MINUTES
HEARING OFFICER
NOVEMBER 1, 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
Dean Miller, Planner II
Marvin White, Code Inspector
Diane McGuire, Administrative Assistant II

There were 4 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
Dean Miller, Planner II
Marvin White, Code Inspector
Diane McGuire, Administrative Assistant II

There were 11 interested citizens present at the regular session.

Meeting convened at 5:00 PM and was called to order by Ms. MacDonald. He 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 November 15, 2016 at 3:00 PM, to the Community Development Department.

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1. The following was noted:

- Agenda Item No. 1

  October 18, 2016 Hearing Officer Minutes
  Steve Abrahamson, Principal Planner, stated that the October 18, 2016 Hearing Officer Minutes had been reviewed and were approved.

- Agenda Item No. 6
  Request approval of a use permit to allow required parking in the front yard building setback for the LIND RESIDENCE (PL160336) located at 314 East Taylor Street. The applicant is Kevin Lind.
  REQUEST WITHDRAWN BY STAFF – USE PERMIT NOT REQUIRED

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2. Request approval to abate public nuisance items at the RISI PROPERTY (CM160714) located at 1024 East Spence Avenue. The applicant is the City of Tempe – Code Compliance.

   Marvin White, Code Inspector, gave an overview of the case, noting that nuisance item(s) on this vacant lot pertained to debris and over height grass and weeds. The property owner has failed to bring the property into compliance. Staff requests a 180 day open abatement period.

   The property owner was not present at this hearing.

   Ms. MacDonald stated that she had driven by the site and reviewed the staff summary report and photographs. She noted that the property owner would have a two (2) week window of time to bring the property into compliance once this abatement was approved.

   DECISION:
   Ms. MacDonald approved the abatement for CM160714 for an open period of 180 days.

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3. Request approval of a use permit to allow an amusement business for UNDERPAR INDOOR GOLF (PL160341) located at 1245 West Elliot Road, Suite #111. The applicant is James Kang.

   Dean Miller, Planner II, gave an overview of this case, stating that the property is located at the southeast corner of West Elliot Road and South Priest Drive within the Costco Plaza in the PCC-2, Planned Commercial Center General District, at 1245 West Elliot Road and would occupy Suite Nos. 109 – 111. The applicant is proposing an indoor golf practice facility to include 13 golf range simulators, golf lessons, equipment repair and the sale of golf merchandise in a 5100 s.f. suite. The use is classified as an amusement business which requires a use permit in the PCC-2 zoning district. Hours of operation will be 9 AM to 10 PM, seven (7) days a week and the business will employ 2 full time and 4 part time employees. Their customers will be of all age groups and every skill level, ranging from beginner to advanced sill levels.

   Mr. Miller stated that staff has received no public input on this request. Based on review of the applicant submittal, staff feels the business meets the criteria requirements for a use permit and recommends approval.

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

Ms. MacDonald stated that this request meets the criteria for a use permit as follows:

- 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.
- This use will not contribute to the deterioration of the neighborhood or the downgrading of property values.
- This use is compatible with the existing surrounding structures and uses.
- There will be adequate control of disruptive behavior both inside and outside the premises.

DECISION:
Ms. MacDonald approved the use permit to operate an amusement business for PL160341 subject to the following conditions:

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.
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. 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. Hours of operation to end no later than 10:00 PM on a daily basis.
6. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact Nathan Ryberg at 480-858-6409.
7. The live proposed use shall take place inside only. No amusement activity will be allowed outside.
8. All business signs shall receive a sign permit. Contact sign staff at 480-350-8435.

ITEM HEARD OUT OF ORDER AT REQUEST OF ASSIGNED PLANNER, LEE JIMENEZ:

4. Request approval of a use permit to allow a massage establishment for L'MAGE SALON STUDIOS (PL160340) located at 1712 East Guadalupe Road, Suite No. 107. The applicant is Tara Harms of Tara Harms Therapeutic Massage LLC.

Lee Jimenez, Senior Planner, gave an overview of this case. He noted that the site is located in Suite 107 of the Santa Fe Palms Plaza near the northwest corner of East Guadalupe Road and South McClintock Drive in the PCC-1, Planned Commercial Center Neighborhood District. The applicant has over 15 years of experience in salon and spa rentals.

Mr. Jimenez explained that the Zoning and Development Code requires a use permit to allow a massage establishment to operate in the PCC-1 zoning district. The applicant, Tara Harms, is planning to rent a 10 ft. x 10 ft. room inside L'Mage Salon Studios to offer massage therapy services such as deep tissue therapeutic massages and Swedish massages. Half hour to 2 hour sessions will be offered Monday through Friday from 12 Noon to 8 PM; and Saturdays and Sundays from 10 AM to 6 PM. Staff has not received any public input on this request. Staff believes that this application meets all approval criteria for a use permit and supports this request subject to the conditions provided in the staff report.

Ms. Tara Harms was present to represent this case. She indicated that she had not read the Staff Summary Report. Mr. Jimenez provided her with an additional copy of the report and Ms. MacDonald read the assigned Conditions of Approval to her. Ms. Harms stated that she understood the Conditions of Approval and had no questions concerning their content.

Ms. MacDonald stated that this was a pretty standard case and that she had no additional questions for staff.

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

- 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.
- There will be no contribution of the deterioration of the neighborhood or downgrading of property values.
- The business is compatible with existing surrounding structures and uses.
- There will be adequate control of disruptive behavior both inside and outside the premises.

DECISION:
Ms. MacDonald approved the use permit to allow a massage establishment in the PCC-1 District for PL160340 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. All required State, County and Municipal permits shall be obtained or the use permit is void.
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.

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5. Request approval of a use permit to allow a second story addition for the GARCIA RESIDENCE (PL160345) located at 3728 South Siesta Lane. The applicant is Robert Waters of Themed Construction Inc.

Lee Jimenez, Senior Planner gave an overview of this case. He explained that the property is located on lot 92 within the Tempe Royal Palms subdivision in the R1-6, Single Family Residential District. The Zoning and Development Code requires a use permit for any single story, single-family residence to add, expand or rebuild for a second story. The applicant, Robert Waters of Themed Construction Inc., is proposing to build an 839 s.f. second story addition to a single story, single family residence that was recently damaged by fire. The second story addition will include two bedrooms, a study loft and a bathroom.

Mr. Jimenez stated that to date, staff has received three (3) e-mails in support of the request, and two (2) phone calls and twelve (12) e-mails in opposition. Those in support of the request believe that the second story addition will increase property values and improve the overall quality of the neighborhood, while those in opposition believe that the addition will infringe on the privacy of several adjacent neighbors and set unwanted precedence for the rest of the neighborhood.

Mr. Jimenez explained that, based on the information provided by the applicant, the public input received and the analysis provided in the staff report, staff believes this application does not meet all approval criteria for a use permit and does not support this request. Should an affirmative action be taken on this request, the conditions of approval provide in the staff report shall apply, but may be amended by the decision making body.

Mr. Alonso Garcia was present to represent this case. He acknowledged receipt of the Staff Summary Report and his understanding of the assigned Conditions of Approval should this request be approved.

Mr. Garcia stated that there were two (2) story homes located not too far away from his property, and that he felt this request would not be detrimental to the surrounding neighborhood. He noted that the proposed addition is set back over 59 ft. from the front property line and is proposed for the back half of the home which will minimize having a street view presence.

Ms. MacDonald stated that she did want to point out that the allowable height in the single family residential district is 30 ft. The applicant's request, including the second story addition, totaled a height of 23 ft., however the Zoning and Development Code requires a use permit relative to a second story addition in the single family residential district regardless of the height being within the allowable dimensions.

Ms. MacDonald noted that those present were probably familiar with the neighborhood area, however for the public record, she requested that Mr. Jimenez provide specific depictions of the location for those present.

Mr. Jimenez provided a depiction of the property location and particulars. These included an aerial map which indicated the position of the property in relation to the surrounding neighborhood, as well as the location map and applicant drawings. The drawings pertained to the site plan(s), elevation plan(s) as well as the general overview of the proposed project, including the second story addition.

Ms. MacDonald acknowledged that there were several individuals within the audience to speak on this request. Those individuals spoke as follows:

- Mr. Shelly Gerard, Tempe resident, spoke in opposition to this request. He addressed his issues of concern which pertained to a loss of privacy as well as the negative affect this second story would have on neighborhood property values. He stated that approval of this request would set a bad precedent for the subdivision.

- Mr. John Watson, Tempe resident, spoke in opposition to this request. He stated that he was opposed to the second story addition as it was not compatible with the neighborhood. He indicated that although there are two story homes in the neighborhood, they are located on larger lot sizes, spaced further away from the adjacent houses and have mature landscaping to provide additional privacy for adjacent neighbors. The applicant's location will decrease the adjacent and nearby properties, Mr. Watson explained.

- Ms. Mary Gallagher, Tempe resident, spoke in opposition to this request. She stated that Mr. Garcia was a good neighbor, however this second story addition would negatively affect her privacy. She suggested that perhaps a change in the proposed plans could be made that would resolve the privacy factor. She indicated that this proposed addition was not in the best interest of the neighborhood.

- Ms. Linh Ngugen, Tempe resident, spoke in opposition to this request. She stated that, in her opinion, the proposed plan(s) would be detrimental to the surrounding property values and would be invasive to the neighbor's privacy. She indicated that the applicant should submit alternative plans that would meet the established code requirements, questioning why the addition couldn't be moved toward the front yard a bit.

- Mr. Steve Terry, Tempe resident, spoke in opposition to this request. He stated that this two story proposal would cause a loss of privacy and negatively affect the value of his home. This addition would not be compatible with the existing neighborhood, he stated, and if a prospective buyer were to see a two story addition next door to his home, it would affect the property value. Mr. Terry also indicated that Mr. Jimenez was very generous with his time in explaining the request, and that he appreciated the good service provided by the City of Tempe. Additionally, Mr. Terry addressed the subject of the postcard mailing notification(s) that the City utilizes. He questioned the value of notifying property owners beyond the immediate vicinity of the request. Ms. MacDonald responded that the addresses are determined from the Maricopa County Assessor's site of those property owners located within 600 ft. of the applicant's property.

Mr. Garcia returned to the podium. He mentioned that he felt there was adequate mature vegetation screening the proposed addition from the neighbors and that this attribute meet the need for privacy. He indicated that he did not feel that there was enough room for an addition into the back yard, because of the swimming pool location. He stated that his addition, as proposed, would be 6 ½ ft. below the maximum allowed height.

Ms. MacDonald reviewed the specific criteria for a use permit as follows:

- 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.
- There will be no contribution of the deterioration of the neighborhood or downgrading of property values.
- The business is compatible with existing surrounding structures and uses.
- There will be adequate control of disruptive behavior both inside and outside the premises.

Ms. MacDonald explained that this request does not, in her opinion, meet the use permit approval criterion #5, *compatibility with existing surrounding structures and uses.* Although the applicant provided two (2) examples of second story homes within the vicinity, the location of those homes are not close enough to be considered of the immediate neighborhood. This subdivision, Tempe Royal Palms, was developed and planned as a single story neighborhood, and the fact of the matter is, that this property is located within an as built environment. If we allow manipulation of the intended development, it could set a precedent that would negatively affect the established neighborhood area.

Ms. MacDonald stated that the burden of proof is that the request needs to indicate compatibility. The responses received by e-mail, phone calls and tonight's speakers indicate that it is not compatible. She indicated that she hoped the applicant could determine a solution that they can utilize, and that this is probably a lot that is tailor-made for a variance.

Ms. MacDonald noted that the neighbors liked Mr. Garcia; however they did not support his request for a use permit for a second story addition. She stated that she hoped the applicant decides to solve the problems presented by his current request.

DECISION:
Ms. MacDonald denied the request for a use permit to allow a second story addition for PL160345.

ANNOUNCEMENTS

- The next Hearing Officer public hearing is scheduled for Tuesday, November 15, 2016 at 5:00 PM with a study session scheduled for 4:30 PM.

With no further business, the public hearing adjourned at 5:45 PM.

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

Steve Abrahamson, Principal Planner
For Vanessa MacDonald, Hearing Officer

SA:dm