

**Minutes
HEARING OFFICER
OCTOBER 7, 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
Sherri Lesser, Senior Planner
Shawn Daffara, Planner II
Nick Graves, Planning Intern
Derek Partridge, Planner I
Alan Como, Planner II

Number of Interested Citizens Present: 12

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 October 21, 2008 at 3:00 PM to the Development Services Department.

1. Mr. Williams approved the Hearing Officer Minutes for September 16, 2008.

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 Williams noted that the following case(s) had been withdrawn:

Request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **ISOM RESIDENCE (PL080334)/ABT08027** (James Isom, property owner) Complaint 084923 located at 2107 North Van Ness Avenue in the R1-6, Single Family Residential District.

WITHDRAWN BY CITY OF TEMPE – NEIGHBORHOOD ENHANCEMENT DEPARTMENT

3. Request by **CENTERPOINT CONDOMINIUMS– TRATTORIA M / AROMA MARKET-CAFE (PL080311)** (Darin Sender/Sender Associates, applicant; Tempe Land Company, property owner) located at 115 West 6th Street, Suite No. 101 in the CC, City Center District for:

ZUP08145	Use permit to allow a restaurant/bar (Series 6).
ZUP08146	Use Permit to allow live entertainment (Indoors and Outdoors).

Ms. Darin Sender of Sender Associates 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.

DECISION:

Mr. Williams approved PL080311/ZUP08145/ZUP08146 subject to the following conditions:

1. The use permits are valid for "Trattoria M/Aroma Cafe" and may be transferable. Should the business be sold, the new owners must contact the Development Services staff for a review of the use permits.
2. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
3. 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.
4. Any expansion or intensification of the use will require review of the use permit.
5. The use permit is valid for the plans as submitted within this application.
6. The business shall adhere to the City of Tempe Noise Ordinance.
7. The applicant shall work with the Tempe Police Department to implement a security plan for the business (contact the Crime Prevention Department at 480-858-6027).

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4. Request by **CENTERPOINT CONDOMINIUMS- 7th LEVEL GREAT ROOM (PL080328)** (Darin Sender/Sender Associates, applicant; Tempe Land Company, property owner) located at 115 West 6th Street, 7th Floor in the CC, City Center District for:

ZUP08147 Use permit to allow a restaurant/bar (Series 6).

ZUP08148 Use Permit to allow live entertainment (Indoors and Outdoors).

Ms. Darin Sender of Sender Associates 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.

Proximity to residential units and potential noise conflict was discussed. Ms. Sender explained that residents of these units would be fully aware of the live entertainment and that sufficient buffer zones (i.e. pool area, etc.) existed. The building itself has high level sound proofing.

DECISION:

Mr. Williams approved PL080328/ZUP08147/ZUP08148 subject to the following conditions:

1. The use permits are valid for "7th Level Great Room/Aroma Cafe" and may be transferable. Should the business be sold, the new owners must contact the Development Services staff for a review of the use permits.
2. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
3. 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.
4. Any expansion or intensification of the use will require review of the use permit.

5. The use permit is valid for the plans as submitted within this application.
6. The business shall adhere to the City of Tempe Noise Ordinance.
7. The applicant shall work with the Tempe Police Department to implement a security plan for the business (contact the Crime Prevention Department at 480-858-6027).

5. Request by **TEMPE CHURCH OF CHRIST - SUNNYDALE SENIOR CENTER (PL080322)** (Darryl Starling, applicant; Tempe Church of Christ/property owner) located at 2424 South Mill Avenue in the R1-6, Single Family Residential District for:

ZUP08149 Use permit to allow a freestanding accessory building (storage).

Mr. Darryl Starling was present to represent this case.

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. This building would not be visible from Mill Avenue.

Mr. Robert King, resident of Tempe, spoke in opposition to this request stating that he lives north of this site and that there were several homeless people who appeared to be residing at this location and flickering (malfunctioning) lights in the parking lot. He was concerned that this enclosed structure may be used to house homeless residents.

Mr. Starling stated that the malfunctioning lights in the parking lot area would be taken care of. Mr. Williams explained the issue of 'light trespass' and how lights can affect the neighboring property.

DECISION:

Mr. Williams approved PL080322/ZUP08149 subject to the following conditions:

1. Obtain necessary clearances from the Building Safety Division.
2. The detached accessory building shall not be used as a separate living unit/guest quarters (no cooking facilities).
3. Accessory structure should be painted to match existing adjacent office building.
4. **The two (2) existing storage sheds shall be removed upon completion of this project. ADDED BY HEARING OFFICER**

6. Request by **TEMPE CONDOMINIUMS (PL080324)** (Arthur Hutchinson, applicant/property owner) located at 2050 South Forest Avenue in the R-3, Multi-Family Residential Limited District for:

ZUP08140 Use permit to allow access from alley adjacent to Single Family Residential District.

Mr. Arthur Hutchinson was present to represent this case.

Derek Partridge, staff planner, gave an overview of this case, and stated that since the staff report had been issued, one letter of opposition had been received which indicated safety concerns for children playing in the area. The amount of additional traffic in the alley was discussed and determined to be negligible.

Mr. Hutchinson explained that this use permit was approved two years ago. As the work was not completed within the specified time period, it has been resubmitted at this time.

DECISION:

Mr. Williams approved PL080324/ZUP08140 subject to the following conditions:

1. The alley must be paved from back of curb on Forest Avenue to back of curb on Hammond Drive.
2. Alley must be paved to City of Tempe Public Works Department Standard Details.

7. Request by **JUST WATER ARIZONA INC. (PL080333)** (Paul Pokatello, applicant; Studios 5C, property owner) located at 502 South College Avenue in the CC, City Center District for:

ZUP08141 Use permit to allow outdoor retailing (located in the patio).

Mr. Paul Pokatello 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. Pokatello expressed concern that the restaurant property (currently vacant) may be leased to a new tenant before the two (2) year period expires and that the outdoor patio would not be available. He asked if this use permit would be transferable to another location. Mr. Daffara explained the administrative transfers of use permits only apply to the same location.

In response to questioning, Mr. Pokatello indicated no generators or other mechanical equipment would be in use at this site.

DECISION:

Mr. Williams approved PL080333/ZUP08141 subject to the following conditions:

1. The use permit is for Just Water Arizona and is valid on ASU Football Game days, Insight Bowl, and other special events only.
2. The use permit is valid for (2) two years. The applicant shall return for an administrative review of this use permit in (2) two years (**October 7, 2010**).
3. Any intensification or expansion of this use shall require that a new use permit be applied for and obtained.
4. 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.
5. All required clearances and encroachment permits shall be obtained from the City of Tempe Engineering Department prior to the use permit becoming effective.
6. A clear path for pedestrians along the sidewalk must be maintained. It shall meet the provisions of the Americans with Disabilities Act.
7. 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.
8. 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.
9. Outdoor retail display signage shall not exceed a total of three (3) square feet and are limited to normal hours of operation.

8. Request by **ROSITA'S PLAZA - CAFE ROMA (PL080336)** (Paula Faria, applicant; 32 Gallon Investments, property owner) located at 960 West University Drive, Suite Nos. 105 & 106 in the CSS, Commercial Shopping and Services District for:

ZUP08142 Use permit to allow live entertainment (live music, comedy, karaoke).

Mr. Paul Wedra was present to represent this case.

Alan Como, staff planner, gave an overview of this case, and stated that since the staff report had been issued one (1) letter of opposition had been received from the Sunset Neighborhood Association who expressed a concern that the live entertainment may contribute to an undesirable element and related police calls for service. Staff did not believe that this use permit would generate problems of this nature.

DECISION:

Mr. Williams approved PL080336/ZUP08142 subject to the following conditions:

1. The use permit is valid for Cafe Roma 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.
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 live entertainment shall be indoors only. No speakers are permitted outside.
6. The use permit is valid for the plans as submitted within this application.
7. The applicant shall work with the Tempe Police Department to implement a Security Plan for the business (contact the Crime Prevention Department at 480-858-6027).
8. Live entertainment is to take place between the hours of 7:00 pm and 2:00 am Thursdays, Fridays, and Saturday (if the restaurant is open on a Saturday).

9. Request by the **BRENNAN RESIDENCE (PL080337)** (Curt Wilt/Architectural Additions, applicant; Gary Brennan, property owner) located at 2608 South Terrace Road in the R1-6, Single Family Residential District for:

ZUP08143 Use permit to allow required parking in the front yard setback.

Mr. Curt Wilt of Architectural Additions 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.

DECISION:

Mr. Williams approved PL080337/ZUP08143 subject to the following conditions:

1. Obtain all the necessary clearances from the Building Safety Division.
2. The garage enclosure shall be compatible with the principal residence in color, form, texture and material.
3. The enclosed guest room is not to be converted into a separate living unit.

10. Request by **CENTERPOINT - FAT TUESDAY (PL080339)** (Chad Wilford, applicant; Centerpoint Holdings LLC, property owner) located at 680 South Mill Avenue in the CC, City Center District for:

ZUP08144 Use permit to allow live entertainment (karaoke, live bands, individual acts).

Mr. Chad Wilford 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. Due to complaint(s) received by the Police Department, it was requested that the live entertainment be restricted to inside this business and to the rear patio – that no live entertainment be allowed on the front patio on Mill Avenue – this is covered by Condition of Approval No. 5, which has been modified, as the outdoor speakers are already in existence and are not a problem.

Mr. Wilford asked that the DJ activity be allowed on the front patio.

Ms. Kristin Gibbons of Centerpoint Management spoke in support of this request.

Mr. Daffara explained that staff does not normally support live entertainment or outdoor speakers on Mill Avenue. In this instance, Fat Tuesday already had permanent speakers built into the soffit above the patio so staff restricted live entertainment on the front patio, in concurrence with the problems this vendor has incurred with the Police Department. By restricting the live entertainment, staff is allowing the applicant to continue to use the soffit speakers in the front patio area. Other bar operations along Mill Avenue have outdoor speakers, however the live entertainment has been restricted to inside these establishments or to the rear of the business.

DECISION:

Mr. Williams approved PL080339/ZUP08144 subject to the following conditions:

1. The use permit is valid for Fat Tuesdays 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.
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. No live entertainment or ~~outdoors speakers~~ permitted on the Mill Avenue frontage patio. **MODIFIED BY STAFF**
6. The use permit is valid for the plans as submitted within this application.
7. The applicant shall work with the Tempe Police Department to implement a Security Plan for the business (contact the Crime Prevention Department at 480-858-6027).

11. Request by **TIEDEMANN AUTO SALES (PL080342)** (Anthony Tiedemann, applicant; Cal-Eaton Properties, property owner) located at 625 South Smith Road, Suite No. 31 in the GID, General Industrial District for:

ZUP08150 Use permit to allow auto sales in the General Industrial District.

No one was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case, and stated that since the staff report had been issued one (1) letter of opposition had been received. The nature of the letter of opposition was opposed to loud music or doing repairs/maintenance at this location.

No opposition was present at this hearing.

DECISION:

Mr. Williams approved PL080342/ZUP08150 subject to the following conditions:

1. The use permit is valid for "Tiedemann Auto Sales" 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 reviewed and approved by the Hearing Officer.
4. The display of vehicles shall not be located in the public right-of-way, landscape areas, **driveway apron or drive aisles. Display is limited to four (4) parking spaces. MODIFIED BY HEARING OFFICER.**
5. All business signs shall require a sign permit. Please contact staff at (480)350-8331 for all sign permitting application and questions.
6. Provide a full cut-off light fixture above garage door by **November 7, 2008. MODIFIED BY HEARING OFFICER**
7. **There shall be no maintenance, modification or repair activities of autos to occur in the parking lot or outdoor areas. ADDED BY HEARING OFFICER**

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12. Request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **PORTER RESIDENCE (PL080330/ABT08026)** (Sharon Porter, property owner) Complaint CE083249 located at 1604 East Del Rio Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Julie Scofield, City of Tempe – Neighborhood Enhancement Department, stated that dead trees, debris, landscaping violations remain in the back yard. Extensions were given to this property owner on May 1, May 16 and June 9 and only incomplete cleanup was done. After five (5) months the City issued a citation on July 7th and there has been no change in the yard to date.

DECISION:

Mr. Williams authorized abatement proceedings for PL080330/ABT08026.

The next Hearing Officer public hearing will be held on **Tuesday, October 21, 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

APPROVED