

**Minutes
HEARING OFFICER
APRIL 2, 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
Diana Kaminski, Senior Planner
Ryan Levesque, Senior Planner
Jack Scofield, Code Inspector
Julie Stenner, Executive Assistant

Number of Interested Citizens Present: 9

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 April 16, 2013 at 3:00 PM, to the Community Development Department.

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1. Ms. MacDonald noted that the Hearing Officer Minutes for March 19, 2013 had been reviewed and approved.

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2. Request approval to abate public nuisance items at the FLANAGAN PROPERTY (PL130066) located at 1980 East Colgate Drive. The applicant is the City of Tempe.

There was no one present to represent the property owner.

Jack Scofield requested a 180 day open abatement for the property located at 1980 East Colgate Drive. The property is in violation of deteriorated landscape, a deteriorated fence and a deteriorated pool. Staff has sent notifications to the property owner and posted notices at the property. The property owner has been sent two citations but they have failed to appear in court. Staff has not had any contact with the property owner. Mr. Scofield requested an additional charge for the abatement. There will be a \$536.00 fee for a dog in the back yard. Maricopa County Animal Care and Control will need to take possession of the dog during the time the contractor is performing the abatement.

Ms. MacDonald asked Mr. Scofield if the property has been abandoned.

Mr. Scofield stated the property has not been abandoned. Notifications posted at the property are gone soon after they are posted and the water bill is still being paid on a monthly basis. He is assuming the property owner is still living at the property.

Ms. MacDonald asked Mr. Scofield if an emergency abatement is necessary due to the unsecure nature of the property.

Mr. Scofield stated an emergency abatement was not necessary. The holes in the damaged fence are not large enough for a person to fit through. The fence is still keeping the dog in the backyard. Some of the slats are loose or missing from the rear fence and the front gate. A child would not be able to get into the yard.

DECISION:

Ms. MacDonald approved abatement proceedings for PL130066/ABT13005 for an open period of 180 days.

3. Request approval for a Use Permit to allow a massage establishment for MASSAGE GOLDEN (PL130071) located at 1730 East Elliot Road, Suite 16. The applicant is Tessa Jones-Dailey, The Phactory.

Tessa Jones-Dailey was present to represent this case.

Diana Kaminski introduced the case. The property is located in the PCC-1, Planned Commercial Center Neighborhood District on the north west corner of Elliot Road and McClintock Drive. There are other similar health related uses in the center. Staff has not received any calls for inquiry regarding this project. The applicant has reviewed the conditions of approval. Staff recommends approval of the requested Use Permit.

Ms. Jones-Dailey 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 PL130071/ZUP13019 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 hours of operation for this use are 9am-10pm, Sunday through Saturday.

4. Request approval for a Use Permit to allow indoor car sales for 101 MOTORS (PL130073) located at 318 South River Drive. The applicant is Tony Tran, TNT Motors LLC dba 101 Motors.

Tony Tran was present to represent this case.

Diana Kaminski introduced the case. The site is located north of 5th Street on the west side of River Drive, south of Rio Salado Parkway. It is an existing industrial building. The applicant is requesting use of the whole site for a resale automotive use. The vehicles would be parked indoors. There are conditions of approval regarding the parking. There shall be no on-street parking of vehicles for sale. The street front spaces are strictly for customers. Employees shall park in the rear lot. Staff has received one call of inquiry regarding the on-street

parking. The parking stipulation was added as a result of that call. The applicant has reviewed the conditions of approval. Staff recommends approval of the requested Use Permit.

Mr. Tran agreed to the conditions of approval.

Ms. MacDonald noted conditions: 4. All nonconforming building lighting shall be removed and replaced with compliant light fixtures; and 5. The Property Owner shall replace all dead or missing trees along the street frontages (minimum of 1 tree per 30 linear feet of street frontage) and within the existing required landscape islands within the parking lot. She also noted the importance of managing the parking.

Mr. Tran stated he already has plans in with his architect to improve the front façade and the interior. The building will be purchased and leased to 101 Motors. This will be a high-end auto gallery. The vehicles will all be inside at night. There will not be any balloons, banners or flags displayed.

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 PL130073/ZUP13018 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. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review.
5. The Property Owner shall replace all dead or missing trees along the street frontages (minimum of 1 tree per 30 linear feet of street frontage) and within the existing required landscape islands within the parking lot.
6. 101 MOTORS shall reserve the street front spaces for customers only, employees and vehicles for sale shall be parked in the rear lot. Vehicles for sale may be located within these spaces however; no signage, flags, banners or outdoor sales/promotional material shall be located on the vehicles or in the lot.
7. There shall be no on-street parking of vehicles for sale.

5. Request approval for a Use Permit to allow a drive-thru for a RESTAURANT (PL130084) located at 1420 North Scottsdale Road. The applicant is Fred Stern, Stern & Associates.

THIS CASE WILL BE CONTINUED TO APRIL 16, 2013 BY THE REQUEST OF COMMUNITY DEVELOPMENT STAFF.

6. Request approval for a Variance to reduce the minimum required vehicle parking from 387 to 350 spaces; a Variance to reduce the side yard setback from 30 to 10 feet; and a Variance to reduce the minimum required rear yard setback from 30 to 10 feet for THE STANDARD ON BROADWAY (PL120409) located at 1245 East Broadway Road. The applicant is Manjula M. Vaz, Gammage & Burnham P.L.C.

Manjula M. Vaz, Gammage & Burnham P.L.C., Robert Lane, Gammage & Burnham, Paul Basha, EPS Group, Inc. (Engineers, Planners & Surveyors) and Todd Gosselink, P.B. Bell Companies were present to represent this case.

Ryan Levesque introduced the case. The property is located at 1245 East Broadway Road. The site is in the PCC-2, Planned Commercial Center General District. The request also requires allowing residential in the commercial district as well as a development plan review. The applicant is proceeding with that application process with the Development Review Commission. The site is primarily vacant with an existing two-story office building. The Variances are for six locations on the plans where the 10 foot setback is requested. Primarily for three of the garage buildings located near the south side of the property, a two-story carriage unit at the north west corner of the site and for one of the apartment buildings at the north east corner of the site where the stairwell landing is proposed. The parking reduction includes a request from 387 spaces to 350 spaces. The applicant has had a few neighborhood meetings and public outreach regarding the request to obtain input from the neighbors. Staff has not received any additional input other than what has been provided in the staff summary report. Staff recommends approval of the request.

Ms. Vaz and Mr. Lane presented a PowerPoint Presentation. P.B. Bell has been in the business since 1976. They have developed over 2,500 apartment homes. This project contains high-end, multi-family apartment homes designed for professionals and young families. The central portion of Tempe does not have many new apartment buildings. The site is zoned PCC-2, PCC-2 (PAD) and is approximately 7.8 acres. The two office buildings on site are currently about 20% occupied. The office buildings will be demolished for the new project. This site was originally going to be an office complex. The roundabout off Broadway was developed to accommodate the traffic for the proposed office development. The Desert Schools Credit Union and the Dani Dental Studio are adjacent to the property. Dorsey Crossing Live/Work Townhomes were also approved in 2006/2007.

The requested Variances will help buffer the neighborhood. The proposed multi-family residential development consists of 194 units (24.87 units per acre). The development proposal has 350 bedrooms: 42 – studios, 44 – 1 bedroom units, 60 – 2 bedroom units and 48 – 3 bedroom units. The site allows for 1 car per bedroom or 1.8 spaces per unit. The on-site vehicle parking includes 350 total spaces. The spaces include: 163 carport spaces, 156 open spaces, 31 garage spaces. Typically you would not need that many parking spaces. The site is near Apache Boulevard for use of the light rail. The Orbit Bus has a route that travels on Dorsey Lane. This project is not designed for student housing. The average rent is \$1,200 - \$1,400 per month. Lot coverage for this project is 37% and landscape coverage is 33%.

The development proposal places the three-story units closer to Broadway Road with the two-story units facing the neighborhood. Some of the units are placed above the garages. The garages placed near the edges of the development would help provide a buffer to the neighborhood. Trees would be placed between the fence and the garages to enhance the landscape. The development provides open parking next to the buildings. Everything is circular to provide open space.

The City of Tempe Zoning Code requires 387 parking spaces for this project. The requirements in Tempe are higher than Phoenix and Scottsdale for multi-family housing. The EPS Group, Inc. recommends 312 parking spaces. The P.B. Bell Companies are proposing 350 parking spaces. This is more than the parking study recommendation, but 37 spaces less than recommended by the City of Tempe. P.B. Bell has built a lot of multi-family complexes over the years and they have a good sense of the amount of parking spaces needed.

Ms. MacDonald asked Ms. Vaz if a shared parking model has been explored.

Ms. Vaz stated they have talked about shared parking. Mr. Gosselink spoke with all of the commercial owners. The other owners are hesitant to give up their commercial parking spaces during the day. Desert Schools Credit Union wants to keep their designated parking spaces.

Mr. Basha, EPS Group, stated the parking study is based upon parking demand counts accomplished

approximately four years ago. The study included two locations in Tempe (McClintock and Broadway) and (Hardy and Baseline) the third complex was in Scottsdale (64th Street and Thomas). The complexes were very similar types of apartment complexes. They were all high-end, luxury mixture of one, two and three bedroom apartments. Based on the parking occupancy counts the City of Tempe Code was approximately 33% in excess of the parking demand. The parking analysis determined the absolute minimum parking to be 260 parking spaces for this development. The EPS Group suggested a 20% increase over the minimum to allow a surplus of parking and to allow people to locate a convenient parking space. In addition to the parking occupancy count the Institute of Transportation Engineers parking generation book is examined. This book documents approximately 20 apartment complexes throughout the United States and Canada and their parking demand throughout the day. That reference suggests 240 parking spaces for The Standard on Broadway. The EPS Group recommendation based on local conditions recommends more parking spaces than the North American reference. The developer is proposing more parking spaces than the EPS Group recommends.

Ms. MacDonald asked Mr. Basha if the parking uses are evaluated during a 24 hour period.

Mr. Basha stated the parking is evaluated throughout the 24 hour period.

Ms. MacDonald stated you are never certain of the mix of tenants. The project could be designed for professionals and young families and end up with all young professionals. The reality can end up much different than what the projections are.

Ms. Vaz stated the amenities include, open spaces, bar-b-q areas, tot lots and dog parks. The project is designed with amenities that would appeal to families or young professionals. There are special circumstances related to the Variance approval criteria. The City of Tempe has a suburban Zoning Code designed for infill development. This development would be an urban infill project. The property has an irregular shaped east property line due to the roundabout, which also provides access to the project site. The south property line adjoins a 16-foot wide alley. The requested variances are not new to this project. These variances are enjoyed by other PCC-2 zoned properties that are multi-family properties throughout Tempe. The special circumstances applicable to the property are not self-imposed by the property owner.

Ms. MacDonald stated she views this as three different requests since there are three Variances involved. She does not have any issues with the two Variances requesting setbacks. There are physical constraints with the property line. The design of the project and layout of the buildings benefit the neighborhood. Ms. MacDonald indicated she was unsure of the hardship for the parking Variance. Other projects have been given reductions for parking, but none of them have been granted through a Variance, they have been through the PAD process.

Ms. Vaz indicated the Development Review Commission wanted the Variances to go before the Hearing Officer instead of being processed through the PAD process.

Ms. MacDonald stated all four criteria must be met to grant a Variance under State Statute.

Ms. Vaz stated if 37 additional parking spaces are added to the project the landscape area would need to be reduced, an open space or amenity would need to be removed, a residential building may need to be removed or underground parking would need to be provided. The changes would achieve a lesser product. The project does not need 387 parking spaces. The current Zoning Ordinance is inflexible in terms of parking requirements and it does not adequately address urban infill projects. The irregular shaped property line is also an issue that creates a hardship.

The streetscape on Broadway Road and the lush landscape is important to enhance the project. The Zoning Code does not require a setback on Broadway Road. The buildings could be placed closer to the road to allow for additional parking spaces. This would have a different look than the other sites on Broadway.

Mr. Gosselink, P.B. Bell Companies, stated the setbacks have been adequately addressed. The concerns seem to be focused on the parking. He stated P.B. Bell Companies has developed over 3,000 apartments and manage twice as many apartment complexes. Many of the properties are similar to this development. One

parking space per bedroom is an ample parking ratio from an operational standpoint. They did not want to create parking fields. Parking fields are unattractive, less convenient, and you would have to walk a lot further to get to the units. They are going above and beyond the applicable industry standards for the number of parking spaces. The industry dictates on thing, municipalities dictate another. They let their operational expertise guide them. Operational occupancy at a high-end, luxury apartment complex is going to plateau somewhere around 95%. There will be two or three model units that will always be furnished for showing; they will never be lived in. As the 12 month leases expire units will be cleaned, carpet will be replaced and the units will need to be leased out again.

Mr. Levesque stated he briefly discussed with the applicants that there are other methods to address the parking. They may want to reduce the amount of the reduction of parking spaces that has been requested.

Ms. MacDonald stated she likes the project. It is a good quality, well designed project. Her issue is with the process and this being brought as a Variance. She questioned the other alternatives from a processing standpoint to accomplish the same thing without granting a Variance.

Ms. Vaz stated the precedence has been set by all the other Mark Taylor projects.

Ms. Kaminski stated there are two options to explore. She suggested a proposed parking ratio through a parking analysis. She noted the parking study was conducted in 2008 and it was a 12 hour period, not a 24 hour period. If there was current information and a proposed professional analysis for some type of a shared parking model for this site it might be justifiable. The PAD process would be the second option. Those are the tools of flexibility. If those two other available means in the Zoning Code did not work a Variance could be requested.

Ms. Vaz stated she did not want to go through the PAD process, it is cumbersome. She stated the Development Review Commission would like the projects that do not have several special circumstances to be heard by the Hearing Officer. More of these projects will be going to the Hearing Officer in the future.

Mr. Basha stated they have prepared a number of parking shared analysis within the City of Tempe and other locations in the valley. Shared parking is a marvelous concept if you share a parking lot. If you do not share a parking lot, shared parking is not an appropriate tool. You cannot expect people to live in the multi-family apartment complex and park in the Desert School Credit Union parking lot or in the Dani Dental Studio parking area. It would need to be a shared parking facility in order to satisfy all of the mixed uses. This is not a mixed use development. The parking for the apartment complex needs to be provided on site. He also responded to Ms. Kaminski's comment. She is correct; they did not count parking occupancy for a 24 hour period. He takes full responsibility for that oversight. The study began at 6:00 am and it was continued until 9:00 or 10:00 pm. The study did capture the time when all residents would be on the property. The parking occupancy demand measured has been used for approximately a dozen different apartment complexes in the City of Tempe within the last four years. Many of the complexes have been constructed and are operating perfectly fine. P.B. Bell Companies knows how many parking spaces they need for their development. If there are not enough parking spaces the facility doesn't lease.

Ms. Vaz stated the underlying problem is that the City of Tempe has not updated their Zoning Code. Infill parcels are difficult to develop based on the Code. The Zoning Code has not been updated to take in to account Orbit and light rail. Uses are different in different locations. The Zoning Code is causing the hardship. Phoenix and Scottsdale have a lower parking requirement than Tempe. The irregular shaped property line is also a hardship.

Mr. Levesque noted the Zoning and Development Code was updated in 2005. The apartment ratios did not change at that time. The apartment ratios may be from the 1980s standards. The only change was in the Transportation Overlay District by about a 25% reduction in those areas. Staff has seen further reductions in the Transportation Overlay District on a case by case basis.

There was no public input.

Ms. MacDonald stated the applicant had really good outreach efforts regarding this project. The roundabout and the northern part of the property line do create a hardship. The fact that the Buildings could be placed closer to Broadway Road for additional parking is also a factor. Moving the placement of the buildings would be at the expense of a really good looking project. Removing amenities would also impact a well-designed project. The Variances are justifiable as they are related to the setback reductions.

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

1. She does believe special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings.
2. She believes the strict application of this Code will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district.
3. The adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located
4. She does not believe that special circumstances are self-imposed by the property owner.

DECISION:

Ms. MacDonald approved PL120409/VAR13002, VAR13003, and VAR13004 subject to the following conditions:

1. The variances for setbacks are authorized only for the locations of the buildings as shown on the submitted plans.
2. The variances are valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.
3. The variance for parking is granted for the number of unit and bedroom types as shown on the submitted plans. Any change or intensification of the site will require the additional units/bedrooms to be in conformance with the minimum standard parking requirements for those units.

The next Hearing Officer public hearing will be held on April 16, 2013.

There being no further business the public hearing adjourned at 2:43 PM.

Prepared by: Julie Stennerson, Executive Assistant
Reviewed by:



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

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