Tempe

Minutes
HEARING OFFICER
FEBRUARY 19, 2013

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
Julie Stennerson, Executive Assistant

Number of Interested Citizens Present: 22

Meeting convened at 1:48 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 March 5, 2013 at 3:00 PM, to the Community Development Department.

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1. Ms. MacDonald noted that the Hearing Officer Minutes for February 5, 2013 had been reviewed and approved.

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2. Request approval for a Use Permit to allow live entertainment for LOCO PATRON (PL120185) located at 222 South Mill Avenue, Suite 115. The applicant is Jeremy Jazwinski.

   Jeremy Jazwinski was present to represent this case.

   Diana Kaminski introduced the case. Loco Patron is located on the northwest corner of Mill Avenue and 3rd Street. It is in an existing commercial center. The restaurant has outdoor patio dining. The applicant is requesting a Use Permit to allow live entertainment which would include small bands, local artists as well as disc jockeys during the evenings and weekends. Staff has not received any calls of inquiry regarding this request. The Police Department has reviewed the Use Permit request. The Police Department did not have any issues with the request. The applicant has reviewed the conditions of approval. Staff recommends approval of the Use Permit.

   Ms. MacDonald noted the live entertainment is exclusively indoors and will not be held out on the patio.

   Mr. Jazwinski indicated the business would like to incorporate live music or a DJ on Taco Tuesday. The music is not intended to attract large crowds; it is just for the customers.

   Ms. Macdonald stated that would be covered by this particular Use Permit. Outdoor entertainment or outdoor speakers would not be covered by the Use Permit.

   Mr. Jazwinski agreed to the conditions of approval.

Greg Swick, resident of 3rd Street in Tempe, lives right across the street from Loco Patron. He is glad that a restaurant finally went into this location. It will be convenient for people using the light rail. Living in the downtown area around a lot of bars can be a real challenge. He appreciates Loco Patron will just be playing for their patrons. Mr. Swick stated he was concerned with the volume of the DJ's in the late evening hours. He would like to have some kind of recourse if the music is played too loud and the noise comes out into the neighborhood. Calling the Police Department has not helped the neighbors in the past. The doors at this location face 3rd Street. He is concerned the noise will come out and hit the buildings across the street and ricochet all over the neighborhood.

Ms. MacDonald noted condition number 8. Live entertainment to cease at 12:00 am Sunday-Wednesday and 1:55 am Thursday-Saturday.

Ms. Kaminski noted condition number 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.

Mr. Jazwinski stated the opening bar windows face Mill Avenue. Loco Patron is going to be an establishment where you can have a conversation with someone. They will not be blasting club music.

Ms. MacDonald asked Mr. Jazwinski if he would commit to having his doors closed since they open up to 3rd Street.

Mr. Jazwinski stated they would like to keep the doors open when it is nice out.

Ms. Kaminski suggested closing the doors at midnight.

Ms. MacDonald stated if the applicant could commit to keeping the doors closed between midnight and 2:00 am it would help mitigate the sound. The Hearing Officer added condition number 9 which reads: Doors of establishment shall be closed at midnight for sound mitigation.

Mr. Jazwinski agreed to the additional condition of approval.

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 PL120185/ZUP12133 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. Any intensification or expansion of use, including change in liquor license (from Series 12 to Series 6) shall require a new Use Permit.
5. No outdoor live entertainment or 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 March 19, 2013.
7. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the use permit becoming effective.
8. Live entertainment to cease at 12:00 am Sunday-Wednesday and 1:55 am Thursday-Saturday.
9. Doors of establishment shall be closed at midnight for sound mitigation. (ADDED BY HEARING OFFICER)

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3. Request approval for a Use Permit to allow a restaurant/bar for the FIREHOUSE (PL120431) located at 4 East University Drive. The applicant is Amy Nations.

   This case is continued from February 5, 2013.

   This case will be continued to March 5, 2013 by the request of Community Development Staff.

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4. Request approval for a Use Permit to allow a fraternity for TEMPE DORMS/CAMPUS LOFTS (PL130011) located at 1116 East Lemon Street. The applicant is Janine Meighew-Urquilla, AZ Rental Homes.

   This case will be continued to March 5, 2013 by the request of Community Development Staff.

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5. Request approval for a Use Permit to allow resale retail for THE QUALITY GARAGE SALE STORE (PL130015) located at 3400 South Mill Avenue, Suite 35. The applicant is Merrlin Gene Olson.

   Merrlin Olson was present to represent this case.

   Diana Kaminski introduced the case. This suite is located in Danelle Plaza on the southwest corner of Mill and Southern Avenue. The request is for resale retail. There are a few similar businesses in the shopping center. The applicant has reviewed the conditions of approval and has asked for a few modifications. Condition number 5, the applicant would like to change the hours of operation to end no later than 9:00 pm on a daily basis. Condition number 6, the applicant would like additional time (30 days) to provide the updated parking information. Staff is recommending approval of the request.

   Mr. Olson stated the Quality Garage Sale Store is a green company. They buy storage units, make necessary repairs and items not placed in the store are donated to ARC or Goodwill. Hopefully they will expand enough to provide jobs too. Mr. Olson asked if he would be able to have items on consignment in his store.

   Ms. Kaminski stated there is not a condition restricting consignment sales. The applicant would be able to have items on consignment in his store.

   Mr. Olson 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 PL130015/ZUP13003 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. Any intensification or expansion of use shall require a new Use Permit.
5. Hours of operation to end no later than ~~6:00~~ 9:00 PM on a daily basis. (MODIFIED BY STAFF)
6. Update the data for parking file for this building prior to the Use Permit becoming effective. Provide information within ~~14~~ 30 days or by ~~March 5, 2013~~ March 21, 2013. (MODIFIED BY STAFF)

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6. Request approval for a Use Permit to allow a wireless communications facility, monopole and equipment shelter for VERIZON PHO CHIGORIN (PL130018) located at 9365 South McKemy Street. The applicant is Michael J. Campbell, Verizon Wireless by Campbell A&Z, LLC.

This case will be continued to March 5, 2013 by the request of Community Development Staff.

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7. Request approval for a Use Permit to allow tandem parking for the SULLTROP RESIDENCE (PL110151) located at 1225 South Wilson Street. The applicant is Roger Sulltrop.

Roger Sulltrop was present to represent this case.

Sherri Lesser introduced the case. This is a Use Permit requested by the Sulltrop residence to allow tandem parking. The property is located south of University Drive west of Mill Avenue in the R-2 Multi-Family Residence. The site is a multi-family project with two dwelling units. The applicant is currently in the process of getting a second story addition approved for one of the properties. In the process a new site plan had to be developed for additional parking. Two of the parking spaces are located in the carport at the front of the property. The remaining three parking spaces will be located at the rear of the lot in a tandem configuration accessed from a paved alley. Staff is recommending approval of the Use Permit. Ms. Lesser noted a few changes to the conditions listed in the staff report. Condition number 2 related to the parking layout can be eliminated as long as the civil plan is correct. Replace condition number 2 with a new condition which reads: Bring property into compliance with Tempe City Code Chapter 21 Nuisance & Enhancement; regarding the appearance of the property and storage of materials.

Ms. MacDonald was concerned with the accumulation of the material in the carport.

Mr. Sulltrop indicated a lot of the material sitting out in the carport was removed from the sheds due to the parking reconfiguration. The appearance of the property will be restored.

Mr. Sulltrop 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 PL110151/ZUP13007 subject to the following conditions:
1. The Use Permit is valid for the plans as submitted within this application.
2. ~~The applicant shall provide an updated parking layout on the permitted building and civil plans prior to Use Permit becoming effective~~. (REMOVED BY STAFF)
2. Bring property into compliance with Tempe City Code Chapter 21 Nuisance & Enhancement; regarding the appearance of the property and storage of materials. (ADDED BY HEARING OFFICER)

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8. Request approval for a Use Permit to allow a Coffee Shop Café/Office in the General Industrial District for INFUSION COFFEE AND TEA (PL120436) located at 1300 East 8th Street, Suite 100 & 104. The applicant is Patrick O'Malley.

This case is continued from February 5, 2013.

Patrick O'Malley was present to represent this case.

Sherri Lesser introduced the case. This case was heard at the previous hearing held on February 5, 2013. There were some concerns regarding the conditions of approval. Staff met with the applicant and the property owner. Through the direction of the Community Development Director it was decided to eliminate two of the conditions of approval regarding the alley and paving. At the pre-session there was discussion regarding the hours of operation. It was decided the hours of operation were not necessary as a condition of approval. Condition number 4 regarding the hours of operation can be removed. Staff recommends approval of the Use Permit.

Ms. MacDonald stated the business should have flexibility regarding the hours of operation.

Mr. O'Malley stated he did not want his hours to overlap too much with Four Peaks Brewery. The primary customers will be people in the neighborhood. The hours of operation may be adjusted to stay open a little later if it is not an inconvenience.

Mr. O'Malley agreed to the conditions of approval.

Mr. Buss, resident of Lemon Street lives in the neighborhood just south of Infusion Coffee and Tea. He is glad to have this business in the neighborhood but has concerns regarding the parking. Four Peaks has inflicted parking problems on the neighborhood. He wanted to make sure Infusion Coffee and Tea has a reasonable parking plan. Hopefully most of the customers can walk or ride a bike to the business.

Ms. Lesser noted the condition of approval number 6 regarding a shared parking agreement for the 1300 and 1370 East 8th Street lots. There are also future plans to provide additional parking further west on 8th Street when the lot is improved.

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 PL120436/ZUP12135 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; specifically the area designated for seating as shown on the floor plan. 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 hours of operation for this use Monday through Thursday 6:30am – 6:30pm, Friday 6:30am - 8pm , Saturday 8am – 8pm and Sunday 8am - 4pm~~. (REMOVED BY THE HEARING OFFICER)
5. Live entertainment is not approved with this use permit.
6. A shared parking agreement for the 1300 and 1370 lots must be processed and approved prior to submittal of building permits for the tenant improvement. The lot located at 1370 E.8th Street shall remain open and available for parking for this use. If the lot on the south side of 8th Street is approved and constructed per City of Tempe requirements; that lot could replace the spaces utilized in the proposed shared parking model.

The next Hearing Officer public hearing will be held on March 5, 2013.

There being no further business the public hearing adjourned at 2:23 PM.

Prepared by: Julie Stennerson, Executive Assistant
Reviewed by:

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

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