

**Minutes
HEARING OFFICER
JULY 15, 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
Sherri Lesser, Senior Planner
Alan Como, Planner II

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 July 29, 2008 at 3:00 PM to the Development Services Department.

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

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 Williams noted that the following case(s) had been administratively withdrawn:

Hold a public hearing for a request by **NG 904 LLC (PL080217)** (Dennis Newcombe/Beus Gilbert PLLC, applicant; Nick Glimcher/NG 904 LLC, property owner) located at 904 North Scottsdale Road in the GID, General Industrial District for:

VAR08016 Variance to reduce the required number of on-site parking from 21 spaces to 19 spaces.
ADMINISTRATIVELY WITHDRAWN

3. Hold a public hearing for a request by the **CHAVEZ RESIDENCE (PL080218)** (Richard Chavez, applicant/property owner) located at 5822 South Alder Drive in the R1-6, Single Family Residential District for:

ZUP08103 Use permit to allow an accessory building (workshop / storage).

Mr. Richard Chavez was present to represent this case.

Alan Como, staff planner, gave an overview of this case, and stated that three (3) phone calls of opposition had been received since the staff report had been issued concerning the proposed use of this structure. One caller felt that the structure was not visibly pleasing. Phone call(s) were received by resident(s) stating that they would support this request if the applicant cleaned up his property.

This structure is approximately 425 s.f. and 14 ft. in height. The accessory building was constructed by the applicant prior to the current Zoning and Development Code being in effect. The old Code did not require a use permit, however the new ZDC does require one. Mr. Chavez was unable to obtain a final building inspection before the new ZDC took effect which is why the use permit has been requested. Mr. Como explained that the current ZDC requires a use permit for any accessory structure(s) over 200 s.f. or 8 ft. in height. It also stipulates that accessory structures cannot exceed the height of the principal residence.

The maximum lot coverage allowed in the R1-6 District is 45%; the principal structure of Mr. Chavez along with the accessory structure amounts to 23%. Mr. Como responded to a question from Mr. Williams that the accessory structure is required to match the principal residence in color, materials and appearance.

Mr. Como noted that he had personally done two (2) site inspections to verify that the sign posting was in place. On the first visit the sign was in place; on the second visit it was apparent that Mr. Chavez had made efforts to affix the signage with duct tape so that it did not fall down. The sign was posted properly by City staff; two storms had occurred since the original posting. Mr. Williams stated that it sounds that it appears all interested parties are aware of the case, which is the purpose of the sign posting. Mr. Como confirmed that in addition to the sign posting, a legal notification is placed in the newspaper and a public hearing notice is mailed to all property owners within 300 ft.

Mr. Chavez stated that at the time of the building of this structure he followed every code regulation that was applicable, paid the fees and obtained the necessary City permits. He was unable to complete the structure within the time limit imposed and his permit expired so he did not receive a final inspection. He confirmed that he had no objections to any of the conditions of approval and that the color of the building was as close to the color of his home as possible.

Mr. Como stated that he felt the existing color of the structure was acceptable and that re-painting was not required at this time. Condition of Approval No. 3 requiring the structure to be painted to match the main residence is just a standard condition for cases of this type.

Mr. Chavez responded to a question from Mr. Williams regarding the proposed use of this structure and related calls of concern. Mr. Chavez stated that in the past he was a contractor and had employees coming to the house, however that was no longer the case. He lifts weights and plans on using the structure for storage of equipment. Mr. Williams asked if this was a recent change of employees not coming to the house; Mr. Chavez stated that no, this change occurred two or three years ago. Mr. Chavez confirmed that he was aware that there are restrictions on business activity in a residential neighborhood.

Mr. Como noted that Condition of Approval No. 5 relates to home occupation restrictions and as to what type of activities can be conducted from a residence in the R1-6 District.

Mr. Roy Schieffer, City of Tempe resident, stated that he has lived in this cul-de-sac for 25 years. The shed was constructed 6 or 7 years ago and he contacted the City personally to ask if a variance or use permit was required. He noted that Mr. Chavez has a couple of large dogs which pose a safety issue to children in the neighborhood as the gates are in disrepair. He does not feel that the shed was completed in an attractive manner and that the general appearance of the property is not good and is in need of maintenance. There has also been a car located in the street which had been left on garage jacks to be worked on for several days – this was another safety issue for the neighborhood.

Mr. Pennington, City of Tempe resident, stated that the structure has been there for some time and his biggest concern is that Mr. Chavez will be running a business out of that location. He explained that he grew up as a City of Tempe resident and that it is a unique place to live. He does not feel that Mr. Chavez is a good neighbor. He can hear those large weights drop at night when being used by Mr. Chavez and it is very annoying to he and his wife. He would like to see a time limit as to when the weights can be utilized at night.

Mr. Chavez confirmed that the climbing structure behind the accessory building has already been removed.

Mr. Williams verbally reviewed the Conditions of Approval with Mr. Chavez and asked if he had any questions. Mr. Chavez stated that while he can repair the rear gate, it was his understanding from Mr. Como that there are no requirements that he had a front gate so he plans on removing it. Mr. Williams stated that if Mr. Chavez has animals that the gate(s) contain, the concern is that the gates provide some type of animal control. Mr. Chavez responded that the dog(s) are contained within the yard by a different type of fence that is 6 ft. high and is sufficient so that the gates are not an issue. Mr. Williams stated that Condition of Approval No. 6 stipulates that both gates are to be repaired and closed. Mr. Como stated that the rear gate definitely needs to be repaired and put back on its hinges and be in working order; it is not required by code to have a front gate however the gate does help to act as a screen for the yard and all the material that is in the yard. All of the material that is in the yard and driveway will need to be cleaned up and/or put in the accessory structure so he does not technically need to have a gate. Mr. Williams stated that both gates need to be brought into compliance with Condition of Approval No. 6.

Mr. Williams explained to Mr. Chavez that the City of Tempe requires residents to maintain their property in a healthy and reasonably maintained manner. In order to grant the use permit approval, Mr. Williams stated that the proposed Conditions of Approval seemed to be reasonable and prudent, and that he wanted to be sure that Mr. Chavez understood them. Mr. Chavez confirmed his understanding of same.

DECISION:

Mr. Williams approved PL080218/ZUP08103 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. The climbing structure behind the accessory building shall be removed prior to the issuance of building permits.
3. The accessory structure shall be painted to match the main residence.
4. The detached accessory building shall not be used as a separate living unit/guest quarters (no cooking facilities).
5. The accessory structure shall comply with all regulations regarding home occupations (ZDC Section 3-412).
6. Bring property into compliance with TCC Chapter 21 Nuisance and Enhancement; regarding appearance of property, storage of materials and repairing front and rear gates; car restoration limited to personal vehicles. Auto restoration/repair is not allowed as a home occupation.

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4. Hold a public hearing for a request by **ENCORE STAFFING SERVICES (PL080221)** (Nancy Miller, applicant; Weingarten Nostat Inc., property owner) located at 1804 East Southern Avenue, Suite No. 4, in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP08104 Use permit to allow an employment agency.

Ms. Nancy Miller 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. This is located in the Bashas Plaza at Southern and McClintock.

DECISION:

Mr. Williams approved PL080221/ZUP08104 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. Any expansion or intensification of the use will require review of the use permit.
4. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
5. The rear door shall require lighting that meets five (5) foot candles at the door and two (2) foot candles within a 15' radius. Details to be reviewed during Building Safety Plan Review.
6. The rear door shall require a lexan vision panel to assist with natural surveillance at the rear of the building. Details to be reviewed during Building Safety Plan Review.

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5. Hold a public hearing for a request by **BASHAS VALLEY PLAZA CENTER - SHALL WE DANCE PHOENIX (PL080227)** (Mona Brandt Arvidson, applicant; Weingarten Nostat Inc., property owner) located at 3163 South McClintock Drive in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP08105 Use permit for an entertainment establishment (offering DJ, dancing, private functions) in conjunction with a dance studio.

Ms. Mona Brandt Arvidson was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case, and stated that a phone call had been received from an interested citizen who asked that a condition be imposed that no live music be allowed since the staff report had been issued.

Ms. Arvidson noted that although she has not had requests for live music or bands and did not foresee a lot of that, she would like to not have a condition prohibiting live music. If, in the future, there was live music which

posed a problem, the issue could be re-visited. She did not feel, given the location of the residences in the area and the way that the studio is situated, that live music would be a problem as the volume could always be controlled.

Mr. Williams asked if the applicant had a back door to the studio. Ms. Arvidson confirmed that one existed and that it would remain closed; this is an emergency exit she stated.

Mr. Williams asked if this building is leased out to other organizations. Ms. Arvidson responded that on Fridays, Saturdays and Sundays people come in and have dances – normally with DJ's. So far there have been no requests for live music. She stated that she had spoken with similar studios in the area and had been advised that they have maybe one or two requests for live music a year. She feels that live music is not that popular, that most people use DJ music. She would like to leave the issue of live music open just in case; a condition limiting excessive noise in the back where the houses are could be added in its place.

Mr. Williams noted to staff that he did not see any conditions relating to hours of operation – usually in cases involving events of live entertainment there is some type of condition restricting the hours allowed. Ms. Lesser explained that she did not limit the hours of operation as in the applicant's letter of explanation the hours would vary. It is one of those things that are difficult to police, Ms. Lesser stated. A condition could be added based on the applicant's letter of explanation.

Mr. Williams asked Ms. Arvidson what the hours of operation would be. She responded that it varied; the latest would be 1 or 2 AM on Friday or Saturday nights. During the week, people are normally out of there by 11 PM or 12 Midnight. It varies because there are teachers giving private lessons at various hours so there might be a few people in the studio late at night.

Mr. Frank Maguire, City of Tempe resident, stated that he has lived in his neighborhood for almost 30 years. He stated that on Friday and Saturday nights, there are hundreds of people at this location and it is party central. It is not a dance studio giving dance lessons. This is a friendly neighborhood center that has been there for a long time. Recently there were 30 or 40 people outside in the parking lot, the place was packed – this is more of a special event. He stated he had started the Mill Avenue Festival of Arts and also the New Year's Eve Block Party so he is familiar with these type of events and this strikes him as more along those lines, than it does as a dance studio. He saw 6 or 7 security guards there one night, the place is trashed afterwards – there are hundreds of liquor bottles, soda bottles, water bottles all over the parking lot. He does not know what the capacity of this place is, but feels that it goes over the maximum allowed. He does not feel this is the right use for this neighborhood and that each event should obtain a special use permit. Although he does not live close enough that the sound would bother him, he has used that center for a number of years and to grant an open permit like this if nothing else a condition should be added that it be re-visited in 30 to 60 days. After a recent shooting at this location, he could not believe how many cars in the parking lot had California license plates.

Mr. Dennis Miller, City of Tempe resident, stated that he and his wife own a restaurant within 300 ft. of this dance studio. They were concerned that they did not receive information on this case. Recently they arrived to find crime tape restricting the parking lot area. The retired man who opens up and makes coffee was escorted to the restaurant by the police and told to lock himself inside the restaurant and not open until given the go ahead by the Police Department. They have not been impacted favorably by this organization. There are 100+ cars taking up spaces allotted to the restaurant and occupying them all evening – he does not know if there is sufficient parking for this business. Mr. Miller addressed concern over Condition of Approval No. 2. He stated that he has 5 employees and a son that just got married. The reception was held in a big hall, a bartender was hired by the family who came in with a liquor license and came in and set up the bar supplying all the liquor. The reception hall had nothing to do with the bar but alcohol was served. He wants to know if this dance studio is

leased out to a private party, if this liquor/bartending situation is a possibility. Even though the applicant(s) are supposed to clean up the premises, when he arrived at 5:30 Am this past Sunday morning, he had to pick up beer bottles and alcohol bottles that were in parking lot from the night before. He is concerned that this same type of situation that also went on the night of the shooting will continue. A bullet from that shooting was taken out of a palm tree located 6 ½ ft. from one of their dining tables where people sit and have their coffee, and where they were sitting just a half an hour prior to the shooting.

Mr. Miller stated that loitering has been a continuing problem. He and his wife have lived nearby for over 22 years. If his staff contacts him with a question or concern, he can be at the restaurant within four minutes. On several nights, his staff has been afraid to walk outside and take the trash to the dumpster because of people loitering outside the building. His staff has been instructed not to tell the people to leave, but to contact the Police Department to do that so that his staff, many of whom are working students, are not put in jeopardy. He is very concerned over how cleanup after major events is going to be enforced. After the shooting event, he watched people returning to over 100 cars that were left in the parking area and many appeared to be gang related. The dance studio is leasing out the premises which is greatly impacting in a negative manner the surrounding businesses, citizens and residents.

Mr. Williams asked if, in Mr. Miller's opinion, are the people who are hanging out in the parking lot there because of the dance studio? Mr. Miller responded that he felt that is definitely the case, and that it occurs mainly on the weekends.

Mr. Williams noted to staff that he is not clear on the weekend activities – are these leased activities going to occur every weekend? Ms. Arvidson stated that there is an event almost every Saturday and Sunday. She stated for the record that there was no event this past Saturday, so any debris in the parking lot this past Sunday morning was not from an event hosted by their studio.

Ms. Lesser confirmed, in response to a question from Mr. Williams, that leased events can bring in their own liquor and not violate the liquor laws as it is a private function. Liquor would be addressed as part of the required security plan; that they would need to comply with the State liquor laws.

Ms. Lesser confirmed that a mailing had gone to all within 300 ft. of the property as well as the tenants of the plaza so she did not know why Mr. Miller did not receive a notice.

Mr. Williams noted, with Ms. Lesser's confirmation, that the loitering problem would be addressed with the security plan and the City of Tempe Police Department as well as Condition of Approval No. 6.

Mr. Williams stated that it appeared that this studio is operating as a nightclub where every weekend large gatherings of people have typical issues of nightclub events. He asked the applicant how this request differed from a nightclub operation. Ms. Arvidson stated that the Saturday and Sunday dances are public dances where there is no alcohol and there is an admission charge – there may be food or refreshments but no alcohol. This gives people who take dance lessons a place to go – dancing is a social sport – where they can practice dancing in a controlled environment. She confirmed, in response to a question from Mr. Williams, that for the regular public dances that are held every weekend, there is not any alcohol.

Mr. Williams asked how often private parties are held? Ms. Arvidson stated that they are held on Saturday nights and not every Saturday night. She stated that they have only been open three (3) months. The police incident (shooting) was on May 31st, she noted.

DECISION:

Mr. Williams approved PL080227/ZUP08105 subject to the following conditions:

1. The use permit is valid for the Shall We Dance and may be transferable to successors in interest through an administrative review with the Development Services Manager, or designee.
2. Any intensification or expansion of this use shall require the applicant to return to the appropriate decision-making body for a new use permit. Should the Dance Studio business expand their use to offer liquor sales and consumption; the business would be considered a nightclub or bar which would require a use permit, occupancy clearance and recalculation of the parking requirements.
3. Music generated from the use shall conform to the City of Tempe code requirements for noise control.
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. The applicant shall work with the Tempe Police Department – Crime Prevention Department (480-858-6027) to implement a Security Plan for the business. The security plan to address the control or loitering in the parking areas and within the shopping center.
6. There is not outdoor component to the use permit request. All entertainment activity on-site shall be maintained indoors.
7. The applicant is responsible for the clean up of trash and debris created in parking areas following an open dance or private function activity.
8. **Live bands prohibited. ADDED BY HEARING OFFICER**
9. **Hours of operation not-to-exceed 1:00 AM (7 days/week). ADDED BY HEARING OFFICER**
10. **Use permit to be reviewed in six (6) months time (December 15, 2008) by the Hearing Officer. ADDED BY HEARING OFFICER**

The next Hearing Officer public hearing will be held on **Tuesday, August 5, 2008.**

There being no further business the public hearing adjourned at 2:35 PM.

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



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

SA:dm