

**Minutes  
HEARING OFFICER  
MARCH 19, 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  
Diana Kaminski, Senior Planner  
Ryan Levesque, Senior Planner  
Julie Stenner, Executive Assistant

**Number of Interested Citizens Present: 5**

Meeting convened at 1:30 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 April 2, 2013 at 3:00 PM, to the Community Development Department.

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1. Ms. MacDonald noted that the Hearing Officer Minutes for March 5, 2013 had been reviewed and approved.

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2. Request approval for a Use Permit to exceed the maximum allowed surface parking (125% of the minimum required) for 1600 DESERT DRIVE (PL130019) located at 1600 North Desert Drive. The applicant is Steven Nevala, Cawley Architects, Inc.

Steven Nevala, Cawley Architects, Inc. was present to represent this case.

Ryan Levesque introduced the case. The property is located on the north west corner of Washington Street and Desert Drive. The applicant would like to remodel the existing building on the site into a multi-tenant office space. The remodel would include removal of a portion of the building, exterior building modifications and the expansion of the existing surface parking. The parking requirement will be increased from the minimum required to 395 spaces or 132%. The maximum allowed surface parking is 125%. The applicant would also be required to provide some additional landscaping within and around the perimeter of the parking lot area. Both staff and the applicant are in agreement with the proposed conditions of approval. Staff recommends approval of this request.

Ms. MacDonald stated this property was previously a single user space. The applicant would like to use the property for office space for multiple tenants. That creates a larger need for parking.

Mr. Levesque stated this creates a reduction in the minimum required parking since a portion of the building will be eliminated. The applicant would like to add some additional parking spaces as well as change some of the circulation on the site based on the demand for the multi-tenant users that will be coming forth.

Ms. MacDonald asked Mr. Levesque at what point in the process would the landscape improvements occur.

Mr. Levesque stated the Use Permit Standard would require 12% of the parking lot area to be landscaped. The applicant currently has landscape and building modification submittal on file with staff. Staff will work with the applicant to meet the minimum requirement. One of the conditions of approval includes replacing all dead/missing trees and shrubs along the perimeter of the property and within landscape islands.

Mr. Nevala 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 PL130019/ZUP13012 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, as part of the Building Permit process.
2. The Use Permit to exceed the maximum allowed parking (125%) is valid for the plans as submitted within this application. Any additions or modifications may be submitted for further review during building plan check process.
3. Replace all dead/missing trees and shrubs along the perimeter of the property and within landscape islands. The site shall be inspected as a part of the building permit inspection process. Call for a Planning landscape inspection at (480) 350-8072 (enter inspection code 699#)

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3. Request approval for a Use Permit to allow a tobacco retailer (electronic cigarette retail business) for UPTOWN VAPORS, LLC dba VAST VAPORS: E-CIGARETTE STORE (PL130049) located at 3121 South Mill Avenue. The applicant is Christina Casteel, Uptown Vapors, LLC.

Christina Casteel and Bob Casteel were present to represent this case.

Diana Kaminski introduced the case. The property is located on the north east corner of Mill Avenue and Southern Avenue in the Huntington Square shopping center. Huntington Square is an existing commercial center. The suite for Uptown Vapors dba Vast Vapors is located on the north end of the property. The applicant has reviewed the proposed conditions of approval. Staff has not received any calls of inquiry from the public. Staff recommends approval of the Use Permit.

Ms. Casteel stated e-cigarettes contain nicotine, not tobacco. The two have not been differentiated in the Zoning Code yet.

Mr. and Ms. Casteel agreed to the conditions of approval.

Ms. MacDonald stated it is a quirk in the Code that retailers selling electronic cigarettes which do not contain tobacco are considered as tobacco retailers.

Christopher Pallus lives near Mill Avenue and Southern Avenue in Tempe. He stated his concern regarding the recent shootings at other local smoke shops. He indicated within the last six months there have been three

shootings, several calls to police, and burglaries in the Huntington Complex. He would prefer to see a family oriented business instead of tobacco sales, head shops or a hookah lounge. He would like to see the businesses attract a different type of crowd.

Ms. MacDonald stated she was not aware of the criminal activity. She stated there is a lot of vacant space in the shopping center. There would be plenty of opportunities for other businesses in this space.

Mr. Abrahamson stated there was a recent shooting in the parking lot of the Huntington Square Shopping Center related to the Olive Branch Mediterranean restaurant. This is not the business before the Hearing Officer today. Uptown Vapors dba Vast Vapors is a retail business. It is not characteristically a smoke shop. They are selling electronic cigarettes and e-cigarette accouterment only. The applicant will not be selling bong, papers, or any other head shop like materials at this shop. He was unaware of any other shootings that have taken place in the shopping center.

Mr. Pallus stated the Olive Branch is more of a hookah lounge than a restaurant. He has witnessed an adult smoking with her two kids right next her. He was disappointed that the owner allows that at the establishment. He and his neighbors have had to call the Police Department multiple times regarding parties being held at the smoke shop and the two bars in the shopping center. He asked if the e-cigarette shop would be having a large grand opening or late night parties.

Ms. Kaminski stated there are six conditions of approval. They include: No intensification or expansion of the use, No outdoor live entertainment or outdoor speakers, Live entertainment requires a separate Use Permit. The Use Permit the applicant is requesting is entirely an interior retail use.

Mr. Pallus would like to see all of the smoke shops gone in the neighborhood. He stated there are smoke shops on all four corners at this location that sell marijuana, rolls, or bong. It brings the negative crowd into the area. He asked if the new business would be in compliance with Huntington Square. He asked if one of the bars or smoke shops would be kicked out of the shopping center due to the new e-cigarette business.

Ms. Kaminski stated no, we do not restrict the number of businesses of similar use. It is a vacant suite they are occupying.

Ms. Casteel addressed the concerns raised by Mr. Pallus. Ms. Casteel stated she understood the concerns. The business is not like Blaze. The business is upscale. She invited Mr. Pallus to come in to visit the establishment as soon as they open. The business is strictly small electronic devices with small cartridges for the nicotine solution. The business actually promotes non-smoking. There will be three display cases that contain the liquid, batteries and the accessories.

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 PL130049/ZUP13013 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.

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The next Hearing Officer public hearing will be held on April 2, 2013.

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There being no further business the public hearing adjourned at 1:52 PM.

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Prepared by: Julie Stennerson, Executive Assistant  
Reviewed by:

A handwritten signature in blue ink that reads "Steve Abrahamson". The signature is written in a cursive style and is positioned above a horizontal line.

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

SA:js