

**Minutes
HEARING OFFICER
NOVEMBER 7, 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
Diana Kaminski, Senior Planner

Number of Interested Citizens Present: 20

Meeting convened at 1:30 PM and was called to order by Ms. MacDonald. She noted that anyone wishing to appeal a decision made by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) days, by November 21, 2012 at 3:00 PM, to the Community Development Department.

-
1. Ms. MacDonald noted that the Hearing Officer Minutes for October 16, 2012 had been reviewed and approved.

-
2. Request approval to abate public nuisance items at the MAROUFKANI PROPERTY, located at 1951 East Oxford Drive. The applicant is the City of Tempe – Code Compliance.

THE PROPERTY WAS REMOVED FROM THE AGENDA AS IT HAS BEEN BROUGHT INTO COMPLIANCE BY THE PROPERTY OWNER.

-
3. Request approval to abate public nuisance items at the JONES PROPERTY, located at 5837 South Country Club Way. The applicant is the City of Tempe – Code Compliance.

THE PROPERTY WAS REMOVED FROM THE AGENDA AS IT HAS BEEN BROUGHT INTO COMPLIANCE BY THE PROPERTY OWNER.

-
4. Request approval for a Use Permit to allow a private day school for CHRYSALIS ACADEMY, LLC located at 600 East Baseline Road, Suite B6. The applicant is Tara Rice.

CONTINUED FROM THE JULY 17, 2012 HEARING

Tara Rice and Dr. Patty McCartney, Chrysalis Academy were present to represent this case.

Sherri Lesser introduced the case. Chrysalis Academy is requesting approval of a Use Permit to allow a private day school. Ms. Lesser noted this Use Permit request has been continued from a previous hearing held on July 17, 2012. At that time there was a tenant that expressed opposition of the Use Permit. There were also building safety requirement concerns for the use of the building. Staff is recommending approval of the use permit. Staff has not received any opposition to this request. Chrysalis has brought additional letters of support for their use. Chrysalis Academy has also worked with the Building Safety Department to address the occupancy concerns.

Ms. MacDonald asked the applicants how they have addressed the issues regarding the adequate control of disruptive behavior both inside and outside the premises.

Dr. Patty McCartney indicated they were not aware of the problem until the day of the last hearing. To correct the problem they talked to all of the neighboring tenants and the landlord. The landlord worked with the applicant to move all of the classrooms to a free standing building. The bus drop off/pick up area was also moved so it would not disrupt the other tenants.

Ms. MacDonald asked about the tenant that expressed opposition at the July 17, 2012 Hearing Officer meeting.

Glenda Cope, Baseline Business Park, property manager representing the landlord was present to answer questions. Glenda Cope was not present at the last hearing. She received one complaint from one tenant. She has not received complaints from any of the other tenants. Ms. Cope indicated the tenant that complained had previously asked to be released from the terms of her lease. The request was rejected and subsequently the property manager started receiving complaints about the school. The complaints were regarding the bus route and the noise. These issues were discussed with Chrysalis and the school has resolved the problems. Ms. Cope stated the Chrysalis Academy is now consolidated in a building away from the other tenants.

Ms. MacDonald noted the previous issues have been resolved by addressing the transportation issues and consolidating the school.

Ms. Rice and Dr. McCartney agreed to the conditions of approval.

There was no public input.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

1. Traffic generated by this use should not be excessive.
2. It won't create a nuisance resulting from odor, dust, gas, noise, vibration, smoke, heat or glare.
3. It won't contribute to the deterioration of the neighborhood.
4. It is compatible with existing surrounding structures and uses.
5. Will allow you to adequately control disruptive behavior both inside and outside the property.

DECISION:

Ms. MacDonald approved PL120193/ZUP12056 subject to the following conditions:

1. Obtain all necessary occupancy clearances from the Building Safety Division prior to use permit becoming effective.
2. 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. Request approval for a Use Permit to allow a dust collector for COMTECH BUILDING 3, located at 2126 West 7th Street. The applicant is Mike Hall, Michael Hall Architect.

CONTINUED FROM THE OCTOBER 16, 2012 HEARING

Mike Hall, Michael Hall Architect was present to represent this case.

Diana Kaminski introduced the case. The applicant is requesting a Use Permit to allow a dust collector for Comtech, Building 3. The property is located north of University Drive, west of 52nd Street. The area is surrounded by industrial property. The design of the addition fits in with the character of the building. The dust collector would have a screen wall around the base; however the unit would be exposed above the wall. Sound specifications have been provided and included in the staff report. Staff has not received any public input on this case. Staff is recommending approval of the Use Permit.

Mr. Hall agreed to the conditions of approval.

There was no public input.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

1. Traffic generated by this use should not be excessive.
2. It won't create a nuisance resulting from odor, dust, gas, noise, vibration, smoke, heat or glare.
3. It won't contribute to the deterioration of the neighborhood.
4. It is compatible with existing surrounding structures and uses.
5. Will allow you to adequately control disruptive behavior both inside and outside the property.

DECISION:

Ms. MacDonald approved PL120164/ZUP12089 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 the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
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. The dust collection equipment must comply with nuisance noise ordinance decibel levels both day and night, or the hours of the dust collection operation is to end no later than 10:00 p.m. on a daily basis.

6. Request the review for revocation of the Use Permit to allow a retail smoke shop and live indoor entertainment for MIDNIGHT HOOKAH, located at 1630 East Apache Boulevard, Suite 103-104. The applicant is The City of Tempe.

CONTINUED FROM THE OCTOBER 16, 2012 HEARING

Lynne Lagarde, Attorney from Earl, Curley & Lagarde, and Nader Yousif, owner of Midnight Hookah were present to represent this case.

Diana Kaminski introduced the case. A review of compliance with the conditions of approval took place at the October 16, 2012 Hearing Officer meeting. Staff has met with the applicant a few times to work towards compliance on several issues. Ms. Kaminski gave an overview of the issues at the site.

The Use Permit took effect in September 2011. A six month review took place in March 2012. Between March 25, 2012 and September 4, 2012 the Police Department indicated there have been 28 calls for service to the property. Thirteen of the calls for service were citizen initiated, two were owner initiated, and thirteen were officer initiated. Most of the calls were related to the business being open after hours or activity going on in the parking lot.

On August 16, 2012 the Police Department observed issues regarding the security plan, loitering, loud music and the behavior of the security guard.

On August 25, 2012 the Police Department observed 15 individuals hanging out in the parking lot. People were smoking on the sidewalk adjacent to the building, which is a smoking violation. It also appeared there was insufficient security to control the property.

Between September 5, 2012 and October 7, 2012 the Police Department had two calls for service. The Police Department also noticed the parking lot was filled. The site has 67 parking spaces. Approximately 15 cars were parked along the front curb blocking the fire lane. The Building Safety occupancy limit is 49 people including staff. The Police Department has indicated the occupancy limit has been an issue on several occasions.

On October 12, 2012 the manager was cited for selling tobacco to a minor. This is a violation of State and Federal regulations for tobacco sales.

Between October 16, 2012 and October 26, 2012 the Police Department received four calls for service. Two were for fights, one was a complaint about the business being open after hours, and the last was for a suspicious vehicle.

Midnight Hookah is not in compliance with the following conditions of approval:

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. Return to the Hearing Officer by September 18th, 2012 for a review of operations in compliance with all conditions of approval. **There have been two more complaints since the last hearing on October 16th.**
6. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact William Gallauer at 480-350-8749 before April 1, 2011. **This condition has been met; implementation has not been met.**
8. The business hours of operation shall be Sunday through Thursday 5pm to 1am, with music off at midnight, and Friday through Saturday, 7pm to 3am, with live entertainment to stop at 1:55am. **The applicant agreed to these hours of operation as a part of the use permit, yet has a sign in the window stating they are open until 4am. There have been five calls regarding loud music after 2am on Sundays and Fridays. An email indicated loud music playing until 4 and 5 am as recently as 10/7/12.**
13. Any intensification or expansion of use shall require a new Use Permit. **The building safety occupancy of this building is II-B, allowing 49 occupants for the total space. A website flier for Midnight Hookah advertises "up to 250 occupancy"; this would be an intensification of use to a banquet hall or nightclub, requiring a different occupancy type (assembly) for building safety. The Certificate of Occupancy is supposed to be prominently placed at the entrance and security staff is to adhere to the occupancy limits posted. The owner told fire department staff that he has had as many as 100 people in the building. After a meeting with staff on October 2nd to review Building Safety Occupancy requirements, staff received a resident email indicating that patrons were parking in the adjacent business' parking lot to access Midnight Hookah. The parking lot for 1630 has 67 spaces, which should adequately accommodate the 49 person occupancy of this space. Tempe Police Department indicated there were approximately 62 vehicles in the parking lot on October 13th at 1am. There are no other businesses within the center at this time.**
15. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01. **A police report indicated patrons smoking hookah outside, next to main entrance of establishment, this is a violation of smoking laws. Any night that the occupancy of the building has exceeded 49 people would also be a violation of the state statute. A staff member was cited for selling tobacco to a minor. This condition has not been met.**
16. The owner/management shall adhere to the City Adopted International Mechanical Code. **This condition has not been met; the air handling system is not large enough for the number of patrons advertised to occupy the space.**

19. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the Use Permit becoming effective. **This condition was met at the time of opening, but has been violated since last year.**

20. Use Permit approval is for a Retail Tobacco Store (Hookah Lounge) with live entertainment, not a nightclub. Reduce the volume level of the background music within the Hookah lounge, and provide sound insulation to the interior of the structure to mitigate excessive noise. **The sound insulation was added, per condition. Loud noise complaints continue to be called in on different nights of the week. This condition has not been maintained.**

Staff has received a few complaint calls from adjacent property owners and residents in the neighborhood since the last Hearing Officer meeting. Staff is recommending revocation of the Use Permit.

Officer Sullivan gave an overview of the Midnight Hookah Lounge during the last few months. The Police Department was instructed to observe Midnight Hookah to see if they were following the security plan. Police Officers used an unmarked vehicle and observed multiple security violations. The individual that maintains the property has been contacted multiple times by the Police Department advising him what needs to be done to correct the issues. Enforcement was recently done with the Attorney General's Office on multiple hookah bars. Tobacco was sold to under age kids at Midnight Hookah. The Attorney General's Office along with the Police Department did a search of the premises and located three or four bottles of vodka in the dishwasher. Mr. Yousif claimed he had no knowledge of the vodka. A bag of white crystal substance was also located in a cabinet. The substance in the bag was tested for crystal meth and cocaine. It tested negative for both. Without sending it out to the lab it could not be ruled out as another illegal substance. On another visit to the site Officer Sullivan asked Mr. Yousif how many people were occupying the building. Mr. Yousif responded 120, he said he could have 50 people in each area of his building. Officer Sullivan informed Mr. Yousif he was only allowed to have a total of 49 people in the building. Officer Sullivan has driven by two or three times and has observed more than 50 people in the building. The Police Department was trying to let Mr. Yousif be proactive about the situation. Unfortunately the situation has not been rectified.

Ms. Lagarde stated there was a misunderstanding regarding the occupancy of the two spaces. The business has been operating with 49 people since the last hearing with proper security and business hours. Ms. Lagarde visited the Midnight Hookah Lounge last Friday night around 10:30 p.m. to see how the operation was being conducted. It was a perfectly calm environment. Mr. Yousif voluntarily eliminated the live entertainment. The applicant would like the Hearing Officer to consider eliminating or amending the live entertainment portion of the Use Permit instead of a revocation of the entire Use Permit. Mr. Yousif would like the opportunity to operate in full compliance with 49 people without live entertainment for a 90 day period. Mr. Yousif would also like to hire an off-duty Police Officer to monitor the operation. He would still like to open a restaurant next door to the hookah lounge. Ms. Lagarde indicated Mr. Yousif was not at the business when the tobacco sale to the underage person took place. The employees who sold the tobacco to the underage person and had the alcohol at the establishment have been fired.

Chuck Buss, Tempe resident lives in the neighborhood behind Midnight Hookah. He is also the Chair for the University Heights Neighborhood Association. He stated the neighbors have had a lot of problems this past year with complaints regarding noise, traffic and the behavior of people in the parking lot. Mr. Buss visited the Midnight Hookah before the last hearing in October on a Friday and a Saturday night. He observed everything his neighbors were complaining about. The music was playing very loud afterhours. There were a lot of people in the parking lot with no security. The parking lot was full so the occupancy limit was probably exceeded. Since the last hearing Mr. Buss visited early hours at 1:15 a.m. on Monday, October 22, 2012. The business was supposed to be closed at 1:00 a.m. and they were still operating. The Police Department was notified. The manager of Midnight Hookah told the Police Department they were allowed to remain open until 4:00 a.m. This business has had several opportunities to make the needed corrections. Mr. Buss feels the Use Permit for Midnight Hookah should be revoked.

Officer Sullivan stated that Mr. Yousif has been told about the conditions of approval several times but does not seem to be concerned. The music has been amplified loud enough that it can be heard on Apache Boulevard. The music has been turned down the last few weeks. The occupancy limit has been over 49 people since the last hearing.

Daniel Rozales , Manager from Baker's Acre Motel spoke in opposition. The music at Midnight Hookah is played too loud. The customers use the Baker's Acre parking lot for over flow parking. Customers also use their parking lot for drinking and smoking. The Police Department has been called on several occasions.

Ms. Lagarde indicated the Police have not been by Midnight Hookah during the last few weeks. The live entertainment has stopped, the 49 occupants were enforced and the hours have been enforced. Security comes in at 11:00 p.m. The parking lot activity has slowed down. Mr. Yousif would like the opportunity to operate for 90 days without entertainment to make this work.

Ms. MacDonald stated this has gone on for some time. The operation of the business poses a direct danger to the public safety and health to the citizens of Tempe. Ms. MacDonald does not agree with splitting up the Use Permit. It has been processed as a single Use Permit. She does not feel that live entertainment is the issue. The amplified music is a concern for the adjacent neighborhood and each time an officer has to respond to a call at this address creates a drain on city resources. This business has not been run successfully within the rules established by the City of Tempe even though the property owner has been given ample time to demonstrate his ability to operate the business within the conditions set forth in his use permit.

Ms. MacDonald reviewed the criteria for a Use Permit

The manner of conduct and the building for the proposed use will not be detrimental to persons residing or working in the vicinity to the adjacent property, to the neighborhood, or to the public welfare in general.

This business has demonstrated this use is detrimental to the neighborhood and surrounding businesses.

1. Traffic generated by this use should not be excessive.
The parking lot is full, the occupancy has not been maintained, overflow parking goes into surrounding neighbors.
2. It won't create a nuisance resulting from odor, dust, gas, noise, vibration, smoke, heat or glare.
A nuisance is created from smoke, vibration and noise at this location.
3. It won't contribute to the deterioration of the neighborhood.
This business contributes to the deterioration of the neighborhood and downgrades property values.
4. It is compatible with existing surrounding structures and uses.
It is not compatible with existing surrounding structures and uses.
5. Will allow you to adequately control disruptive behavior both inside and outside the property.
Disruptive behavior has not been adequately controlled inside or outside the property.

DECISION:

Ms. MacDonald approved the revocation PL110015/ZUP11007/RVK12002.

7. Request approval for a Use Permit to allow a hookah lounge for ALMAZA HOOKAH LOUNGE, located at 107 East Baseline Road, Suite A-3. The applicants are Jack and Mary Narsa.

CONTINUED FROM THE OCTOBER 16, 2012 HEARING

Jack and Mary Narsa, Almaza Hookah Lounge, were present to represent this case.

Diana Kaminski introduced the case. Almaza Hookah Lounge would be located in a commercial shopping center on the south east corner of Baseline Road and Mill Avenue. There would be occupancy limitations. The applicant indicated they are working with the Police Department on their security plan. Staff has not received any public input. Staff is recommending approval of the Use Permit.

Ms. Narsa stated the pool tables for the establishment have been eliminated due to space. The applicant is not

considering live entertainment at this time. Live entertainment will be evaluated at a future time and they will apply for a second Use Permit at that time. The request for the current Use Permit is strictly for a hookah lounge with some background music from a radio system or satellite television. Alcohol will not be sold. Coffee, juice and tea will be available.

Ms. MacDonald read condition number 8 for the record: Any intensification or expansion of use shall require a new Use Permit. This would include live entertainment.

Ms. MacDonald would like to add the hours of operation as a condition of approval which reads:

17. Hours of operation shall be Monday through Thursday 4:00 p.m. to 12 a.m., Friday and Saturday 4:00 p.m. to 2:00 a.m., and Sunday 4:00 p.m. to 10:00 p.m.

Ms. MacDonald also added a condition for a review of compliance with the conditions of approval in six months which reads:

18. The Applicant shall return to the Hearing Officer for review of compliance with the conditions of approval in six months.

Mr. and Ms. Narsa agreed to the conditions of approval.

There was no public input.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

1. Traffic generated by this use should not be excessive.
2. It won't create a nuisance resulting from odor, dust, gas, noise, vibration, smoke, heat or glare.
3. It won't contribute to the deterioration of the neighborhood.
4. It is compatible with existing surrounding structures and uses.
5. Will allow you to adequately control disruptive behavior both inside and outside the property.

DECISION:

Ms. MacDonald approved PL120309/ZUP12087 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 the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. The Use Permit is valid for Almaza Hookah Lounge and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
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 for a possible revocation.
5. No outdoor speakers shall be allowed.
6. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact William Gallauer at 480-350-8749 before December 7, 2012.
7. All business signs shall receive a Sign Permit. Contact sign staff at 480-350-8372.
8. Any intensification or expansion of use shall require a new Use Permit.
9. All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the Use Permit becoming effective.
10. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.
11. The owner/management shall adhere to the City Adopted International Mechanical Code.
12. The gross sale of beverage and snack items may not exceed that of tobacco and hookah products for the hookah lounge tax license.
13. Any modifications to the exterior of the building require a Development Plan Review.
14. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the Use Permit becoming effective.
15. The established maximum occupancy of 49 people (staff and customers) for the business must be adhered

- to. Violation of the building safety occupancy is grounds for immediate closure and revocation of the certificate of occupancy.
16. Live entertainment is not permitted for the business. A separate use permit application must be applied for and obtained through a public hearing process.
 17. **Hours of operation shall be Monday through Thursday 4:00 p.m. to 12 a.m., Friday and Saturday 4:00 p.m. to 2:00 a.m., and Sunday 4:00 p.m. to 10:00 p.m. (ADDED BY HEARING OFFICER)**
 18. **The Applicant shall return to the Hearing Officer for review of compliance with the conditions of approval in six months. (ADDED BY HEARING OFFICER)**

8. Request approval for a Use Permit to allow live entertainment for PHO CAO RESTAURANT & BAR, located at 710 East Gilbert Drive. The applicant is Victor Cao.

Victor Cao, PHO CAO Restaurant & Bar was present to represent this case.

Diana Kaminski introduced the case. The property is a General Industrial site located on the west side of Scottsdale Road north of the Red Mountain 101 Freeway off Gilbert Drive. This location has been used as a brewery in the past and as a restaurant. It is currently being operated as PHO CAO Restaurant. The applicant is requesting a Use Permit to allow live entertainment. The permit is primarily for karaoke and a DJ on the weekends. The applicant is working with Officer Schoville to develop a security plan. There have been a few security issues with the applicant renting out the space within the last six months. The applicant is working with the Police Department to address those concerns. The occupancy limit including staff and customers is 124 people. Staff had not received any public input. Staff recommends approval of the Use Permit.

Mr. Cao stated he has been working with the Police Department and has the Security Plan approved.

Mr. Cao agreed to the conditions of approval.

Ms. MacDonald noted condition number 9 which reads:

Replace all dead or missing trees and any other missing landscape material. (ie. parking lot island trees, buffer along west side, and required street trees) The landscaping needs to be restored back to the original condition.

Ms. MacDonald asked the applicant about renting out the facility as noted in the letter of explanation.

Mr. Cao indicated the business has not been rented out to private parties since he has been informed that it is not permitted without an additional use permit. Mr. Cao stated he was always on the premises monitoring the process of the party. In the future he will only rent out the room in the back for parties. The business will operate as usual in the front of the building.

Ms. MacDonald added a condition of approval that would include renting out the facility which reads:

12. Any intensification or expansion of use including rental of entire facility shall require a new Use Permit.

Patricia Countryman, Office Manager for Starz Karaoke LLC was present. She spoke in support of the Use Permit for the applicant.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

1. Traffic generated by this use should not be excessive.
2. It won't create a nuisance resulting from odor, dust, gas, noise, vibration, smoke, heat or glare.
3. It won't contribute to the deterioration of the neighborhood.
4. It is compatible with existing surrounding structures and uses.
5. Will allow you to adequately control disruptive behavior both inside and outside the property.

DECISION:

Ms. MacDonald approved PL120328/ZUP12095 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 the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
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, which may result in termination of the Use Permit.
4. The live entertainment use shall take place inside only. No live entertainment will be allowed outside.
5. Live entertainment to cease at 10pm Sun-Tues. and 1:55am Wed.-Sat.
6. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact William Gallauer at 480-350-8749 before December 7, 2012.
7. Hours of operation to end no later than 2am on a daily basis.
8. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review.
9. Replace all dead or missing trees and any other missing landscape material. (ie. parking lot island trees, buffer along west side, and required street trees)
10. Remove non-compliant light fixtures on exterior of building and on site. (ie. spot lights in retention area)
11. The established maximum occupancy of 124 people (staff and customers) for the business must be adhered to. Violation of the building safety occupancy is grounds for immediate closure and revocation of the certificate of occupancy.
12. **Any intensification or expansion of use including rental of entire facility shall require a new Use Permit. (ADDED BY HEARING OFFICER)**

9. Request approval for a Use Permit to allow entertainment and retail sales for THE SKATEBOARD SHELTER LLC, located at 625 South Smith Road, Suite #23. The applicants are Robb E. Ray and Brittaney Bosell.

Robb E. Ray and Brittaney Bosell, The Skateboard Shelter, were present to represent this case.

Diana Kaminski introduced the case. This property is a General Industrial Site located on the west side of Smith Road, north of University Drive. The request for Skateboard Shelter is an indoor skate facility. The applicant has contacted the Police Department to develop a Security Plan. The building is limited in occupancy based on the use and the square footage. Staff has not received any public input. Staff is recommending approval of the Use Permit.

Ms. MacDonald added a condition which reads:

8. No skateboarding or loitering outside the building.

Mr. Ray and Ms. Bosell agreed to the conditions of approval.

There was no public input.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

1. Traffic generated by this use should not be excessive.
2. It won't create a nuisance resulting from odor, dust, gas, noise, vibration, smoke, heat or glare.
3. It won't contribute to the deterioration of the neighborhood.
4. It is compatible with existing surrounding structures and uses.
5. Will allow you to adequately control disruptive behavior both inside and outside the property.

DECISION:

Ms. MacDonald approved PL120334/ZUP12096 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 the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
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, which may result in termination of the Use Permit.
4. No outdoor live entertainment or outdoor speakers shall be allowed.
5. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact William Gallauer at 480-350-8749 before December 7, 2012.
6. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the use permit becoming effective.
7. Hours of operation shall be 10am to 10pm daily.
8. **No skateboarding or loitering outside the building. (ADDED BY HEARING OFFICER)**

10. Request approval for a Use Permit Standard to allow a garage addition for the DAMBROSIO RESIDENCE, located at 1230 West Oxford Drive. The applicant is Kenneth Fuller, K.N.F. Design & Development.

Kenneth Fuller, KNF Design & Development was present to represent this case.

Diana Kaminski introduced the case. This property is located on Oxford Drive south of Baseline Road adjacent to the Highline Canal. The applicant is proposing to add a two car garage on the first floor with a game room and a restroom facility on the second floor. The materials and paint colors will be compatible with the existing house. The addition is a significant addition and improvement to the area. Staff feels this meets the criteria for a Use Permit. Staff has not received any comments from the public and recommends approval of the Use Permit.

Mr. Fuller agreed to the conditions of approval.

There was no public input.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

1. Traffic generated by this use should not be excessive.
2. It won't create a nuisance resulting from odor, dust, gas, noise, vibration, smoke, heat or glare.
3. It won't contribute to the deterioration of the neighborhood.
4. It is compatible with existing surrounding structures and uses.
5. Will allow you to adequately control disruptive behavior both inside and outside the property.

DECISION:

Ms. MacDonald approved PL120336/ZUP12097 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 the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. The addition of a garage and the second story livable space shall provide circulation through the main living space of the house and not be physically separated to function as a second dwelling unit, which would violate the zoning designation of this lot.
4. The materials and colors of the addition shall match or be compatible with the existing structure.
5. Graffiti on the alley side of the wall shall be removed and the wall painted a uniform color compatible with the

residence.

The next Hearing Officer public hearing will be held on November 20, 2012.

There being no further business the public hearing adjourned at 2:52 PM.

Prepared by: Julie Stennerson, Executive Assistant

Reviewed by:

A handwritten signature in blue ink that reads "Steve A. Abrahamson". The signature is written in a cursive style and is placed on a light blue rectangular background.

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

SA:js