

**MINUTES
HEARING OFFICER
AUGUST 2, 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:

Vanessa MacDonald, Hearing Officer
Steve Abrahamson, Principal Planner
Lee Jimenez, Senior Planner
Dean Miller, Planner II
Jack Scofield, Code Inspector
Diane McGuire, Administrative Assistant II

There were 7 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:

Vanessa MacDonald, Hearing Officer
Steve Abrahamson, Principal Planner
Lee Jimenez, Senior Planner
Dean Miller, Planner II
Jack Scofield, Code Inspector
Diane McGuire, Administrative Assistant II

There were 10 interested citizens present at the regular session.

Meeting convened at 5:00 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 16, 2016 at 3:00 PM, to the Community Development Department.

1. Ms. MacDonald noted the following:

Agenda Item No. 1

- **July 19, 2016 Hearing Officer Minutes**

Ms. MacDonald noted that the July 19, 2016 Hearing Officer Minutes had been reviewed and were approved.

- **July 5, 2016 Hearing Officer Minutes**

Mr. Abrahamson noted that the July 5, 2016 Hearing Officer Minutes had been reviewed and were approved.

2. Request approval to abate public nuisance items at the **BRENNAN PROPERTY (CE163565)** located at 5929 South Jentilly Lane. The applicant is the City of Tempe – Code Compliance.

Jack Scofield, Code Inspector, gave an overview of the case noting that nuisance items pertained to a deteriorated pool and deteriorated landscape. The property owner failed to appear for court and staff requests a 180 day open abatement period.

The property owner was not present at this hearing.

Ms. MacDonald noted that she had reviewed the Staff Summary Report and attachments and conducted a drive by of the property. She stated that although it appeared that an attempt to clean up the front yard had been made, the property still remains in non-compliance and represents a long time period of citations.

DECISION:

Ms. MacDonald approved the abatement for CE163565 for an open period of 180 days.

Ms. MacDonald noted that the Percy Residence (PL160171), Agenda Item No. 5, would be heard next.

3. Request approval of a use permit standard to reduce the south side yard setback by 20% from 7 ft. to 5 ft. 7 in. to allow an attached single vehicle garage addition for the **PERCY RESIDENCE (PL160171)** located at 1966 East Los Arboles Drive. The applicants are Simon and Suzanne Percy.

Lee Jimenez, Senior Planner, gave a brief overview of this case noting that this site is located is on a cul-de-sac lot in the R1-7, Single Family Residential District within the Estate La Colina Unit 4 Subdivision. The applicants have owned their 2,200 s.f. home for the past 10 years. They are requesting the use permit standard to allow for an attached 3rd car garage addition. They are also planning to add a first floor master suite and a play room basement below, however, these components meet the required side yard setback requirements. According to Section 4-201A of the Zoning and Development Code, the Percy Residence qualifies for a 20% reduction of their required side yard setback with a Use Permit Standard. They held a neighborhood meeting at their residence on Thursday, June 30, 2016. Two neighbors attending the meeting and support the Percy's request. To date, staff has received 5 letters of support from the neighborhood. Staff believes that this application does meet all of the approval criteria for a Use Permit Standard and supports the request.

Mr. Percy was present to represent this case and acknowledged receipt of the Staff Summary Report and his understanding of the assigned Conditions of Approval.

Ms. MacDonald noted that this Use Permit Standard request has a smaller setback reduction than the variance originally requested by the applicant; and meets the criteria for a use permit standard:

- There will be no significant increase in vehicular or pedestrian traffic.
- There will be no 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 will not contribute to the deterioration of the neighborhood or to the downgrading of property values, which is in conflict with the goals, objects or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan.
- The use is compatible with existing surrounding structures and uses.
- There is adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public.

DECISION:

Ms. MacDonald approved the use permit standard request for PL160171 subject to the following Conditions 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.

4. Six (6) month review of compliance with the assigned Conditions of Approval for a 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.

Dean Miller, Planner II, gave an overview of the case noting that the business is located in the Michael Pollack commercial center (Union Plaza) on the west side of Scottsdale Road, north of Weber Drive within the CSS, Commercial Shopping and Services District. The use permit was approved by the Hearing Officer on August 18, 2015. The timing for the 6 month review was to commence when the business was in full operation. The applicant opened for business on January 14, 2016. Business hours were identified as 8 AM to 8 PM and the applicant's business partner, Randy Lang, has indicated that the business is open on a limited basis. City staff has not identified any issues or concerns with the operation of this business and the City of Tempe Police Department has not identified any issues related to this use. Staff has received a phone from a neighbor who expressed concern that the business has not been open full time and that therefore it has been unable to be determined if the business operation will become a nuisance once they open full time. Mr. Miller stated that, based on the analysis of compliance with the assigned Conditions of Approval (noted below), staff recommends no further action be taken and that the use permit be considered as valid.

Mr. Miller reviewed compliance with the assigned Conditions of Approval as follows:

1. This use permit is valid only after a building permit has been obtained and the required inspection has been completed and a final inspection has been passed. **Mr. Miller stated that staff does not believe a building permit was required.**
2. The use permit is valid for the plans as submitted within the application. Any additions or modifications may be submitted for review during the building plan check process. **Staff does not believe any changes have occurred.**

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. **Staff has not identified any complaints arising from this use.**
4. Any intensification or expansion of use shall require a new use permit. **Staff does not believe the use has intensified.**
5. Hours of operation to end no later than 8 PM (normal retail hours) daily. **Staff does not believe the business has been open beyond the allowed hours of operation.**
6. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan review. **Site visit by staff has not identified any non-compliant light fixtures on site.**
7. Return to the Hearing Officer for review of compliance with conditions of approval within 6 months. The timing for the 6 month review period to commence when the business is in full operation. Advise Community Development staff when in full business operation. If the business activity is not initiated within one year, the use permit will lapse. **Ms. MacDonald noted that the applicant(s) are present for the 6 month review.**

Ms. MacDonald noted that she had a speaker's request card from Darlene Justus.

Ms. Justus, spoke, stating that she was a resident of Tempe and represents the North Tempe Neighborhood Association. Ms. Justus noted that this case had originally been presented as a retail and modeling establishment, and that the City had determined that a use permit is only required for the retail use, not for modeling purposes. She noted that residents of the area still had concerns regarding this use permit as related to parking and sustained periods of active business operation for extended hours rather than the recent limited hours of operation by the applicant.

Ms. Tani Johnson and Mr. Randy Lang were present to represent this case. They acknowledged receipt of the Staff Summary Report. Mr. Lang explained that the business has started slow and they are open on a limited basis as due to financial constraints, staying open for 7 days a week became a losing proposition. He stated that the reality of the situation was that they had spent time and money fixing up the premises and that it had been more costly than first anticipated. In addition to personal concerns which affected the time and funds related to their business concerns, the business has only been open for limited periods of time. The business is not a thrift store, however customers can donate items to the store and purchase other products available.

Ms. MacDonald questioned how the business planned to operate, would they be setting up appointments for those interested in the modeling aspect ?

Ms. Johnson responded that their hope is to have television personalities involved in the modeling activity as their goal was to aid women at a low cost of expenditure.

Ms. MacDonald noted that at this point, there is no action required by her, other than the review of compliance with the Conditions of Approval. There is no stipulation in the code which addresses the limited hours, or requires the applicant to be open all of the projected hours in their original application.

DECISION:

Ms. MacDonald acknowledged the applicants' compliance with the Conditions of Approval as assigned to the approval of the use permit to allow a resale retail store for D.I.M.E. (PL150280) at the August 18, 2015 public hearing.

5. Request approval of a variance to allow block wall fencing within the front yard setback to exceed 6 feet in height for the **DROR RESIDENCE (PL160173)** located at 1064 East Sandpiper Drive. The applicant is Yossi Dror.

Lee Jimenez, Senior Planner, gave a brief overview of this case noting that this location is within the area which is often referred to as 'The Island' on Lot 64 of The Lakes Tract B Subdivision in the R1-6, Single Family Residential District. The applicant received a correction notice on April 12, 2016 for violating Section 4-706 of the Zoning and Development Code. Mr. Dror had constructed an 8 foot tall block wall fence within the required 15 foot front yard setback for open structures.

Mr. Jimenez explained that according to Section 4-706 of the Zoning and Development Code's Landscape and Walls chapter, the maximum height of any freestanding wall or fence shall be measured from the highest adjacent finished surface of the ground, paving, or sidewalk within 20 feet, unless otherwise noted. Walls or fences in a required front yard building setback shall be 4 feet maximum in height. An increase in height up to 6 feet may be permitted with a use permit; however the use permit shall demonstrate that a natural surveillance to the street be maintained by incorporating openings, providing transparent materials or varying height/materials. Mr. and Mrs. Dror held a neighborhood meeting on July 14, 2016 at their residence in which 11 members of the neighborhood attended. To date, staff has received 2 phone calls in opposition and 2 letters in support of the variance request. Staff believes that this application meets all the approval criteria for a variance and supports this request subject to the conditions provided in the staff report.

Mr. Jimenez noted that staff would like to modify the assigned Condition of Approval to add the words 'if required' after the words 'building permit'.

Mr. Yossi Dror was present to represent this case. He acknowledged receipt of the Staff Summary Report and the assigned Condition of Approval as modified.

Ms. MacDonald referred to the photographic exhibit, as included in the attachments to the Staff Summary Report, which showed before and after photographs of the existing wall.

Ms. MacDonald noted that she had a speaker's request card from Nancy Saxton.

Ms. Nancy Saxton spoke in support of this request, noting that she is a resident of this subdivision. She explained that the property was in a serious state of disrepair prior to Mr. Dror's purchase and that he had improved not only his residential property, but also contributed to the enhancement of the neighborhood area. She stated that she was very much in favor of this request.

Ms. MacDonald stated that she had driven by the property and it was a good looking house with a good clean look to the property.

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

- Special circumstances are applicable to the property, including its size, shape, topography, location or surroundings. The property is on a wedge shaped lot which slopes downward from the rear lot line to the back of the curb. The lot backs into a greenbelt that is 8 feet above the top of the curb.
- Strict application of this Code will deprive the property of privileges enjoyed by other property of the same classification in the same zoning district. Ms. MacDonald noted that during her drive by review of the property she saw a lot of walls in that area that had apparently been erected without a variance from the City.
- 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 provided a list of 96 properties, 7 of which are located in the immediate vicinity, which are

apparently in violation of the Code. Staff found that 2 out of the 7 properties were granted variances and are considered legal.

- A variance may not be granted if special circumstances applicable to the property are self-imposed by the property owner. The raised greenbelt is the primary reason why the property slopes downward from the rear yard towards the front.

DECISION:

Ms. MacDonald approved the variance request for PL160173 subject to the following Condition of Approval:

1. This variance is valid only after a building permit , **if required**, 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. **MODIFIED BY STAFF**

ANNOUNCEMENTS

- The next Hearing Officer public hearing is scheduled for Tuesday, August 16, 2016 at 5:00 PM with a study session scheduled for 4:30 PM.

With no further business, the public hearing adjourned at 5:45 PM.

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



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