

Minutes  
HEARING OFFICER  
JANUARY 19, 2010

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  
Nick Graves, Planning Intern  
Sherri Lesser, Senior Planner  
Derek Partridge, Planner I  
Kevin O'Melia, Senior Planner

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 February 2, 2010 at 3:00 PM to the Development Services Department.

1. Mr. Williams approved the Hearing Officer Minutes for January 5, 2010.

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 Williams noted that the following case(s) had been withdrawn from today's agenda:

Request by the City of Tempe – Code Compliance Department to abate public nuisance items in violation of the Tempe City Code for the **ORRAS RESIDENCE (PL090428/ABT09038/CE087014)** (Jamie Orras, property owner) located at 26 West Erie Drive in the R1-6, Single Family Residential District.  
**WITHDRAWN BY CITY OF TEMPE CODE COMPLIANCE DEPARTMENT**

3. Request by the **RESIDENCE AT 16 EAST 15<sup>TH</sup> STREET (PL090003)** (Charles Huellmantel, applicant) located at 16 East 15<sup>th</sup> Street in the R1-6, Single Family Residential District for:

**ZUP09182** Use permit to allow an accessory building above fifteen (15) feet in height, not-to-exceed thirty (30) feet in height (new two story accessory building).

**VAR09016** Variance to reduce the north rear yard setback from **nine (9) ~~fifteen (15)~~** feet to five (5) feet.

**CORRECTED BY DEVELOPMENT SERVICES IN ACCORDANCE WITH THE OCTOBER 2009  
ZONING DEVELOPMENT CODE CHANGES**

~~VAR09017~~ Variance to allow a separate utility metering service for an accessory building/guest quarters.  
**WITHDRAWN BY APPLICANT**

Mr. Charles Huellmantel was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case and stated that two (2) e-mails in opposition to this request have been received since the staff report was issued. One was from the property owner to the north and they were concerned regarding the height; the other property owner objected to the metering which has been withdrawn by the applicant. Two (2) letters of support of this request have been received.

Mr. Williams noted that one of the neighbors had suggested that if this request was to be approved that the window on the north elevation be opaque and that this had been included within the conditions of approval. He questioned the second story window on the east elevation and whether it would also be opaque. Sherri Lesser stated that staff was in support of that request also.

Mr. Huellmantel stated that special circumstances were present that applied to the variance request. The structure is designed in such a manner that it will complement the existing house. It cannot be moved south as that location would destroy the existing pecan trees. The structure will sit below the line of oleanders that surround the building and it will not be visible from the alley. In response to a question from Mr. Williams, Mr. Huellmantel replied that there was a chain link fence and a building (shed) currently in that location that had been there for a very long time and the new guest house would be replacing that shed.

Mr. Phil Hedrick, Tempe resident, spoke in opposition. He lives directly north of this property and is opposed to this use permit and variance request. He stated that he has been informed by his real estate agent that having this building right next to the border of his property will decrease his property value. He explained that the original letter he had received from Mr. Huellmantel indicated that he would be erecting a garage not a two story guesthouse. He stated that the ordinance requires 15,000 s.f. lot for this type of structure and Mr. Huellmantel only has a 14,000 s.f. so this was not the intent of the ordinance to allow guesthouses on properties less than 15,000 s.f. Mr. Hedrick stated he has lived at his present location for 18 yrs. There is not an adequate visual barrier as the guesthouse will only be five (5) feet from the existing chain link fence that separates the two properties. Maintaining the oleander hedge is a concern; both the possibility of it dying and the requirements for Mr. Huellmantel to maintain it (i.e. trimming, etc.). He also feels that the structure would be a sound invasion and intrude on his privacy. The five (5) ft setback requested does not allow for adequate growing room for the landscape. He indicated that cutting a single branch from the existing tree would allow Mr. Huellmantel to move the location of the guesthouse further south on the property. He is not opposed to a one story garage or a one story guesthouse.

Ms. Lesser explained that a house requires a fifteen (15) ft setback while an accessory building only requires a nine (9) ft setback.

Mr. Cliff Jones, Tempe resident, spoke in support of this request. He stated that he lives in the house directly across the street from this property. Mr. Huellmantel has reviewed his plans for this project with him several times and kept him informed of developments and his concern to preserve the existing landscape/trees. He feels that the project is attractive and will add value to the neighborhood.

Mr. Doug McQueen, Tempe resident, stated that he lives north of this property and is concerned because this could be turned into a rental regardless of what Mr. Huellmantel says at the present time . . . anything that can be

a rental will be a rental one day he said. He stated that if this project was being built in the back of his property he would be very concerned over the scope and size of the project as he feels that it way more than a small lot should accommodate.

Ms. Lesser explained that the ordinance adopted in October 2009 set perimeters on guesthouses erected in residential areas. A written affidavit by the property owner stating that this will not be used as a rental, that it will be used strictly as a guesthouse is required. No separate metering is allowed. Enforcement of those requirements can be implemented with documentation that this is not being adhered to.

Mr. Hedrick returned to the podium to question the four foot work bench issue.

Mr. Huellmantel acknowledged that there is a small work bench in the area depicted and explained that it is as close as possible to the existing pecan tree. He stated that the oleanders had been there for years and years and that he would maintain them. He explained that his design of the guesthouse was to minimize the affect on the neighboring properties.

Mr. Williams observed that this immediate neighborhood has distinctive vegetation in its character and based on that the variance is supportable. He found the second story accessory building troubling due to the neighbors need for privacy. He stated that either the applicant should move the structure further south on the property, or erect a six (6) ft wall adjacent to the structure. He would prefer that the applicant rework the floor plan to provide a sound barrier. Mr. Williams noted that he did not feel that the property value issue is contingent on the height of the accessory building alone.

Mr. Williams acknowledged the issue of the lot size in regards to supporting a guesthouse structure, however he noted that this was not an issue on the agenda today.

Mr. Huellmantel asked that the condition addressing the height of the building allow twenty feet 6 inches rather than just twenty feet. Mr. Williams noted that this would be taller than necessary and added Condition #4 limiting the height to twenty feet.

#### DECISION:

Mr. Williams approved PL090003/ZUP09182/VAR09016 subject to the following conditions:

1. The windows on the north elevation **and northern most east elevation** of the structure to be opaque material **on the first and second story. MODIFIED BY HEARING OFFICER**
2. The new structure to complement the main dwelling in material, design and colors.
3. Obtain all necessary building clearances and permits.
4. **The height of the accessory building is limited to twenty (20) feet. ADDED BY HEARING OFFICER**
5. **Applicant is to submit to the Development Services staff for review either a revised floor plan to move the outdoor entertainment area to the south side of the building or retain the existing floor plan and add a six (6) ft wall along the north elevation extending a minimum of twenty (20) feet east of the structure. ADDED BY HEARING OFFICER**

The following ZDC requirements to be adhered to:

- The guest quarters must adhere to the requirements found within ZDC Section 3-411 Guest Quarters.

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4. Request by **WAGGONER ELEMENTARY – CLEARWIRE – AZ-PHX0704 (PL090396)** (Rulon Anderson/Clearwire, applicant; Kyrene School District #28, property owner) located at 1062 East Carver Road in the AG, Agricultural District for:

**ZUP09155** Use permit to allow a sixty-five foot (65') monopole (light pole).

Mr. Rulon Anderson of Clearwire was present to represent this case.

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

Mr. Williams noted for the record that he was concerned for the neighboring residential areas and that co-location is preferable to a proliferation of monopoles.

Mr. Anderson stated, in response to a question from Mr. Williams, that this site was not co-locatable and was necessary to provide wireless coverage in the area. This is for a new carrier with new service.

Mr. Abrahamson explained that while the City prefers co-locatable locations, it has to be measured against the visual impact. This monopole serves a dual purpose as both a monopole and a light for the school.

It was noted by Mr. Anderson that the equipment cabinet for this monopole was small, and would not impact the site to any large degree.

Ms. Karin Smith, representative of the Kyrene School District #28, the property owner, spoke in support of this request.

Mr. Williams noted that this was a situation where there was a need for service and not a better place available.

Mr. Williams questioned Mr. Abrahamson as to his opinion on whether this should be a co-locatable condition. Mr. Abrahamson explained that it was possible that this could be a location that would not have additional antennas but perhaps a canister instead. Mr. Anderson was questioned as to whether it would be possible for another carrier to come in with a twenty-six (26") diameter canister and co-locate at this pole. Mr. Anderson stated that it would not due to the pole's construction and concrete foundation support; you could not place a canister on the bottom and a canister on the top would require an additional branch for support. Two canisters could be stacked together.

**DECISION:**

Mr. Williams approved PL090396/ZUP09155 subject to the following conditions of approval:

1. Obtain all necessary clearances from the Building Safety Division.
2. The monopole shall be no greater than 65'-0 (sixty-five feet) in height with an area light at 40'-0 (forty feet).
3. The proposed equipment cabinet shall be constructed of similar material and color to match the existing building.
4. Proposed area light shall be full cutoff, dark sky compliant.
5. The proposed monopole (light pole) shall maintain a twenty foot (20') separation from any existing tree.
6. Any intensification or expansion of use will require a new use permit.
7. The wireless device shall be removed within thirty (30) days of discontinuance of use.

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5. Request by the **AGAVE CENTER – CARL’S JR RESTAURANT (PL090412)** (Nick Wood/Snell & Wilmer LLP, applicant; Property Reserve Arizona LLC, property owner) located at 8825 South Jewel Street in the PCC-1, Planned Commercial Center Neighborhood District and SWOD, Southwest Tempe Overlay District for:

**VAR09018** Variance to allow a drive-through lane on the street side of the building deviating from Zoning & Development Code Section 3-408, drive-through orientation requirements.

**VAR09019** Variance to waive trees in the landscape islands for a portion of the parking area within the El Paso Natural Gas line easement.

Mr. Nick Wood of Snell & Wilmer LLP was present to represent this case. He noted that while alternate locations had been considered this is only plan that works for this site.

Kevin O’Melia, staff planner, gave an overview of this case and stated that drought tolerant trees are to be planted. Staff is in support of both variance requests due to special circumstances involved with this site. No public input has been received on this case.

Mr. Williams noted that the location of this property and the utility easement justifies the need for the variances requested. He noted that he would modify Condition #5 to specifically address the location of the trees on the site plan.

**DECISION:**

Mr. Williams approved PL090412/VAR09018/VAR09019 subject to the following conditions:

1. Development Plan Review approval shall be obtained and construction documents for site development shall be submitted to the Development Services Building Safety Division for building permit by January 19, 2011 or the variance approvals shall be made void. Subsequently, an expiration of the building plan check period or issued building permit will result in expiration of the variances.
2. Establish the width of the natural gas easement, dedicate this easement by separate instrument and have the instrument recorded at the Maricopa County Recorder’s office prior to issuance of building permit.
3. Provide a continuous minimum 3’-0” high screen on the street side of the drive-through. The screen shall consist of a combination of landscape berm and masonry or concrete site wall. The landscape berm may not be less than 50 percent of the entire screen. Provide site wall of materials and finish that architecturally compliments the materials and finish of the building. Details of screen wall and landscape berm layout shall be approved during Development Plan Review process.
4. Modify the existing retention basin on the western edge of Lot 3 to conform to the site plan. The reconfigured basin is required to handle 100 year storm water runoff for Jewel Street (east half) extending from Warner Road south to Ranch Road. Incorporate the capacity requirement for this basin with the requirement for on-site water retention for Lot 3. Details of reconfigured retention basin layout as it relates to screen wall and berm placement shall be approved during Development Plan Review process.
5. The exemption of trees applies only to parking landscape islands or other landscape areas that are over the gas line easement. For each required tree that is exempted, install one additional tree (minimum 24” box installation size) on site or in one of the adjacent street frontages that otherwise would not be required by the Zoning and Development Code. **Install 24 inch boxed trees so there is a continuous line of mature tree canopies along the street frontages opposite the drive-through.** Details of tree selection and locations shall be approved during Development Plan Review process. **MODIFIED BY HEARING OFFICER**
6. Install landscape islands over the gas line easement where planting in islands provides a 100 percent ground cover spread when plants are mature. Details of plant selection and layout shall be approved during Development Plan Review process.

7. Promptly repair damage to paving and landscape caused by periodic heavy maintenance to gas lines contained under the natural gas easement.

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6. Request by **VALLEY WEST SHOPPING PLAZA – CLEARWIRE – AZ-PHX0501C (PL090432)** (Rulon Anderson/Clearwire, applicant; Pollack Investments, property owner) located at 1811 North Scottsdale Road in the CSS, Commercial Shopping and Services District for:

**ZUP09165** Use permit to allow a sixty foot (60') monopole (monopalm).

Mr. Rulon Anderson of Clearwire was present to represent this case.

Derek Partridge, staff planner, gave an overview of this case and stated that no public input had been received to date.

Mr. Anderson stated that this location may be closer to a residential area than we would like – the height of the monopole is 55 feet while the height of the fronds increase it to 60 feet.

Mr. Williams questioned Mr. Abrahamson as to whether this request and its location would have a negative affect on the Gateway Plan. The Gateway Plan is strictly a concept and at this time there is not a firm Gateway Plan, Mr. Abrahamson responded, and that this issue has been addressed in the past by another carrier. Mr. Anderson noted that when meeting with staff, the issue of the possible Gateway Plan was discussed.

Mr. Williams stated that he would be adding Condition #6 to move the site of this monopole to the west (or south) side of the property due to the proximity to the residential neighborhood.

Mr. Anderson stated that the setback requirements were non-existent due to the decision of the City Council and that there was a landlord involved who was opposed to any relocation on this site. If this Condition is added it would, in essence, be a denial of this request by Clearwire. Although they would like to accommodate the Hearing Officer's request for a relocation, they would be unable to do so.

**DECISION:**

Mr. Williams approved PL090432/ZUP09165 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. The monopole shall be no greater than 60'-0 (sixty feet) in height.
3. The proposed equipment cabinet shall be constructed of similar material and color to match the existing building.
4. Any intensification or expansion of use will require a new use permit.
5. The wireless device shall be removed within thirty (30) days of discontinuance of use.
6. **Site to be relocated to the west side of the property away from the residential neighborhood or along the south side of the property line. ADDED BY HEARING OFFICER**

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7. Request by the **KUITUNEN RESIDENCE (PL090482)** (Jeff Pawlowski/PK Architects, applicant; Scott Kuitunen, property owner) located at 1217 East Knight Lane in the AG, Agricultural District for:

**ZUP09183** Use permit standard to reduce the north front yard setback by twenty percent (20%) from forty (40) feet to thirty-two (32) feet for two (2) additions to the residence. (*Note: Side yard use permit not required per Sunburst Farm PAD.*)

Mr. Anthony Franco of PK Architects 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 one (1) phone call of opposition had been received in relation to the architectural design of the addition.

Ms. Lesser indicated that the proposed Conditions of Approval be modified to read as follows:

1. Obtain all necessary clearances from the Building Safety Division.
2. Per Tempe City Code; improved paved areas shall not exceed 35% of the front and side areas visible from the street **for both driveways. MODIFIED BY STAFF**
3. The proposed driveway shall be paved with asphalt or concrete; or alternatively, a dust proof, porous paving material (e.g. decomposed granite) may be used when approved by the Development Services Manager or designee, as part of a storm retention plan.
4. Obtain all necessary clearances from the Public Works Department for on-site retention for expansion of pavement in the front yard.
5. ~~Remove existing driveway.~~ **DELETED BY STAFF**
6. The building additions shall be compatible with the existing dwelling in form, color and materials.
7. ~~Replace the existing tree to be removed with a similar tree to be placed on the west side of the front yard.~~ **DELETED BY STAFF**

Mr. Franco noted that alternate designs were considered. He acknowledged the Conditions of Approval, in particular the stipulations of the modified Condition #2.

Mr. Starkey, Tempe resident, stated that he was the owner of the property immediately to the east of this address. He stated that this request has a severe impact on the streetscape. This design is not in keeping with the character of this neighborhood, and would have a visual impact on his property and a negative affect on the aesthetics of the area. He was unaware of these plans until he received the postcard notification, and wished the applicant had discussed his intended plans with him.

Mr. Slade Lawson, Tempe resident, stated that he lives two (2) houses east of this residence. Although the nearby property owners are affected by this request, he did not think that the plans had been presented to anyone. There was concern over the impact of the garage and driveway(s).

Mr. Abrahamson spoke and explained to those present that there had been some concern over the actual ownership of this property and that it had be ascertained that Mr. Scott Kuitunen was the actual property owner. Additionally this is not a variance request but a use permit request and, as such, the property owner/applicant is not required to hold a neighborhood meeting to discuss the proposed plans and details.

Mr. Williams asked Mr. Abrahamson that although a neighborhood meeting was not required for a use permit request would it be possible to require the property owner to have one. Mr. Abrahamson responded that while it

would be unusual, it was the decision of the Hearing Officer and his point of view as to whether a neighborhood meeting would be required.

Mr. Williams stated that due to the neighborhood concern(s) he would like to continue this case and stipulate that the applicant and/or property owner hold a neighborhood meeting, and also be required to place stakes in the yard to depict the actual location of the design footprint. He felt that the site plan lacks some pertinent information. He would like the applicant to provide a site plan that shows the driveway(s) connecting to the street and a rough calculation of the 35% requirement.

**DECISION:**

Mr. Williams continued PL090482/ZUP09183 to the February 16, 2010 Hearing Officer hearing. During that period the applicant and/or property owner is to notify property owners within a 300 ft radius of a neighborhood meeting to discuss the plans and particulars of this request. An attendance sheet and report of this meeting is to be submitted to Development Services staff. An updated site plan showing the exact location of the driveway(s) and to depict lot line to lot line as well as a rough calculation of the 35% requirement and relative dimensions. Applicant is to position stakes to indicate the design footprint. He noted that all materials such as the staff summary report and attachments are public record and available for review to anyone. Mr. Abrahamson explained that the information is available on the City website prior to the hearing.

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The next Hearing Officer public hearing will be held on **Tuesday, February 2, 2010.**

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**There being no further business the public hearing adjourned at 3:40 PM.**  
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Prepared by: Diane McGuire, Administrative Assistant II  
Reviewed by:



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

SA:dm