

**Minutes
HEARING OFFICER
NOVEMBER 6, 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
Shawn Daffara, Planner II
Jon Christopher, Planner II
Sherri Lesser, Senior Planner

Number of Interested Citizens Present: 13

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

1. Mr. Williams approved the Hearing Officer Minutes for October 16, 2007.
2. Mr. Williams noted that the following case(s) had been administratively withdrawn:
 - Hold a public hearing for a request by **WEISS GUYS CAR WASH (PL070340)** (Michael Scarbrough/3K1Consulting Services LLC, applicant; TCE Kyrene Nineteenth LLC, property owner) located at 7425 South Kyrene Road in the GID, General Industrial District for:

ZUP07159 Use permit to allow expansion of existing car wash (express wash bays).
ADMINISTRATIVELY WITHDRAWN BY DEVELOPMENT SERVICES DEPARTMENT

3. Mr. Williams noted that the following case(s) had been continued:
 - Hold a public hearing for a request by **TEMPE VILLAGE - LUCKY MAN PRODUCTIONS LLC (PL070412)** (Stephen Duncan, Esquire/applicant; White Knight Investments, ACC /property owner) located at 5004 South Price Road in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP07146 Use permit to allow a bar (Series 6).

ZUP07153 Use permit to allow live entertainment (venue).

CONTINUED TO NOVEMBER 20, 2007 HEARING OFFICER

4. Hold a public hearing for a request by the **LEWIS PROPERTY (PL070403)** (Joseph Lewis, applicant/property owner) located at 241 East 15th Street in the R1-6, Single Family Residential District for:

VAR07024 Variance to reduce the front yard setback from twenty (20) feet to ten (10) feet two (2) inches.

VAR07025 Variance to reduce the required driveway from twenty (20) feet to ten (10) feet two (2) inches.

Joseph Lewis was present to represent this case.

Carl Hertenstein, 301 E. 15th St. – neighbor of applicant – concerned this would change the look of the neighborhood, as compared to other properties, and that the structure would close in his property on both sides.

Mr. Lewis responded by addressing the need for a garage, mainly due to break-ins on their vehicles not parked in a garage, and mentioned that the neighbors who attended his neighborhood meeting did not have any issues or concerns. Mr. Williams inquired of staff regarding setbacks, current aerials/satellite photos, as related to the adjoining properties. Mr. Williams wishes to continue this case for two weeks to allow for current photos to be obtained.

DECISION:

Mr. Williams continued PL070403/VAR07024/VAR07025 to the November 20, 2007 Hearing Officer meeting and requested additional information about setbacks on neighboring properties.

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5. Hold a public hearing for a request by **WARNER RANCH PLAZA - FRY'S FOOD AND DRUG STORE NO. 627 (PL070435)** (Mary Addington, applicant; Fry's Food & Drug Store, property owner) located at 9900 South Rural Road in the PCC-2, Planned Commercial Center General District for:

ZUP07160 Use permit to allow outdoor retail display.

Mary Addington was present to represent this case.

No public input was received on this case by staff.

Jun-yung Wang, 535 E. Yvonne Ln. – is opposed to this request; has many issues of concern including increased traffic so close to residential community, increased opportunity for crime, increased noise, the possibility of Fry's having outdoor retail display year round for every occasion, as well as ongoing maintenance issues.

Mr. Williams and staff clarified that the request was for outdoor retail display located near the front door, not close to the Ms. Wang's residential community.

Mr. Williams asked the applicant to be more specific on future site plans with exact dimensions noted.

DECISION:

Mr. Williams approved PL070435/ZUP07160 subject to the following conditions:

1. The outdoor display merchandise shall not conflict with pedestrian or vehicular traffic. If any display items are moved into the sidewalk, the business may be cited and/or returned to the Hearing Officer for review, and potential revocation of the use permits. The Zoning and Development Code requires a six (6') foot clear, unobstructed path.
2. The use permit is valid for the plans as ~~submitted to and~~ **depicted on site plan** as approved by the Hearing Officer, any expansion of the outdoor display would require a new use permit. **(Modified by Hearing Officer)**

3. The outdoor display of merchandise shall not be located in the driveway/parking access aisle lane, parking spaces and landscape areas.
4. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the Development Services office, the use permit may be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
5. Any outdoor signage associated with the display shall be reviewed by the Development Services Department – Planning Division and are limited to three (3) square feet.
6. No sound amplification shall be used for the outdoor display.
7. **Maintain at least 10 ft. between displays and sidewalk (not including apron). (Added by Hearing Officer)**
8. **Shopping cart storage shall not interfere with clearances of the outdoor retail display. (Added by Hearing Officer)**

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6. Hold a public hearing for a request by **COLLEGE PARK SHOPPING CENTER - FRY'S FOOD AND DRUG STORE NO. 607 (PL070436)** (Mary Addington, applicant; Fry's Food & Drug Store, property owner) located at 5100 South McClintock Drive in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP07161 Use permit to allow outdoor retail display.

Mary Addington was present to represent this case.

No public input was received on this case by staff.

DECISION:

Mr. Williams approved PL070436/ZUP07161 subject to the following conditions:

1. The outdoor display merchandise shall not conflict with pedestrian or vehicular traffic. If any display items are moved into the sidewalk, the business may be cited and/or returned to the Hearing Officer for review, and potential revocation of the use permits. The Zoning and Development Code requires a six (6') foot clear, unobstructed path.
2. The use permit is valid for the plans as ~~submitted to and~~ **depicted on site plan** as approved by the Hearing Officer, any expansion of the outdoor display would require a new use permit. **(Modified by Hearing Officer)**
3. The outdoor display of merchandise shall not be located in the public right-of-way, parking spaces and landscape areas.
4. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the Development Services office, the use permit may be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
5. Any outdoor signage associated with the display shall be reviewed by the Development Services Department – Planning Division and are limited to three (3) square feet.
6. No sound amplification shall be used for the outdoor display.
7. **No retail display outside of screen wall on front of building. (Added by Hearing Officer)**
8. **Shopping cart storage shall not interfere with clearances of the outdoor retail display. (Added by Hearing Officer)**

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7. Hold a public hearing for a request by **FRY'S FOOD AND DRUG STORE NO. 124 (PL070437)** (Mary Addington, applicant; Fry's Food & Drug Store, property owner) located at 3255 South Rural Road in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP07162 Use permit to allow outdoor retail display.

Mary Addington was present to represent this case.

No public input was received on this case by staff.

DECISION:

Mr. Williams approved PL070437/ZUP07162 subject to the following conditions:

1. The outdoor display merchandise shall not conflict with pedestrian or vehicular traffic. If any display items are moved into the sidewalk, the business may be cited and/or returned to the Hearing Officer for review, and potential revocation of the use permits. The Zoning and Development Code requires a six (6') foot clear, unobstructed path.
2. The use permit is valid for the plans as ~~submitted to and~~ **depicted on site plan as** approved by the Hearing Officer, any expansion of the outdoor display would require a new use permit. **(Modified by Hearing Officer)**
3. The outdoor display of merchandise shall not be located in the public right-of-way, parking spaces and landscape areas.
4. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the Development Services office, the use permit may be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
5. Any outdoor signage associated with the display shall be reviewed by the Development Services Department – Planning Division and are limited to three (3) square feet.
6. No sound amplification shall be used for the outdoor display.
7. **Maintain a 10 ft. clearance between outdoor display and curb (apron). (Added by Hearing Officer)**
8. **Shopping cart storage shall not interfere with clearances of the outdoor retail display. (Added by Hearing Officer)**

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8. Hold a public hearing for a request by **FRY'S FOOD AND DRUG STORE NO. 101 (PL070438)** (Mary Addington, applicant; Fry's Food & Drug Store, property owner) located at 3232 South Mill Avenue in the CSS, Commercial Shopping and Services District for:

ZUP07163 Use permit to allow outdoor retail display.

Mary Addington was present to represent this case.

No public input was received on this case by staff.

DECISION:

Mr. Williams approved PL070438/ZUP07163 subject to the following conditions:

1. The outdoor display merchandise shall not conflict with pedestrian or vehicular traffic. If any display items are moved into the sidewalk, the business may be cited and/or returned to the Hearing Officer for review, and potential revocation of the use permits. The Zoning and Development Code requires a six (6') foot clear, unobstructed path.
2. The use permit is valid for the plans as ~~submitted to and~~ **depicted on site plan as** approved by the Hearing Officer, any expansion of the outdoor display would require a new use permit. **(Modified by Hearing Officer)**
3. The outdoor display of merchandise shall not be located in the public right-of-way, parking spaces and landscape areas.
4. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the Development Services office, the use permit may be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
5. Any outdoor signage associated with the display shall be reviewed by the Development Services Department – Planning Division and are limited to three (3) square feet.
6. No sound amplification shall be used for the outdoor display.

7. **Maintain a 14 ft. clearance between outdoor display and curb (apron). (Added by Hearing Officer)**
8. **Shopping cart storage shall not interfere with clearances of the outdoor retail display. (Added by Hearing Officer)**

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9. Hold a public hearing for a request by **SOUTH POINT PLAZA - FRY'S FOOD AND DRUG STORE NO. 43 (PL070439)** (Mary Addington, applicant; Fry's Food & Drug Store, property owner) located at 2700 West Baseline Road in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP07164 Use permit to allow outdoor retail display.

Mary Addington was present to represent this case.

No public input was received on this case by staff.

DECISION:

Mr. Williams approved PL070439/ZUP07164 subject to the following conditions:

1. The outdoor display merchandise shall not conflict with pedestrian or vehicular traffic. If any display items are moved into the sidewalk, the business may be cited and/or returned to the Hearing Officer for review, and potential revocation of the use permits. The Zoning and Development Code requires a six (6') foot clear, unobstructed path.
2. The use permit is valid for the plans as ~~submitted to and~~ **depicted on site plan** as approved by the Hearing Officer, any expansion of the outdoor display would require a new use permit. **(Modified by Hearing Officer)**
3. The outdoor display of merchandise shall not be located in the public right-of-way, parking spaces and landscape areas.
4. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the Development Services office, the use permit may be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
5. Any outdoor signage associated with the display shall be reviewed by the Development Services Department – Planning Division and are limited to three (3) square feet.
6. No sound amplification shall be used for the outdoor display.
7. **Shopping cart storage shall not interfere with clearances of the outdoor retail display. (Added by Hearing Officer)**

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10. Hold a public hearing for a request by **PUEBLO ANOZIRA CENTER - FRY'S FOOD AND DRUG STORE NO #22 (PL070440)** (Mary Addington, applicant; Fry's Food & Drug Store, property owner) located at 1835 East Guadalupe Road in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP07165 Use permit to allow outdoor retail display.

Mary Addington was present to represent this case.

No public input was received on this case by staff.

DECISION:

Mr. Williams approved PL070440/ZUP07165 subject to the following conditions:

1. The outdoor display merchandise shall not conflict with pedestrian or vehicular traffic. If any display items are moved into the sidewalk, the business may be cited and/or returned to the Hearing Officer for review, and potential revocation of the use permits. The Zoning and Development Code requires a six (6') foot clear, unobstructed path.

2. The use permit is valid for the plans as ~~submitted to and~~ **depicted on site plan as** approved by the Hearing Officer, any expansion of the outdoor display would require a new use permit. **(Modified by Hearing Officer)**
3. The outdoor display of merchandise shall not be located in the public right-of-way, parking spaces and landscape areas.
4. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the Development Services office, the use permit may be reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
5. Any outdoor signage associated with the display shall be reviewed by the Development Services Department – Planning Division and are limited to three (3) square feet.
6. No sound amplification shall be used for the outdoor display.
7. **Maintain a 3 ft. clearance between outdoor display and store entrance. (Added by Hearing Officer)**
8. **Maintain a 6 ft. clearance between outdoor display and columns and shopping carts. (Added by Hearing Officer)**
9. **Maintain a 4 ft. clearance between outdoor display and pay telephones for ADA accessibility. (Added by Hearing Officer)**

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11. Hold a public hearing for a request by the **ABOUCAR RESIDENCE (PL070442)** (Christopher Abouchar, applicant/property owner) located at 30 East Bishop Drive in the R1-10, Single Family Residential District for:

VAR07027 Variance to reduce the rear yard setback from twenty-five feet (25') to thirteen feet (13') for a patio cover.

Chris Abouchar was present to represent this case.

No additional information or public input received by staff; no letters of opposition.

Mr. Williams inquired of staff about the width of the easement on this property; Mr. Christopher, staff planner, indicated that it is approx. a 9 ft. easement, and applies to the entire neighborhood. Mr. Williams asked about the porch on the property to the west; Mr. Christopher indicated that variance was based on the Zoning Code 808 and approved approximately 31 years ago.

Mr. Abouchar indicated that the actual plat shows an 8 ft. easement. Asked that one of the conditions be revised to state patio cover shall "complement" rather than "match" the main residence in color, and drop the reference to design and materials. He also stated his home is an average size home, but one of the smallest lots out of 68 lots in the subdivision, 85% of which have lots not built out to setbacks. His lot width is shorter than R1-10 standards; his lot is 76 ft. and minimum lot width in R1-10 is 90 ft. He would like to provide a sunshade structure for his small children, and in order to do so a variance is required. The differences in size and shape of his lot compared to others in the area create a special circumstance. 12 of his neighbors have stated they will support his request.

DECISION:

Mr. Williams approved PL070442/VAR07027 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. The patio cover shall ~~match~~ **complement** the main residence in color, design and materials. **(Modified by Hearing Officer)**

12. Hold a public hearing for a request by **LOST DUTCHMAN COFFEE ROASTERS (PL070446)** (Victor Kessler, applicant; Third Street Commerce Center LLC, property owner) located at 1920 East 3rd Street in the GID, General Industrial District for:

ZUP07166 Use permit to allow coffee roasting.

Victor Kessler was present to represent this case.

No additional information or public input received by staff; no letters of opposition.

DECISION:

Mr. Williams approved PL070466/ZUP07166 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 business be sold, new owners must reprocess for administrative review.
3. Any expansion or intensification of use shall require a new use permit to be approved.
4. 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 reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.
5. 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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13. Hold a public hearing for a request by **TEMPE POLICE DEPARTMENT SOUTH SUBSTATION – MOTOROLA (PL070447)** (Alan Wawrzyniak/Patriot Tower, applicant; City of Tempe, property owner) located at 8201 South Hardy Drive in the GID, General Industrial District for:

ZUP07167 Use permit to allow communication antennas on an existing one-hundred-fifty foot (150') monopole.

Alan Wawrzyniak was present to represent this case.

No additional information or public input received by staff; no letters of opposition.

DECISION:

Mr. Williams approved PL070447/ZUP07167 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 the existing antennas on the existing Police communications tower.
4. The wireless device shall be removed within 30 days of discontinuance of use.

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14. Hold a public hearing for a request by **CROSSROAD'S PLAZA – RILEY'S RUFF HOUSE (PL070448)** (Jennifer Chavanne, applicant; McClintock & Elliot LLC, property owner) located at 1730 East Elliot Road, Suite Nos. 1-3 in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP07168 Use permit to allow the expansion of a pet day care facility to include overnight boarding.

Jennifer Chavanne was present to represent this case.

No additional information or public input received by staff; no letters of opposition.

DECISION:

Mr. Williams approved PL070448/ZUP07168 subject to the following conditions:

1. Animal waste to be removed from the premises immediately and on a continual basis throughout the day. The dog walking area to be kept clean at all times.
2. 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 reviewed by city staff to determine the need for a public hearing to re-evaluate the appropriateness of the use permit.

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15. Hold a public hearing for a request by the **NORBERG RESIDENCE (PL070449)** (Mike Norberg, applicant/property owner) located at 2513 West Vineyard Road in the R1-6, Single Family Residential District for:

ZUP07169 Use permit standard to reduce the rear yard setback by twenty percent (20%) from fifteen feet (15') to twelve feet (12').

Mike Norberg was present to represent this case.

No additional information or public input received by staff; no letters of opposition.

Cynthia Price, 2414 W. Greenway Rd.– adjoining neighbor; wanted clarification if this would allow the fence to move further into the alley, or just allow use to move closer to fence inside the yard. Mr. Williams explained this request will not move fence into the alley, but will allow applicant to move three feet closer to his fence inside his yard.

DECISION:

Mr. Williams approved PL070449/ZUP07169 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. The addition must match the existing dwelling in color, form and material.

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16. Hold a public hearing for a request by the **IANNELLA RESIDENCE (PL070454)** (Monica Lisa Iannella, applicant/property owner) located at 641 West La Donna Drive in the R1-6, Single Family Residential District for:

ZUP07157 Use permit to allow parking in the front yard setback.

ZUP07158 Use permit to allow the parking of a boat in the front yard setback.

Monica Lisa Iannella was present to represent this case.

Mr. Christopher indicated there were three letters of opposition of this request.

Ms. Iannella provided information regarding landscaping removal due to scorpion infestation, and enclosure of a carport to increase livable interior space of home due to family size, both done several years ago. Needs parking in yard due to more drivers in the family (children are now older and driving). Also would like to be allowed to park a boat on the right side of the house.

Janice Stevenson, 8224 S. Pecan Grove Circle – (neighbor across street) has concerns about parking boat in front yard setback, specifically condition of landscaping and overparking of automobiles.

There was a discussion regarding the condition of the front yard landscaping. Ms. Iannella indicated that she had a list of signatures of her neighbors who approved of her requests. Mr. Williams asked her to submit that letter to him. She then explained her landscaping plans of brick walls and trees.

After Mr. Williams indicated he would deny the request to park a boat in the front yard setback, staff clarified that a boat would be allowed to be parked in side yard setback, no closer to the street than the house is. Ms. Stevenson indicated she would like to request that Ms. Iannella install a gate so that the boat was not visible from the street. Staff clarified that there were new screening requirements for side yard setback parking. Ms. Iannella then stated that there is already a gate there, and that the boat is already covered.

DECISION:

Mr. Williams denied PL070454/ZUP07158.

Mr. Williams approved PL070454/ZUP07157 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. Vehicles at any time shall not park overlapping the sidewalk. (City of Tempe's Code, Chapter 19, Article 1, Definitions, Penalties, Liability; Section 19, and Number 13.)
3. Residence front yard landscape shall be maintained at all times based on the City of Tempe's Code (Chapter 21, Article 1, Nuisances; Section 21-1).
4. **An additional tree will be installed in the front yard; details to be approved by Staff. (Added by Hearing Officer)**

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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 **BARRIGA RESIDENCE (PL070396/ABT07026)** (Miguel & Hilda Barriga, property owners) Complaint CE072943 located at 1139 East Weber Drive in the R-2, Multi-Family Residential District.

Miguel Barriga was present to present the property owner.

Andres Lara representing the City of Tempe – Neighborhood Enhancement Department, stated that there has been some progress. Mr. Williams indicated that he observed that there has been little progress in the back yard. The owner, Mr. Barriga, requested the Hearing Officer grant him an extension of time to comply based upon financial and medical hardship.

DECISION:

Mr. Williams continued abatement proceedings for PL070396/ABT07026 until December 4, 2007 Hearing Officer.

The next Hearing Officer public hearing will be held on **Tuesday, November 20, 2007.**

There being no further business the public hearing adjourned at 3:55 PM.

Prepared by: Diane McGuire, Administrative Assistant II/Dianne Garrett, Administrative Assistant II
Reviewed by:

A handwritten signature in blue ink that reads "Steve A. Abrahamson". The signature is written in a cursive style and is positioned above a horizontal line.

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

SA:dm:dg

APPROVED