

**Minutes
HEARING OFFICER
OCTOBER 15, 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
Donna Kennedy, Alternate Hearing Officer
Steve Abrahamson, Planning & Zoning Coordinator
Sherri Lesser, Senior Planner
Julie Stenner, Executive Assistant

Number of Interested Citizens Present: 14

Meeting convened at 1:36 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 October 29, 2013 at 3:00 PM, to the Community Development Department.

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

Ms. MacDonald stated agenda item number 4 would be taken out of order.
Ms. MacDonald recused herself for this case, declaring a conflict of interest.
The case will be heard by Ms. Kennedy.

-
4. Request approval for a Use Permit to allow an auto title loan business to operate in the CSS District for **TITLEMAX (PL130343)** located at 2404 North Scottsdale Road. The applicant is Reese L. Anderson, Pew & Lake, PLC.

Ralph Pew, Pew & Lake, PLC. and Mr. Chris Ryan, TitleMax were present to represent this case.

Steve Abrahamson introduced the case. The applicant is requesting a Use Permit for TitleMax to allow an auto title loan business. The proposed location is the north west corner of Fillmore Street and Scottsdale Road. The site is in the CSS, Commercial Shopping and Services District. TitleMax is an auto title loan company. It is an unchartered financial institution, as such it requires a Use Permit under the City of Tempe Zoning and Development Code. There is a separation requirement between uncharted financial institutions of 1,320 feet. There is another auto title loan company to the north located in Scottsdale beyond 1,320 feet. TitleMax meets the separation requirement.

Staff has received two letters of concern from neighbors, Ms. Betty Ackworth and Ms. Shannon Dutton. Both neighbors live on Fillmore Street relatively close to the proposed location for TitleMax. The concerns expressed include: additional traffic, speeders, the safety of children in the area due to the additional traffic, the hours of

operation, restriction on automobile sales, impounding of automobiles on site, the monument sign on Fillmore, neon signage, and the condition of American Flag if being used on the site.

This location has been a used car dealership in the past. There have been issues in the past with automobile carrier trucks pulling onto Fillmore Street and idling. Mr. Abrahamson stated he understands the neighbors' concerns. With respect to that this is a different type of use and does not involve the sales of automobiles.

Mr. Pew stated they agree and concur with the Staff Report and agree with all of the conditions of approval. He addressed the concerns from the neighbors. The business will be closed on Sunday and will close at 7:00 pm Monday – Saturday. TitleMax has a great reputation throughout the country. There are 820 stores under the name of TitleMax functioning throughout the country, and they do a great job. There will be no sale, repossession or storage of vehicles on the site. This site is designed with 21 parking spaces, for this office use only 7 are required. Traffic will be minimal and less than the automotive uses that have existed prior to this proposed use. TitleMax will be making improvements to the premises which will make the building look better and more compatible to the area.

Mr. Pew stated they meet the criteria for a Use Permit. There will be no significant increase in vehicular or pedestrian traffic. Business is entirely conducted indoors. There will be no emissions of any type from the premises. Improving the site, removing the automotive use and making it more of a business type operation will enhance and improve the neighborhood rather than bring in any degradation to the property values or the use in the area. It is clear since the building exists it was integrated into the shopping area to begin with. The building is consistent with existing surroundings and structures. He does not believe the operation will be destructive in any way to the neighbors given the history and operation of TitleMax. Very little cash is kept on the premises. Most of the transactions are handled with automatic bank transfers. Occasionally a customer will make a payment in cash. The cash is immediately placed in the safe for deposit. The business will not create a hazard to the neighbors.

Darlene Justus with the North Tempe Neighborhood Association thanked TitleMax for the layout of the business operation. She asked the Hearing Officer to include a condition of approval for the specified hours as stated. Safety would be more of a concern if the hours extended later into the evening. She appreciates that there will be no repossessed vehicles, no storage of vehicles or sales of vehicles on site. She would also like those stipulations to be listed in the conditions of approval. Ms. Justus asked that the vehicles not be test driven on Fillmore Street if they are test driven before the loans are given. She also asked if a no right turn sign could be posted on the site to keep the traffic off the residential street. She was pleased to hear there would be very little traffic from this use and that very little money would be kept on site with this type of business.

Mr. Pew stated the hours of operation, the sale of vehicles and the storage of vehicles are already contained in the stipulations. He asked Mr. Ryan to address the question regarding test driving vehicles. Mr. Ryan stated the vehicles are appraised before loans are given, but they are not test driven.

Ms. Kennedy stated she has reviewed the conditions of approval and would like to make some edits to the stipulations. Condition of approval number 5: The hours of operation are to end no later than 7 pm Monday – Saturday. Condition of approval number 9: Remove the existing concrete parking pad. She stated she would also like the sign on Fillmore removed within the landscape area, and landscaped with vegetation within 30 days.

Mr. Pew stated the issue with respect to signage is a separate application. When they come forward with the signage they will have to deal with removal of existing signs, and construction of proposed signs.

Mr. Abrahamson stated that is correct. The site does have two monument signs, one on Fillmore, and one on Scottsdale. The neighbors were concerned with the monument sign on Fillmore. The site is only allowed to have one monument sign. One of the signs will have to be removed. The neighbors requested there be no sign on Fillmore.

Mr. Ryan agreed to remove the sign on Fillmore. He asked for at least 90 days. He was unsure as to when the construction would begin. He will need to get approval from the landlord and did not believe 30 days would be

sufficient.

Ms. Kennedy agreed to 90 days for the sign removal. She would like to see the landscape started sooner.

Mr. Ryan stated the landscape would be incorporated with the construction period. He still needs to get a Building Permit. He would like to do all the work at once. The sign guy will install and remove signs at the same time. He would like to encompass all of this within the Building Permit and a Certificate of Occupancy.

Mr. Pew stated the time to mark when the work should be done should be on the issuance of a Building Permit. After the Building Permit is issued they will need to get a contractor.

Mr. Ryan stated typically the landscaping and signage are done last in a development.

Ms. Kennedy noted condition of approval number 7. Replace all dead or missing trees and any other missing landscape material on site and in the right of ways. She also wanted to include cleaning up the palm fronds and taking out the palm stump.

Mr. Ryan stated that would be done when staff reviews the Building Permit and Site Plan.

Mr. Pew stated the conditions have been agreed to and will be done in the course of construction.

Ms. Kennedy noted condition of approval number 9. Submit a development plan review application within 1 year of this Use Permit request. She stated she would like to change the time frame to 6 months.

Mr. Pew agreed to the new deadline.

Ms. Kennedy modified condition of approval number 11 to read: No sale or test drive of vehicles on site.

Mr. Ryan asked if the existing sign can be removed when the new signage is installed.

Ms. Kennedy stated a stipulation could be created to address the signs. She stated Ms. Justus requested a no right turn from the property. Ms. Kennedy believed that item should be discussed with the streets department.

Mr. Abrahamson stated that would be an onsite directional sign indicating no right hand turns on the south exit along Fillmore.

Mr. Pew stated they were getting beyond a reasonable request. Fillmore is a public street. TitleMax is not going to have that much traffic. If someone turns right and goes out on Fillmore it is not going to be detrimental to the neighborhood.

Ms. Kennedy stated there is give and take on this and hopefully the major issues have been addressed to meet the needs of the neighbors.

Ms. Kennedy 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. Kennedy approved PL130343/ZUP13120 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. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.

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 7pm on a daily basis, **Monday – Saturday. (Modified by the Hearing Officer)**
6. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review.
7. Replace all dead or missing trees and any other missing landscape material on site and in the right of ways. **Trim palm tree fronds. (Modified by the Hearing Officer)**
8. Provide bicycle parking racks per City of Tempe Public Works Department bicycle rack detail T-578 standard.
9. Remove the existing concrete parking pad within the landscape area and landscape with vegetation. Site plan modifications to be reviewed separately from this request and approved administratively by staff. Submit a development plan review application within ~~1 year~~ **(6 months)** of this Use Permit request. **(Modified by the Hearing Officer)**
10. No storage of repossessed vehicles on site.
11. No sale or test drive of vehicles on site. **(Modified by the Hearing Officer)**
12. ~~Remove monument sign on Fillmore Street. (Added by the Hearing Officer)~~ ***It was later discovered the monument sign on Fillmore Street was not on the same property as TitleMax.***

Ms. MacDonald returned as the Hearing Officer.

2. Reconsideration of a Use Permit to allow an increase of the height of a fence located within the front yard setback for the **JOHNSON RESIDENCE (PL130241)** located at 1718 East Pebble Beach Drive. The applicant is Robert Johnson

Robert Johnson was present to represent this case.

Sherri Lesser introduced the case. This is a reconsideration of a Use Permit heard by the Hearing Officer on August 6, 2013. At that time Mr. Johnson proposed a wall that was at 6 feet, 8 inches in height. The proposal was for a solid wall with some visual openings. This proposal was taken to the Development Review Commission on September 10, 2013 on an appeal. The Commission determined the new proposal is significantly different and the case was remanded back to the Hearing Officer.

The new proposal is a wrought iron fence with masonry piers. The overall height would be 5 feet. The fence would be surrounding his property in the front yard, located approximately 5 ½ feet behind the sidewalk. The property line is roughly 3 feet behind the sidewalk.

Mr. Johnson stated he tried to address the neighbors' issues with his new fence proposal. The neighbors' main concerns regarding the wall included the height, potential graffiti and blocking the view of the community. The new proposed fence is no longer made out of brick. The height has been reduced from 6 foot 8 inches to 5 feet. He is still requesting the 5 ½ foot setback. He indicated he would plant some small shrubs in front of the fence. He knows the neighbors were concerned with him having a pool in his front yard. He would like to keep the option open for a water feature in the future. A 5 foot wall is a requirement when you have a water feature

deeper than 2 feet. The new proposed wall will not attract graffiti, it is shorter and you can see through it.

Ms. MacDonald stated she does remember the case. She remembers the wall was solid, too big and too tall. There was not enough design incorporated in the wall. She felt it was incompatible with the neighborhood. Ms. MacDonald stated she appreciates Mr. Johnson being flexible changing the design. She believes the new proposal is a really well designed fence.

Reid Reinholz stated if the fence was a 4 foot retaining fence they would not be here. The only logical reason Mr. Johnson wants a 5 foot fence is because he does want to have water behind the fence. A pool may still be a consideration. A water feature would be detrimental to the way the neighborhood feels and it may possibly cause issues with the perception of property values. The new proposed fence is more compatible in the way it looks in comparison to the neighbors directly to the west. The fence is still one foot higher. The driveways look like they are conjoined. The neighbor's retaining wall coupled with Mr. Johnson's fence would look like a big long running fence and make it look like a mini apartment complex right in the middle of the street. If Mr. Johnson decides to build a pool he would probably want more privacy than bars. A fence with bars surrounding a swimming pool would look like a public swimming pool. Mr. Johnson would probably create a situation with shrubs that would create an obtuse jetting out situation. Mr. Johnson would be able to place a water feature or koi pond in the back yard. A water feature would only require a shallow, smaller area and the trees would not be disturbed. A fence beyond 4 feet makes a lot of people uncomfortable. A majority of the neighborhood still seem quite uncomfortable with a fence this high. The only other high walls in the neighborhood are side walls, not front walls. The proposed fence at 5 foot high would disrupt the character of the neighborhood.

Ms. MacDonald asked Mr. Reinholz if he would rather see a four foot solid block wall than a 5 foot fence like Mr. Johnson has proposed.

Mr. Reinholz stated if Mr. Johnson is going to have a solid wall that is 4 feet that is his choice. He can construct that without any issues. With a 5 foot fence chances are there will be growth beyond the fence. A 5 foot fence is just too high and too close to the road. The house behind Mr. Reinholz has been built beyond the permits stated. The house is much larger than what is allowed.

Elaine Dehghanpisheh stated the new proposal presented by Mr. Johnson is better than what was suggested before. The 5 foot fence is better than the 6 foot 8 inch fence. She questioned if Mr. Johnson would be able to building the 6 foot 8 inch fence.

Ms. MacDonald explained this is not an appeal, it is a new case. The substance of Mr. Johnson's application has changed so it no longer qualifies as an appeal.

Ms. Dehghanpisheh stated her concern with the water feature Mr. Johnson spoke of. The neighborhood has had problems with college students in the area. She was concerned that students would come and use the water feature/swimming pool in the night time hours. The noise would be a problem with her front living area being located so close to Mr. Johnson's front yard. She believes the purpose of the 5 foot fence is for a future water feature or pool. A pool in the front yard would cause problems with the property values. Most of the neighbors are long term residents. Mr. Johnson has a growing family and he may move to a larger place. He may make some changes to his current house that the neighbors will be stuck with.

Mr. Johnson displayed a photograph of a neighbor's house that has a 4 foot fence with shrubs growing at least 5 foot tall. They have created a fence out of shrubs. Mr. Johnson indicated he does not want to do that, he just wants a fence around his property. He did initially propose a pool but he would be happy to build a water feature that would enhance the neighborhood.

Ms. MacDonald asked Mr. Johnson what the difference was between a pool and a water feature.

Mr. Johnson stated a pool is specifically for diving in and swimming.

Ms. MacDonald stated not all pools are diving pools. There are play pools that are only four feet deep.

Mr. Johnson stated something that is not quite like a diving pool or swimming pool could be used for decoration. A water feature may be a fountain with water around it. He is concerned about his property values too. The Use Permit is for the fence, not the pool.

Ms. MacDonald stated that is true. The pool issue is not relevant to the fence.

Ms. Lesser stated any water feature greater than a foot in depth has to have a 5 foot fence.

Mr. Johnson does not want to limit himself. He has put a hold on the idea of a water feature because of finances. The construction of the fence will probably cost about \$10,000.00. It may be a year or two down the road before he plans to construct a water feature. He is not going to spend all this money on improvements to his home to rent it out. He feels he has addressed the neighbors' concerns from the first hearing. The neighbors would be able to see through this fence, it will not attract graffiti, and the size has been dramatically reduced. There are other residences in the City of Tempe that have fences greater than 5 feet. He is going to keep his fence at 5 feet and it will be professionally constructed. He will not use shrubs for a barrier. He has decided to let go of the idea of a pool. He is interested in a water feature for relaxing, and sitting out and having conversation.

Ms. MacDonald agreed with this fence configuration, a swimming pool in the front yard would not be a good situation. There is potential for people hopping over the fence and things getting thrown in the pool. Ms. MacDonald asked Ms. Lesser how far back Mr. Johnson would have to build his fence to be at the setback.

Ms. Lesser stated at a 20 foot setback Mr. Johnson could put the fence at 8 feet in height. The placement of the fence would be about 25 feet behind the sidewalk.

Ms. MacDonald stated Mr. Johnson would have very little use of his enclosed front yard. The issue here is the difference between 4 feet and 5 feet within the front yard setback. Mr. Johnson could build a solid block wall 4 feet in height.

Mr. Johnson stated he believes he was successful trying to appease everybody. Only two neighbors attended the meeting today that have expressed opposition.

Ms. MacDonald acknowledged the public speakers disagreeing with the last statement Mr. Johnson made. She assumed there are other neighbors interested and possibly opposed but were unable to be here this afternoon. Ms. MacDonald noted a letter of opposition with 9 signatures. The petition is dated August 28, 2013. The letter states the neighbors oppose the construction of a 6 foot 8 inch wall. The petition has been accepted into the record but it is not germane to this particular case.

Ms. MacDonald stated this is a tough case. She appreciated the exhibits and the flexibility Mr. Johnson demonstrated to work with his neighbors. He addressed nearly all of their concerns with regards to the fence. Clearly they do not want Mr. Johnson to have a swimming pool within the front yard. She does not think a swimming pool in the front yard is a good idea either. A swimming pool in the front yard would not be compatible with the neighborhood. The Use Permit is not for a swimming pool, it is for a fence within the front yard setback.

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 PL130241/ZUP13084 subject to the following conditions:

1. The Use Permit is valid for the plans as submitted within this application.

2. The fence and masonry piers to match the color scheme for the residence.

3. Request approval for a Use Permit and a Variance to allow parking for an adjacent commercial use on multi-family zoned lot; at the zero setback; with an encroachment in the City Right of Way for **ARDEN PROPERTIES 8TH STREET PARKING (PL130337)** located at 1219 East 8th Street. The applicant is Miguel Berastegui.

Miguel Berastegui was present to represent this case.

Sherri Lesser introduced the case. The parking lot for Arden Properties will not be encroaching into the city right-of-way. The case was initially advertised as encroaching into the right-of-way. The setback is right at the 0 foot setback for the parking. The property is located east of Rural Road on the south side of 8th Street. There is a historic gas station located to the east and industrial property is across the street where the Four Peaks Brewery is now in business. The proposed parking is intended to serve as overflow parking. Staff has not received any public input. Staff is recommending approval of the Variance and Use Permit.

Ms. Lesser wanted to make one change to the conditions of approval. When this project was routed through the Site Plan Review process the Traffic Engineering Department suggested the applicant modify the plan to one driveway. There were safety concerns due to the bike path. This condition was discussed in the pre-session and it was determined this may not need to be a condition of approval. The subject is a matter for discussion between the applicant and Traffic Engineering.

Ms. MacDonald stated the site has enough constraints. Every restaurant or shopping center has two points of ingress and egress. Often times there are bike lanes that go right in front those. She felt the condition may have been an over reach on the part of Transportation. If the single drive can be done successfully it may be a good idea. She felt it was unnecessary to stipulate the single drive as a condition of approval.

Ms. Lesser stated the site is an irregular shaped lot. The property has a substantial right-of-way of 33 foot that goes right into the property. The City will not be widening the road on 8th Street to take that right-of-way. It would be setting the parking back a substantial distance from the curb. Parking is more valuable at this site. There will be ample area for landscape in front of the parking lot, in the right-of-way.

Mr. Berastegui stated they do not have any issues with the single entry for the parking lot. The issue could be discussed further to see how they can accommodate the request. The property is an awkward site and that is why they want to turn it into parking. The gas station next door has been acquired by Arden Properties as well. The reason for the parking is for the overflow parking from Four Peaks. They have heard complaints from the neighborhood regarding the overflow parking. Mr. Berastegui asked about the handicapped accessible parking. He understands the need for it when it is adjacent to a building. He does not see how this would provide any type of accessibility. You would still have a long way to go before you arrive to a building from this parking lot. Accessible parking in a detached parking lot is not really reasonable at this point in time. If the gas station property is joined to this parking lot, handicapped parking would be supplied. They are trying to maximize the amount of parking available in the lot.

Ms. Lesser stated he is referring to the preliminary Site Plan Review comments. This concern would need to be discussed with the Building Safety Department. The comments are from ADA requirements.

Mr. Berastegui agreed to the conditions of approval.

There was no public input.

Ms. MacDonald noted that this request meets the criteria for a Variance and found as follows:

1. She believes that 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. She does not believe the adjustment authorized constitutes 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 the special circumstances applicable to the property are self-imposed by the property owner.

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 PL130337/VAR13012/ZUP13118 subject to the following conditions:

1. The Variance and Use Permit are valid for the plans as submitted within this application.
2. This Variance and Use Permit 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 and Use Permit are valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
4. ~~Traffic Engineering Department requires the combination on the two driveways shown on the plan into one driveway – provide updated site plan for Development Plan Review Approval.~~ **(Removed by the Hearing Officer)**

5. Request approval for a Use Permit to allow retail sales (convenience and liquor store) in the General Industrial District for **CAL-EATON INDUSTRIAL PARK - NIGHTTIME NOSH (PL130350)** located at 625 South Smith Road, Suite 13. The applicant is Gerson Cedillos.

Gerson Cedillos was present to represent this case.

Sherri Lesser introduced the case. The applicant is requesting a Use Permit to allow a retail use in the General Industrial District. The property is located on Smith Drive, which is just south of the Tempe Marketplace Shopping Center, north of University Drive. Nighttime Nosh has obtained a liquor license for the sale of beer, wine and liquor. The business will be a convenience store but the primary focus is for a delivery use for the residential areas to the south. Nighttime Nosh will have some walk in traffic. Most of the traffic will be generated after the other businesses in the area are closed. This is a good mix that will not create a nuisance from traffic and it will not be disruptive to the other office areas because of the offset in hours. Staff received one call of inquiry. The caller was pleased that the business would be in the area.

Ms. MacDonald stated this is a unique request. She asked Mr. Cedillos if he had a Series 9 liquor license.

Mr. Cedillos did not recall the type of liquor license. He stated the license from the DLLC is just for beer and wine. The model right now is strictly delivery. In order to be in compliance with the DLLC the model needs to be changed to a convenience store that delivers beer and wine. The Business is in a business complex and they would happily sell to walk in customers.

Ms. MacDonald asked if they would be selling any tobacco related items.

Mr. Cedillos stated they sell cigarettes and rolling tobacco.

Ms. MacDonald asked if they have a Use Permit as a tobacco retailer.

Ms. Lesser stated they do not need a Use Permit to sell tobacco. Tobacco sales are ancillary to the business. The sales are no greater than a Circle K or any other convenience market.

Ms. MacDonald stated she asked because a lot of businesses are selling e-cigarettes.

Mr. Cedillos stated they do not carry e-cigarettes.

Ms. Lesser explained if they start selling e-cigarettes as 50% of their sales a Use Permit would be necessary.

Ms. MacDonald stated she did not know alcohol could be delivered.

Mr. Cedillos stated under the DLLC convenience stores can offer delivery for beer and wine, but no other liquor. The last call for delivery would be 1:15 am.

Ms. MacDonald reviewed the conditions of approval.

Mr. Cedillos 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 PL130350/ZUP13122 subject to the following conditions:

1. This Use Permit is valid only after permits have been obtained for tenant improvements and signage 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. Any non-conforming lighting shall be upgraded to meet current light levels in parking, pedestrian areas and at doorways for the safety of customers and staff.
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.

-
6. Request approval for a Use Permit to allow a massage establishment for **RIO SALADO OFFICE SUITES - SOL TOUCH MASSAGE (PL130358)** located at 2121 South Mill Avenue, Suite 116. The applicant is Angela Sellars.

Angela Sellars was present to represent this case.

Sherri Lesser introduced the case. The applicant is requesting a Use Permit to allow a massage establishment in the Rio Salado Office Suite. The site is located at the south east corner of El Parque and Mill Avenue. This site is zoned R-4, Multi Family District, but it has a historic Use Permit allowing to operate the center as RO, Residential Office Uses. The use for a massage establishment is allowed subject to Use Permit. The applicant stated in their letter of explanation the business is for a sports therapy massage establishment. The business is

by appointment only. The hours of operation will be from 9:00 am. – 10:00 pm. Staff has received a letter and a petition of opposition for this request. Staff is recommending approval of the Use Permit. Staff will be adding a few conditions of approval in response to the letter and petition of opposition. Conditions of approval added include: 7. No neon signage or commercial signs on site. 8. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval.

Angela Sellars stated she has been practicing for 15 years as a massage therapist. She is looking forward to expanding and moving her business to Tempe. The majority of her clientele is athletic. She does a lot of sports massage. She works with major league baseball players during spring training as well as the players who live here. She also provided massage therapy for WNBA, NFL players and the ASU Athletic Department. She sees general clientele as well. There is a massage establishment located across the street. Parking spaces have been purchased in the garage located on site for customer parking. The office complex has other professional businesses as tenants. There was concern with a massage establishment at this location since there is a school located down the street. The massage establishment is completely legitimate. This is a professional and therapeutic business.

Ms. MacDonald stated there is a high level of anxiety when a massage establishment is going to be located near a neighborhood. The neighbors may have not had all the facts for the business. A letter and petition of opposition have been submitted. However, there are no members of the public present this afternoon wanting to speak. If any members of the public were present today they would probably be relieved after hearing the nature of the business.

Jeremy Sellars, co-owner of Sol Touch Massage stated this is a legitimate family owned business. He emphasized the professionalism of the business. Sol Touch Massage is a professional therapeutic clinic. He stated a medical setting was purposely chosen for the business. The proximity to ASU was also taken into consideration when selecting this location.

Ms. MacDonald reviewed conditions of approval number 7. No neon signage or commercial signs on site and number 8. 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.

Angela Sellars questioned condition of approval number 7, related to the commercial sign.

Ms. Lesser explained a business sign is allowed. The sign would need to comply with the sign package for the center.

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 PL130358/ZUP13123 subject to the following conditions:

1. The Use Permit is valid for Sol Touch Massage and may be transferable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation.
2. All business signs shall be Development Plan Review approved and permits obtained.
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. Obtain all necessary clearances and permits for the occupancy from the Building Safety Division.

5. All required State, County and Municipal permits shall be obtained or the Use Permit is void.
6. 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.
7. **No neon signage or commercial signs on site. (Added by the Hearing Officer)**
8. **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. (Added by the Hearing Officer)**

7. Request approval for a Use Permit to allow outdoor display for **MEGA FURNITURE (PL130326)** located at 1315 West Elliot Road. The applicant is Karim Kanjiyani.

Ray Garcia was present to represent this case.

Steve Abrahamson introduced the case. This is a request for a Use Permit to allow an outdoor display for Mega Furniture. Mega Furniture is located at the south east corner of Priest Drive and Elliot Road in the PCC-2, Planned Commercial Center Two Zoning District. The applicant has indicated they would like to display furniture outside of the building. This request is not new to the area, but it does require a Use Permit. The Use Permit is required to assure everything is kept orderly and neat within the realm of good retail propriety and aesthetics. Staff has not received any input from the public. Staff supports the request for the Use Permit.

Ray Garcia stated he is the new sales manager for this location. The main objective of the Use Permit is to display a few items out front. The items displayed would be patio furniture. Most of the patio furniture would be on display inside. Mega Furniture would like to have a small display outdoors to make customers aware of the patio furniture available.

Ms. MacDonald stated she was a little confused while reviewing the Staff Report. She felt the exhibits were lacking and she does not understand what the display would consist of. She stated she would like to continue the case. She would like more thorough drawings and a better plan submitted. Ms. MacDonald does not want the front of the store to look like a yard sale or for there to be stacking of merchandise. She felt a Special Events Permit may be more appropriate.

Ms. Lesser suggested the applicant submit a photo representation of the proposed display.

Ms. MacDonald agreed more visuals would be helpful. She wants the display to be in good taste. She also would like to get some input from the City of Tempe Code Compliance Division to make sure a display is acceptable.

Mr. Garcia stated he understands Ms. MacDonald's concerns. As a manager his objective is to display a few items to create an interest. He does not want to create a hazard for the pedestrian traffic. His intent is not to bring a bunch of furniture in and out of the store each day. He agreed to set up a display and send a photograph in to Diana to include in the next Staff Report.

DECISION:

Ms. MacDonald continued this case to November 6, 2013.

The next Hearing Officer public hearing will be held on November 6, 2013.

There being no further business the public hearing adjourned at 3:06 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 with a light blue rectangular highlight behind it.

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

SA:js