

**MINUTES
HEARING OFFICER
JULY 5, 2016**

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

STUDY SESSION 4:30 PM

Present:

Wendy Springborn, Acting Hearing Officer
Steve Abrahamson, Principal Planner
Lee Jimenez, Senior Planner
Dean Miller, Planner II
Prince Twumasi, Planning Intern
Michael Glab, Code Inspector
Brandy Zedlar, Code Inspector
Diane McGuire, Administrative Assistant II

There were 4 interested citizens present at the study session.

- Staff and the Hearing Officer discussed overview and updates to the scheduled cases for this hearing.

REGULAR SESSION 5:00 PM

Present:

Wendy Springborn, Acting Hearing Officer
Steve Abrahamson, Principal Planner
Lee Jimenez, Senior Planner
Dean Miller, Planner II
Prince Twumasi, Planning Intern
Michael Glab, Code Inspector
Brandy Zedlar, Code Inspector
Diane McGuire, Administrative Assistant II

There were 11 interested citizens present at the regular session.

Meeting convened at 5:00 PM and was called to order by Ms. Springborn. 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 July 19, 2016 at 3:00 PM, to the Community Development Department.

1. Ms. Springborn noted the following:

- **June 21, 2016 Hearing Officer Minutes**

Ms. Springborn stated that approval of the June 21, 2016 Hearing Officer Minutes would be continued to the July 19th Hearing Officer public hearing.

- **Agenda Item No. 6**

Review of compliance with the Conditions of Approval for the use permit to allow a resale retail store for **DIVINE INSTITUTE OF MODELING AND ETIQUETTE (D.I.M.E.) (PL150280)** located at 1440 North Scottsdale Road. The applicant is Tani Johnson.

CASE CONTINUED

2. Request approval to abate public nuisance items at the **HONSIK PROPERTY (CE162550)** located at 847 West Rice Drive. The applicant is the City of Tempe.

Brandy Zedlar, Code Inspector, gave an overview of this case. She noted that there are weeds and grass growing in the gravel landscape and asked for an open abatement period of 180 days.

The property owner was not present to represent this case.

DECISION:

Ms. Springborn approved the request for an open abatement period of 180 days for the Honsik Property (CE162550).

3. Request approval to abate public nuisance items at the **BOETTCHER PROPERTY (CE160196)** located at 2050 East Laguna Drive. The applicant is the City of Tempe.

Michael Glab, Code Inspector, gave an overview of this case. He noted that a compliant had been received on this property for inoperable/unregistered vehicle(s) and junk and debris. Since that time, the driveway has been cleared of inoperable/unregistered vehicles, however there is still junk and debris/deteriorated landscape remaining. An open abatement period of 180 days has been requested.

Mr. Alex Boettcher, the property owner, was present to represent this case. He explained that he received his first notification of non-compliance on January 29th, which was almost February of 2016 and that he had been working on bringing the property into compliance. Although progress has been made, he stated that he is only one person and that this is much to be done. Mr. Boettcher stated that he is a good person and tries to be a good neighbor and help everybody. Some of the items that he has stored on his property are no longer available for purchase from suppliers/dealers such as a gas tank.

Mr. Boettcher questioned how much time he had to bring the property into compliance and asked if the 180 day period was an open period for him to work on the property.

Steve Abrahamson, Principal Planner, explained that the open 180 day abatement period is a period of time during which, should the property continue to be in non-compliance, abatement proceeds can be activated without another hearing process. Mr. Abrahamson also explained to Mr. Boettcher that there is a two week period (until July 19, 2016) during which he can bring the property into compliance; after July 19th the abatement can be activated for processing by code compliance.

Mr. Boettcher stated that he did want to bring the property into compliance and had been working with Mike Glab, the assigned code inspector.

Mr. Boettcher said 'only 14 days' and indicated that he did not feel he would be able to complete the cleanup in that period of time. He again noted that he had accomplished a great deal of progress and how the property currently looks as compared to what it looked like before was a clear indication of his desire to bring it into compliance.

Ms. Springborn stated that from the time of notification (February 2016) to now (July 2016) was a period of 6 months and that, based on the information available and staff recommendations, she would approve the abatement for an open period of 180 days.

Mr. Abrahamson explained the appeal process to Mr. Boettcher and noted that he can submit an appeal of the Hearing Officer's decision to the Board of Adjustment as long as that appeal is submitted prior to the July 19th deadline date. If an appeal is submitted, it would then be placed on a Board of Adjustment agenda. Mr. Abrahamson stated that Mr. Boettcher could contact him directly for assistance in filing the appeal and that he would waive the appeal fee for Mr. Boettcher.

DECISION:

Ms. Springborn approved the request for an open abatement period of 180 days for the Boettcher Property (CE160196).

4. Request approval to abate public nuisance items at the **CLEVELAND PROPERTY (CE161289)** located at 1808 East Concorda Drive. The applicant is the City of Tempe.

Michael Glab, Code Inspector, gave an overview of this case. He noted that there had been a prior abatement at this property and that the current violation was for an inoperable/unregistered vehicle. An open abatement period of 180 days is requested.

The property owner was not present to represent this case.

DECISION:

Ms. Springborn approved the request for an open abatement period of 180 days for the Cleveland Property (CE161289).

5. Request approval to abate public nuisance items at the **GOMM PROPERTY (CE163484)** located at 1964 East Laguna Drive. The applicant is the City of Tempe.

Michael Glab, Code Inspector, gave an overview of this case. He noted that there had been a prior abatement at this property. This abatement request is for an open period of 180 days and currently pertains to over height grass and weeds, deteriorated landscape and a green pool.

The property owner was not present to represent this case.

DECISION:

Ms. Springborn approved the request for an open abatement period of 180 days for the Gomm Property (CE163484).

6. Request approval of a variance to reduce the east side yard setback to allow a RV garage for the **MILLER RESIENCE (PL160187)** located at 1536 East Caroline Lane. The applicant is Leland Miller.

Dean Miller, Planner II, gave an overview of the case noting that the site is located south of Warner Road and west of McClintock Drive in the Mission Ridge Subdivision. The property is within the R1-15, Single Family Residential District which has a 15 ft. side yard building setback requirement. Tempe Zoning Code allows an accessory building up to 9 ft. in height to encroach into the building setback within 3 ft. of the property line. The code requires an additional 1 ft. setback for every ft. in height over 9 ft. up to a maximum 15 ft. in height. Based on the applicant's plan, the setback requirement for this garage is 9 ft. The applicant is requesting a variance to reduce the required 9 ft. setback to 6 ft.

Dean Miller noted that the applicant held a neighborhood meeting on June 17th and 8 homeowners were in attendance representing 5 neighborhood homes. The applicant has provided 14 letters of support from neighboring homeowners.

Dean Miller stated that although the applicant has provided significant evidence of support from many of his neighbors, and evidence of similar approved variances, staff is not supporting this request, as the applicant has not demonstrated special circumstances that are applicable to the property and which made it different from the nearby properties or how an approval would not be inconsistent with the limitations upon other properties within the vicinity.

Mr. Leland Miller was present to represent this case. He acknowledged receipt of the Staff Summary Report and presented several photographs and sketches of his home and the proposed garage. He stated that he had endeavored to reduce the height of the garage as low as possible and the current proposal indicates the location of the AC on the side of the building rather than on the top.

Leland Miller explained that moving the structure to the west would place it too close to the existing A/C unit to meet the ADA 4.13.5 Clear Width Opening and the ADA 4.13.6 Minimum Maneuverability requirements. The A/C unit cannot be moved without undue and unreasonable expense due to the fact that the return air system is underground below the house foundation. Mr. Miller stated that the ADA requirements are applicable due to the fact that he would likely have future need of a mobility scooter, walker or possibly wheelchair due to medical conditions.

Mr. Miller stated that the rear of his lot is higher than the rest of the lot and presented photographs depicting mature landscaping and established vegetation. He noted that he felt the only other option was to sacrifice the existing mature palm trees and that, from his perspective, he felt that he meets the criteria for a variance due to the above mentioned reasons as well as the fact that there are several known neighborhood properties with approved variances.

Mr. Miller presented an itemized list of 13 lots/property locations as a point of reference, and indicated that he had done a survey of 39 lots and that 74.35% of the lots are wider than his and only 1 lot is narrower. The average lot size is 130.014 ft. and the average lot without a Cul De Sac included is 120.33 ft. He indicated 7 of the 13 properties on the list were in the immediate vicinity of his property.

Ms. Springborn indicated that she had a speaker request form from Mr. Ben Porritt regarding this case.

Mr. Porritt stated that he was a neighbor of Mr. Leland Miller and was in support of the applicant's request as proposed as he felt it was a valid solution and makes sense.

Mr. Leland Miller returned to the podium and stated that the garage can be moved to the back of the property and still meet the 9 ft. criteria, but that it would necessitate tearing out several established vegetation and landscape areas. He stated that he had spent hours and hours trying to make the design work within the stipulation of the ZDC criteria.

Mr. Leland Miller indicated that he had been informed by Dean Miller that the lot next door is 115 ft. so that the justification was not applicable.

Ms. Springborn stated that based upon the information from the applicant and the report and backup documentation in the Hearing Officer packet, she would uphold the staff recommendation to deny this variance request, based upon the lack of justification for special circumstances. She explained that she did not have all the specifics pertaining to the variances that have been granted as indicated by Mr. Miller.

Ms. Springborn noted that this case does not meet the criteria for a variance and that the applicant had failed to identify the following:

- Special circumstances are applicable to the property, including its size, shape, topography, location or surroundings. The applicant has not demonstrated special circumstances that are applicable to the property.
- The strict application of this code will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district.
- 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. The applicant did not address how approval of the variance would not grant special privileges inconsistent with the limitations imposed upon surrounding properties.
- A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner. The applicant did not identify special circumstances applicable to his property that would support the variance request.

Mr. Leland Miller stated that he had spent a great deal of money on this proposed project already. He questioned the absence of the regular Hearing Officer, Vanessa MacDonald and reiterated that he felt his request for a variance should be granted based on the reasons he had voiced.

Steve Abrahamson, Principal Planner, stated that circumstances had prevented Ms. MacDonald's presence at tonight's public hearing. He stated that Ms. Springborn had been with the City for quite a length of time and asked Ms. Springborn how long.

Ms. Springborn stated that she had been a City employee for 10 years.

Mr. Abrahamson stated that he understands that Ms. MacDonald is the regular Hearing Officer, however Ms. Springborn is more than qualified to act as Hearing Officer at tonight's public hearing.

Mr. Abrahamson stated, in response to Mr. Leland Miller's protests, that with all due respect the Hearing Officer's decision had been made to deny this variance request, and that Mr. Miller had the option to appeal that decision with the established 14 day appeal period, by July 19th. If appealed the case would then be heard by the Board of Adjustment.

DECISION:

Ms. Springborn denied the variance request for the Miller Residence (PL160187).

7. Request approval of a variance to reduce the rear and east side yard setbacks to allow a home addition for the **CADZOW RESIDENCE (PL160191)** located at 1207 East Sunburst Lane. The applicant is James Cadzow. The request includes the following:

1. Variance to reduce the rear yard setback from 15 ft. to 10 ft.
2. Variance to reduce the east side yard setback from 7 ft. to 2 ft.

Lee Jimenez, Senior Planner, gave a brief overview of this case noting that this location is on the southeast corner lot of East Sunburst Lane and South Terrace Road within the Sandahl Homes Tempe Subdivision in the R1-7, single Family Residential District. The applicant is requesting the two (2) variances to allow an addition onto the southeast portion of the home. The 641 s.f. addition would encroach into the required rear and east side yard setbacks by 5 ft. The proposed addition will add 1 ½ bathrooms, 1 bedroom and 1 new playroom. Mr. Jimenez noted that the applicant held a neighborhood meeting on June 10th and approximately 10 members of the neighborhood were in attendance. To date, staff has received one collaborated letter in opposition from the 2 neighbors immediately east of the subject property.

Mr. Jimenez noted that staff is not supporting the request as it does not meet the approval criteria for a variance.

Mr. Cadzow was present to represent this case. He acknowledged receipt of the Staff Summary Report. Mr. Cadzow explained that he had purchased the home thru a foreclosure auction in November 2013, and had spent much time and money upgrading the home and property which had been an eyesore to the neighborhood. He noted that the reason for the 641 s.f. addition was due to the fact that his fiancée and her two children would be joining he and his daughter as residents of the home.

Mr. Cadzow noted that in December of 2014 he added a pool and was required by the City of Tempe to have a survey done of the property. He stated that he had encountered hardship while constructing this pool because of the irregular size of the lot. The north (front yard) and southwest (back yard) was required for water retention basins and the 100 year flood plan. In addition, SRP has an easement that runs on the southwest side of the property. In addition to the water retention required by the City of Tempe and the power lines that are buried on the southwest corner of the lot, the fence line subdividing his lot and the neighbor's lots is severely bowed by 5 to 7 feet on the south end of the property. If the fence line had been poured straight, the variance wouldn't be an issue for the back of the property.

Mr. Cadzow questioned whether Ms. Springborn had had a chance to review his submittal and accompanying documentation. Ms. Springborn confirmed that she had done so.

Ms. Springborn referred to a sketch/map on the pool plans that indicated that there was an addition planned at that time for this property.

Mr. Cadzow confirmed that this was true.

Mr. Jimenez referred to the survey map and noted that the proposed addition was different than what is currently proposed.

Mr. Cadzow stated that he definitely needs at least reduction to 10 ft. in the rear yard setback to construct the current addition.

Mr. Jimenez explained that if Mr. Cadzow processed a use permit standard reduction of 20%, which meets the criteria of the Zoning and Development Code, it would then reduce that rear yard setback from 15 ft. to 12 ft., which would be a 2 ft. difference from the requested variance for that location.

Ms. Springborn stated that she had speaker request cards pertaining to this case and called the individuals to the podium.

Mr. Bob Rose spoke in opposition to this request, stating that the proposed addition would completely block his view of the skyline. Mr. Rose stated that he lives east of Mr. Cadzow's property. Mr. Rose acknowledged the extensive improvements and renovations that Mr. Cadzow had made to his home's interior and exterior as well as the landscaping. Mr. Rose stated that he did not feel the applicant's request met the criteria for a variance. Mr. Rose stated that he felt the applicant's proposal was detrimental to his property values.

Mr. Jeff Kulaga also spoke in opposition to this request. He too stated that while he appreciated the extensive improvements Mr. Cadzow had made to the property, he had collaborated on the letter of opposition with Mr. Rose. He indicated that he also lives east of this property and dated that the indicated hardship is self-imposed and not unique to Mr. Cadzow's property. The pool was constructed about 18 months ago eliminated available land within the back yard setbacks. Both the pool and retention are self-imposed, Mr. Kulaga stated. He indicated that he too felt the addition would be detrimental to his property value and create an undesirable condition, and noted that all residences in the area have a 3 ft. PUE (public utility easement) restriction.

Ms. Springborn asked if Mr. Cadzow had any further comments.

Ms. Springborn noted that this case does not meet the criteria for a variance:

- Special circumstances are applicable to the property, including its size, shape, topography, location or surroundings. T
- The strict application of this code will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district.
- 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.
- A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner.

Ms. Springborn stated that based on the information in the Hearing Officer packet and staff recommendations she would deny the request for the two (2) variances. However, Mr. Springborn stated that this property does meet the criteria for a Use Permit Standard, which would allow for a 20% reduction on both requested setbacks (i.e. rear yard and east side yard) and which would require no additional processing for approval.

Mr. Abrahamson explained that since the use permit standard reduction(s) dimensions would be less than the variances requested, an additional public mailing and public hearing would not be required.

Mr. Jimenez explained that should the applicant accept the use permit standard reduction(s) of 20% the following setback dimensions would apply:

1. Use Permit Standard to reduce the rear yard setback by 20 percent from 15 feet to 12 feet.
2. Use Permit Standard to reduce the east side yard setback by 20 percent from 7 feet to 5.5 feet.

Discussion from the two (2) residents (Mr. Rose and Mr. Kulaga) ensued, asking for more information on this change from a variance request to a use permit standard.

Mr. Jimenez explained the difference between variance(s) and use permit standard(s) is that the use permit standard allows up to a 20% reduction and would therefore allow the reduction of the rear yard setback to 12 ft. instead of 10 ft.

Mr. Jimenez read into the record the criteria for a Use Permit Standard as follows – the use shall:

- a. Not cause any significant vehicular or pedestrian traffic in adjacent areas, and
- b. Not cause any nuisance (odor, dust, gas, noise, vibration, smoke, heat or glare, etc.) exceeding that of ambient conditions, and
- c. Not contribute to the deterioration of the neighborhood or be in conflict with the goals, objectives and policies of the City, and
- d. Be compatible with existing surrounding structures, and
- e. Not result in any disruptive behavior which may create a nuisance to the surrounding area or general public

Mr. Rose asked if it would be the same structure that is currently proposed. Mr. Lee Jimenez responded that as long as the addition meets the criteria for the use permit standard, it would be allowed. Lee noted that a use permit standard is sort of like a variance only limited to a maximum of a 20% reduction.

The applicant, Mr. Cadzow, vehemently expressed his concerns over the delay(s) that had already ensued through this public hearing process and stated that the process had already negatively impacted the construction schedule for the addition.

Mr. Rose indicated his opinion that Mr. Cadzow and his fiancée had the option to pursue other alternatives, and that many expanding family units had to do so in the Tempe area.

Mr. Cadzow's fiancée, Kim Ludwig, spoke and stated adamantly that she felt the neighbors were being unfair in their opposition to this project and stressed that she was very upset and could become homeless due to their opposition.

Mr. Abrahamson stated that the decision had been rendered by the Hearing Officer (to approve the two Use Permit Standards) and that anyone had the option of appealing this decision with the specified 14 days appeal period, by July 19th.

Ms. Ludwig questioned if they had to delay the start of construction until the 14 day appeal period was over. Mr. Abrahamson responded an appeal may be submitted within the 14 day time frame by July 19th, by either party (Mr. Cadzow or the neighbors). An appeal of the approval of the use permit standards would be heard by the Development Review Commission; an appeal of the variance denial would be heard by the Board of Adjustment.

DECISION:

Ms. Springborn denied the variance request(s) and approved two (2) Use Permit Standards for the Cadzow Residence as follows subject to Conditions of Approval:

1. Use Permit Standard to reduce the rear yard setback by 20 percent from 15 feet to 12 feet.
2. Use Permit Standard to reduce the east side yard setback by 20 percent from 7 feet to 5.5 feet.

CONDITION(S) OF APPROVAL:

1. This Use Permit Standard 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, on-site storm water retention may be required to be verified or accomplished on this Site.
2. The Use Permit Standard is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.

ANNOUNCEMENTS

- The next Hearing Officer public hearing is scheduled for Tuesday, July 19, 2016 at 5:00 PM with a study session scheduled for 4:30 PM.

With no further business, the public hearing adjourned at 6:30 PM.

Prepared by: Diane McGuire, Administrative Assistant II
Reviewed by:

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

Steve Abrahamson, Principal Planner for Vanessa MacDonald, Hearing Officer
SA:dm