

**Minutes
HEARING OFFICER
JANUARY 3, 2012**

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

Number of Interested Citizens Present: 12

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 17, 2012 at 3:00 PM to the Community Development Department.

1. Ms. MacDonald noted that the Hearing Officer Minutes for December 6, 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 **BROWN RESIDENCE (PL110429 /ABT11045 /CE093564)** (Jody Benson, Inspector; Kenton Brown, property owner) located at 1208 West Malibu Drive in the R1-6, Single Family Residential District. **WITHDRAWN BY CODE COMPLIANCE**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 **GRIESBACHER PROPERTY (PL110412 /ABT11043 /CE111896)** (Brandy Zedlar, Inspector; Kathleen Griesbacher, property owner) located at 6744 South La Rosa Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Brandy Zedlar, Code Inspector, explained that there is an excessive amount of palm tree debris in the back yard, deteriorated wrought iron fencing down along the back side of the property as well as a large amount of trash in the front yard. The property is in foreclosure with an auction date of 1/6/2012. 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 PL110412 /ABT11043 /CE111896 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 **DUNBAR PROPERTY (PL110414 /ABT11042 /CE113376)** (Michael Spencer, Inspector; Carol Dunbar, property owner) located at 1729 North Palm Drive in the R1-4, Single Family Residential District.

No one was present to represent the property owner.

Michael Spencer, Code Inspector, explained that the property owner is in an adult care facility and unable to take care of the property. The owner's daughter had not taken care of the violations which include grass and weeds on the front and side yards, as well as a broken gate on the north side yard of the property.

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

DECISION:

Ms. MacDonald approved abatement proceedings for PL110414 /ABT11042 /CE113376.

5. 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 PROPERTY (PL110425 /ABT11046 /CE113407)** (Jack Scofield, Inspector; Flagstar Bank, 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 is over height grass and weeds in the front, side and rear yards as well as dead trees. 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 PL110425 /ABT11046 /CE113407 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 **KAMPER PROPERTY (PL110426 /ABT11047 /CE113682)** (Jack Scofield, Inspector; Naida Kamper, property owner) located at 1087 East Minton Drive in the R-2, Multi- Family Residential District.

Ms. Kamper was present to represent the property owner.

Jack Scofield, Code Inspector, explained that there is trash and debris as well as over height grass and weeds in the rear yard. There are also roof areas that have curled, rotted or missing roof material that need to be repaired or replaced. Staff is requesting an open abatement period of 180 days to prevent repeated property neglect and neighborhood decline.

Ms. Kamper introduced herself as a lawyer who has lived in Tempe since 1975. Ms. Kamper indicated that she is opposed to the abatement for the following reasons: the allegations are incorrect; she is being retaliated against by her HOA for being a "whistleblower"; she objects to the anonymous nature of the complaint process; she was not given a copy of the staff report prior to the hearing; and the notification process by the city is inflammatory and excessive. Additionally, she believes that she is being discriminated against, the material in her back yard is not junk, and that her property has not been abandoned. She noted that other homes in this area are also in violation of the city code due to improper maintenance by the HOA. She also indicated that she believes the City should not be able to enforce compliance with the City Code in this development since the yards are not visible from a public right of way.

In response to a question from Ms. MacDonald, Ms. Kamper indicated that she is the owner and is therefore responsible for this property.

Ms. MacDonald explained that she had done a site visit and had seen the property herself. At this time, Ms. Lesser gave additional pictures of the property to Ms. MacDonald, which were displayed on the video screens in the Council Chamber. Ms. Kamper viewed the pictures and objected to the content stating that the gate is closed and locked and access to the yard denied. She expressed concern that someone may have entered her yard illegally in order to take the photos. She indicated that some of these items were personal legal documents that she is storing.

Ms. MacDonald explained that it is not her responsibility to confirm that the code compliance process established by the ZDC is valid, but that it is applied fairly. She does not believe that this particular case is being addressed arbitrarily. There were several cases on today's agenda that were processed in the same manner. Ms. Kamper was notified that these issues in violation of the City code existed several times and was given ample time to resolve them. It was Ms. Kamper's choice to question the process rather than bring the property into compliance. Ms. MacDonald explained that even if the decision is made today to abate this property, Ms. Kamper will still have a period of two weeks to clean up the property before the abatement is enforced.

Ms. Kamper stated that she disagreed with the role of the Hearing Officer in this case.

Ms. MacDonald referred to the several notifications that had been sent on these issues to Ms. Kamper. She noted that she had not received photographs with this report, but rather relied on her own observations of the property.

Ms. Kamper asked that the record reflect that she had not received the notices in a timely manner, and that Mr. Scofield had explained that some had been returned. Ms. MacDonald explained that this is the reason that the notices are also posted at the property location.

Ms. MacDonald stated that ultimately Ms. Kamper is responsible for resolving these issues and the fact that she is present at today's hearing indicates that she has been notified in some manner of the hearing process. The bottom line is that this request meets the criteria for properties in disrepair, and that Ms. Kamper has two weeks to remedy the situation and can also appeal this decision.

Ms. Kamper again stated she felt that the violations on this private property cannot be viewed without looking over the fence into the back yard and should therefore not be a viable source of complaint.

Jeff Tamulevich, Code Compliance supervisor, was called to the podium to explain the process of investigating properties in violation. He noted that this property is in violation of the City code.

Ms. MacDonald noted that she was going to approve this abatement request, and that the property owner has been advised of her options (bring the property into compliance or appeal this decision within two weeks) and have been given plenty of notice.

DECISION:

Ms. MacDonald approved abatement proceedings for PL110426 /ABT11047 /CE113682 for an open period of 180 days.

7. Request by **RIO SALADO CENTER – P J PROPERTIES (PL110435)** (Arnaldo Matos/P J Properties, applicant/property owner) located at 1290 North Scottsdale Road, Suite Nos. 120 – 122 in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP11116 Use permit to allow a reception center with live entertainment.

Ms. Patti DeSlyvester was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case. She noted that the applicant is also the property owner of the Rio Salado Center. He is requesting a use permit to allow a reception center with live entertainment. This business will occupy the space previously occupied by Pulse Teen Night Club in the Rio Salado Shopping Center. This reception center will be used for a variety of events such as wedding receptions, quinceaneras, bar mitzvahs and business meetings/seminars. A manager will be hired to manage and lease the reception center. The property owner will be the ultimate party responsible for the conduct of the business. They will not serve food or liquor; all items will be brought in by the individuals associated with the events. The entertainment will vary per events and will include DJ's, dancing and live bands. The applicant estimates that the hall will be used primarily on the weekends. The hours of operation will be in the evenings and in all cases the venue will be open no later than 1 Am. One telephone of inquiry has been received regarding this request.

Ms. DeSlyvester acknowledged understanding of the assigned Conditions of Approval.

Ms. Darlene Justus, representing NTNA, requested that this case be continued until after the revocation hearing for the Teen Dance Club (Pulse) that is scheduled for the January 17, 2012 Hearing Officer hearing. This is a difficult time to have a case of this type heard and responded to as many people are out of town for the holidays. Otherwise this is a case of putting the cart before the horse. She referenced the history of the Pulse Teen Night Club and incidents of concern that occurred as well as a lack of security. This community is entitled to more assurance as to what type of occurrences will be related to this new request. There will be events for 15 year olds and disc jockeys. There have had parking lot problems in the past. Ms. Justus stated that this request needs to be better defined so that there is a better understanding of the number of attendees expected, as well as the security personnel that will be available for the event(s), and traffic plan(s). The fact that a liquor license will be provided by an outside entity. They need an assurance that alcohol will not be provided by private individuals. The need for a 6 month review of the request is important. When meeting with the owner's representative, Ms. DeSlyvester, she had stated that they plan on making an additional \$80,000 investment which they plan on recouping in three months. In order to do this, Ms. DeSlyvester indicated that there would be

an expected revenue of \$2500 to \$3000 per event. This indicates a possibility of a lot of events being held which would affect the neighborhood(s). Ms. Justus stated that a continuance is needed so that they can sit down with the Police Department and City representatives and get a better definition of what type of events are going to be offered as well as the affected areas of concern.

Mr. Lane Carraway, representing Cavalier Hills NTNA, asked that the case be continued until after the revocation hearing for the Teen Dance Club (Pulse) that is scheduled for the January 17, 2012 Hearing Officer hearing. He did not understand how this request can be heard legally when the Pulse Teen Night Club issue(s) had not been resolved at this same address. He stated that the neighborhood(s) have had nothing but trouble at that location in the past. It is his feeling that the Tempe Police Department could not handle the security issues related to this location in the past. Mr. Carraway had wanted this item removed from the agenda until the issues of concern related to this request were resolved to the satisfaction of the neighborhood association(s). He stated his opinion that the City does not have a definition for public versus private events.

Mr. Abrahamson, Planning and Zoning Coordinator, explained that this is a commercial area and an allowed use; staff had erred on the side of caution by having this presented at a public hearing as a use permit request. The Conditions of Approval address specific areas of concern and is for a specific length of time.

Mr. Abrahamson noted that Mr. George, representative of the Pulse Teen Night Club, is out of the country and will not be present for the scheduled January 17th revocation hearing. He has lost his lease and is in effect removed from business operations at that location.

Ms. DeSylvester returned to the podium noting that although they want to keep the neighbors happy, in the meeting the representatives stated that they would like to see a different type of business in that location. There is not a different type of business wanted to go in. This is an allowed business for the property owner and they have a vested interest. She explained that she came in on her day off to spend 3 hours meeting with the neighborhood representatives to address their concerns; however, this is an allowed use to which they are entitled. She asked for the same consideration that the neighbors are given.

Ms. MacDonald acknowledged the neighbors' concerns with this space. The applicant is operating in good faith and this is an allowed use for this property. The Conditions of Approval have been adjusted to allow only a year (12 month) period of operation. Condition of Approval No. 6 allows for a review of the use permit if there are verified complaints received.

Ms. MacDonald noted that this request meets the criteria for use permits:

- The proposed use will cause no significant increase in vehicular or pedestrian traffic in adjacent areas not uncommon with a major shopping center.
- Live entertainment use is similar to others in the area; sound from music will have to conform to the noise ordinance.
- The proposed use should not contribute to neighborhood deterioration or downgrade property values.
- The proposed use appears to be compatible with surrounding uses.
- Provisions within will be proposed within the security plan to maintain adequate control of disruptive behavior.

Ms. Lesser proposed that Condition of Approval No. 8 be modified to read as follows:

The applicant shall work with the Tempe Police Department **and Neighborhood Association(s)** to implement a Security Plan for the business **before the use permit becoming effective**. Please contact the Crime Prevention Department at 480-858-6333. **PROPOSED STAFF MODIFICATION**

Ms. DeSlyvester opposed this modification, stating that she did not feel that it should be made mandatory for the neighborhood association(s) to have the final say in the security plan as perhaps they would be able to delay or oppose the opening of the business. She wants to keep the security plan development/requirements between the applicant and the City as it is supposed to be done. The applicant should not be subjected to this stipulation.

Ms. Lesser noted that reasoning behind the proposed modifications is so that the neighborhood association(s) would have the opportunity to have items of concern included in the security plan so that the police would be able to legally enforce those actions.

Ms. MacDonald indicated her concern over the wording of the 'before the use permit becoming effective' for this condition's proposed modification. While input from the neighborhood association(s) is important, at some point the property owner and police department needs to be able finalize a security plan even though a neighborhood association(s) may not be pleased with the final outcome of the plan and be able to deter the use permit becoming effective and keep the business from opening. This is not a modification that is normally done. The record reflects that this applicant wants to work with the neighbors and operate in good faith. The modification to this Condition would therefore not be enacted.

DECISION:

Ms. MacDonald approved PL110435/ZUP11116 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. The use permit is valid and operable only for the specific use for an ~~eighteen~~ **twelve** month time period **(until 01/03/13)** and ~~will cease on 6/3/13~~ as allowed per Section 6-308 (L). **MODIFIED BY STAFF**
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. 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.
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.
8. The applicant shall work with the Tempe Police Department to implement a Security Plan for the business. Please contact the Crime Prevention Department at 480-858-6333.

9. Request by the **SHAVIN PROPERTY (PL110438)** (Alan Shavin, applicant/property owner) located at 9245 South Terrace Road in the R1-15, Single Family Residential District for:

ZUP11117 Use permit standard to reduce the east side yard setback by 20% from 15 feet to 12 feet for wider turning radius to garage entrance.

Mr. Alan Shavin was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case. She noted that the applicant is seeking a use permit standard to reduce the east side yard setback by 20% from 15 feet to 12 feet to allow for a greater turning radius area for the garage on the west side driveway entrance. This is construction of a new residence on a vacant lot. Staff supports this request.

Mr. Shavin acknowledged his understanding of the assigned Conditions of Approval.

Ms. MacDonald noted that this request meets the criteria for use permits and that this use was compatible with surrounding areas. It will not contribute to neighborhood deterioration or downgrade property values. It is consistent with the General Plan 2030's Land Use Element and will further the General Plan Land Use Element Goals and Strategies. It will not cause a significant increase in vehicular or pedestrian traffic in adjacent areas nor will it create a nuisance from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare.

The house will be built with the front door facing the north, Ms. Lesser, explained, in response to a question from Ms. MacDonald.

Ms. MacDonald noted that this request meets the criteria for a use permit standard. It applies to a very small portion of a tight site.

DECISION:

Ms. MacDonald approved PL110438/ZUP11117 subject to the following conditions:

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

10. Request by **THE BRICK YARD - ANTARS SPORTS BISTRO (PL110404)** (Greg Davis/Antars Sports Bistro LLC, applicant; ASU, property owner) located at 699 South Mill Avenue, Suite No. 201 in the CC, City Center District for:

ZUP11107 Use permit to allow a Series 6 bar with live entertainment.

Mr. Greg Davis was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case. She noted that this is a restaurant/sports bar located in the Brickyard on Mill Avenue. Although a restaurant use, they have a Class 6 bar liquor license thus requiring a use permit. They are also requesting a use permit for live entertainment which will consist of DJ's, dancing, live bands and other musicians. It will be offered 3 nights a week from 10 pm to 2 am. The landlord, ASU, has outlined in the letter of authorization their limitations regarding the live entertainment. To conform with Building and Fire Code requirements; if furniture is removed to accommodate the dance floor, it must not be stored inside the restaurant in conflict with accessibility and emergency egress. Staff has received one telephone inquiry. Staff supports this request, Ms. Lesser stated. One e-mail of opposition has been received from a nearby residence.

Mr. Davis acknowledged his understanding of the assigned Conditions of Approval.

Ms. Wendy Gabriel stated that she is a resident of Orchid House and is concerned about the operation of the nature of this business due to the liquor license and the live entertainment components. This type of venue would attract undesirable types (i.e. loud, obnoxious) of individuals in the early areas of the morning. Nearby residential areas would be subjected to the loud music coming from the bar due to the large window present in

this operation. She presented a site plan and indicated due to the outdoor seating and the occupancy limit(s) there would be a lot of people coming in and out of the building. Without a lobby area, the door would be open a lot and allow noise coming out. Orchid House is located very close and amplified noise (i.e. music) would carry. Because the location is on the second floor, the noise/music would be increased.

Ms. Gabriel referred to the criteria for use permits and stated her reasons why she felt this request would not be compliant with the intent of those reasons. This type of venue will be detrimental to the Orchid House residents, she stated. The neighborhood should be a harmonious unit and this venue would create a great deal of disharmony and dissatisfaction, she noted.

Mr. Brian Young, Orchid House resident, surmised concerns of an associate (also an Orchid House resident) who had to leave the hearing for another commitment. He stated that as long as the music is indoors and not allowed in the patio area, he is fine with this project.

Mr. Abrahamson, Planning and Zoning Coordinator, explained that there are several businesses around the Orchid House location that presently have use permits for live entertainment, all of which are transferable administratively. Ms. Lesser noted that staff does have the option to bring use permit requests to a public hearing instead of approving administratively.

Mr. Davis returned to the podium and explained the intent to provide adequate sound barrier for the music to the outside areas. Doors will remain closed; speakers have been removed from the outdoor patio area. The intent is to fully comply with the Conditions of Approval, and the stipulations imposed by ASU. They full intend to be a good neighbor to the surrounding residential area(s).

Ms. MacDonald noted that this is an allowed use in this area. Good faith efforts toward the community need to be assessed when rendering a decision, as well as the imposed Conditions of Approval under which the business must operate.

Ms. MacDonald noted that this request meets the criteria for use permits:

1. There will be no significant increase in vehicular or pedestrian traffic in adjacent areas. The business is already in existence. The music will not significantly increase the number of patrons.
2. This is a commercial use, similar to others in the area; there should be no nuisances. The landlord has done a good job in mitigating the effect of the possible noise factors.
3. The proposed development will not contribute to neighborhood deterioration or downgrade property values.
4. The proposed use appears to be compatible with surrounding structures and uses. As Mr. Abrahamson explained there are several use permits for this type of use in the nearby area.
5. The proposed use appears to have adequate control of disruptive behavior.

DECISION:

Ms. MacDonald approved PL110404/ZUP11107 subject to the following conditions:

1. The Use Permit is valid for the plans and information as submitted within this application. Any additions or modifications must be submitted for review by planning.
2. The Use Permit is valid for Antars Sports Bistro 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 for re-evaluate the appropriateness of the Use Permit.
5. Live entertainment limited to indoor entertainment: disc jockeys, dancing and live bands; concert assembly.
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. The live entertainment limited to indoor use only and shall not be extended to the outdoors via speakers or open doors to the east patio area closest to the Orchid House residences.
8. Live entertainment limited to three nights a week to cease at or before 2:00 AM.
9. The applicant shall contact Tempe Police Department – Crime Prevention at 480-858-6333 to create a security plan.
10. Any furniture removed to accommodate a dance floor area must be stored in an area that does not conflict with required emergency exiting.

The next Hearing Officer public hearing will be held on January 17, 2012.

There being no further business the public hearing adjourned at 3:36 PM.

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



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

SA:dm