

**Minutes
HEARING OFFICER
MAY 19, 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
Derek Partridge, Planner I

Number of Interested Citizens Present: 15

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 June 2, 2009 at 3:00 PM to the Development Services Department.

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1. Mr. Williams approved the Hearing Officer Minutes for May 5, 2009.

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

Request by **VERIZON WIRELESS – PHO BENKO (PL090005)** (Chad Ward/Pinnacle Consulting Inc., applicant; The Center, property owner) located at 201 East Southern Avenue in the CSS, Commercial Shopping and Services District for:

ZUP09062 Use permit to allow a sixty (60) foot wireless antenna (monopalm).

CONTINUED TO THE JULY 7, 2009 HEARING OFFICER HEARING

3. 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 for:

ZUP09049 Use permit to allow live entertainment.

Mr. Bruce Sandground 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. He noted that this case had been continued from the April 7, 2009 Hearing Officer hearing in order that a neighborhood meeting could be held to address neighborhood concerns. This meeting was held on May 4, 2009 and the applicant will provide further information on what transpired. Locations of the doors/entrances were discussed as depicted on the site plan.

Mr. Sandground explained that they would like to add entertainment (karaoke, DJ, live performers, small ensembles) to enhance business. Entertainment would be held indoors only with as little amplification as possible.

Ms. Pam Goronkin, Tempe resident, spoke of concerns that residents of Warner Estates have regarding the request to change the nature that this business location has had for the past 25 years – that is by adding a late night element. The Conditions of Approval as listed address the concerns presented at the neighborhood meeting with a few exceptions. One is that residents had requested that the use permit be made conditional for a 12 month period, so that they could determine whether they would experience bothersome activity generated by the live entertainment.

Ms. Goronkin explained that homes and bedrooms of the residents are only about 75 yards from the entrance of this business. Employees leaving the business often disturb residents in the form of loud radios, traffic in and out of the lot, etc. Patrons generated by the live entertainment would add to this nuisance factor. By applying the 12 month use permit stipulation this would allow residents to address any concerns they had experience. They would also like to request that at the end of this 12 month period that a review of the sales receipts generated during that period be reviewed to see if the sales of alcohol were greater than food sales – if so this would be changing the nature of the establishment and would affect the residents as well as a change in the liquor license requirement. This concern also relates to the possible change of ownership in the future and whether future owner(s) would be good neighbors. She provided additional e-mails of concern to the Hearing Officer.

Mr. Williams stated for the record that the liquor license is not an issue that would be considered regarding the merits of this case. Ms. Goronkin further expressed concern that the late hours for the live entertainment would conflict with residents personal backyard activities during the same period. Mr. Williams noted that the live entertainment would be contained indoors and as no outdoor speakers were permitted, the noise factor should have a minimal effect on personal enjoyment of the residents' properties.

Ms. Goronkin explained that the applicant had had live entertainment for several months before applying for this use permit as well as offering a Sunday brunch. Residents were concerned that the applicant would not be inclined to honor commitments with the City such as adherence to the Conditions of Approval.

Mr. Williams asked Ms. Goronkin for her definition of 'late night'; she responded that 11 PM was the time factor discussed at the neighborhood meeting. She confirmed that it was the residents' request that live entertainment not be permitted past 11 PM on all seven nights.

Mr. Mike St. George, Tempe resident for 41 years, spoke in support of this request stating that he was a customer of this business and also played in a band. He encouraged the City to grant this use permit noting that musical venues within the City are limited. He explained that this is a family oriented business.

Mr. Sandground reiterated that this entertainment would not be disruptive to the community and that they would abide by all of the City's stipulations. He also stated that Maricopa County has sufficient inspectors to assure that they comply with the State liquor laws. He confirmed, in response to a question from Mr. Williams, that he fully understood the need to comply with all of the conditions of approval in order to maintain the use permit.

Mr. Williams explained that the issue of compatibility to property owners is considered very carefully when the issue of live entertainment is presented and any negative aspects that may occur. The fact is that there are residential properties that back up to the shopping center and it has always been that way. The shopping center existed when properties were purchased and homes built so there has always been that interface.

DECISION:

Mr. Williams approved PL090098/ZUP09049 subject to the following conditions of approval:

1. The use permit is valid for Sign of the Whale 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. 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 Noise Ordinance 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 outdoor speakers will be allowed.
6. Live entertainment is approved for the hours of 7 PM to Midnight on Friday and Saturday; and from 7 PM to 11 PM on Sunday thru Thursday.
7. 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.
8. **Service and patio doors shall remain closed at all times during times of performance and live entertainment. ADDED BY HEARING OFFICER**

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4. Request by **SPINATO'S PIZZA (PL090133)** (Mark Schipper/Schipper Design Associates, applicant; University Smith Partners, property owner) located at 227 South Smith Road, Suite No. 101 in the GID, General Industrial District for:

ZUP09065 Use permit to allow the expansion of a restaurant.

ZUP09066 Use permit to allow an outdoor patio.

Mr. Mark Schipper of Schipper Design Associates and Mr. Patrick Folley of Patrick Folley Construction were 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.

DECISION:

Mr. Williams approved PL090133/ZUP09065/ZUP09066 subject to the following conditions of approval:

1. Obtain all necessary clearances from the Building Safety Division and Engineering Department.
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. 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.

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5. Request by the **KEEGAN RESIDENCE (PL090145)** (Pat Keegan, applicant/property owner) located at 1325 East Secretariat Drive in the AG, Agricultural District for:

ZUP09061 Use permit to allow an accessory building (ramada).

Mr. Pat Keegan 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 PL090145/ZUP09061 subject to the following conditions of approval:

1. Obtain necessary clearances from the Building Safety Division.
2. The use permit is valid for the plans as submitted to the Hearing Officer.

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6. Request by **HAREM NIGHTS (PL090148)** (Kahlil Abulaban, applicant; 1630 Apache LLC, property owner) located at 1630 East Apache Boulevard, Suite No. 103 in the CSS, Commercial Shopping and Services District for:

ZUP09063 Use permit to allow a hookah lounge.

ZUP09067 Use permit to allow live entertainment.

Ms. Tara Eivers was present to represent this case. TV's are available to watch sports events, entertainment is belly dancing only. The belly dancer provides her own music on a CD and there are two (2) shows of 20 minutes duration – one at 10 PM and one at 11 PM.

Shawn Daffara, staff planner, gave an overview of this case and stated calls of inquiry had been received since the staff report had been issued. He identified the location of the nearest Single Family Residential District to the north and that the live entertainment would only consist of belly dancing. The calls of inquiry had concerned the nature of the live entertainment and no letters of complaint had been received. Mr. Daffara confirmed in

response to a question from Mr. Williams that this applicant is required to comply with the Smoke Free Arizona stipulations. No liquor is allowed to be served, just coffee, tea, soft drinks, water – there is no liquor license. Customers can bring in their own food from other sources but the applicant is not allowed to serve food on site.

Mr. Chuck Buss, Tempe resident of the University Heights neighborhood, stated that the biggest concern is that the building is ten (10) feet from a residential area. Residents had experienced noise problems from a bar that was in this location previously. This business has a very small parking lot and there are concerns about parking issues as overflow parking may occur on 12th Street. He presented thirteen (13) statements of opposition to this request to the Hearing Officer, noting that the lack of a neighborhood meeting generated the calls of inquiry to staff.

Mr. Williams asked staff whether a neighborhood meeting was required. Mr. Daffara responded that the Zoning and Development Code only requires that a neighborhood meeting be held in when issues of variances or PADs exist. Staff does recommend that neighborhood meetings be held when there are residential areas nearby use permit requests however they cannot require that the applicant(s) do so. Applicants who receive letters/inquires of concern from residents often decide to hold a neighborhood meeting in order to alleviate those issues of concern. Mr. Daffara explained that there had been no calls or inquiry until after the staff report had been issued to the applicant.

Mr. Williams asked how long Harem Nights had been in operation. Mr. Daffara responded that they are not yet in operation so no track record as to the number of patrons, or issues of operation exist at this time. Mr. Daffara stated that based on staff's experience with other hookah lounges, the majority of patrons usually number 15 to 20 people. Mr. Daffara read the conditions of approval into the record for those present.

Mr. Christopher McKee, Tempe resident of the University Heights neighborhood, stated that the conditions of approval address the residents' concerns. He would recommend that the applicant seek an agreement for overflow parking on another lot. He asked that the applicant assure that the entertainment/patrons do not overflow into the parking lot or patio area.

Ms. Eivers explained that Harem Nights is an upscale place catering mainly to the 25 to 85 year age group. She is very conscious of the homeowners in the nearby area and would be happy to hold a neighborhood meeting even after the use permit is approved if the residents so desired. Everything will be indoors and there is no room for an outdoor patio. She assured Mr. Williams that she had no problem being accountable to the residents concerns. There are no other tenants of this center who have night time activities so parking should not be an issue. She expects that most people will like to come on the weekends when the belly dancer is present and estimated that there may be 10 to 40 patrons at that time.

In response to a question from Mr. Williams as to the seating availability, Ms. Eivers stated that on the floor itself there is seating for about 23 people. An upper area seats about 20 people comfortably and there are additional stools available.

Mr. Williams noted that in essence that the residents in the audience were in fact now having a neighborhood meeting. He asked if anyone had additional questions for this applicant. Mr. Buss returned to the podium to question Ms. Eivers about the current status of this business/security plan/parking. She responded that they were currently doing renovations. She explained that several of the parking lot lights were inactive and that the property owner would be rectifying that situation which relate to the security issue(s). A security plan is required to be implemented within thirty (30) days. The property owner has agreed to have the parking lights in operation by May 19th.

Mr. Buss noted that there had been a homeless contingent in this parking lot area. Ms. Eivers explained that she had been working with the Tempe Police Department on this issue and that there were a lot of more police officers driving thru this area to resolve this situation of homeless tenancy.

Mr. Buss asked what would be required should this business decided to expand in the future and the subsequent parking affect. Mr. Williams confirmed that they would be required to return to Development Services staff to obtain approval for anything of that nature. Ms. Eivers noted that their objective is to be a good neighbor.

DECISION:

Mr. Williams approved PL090148/ZUP09063/ZUP09067 subject to the following conditions of approval:

1. The use permit is valid for Harem Nights and may be transferrable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff or review of the business operation.
2. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.
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. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective. Since smoking will be permitted on the premises, the owner/management is responsible to adhere to the 2003 International Mechanical Code.
5. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
6. The gross sale of beverages and snack items may not exceed that of tobacco and hookah products.
7. No outdoor live entertainment or outdoor speakers shall be allowed.
8. Live entertainment shall not violate the City of Tempe Noise Ordinance.
9. Existing fluorescent lighting above entrance doors shall be operable from dusk until dawn. Staff will conduct evening inspection to verify.
10. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8331.
11. The applicant shall contact the City of Tempe Crime Prevention Unit for a Security Plan within 30 days of this approval. Contact Crime Prevention at (480) 858-6027 before June 19, 2009.
12. **Live entertainment is restricted to live belly dancing only. ADDED BY STAFF**
13. **Live entertainment shall cease at 11:30 PM nightly. ADDED BY STAFF**

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7. Request by **TEMPE TOWNE CENTER – URBAN CAMPFIRE (PL090150)** (Steve Wolff, applicant; Tempe Towne Holding Company, property owner) located at 921 East University Drive in the CSS, Commercial Shopping and Services District for:

ZUP09064 Use permit to allow live entertainment.

Mr. Steve Wolff 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. This business owner had spoken with the adjacent business owner and obtained a petition of support from them for this request. The patio is located on the north side of the building.

At Mr. Wolff's request, Mr. Williams read the conditions of approval. Mr. Wolff stated that they are working with the Crime Prevention Department and the landlord will be removing the weeds. He acknowledged the need for a sign permit for the painted sign on the building.

DECISION:

Mr. Williams approved PL090150/ZUP09064 subject to the following conditions of approval:

1. The use permit is valid for Urban Campfire 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. Noise generated from the use shall conform to the City of Tempe Noise Ordinance 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 band and/or karaoke area to maintain a minimum 3' clearance from patio entrance to comply with ADA accessibility requirements.
6. The use permit is valid for the plans as submitted within the application.
7. The applicant shall work with the Tempe Police Department to update the Security Plan for the business. Contact the Crime Prevention Department at 480-858-6027.
8. Remove weeds from landscape areas on site by 06/19/09.
9. Obtain approval of painted sign on rear of building or remove by 06/19/09.

The next Hearing Officer public hearing will be held on **Tuesday, June 2, 2009.**

There being no further business the public hearing adjourned at 2:45 PM.

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



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

SA:dm