

**Minutes
HEARING OFFICER
JANUARY 2, 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
Brandy Zedlar, Code Inspector
Jack Scofield, Code Inspector
Shawn Dafara, Code Inspector
Julie Stenner, Executive Assistant

Number of Interested Citizens Present: 12

Meeting convened at 1:30 PM and was called to order by Ms. MacDonald. She noted that anyone wishing to appeal a decision made by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) days, by January 16, 2013 at 3:00 PM, to the Community Development Department.

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1. Ms. MacDonald noted that the Hearing Officer Minutes for December 18, 2012 had been reviewed and approved.

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2. Request approval to abate public nuisance items at the JORDAN PROPERTY (PL120410) located at 3403 South Westfall Avenue. The applicant is the City of Tempe – Code Compliance.

There was no one present to represent the property owner.

Brandy Zedlar requested approval of abatement for the property located at 3403 South Westfall Avenue. The landscape in the back yard needs to be cleaned up as well as any debris and animal feces creating offensive odors. This property was abated in 2008 for the same issues. Staff has made several attempts to contact the property owner. Code Compliance has not received any response from the property owner.

DECISION:

Ms. MacDonald approved abatement proceedings for PL120410/ABT12061.

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3. Request approval to abate public nuisance items at the JORQUEZ 2011 TRUST/PACALDO PROPERTY (PL120411) located at 2422 East Don Carlos Avenue. The applicant is the City of Tempe – Code Compliance.

There was no one present to represent the property owner.

Jack Scofield requested approval of 180 day open abatement for the property located at 2422 East Don Carlos Avenue. Notification has been sent to the property owner with no success of the landscape violations being corrected. Code Enforcement has been notified that the property owner is deceased. A family member has attempted to clean up the property. The abatement on this property is being requested due to multiple complaints and lack on maintenance of the property.

DECISION:

Ms. MacDonald approved abatement proceedings for PL120411/ABT12062 for an open period of 180 days.

4. Request approval to abate public nuisance items at the PEWITT PROPERTY (PL120412) located at 101 East McKinley Street. The applicant is The City of Tempe – Code Compliance.

THE PROPERTY WAS REMOVED FROM THE AGENDA AS IT HAS BEEN BROUGHT INTO COMPLIANCE BY THE PROPERTY OWNER.

5. Request approval to abate public nuisance items at the FEDERAL NATIONAL MORTGAGE ASSOCIATION PROPERTY (PL120415) located at 1120 North Frances Street. The applicant is The City of Tempe – Code Compliance.

There was no one present to represent the property owner.

Jack Scofield requested approval of abatement for the property located at 1120 North Frances Street. Notification has been sent to the property owner regarding the deteriorated landscape. Staff has not received a response from the property owner. This is a bank owned property.

Ms. MacDonald noted sometimes banks prefer to have the City clean up the property.

DECISION:

Ms. MacDonald approved abatement proceedings for PL120415/ABT12064.

10. Request approval to abate public nuisance items at the ESTRADA PROPERTY (PL120425) located at 402 West 7th Street. The applicant is the City of Tempe – Code Compliance.

There was no one present to represent the property owner.

Shawn Daffara requested approval of a 180 day open abatement for the property located at 402 West 7th Street. The property is in violation of deteriorated landscape and graffiti. The property is vacant and the owner is deceased. The property is in pre-foreclosure. The auction date is set for January 17, 2013 by Bank of America. Code Compliance would like to get the property cleaned up until it sells at auction.

DECISION:

Ms. MacDonald approved abatement proceedings for PL120425/ABT12065 for an open period of 180 days.

6. Request approval for a Use Permit Standard to reduce the side yard setback from 9 feet to 5 feet for an accessory building and a Use Permit Standard to allow a two-story accessory building up to 20 feet in height for the HINES RESIDENCE (PL120382) located at 312 West Santa Cruz Drive. The applicant is Corbin Hines.

Corbin Hines was present to represent this case.

Steve Abrahamson introduced the case. The Hines residence is located near Kyrene Road, just north of the Superstition Freeway. The address is 312 West Santa Cruz Drive. This home is located in the R1-6 Single Family Residential District. The applicant is requesting a Use Permit Standard to reduce the side yard setback from 9 feet to 5 feet for a detached garage and a Use Permit Standard to allow the height of 18 feet for a detached garage in the R1-6.

The height of an accessory structure in the R1-6 District is limited to 15 feet. Section 3-401 of the Zoning Code lists the requirements for Accessory Buildings, Uses and Structures. Accessory buildings shall not be located in the required front yard and street side yard building setbacks. Such buildings shall be setback at least 3 feet from all side and rear property lines. An additional 1 foot setback is required for every additional foot in height above 9 feet, up to 15 feet in height.

Ms. MacDonald stated this is the second public hearing for this case. The applicant originally asked for the height of the garage to be built at 20 feet. The applicant revised the plans and is now requesting the height of the garage to be at 18 feet tall.

Mr. Abrahamson stated the applicant has provided a map showing several other two-story structures in the neighborhood. There are also a number of accessory structures in the neighborhood.

Mr. Hines addressed the justification for the 5 foot setback. Mr. Zeising, owner of Custom Creations who prepared the plans introduced himself. The request of a 5 foot setback is due to a pre-existing driveway at the residence that leads up to a double gate. This would be the easiest way to access the garage. If the garage is built to the west it would be more difficult to access. It would also be difficult to access a garage from the alley due to the conditions of the property directly behind the Hines Residence. The height of the garage would accommodate a hoist, allowing one car to be stored on top of another. The applicant is requesting the height of the garage to be 18 feet. The truck to be stored in the garage is approximately 6 feet tall, the car is approximately 4 feet tall, 2 to 4 feet is needed between the vehicles once they are stacked and the truss height is approximately 2.5 feet below the roof. The materials of the garage will reflect the same materials of the home. Mr. Hines presented several pictures of houses in his neighborhood that have detached garages. He noted the setbacks were similar to his request.

Mr. Hines agreed to the conditions of approval.

Ms. MacDonald stated prior to the first hearing one of the neighbors expressed an inquiry. The concerns were addressed through email. Ms. MacDonald expressed her appreciation to the applicant for working to make the height work. Though 15 feet could be achieved with a flat roof, the better option is to match the roof peak of the existing house with an 18 foot, pitched roof. Ms. MacDonald also confirmed that the color and materials used on the garage will match those of the existing home.

Ms. MacDonald noted that this request meets the criteria for a Use Permit Standard:

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 PL120382 / ZUP12126 and ZUP12127 subject to the following conditions:

1. This Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.
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. The materials and colors of the garage shall match or be compatible with the existing structure.

7. Request approval for a Use Permit Standard to reduce the front yard setback by 20%, from 15 feet to 12 feet for the LYMAN RESIDENCE (PL120417) located at 1304 East Wesleyan Drive. The applicants are Jim and Karen Lyman.

Jim and Karen Lyman were present to represent this case.

Steve Abrahamson introduced the case. The request is for a Use Permit Standard to allow an open structure carport. The Lyman residence is located on the north east corner of Wesleyan Drive and Dorsey Lane. Open structures such as carports require a 15 foot setback in the R1-6 Single Family Residential District. The applicants are requesting approval of a 20% front yard setback reduction from 15 feet to 12 feet to accommodate a carport structure. Staff has not received any public input regarding this request. Staff recommends approval of the request.

Mrs. Lyman stated they wanted the carport to help reduce the ambient heat. She also presented a letter of support signed by seven neighbors. Mr. and Mrs. Lyman stated the design of the carport would match the house.

Mr. and Mrs. Lyman agreed to the conditions of approval.

There was no public input.

Ms. MacDonald noted that this request meets the criteria for a Use Permit Standard:

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 PL120417/ZUP12128 subject to the following conditions:

1. This Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.
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. The materials and colors of the carport shall match or be compatible with the existing structure.
4. The existing garage may not be converted into livable space without returning to the Hearing Officer for a Use Permit to allow primary vehicular parking within the front yard setback.

8. Request approval for a Use Permit to increase the wall height in the front yard from 4 feet to 6 feet for the DUBOIS RESIDENCE (PL120421) located at 2122 East Balboa Drive. The applicant is Wouter Dubois.

Wouter Dubois was present to represent this case.

Steve Abrahamson introduced the case. This is a Use Permit request. Tempe Zoning and Development Code allows for a Use Permit to allow for fences and walls from 4 feet to 6 feet in the R1-6 Single Family Residential

District. The location of this home is on Balboa Drive just north of the Shalimar Golf Course, north of Southern Avenue just west of the Price Road/101 Freeway. The neighborhood is eclectic in style. The request is to allow for a fence in the front yard setback. The applicant is currently allowed to have a 4 foot fence or wall. The applicant would like an increase in height from 4 feet to 6 feet. This request is not uncommon. People like the fence or wall for safety, security and a number of different reasons. Staff is recommending approval based upon the Use Permit criteria. This request meets the requirements for a Use Permit. Several citizens have voiced their opposition to this request.

Ms. MacDonald noted letters of support/opposition for the record:

David and Frances Manning – support

Mark and Alonna Randall – opposition

Linda Akers – opposition

Rennie Rasp, opposition

Tom Brethauer, opposition

Gloria Lowe, opposition

Mr. Dubois stated he and his wife were very fortunate to buy a house in this neighborhood. His wife has over 50 ceramic pots of vegetation, mostly succulents. They would like to have a courtyard in the front yard to incorporate the plants. The house is located on a busy street and he does not believe a 4 foot wall would be high enough. The house across the street has a wall surrounding it. The Zoning Code allows a 6 foot wall with the approval of a Use Permit. Mr. Dubois stated he did not have time to communicate with the neighbors and felt the wall may be problematic.

The design of the 6 foot wall is to create a noise barrier for a more accommodating life style. He realizes he needs vision to the street. He would like to design a wall with openings. He stated the wall would be a Spanish type of design. The wall would blend into the house and the neighborhood. The wall would be stucco and mimic the house. A sandstone paint color would be used for the wall.

Ms. MacDonald stated the Traffic Engineering Department would have to review the plans. The Zoning and Development Code has clear vision requirements that apply to fences and walls. The current plans may need to be modified for safety reasons.

Mr. Abrahamson stated the Planning Division has no purview over the design elements in Single Family Residential Zoning Districts. The design elements include: colors, materials, textures and appearance in general. We need to assure the visibility angles are clear from a traffic standpoint.

Mr. Dubois stated he understood why the fence should be angled near the corner of the driveway for visibility. He stated this would give him an opportunity for additional landscaping outside the wall.

Ms. MacDonald noted condition number three which reads: 3. The materials and colors of the wall shall match or be compatible with the existing structure.

Mr. Dubois presented pictures of wall similar to what he would like to build. He stated there would be about 3.5 to 4 feet between the sidewalk and the wall. He would like to incorporate a variation of pavers, granite and plants between the wall and the sidewalk. The gate would be about 3 foot tall and you would be able to see the front door of the house. Mr. Dubois feels a lot of the opposition may be from the lack details of the wall. This project will complement the neighborhood.

Mr. Dubois agreed to the conditions of approval.

Tom Brethauer stated he is not in favor of the wall. The noise levels are from being located in a vibrant city. A wall in the front yard is not going to stop the noise. The homes in the neighborhood are located in the Shalimar Estates. The house across the street with the wall was built in the early 1960s. It is a very unusual design. The

sides of the house face north and south rather than east and west. The north side of the house is almost out to the street near the west boundary of the lot. The south side of the house is next to the golf course. A detached garage is located on the west. The fence is located between the detached garage and the side of the house near Balboa Drive. This is the only house in the neighborhood with a fenced in front yard. The only exceptions are short 3 foot walls or rod iron fences. A wall in the front yard would look like a misfit in the neighborhood. It would look like something a drug dealer would want so no one could see in the house or something an immigrant smuggler would want to use as a drop house. It is contrary with the neighborhood. Mr. Brethauer lives next door to Mr. Dubois and the wall would drastically block his view from his front window. The wall would also create a safety hazard. His grandson and other kids playing in the front yard will not be able to see cars coming from that direction. If his grandson runs into the street and gets hit by a car he will hold Mr. Dubois and the City responsible if they approve the wall. If Mr. Dubois wanted a fenced in yard he should have bought one of the townhouse villas, they all have fenced in front yards. The wall will also decrease the value of the houses.

Neil Bearce agrees with everything the last speaker stated. He lives on the west side of Mr. Dubois. The wall is absolutely out of context with the neighborhood. It is unfortunate Mr. Dubois did not do his homework before he bought the house. This would be an absolute eye sore and detract from the value of the other homes in the neighborhood. The Shalimar Estates are all custom homes. It seems the primary reason Mr. Dubois wants to build the wall is due to traffic on Balboa Drive. Mr. Bearce visited the Engineering Department in Public Works this morning. Balboa Drive is a residential street. Residential streets have up to 500 cars per 24 hour period, .36 cars per minute. There are no school buses, city buses or large commercial trucks on Balboa Drive. The Sanitation Department runs a garbage truck about three times a week, usually between 8:00-9:00 a.m. Mr. Bearce has lived in his home for 28 years. He works in his garage and is in his front yard about five days a week between 4-5 hours. Between 6:00-9:00 a.m. this morning he counted 47 cars on Balboa Drive, this includes rush hour. Balboa Drive is not a noisy or busy street. The speed limit is 25 miles per hour. Balboa Drive is not a major thoroughfare. There are nine exits between Broadway Road and Southern Avenue on to Price Road. A wall would detract from the neighborhood.

Dawn Sinclair is opposed to the applicant's wall in the front yard. This proposal destroys the architectural integrity of a rather unique neighborhood. The house across the street with the fence was built in the 1960s at a time when the zoning was very different. The zoning regulations were ignored because a well know architect built that home. The architect did a lot of work for the City of Tempe. That house and fence would not be able to be built there today. The neighborhood should not be able to have fence wars. That is not the neighborhood she bought into. The neighborhood has villas near it. The villas are referred to as walled villas. The proposed wall would turn Mr. Dubois home into one of those walled villas. Mr. Dubois should have bought a walled villa if that is what he wanted. The neighborhood is very open and you can see up and down the street. The wall just doesn't fit into the neighborhood. The safety concerns of the neighbor are very well placed. There is not an enormous amount of traffic on Balboa Drive. There is enough traffic that building a wall is going to block the visibility for drivers as well as children playing. The reasons that Mr. Dubois wants to build the wall are things he should have considered before he bought the home. She believes this will decrease her property value. The wall is not compatible with the existing structures and it will downgrade property values.

Mr. Dubois returned to address the issues brought up by neighbors. He understands each person's perspective. At the same time he is trying to achieve something that is available through the Zoning Code. He does not feel the wall would be detrimental to the neighborhood. He is following the process to ask for a Use Permit to heighten the wall from the allowable 4 feet to 6 feet. He is concerned that there would be opposition to a 4 foot wall. He feels his request and submittals have satisfied the requirements and criteria of the Use Permit. He would like to see an approval of his request.

Ms. MacDonald stated these cases are troubling because she can see both sides of this issue. She can understand the neighbors not wanting something they perceive to impact their property. At the same time she understands the applicants desire to improve his property within the constraints of the code.

Ms. MacDonald noted that this request meets four out of the five 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. **Property owners believe this will decrease their property values. Mr. Dubois believes it will increase his property value. Ms. MacDonald stated it is all in perception and how you view the function of the wall. She does not believe it will contribute to the deterioration of this neighborhood.**
4. **Compatibility with existing surrounding structures and uses. She does not think it is compatible with existing surrounding structures and uses. The wall is out of character with the neighborhood.**
5. Will allow you to adequately control disruptive behavior both inside and outside the property.

DECISION:

Ms. MacDonald approved PL120421/ZUP12129 subject to the following conditions:

1. This Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.
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. The materials and colors of the wall shall match or be compatible with the existing structure.
4. Plants planted within the right of way in front of the wall shall not have thorns or spines, and be not encroach onto the sidewalk.
5. Wall must comply with site visibility triangles at corner by driveway to provide safe exiting from drive into public right of way. This may be accomplished by lowering the wall within this portion of the design, or chamfering the design at an angle.

9. Request approval for a Use Permit to allow a fitness facility in the General Industrial District for REVOLUTION TRAINING SYSTEMS (PL120422) located at 606 West Southern Avenue, Suite 2. The applicant is Michael Peltz.

Michael Peltz was present to represent this case.

Steve Abrahamson introduced the case. This is a request for a fitness facility in the General Industrial District. The property is located at the north west corner of Southern Avenue and Roosevelt Street. The request is required through the Zoning and Development Code. A fitness facility or a gym in the GID requires a Use Permit because it is a different use than the other uses in the area. The parking ratios are different and generally they have different hours than most of the industrial uses. Staff has not received any input from the public. Staff is recommending approval of the Use Permit.

Ms. MacDonald noted condition number five which reads: 5. All fitness training shall be conducted inside the building, not outside.

Mr. Peltz 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 PL120422/ZUP12130 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. The hours of operation for this use Monday through Friday 6am-9pm and Saturday and Sunday 6am-4pm.
5. All fitness training shall be conducted inside the building, not outside.
6. Sale of products ancillary to the fitness use shall not exceed 15% of the total tenant suite.

The next Hearing Officer public hearing will be held on January 15, 2013

There being no further business the public hearing adjourned at 3:06 PM.

Prepared by: Julie Stennerson, Executive Assistant
Reviewed by:

A handwritten signature in blue ink that reads "Steve A. Abrahamson".

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

SA:js