

**Minutes  
HEARING OFFICER  
SEPTEMBER 6, 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  
Sherri Lesser, Senior Planner  
Kevin O'Melia, Senior Planner

**Number of Interested Citizens Present: 19**

**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 September 20, 2011 at 3:00 PM to the Community Development Department.**

1. Ms. MacDonald noted that the Hearing Officer Minutes for August 16, 2011 had been reviewed and approved.

2. Ms. MacDonald noted that the following item(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 **ALPHA SIGMA HOUSING CORPORATION PROPERTY (PL110266 /ABT11031 /CE111791)** (Michael Spencer, Inspector; Alpha Sigma Housing Corporation Inc., property owner) located at 717 East Alpha Drive in the GID, General Industrial District.  
**ABATEMENT REQUEST WITHDRAWN BY CODE COMPLIANCE**
- Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **RAINS PROPERTY (PL110296 /ABT11036 /CE111968)** (Jack Scofield, Inspector; Rebecca Rains, property owner) located at 2102 East Radcliffe Drive in the R1-6, Single Family Residential District.  
**ABATEMENT REQUEST WITHDRAWN BY CODE COMPLIANCE**

3. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **SPIRAL BROADCASTING COMPANY SBC LLC PROPERTY (PL110293 /ABT11032 /CE110482)** (Marvin White, Inspector; Doug McClure/Spiral Broadcasting Company SBC LLC, property owner) located at 616 West Baseline Road in the CSS, Commercial Shopping and Services District.

No one was present to represent the property owner.

Marvin White, Code Inspector, explained that the emergency abatement on this property has been completed. The abatement was for an unsecured building only at a cost of \$306.00. The other violations on this property have been completed by the owner. 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 PL110293 /ABT11032 /CE110482 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 **DONNELLY RESIDENCE (PL110289 /ABT11033 /CE103870)** (Shawn Daffara, Inspector; John Donnelly, property owner) located at 3111 South Clementine Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Shawn Daffara, Code Inspector, explained that there is junk and debris in the front and rear yards and an illegal structure/building in the back yard. Due to medical issue(s) (i.e. surgery), Mr. Donnelly was granted a two month time extension(s) until July 2011 and, although some progress was made, the property continues to be non-compliant. A Notice of Trustee sale has been posted to this property. It was noted that complaint history goes back to the year 2000.

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

**DECISION:**

Ms. MacDonald approved abatement proceedings for PL110289 /ABT11033 /CE103870.

- 
5. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **SIMPSON PROPERTY (PL110295 /ABT11034 /CE111879)** (Shawn Daffara, Inspector; Delores Simpson, property owner) located at 1714 South Parkside Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Shawn Daffara, Code Inspector, explained that the property is currently being occupied by a renter, Mr. David Whisler, who has indicated he has resided at this address for the past 12 years. There are three (3) inoperable vehicles in the driveway and carport with flat tires. The back yard has high grass and weeds, dead trees and landscape debris. 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 PL110295 /ABT11034 /CE111879 for an open period of 180 days.

-----

6. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **BAC HOME LOANS SERVICING LP PROPERTY (PL110297 /ABT11035 /CE112275)** (Jack Scofield, Inspector; BAC Home Loans Servicing LP, property owner) located at 4432 South Juniper 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 grass and weeds growing in the gravel areas of the front and side yards, trash and debris in the front and rear yards, and a deteriorated pool with green stagnant water. Staff is requesting an open abatement period of 180 days to prevent repeated property neglect and neighborhood decline. In response to a question from Ms. MacDonald, Mr. Scofield explained that the pool will be drained.

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

**DECISION:**

Ms. MacDonald approved abatement proceedings for PL110297 /ABT11035 /CE112275 for an open period of 180 days.

-----

7. Request by **AGAVE CENTER – CARL'S JR RESTAURANT (PL090412)** (Nick Wood/Snell & Wilmer LLP, applicant; Property Reserve Arizona LLC, property owner) located at 8825 South Jewel Street in the PCC-1, Planned Commercial Center Neighborhood District and SWOD, Southwest Tempe Overlay District for:

**VAR11006** Variance to allow a drive-through lane on the street side of the building deviating from Zoning & Development Code Section 3-408, drive-through orientation requirements.

**VAR11007** Variance to waive trees in the landscape islands for a portion of the parking area within the El Paso Natural Gas line easement.

Mr. Nick Wood was present to represent this case.

Kevin O'Melia, staff planner, gave an overview of this case, noting that these two (2) variances had been requested and approved previously in January 2010, but that the approvals were allowed to expire for lack of a building safety plan check submittal within the allotted deadline. These variances allow development of this lot for a restaurant with a vehicular drive-through for food pickup. The natural gas easement limits the ability of the

site development with respect to the requirements of the Zoning and Development Code and meets the requirement of a hardship factor. Staff supports both variance(s) subject to the assigned Conditions of Approval.

Mr. Wood gave an overview of the project and confirmed his understanding of the assigned Conditions of Approval.

Ms. MacDonald reviewed the criteria for variance(s) and noted that this request meets those requirements (i.e. special circumstances that apply to this property which is the gas line location).

**DECISION:**

Ms. MacDonald approved PL090412 / VAR11006/ VAR11007 subject to the following conditions:

1. Development Plan Review approval shall be obtained and construction documents for site development shall be submitted to the Community Development Building Safety Division for building permit by September 6, 2012 or the variance approvals shall be made void. Subsequently, expiration of the building plan check period or issued building permit will result in expiration of the variances.
2. Provide a continuous minimum 3'-0" high screen on the street side of the drive-through. The screen shall consist of a combination of landscape berm and masonry or concrete site wall. The landscape berm may not be less than 50 percent of the entire screen. Provide site wall of materials and finish that architecturally compliments the materials and finish of the building. Details of screen wall and landscape berm layout shall be approved during Development Plan Review process.
3. Modify the existing retention basin on the western edge of Lot 3 to coordinate with the development of Lot 3. The reconfigured basin is required to handle 100 year storm water runoff for Jewel Street (east half) extending from Warner Road south to Ranch Road. The reconfigured retention basin may be divided to include a portion of storm runoff on Lot 4, subject to agreement of adjacent property owner(s) and the C.O.T. Public Works Engineering Division.
4. The exemption of trees applies only to parking landscape islands or other landscape areas that are over the gas line easement. For each required tree that is exempted, install one additional tree (minimum 24" box installation size) on site or in one of the adjacent street frontages that otherwise would not be required by the Zoning and Development Code. Install trees so there is a continuous line of mature tree canopy along the street frontages opposite the drive-through. Details of tree selection and locations shall be approved during Development Plan Review process.
5. Install landscape islands over the gas line easement where planting in islands provides a 100 percent ground cover spread when plants are mature. Details of plant selection and layout shall be approved during Development Plan Review process.
6. Promptly repair damage to paving and landscape caused by periodic heavy maintenance to gas lines contained under the natural gas easement.
7. The site parking layout with dimensions as indicated does not meet the minimum standards of the Zoning and Development Code (ZDC) with respect to fire/refuse lane layout (item d. below) and landscape island size (item e. below). Incorporate the requirements of items a., b. and c. below and make adjustments to the site plan to correct the parking layout.
  - a. Minimum standard parking space is 8'-6" wide and 18'-0" long, but 2'-0" of parking space length may overhang adjacent paved walkway or landscape in accordance with ZDC Sec. 4-606(A.1.). At a walkway, provide minimum 4'-0" access width on paving outside of parking space overhang.
  - b. Minimum disabled van accessible parking space width is 8'-0" with an 8'-0" side aisle in accordance with COT Engineering Standard Detail T-360.
  - c. Maintain minimum 23'-0" wide two-way drive aisle width in accordance with ZDC Tab. 4-606A.

- d. On the site plan indicate outline of 20'-0" wide fire and solid waste lane through parking lot in accordance with ZDC Fig. 4-502(G). Locate fire lane entirely in drive aisle. Maintain fire lane entirely clear of landscaped island curbs and parking spaces. Do not provide turn radius that is less than the minimum allowed.
  - e. Provide landscaped islands of minimum size and area in accordance with ZDC Sec. 7-704(C.2.)
- 

8. Request by **CAMPUS CELLULAR/42 DEGREES SMOKE SHOP (PL110283)** (Geoffrey Turner/Communicom LLC, applicant; Winter Wren LLC, property owner) located at 946 South Mill Avenue in the CC, City Center District for:

**ZUP11075** Use permit to allow a tobacco retailer.

Mr. Geoffrey Turner was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case. She noted that the business will involve the sale of tobacco-related products, tobacco, cigarettes and smoking related items. The store combines two separate retail uses; a cellular phone store and a smoke shop. The store will be located across from AZ State University. This request meets the criteria for a use permit and the school separation requirement. Six (6) e-mails in opposition and one (1) phone call in opposition have been received on this request.

Mr. Turner noted that he has been operating the store for the past year without the necessary use permit as he was confused about the necessity for one as he was not selling tobacco products.

Mr. Abrahamson questioned Mr. Turner as to whether tobacco products were being sold; Mr. Turner stated that tobacco was not currently being sold. Tobacco related products such as smoking items are being sold.

Ms. MacDonald addressed the issue of bongs and water pipes, which are being sold at the location, and questioned whether tobacco would be smoked utilizing those items. Mr. Turner stated that the items were not typically used to smoke tobacco except hookah.

Ms. MacDonald questioned staff if this vendor was being given approval with this use permit to sell items to be used in smoking illegal substances. Does the Ordinance address this issue, she asked. Mr. Abrahamson referred to the Ordinance and read the related material to smoking related items. If Mr. Turner is stating that these items (i.e. bongs, glass pipes) are being used to smoke tobacco, the Ordinance allows for the sale of tobacco paraphernalia items.

Mr. Steven Tseffos spoke in opposition, stating that Mr. Turner is not vested in the neighborhood and it is business operation(s) of this nature which have caused Tempe to go from funky to seedy. This area is the gateway to the downtown and maintained appropriately. This use (i.e. selling drug paraphernalia) would promote deterioration to this area which is primarily residential. This type of use will encourage crime and does not fit the area.

Ms. Peggy Warner, owner of Vanity on Mill Hair Gallery and Spa, located at 944 South Mill Avenue, spoke in opposition to this request noting her concerns regarding security issues and vagrants. The homeless are a problem especially at night when clients come to the shop. She would like to see something that would be more supportive of the area than this request.

Mr. Rick West, State Farm Insurance agent, spoke in opposition to this request stating that he had recently relocated his business to this area as he wanted a location near downtown Tempe. He agreed with the previously statements voiced by those opposed to this request. He stated that he has children, including a son who is a freshman at ASU, and can't condone the smoke shop items being sold by this establishment. As a community we should do anything possible to divert our children from the use of illegal substances, he stated.

Mr. Jan Scott Glasser, spoke in support of this request. He stated that he is the night manager at Munchies Café and has found Mr. Turner to be a professional and trustworthy individual who sells great cell phones. There are other established smoke shops in Tempe that sell paraphernalia of this type as part of their inventory, he stated.

Ms. MacDonald and Mr. Abrahamson noted for the record that several e-mails of opposition had been received and would be part of the public record for this case.

Mr. Turner returned to the podium to address issues such as security. He noted that his business works with the Tempe Police and robberies can occur anywhere. Many of his cell phone customers buy smoke shop products and vice versa. The tattoo shop and his business have very similar type of customers. His business is not promoting drug use and has no intention of doing so. The number of people opposed to his business form a very small percentage of the population residing in this area. His store is a very small store which meets the requirements for parking and they do not allow transients to congregate around the location. Hours of operation are from 11 Am to 11 Pm. Hookah is one of the most popular activities for young people today and glass pipes are utilized for the smoking of that type of tobacco.

Mr. Abrahamson noted that in the applicant's letter of intent he had indicated that the hours of operation would be from 11 Am to 8 Pm, which is different from his statement, and that smoking in the store would not be allowed.

Mr. Turner responded that his intent is not to have a hookah lounge and that smoking would not be allowed in his establishment, however hookah supplies will be sold.

Ms. MacDonald noted that his application indicated that he would be selling herbal supplements and stimulants. Mr. Turner stated that those substances are legal.

Ms. MacDonald reviewed the criteria for a use permit for a tobacco retailer and noted that while some uses are allowed outright, others are in a different category as they may not be appropriate everywhere. They need to justify why they should be allowed in that particular location.

**DECISION:**

Ms. MacDonald denied PL110283 / ZUP11075, stating that this use of smoking paraphernalia is not compatible with the residential neighborhood and that it would contribute to the downgrading of property values. A business like this (selling drug paraphernalia, bath salts and spice) operates on the margins of legality, and can contribute to the deterioration of the neighborhood.

-----

9. Request by **OMNI CENTER - APACHE PAWN OF MESA INC. (PL110300)** (Walter Cheeseman, applicant; Mr. Kim Commons, property owner) located at 2155 East University Drive, Suite No. 107, in the CSS, Commercial Shopping and Services District for:

**ZUP11078** Use permit to allow a pawn shop.

Mr. Walter Cheeseman was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case. She noted that the hours of operation are from 9:30 Am to 6:30 Pm, Monday through Friday, and 10 AM – 6 PM on Saturdays, closed Sundays. They anticipate serving 20 to 30 customers per day and will buy, sell, trade and make secured loans on merchandise. There has been no public input. A parking surplus exists due to the storage aspect of the pawn shop.

Mr. Cheeseman acknowledged his understanding of the Conditions of Approval. It was noted that this business is about 70% storage.

Ms. MacDonald reviewed the criteria for a use permit and noted that this request meets those requirements. She noted that this was a good use for this center.

**DECISION:**

Ms. MacDonald approved PL110300 / ZUP11078 subject to the following conditions:

1. The use permit is valid for Apache Pawn and may be transferable to successors in interest through an administrative review with the 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. 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 Dean Miller at (480) 350-8435.
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. Please contact Bill Gallauer at 480-350-8749.

-----

10. Request by **MILL TOWNE CENTER – ROLLY SMOKES LLC (PL110301)** (Thomas Schmidt, applicant; Matthews Real Estate LLC, property owner) located at 209 East Baseline Road, Suite 103 in the PCC-1, Planned Commercial Center Neighborhood District for:

**ZUP11079** Use permit to allow a tobacco retailer.

Mr. Thomas Schmidt was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case. No public input has been received. The business will be open 7 days a week from 9 Am to 8 Pm.

Mr. Schmidt expressed appreciation to City staff, especially Ms. Diana Kaminski, for their help and assistance in processing this submittal. The store will offer antique items such as art work and cigarette cases, etc. as well as cartons of cigarettes, fine cigars and pipe tobacco. The store will not carry any items considered to be drug paraphernalia. Most tenants in the center are restaurants and a mix of various business owners. There will be no smoking on the premises, just retail use.

Ms. Rebecca Green, a business owner in Mill Towne Center, was also present. She spoke in support of this request. She expressed her displeasure with the Medical Marijuana that will be located in this plaza for a separate business owner.

Mr. Abrahamson spoke for the record that the Medical Marijuana dispensary at that location is related to a medical doctor.

Mr. Schmidt acknowledged his understanding of the Conditions of Approval.

Ms. MacDonald reviewed the criteria for a use permit and noted that this request meets those requirements and would enhance the location at that shopping center.

**DECISION:**

Ms. MacDonald approved PL110301 / ZUP11079 subject to the following conditions:

1. The use permit is valid for Rolly Smokes LLC and may be transferable to successors in interest through an administrative review with the Community Development Manager, or designee. Should the business be sold, the new owners must contact the Community Development staff for review of the business operation.
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. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
5. All business signs shall receive a Sign Permit. Please contact Dean Miller at (480) 350-8435.
6. The applicant shall submit a security plan to the City of Tempe Crime Prevention Unit. Please contact William Gallauer at 480-350-8749 within 30 days of this approval (October 6, 2011).

- 
11. Request by the **ROSEN PROPERTY (PL110305)** (Robert Rosen, applicant/property owner) located at 1229 West 10<sup>th</sup> Street in the R1-6, Single Family Residential District for:

**ZUP11081** Use permit to increase the maximum allowable height of a wall in the front yard setback from 4 ft. to 6 ft.

Mr. Robert Rosen was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case. She noted that this request is to increase the maximum allowable height of a wall located in the front yard setback from 4 ft. to 6 ft., which will allow for the creation of a courtyard in the front of the house along the street front. The wall will create a courtyard located in the front yard but technically serves as a side yard courtyard due to the location of the front door on the side of the dwelling. Staff supports this request.

Mr. Rosen acknowledged his understanding of the assigned Condition of Approval. He asked for clarification on the requirement for site retention. Ms. Lesser explained that he could contact Building Safety regarding the water retention requirement for this property.

Ms. MacDonald reviewed the criteria for a use permit and noted that this request meets those requirements and was compatible with the surrounding structures in the neighborhood.

**DECISION:**

Ms. MacDonald approved PL110305 / ZUP11081 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division for wall construction and Public Works Department regarding on site retention.

-----

12. Request by the **WOOD RESIDENCE (PL110307)** (Ron Wood, applicant/property owner) located at 1527 East Louis Way in the R1-10, Single Family Residential District for:

**ZUP11082** Use permit to allow an accessory building (shed/barn) 17 ft. in height.

Mr. Ron Wood was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case. She noted that this use permit is to allow a freestanding accessory building 17 ft. in height for the purpose of multi-use storage. The proposed structure is 1476 s.f. and 16 ft. 3 inches in height. One (1) telephone inquiry was received today, and she noted that resident is present at the hearing today. No other public input was received.

Mr. Wood acknowledged his understanding of the assigned Condition of Approval.

Ms. MacDonald questioned why the height of the building was needed. Mr. Wood described the building design and that it included an arch. The tallest point of height was a very small area at the highest point of the arch.

Mr. Robert Duffell explained that he lived on the west side of Mr. Wood's property. He noted that he has been working with Mr. Wood to shift the building slightly so Mr. Duffell's garden can receive the morning sun. He thanked Ms. Lesser for her help with this case.

Mr. Wood returned to the podium and acknowledged that the structure would be adjusted slightly to meet Mr. Duffell's needs while accommodating water lines and existing trees on the property.

Ms. MacDonald reviewed the criteria for a use permit and noted that this request meets those requirements and was compatible with the surrounding structures in the neighborhood.

**DECISION:**

Ms. MacDonald approved PL110307 / ZUP11082 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.

-----

The next Hearing Officer public hearing will be held on **Tuesday, October 4, 2011**.  
**The September 20, 2011 Hearing Officer public hearing has been cancelled.**

-----

There being no further business the public hearing adjourned at 3:26 PM.

-----

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



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

SA:dm

APPROVED