

Minutes of the Development Review Commission July 25, 2017

Minutes of the regular hearing of the Development Review Commission, of the City of Tempe, was held in Council Chambers,
31 East Fifth Street, Tempe, Arizona

Present:

Chair Linda Spears
Vice Chair David Lyon
Commissioner Thomas Brown
Commissioner Philip Amorosi
Commissioner Andrew Johnson
Commissioner Michael DiDomenico
Alternate Commissioner Angela Thornton
Absent:
Commissioner Scott Summers
Alternate Commissioner Nicholas Labadie
Alternate Commissioner Barbara Lloyd

City Staff Present:

Suparna Dasgupta, Principal Planner
Steve Abrahamson, Principal Planner
Lee Jimenez, Senior Planner
Cynthia Jarrad, Administrative Assistant

Hearing convened at 6:00 p.m. and was called to order by Chair Linda Spears.

Consideration of Meeting Minutes:

The following Agenda items #1 and #2 were considered together.

- 1) Study Session and Regular Meeting Minutes, June 13, 2017
- 2) Study Session and Regular Meeting Minutes, June 27, 2017

MOTION: Motion made by Vice-Chair Lyon to approve Study Session and Regular Meeting minutes for June 13, 2017 and June 27, 2017. Motion seconded by Commissioner Johnson.

VOTE: Motion passes 5-0.

- 3) Hold a public hearing for an appeal of the decision by the Hearing Officer to deny a use permit to allow a tobacco retailer for **LAVEEN SMOKE SHOP #6 (PL170157)**, located at 4325 South 48th Street, Suite 101. The appellant is Lori D. Scott of Mashtah's, LLC.

PRESENTATION BY STAFF:

Mr. Lee Jimenez, Senior Planner, gave a presentation about the appeal. He stated that Laveen Smoke Shop #6 intends to operate in a neighborhood-level shopping strip located on the northeast corner of South 48th Street and West Vineyard Road along the Phoenix/Tempe border. At the hearing held June 20, 2017, the Hearing Officer denied the use permit request to allow a tobacco retailer for this smoke shop. The use permit application was the result of a code violation issued by the Code Compliance Division on May 4, 2017 for operating a tobacco retail store without a use permit. A use permit application was accepted by the Community Development Department on May 15th. The shop plans to sell cigars and other tobacco products, but wants to focus on cigars. Per the Zoning and Development Code, a tobacco retailer is categorized as a separated use and cannot be located within a ¼ mile or 1,320 feet of a charter, private, or public school which provides elementary or secondary education. The proposed smoke shop is approximately 1,340 feet from Nevitt Elementary School. Prior to the original hearing, staff received a total of four emails and two phone calls in opposition to the request. At the hearing, four members of the neighborhood provided testimony in opposition to the use permit request. Opposition cited concern for downgrading of property values,

compatibility with nearby uses, and secondary effects caused by potential disruptive behavior. The appellant submitted an appeal petition on June 26, 2017. Ms. Scott feels the use permit application meets the use permit approval criteria, contrary to the Hearing Officer's decision. Staff has received petitions in opposition to the appeal from the Tempe South Mountain Neighborhood Association. A total of 56 signatures were collected from the neighborhood, and copies were presented to the Commissioners this evening. A decision by the Commission to approve the appeal will have the effect of overturning the Hearing Officer's decision; thus, approving the use permit; a denial will uphold the Hearing Officer's decision and the use permit will remain denied.

PRESENTATION BY APPLICANT:

Ms. Lori Scott of Phoenix spoke for a few minutes. She stated that this business meets all of the criteria for the approval of a use permit. There is nothing illegal sold in this business; they hope to cater to the cigar smokers who frequent the golf courses near this site. Employees are trained, they do not sell to minors, and minors are not allowed to loiter within the store. She said she was available for any questions.

Commissioner DiDomenico inquired if the business had been open previous to the Code violation, and if so, for how long. Ms. Scott responded that the shop had been open for 12 days in late April of 2017. Once they received the Code violation, they closed the doors and shipped product back. She was unaware they needed a use permit in the City of Tempe, she has similar shops in Phoenix and did not need one, she had obtained everything else needed, such as licenses, etc.

Chair Spears inquired if Ms. Scott was aware of which six days they would regularly be open for business. Ms. Scott replied that they wanted to get a feel for when most of the "traffic" would be. Typically they remain closed on Sundays, but they were still unsure at this point in time.

PUBLIC COMMENT:

Ms. Chris Hoover, a Tempe resident, spoke in opposition to this smoke shop. She asked the Commission members if they had been to this location. She stated it is 200 feet from a neighborhood park, and 80 feet from a school bus stop. They sell more than cigars; they are actually a "head shop" and sell those types of products as well. She works at Nevitt Elementary School, which is only 20 feet beyond the required separation for this type of use. The applicant doesn't even know what hours and days they will be open.

Moonshadow, a Phoenix resident, lives 600 feet from the shop. She had gathered eight signatures on a petition the evening before, in her neighborhood, in opposition to this project. She stated there are already two other smoke shops in the area, and a third is not needed. She believes it does not add value to the neighborhood, and it has already been burglarized.

Ms. Barb Brooks, a Tempe resident, spoke in opposition as well. She stated that she is herself a smoker, but she does not frequent these types of businesses. She stated this is already a fragile neighborhood, there are businesses surrounding the neighborhood, and there are problems with crime, traffic, loitering, homeless, etc on the northeast corner of 48th Street and Southern. Neighbors are afraid that this will extend into the neighborhood.

Ms. Marion Brownell, a Tempe resident, spoke in opposition to the project. She stated she has lived in the neighborhood for 30 years, and they're trying to preserve their neighborhood. She checked with Tempe police to see if there had been any crime at this location, they stated there had not been until the attempted burglary at this smoke shop. She would like to see the neighborhood go back to the way it was.

APPLICANT RESPONSE:

Ms. Scott stated that there has not been a burglary at this site, it was an attempted break-in, the alarm went off and the police came.

Commissioner DiDomenico asked Ms. Scott, if in the 12 days they were open, were there any calls to the police department for problems? Ms. Scott responded no. Commissioner DiDomenico asked if there has been any loitering. Ms. Scott responded no. Commissioner DiDomenico asked if there was additional noise. Ms. Scott responded no. Commissioner DiDomenico asked Mr. Jimenez if he had checked on any police records for this site. Mr. Jimenez

responded yes, and that the only call had been for the attempted burglary Ms. Scott referred to.

Commissioner Amorosi inquired of Ms. Scott if there were security cameras. Ms. Scott replied yes, there are 16 cameras.

Commissioner Johnson asked if there were any films or anything of that nature within the business, as on the window it says "enjoy the show." Ms. Scott replied that was just a moniker her husband has used in their smoke shops, and it just means come in and look around, there is no actual show or film.

Commissioner Thornton asked what prevented the burglary, as in the photos she does not see bars on the door. Ms. Scott replied that there are bars on the windows, and there are also two large show cases just inside the door.

Vice-Chair Lyon inquired if the site was vacant before they rented the space and if so for how long? Ms. Scott responded that it was vacant but she did not know how long it had been vacant.

Commissioner Brown commented that one of the neighbors had made reference to a head shop, and do they sell those types of products? Ms. Scott responded that they sell rolling papers and pipes as well as the cigars, tobacco, water, juice, soda, etc.

COMMISSION COMMENTS:

Commissioner Amorosi stated that he lives in an area that has many smoke shops and hookah lounges, and that in his experience, these are not the businesses that create problems, alcohol related businesses are what cause problems.

Vice-Chair Lyon quickly summarized the five criteria for approval of a use permit. He believes this applicant meets the five criteria, and he disagrees with the Hearing Officer's decision to deny.

Commissioner Brown stated that he is familiar with smoke shops, there are two that he walks by or bicycles by on a regular basis. Typically there are people smoking outside these establishments and the smoke is offensive. He believes that use permit criteria #3, which refers to deterioration of the neighborhood or downgrading of property values might apply in this case. He is inclined to vote against the appeal.

Vice Chair Lyon spoke about the fact that this site had been vacant for some time previous to the smoke shop moving in, and he believes it is far more detrimental to neighborhoods to have vacant business units than it is to have them rented. In regards to what "type" of business is in this location, he believes low rent tenants are attracted to low rent neighborhoods, but it is still better to have commerce there, and the hope is that rents and quality of shops and businesses will eventually go up.

Commissioner Brown responded to Vice Chair Lyon, asking if, with this way of thinking, then the lowest common denominator is the way to go?

Commissioner DiDomenico stated that he is very familiar with this site, and he believes the worst thing for a retail area such as this is vacancy. Active tenants are the best deterrents for the "bad stuff" that can happen. He stated this area has always had a transitory tenant population and past problems with the maintenance of this building is owner driven. He has frequented a similar smoke shop in his neighborhood, and they typically do not have outside areas set up for people to sit and smoke. He has read what the Hearing Officer stated as justification for denial and he did not find substance there. As a City, we may want to see something other than a smoke shop in this location, but the role of the Commission is to make its decision looking at the five criteria only. He doesn't believe that having three smoke shops rather than two in this area will change the value of the neighborhood.

Commissioner Johnson stated that he agrees largely with Vice Chair Lyon's statements regarding the five criteria for a use permit. He himself lives about 50 yards from a smoke shop, and he does not see any issues with it. He thinks it would be a good idea to add the stipulation about the appellant coming back before the Hearing Officer for a review of compliance in six months.

Chair Spears commented that some people may not like smoking, but the truth is that smoking is not illegal, and it is not the Commission's role to dictate where certain businesses may be located. They are to be looking at the five criteria only, and she does not see that there are violations of any of those criteria.

MOTION: Motion made by Vice Chair Lyon to approve an appeal of the decision by the Hearing Officer to deny a use permit to allow a tobacco retailer for **LAVEEN SMOKE SHOP #6 (PL170157)**, located at 4325 South 48th Street, Suite 101, with the added condition "Return to the Hearing Officer for review of compliance with the Conditions of Approval within six (6) months. The timing for the six (6) month review period to commence when the business is in full operation. Advise Community Development staff when in full business operation. If the full business activity is not initiated in one (1) year, the use permit will lapse."
Motion seconded by Commissioner Amorosi.

VOTE: Motion passes 6-1, with Commissioner Brown in the opposition.

STAFF ANNOUNCEMENTS:

Ms. Dasgupta reviewed the agenda for the August 8, 2017 Development Review Commission meeting.

There being no further business, the meeting was adjourned at 6:43 pm.

Prepared by: Cynthia Jarrad



Reviewed by:
Suparna Dasgupta
Principal Planner, Community Development Planning