

**MINUTES
HEARING OFFICER
JANUARY 21, 2014**

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
Diana Kaminski, Senior Planner
Diane McGuire, Administrative Assistant II

Number of Interested Citizens Present: 7

Meeting convened at 1:35 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 February 3, 2014 at 3:00 PM, to the Community Development Department.

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1. Ms. MacDonald noted that the Hearing Officer Minutes for January 7, 2014 had been reviewed and approved.

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2. Request approval to abate public nuisance items at the **WEBB PROPERTY (PL130458)** located at 8630 South Hazelton Lane. The applicant is the City of Tempe.

CASE CONTINUED TO FEBRUARY 4, 2014 HEARING OFFICER AT THE REQUEST OF CODE COMPLIANCE INSPECTOR

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3. Request approval to abate public nuisance items at the **ZIMMERMAN PROPERTY (PL130453)** located at 7325 South Lakeshore Drive. The applicant is the City of Tempe.

CONTINUED FROM THE JANUARY 7, 2014 HEARING OFFICER

CASE CONTINUED TO FEBRUARY 4, 2014 HEARING OFFICER AT THE REQUEST OF CODE COMPLIANCE INSPECTOR

4. Request approval for a Use Permit to allow a tobacco retailer (electronic cigarette retail store) for **ASU E-VAPOR ZONE (PL130474)** located at 827 South Rural Road. The applicant is Chau Ha.

Mrs. Chau Ha was present to represent this case.

Diana Kaminski, senior planner, explained that this request is for an electronic cigarette retail store and is located on the east side of Rural Road south of University Drive in the Towne Plaza development. This site has an existing restaurant and former hookah lounge and the adjacent site has a tattoo shop. The surrounding uses are all commercial uses with ASU and a light rail station across the street on the west side of Rural Road. The site has had a tobacco retail use since 2002, operating as a hookah lounge. The proposed use, also categorized as a tobacco retail use, is for electronic cigarette sales, requiring a new use permit. Staff recommends approval of this use permit.

Mrs. Ha and her husband read the eight (8) assigned Conditions of Approval. She questioned Condition of Approval No. 5, regarding the use of outdoor speakers, and asked if they could occasionally have outdoor music for an event, like their grand opening.

Diana Kaminski responded that in the case of special events that may occur once or twice a year, outdoor music (speakers) would be allowed if approved as part of the special event permit. A separate event permit process is required for this situation.

Ms. MacDonald noted that this meets the criteria for a Use Permit:

1. No significant increase in vehicular or pedestrian traffic. The volume of customers will not create an excess of traffic for the area. The site has been operating as a hookah lounge since 2002.
2. The proposed use is similar to others in the area and there should be no nuisances created from odor, dust, gas, noise vibration, smoke, heat or glare. The proposed use will be contained within the building; there is no smoke from electronic cigarettes however vapor is released during use.
3. The proposed use is not in conflict with the city's adopted plans or General Plan. It would not contribute to neighborhood deterioration or downgrade property values. The proposed use is similar but less intense than the prior hookah lounge.
4. The proposed use appears to be compatible with surrounding structures and uses.
5. The proposed use appears to have adequate control of disruptive behavior.

DECISION:

Ms. MacDonald approved PL130474/ZUP13160 subject to the following conditions:

1. This Use Permit or Variance is valid only after a Building Permit has been obtained for any tenant improvements requiring building permits, and the required inspections have been completed and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this site.
2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
4. Any intensification or expansion of use shall require a new Use Permit.
5. No outdoor live entertainment or outdoor speakers shall be allowed.
6. Live entertainment requires a separate Use Permit.
7. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review.
8. Replace all dead or missing trees along the north landscape area and in the north landscape islands; along with any other missing landscape material.

5. Six month review of compliance for a Use Permit to allow a hookah lounge for **ALMAZA HOOKAH LOUNGE (PL120309)** located at 107 East Baseline Road, Suite A-3. The applicants are Jack and Mary Narsa.

REVIEW OF COMPLIANCE OF USE PERMIT CONDITIONS PER NOVEMBER 7, 2012 HEARING OFFICER

Jack and Mary Narsa were present to represent this case.

Diana Kaminski, Senior Planner, stated that site is located on the south side of Baseline Road in the Mill Town Shopping Center surrounded by a variety of commercial uses. The Hearing Officer approved the use permit on November 7, 2012 with a condition to return within six months of opening.

No public input has been received on this request.

Mary asked to modify their hours of operation. Condition of Approval No. 17 was modified to indicate that the hours of operation would be from Sunday through Saturday, 4pm to 2am.

Mary and Jack Narsa asked about modifying their occupancy, to increase it from 49 to 75 or 80 people. Diana Kaminski explained that this is a building safety requirement, with investment in an air handling system to comply with building codes. They need to consult with building safety regarding the requirements. The Hearing Officer added that this was not a condition of the Use Permit, but a requirement of the building code, a different process.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

1. No significant increase in vehicular or pedestrian traffic. The volume of customers will not create an excess of traffic for the area.
2. The proposed use is similar to others in the area and there should be no nuisances created from odor, dust, gas, noise vibration, smoke, heat or glare.
3. The proposed use is not in conflict with the city's adopted plans or General Plan. It would not contribute to neighborhood deterioration or downgrade property values.
4. The proposed use appears to be compatible with surrounding structures and uses.
5. The proposed use appears to have adequate control of disruptive behavior.

DECISION:

Ms. MacDonald re-approved PL120309/ZUP12087 subject to the assigned Conditions of Approval:

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. This Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. This Use Permit is valid for Almaza Hookah Lounge and may be transferable to successors in interest through an administrative review with the Community Development Director, or designee.
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 outdoor speakers shall be allowed.
6. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact William Gallauer at 480-350-8749 before November 16, 2012.
7. All business signs shall receive a Sign Permit. Contact sign staff at 480-350-8435.
8. Any intensification or expansion of use shall require a new Use Permit.
9. All required permits and clearances shall be obtained from the Audit and Licensing Division of the City of Tempe prior to the Use Permit becoming effective.
10. This use shall not violate the City of Tempe Smoking Ordinance or Smoke Free Arizona Act A.R.S. §36-601.01.
11. The owner/management shall adhere to the City Adopted International Mechanical Code.
12. The gross sale of beverage and snack items may not exceed that of tobacco and hookah products for the

hookah lounge tax license.

13. Any modifications to the exterior of the building require a Development Plan Review.
14. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the Use Permit becoming effective.
15. The established maximum occupancy for the business may be adhered to. Any excess patrons beyond the maximum may subject the business to violation notices and review of the use permit for the business.
16. Live entertainment is not permitted for the business. A separate use permit application must be applied for and obtained through a public hearing process.
17. ~~Hours of operation shall be Monday through Thursday 4:00 p.m. to 12 a.m., Friday and Saturday 4:00 p.m. to 2:00 a.m., and Sunday 4:00 p.m. to 10:00 p.m.~~ Hours of operation will be from Sunday through Saturday, 4pm to 2am. **MODIFIED BY HEARING OFFICER ON JANUARY 21, 2014**

6. Review of compliance for a Use Permit to allow a Reception/Event Hall with live entertainment for **POLLACK SOUTHWIND PLAZA – PARAGON DANCE AND RECEPTION CENTER (PL130203)** located at 931 East Elliot Road, Suite 101. The applicant is Mike Gadberry, Paragon Dance Center.

REVIEW OF COMPLIANCE OF USE PERMIT CONDITIONS PER JULY 16, 2013 HEARING OFFICER

Mike Gadberry was present to represent this case.

Diana Kaminski, Senior Planner, noted that the Hearing Officer approved a use permit on July 16, 2013. City of Tempe police staff has indicated that there were no calls for service since the approval of this use permit.

There has been no public input on this request regarding the review of conditions.

Ms. MacDonald complimented Mr. Gadberry on their positive record of operation to date, and encouraged them to maintain the good record of compliance and harmony with the surrounding property owners.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

1. No significant increase in vehicular or pedestrian traffic.
2. The proposed use is similar to others in the area and there should be no nuisances created from odor, dust, gas, noise vibration, smoke, heat or glare.
3. The proposed use is not in conflict with the city's adopted plans or General Plan. It would not contribute to neighborhood deterioration or downgrade property values.
4. The proposed use appears to be compatible with surrounding structures and uses.
5. The proposed use appears to have adequate control of disruptive behavior. Based on the past year of calls for service to this complex, which includes all uses on site, it appears there has been adequate control of disruptive behavior on site.

DECISION:

Ms. MacDonald re-approved PL130203 / ZUP13070 subject to the assigned Conditions of Approval:

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. Business hours of operation: 6am-2am
 - Live entertainment hours: 9am to 10:30pm Sun-Thurs, 9am-12am (midnight) Fri-Sat
 - Events shall end at or before 1:30am, with thirty minutes thereafter permitted for clean-up.
3. A designated reception center management staff to be present on site for all events from set up to clean up.
4. Security provided by a licensed security company hired by Paragon Dance Center for all activities. Lease of the space for events shall not allow separate security companies to oversee events.
5. A sound engineer or management staff shall continually monitor music and amplified sound levels; at 10pm, music shall be reduced so that it is not audible from any property line of the center.

6. Event capacity limited to 277 people maximum.
7. No valet parking shall be allowed off-site.
8. Signs stating "No Loitering and No Trespassing" shall be posted throughout the parking area utilized by patrons. Signs shall be placed in locations visible to all patrons.
9. Security staff is responsible for implementation of the security plan and monitoring of the premises both indoors and in the parking lot.
10. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
11. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
12. The Use Permit is for the following activities: weddings and receptions (not Bachelor or Bachelorette Parties), Birthday Parties, Bar mitzvahs, Bat mitzvahs, Graduation Parties, Family Reunions, Anniversary Parties, Educational Seminars and Religious Services. Any intensification or expansion of use shall require a new Use Permit.
13. The facility may be used for live music, DJs, karaoke, banquets, receptions and parties, but may not be used as a concert venue. No tickets may be sold for entry to the facility and the live music may not be the primary purpose for attendance. Cover charge for dance events is permitted.
14. All events with live entertainment are by invitation only.
15. Only licensed bar service vendors are to be used for events providing alcohol.
16. No outdoor speakers shall be allowed; doors must remain closed at all times.
17. The live entertainment use shall take place inside only. No live entertainment will be allowed outside.
18. The applicant shall contact the City of Tempe Crime Prevention Unit to review the existing security plan within 30 days of this approval. Contact the Police Department at 480-350-8749 before **August 16, 2013**.
19. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the use permit becoming effective.
20. An updated parking model is required for this request; submit a parking count of existing available spaces including accessible spaces, and a list of all suites in each building, with the business name, square footage of the business and use for staff verification of parking availability. This information shall be provided by August 16, 2013. If the parking does not support occupancy of this suite for evening use, a parking solution will need to be determined prior to leasing the suite for reception uses with live entertainment.

7. Request approval for a Use Permit to allow Resale Retail of used electronics for **UNION PLAZA – GREAT DEAL RESALE LLC (PL130220)** located at 1438 North Scottsdale Road. The applicant is Joseph Chrisman.

REVIEW OF COMPLIANCE OF USE PERMIT CONDITIONS PER JULY 16, 2013 HEARING OFFICER

Joseph Chrisman was present to represent this case.

Diana Kaminski, Senior Planner, noted that the Hearing Officer approved this use permit on July 16, 2013 with a condition to return for review of this use in six months. There has been no public input on this item except for one resident inquiring about when the hearing would be held. A police report for this area was provided, indicating that one 911 call by an employee was made which turned out to be a misdial.

Joe asked what the requirements were for getting a sign permit, and if sign spinners were allowed; Steve Abrahamson, Planning & Zoning Coordinator, responded that sign spinners must be on the property of the subject business, and must remain in motion, they may not be stationary, there is no permit for them. Other permanent signage does require a sign permit.

Joe asked if he could modify his use to allow walk-in business as opposed to by appointment only. The Hearing Officer pointed out that this was not a condition of approval. Diana Kaminski indicated this was new information, and requested time to research the security plan and whether there were any issues with this modification to the use as previously presented. The Hearing Officer said that the use was similar to other resale uses and was not restricted to an appointment only operation, but that follow up with staff would be appropriate.

Ms. MacDonald commented that there was a very active neighborhood association in this area and that it was a positive note that they were not in attendance today, because if they had concerns they would have been present at this hearing to address them..

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

1. No significant increase in vehicular or pedestrian traffic.
2. The proposed use is similar to others in the area and there should be no nuisances created from odor, dust, gas, noise vibration, smoke, heat or glare.
3. The proposed use is not in conflict with the city's adopted plans or General Plan. It would not contribute to neighborhood deterioration or downgrade property values.
4. The proposed use appears to be compatible with surrounding structures and uses.
5. The proposed use appears to have adequate control of disruptive behavior. Based on the past year of calls for service to this complex, which includes all uses on site, it appears there has been adequate control of disruptive behavior on site.

DECISION:

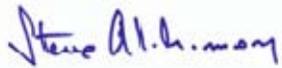
Ms. MacDonald re-approved PL130220 / ZUP13076 subject to the assigned Conditions of Approval:

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 plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
4. Any intensification or expansion of use shall require a new Use Permit.
5. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact Tempe Police at 480-350-8749 before August 16, 2013.
6. Hours of operation to end no later than 7:30 p.m. on a daily basis.
7. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review.

The next Hearing Officer public hearing will be held on February 4, 2014.

There being no further business the public hearing adjourned at 2:00 PM.

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



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

SA:dm