MINUTES
HEARING OFFICER
JULY 19, 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
Suparna Dasgupta, Principal Planner
Lee Jimenez, Senior Planner
Cerelia Torres, Planning Technician
Prince Twumasi, Planning Technician
Edwin Tobar, Planning Intern
Diane McGuire, Administrative Assistant II

There were 11 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
Suparna Dasgupta, Principal Planner
Lee Jimenez, Senior Planner
Cerelia Torres, Planning Technician
Prince Twumasi, Planning Technician
Edwin Tobar, Planning Intern
Diane McGuire, Administrative Assistant II

There were 16 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 August 2, 2016 at 3:00 PM, to the Community Development Department.

---

1. Ms. MacDonald noted the following:

Agenda Item No. 1

- June 21, 2016 Hearing Officer Minutes
  Ms. MacDonald noted that the June 21, 2016 Hearing Officer Minutes had been reviewed and were approved.

- July 5, 2016 Hearing Officer Minutes
  Ms. MacDonald noted that the July 5, 2016 Hearing Officer Minutes would be continued to the August 2, 2016 public hearing as she was not in attendance at that hearing, and Mr. Abrahamson was not able to attend tonight's hearing to approve them.

Agenda Item No. 2

- Request approval of a variance to reduce the south side yard setback to allow for a garage addition for the PERCY RESIDENCE (PL160171) located at East Los Arboles Drive. The applicants are Simon and Suzanne Percy.

  Ms. MacDonald noted that the variance request on the agenda is being continued, at her request and discretion, to the August 2, 2016 Hearing Officer public hearing with the expectation that the property owner and staff can put together a use permit standard request rather than a variance request.

---

2. Request approval of a use permit to allow a massage establishment for AZ FAMILY MASSAGE PLLC (PL160226) located at 2039 South Mill Avenue, Suite E. The applicant is Grace Burnham of AZ Family Massage PLLC.

   Lee Jimenez, Senior Planner, gave a brief overview of this case noting that this location is in Suite E of the Mill Professional Plaza in the CSS, Commercial Shopping and Services District. The applicant, Grace Burnham, has been a licensed therapist since 2010 and has provided therapeutic massage services in the greater Phoenix area for the past 3 years. Staff is in support of this request.

   Ms. Grace Burnham was present to represent this case. She acknowledged receipt of the Staff Summary Report and understanding the assigned Conditions of Approval.

   Ms. MacDonald noted that this request meets the criteria for a use permit:
   - There will be no significant increase in vehicular or pedestrian traffic.
   - There will be no nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions.
   - The use will not contribute to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objects or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan.
   - The use is compatible with existing surrounding structures and uses.
   - There is adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public.

DECISION:
Ms. MacDonald approved the use permit request for PL160226 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. 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. All required State, County and Municipal permits shall be obtained or the use permit is void.
6. Update the date for the parking file for this building prior to the use permit becoming effective. Provide information within 14 days or by July 30, 2016.

---

3. Request approval of a use permit to allow retail sales exceeding 15% of the floor area for SELECT LAUNDRY LLC (PL160228) located at 214 South Rockford Drive. The applicant is Gordon Phillips of Select Laundry LLC.

Prince Twumasi, Planning Technician, gave a brief overview of this case noting that this location is in the Eaton University Industrial Park in the GID, General Industrial District. The proposed component addition will be 26% of the total building area's primary industrial use. Mr. Twumasi explained that Select Laundry is a retail warehouse that stores major appliances and conducts appliance repairs and they are seeking to incorporate a larger retail sales space at the Rockford Drive location. Staff has received no public input and is in support of this request.

Ms. MacDonald questioned what type of notification had been made to the surrounding area. Lee Jimenez, Senior Planner, responded that a postcard notification mailed had been sent to all property owners within a 600 ft. radius, and that all neighborhood and homeowner associations within 1320 ft. had also been notified by mail. In addition the site has been posted with the required notification signage.

Mr. Gordon Phillips was present to represent this case. He acknowledged receipt of the Staff Summary Report and understanding the assigned Conditions of Approval.

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

- There will be no significant increase in vehicular or pedestrian traffic.
- There will be no nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions.
- The use will not contribute to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objects or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan.
- The use is compatible with existing surrounding structures and uses.
- There is adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public.

DECISION:
Ms. MacDonald approved the use permit request for PL160228 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. 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. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during building Safety Plan Review.
5. Replace all dead or missing trees along all landscaped areas and in landscaped islands; along with any other missing landscape material.
6. All rear exit doors require a lexan vision panel. Details to be approved through Building Safety Plan Review.
7. Provide 4 bicycle parking racks conforming to City of Tempe Public Works Department bicycle rack detail T-578 standard.
8. Update the date for the parking file for this building prior to the use permit becoming effective. Provide information within 14 days or by August 2, 2016.

---

4. Request approval of a use permit to allow a teen night club for SCHOOL OF ROCK MILL AVE (PL160230) located at 411 South Mill Avenue, Suite 201. The applicant is Kevin Guinan of School of Rock Mill Ave LLC.

Lee Jimenez, Senior Planner, gave a brief overview of this case noting that the School of Rock is currently operating as a night club at 411 South Mill Avenue in Suite 201 within the CC City Center District and the TOD, Transportation Overlay District. The applicant is requesting to add a teen night club component to his existing operations. This location previously known as Club Cherry and Club Level has been the site of bars and night clubs dating back to 1983. The traditional bar/night club will operate on Friday and Saturday nights from 9 PM to 2 AM and the teen night club will operate on Thursday nights from 10 PM to 1 AM. Staff supports this request , subject to the assigned Conditions of Approval, and has not received any public input.

Ms. MacDonald noted that the terminology of Condition of Approval No. 10 had been slightly modified to indicate that the only entertainment that may occur after 2 AM will be permitted in writing in an 'after hours permit' after the appropriate hears by the City Council.

Mr. Kevin Guinan was present to represent this case. He acknowledged receipt of the Staff Summary Report and understanding the assigned Conditions of Approval, as well as the modification to Condition of Approval No. 10.

Ms. MacDonald noted that this request meets the criteria for a use permit:
- There will be no significant increase in vehicular or pedestrian traffic.
- There will be no nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions.
- The use will not contribute to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objects or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan.

- The use is compatible with existing surrounding structures and uses.
- There is adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public. The Condition of Approval No. 5 stipulates that a new security plan is to be submitted.

DECISION:
Ms. MacDonald approved the use permit request for PL160230 subject to the following Conditions of Approval:

1. 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.
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, which may result in termination of the Use Permit.
3. Return to the Hearing Officer for review of compliance with 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 year the use permit will lapse.
4. Any intensification or expansion of the use shall require the applicant to return to Hearing Officer for further review.
5. The applicant shall contact the City of Tempe Crime Prevention Unit for a new or revised security plan within 30 days of this approval. Contact 480-858-6409 before August 18, 2016.
6. 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.
7. Live entertainment limited to live bands and DJ's for bar patrons (indoors) – concert assembly not allowed.
8. The live entertainment use shall take place inside only. No live entertainment will be allowed outside.
9. Nightclub management shall at all times assure that potential customers in front of the lobby do not obstruct or interfere with pedestrian movement along the sidewalk or with ingress and egress to adjacent businesses.
10. ~~Bar activity shall cease at 2:00 a.m.~~ The only entertainment that may occur after 2 AM ~~that time~~ will be permitted in writing in an "after hours permit" after the appropriate hearings by the City Council. MODIFIED BY HEARING OFFICER
11. Music and amplified sound shall terminate at closing and is subject to City noise and other ordinances. No outdoor speakers allowed.

---

5. Request approval of a use permit to allow an amusement business for DARE TO ESCAPE AZ (PL160232) located at 9875 South Priest Drive, Suite 101. The applicant is Alpay Bicer of Puzzlist LLC.

Lee Jimenez, Senior Planner, gave a brief overview of this case noting that the location is in Office Building D of Tempe Crossings II subdivision within the PCC-2, Planned Commercial Center General District. An 'escape room' is a physical adventure game in which players are locked in a room and have to use elements of the room to solve a series of puzzles and escape within a set time limit, Anyone under the age of 16 is required to be accompanied by an adult. Considering this is a corporate team building activity, the majority of the customers will be working professionals. Staff has received no public input and supports this request.

Mr. Tolga Memioglu was present to represent this case. He explained that Mr. Bicer was unable to attend tonight's hearing. They are business partners, and he confirmed, in response to a question from Ms. MacDonald, that he is authorized to speak on behalf of Mr. Bicer. He acknowledged receipt of the Staff Summary Report and his understanding the assigned Conditions of Approval.

Ms. MacDonald referred to the portion of the business operation where players are locked in a room and questioned the safety liability concerns of that practice should there be a fire or other emergency. Mr. Memioglu responded that the purpose of the activity was mainly for a corporate team building activity. The participants would work together to solve creative puzzle type activities and challenges. These are exercises which will cater mainly to working professionals although families and other individuals may wish to engage in these activities. Mr. Memioglu described the process and stated that there would be adequate supervision to alleviate any safety concerns. In addition, a key is provided at the bottom of the room doors should anyone need to unlock the door. Also, all rooms will be monitored with cameras by a game master.

Mr. Memioglu explained that walk-ins are not accepted, that groups need to purchase tickets online and make their reservations in advance, then show up 15 minutes before reservation time and leave after spending 1 hour at the facility. Maximum occupancy will be 16 players and 2 employees.

Ms. MacDonald questioned whether this business was in operation elsewhere (i.e. at other locations). Mr. Memioglu responded that it was the first of its kind.

Ms. MacDonald noted that she had a speaker from a member of the public who wished to speak on this request.

Gary Dukarich, of Evans Dukarich LLP, spoke of his concerns regarding this business at this location, which, he stated, was directly across from the entrance to his business which is located in the adjacent building. The front doors of his business and Dare to Escape AZ face each other. Mr. Dukarich explained that he did not feel that parking was adequate to support the participants who may engage in the activities proposed by Dare to Escape. He noted on the site plan that there was another location at the rear of the property which was currently just a building pad and would be out of the way of whatever business traffic pertained to his firm. He stated that he had misgivings regarding the people who would be coming and going and that there was the possibility of people congregating in the respective entrance areas. He also referred to a potential problem that may become a safety and security issue if there are participants milling around after hours. He noted that although the applicant has indicated that there will be a limited number of participants at one time, it is not known if this would be the reality as there may additionally be people coming and going, so at this point in time it is just an assumption rather than a known fact.

Ms. MacDonald questioned staff regarding whether there was adequate parking at this site. Mr. Jimenez responded that this type of use was very unique, and in determining the parking factor, staff felt that it was equivalent to a live theatre setup. The parking requirement for theaters is 1 space per 3 available seats. This use will have a maximum of two groups in the building at one time, and a maximum of 16 players total (combination of Games 1 or 2 and Game 3). It was felt that five (5) off-street parking spaces are required.

Ms. MacDonald referred to Condition of Approval No. 5 which requires the applicant to return to the Hearing Officer for a review of compliance with the Conditions of Approval. She explained that gives the applicant a period of time to establish his business and for staff to ascertain that things are operating without a problem because by that time they will have had a chance to establish a track record.

Mr. Jimenez noted that Condition of Approval No. 2 would cover any future complaints concerning this use permit should it be approved.

Ms. MacDonald asked the applicant if there would be any music playing during the participants' exercises. Mr. Memioglu responded that the only background music would be inside the room while the games are ongoing. He stated that there would be a 45 minute time period between the start and end of reservations.

Mr. Jimenez noted that he just wanted to point out that Condition of Approval No. 4 requires the applicant to submit a security plan and that they will have a record of names who will be on site at all times.

Mr. MacDonald encouraged the applicant to control the behavior of incoming and outgoing participants. She indicated that there would be an initial period of time to see if it will work at this location and that is why Condition of Approval No. 5 requires the applicant to return in 6 months following his business opening.

Ms. MacDonald noted that there is a specific criteria, based on the Zoning and Development Code, that she has to look at as to what is allowed and what is not allowed for a use permit request.

Mr. Duikarich again addressed his concern(s) regarding the existing parking situation and referred to the parking area at the rear of the area which is never filled, as opposed to the area nearer the entrance to both his business and Dare to Escape AZ. He stated that if their participants would utilize this other parking area it would probably take care of any possible problems.

Ms. MacDonald explained the parking criteria and Mr. Jimenez noted that parking areas are related to the boundaries of particular parcels rather than a generic area. Should the parking demand increase, all interested property owners could enter into a shared parking agreement.

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

- There will be no significant increase in vehicular or pedestrian traffic.
- There will be no nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions.
- The use will not contribute to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objects or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan.
- The use is compatible with existing surrounding structures and uses.
- There is adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public.

DECISION:
Ms. MacDonald approved the use permit request for PL160232 subject to the following Conditions of Approval:

1. 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.
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, which may result in termination of the Use Permit.
3. Update the data for the parking file for this building prior to the use permit becoming effective. Provide information within 14 days or by August 2, 2016.
4. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact 480-858-6409 before August 18, 2016.
5. Return to the Hearing Officer for review of compliance with 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 year the use permit will lapse.

---

6. Request approval of a use permit to allow a massage establishment for MASSAGELUXE (PL160236) located at 8750 South McClintock Drive. The applicants are Matt and Carissa Krupski of Desert Spa LLC.

   Lee Jimenez, Senior Planner, gave a brief overview of this case noting that the applicants are proposing to operate at the site of a former convenience store located on the northwest corner of South McClintock Drive and East Warner Road in the PCC-1, Planned Commercial Center Neighborhood District. Their business is described as a membership based massage and facial spa and this will be the first location of a franchise. The business will primarily operte by scheduled appointmetns, but will accept walk-in requests. The hours of operation will be from 8:00 AM to 10:00 PM, Monday through Friday; and 8 :00 AM to 8:00 PM, Saturdays and Sundays. Staff has received no public input and supports this request.

   Carissa Krupski was present to represent this case. She acknowledged receipt of the Staff Summary Report and her understanding the assigned Conditions of Approval.

   Ms. MacDonald noted that this request meets the criteria for a use permit:
   - There will be no significant increase in vehicular or pedestrian traffic.
   - There will be no nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions.
   - The use will not contribute to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objects or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan.
   - The use is compatible with existing surrounding structures and uses.
   - There is adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public.

   DECISION:
   Ms. MacDonald approved the use permit request for PL160236 subject to the following Conditions of Approval:

   1. 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.
   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. All required State, County and Municipal permits shall be obtained or the use permit is void.
   6. Update the data for the parking file for this building prior to the use permit becoming effective. Provide information within 14 days or by July 30, 2016.

ANNOUNCEMENTS

- The next Hearing Officer public hearing is scheduled for Tuesday, August 2, 2016 at 5:00 PM with a study session scheduled for 4:30 PM.

With no further business, the public hearing adjourned at 6:00 PM.

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

Suparna Dasgupta, Principal Planner for Vanessa MacDonald, Hearing Officer
SD:dm