Tempe

Minutes
HEARING OFFICER
APRIL 3, 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: 8

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 17, 2012 at 3:00 PM, to the Community Development Department.

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1. Ms. MacDonald noted that the Hearing Officer Minutes for March 20, 2012 had been reviewed and approved with changes noted and made into the record.

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2. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the MOLL PROPERTY (PL120063) / (Jack Scofield, Inspector; James Cahill and Christy Moll, property owners) located at 1637 E. Calle De Caballos in the AG, Agricultural Residential District.

   There was no one present to represent the property owner.

   Jack Scofield, Code Inspector, requests approval of an abatement to remove graffiti off of a perimeter wall and explained that notification has been sent to the property owner but they have not been responsive to the notices. The property owner disputes that the wall is her responsibility as the wall is a shared wall between her and the neighbor to the south. Ms. Moll refuses to remove any of the graffiti.

   Ms. MacDonald stated that there is a path that appears to separate Ms. Moll's property and the adjacent property owner. It is not a recorded easement.

   Jack Scofield stated that though part of Ms. Moll's lot has been designated as a path for the community, she is still responsible for everything up to the property line, including the wall.

   Ms. MacDonald agrees this is a nuisance and needs to be cleaned up.

   DECISION:
   Ms. MacDonald approved abatement proceedings for PL120063 for an open period of 180 days.

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3. Hold a public hearing for a request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the LOEW PROPERTY (PL120021 /ABT12005 /CE113418) (Shawn Daffara, Inspector; William Loew, property owner) located at 1148 West 12th Street in the R1-6, Single Family Residential District.
CONTINUED FROM THE FEBRUARY 21, 2012 HEARING
WITHDRAWN BY CODE COMPLIANCE

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5. Hold a public hearing for a request by the RUKAVINA RESIDENCE (PL120058) (Mark Rukavina, applicant/property owner) located at 1140 South Farmer Ave in the R-3, Multi-Family Residential District for:

ZUP12029 Use Permit to allow the increase of a wall, located in the front yard setback, from 4 ft. to 6 ft.

Mr. Rukavina was present to represent this case.

Sherri Lesser, gave an overview of this case. This is a use permit to increase the wall height and setback, from 4ft. to 6ft., replacing an existing chain link fence that surrounds the front yard of the property. Staff has not received any public input regarding this request. Staff is recommending approval.

Mr. Rukavina handed out pictures to the Hearing Officer and Planners showing examples of the wrought iron fencing available. The Current chain link fence is 3.5 ft. tall; and the easement is 10 ft. back from the sidewalk, which is the placement of the current fence. He would like to remove the chain link fence and replace it with a 6 ft. wrought iron fence.

Ms. MacDonald noted that she is aware of the existing conditions and agrees the wrought iron fence would be an attractive addition to the neighborhood.

Mr. Rukavina would like to have the 6 ft. fence to keep his dogs in the yard.

Mr. Abrahamson requested that on the design utilized in this project, the pickets should be no greater than 4" on center.

Ms. MacDonald asked if a stipulation needed to be added, since most fence manufacturers are familiar with that requirement.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:
1. It won't increase vehicular or pedestrian traffic in the area.
2. It won't create a nuisance from odor, dust, gas, or vibration.
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 PL120058/ZUP12029 subject to the following conditions:
1. The wrought iron fence to complement the residence in color and design.
2. The fence approved in the location of the existing chain link fence.

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6. Hold a public hearing for a request by ESPRESSO ITALIA (PL120062) (Patrick O'Malley, applicant; Rudi Vafadari, property owner) located at 1340 East 8th Street, in the GID, General Industrial District and Transportation Overlay District Corridor for:

ZUP12028 Use Permit to allow a coffee roaster

Patrick O'Malley was present to represent this case.

Sherri Lesser, gave an overview of the case. This request is for a coffee roaster for a warehouse industrial space that is located adjacent to the Four Peaks Brewery. The site is located in Suite 101. Staff is recommending approval of this use. Staff received public input from the neighborhood association and they are in support of this request.

Mr. O'Malley stated they are interested in a small tasting bar where people could come in and taste the product.

Sherri Lesser noted since this is an industrial use, as long as the area for the tasting does not exceed 15 percent of the gross floor area, it is allowed by ordinance.

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

There was no public input.

Ms. MacDonald read the letter in support of the project from Chair Charles Buss and Co-Chair Christopher McKee of the University Heights Neighborhood.

Sherri Lesser indicated if the applicant were to go to a full scale coffee shop or restaurant establishment a separate Use Permit would be required.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:
1. It will not significantly increase vehicular or pedestrian traffic.
2. It will not create a nuisance arising from the omission of odors, dust, gas, noise, vibration, smoke, heat or glare.
3. It will not contribute to the deterioration of the neighborhood or downgrade property values.
4. It is compatible with existing surrounding structures and uses.
5. The applicant will adequately control disruptive behavior both inside and outside the premises.

DECISION:
Ms. MacDonald approved PL120062/ZUP12028 subject to the following conditions:
1. All permits and clearances required by the Building Safety Division shall be obtained prior to the Use Permit becoming effective.
2. The Use Permit is transferable. Should the business be sold, the new owners must reprocess for administrative review.
3. The Use Permit is valid for the plans and business operation as submitted to and approved by the Hearing Officer/Board of Adjustment.
4. Any expansion or intensification of use shall require a new Use Permit to be approved.
5. If there are any complaints arising from the uses herein permitted that are verified by a consensus of the complaining party and the City Attorneys office, the Use Permit may be returned to the Board of Adjustment, and another public hearing set to re-evaluate the Use Permit.
6. The vent, stack, chimney, and exposed mechanical equipment shall not exceed the parapet of the existing building. If the equipment exceeds the parapet, you will need a secondary screen wall that will have to be approved by applying to Development Plan Review.

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4. Hold a public hearing for a request by THE HANDLE BAR AND GRILL (PL120027) (Julian Wright, applicant; Centerpoint Holdings, property owner) located at 680 South Mill Avenue, Suite No. 109, in the CC, City Center District for:

ZUP12026 Use Permit to allow a bar Series 6 liquor license.

There was no one present to represent this case.

Diana Kaminski stated that while the applicant is home with the flu, he is eager to have both of his cases heard. He is aware of the conditions of approval, including conditions 12 and 13 which were added by the hearing officer prior to the hearing. His understanding from the property owner is that the parking analysis is underway and there are no other problems, they would be able to meet both conditions. The applicant is seeking approval without attending the hearing.

Ms. MacDonald decided to move forward with the case.

Diana Kaminski stated the Handle Bar and Grill is located in the Centerpoint commercial district on the west side of Mill Avenue and used to be a Bath and Body Works retail space. As part of their conversion from retail to a bar, a Use Permit is needed. The applicant provided a letter of explanation and a site plan, and has gone through a development plan review for tenant improvements. There are some changes to the conditions of approval for the record: Condition #7 should read: The hours of operation shall be from 11 am to 2 am Sunday through Saturday. Condition #12 is added as follows "Should the professional parking analysis not be completed within six (6) months of this hearing (October 3, 2012), the use permit is subject to review". Condition #13 is added as follows: "The applicant shall work with staff to resolve security issues with the design of the entryway".

Ms. MacDonald asked about the differences approved at their development plan. Ms. Kaminski noted that the new condition #13 addressed the differences, they need vision panels in the back door to allow visibility for employees.

There was no public input

Ms. MacDonald stated she believes this meets the criteria of a Use Permit.

1. The manner of conduct and the building for the proposed use will not be detrimental to persons residing or working in the vicinity.
2. Will not contribute to an increase in vehicular or pedestrian traffic
3. Will not create a nuisance from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare.
4. Will not contribute to the deterioration of the neighborhood or downgrade property values.
5. Compatible with existing surrounding structures and uses.
6. Will adequately control disruptive behavior both inside and outside the premises.

DECISION:

Ms. MacDonald approved the Use Permit PL120027/ZUP12026 seeking to allow a series 6 liquor license with 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 Handlebar and Grill and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee. Should the business be sold, the new owners must contact Community Development staff for review of the business operation.
3. Any intensification or expansion of use shall require the Use Permit to be reheard by the Hearing Officer.
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.
5. No live entertainment.
6. No outdoor speakers allowed.
7. The hours of operation shall be from 11am to 2am Sunday through Saturday.
8. Music/sound/noise generated from the use shall conform to the City of Tempe code requirements for noise.
9. Any new business signs shall receive a Sign Permit: contact Dean Miller at 480-350-8435.
10. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30

days of this approval. Contact Tempe Police Department – Crime Prevention at 480-858-6333 by May 3, 2012.

11. The property owner shall complete a professional shared parking analysis prior to Certificate of Occupancy for this change of use, to demonstrate compliance with required parking.
12. Should the professional parking analysis not be completed within six (6) months of this hearing (October 3, 2012), the use permit is subject to review. (ADDED BY THE HEARING OFFICER)
13. The applicant shall work with staff to resolve security issues with the design of the entryway. (ADDED BY THE HEARING OFFICER)

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7. Hold a public hearing for a request by CANTEEN TEQUILA BAR (PL120064) (Julian Wright, applicant; Centerpoint Holdings, property owner) located at 640 South Mill Avenue, Suite No. 110, in the CC, City Center District for:

ZUP12027 Use Permit to allow a bar with a Series 6 liquor license.

Diana Kaminski gave a brief overview of this case. Canteen Tequila Bar is located in the Centerpoint development on 6th Street. They have been operating as a restaurant the last few years but because of state requirements for sales of alcohol vs. food; they have exceeded the amount of alcohol sold and have applied for a series 6 liquor license. A Use Permit is needed to allow for a series 6 liquor license. They are not making any modifications to the building and they are continuing to operate as they have been.

Ms. MacDonald noted they have already been granted the approval for the outdoor patio and live entertainment, they are just converting over to the series 6 license.

Diana Kaminski noted changes to the following conditions: #1. The Use Permit is valid for the Canteen Tequila Bar, #4. The hours of operation shall be from 11am to 2 am Sunday through Saturday. She added condition #7 which reads: "The property owner shall complete a professional shared parking analysis, to demonstrate compliance with required parking within six (6) months of this hearing (October 3, 2012) or this use permit shall be subject to review".

There was no public input.

Ms. MacDonald noted after reviewing this application, Use Permits for Canteen have been approved in the past. It is an existing business, and this is just a simple conversion from one series liquor license to another. The request meets the criteria for a Use Permit.

DECISION:
Ms. Macdonald approved PL120064/ZUP12027 subject to the following conditions:

1. The Use Permit is valid for The Canteen Tequila Bar and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee. Should the business be sold, the new owners must contact Community Development staff for review.
2. Any intensification or expansion of use shall require the Use Permit to be reheard by the Hearing Officer.
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 hours of operation shall be from 11am to 2am Sunday through Saturday.
5. Music/sound/noise generated from the use shall conform to the City of Tempe code requirements for noise.
6. The applicant shall contact the City of Tempe Crime Prevention Unit for an updated security plan within 30 days of this approval. Contact Tempe Police Department – Crime Prevention at 480-858-6333 by May 3, 2012. The property owner and business owners shall work with police to address security issues on and around the site to reduce calls for service in the future.
7. The property owner shall complete a professional shared parking analysis, to demonstrate compliance with required parking within six (6) months of this hearing (October 3, 2012) or this use permit shall be subject to

review. (MODIFIED BY THE HEARING OFFICER)

The next Hearing Officer public hearing will be held on April 17, 2012.

There being no further business the public hearing adjourned at 2:02 PM.

Prepared by: Julie Stennerson, Executive Assistant
Reviewed by:

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

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