

**Minutes
HEARING OFFICER
DECEMBER 4, 2007**

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:

David Williams, Hearing Officer
Steve Abrahamson, Planning and Zoning Coordinator
Sherri Lesser, Senior Planner
Jon Christopher, Planner II
Shawn Daffara, Planner II
Alan Como, Planner II
Derek Partridge, Planning Intern

Number of Interested Citizens Present: 26

Meeting convened at 1:30 PM and was called to order by Mr. Williams.

1. Mr. Williams continued the consideration of the Hearing Officer Minutes for November 20, 2007 to the December 18, 2007 Hearing Officer hearing.

2. Mr. Williams noted that the following case(s) had been continued:

- Hold a public hearing for a request by **CENTRAL PLAZA - FOOD CITY NO. 96 (PL070481)** (M. Brennan Ray/Burch & Cracchiolo, applicant; Bashas Inc., property owner) located at 1338 East Apache Boulevard in the CSS, Commercial Shopping and Services District for:

ZUP07174 Use permit to allow outdoor retailing (outdoor roasting/retail food productions).
CONTINUED TO THE DECEMBER 18, 2007 HEARING OFFICER HEARING

- Hold a public hearing for a request by the **FITZHUGH RESIDENCE (PL070485)** (Edward Fitzhugh, applicant/property owner) located at 2059 East La Vieve Lane in the AG, Agricultural District for:

ZUP07177 Use permit standard to reduce the west side yard setback by twenty percent (20%) from twenty feet (20') to sixteen feet (16').
CONTINUED TO THE DECEMBER 18, 2007 HEARING OFFICER HEARING

3. Hold a public hearing for a request by the **LEWIS PROPERTY (PL070403)** (Joseph Lewis, applicant/property owner) located at 241 East 15th Street in the R1-6, Single Family Residential District for:

VAR07024 Variance to reduce the front yard setback from twenty (20) feet to ten (10) feet ~~two (2)~~ **four (4)** inches.

VAR07025 Variance to reduce the required driveway from twenty (20) feet to ten (10) feet ~~two (2)~~ **four (4)** inches.

Joseph Lewis was present to represent this case.

Shawn Daffara indicated that no new public input had been received regarding this case.

Mr. Lewis discussed his neighbors support and clarified the hardship in this case.

The following citizens spoke regarding this case:

Bob Trick, 304 E. 15th St. – in support and feels the structure will enhance the property and neighborhood.

Bruce Cormier, 235 E. 15th St. – in support to reduce the number of cars parked on the street.

Carl Hertenstein, 301 E. 15th St. – next door neighbor, opposed due to the garage wall which will be facing and visible to his property.

DECISION:

Mr. Williams denied PL070403/VAR07024/VAR07025, stating that there was technically no hardship in this situation, and that the request would create a negative situation for the neighborhood, as it would be too much building mass so close to the street.

4. Hold a public hearing for a request by the **FRANZ RESIDENCE (PL070471)** (Kathleen Franz, applicant/property owner) located at 1128 East Concorda Drive in the R1-6, Single Family Residential District for:

VAR07028 Variance to reduce the front yard setback for an open structure (carport) from fifteen feet (15') to seven feet (7').

Kathleen Franz was present to represent this case.

Sherri Lesser indicated that she received a call in support of this request from James Hill who resides at 1108 E. Concorda Drive. Helen Boring, another neighbor, sent a letter of support.

Mrs. Franz spoke to clarify her situation and request.

Sherri Lesser indicated that there had been a complaint lodged against this property that prompted this applicant's request. Mr. Williams stated he would move this case ahead in the agenda in order to allow Ms. Lesser time to obtain more information on this complaint.

When Ms. Lesser returned, she advised that the complaint was not specifically placed against this property, but was part of a group of several complaints received by the Building Safety Division by a concerned citizen. Building Safety staff then determined that the existing carport was built without building permits.

Mr. Williams expressed concern about the material being stored in the carport. He indicated that the carport was not to be used for storage of any type. Existing materials must be removed by December 19, 2007.

DECISION:

Mr. Williams approved PL070471/VAR07028 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. The carport is to remain an open structure; a conversion to a garage is prohibited.
3. **The carport may not be used for storage of any type, and existing materials must be removed by December 19, 2007. (Added by Hearing Officer)**

5. Hold a public hearing for a request by the **EHLERS RESIDENCE (PL070479)** (John Ehlers, applicant/property owner) located at 946 East Knight Lane in the R1-7, Single Family Residential District for:

VAR07029 Variance to reduce the east side yard setback from seven feet (7') to four feet (4') for a garage addition.

John Ehlers was present to represent this case.

Alan Como indicated there have been nine letters of support received. In addition, Mr. Ehlers provided eight more letters in support. He gave clarification of his request, supporting his hardship.

The following spoke in support of this request:

Patrick Dye, 945 E. Knight Lane – Feels that Mr. Ehlers request would enhance the neighborhood.

Shirley Fang, 937 E. Knight Lane – Feels Mr. Ehlers request would enhance their neighborhood.

DECISION:

Mr. Williams approved PL070479/VAR07029 subject to the following conditions:

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

6. Hold a public hearing for a request by **VALLEY WEST SHOPPING CENTER LLC - FOOD CITY NO. 41 (PL070482)** (M. Brennan Ray/Burch & Cracchiolo, applicant; Bashas Inc., property owner) located at 1845 North Scottsdale Road in the CSS, Commercial Shopping and Services District for:

ZUP07175 Use permit to allow outdoor retailing (outdoor roasting/retail food products).

Brennan Ray was present to represent this case, presenting photos of the operation at similar sites. He indicated that this type of operation will be temporary/seasonal. Bashas is concerned about aesthetics and safety, and wants to have a quality operation that compliments the community. His photos also indicated how the Tempe location will be set up. The operation will be staffed at all times during hours of operation. The hours of operation will be: for the chilies -- Friday & Monday 2p-7p; Saturday & Sunday 10a-4p; for the chickens – Friday thru Monday 11:30a-7p. Set up and breakdown will take approximately a half hour each. No money is exchanged at the outdoor site, and there are no tables and chairs for outdoor dining.

Mr. Brennan then spoke regarding the use permit request. There will not be an increase in vehicular or pedestrian traffic. The area will be ADA accessible. The operation will not create a nuisance regarding odors, dust, noise or smoke. This use will not contribute to the deterioration of the community surrounding nor negatively impact property values. This use will be compatible with other businesses in the center.

Mr. Daffara indicated that a letter of opposition had been received by the North Tempe Neighborhood Association, along with photos of another Food City showing a similar operation. He also stated that staff would like to add another condition (see below).

Mr. Williams asked about the declaration that the operation will be temporary, and requested clarification about this. Mr. Brennan indicated it would be seasonal and as weather permits. Mr. Williams stated that, since there were no specific timeframes listed in the conditions, he would consider this a permanent use. Mr. Williams then asked about the dimension of the sidewalk in front of this site. Mr. Brennan stated that it would be approximately 6 ft. Mr. Williams asked for a clarification regarding the transport of the food, and Mr. Brennan indicated that only Food City employees will be transporting the food.

Mr. Williams then asked for any public input.

The following people spoke regarding this situation:

John Cotuano, 1827 North Scottsdale Road – has a business in this center. Has concerns regarding the number of empty stores in the center, the location of the Food City operations and the possibility of traffic congestion and fire safety issues, availability of tables and chairs to transients and other trespassers.

Darlene Justus, North Tempe Neighborhood Association (NTNA) – has concerns regarding the maintenance and care of the site of the operation, especially the fencing, barriers, etc., that remain when the site is not being used for this type of operation. Also has concerns regarding the amount of smoke from the barbecuing, and interference with a restaurant next door. She had questions regarding the lighting not being adequate when it gets dark so early at this time of the year.

Mr. Ray took the podium again to respond to these concerns. The fire hydrant is openly available and located away from the food operation. The parking issues raised should not cause a problem, since there are No Parking signs all along the area of the operation. He believes that Bashas is responsible regarding safety issues and will educate their employees accordingly. As far as vagrancy and trespassing, he stated that Bashas is willing to make accommodations on this site to alleviate this concern. Mr. Ray said that this location is not comparable to the Phoenix/McDowell St. site and that issues related to maintenance and operation will not be a problem in Tempe.

Mr. Williams asked about compliance with air quality standards related to the outdoor smoke from the barbecuing. Mr. Ray stated that Bashas is not aware of any air quality standards that have arisen in the 18 years they have been conducting these types of operations.

Mr. Williams also had questions regarding the space allowed for the outdoor seating. Mr. Ray indicated that Bashas understands that there should be as much space as possible between Bashas and the restaurant next door and modify the site plan accordingly.

Mr. Williams asked staff about development plan review. Staff indicated that this process will include input from the NTNA.

DECISION:

Mr. Williams approved PL070482/ZUP07175 subject to the following conditions:

1. The outdoor roasting/cooking equipment shall not conflict with pedestrian or vehicular traffic. If any display/cooking equipment are moved into the sidewalk, the business may be cited and/or returned to the Hearing Officer for review, and potential revocation of the use permits. The Zoning and Development Code requires a six (6') foot clear, unobstructed path.
2. The use permit is valid for the plans as submitted to and approved by the Hearing Officer, any expansion of the outdoor display would require a new use permit.
3. The applicant shall remove all items that are currently obstructing the ADA accessible walkway along the front of the building.
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 may be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.

5. Any outdoor signage associated with the display shall be reviewed by the Development Services Department – Planning Division and are limited to three (3) square feet.
6. The outdoor grilling area shall require development review plan, this to include (temporary awnings/tents and fences).
7. No sound amplification shall be used for the outdoor display.
8. **The outdoor grilling area must be maintained in a clean and orderly manner (per City Code 21-3, B1), with boxes and pallets removed immediately after unloading/loading. (Added by Staff)**
9. **Provide a revised site plan with details for pedestrian circulation and customer waiting area; provide elevations and details for the shade structure and barricades. Those elevations must be shared with the North Tempe Neighborhood Association. (Added by Hearing Officer)**
10. **Area will be monitored by a qualified staff member at all times. (Added by Hearing Officer)**
11. **Remove tables chairs and chairs outside the Food City store, if North Tempe Neighborhood Association is in agreement. (Added by Hearing Officer)**
12. **Post “No Dining” and “No Loitering” signs. (Added by Hearing Officer)**
13. **Add “No Parking” striping at the curb and on the pavement at the location of the operation. (Added by Hearing Officer)**
14. **The fire hydrant locations shall not be blocked by fencing or other items. (Added by Hearing Officer)**
15. **Include a maximum amount separation from outdoor dining to the north. (Added by Hearing Officer)**

Mariane Owen, Senior Property Manager with Bashas' Inc., came forward to speak regarding the added Condition #11. She indicated that the tables and chairs were installed at this location, at the request of the NTNA. She indicated that Bashas will work with Mr. Pollack to monitor the loitering. Mr. Williams stated that, if the NTNA agreed that the tables and chairs would remain, he would revise this added condition.

7. Hold a public hearing for a request by the **CHENEY RESIDENCE (PL070483)** (Kelly Cheney, applicant/property owner) located at 1325 West 6th Street in the R1-6, Single Family Residential District for:

ZUP07176 Use permit to allow parking in the front yard setback.

Kelly Cheney was present to represent this case.

Jon Christopher indicated staff received one letter of opposition to this request.

Mr. Williams asked for public input from the audience. No one wished to speak.

DECISION:

Mr. Williams approved PL070483/ZUP07176 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
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8. Hold a public hearing for a request by **SOLE SPORTS RUNNING ZONE (PL070490)** (Kimo Seymour, applicant; Velo Properties LLC, property owner) located at 1006 East Warner Road, Suite No. 104 in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP07178 Use permit to allow a massage therapy room.

Lance Muzslay (co-applicant) represent this case.

Mr. Williams asked staff about the parking requirements for this business. Alan Como indicated that the applicant advised staff that their business would be by appointment only, and they would be limiting the number of appointments in one day.

No public input was received regarding this case.

DECISION:

Mr. Williams approved PL070490/ZUP07178 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 transferable. Should the business be sold, the new owners must reprocess for administrative review.
3. The use permit is valid for the plans and business operation as submitted to and approved by the Hearing Officer/Board of Adjustment.
4. Any expansion or intensification of use shall require a new use permit to be approved.
5. 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 set to re-evaluate the appropriateness of the use permit.
6. All required State, County and Municipal permits shall be obtained or the use permit is void.
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. All business signs shall be approved through Development Review, and permits obtained.
9. Massage therapy shall be limited to store hours of operation, as posted on site.

9. Hold a public hearing for a request by **JUST PETS (PL070493)** (Jennifer Carter-Zuchowski, applicant; Union Knitting Factory International, property owner) located at 1526 North Scottsdale Road in the CSS, Commercial Shopping and Services District for:

ZUP07179 Use permit to allow a pet store with overnight boarding.

Jennifer Carter-Zuchowski was present to represent this case.

Staff informed Mr. Williams that several phone calls from NTNA and Ms. Justus, with concerns about this request.

The applicant spoke about the details of their request. Ms. Carter-Zuchowski indicated that she had spoken with Ms. Justus and that their concerns focused on waste disposal, trash removal, and pet odor. The applicant clarified that the trash and animal waste would be dealt with immediately, including when the dogs are walked. Their business is family owned.

Ms. Justus stated that she and the NTNA are very pleased that a family-friendly business was locating in this plaza. She is satisfied with the applicant addressing her concerns about animal waste and trash removal. She asked that there be a dispenser for bags be located in the walking area, and a trash receptacle. Mr. Williams asked about getting a new cover for the dumpster on this site. Staff indicated that if this was a city dumpster, the covers could be replaced.

DECISION:

Mr. Williams approved PL070493/ZUP07179 subject to the following conditions:

1. The property owner shall upgrade rear lighting per Zoning and Development standards with a full cutoff light fixture and shall be illuminated from dusk to dawn, with five (5) foot candles of light for fifteen (15) foot radius.
2. Obtain all necessary clearances from the Building Safety Division.
3. All dog waste to be removed from the premises immediately, and all dog walking areas to be kept clean on a continual basis.
4. The owner(s) will continue to control dogs which bark excessively and will cooperate with any additional measures necessary to alleviate disruptive behavior both inside and outside the premises.
5. 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.

6. The use permit is transferable. Should the business be sold, the new owners must reprocess for administrative review.
 7. **Provide an airtight refuse container outside and collection bags to use for animal waste. (Added by Hearing Officer)**
 8. **Covers shall be installed on the dumpster by February 4, 2008. (Added by Hearing Officer)**
 9. **Animal waste should be in sealed bags. (Added by Hearing Officer)**
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10. Hold a public hearing for a request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **BARRIGA RESIDENCE (PL070396/ABT07026)** (Miguel & Hilda Barriga, property owners) Complaint CE072943 located at 1139 East Weber Drive in the R-2, Multi-Family Residential District.

Mike Barriga was present to present the property owner.

Jan Koehn, representing the City of Tempe – Neighborhood Enhancement Office, stated the results of the inspection on December 3rd, the day before this hearing, indicates there has been no change in the property since the last hearing a month or so ago. She indicated she had some photos to share with the Hearing Officer. Therefore, she requested that this abatement be approved.

Mr. Barriga stated he was about half done, but gave some reasons why clean up has not been completed. He said that he had a pending industrial case on November 19, 2007, and he has a medical condition which does not allow him to do this work himself. His financial situation also impacts this, as he cannot afford to hire someone to complete the work. Also, their roof had leaked from the rain and he had been doing the repair on that. Mr. Barriga asked for a 30-day extension.

Mr. Williams asked Ms. Koehn about the condition of the property and she stated that this case was originally heard by the Hearing Officer in October, so this is the third request for extension. The property has a long history of problems with public nuisance. Ms. Koehn stated that a revised abatement estimate would be prepared to reflect some of the work being completed.

Mr. Williams stated that he would not approve an extension.

DECISION:

Mr. Williams approved abatement proceedings for PL070396/ABT07026.

The next Hearing Officer public hearing will be held on **Tuesday, December 18, 2007.**

There being no further business the public hearing adjourned at 4:15 PM.

Prepared by: Diane McGuire, Administrative Assistant II/Dianne Garrett, Administrative Assistant II
Reviewed by:



Steve Abrahamson, Planning & Zoning Coordinator
for David Williams, Hearing Officer

SA:dm:dg