

**Minutes
HEARING OFFICER
JUNE 3, 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
Nick Graves, Planning Intern

Number of Interested Citizens Present: 10

Meeting convened at 1:30 PM and was called to order by Mr. Williams. He 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 June 17, 2008 at 3:00 PM to the Development Services Department.

1. Mr. Williams approved the Hearing Officer Minutes for May 20, 2008.

2. Mr. Williams noted that the following case(s) have been withdrawn:

- Hold a public hearing for a request by **BROADWAY CENTER – TUMBLEWEED CENTER FOR YOUTH DEVELOPMENT TYRC (PL080139)** (Richard Geasland/Tumbleweed Center for Youth Development, applicant; Saia Family L/P, property owner) located at 1310 East Broadway Road, Suite No. 102, in the CSS, Commercial Shopping and Services District for:

ZUP08071 Use permit to allow a youth resource center.
WITHDRAWN BY APPLICANT

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3. Hold a public hearing for a request by the **TEMPE EAST KINGDOM HALL OF JEHOVAH'S WITNESSES (PL070190)** (Lauren Leuning, applicant; Tempe East Kingdom Hall of Jehovah's Witnesses, property owner) located at 4400 South Butte Avenue in the R1-6, Single Family Residential District for:

ZUP08069 Use permit to exceed 125% of the maximum allowable parking.

Mr. Lauren Leuning was present to represent this case. He noted that the existing parking of 77 spaces had been established 26 years ago.

Nick Graves, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. He noted that this case had been continued from the May 20, 2008 Hearing Officer hearing due to concerns over the alley abandonment issue. Staff research indicated it had been abandoned in May 1985 and was approved by the Design Review Board.

Mr. Williams noted that it appeared that some of the trees had been trimmed since the last Hearing Officer hearing. He asked Mr. Leuning if the parking lot was ever used for any other activity other than parking. Mr. Leuning responded that to his knowledge it was not used for anything but parking. Mr. Williams asked if Mr. Leuning was aware of any vehicles parked for longer than one day. Mr. Leuning responded that there were not.

Mr. Williams acknowledged that the landscape plan as submitted looked good, that the applicant had pulled the landscaping farther away from the houses to the south.

Mr. Angel Ramos, Tempe resident, questioned how the fence could be raised three (3) feet to allow for homeowner privacy due to the parking of high profile vehicles such as buses and campers. He asked who was responsible for the raising of the fence. He stated that he had spoken with the City who advised him that he would have to obtain an engineering permit to do this. He said that he had erected and paid for the current fence wall the height of which is six (6) feet. He said at times there is a noise level to contend with at 10 PM.

Mr. Williams acknowledged Mr. Ramos concerns of privacy. Mr. Ramos indicated that representatives of the church had talked with him regarding the tree issue of dropping debris onto his property and that probably that is when the trees got trimmed. Mr. Ramos stated that they could trim all they wanted but the trees are higher than his sixteen (16) foot roof and tree debris would continue to be an issue. Mr. Williams noted that his site review showed that two (2) of the trees had been severely trimmed.

Mr. Ramos stated that he had been informed by the church representatives that they had been required by the City of Tempe to plant the trees. Mr. Williams explained that they were required to have a landscape plan and a component was the trees, although the City most likely did not specify where the trees were to be planted (i.e. four (4) trees along Mr. Ramos' back wall).

Mr. Williams explained that the problem he had with requiring the applicant to raise (rebuild) the wall an additional three (3) feet in height was that they would incur a significant cost in doing so as structural elements such as rebar, etc. would require the existing wall to be torn down. Regardless of the wall height, the homeowner(s) would have to continue to deal with noise and other parking activities. Mr. Williams stated that he did want to try to protect Mr. Ramos privacy by perhaps having the applicant stipulate the parking of high profile vehicles to the north end of the lot, away from the homeowners.

Mr. Ramos referred to the home of a nearby architect who had installed wood screening on top of an existing block wall. Mr. Williams questioned Mr. Ramos as to whether a two (2) foot wooden screen installed on top of the block wall would be acceptable. Mr. Ramos responded that wood with some type of facing on it would be ok, but that the issue of an engineering permit and cost would have to be resolved - perhaps the church representatives could meet with him to resolve this issue. Mr. Ramos noted that the church representatives had indicated to him that they have a lot of artistic people who can do work such as concrete, etc. so the cost would be more feasible.

Mr. Williams noted that the screening would have to be finished on both sides.

Mr. Leuning explained that the placement of the landscape trees were due to the plan/comments by Bill Kersbergen, City of Tempe, in order to get the lighting to work.

Mr. Williams asked Mr. Abrahamson if staff would recommend that the two (2) trees that had been severely pruned be replaced. Mr. Abrahamson responded that a condition of approval could be added stating that should the trees not come back within a specific period of time, that they should be replaced with a like species or a species that meets with the neighbors' approval – possibly a species that does not have as much leaf dropping or debris.

Mr. Williams asked if the wording should indicate that a specific person would determine whether the trees needed to be replaced or just simply 'staff'. Mr. Abrahamson stated that after a six (6) month period that would be ample time for a decision to be made by a planning inspector or one of the code compliance inspectors as to whether the trees need to be replaced. Mr. Williams stated that he would stipulate a December 1, 2008 inspection of these trees.

Mr. Leuning discussed the issue of whether the parking lot lighting was going to be fully shielded from the neighbors due to the condition of the trees. Mr. Abrahamson indicated that the lighting fixtures would be compliant with the current City of Tempe Zoning and Development Code and will be no more than eighteen (18) feet above grade and it will be assured that they will have shields and that the light distribution will be such that it will be directed away from the residential properties.

Mr. Abrahamson noted in response to a question from Mr. Williams regarding the addition of Condition of Approval No. 6 that any wall above six (6) feet in height requires a building permit and structural review, so the present wall would have to be inspected to determine whether it would support the additional load on top of the wall. He suggested that the Condition require Development Plan Review so the aesthetics would be acceptable to the neighborhood, church and staff.

Mr. Leuning asked who would be responsible for designing the screen wall. Mr. Williams stated that it would be the applicant's responsibility to design and install the screen wall which is to be finished on both sides – staff can assist the applicant with available options. Mr. Leuning asked if the Ramos could supply the materials and the applicant supply the labor. Mr. Williams stated that he was not asking the Ramos to participate in the cost of this screen wall at all.

Mr. Abrahamson suggested that Mr. Williams be open to materials other than wood for this screen wall such as mesh steel or wrought iron type extension to the wall could include a green screen. A wooden structure does not tend to hold up.

DECISION:

Mr. Williams approved PL070190/ZUP08069 subject to the following conditions:

1. The additional landscape material proposed for the parking area to be approved by Building Safety Division Plan Review.
2. The applicant shall provide a minimum of twelve percent (12%) of the surface area as landscaping, measuring around the perimeter of all parking spaces and maneuvering areas.
3. Lighting and landscape plans as well as site plan as approved through staff review of DPR07088 must be approved through Building Safety Division Plan Review.
4. **The eighteen (18) parking spaces along the southeast perimeter shall be limited to automobile (car) parking only (south tier of spaces near the common wall). ADDED BY HEARING OFFICER**
5. **High profile vehicles (i.e. buses, RV's) will be limited to the northernmost tier of parking spaces adjacent to the freeway wall. ADDED BY HEARING OFFICER**
6. **Design a screen of acceptable material to increase the height of the existing perimeter block wall to a height eight (8) feet subject to Development Plan Review. Screen is to be finished on both sides. Notification of plan review is to be made to surrounding property owners prior to approval. ADDED BY HEARING OFFICER**

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4. Hold a public hearing for a request by **CAFE ISTANBUL (PL080075)** (Mohmound Ayashe, applicant; City of Tempe, property owner) located at 1310 East Apache Boulevard, Suite No. 204 in the CSS, Commercial Shopping and Services District for:

ZUP08085 Use permit to allow a hookah lounge/tobacco retailer.

Mr. Mohmound Ayashe was present to represent this case.

Shawn Daffara, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. The lounge will be located upstairs with its own ventilation system, separate from the restaurant area, to comply with the Smoke Free Arizona policy. They are within the 1320 s.f. separation from the nearby Tempe School for the Arts school per the code at the time of their original application. A twenty (20) foot separation for smoking is required from the main entrance and the applicant meets this criteria. Shawn confirmed that there is a separate entrance for the restaurant as well as the hookah lounge.

DECISION:

Mr. Williams approved PL080075/ZUP08085 subject to the following conditions:

1. The use permit is valid for Cafe Istanbul and may be transferrable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Office 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. The use permit is valid for the plans reviewed and approved by the Hearing Officer.
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 permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
6. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.

7. The gross sale of beverage and snack items may not exceed that of tobacco and hookah products for the hookah lounge tax license.
8. All business signs shall receive a Sign Permit. Please contact the Planning Division at (480) 350-8331.
9. The applicant shall contact City of Tempe Crime Prevention Unit for a Security Plan. Please contact Sergeant Ken Harmon (480) 858-6330.
10. The Restaurant and Hookah Lounge shall have separate sales tax licenses. The applicant shall contact Sales Tax and License for a hookah lounge/tobacco retailer tax license.

5. Hold a public hearing for a request by **FIESTA PLAZA SHOPPING CENTER - VERIZON WIRELESS (PL080091)** (Carl Taskers/Wireless Resources Inc., applicant; BAMA Retail LLC, property owner) located at 7520 South Rural Road in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP08086 Use permit to allow a sixty foot (60') mono-palm.

Mr. Carl Taskers of Wireless Resources was present to represent this case.

Shawn Daffara, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. He indicated where the existing flagpole is in related to the monopole at Mr. Williams' request. He noted that staff is recommending demolition of the flagpole.

Mr. Williams questioned why removal of the flagpole was not a Condition of Approval. Mr. Daffara responded that it was included in the applicant's letter of explanation because the monopole is indicated in the exact same location as the existing flagpole.

Mr. Tasker questioned whether Condition of Approval No. 4 was requiring two (2) trees in addition to what is included on the applicant's plans or if they were the same two (2) trees. Mr. Daffara responded that the two trees indicated in Condition of Approval No. 4 were not two additional but those that were indicated in the landscape plan.

DECISION:

Mr. Williams approved PL080091/ZUP08086 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. Any intensification or expansion of use, including co-location of additional antennas, will require a new use permit.
3. The wireless device shall be removed within 30 days of discontinuance of use.
4. A minimum of two (2) minimum twenty foot (20') brown trunk Phoenix Date Palm trees shall be planted to complement the proposed mono-palm on site. The Palm trees shall be located in the landscape area south of the equipment enclosure. Details to be resolved through the Building Permit Plan Review process.
5. The wrought iron gate at the equipment enclosure will require 5 f.c. at the gate and 2 f.c. within 15' radius.
6. An emergency placard shall be installed near the enclosure gate.

6. Hold a public hearing for a request by **PHOENIX 1 PLAZA – NEXTLINK WIRELESS INC. (PL080147)** (Sonya Okamoto/PlanCom Inc., applicant; Fountainhead Corporation LLC, property owner) located at 2625 South Plaza Drive in the GID, General Industrial District for:

ZUP08076 Use permit to allow roof top wireless antennas.

Ms. Sonya Okamoto of PlanCom Inc. was present to represent this case.

Shawn Daffara, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued.

Mr. Williams noted, with confirmation from Ms. Okamoto, that the antennas did not exceed the height of the surrounding buildings.

DECISION:

Mr. Williams approved PL080147/ZUP08076 subject to the following conditions.

1. Obtain all necessary clearances from the Building Safety Division.
2. Any intensification or expansion of use, including co-location of additional antennas, will require a new use permit.
3. The use permit is valid for the plans reviewed and approved by the Hearing Officer.
4. All new antennas shall not exceed the mechanical parapet.
5. The wireless device shall be removed within 30 days of discontinuance of use.
6. The new antennas shall be painted to match the building and mechanical screen wall.
7. Nextlink Wireless shall tag all of its equipment associated with this application with identification and contact information.

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7. Hold a public hearing for a request by **FAHRENHEIT TANNING (PL080163)** (Howard Li/Paramount Design & Drafting, applicant; NG 904 LLC, property owner) located at 904 North Scottsdale Road, Suite No. 104 in the GID, General Industrial District for:

ZUP08087 Use permit to allow a tanning salon in the GID, General Industrial District.

Mr. Nick Glimcher, property owner, was present to represent this case.

Nick Graves, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. This is for a retail use within the General Industrial District. He noted that there were code violations due to pre-existing conditions from the previous tenant which the code enforcement division is working with the applicant to resolve.

Mr. Williams questioned the exact criteria for this tanning salon. Mr. Glimcher stated that although he was not the applicant, he has been a tenant at several other shopping centers of his and would involve tanning beds and that he has some tanning type products that are sold. It is very similar to the other 16 units he has here in the valley.

Mr. Williams noted that the sign displayed at this location indicates a tanning spa is coming, and that the definition of spa constitutes different services from just a tanning salon. Mr. Glimcher stated that the copy of the lease authorizes a tanning salon only, the tenant will be offering no massages or other uses.

Mr. Williams questioned staff if a Condition of Approval should be added limiting the use to a tanning salon only. Mr. Abrahamson stated that they did not believe that was necessary.

DECISION:

Mr. Williams approved PL080163/ZUP08087 subject to the following conditions.

1. Obtain all necessary clearances from the Building Safety Division.
2. All new signs to receive separate approval and permits, contact Planning Staff at (480) 350-8331.
3. Use permit valid per submitted plans review and approved by the Hearing Officer.

8. Hold a public hearing for a request by **BELLA NAIL (PL080164)** (Howard Li/Paramount Design & Drafting, applicant; NG 904 LLC, property owner) located at 904 North Scottsdale Road, Suite No. 105 in the GID, General Industrial District for:

ZUP08088 Use permit to allow a nail salon in the GID, General Industrial District.

Mr. Nick Glimcher, property owner, was present to represent this case.

Nick Graves, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. This is for a retail use within the General Industrial District. Residents had expressed concern that the sign indicated a spa and that services other than a nail salon would be offered. As the floor plan depicts, no additional services are indicated.

DECISION:

Mr. Williams approved PL080164/ZUP08088 subject to the following conditions.

1. Obtain all necessary clearances from the Building Safety Division.
2. All new signs to receive separate approval and permits, contact Planning Staff at (480) 350-8331.
3. Use permit valid per submitted plans review and approved by the Hearing Officer.

9. Hold a public hearing for a request by **EATON UNIVERSITY INDUSTRIAL PARK - GLOBAL MOTORS (PL080170)** (Michael Crunk, applicant; Farnam Family Trust, property owner) located at 2140 East 5th Street, Suite No. 10, in the GID, General Industrial District for:

ZUP08084 Use permit to allow internet car sales.

Mr. Michael Crunk was present to represent this case.

Shawn Daffara, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. There might be a car or two inside the warehouse area, but for the most part the vehicles will be web-based.

Mr. Crunk responded to a question from Mr. Williams that the only cars on-site would be housed within the facility; some sales will be consummated on the internet, and some sales will be consummated on the property. It is not an outdoor car sales operation, it is an indoor sales operation. No vehicles will be stored outside.

DECISION:

Mr. Williams approved PL080170/ZUP08084 subject to the following conditions:

1. This use permit is valid for "Global Motors" and may be transferable. Should the business be sold, the new owners must contact the Board of Adjustment/Hearing Officer staff for review of the business operations.

2. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
3. The use permit is valid for the plans review and approved by the Hearing Officer.
4. The display of the vehicles shall not be located in public right-of-way or landscape areas.
5. All business signs shall require a sign permit. Please contact Jeff Tamulevich (480) 350-8331 for all sign permitting application and questions.
6. Rear doors shall require lighting to meet five (5) foot candles at the doors and two (2) foot candles within a 15' radius of the doors. Details to be reviewed and approved by planning staff.

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 **MCCOMBS RESIDENCE (PL080063/ABT08008)** (Greg McCombs, property owner) Complaint CE075864 located at 1272 East La Jolla Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Jan Koehn, City of Tempe – Neighborhood Enhancement Department, stated that this property had a previous abatement which was approved. Additional landscape violations (i.e. dead tree limbs, etc.) are a problem.

DECISION:

Mr. Williams approved abatement proceedings for PL080063/ABT08008.

The next Hearing Officer public hearing will be held on **Tuesday, June 17, 2008**.

There being no further business the public hearing adjourned at 2:42 PM.

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



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

SA:dm