



Minutes HEARING OFFICER JANUARY 17, 2012

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:

Vanessa MacDonald, Hearing Officer
Steve Abrahamson, Planning & Zoning Coordinator
Sherri Lesser, Senior Planner
Ryan Levesque, Senior Planner

Number of Interested Citizens Present: 7

Meeting convened at 1:30 PM and was called to order by Ms. MacDonald. She 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 January 31, 2012 at 3:00 PM to the Community Development Department.

1. Ms. MacDonald noted that the Hearing Officer Minutes for January 3, 2012 had been reviewed and approved.

2. Ms. MacDonald noted that the following item(s) had been removed from today's agenda:

Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **PATTERSON PROPERTY (PL110442 /ABT11049 /CE112238)** (Brandy Zedlar, Inspector; Barbara Patterson, property owner) located at 1121 West Carson Drive in the R1-6, Single Family Residential District.

WITHDRAWN BY CODE COMPLIANCE

3. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **FERGUSON PROPERTY (PL110443 /ABT11048 /CE113670)** (Brandy Zedlar, Inspector; William Ferguson, property owner) located at 1213 West Hermosa Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Brandy Zedlar, Code Inspector, explained that a complaint had been received on the deteriorated landscape which contains weeds and grass growing within the gravel landscape in the front and side yard. There have been three (3) complaints on this property for deteriorated landscape between June 2010 and 2011.

Ms. MacDonald noted that this request meets the criteria for properties in disrepair.

DECISION:

Ms. MacDonald approved abatement proceedings for PL110443 /ABT11048 /CE113670

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4. Request by **A. T. & T. COMMUNICATIONS – P418 (PL110342)** (Taylor Candland/Bechtel Communications, applicant; Heywood Realty, property owner representative) located at 1834 East Baseline Road in the R/O, Residential/Office District for:

ZUP11125 Use permit to allow the replacement of an existing monopole with a new 65 ft. tall monopine.

Mr. Taylor Candland was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case. She noted that A. T. & T. Communications is proposing to replace the existing monopole (stealth design) with a 65 ft. tall monopine. The existing monopole was originally approved at a height of 65 ft. In 2002, the original request met with neighborhood opposition primarily concerned with the visual intrusion of a 65 ft. tall monopole adjacent to a 25 ft. tall building. A relocation of an existing refuse enclosure will require a separate Development Plan approval site plan modification prior to the issuance of building permits for the monopine. No public input has been received on the current request. Staff supports this request, Ms. Lesser stated.

A letter of objection had been received from Bob and Zoe Pohlit, nearby residents, Ms. Lesser stated. They stated that they did not feel the mono-pine would be non-intrusive as there are no pine trees in the nearby area. In their opinion the design should remain as the current stealth design. They indicated that construction of this new design had begun, however staff during a site visit, did not find this to be the case. Ms. Lesser indicated that further staff review had concluded that a mono-palm design would be better suited to this area, and asked that a Condition of Approval be added to replace the dead and missing landscape to bring the site into compliance with the landscape plan for this project.

Mr. Candland addressed the design issue of the mono-pine versus the mono-palm. The mono-palm design would have technological restraints required by this request. Pine trees could be added to the landscape rather than palm trees to mitigate the visible impact on the location.

Ms. MacDonald read the letter of objection from the Pohlits into the record.

It was agreed that an additional Condition of Approval be added to address the dead and missing landscape on this site to indicate that the substitution of pine trees is permissible on the original landscape plan. Mr. Candland agreed to this added Condition of Approval No. 10 and indicated his understanding and agreement with the other nine (9) Conditions of Approval.

DECISION:

Ms. MacDonald approved PL110342/ZUP11125 subject to the following conditions:

1. Obtain all necessary permits and clearances from the Building Safety and Engineering Division prior to commencing construction.
2. This use permit is valid for A. T. & T. Communications and may be transferable to successors in interest through an administrative review with the Community Development Manager or designee.
3. The Use Permit for a wireless telecommunication facility including a mono-pine is granted based on the presentation exhibits included within this request. The mono-pine shall be no greater than 65.0 ft. in height, as measured from grade to top of artificial foliage above the top of the pole, as indicated in the submittal. The approval includes the removal of the existing stealth monopole. The existing tower to be removed prior to the installation of the new mono-pine.
4. The relocated refuse enclosure to receive separate Development Plan Approval for site plan modification prior to submittal for building permits of the mono-pine. The civil and building permits associated with the new enclosure may be included within the same Building Safety plan check process for the mono-pine.
5. Any intensification or expansion of use beyond that presented, including additional height and/or antennae will require a new Use Permit.
6. The new masonry equipment enclosure wall to match the existing enclosure.

7. Provide security illumination at the following locations: Conform to the Zoning and Development Code Part 4 Chapter 8 for provisions on light fixture design and method of demonstrating illumination level. Provide illumination from dusk to dawn using a sun-sensitive photo sensor.
8. Provide minimum 5.0 foot-candles at lock with minimum 2.0 foot-candles at 15.0 ft. radius all around lock at property vehicle access gate, at equipment enclosure yard gate pair and at equipment shelter door. Provide minimum 0.5 foot candles within walled equipment enclosure yard. Provide minimum 0.5 foot-candles for a minimum 10.0 ft. radius all around base of telecommunications.
9. Remove the wireless telecommunication facility within thirty (30) days of discontinuance of use.
10. **Replace dead and missing landscape materials per original landscape plans. The substitution of pine trees is permissible. ADDED BY HEARING OFFICER**

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5. Request by **WORLD OF BEER (PL110433)** (Michael Kelly/M. W. Kelly Architects Ltd., applicant; 526 Mill LLC, property owner) located at 528 South Mill Avenue, Suite No. 101, in the CC, City Center District for:

ZUP11123 Use permit to allow a Series 7 bar.

ZUP11124 Use permit to allow live entertainment.

Mr. Michael Kelly was present to represent this case.

Ryan Levesque, staff planner, gave an overview of this case. He explained the historical preservation and development review aspects of this case. The proposed business will occupy the majority of the historic Tempe National Bank building with future tenant space near the back. The request also includes the addition of a 644 s.f. patio for the bar, located at the south eastern side of the building. There has been no public input to date, Mr. Levesque stated.

Mr. Kelly acknowledged his understanding of the assigned Conditions of Approval.

Ms. MacDonald noted that this request meets the criteria for use permits:

- The proposed use will not be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general, and that the use will be in full conformity to any conditions, requirements or standards prescribed by this code. This business will be compatible with other uses which have received use permit approvals for a bar and live entertainment in the downtown Tempe area.
- Any significant increase in vehicular or pedestrian traffic. This business potentially will create an increase in both vehicular and pedestrian traffic. One of the objectives for a downtown is to bring visitors to a concentrated area that shares its parking demands for various businesses with a mix of public parking locations in walking distance. The downtown's walkway improvements will support any additional pedestrian traffic.
- Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions. Any noise generated by the live entertainment, as conditioned in this request, will be contained within the building. Consistent with the entertainment venues within the downtown, limited hours of operation are established. The use permit may be reviewed at a future request if verifiable complaints arise regarding the live entertainment.
- Contribution to deterioration of the neighborhood or to the downgrading of property values, the proposed use is not in conflict with the goals or objectives as set forth in the city's adopted plans or General Plan. This request will not contribute to downgrading of property values. Having an active business operating in a historic site will ensure long term viability for the building's maintenance and upkeep.
- Compatibility with existing surrounding structures and uses. This business is consistent with other businesses in the downtown that provide both a bar and live entertainment.
- Adequate control of disruptive behavior both inside and outside the premises. The conditions set forth in this request will ensure adequate control of nuisances and disruptive behaviors.

DECISION:

Ms. MacDonald approved PL110433/ZUP11123/ZUP11124 subject to the following conditions:

1. This Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.
2. The Use Permit is valid for World of Beer and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee. Should the business be sold, the new owners must contact Community Development staff for review of the business operation.
3. Any intensification or expansion of the use shall require the use permit to be reheard by the Hearing Officer.
4. If there are any complaints rising 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 use shall take place inside only and is limited to the following: karaoke, live bands, disc jockeys, musical performances, video projection, dance, comedy, or small theatrical acts. No live entertainment will be allowed outside the building.
6. Live entertainment shall cease at or before 1:55 AM weekly.
7. No outdoor speakers allowed.
8. Music/sound/noise generated from the use shall conform to the City of Tempe code requirements for noise control.
9. Any new business signs shall receive a Sign Permit. Contact Dean Miller at 480-350-8435.
10. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact the Tempe Police Department – Crime Prevention at 480-858-6333 by February 17, 2012.

6. Request by **TEAM VERDONE LLC (PL110448)** (Gino Verdone, applicant; First United Bank, property owner) located at 1111 North Miller Road in the GID, General Industrial District for:

ZUP11122 Use permit to allow automotive sales in the GID, General Industrial District.

Mr. Gino Verdone was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case. She noted that vehicle sales are conducted on site and via the internet; there will not be a display 'car lot' attached to this operation. All vehicle storage will be interior or behind the building. No public input has been received regarding this request. Staff recommends approval of the proposal as submitted, with conditions. Ms. Lesser read into the record three (3) additional Conditions of Approval (#12, #13 and #14).

Mr. Verdone acknowledged his understanding of the assigned Conditions of Approval, including the addition of #12, #13 and #14. He noted that this property had been sitting vacant for 3 ½ years and had been vandalized. Every effort has been made to bring the property into compliance (i.e. landscape, electrical, etc.).

Ms. MacDonald read a letter of opposition from Mr. Kirk Strain, Tempe resident, into the record which addressed issues of parking on the street, loading and unloading of vehicles, overflow parking, increased traffic and maintenance of the site. In addition, Mr. Strain stated that there is evidence that the applicant is utilizing a city property to the south for auto storage as well as a body shop the applicant has opened that shows no sign of a paint booth for the painting they are doing.

Mr. Verdone explained that 90% of his business is vehicle sale(s) not the repainting of vehicles. The location for loading/unloading of vehicles was discussed. He noted that numerous improvements had been made to the site, despite continuing vandalism due to, in his opinion, a nearby recycling plant.

Ms. MacDonald noted that this request meets the criteria for use permits:

1. There will be no significant increase in vehicular or pedestrian traffic in adjacent areas.
2. This is a commercial use, similar to others in this industrial area; there should be no nuisances.

3. The proposed development will not contribute to neighborhood deterioration or downgrade property values.
4. The proposed use appears to be compatible with surrounding structures and uses.
5. The proposed use appears to have adequate control of disruptive behavior.

DECISION:

Ms. MacDonald approved PL110448/ZUP11122 subject to the following conditions:

1. The use permit is valid for Team Verdone LLC and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
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 the vehicles shall not be located in the public right-of-way or landscape areas.
5. All business signs shall require a sign permit. Please contact Dean Miller at (480) 350-8435 for all sign permitting application and questions.
6. Any intensification or expansion of the use shall require the applicant to return to the appropriate decision-making body for a new use permit.
7. Obtain all required licenses and permits for vehicle sales from Tempe Tax and License and Arizona Department of motor vehicles.
8. No test drives allowed within residential areas.
9. Off-loading of vehicles on Miller Road to comply with City of Tempe Traffic Engineering requirements for use of the Public Right-of-Way.
10. No off-loading of vehicles on any residential street allowed.
11. Obtain all clearances from the Building Safety Department for the interior storage of gas powered vehicles prior to the use permit becoming effective.
12. **A landscape plan shall be approved for the site. ADDED BY STAFF**
13. **An 8 ft. screen wall with gate shall be required to screen vehicles/storage. ADDED BY STAFF**
14. **No offsite storage/parking of vehicles allowed. ADDED BY STAFF**

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7. Request by the **MELIS RESIDENCE (PL110449)** (James Trahan/180 Degrees Design Inc., applicant; Gwen Melis, property owner) located at 339 East Malibu Drive in the R1-6, Single Family Residential District for:

ZUP11121 Use permit to allow the required parking space to be located in the front yard setback.

Mr. James Trahan of 180 Degrees Design Inc., and Mr. and Ms. Melis were present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case. She noted that the existing garage is being converted to livable space to include a new bedroom, craft room and laundry room. A double car driveway is available within the front yard setback to park. The property owner has noted that the existing garage is rarely used to park vehicles; they are usually parked on the driveway in the front yard setback. Two (2) telephone inquiries had been received and, after explanation, both callers expressed support of this request. One (1) letter of has been received.

Understanding of the assigned Conditions of Approval was indicated by Mr. Trahan and Mr. and Mrs. Melis.

A letter of opposition received from Mr. Joseph Harris, nearby resident, was read into the record by Ms. MacDonald. Mr. Harris objected to the parking of vehicles or trailers in front the house.

Mr. Melis addressed the letter of opposition, noting that the trailer was only parked there temporarily during the construction process.

Ms. MacDonald noted that this request meets the criteria for a use permit and is compatible with the surrounding neighborhood. This request will have a minimal impact she stated.

DECISION:

Ms. MacDonald approved PL110449/ZUP11121 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
 2. Construction of the garage enclosure to livable to complement the main dwelling in design, color and materials.
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8. **Review of the following for possible revocation (RVK11001) of the use permit per the City of Tempe's Attorney office's direction due to non-compliance with Conditions of Approval as assigned by the Hearing Officer:**

Request by **RIO SALADO CENTER - TEEN DANCE CLUB (PULSE) (PL100060)** (Thomas George, applicant; Rio Salado Center LLC, property owner) located at 1290 North Scottsdale Road, Suite Nos. 120 – 122 in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP10020 Use permit to allow a teen dance hall with live indoor entertainment (live bands, DJ).

The applicant was not present to represent this case.

Ms. Lesser reviewed the case history:

On May 4, 2010 the Hearing Officer (David Williams) approved a use permit to allow a teen dance hall with live indoor entertainment in the form of live bands, DJ's and dancing. Condition of Approval No. 18 was included which stated that the applicant is to return to the Hearing Officer on November 3, 2010 for review of compliance with these conditions.

On November 3, 2010 the applicant, Mr. George, returned to the Hearing Officer (Ms. MacDonald) but noted that his business had not yet opened. Condition of Approval No. 18 was modified to indicate that the applicant was to return to the Hearing Officer on May 3, 2011 for review of compliance with the assigned Conditions of Approval. Staff also added an additional Condition of Approval No. 19 stating that all conditions shall be completed prior to the use permit becoming effective.

At the June 7, 2011 public hearing Mr. George indicated to the Hearing Officer, Ms. MacDonald, that the business had opened in February 2011. Condition of Approval No. 18 was modified to indicate that the applicant was to return to the Hearing Officer on December 7, 2011 for a review of his compliance to the assigned Conditions of Approval.

On November 30, 2011, staff received a phone call from the property manager to inform the City that the tenant had been locked out of the lease space and that the current business was to be discontinued.

At the December 6, 2011 hearing to review the use permit, the applicant failed to appear at the hearing to present his case. Given his failure to comply with the assigned Conditions of Approval, Ms. MacDonald placed the case on the January 17, 2012 agenda to be heard for revocation.

Ms. Lesser noted that an e-mail of concern has recently been received from the business owner, Mr. George, who is aware of this revocation hearing but is presently out of the country. He had concern over the affect this revocation may have on his future business interests and possible use permit applications. There is ample information recommending this revocation of the use permit, Ms. Lesser stated.

Mr. Lane Carraway, representing Cavalier Hills NTNA, addressed various issues of past and present concerns regarding this business operation and the management of these properties. In particular, the violation of the security plan by Mr. George. He also expressed reservations about the newly-issued use permit at this same address for a reception hall. Ms. MacDonald advised Mr. Carraway that it is inappropriate to discuss cases other

than the Teen Dance Club (Pulse) at this hearing. Decision(s) had been rendered and related appeal(s) submitted to the Board of Adjustment which will hear the case at an upcoming hearing. Mr. Abrahamson corrected Ms. MacDonald, and explained that it will be the Development Review Commission, rather than the Board of Adjustment, who will hear the related appeal.

Ms. MacDonald noted that the applicant's failure to appear at the December 6, 2011 hearing violated the Conditions of Approval for the use permit. His failure to appear at the revocation hearing indicated that he was not interested in maintaining the use permit. Both circumstances contributed to the revocation of the use permit.

DECISION:

Ms. MacDonald approved the revocation PL100060/ZUP10020/RVK11001.

The next Hearing Officer public hearing will be held on February 7, 2012.

There being no further business the public hearing adjourned at 3:42 PM.

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



Steve Abrahamson, Planning & Zoning Coordinator
for Vanessa MacDonald, Hearing Officer

SA:dm

APPROVED