

**Minutes
HEARING OFFICER
OCTOBER 16, 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: 33

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

1. Mr. Williams approved the Hearing Officer Minutes for October 2, 2007.

2. Mr. Williams noted that the following case(s) had been withdrawn by the City of Tempe – Neighborhood Enhancement Department:
 - 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 **SINES PROPERTY (PL070408/ABT07027)** (Renate Sines, property owner) Complaint CE073201 located at 1143 East McKellips Road in the R1-6, Single Family Residential District.

 - 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 **SIMMONS RESIDENCE (PL070409/ABT07028)** (Bruce Simmons, property owner) Complaint CE073202 located at 1636 North Oleander Street in the R1-6, Single Family Residential District.

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 6, 2007 HEARING OFFICER

4. Hold a public hearing for a request by the **FOX RESIDENCE (PL070306)** (Darwin Fox, applicant/property owner) located at 520 East Manhattan Drive in the R1-6, Single Family Residential District for:

VAR07021 Variance to raise the height of the fence/wall in the front yard setback from four feet (4') to five feet eight inches (5' 8").

Darwin Fox was present to represent this case.

No public comment presented. There was a discussion regarding the description of a hardship and/or special circumstances, and a discussion of alternatives.

DECISION:

Mr. Williams approved PL070306/VAR07021 subject to the following conditions:

1. The variance is granted at five feet eight inches (5' 8") **on the east and west sides; no more than five feet (5' 0") at the rounded corners; and no more than four feet four inches (4' 4") in the section parallel to the street; with no more than 30% of the wall to be higher than four feet four inches (4' 4") as illustrated in Attachment 11.** This is based on the plans submitted and approved by the Hearing Officer. **(Modified by the Hearing Officer)**
2. Obtain all necessary clearances from the Building Safety Division.
3. The wall shall be painted to match the existing residence.

-
5. Hold a public hearing for a request by the **HOFFMAN RESIDENCE (PL070414)** (Wade Hoffman, applicant/property owner) located at 1111 East Concorda Drive in the R1-6, Single Family Residential District for:

VAR07026 Variance to reduce the front yard setback from the required fifteen (15) feet to two (2) feet five (5) inches for an open structure (carport).

Wade Hoffman was present to represent this case.

James Pratt, of 111 E. Loma Vista Dr., spoke in support of this request.

DECISION:

Mr. Williams approved PL070414/VAR07026 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. The carport is to remain an open structure; a conversion to a garage is prohibited.

-
6. Hold a public hearing for a request by **YUCCA JUNIOR (PL070415)** (Rodney Hu/On Call Construction, applicant / property owner) located at 23 West Southern Avenue in the CSS, Commercial Shopping and Services District for:

ZUP07147 Use permit to allow live entertainment.

Rodney Hu was present to represent this case.

Public comment:

Paula Christy, 577 E. Rayfield Dr., Queen Creek, AZ – spoke in support, as a parent who feels it is a nice place for young people to have fun safely. She has had positive experiences with venues such as this.

Rabbi Barton Lee, 626 E. La Jolla – spoke in opposition. Based on secluded and unsafe locale and possible parking issues.

Olga Aparicio, 4037 N. 81st St., Scottsdale, AZ – spoke in support, as a parent who appreciates there will be choices for young people under 21 where drinking is not allowed and they will be safer.

Chris Cervantes, 3318 S. Mill Ave., Phoenix, AZ – owns Cervantes Restaurant next door to the Yucca Junior site. Spoke in opposition mainly due to potential overparking issues.

Samir Mirza, 9621 S. 50th St., Phoenix, AZ – owns Byblos Restaurant. Spoke in opposition due to overparking issues, mainly due to many other bars whose customers already crowd the parking lot, and also underage drinking possibilities. Two people were killed in the parking lot by his restaurant. Good idea, but bad location.

Josh Bartosh, (no address, but Tempe resident) – former bar owner, part-time doorman at Yucca Tap Room. Spoke in support of this request. Feels safety and security are not detrimental issues. Does not feel parking is a negative issue. Initially felt mixing of adult / under-21 would be a concern, but has changed his initial opinion based upon discussion with owners.

Andrea Pomykala, 896 E. Tyson Court, Gilbert (owns a building at 3400 S. Mill Ave.) – Spoke in support of this type of venue. Offered some solutions to possible overparking issues, such as free valet parking for the other side of the site where parking is more plentiful. Regarding security issues, she feels more people would make a safer locale.

Darin Roberge, 3332 N. 81st St., Scottsdale, AZ – Works in entertainment business in the Valley. Spoke in support of this type of venue, feels this will positively impact the community and adjacent businesses.

Kevin Newby, 820 West University Drive, #21 – Spoke in support of this type of venue, feels it will be a positive impact on the surrounding communities.

Gloria Howe, 2008 N. Chandler Ave., Chandler, AZ – Spoke in support of this type of venue and activity for under 21 young adults.

Ken Harmon, Supvr., Crime Prevention, City of Tempe – Spoke in opposition. Concerns included children skipping school, smoking shop and liquor shop in the center, issues related to homeless, parking surveillance problems, day labor facility issues. 200 calls for police service in the past year for this plaza: 48 suspicious activity, 10 welfare checks, 10 criminal informations, 10 subject disturbing, 6 trespassing. Feels this is a good idea, but the location is not.

Shannon Thompson, 3414 E. Fox, Mesa, AZ – Peace officer, spoke in support. Felt this type of venue is a good thing to keep young adults out of trouble.

Jared Casto, 4615 S. Poplar – spoke in support of this type of venue for young adults. Feels as though these young adults need their own activities and will police their own actions in a positive manner. Feels this type of venue will strengthen the plaza and will keep our own youth safe.

Matthew Scott, 1660 W. Belfast, Mesa, AZ – spoke in support, and feels this type of venue will actually help resolve some of the problems people have addressed. Feels that the business owners and their employees should be accountable and do their jobs as they should, and many of these potential problems will not occur.

Jacob Slider, 813 E. 10th Dr., Mesa, AZ – Spoke in support. He is affiliated with the Yucca Junior owners/applicants. They met with Ken Harmon and discussed their proposed security plan which met with Mr. Harmon's approval. Feels this type of venue is very positive for the community. He knows that the existing business owners do not allow sales to minors. He indicated that they will have a large amount of security, including the parking lot. Incidents of violence have occurred in relation to hip-hop shows and vendors of alcohol. Yucca Jr. will not feature hip-hop shows.

Rodney Hu, the owner and applicant, responded to the concerns addressed by the public. He feels that the positive contribution to the community made by the Yucca Taproom over the last 30+ years would continue with the establishment of Yucca Junior. Mr. Hu would have liked to address the concerns brought up by Officer Harmon, but Officer Harmon had already left the hearing. Mr. Hu indicated he changed his hours on the recommendation of Mr. Abrahamson, in order that summer hours could be implemented for other types of art-related events, without further hearings to approve a change in hours. Officer Harmon had been working with only the *initial* plans for the building,

and to Mr. Hu's knowledge had not visited the site. With regard to Officer Harmon's comments regarding security, Mr. Hu stated he has already been working with Officer Bill Vanek, a co-worker of Officer Harmon in Crime Prevention, to set up an effective security plan. Mr. Williams asked Mr. Hu about his site selection process; Mr. Hu responded that he owns the land and his choice of site was mainly influenced by financial issues. He indicated that other all-ages venues in the City were actually part of adult only (serving alcohol) establishments, and that Yucca Jr. was *separate* from an adult only business and would not be serving alcohol.

DECISION:

Mr. Williams denied PL070415/ZUP07147. Mr. Williams indicated that the proximity to the other types of adult type businesses concerned him greatly, as well as the hours of operation, although he sees the need for this type of venue in the community. He suggested that Development Services staff research the possibility of other City Departments/ staff promoting this type of facility at a more acceptable location. In addition, Mr. Williams asked that DSD staff also assist Mr. Hu in locating Yucca Junior in a more acceptable location.

-
7. Hold a public hearing for a request by **SOUNDS GOOD TO ME LLC (PL070417)** (David Gracey, applicant; Crux Development LLC, property owner) located at 1010 West Broadway Road, Suite No. 101, in the PCC-1, Planned Commercial Center Neighborhood District for:

ZUP07148 Use permit to allow vehicle service (car stereo installation) as an ancillary part of car stereo retailer.

David Gracey was present to represent this case.

No public comment at the meeting.

DECISION:

Mr. Williams approved PL070417/ZUP07148 subject to the following conditions:

1. The use permit is valid for Sounds Good to Me and may be transferable to successors in interest through an administrative review with the Development Services Manager, or designee.
2. The use permit is for the installation and repair of car audio, mobile video, car alarms and related systems.
3. All installation and testing must occur inside building and shall comply with City of Tempe Noise Ordinance Standards.
4. No outdoor speakers allowed.
5. All parking areas around tenant space to be kept free of trash and debris.
6. All signs to be approved by Development Plan Review with sign permit(s) obtained prior to installation. No banners, pennants, or balloons allowed without obtaining permits, window signs must comply with ZDC requirements for coverage; portable signs strictly prohibited.
7. Obtain all necessary clearance and permits from Building Safety Division prior to use permit becoming effective.
8. 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. Hold a public hearing for a request by **SIMPLY BURGERS (PL070418)** (Sanjay Matken, applicant; Lawrence & Geyser Development, property owner) located at 580 South College Avenue, Suite No. 103 in the CC, City Center District for:

ZUP07149 Use permit to allow live entertainment.

Sanjay Matken was present to represent this case.

There was a discussion regarding condition #2 and the addition of condition #7, related to the use of sound amplification, and also the same use by the neighboring business, The Dirty Devil. The Hearing Officer made the decision to approve without an additional condition related to noise.

DECISION:

Mr. Williams approved PL070418/ZUP07149 subject to the following conditions:

1. This use permit is valid for 'Simply Burgers' and is transferable. Should the business be sold, the new owners must contact the Board of Adjustment/Hearing Officer staff and apply for a transfer of the use permit.
2. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
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. Any expansion of intensification of the use will require review of the use permit.
5. The use permit is valid for the plans as submitted within this application.
6. The restaurant Simply Burgers will adhere to the City of Tempe Noise Ordinance.

-
9. Hold a public hearing for a request by the **BROWN RESIDENCE (PL070419)** (Steve Davis/Cassia Builders Inc., applicant; Wesley Brown, property owner) located at 11812 South Rural Road in the AG, Agricultural District for:

ZUP07150 Use permit to allow an accessory building (barn).

Steve Davis was present to represent this case. No public input was received on this case.

DECISION:

Mr. Williams approved PL070419/ZUP07150 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. Detached structure to be compatible in design with the main dwelling; color to match existing dwelling.
3. The height of the accessory building (barn) shall not be taller than the main residence.
4. Applicant shall submit construction plans for the main residence to the Building Safety Division within 60 days of this hearing date (by **December 16, 2007**). **Staff has authority to extend this date by another 30 days, if progress is being made, should applicant require an extension to comply. (Modified by Hearing Officer)**

-
10. Hold a public hearing for a request by **THE CENTER BISTRO (PL070424)** (Austin Vickers, applicant/property owner) located at 21 East 6th Street in the CC, City Center District for:

ZUP07151 Use permit to allow live entertainment (acoustical music).

Austin Vickers was present to represent this case.

DECISION:

Mr. Williams approved PL070424/ZUP07151 subject to the following conditions:

1. No noise shall emanate beyond the walls of the building. The entrance of the restaurant is located near a parking lot which is next to a church. In addition, the location of the restaurant is located at the corner bottom of suite of the building which is isolated from the surrounding neighbors.
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. The use permit is valid for The Center Bistro/Austin Vickers and may be transferable. Should the business be sold, new owners must contact Board of Adjustment/Hearing Officer staff for review of the business operation.
4. All permits and clearances required by the Building Safety Division shall be obtained prior to the use permit becoming effective.
5. Any expansion or intensification of use shall require a new use permit to be approved.
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. Submit a security plan with the Tempe Police Department within 30 calendar days (**November 16, 2007**). Contact Officer Derek Pittam at (480) 858-6341.

-
11. Hold a public hearing for a request by the **THOMPSON RESIDENCE (PL070427)** (Larry Thompson, applicant/property owner) located at 16 East Rice Drive in the R1-6, Single Family Residential District for:

ZUP07152 Use permit to allow an accessory building (garage).

No one was present to represent this case. No public input was received on this case.

DECISION:

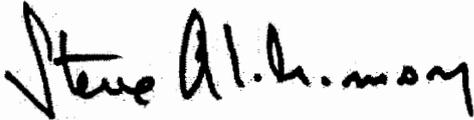
Mr. Williams approved PL070427/ZUP07152 subject to the following conditions:

1. Obtain all necessary clearances and permits from the Building Safety Division.
2. Structure to match dwelling in color, form and material.
3. Bring property into compliance with TCC Chapter 21 Nuisance and Enhancement; regarding appearance of property, storage of materials and inoperable vehicles; car restoration limited to personal vehicles. Auto restoration is not an allowed home occupation.

The next Hearing Officer public hearing will be held on **Tuesday, November 6, 2007**.

There being no further business the public hearing adjourned at 3:20 PM.

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



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

SA:dm:dg