MINUTES
HEARING OFFICER
AUGUST 16, 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
Karen Stovall, Senior Planner
Michael Glab, Code Inspector
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
Karen Stovall, Senior Planner
Michael Glab, Code Inspector
Diane McGuire, Administrative Assistant II

There were 7 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 30, 2016 at 3:00 PM, to the Community Development Department.

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1. Ms. MacDonald noted the following:

   - Agenda Item No. 1

     August 2, 2016 Hearing Officer Minutes
     Ms. MacDonald stated that the August 2, 2016 Hearing Officer Minutes had been reviewed and were approved.

   - Agenda Item No. 2
     Request approval to abate public nuisance items at the SPENCER LESSNER PROPERTY (CE162203) located at 1320 East Verlea Drive. The applicant is the City of Tempe – Code Compliance.
     ABATEMENT REQUEST WITHDRAWN – PROPERTY IN COMPLIANCE

   - Agenda Item No. 4
     Request approval to abate public nuisance items at the MCGOWAN PROPERTY (CE154298) located at 1733 East Broadmor Drive. The applicant is the City of Tempe – Code Compliance.
     ABATEMENT REQUEST WITHDRAWN – PROPERTY IN COMPLIANCE

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2. Request approval to abate public nuisance items at the SOFFER PROPERTY (CE162805) located at 1702 East El Parque Drive. The applicant is the City of Tempe – Code Compliance.

   Michael Glab, Code Inspector, gave an overview of the case noting that nuisance items pertained to deteriorated landscape and over height grass and weeds. The property owner has failed to bring the property into compliance and staff requests a 180 day open abatement period.

   The property owner was not present at this hearing.

   Ms. MacDonald noted that she had reviewed the Staff Summary Report and attachments and conducted a drive by of the property. Ms. MacDonald acknowledged that the property owner had been non-responsive after months of correspondence regarding the violation(s).

   DECISION:
   Ms. MacDonald approved the abatement for CE162805 for an open period of 180 days.

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3. Review of compliance with the assigned Conditions of Approval for a use permit to allow outdoor entertainment for SHADY PARK RESTAURANT (formerly SAN PABLO RESTAURANT) (PL140445 / ZUP15024) located at 26 East University Drive. The applicant is Scott Price/Peacocks Unlimited LLC.

   Lee Jimenez, Senior Planner, gave a brief overview of this case noting that this eatery is located at 26 East University Drive in the CC, City Center District. The Hearing Officer approved an outdoor live entertainment use permit (ZUP15024) on March 3, 2015 for the San Pablo Restaurant, now known as Shady Park Restaurant. The approval conditioned that the applicant return to the Hearing Officer for a 9 month review of compliance. After legal advertising and public notification of the compliance review, staff has received one (1) e-mail in support of the restaurant. To date, the City of Tempe Police Department's Crime Prevention Unit has confirmed that there had been no violations with Shady Park Restaurant's implemented security plan. Calls for service received by the police department have been standard disturbances common with bars on Mill Avenue. No cases related to the use permit have been opened by the City's

Code Compliance Division. Staff believes that Shady Park Restaurant is in compliance with all conditions of approval and supports the continuation of the use permit.

Mr. Scott Price of Peacocks Unlimited LLC was present but not called on to speak.

Ms. MacDonald noted that at this point, there is no action required by her, other than the review of compliance with the Conditions of Approval. She gave a brief explanation of the process when a case is assigned a Condition of Approval for review of compliance.

DECISION:
Ms. MacDonald acknowledged the applicants' compliance with the Conditions of Approval as assigned to the approval of use permit ZUP15024 to allow live outdoor entertainment for SHADY PARK RESTAURANT (PL140445) at the March 3, 2015 public hearing.

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4. Request approval of a variance to increase the maximum building height from 30 ft. to 40 ft. for FIRST BAPTIST CHURCH WORSHIP SPACE (PL160155) located at 4525 South McClintock Drive. The applicant is DFDG.

Karen Stovall, Senior Planner, gave an overview of this case and that this site is located in the R1-6, Single Family Residential District. She presented an aerial and a site plan, as well as elevation drawings, for the project, noting that this request is related to a 19,050 s.f. building addition proposed on the west side of the existing First Baptist Church of Tempe. Only a 831 s.f. portion of the proposed addition would extend above the maximum 30 ft. building height; this area would serve as the primary entrance to the new worship space. The applicant is requesting a variance to increase the maximum building height from 30 ft. to 40 ft.

Ms. Stovall stated that at the completion of the Staff Summary Report, no public input had been received by staff. Staff does not support this request, as they do not feel it meets all of the required criteria for a variance.

Dr. Roger Ball, Senior Pastor of First Baptist Church, was present to represent this case. He indicated that this church had been active in the community at its present location for over 40 years, and stated that he had the support of the neighborhood for his request.

Ms. Michelle Rutkowski of DFDG was also present to represent this case. She presented a photographic rendering of the proposed project and stated that she wanted to be sure that consideration was being given to this property rather than the surrounding residential neighborhood, as she felt there were special circumstances involved. She explained that the new worship center needs to blend with the existing building and that is was essential that the height not compromise the architectural quality of the project. Ms. Rutkowski stated that the size of this property meets the criteria for special circumstances as it is 4 times the size of the next largest property and a minimum of 14 times the size of the remaining 46 nearby properties in this R1-6, Single Family Residential zoning district. She also noted that the centerline of the curb is 2.5 ft. lower than the existing building's finish floor.

Ms. MacDonald asked staff what the maximum building height was allowable under the old development code. Ms. Stovall responded that it was also 30 ft.

Ms. MacDonald indicated that, in her view, the applicant(s) had not chosen the proper tool to process the endeavor. She explained that they could have requested a rezoning of the property to a CSS, Commercial Shopping and Services District, and then a use permit standard to exceed the maximum height permitted in the CSS District. She did note that a rezoning request could be a lengthy process. She also referred to the use permit standard process, but noted that this would only allow a building height increase of 10% beyond what the ZDC permits, or 33 feet, in the R1-6, Single Family Residential District.

Ms. MacDonald acknowledged that while the property did have some special circumstances, such as the irregular shape, there were none to justify the approval of the requested variance.

Ms. MacDonald noted that this request failed to meet the criteria for a variance:

- While the shape and size of the property are a special circumstances, they are not burdensome to the applicant. The large size of the property should allow the applicant to employ design creativity on the site and develop the property without a variance.

- The strict application of this Code will not deprive the property of privileges enjoyed by other property of the same classification in the same zoning district. There are no other structures within the R1-6 Zoning District with buildings exceeding 30 ft. in height.

- Granting a variance to allow an increase in maximum building height would grant special privileges to this property which would be inconsistent with the limitations upon other properties in the vicinity and zone and would set a precedent for others in the area to apply for a similar variance.

- In their letter of explanation, the applicant pointed to the existing buildings on the site as a special circumstance which necessitated the variance. However, a variance may not be granted if special circumstances applicable to the property are self-imposed by the property owner. Ms. MacDonald stated that she felt that the applicant(s) did in fact self-impose the need for the variance by performing the construction done at this location to date. The applicant has been the owner of this property for forty years.

Ms. MacDonald encouraged the applicant(s) to work with staff to resolve this situation and to investigate other zoning tools to achieve their goals for the property.

DECISION:
Ms. MacDonald denied the variance request for PL160155.

Ms. Stovall requested that Ms. MacDonald explain the appeal process to the applicant(s).

Ms. MacDonald did so, noting that the applicant(s) had the option to submit a written appeal of her decision by August 30, 2016 at 3:00 PM to the Board of Adjustment. The appeal case would then be heard by the Board of Adjustment, and a decision rendered by those Board members (i.e. uphold the HO denial decision, or approve the variance).

ANNOUNCEMENTS

- The next Hearing Officer public hearing is scheduled for Tuesday, September 6, 2016 at 5:00 PM with a study session scheduled for 4:30 PM.

With no further business, the public hearing adjourned at 5:30 PM.

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

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