MINUTES
HEARING OFFICER
JUNE 7, 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
Michael Glab, Code Compliance Inspector
Cerelia Torres, Planning Technician
Edwin Torres, Planning Intern
Diane McGuire, Administrative Assistant II

There were 5 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
Cerelia Torres, Planning Technician
Diane McGuire, Administrative Assistant II

There were 12 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 June 21, 2016 at 3:00 PM, to the Community Development Department.

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1. Ms. MacDonald noted the following:

   - May 18, 2016 Hearing Officer Minutes
     Ms. MacDonald stated that the May 18, 2016 Hearing Officer Minutes had been reviewed and were approved.

- Agenda Item No. 2
  Request approval to abate public nuisance items at the HAUK PROPERTY (CE160465) located at 2100 South Cottonwood Drive. The applicant is the City of Tempe.
  REQUEST FOR ABATEMENT WITHDRAWN – PROPERTY IN COMPLIANCE

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2. Request approval of a use permit to allow a wireless communication facility including a monopalm and related equipment for VERIZON WIRELESS PHO KLEVEN (PL150465) located at 1020 West 1st Street. The applicant is Casey Spiegel of Shaw and Associates PLC. The requested use permit is as follows:

   1. Use permit to allow a 55 ft. monopalm and equipment shelter.

   Cerelia Torres, Planning Technician, gave an overview of this case. She stated that the site is located in the GID, General Industrial District on the west side of an industrial storage facility building. The equipment shelter will share a wall with an existing building that is located on the west portion of the property. The use permit is to allow a 55 ft. monopalm (60 ft. to top of fronds) and equipment shelter. The feasibility study indicated that there are no wireless communications facilities in the area. Staff has received two (2) e-mails in opposition to this request. She noted that staff supports this request.

   Casey Spiegel of Shaw and Associates was present to represent this case. He acknowledged receipt of the Staff Summary Report and understanding of the assigned Conditions of Approval.

   Mr. Spiegel noted that the current location was determined after the initial submittal indicated technical issues in relation to the water line. The original plan was revised and the site for this wireless facility moved to better accommodate the restrictions of the location.

   James Thornton, Tempe resident, spoke in opposition to this request. Noting that he lives very close to this location. He stated that quite aside from the appearance and aesthetics of this proposed facility which would not enhance the neighborhood location, his main concern was the health and wellness issues related to living so close to this type of electronic structure. He indicated research that he had done where the synopsis is that cell phone towers affect the human heart beats and other health issues. He stated that there were many cell phone towers in existence in the nearby areas, and that for residents that lives in this area, the close proximity would cause exposure to those in the area and would be detrimental to health concerns.

   Steve Abrahamson, Principal Planner, stated that staff cannot speak to the issue of health concerns that may or may not be affected by wireless communication facilities.

   Vanessa MacDonald acknowledged Mr. Thornton's concerns and stated, however, health risks and consequences due to the proximity of wireless communication facilities are difficult to evaluate.

   Mr. Spiegel returned to the podium. He questioned the criteria of Condition of Approval No. 5 which stipulated a 20 ft. separation from any existing tree.

   Mr. Abrahamson stated that it would not be a problem to adjust the wording of that condition to a 15 ft. separation and it was agreed to modify Condition of Approval No. 5 accordingly.

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.
- 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 use will not contribute to disruptive behavior.

DECISION:
Ms. MacDonald approved the request for the use permit for PL150465 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 building plan check process.
3. Any intensification or expansion of use shall require a new use permit.
4. The monopalm shall be no greater than 55 ft. 0 inches in height to the top of structure (arrays) and fronds shall be no greater than 60 ft. 0 inches.
5. The proposed monopalm shall maintain a ~~twenty foot (20 ft.)~~ fifteen foot (15 ft.) separation from any existing tree. MODIFIED BY HEARING OFFICER
6. A weather resistant emergency contact information sign shall be posted on the site and shall be visible to the public.

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4 Request approval of a use permit standard to reduce the north side yard setback by 20% to allow a home addition for the MILLAN RESIDENCE (PL160150) located at 7156 South Alder Drive. The applicant is Shawn Mencer of Precise Drafting. The request includes the following:

1. Use Permit Standard to reduce the north side yard setback by 20% from 7 ft. 0 in. to 5 ft. 8 in. for an addition to the existing home.

Lee Jimenez, Senior Planner, gave an overview of this case. He noted that the site is located on Lot 378 of the Continental Tempe Unit One Subdivision within the Dava-Lakeshore Neighborhood Association in the R1-7, Single Family Residential District. The applicant is requesting approval of a use permit standard to reduce the required side yard setback from 7 ft. 0 in. to 5 ft. 8 in. to allow for an attached home addition (bedroom/bathroom). The addition will add 826 s.f. of living space. Staff received a phone call from the neighbor to the north who expressed a concern for privacy in regards to the proposed set of windows on the north elevation of the addition. He stated that staff supports this request.

Mr. Jimenez noted that an e-mail had been received since the Staff Report was issue. This e-mail communication was from Mr. Creg Cola addressing the issue of privacy. He lives next door to this location and was concern that the wall between the properties does not block sight from the windows and would invade his right to privacy. He asked that the windows (rectangular windows at the top of the wall) be changed to bathroom type windows to preserve the privacy of his residence.

Ms. MacDonald acknowledged receipt of this e-mail communication from Mr. Cola. She explained that if this project was going to be a two story rather than the proposed one story, it would then present a situation where someone could peer down into the neighbor's back yard. She stated that she knows that privacy is a concern but at this point, it appears that the line of vision will be directed to the back of the house and not into the neighbor's house.

Ms. MacDonald also indicated that the block wall fencing that separates the two properties is tall enough to block almost the entire view of the window with the exception of a few inches at the top.

Shawn Mencer of Precise Drafting was present to represent this case. He acknowledged receipt of the Staff Summary Report and understanding of the assigned Conditions of Approval. He stated that he is the representative of the property owner, and that the property owner is aware of, and understands the assigned Conditions of Approval. Mr. Mencer addressed the issue of the neighbor's privacy concerns and explained that at this location there is a setback of 16 inches so privacy should not be a concern.

Mr. Mencer explained that the request is to encroach 16 inches into the setback and, had the addition been 16 inches further to the south, the neighbor would not have a say in this situation. However, should it be a concern, he would have no issue with satisfying the concern by design.

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.
- 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 use will not contribute to disruptive behavior.

DECISION:
Ms. MacDonald approved the request for a use permit standard for PL160150 subject to the following Conditions of Approval:

1. The 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. Any intensification or expansion of use shall require a new use permit standard.
4. All required State, County and Municipal permits shall be obtained or the Use Permit Standard is void.

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5 Request approval of a use permit standard to reduce the north side yard setback by 20% to allow a detached garage for the RAWLINGS RESIDENCE (PL160164) located at 1029 South Maple Avenue. The applicant is Carol Rawlings. The request includes the following:

1. Use permit standard to reduce the north side yard setback by 20% from 10 ft. to 8 ft. to allow a detached garage.

Lee Jimenez, Senior Planner, gave an overview of this case. He noted that the site is located on Lot 1 and the south half of Lot 2, Block 1 of the Park Tract Subdivision. The property is within the Maple Ash Neighborhood Association in the R-2, Multi-Family Residential District. The applicant is requesting approval of a use permit standard to reduce the required side yard setback from 10 ft. to 8 ft. for a detached garage north of the existing home. One e-mail of support has been received by staff. Mr. Jimenez stated that staff supports this request.

Mr. Jimenez noted that the applicant had held a neighborhood meeting on May 23, 2016. One member of the neighborhood attended that meeting who was not in opposition to this request.

Carol Rawlings was present to represent this case. She acknowledged receipt of the Staff Summary Report and his understanding of the assigned Conditions of Approval.

Ms. MacDonald stated that she knows that the Ordinance does not require a neighborhood meeting for a use permit standard, but that she was glad that one had been held.

Ms. MacDonald questioned the inclusion of Condition of Approval No. 5, stating that this lot appears to be pretty heavily treed. Mr. Jimenez responded that this condition is a standard condition for properties zoned multi-family. Ms. MacDonald indicated that she did not feel it was necessary for this particular location and would delete it from the requirements.

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.
- 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 use will not contribute to disruptive behavior.

DECISION:
Ms. MacDonald approved the request for a use permit standard for PL160164 subject to the following Conditions of Approval:

1. The use permit standard 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 standard 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. Any intensification or expansion of use shall require a new use permit standard.
4. All required State, County and Municipal permits shall be obtained or the use permit standard is void.
5. ~~Replace all dead or missing trees along the west and south landscape areas along with any other missing landscape material.~~ DELETED BY HEARING OFFICER

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6. Request approval of a use permit standard to reduce the rear yard setback to allow a home addition for the WOJCIK RESIDENCE (PL160165) located at 5331 South Holbrook Lane. The applicant is Adam Wojcik. The request includes the following:

   1. Use permit standard to reduce the rear yard setback from 15 ft. to 14 ft. to allow for a home addition.

   Lee Jimenez, Senior Planner, gave an overview of this case. He noted that the site is located on Lot 979 of the Tempe Royal Palms #11 Subdivision. The property is within the Optimist Park Northwest Neighborhood Association in the R1-7, Single Family Residential District.. The applicant is requesting approval of a use permit standard to reduce the required rear yard setback by 1 ft. from 15 ft. to 14 ft. to allow f a home addition which consists of bridging the house to an existing accessory building. The proposed addition will add approximately 204 s.f. of living space to the home and encroach into the required 15 ft. rear yard setback by 1 ft. To date, staff has not received any public input. Mr. Jimenez stated that staff supports this request.

   Adam Wojcik was present to represent this case. He acknowledged receipt of the Staff Summary Report and his understanding of the assigned Conditions of Approval.

Mr. Wojcik stated that he wanted to be clear that the resulting setback would be 13 ft. 10 inches. Mr. Jimenez responded that the plans, as submitted by Mr. Wojcik, indicated that the setback would be 13. 9 ft., rounded up to 14 ft. and that dimension fell within the criteria for a use permit standard.

Ms. MacDonald confirmed that the dimension(s) as submitted with the plans falls within the use permit standard criteria, otherwise, it is a larger dimension it has to be processed by a variance which is a whole different process.

Mr. Wojcik questioned if he needed to have the footings inspected since the accessory building was built in 1985.

Steve Abrahamson, Principal Planner, responded that he could have it 'pot holed', and that it really depends on the determination of the Building Safety Inspection.

Ms. MacDonald confirmed that this hearing gives approval to use permit(s), while Building Safety handles building permit issues.

Ms. MacDonald noted that she had a speakers' request card from Bill Pennington. Mr. Pennington, Tempe resident, spoke, stating that he had no comments.

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.
- 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 use will not contribute to disruptive behavior.

DECISION:
Ms. MacDonald approved the request for a use permit standard for PL160165 subject to the following Conditions of Approval:

1. This Use Permit Standard 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 Standard 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. Any intensification or expansion of use shall require a new Use Permit Standard.
4. All required State, County and Municipal permits shall be obtained or the use permit is void.

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7. Request approval of a use permit to allow massage therapy services for the ESCAPE MASSAGE DAY SPA (PL160176) located at 209 East Baseline Road. The applicant is Violeta Munoz. The request includes the following:

   1. Use Permit to allow massage therapy services in the PCc-1, Planned Commercial Center Neighborhood District.

Lee Jimenez, Senior Planner, gave an overview of this case. He noted that the site is located in Office #4, Suite E-102 in the Mill Towne Center at 209 East Baseline Road in the PCC-1, Planned Commercial Center Neighborhood District. The Mill Towne Center is located just north of the Kiwanis Park Neighborhood Association and northwest of the University Royal Garden Homes Homeowner Association. The applicant has been a licensed massage therapist for over 4 years. To date, staff has received no public input. Staff supports this request, Mr. Jimenez stated.

Ms. MacDonald referred to the assigned Conditions of Approval, and asked if there should be an additional Condition to address the requirement for a massage license. It was agreed that a Condition of Approval should be added to indicate that a Massage Establishment License be obtained.

Ms. MacDonald asked if the applicant was present at tonight's hearing.

Mr. Jimenez responded that he had received a voice message from her representative asking if the applicant was required to attend the hearing. Mr. Jimenez stated that he had returned the call and left a message stating that the applicant's presence was required at this hearing, however no one was present.

Ms. MacDonald noted that, based on her policy on previous requests, if there is no representative present , she would continue this case to the next hearing.

Mr. Abrahamson, Principal Planner, stated that the next hearing would be held on June 21, 2016.

DECISION:
Ms. MacDonald continued the request for a use permit for PL160176 to the June 21, 2016 Hearing Officer public hearing.

ANNOUNCEMENTS

- The next Hearing Officer public hearing is scheduled for Tuesday, June 21, 2016 at 5:00 PM with a study session scheduled for 4:30 PM.

With no further business, the public hearing adjourned at 6:40 PM.

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

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