

**MINUTES
HEARING OFFICER
MAY 3, 2016**

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.

STUDY SESSION 4:30 PM

Present:

Vanessa MacDonald, Hearing Officer
Steve Abrahamson, Principal Planner
Lee Jimenez, Senior Planner
Jack Scofield, Code Compliance Inspector
Andres Lara, Code Compliance Inspector
Brandy Zedlar, Code Compliance Inspector
Diane McGuire, Administrative Assistant II

There were 2 interested citizens present at the study session.

- Staff and the Hearing Officer discussed overview and updates to the scheduled cases for this hearing.

REGULAR SESSION 5:00 PM

Present:

Vanessa MacDonald, Hearing Officer
Steve Abrahamson, Principal Planner
Lee Jimenez, Senior Planner
Jack Scofield, Code Compliance Inspector
Andres Lara, Code Compliance Inspector
Brandy Zedlar, Code Compliance Inspector
Diane McGuire, Administrative Assistant II

There were 3 interested citizens present at the regular session.

Meeting convened at 5:00 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 May 17, 2016 at 3:00 PM, to the Community Development Department.

1. Ms. MacDonald noted the following:

- **April 19, 2016 Hearing Officer Minutes**
Ms. MacDonald stated that the April 19, 2016 Hearing Officer Minutes had been reviewed and were approved.

- **Agenda Item No. 5**
Request approval to abate public nuisance items at the **BEAM PROPERTY (CE158348)** located at 2012 North Van Ness Avenue. The applicant is the City of Tempe.
ABATEMENT REQUEST WITHDRAWN – PROPERTY IN COMPLIANCE

- **Agenda Item No. 6**
Request approval to abate public nuisance items at the **MUNIZ PROPERTY (CE159033)** located at 731 East Fillmore Street. The applicant is the City of Tempe.
ABATEMENT REQUEST WITHDRAWN – PROPERTY IN COMPLIANCE

- **Agenda Item No. 8**
Request approval to abate public nuisance items at the **LA FRANCE PROPERTY (CE160450)** located at 2330 West Carson Drive. The applicant is the City of Tempe.
ABATEMENT REQUEST WITHDRAWN – PROPERTY IN COMPLIANCE

2. Request approval to abate public nuisance items at the **HARRIS PROPERTY (CE158311)** located at 63 West 13th Street. The applicant is the City of Tempe.

Andres Lara, Code Inspector, gave an overview of this case. He noted that the nuisance items pertained to deteriorated landscape, dead trees and bushes, over height grass and weeds. The property owner has been non-responsive to citations and a 180 open abatement period has been requested.

The property owner was not present at this hearing.

Vanessa MacDonald noted that she had reviewed the site and the Staff Summary Report.

DECISION:

Ms. MacDonald approved the abatement request for CE158311 for an open period of 180 days.

3. Request approval to abate public nuisance items at the **HUMMINGBIRD LLC PROPERTY (CE160008)** located at 2435 East Victory Drive. The applicant is the City of Tempe.

Michael Glab, Code Inspector, gave an overview of this case. He noted that the nuisance items pertained to deteriorated landscape, junk and debris, grass and weeds. The property owner has been non-responsive to citations and a 180 open abatement period has been requested.

The property owner was not present at this hearing.

Vanessa MacDonald noted that she had reviewed the site and the Staff Summary Report, and that these violations had been pending for nearly 4 ½ months now.

DECISION:

Ms. MacDonald approved the abatement request for CE160008 for an open period of 180 days.

4. Request approval to abate public nuisance items at the **BELLO PROPERTY (CE158964)** located at 936 South George Drive. The applicant is the City of Tempe.

Michael Glab, Code Inspector, gave an overview of this case. He noted that the nuisance items pertained to an inoperable (flat tire) /unregistered vehicle. The property owner has been non-responsive to citations and a 180 open abatement period has been requested.

The property owner was not present at this hearing.

Vanessa MacDonald noted that she had reviewed the site and the Staff Summary Report, and that property owner had been notified several times regarding these violations.

DECISION:

Ms. MacDonald approved the abatement request for CE158964 for an open period of 180 days.

5. Request approval to abate public nuisance items at the **REIDHEAD PROPERTY (CE161085)** located at 961 West Fogal Way. The applicant is the City of Tempe.

Brandy Zedlar, Code Inspector, gave an overview of this case. She explained that the department had received a complaint on the property. There have been eleven (11) complaints for deteriorated landscape between 2006 to 2016, and two (2) property abatements completed in 2015. She noted that the nuisance items pertained to deteriorated landscape, trash and debris, grass and weeds as well as a wood fence in need of repair. A 180 open abatement period has been requested.

Mr. Darryl Reidhead, the property owner, was present at this hearing. He explained the current state of the property and indicated his intent to bring it up to code. He questioned the issue of the fence repair.

Ms. MacDonald responded that the fence needs to be a functional structure. She suggested that Mr. Reidhead meet with Brandy Zedlar to ascertain the criteria for bringing the nuisance items up to code.

Ms. MacDonald explained to Mr. Reidhead that even though the property is being abated today, he has a two (2) week period before the abatement will become active. This two (2) week period is an opportunity for him to bring the property into compliance, Ms. MacDonald noted.

Vanessa MacDonald noted that she had reviewed the site and the Staff Summary Report.

DECISION:

Ms. MacDonald approved the abatement request for CE161085 for an open period of 180 days.

6. Request approval for a use permit to allow a pet daycare (animal kennel) for the **WAGGING TAILS PET RESORT (PL160114)** located at 2064 East Southern Avenue. The applicant is Christopher Friedrichs.

Lee Jimenez, Senior Planner, gave an overview of the case, noting that this site is currently located at 2066 East Southern Avenue in the Shalimar Shopping Center on the northeast corner of East Southern Avenue and South Fairfield Drive in the CSS, Commercial shopping and Services District. The business was formerly named 'The Dog Wash' and 'Happy Tails Spa & Resort'. The new ownership is proposing to expand dog daycare services into a neighboring vacant suite located at 2064 East Southern Avenue as well as expand the existing outdoor dog play area at the rear of the building. The establishment is a full service grooming, boarding and animal daycare business that primarily caters to dogs, with occasional boarding or grooming services for cats. The proposed interior expansion is intended to be utilized solely as a daytime dog daycare area with no overnight boarding to be located at the rear of the building from approximately 663 s.f. to 960 s.f.; no grooming would be conducted in the additional space. Capacity of the new dog daycare space will be 40 dogs a day with no more than 15 allowed at a time in the supervised outdoor play area.

Mr. Jimenez noted that staff had received one phone call from a property owner in the Shalimar East Subdivision, directly north of the shopping center, who expressed a concern of potential excessive barking and undesirable pet odors from the outdoor dog play area. This condo owner requested that a condition of the permit be that complaints of barking or inappropriate pet odor be immediately addressed by the owner/operators under the terms of the permit approval with non-compliance leading to revocation of the portion of the permit that allows existence for the outside play area. That property owner followed up the phone call with a letter of concern detailing the issues, and asked that they be addressed in the conditions of approval. Mr. Jimenez stated that staff would like to acknowledge that this request is a standard condition of approval for all use permits issued by the city.

Mr. Jimenez stated that staff supports this use permit request based on the assigned Conditions of Approval, and that a 6 month review for compliance with those conditions has been included.

Mr. Christopher Friedrichs, and his wife, Katie, were present to represent this case. They acknowledged receipt of the Staff Summary Report and his understanding of the assigned Conditions of Approval.

Discussion between the applicant(s), staff and Ms. MacDonald regarding an additional (second) gate which may be required by Development Services (formerly known as Building Safety) and its location resulted in a determination that this issue would be covered by Condition of Approval No. 2. That condition indicates that any additions or modifications may be submitted for review during the building plan check process. Ms. MacDonald stated that Conditions of Approval No 18 would be deleted due to this requirement.

Ms. MacDonald noted that she was deleting Conditions of Approval Nos. 12, 13, 14 and 15, as she felt they were unenforceable and too restrictive in limiting the number of dogs. Any negative issues or perceived nuisances would be addressed in the six (6) month review of compliance required with Condition of Approval No. 5.

In response to the letter of concern received from an adjacent neighbor, Ms. MacDonald stated that she wanted to make clear to the applicant(s), that non-compliance with Conditions of Approval typically leads to the initiation of a revocation hearing, not automatic revocation of a use permit, or a portion thereof.

Ms. MacDonald noted that this request meets the criteria for a use permit:

- There will be no significant increase in vehicular or pedestrian traffic.
- This use will not contribute to any nuisance exceeding that of ambient conditions. There will be no pets outside in the play areas unattended and any barking animals are to be immediately removed from outdoor areas. Outdoor play areas are cleaned daily and waste is immediately picked up and disposed of.
- This use will not contribute to the deterioration of the neighborhood or downgrading of property values.
- It is compatible with the existing surrounding structures and uses. The applicant intends to extend the current 6 ft. tall fencing and is open to the installation of future shade canopies should they be required or requested.
- The use will not contribute to disruptive behavior.

DECISION:

Ms. MacDonald approved the use permit request for PL160114 subject to the following 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. 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 the building plan check process.
3. All required State, County and Municipal permits shall be obtained or the use permit is void.
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, which may result in termination of the use permit.
5. Return to the Hearing Officer for review of compliance with the conditions of approval within six (6) months. The timing for the six month review period to commence begins when the business is in full operation. Advise Community Development staff when in full business operation. If the full business activity is not initiated within one (1) year, the use permit will lapse.
6. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review.
7. Replace all dead or missing trees along the landscaped areas and islands; along with any other missing landscape material.
8. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review.
9. The Shared Parking Analysis for Shalimar Shopping Center is approved. This report shows that 29 parking spaces are required at peak demand, 1:00 p.m. Monday through Friday, and that 28 parking spaces are provided. The Board of Adjustment approved a variance on May 25, 1977 to reduce the required parking spaces from 42 to 29 at 2052 East Southern Avenue; therefore, a deficit no greater than 13 parking spaces must be maintained on the site for the proposed mix of uses. Any modification to the tenant mix which creates intensification in the demand for parking spaces will require an update to the parking analysis report with review and approval (including applicable fees) by the Planning Division.
10. Development Plan Review approval for the expanded outdoor play area and any future shade canopies on the north side of the building is required. Obtain all necessary Community Development Department clearances and permits for structures in this area.
11. Dogs shall be attended by staff during entire outdoor time and immediately brought into the facility if the animals begin to bark or create other types of noise that may cause a disturbance. No animals shall be left unattended outdoors.
12. ~~Dog outdoor playtime use to be limited from 8am to 5pm. The six month review will evaluate extended hours if requested.~~ **DELETED BY HEARING OFFICER**
13. ~~No more than 15 dogs in the dog play area at any one time. The six month review will evaluate a higher volume if requested.~~ **DELETED BY HEARING OFFICER**

14. ~~Total Number of dogs on site at any time not to exceed a monthly average of 40 dogs per day. The six month review will evaluate a higher volume if requested.~~ **DELETED BY HEARING OFFICER**
15. ~~Drop off and pick up hours limited to 7am and 5pm. The six month review will evaluate extended hours if requested.~~ **DELETED BY HEARING OFFICER**
16. A water disposal drain shall be installed inside the dog run for cleaning and maintenance purposes. The dog play area shall be cleaned daily.
17. All dog drop-off and pick-up shall be conducted from the store front.
18. ~~The dog play area shall have only gate, unless required life safety. The new fencing shall be constructed as shown on site plan received April 20, 2016.~~ **DELETED BY HEARING OFFICER**
19. Organic waste that is removed daily shall be placed in sealed bags and placed in exterior refuse containers. Exterior refuse pick-up shall be provided at least 2 days a week. The six month review will evaluate a higher frequency if needed.
20. Advise property owner to provide bicycle parking racks per City of Tempe Public Works Department bicycle rack detail T-578 standard as required by Code.

ANNOUNCEMENTS

- The next Hearing Officer public hearing is scheduled for Wednesday, May 18, 2016 at 5:00 PM with a study session scheduled for 4:30 PM.

With no further business, the public hearing adjourned at 5:40 PM.

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



Steve Abrahamson, Principal Planner
for Vanessa MacDonald, Hearing Officer
SA:dm