Tempe

Minutes
HEARING OFFICER
MARCH 18, 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
Alan Como, Planner II
Nick Graves, Planning Intern

Number of Interested Citizens Present: 14

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 April 1, 2008 at 3:00 PM.

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1. Mr. Williams approved the Hearing Officer Minutes for March 4, 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 **PAPAGO GATEWAY CENTER (PL080056)** (Arthur Lara/Smith Group Inc., applicant; SRP, property owner) located at 350 West Washington Street in the GID, General Industrial District for:

   VAR08004 Variance to allow roof top mechanical to exceed parapet.
   CONTINUED TO FUTURE HEARING OFFICER – UNDETERMINED AT THIS TIME.

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3. Hold a public hearing for a request by **SPRINT NEXTEL (PL080028)** (Corey Alvin/Sprint Nextel, applicant; City of Tempe, property owner located at 735 West Carver Road in the GID, General Industrial District for:

   ZUP08018 Use permit to allow additional antennas on an existing monopole.

   Ms. Amy Million was present to represent this case (for Corey Alvin).

   Nick Graves, staff planner, stated that no additional public input or information had been received since the staff report had been issued.

   Mr. Williams clarified that the pole was existing and that antennas were being added to that pole. Mr. Graves confirmed.

   Mr. Williams asked the applicant if the site was adjacent to the railroad right of way. Ms. Million confirmed that it was.

   DECISION:
   Mr. Williams approved PL080028/ZUP08018 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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4. Hold a public hearing for a request by the **HOLLAND RESIDENCE (PL080053)** (Katherine Holland, applicant/property owner) located at 2163 East Golf Avenue in the R1-6, Single Family Residential District for:

   ZUP08026 Use permit to allow an accessory building (art studio).

   Mr. Michael Holland was present to represent this case.

   Nick Graves, staff planner, stated that no additional public input or information had been received since the staff report had been issued. Mr. Graves stated that there was one e-mail of inquiry, which was included in the staff report.

   Mr. Williams asked if this was a corner lot, if this structure was in the side yard, and asked staff to confirm the setbacks for the structure. Mr. Graves stated that the rear yard setback was fifteen feet (15') measured from the midpoint of the alley, directly behind the house, and the side yard setback is ten feet (10').

   Mr. Williams noted that the height of the structure would be visible from the street, and asked staff if the architecture would match the principle structure. Mr. Williams stated that since the structure would be visible it should match the house.

   Mr. Holland stated that the roofline of the structure would be of the same pitch as the house, and that the structure would have a similar stucco finish to the house. Mr. Holland stated that the structure would be painted with a new color and that the house would later be repainted to match the color of the house.

Mr. Williams asked the applicant what the roof material would be. Mr. Holland responded that the roof of the accessory structure would be 3 tab shingles.

Mr. Williams asked the applicant to confirm the height of the structure and the perimeter wall. Mr. Holland responded that the structure was sixteen feet (16') tall and the wall was six feet (6') tall, and that he planned to add another course of block to the wall.

Mr. Williams modified condition #2.

DECISION:
Mr. Williams approved PL080053/ZUP08026 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; **including roof pitch, finish and** colors to match existing dwelling. **MODIFIED BY HEARING OFFICER**
3. The detached accessory building shall not be used as a separate living unit/guest quarters (no cooking facilities). Only one residential unit per lot is allowed in the R1-6, Single Family Residential District.

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5. Hold a public hearing for a request by **SHALIMAR SQUARE – BLUE RIDGE TEMPE COMMUNITY LEARNING CENTER (PL080058)** (William Sawner/Educational Options Inc., applicant; Tierra Firme One LLC, property owner) located at 3280 South Country Club Way, Suite No. 110, in the CSS, Commercial Shopping and Services District for:

ZUP08027 Use permit to allow a private school in the CSS, Commercial Shopping and Services District.

Mr. Jeff Sawner of Educational Options Inc. was present to represent this case.

Alan Como, staff planner, stated that no additional public input or information had been received since the staff report had been issued. Mr. Como stated that two phone calls of inquiry were received.

Mr. Como stated that the applicant has indicated that they will have approximately 40 computer lab spaces and additional space for tutoring and proctoring of exams.

Mr. Williams asked if the City of Tempe required any licensing other than the use permit. Mr. Como stated that the City does not require the applicant to receive any licensing to operate this facility, other than the use permit.

Mr. Sawner stated that the 40 seats would be peak usage; that the main focus of the lab was for tutoring and exam proctoring, and that most of the classes are online and the computer lab is there to support those classes.

Mr. Williams asked who the applicant was accredited by. The applicant stated that they were accredited through the Commission on Trans-regional Accreditation, among others. Mr. Williams asked if they had a direct relationship with the school districts. Mr. Sawner stated that they would support and collaborate with the schools and serve the community. Mr. Williams asked how they planned on marketing their services. Mr. Sawner stated that they market specifically to the schools and administrators, as well as community organizations.

Mr. Williams asked a question about the total number of students at the facility at any given time. Mr. Sawner asked the director of the facility David Reed to answer the question. Mr. Reed responded that the facility would serve approximately 50 students maximum.

Mr. Williams asked the number of students that are dropped off vs drive. Mr. Reed stated that he intended that this would serve the local community and that the majority would walk or be dropped off either by bus or by parents. Mr. Reed said that approximately 10 cars at any given time and that the majority would not drive to and park at the site.

Mr. Williams asked the applicant what their plan was for designated smoking areas. Mr. Reed stated that the students are not allowed to smoke on the premises. Mr. Williams also asked how long the students are typically at the facility. Mr. Reed responded that students are there on average 1-2 hours, but typically only 1 hour. Mr. Williams stated that reason he asked the question about smoking was that there was a strip of land behind the building that could be used for such a purpose, and that he was concerned for the residents that lived on the other side of the property wall. Mr. Reed stated that they will not allow smoking, and that there will be visual surveillance over that area.

Mr. Williams stated that he was comfortable with Mr. Reed and his organization self-policing that area and that an additional condition did not need to be added to address the issue of smoking.

Mr. Williams stated that his concerns over parking and smoking had been adequately addressed by the applicant.

DECISION:
Mr. Williams approved PL080058/ZUP08027 subject to the following conditions:
1. Obtain all necessary clearances from the Building Safety Division.
2. Any intensification or expansion of the use would require the use permit to be reheard by the Hearing Officer. If Blue Ridge Tempe Community Learning Center were to become a charter school, that would require a new use permit.

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6. Hold a public hearing for a request by the **ANDERSON RESIDENCE (PL080061)** (Michael Warinner/C&C Refurbishing, applicant; Marcus Anderson, property owner) located at 1954 East Calle De Arcos in the R1-7, Single Family Residential District for:

ZUP08028 Use permit to allow an accessory building (office).

Mr. Michael Warinner of C & C Refurbishing was present to represent this case.

Nick Graves, staff planner, stated that no additional public input or information had been received since the staff report had been issued. Mr. Graves stated that staff has received three (3) phone calls of inquiry, and one letter of support which was included in the staff report.

Mr. Graves stated that the existing mini shed would be relocated and did not require a use permit because it did not meet the size requirements in the code.

Mr. Williams asked if there was a requirement for this structure to match the existing structure. Mr. Graves stated that condition of approval #2 addressed that issue.

Mr. Williams noted that the lot was unusually shaped and that the shed was being placed in the yard where there was the least amount of space, and that this location would most impact the neighbor. Mr. Warinner stated that the yard had a pool and that the owner wanted this shed in the proposed location, and that the affected neighbor was in support of this location. Mr. Williams noted that staff has not heard from the property owner to the east.

Mr. Williams asked about the height of the structure and the roof line in comparison to the existing house. Mr. Warinner stated that the roof line would match the existing house, and that the height of the proposed building was eleven feet (11') and the main house was approximately seventeen feet (17'). Mr. Warinner stated that the shed would be stucco and that the roof tiles would also match the existing structure.

Mr. Williams also asked the applicant to confirm the use of the shed. Mr. Warinner stated that is would be used as a workshop.

Mr. Williams asked staff how noise complaints would be addressed. Mr. Abrahamson replied that noise complaints would be handled through Neighborhood Enhancement Division is a daytime complaint, whereas a nighttime complaint would be handled through the police department.

Mr. Charles Webb, a member of the public, spoke with concerns that the applicant had used his business name and license number in this application and that no permits would be used in his name. Mr. Williams asked staff to address this issue. Mr. Abrahamson stated that Mr. Webb's name was not used anywhere in the application and that the contractor's number was not used in the application. Mr. Graves stated that Mr. Warinner submitted a new contractor business name for this application to correct this matter.

Mr. Williams modified condition #2.

DECISION:
Mr. Williams approved PL080061/ZUP08028 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; **as to roof pitch, finishing, materials and** colors to match existing dwelling. **MODIFIED BY HEARING OFFICER**
3. The detached accessory building shall not be used as a separate living unit/guest quarters (no cooking facilities). Only one residential unit per lot is allowed in the R1-7, Single Family Residential District.

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7. Hold a public hearing for a request by **TWENTY PAWS LLC d.b.a. THE DOG WASH (PL080064)** (Donald & Jeanette Chenevert, applicants; Joyce C. Carson Estate Trust, property owner) located at 2066 East Southern Avenue in the CSS, Commercial Shopping and Service District for:

ZUP08030 Use permit to allow dog boarding.

Donald Chenevert was present to represent this case.

Shawn Daffara, staff planner, stated that additional public input or information had been received since the staff report had been issued. Three (3) letters of opposition had been received since the staff report had been issued, and one (1) letter of concern.

Mr. Daffara stated that the Dog Wash has been in operation under a previous owner since 1997. The previous owner had dog kennels without a use permit. Mr. Williams confirmed that the previous owners were not in compliance with the zoning ordinance.

Mr. Daffara stated that the applicant will be working with staff to improve the conditions in the rear of the building in regards to fencing and lighting. Mr. Williams asked if the upgrades would be to make it more dog friendly or people friendly for the neighbors. Mr. Daffara stated that it would be for both, and that the chain link fence had been placed there by the previous owner. Mr. Williams asked if this was addressed through the conditions of approval, and if they needed to more specifically define what changes would be made. Mr. Daffara stated that this would be done through the Development Plan Review process.

Mr. Williams asked if staff needed to condition the hours that dogs are allowed in the rear of the building. Mr. Daffara stated that the letter of explanation stated that the dogs would not be outside for an extended period of time.

Mr. Daffara noted that the letter of concern was from the property owner and landlord to the north who expressed concern over odor and animal waste. Mr. Williams asked if there was a condition that addressed these issues. Mr. Daffara stated that condition of approval #1 addressed this concern. Mr. Williams asked if all the issues raised in the letter were covered, to which Mr. Daffara replied that those issue have all been addressed.

Mr. Williams asked the applicant to address their plan of operation for when dogs are inside vs. when they are outside. Mr. Chenevert responded that they will be open Tuesday thru Saturday from 8:00am to 6:00pm. Boarded dogs would be allowed outside for approximately ten (10) minutes in the morning, and that exercise would be in the facility. Mr. Williams asked if the dogs have free access to the rear of the property. Mr. Chenevert responded that the dogs do have free access when the back door is open, but that they generally keep it closed. Mr. Williams noted his concern was in regards to the area outback where noise and odor would carry over the wall to the residential property.

Mr. Williams stated that he did understand the neighbors concern regarding animal waste and noise.

Mr. Williams asked staff if the applicant needed to come back before the hearing officer in one year. Mr. Daffara stated that he considered it, but that since the previous owner did not receive any complaints over the previous ten (10) years, he did not feel that needed to be added. Mr. Abrahamson noted that there was a condition that enabled this case to be brought back if there were enough complaints.

DECISION:
Mr. Williams approved PL080064/ZUP08030 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 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.
3. The use permit is transferable. Should the business be sold, the new owners must reprocess for administrative review.
4. The outdoor dog area at the rear of the building requires Development Plan Review approval. Applicant to work with staff to obtain necessary planning approvals. Applicant to submit an application by **April 18, 2008**.
5. The rear door shall require security lighting that is required to meet five (5) foot candles at the door and two (2) foot candles within a 15' radius.
6. After all work is completed, contact Planning Inspector Rob Peterson at (480) 350-8396 for a final planning inspection.

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8. 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 **ROWE RESIDENCE (PL070487/ABT07029)** (Richard Rowe, property owner) Complaint CE073237 located at 1405 North Rose Street in the R1-6, Single Family Residential District.

Mr. Rowe was present to represent the property owner.

Andres Lara, representing the City of Tempe – Neighborhood Enhancement Department stated that the issue with the wood and mulch has been corrected. Mr. Lara noted that the only item remaining to be corrected was with the motor home being registered. Mr. Williams asked if Mr. Lara has discussed the issue of the motor home with Mr. Rowe, to which Mr. Lara responded he had and that Mr. Rowe was working on getting it fixed in order to pass emissions. Mr. Williams asked if the motor home could be stored in the back yard if it were licensed.

Mr. Williams asked Mr. Lara what his recommendation was. Mr. Lara responded that he recommends that the property be abated.

Mr. Rowe indicated that he was working on making the motor home operable, and would be able to get the motor home registered.

Mr. Williams noted that Mr. Rowe has made progress on his property and asked Mr. Rowe if he was asking for additional time to correct the motor home issue. Mr. Rowe responded that he would need more time, and approximately two weeks would be sufficient.

DECISION:
Mr. Williams continued abatement proceedings for PL070487/ABT07029 to April 1, 2008.

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9. 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 **MCCOMBS RESIDENCE (PL080063/ABT08003)** (Greg McCombs, property owner) Complaint CE075864 located at 1272 East La Jolla Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Jan Koehn, representing the City of Tempe – Neighborhood Enhancement Department stated that staff has issued numerous citations regarding the fence. Ms. Koehn also requested that the notice to abate be amended to include the weeds on the site.

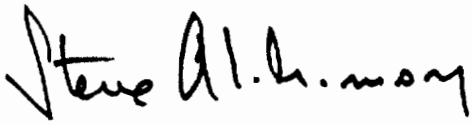
Mr. Williams asked how long the hole has been in the fence. Ms. Koehn stated that the hole has been in the fence since October 2007. Mr. Williams noted that the hole in the fence was indeed a problem. He added that the weeds were a problem, but that he could not authorize the abatement of the weeds at this time, and that staff could request abatement of that issue at a later date.

DECISION:
Mr. Williams approved abatement proceedings for PL080063/ABT08003.

The next Hearing Officer public hearing will be held on **Tuesday, April 1, 2008.**

There being no further business the public hearing adjourned at 2:41 PM.

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



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

SA:dm