

**MINUTES
HEARING OFFICER
NOVEMBER 15, 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
Julie Scofield, Code Inspector
Barbara Simmons, 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
Julie Scofield, Code Inspector
Barbara Simmons, Code Inspector
Diane McGuire, Administrative Assistant II

There were 5 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 29, 2016 at 3:00 PM, to the Community Development Department.

1. The following was noted:

- **Agenda Item No. 1**

November 1, 2016 Hearing Officer Minutes

Ms. MacDonald stated that the November 1, 2016 Hearing Officer Minutes had been reviewed and were approved.

- **Agenda Item No. 3**

Request approval to abate public nuisance items at the **MASIELLO CANCHOLA PROPERTY (CE163676)** located at 410 East La Donna Drive. The applicant is the City of Tempe.

ABATEMENT REQUEST WITHDRAWN – PROPERTY IN COMPLIANCE

2. Request approval to abate public nuisance items at the **REYNOLDS PROPERTY (CE163628)** located at 240 East Fremont Drive. The applicant is the City of Tempe – Code Compliance.

Julie Scofield, Code Inspector, gave an overview of the case, noting that the nuisance item(s) on this property pertained to a dead palm tree. Ms. Scofield noted that the property owner has had several extensions to bring the property into compliance and, as of this date, had failed to do so.

The property owner was not present at this hearing, however Mr. Thad Rosenthal submitted a speaker's card on this item, and noted, when called to the podium, that he lived at this address.

Mr. Rosenthal presented two (2) colored depiction photographs indicating the painted artwork done on the dead palm tree at 240 East Fremont Drive. He indicated that the artwork had been painted rather than carved as first proposed.

Ms. MacDonald asked for staff input . Steve Abrahamson, Principal Planner, responded that the Planning Division does not have a purview of design aspects of single family residences, including artwork.

Ms. MacDonald stated that she had and reviewed the staff summary report and photographs. She acknowledged that she has seen examples of tree carvings such as bears, etc. however those were sculptures rather than a tree that has been painted.

Ms. MacDonald noted that the property owner had done a good job of resolving a number of other issues relating to code enforcement notices.

Ms. MacDonald explained that there is a two (2) week period following an abatement approval during which the property owner and/or resident come bring the property up to code and that in this case, that would allow a transition period for the dead palm tree to become a piece of actual sculpture/artwork.

DECISION:

Ms. MacDonald approved the abatement for CE163628.

3. Review of compliance with assigned Conditions of Approval for a use permit approved on May 18, 2016 to allow a vocational school for **VALLEY VOCATIONAL ACADEMY (PL160115)** located at 1845 East Broadway Road, Suite No. 114. The applicant is Dan Nussbaum.

Lee Jimenez, Senior Planner, gave an overview of this case, stating that this vocational school is located in Suite 114 of the Broadway Square Shopping Center located on the southeast corner of East Broadway Road and South McClintock Drive in the CSS, Commercial Shopping and Services District. The approval of the use permit on May 18, 2016 conditioned that the applicant return to the hearing Officer for a six (6) month review of compliance after opening for business. Mr. Jimenez stated that there have been no commercial complains and to date staff has not received any public input concerning the operations of Valley Vocation Academy. As noted in the staff report, staff believes that the Valley Vocational Academy is in compliance with all conditions of approval and supports the continuation of the use permit.

Mr. San Nussbaum was present to represent this case. His attendance at this public hearing was acknowledged by Ms. MacDonald.

Ms. MacDonald noted that the applicant has been found to be in compliance with the assigned Conditions of Approval, and that although use permits for vocational schools typically do not require a 6 month compliance review, the suite's change in use from retail to a vocational school is considered intensification. The applicant has proved that the school's use is compatible with this location.

DECISION:

Ms. MacDonald noted that this applicant (Valley Vocational Academy) was in compliance with the assigned Conditions of Approval and that the use permit remained active.

4. Request approval of a use permit to allow a restaurant with a drive through for **JIMMY HULA'S (PL160365)** located at 1202 West Broadway Road. The applicant is Leonard Allsup of Storied Restaurant Concepts – Phoenix LLC.

Lee Jimenez, Senior Planner, gave an overview of this case. He noted that the Jimmy Hula's is a new restaurant operating at the former Long John Siler's site located at 1202 West Broadway Road which is north of West Broadway Road, east of south Cutler Drive and west of South Beck Avenue in the CSS, Commercial Shopping and Services District.

Mr. Jimenez explained that the Zoning and Development Code began requiring use permits for restaurants with a drive-through in this particular commercial zoning district on January 20, 2005. When Long John Silver's was in operation, the drive-through was considered a legal non-conforming use a.k.a. grandfathered use since it predated the use permit requirement. However, the grandfathered status has since been lost when the restaurant ceased operations for a period in excess of one (1) year according to Chapter 5 – Non-Conforming Use or Development of the Zoning and Development Code. The applicant is requesting this use permit to reactivate the drive-through. Staff has received no public input on this request and believes that this application meets all approval criteria for a use permit. Staff supports this request subject to the proposed Conditions of Approval.

Mr. Leonard Allsup 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 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 restaurant with a drive-through for PL160365 subject to the following Conditions of Approval:

1. The use permit is valid only after a building permit, if required, 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. 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. Request approval of a use permit to allow a private university for the **UNIVERSITY OF DUBUQUE (PL160364)** located at 2900 South Diablo Way. The applicant is Carol Kleinberg of The Muller Company.

Dean Miller, Planner II, gave an overview of this case. He explained that the property is located at the southwest corner of West Alameda Drive and South Diablo Way within the Diablo Technology Park in the GID, General Industrial District. The university will be located in a 13,800 s.f. suite on the second floor of Building D.

Mr. Miller explained that the University of Dubuque is a small, private university offering undergraduate, graduate and theological seminary programs. The school will be in session Monday – Friday, 6 PM to 9 PM. The office hours will be Monday – Friday 8 AM to 5 PM. The University will consist of 25 to 30 staff members including instructors. Staff has reviewed the information provided by the applicant and their analysis of the request did not result in any concerns regarding this use. Mr. Miller stated that staff supports the request for the private university. Staff has received no public input on this request.

Ms. MacDonald questioned Mr. Miller as to whether the parking situation had been reviewed, and if there was adequate parking available to support the use at this location. Mr. Miller confirmed that the issue had been reviewed, and that the location meets the parking requirement(s).

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

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 private university for PL160364 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 the 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. Any intensification or expansion of use shall require a new use permit.
4. Hours of operation to end no later than 10:00 p.m. on a daily basis.

ANNOUNCEMENTS

- The next Hearing Officer public hearing is scheduled for Tuesday, December 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:

A handwritten signature in blue ink that reads "Steve A. Abrahamson". The signature is written in a cursive style and is contained within a rectangular box.

Steve Abrahamson, Principal Planner
For Vanessa MacDonald, Hearing Officer

SA:dm