

**Minutes
HEARING OFFICER
APRIL 7, 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
Steve Abrahamson, Planning & Zoning Coordinator

Number of Interested Citizens Present: 13

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 April 21, 2009 at 3:00 PM to the Development Services Department.

1. Mr. Williams approved the Hearing Officer Minutes for March 17, 2009.

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

- Request by **EMERALD CENTER - PHASE VENUE/NIGHTCLUB (PL090106)** (Jon Harris, applicant; DAR 2 LLC, property owner) located at 8475 South Emerald Drive in the RCC, Regional Commercial Center District for:

ZUP09050 Use permit to allow a concert venue including outdoor entertainment.
CONTINUED BY DEVELOPMENT SERVICES DEPARTMENT

- Request by **COUNTRYSIDE SHOPPING CENTER - SIGN OF THE WHALE (PL090098)** (Gregory Arrington/ABM Development Services, applicant; JDS Countryside LLC, property owner) located at 1706 East Warner Road, Suite No. 3 in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP09049 Use permit to allow live entertainment.
CONTINUED TO THE MAY 5, 2009 HEARING OFFICER

3. Request by **TEMPE FARMERS MARKET (PL080462)** (Daryle Brett Dutton, (applicant; Javan LLC, property owner) located at 805 South Farmer Avenue in the GID, General Industrial District for:

ZUP09047 Use permit for outdoor retailing in conjunction with an indoor farmers market.

Mr. Daryle B. Dutton 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. It was noted that this applicant had recently been approved for a use permit allowing indoor retailing.

DECISION:

Mr. Williams approved PL080462/ZUP09047 subject to the following conditions of approval:

1. The use permit is valid for Tempe Farmers Market and may be transferable with approval from the Development Services staff. Should the business be sold, the new owners must contact the Development Services staff for review of the business operation.
2. The location of outdoor display areas shall not impede vehicular traffic, parking or sight visibility triangles.
3. A clear path for pedestrians must be maintained. All maneuvering areas shall meet the provisions of the Americans with Disabilities Act.
4. All displays shall be located on private property and may not encroach into the City right-of-way.
5. 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.
6. Obtain the necessary clearances from the Maricopa Health Department for the handling and disposal of produce.
7. All display materials, including tables, stands or crates to be stored on the interior of the building during non-business hours. The display area must be kept neat, clean and hazard-free during hours of operation.
8. Any signage for the outdoor display area to receive clearance from the Development Services Department sign section.
9. **All shopping carts shall be stored in the interior of the building. ADDED BY HEARING OFFICER**

4. Request by the **LOPERCIO RESIDENCE (PL090084)** (Michael Lopercio, applicant/property owner) located at 1605 East Citation Lane in the AG, Agricultural District for:

ZUP09046 Use permit to allow an accessory building (garage).

Mr. Michael Lopercio 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. He noted that this residence was part of Sunburst Farms. In response to a question from Mr. Williams, Mr. Daffara noted that the height of this structure is twelve (12) feet two (2) inches.

Sherri Lesser, staff planner, commented that per the code a twenty (20) foot setback is required on this property as the garage is facing a side street.

In response to a question from this applicant, Mr. Williams noted that normally the zoning code requires a minimum fifteen (15) foot setback however when a driveway is involved a twenty (20) foot setback is required to insure that there is enough room to adequately store a vehicle. Mr. Lopercio noted that this is a dead end street and that, if possible, he would prefer a fifteen (15) foot setback rather than twenty (20). Mr. Williams noted that a request for a fifteen (15) foot setback would require Mr. Lopercio to apply for a variance. In order for a variance to be approved, Mr. Williams explained, the applicant would have to prove that a hardship was involved.

Mr. Williams noted that two (2) letters of opposition had been received from neighbors to the south of this location who were concerned about the placement of this structure.

DECISION:

Mr. Williams approved PL090084/ZUP09046 subject to the following conditions of approval:

1. Accessory building not to be used for sleeping or living purposes and shall have no cooking facilities.
2. The accessory building not to be rented separately from the main residence as an office or accessory unit.
3. The accessory building shall be compatible with the main residence in color, form and material.

5. Request by the **THOMPSON PROPERTY (PL090085)** (Robert Thompson, applicant/property owner) located at 1623 East Del Rio Drive in the R1-6, Single Family Residential District for:

ZUP09045 Use permit to allow required parking in the front yard setback.

Mr. Robert Thompson was present to represent this case.

Steve Abrahamson, staff planner, gave an overview of this case and stated that two (2) e-mails in opposition had been received since the staff report had been issued. The opposition regarded the number of occupants in the house and that this is a rental home and the number of cars at that location. Staff is adding a condition regarding street parking to address these concerns.

Discussion regarding Condition of Approval No. 4 was addressed by Mr. Abrahamson who stated that if the carport matched the main residence/structure then the applicant was meeting this condition of approval. If there is a deviation in the color, then it needed to match the existing color to maintain consistency.

Mr. W. Wayne Roach, Tempe resident, spoke in opposition to this case. He noted that he resided nearby and that this property has no landscaping (i.e. trees, bushes, etc.) at all and only had sand in the yard. The property has been converted to a rental housing for students rather than the intended single family use. The neighborhood is experiencing an on-going problem with excessive street parking due to the rental units. He stated that he objected to any change that would facilitate continuous parking on the street and driveways.

Mr. Williams had staff confirm for the record that the Tempe City Code permits three (3) unrelated adults to reside in a home located in a single family residential district. Mr. Abrahamson responded that it is actually the Zoning and Development Code that contains this stipulation.

The issue of landscaping was discussed and in response to a question from Mr. Williams, Mr. Abrahamson stated that since the property has no landscaping in order to mitigate the issue of additional cars parking in the driveway it would be appropriate to add a condition to include adding some screening. Staff discussion indicated that recent cases included additional landscaping when necessary.

Mr. Thompson explained that he had removed the grass in the front yard area, placed plastic sheeting and installed desert landscaping consisting of crushed granite. The property had a large tree in the front yard until about thirty (30) days ago when it died due to age. The tree was cut down within the last thirty days. He has no problem replacing the tree. Mr. Roach responded that this was not desert landscaping but just sand.

DECISION:

Mr. Williams approved PL090085/ZUP09045 subject to the following conditions of approval:

1. The required parking on-site shall be used for single family residence only.
2. Parking shall take place on impervious surfaces only.
3. All vehicles parked on the premises must be actively registered and in operable condition at all times.
4. The enclosed area shall be painted to match the existing brick facade of the residence within sixty (60) days (June 7, 2009). **MODIFIED BY HEARING OFFICER**

5. If there are 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.
6. **Any on street parking in front of the residence is to comply with the Tempe City Code Chapter 21.**
ADDED BY HEARING OFFICER
7. **Applicant shall provide a 24" box low water use shade tree within thirty (30) days (May 7, 2009).**
ADDED BY HEARING OFFICER

6. Request by the **SLEEPY DOG BREWERY (PL090092)** (Scott Rasmussen/Synectic Design Inc., applicant; University and Perry LLC, property owner) located at 1920 East University Drive, Suite No. 104 in the GID, General Industrial District for:

ZUP09044 Use permit to allow a restaurant and brewery.

Mr. Scott Rasmussen of Synectic Design Inc. and Mr. Robert Sizemore were 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. He noted that this is not a bar but a brewery that will include a tasting room that does not require a Series 6 license. There is no live entertainment proposed at this point.

In response to a question from Mr. Williams, Mr. Sizemore responded that primarily their business plan is for packaging and distribution to restaurants and bars. A small amount of beer will be held back for tasting and retail.

DECISION:

Mr. Williams approved PL090092/ZUP09044 subject to the following conditions of approval:

1. The use permit is valid for Sleepy Dog Brewery and may be transferable with approval from the Development Services staff. Should the business be sold, the new owners must contact the Development Services staff for review of the business operation.
2. The use permit is valid for the plans submitted and reviewed by Development Services staff.
3. The use is only valid for brewery/manufacturing. No intensification to include restaurant use will be allowed unless a new use permit is approved.
4. All business signs will require sign permits prior to installation.
5. The applicant or business owner shall contact the City of Tempe Police Department, Crime Prevention Unit to implement/update a Security Plan for the business. Please contact the Crime Prevention Department at 480-858-6027.

7. Request by the **ARROWSMITH RESIDENCE (PL090097)** (Jeff Ericson/Woolsey Studio Inc., applicant; Ramon Arrowsmith, property owner) located at 140 East Del Rio Drive in the R1-6, Single Family Residential District for:

ZUP09048 Use permit to allow the intensification of an existing accessory building from garage to garage/studio office.

Ms. Christine Woosley of Woolsey Studio Inc. and Mr. Ramon Arrowsmith were present to represent this case. Ms. Woosley stated that there was no intention of using this structure as a rental unit and that the floor plan had been revised.

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. One phone call had been received expressing concern with increased traffic and the possibility of this structure being turned into a rental unit. This concern has been addressed by the Conditions of Approval.

DECISION:

Mr. Williams approved PL090097/ZUP09048 subject to the following conditions of approval:

1. Locate pool bath on first floor of structure.
2. Accessory building is not to be used for sleeping or living purposes and shall have no cooking facilities.
3. The accessory building is not to be rented separately from the main office as an office or accessory unit.
4. Non-compliance with the conditions of approval may result in revocation of the use permit and the use of the building returned to storage.

8. Request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **GRIFFITHS RESIDENCE (PL090091/ABT09004)** (Megan Griffiths, property owner) Complaint 087661 located at 422 East Fordham Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Brandy Zedlar, City of Tempe – Neighborhood Enhancement Department, stated that this is a basic landscape cleanup that has been ongoing for several months. Many complaints had been received from the surrounding neighbors regarding the condition of the property.

Mr. Williams asked that materials on whatever assistance may be available be mailed to the property owner by Ms. Zedlar.

DECISION:

Mr. Williams approved abatement proceedings for PL090091/ABT09004.

The next Hearing Officer public hearing will be held on **Tuesday, April 21, 2009.**

There being no further business the public hearing adjourned at 2:19 PM.

Prepared by: Diane McGuire, Administrative Assistant II

Reviewed by:



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

SA:dm