

**Minutes
HEARING OFFICER
FEBRUARY 5, 2008**

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 & Zoning Coordinator
Shawn Daffara, Planner II
Alan Como, Planner II
Nick Graves, Planning Intern

Number of Interested Citizens Present: 20

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

1. Mr. Williams approved the Hearing Officer Minutes for January 15, 2008.

 2. Mr. Williams noted that the following case(s) had been continued:
 - Hold a public hearing for a request by the **RICHARDSON RESIDENCE (PL070545)** (James Richardson, applicant/property owner) located at 2006 South El Camino Drive in the R1-6, Single Family Residential District for:

VAR08001 Variance to increase the wall height to eight feet (8') in the front yard setback.
CONTINUED TO FEBRUARY 19, 2008 HEARING OFFICER
 - Hold a public hearing for a request by the **MINGUA RESIDENCE (PL080002)** (Sam Mingua, applicant/property owner) located at 1530 West 5th Place in the R1-6, Single Family Residential District for:

ZUP08005 Use permit to allow an accessory building.
ZUP08006 Use permit standard to reduce the rear yard setback by twenty percent (20%) from fifteen feet (15') to twelve feet (12').
CONTINUED TO FEBRUARY 19, 2008 HEARING OFFICER
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3. Hold a public hearing for a request by the **KERBER RESIDENCE (PL070497)** (Gregory Kerber, applicant/property owner) located at 401 East Hermosa Circle in the R1-6, Single Family Residential District for:

ZUP07184 Use permit to park in the front yard setback.

VAR07030 Variance to reduce the front yard setback from fifteen feet (15') to seven feet (7') for an open structure.

VAR08002 Variance to reduce the west side yard setback from five feet (5') to three feet (3') for an open structure.

Mrs. Carol Kerber was present to represent this case.

Alan Como, staff planner, stated that one (1) letter of support for this request had been received since the staff report had been issued.

Mr. Williams noted Sunset Neighborhood Association had issued a letter of opposition, however this Neighborhood Association was not located within the neighborhood where the applicant resides.

Mrs. Kerber stated that they would be appreciative of any efforts to approve these requests as currently their cars, one of which is a convertible without a top, have to be parked in the sun which is no fun. She confirmed that although there were no attendees at their neighborhood meeting, everyone they had talked to was in favor of their request, except for the one letter of opposition from the Sunset Neighborhood Association.

Mr. Williams questioned the length of time the Kerbers had resided at this home. Mrs. Kerber responded that they had lived in the home for thirty (30) years. She noted that the garage was enclosed by the previous owners had converted the garage to livable space without a permit by leaving the garage door in place and having a false space directly behind that door.

Mrs. Kerber explained, in response to a question from Mr. Williams, that although the Kerbers do not presently require wheelchair accessibility, they are planning ahead for possible future use.

Mr. Williams noted that one (1) letter of support had been received from Ms. Mary Pendleton and asked where she resided in relation to the Kerbers. Mrs. Kerber stated that Ms. Pendleton resided in the cul-de-sac right next to them; that their front door (located on the side of the house) faced Ms. Pendleton's front door.

Mr. Williams questioned staff on the criteria of compatibility with existing structures and uses, and asked if staff had observed any other structures or additions where encroachments would extend into the front yard to the extent that that the proposed request would. Did staff feel that this request was in character with the neighborhood? Mr. Como responded that Mr. Williams was correct in that compatibility was an issue. He noted that the intent of this request was to make the carport compatible with the home, and that Mrs. Kerber had informed staff that there are several carports in the nearby area only a few blocks away although not in this cul-de-sac. Mr. Como explained that staff did not have an opportunity to confirm Mrs. Kerber's observation.

Mr. Williams questioned how long the Kerbers had resided at this location. Mrs. Kerber responded that they have lived in this home for thirty (30) years.

Mr. Williams stated that he has significant issues with these variance requests, as he does not understand how they would be compatible or fit the neighborhood where all the lots are pie-shaped – the Kerbers have been living with this arrangement for thirty (30) years. He noted that all other homes in that neighborhood are intact

in terms of their original front yards/layouts – there are no other encroachments in the front yards like carports and he does not understand the need/justification for the variances – understands the need to park in the driveway with the enclosure of the garage but the City of Tempe did not create that condition. Mr. Williams stated that he approved the request for a use permit based on one (1) condition of approval, however the variances are denied.

DECISION:

Mr. Williams approved PL070497/ZUP07184 subject to the following conditions:

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

Mr. Williams denied PL070497/VAR07030/VAR08002.

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4. Hold a public hearing for a request by **INHERMISSION (PL070536)** (Virginia Blatchley, applicant/property owner) located at 522 West 1st Street, #105 in the MU-2, Mixed Use, Medium Density District:

ZUP08002 Use permit to allow a massage therapy business located in a mixed use district.

Ms. Virginia Blatchley was present to represent this case.

Shawn Daffara, staff planner, stated that no additional public input or information had been received since the staff report had been issued.

Mr. Williams questioned the applicant as to what she anticipated the parking requirement to be – will customers even be driving? Ms. Blatchley responded that there is street parking and she will only be seeing one client at a time so only one space at a time is needed, although some clients will be walking, so there should no be a problem.

Mr. Williams asked if there are any front street parking restrictions – such as parking by residential permits? Ms. Blatchley stated that there are no restrictions involved. Mr. Williams asked if they get students parking in that neighborhood. Ms. Blatchley confirmed that they do.

Mr. Michael Landry of the City of Tempe, spoke in support, and stated that he was with the Homeowners Association who had no opposition to this request.

DECISION:

Mr. Williams approved PL070536/ZUP08002 subject to the following conditions:

1. The use permit is transferable. Should the business be sold, the new owners must reprocess for administrative review.
2. The use permit is valid for the plans and business operation as submitted to and approved by the Hearing Officer/Board of Adjustment.
3. Any expansion or intensification of use shall require a new use permit to be approved.
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 required State, County and Municipal permits shall be obtained or the use permit is void.
6. 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.

7. All business signs shall be Development Review approved and permits obtained.

5. Hold a public hearing for a request by the **MCCURDY RESIDENCE (PL070553)** (Brad McCurdy, applicant/property owner) located at 1709 South La Rosa Drive in the R1-6, Single Family Residential District for:

VAR07032 Variance to reduce the rear yard setback from fifteen (15) feet to five (5) feet.

Mr. Brad McCurdy was present to represent this case.

Shawn Daffara, staff planner, stated that no additional public input or information had been received since the staff report had been issued. Mr. Daffara stated that he would like the Hearing Officer to ask the applicant about the ten (10) letters of support that he said he would be presenting this afternoon. In response to a question from Mr. Williams, Mr. Daffara confirmed that staff recommended approval of this request.

Mr. McCurdy stated that he had done some calculations on his lot including the easement on the north side of the property setback there is a twenty foot (20 ft.) setback on the front, the current rear setback is fifteen feet (15 ft.) – the lot size is just over 9,000 s.f. when including all the setbacks – more than 50% of property is encumbered by setbacks and easements. He asked that the Hearing Officer take into consideration he is only asking for approximately 2% of setbacks and easement. Mr. Williams asked if the front setback is 20 ft – how far back is the house located? Mr. McCurdy stated that the house is set back more than 20 ft. – about 22 or 23 ft.

Mr. Williams stated that he takes a positive approach to this type of variance request because it is a good utilization of the property. He noted that in the front yard easement there is a temporary shade structure for vehicle parking that is not normally what is seen in front yards. He did not know if the shade structure was permitted but it creates a visual problem, and does not seem to be architecturally compatible.

Mr. McCurdy stated, in a response to a question from Mr. Williams that the house has been in the family since it was built in the 1930's. He presented a petition style letter of support for this request with eight (8) signatures (husbands/wives/couples).

Mr. Williams asked if a neighborhood meeting had been required. Mr. McCurdy confirmed that two (2) neighborhood meetings were held with seven (7) attendees at the first meeting and two (2) attendees at the second meeting.

Mr. Williams stated that he would add a fourth condition of approval - to remove the shade structure in the front of the house on the north side yard – Mr. McCurdy indicated he was agreeable. Mr. Williams noted the variance request was excellent use of the lot. Mr. Williams stated that, based on the shape of the lot and proximity to the lot, this request was approved subject to the four (4) conditions of approval.

DECISION:

Mr. Williams approved PL070553/VAR07032 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. The addition shall match the existing residence in color, form and material.
3. The east elevation of the garage shall have address numbers installed. Address numbers to contrast with the garage color.

4. Shade structure in the front of the house to be removed. ADDED BY HEARING OFFICER

6. Hold a public hearing for a request by **ADULT TRANSITIONS INC. (PL080006)** (Trevor Hinton/Trevor Ryan Builders, applicant; Javier & Diana Perez, property owner) located at 8650 South Los Feliz Drive in the R1-7, Single Family Residential District for:

ZUP08007 Use permit to allow parking in the front yard setback.

Mr. Javier Perez, the owner of the house, was present to represent this case.

Shawn Daffara, staff planner, stated that since the staff report had been issued staff has received three (3) new letters of opposition and six (6) new letters of support and also two (2) phone calls of concern were received – these were presented to Mr. Williams for his review.

Mr. Perez addressed the letters of concern, and noted that if this request was approved the incoming and outgoing traffic caused by the three (3) shifts each day would be substantially decreased, as with the new rooms one would be a room for a caregiver, and one would be an office. The reason for the request is to reduce traffic to and from the home, although he believes that traffic has not been a concern of the neighbors to date. He presented a map of the neighborhood indicating where other homes had parking in the front yard setback (driveway). In response to a question from Mr. Williams, Mr. Perez explained that some homes indicated on the map use the parking for boats and other vehicles. He stated that he often sees teenagers with three or four friends parked in front of the houses.

Mr. Williams noted that he had visited the neighborhood today, and that Mr. Perez is doing an excellent job of maintaining the property - that it looked good as it should look. Under the current conditions Mr. Perez is operating very well.

Mr. Williams asked that Mr. Perez supply extra copies of the location map to interested parties in the audience.

Mr. Trevor Hinton stated that he was the general contractor for this project. He noted that when the whole process was started they were trying to accommodate the City of Tempe regulations. The letters of opposition indicate a concern with traffic. He stated that the parking is ample, that the only reason that the use permit was requested was that the applicant was trying to utilize the interior of building on a property that has been acceptable to this point, and the City of Tempe requires a use permit to do the project. Mr. Williams explained that this is considered an intensification of use for the property is why the use permit is required.

Mr. Greg Dix, Mr. Tom Keller and Mr. Joseph Bedard, all of Tempe, stated their concerns with this request which included:

- While it is understood that the City of Tempe has no control over the scope of this type of business as it falls under State jurisdiction as it requires a State license there is concern that the applicant may use the additional area for an office, or they may change their minds and house more people and there is nothing the City of Tempe can do – neighbors do see a fair amount of traffic coming and going from this location.
- While they are not challenging the Mr. Perez's right to care for or provide care for the residents, they as neighbors and landlords do have the right to protect the quality of life for neighborhood residents as well as the value of their properties which may be affected should this request be granted. There is a lot of use that

may be questionable, the concern is mainly the quality of the neighborhood the bottom line is why people should be made to park in the street. When cars are parked side-by-side in front of a house, it doesn't look like a house anymore, it looks like a business, and this is caused by parking in the front yard setback. This does not maintain the flavor of the neighborhood.

Mr. Gary Graham of Tempe stated that he is an officer with the Neighborhood Association for this area. He is present due to neighbors concern and opposition with this project. While they have been reluctant to be critical in the past, they want to voice their concerns. It was noted that the staff tend to park on the gravel next to the driveway. A of folks do park two or three cars in the driveway and excess vehicles spill over to parking in the street – they do not have use permits, they just do that and it can be a problem in that neighborhood.

Ms. Monica Perez, house manager, stated that the residents of this home are treated with the utmost care – her concern in caring for these folks is that this house is home to these folks – residents in this home are well cared for. Mr. Williams stated that this request has nothing to do with the people in the home – she stated that she disagrees because of traffic concerns of neighbors – residents have a right to have family members visit. She think they have done an exceptional job. As soon as City of Tempe notified them that they could not utilize the garage area for the use requested without a concrete slab, they immediately followed the proper procedures to do that. She stated that this request relates to the care of the residents.

Mr. Perez explained that they are licensed for ten (10) residents – some may be terminal while others may be longer term residents. He does not want to do anything with his home that is not within the City of Tempe codes and regulations. He is interested in keeping up the value of his property as much as anyone else.

Mr. Williams noted that care homes are very important, however he stated that removing parking from the garage places a burden on the neighborhood, and that the intensification was out of character with the neighborhood. This neighborhood was designed with parking in the garage. He does not agree that removing the parking from the garage keeps the home consistent with the neighborhood. The homes in this neighborhood have their original design intact that includes garage parking.

Mr. Williams addressed the letters of support received for this case and noted that these individuals did not reside in this neighborhood.

Mr. Williams stated his observations is that the home is well run and well maintained, and the City of Tempe does support them as a company. However the request is out of character with the neighborhood and cannot be supported and he denied the request.

DECISION:

Mr. Williams denied PL080006/ZUP08007.

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7. Hold a public hearing for a request by **LAKES TOWNE CENTER – LOWES (PL070361)** (Parizaad Holliday/Lowes, applicant; Rural Baseline LLC/Kitchell Development Company, property owner) located at 777 East Baseline road in the PCC-2, Planned Commercial Center General District for:

ZUP08008 Use permit to allow outdoor display.

ZUP08009 Use permit to allow renting of vehicles.

Mr. Charles Huellmantel was present to represent this case.

Steve Abrahamson, Planning and Zoning Coordinator, stated that no additional public input or information had been received since the staff report had been issued.

Mr. Huellmantel noted that Condition of Approval No. 2 limits the outdoor display area to 1,920 s.f. and he requested that the Hearing Officer consider a modification to increase this area to 2,220 s.f. since they do have additional parking space and the parking is ample to support this increase.

Mr. Williams asked if there was a layout that shows the additional parking space? Site plan was presented and parking indicated. Mr. Huellmantel gave the particulars of the parking and display area as well as street locations.

Mr. Huellmantel addressed the issue of rental vehicles and explained that the business would be using three (3) rental trucks (i.e. standard pickups) that unless you were directly associated with the business you would not know they were rentals.

Mr. Williams questioned the area(s) to be used for display/retailing. Steve Abrahamson stated that the north elevation of the building would be utilized for this use. He asked Mr. Huellmantel if there was an additional display area planned. Mr. Huellmantel stated that the far eastern edge would display some storage sheds.

Mr. Huellmantel stated that the outdoor display area/retailing in front of the store will be utilized for such things as holiday decorations, lawnmowers, Bar-ques, plants, etc. While they are mindful that they usually use 1,920 s.f. they want to make sure that they are in complete compliance with the City of Tempe regulations. After speaking with the operational folks, it was determined that the setup of Bar-ques sometimes take up more room due to the nature of the display setup and that is why they have asked for the modification to include additional square footage.

Mr. Williams asked what was the height of the display(s) in the parking lot. Mr. Huellmantel stated that they would include standard utility trailers and storage sheds – (storage sheds have a 10 ft maximum height while some are smaller depending on type – barn type storage shed).

Mr. Williams stated that he would like to impose a display height and asked if twelve (12) feet was adequate. Mr. Huellmantel reviewed his drawings and documentation, noting possible concern with hanging plants in the garden center. After review, Mr. Huellmantel stated that he felt twelve (12) feet would be fine.

Mr. Williams noted to staff that he is accustomed to seeing a detailed layout of the proposed display area, but one was not included in the staff report documentation. This site plan should indicate the location of materials in relation to doorways, public pay phones, fire access, etc. He is inclined to continue the case however the only other option is to have a detailed site plan submitted and subject to staff review. He questioned staff if they would have any problem (questions/concerns) with staff reviewing detailed site plan if the use permit(s) were approved? Steve Abrahamson said that this would not be a problem for staff, but did request that Mr. Williams add a height limitation to the conditions of approval, and also asked that the applicant indicate any deviations from the original submittal.

Mr. Williams noted that oftentimes these type of stores attract people who want to hang out, eat hot dogs or whatever and it is important that there is room available for building exits. He asked that staff take this into consideration when reviewing the detailed site plan to be submitted by the applicant.

Mr. Williams noted that the square footage of the display area would be increased to 2,220 s.f. as requested. Two additional conditions of approval will limit the maximum height of the outdoor displays to twelve (12) feet and provide a five (5) foot ADA clearance around the structural and architectural elements in front of the store.

Mr. Huellmantel asked if this five (5) foot clearance would be in addition to the building code regulations.

Mr. Williams responded that his observations of store displays of this nature is that they extend all the way to the pillars and architectural elements and people can not move around them. The displays actually block the area, except for maybe a foot and while some people can move thru that small of a space, a person in a wheelchair cannot. There should be an accessible route from one end of the building to another.

Mr. Huellmantel stated that the applicant wants their customers to be happy and safe.

Mr. Williams noted that if Mr. Huellmantel has any concerns with the results of staff review of his updated site plan, he has the option to return to the Hearing Officer for review.

DECISION:

Mr. Williams approved PL070361/ZUP08008/ZUP08009 subject to the following conditions:

1. The use permit(s) are valid for the plans as submitted to and approved by the Development Review Commission.
2. The outdoor display area is limited to ~~1,920~~ **2,220** square feet directly in front of Lowe's building, and within specified areas of the parking lot, not directly visible from the public right-of-way. **MODIFIED BY HEARING OFFICER**
3. The rental vehicle use permit would be for three (3) rental vehicles.
4. Any intensification or expansion of either use, including expansion or relocation of the outdoor display area or increased number of rental cars, will require a new use permit.
5. **The maximum allowable height of outdoor display items shall be twelve (12) feet. ADDED BY HEARING OFFICER**
6. **ADA clearances shall be provided with a minimum of five (5) foot clearance in front of the building and entrances, including the all pillars and architectural features. ADDED BY HEARING OFFICER**

8. 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 **CANZANO RESIDENCE (PL070073/ABT08001)** (Robert Canzano, property owner) Complaint CE075391 located at 1133 East Concorda Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Ms. Brandy Zedlar, representing the City of Tempe – Neighborhood Enhancement Department stated there had been no changes in the property – has had one conversation with Mr. Canzano but no communication since.

DECISION:

Mr. Williams approved abatement proceedings for PL070073/ABT08001.

9. 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 **JAMES RESIDENCE (PL070554/ABT08002)** (Elise James, property owner) Complaint CE071292 located at 2415 South Evergreen Road in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Brett Barnes, representing the City of Tempe – Neighborhood Enhancement Department stated that there had been no change in the condition of the property, that it remained in non-compliance. This residence had a reoccurring problem with deteriorating landscaping and the side yard was overgrown.

DECISION:

Mr. Williams approved abatement proceedings for PL070554/ABT08002.

The next Hearing Officer public hearing will be held on **Tuesday, February 19, 2008.**

There being no further business the public hearing adjourned at 2:37 PM.

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



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

SA:dm