

Minutes
HEARING OFFICER
MARCH 17, 2009

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
Sherri Lesser, Senior Planner
Shawn Daffara, Planner II
Nick Graves, Planning Intern
Derek Partridge, Planner I
Steve Abrahamson, Planning & Zoning Coordinator

Number of Interested Citizens Present: 16

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 March 31, 2009 at 3:00 PM to the Development Services Department.

1. Mr. Williams approved the Hearing Officer Minutes for March 3, 2009.

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 Williams noted that the following case(s) had been withdrawn: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 **THOMAS RESIDENCE (PL090067/ABT09003)** (Paul Thomas, property owner) Complaint CE087492 located at 1117 West Second Street in the R1-6, Single Family Residential District.

WITHDRAWN BY CITY OF TEMPE – NEIGHBORHOOD ENHANCEMENT DEPARTMENT

3. Request by the **COTTRELL RESIDENCE (PL070162)** (Craig & Andrea Cottrell, applicants/property owners) located at 923 East Carver Road in the AG, Agricultural District for:

ZUP09033 Use permit to allow a second story addition.

VAR09002 Variance to reduce the front yard setback from forty (40) feet to ~~twenty-four (24) feet~~ **thirty-two (32) feet. MODIFIED BY THE HEARING OFFICER**

Ms. Andrea Cottrell was present to represent this case. She explained that due to financial considerations they were unable to complete their project within the one year time frame and that she was unaware of the one year time frame for the front yard variance previously approved.

Sherri Lesser, staff planner, gave an overview of this case and stated that no additional public input had been received since the staff report had been issued. She noted that the applicant had appeared before the Hearing Office approximately two (2) years ago for a variance setback and at that time the Hearing Officer approved a twenty percent (20%) reduction to thirty-two (32) feet. The applicant then appealed this decision to the Board of Adjustment who granted a setback to twenty-four (24) feet. The applicant did not apply for a building permit within the specified time period of twelve (12) months so the entitlements expired. At this time the applicant is also applying for a use permit to allow a second story addition.

Mr. Williams noted that he had received an e-mail of opposition to this case from Doug Walton.

Mr. Doug Walton, Tempe resident, spoke in opposition to this case, stating that he did not feel that this proposed project would maintain the character of the established neighborhood. He addressed related issues of septic tank capacity and design. He did not see approval from the homeowners association for this project.

Mr. Williams noted that while the City of Tempe encourages CC & R's they do not enforce them as they are private party agreements between property owners and Homeowners Associations. The original application, which was submitted two (2) years ago, did not include the second story addition, and the variance applied for at that time was modified to thirty-two feet as there did not appear to be any hardship involved. Mr. Williams noted that he was concerned about the design of the second story addition as it was designed at the front of the home towards the street rather than the rear. He stated that the second story design as presented did not step back from the street or meet the character of the neighborhood.

DECISION:

Mr. Williams denied the use permit for PL070162/ZUP09033.

Mr. Williams approved a modified variance to reduce the front yard setback from forty (40) feet to thirty-two (32) feet for PL070162/VAR09002 subject to the following conditions of approval:

1. Obtain all necessary clearances from the Building Safety Department.
2. Obtain all necessary clearances from the Public Works Department for on-site retention for expansion of pavement in front yard.
3. Per Tempe City Code, improved paved areas shall not exceed 35% of the front and side areas visible from the street.

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4. Request by **56th STREET CLASSIC CAR SPA (PL090069)** (Timothy Stocker, applicant; 56th Street Classic Car Spa LLC, property owner) located at 9969 South Priest Drive in the PCC-2, Planned Commercial Center General District for:

ZUP09034 Use permit to allow vehicle rental (U-Haul).

Mr. Timothy Stocker was present to represent this case. He discussed cleanup and traffic at this site and explained that the volume of U-Haul rentals would be two (2) to five (5) a day.

Shawn Daffara, staff planner, gave an overview of this case and stated that no additional public input had been received since the staff report had been issued. He noted that the rentals would be parked in the northeast corner of the site.

Condition of Approval No. 5 was discussed with the applicant and it was noted that there are only five (5) available spaces to store U-Hauls. The applicant acknowledged the condition and stated that he will comply.

DECISION:

Mr. Williams approved PL090069/ZUP09034 subject to the following conditions of approval:

1. The use permit is valid for 56th Street Classic Car Spa and may be transferred to successors in interest, subject to a review by Development Services staff.

2. Any significant verifiable complaints as determined by the City Attorney and/or Commercial Enforcement Division shall require the applicant to return to the Hearing Officer for re-evaluation of the use permit.
3. All U-Haul vehicles shall not block any portion of the fire lane. A fire lane requires a twenty (20) foot wide drive aisle for emergency vehicles to maneuver on site. Any questions regarding the fire lane should be addressed to the Fire Department Representative, Jim Walker (480) 350-8858.
4. No truck repair shall be conducted on site.
5. No more than five (5) U-Haul vehicles allowed at any given time.
6. All U-Haul vehicles shall be parked at the northeast corner of the site, away from the street.
7. The landscape area along the east property line requires maintenance. All litter, debris, weeds and uncontrolled growth shall be removed by March 31, 2009.
8. All refuse enclosures on site are in need of maintenance. All litter, debris and junk shall be removed by March 31, 2009.
9. Classic Car Spa shall obtain Development Plan Review (DPR) approvals for all the fabric canopies on site or canopies shall be removed. Applicant shall meet with staff by March 31, 2009 to resolve illegal fabric canopies.

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5. Request by the **THOMAS RESIDENCE (PL090070)** (Jeff Campbell/Quantum Builders, applicant; Dave Thomas, property owner) located at 1890 East Carmen Street in the R1-7, Single Family Residential District for:

ZUP09035 Use permit to allow an accessory building (gazebo).

ZUP09036 Use permit standard to reduce the west side yard setback by twenty percent (20%) from seven (7) feet to five (5) feet six (6) inches.

Mr. Dave Thomas was present to represent this case.

Nick Graves, staff planner, gave an overview of this case and stated that a phone call of support had been received yesterday.

DECISION:

Mr. Williams approved PL090070/ZUP09035/ZUP09036 subject to the following conditions of approval:

1. Obtain all necessary clearances from the Building Safety Division.
2. The ramada shall compliment the style of the existing residence in materials and design and be painted a color complimentary to the existing residence.
3. The use permits are valid for the plans as submitted to and approved by the Hearing Officer.

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6. Request by **ACCEL INC (PL090071)** (Gerald Cook/Cook Associates Architects Inc., applicant; ACCEL Inc., property owner) located at 1430 East Baseline Road in the R1-6, Single Family Residential District for:

ZUP09037 Use permit to expand the existing charter school to allow enrollment up to the twelfth (12th) grade.

Mr. Gerald Cook of Cook Associates Architects Inc. was present to represent this case.

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

DECISION:

Mr. Williams approved PL090071/ZUP09037 subject to the following conditions of approval:

1. All dead and/or missing landscaping on site shall be replaced within 30 days of this approval (4/17/2009). Landscaping shall be maintained free of weeds.
2. All required 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 on this use through Code Enforcement, Police, or Building Safety and these complaints are deemed valid by the City Attorney's office, this use may be required to return to the Hearing Officer for a re-review of the use permit.

7. Request by **BROADWAY PLAZA - MEMOS CAFE (PL090072)** (Ramez Rabata, applicant; Red Mountain Retail Group, property owner) located at 1845 East Broadway Road, Suite No. 111 in the CSS, Commercial Shopping and Services District for:

ZUP09038 Use permit to allow live entertainment.

Mr. Ramez Rabata was present to represent this case.

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

Mr. Williams questioned whether there had been any complaints or problems with this business; Mr. Daffara responded that there had not been any.

Mr. Daffara stated that a Condition of Approval No. 9 needed to be added to address the issue of the broken bench and table located in the common area adjacent to the outside entrance door to this business. Should the applicant decide to replace these items, a Design Review approval would need to be obtained from staff prior to installation.

Mr. Rabata stated that the property owner would be taking care of the broken table/chairs and planned on replacing them. Mr. Daffara explained the need for prior approval by Development Services staff of any exterior modifications such as replacement tables and chairs.

DECISION:

Mr. Williams approved PL090072/ZUP09038 subject to the following conditions of approval:

1. The use permit is valid for Memo's Cafe and may be transferable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation.
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. The live entertainment use shall take place inside only. No live entertainment will be allowed outside in the patio area.
5. No outdoor speakers will be allowed.
6. 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.
7. The use permit is valid for the plans as submitted within this application.
8. The applicant shall work with the Tempe Police Department to implement/update a Security Plan for the business. Please contact the Crime Prevention Department at 480-858-6027.
9. **Repair or remove the broken bench and table located outside the front entrance door. Any new tables or chairs require prior approval by Development Services staff. ADDED BY STAFF**

8. Request by the **KIM RESIDENCE (PL090077)** (Joochul Kim, applicant/property owner) located at 724 West 10th Street in the R1-6, Single Family Residential District for:

ZUP09039 Use permit to allow an accessory structure (storage building).

Mr. Joochul Kim was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case and stated that no additional public input had been received since the staff report had been issued. She noted that this building had been partially constructed and that the applicant was made aware of the use permit process by the building code inspector. Four (4) letters of support had been received for this request.

Mr. Mark Lymer, Tempe resident, stated that he supports this request but wishes the applicant had followed City requirements before starting construction.

Mr. David May and Mr. Bill Goratch, Tempe residents and neighbors, both spoke in support of this request.

DECISION:

Mr. Williams approved PL090077/ZUP09039 subject to the following conditions of approval:

1. Obtain all necessary clearances and permits from the Building Safety Division.
2. Accessory building (garage) to complement the main residence in color, form and material.
3. The alley shall be maintained in a dust free condition per City Code, Chapter 29-3.
4. Process a lot tie with Building Safety Division to create one property.

The next Hearing Officer public hearing will be held on **Tuesday, April 7, 2009.**

There being no further business the public hearing adjourned at 2:15 PM.

Prepared by: Diane McGuire, Administrative Assistant II

Reviewed by:



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

SA:dm