Tempe

Minutes
HEARING OFFICER
MAY 20, 2008

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:
David Williams, Hearing Officer
Steve Abrahamson, Planning & Zoning Coordinator
Shawn Daffara, Planner II
Nick Graves, Planning Intern

Number of Interested Citizens Present: 31

Meeting convened at 1:30 PM and was called to order by Mr. Williams. He noted that anyone wishing to appeal a decision made today by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) days by June 3, 2008 at 3:00 PM to the Development Services Department.

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1. Mr. Williams approved the Hearing Officer Minutes for May 6, 2008.

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2. Mr. Williams noted that the following case(s) had been continued:

- Hold a public hearing for a request by BROADWAY CENTER – TUMBLEWEED CENTER FOR YOUTH DEVELOPMENT TYRC (PL080139) (Richard Geasland/Tumbleweed Center for Youth Development, applicant; Saia Family L/P, property owner) located at 1310 East Broadway Road, Suite No. 102, in the CSS, Commercial Shopping and Services District for:

  ZUP08071 Use permit to allow a youth resource center.
  CONTINUED AT THE REQUEST OF STAFF

- Hold a public hearing for a request by the KLETT RESIDENCE (PL080144) (Stan Patton, applicant; Mark & Emily Klett, property owners) located at 1136 South Ash Avenue in the R-3R, Multi-Family Residential Restricted District for:

  ZUP08074 Use permit to allow a second story addition (studio / work shop).
  VAR08011 Variance to reduce the north side yard setback from ten (10) feet to three (3) feet ten (10) inches.
  CONTINUED AT THE REQUEST OF THE APPLICANT

- Hold a public hearing for a request by PHOENIX 1 PLAZA – NEXTLINK WIRELESS INC. (PL080147) (Sonya Okamoto/PlanCom Inc., applicant; Fountainhead Corporation LLC, property owner) located at 2625 South Plaza Drive in the GID, General Industrial District for:

  ZUP08076 Use permit to allow roof top wireless antennas.
  CONTINUED AT THE REQUEST OF THE APPLICANT

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3. Hold a public hearing for a request by the NANNAPANENI RESIDENCE (PL060629) (Ravi Nannapaneni, applicant/property owner) located at 1026 East Knox Road in the AG, Agricultural District for:

   VAR08009 Variance to increase wall height in the front yard setback from four (4) feet to six (6) feet.

   Mr. Ravi Nannapaneni was present to represent this case.

   Shawn Daffara, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. He noted the neighbor to the west is no longer in opposition and that his concerns have been resolved.

   Mr. Williams noted that the purpose of a variance is to provide relief when the Zoning and Development Code is not applied fairly to a property owner. Mr. Nannapaneni's residence is across the street from the parking lot of a high school where there is a lot of activity and the wall will allow privacy.

   DECISION:
   Mr. Williams approved PL060629/VAR08009 subject to the following conditions:
   1. The variance is granted based on the plans submitted and approved by the Hearing Officer.
   2. Obtain all necessary clearances from the Building Safety Division.
   3. The wall shall be designed to match the existing residence in color, form and material.

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4. Hold a public hearing for a request by WALGREENS PLAZA - H B TOBACCO (PL060676) (Anis Ben Harzallah, applicant; Mark Stoneman/Stoneman Properties, property owner) located at 53 East Broadway Road in the CSS, Commercial Shopping and Services District for:

   ZUP08068 Use permit to allow a hookah lounge/tobacco retailer.

   Mr. Anis Ben Harzallah was present to represent this case.

   Shawn Daffara, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. This request is based on the Zoning Administrator's opinion that they were allowed to apply for this use permit.

   Mr. Williams questioned Mr. Abrahamson as to whether there had been any applicants that were restricted as to hours designated for smoking vs the business hours they are allowed to sell tobacco products. Mr. Williams noted that there was a Walgreens located next door to this business who also sold tobacco products. Mr. Abrahamson explained that the sale of tobacco products was not the primary source of income for Walgreens and they were not required to have a use permit, whereas Mr. Harzallah would derive over fifty percent (50%) of his income from the sale of tobacco. Mr. Williams cited his concern over high school students in the nearby area and asked if perhaps it would be more beneficial to limit the hours when smoking is allowed to a later time period such as 5 PM. He asked if limiting the hours is an option in this case.

   Mr. Harzallah spoke and explained that the normal hours of his business were from 7 PM to 2 AM. Staff confirmed that this applicant's letter of explanation specified these hours of business.

Mr. Steve Stewart, Chairman of Date Palm Manor Homeowners Association, presented Mr. Williams with a specific petition of opposition to this request by his association. He pointed out the location of Tempe High School (northwest corner) and that the association strongly protests this use permit based on health concerns.

Mr. Angel Mendez, of Penasco Place, spoke in support of this request and stated that as a business owner and neighbor, Mr. Harzallah keeps the premises and parking area clean and causes no problems.

Ms. Margaret Christiansen, resident of Tempe, spoke in opposition and stated that as adults in our community we need to protect our youth during a period when they are very vulnerable and experimental against things, such as tobacco, that are harmful at all costs.

Mr. Williams noted that the sale of tobacco products is not what is under advisement today as that use permit had been approved over a year ago. The use permit to allowing smoking on the premises is what is being considered today, and because of the concern over high school students having a place to go and smoke, a use permit was denied a year and a half ago. He went on to state that we are back today to look at that very same question. Further, he indicated that he shared a very strong concern with the community over the close proximity of high school students, and the relation of this business to the location of the high school. Due to the Zoning Administrator's opinion that stated that this use was 'grandfathered', and the fact that the hours of operation were beyond the high school hours, since high school kids are not concentrated at 7 PM at this location, Mr. Williams noted that he was approving this request with an added condition limiting the hours of operation.

DECISION:
Mr. Williams approved PL060676/ZUP08068 subject to the following conditions:

1. The use permit is valid for HB Place 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. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. § 36-601.01.
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. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
5. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
6. The gross sale of beverages and snack items may not exceed that of tobacco and hookah products.
7. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review prior to issuance of building permit.
8. All doors to have illumination to meet five (5) foot candles at the door and two (2) foot candles within a 15' radius. Details to be approved through Building Safety Plan Review.
9. All business signs shall receive a sign permit. Please contact Planning staff at (480) 350-8331.
10. The applicant shall contact City of Tempe Crime Prevention Unit for a Security Plan. Please contact Sergeant Ken Harmon (480-858-6330).
11. The hours of operation for on premises smoking are limited to 7:00 PM to 2:00 AM. ADDED BY HEARING OFFICER

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5. Hold a public hearing for a request by the TEMPE EAST KINGDOM HALL OF JEHOVAH'S WITNESSES (PL070190) (Lauren Leuning, applicant; Tempe East Kingdom Hall of Jehovah's Witnesses, property owner) located at 4400 South Butte Avenue in the R1-6, Single Family Residential District for:

   ZUP08069 Use permit to exceed 125% of the maximum allowable parking.

   Mr. Lauren Leuning was present to represent this case.

   Nick Graves, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. The applicant is asking for an additional ten (10) parking spaces. Currently the code requires for twelve percent (12%) of the parking area to be landscaped, based on the applicant's site plan fifteen and a half percent (15.5%) of the total parking area would be landscaped.

   Mr. Williams stated that based on the documentation he counted twenty (20) new parking spaces – he asked Mr. Graves how many parking spaces were there. Mr. Graves responded that currently they have seventy-seven (77) spaces on site, and based on this request they would have a total of eighty-seven (87) spaces. Mr. Graves explained that the applicant would be adding more parking near the freeway wall, and reconfiguring the whole parking layout plus adding ten (10) additional parking spaces.

   Mr. Williams asked if this parking lot was developed under an approved site plan or development plan. Mr. Graves explained that staff had given approval to a site plan and noted at that time that ten (10) additional spaces were being added to the parking. That observation led to the request for this use permit by the applicant.

   Mr. Williams asked if the code required a certain number of trees as part of the minimum landscape plan. Mr. Graves responded that while a specific number of trees was not required, there was a requirement for twelve percent (12%) of the area to be landscaped. This applicant is providing fifteen and a half percent (15.5%) landscaping.

   Mr. Leuning noted that the existing parking configuration had been in existence for about twenty-six (26) years. After the new site plan was approved by the City, it was discovered that an additional ten (10) parking spaces were included, and the applicant was requested by the City to obtain a use permit for this additional parking.

   Mr. Williams explained that the purpose of parking space maximums in the code was mainly to counteract the presence of hard surfaces such as asphalt paving, and to discourage the use of paved areas which create additional rain runoff versus landscape areas.

   Mr. Williams stated that he was trying to determine how many trees were being shown in the landscape plan, and if there was adequate coverage.

   Micki Remos, resident of Tempe, stated that her property was right against the parking lot. She moved into her home thirty-six (36) years ago – although initially concerned about having the church as a neighbor, they have been good neighbors. Although there was never any dialogue from the church as to purposed wall modifications, the wall was modified with paint and stucco and she was able to live with that – the church did plant trees that extend over the wall into her property area and drop leaves and debris into her swimming pool. With the current request, her concern is that there will be not only more parking, but parking of high profile vehicles. When the church has services there are motor homes and campers and a couple of times a week there is parking of huge buses which greatly diminishes the privacy of her yard – there are people coming and going and visiting in the parking area and noise.

   Ms. Remos suggested that a solution would be to raise the height of the wall – 3 ft. or 5 ft. - although she does not know what the ordinance allows. This would provide a sound barrier and allow some privacy for her property. Her pool is right up against that wall. If they are going to add the parking spaces, it would be advisable for the church to extend that wall as the neighbors have been very good about their requirements. Mr.

Williams asked what the current height of the wall is – Ms. Remos responded that she is not sure – whatever it was when she moved in – perhaps 6 ft. in places – due to the location in a cul-de-sac the wall is different in places such as the front due to the land being higher in the back.

Mr. Williams wondered why the alley was eliminated and questioned staff as to why there is no separation provided by an alley in that area. Mr. Williams appreciated Ms. Remos' concerns and asked staff what the code allowed for wall height. Mr. Abrahamson responded that a maximum height of 8 ft. was allowed, however any wall over 6 ft. required a permit for the additional height.

Mr. Leuning was questioned as to his knowledge about the abandoned alley way. He responded that the alley was abandoned quite a few years ago when the property was first developed.

Mr. Williams asked Mr. Leuning to have the tree limbs trimmed where they overhang Ms. Remos' property.

Mr. Williams stated that he did not have enough information to make a decision on this request today and that he would continue this case to the next hearing on June 3, 2008. He would like to see a full size set of parking lot plans including the landscape plans.

DECISION:
Mr. Williams continued PL070190/ZUP08069 to the June 3, 2008 Hearing Officer hearing.

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6. Hold a public hearing for a request by PRECISION DIE AND STAMPING (PL070420) (Sam McGuffin/Cawley Architects, applicant; Precision Die & Stamping, property owner) located at 1744 West 10th Street in the GID, General Industrial District for:

VAR08010 Variance to reduce the street side yard setback from twenty-five (25) feet to twelve (12) feet.

Mr. Gary Brinkly of Cawley Architects was present to represent this case.

Shawn Daffara, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. The existing building was built in 1975 when the code allowed a twelve (12) foot setback. When the Zoning and Development Code changed, it modified the setback from twelve (12) feet to twenty-five (25) feet. Staff agrees that the ordinance created a hardship for this applicant and that it should be twelve (12) foot setback.

Mr. Williams questioned if the twelve (12) foot setback served any public purpose. Mr. Daffara stated that the surrounding streets and existing landscape would not be impacted or damaged by this request, which would allow a new addition and replace the outdoor storage area.

Mr. Brinkly confirmed, in response to a question from Mr. Williams, that the applicant was concerned over the security of the outdoor storage of materials and also wanted to clean up the yard area.

Mr. Williams noted that this business was built before the code required a larger setback and that this request for a variance was reasonable.

DECISION:
Mr. Williams approved PL070420/VAR08010 subject to the following conditions:
1. The use permit is valid for the plans as submitted to and approved by the Hearing Officer.
2. All required permits and clearances shall be obtained from the Building Safety Division.
3. The applicant shall submit for Development Plan Review for the new building addition. Site Plan, Landscape Plan and Elevations to be approved prior to Building Permit submittal.

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7. Hold a public hearing for a request by SPRINT NEXTEL (PL080026) (Amy Million/Sprint Nextel, applicant; Tempe West Investors LLC, property owner) located at 1403 West Baseline Road in the GID, General Industrial District for:

   ZUP08016 Use permit to allow additional antennas on an existing monopole.

   Ms. Amy Million was present to represent this case.

   Nick Graves, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued.

   DECISION:
   Mr. Williams approved PL080026/ZUP08016 subject to the following conditions:
   1. Obtain all necessary clearances from the Building Safety Division of the Development Services Department.
   2. Any intensification or expansion of use, including co-location of additional antennas, will require a new use permit.
   3. The proposed antennas shall match in color the existing antennas on the site.
   4. The wireless device shall be removed within 30 days of discontinuance of use.

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8. Hold a public hearing for a request by the TAHILIANI RESIDENCE (PL080121) (Matt Price/SW Commercial Services Inc., applicant; Harry Tahiliani, property owner) located at 1101 East Warner Road, Estate 151, in the R1-15, Single Family Residential and AG, Agricultural Districts for:

   ZUP08056 Use permit to allow an accessory building (ramada).
   ZUP08065 Use permit to allow an accessory structure (batting cage).

   Mr. Matt Price of SW Commercial Services Inc. was present to represent this case.

   Shawn Daffara, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. The proposed area is north of the existing home.

   Mr. Williams questioned, with confirmation from Mr. Daffara that this applicant is combining two parcels into one and is currently going thru the subdivision process for City Council approval.

   Mr. Williams asked if these structures are within the allowable building heights. Mr. Daffara confirmed that they were. Mr. Williams asked if they needed to determine that these structures are on a separate lot. Mr. Daffara responded that is the exact reason for the subdivision plat to combine the two lots into one as it will be part of the primary residence.

   DECISION:
   Mr. Williams approved PL080121/ZUP08056/ZUP08065 subject to the following conditions:
   1. Obtain all necessary clearances and permits from the Building Safety Division.
   2. A subdivision plat will need to be approved and recorded before Building Permits are Finaled.
   3. The accessory structure (shade canopy) shall be located a minimum of twenty-five (25) feet from the west property line. The Agricultural (AG) zoning district requires a twenty-five (25) foot street side yard setback.

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9. Hold a public hearing for a request by the BUNGER RESIDENCE (PL080135) (William Bunger, applicant/property owner) located at 1936 East Calle De Arcos in the R1-7, Single Family Residential District for:

   ZUP08070 Use permit to allow an accessory building (garage / work shop).

   Mr. William Bunger was present to represent this case.

   Steve Abrahamson, Planning and Zoning Coordinator, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. The proposed accessory building would be 576 s.f. and located in the northwest corner of the property which was in a cul-de-sac. Lot coverage would be 13% and they are allowed up to 45% lot coverage.

   Mr. Bunger stated that no trees would be removed for the construction of this accessory building and that it would match the main residence.

   Mr. Williams asked if Mr. Bunger had spoken with his neighbor to the west. Mr. Bunger confirmed that his neighbor supported his request.

   Mr. Williams asked about the metal storage building located at the end of the driveway. Mr. Bunger responded that it was useless, and would be removed once the new accessory building is completed.

   DECISION:
   Mr. Williams approved PL080135/ZUP08070 subject to the following conditions:
   1. Obtain all necessary clearances from the Building Safety Division.
   2. Detached structure to be compatible in design with main dwelling; colors to match existing dwelling.
   3. The detached accessory building shall not be used as a separate living unit/guest quarters (no cooking facilities).

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10. Hold a public hearing for a request by DARLA'S PROFESSIONAL THERAPEUTIC MASSAGE (PL080140) (Darla Walgenbach, applicant; Paul Wenz, property owner) located at 2409 South Rural Road, Suite No. B-1, in the R/O, Residential/Office District for:

    ZUP08072 Use permit to allow a massage therapist.

    Ms. Darla Walgenbach was present to represent this case.

    Steve Abrahamson, Planning and Zoning Coordinator, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. He noted that the area was 722 s.f., hours would be from 8 AM to 7 PM, four (4) days a week (Monday thru Friday) and that the applicant would be the only massage therapist.

    Ms. Walgenbach noted that although she would be open four (4) days a week, she would be available to take private appointments at other times if requested. She normally does four (4) clients a day. She asked if weekend work would be a problem.

    Mr. Williams noted that this was a residential district and asked for more information on her proposed weekend hours. Ms. Walgenbach responded that every once in a while, if she is in town and someone calls for an appointment, she would do weekend appointments.

Mr. Williams noted to Mr. Abrahamson that there was no condition of approval regarding hours and days of operation, and asked if there would be a problem if there were weekend hours. Mr. Abrahamson replied that there was no problem as long as Mr. Williams indicated that as part of his approval.

Mr. Williams stated that this was probably a low intensity type of use that there was not much concern and traffic concern does not seem to be the case.

Mr. Williams asked if staff was suggesting that the Hearing Officer add a condition regarding days and hours to the Conditions of Approval. Mr. Abrahamson said that reviewing her business plan, it projected four (4) clients a day, not four (4) days a week, so there was no problem.

Ms. Walgenbach asked if there would be a problem if she had an excess of four (4) appointments a day. Mr. Williams clarified this issue with Mr. Abrahamson who noted that her letter of explanation stated that there would be up to four (4) appointments per day. If Mr. Williams wished to, he could add a condition that indicates more would be allowed.

Mr. Williams asked if the applicant could submit an updated letter to staff stating that there may be more than four (4) appointments per day. Mr. Abrahamson stated that would be fine. Ms. Walgenbach was instructed to submit this modified letter to staff.

DECISION:
Mr. Williams approved PL080140/ZUP08072 subject to the following conditions:
1. Obtain all necessary clearances from the Building Safety Division.
2. All new signs to receive separate approval and permits, contact Planning Staff at (480) 350-8441.

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11. Hold a public hearing for a request by the HERNANDEZ RESIDENCE (PL080142) (Antonio Hernandez, applicant/property owner) located at 5430 South El Camino Drive in the R1-6, Single Family Residential District for:

ZUP08073 Use permit to allow a second story addition.

Mr. Antonio Hernandez was present to represent this case.

Nick Graves, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued.

Mr. Williams stated that he was searching for a foot elevation with the documentation submitted by this applicant. Mr. Graves responded that he did not believe one was submitted.

Mr. Hernandez stated that he had spoken with the neighbors and that they were in support of his request.

Mr. Williams expressed concern if there were any other second story houses in this neighborhood. He also noted that when visiting the property, he did not see the notice that had been posted in the front yard.

Mr. Hernandez responded that the wind had blown the sign down over the weekend, and that he had propped it up against his wall.

When asked if he understood the Conditions of Approval, Mr. Hernandez asked a question regarding Condition No. 3. He noted that his current residence is constructed of block wall and that the addition would be stucco – he asked if the residence could be stucco.

Mr. Williams asked if he was going to upgrade the house to match the addition? Mr. Hernandez stated that he was in terms of the finish and color.

Mr. Williams stated that he had a concern over a second story addition in a single story neighborhood, however the structure was in the back yard so the massing was away from the street which preserves the character of the neighborhood.

DECISION:
Mr. Williams approved PL080142/ZUP08073 subject to the following conditions:
1. The use permit is valid for the plans as submitted to and approved by the Hearing Officer.
2. All required permits and clearances shall be obtained from the Building Safety Division.
3. The proposed addition and second story shall match existing dwelling in design, color and material.

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12. Hold a public hearing for a request by COLLEGE PARK SHOPPING CENTER - WHOLE FOODS MARKET (PL080145) (Rafael Buerba/KDRA Associates, applicant; Whole Foods Market, property owner) located at 5120 South Rural Road in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP08075 Use permit to allow outdoor storage.

Mr. Dave Campbell of Whole Foods Market was present to represent this case.

Steve Abrahamson, Planning and Zoning Coordinator, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. The storage would be to the rear or west side of the building and required to have a screen wall.

Mr. Campbell noted that presently there was a chain link fence for the past ten (10) years which had been determined by the City not to be legal. They have been informed that a concrete block wall is required, but it is there understanding that an alternative can be proposed once the use permit is approved.

Mr. Abrahamson noted that the applicant will have to go thru the Development Plan Review process as indicated in Condition No. 1 and in that review if the applicant has alternative solutions to the screening they will be considered.

Mr. Williams suggested that staff consider the view from the west for a structure that may be 12 or 13 feet high, if there even is a view, when reviewing alternative solutions. Mr. Campbell noted that the screen wall would not be any higher than the existing chain link fence.

DECISION:
Mr. Williams approved PL080145/ZUP08075 subject to the following conditions:
1. Screen wall will require Development Plan Review processing and approval. Plans must be submitted and approved prior to construction.
2. Obtain all necessary clearances from the Building Safety Division.

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13. Hold a public hearing for a request by the CHAMBERLAIN RESIDENCE (PL080148) (Tess Jones Odenwald/The Phactory, applicant; Michael & Judy Chamberlain, property owners) located at 2036 East Myrna Lane in the AG, Agricultural District for:

ZUP08077 Use permit standard to reduce the front yard setback by twenty percent (20%) from forty (40) feet to thirty-two (32) feet.
ZUP08078 Use permit standard to reduce the west side yard setback by twenty percent (20%) from twenty (20) feet to sixteen (16) feet.

Ms. Tess Jones Odenwald of The Phactory, and Michael Chamberlain, were present to represent this case.

Nick Graves, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. The request is to allow a home addition as depicted in the documentation. An e-mail had been received from the applicant this morning regarding support of this request.

Ms. Odenwald presented a petition of support from adjacent neighbors including the neighbors from across the street.

Mr. Williams asked about the posting of the property. Mr. Chamberlain responded that the sign was up when he left yesterday morning, however when he returned that evening it was laying down.

DECISION:
Mr. Williams approved PL080148/ZUP08077/ZUP08078 subject to the following conditions:
1. Obtain all necessary clearances from the Building Safety Division.
2. The use permit approval is valid for the plans as submitted to and approved by the Hearing Officer.
3. The building additions shall match the existing residence in design, color and materials.

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14. Hold a public hearing for a request by INFERNO FITNESS LLC (PL080149) (Matthew Lucas, applicant; BME Land Development & Construction Inc., property owner) located at 2027 East Cedar Street in the GID, General Industrial District for:

ZUP08079 Use permit to allow a personal fitness center in the GID, General Industrial District.

Mr. Matthew Lucas was present to represent this case.

Shawn Daffara, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. Required parking is 18 spaces; parking provided is 40 spaces – a total of 95 parking spaces are available thru the industrial park for four (4) buildings. A shared parking agreement is in place from when this property was built.

Mr. Lucas noted that the location map indicated the position of his business incorrectly. Mr. Williams asked if staff advertised the correct address for this business. Mr. Daffara responded that it had been advertised correctly but unfortunately, although the industrial park was correctly indicated, the business was not. Staff indicated the advertisement was published with correct information.

Mr. Lucas confirmed, in response to a question from Mr. Williams, that at any given time there may be up to fifteen (15) clients present.

DECISION:
Mr. Williams approved PL080149/ZUP08079 subject to the following conditions:
1. Obtain all necessary clearances from the Building Safety Division.
2. All new signs to receive separate approval and permits, contact Planning Staff at (480) 350-8441.

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15. Hold a public hearing for a request by the CARRAZCO RESIDENCE (PL080150) (Russ Conway/Classic Stellar Homes Inc., applicant; Francisco & Eva Carrazco, property owners) located at 1534 East Calle de Caballos in the AG, Agricultural District for:

ZUP08080 Use permit to allow the construction of a two (2) story home.

Mr. Russ Conway of Classic Stellar Homes Inc. was present to represent this case.

Steve Abrahamson, Planning and Zoning Coordinator, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. One call of concern had been received asking what was involved with this request. This is a 2 ½ acre lot. Proposed lot coverage is 10%; allowable lot coverage is 25%. The proposed home addition is 11,000 s.f. and other homes in the area have two story additions. Building permits have been applied for, but not issued, and will not be issued unless the use permit is approved.

Mr. Williams questioned the height of the addition as this information was not included in the dimensions and elevations. Mr. Abrahamson stated that the building height does not exceed the maximum for the use permit standards to increase building height by 10%. Mr. Daffara ascertained that the permitted height is 30 ft.

Mr. Russ Conway stated that he believed the building height is 28 feet 4 inches. Soil testing for the septic system is going on today. Building plans have been submitted but the landscape plans are not complete. There will be a front courtyard area set way back from the front of the property.

Mr. Williams asked if a landscape plan is required. Mr. Abrahamson stated that it is not, only the building design is considered.

Mr. Williams noted his concern about the compatibility of this large two story addition of 11,000 s.f. with the single story neighborhood and whether it fits with the scale of the neighborhood. Mr. Conway responded that there was a second story addition next door to this property. Mr. Williams stated that he believed that this was a clerestory rather than a second story addition.

Ms. Sherry Barnard and Ms. Ellen Kirk, residents of Tempe, stated that they were associated with the Calle de Caballos Homeowners Association and lived nearby. Ms. Kirk stated that the home, as presented to them last night, was only 8,000 s.f. and the remainder was a garage. She noted that the house next door was not a two story addition but rather a home with vaulted ceilings – there are two story homes in the neighborhood in the 24 lot historical neighborhood. Ms. Barnard stated that neighbors had observed children on this construction site and safety was a concern. It is their understanding that construction chain link fence will be erected to protect this site.

Ms. Barnard stated that plans were delivered to the five (5) member Board on May 15th at 6 PM and as some of the members have been out of town, and unavailable, there has not been an opportunity to review the proposed addition. Plans as reviewed by the partial Board were beautiful but incomplete. There were no electrical or exterior lighting plans included. The Calle de Caballos Architectural Review Committee is respectfully requesting a thirty (30) day continuance so that final plans can be reviewed and the equestrian elements of the neighborhood can be protected.

Mr. Williams asked if the Board's approval was required before building can begin by the applicant. Ms. Barnard stated that was true. She noted that the CCR's required a thirty (30) day response was required once the complete and final plans are received.

Mr. Williams explained that the City of Tempe cannot act to enforce private restrictions and does not normally condition their approvals based on the Boards or Architectural Committees. While he understands that they received incomplete plans without time to review them, his concern is whether this project is groundbreaking or setting a precedent for the neighborhood. He is not inclined to delay the approval of this request, as the applicant will still require the approval of the Calle de Caballos Board/Committee.

Mr. Conway responded to a question from Mr. Williams that the second story of this addition will consist of only 1,045 s.f.

Mr. Williams stated that the second story was minimal compared to the rest of the structure.

Mr. Williams stated that he was adding two (2) conditions of approval:
3. Submit a front yard landscape plan for review and approval by Development Services staff.
4. Secure the property from trespass during construction.

Mr. Abrahamson questioned what in particular the Hearing Officer was looking for in the landscape plan. Mr. Williams stated the structural and organic elements, plant materials and their treatment. Mr. Abrahamson explained that staff does not review residential landscape plans as it is not part of the Zoning and Development Code.

Mr. Conway stated that they were probably thirty (30) days away from construction and would be erecting a construction fence at that time. Currently the existing wood fence in the front yard area is still there. A full set of plans would be submitted to the Board/Committee when complete.

Mr. Williams questioned Ms. Kirk as to whether their Board/Committee was able to enforce the removal of the wood fence. Ms. Kirk replied that they have tried several times in the past to do so and that their main concern is the risk to children in the area being able to access an area where they may get injured.

Mr. Williams stated that he would approve this request with one added Condition of Approval No. 3 which is to occur at the beginning of construction.

DECISION:
Mr. Williams approved PL080150/ZUP08080 subject to the following conditions:
1. The use permit is valid for the plans as submitted to and approved by the Hearing Officer.
2. All required permits and clearances shall be obtained from the Building Safety Division.
3. Remove the existing wood fence and secure the property from trespass during construction. ADDED BY HEARING OFFICER

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16. Hold a public hearing for a request by ALL ABOUT YOU MEDSPA – BECKY ABBOTT – MASSAGE THERAPY (PL080157) (Becky Abbott, applicant; Amboly, property owner) located at 7517 South McClintock Drive, Suite No. 103 in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP08082 Use permit to allow massage therapy.

Ms. Becky Abbott was present to represent this case.

Steve Abrahamson, Planning and Zoning Coordinator, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. The leased space is 108 s.f. , hours are by appt between 9 AM – 6 PM on Mondays, Tuesday, Wednesday and Thursdays.

Mr. Williams noted that the site plan depicted a larger area than 108 s.f. Ms. Abbott responded that it was not to scale and that she had just submitted a general sketch which indicated the whole suite of rooms – she will be located in Room 2 on the sketch.

DECISION:
Mr. Williams approved PL080157/ZUP08082 subject to the following conditions:
1. Obtain all necessary clearances from the Building Safety Division.
2. All new signs to receive separate approval and permits, contact Planning Staff at (480) 350-8441.

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17. Hold a public hearing for a request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the MARONEY RESIDENCE (PL080137/ABT08007) (Patrick R. Maroney, property owner) Complaint CE074728 located at 1952 East Concorda Drive in the R1-6, Single Family Residential District.

    No one was present to represent the property owner.

    Brett Barnes, City of Tempe – Neighborhood Enhancement Department, stated that no improvement had been made by the property owner after several notices had been issued for landscape weeds. This property had been abated about a year ago for multiple violations.

    Mr. Williams asked if they had been cited for the vehicle in the carport. Mr. Barnes stated that they had not. This case had actually been initiated by one of the part time code inspectors. Due to their limited schedule of hours, this case was then assigned to Mr. Barnes.

    Mr. Williams asked since today's proceedings was about the weeds, what would be done about the vehicle. Mr. Barnes responded that there was a standard $100 fee for towing an inoperable vehicle. The violation on the vehicle is that it has one (1) missing tire. Due to the car being within a carport, Mr. Barnes stated, it does not have to have current registration but just needs to be in operable condition – currently it is sitting on a jack and has one tire missing. There are two (2) inoperable vehicles located in the back yard which is permitted within the Tempe City Code.

    DECISION:
    Mr. Williams approved abatement proceedings for PL080137/ABT08007.

The next Hearing Officer public hearing will be held on Tuesday, June 3, 2008.

There being no further business the public hearing adjourned at 3:37 PM.

Prepared by: Diane McGuire, Administrative Assistant II
Reviewed by:

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Steve Abrahamson, Planning and Zoning Coordinator
for David Williams, Hearing Officer

SA:dm