

**Minutes  
HEARING OFFICER  
MARCH 5, 2013**

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.

**Present:**

Vanessa MacDonald, Hearing Officer  
Steve Abrahamson, Planning & Zoning Coordinator  
Sherri Lesser, Senior Planner  
Diana Kaminski, Senior Planner  
Michael Spencer, Senior Code Inspector  
Brandy Zedlar, Code Inspector  
Shawn Daffara, Code Inspector  
Julie Stenner, Executive Assistant

**Number of Interested Citizens Present: 28**

Meeting convened at 1:44 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 March 19, 2013 at 3:00 PM, to the Community Development Department.

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1. Ms. MacDonald noted that the Hearing Officer Minutes for February 19, 2013 had been reviewed and approved.

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2. Request approval to abate public nuisance items at the CARRILLO PROPERTY (PL130016) located at 504 East Bell De Mar Drive. The applicant is the City of Tempe.

There was no one present to represent the property owner.

Brandy Zedlar requested a 180 day open abatement for the property located at 504 East Bell De Mar Drive. The property is in violation of deteriorated landscape, junk and debris. A complaint was received on September 28, 2012. A citation has been issued to the property owner in which he did appear in court and was found responsible. Mr. Carrillo indicated the property was in the foreclosure process and he has no intention to clean up the property at this time. A tree has recently uprooted and needs to be removed from the property. This item will be added to the abatement. The 180 day open abatement is being requested due to the property being vacant.

Ms. MacDonald stated since the property is going into foreclosure the 180 day open abatement is necessary.

**DECISION:**

Ms. MacDonald approved abatement proceedings for PL130016/ABT13002 for an open period of 180 days.

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3. Request approval to abate public nuisance items at the FELSINGER PROPERTY (PL130029) located at 1031 East Lilac Drive. The applicant is the City of Tempe.

There was no one present to represent the property owner.

Michael Spencer requested a 180 day open abatement for the property located at 1031 East Lilac Drive. The property is in violation of deteriorated landscape. Notices have been sent to the property owner and he has failed to take any action to alleviate the problems with the landscape at this property. This property has been abated several times over the years. The owner has shown no indication that he will maintain the property.

Ms. MacDonald agreed the property is in a state of disrepair.

**DECISION:**

Ms. MacDonald approved abatement proceedings for PL130029/ABT13003 for an open period of 180 days.

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4. Request approval to abate public nuisance items at the BROWN PROPERTY (PL130035) located at 2512 East Del Rio Drive. The applicant is the City of Tempe.

There was no one present to represent the property owner.

Shawn Daffara is presenting this case for Jody Benson. A 180 day open abatement has been requested for the property located at 2512 East Del Rio Drive. This case originated in February 2012. The property has been in violation of weeds, junk and debris, and inoperable vehicles. Inspector Benson sent notices and found out the property owner is deceased. The property owner has a son in the vicinity that was trying to clean up the property but has failed to do so. Staff is asking for an abatement to remove the inoperable vehicles, junk and debris and clean up the deteriorated landscaping. The property is still in the deceased owners name at this time.

**DECISION:**

Ms. MacDonald approved abatement proceedings for PL130035/ABT13004 for an open period of 180 days.

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5. Request approval for a Use Permit to allow a tobacco retailer (electronic cigarette retail business) for ZIKWID (PL130020) located at 725 South Rural Road, Suite #111. The applicant is Chad E. Green, ECIGsupply LLC DBA Zikwid.

Chad Green was present to represent this case.

Diana Kaminski introduced the case. The property is located at 725 South Rural Road, on the north east side of Rural Road and University Drive in the Cornerstone Shopping Center. It is a suite within an existing commercial development. The applicant is requesting a Use Permit for a tobacco retailer. The business is for an electronic cigarette retailer. Staff has not received any public input. Staff recommends approval of the Use Permit. The applicant has reviewed the conditions of approval. Condition number 7 regarding the hours of operation can be removed.

Ms. MacDonald stated condition number 7 would limit the hours of operation. Some of the other tenants in the Cornerstone shopping center are open until 9:00 PM. Ms. MacDonald asked Mr. Green if he would be selling tobacco products.

Mr. Green stated they would not be selling tobacco products. The business is strictly electronic cigarettes.

Mr. Green agreed to the conditions of approval.

There was no public input.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

1. Traffic generated by this use should not be excessive.
2. It won't create a nuisance resulting from odor, dust, gas, noise, vibration, smoke, heat or glare.
3. It won't contribute to the deterioration of the neighborhood.
4. It is compatible with existing surrounding structures and uses.
5. Will allow you to adequately control disruptive behavior both inside and outside the property.

**DECISION:**

Ms. MacDonald approved PL130020/ZUP130006 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 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. No outdoor live entertainment or outdoor speakers shall be allowed.
6. Live entertainment requires a separate Use Permit.
7. ~~Hours of operation to end no later than 8pm on a daily basis.~~ (REMOVED BY HEARING OFFICER)

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6. Request approval for a Variance to reduce the west street side yard setback for an attached garage addition for the SHEKERJIAN RESIDENCE (PL130021) located at 1301 East Myrna Lane. The applicant is Brian Shekerjian.

Brian Shekerjian was present to represent this case.

Sherri Lesser introduced the case. This is a Variance to reduce the west side yard setback for a garage addition. This property is located in the Corona Del Sol Estates, south of Warner Road and west of McClintock Drive. Staff is recommending approval of the Variance. The Staff Report outlines how the tests have been met to receive a Variance. Staff has not received any opposition or letters of support regarding this request. The applicant submitted a petition of support from the neighborhood meeting.

Ms. MacDonald stated she saw the petition of support that was included in the Staff Report as well as the list of the other Variances granted in the neighborhood. She asked Ms. Lesser how the easement affects this property.

Ms. Lesser stated there are four easements on this property. There were over twenty Variances granted in this subdivision for side yard setbacks varying from two feet down to a minimum of three feet. This property is the only one she saw with an easement. The easement was noted strictly for information. The property owner cannot build or encroach in the easements.

Mr. Shekerjian had a question regarding the on-site retention noted in condition number 2. He will check with the Public Works Department – Engineering for clarification.

Mr. Shekerjian agreed to the conditions of approval.

Ms. MacDonald stated she saw another house in the neighborhood with a very similar addition. This provided a good visual representation and it is a good looking addition.

There was no public input.

Ms. MacDonald noted that this request meets the criteria for a Variance and found as follows:

1. She does believe that special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings.
2. She believes the strict application of this Code will deprive this property of privileges enjoyed by other property of the same classification in the same zoning district.
3. The adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.
4. She does not believe that special circumstances are self-imposed by the property owner.

**DECISION:**

Ms. MacDonald approved PL130021/VAR13001 subject to the following conditions:

1. The variance is valid for the plans as submitted within this application.
2. The applicant shall obtain all necessary permits and clearances from the Public Works Department-Engineering and Building Safety Division for on-site retention and construction documents.

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7. Request approval for a Use Permit to allow a tobacco retailer (electronic cigarette retail business) for SYNERGY VAPOR LABS (PL130023) located at 3415 South McClintock Drive, Suite #106. The applicant is David Phemister, Synergy Labs LLC.

David Lee Phemister was present to represent this case.

Diana Kaminski introduced the case. Synergy Vapor Labs is located at the south east corner of Southern Avenue and McClintock Drive in an existing commercial shopping center. The applicant is requesting a Use Permit for a tobacco retailer. The use is for electronic cigarettes. Staff has not received any calls of inquiry from the public regarding this use. The applicant is familiar with the conditions of approval. There are a few changes to be read into the record. Condition number 7 regarding the hours of operation can be removed. The hours of operation can be left at the discretion of the tenant. There was an issue with the Certificate of Occupancy that was discovered today. This issue will need to be resolved by the property owner. Staff added condition of approval number 8 which reads: The property owner shall resolve the certificate of occupancy for the suites within the building within 60 days of this approval.

The property owner and property manager had previously come in with an applicant for a smoke shop tobacco retailer to be located in the other building on this site. The placement of the building was too close to McClintock High School for a tobacco retailer due to the separation requirements. The tobacco retailer successfully relocated into one of the suites of the adjacent building. The same property owner and property manager allowed the current applicant to occupy a suite in the building that is closer to the school. It has been determined the new applicant is also too close to the school. A recommendation has been made to look for a suite in the other building. The tenant is currently in discussion with the property owner. He has already opened his business in the first suite facing Southern Avenue. Diana Kaminski presented pictures of the suite the applicant has already improved. The applicant will now need to make improvement on the suite he will be relocating to. The flooring, paint, carpet, and wall furnishings will need to be improved in the new suite. The improvements will not require a building permit. There is a discrepancy with the suiting map that identifies three suites, but the Certificate of Occupancy identifies those three suites as one space. The Certificate of Occupancy will need to be resolved for the benefit of the tenant.

Mr. Abrahamson stated staff will follow-up and make sure the Certificate of Occupancy is accommodated.

Mr. Phemister stated due to the verbiage of being a tobacco retailer in the Zoning Ordinance there was some confusion missed by some of the involved parties. He is going to lose the money he used to improve the first suite occupied. Electronic cigarettes are an emerging industry and a new product designed to transition people away from using tobacco. They are not really cigarettes in any form. E-cigarettes are vaporizers and batteries with a nicotine base solution. They are a nicotine delivery system that you use instead of smoking tobacco. In 2010 electronic cigarettes were placed under tobacco retailer in the Zoning Code. He believes there is a lack of knowledge of the product. By design this product gets people off of tobacco and helps them taper off the nicotine until they are done altogether. Electronic cigarettes do not fall under tobacco or smoking in the available legislature in the Smoke Free Act of Arizona and SB1280. He is concerned that the property owner may terminate his lease due to the Certificate of Occupancy.

Ms. MacDonald indicated the Zoning Code has not kept up with the different innovations of different products. This may be addressed when the code is revised.

Mr. Phemister was concerned over the exclusivity rights for his business at that particular property.

Ms. MacDonald stated the exclusivity rights would be between the tenant and the landlord.

Mr. Phemister agreed to the conditions of approval.

There was no public input.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

1. Traffic generated by this use should not be excessive.
2. It won't create a nuisance resulting from odor, dust, gas, noise, vibration, smoke, heat or glare.
3. It won't contribute to the deterioration of the neighborhood.
4. It is compatible with existing surrounding structures and uses.
5. Will allow you to adequately control disruptive behavior both inside and outside the property.

**DECISION:**

Ms. MacDonald approved PL130023/ZUP13010 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 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. No outdoor live entertainment or outdoor speakers shall be allowed.
6. Live entertainment requires a separate Use Permit.
7. ~~Hours of operation to end no later than 9pm on a daily basis.~~ (REMOVED BY HEARING OFFICER)
8. **The property owner shall resolve the certificate of occupancy for the suites within the building within 60 days of this approval. (ADDED BY STAFF)**

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8. Request approval for a Use Permit to allow a fraternity for TEMPE DORMS/CAMPUS LOFTS (PL130011) located at 1116 East Lemon Street. The applicant is Janine Meighen-Urquilla, AZ Rental Homes.

Continued from February 19, 2013

Janine Meighen-Urquilla, AZ Rental Homes and Justin Marino, Fraternity Member of Phi Gamma Delta (Fiji) were present to represent this case.

Diana Kaminski introduced the case. The property is an existing established apartment community located on the north side of Lemon Street in a primarily R-4 Multi-family Residential District. The Tempe Dorms application is to allow a fraternity to occupy the existing apartment community. This would be for the Alpha Sigma Chapter of the Phi Gamma Delta (Fiji) Fraternity. It would not be for all the members of the community. The fraternity has approximately 90 members. There are 17 units in the apartment complex with an on-site student manager as well as the management company that manages the property for the property owner. The fraternity members have been residing at the location for approximately two years and were not aware of the requirement for the Use Permit. Staff reviewed the previous activity on the site to get a sense if there was a change from a previous use as an apartment community to the fraternity. Up until recently the comparative data has been about the same as other apartment communities in the area. There are several conditions of approval. An additional condition of approval will be added which reads: 10. The Use Permit conditionally approved until 12/17/2013. After that date, staff shall evaluate and may administratively renew the Use Permit for an unlimited time period with no additional fee to applicant. If unable to approve administratively, application shall return to Hearing Officer in Public Hearing.

Ms. MacDonald stated the Use Permit may be administratively renewed. If there are a sufficient amount of complaints another hearing would be necessary.

Ms. Kaminski stated she has received a few calls of inquiry that have expressed concern about loud parties.

Ms. MacDonald stated the Staff Report noted inquiries from five individuals. Two expressed concern about noise and parties. One express concern with parking, but felt the issue has been resolved after communication with the manager on site. One parent called, who is in support of the application. A fraternity member living at the complex also expressed support for the requested Use Permit.

Ms. Meighen-Urquilla from AZ Rental Homes is here to represent the property owner. She stated representatives were present from the fraternity. Ms. Meighen-Urquilla agreed to the conditions of approval. She stated the members of the fraternity would be responsible for the Special Event permits. The fraternity will be notified of all the conditions of approval if the Use Permit is granted.

David Watkins is part of the graduate group that works with Alpha Sigma Chapter Phi Gamma Delta. He is part of the housing corporation which is a group of graduates that are responsible and work with the under graduate group as well as the international headquarters in terms of operations of facility for the fraternity. They are in constant contact with the brothers that live at the property and with Janine to make sure the property is in good order. They also work on the upkeep and improvements of the property.

Ms. MacDonald stated she wanted to go over the conditions of approval listed in the Staff Report with someone who would be at the property on a daily basis. The concern on this property is some of the behavioral issues.

Justin Marino, Fraternity Member of Phi Gamma Delta (Fiji) lives at this apartment complex.

Ms. MacDonald reviewed some of the conditions of approval. This Use Permit does not grant any outdoor live entertainment. A Special Event Use Permit would be required for each event. If a Special Event permit is not obtained and the Police Department is called it will be a verifiable complaint. The applicant will need to work with City of Tempe Crime Prevention Unit for a security plan prior to April 5, 2013. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the Use Permit becoming effective. Fire sprinklers shall be installed within the next two years to bring this property into compliance. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Dead or missing trees and landscape material will need to be replaced. The Use Permit criteria looked at by the Hearing Officer includes two items that are related to behavior. They are adequately controlling disruptive behavior both inside and outside the property and not creating a nuisance arising from odor, dust, gas, noise, vibration, smoke, heat or glare which exceeds ambient conditions. Noise and vibration from loud parties are primary concerns.

Justin Marino agreed to the conditions of approval. He stated they are doing their best right now and are striving to improve. The fraternity wants to comply with the City and their neighbors as well.

Kenneth Burger indicated the lot next door, 1122 East Lemon has also been purchased by a fraternity with intent to evict the current occupants and have it ready for use as a frat house, putting two frat houses next door to each other. Mr. Burger stated his concern with the proximity issue.

Ms. MacDonald stated city staff will need to be diligent to follow up with the property owner to let them know there is a Use Permit process in effect prior to converting this apartment complex to a fraternity house.

Ms. Kaminski stated some uses have separation requirements. There is no proximity separation requirement for fraternity uses.

Chuck Buss was present to represent University Heights Neighborhood Association. He spoke in opposition of the Use Permit. His neighborhood is about 900 feet east of this property. He stated his concerns regarding noise, loud parties, traffic and loitering. He has visited the site a few times on a Thursday afternoon and on a Saturday night around midnight. He did not see parties, but it seems to be a frequently visited location. Nobody wants to have a bunch of fraternities next to their neighborhood. He was disappointed that ASU tore down the north and south fraternity rows. He spoke with Stephanie Salazar at ASU and she indicated they are working on a new dormitory complex south west of Apache and Rural. They are trying to encourage fraternities to reside there. Mr. Buss believes the fraternities would be better off away from neighborhoods and around other fraternities. He likes the additional condition to review the Use Permit. He asked how many complaints it would take to trigger a full-fledged public hearing.

Ms. MacDonald stated the condition was strengthened with the expiration date of the Use Permit. If there are not any significant issues the Use Permit can be renewed. If there are verifiable complaints that involve Police activity the Use Permit does not need to be renewed.

Mr. Abrahamson stated if there are neighborhood concerns they will be monitored and the City will work with the neighborhood regarding issues of this particular use.

Ms. Kaminski stated this condition has been used on other uses and with previous cases. The Hearing Officer recently went through a revocation process for a Use Permit. If this stipulation would have been in place the process would not have taken the length of time that it did.

Ms. MacDonald stated the Use Permit criteria will be looked at by staff administratively. This apartment complex is surrounded by other apartment complexes. It will need to be compared to the other apartment complexes in the area. The property will be evaluated by the number of police calls along with other objective criteria.

David Watkins spoke in favor of the Use Permit. The importance of developing young men is expanded upon by a fraternity. Management, budgeting, the operations of a company, the interaction of personnel are all building better young men. The housing capacity that the current location allows is the extent of community or brotherhood. There are opportunities to help the community. Parties are not the main focus of the fraternity. Parties may possibly take place but they will be monitored and they will be responsible. Mr. Watkins requested the conditions of approval to allow the fraternity to be focused on the items that need to be addressed. This is all part of the educational process the Greek system is responsible for and participates in. The security issue is extremely important. This is how the whole process began by trying to install a gate on the property to reduce the transient activity. The intent is to install the gate after this process is complete. Prior to the fraternity living at this location a party or two probably took place at the apartments. The fraternity brings a sense of ownership to the property.

Philip Heide, volunteer advisor to Alpha Sigma Chapter, Phi Gamma Delta is in favor of the Use Permit. He has nothing to add to Mr. Watkins comments.

Scott Minchuk has been a member of the Phi Gamma Delta Fraternity at Arizona State for four years. He spoke in favor of the Use Permit. He will be graduating this semester. He is also the President of Order of Omega at Arizona State University. Order of Omega is a Greek Honor Society that promotes fellowship among all Greeks. He represents about 150 people. This house is important to the fraternity. This is the first fraternity to apply for a Use Permit in Tempe. They are leaders, they want to follow the rules and help out. The fraternity participates in many philanthropy events and volunteer events. They also sponsor Terrace Road by doing street cleanings several times a year. They are helping the community by picking up trash and painting over graffiti. They take care of the community and want to be a part of it. The fraternity members have improved their current property and they work directly with their neighbors. They have resided at this location for two years. The fraternity has done well in the past few years and they are going to continue to do that. The fraternity is very involved with ASU. They have donated books and canned food to those in need. They just participated in a dance marathon which gives back to the Phoenix Children's Hospital. They are good members of this community.

Ms. MacDonald stated she looked at the Fiji Page on Facebook. She was impressed with the activities the fraternity has participated in. She believes the members present today have made a commitment to be good neighbors. She thinks they will do a good job spreading the word to the fraternity brothers and visitors as well.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

1. Traffic generated by this use should not be excessive.
2. It won't create a nuisance resulting from odor, dust, gas, noise, vibration, smoke, heat or glare.
3. It won't contribute to the deterioration of the neighborhood.
4. It is compatible with existing surrounding structures and uses.
5. Will allow you to adequately control disruptive behavior both inside and outside the property.

**DECISION:**

Ms. MacDonald approved PL130011/ZUP13002 subject to the following conditions:

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. Any intensification or expansion of use shall require a new Use Permit.
4. No outdoor live entertainment (this includes bands and disc jockeys) or outdoor speakers shall be allowed unless part of a special event use permit.
5. Special events require a separate special event permit per event.
6. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact Crime Prevention at 480-350-8714 before April 5, 2013.
7. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the use permit becoming effective.
8. All nonconforming building lighting shall be removed and replaced with compliant light fixtures.
9. Replace all dead or missing trees and landscape material.
10. **The Use Permit conditionally approved until 12/17/2013. After that date, staff shall evaluate and may administratively renew the Use Permit for an unlimited time period with no additional fee to applicant. If unable to approve administratively, application shall return to Hearing Officer in Public Hearing. (ADDED BY HEARING OFFICER)**

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9. Request approval for a Use Permit to allow a wireless communications facility, monopole and equipment shelter for VERIZON PHO CHIGORIN (PL130018) located at 9365 South McKemy Street. The applicant is Michael J. Campbell, Verizon Wireless by Campbell A&Z, LLC.

Continued from February 19, 2013

Michael J. Campbell was present to represent this case.

Steve Abrahamson introduced the case. This is a request for wireless facility in the form of a monopole. The request is for a Use Permit to allow a 60 foot monopole in the GID, General Industrial District off of McKemy Street. This is in the southern portion of the City of Tempe near a residential area within the City of Chandler. The request meets all the criteria for a Use Permit. Staff has received one concern from a neighbor to the south, within the City of Chandler over the appearance of the requested antenna. Through the conditions of approval staff is recommending a monopalm instead of a monopole since there was an expressed concern with the location.

Ms. MacDonald stated there are no other palm trees in the area. She asked if there was a different type of tree that could be mimicked by a cell phone tower.

Mr. Abrahamson stated pine trees could be mimicked, but there are no pine trees in this area as well.

Mr. Campbell is the consultant for Verizon Wireless. Verizon is proposing a 60 foot monopole in the GID, General Industrial District. Warner Road Business Park is a major industrial complex. The monopole would be located on the north side of the four acre parcel. The primary building is almost 28 foot tall. There are currently two tenants in the building. The building is used for manufacturing and distribution type uses. The proposed site is located on the north end of the property. The proposed project would take up approximately four parking spaces and one parking island, measuring an area of about 20 feet by 42 feet. The monopole and equipment cabinet would be surrounded by an 8 foot cmu block wall. Staff has requested a parking island at the east end. The applicant thought it would be more affective on the west end near McKemy, but they are willing to place it wherever staff wants it. The applicant just received the Staff Report on Friday and that was the first he had heard of the recommended monopalm. Prior to Friday, the suggested monopalm had not been communicated to him. He respects the fact that someone may have a differing opinion as to what might be a visual impact. A monopole allows more flexibility with the antennas than a monopalm. There is another monopole within the industrial park. The other pole is not noticeable; it is located between two industrial buildings. The nearest house is located 507 feet from the proposed antenna site. Due to the distance, the large industrial buildings and the trees, the visual impact of the monopole from the neighborhood would be minimal. The applicant prefers the monopole over the monopalm due to the placement of the antennas and the flexibility it allows.

Ms. MacDonald noted she received an email and aerial views from Rich Grams. The email does not include his address. Ms. MacDonald believes a monopole is completely appropriate for this location. Condition number 6 recommending the modified monopalm will be removed.

Mr. Campbell agreed to the conditions of approval.

Ms. MacDonald read the email from Rich Grams into the record. He stated his concern regarding the proposed location of the monopole and the proximity to upscale houses in Ray Ranch Estates. He believes there are other possible locations for the monopole north of Warner between the railroad tracks and Kyrene. He stressed the severity of this proposal.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

1. Traffic generated by this use should not be excessive.
2. It won't create a nuisance resulting from odor, dust, gas, noise, vibration, smoke, heat or glare.
3. It won't contribute to the deterioration of the neighborhood.
4. It is compatible with existing surrounding structures and uses.
5. Will allow you to adequately control disruptive behavior both inside and outside the property.

**DECISION:**

Ms. MacDonald approved PL130018/ZUP13005 subject to the following conditions:

1. The Use Permit is valid for the plans as submitted within this application.
2. The applicant shall provide updated tenant and parking data during planning plan check process.

3. Obtain all clearances from Building Safety prior to use permit becoming effective.
4. Provide a landscape island, designed per ZDC requirements, at the west end of scope of work area.
5. All equipment to be removed within 30 days of termination of use.
6. ~~The tower to be modified to a 60' high monopalm, design and details to be reviewed in planning plan check process.~~ (REMOVED BY HEARING OFFICER)

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10. Request approval for a Use Permit to allow a restaurant/bar for the FIREHOUSE (PL120431) located at 4 East University Drive. The applicant is Amy Nations.

**Continued from February 19, 2013**

William G. Was III was present to represent this case.

Diana Kaminski introduced the case. The applicant is requesting a Use Permit to allow a bar in the City Center Zoning District. The property is located at the north east corner of Mill Avenue and University Drive. The Firehouse opened last year as a restaurant. They have been very successful with their sales of alcohol and they are applying for an Arizona State Liquor License to change from a Series 12 Restaurant license to a Series 6 Bar license. The Use Permit is required to change the use from a restaurant to a bar. Staff has not received any inquiries from the public. Staff reviewed and supports the shared parking analysis that was submitted by the applicant. Staff recommends approval of the Use Permit for the bar.

Ms. MacDonald reviewed condition of approval number 5 which reads Outdoor vending requires a separate Use Permit. It was her understanding there has been some outdoor grilling and sales of hamburgers or hotdogs.

Mr. Was stated they would not be doing that again without going through the proper channels.

Ms. MacDonald indicated the Firehouse would be back to process a Use Permit for live entertainment.

Mr. Was stated they would be back for the live entertainment Use Permit.

Mr. Was agreed to the conditions of approval.

There was no public input.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

1. Traffic generated by this use should not be excessive.
2. It won't create a nuisance resulting from odor, dust, gas, noise, vibration, smoke, heat or glare.
3. It won't contribute to the deterioration of the neighborhood.
4. It is compatible with existing surrounding structures and uses.
5. Will allow you to adequately control disruptive behavior both inside and outside the property.

**DECISION:**

Ms. MacDonald approved PL120431/ZUP12131 subject to the following conditions:

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. Any intensification or expansion of use shall require a new Use Permit.
4. No live entertainment is allowed without a separate use permit.
5. Outdoor vending requires a separate use permit.

6. No outdoor speakers shall be allowed.
7. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact William Gallauer at 480-350-8749 before March 19, 2013.
8. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the use permit becoming effective.
9. Business hours are: Monday-Thursday 10am-2am, Friday-Sunday 8am to 2am.

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The next Hearing Officer public hearing will be held on March 19, 2013.

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There being no further business the public hearing adjourned at 3:22 PM.

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Prepared by: Julie Stennerson, Executive Assistant  
Reviewed by:



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Steve Abrahamson, Planning & Zoning Coordinator  
for Vanessa MacDonald, Hearing Officer

SA:js