

Minutes HEARING OFFICER AUGUST 6, 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 Michael Spencer, Senior Code Inspector Jody Benson, Code Inspector Robert Ferraro, Police Officer Julie Stennerson, Executive Assistant

Number of Interested Citizens Present: 46

Meeting convened at 1:45 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 20, 2013 at 3:00 PM, to the Community Development Department.

1. Ms. MacDonald noted that the Hearing Officer Minutes for July 16, 2013 had been reviewed and approved.

2. Request approval to abate public nuisance items at the **BENJAMIN PROPERTY (PL130221)** located at 30 East Fillmore Street. The applicant is the City of Tempe – Code Compliance.

There was no one present to represent the property owner.

Michael Spencer requested a 180 day open abatement for the property located at 30 East Fillmore Street. The property is in violation of deteriorated landscaping. Two courtesy notices were issued to the property owner for voluntary compliance. No change in the landscape has been noted. One citation was issued to the owner for failure to bring the property into compliance with the landscaping. The property owner failed to appear in court on the citation.

Ms. MacDonald agreed, the property is a nuisance and needs to be abated.

There was no public input

DECISION:

Ms. MacDonald approved abatement proceedings for PL130221/ABT13020 for an open period of 180 days.

3. Request approval to abate public nuisance items at the **PEREZ PROPERTY (PL130223)** located at 317 East Papago Drive. The applicant is the City of Tempe – Code Compliance.

This property was withdrawn by the request of Code Compliance Staff.

4. Request approval to abate public nuisance items at the **GILMAN PROPERTY (PL130253)** located at 3320 South Country Club Way. The applicant is the City of Tempe – Code Compliance.

There was no one present to represent the property owner.

Jody Benson requested a 180 day open abatement for the property located at 3320 South Country Club Way. The property is in violation of deteriorated landscaping. Staff has been working with the property owner to try to bring the property into compliance. The property owner has had some health problems and has not been able to maintain the property. Courtesy notices and citations have been issued. Staff has contacted a family member at the property owners request to reach out for help. The family member was not able to provide any help. The front and side yards are currently in compliance. Some issues still need to be resolved in the backyard. The back yard contains dead trees and the over height dead grass. The property owner informed staff he would not be able to remove the large dead trees.

Ms. MacDonald stated she would like to approve the abatement. The amount of the abatement is extremely high. She asked Mr. Benson if the cost of the abatement would be adjusted since the front and side yards are now in compliance.

Mr. Benson stated the cost of the abatement would be adjusted. The City would only be billed for the work completed at the property.

There was no public input.

DECISION:

Ms. MacDonald approved abatement proceedings for PL130253/ABT13022 for an open period of 180 days.

 Request approval for a Use Permit to allow a Restaurant/Bar and live entertainment for the 560 BUILDING -SOL DIABLO CANTINA (PL130163) located at 560 South College Avenue, Suite 101. The applicant is Amber Barnett, Lawrence & Geyser Development.

A representative from Barnett, Lawrence & Geyser Development was present to represent this case.

Steve Abrahamson introduced the case. This is a request for a bar with live entertainment. The location is at the south west corner of 5th Street and College Avenue. The site is in the City Center Zoning District. This site is perfectly positioned to be potentially successful at this location. Directly across the street is a 19 story student housing project. There has been a history at this site of bars in the past under different names and ownerships. Sol Diablo would like to expand the area of use and provide live entertainment. Staff has not received any input regarding this request. Staff recommends approval of the request.

The applicant stated the site has been filled many times. They are trying to make the establishment more of a restaurant than a bar. This would provide a family atmosphere and cater to the surrounding area. The expansion of the use is to bring more of a street presence. The restaurant is set back off the street front. Bringing the patio out to the front should help bring in business.

Ms. MacDonald reviewed several of the conditions of approval: Number 2. - Live entertainment hours: 11 am - 12 am (midnight) Sunday – Thursday, 11 am – 1:55 am Friday – Saturday. Number 7. - The facility may be used

for live music, djs, karaoke, and may not be used as a concert venue. No tickets may be sold for entry to the facility and the live music may not be the primary purpose for attendance. Cover charge is permitted. Number 11. - The applicant shall contact the City of Tempe Crime Prevention Unit to review the existing security plan.

The applicant 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 PL130163/ZUP13086/ZUP13087 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. Business hours of operation: 11am-2am
 Live entertainment hours: 11am to 12 am (midnight) Sun-Thurs, 11am-1:55am Fri-Sat
- 3. A sound engineer or management staff shall continually monitor music and amplified sound levels to adhere to the Tempe Noise Ordinance.
- 4. Security staff is responsible for implementation of the security plan and monitoring of the premises both indoors and in the parking lot.
- 5. 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.
- 6. 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.
- 7. The facility may be used for live music, djs, karaoke, and may not be used as a concert venue. No tickets may be sold for entry to the facility and the live music may not be the primary purpose for attendance. Cover charge is permitted.
- 8. No outdoor speakers shall be allowed.
- 9. Doors shall remain closed during live entertainment.
- 10. The live entertainment use shall take place inside only. No live entertainment will be allowed outside.
- 11. The applicant shall contact the City of Tempe Crime Prevention Unit to review the existing security plan within 30 days of this approval. Contact the Police Department at 480-350-8749 before **September 6**, **2013**.
- 12. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the use permit becoming effective.

 Request approval for a Use Permit to allow a Tobacco Retail Hookah Lounge for BROADWAY CENTER – VERTIGO HOOKAH LOUNGE AND CAFÉ (PL130216) located at 1320 East Broadway Road. The applicant is Ali Alsharif, Al Fayhaa LLC.

Continued from July 16, 2013

Ali Alsharif was present to represent this case.

Steve Abrahamson introduced the case. This is a request for Vertigo Hookah Lounge at 1320 East Broadway Road. The site is located in the CSS, Commercial Shopping and Services District. The site was once the Horse & Hound and Clubhouse Music Venue at Dorsey and Broadway Road. Tempe has several hookah lounges.

This request was heard at the last Hearing Officer meeting. There were some unanswered questions with respect to the restroom access, separation of the uses and the leasing of the suite. The suite will be leased by one tenant that has two separate businesses. The larger suite on the east will be a restaurant and the smaller suite on the west will be the hookah lounge. There is a concern about the shared restrooms between the businesses.

Ms. MacDonald stated her concern with the shared restrooms. The hookah lounge requires a Use Permit, but the restaurant does not. The hookah lounge is relying on the facility that does not require a Use Permit. Typically each business would have to stand on its own in terms of ADA Accessibility, restrooms, and mechanical requirements. Allowing access between the two businesses may be creating an unmanageable condition to regulate. The two different uses require different regulations for ventilation.

Mr. Abrahamson stated there are a lot of different regulations by different sets of rules and agencies. The Mechanical Code requires changing the air within a smoking room on a more regular basis than you would in a normal setting. The requirements are based off the occupancy. The conditions of approval state the applicant must follow the guidelines of the Mechanical Code to assure that the ventilation works. At the same time there is the problem with the pass-through, one of which the applicant indicated would be sealed up. The other open pass-through will allow patrons from the hookah lounge to use the restrooms in the restaurant. That may be a concern of the State of Arizona and the Smoke-Free Arizona Act. There should not be openings between uses such as this. Hookah cannot be served in a restaurant. Food can be served within a hookah lounge only if the entire gross receipts for the hookah exceed that of food. The Use Permit is for a tobacco retailer, not a hookah lounge. The guidelines for the business need to be followed.

Ms. MacDonald stated the floor plan looks like the applicant has just set up a smoking section for the restaurant. She realizes the purpose is for hookah, not cigarettes and there is a culture that goes along with that. It's one operator with one space portioning off a section. She does not see the distinction between the two businesses.

Mr. Alsharif stated the site is two different businesses. They did not intend to have a smoking lounge for the restaurant. The business is going to be a hookah lounge and a café. They will be serving Arabic coffee, Turkish coffee some deserts and soda. It will be two separate businesses right next to each other. He indicated there is a separation between the two suites. There will be doors between both businesses and the restrooms will be shared. The hookah lounge will have a ventilation system that will clear the air for up to 1,500 square feet. The suite is less than 1,500 square feet in size. The businesses will have two separate entrances. The applicant requested the hours of operation to be increased past 1:55 am since the establishment is not a bar.

Ms. MacDonald stated the applicant originally asked for the establishment to remain open until 3:00 am. She asked Mr. Alsharif what time the restaurant would be closing.

Mr. Alsharif stated the restaurant would close at 10:00 pm. After 10:00 pm to-go orders would be available.

Ms. MacDonald asked Mr. Alsharif to go over the floor plan related to the access to the restrooms.

Mr. Alsharif displayed an illustration with doors between each business, enclosing the restrooms in the center. The walls at the doorways will extend to the ceiling.

Ms. MacDonald noted condition number 2. The Use Permit is valid for the plans as submitted within this application.

Ms. MacDonald requested additional conditions of approval. 15. The applicant shall file an updated suite map with the Community Development Department. The suite map on file shows the suite being 9,100 square feet. The map does not show the distinction between the two businesses. 16. The applicant shall return to the Hearing Officer for a review of compliance in six months. Ms. MacDonald guestioned the hours of operation.

Mr. Abrahamson stated there have been hookah lounges within the City of Tempe that have operated afterhours. There have been problems with the hookah lounges that have stayed open past 2:00 am.

Mr. Alsharif stated he has seen some of the other hookah lounges with live entertainment. He stated that is not how he is going to operate and that is not his culture. He is against some of the behavior he has witnessed. He indicated his establishment would not include live entertainment and the premises would be under control.

Ms. MacDonald stated in the past some establishments have been treated as an after-hours club with loud music. Alcohol was not provided at the hookah lounges but some of the patrons that had been out drinking all night would show up and the situation was out of control. She stated she is hesitant to expand the hours, but since the Use Permit would be reviewed in six months the hours of operation could be changed if the 3:00 am. is creating a problem.

Ms. MacDonald asked Officer Ferraro if he felt the site plan would be a manageable situation from a Police perspective.

Officer Ferraro asked if there was a liquor license attached to the restaurant.

Ms. MacDonald stated she did not believe so.

Officer Ferraro indicated if there is no liquor license attached to the suite patrons being under the age of 21 would not be an issue. The site plan is not that uncommon. If there are any questions from the Police Department they would be addressed in the security plan. As far as issues with after hours at hookah clubs he does not see the need to recommend a denial of the Use Permit. There is flexibility within the security plan to adjust the hours of operation if there are problems or calls for service.

There was no public input.

Ms. MacDonald modified condition of approval number 11. Friday and Saturday the hours of operation would be 9 am to 2:55 am. The applicant is required to file a security plan by September 6, 2013. She also noted condition number 4. Any intensification or expansion of use shall require a new Use Permit. This would include a liquor license.

Mr. Alsharif agreed to the conditions of approval.

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 PL130216/ZUP13073 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. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact Police Crime Prevention Staff at 480-350-8749 before **September 6, 2013**.
- 7. Staffing of the hookah lounge shall include a security position at the door to the restrooms, to verify age for

- tobacco sales/consumption of guests coming from the café or restroom area.
- 8. If the café applies for a liquor license sometime in the future, the security plan for the hookah lounge will be required to be updated.
- 9. Use Permit for Tobacco Retail does not allow live entertainment live entertainment requires a separate Use Permit.
- 10. An occupancy inspection and clearance from the Tempe Fire Department shall be obtained prior to the use permit becoming effective.
- 11. Hours of operation are 9am to 12:00 am Sunday through Thursday, 9 am to 1:55am 2:55 am Friday through Saturday. (Modified by the Hearing Officer)
- 12. All nonconforming building lighting shall be removed and replaced with compliant light fixtures by October 16, 2013. Details can be resolved during Building Safety Plan Review.
- 13. Replace all dead or missing trees and landscape material by October 16, 2013.
- 14. An updated parking model is required for this request; submit a parking count of existing available spaces including accessible spaces, and a list of all suites in each building, with the business name, square footage of the business and use for staff verification of parking availability. This information shall be provided by August 16, 2013.
- 15. The applicant shall file an updated suite map with the Community Development Department. (Added by the Hearing Officer)
- 16. The applicant shall return to the Hearing Officer for a six month review of compliance on February 4, 2014. (Added by the Hearing Officer)

7. Request approval for a Use Permit to allow new 60 ft. Monopalm antennas and RRU's located within the proposed fronds and associated equipment in shelter below for THE CENTER - VERIZON PHO BENKO (PL130229) located at 201 East Southern Avenue. The applicant is Steve Ciolek, Coal Creek Consulting.

This case will be continued to August 20, 2013 by the request of the Community Development Staff.

8. Request approval for a Use Permit to allow an increase of the height of a block wall located within the front yard setback for the **JOHNSON RESIDENCE (PL130241)** located at 1718 East Pebble Beach Drive. The applicant is Robert Johnson.

Robert Johnson was present to represent this case.

Sherri Lesser introduced the case. This is a Use Permit to allow a wall in the front yard setback for the Johnson Residence. This property is located south of Southern Avenue, west of McClintock Drive in the R1-6 Single Family Residential District. The applicant is seeking the wall to allow for construction of a pool in the front yard. There are no provisions in the Zoning and Development Code to prohibit swimming pools in the front yard. A swimming pool can be placed anywhere on your property as long as it is in compliance with the Building Code. The Building Code does require a 5 ½ foot minimum barrier for the pool with a self-latching gate. The site plan shows the wall being placed 5 ½ behind the sidewalk. The property line does not follow the sidewalk due to the curve of the property. Staff is recommending approval of the wall. Staff is not commenting on the swimming pool. The Use Permit is for the construction of the wall and the height of the wall. Staff has supported walls in the front yard setback in the past. Staff has had discussions with the neighbor next door. She is in opposition of the Use Permit. If the wall is approved, the neighbor does not want to see anything above it (pool equipment, slide, rock formations). The neighbor would like it to look like a courtyard from the street. Landscaping above the wall and in front of the wall would be acceptable. Mr. Johnson indicated he was planning to do some landscaping in front of the wall. The neighbor would also like to see the wall set back to 8 or 9 feet behind the sidewalk. Staff would like to impose the conditions requested by the neighbor, if the Use Permit is approved. There are citizens present to speak on this request.

Ms. MacDonald noted a letter of opposition from Ms. And Mr. Washington into the record.

Mr. Johnson appreciated the comments by Ms. Lesser. He stated he was interested in hearing the opinions of his neighbors. He wants to be on good terms with his neighbors. He is interested in the property values in the neighborhood as well. He purchased the home as an investment property. He and his family are now living in the house. It would be helpful to have the area in the front of his home for his family to enjoy. They have had some issues with a rental property located across the street. He wants to make sure the wall is a good design and attractive. He would like to preserve and protect the neighborhood.

Ms. MacDonald asked Mr. Johnson about the height of the wall.

Mr. Johnson stated he initially planned to have the height of the wall at 6 feet. His contractors informed him the wall would have to be a certain height in order to have the decorative openings. The wall is designed to be 6 feet at the highest elevation. The property is on a small incline; at one point an extra layer of block would be necessary.

Elaine Dehghanpisheh has resided in the neighborhood since 1984. She along with several of her neighbors opposes the Use Permit for the block wall and the atmosphere it would create. She submitted a letter to the Hearing Officer with signatures of her neighbors in opposition of the construction of the front yard pool and the 6 foot concrete block wall.

Ms. Dehghanpisheh lives on the adjoining property on the east side of Mr. Johnson. This type of use would be a contradictory type structure in the neighborhood. There are no other tall concrete walls or pools in the front yards. This would change the character of the neighborhood from being open and neighborly. She feels strongly that it would impact the market value for the houses in the neighborhood. The wall would extend to the west side of her property and it would impact the curb appeal of her house. The wall would also block her view of the neighborhood. If a pool is constructed in the front yard the noise would also impact her living area.

Reid Reinholtz lives to the east of the Johnson Residence, a few houses down. He feels the wall would hinder the view and the character of the open community feel of the neighborhood. Several of the neighbors have made home improvements to maintain the look of the neighborhood. The large block wall would be an eyesore and an unnecessary partition. He feels there is probably room in the backyard to accommodate a pool. In keeping with the tradition of the community in the area there are no pools or giant imposing walls in the front yards. He feels the granting of this Use Permit would impact the property values in the neighborhood in a negative way. The neighbors appreciate the home improvements the Johnsons have done to their home. The neighborhood has had situations in the last several years with tagging incidents in alleyways and on main street walls. The wall will attract taggers as a blank canvas which would immediately reduce the perception of value in the neighborhood.

Joan Bricker lives diagonal across the street from the Johnson Residence. She has lived in the neighborhood for 33 years. She spoke in opposition of the Use Permit for the block wall. She does not want to look at the wall when she is home. She does not believe it fits into the neighborhood. She feels the pool should be constructed in the back yard. The street is a private street without much traffic. There are probably about 10 houses on the street with pools in the back yards. None of the other neighbors have a pool in the front yard.

Ms. MacDonald asked Ms. Bricker to take the pool out of the equation. She stated the issue is the block wall, not the pool. She asked if Ms. Bricker's comments still stand regarding the wall.

Ms. Bricker asked if Mr. Johnson would still be constructing the wall without the pool.

Ms. MacDonald was unsure. She stated applicants have requested walls in the past who were not putting swimming pools in their front yard. Ms. MacDonald wanted to clarify that the discussion was not specifically concerning the swimming pool. The issue is the wall and specifically the height of the wall.

Ms. Bricker stated she was concerned about the height of the wall. She believes it would be an eyesore. The wall would also decrease the property values in the neighborhood. The rental house occupied by the college students that was a problem in the past is currently for sale.

Chris Duncan is a resident in the neighborhood. He presented a letter of opposition from a neighbor that was not able to attend the meeting today. His biggest issue with the fence is that there is nothing else like it in the neighborhood. The visibility down the street will be destroyed since the street curves. The style of the proposed wall feels blocked off and similar to a penitentiary. He feels the visibility from the street will be blocked when Mr. Johnson backs out of his driveway. Mr. Johnson stated he has several other rental properties. This property may become a rental someday. If college students rent the house this would create a noisy area for people to hang out.

Ms. MacDonald noted she had letters and a signature on a petition in opposition of the Use Permit from the following:

Kevin Axon

Mary Rodriguez

Reid and Tamara Reinholz

Regina Washington Dragon as a representative for Earlie Washington

Mr. Johnson stated he understands the neighbors' concerns. He wants to stay on good terms with all of the neighbors. When he had the wall designed the most important thing was the aesthetics for the neighborhood. He is interested in maintaining the property values in the neighborhood as well. There is no intent to construct anything above the wall. He has four young children and was not planning to include a slide or diving board with the pool. He just wanted a place for the kids to swim. He is very concerned how the wall looks to the neighborhood. Mr. Johnson stated he would do everything in his power to ensure that the wall is aesthetically designed. He would put some shrubs out in front of the wall.

Ms. MacDonald asked Mr. Johnson why he has not explored the option to build the pool in his back yard.

Mr. Johnson stated he has four mature trees in the back yard. Two are giant eucalyptus trees and one is an olive tree. He is an environmentalist and feels the trees are good for the environment. The mature trees are maintained responsibility. Placing the pool in the back yard would require major excavation of the back yard property. The property up front is not being used for anything. The large trees in the back provide a lot of oxygen. This is good for the environment being in a high traffic area right off the US 60. The wall around the pool would act as a barrier to any noise in the front yard. The property was a rental property about three or four years ago. They made this the residence for their family since it was the largest property they owned. They have been very strict about the people they have rented to although there is no intention to rent the property out.

Ms. MacDonald stated this is an interesting case and very similar to another case that was presented a few months ago. She is familiar with the aesthetics and how a fence like this can look in a neighborhood. Some of the Use Permit criteria outlined in the Zoning Code does not really apply to stationary structures.

Ms. MacDonald reviewed the Use Permit criteria:

- 1. Will this create a significant increase in vehicular or pedestrian traffic? She stated clearly this use would not create an increase in traffic but this criterion does not apply.
- 2. Will this create a nuisance arising from the emission of odor, dust, gas noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions? The use itself would not create a nuisance but there is potential with a pool in the front yard to create a nuisance with splashing, yelling, and outdoor activity.
- 3. Will this contribute to the deterioration of the neighborhood or downgrade the property values? It is hard to gauge what is going to happen to someone's home economically. A structure like this is not in keeping with the other investments that have been made in the neighborhood. The other investments have been in the nature of painting and enclosing livable space and putting money into the home, not walling off the property. She does not believe the wall would contribute to the deterioration of the neighborhood, but it certainly would not improve the neighborhood by any measure.
- 4. Is this compatible with existing surrounding structures and uses? She does not believe this to be compatible at all in this neighborhood. There are a few walls on the street, but they are all within the three to four foot range. Many of the walls have wrought iron ornamentation. The walls delineate the space but you can still see the homes. The other walls are not a fortress like pertinence being created in the front yard.

5. Will there be adequate control of disruptive behavior both inside and outside the premises? This criterion could be questionable. This could be home to a really loud pool party. This may also invite tagging or graffiti especially since this area has experienced that in the past.

DECISION:

Ms. MacDonald denied PL130241/ZUP13084 for a Use Permit to allow an increase of the height of a block wall located within the front yard setback.

9. Request approval for a Use Permit to allow parking in the front yard setback for the **HAUGEN/THOMPSON RESIDENCE** (**PL130254**) located at 119 East Fillmore Street. The applicants are Gene Haugen and Kathy Thompson.

Gene Haugen was present to represent this case.

Steve Abrahamson introduced the case. This is a request by the Haugen/Thompson residence at 119 East Fillmore Street in the R1-6 Single Family Residential District to allow for parking in the front yard setback. This neighborhood is in north Tempe, very close to the PERA Club. The homes in this neighborhood were constructed in the late 50s and early 60s. Many of the homes have single car garages. Many of the homes have a small footprint and are probably in the range of 1000 – 1300 square feet. The Haugen/Thompson residence wishes to enclose the existing carport to create livable space. This is not out of the ordinary in this neighborhood. The request was posted and advertised. Staff has only received one call of interest. The caller indicated they were good with the request as long as the structure would not be built over the driveway and block the view of the street front. This request would simply require putting a wall up in the carport to create livable space. Staff recommends approval of the request.

Mr. Haugen stated they looked at the possibility of a cover over the carport where they would park their cars. After discussing this with Mr. Abrahamson and a City Engineer he decided the cost and logistics would be prohibited. He does not anticipate adding any additions. He would like to enclose the carport to make this livable space and park the cars out on the driveway within the front yard setback.

Ms. MacDonald stated the neighborhood has other garage and carport enclosures. This request is not out of the ordinary for this neighborhood. She asked the applicant if he agreed to the conditions of approval.

Mr. Haugen agreed to the conditions of approval.

Mr. McLaughlin lives adjacent to Mr. Haugen. He is in support of his efforts to enclose the carport. He believes the enclosure is very well designed. He did have a question regarding condition of approval number 2. which reads: A 3-4' parking screen wall shall be built along the edge of the driveway, for a distance of 20' starting at the drip line of the roof of the house, extending north towards the street. He wanted to know if the City was asking for a fence.

Ms. Macdonald referred this question to staff.

Mr. Abrahamson stated it appears we could strike this item from the conditions of approval from the staff perspective.

Ms. MacDonald asked Mr. Haugen if he was planning to build a fence.

Mr. Haugen stated he was not building a fence.

Mr. McLaughlin stated he didn't mind if Mr. Haugen built a fence, but he wanted to know what it would be constructed of.

Ms. MacDonald stated she believed the condition was some left over language from a previous staff report. Ms. MacDonald stated she would be striking condition of approval number 2, which leaves just four conditions.

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 PL130254/ZUP130254 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. A 3 4' parking screen wall shall be built along the edge of the driveway, for a distance of 20' starting at the drip line of the roof of the house, extending north towards the street. (Removed by the Hearing Officer)
- 3. 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.
- 4. No structures shall be built over the driveway without returning to Planning for verification of setbacks and site visibility requirements.
- 5. 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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 Request approval for a Use Permit to allow a philanthropic organization to operate a youth day center for TUMBLEWEED YOUTH RESOURCE CENTER (PL130257) located at 505 West University Drive. The applicant is Chris Tompkins, Tumbleweed C.F.Y.D.

This case will be continued to September 17, 2013 by the request of the Hearing Officer. She stated she did not have enough information to hear the case today and she wanted to encourage dialog between the applicant and the surrounding neighborhood.

11. Request approval for a Use Permit to allow a second story addition for the **HERNANDEZ RESIDENCE** (PL130263) located at 2501 South Palm Drive. The applicant is Dr. Edgar Hernandez.

Mike Lorenz was present to represent this case for Dr. Edgar Hernandez.

Sherri Lesser introduced the case. The applicant is requesting a Use Permit to allow a second story addition. The request is not technically an addition; it is within the proposed roof trusses of the house. The applicant would like to build a storage space within the trusses that would be about 7 feet in height for the interior space. The overall height of the structure would be approximately 15-16 feet in height.

Ms. MacDonald asked if the applicant was going to put a new roof and trusses on the house to change the elevation.

Ms. Lesser stated the purpose of the Use Permit is for a rebuild on the structure. There will be a higher overall pitch on the roof. The R1-6 Single Family Residential District allows up to 30 feet in building height. The request is really for a second story space within the trusses of the single story. Staff has not received any public input regarding this request. Staff recommends approval of the Use Permit.

Mr. Lorenz stated he is a close friend of the family and has been given full and complete authority to speak for Dr. Hernandez. The applicant, Dr. Hernandez is a cancer surgeon and has been called in to surgery this afternoon. Mr. Lorenz stated they were considering the option of adding walls with faux windows to eliminate the large expanse of roofing facing the neighbors. The extra wall adds a little more interest to the house. This change is virtually the same and would be under the same truss level. This change would provide more building design instead of all the tile roofing. Mr. Lorenz stated the existing building is in terrible disrepair. The building would be demolished and a new structure would be built. They have arranged with the Tempe Police Department for the SWAT Team to use this as a test house. The SWAT Team is doing some exercises on the house to help demolish the building. The overall layout of the new house will be slightly larger but very similar in design from the original home. The overall height of the building will be raised slightly. The fireplace enclosure is 24 feet in height, which is below the allowable 30 feet. There is a two story house, three houses down from this site.

Ms. MacDonald asked if there would be living space in the second story addition.

Mr. Lorenz stated the space above the garage is the small area he is seeking approval for. The space is an undefined/storage space.

Ms. MacDonald asked what the ceiling height would be in that room.

Mr. Lorenz indicated the highest point would be 8 foot and would slope down to about 7 foot on each peak. The 7 foot height is the minimum height as the stair comes up for clearance at the top.

Ms. MacDonald stated the room could be livable space even though it is not planned for it at this time. She stated the design is beautiful and the house will be a nice looking addition to the neighborhood. The new structure would need to comply with the current codes.

Mr. Lorenz stated they have already met with Building Safety on two occasions. They have presented the preliminary plans and elevations. The specific requirements have been addressed. The plans will be submitted in the near future with approval of the Use Permit.

Mr. Lorenz 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 PL130263/ZUP13094 subject to the following conditions:

- 1. The Use Permit is valid for the plans as submitted within this application.
- 2. Obtain all clearances from Building Safety prior to use permit becoming effective.

12. Request approval for a Use Permit to allow an outpatient youth alcohol and drug counseling center for THE PATHWAY PROGRAM (PL130267) located at 2143 East 5th Street. The applicants are Joshua and Valerie Azevedo.

Joshua Azevedo was present to represent this case.

Sherri Lesser introduced the case. This proposed business would be located in the Eaton Industrial Business Park which is south of Rio Salado Parkway, north of University Drive, between McClintock Drive and Price Road. The Use Permit is for an outpatient drug and alcohol treatment facility. Section 3-413 of the Zoning Code requires any institution that treats mentally disabled, epileptic, drug or alcohol patients to receive a Use Permit prior to locating their business to Tempe. Staff has received one letter of opposition regarding this request from Tempe Trade Center. Ms. Lesser believes someone from that property ownership is here to speak as well. Staff looks at this request similar to a clinic or doctor's office within Tempe. The request is for an office use, the occupancy for the building is office use. From what the applicant has stated in their letter, patients arrive by vehicle. It is not a pedestrian access to use. This is a daytime use that is compatible with the surrounding area. Staff is recommending approval of the Use Permit.

Ms. MacDonald stated this is not an inpatient treatment facility. There is no overnight lodging. People come and go for their appointments with their practitioner.

Ms. Lesser stated The Pathway Program is a licensed state behavioral health program.

Ms. MacDonald noted if this were a regular psychology or psychiatry practice a Use Permit would not be required. Since there is an alcohol component the zoning provision requires a Use Permit.

Mr. Azevedo stated the Pathway Program is an outpatient program. The program only works with families and young people who are there by request. They do not work with the Criminal Justice System, SMI (seriously mentally ill) clients or anyone that is under any duress in any form. The patients are young people that are asking to be counseled. The organization only accepts private paying patients. Health insurance does not cover the costs for the counseling. The patients seek the counseling at their request.

Ms. MacDonald asked how many appointments are typical each day and what the hours of operation would be.

Mr. Azevedo stated the group counseling sessions max out at 38 clients per day. The prior business at this site had 60 employees in the building. The normal hours of operation would be 10:00 am to 5:00 pm. After hours appointments are available for family sessions. The parent and youth support group is held in the evenings a few nights a week. The group meetings could potentially have 100 people. The meetings start at 7:00 pm, the latest they are ever there is 11:30 pm.

Ms. MacDonald asked if the staff is present when the people leave the premises.

Mr. Azevedo stated the staff is always the last to leave. They make sure the parking lot is clean before leaving. Several staff members are always available anytime people are in the building. The Pathway Program is currently in a multi-tenant building. The establishment has been there for five years and has not had any problems with the other tenants. The customers know where they can park and follow the guidelines.

Ms. MacDonald asked staff for information on the parking situation at this site.

Ms. Lesser stated the building is parked at 1 space required for every 250 square feet of building or office area. The site is a little over 10,000 square feet. There is a substantial parking lot but it is in a shared agreement with the other businesses. There is parking available for the use if it is after hours.

Mr. Azevedo stated they outgrew a facility in this same neighborhood before they moved to Gilbert. There is a lot of street parking available. The other businesses use it during the day, but it would be available in the evenings for the group meetings.

Ninon Tantet stated she and her brother own the adjoining building and it has been in the family for approximately 15 years. She did not receive her public notice card until Thursday. They have not had any ability to contact any of their tenants or the neighborhood to see what their position is on this establishment. She would like a continuance to allow time to contact the neighbors and her tenants. She has a company that delivers medication in her building. The business has been broken into twice in the Tempe Trade Building.

There is a treatment center just around the corner for a methodone clinic. The parking is a shared parking. The site The Pathway Program is proposing has a total of 27 parking spaces and approximately 10,800 square feet of space. The building has been for sale. She does not feel there is adequate parking for 100 clients along with staff. Her tenants will be impacted by their need to park. This will create a need for towing as well as liability issues. The site next door has no ingress or egress, there is no pass through. Her property does have a pass through on both sides. They have had issues with theft in the past. Theft is primarily from juveniles with issues. There is an attractive nuisance by bringing in troubled youths to an area that is not designed for this. As far as bringing in cars, they will have to come in, park, turn around and back-up. They are going to completely bottleneck in this area. The parking lot is already full. The issue with the parking is not fair to her or the tenants at her property. She is not impartial to the needs of what The Pathway Program is doing. She owns a building in Chandler with St. Luke's Behavioral Center as a tenant. She also has a counseling center for children there. She understands the need for medical treatment and care. The building with St. Luke's hires someone to pick up the patients to bring them in for inpatient care during the day and then they are driven home. This helps alleviate the traffic and parking issues. The counseling center for the children does park at the site and there are a lot of issues with the parking. She supports the use of The Pathway Program but not at this particular building in this particular circumstance. She does not feel this is an appropriate use and she has not been given any time to rebut this or even speak with her tenants about the use. The possibility of counseling three nights a week running until 11:30 pm with over 100 people not including the counselors is not appropriate use for a light industrial complex.

Dwain Ellingson with Commercial Properties stated he has been associated with the property where The Pathway Group has been located the past five years. He has been a part of the property management and the leasing team for the building. They have not had any problems whatsoever with any type of theft. The program is monitored and respectful. This new site is being looked at as an opportunity for Josh to buy his own building.

Ms. MacDonald asked Mr. Ellingson what the similarities are between the building The Pathway Program is currently in and the proposed site.

Mr. Ellingson stated the square footage is about the same. He feels the parking is adequate. Since the proposed site is vacant the parking lot is now full with the tenants from the neighboring building. There may be an issue in the beginning with the parking until the ground rules are set. He does not see any other issues. The other businesses would not be open in the evenings when the group meetings are held. The parents would be there with the kids. The kids would be supervised not only by Pathway, but also by the parents.

Ms. Lesser stated the site was required by ordinance to have 42 parking spaces when the building was built. Parking is available along the south property line, along the side of the building and near the street frontage.

Mr. Azevedo indicated they would have less people there during the day than the previous business. The previous business had 60 employees at this location. The Pathway Program has a total of seven staff members that would be present during the day. The maximum of 38 patients along with the staff would total 45 people. A lot the kids that are under 18 are dropped off and pickup up by their parents, they are not actually parking at the site

Ms. MacDonald asked staff how the shared parking agreements are established and modified if necessary.

Ms. Lesser stated the property has shared access, not shared parking. The parking required when the building was built was 42 spaces because it was 1 space for every 250 square feet. The current requirement is 1 space for every 300 square feet for office uses. This is not considered a medical use because it is for psychological and counseling services. There is not a waiting room or a lobby. The appointments are typically for a set time. The number of people attending the group meetings in the evening was never disclosed to staff prior to this meeting.

Ms. MacDonald stated it doesn't sound like Ms. Tantet had the opportunity to engage her tenants.

Ms. Lesser stated the site was posted with a sign for notification.

Ms. MacDonald stated she did see the sign posted at the site.

Mr. Abrahamson stated with all due respect to the neighbor that just received the notification card, the Zoning Code indicates very clearly that the City is not responsible for the Post Office. The notification cards are mailed out 15 days in advance, the site is posted with a sign and the meeting agenda is advertised in the legal section of the newspaper. The property owner is here, that is proof that she was adequately notified.

Ms. MacDonald stated she has concerns with the parking at the site and the use being compatible with the existing surrounding structures and uses. She feels this is a good and necessary use but wants to make sure it is compatible at this location.

Mr. Azevelod stated if he doesn't close by August 30, 2013 this will create an issue with him regarding the bank. The building is in escrow. The bank has waived the appraisal fee and other fees that will need to be paid by the applicant if he does not close by August 30th.

Ms. MacDonald stated the case could be continued to August 20, 2013. This is 10 days in advance of the applicants closing date deadline. She would like some time for staff to review the parking at the site. Staff was not given the appropriate information before the hearing.

Ms. Lesser stated staff would be willing to go out and visit the current location to observe the parking situation on the evenings the group counseling sessions are held. That information could be included in the next Staff Report. She would also like to work with the applicant to update the information provided in the site plan for the parking. Staff also needs to get an actual count for available parking at the proposed site.

Ms. MacDonald stated the additional information would be really helpful.

Ms. Lesser stated she may also want to review this application for calls of service or any other impacts of the use.

Mr. Abrahamson stated the applicant is going into escrow to purchase this property. This is not going to be a temporary use. He suggested doing an adequate parking study within the next two weeks to figure out the parking and what the other use is like. A condition of approval should also be added to provide for a security plan so that any issues or concerns could be addressed through the Police Department. The security plan would increase the safety and security of the site and provide a sense of stability for the neighbors. The lighting could be increased in particular. Staff did not realize this was going to be a nighttime use. Most clinics are operated during the day.

DECISION: Ms. MacDonald continued this case to August 20, 2013. The next Hearing Officer public hearing will be held on August 20, 2013. There being no further business the public hearing adjourned at 3:45 PM.

Prepared by: Julie Stennerson, Executive Assistant Reviewed by:

Steve al. h. many

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

SA:js