

**Minutes  
HEARING OFFICER  
JUNE 5, 2007**

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 and Zoning Coordinator  
Sherri Lesser, Senior Planner  
Shawn Daffara, Planner II

**Number of Interested Citizens Present: 29**

Meeting convened at 1:30 PM and was called to order by Mr. Williams.

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1. Mr. Williams approved the Hearing Officer Minutes for May 15, 2007.

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

Hold a public hearing for a request by the **ROWLEY RESIDENCE (PL070041)** (Steve Briggs/TEBO LLC, applicant; Chris Rowley, property owner) located at 948 South Ash Avenue in the R-3, Multi-Family Residential Limited District for:

**ZUP07016** Use permit to allow tandem parking for a multi-family project.

**VAR07006** Variance to reduce the north side yard setback from 10 feet to 3 feet.

**VAR07007** Variance to reduce the west rear yard setback from 15 feet to 4 feet.

**CONTINUED TO THE JUNE 27, 2007 HEARING OFFICER**

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3. Hold a public hearing for a request by **ENVIRONMENTAL RECYCLING (PL070116)** (Nate Sorkin/Environmental Recycling, applicant; Mark Kadrie, property owner) located at 1803 East Rio Salado Parkway #107 in the GID, General Industrial District for:

**ZUP07056** Use permit to allow for a recycling business.

Mr. Nate Sorkin, applicant, identified himself and stated that Mr. James Hall, property manager, was present to represent this case. Mr. Mark Kadric, property owner, was also present.

**DECISION:**

Mr. Williams approved PL070116/ZUP07056 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 not transferable. Should the business be sold, the new owners must reprocess for a new use permit.
3. The use permit is for metal recycling only.
4. The business operation shall be relocated towards the east, to allow the existing building to screen the equipment, materials and storage containers. All equipment, materials and storage containers need to be screened.
5. The use permit is valid for 24 months from the hearing date. The applicant shall return to the Hearing Officer for a review of the use permit before **June 5, 2009**.
6. The use permit is valid for the plans and business operation as submitted to and approved by the Hearing Officer/Board of Adjustment.
7. Any expansion or intensification of use shall require a new use permit to be approved.
8. If there are any complaints arising from the uses herein permitted that are verified by a consensus of the complaining party and the City Attorney's office, the use permit ~~may be returned to the Board of Adjustment, and another public hearing set to re-evaluate 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.** **CORRECTED BY DEVELOPMENT SERVICES**
9. All signs must have a required sign permit, or they will need to be removed from the site.
10. The portable toilets on the property shall be removed immediately.
11. The applicant shall meet with the City of Tempe Police Department, Crime Prevention Unit, for a security plan. Please contact Derek Pittam at (480-858-6341) by **June 12, 2007**.
12. **A 'No Loitering' sign(s) meeting Crime Prevention Unit specification shall be installed in plan view at the facility. ADDED BY HEARING OFFICER**

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4. Hold a public hearing for a request from **THE SETS (PL070167)** (Hamid Hekmatian, applicant; Ethan Christopher LLC, property owner) located at 93 East Southern Avenue in the CSS, Commercial Shopping and Services District for:

**ZUP07042** Use permit to allow a billiard parlor and sports bar with live entertainment previously granted on March 21, 2006, and required to return for review after one year.

Mr. Hamid Hekmatian was present to represent this case. He indicated what he would do to resolve/mitigate noise and related wall issues. He requested continuance of this case until the walls and baffles are completed and tested.

Paul Bennewitz, of 120 East Pebble Beach Drive, stated that he opposes this request and has been involved with noise tests in the past. He stated that the noise is from both the interior and exterior.

Steve Bonaguidi, of 126 East Pebble Beach Drive, spoke in opposition to this request. He discussed the City's noise ordinance and explained that the noise affects his life on a daily basis.

Ryan Bird, of 10245 East Via Linda, stated that he was representing the property owner and that there had been no complaints from the adjacent businesses located in this center.

Scott Ford, of 3614 South Colonial Way, stated that he is the manager of The Sets and has been there since 1995. He believes that the issues is the clientele talking, not the music.

Attorney Randy Nussbaum, of 8623 East Thoroughbred, countered Mr. Bonaguidi's claim that The Sets is not listening. He stated that the Police Department has been called to the site and that The Sets has not been cited as a result of these calls.

Mr. Williams stated that the calls for service are average for a bar. Noise is a significant concern. The owners have exceeded what they could do for noise mitigation.

**DECISION:**

Mr. Williams approved PL070167/ZUP07042 for a sports bar with live entertainment and billiards subject to the following conditions:

1. No noise shall emanate beyond the walls of the building. The four doors leading to the back of the shopping center shall be closed at all times, and use for emergency exit only.
2. 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 set to re-evaluate the appropriateness of the use permit.
3. There shall be no live entertainment on the patio.
4. No overflow parking allowed in the alley or on adjacent properties.
5. No 'car shows' or special events allowed on the exterior of the building or within the parking area. All special events that extend beyond the interior of the business to obtain approval from Special Event Task Force.
6. All proposed upgrades to the interior and exterior to obtain Development Plan Approval and Building Safety Division clearance.
7. **Complete the wall and sound mitigation measures as presented at the June 5, 2007 Hearing Officer hearing and as submitted to the Building Safety Department (reference BP070834). ADDED BY HEARING OFFICER**

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5. Hold a public hearing for a request by **KING PLAZA – INTENSE CREATIONS TATTOO STUDIO AND ART GALLERY (PL070176)** (Eugene Ramirez, applicant; Ernest Kurschat, property owner) located at 1400 South McClintock Drive in the CSS, Commercial Shopping & Services District and Transportation Overlay District – Station Area for:

**ZUP07051** Use permit to allow a tattoo studio and art gallery.

Mr. Eugene Ramirez was present to represent this case.

**DECISION:**

Mr. Williams approved PL070176/ZUP07051 subject to the following conditions of approval:

1. Prior to the use permit becoming effective, all practitioners must have training in blood-borne pathogens and cross-contamination.
2. Prior to the use permit becoming effective, the establishment must post and provide to customers, upon request, written instructions on tattoo care.
3. Any intensification or expansion of this use shall require that a new use permit be applied for and obtained.
4. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
5. The use permit is transferable. Should the business be sold, the new owners must reprocess for administrative review.
6. The use permit is valid for the plans and business operation as submitted to and approved by the Hearing Officer/Board of Adjustment.
7. 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 set to re-evaluate the appropriateness of the use permit.
8. The applicant shall devise a security plan in conjunction with the Police Department officials (contact Officer Derek Pittam 480-858-6341) prior to the use permit becoming effective.
9. All business signs shall be Development Review staff approved and permits obtained.
10. **Use permit is valid for Suite Nos. 7 and 8 at 1400 South McClintock Drive. Applicant is required to submit a revised floor plan to Development Services staff. ADDED BY HEARING OFFICER**

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6. Hold a public hearing for a request by the **SHARER RESIDENCE (PL070193)** (Jon Sharer, applicant/property owner) located at 1040 East Westchester Drive in the R1-6, Single Family Residential District for:

**ZUP07063** Use permit to allow a detached accessory structure.

**VAR07016** Variance to reduce the north rear yard setback from fifteen (15) feet to five (5) feet.

Mr. Jon Sharer was present to represent this case.

**DECISION:**

Mr. Williams approved PL070193/ZUP07063/VAR07016 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.

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7. Hold a public hearing for a request by **MARCOS DE NIZA PLAZA - TOBACCO WORLD LLC (PL070195)** (Eddie Sharaf, applicant; Michael Pollock/property owner) located at 6460 South Rural Road in the PCC-1, Planned Commercial Center Neighborhood District for:

**ZUP07057** Use permit for a tobacco retailer.

Mr. Eddie Sharaf was present to represent this case.

**DECISION:**

Mr. Williams approved PL070195/ZUP07057 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. 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 set to re-evaluate the appropriateness of the use permit.
5. The applicant shall devise a security plan in conjunction with the Police Department officials (contact Officer William Vanek 480-858-6342 prior to the use permit becoming effective).
6. All business signs shall be Development Review staff approved and permits obtained.

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8. Hold a public hearing for a request by **WARNER VILLAGE - HYATT SUMMERFIELD SUITES (PL070201)** (Charles Huellmantel, applicant; Gencom Group, property owner) located at 8575 South Priest Drive in the PCC-1, Planned Commercial Center Neighborhood and Southwest Overlay Districts for:

**ZUP07061** Use permit to allow a hotel in the PCC-1 District.

**ZUP07062** Use permit to increase the maximum building height by 12% from sixty (60) feet to sixty-seven (67) feet.

Mr. Charles Huellmantel was present to represent this case.

**DECISION:**

Mr. Williams approved PL070201/ZUP07061/ZUP07062 subject to the following conditions:

1. Building Elevations, Site Plan, Landscape Plan and Preliminary Grading and Drainage Plans to receive separate approval from the Development Review Commission.

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9. Hold a public hearing for a request by the **BARGNESI RESIDENCE (PL070202)** (C. Tyler Kestner/The Apollo Group LLC, applicant; John Bargnesi, property owner) located at 221 East 15<sup>th</sup> Street in the R1-6, Single Family Residential District for:

**ZUP07060** Use permit to allow an accessory structure – an expansion of an existing detached garage.

Mr. Bargnesi was present to represent this case. He indicated an issue with Condition of Approval No. 3 which prohibited bathing. Mr. Bargnesi stated that he understood that the structure cannot be used as a secondary or separate dwelling, and indicated that he had no intention to do so.

Jon Gillan, of 306 East 15<sup>th</sup> Street, stated that he supports this request and feels that the improvements are fantastic.

**DECISION:**

Mr. Williams approved PL070202/ZUP07060 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 (no ~~bathing or~~ cooking facilities).

**MODIFIED BY HEARING OFFICER**

4. Only one residential unit allowed in the R1-6, Single Family zoning district.
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10. Hold a public hearing for a request by the **SUNSET CLOTHING XCHANGE (PL070207)** (Oswaldo Fuentes, applicant; David Frye, property owner) located at 601 West University Drive in the CSS, Commercial Shopping and Services District for:

**ZUP07058** Use permit to allow the resale of clothing and accessories.

Mr. Oswaldo Fuentes was present to represent this case.

**DECISION:**

Mr. Williams approved PL070207/ZUP07058 subject to the following conditions:

1. Any intensification or expansion of this use shall require that a new use permit be applied for and obtained.
  2. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
  3. The use permit is transferable. Should the business be sold, the new owners must reprocess for administrative review.
  4. The use permit is valid for the plans and business operation as submitted to and approved by the Hearing Officer/Board of Adjustment.
  5. 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 set to re-evaluate the appropriateness of the use permit.
  6. All business signs shall be Development Review staff approved and permits obtained.
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11. Hold a public hearing for a request by **NORTH PEAK MILLWORKS (PL070213)** (Susan Anderson/North Peak Construction, applicant; Jemco Properties, property owner) located at 912 South Park Lane, Suite 102 in the GID, General Industrial District for:

**ZUP07059** Use permit to allow cabinet manufacturing.

Ms. Susan Anderson was present to represent this case.

**DECISION:**

Mr. Williams approved PL070213/ZUP07059 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 intensification of use shall require a new use permit to be approved.
5. 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 set to re-evaluate the appropriateness of 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. Details can be worked out during the Building Permit Plan Review process.

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12. 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 **CONNELL RESIDENCE (PL070150/ABT07011)** (Corinne Connell, property owner) Complaint CE065415 located at 421 East Pegasus Drive in the R1-6, Single Family Residential District.

Barry Kissel from the City of Tempe – Neighborhood Enhancement Department summarized the case. He stated that the property is being sold and that the pool will be drained by next Monday or Tuesday by the new owner. Based on these developments the City of Tempe – Neighborhood Enhancement Department withdraws their request for abatement proceedings at this property.

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13. 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 **COADY RESIDENCE (PL070204/ABT07015)** (William Coady, property owner) Complaint CE066508 located at 1846 East Riviera Drive in the R1-6, Single Family Residential District.

The City of Tempe – Neighborhood Enhancement Department has withdrawn their request for abatement proceedings at this property as it has been brought into compliance.

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The next Hearing Officer public hearing will be held on **Wednesday, June 27, 2007.**

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**There being no further business the public hearing adjourned at 2:47 PM.**

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



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

SA:dm