anderson, the manager of the Improv, expressed his concerns about a saturated entertainment market for performance arts and available parking.

Ms. MacDonald explained that landlord/tenant & competitive issues are outside of her authority and decision making in the Hearing Officer process.

Ms. Lesser was asked to address the parking issues. She stated that the parking study indicates adequate parking. She further explained that in conversations with the applicant, he had indicated that his intent is to have a cafe with live performances on a smaller scale (limited to 250 people or less) than the Improv whose occupancy allowance is 500 people.

Ms. Debbie Kocour, property manager representative spoke, and noted, for the record that his applicant would not be allowed to have comedy acts. Condition of Approval No. 5 was amended to reflect this stipulation. Ms. Granville objected to the amendment of Condition No. 5, since some theatrical acts are, in fact, comedies. The Condition of Approval remained as originally written.

Mr. Scott Merritt, architect, addressed the parking issue and stated that there were 738 parking spaces allotted to this center, and even with this proposed use, an average of 99 parking spaces existed.

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

DECISION:

Ms. MacDonald approved PL110052 / ZUP11017 subject to the following conditions:

1. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications must be submitted for review by planning.
2. The Use Permit is valid for Venue 104 and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
3. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
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. Live entertainment limited to indoor entertainment: disc jockeys, solo/duet musical performances, video projection, dance, comedy, small theatrical acts, small concerts with crowds less than 250 people or to

maximum of occupancy allowance (if less than 250 people). Large concert assembly (greater than 250) and outdoor entertainment not allowed.

6. Allowable noise decibel levels to comply with the Tempe City Code – Chapter 20. Noise complaints arising from the open windows/doors shall require closure of all outdoor windows and doors to mitigate noise trespass to adjacent public or private spaces.
7. No outdoor speakers allowed.
8. This use shall not violate the State Smoking Ordinance, www.smokefreearizona.com.
9. 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.
10. Live entertainment to cease at or before 1:55 AM.
11. The applicant shall contact the City of Tempe Crime Prevention Unit to initiate a security plan within 30 days of this approval. Contact William Gallauer at 480-350-8749 before April 15, 2011.
12. Update parking record for center.

The next Hearing Officer public hearing will be held on **Tuesday, April 5, 2011**.

There being no further business the public hearing adjourned at 2:22 PM.

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



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

SA:dm