

**Minutes  
HEARING OFFICER  
AUGUST 19, 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  
Alan Como, Planner II  
Sherri Lesser, Senior Planner  
Shawn Daffara, Planner II  
Derek Partridge, Planner I

**Number of Interested Citizens Present:** 18

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 September 2, 2008 at 3:00 PM to the Development Services Department.

1. Mr. Williams approved the Hearing Officer Minutes for August 5, 2008.

2. 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:
- a. Reconsideration of the July 15, 2008 Hearing Officer's approval due to invalid property owner authorization.
  - b. If reconsideration is approved, then rehear:

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

Mr. Williams stated that he agreed to reconsider this case which was originally heard at the July 15, 2008 Hearing Officer hearing.

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

Sherri Lesser, 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. She noted that at the time this case was originally heard, the applicant had provided a copy of her lease agreement. This was actually an invalid authorization for the requested use permit as the lease allowed 'operation of a dance studio' not authorization to allow an entertainment establishment'. Due to lack of valid property owner authorization, this case was now being reconsidered.

Ms. Arvidson requested a continuance of this case so that she could meet with the Zoning Administrator and discuss the need for a use permit to operate a instructional dance studio.

Mr. Bill Strother, of Houston, Texas, stated that he is the Director of Security for Weingarten Nostat Inc., the property management firm, and that they are opposed to any change other than the original lease stipulations which allowed a dance studio for private ballroom dance instruction but not an entertainment establishment. The applicant will not be able to receive authorization from the property owner for an entertainment establishment.

Ms. Lesser explained that it is the City's viewpoint that when an entertainment venue requires a security plan, then the applicant is required to obtain a use permit. A use permit cannot be obtained without property owner authorization and the current submittal by this applicant is therefore invalid.

Mr. Williams explained that the applicant still needs to come in and work with staff to determine what is allowed under the current Zoning and Development Code for dance code instruction. Mr. Abrahamson clarified that the current lease situation is a private matter between the property owner and the applicant.

**DECISION:**

Mr. Williams denied the PL080227/ZUP08105 use permit request and reversed the approval issued at the July 15, 2008 Hearing Officer hearing. The applicant's request for a continuance was also denied by Mr. Williams.

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3. Hold a public hearing for a request by the **HUGHES RESIDENCE (PL080236)** (John Hughes, applicant/property owner) located at 116 East Concorda Drive in the R1-10, Single Family Residential District for:

**ZUP08109** Use permit to allow an accessory building (pergola-trellis structure).

**ZUP08118** Use permit standard to reduce the east side yard setback by twenty (20) percent from ten (10) feet to eight (8) feet.

Mr. John Hughes was present to represent this case.

Derek Partridge, 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.

**DECISION:**

Mr. Williams approved PL080236/ZUP08109/ZUP08118 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
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4. Hold a public hearing for a request by the **MUILENBERG RESIDENCE (PL080250)** (Eric Muilenberg, applicant/property owner) located at 1101 East Warner Road, No. 132, in the R1-15, Single Family Residential District for:

**ZUP08119** Use permit to allow an accessory structure (ramada).

**VAR08018** Variance to reduce the rear yard (east) setback from thirty (30) feet to fifteen (15) feet six (6) inches.

**VAR08019** Variance to reduce the south side yard setback from fifteen (15) feet to seven (7) feet six (6) inches.

Mr. Eric Muilenberg was present to represent this case.

Sherri Lesser, 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 structure is about 354 s.f. and about 8 feet tall. Ms. Lesser noted that while the structure meets the height requirement for an accessory building, it is a little over the 200 s.f. criteria thus requiring a use permit. In the previous Ordinance 808 this building would have been allowed without a use permit and at the proposed setbacks.

Mr. Williams stated that perhaps Mr. Abrahamson may need to do a Hearing Officer Memo regarding the setbacks in the R1-15 District where the rear setback of thirty (30) feet may need to be reduced in the Zoning and Development Code. It is not proportional for the lot size in this district and seems to generate the need for these variances. The extent of back yard utilization is determined by the lot coverage, Mr. Williams stated, and perhaps the Hearing Officer Memo needs to address the height and square footage limitations as well.

Ms. Lesser noted that they had not received any complaints, although this is an existing structure. The applicant had held a neighborhood meeting and letters and a petition of support from the neighbors was received by staff.

**DECISION:**

Mr. Williams approved PL080250/ZUP08119/VAR08018/VAR08019 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. Use Permit and Variances are valid for plans as submitted within this application.

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5. Hold a public hearing for a request by **HOME DEPOT – BEHIND THE SCENES (PL080268)** (Heather Freestone, applicant; Street Eats Limited/Home Depot, property owner) located at 1330 West Baseline Road in the PCC-1, Planned Commercial Center Neighborhood District for:

**ZUP08121** Use permit to allow outdoor retailing (hot dog vendor).

Ms. Heather Freestone was present to represent this case.

Derek Partridge, 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 confirmed in response to a question from Mr. Williams that staff had reviewed the applicant's plans and ascertained that there was adequate circulation and accessibility available around columns and doors – a 6 ft. separation which is standard. This vendor will be located near the east side of the Home Depot store near the customer pickup area.

Mr. Williams asked if this use conflicts with the accessory use of shopping cart storage; Mr. Partridge stated that the shopping cart storage is located near the main entrance of the store, not in this pickup area. Mr. Abrahamson noted that there is shopping cart storage in the northwest area also.

Ms. Freestone noted that she will actually be located a total of fourteen (14) feet from the door area.

**DECISION:**

Mr. Williams approved PL080268/ZUP08121 subject to the following conditions:

1. The use permit is for Behind the Scenes/Home Depot and may be transferable to successors with Development Services staff review.
  2. Any intensification or expansion of this use shall require that a new use permit be applied for and obtained.
  3. All required permits and clearances shall be obtained from the Tax and Licensing Division of the City of Tempe prior to the use permit becoming effective.
  4. The proposed retail stand shall not conflict with the location of other existing vending stands authorized with valid permits.
  5. A clear path for pedestrians along the sidewalk must be maintained. It shall meet the provisions of the Americans with Disabilities Act.
  6. The vending area must be kept neat, clean and hazard-free during hours of operation. Vendor is responsible for the fifty (50) foot area surrounding the vending area. Vendor shall remove trash off-site.
  7. Pushcarts and any other vending equipment must be removed from the property at any time when not open for sales.
  8. Obtain clearance for the hot dog vending cart from the Maricopa County Health Department.
  9. 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.
  10. Outdoor retail display signage shall not exceed a total of three (3) square feet and are limited to normal hours of operation.
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6. Hold a public hearing for a request by the **BRADLEY PROPERTY (PL080272)** (Gary Bradley, applicant; Ellen Bradley, property owner) located at 1225 East Warner Road, Lot No. 20, in the R1-15, Single Family Residential District for:

**ZUP08123** Use permit to allow an accessory building (pool house).

Mr. Gary Bradley was present to represent this case.

Derek Partridge, 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.

**DECISION:**

Mr. Williams approved PL080272/ZUP08123 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
  2. The accessory building shall not be used as a separate living unit/guest quarters (no cooking facilities). Only one residential unit per lot is allowed in the R1-15, Single Family Residential District.
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7. Hold a public hearing for a request by **PARK PLAZA – UP IN SMOKE (PL080275)** (William Grue, applicant; BYS Company/ property owner) located at 23 West Baseline Road, Suite No. 2, in the CSS, Commercial Shopping and Services District for:

**ZUP08124** Use permit to allow a tobacco retailer.

Ms. Pam Grue was present to represent this case. She noted that they may add the sale of sodas and possibly CD's as well.

Alan Como, 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 applicant has indicated that they may stay open as late as 10 PM.

Mr. Abrahamson noted for the record that this use limits the sale of tobacco to those persons who are not minors (under age 18 per Smoke Free Arizona law); minors are allowed on the premises but cannot purchase tobacco products. Ms. Grue stated that she understood this stipulation, and that no smoking on the premises was allowed.

**DECISION:**

Mr. Williams approved PL080275/ZUP08124 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. 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.
3. Any expansion or intensification of the use will require review of the use permit.
4. A security plan is required for this establishment. Contact Tempe Police Department Crime Prevention Unit (480-858-6333) by **September 19, 2008**.
5. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review prior to issuance of building permit.
6. All doors shall have illumination to meet five (5) foot candles at the door and two (2) foot candles within a fifteen (15) foot radius. Upgrade or install new fixtures to comply with this condition. Details to be approved through Building Safety Plan Review.
7. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.
8. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8331.
9. The use permit is valid for the plans as submitted within this application.
10. This store is not permitted to operate a hookah lounge under this use permit. A hookah lounge would be an intensification of this use and would require a separate use permit.

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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 **WINGERSKY PROPERTY (PL080264/ABT08016)** (Mike Wingersky, property owner) Complaint CE071664 located at 1616 South Roosevelt Street in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Ms. Julie Scofield, City of Tempe – Neighborhood Enhancement Department, stated that this property has been a problem for a while now with landscaping issues (dead tree, overgrown grass), the fence is missing its gate and is falling down on the south side of the property. The graffiti issue has been resolved, and this abatement is being requested to cover the landscape issues and to fix the fence and gate.

**DECISION:**

Mr. Williams approved abatement proceedings for PL080264/ABT08016 as outlined in the July 11<sup>th</sup> estimate contained in the abatement documentation and the Neighborhood Enhancement Department is authorized to process abatement proceedings for an open period of one hundred eighty days (180 days) as necessary.

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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 **GMAC MORTGAGE LLC PROPERTY (PL080265/ABT08017)** (GMAC Mortgage LLC, property owner) Complaint CE074231 located at 111 South Hardy Drive in the R-3, Multi-Family Residential Limited District.

No one was present to represent the property owner.

Julie Scofield, City of Tempe – Neighborhood Enhancement Department, stated that this property, which has gone into foreclosure, has been a continuing problem with landscaping, junk and debris, broken window(s) and an inoperable vehicle. There has been no response or actions taken by this property owner.

**DECISION:**

Mr. Williams approved abatement proceedings for PL080265/ABT08017 as outlined in the July 22<sup>nd</sup> estimate contained in the abatement documentation and the Neighborhood Enhancement Department is authorized to process abatement proceedings for an open period of one hundred eighty days (180 days) as necessary.

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The next Hearing Officer public hearing will be held on **Tuesday, September 2, 2008.**

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There being no further business the public hearing adjourned at 2:18 PM.

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



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