

Staff Summary Report



Board of Adjustment Hearing Date: 2/22/12

Agenda Item Number: 2

SUBJECT: Appeal (**VRA11002**) of the December 6, 2011 Hearing Officer's decision to approve the request by the **ARKULES-SAINT VINCENT PROPERTY** located at 902 South Ash Avenue for one (1) variance.

DOCUMENT NAME: 20120222cdsl01 **PLANNED DEVELOPMENT (0406)**

COMMENTS: Appeal (**VRA11002**) of the December 6, 2011 Hearing Officer's decision to approve the request by the **ARKULES-SAINT VINCENT PROPERTY (PL100228)** (Patricia St. Vincent, applicant; Arkules-Saint Vincent, property owners) located at 902 South Ash Avenue in the R-3, Multi-Family Residential Limited District for:

VAR11008 Variance to waive the required masonry wall between the properties developed for multi-family and single family.

PREPARED BY: Sherri Lesser, Senior Planner (480-350-8486)

REVIEWED BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359) *SEA*

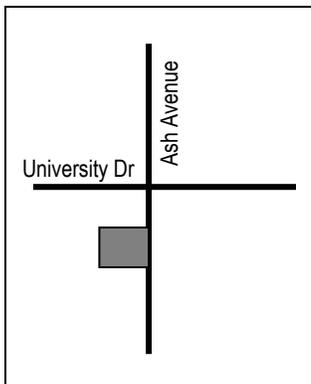
LEGAL REVIEW BY: N/A

DEPARTMENT REVIEW BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359)

FISCAL NOTE: There is no fiscal impact to City funds.

RECOMMENDATION: **Staff –no recommendation on appeals**

ADDITIONAL INFO:



Sienna Court Lofts Homeowners Association, Rhombus LLC and Rick D. Hondorp are requesting an appeal of the December 6, 2011 Hearing Officer's decision to approve the request by the Arkules-St. Vincent property for a variance to waive the required masonry wall between the properties developed for multi-family and single family. The variance was the first step in the process to bring the property into compliance with the Zoning and Development Code. The site is located at the southwest corner of 9th Street and Ash Avenue. Staff recommended approval of the variance with the finding that there were special circumstances unique to this lot to warrant support of the variance. Staff received correspondence; both in opposition and support, from the surrounding area regarding this request (see attachments). The applicant held a neighborhood meeting in accordance with the Zoning and Development Code requirements.

PAGES:

1. List of Attachments
2. Comments; Reasons for Approval
3. Conditions of Approval; History & Facts/Description; Zoning & Development Code Reference

ATTACHMENTS:

1. Location Map(s)
2. Aerial Photo(s)
- 3-12. Letter(s) of Appeal w/attachments from Rick Hondorp, dated 12/22/11 (representing Sienna Court Lofts HOA, Inc.; Rhombus LLC; & Rick Hondorp)
- 13-14. Applicant Letter of Intent
15. Site plan
- 16-17. Hearing Officer Minutes, dated 12/06/11
- 18-19. MANA Council Meeting Minutes, dated 9/11/11
20. Letter of Opposition from Rick Hondorp, dated 10/12/11
- 21-22. Letter of Opposition from Sienna Court Lofts HOA, Inc. dated 10/12/11
- 23-24. Letter of Opposition from Rhombus LLC, dated 10/12/11
- 25-30. Rick Hondorp Opposition to Project Submittal Application, letter dated 11/28/11.
- 31-36. Rhombus LLC Opposition to Project Submittal Application, letter dated 11/28/11
- 37-55. Sienna Court Lofts HOA, Inc. Opposition to Project Submittal Application, dated 11/28/11
- 56-82. Rick Hondorp Letter of Opposition, dated 12/06/11.
- 83-105. Sienna Court Lofts HOA, Inc. Letter of Opposition, dated 12/06/11
- 106-131. Rhombus LLC Letter of Opposition, dated 12/06/11
- 132-149. Citizen support correspondence in chronological order by date.
- 150-158. Applicant historical property information.

COMMENTS:

Sienna Court Lofts Homeowners Association, Rhombus LLC and Rick D. Hondorp are requesting an appeal of the December 6, 2011 Hearing Officer’s decision to approve the request by the Arkules-St. Vincent property for a variance to waive the required masonry wall between the properties developed for multi-family and single family. The appellants’ letter of attachment describes their reasons seeking a reversal of the Hearing Officer Decision.

The Comments, Justification, Reasons for Approval and Conditions reviewed by the Hearing Officer included the following:

In 1999, Otto Bed and Breakfast located at 902 S Ash Avenue received a use permit to allow a bed and breakfast. The application for the use permit included a modified site plan with a parking area in the rear yard of the property; accessible from 9th Street. The parking area was installed per the site plan shown to the Board of Adjustment. Due to the conditions of approval not completed by the applicant; the ratification of the use permit was not completed. The property transferred ownership in 2000 to the current owner. They inherited the responsibility of the non-compliant modifications to the property. The property owners were cited by the Code Compliance Department and subsequently they made an application to waive the required buffer wall between their multi-family zoned property and the single family zoned property to the south. The variance process will be the first step in bringing the property into compliance with the Zoning and Development Code. The applicant will need to complete the Development Plan Review Process for the site modifications.

Variance

The Zoning and Development Code Development Standards requires a masonry wall buffer between properties development for multi-family from single family developments. Although the modifications to the site currently exist on the property; they will be processing all applications as a “new” development to bring everything into compliance.

Per the Zoning and Development Code variance(s) shall not be authorized unless the decision-making body finds upon sufficient evidence of the following:

- 1. That special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings and
The property is located on a corner with the parking to rear accessible from the street side. Due to the mature landscaping on site the structure of a wall would be disruptive. Additionally, limiting the visibility from the surrounding neighbors (the intent of the buffer) would not be enhanced by the wall greater than existing conditions.
- 2. 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; and

A windshield survey of the neighborhood produced evidence other developments where single family develop abuts multi-family developments do not have an 8’ masonry wall to buffer the uses. Other materials such as a green screens serve as a buffer.
- 3. 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; and
Shall not be considered a special privilege inconsistent with other multi-family zoned properties.
- 4. A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner.
The development was purchased with the modifications.

Conclusion

Staff recommends approval of the variance.

REASON(S) FOR APPROVAL:

1. Special circumstances or conditions applying to the land, building or use exist.
2. The authorizing of the variance is necessary for the preservation and enjoyment of substantial property rights.
3. Authorization of the variance(s) will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general.

SHOULD THE BOARD OF ADJUSTMENT ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE FOLLOWING CONDITIONS OF APPROVAL SHOULD APPLY.

CONDITION(S) OF APPROVAL:

1. Obtain Development Plan Approval for all non-compliant modifications and future improvements to the site within 45 days or by ~~01/21/2012~~ **05/21/2012**

HISTORY & FACTS:

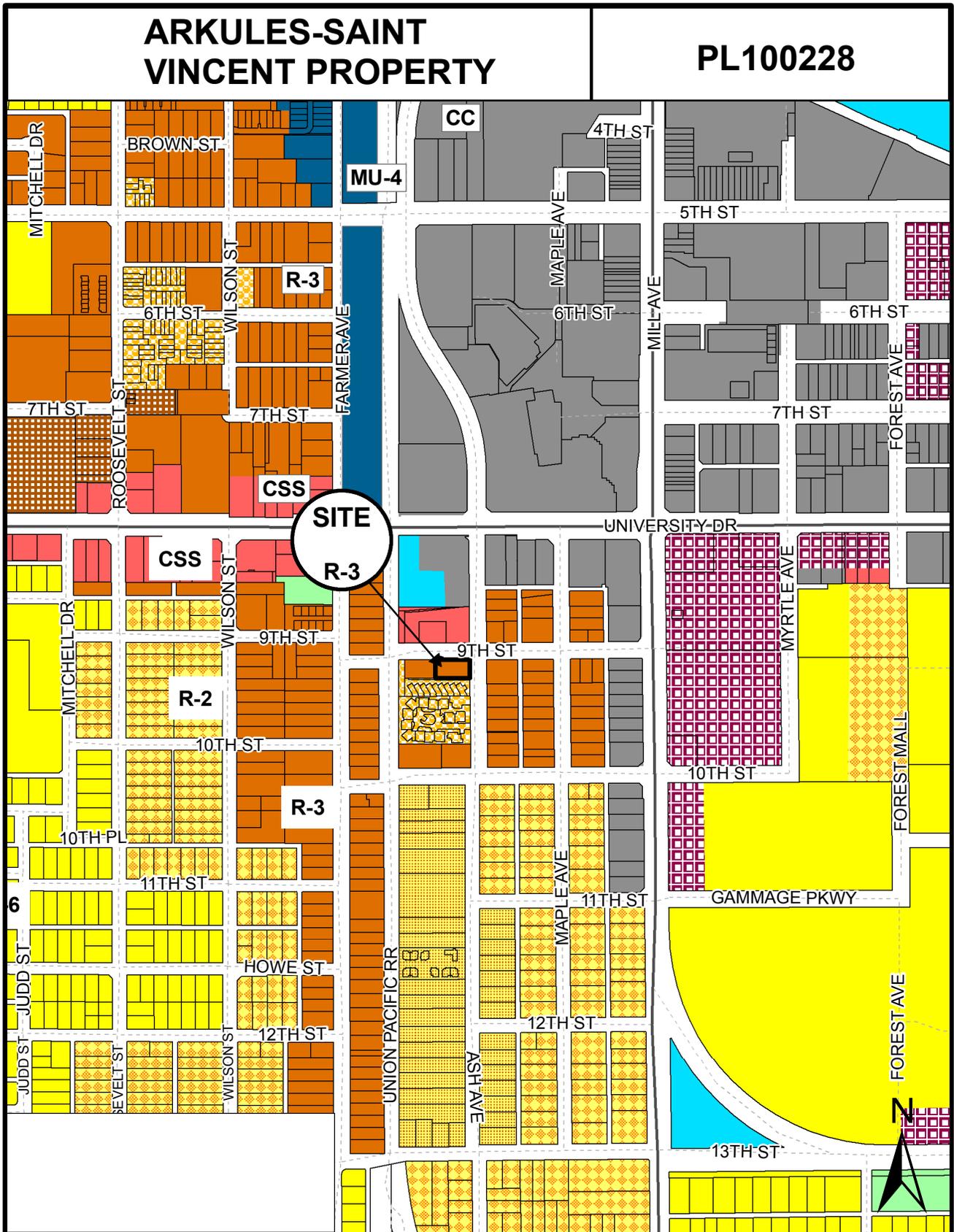
- 1909 Gage Addition of Tempe Subdivison Plat created the infill lot.
- 1925 The house was constructed per information on the Historic Preservation Property Inventory Form
- June 24, 1999 The Board of Adjustment approved a use permit for the Otto Boarding House Bed and Breakfast subject to conditions.
- December 6, 2011 The Hearing Officer approved the request for a variance to waive the required masonry wall between the properties developed for multi-family and single family.

DESCRIPTION:

Owner – Arkules-Saint Vincent
Applicant – Arkules-Saint Vincent
Existing Zoning – R-3, Multi-Family Residential Limited District

ZONING AND DEVELOPMENT CODE REFERENCE:

Part 4, Chapter 7. Section 4-706- Land Use Buffers
Part 6, Chapter 3, Section 6-309- Variances



Location Map



ARKULES-SAINT VINCENT PROPERTY (PL100228)

22 December 2011 HAND DELIVERED

City Of Tempe

Development Services Dept. - Planning & Zoning

31 East 5th ST Garden Level

Tempe, AZ 85281

City of Tempe (CoT) – Zoning Administrator, Planning and Zoning Staff and Board of Adjustment

RE: Appeal of Hearing Officer (HO) decision in the case: VAR11008 – a request by applicant Arkules- Saint Vincent (PL100228) on 6 December 2011, by the "aggrieved" parties listed below, in accordance with the CoT Zoning and Development Code (ZDC), scheduled for 25 Jan 2012, our request for continuance.

Sienna Court Lofts Homeowners Association, Inc. [SCL-HOA, Inc.] (an AZ not for profit corp.)

920-A South Ash Avenue Tempe, AZ 85281 President/Director - Rick D. Hondorp

Rhombus LLC (an AZ limited liability company) 275 West 9th Street Tempe, AZ 85281

Managing member – Rick D. Hondorp

Rick D. Hondorp property owner in same block as subject property

275 West 9th Street Tempe, AZ 85281

In the last 48 hours, we have received information from CoT Staff, that: three (3) persons on the Board of Adjustment will have their terms expire on 12-31-11, there is also currently one (1) vacancy of members, there have been less than one (1) Board meetings per month in 2011, and that our appeal is the only item scheduled for Jan 2012. Considering the above, incompleteness of the Board, the large amount of information for each Board person to read and understand regarding our appeal, the holiday period, and the seriousness of our case before the Board, we request that the appeal be continued to the Feb 2012 meeting date, in consideration of all parties best interests. In the interest of transparency, we can offer at this time, that lack of a full seven (7) member Board, including any absents and/or conflicts of interest, will force us to request a continuance at the meeting, in the interest of fairness to our case.

Please reply back to us in a timely manner by std. US Mail first-class postage-paid to: Rick D. Hondorp - Architect 275 West 9th ST Tempe, AZ 85281 Thank you
Sincerely,

Rick D. Hondorp Registered Architect, representing the above named, "aggrieved" parties.



20 December 2011 HAND DELIVERED w/ check in amount of \$108.00 as advised by Staff
City Of Tempe
Development Services Dept. - Planning & Zoning
31 East 5th ST Garden Level
Tempe, AZ 85281
City of Tempe (CoT) - Zoning Administrator, Planning and Zoning Staff and Board of Adjustment

VARA 11002

RE: Appeal Petition of Hearing Officer (HO) decision in the case: VAR11008 - a request by applicant Arkules- Saint Vincent (PL100228) on 6 December 2011, by the "aggrieved" parties listed below, in accordance with the CoT Zoning and Development Code (ZDC).

Sienna Court Lofts Homeowners Association, Inc. [SCL-HOA, Inc.] (an AZ not for profit corp.)

920-A South Ash Avenue Tempe, AZ 85281 President/Director - Rick D. Hondorp
Rhombus LLC (an AZ limited liability company) 275 West 9th Street Tempe, AZ 85281

Managing member - Rick D. Hondorp
Rick D. Hondorp property owner in same block as subject property
275 West 9th Street Tempe, AZ 85281

Representing twelve (12) land parcel "properties in the vicinity", including one (1) parcel that is congruent and ten (10) others that are adjacent to the subject property, directly affected by this request for variance. [All single-family zoned properties]

This letter shall serve as the "appeal petition" as shall be included with this letter, the six (6), independently written and submitted letters of opposition, including all attachments therein, to the decision of the HO on 6 Dec 2011, in this case and also the three (3) "Prepared Statements" by the above parties on 6 December 2011, which the HO failed to include in the decision process, in that she rejected them in the public hearing when presented as "testify in writing". (per ZDC Part 1, Chapter 3, Section 1-305, C. Hearing Officer)

The specific grounds for the appeal are as included in the information named in the above paragraph and as stated below.

1. City of Tempe (CoT) Planning & Zoning Staff (Staff) failed to provide full disclosure of ALL pertinent, accurate, factual information available to Staff and issued a defective Staff Summary Report (Report) containing mis-statements, half-truths, false information and

failed to tell the whole true history, facts and comments in the Report that Staff produced and the HO relied on for decision. In so doing, Staff left out key information that would NOT support the "approval, subject to conditions" recommendation, because inclusion would have kept Staff from fulfilling the requirement of ALL four (4) "approval criteria" of the ZDC. We allege that these actions were deliberate, negligent and contributed to a wrongful decision.

2. For "Approval Criteria #1."

- a. SCL-HOA, Inc. & Rhombus LLC both stipulated in their respectively Prepared Statements that the "mature landscaping on site" (the East 2/3rd's portion of the required 8' masonry wall along the South property line (PL) of the subject property) was not of concern with this request for variance, but rather the West 1/3rd portion, which is unencumbered by anything and where the "development" (parking area/old back yard) is located, was!

So, had Staff/applicant been willing to make this a "subject to condition", or had the HO not rejected the Prepared Statements as written testimony, prior to her decision, this matter would be over, as far as the variance in this case goes, BUT neither did so!

- b. SCL-HOA, Inc. submitted as attachments to its Prepared Statement human, eye-level, ground standing photos, from the SCL Site, clearly showing the 8' wall height WOULD "limiting the visibility from the surrounding neighbors (the intent of the buffer)". [These photos CONTRADICT the Staff Report]. We allege that Staff, deliberately misrepresented the true benefit the 8' wall height to the "surrounding neighbors" (SCL-HOA, Inc./Rhombus LLC) out of their own mis-guided desire to "take" the private property of SCL-HOA, Inc. the "existing conditions", to supplement the "buffer" requirement.
- c. The Report failed to address that the "existing condition" was (SCL-HOA, Inc.'s) own masonry wall, was in FACT, entirely located within the PL of SCL-HOA, Inc. and in accordance with Arizona Revised Statutes (ARS), could NOT be used either by CoT or the applicant, and in FACT was NOT a "common wall". (attached copy of SCL Site Plan for its wall blog. permit)
- d. So, given the above, the only factual data to support #1 is the "mature landscaping" claim, which we, herein address, but does NOT pertain to the West 1/3rd of the lot line area. The HO decision should be overturned on appeal.

- 3.
- For "Approval Criteria #2."
- a. From the Report: "A windshield survey of the neighborhood....." We allege that Staff, with what is expected knowledge of the CoT, was negligent in making such a statement. The information was available to them so that, they should have known, there are only two (2) situations "of the neighborhood" where R3 and R 1PAD zoning share a PL, and they both occur in this city block, next to each other, and one (1) is this case! The other is the common PL between SCL-HOA, Inc. and Ash Court to the South, where in Ash Court had changed from R3 to R 1PAD, while SCL was in development, and thus SCL was required/built the 8' masonry wall, again on its own property. Staff had but to only walk 75' South of subject PL to observe this 8' wall!
- b. From the Report: "*strict application of this Code...*"; we address, above in "2. a." , so that aspect of this criteria is moot.
- c. From the Report: "*...will deprive such property of privileges...*" we address, above in "3.a.", the buffer requirement is a requirement of "development" of the subject property, period. No one is "depriving" applicant from "developing" subject property, but if applicant wants to continue to change the use of the backyard of 902 S. Ash to park vehicles and be in "compliance" with the ZDC, the 8' masonry wall is required.
- d. This #2, criteria item is NOT "sufficiently evidenced" in accordance with the requirements of the ZDC and thus, since ALL four (4) criteria are required for approval, the HO decision is in error and should be overturned on appeal.
- 4.
- For "Approval Criteria #3."
- a. From the Report: "*...shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity...*" We allege that Staff provided false information in the Report, because to grant approval of this variance WOULD GRANT "special privilege" to the applicant and equally "deprive" the SCL-HOA, Inc./Rhombus LLC properties adjacent on the South, of its property rights of protection under the ZDC.
- b. The Prepared Statements of SCL-HOA, Inc. & Rhombus LLC from 6 Dec 11, fully address this criteria requirement with factual data applicable to this issue, as well as others, but were rejected by the HO as written testimony.

- c. Staff, in The Report, fails to provide "sufficient evidence" to support the mis-leading statement made in an attempt to fulfill this #3 criteria requirement.
- d. This #3, criteria item is NOT "sufficiently evidenced" in accordance with the requirements of the ZDC, and since the HO based her decision on the Report, the decision is in error and should be overturned on appeal.
5. For "Approval Criteria #4."
- a. The Report fails to present a true, factual "comments" and "history & facts:" and we allege that Staff, negligently, with malice of for thought, and having full knowledge of the "long history" [as S. Lesser (Staff) stated in the public hearing], left out data and events, for as to include them, would prove our allegation of complicity with applicant in attempting to secure this variance approval. The missing information would also prove that applicant DID "self-impose" the "modifications" "to the property".
- b. Staff had acquired knowledge that a "history" existed between the years of 1993 and 1998, where in, the subject property rear yard was "modified", by a change in use from landscaped, lawn with a perimeter wood fence, to having sections of the fence removed, lawn removed and vehicles started parking in the area. This was PRIOR to the "In 1999, Otto Bed & Breakfast..." Otto created the "non-conforming use", in violation of the Zoning Ordinance No. 808 (ZO#808), PRIOR to the use permit application.
- c. Applicant purchase subject property from Otto, after the use permit became VOID. Applicant, upon ownership, used the rear yard area for employee and patron parking for his commercial interest located on another block, (Casey Moore's). This action, under the ZO#808, was illegal, as there were no exceptions to allow it. Applicant never legalized the change in use with CoT, just continued using the area for commercial vehicle parking, until 2010 when CoT Code Enforcement issued a citation for how applicant was using the subject property in violation of the ZDC.
- d. Applicant requested and was approved by S. Lesser on 2 September 2010, a "Site plan Modification - new parking surface". In July 2011, applicant "modified" the subject property.
- e. From the Report, "The development was purchased with the modifications." No one "held a gun to his/her head" and MADE applicant park vehicles in the rear yard.

a CHOICE was available and viable, to simply put a wood fence back up to keep vehicles from being parked there and return the area into compliance by that easy change, no wall required, no variance needed!

So, the Staff statement in the Report is mis-leading, without merit, vague, false and fails to "sufficiently evidence" the requirement of the #4 criteria. The three (3) individuals, Prepared Statements of SCL-HOA, Inc., Rhombus LLC and Rick D. Hondorp of 6 Dec 11, provide supporting documentation to dis-credit the Staff Report on ALL four (4) "approval criteria", this one included.

f. This #4 criteria item is NOT "substantially evidenced", so the variance request fails to meet the required tests for approval and the HO decision should be overturned on appeal.

6. "Reason(s) for Approval:"

- a. From the Report: "The property is located on a corner with the parking to rear accessible from the side street." SO WHAT! NOT a "special circumstance". The parking area was illegally created without CoT application or approval by Ottos. The area continued to be used by applicant, again illegally w/o CoT application or approval until 2010, when CoT Staff negligently approved the "site modification" request by applicant. The area continues to this day to be used to park Casey Moore's employee vehicles, in violation of the ZDC.
- b. The variance is NOT NECESSARY, just stop using the back yard for parking! No "enjoyment of substantial property rights", is being curtailed, because "property rights" do not entitle an owner to violate the Codes and Ordinances of CoT.
- c. "Authorization of (this) variance" WILL BE MATERIALLY DETRIMENTAL "to persons residing or working in the vicinity, to adjacent property..." namely SCL-HOA, Inc. and Rhombus LLC (the majority land owner in SCL).
- d. Had the CoT Staff prepared a factually complete, accurate, unbiased Report, they could NOT have "substantially evidenced", a recommendation of approval for this variance request, as we have pointed out in ALL the documentation brought to bear in opposition, [the six (6) letters of opposition and three (3) prepared statements] and now this appeal petition letter.

7. "Condition(s) of Approval"

- a. From the Report: "Obtain Development Plan Approval for..." Staff fails to address the ZDC requirement from Chapter 6, Section 4-602, D. 4, which states: "Parking lots for adjacent commercial uses are permitted in any multi-family district, SUBJECT TO A USE PERMIT". No use permit currently exists to satisfy this ZDC requirement. We allege that not only is this variance request "the first step" (the Report), but it is the ONLY, Public exposure, to what is in the applicant's "development plans." The plan document submitted by applicant not only fails to meet the submittal requirements of the ZDC, but gives no indication of what will be proposed or even show the required 8' masonry wall location. The vagueness of the Staff Report in this aspect gives credibility to our allegation that Staff is complicit with applicant and will continue to do so, "behind closed doors" within the P&Z Dept.

8. The entire Public Hearing of 6 Dec 11, conducted by Hearing Officer (HO) Ms. Vanessa Mc Donald, as it pertains to this specific case is highly suspect, as to qualifications of this HO, in accordance with ARS 9-462.8, with regard to her "training and experience which qualifies them to conduct hearings and make findings and conclusions on the matters heard".

- a. At the opening of the general public hearing, the HO stated that she uses the Staff Summary Report as well as makes her own site visits to each case location. Herein lays the significance of Staff's duty to provide a full, accurate, truthful and unbiased Report, which in this case, Staff did NOT! It was apparent in the hearing, that the HO's "site visit" was not very thorough in that she asked of Staff: I understand there is an existing wall?, to which, Staff failed to accurately depict the specific location and ownership of and that it was NOT a common wall at all.
- b. Prior to the above incident, the HO had to be "coached" by Staff present, at which time she introduced special "procedural conditions" for this case, one being the five (5) minute rule for public comment, (which hadn't been brought up in any of the other cases on this agenda, or at the beginning of the general hearing opening).

- c. When we attempted to comply with the ZDC and submit written testimony, the HO, made the excuse that she couldn't review all the testimony presented in the "few minutes" she had, at which point Staff Abrahamson, out of order, offered his opinion that a Summary of the testimony could be made in the time allotted, which the HO forced us to comply with, when the option of "Continuing the Case" was at her disposal to use. There was no need to decide this case that day, as applicant had waited two (2) months or more from filing the application, just to submitting the "completion" of it, as lacking as it was.
- d. A further statement which shows lack of qualification for position as an HO came in her questioning: "why don't you (SCL HOA, Inc.) just add on top of your wall?" clearly, showing she lacked of knowledge of ARS property law, and exposing her unconscionable bias in this case, in favor of the applicant.
- e. In the limited verbal explanation we could offer, she exhibited little comprehension of the errors presented in the Staff Summary Report, as well as our argument of the illegal "taking" of another parties private property (the existing SCL-HOA, Inc. wall) to serve the CoT/applicants needs.
- f. The HO knew, holding the three (3) individually Prepared Statements in hand, (with their numerous pages of attachments), that she had not fully reviewed this case, yet still pushed through her arguably negligent ruling of approval.
- g. We herein allege that in this case, from the get go, this HO, exhibited a lack of "training and experience" and failed to make a legal, proper decision when she approved this variance on 6 Dec 2011.

In real estate law based on Arizona Revised Statutes, there are terms that are applicable in this case, that could distill this matter very simply. There are "dominant" properties" and "servient" properties.

Single Family Residential (dominant) Zoning is considered a "higher and better" land usage than Multi-family (servient) Zoning. (R1PAD v. R3) and the ZDC not only supports this statement, but also establishes it.

The types of restrictions that are in the ZDC, as in this case the 8' masonry wall to "buffer" are there to preserve and protect Single Family Residential Zoning properties, and their property rights.

As we have presented in this appeal petition letter, (and supporting documents), substantial evidence that there is NOT "sufficient evidence" for approval of this variance request.

Full disclosure by an unbiased Staff in its Report and full examination of ALL the evidence presented to a qualified Hearing Officer, in our opinion, would have produced a Denial.

We therefore appeal to the Board of Adjustment to overturn the approval decision and deny this variance request.

Lastly, in as much as "neighborhood support" is brought up in this case, the location of the required 8' masonry wall, (along the West 1/3rd of the South PL) has ZERO negative affects on the neighborhood. However, elimination of the required 8' masonry wall, would clearly be DAMAGING to all property Owners within the SCL HOA, Inc. community, adjacent to the South.

Sincerely,

Rick D. Hondorp Registered Architect, representing the above named, "aggrieved" parties.



Attachment(s)

Patty St. Vincent
NINTH AND ASH, LLC
902 South Ash Avenue
Tempe Arizona 85281
602-430-3480

November 10, 2011

City of Tempe
Planning Department
Tempe Arizona 85281

DPR10162 / DS 100748

Re: 902 S Ash Ave Parking Drive area / variance

Applicant purchased subject property from the Otto family who ran a licensed Bed and Breakfast/Boarding home in the City of Tempe that including parking in the rear of the property.

The parking was openly used and visible prior to purchase by the applicant. An additional burden has been put upon applicant by the city of Tempe when the street parking on North side of the applicant's property was removed after purchase by applicant.

Applicant wishes to complete the necessary permit process now that applicant finds the original permit process was never completed by previous owner including a variance request for a wall where a block wall is already in place.

Criteria for variance approval are:

That special circumstance are applicable to this property because of the location and history. The applicant property and the adjacent property were one and the same parcel before all current owners purchased including the property owner adjacent to the South. Long after the property was subdivided the South adjacent property owner built a wall along the property line.

The strict application of the code will deprive applicant of of privileges enjoyed by other property owners of the same same classification and zoning district who currently share common walls and fences.

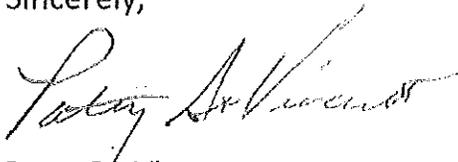
The variance or adjustment requested shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located since sharing of a wall or fence is common practice in the vicinity.

A burden has been not self-imposed on the owner since street parking has been restricted in front of the owner by the City of Tempe. The current wall was built by the adjacent property owner.

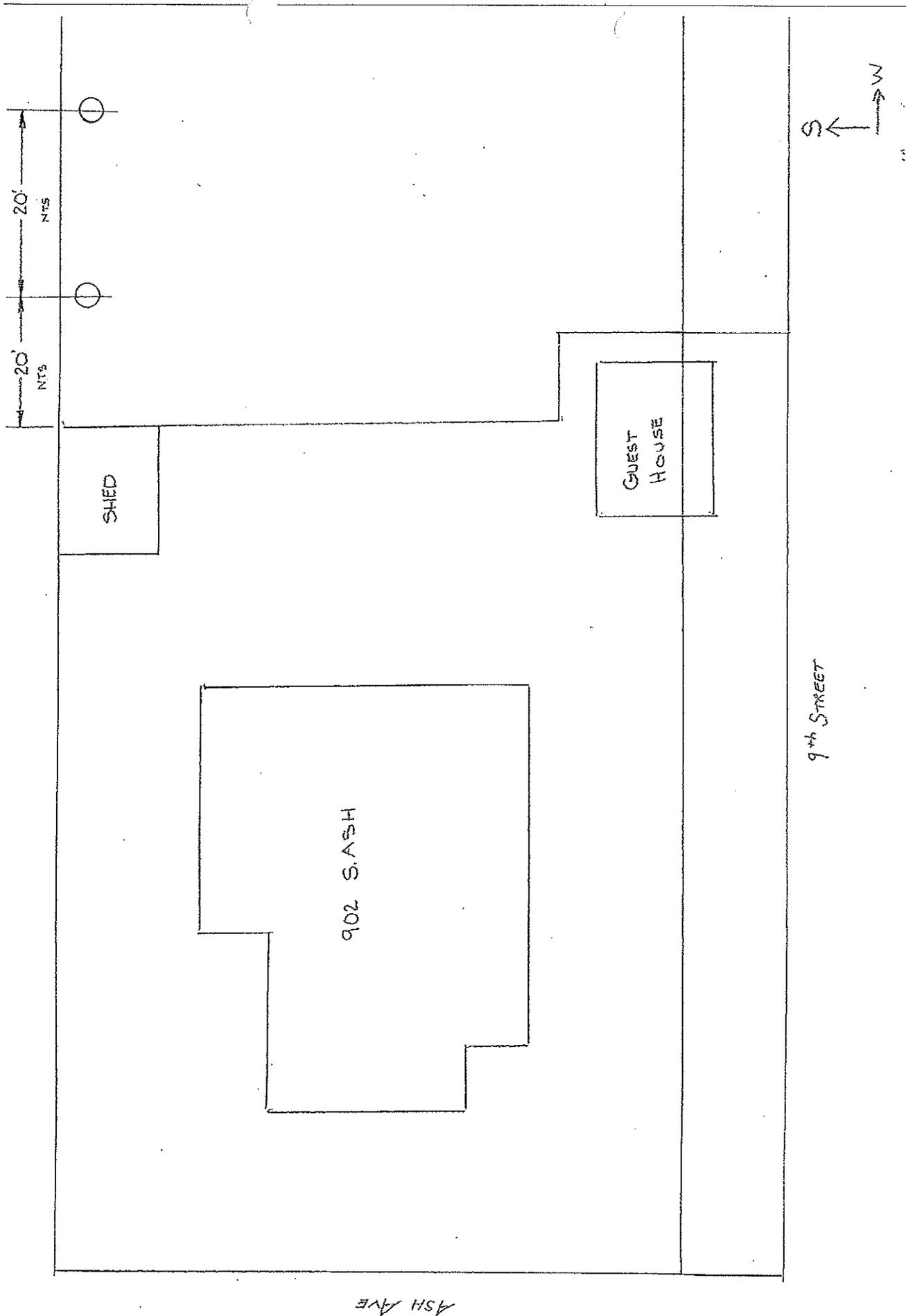
The construction of another parallel block wall would be a waste of valuable resources and not be visually appealing since a wall is already in existence.

Applicant desires to plant trees along existing wall which would be planted according to Tempe recommendations.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patty St. Vincent".

Patty St. Vincent



3. Request by the **ARKULES-SAINT VINCENT PROPERTY (PL100228)** (Patricia St. Vincent, applicant; Arkules-Saint Vincent, property owners) located at 902 South Ash Avenue in the R-3, Multi-Family Residential Limited District for:

VAR11008 Variance to waive the required masonry wall between the properties developed for multi-family and single family.

(NOTE: THIS CASE WAS HEARD OUT OF ORDER AS THE LAST ITEM DISCUSSED AT THIS HEARING.)

Mr. David Arkules and Ms. Patricia St. Vincent were present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case. She noted that in 1999 Otto Bed & Breakfast located at 902 South Ash had received a use permit to allow a bed & breakfast. That application included a modified site plan with a parking area in the rear yard of the property, accessible from 9th Street, and installed per the site plan. That applicant did not complete the Conditions of Approval and when the property transferred ownership in 2000 to the current owner, they inherited the responsibility of the non-compliant modifications to the property. The current owners were cited by the Code Compliance Department and have made an application to waive the required buffer wall between their multi-family zoned property and the single family zoned property to the south. This variance request is the first step in bringing the property into compliance with the Zoning and Development Code. The applicant will need to complete the Development Plan Review process for the site modifications. Ms. Lesser noted that Mr. Arkules had submitted sixteen (16) letters of support since the Staff Summary Report was issued. Staff supports this request as there are special circumstances unique to this lot. Three (3) letters of opposition have been received.

Ms. Lesser noted, in response to a question from Ms. MacDonald, that the granting of this variance was the first step in the approval process. It relates strictly to the masonry wall, not other issues such as landscaping, etc.

The applicant(s) acknowledged their understanding of the assigned Condition of Approval.

Mr. Chris Rowley, spoke in support of this request, stating that a wall would be redundant and that roof rats nest between walls. He indicated where he lived on the site plan. He explained that the person representing 3 entities is actually one person and one property. This is an old historical neighborhood full of trees and Mr. Rowley expressed his opinion of the opposition's (Mr. Hondorp) intent to change the character of the area. He feels that the wall is unnecessary.

Ms. Jenny Lucier, spoke in support, stating that an additional wall would be no benefit and would contribute to the roof rat problem. In her opinion this requirement is harassment. She indicated where she lives on the site plan. She feels that this places an undue burden on the property owner and that the applicant(s) are great neighbors and enhance the quality of the neighborhood's character.

Ms. Becky Rowley, spoke in support, stating that they needed more trees and less walls. She indicated where she lives on the site plan. Walls tend to set neighbors apart rather than enhance the character of neighborhood community that is present in the area. A wall would disturb the roots of a number of mature trees and increase the roof rat problem. This wall would serve no purpose whatsoever, in her opinion.

Mr. Rick Hondorp represented three (3) entities in opposition (himself, Rhombus LLC, and Sienna Court Lofts) to this request and was given 15 minutes to speak. He explained that, in his opinion, there was significant value in erecting a wall and that he did not feel this request meets the criteria for variance(s) – that there was no special circumstances relating to this application. He referenced the CDC and how, in his opinion, violations of the code were established in relation to this property, and has continued to be so ever since. It is his concern that the full knowledge of the history of this property is not being considered.

Ms. MacDonald acknowledged the three (3) letters of opposition with backup documentation submitted by Mr. Hondorp prior to the staff summary report being issued. In addition, Ms. MacDonald acknowledged receipt of three (3) additional packets of opposition presented by Mr. Hondorp at today's hearing with backup documentation and photographs.

Mr. Hondorp explained his reason(s) for desiring that the wall be built and referenced the Zoning Ordinance 808 that was in effect prior to the current Zoning and Development Code.

Mr. Arkules and Ms. Saint Vincent returned to the podium. Mr. Arkules referred to the letters of support submitted in relation to this request. He presented a site plan indicating the specific location(s) of the supporters. Only one (1) letter of support relates to a personal relationship (his daughter who lives at the adjacent property at 936 South Ash in Sienna Court. He finds Mr. Hondorp's opposition confusing as the property was designed by Mr. Hondorp's partner. The partnership has since dissolved. Mr. Arkules referred to the Phoenix Magazine's inclusion of his property in an article on historical neighborhoods.

Ms. MacDonald noted that this request is perplexing case. This request is to grant a variance to waive a wall between adjacent properties. She noted that does not understand the need for an additional wall as there is already a wall between the properties. If the issue of the opposition is the height of the wall (6 ft. vs 8 ft.) the existing wall could be added on to.

She explained that this variance request meets the criteria as follows:

- 1. Special circumstances are applicable to the property, including its size, shape, topography, location or surroundings.**

Ms. MacDonald explained that the neighborhood as a whole has to be considered. The property is located on a corner with the parking to rear accessible from the street side. The structure of a wall would be disruptive to the mature landscaping on the site. Limiting the visibility from the surrounding neighbors (the intent of the buffer) would not be enhance by the wall greater than the existing conditions and the neighbors most affected are here today to speak in support.

- 2. The strict application of this Code will deprive such property of privileges enjoyed by other properties of the same classification in the same zoning district.**

Ms. MacDonald stated that during her site visit a windshield survey of the neighborhood produced evidence that other developments where single family residences abut multi-family developments do not have an 8 ft. masonry wall to buffer the uses. Other materials such as green screens serve as a buffer.

- 3. 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.**

Shall not be considered a special privilege inconsistent with the other multi-family zoned properties. Ms. MacDonald stated that this request is not inconsistent with the surrounding neighborhood properties.

- 4. A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner.**

The development was purchased with the modifications. Ms. MacDonald explained that none of the conditions of the property are self-imposed as the property was purchased with the conditions in place.

DECISION:

Ms. MacDonald approved PL100228/VAR11008 subject to the following conditions:

- 1. Obtain Development Plan Approval for all non-compliant modifications and future improvements to the site within 45 days or by 01/21/2012.**

Attendance: Betsy Tait, Mike Deskin, Jay Braun, Adam Rifkin, Karyn Gitlis, Ginny Sandstedt, Lee Cruz, Beth Hoffmann, Phil Douglass. Guests: Jill Allen, Flora Farago, Kevin Heade, Carol Crimmons.

Minutes: Not available.

Treasurer's Report: Not available.

Announcements: 1. Jill Allen volunteered to attend the GAIN planning event on 9/21. 2. Flora Farago announced a burglary in her home at 1118 S. Maple recently. There has been a spike in burglaries in the area. There will be a meeting on 9/12 at the Cahill Multigenerational Center from 6-7 pm to address this trend. 3. This year MANA is celebrating their 25th anniversary. There will be acknowledgement of this at the GAIN event and potluck on 10/22. 4. Ginny announced a program through APS that consists of giving out free trees for customers. More information on this program can be obtained by visiting the APS web site. 5. MANA is a Valley Forward Environmental Excellence Award finalist for Nina Solomon's work on the standpipe. The award will be given out on 9/17 in Scottsdale. The newest standpipe project is now complete. 6. No one attended the hearing for a proposed smoke shop in the plaza on the southwest corner of Ash and University.

13th St. Trees: Ginny is concerned about some of the new trees that have been girdled, but now need to have these removed because of the constriction. Ginny suggested that MANA contact the city and have several residents walk along with city staff and cut these off with staff permission. Karyn will contact Eric Iverson about this concern and another concern that involves some overgrown trees along 13th St.

Citrus Harvesting: Flora Farago has noticed that there is a lot of wasted fruit on some of the trees in the neighborhood. She suggested that some volunteers could go around and, with permission from the property owner, pick the fruit. Jay explained that he picks the grapefruit off his own tree, takes it to some poorer neighborhoods and gives it away. Karyn and Flora talked about getting a flyer out. Kevin Heade suggested that bringing other neighborhoods in on this project would foster communication and cooperation among neighborhoods.

Code Enforcement: There was much discussion on the 1026 S. Maple property. The front house has been condemned. There has been a temporary storage pod along the west side of Ash that has been blocking parking for at least 7 weeks. Karyn will follow-up on this code violation. Restricted parking enforcement is no longer a city police service unless a resident calls them with a complaint. There was discussion on ideas to get the neighborhood residents to volunteer to take a short class to be qualified to give out parking tickets. Karyn passed around a code compliance letter.

GAIN Event: This will be on 10/22 from 4-7 pm at the Barnes House. Adam said that he would donate a banner acknowledging MANA's 25th anniversary. This banner will be given in memory of his father, a long time MANA resident who, recently has passed away. He loved this event and had attended every year. Close Enough String Band will provide the music. Council nominations were discussed and names of new people were proposed. Wiffle ball, golf and corn hole were suggested as possible games. Karyn will send a postcard. There will not be a raffle this year. Set up will be at 9:30 am. Casey Moore's will be contacted and Karyn will check supply of paper goods. David and Marty will be asked to set up the lighting.

Newsletter: Articles will include information on historic plaques, the 2011 award winners and crime report. Lee Cruz will do an article containing information about trash and trash collection. There will be an announcement on the dedication of the standpipe project to be held an hour before the November council meeting.

Meeting adjourned at 8:20 pm.

Respectfully submitted,

Betsy Jait

12 October 2011 HAND DELIVERED this Date

City Of Tempe
Development Services Dept. - Planning & Zoning
31 East 5th ST Garden Level
Tempe, AZ 85281

Chris Anaradian, Lisa Collins, Steve Abrahamson, Sherri Lesser, Hearing Officer- Vanessa MacDonald,
Jeff Tamulevich, et al.

RE: Opposition to: "Variance to Waive Wall Requirement" 902 S. Ash Ave. Tempe, AZ 85281
Parcel No. 132-42-073B, CoT. #'s DS100748, DPR10162, PL100228, (no "VAR" has been assigned to
this Project Submittal Application according to Development Services Dept. Staff at this time.)

This letter shall serve as notification of Opposition to the above request for Variance "for relief
from the standards" from the City of Tempe (CoT) Zoning and Development Code (ZDC).

Since at this time Development Services Dept. does not have the "completed submittal" from
the applicant, there is very limited information available from which to determine the full scope of
the "site development" proposed by the applicant for this address, (why a Variance is being
requested?)

Since in two meetings with CoT P&Z Staff, First on 5 October 2011 w/ Steve Abrahamson and
the second on 10 October 2011 w/ Sherri Lesser, neither Staff person was forthcoming on the full "site
development" for this address and the reason(s) the Variance request was being processed, an
investigation into the validity of this request is incomplete at this time.

In the mean time, the Opposition to the above request, as stated herein, stands.

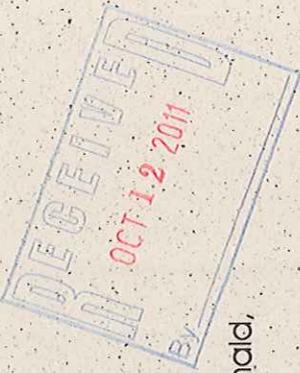
At first glance, there appear to be NO Justification(s), under the requirements established in
the ZDC and by Arizona Revised Statutes (ARS) for anything other than Denial of the application.

Further documentation in support of the Opposition declared herein, shall be forthcoming as
it becomes available and will be presented to CoT either prior to or in the public hearing.

Sincerely,



Rick D. Hondorp Architect 275 West 9th ST Tempe, AZ 85281 VM 480 966 3888



12 October 2011 HAND DELIVERED this Date

City Of Tempe

Development Services Dept. - Planning & Zoning
31 East 5th ST Garden Level
Tempe, AZ 85281

Chris Anaradian, Lisa Collins, Steve Abrahamson, Sherri Lesser, Hearing Officer- Vanessa MacDonald,
Jeff Tamulevich, et al.

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the second on 10 October 2011 w/ Sherri Lesser, neither Staff person was forthcoming on the full "site
development" for this address and the reason(s) the Variance request was being processed, an
investigation into the validity of this request is incomplete at this time.

Sienna Court Loft HOA, Inc. [SCL HOA] (Owner of the property adjacent on the South of the
backyard of 902 S. Ash Ave.) cannot see any justification for this variance request and has been
filing complaints with CoT Code Enforcement regarding the illegal parking that has been in violation
of the ZDC, since SCL HOA has become Owner of the adjacent property.

We believe that the change in land use from a fenced, lawn area of the 902 S. Ash Ave.
property warranted/warrants not only a full public process, but a process that is in full compliance
with the #808 ZO then and the ZDC now.

So far, SCL HOA sees little to no evidence that anything 'legal' has been fulfilled, to date, that
validates any change in use as it has occurred.



SCL HOA has incurred compensatory damages due to what we allege has been negligent misconduct by CoT Staff both in Planning and Zoning and in Code Enforcement, at a minimum.

Make no mistake, documentation will be provided to fully support our claim that there is NO valid chain of authority to substantiate the legal existence of "an existing parking area" in the backyard of 902 S. Ash Ave., NOT NOW, NOT EVER.

Based on this, the DPR10162 – Site Modification should NEVER have been allowed without full public process, FIRST being applied to that request.

Additionally, any inferences that the existing masonry wall currently existing directly South of the backyard of 902 S. Ash meets any intent or purpose of the "Wall Requirement" are equally INVALID. The existing masonry site wall, is located fully on SCL HOA Inc. property to the South, and neither the City of Tempe nor the applicant has any rights of usage to the wall for any purposes without the express written consent of the walls Owner.) Also, our wall does NOT meet the requirements as listed in the ZDC for the purposes that may be suggested, in that it is only six (6) feet in height as viewed from the 902 S. Ash property.

In the mean time, the Opposition to the above request, as stated herein, stands:

There appear to be NO Justification(s), under the requirements established in the ZDC and by Arizona Revised Statutes (ARS) for anything other than Denial of the application.

Further documentation in support of the Opposition declared herein, shall be forthcoming as it becomes available and will be presented to CoT either prior to or in the public hearing.

Sienna Court Lofts HOA, Inc. 920 – A South Ash Ave. Tempe, AZ 85281 Representing-
Eleven (11) individual Lots within the Sienna Court Lofts community

12 October 2011 HAND DELIVERED this Date

City Of Tempe
Development Services Dept. - Planning & Zoning
31 East 5th ST Garden Level
Tempe, AZ 85281

Chris Anaradian, Lisa Collins, Steve Abrahamson, Sherri Lesser, Hearing Officer- Vanessa MacDonald,
Jeff Tamulevich, et al.

RE: Opposition to: "Variance to Waive Wall Requirement" 902 S. Ash Ave. Tempe, AZ 85281
Parcel No. 132-42-073B, CoT #'s DS100748, DPR10162, PL100228, (no "VAR" has been assigned to
this Project Submittal Application according to Development Services Dept. Staff at this time.)

This letter shall serve as notification of Opposition to the above request for Variance "for relief
from the standards" from the City of Tempe (CoT) Zoning and Development Code (ZDC).

Since at this time Development Services Dept. does not have the "completed submittal" from
the applicant, there is very limited information available from which to determine the full scope of
the "site development" proposed by the applicant for this address. (why a Variance is being
requested?)

Since in two meetings with CoT P&Z Staff, First on 5 October 2011 w/ Steve Abrahamson and
the second on 10 October 2011 w/ Sherri Lesser, neither Staff person was forthcoming on the full "site
development" for this address and the reason(s) the Variance request was being processed, an
investigation into the validity of this request is incomplete at this time.

Rhombus LLC speculates that this request is related to illegal parking of vehicles owned by
employees and/or patrons of the business establishment Casey Moores located across on the North
side of West 9th ST. (for which numerous complaints have been made over the past many years and
continue to date)

Make no mistake, documentation will be provided to fully support our claim that there is NO
Valid chain of authority to substantiate the legal existence of any "an existing parking area" in the
backyard of 902 S. Ash Ave., NOT NOW, NOT EVER.

Based on this, the DPR10162 - Site Modification should NEVER have been allowed without full
public process, FIRST being applied to that request.



Any references to the CoT Board of Adjustment (BoFA) Case BA990135 -- Otto Boarding House/Bed and Breakfast "conditional approval" of a use permit are IN VALID.

1. Because: "The approval was subject to the following conditions:"
 - "1. The use permit is valid for the Otto Bed & Breakfast only and is not transferable." (Ownership and use of the property changed in less than a year to David Arkules, then to Ninth and Ash, LLC by year end 2000)
 - "3. All required permits and clearances shall be obtained by building Safety Division prior to the use permit becoming effective." (the "permanent masonry wall enclosure" - approval condition #8, would have required a building permit, yet the condition was not met)
2. Because: It appears that NONE of the approval conditions were "fully complied with".
3. Because: "In addition to the proceeding with the approvals granted, it is understood that any and all conditions as stipulated by the Board as indicated above, shall be fully complied with." (from the June 24, 1999 letter of notification by CoT) It does not appear any/all were.
4. The "Use Permit" in question was never validated by compliance, as mandated by the CoT #808 Zoning Ordinance (ZO) this application was made under.

Any inferences that the existing masonry wall currently existing directly South of the backyard of 902 S. Ash meets any intent or purpose of the "Wall Requirement" are equally IN VALID. The existing masonry site wall, located fully on the 3rd party owned property to the South, (Sienna Court Lofts HOA, Inc) and neither the City of Tempe nor the applicant has any rights of usage to the wall for any purposes without the express written consent of the walls Owner.)

In the mean time, the Opposition to the above request, as stated herein, stands. At first glance, there appear to be NO Justification(s), under the requirements established in the ZDC and by Arizona Revised Statutes (ARS) for anything other than Denial of the application. Further documentation in support of the Opposition declared herein, shall be forthcoming as it becomes available and will be presented to CoT either prior to or in the public hearing.

Rhombus LLC 275 West 9th ST Tempe, AZ 85281 Owner of: 920-932 S. Ash Ave. Tempe, AZ 85281 Seven (7) individual Lots within the Sienna Court Lofts community

28 November 2017 HAND DELIVERED
City Of Tempe
Development Services Dept. - Planning & Zoning
31 East 5th ST Garden Level
Tempe, AZ 85281

City of Tempe (CoT) - Zoning Administrator, Development Services Manager, Planning and Zoning Staff, Zoning Administrative Hearing Officer/Hearing Officer, Code Compliance Manager & Staff, City Attorney, et al.

RE: Opposition to: CoT - Project Submittal Application, date 9-19-2011, "Variance to Waive Wall Requirement" 902 S. Ash Ave. Tempe, AZ 85281. Parcel No. 132-42-073B - "Arkules-Saint Vincent Property" (Ninth & Ash LLC)
CoT #'s DS100748, DPR10162, PL100228.

This letter shall serve as notification of Opposition to the above request for Variance "for relief from the standards" from the City of Tempe (CoT) Zoning and Development Code (ZDC).

Sherri Lesser (CoT P&Z Staff), stated last week that the "completed submittal" from the applicant, in that a letter dated November 10, 2011 from Patty St. Vincent and an 11"x17" plan document containing very limited information has been received. From this plan document which is not even labeled "Site Plan", it is difficult to determine the full scope of the "site development" proposed by the applicant for this address, (why a Variance is being requested?)

From the St. Vincent letter:

1. "An additional burden has been put upon applicant by the City of Tempe when the street parking on the North side of the applicant's property was removed after the purchase by applicant."

This statement has NO Relevance to the variance matter at hand, but is more of a "bleeding heart" story of persecution meant to incur favor, no doubt.

2. "The strict application of the code will deprive applicant of [of] privileges enjoyed by other property owners of the same [same] classification and zoning district who currently share common walls and fences."

Again, NO Relevance, in that applicant does NOT "currently share common walls" with anyone! To "share" a "common wall" would imply that a wall bisects a property line or is co-owned, which, again, is NOT the case. SCL HOA, Inc. owns its own wall, on its property. It is the SCL HOA, Inc. Owners that are being "deprived" of their rights as property owners in CoT. SCL HOA, Inc. Owners have an expectation that governing Codes and Ordinances will be enforced and that the CoT will due diligence in investigating the validity in all P&Z applications for project development. SCL HOA, Inc. Owner "property rights" have been and continue to be VIOLATED by the illegal land use in the back yard of 902 S. Ash Ave. - parking for a commercial business establishment!

3. "A burden has been not self-imposed on the owner since street parking has been restricted in the front yard of the owner by the City of Tempe. The current wall was built by the adjacent property owner."

Again, none of this statement has any relevance to the variance matter at hand. The requirement of an 8' high, masonry or concrete wall, on-site, as a requirement of development of that site is from the ZDC and, again, there is NO "current wall", on the subject site. The 6' high wall on the SCL HOA, Inc. property, which is their property improvement, is not available to applicant, or CoT, and does NOT meet the wall height requirement necessary.

There appear to be NO Justification(s), under the requirements established in the ZDC and by Arizona Revised Statutes (ARS) for anything other than Denial of this application. The applicant has failed to meet the "Approval Criteria" of the ZDC and thus this variance request should be denied.

In this letter of Opposition, I have only addressed three (3) of the statements from the St. Vincent letter. Rhombus LLC and Senna Court Lofts HOA, Inc. in their separate respective letters of Opposition have addressed the other statements in the St. Vincent letter.

I have to say, as a licensed Architect, registered in AZ and MI and the qualifying party for a licensed AZ construction corporation, professionally, speaking, what has transpired, to date, regarding applicant(s) and CoT Administration actions and deeds have been deplorable in my opinion.

For example: On Monday, 11 July 2011, at 4:00PM, in a meeting I attended where Lisa Collins and Jeff Tamulevich represented CoT, (a follow up meeting from a Wednesday, 1 June 2011, 4:00PM meeting) they presented to me a portion of the Use Permit – BA990135 Otto Boarding House/Bed & Breakfast case file.

In this meeting Tamulevich stated that those portions they were handing me, where copies of what Arkules had presented to them in a previous meeting, (since 1 June 2011). When I asked where "the rest of the file is?" Collins stated "I guess we'll have to get the full file from the City Clerk." They both claimed that neither of them was aware of the Otto case, until Arkules presented them with a portion of the case file. (Tamulevich in subsequent conversations said that CoT had uncovered the 1999 BofA case of topic.)

In this meeting, what became immediately apparent to me, as an Architect, was that, NONE of the "conditions of approval", had been met in the required 12 month time period, as was evidenced now some +10 years later, and that based on that information the Use Permit had EXPIRED!

The expiration of the use permit meant that for 10 years or more, there had been no legal basis, upon which the LAND USE of the back yard of 902 S. Ash Ave. had been authorized and the parking area it became was in Violation of not only the current ZDC but the Zoning Ordinance No. 808. I had and still have no recollection of being notified of the case, for certainly, I would have raised opposition on my own behalf as well as for Rhombus LLC and the future Sienna Court Lofts project.

Collins and Tamulevich, both just sat there, acting like this expired use permit was a "get out of jail free" card, regarding the on going illegal parking complaint(s).

On Monday, 1 August 2011, Tamulevich left a phone voice message for me, stating that after consultation with the City Attorney, Arkules was being offered a "choice of compliance" either in accordance with the Zoning Ordinance No. 808 or the current ZDC.

As for the applicant(s), Arkules & St. Vincent who are also business partners in the Casey Moore's Bar/Restaurant located North across West 9th Street from the subject property, 902 S. Ash Ave. In my opinion, their "history of actions" has and continues to be: Do what ever we want,

regardless of Ordinances and Codes, Zoning or Building, if caught plead ignorance or persecution, what ever works to get us by... They have an inadequate amount of on-site parking on the Casey Moore's site, so they and their patrons have become "creative" in where they all think parking is OK.

They tried parking in the railroad RofW, the West 9th ST RofW, both North and South sides, off street in landscape areas, the assigned residential parking area of 243/249 West 9th ST, the resident permit only street parking on Ash Ave, the backyards of 243/249 and the back yard of 902 S. Ash Ave., subject property. (see attached photos)

For over a decade I have filed complaint after complaint w/ CoT Code Enforcement, all too little avail. Applicant(s) seem to have this notion that West 9th ST is "their driveway" and since they, thru Ninth & Ash LLC, Stacey Lynn Enterprises (Arkules only) and Casey Moore's, own the properties N/S of the roadway, can do most whatever benefits their own interests, public be damned. My private residence @ 275 is the only property not owned by them and the exit driveway for SCL HOA, Inc. across the Easement of 249 W. 9th ST is the other, both of which they have intereted with in the past.

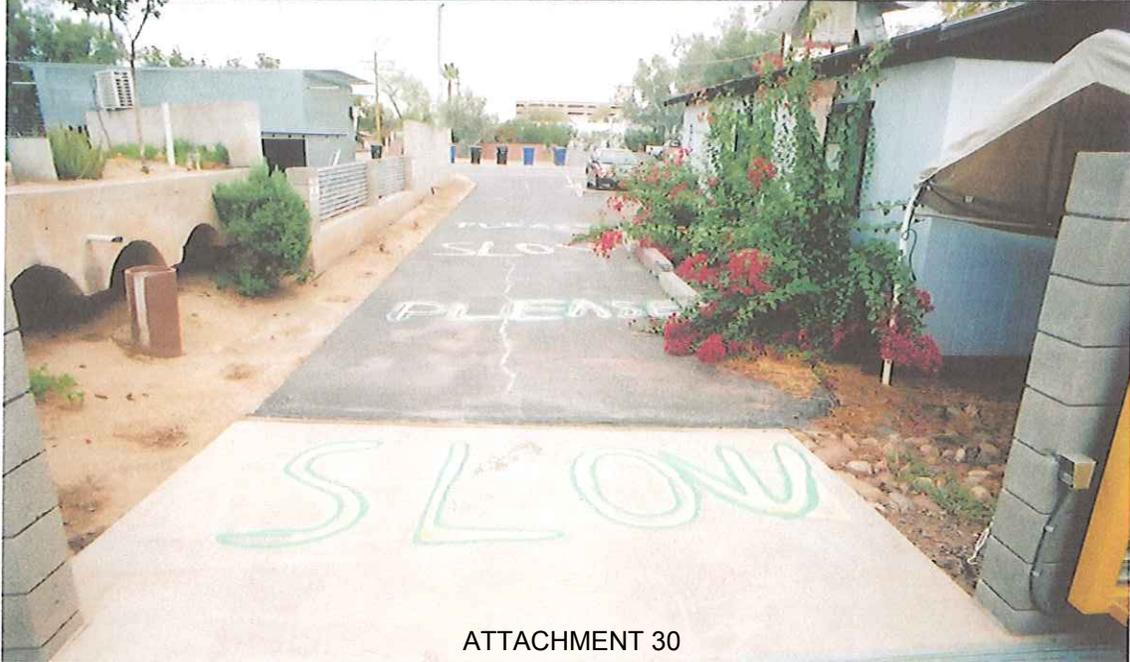
So, now we have another situation where in, the applicant(s) are attempting to secure more parking for Casey Moore's, in a residential back yard, not even contiguous to the business property.

This variance application should be denied, period. There has been insufficient evidence presented to support any other decision than Denial of the application.

Rick D. Hondorp Architect, Property owner @ 275 West 9th ST, Tempe, AZ 85281

attachments





28 November 2011 HAND DELIVERED

City Of Tempe
Development Services Dept. - Planning & Zoning
31 East 5th ST Garden Level
Tempe, AZ 85281

City of Tempe (CoT) - Zoning Administrator, Development Services Manager, Planning and Zoning Staff, Zoning Administrative Hearing Officer/Hearing Officer, Code Compliance Manager & Staff, City Attorney, et al.

RE: Opposition to: CoT - Project Submittal Application, date 9-19-2011, "Variance to Waive Wall Requirement" 902 S. Ash Ave. Tempe, AZ 85281. Parcel No. 132-42-073B - "Arkules-Saint Vincent Property" (Ninth & Ash LLC)
CoT #'s DS100748, DPR10162, PL100228

This letter shall serve as notification of Opposition to the above request for Variance "for relief from the standards" from the City of Tempe (CoT) Zoning and Development Code (ZDC).

Further, herein, Rhombus LLC demands "equal protection under the law" as it applies to CoT Zoning Ordinance 808 of 1997 and the current ZDC. In that regard, requesting that the Hearing Officer, quash this case and instruct the CoT to force the applicant to make new application in full compliance with the current ZDC and legal site conditions of applicant's property and those adjacent.

Development Services Dept. states it has received a "completed submittal" from the applicant, culminating with a letter dated November 10, 2011 from Patty St. Vincent and an accompanying 11"x17" plan document of the applicant's property.

Rhombus LLC speculated that this request is related to illegal parking of vehicles owned by employees and/or patrons of the business establishment Casey Moores located across on the North side of West 9th ST. (for which numerous complaints have been made over the past many years and continue to date) and her letter substantiates our concern(s).

From the St. Vincent letter:

1. *"That special circumstance[s] are applicable to this property because of the location and history. The applicant property and the adjacent property were on and the same parcel before all current owners purchased including the property owner to the South."*

There is NO REVELANCE of this statement to the matter at hand and the subject property contains NO "special circumstance[s]" that are significant to this variance. There is no evidence of "special circumstances or conditions" (per ZDC), provided by applicant, just saying there is, doesn't make it so!

2. *"Long after the property was subdivided the South adjacent property owner built a wall along the property line."*

The Lot split of Lot 2, Block 30, Gage Addition occurred in 1960 at which time the Easement across the west 15 feet of Lot 1 and the North half of Lot 2, was also created. Again, NO REVELANCE in this matter.

In 1998, Rick D. Hondorp (then owner of "South adjacent property") obtained approval & permits for the North and South reinforced masonry, site/development specific, grey, concrete block wall, located, within the survey verified property line of his property, (now SCL HOA, Inc. property) Again, this was an "ON-SITE" construction of a required site wall for Hondorp's forthcoming project, ONLY. Again, NO REVELANCE in this matter.

3. *"The variance or adjustment requested 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 since sharing of a wall or fence is common practice in the vicinity."*

This variance would be: "materially detrimental to persons residing or working in the vicinity, to adjacent property..." (ZDC) it would in deed grant a special privilege to the applicant, in that it would allow applicant to use the adjacent owner's private property for the applicant's financial gain, again to the detriment of the adjacent property owner(s). There is NO "sharing of a wall", going on here!

Hondorp built, a masonry site wall, on his property, for his property and the future development of that property, alone, period. Again, "common practice in the vicinity", is NOT RELEVANT as ZDC mandates "case by case" basis.

4. "The construction of another parallel block wall would be a waste of valuable resources and not be visually appealing since a wall is already in existence." The only "valuable resource" is that applicant doesn't want to have to spend the (\$) money to bring his/her property into compliance with development standards applicable Ordinances/Codes, which is NOT a "hardship" by definition of ZDC. Hondorp proved that an architecturally designed, reinforced masonry wall of grey concrete block with a sandblasted finish comparable with the project he designed can be constructed within less than an inch of a property line, as was done. A comparable wall constructed to the required eight (8) foot height, on the applicant's property, on the contrary WOULD be "visually appealing", PURPOSEFUL and lastly possible.

Hondorp/Rhombus LLC was required to "jump through hoops", numerous times to be in compliance with all of the governing authorities in the development of the Sienna Court Lofts (SCL) project. There were NO VARIANCES REQUIRED to gain approvals of the design or building of the SCL project. The entire design/building process has been done on an "ask permission/approval FIRST" approach by Hondorp/Rhombus LLC, yet the applicant(s) have a noted history of: "do what we want, ask for forgiveness if we get caught", standard operating procedure (SOP).

Hondorp/Rhombus LLC has been harassed by the actions of applicant(s) and CoT P&Z Dept. has failed to apply "uniformity" in it's interpretations and enforcements of the Zoning Ordinance No. 808 and the ZDC. The P&Z Staff, under the direction of the Zoning Administrator, has manipulated the current ZDC, by "interpretation(s)", to become a "loop hole" Code and they have done so to the detriment of the citizen/property owners of CoT, as this variance case shows (see photos attached)

As Hearing Officer, we feel you have an obligation to see through all the "irrelevant" statements from the applicant(s) and get to the real matter at hand.

Fact(s): A CHANGE OF USE of land occurred, (+/- 1998), where in, a longstanding, fenced, landscape/lawn area of a residential back yard was made into an un-improved, driveway and parking area for purposes yet to be brought out as it applies to this current case before this Hearing Officer.

A Use Permit was approved, but due to non-compliance with conditions, EXPIRED.

Applicant(s), with the "guidance" from CoT P&Z, are attempting a "backdoor" approach in that he/she are attempting to bootstrap the non-compliance "parking area" to an expired use permit, by attempting to secure a variance, to further continue their illegal use of the area for Casey Moore employee/patron parking.

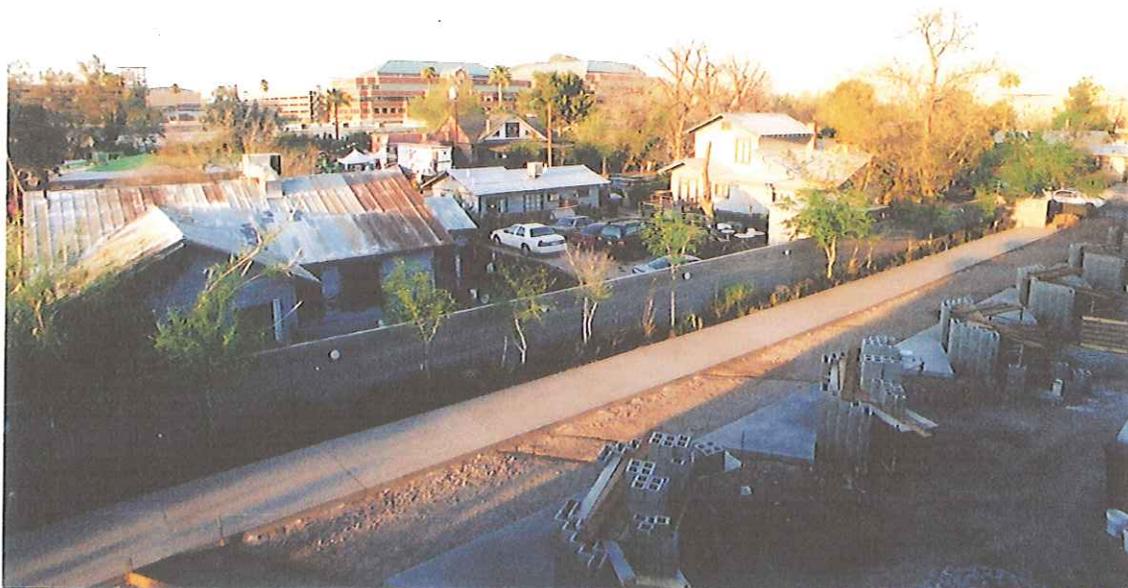
Approval Criteria, (according to the ZDC) has NOT been sufficiently evidenced, so Rhombus LLC asks you to deny this request for variance presented by applicant(s) or quash the matter, forcing applicant(s) to make a new, full process application for their truthful development intent/design/modification for the subject property. Additionally, Rhombus LLC requests that as part of your determination in this matter, that you instruct CoT P&Z to immediately abate the on going illegal parking in this area of the subject property.

Rhombus LLC 275 West 9th ST Tempe, AZ 85281

Owner of: 920-932 S. Ash Ave. Tempe, AZ 85281

Seven (7) property Lots in Sierra Court Lofts

attachments





28 November 2011 HAND DELIVERED

City Of Tempe
Development Services Dept. - Planning & Zoning
31 East 5th ST. Garden Level
Tempe, AZ 85281

City of Tempe (CoT) - Zoning Administrator, Development Services Manager, Planning and Zoning Staff, Zoning Administrative Hearing Officer/Hearing Officer, Code Compliance Manager & Staff, City Attorney, et al.

RE: Opposition to: CoT - Project Submittal Application, date: 9-16-11, "Variance to Waive Wall Requirement" 902 S. Ash Ave. Tempe, AZ 85281 Parcel No. 132-42-073B - "Arkules-Saint Vincent Property" (Ninth & Ash, LLC)
CoT #'s DS100748, DPR10162, PL100228, "902 S. Ash Ave. Parking Drive area/Variance"

This letter shall serve as notification of Opposition to the above request for Variance "for relief from the standards" from the City of Tempe (CoT) Zoning and Development Code (ZDC).

At this time Development Services Dept. has declared to have the "completed submittal" from the applicant, by receipt of a letter dated November 10, 2011 signed by Patty St. Vincent and an "11'x17" plan document, from which there is very limited information available to determine the full scope of the "site development" proposed by the applicant for this address, (why a Variance is being requested?)

The applicant's letter implies that an attempt is being made to boot-strap an EXPIRED Use Permit, from 1999 (BA990135 - Otto Boarding House/Bed and Breakfast) "approval was subject to the following conditions": of which the "conditions" were NOT COMPLETED.

1. "Re: 902 S Ash Ave Parking Drive area / variance"
2. "Applicant purchased subject property from the Otto family who ran a licensed Bed and Breakfast/Boarding home in the City of Tempe that included parking in the rear of the property.
The parking was openly used and visible prior to purchase by the applicant."

3. Applicant wishes to complete the necessary permit process now that applicant finds the original permit process was never completed by previous owner including a variance request for a wall where a block wall is already in place.
4. "Applicant desires to plant trees along the existing wall which would be planted according to Tempe recommendations."

Whether the Otto family ran a "licensed" B&B is irrelevant in this matter. The Fact(s) are that:

1. As early as 1998, the backyard of 902 S. Ash Ave. had been "site modified" in Violation of the current Zoning Ordinance of the day, (Zoning Ordinance No. 808). Offos changed the LAND USE of the backyard from perimeter fenced lawn/landscape area, (as it was when Otto's purchased property), to an un-fenced, un-improved, parking area, WITHOUT any CoT process or approval(s). (See CoT P&Z Aerial Photo document(s) from Engineering Dept. 1990, 1993, 1998 and attached 1983 Landis Aerial Photo)
2. In 1999, Offos applied for a Use Permit: "BA990135 - OTTO BOARDING HOUSE/BED AND BREAKFAST", which was "Approved" ...subject to the following conditions". However, Offos never fulfilled the "conditions" of the 1999 Use Permit, (nor did the subsequent owner - Arkules or current owner/applicant) in the required time frame of twelve (12) months; nor did anyone secure the required permits associated with fulfilling the "conditions", thus rendering the Use Permit EXPIRED, since no extension of time period was filed "within twelve (12) months of the date of approval by the Board of Adjustment and required by Zoning Ordinance No. 808". Offos continued to use the backyard for parking (as did subsequent owner(s)/applicant. ALL of them doing so in VIOLATION of the Zoning Ordinance No. 808 and then the ZDC, the CoT did little to nothing as far as enforcement of either Ordinance or Code. (See attached BA990135 File copy)
3. The applicant is being FORCED, now, by CoT, due to the Complaint(s) made to CoT for the un-processed, un-approval LAND USE CHANGE of the backyard of 902 S. Ash Ave. from fenced lawn/landscape to parking area, in VIOLATION of the ZDC. This statement substantiates the our claim as we state above, "conditions" were NOT fulfilled, thus the Use Permit and Everything (parking area included) associated with

the Use Permit is INVALID, not to be resurrected some 11 years later, if EXPIRED! Additionally, on the applicant's property, there is NO "block wall already in place"! This statement by applicant contains false information in that, the Ordinance requires: "All required walls shall be located on-site..." (Ord. 808, 1997, Part III. Walls, A. Standards of Design, #5.) There is no wall located on the applicant's property.

4. ONLY the applicant's lack of effort, has kept the applicant from his/her "desire" to install the "required side yard landscaping" in accordance with either the No. 808 or ZDC. In fact, their "landscape effort" on their property to the West, resulted in flood watering of SCL HOA, Inc. property. (see attached)

The perimeter site wall of the Sienna Court Lofts (SCL) project was purposely designed and constructed within the surveyed property lines of the SCL property, "on-site" in compliance with the Ordinance in effect when approved, for the SCL project, ONLY.

Additionally, any inferences, (by CoT or applicant), that the existing masonry wall currently existing, (located ON SCL HOA, Inc. property), directly South of the backyard of 902 S. Ash meets any intent or purpose of the "Wall Requirement" are equally IN Vain, in that the exposure to the applicant property is only six feet (6ft) in height, wherein the requirement is eight feet (8ft) in height.

The ONLY "existing" masonry site wall, is located fully on SCL HOA Inc. property to the South, is the Private Property of Sienna Court Lofts HOA, Inc. and neither the City of Tempe nor the applicant has any rights of usage to the wall for any purposes!

Sienna Court Loft HOA, Inc. [SCL HOA] (Owner of the property adjacent on the South of the backyard of 902 S. Ash Ave.) cannot see any justification for this variance request and has been filing complaints with CoT Code Enforcement regarding the illegal parking that has been in violation of the ZDC, since SCL HOA has become Owner of the adjacent property.

We believe that the CHANGE IN LAND USE from a fenced, lawn area of the 902 S. Ash Ave. property (by CoT P&Z documents-aerial photos) as late as 1997, warrants not only a full NEW public process, but a process that is in full compliance with the Current Zoning Development Code (ZDC), subject to the current site conditions.

SCL HOA, Inc. sights that no evidence has been presented that anything 'legal' has been fulfilled, that validates any 'legal' change in use. The parking area violation(s) that have been on going since 1998, per CoT P&Z documents, (aerial photos)

SCL HOA, Inc. has incurred compensatory damages due to what we allege has been negligent administrative misconduct by the CoT. - Zoning Administrator, Development Services Manager, P&Z Staff, Code Compliance Manager & Staff, City Attorney; et al., in that Violations of the Zoning Ordinance No. 808 and the ZDC have been on going since 1998 on applicant's property, that the applicant continued the Violations and that BOTH applicant(s) and the CoT are culpable for past and damages, on going. (See attached photos)

There is NO Valid chain of authority to substantiate the legal existence of "an existing parking area" in the backyard of 902 S. Ash Ave., PERIOD!

Based on this, the DPR 10162 - Site Modification (2 September 2010) should NEVER have been allowed without NEW full public process. This "site modification" was applied for following another Complaint to CoT, upon which CoT Case#: CE 102154 was initiated. CoT P&Z Staff FAILED to due diligence in this matter, where research then would have produced the current available information that, in deed, the LAND USE CHANGE from backyard lawn/landscape to parking area was IN VALID, for which the CoT is, again, culpable (See attached documents)

SCL HOA, Inc. alleges that the CoT Administration is both complicit and culpable in this SNAFU and herein demands that injunctive action be taken by the Hearing Officer to quash this matter, now and the Violation of Parking in this area be immediately abated.

Sienna Court Lofts HOA, Inc. 920 - A South Ash Ave. Tempe, AZ 85281
Representing- Eleven (11) individual property Lots within the Sienna Court Lofts community

attachments



RAILROAD S/O + TRACKS

276 W. 9TH

EVENMENT

249 W. 9TH

ENJGEMENT

K&K COURT

FUTURE

243 W. 9TH

209 W. 9TH

W. 9TH STREET

930 S. ASH

902 S. ASH

S. ASH AVENUE

City of Tempe
P.O. Box 502
31 East Fifth Street
Tempe, AZ 85280
(602) 965-8772 (FAX)

FILE COPY
City of Tempe

Development Services
Department
(480) 358-8311 (Phone)

June 24, 1999

Daniel H. & Cecilia K. Otto
16330 E. Crystal Point Drive
Fountain Hills, AZ. 85268

RE: BA990135 - OTTO BOARDING HOUSE/BED AND BREAKFAST

Dear Mr. & Mrs. Otto:

You are hereby advised that at its meeting held June 23, 1999, the Board of Adjustment of the City of Tempe, acting in accordance with Section 1, Part II.H.3. of Zoning Ordinance No. 808, took the following action on your application:

Approved the following use permit request by the OTTO BOARDING HOUSE/BED AND BREAKFAST to allow a boarding house/bed and breakfast, located at 902 S. Ash in the R-3, Multi-Family Limited District.

The approval was subject to the following conditions:

1. The use permit is valid for OTTO BED & BREAKFAST only and is not transferable.
2. Any expansion or intensification of use shall require a new use permit to be approved.
3. All required permits and clearances shall be obtained by building Safety Division prior to the use permit becoming effective.
4. Security and lighting requirements shall be reviewed and approved by Police Department Representative Officer Roger Austin prior to the use permit becoming effective.
5. Signs shall be Design Review approved and permits obtained.

BA990135 OTTO BOARDING HOUSE/BED & BREAKFAST
June 24, 1999

6. The parking areas shall be paved, stripped and landscaped in accordance with Section 5 & 6 of Ordinance 808, or variances obtained.
7. The use permit is valid for the plans as submitted to and approved by the Board of Adjustment.
8. The trash containers shall be screened behind a permanent masonry wall enclosure. The CMU screen wall shall be Design Review approved.

Approvals are specifically conditioned upon the applicant proceeding with the proposed use(s) and/or variance(s) within twelve (12) months of the date of the approval by the Board of Adjustment and required by Zoning Ordinance No. 808.

In addition to proceeding with the approvals granted, it is understood that any and all conditions as stipulated by the Board as indicated above, shall be fully complied with.

If the action of the Board was required for the purposes of rectifying any violations of Zoning Ordinance 808, the violations shall be the responsibility of the applicant/owner to fully correct and achieve conformance. In sign-related violations, corrections shall be made within five (5) days of Board action; in all other matters, corrections shall be made within fifteen (15) days of Board action, unless specifically conditioned otherwise by the Board of Adjustment.

You are further advised that the above does not waive the requirements for obtaining building permits and other clearances as may be necessary.

Sincerely,

Tracy Williams
Tracy Williams
Deputy Director

TM/kd

cc: File

23 July 2011

Ninth & Ash LLC
P. St. Vincent & D. Arkules – members
902 S. Ash Avenue + 927 S. Farmer Avenue
Tempe, Arizona 85281

Re: Flood watering of landscape adjacent to Sienna Court Lofts North property line & damages to SCL property.

Ms. St. Vincent & Mr. Arkules:

It has been recently observed that modifications to the landscape area on your properties, (adjacent to the North property line and perimeter masonry site wall of Sienna Court Lofts – [SCL]), have resulted in water flooding the SCL property, ponding in the SCL landscape/retention area. (photos attached)

Please, immediately, remedy this situation, before more damage is done to the SCL property. Perhaps you are unaware of the situation. If so, please, now, take immediate action to stop the flood of water onto SCL property.

Sienna Court Lofts – HOA, Inc.
920 – A South Ash Ave. Tempe, Arizona 85281

Photos attached

















DEVELOPMENT SERVICES DEPARTMENT
CODE COMPLIANCE
CORRECTION NOTICE

06-14-2010

DAVID ARKULES
7502 N EUCALYPTUS DR
PARADISE VALLEY, AZ 85253

Case#: CE102154
Site Address: 902 S ASH AVE

SITE REINSPECTION ON OR AFTER: 06/28/2010

This is a notice to inform you that this site was inspected on 06/14/2010 and found to be in violation of the City of Tempe's Zoning and Development Code (ZDC) and/or Nuisances and Property Enhancement Ordinance, Chapter 21, Article I and/or II of the City Code (CC) as noted. Failure to comply may result in civil citation or criminal charges.

SECTION VIOLATION
ZDC 4-602.B Parking Standards Applicable in All Zoning Districts

2. *Parking* is allowed only on paved *parking* surfaces. Pavement may be concrete, asphalt, or a porous material approved by the Development Services Manager, or designee. Where decomposed granite or similar porous pavement is used, it shall conform to ADA guidelines and the *parking lot* entrance(s) and exit(s) shall have tire cleaning strips to remove loose particles from the tires of vehicles;

PLEASE TAKE THE FOLLOWING CORRECTIVE ACTION

ZDC 4-602 Cease using the rear yard area as additional parking for the multi-family unit. To use this area as additional parking you would need to process a site modification plan through Development Plan Review for approval.

Please contact me if you have questions or need further assistance. Thank you for your cooperation in this matter.

Senior Code Inspector: Michael Spencer

Direct: 480-350-8075
Code Compliance: (480)350-8372

Civil and Criminal Penalties

City Code Section 21-3, subsections (b) 1-8, 15 and 17-19; Section 21-4; Sections 21-13; Section 21-38, subsections (a-k) and (m-q): 1st occurrence \$150 per violation, 2nd occurrence \$250 per violation, 3rd occurrence \$350 per violation | Sections 21-31, 21-32, 21-33, 21-35, 21-36: 1st occurrence \$250 per violation, 2nd occurrence \$450 per violation, 3rd occurrence \$650 per violation | Section 21-3, subsections (b) 9-14, 16 and 20; Sections 21-34, 21-37; Section 21-38, subsection (l): 1st occurrence \$350 per violation, 2nd occurrence \$650 per violation, 3rd occurrence \$950 per violation. | Section 21-25: \$1000 per violation plus an additional \$100 for each month after the date of the original violation until compliance occurs. | Section 21-4 (B) Habitual Offender: 1st occurrence \$500 in addition to other fines, 2nd occurrence \$1000 in addition to other fines, 3rd occurrence, \$1500 in addition to other fines. | Zoning and Development Code: 1st occurrence \$120 per violation, 2nd occurrence \$370 per violation, 3rd occurrence \$770 per violation | The city has authority to abate the violation should the owner neglect, fail or refuse to correct the violation within 30 days and to assess a lien against the property for the cost of the abatement. | The city prosecutor is authorized to file a criminal class 1 misdemeanor complaint in the Tempe Municipal Court for violations of these codes.



DEVELOPMENT SERVICES DEPARTMENT
CODE COMPLIANCE
CORRECTION NOTICE

06-14-2010

PATRICIA ST VINCENT
902 S ASH AVE
TEMPE, AZ 85281

Case#: CE102154
Site Address: 902 S ASH AVE

SITE REINSPECTION ON OR AFTER- 08/25/2010

This is a notice to inform you that this site was inspected on 06/14/2010 and found to be in violation of the City of Tempe's Zoning and Development Code (ZDC) and/or Nuisances and Property Enhancement Ordinance, Chapter 21, Article I and/or II of the City Code (CC) as noted. Failure to comply may result in civil citation or criminal charges.

Table with 2 columns: SECTION, VIOLATION. Row 1: ZDC 4-602.B, Parking Standards Applicable in All Zoning Districts

2. Parking is allowed only on paved parking surfaces. Pavement may be concrete, asphalt, or a porous material approved by the Development Services Manager, or designee. Where decomposed granite or similar porous pavement is used, it shall conform to ADA guidelines and the parking lot entrance(s) and exit(s) shall have tire cleaning strips to remove loose particles from the tires of vehicles;

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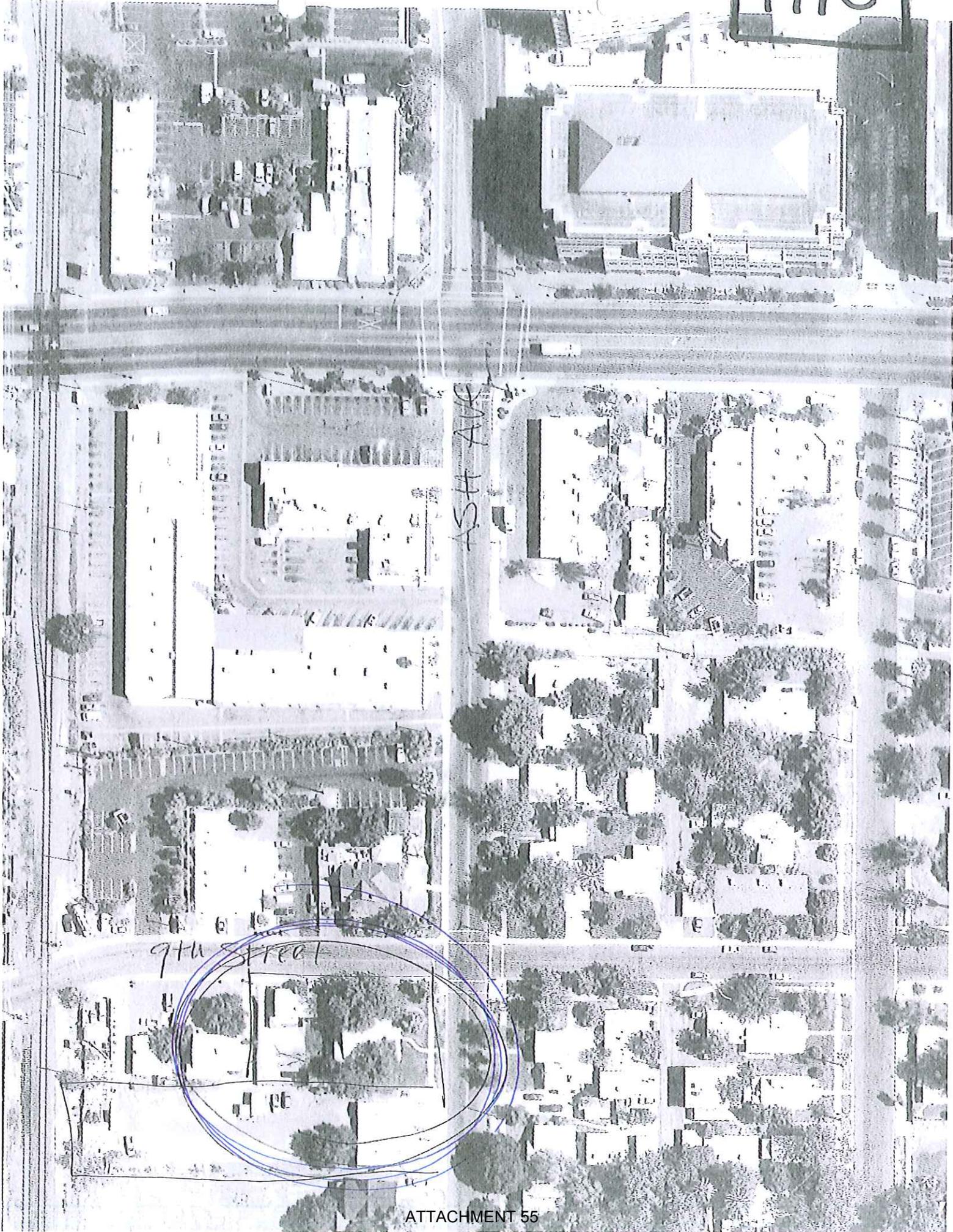


1993

1993



1998



6 December 2011

City of Tempe Hearing Officer
For: 12/06/11 Public Hearing VARI 1008

Variance to waive the required masonry wall between the properties developed for multi-family and single family.

Opposition to Variance - Prepared Statement of: Rick D. Hondorp 275 West 9th ST Tempe, AZ

I have submitted two (2) previous letters of opposition, yet I find that only one is included in the Staff Summary Report by Lesser/Abrahamson.

The Report presents that the "variance is the first step in the process to bring the property into compliance with the Zoning and Development Code." [ZDC] Additionally, "Staff is recommending approval of the variance with the finding that there are special circumstances unique to this lot to warrant support of the variance."

Having thoroughly read the Report, including the applicant's "Letter of Intent", I still find no foundation upon which to base the variance. The applicant simply needs to abate the existing, never legalized, non-complying, violation of unlawful removal of a landscape area, in which applicant has been using for employee and patron parking for another of applicant's commercial bar/restaurant businesses located North of West 9th ST, Abate, no variance needed.

Applicant's letter mentioned "burden (s) placed by CoT thru removal after purchase".

NO Parking on the paved surface of West 9th ST North or South side has been approved in place for as long as I have lived on West 9th ST. (1976) Signage may have "disappeared" on and off since then, but the pavement width and the center stripe do not provide enough space for vehicles to safely pass if vehicles are parked against the curb.

The neighborhood requested and got approved "resident permit only" parking on Ash Avenue within the area, (front of the owner) parking)

In my further review of the Report, it appears that there is significant information missing from not only the "History & Facts;" but the "Comments;" and the "Variance" sections of the Report, to which I believe the SCL HOA, Inc. and Rhombus LLC, letters of Opposition address.

The Report states: "...variance is the first step in the process to bring the property into compliance with the (ZDC)."

However, my review of the Factual History, the Zoning Ordinance No. 808 and the ZDC, beg the question, How is that possible?

Referring to the Factual course of events preceding this variance request, actions taken by previous owner (Ottos), and those subsequently taken by applicant, and (David I. Arkules an owner between), appear to make "bring the property into compliance" (as it is being used), difficult to impossible.

Referring to the ZO #808, (docs 1-9 attached)

Ottos Violated the Ordinance: (pgs.2,4,5,6 &9 attached)

Ottos Violated the Ordinance by "strip, excavate or remove top soil...except...an approved site..." They did so PRIOR to application for their use permit.

Ottos continued to Violate the Ordinance AFTER "conditional approval" of their specific use permit, by FAILING to "commenced within twelve months" (fulfilling the "conditions of approval"), rendering the use permit "Void" Arkules, as new owner, continues to Violate the Ordinance even as the property is conveyed to Ninth & Ash LLC. (applicant), all still under the ZO#808. Arkules/Ninth & Ash LLC, (applicant) add a new Violation to the Ordinance in that vehicles of employees and patrons for applicant's other business, a bar/restaurant located on the North side of West 9th ST. start parking on subject property. (pgs. 3&8 attached)

So, at this point applicant is committing MULTIPLE Violations of the Ordinance. Referring to the Zoning and Development Code (ZDC), (docs A-M attached) [Adopted 2005] Applicant Violates the ZDC with Multiple Offences: (pgs. C,D,E,F,G,I,J,K,L,M,N&O)

Applicant continues to Violate the ZDC "openly" and "visible", complaint(s) are made to CoT Code Enforcement for a number of years, until 2010 when a CoT Code Compliance – Correction Notice is mailed to applicant(s) (pgs. L&M) Applicant makes application to CoT for "Site Plan Modification – new parking surface", approved by Sherri Lesser, PL100228/DPR10162, September 2, 2010. Lesser FAILED to due diligence to investigate the legality of "Parking Area" shown on applicant's site plan in submittal documents. (pg. N attached)

In 2011, a complaint was made to CoT City Manager regarding illegal parking in rear yard of subject property, a series of meetings take place with applicant and CoT P&Z/Admin. The "Otto Use Permit" issue is brought to light in these meetings.

Applicant proceeds and has work approved "new parking surface", done on subject property.

More meetings take place as the issue of "legality" of the "existing parking area" continues, raised by further complaint(s).

Applicant is offered by CoT, choice of compliance with ZO #808 or ZDC, to bring subject property "into compliance"

Applicant applies for variance to waive 8' masonry/concrete wall requirement between R3 and R1/PAD properties per ZDC.

Referring to the ZDC: (pgs. B,D,E,F,G,H,I,J&K attached)

Applicant Violated the ZO#808, without resolution and continued doing so as the ZDC was adopted in 2005. Applicant did so, by "Site Modification(s) without approval" and Change in Land use again, without approval(s).

By ZDC Definitions, the existing conditions of the parking area/driveway, FAIL to meet the "Non-conforming use" in that they were NEVER "lawfully established prior to it becoming nonconforming". (pg. K attached)

By ZDC Appendix K, "All existing violations of the Zoning Ordinance of the City of Tempe, Arizona, Ordinance No. 808,.....shall not become legal nonconforming uses." (pg. J attached)

So, as I understand all of the above, in accordance with the ZDC, the subject property CANNOT be brought into compliance for the historically and on going change in land use, (that of a driveway and parking area for commercial usage), where the commercial property is NOT "adjacent" and NOT "contiguous" and NOT on the "the lot it serves", in VIOLATION of past Ordinance and the ZDC, as documented.

I see no merit in the arguments brought by Staff, in fact the damaged parties in all of this are SCL, HOA, Inc. and Rhombus LLC for all the years of on going Violations occurring on subject property under applicant's ownership.

Please deny this variance because it is the "first step" in making a change in the use.

THIS PRINTING OF ORDINANCE 808, THE ZONING ORDINANCE OF THE CITY OF TEMPE, HAS BEEN REPUBLISHED, TO INCORPORATE ALL AMENDMENTS TO SAID ORDINANCE WHICH HAVE BEEN ADOPTED AND ARE IN EFFECT AS OF January 18, 1997. AMENDING ORDINANCES INCLUDED IN THIS PRINTING ARE LISTED BELOW.

ORDINANCE NO. 808.17

Adopted by the Tempe City Council: February 3, 1977
Effective: March 3, 1977

ORDINANCE NO. 808.35

Adopted by the Tempe City Council: February 9, 1978
Effective: March 11, 1978

ORDINANCE NO. 808.41

Adopted by the Tempe City Council: February 9, 1978
Effective: March 11, 1978

ORDINANCE NO. 808.42

Adopted by the Tempe City Council: February 9, 1978
Effective: March 11, 1978

ORDINANCE NO. 808.121

Adopted by the Tempe City Council: April 10, 1980
Effective: May 10, 1980

ORDINANCE NO. 808.141

Adopted by the Tempe City Council: April 10, 1980
Effective: May 10, 1980

ORDINANCE NO. 808.142

Adopted by the Tempe City Council: April 10, 1980
Effective: May 10, 1980

ORDINANCE NO. 808.170

Adopted by the Tempe City Council: December 18, 1980
Effective: January 18, 1981

2

PART II. ADMINISTRATION

A. REPEAL, SAVING CLAUSE AND APPLICATION

1. Repeal: All ordinances or parts of ordinances in conflict herewith are hereby repealed, including but not limited to Ordinance No. 405.
2. Saving Clause: Should any Section or provision of this Ordinance be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.
3. Application: The repeal of the ordinances or parts thereof by this Ordinance shall not (1) affect suits pending or rights existing immediately prior to the effective date of this Ordinance; (2) impair, avoid, or affect any grant or conveyance made or right acquired or cause of action now existing under any such repealed Ordinance or amendment thereto; or, (3) affect or impair the validity of any bond or other obligation issued or sold in constituting a valid obligation of the issuing authority immediately prior to the effective date of this Ordinance.

B. VIOLATIONS AND PENALTIES

1. It is unlawful to construct, erect, install, alter, change, maintain, use or to permit the construction, erection, installation, alteration, change, maintenance or use of any house, building, structure, sign, landscape area, parking lot, or fence, or to use or permit the use of any lot or other land contrary to or in violation of any of the provisions of this Ordinance.
2. Any person, firm or corporation violating any of the provisions of Ordinance No. 808 and any amendments thereto shall be guilty of a Class I Misdemeanor, punishable by a fine not exceeding Twenty-Five Hundred Dollars, or by a term of probation not exceeding three years, or imprisonment for a term not exceeding six months, or by fine, imprisonment and probation.
 - a. Every such person, firm or corporation shall be deemed guilty of a separate offense for each and every day during which any violation is committed, continued or permitted.
 - b. The owner or person in possession of any property used in violation of this Zoning Ordinance shall be responsible for any violation thereof whether or not he or his agent has committed the prohibited act or acts or has neglected to prevent the performance of the prohibited act or acts by another person.

Section 2, Residential Dist., Part III, Multi-Family Res. Dist.

PART III. MULTI-FAMILY RESIDENCE DISTRICTS

- R-2, Two Family Residence District
- R-3, Multi-Family Residence Limited District
- R-3R, Multi-Family Residence Restricted District
- R-4, Multi-Family Residence General District

A. PERMITTED USES

1. All uses permitted in SECTION 2, PART II.A.& B. and subject to all restrictions specified for said Districts, except as provided herein.
2. Multi-Family dwellings. Guest quarters shall be counted in density calculations of the site and shall not require a Use Permit. (Refer to SECTION 1, PART IV. Definitions.)
- **3. Developments of one acre or greater in net site area, including apartments, condominiums and other cluster housing concepts; such residences shall file a site plan or PAD, and comply with the requirements of SECTION 1, PART III.E. or F.

B.

ADDITIONAL USES PERMITTED IN THE R-3, R-3R & R-4 DISTRICT SUBJECT TO A USE PERMIT

1. Boarding houses and rooming houses.
2. Fraternity and sorority houses.
3. Hospitals or sanitariums for the treatment of human ailments, nursing or convalescent homes, orphanages, and institutions for the mentally disordered, epileptic, drug or alcoholic patients; institutions of an educational religious or philanthropic nature; homes for the aged, without cooking facilities in individual dwelling units. Any building so used shall be not less than 50 feet from the lot line of any adjoining property.
4. Nursery schools and day care centers.
5. Parking lots for adjacent commercial uses.
6. Radio and television transmitter stations.
- *7. Any use not appearing in this Ordinance which is similar to, and not more detrimental than the uses permitted herein, as determined by the Zoning Administrator, may be permitted in the area upon securing a use permit. See Section 1, Part III (C), Procedures: Use Permit.

*Ordinance No. 808.349, effective 8/31/85.
 **Ordinance No. 808.9506, effective 6/10/95.

C. GENERAL REGULATIONS

- ***1. The provisions of Section 5 shall apply to all new buildings, all new uses of land, and any addition to existing buildings and uses, occurring in any Multi-Family Districts, Service Districts, Commercial Districts (except the RCC District), all Industrial Districts and non-residential uses in the AG and Single Family Districts. The RCC District is not subject to the standards of Section 5. Standards for landscaping, walls, screening and lighting in the RCC District shall be established through the Design Review Board and City Council. Maintenance requirements of this section shall apply to all sites and uses within the districts listed above.
- 2. Any expansion of building or use, or development of land shall be constructed in accordance with an approved site plan and landscape plan.
- 3. Prior to the issuance of a building permit, the Planning Division shall review and approve the site plan and landscape plan.
- *4. Prior to issuance of an Occupancy Permit, the walls, screening devices and lighting shall be installed in accordance with the approved construction plans.

In lieu of the installation of landscaping, irrigation system or public art prior to issuance of an Occupancy Permit, a cash deposit or an irrevocable letter of credit in an amount guaranteeing the complete installation of the landscaping, irrigation system or public art within six (6) months may be accepted by the Planning Division. Failure to install the landscaping, irrigation system or public art shall result in the forfeiture of the deposit or letter of credit, and be deemed a violation of this Section of the Ordinance.

- 5. No person, firm or corporation shall strip, excavate or remove top soil nor shall they berm up soil on a site, except to accommodate an approved building, building addition or facilitate necessary and approved site improvements.
- 6. Any landscape areas in the public right-of-way shall comply with all the requirements of Sections 29-44 of the Tempe City Code and with the criteria of the Arizona Department of Water Resources. These criteria specify plant material which have low water needs and encourage the conservation of our water resources.
- **7. Developers of commercial or office projects shall contribute to public art if the development either contains a total of more than 50,000 s.f. gross floor area, or is a phase of a larger project approved after February 24, 1990 that contains a total of more than 50,000 s.f. gross floor area.

* Ordinance No. 808.9202, Effective March 14, 1992.
 ** Ordinance No. 808.9407, Effective March 11, 1995.
 ***Ordinance No. 808.9606, Effective May 25, 1996.

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PART II. LANDSCAPING

A. STANDARDS OF DESIGN

1. Each site to be developed shall be required to provide landscape areas equal to or exceeding the following minimum amounts:
 - a. Each site in a Multi-Family District shall have a minimum of thirty percent (30%) of the net site/lot area in landscaping.
 - b. Each site in a Service/Commercial District shall have a minimum of fifteen percent (15%) of the net site/lot area in landscaping.
 - c. Each site in an Industrial District shall have a minimum of ten percent (10%) of the net site in landscaping.
 - d. In addition to the minimum on-site landscaping, there shall be landscaping in the entire area of the right-of-way, between street property line and back of street curb except for approved driveways, walkways and bikepaths.
 - e. Refer to Section 1, Part V or Part VI for additional landscape requirements for parcels in the Rio Salado Overlay District and Southwest Overlay District.

- *2. Except for residential units, bonafide city parks of less than ten (10) acres in total area which are intended for use and enjoyment of the general public whether or not such parks are owned by the City or by a private entity, and "Turf-related facilities" as defined in Section 6-210 of the Arizona Department of Water Resources (ADWR) Second Management Plan (Phoenix), all new development shall conform to the following criteria:
 - a. Projects with less than 22,000 square feet of total landscaped area shall plant a minimum of fifty (50) percent of the total landscaped area with material from the ADWR Low Water Use Plant List (hereinafter "ADWR List").
 - b. Projects with more than 22,000 square feet of total landscaped area shall plant a minimum of fifty (50) percent of the total landscaped area with material from the ADWR List for the first 22,000 square feet and a minimum of eighty (80) percent of the remainder with material from the ADWR List.

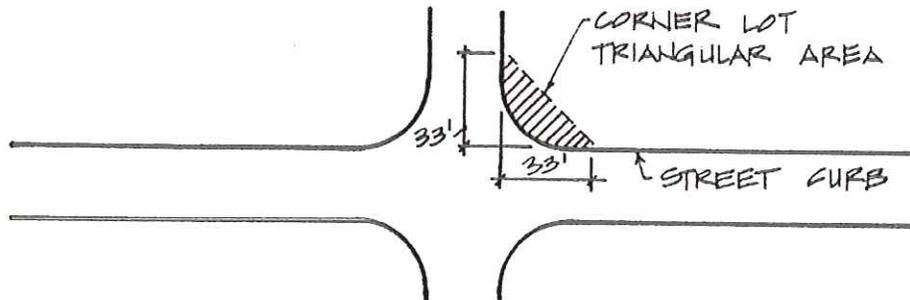
*Ordinance No. 808.9202, Effective March 14, 1992.

8. Where multi-family, commercial, office or industrial uses are adjacent to or separated by an alley or lesser separation from a single family residential (R1) development or district, such trees shall be planted at ten (10) feet on center, with every other tree being a minimum twenty-four (24) inch box size.
9. Where a commercial, office or industrial user of over 50,000 square feet building area is located adjacent to a residence or residential district, the landscape buffer described in No. 5 above shall be increased to fifteen (15) feet (adjacent to that user), with two (2) rows of trees along the interior side of the required wall. Each row is to contain minimum fifteen (15) gallon trees spaced fifteen (15) feet on center, staggered for maximum effect in buffering the two uses.
10. Trees shall be required along all street frontages according to the following criteria:
 - a. A minimum of one (1) tree shall be planted for every twenty-five (25) feet of lineal street frontage;
 - b. Fifty percent (50%) shall be 24" box size or larger with the balance being minimum fifteen (15) gallon size;
 - c. The trees selected shall be compatible with the overall site and landscape plan, as well as adjacent sites.
11. All trees shall be planted and staked in accordance with the "Standard Tree Planting Detail" in this Section. Plant sizes to be in accordance with the Arizona Nurseryman Association Standards;
12. All on-site water retention areas, other than paved surfaces shall be entirely landscaped and shall comply with the following criteria:
 - a. The retention areas shall not occupy more than 67% of the on-site street frontage landscape area;
 - b. All retention areas shall maintain slopes no steeper than 4:1;
 - c. Refer to Section 1, Part V or Part VI for additional retention requirements for parcels in the Rio Salado Overlay District or Southwest Overlay District.
13. All mounding and berming shall have slopes no steeper than 4:1.

4. When property lines are in common with or separated by an alley from a residence or residential district, a wall with a minimum height of six (6) feet, as measured from the highest adjacent grade within twenty (20) feet, shall be provided on the property line(s) of a site that is used for or zoned for:
 - a. Multi-family,
 - b. Service,
 - c. Industrial,
 - d. Churches,
 - e. Private schools,
 - f. Public facilities, or
 - g. Any non-residential use permitted in a single family district.

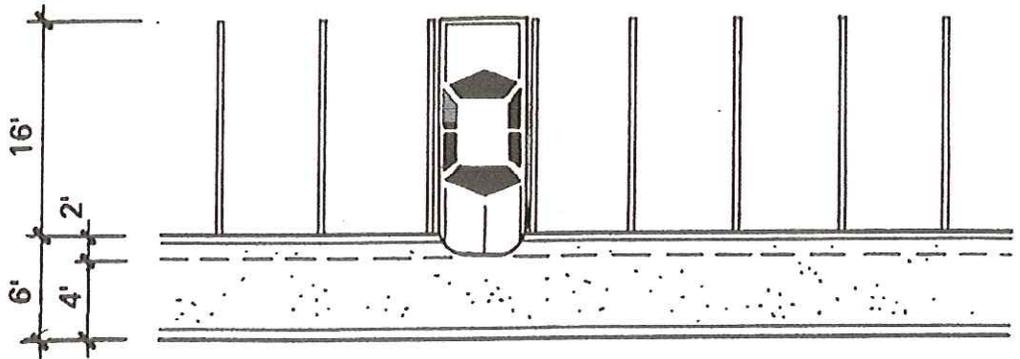
The walls shall have no vehicular access points to or from the alley. Within the first twenty-five (25) feet from the street property line, the height of the wall may be reduced, gradually, to three (3) feet in height if there is potential of obstructed vision for pedestrian and vehicular traffic. In addition, trees shall be planted as specified in Part II of this Section.

5. All required walls shall be located on-site and be of masonry or concrete construction. All walls shall have an architectural texture, color and material compatible with the primary building on-site (or on respective sides). Where walls are along alleys, the alley side is only required to be painted. Alternate wall finishes to those noted above must receive written approval from the Zoning Administrator.
6. No walls, buildings or other obstruction to view in excess of two (2) feet in height (measured from street curb) shall be placed on any corner lot within a triangular area formed by the curb lines and a line connecting them at points thirty-three (33) feet from the intersection of lines, extended from the curbs. There shall be an exception for a reasonable number of trees pruned high enough to permit unobstructed vision to automobile drivers.



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- *2. The Parking Area shall be paved and located on the lot it serves, or on a contiguous lot. Whenever Required Parking is provided on a contiguous lot a Parking Covenant and Agreement shall be filed with the Building Safety Department prior to issuance of a building permit.
- 3. Parking for uses located on any land with Multi-Family Residential, Service/Commercial or Industrial zoning may not be provided on any property with Single Family (R1) zoning. Parking for any non-residential use permitted in the Single Family Zoning Districts may be located in any other Zoning District.
- 4. Where vehicles extend into or overhang any walkway a sidewalk shall be installed. No vehicle may overhang any part of a bikeway system.



minimum sidewalk with overhang

- 5. The use of any property is conditional upon the unqualified continuance and availability of the parking as required by this Ordinance. Any use of property in violation thereof shall be deemed a violation of this Ordinance.
- 6. Construction or modification of any Parking Area shall comply with plans which have been approved by the City of Tempe.

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*Ordinance No. 808.9105, effective July 13, 1991.

- b. Use permits required for any bar which occupies 4,500 s.f. or more in Gross Floor Area and use permits required for any other use which occupies 10,000 s.f. or more in Gross Floor Area in every other Section 3 Service District except the CCD, with advice of the Planning Commission;
 - c. Use permits required for any use which occupies 20,000 s.f. or more in Gross Floor Area in every Section 4 Industrial District, with advice of the Planning Commission. For use permits to exceed the allowed percent of retail in an Industrial District, the square footage devoted to retail will be taken as the Gross Floor Area for the use requiring the use permit;
 - d. All use permits required in the CCD.
 - e. The Zoning Administrator may direct that a request defined by items a. through d. immediately above be heard instead by the Zoning Administrative Hearing Officer/Board of Adjustment based on a review which includes but is not limited to the following factors:
 - 1) previous decisions by the Hearing Officer/Board of Adjustment regarding the site on which the proposed use is located
 - 2) the probable impact of the requested use on its immediate surroundings, and
 - 3) the consistency of the requested use with projected land uses, policies and principles of **General Plan 2000**.
3. Such use permits as are granted by the Commission and Council, Hearing Officer or Board shall be void if use is not commenced within twelve months of such granting or within the time stipulated by the Hearing Officer, Board of Adjustment or Planning Commission and Council.
4. A use permit shall be granted only upon a finding by the Hearing Officer, Board or Commission and Council that the use covered by the permit, the manner of its conduct, and any building which is involved will not be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, to the public welfare in general and that the use shall be in full conformity to any conditions, requirements or standards prescribed therefore by this Ordinance (pursuant thereto).

In arriving at the above determination, the following factors shall be considered, but not be limited to:

Section 1-305 Hearing Officer.

- A. Hearing Officer – Creation and Purpose.** The Hearing Officer shall be appointed by the Development Services Manager or designee. The Hearing Officer is created to conduct public hearings on specific applications as noted in Section 1-305(B).
- B. Hearing Officer – Duties and Powers.** The Hearing Officer shall have the duty to carry out the provisions and intent of the General Plan and this Code. The Hearing Officer shall have the power to hold a public hearing to review and approve, continue, deny, or approve with conditions, the following:
1. Use permit applications pursuant to Section 6-308;
 2. Variance applications pursuant to Section 6-309;
 3. Rental housing code appeals pursuant to Chapter 21 of the Tempe City Code; and
 4. Abatements pursuant to Chapter 21 of the Tempe City Code and Section 6-310.

The Hearing Officer may in connection with any application, impose conditions deemed necessary in order to fully carry out the provisions and intent of this Code, pursuant to Part 6, Chapter 6, Conditions of Approval. Violation of any Hearing Officer condition shall be a violation of this Code.

- C. Hearing Officer – Procedure.** Public hearings conducted by the Hearing Officer shall be open to the public and conducted in accordance with Part 6, Chapter 5, Public Meetings and Public Hearings. The public shall be given an opportunity to testify orally or in writing. The minutes of its proceedings in accordance with Section 6-503, shall be kept by the City Clerk as a public record.
- D. Hearing Officer – Appeals.** Any person aggrieved by a decision of the Hearing Officer under this Code may file an appeal to the Board of Adjustment, Joint Review Committee, or the Redevelopment Review Commission as applicable, within fourteen (14) calendar days after the Hearing Officer has rendered its decision, in accordance with Part 6, Chapter 8, Appeals. Appeals of the decisions of the Hearing Officer shall be heard de novo by the Board of Adjustment, the Redevelopment Review Commission or the Joint Review Committee as applicable.

State law reference — A.R.S. §9-462.08 Hearing officer

Table 3-102 – Permitted Land Uses (AG, SFR, MF, MH, RMH, TP)				
Uses	Status of Use in District			
	AG	SFR	MF	MH/RMH/TP
Country Clubs, Private Clubs, Golf Courses	U	U	U	N
Farming [Section 2-404]	S	N	N	N
Fraternity and Sorority Houses (R-3 and R-4 Districts Only)	N	N	U	N
Group Homes for Adult Care, Persons with Disabilities, and Child Shelter [Section 3-409]	S	S	S	N
Guest Quarters [Section 3-411]				
Attached	N	N	N	N
Detached	N	N	N	N
Home Occupations [Section 3-412] [See Appendix N.]	S	S	S	S
Hospitals, Sanitariums, Nursing Homes: e.g. Orphanages, Institutions (AG, R-3R, R-3, R-4 only) [Section 3-413]	U(S)	N	U(S)	N
Live-Work [Section 3-414]	N	N	U(S)	N
Mobile Homes [Section 3-416]	N	N	N	S
Multi-Family Dwelling (2 or more dwellings)	N	N	P	N
Parking Facilities for Commercial Uses (off-street and not enclosed in a building)	N	N	U	N
Places of Worship (except tents and other temporary structures or buildings not permitted) including childcare, Sunday school use which are ancillary to main use	P	P	P	P
Childcare center, private or charter school not ancillary to main use	U	U	U	U
Processing of Farm Products [Section 3-404]	U(S)	N	N	N
Public Uses				
Civic facilities (e.g., post office, library, city office, customer serving)	U	U	U	N
Municipal facilities (maintenance, repair and storage)	U	U	U	N
Open space, parks, similar uses (See also, Schools)	P	P	P	P
Residential Sales Office, Temporary [Section 3-419]	S	S	S	S
Retailing of Farm Products Produced on Premises	U	N	N	N
School				
Charter	U	U	U	U
Instructional	U	U	U	U
Private	U	U	U	U
Public	P	P	P	P
Vocational	N	N	N	N

Key:

P = Permitted
 S = Permitted with special standards or limitations
 U = Use permit required
 N = Not permitted

AG = Agriculture districts
 SFR = Single-family districts
 MF = Multi-family districts
 MH = Mobile home district

RMH = Mobile Home Residence
 TP = Trailer Park

(B)

CHAPTER 1 – DEVELOPMENT STANDARD ADMINISTRATION

Section 4-101 Purpose and Applicability.

- A. **Purpose.** Part 4 provides standards for *development density*, height, *setbacks*, *lot coverage*, *building design*, *parking*, *landscape*, access and circulation for pedestrians and vehicles, signs, lighting, and infrastructure. The intent of these regulations is to minimize land use conflicts, conserve and enhance design character and aesthetic values throughout the city; support crime prevention and safety including *accessibility* for *persons with disabilities*; and provide multi-modal transportation options for the general public.
- B. **Applicability.** Unless otherwise noted, all uses and *developments* shall conform to Part 4, Development Standards. Additionally, except for *density*, an increase in the defined maximum standards and/or a decrease in the required minimum standards in Tables 4-202A, 4-202B, 4-202C, 4-203A, 4-203B, 4-204 may be allowed up to the percentages noted in designated tables subject to a *use permit* and are considered a *development standard* of Part 4 of this Code.

City code reference—See TCC §14A, Historic Preservation Ordinance.

Section 4-102 General Regulations and Approval Criteria.

- A. **Commencement of Use or Development.** A *development* shall not be constructed, or a use commenced, except after its applications or plans are approved by the city in conformance with this Code.
- B. **Variances to Part 4.** Deviations from the standards set forth in Part 4 require approval of a *variance(s)* under Section 6-309.
- C. **Conformance to Approved Plans Required.** Any expansion of *building* or use, or *development* of land, shall conform to plans approved under Part 6. When an approval under Part 6 is required, the city or, in the case of the MU-Ed District, *Public University* may not issue a site development permit, a building permit, electrical permit or a mechanical permit for the project until the approval has been granted.
- D. **Completion or Bonding Prior to Final Inspection.** Prior to issuance of a final inspection, letter of compliance or a (temporary) certificate of occupancy, all required improvements shall be installed in accordance with plans approved by the Development Services Department or in the case of the MU-Ed District, *Public University*. The Development Services Department may accept a cash deposit, bond or an irrevocable letter of credit in an amount guaranteeing the complete installation of the required *landscape* and irrigation within six (6) months of notice of completion or certificate of occupancy. Failure to install the required *landscape* and irrigation shall result in the forfeiture of the deposit, bond, or letter of credit, and be deemed a violation of this Code.

CHAPTER 6 – PARKING

Section 4-601 Purpose and Applicability.

- A. **Purpose.** The purpose of Chapter 6 is to provide standards for vehicle and bicycle *parking* facilities. This chapter recognizes that each *development* has unique *parking* needs and provides a flexible approach for determining *parking* space requirements.
- B. **Applicability.** Conformance to the standards in Chapter 6 shall be required for all uses and *developments*, except as noted herein, except in the MU-Ed District parking standards shall be established through the Joint Review Committee. Construction or modification of any *parking* area, except single-family residential *parking* areas, shall comply with plans that have been approved by the city. Single-family *parking* areas shall conform to Section 4-602(C).

Section 4-602 General Parking Standards.

- A. **Parking Required.** No use shall provide less than the minimum or more than the maximum number of *off-street parking* spaces required under Section 4-603. The use of any property is conditional upon the unqualified continuance and availability of the *parking* as required by this Code. In phased projects, individual phases of the project are exempt from the maximum *parking* standards, provided that the project does not exceed the maximum allowable *parking* at build-out.
- B. **Parking Standards Applicable in All Zoning Districts.**
1. *Parking* spaces shall conform to the clear vision requirements in Section 4-702(G) and the vehicle and pedestrian circulation standards in Sections 4-502 and 4-503 respectively;
 2. *Parking* is allowed only on paved *parking* surfaces. Pavement may be concrete, asphalt, or a porous material approved by the Development Services Manager, or designee. Where decomposed granite or similar porous pavement is used, it shall conform to ADA guidelines and the *parking lot* entrance(s) and exit(s) shall have tire cleaning strips to remove loose particles from the tires of vehicles;
 3. A *parking* area shall be located on the *lot* it serves, or on a *contiguous lot*. Whenever required *parking* is provided on a *contiguous lot* a parking covenant and agreement shall be filed with the Development Services Department prior to issuance of a building permit;
 4. *Parking* for uses located on property zoned as multi-family residential, commercial, *mixed-use* or *office/industrial* may not be provided on any property in a single-family (R1) district. *Parking* for any non-residential use permitted in the single-family zoning districts may be located in any other zoning district;

3. *Parking structure* designs shall minimize risk and opportunity for crime through clearly marked and *accessible* pedestrian routes, way-finding, lighting, and opportunities for surveillance; and
4. *Parking lots for adjacent commercial uses* are permitted in any multi-family district subject to a *use permit*.

Section 4-603 Parking Ratios.

The number of required off-street vehicle and bicycle *parking* spaces shall be calculated for each use as follows:

- A. **On-Site Parking Spaces.** The minimum *parking* ratios in Table 4-603E, below, are applied to each use on the site. Statements like "+ office" are intended to remind the applicant to identify and include all independent uses. *Parking* calculations shall be provided for every separate main or primary use on the site, as identified in the site and floor plans submitted for city approval.
- B. **Accessible Parking Spaces (Americans with Disabilities Act - ADA).** The minimum number of *accessible parking* spaces shall conform to ADA requirements. Refer to Federal ADA code.
- C. **Maximum Parking Spaces.** Except for the RCC zoning district and all MU districts, the number of *parking* spaces provided by any *development* in surface *parking lots* shall not exceed one hundred twenty-five (125) percent of the minimum required spaces in Table 4-603E, except as follows:
 1. *Parking* within the *building* footprint of a *structure* (e.g., rooftop *parking*, below-grade *parking*, multi-level *parking structure*);
 2. When a change in use causes a lower *parking* requirement;
 3. *Parking* spaces managed for shared *parking*;
 4. A *use permit* is required to provide more surface *parking* than the maximum standard and additional *landscape* is required per Section 4-704(A).; and
 5. Phased projects do not need to comply, until the final phase is constructed.
- D. **Parking Calculations.** If the Zoning Administrator determines that an activity could function independent of the main use for the space, *lot* or *building*, then it must be included in the required *parking* calculation and must provide *parking* of its own. A separate *parking* calculation is not required for *accessory uses*. *Parking* calculations shall follow the requirements below:
 1. When multiple uses are proposed, the fractional *parking* requirement for each use is added together prior to rounding, per Section 1-209;

Section 4-604 Shared Parking.

Parking requirements for two (2) or more uses may be satisfied with *shared parking*. *Shared parking* may be approved only when the subject uses have inherent differences in *parking* activity patterns, the combined *parking* requirement will not exceed the available *parking* supply, and the right of joint use of a *parking* facility is evidenced by a contract establishing joint use. *Shared parking* shall be subject to review and approval by the Zoning Administrator under Section 6-311, and shall conform to the following standards:

- A. **Location.** *Parking* shall be provided on the same or a contiguous lot. *Parking* may be provided off-site with professional analysis that the proximity of the *parking* is acceptable.

In cases where *parking* for a project is to be provided on more than one (1) *lot*, a *parking* association shall be formed by the owners of the affected parcels prior to issuance of a building permit. Documentation of the association shall be provided to the Zoning Administrator prior to issuance of the building permit.

- B. **Shared Parking Model.** The Shared Parking Model (see Appendix F) shall be used as a basis for predicting the *parking* required for a particular mix of uses on a site, except where the Zoning Administrator has approved the use of a customized *parking* model.
- C. **Shared Parking Report.** The applicant's calculation of *shared parking* requirements shall be based on a professional *parking* analysis and management plan that is submitted with the *development plan* and/or land use proposal.
- D. **Implementation.** The owner or manager of a project approved under the *parking* demand alternative, once built, shall maintain an accurate up-to-date record of the usage of the *net floor area* for the project, both occupied and vacant, according to type of use. The Development Services Manager, or designee, may require this record be provided when the owner applies for a new land use or development approval for the subject parcel.

Section 4-605 Parking Affidavit.

When *shared parking* is permitted, the owner of the site on which the *shared parking* is located shall file a *parking affidavit* with the Development Services Department. The *parking affidavit* shall transfer the rights to the unqualified availability of a specific number of *parking* spaces from one property (which can no longer take credit for them) to another for the specific hours of use supported by the *parking* analysis (Section 4-604(C)), as long as the spaces are required by this Code.

Section 4-606 Parking Area Dimensions.

- A. **Parking Area Dimensions.** Minimum dimensions for *parking* spaces:
1. *Motor vehicle parking* spaces shall measure eight (8) feet six (6) inches wide by eighteen (18) feet long or by sixteen (16) feet long, with not more than a two (2) foot overhang when allowed;

F

CHAPTER 7 – LANDSCAPE AND WALLS

Section 4-701 Purpose and Applicability.

- A. **Purpose.** This chapter provides standards for the design of *landscape* treatments and access control *landscapes*, including plant materials, ground covers, *landscape structures*, hardscapes (e.g., plazas, *courtyards*, walls), screening, and access control devices such as fences and gates. Its purpose is to create functional, safe, *accessible* and attractive outdoor areas, as well as screen from view any and all uses that may be unattractive to public view. *Landscape* design standards are intended to: assist in controlling erosion, reduce dust and glare, provide shade, visually soften *building* masses, create defensible spaces that support crime prevention, ensure ADA *accessibility* and aid in screening intense activities. The design standards and referenced guidelines in this chapter are intended to be flexible and adaptable to address the context in which they are applied.
- B. **Applicability.** All uses and *developments* shall conform to the standards of this chapter, except as provided for uses and *developments* in the RCC district, all MU districts and single-family uses, as noted herein. Standards for *landscape*, walls and screening in the RCC district and all MU districts shall be established through a *Development Plan Review*, pursuant to Section 6-306. Written approval by the Development Services Department is required prior to installation of any landscape, walls, fences, or other improvements. All *landscape* and walls shall be installed prior to issuance of a certificate of occupancy, except as provided for under Section 4-102(D). Any walls to be located within the public right-of-way shall require *development plan* approval and/or prior approval by the Public Works Department, and receive an encroachment permit.

Section 4-702 General Landscape Standards.

- A. **Water Retention Area Landscape Standards.** All on-site water retention areas, other than paved surfaces, shall be entirely *landscaped*, and comply with the criteria below:
1. The retention areas shall not occupy more than sixty-seven percent (67%) of the on-site *street* frontage *landscape* area (*landscape* area does not include driveways); and
 2. All retention areas shall maintain slopes no steeper than four to one (4:1), except as approved by the Public Works Manager.

Cross reference — See also Section 5-102 for additional requirements for parcels in the Rio Salado Overlay District.



- K. **Use Permit Time Limitation.** *Use permits* shall be void if the use is not commenced within twelve (12) months after the use permit is granted or within the time stipulated by the decision-making body.

Section 6-309 Variances.

- A. **Purpose.** This section provides for relief from the standards of this Code when needed because of circumstances applicable to a property, including its size, shape, topography, location or surroundings, where the strict application of this Code would deprive such property of privileges enjoyed by other property of the same classification in the same zoning district.
- B. **Applicability.** *Variances* are applicable to quantified standards (e.g., *setbacks*, height, *lot* areas, dimensions, etc.) and non-quantified standards. *Variances* are not applicable to guidelines as specifically identified in this Code. Any variance granted shall not:
1. Make any changes in the uses and densities permitted in any zoning classification or zoning district;
 2. Be for the purpose of rectifying a special circumstance, which was self-imposed by the property owner or applicant; or
 3. Allow relief from any item expressly prohibited by this Code.
- C. **Procedure.** Requests for *variances* from the terms of this Code shall be processed as a public hearing procedure to the decision-making body as provided in Section 6-101.
- State law reference — *Variances*, power to grant, A.R.S. §9-462.06.
- D. **Approval Criteria.** A variance shall not be authorized unless the decision-making body finds upon sufficient evidence:
1. That there are special circumstances or conditions applying to the land, *building* or use referred to in the application;
 2. That authorizing the variance is necessary for the preservation and enjoyment of substantial property rights;
 3. That authorizing the variance will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general; and, if applicable
 4. That the applicant for a *sign variance* has received *development plan* approval (i.e., contingent upon *variance* approval) prior to a decision being made on the *variance*.

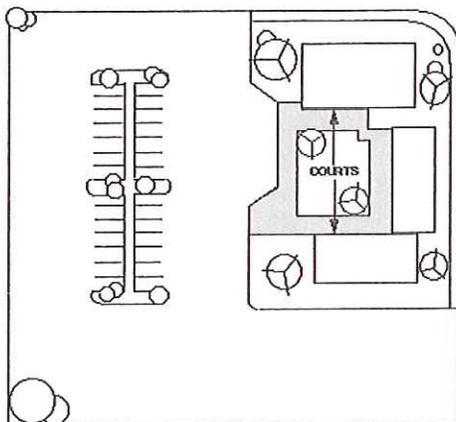


Condominium means a building space designated for individual ownership, not including land, together with an interest in any common ownership land or improvements. Real estate is not a condominium unless the undivided interests in the common units are vested in the unit owners. See also "horizontal regime."

Contiguous means in contact with.

Courtyard means a space, other than a setback yard, that is open and unobstructed to the sky, and located on the same lot with a building or group of buildings, which bound it on two or more sides and face each other. A court or courtyard typically provides amenities such as gardens, planters, seating, art or similar features. The width of a court shall be its least horizontal dimension as measured from the face of buildings or to columns, posts, overhangs or balconies, as applicable.

Figure 7-104 A.



CPTED or Crime Prevention Through Environmental Design means the design and use of the built environment to lead to reduced fear and incidence of crime, and an improvement in the quality of life. In Tempe, CPTED is based upon five internationally recognized principles that are basic to crime prevention philosophy, which are Natural Surveillance, Access Control, Activity Support, Territoriality, and Maintenance. See Appendix for further explanation.

Section 7-105 "D" Definitions.

Develop means to construct or alter a structure or to make a physical change to the land including excavations and fills.

Development means all improvements on a site, including buildings, other structures, signs, parking and loading areas, landscaping, paved or graveled areas, and areas devoted to exterior display, storage or activities. Development includes improved open areas such as plazas and walkways, but does not include natural geologic forms or unimproved land. See also, "*alteration, exterior*".

Development, new means development of a site that was previously unimproved or that has had previously existing buildings demolished.

Mixed use means, in the MU-Ed zoning district, uses that are a combination of either a *Public University* use or *Public University* related use and a commercial and/or residential use within the same building or project.

Mobile home means a dwelling unit built on a chassis in excess of eight (8) feet in width and forty (40) feet in length and containing complete electrical, plumbing and sanitary facilities, and designed to be installed on a temporary or a permanent foundation for permanent living quarters.

Mobile home park means a development providing rental or individually-owned spaces for occupancy by mobile homes, together with certain accessory buildings and uses provided for the benefit and enjoyment of the residents of the park.

Mobile home subdivision means a single-family subdivision that is to be used specifically as single-family residential uses, for mobile homes. Expressly prohibited for residential purposes are buses, recreational vehicles, motor homes, campers, trailers and other similar vehicles.

Model homes means single-family residential homes built and used by developers for the initial purpose of showing prospective buyers similar type homes for sale. Model homes are not used for residential purposes until the home is sold for this use.

Motel see "hotel".

Motor vehicle see "vehicle, motor".

Multi-family dwelling means two (2) or more dwelling units in one structure.

Section 7-115 "N" Definitions.

Non-conforming development means a development that does not fully comply with a Code standard because of setbacks, building height, lot coverage, signs, landscape or with some other standard of this Code.

Non-conforming use means a use that is not permitted outright and has not received conditional approval (e.g., use permit) in the district, but was lawfully established prior to it becoming nonconforming.

Nude model studio means a place where the primary use involves a person who regularly appears in a "state of nudity", displays "specified sexual activities" or the exposure of "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who transfer any form of consideration.

Nudity/state of nudity means without opaque non-flesh colored fabric fully covering the human anus, pubic region, male genitals, female genitals, and female breasts below the top of the areola.

ORDINANCE NO. 2003.36

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, REPEALING ZONING ORDINANCE NO. 808 AND ADOPTING THE CITY OF TEMPE ZONING AND DEVELOPMENT CODE ESTABLISHING LAND USE CLASSIFICATIONS; DIVIDING THE CITY INTO DISTRICTS; IMPOSING REGULATIONS, PROHIBITIONS AND RESTRICTIONS FOR THE PROMOTION OF HEALTH, SAFETY, MORALS, CONVENIENCE, AESTHETICS, AND WELFARE.

WHEREAS, it has been found necessary for the public health, safety or general welfare of the City of Tempe that an amended Zoning Ordinance shall be enacted, and

WHEREAS, by authority conferred by Title 9, Chapter 4, Article 6.1, Arizona Revised Statutes, the City of Tempe is authorized and empowered to enact such an ordinance;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Zoning Ordinance No. 808 adopted by the City Council on September 2, 1976 is hereby repealed in its entirety.

Section 2. That the City Council hereby adopts the Zoning and Development Code, copies of which are on file in the office of the City Clerk.

Section 3. That all rights or remedies of the City of Tempe are expressly saved as to any and all violations of such repealed ordinance and all amendments thereto. Courts of competent jurisdiction shall have all the powers that existed prior to the effective date of the Zoning and Development Code as to all violations that have accrued at the time of the effective date of the Code. All existing violations of the Zoning Ordinance of the City of Tempe, Arizona, Ordinance No. 808, and all amendments thereto, which may otherwise become nonconforming uses under this Ordinance, shall not become legal nonconforming uses.

Section 4. If any section, subsection, sentence, clause, phrase or portion of the Zoning and Development Code is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.



DEVELOPMENT SERVICES DEPARTMENT
CODE COMPLIANCE
CORRECTION NOTICE

06-14-2010

PATRICIA ST VINCENT
902 S ASH AVE
TEMPE, AZ 85281

Case#: CE102154
Site Address: 902 S ASH AVE

SITE REINSPECTION ON OR AFTER: 06/28/2010

This is a notice to inform you that this site was inspected on 06/14/2010 and found to be in violation of the City of Tempe's Zoning and Development Code (ZDC) and/or Nuisances and Property Enhancement Ordinance, Chapter 21, Article I and/or II of the City Code (CC) as noted. Failure to comply may result in civil citation or criminal charges.

SECTION VIOLATION
ZDC 4-602.B Parking Standards Applicable in All Zoning Districts

2. Parking is allowed only on paved parking surfaces. Pavement may be concrete, asphalt, or a porous material approved by the Development Services Manager, or designee. Where decomposed granite or similar porous pavement is used, it shall conform to ADA guidelines and the parking lot entrance(s) and exit(s) shall have tire cleaning strips to remove loose particles from the tires of vehicles;

PLEASE TAKE THE FOLLOWING CORRECTIVE ACTION

ZDC 4-602 Cease using the rear yard area as additional parking for the multi-family unit. To use this area as additional parking you would need to process a site modification plan through Development Plan Review for approval.

Please contact me if you have questions or need further assistance. Thank you for your cooperation in this matter.

Senior Code Inspector: Michael Spencer

Direct: 480-350-8075
Code Compliance: (480)350-8372

Civil and Criminal Penalties

City Code Section 21-3, subsections (b) 1-8, 15 and 17-19; Section 21-4; Sections 21-13; Section 21-38, subsections (a-k) and (m-q): 1st occurrence \$150 per violation, 2nd occurrence \$250 per violation, 3rd occurrence \$350 per violation | Sections 21-31, 21-32, 21-33, 21-35, 21-36: 1st occurrence \$250 per violation, 2nd occurrence \$450 per violation, 3rd occurrence \$650 per violation | Section 21-3, subsections (b) 9-14, 16 and 20; Sections 21-34, 21-37; Section 21-38, subsection (l): 1st occurrence \$350 per violation, 2nd occurrence \$650 per violation, 3rd occurrence \$950 per violation. | Section 21-25: \$1000 per violation plus an additional \$100 for each month after the date of the original violation until compliance occurs. | Section 21-4 (B) Habitual Offender: 1st occurrence \$500 in addition to other fines, 2nd occurrence \$1000 in addition to other fines, 3rd occurrence, \$1500 in addition to other fines. | Zoning and Development Code: 1st occurrence \$120 per violation, 2nd occurrence \$370 per violation, 3rd occurrence \$770 per violation | The city has authority to abate the violation should the owner neglect, fail or refuse to correct the violation within 30 days and to assess a lien against the property for the cost of the abatement. | The city prosecutor is authorized to file a criminal class 1 misdemeanor complaint in the Tempe Municipal Court for violations of these codes.





DEVELOPMENT SERVICES DEPARTMENT
CODE COMPLIANCE
CORRECTION NOTICE

06-14-2010

DAVID ARKULES
7502 N EUCALYPTUS DR
PARADISE VALLEY, AZ 85253

Case#: CE102154
Site Address: 902 S ASH AVE

SITE REINSPECTION ON OR AFTER: 06/28/2010

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902 SOUTH ASH
902 South Ash LLC
902 South Ash Ave
Tempe, AZ 85281

RE: MULTI-FAMILY RESIDENCE @ 902 SOUTH ASH
Site Plan Modification- new parking surface
PL100228 / DPR10162

Dear Mr. Arkules:

The Community Development Department staff has approved your request for a site plan modification- new parking surface. This site is located at 902 South Ash Ave, in R-3 Multi-family Residential District.

This approval is based on compliance with the plans submitted as part of the application with such modifications as may be required by any conditions listed below. Your proposal must be completed prior to final inspection. This approval is valid for one year or the Development Review approval will lapse.

Approved subject to the following conditions:

1. Approval is valid for the plans as submitted to and approved by the Development Review Staff.
2. The parking surface to be Envi-Rox 2000 and must be maintained annually to minimize dust.
3. Upon completion of the paving surface, the applicant shall contact Planning Inspector Bill Kersbergen at (480) 350-8839 for a final planning inspection.

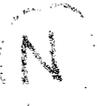
If you have any questions, please contact me at (480) 350-8486. If there are any issues which remain after discussions with staff, you have the opportunity to have the case heard before the Development Review Commission. A written request must be forwarded to staff, in order to have the application placed on the next available agenda.

Sincerely,



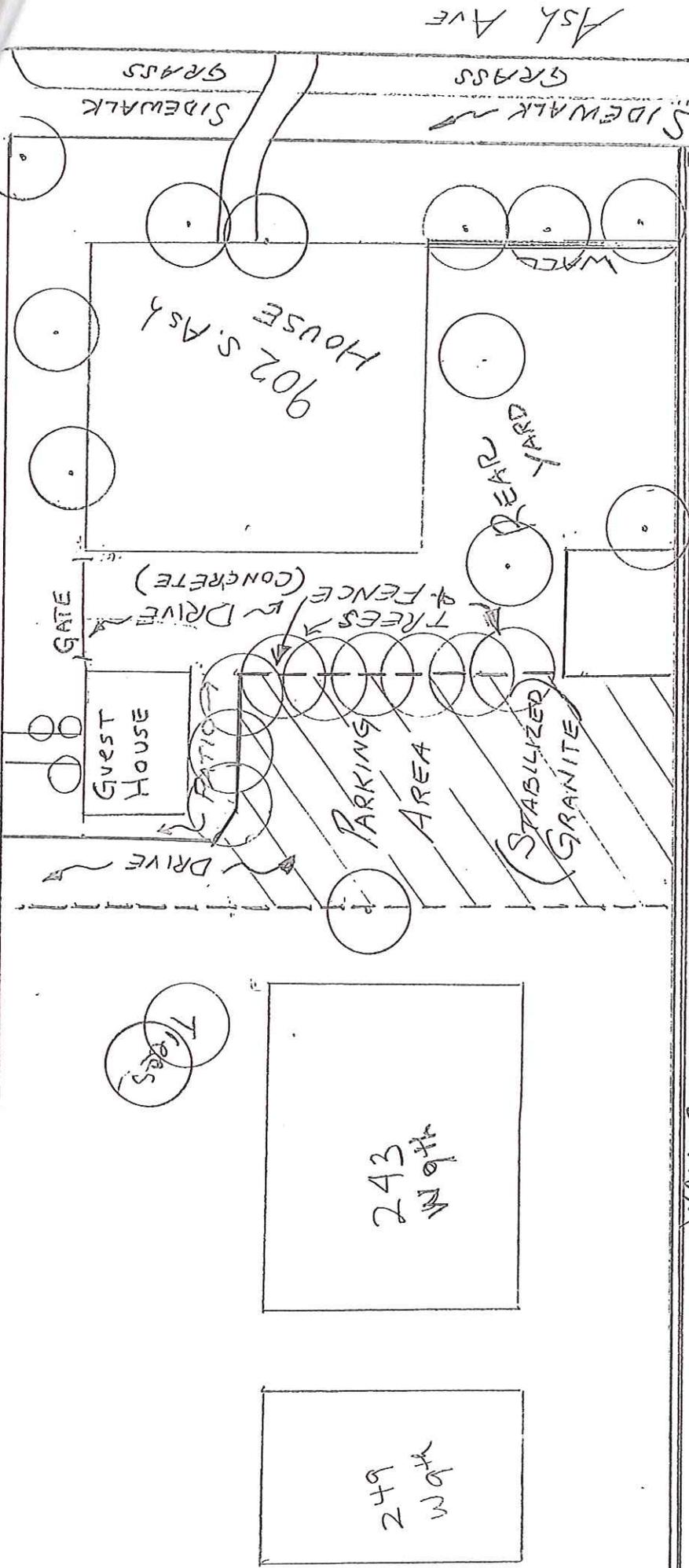
Sherri Lesser
Senior Planner
Community Development Department

SL/n



9th STREET

SIDEWALK



6 December 2011

City of Tempe Hearing Officer

For: 12/06/11 Public Hearing VAR11008

Variance to waive the required masonry wall between the properties developed for multi-family and single family.

Prepared Statement by: Sienna Court Lofts HOA, Inc. an AZ not-for-profit Corporation located @ 920-A South Ash Avenue Tempe, AZ 85281 Representing the two Common Area land parcels, one of which is adjacent to the subject property, the HOA owns, and the Member/Owners of the nine (9) other town home land parcels in the SCL community. Rick D. Hondorp Pres./Dir. speaking for the HOA.

Hearing Officer:

You should have received two letters of opposition from Rhombus LLC.

12 October 2011 two (2) pages no attachments. (doc attached)*

28 November 2011 four (4) pages with attachments

*Staff Summary Report states: "To date, we have received three (3) letters in opposition to the request." There should be SIX (6) letters in opposition that we are aware of, so the Report is in error.

Has the HO thoroughly read and understands the information contained within them?

Does the HO have any questions regarding them you wish me to address?

In as much as the Staff Summary Report by Lesser/Abrahamson is inaccurate, misleading, prejudicially bias for the applicant and generally gives credence to our allegation of CoT-P&Z complicity with the applicant in the matters surrounding this subject property, it does contain at least one truth: they will be processing all applications as a new development.

New Development is exactly what this variance is for, but not really. What the variance really is about is "the first step" at an attempt to legalize an existing, illegal, non-conforming, violation of unlawful removal of a landscape area to provide parking in the rear yard of a residential/multi-family property for the commercial business located on the other side of West 9th Street.

By definitions from the ZDC the "existing parking violation/land use change" CANNOT become a "legal nonconforming use" either, so under the ZDC it CANNOT become a "nonconforming use as well. (docs attached J/K)

Any NEW Development of any property is subject to Ordinances/Codes and costs of development to achieve the goal(s) of the development. Costs are NOT a "criteria applicable" for variances. The applicant/developer is attempting to avoid a required cost, period.

1. The attached photos, (1-4) taken from standing eye-level from the driveway of SCL show: "Additionally, limiting the visibility from the surrounding neighbors (the intent of the buffer) would not be enhanced by the wall greater than existing conditions." [from the Report] To be a FALSE statement! An 8' wall WOULD "limit the visibility" into the subject property as shown. The stack of six (6) brick red color block, representing a +/- 8' property wall, CLEARLY SHOWS the "limiting visibility" to BE "enhanced"! Secondly, ANY USE of SCL HOA, Inc. private property, (existing conditions) constitutes a "takings", first by the City of Tempe P&Z as a suggestion of its use, second by the applicant of its use. As far as this variance, it should be viewed as if no wall exists, because as far as the subject property goes, no wall currently exists on applicant's property.

2. Again, the attached photos, (5-6) taken from standing eye-level at the property line juncture of Ash Court and Sienna Court Lofts, (within 80' of subject property) shows: "A windshield survey of the neighborhood produced evidence other developments where single family develop abouts multi-family developments do not have an 8' masonry wall to buffer the uses." [from the Report] To be a misleading statement!

In fact, went SCL was developed, Ash Court had been re-zoned from R-3 (previous/same as SCL) and Hondoip/Rhombus LLC was required, and complied, by building an 8' high masonry wall, again, within its property lines, as then ZO #808 required.

3. Again, the Fact that SCL in its development (prior to its own change in zoning from R3 to R1PAD) was required to absorb the cost of the 8' masonry wall, and did so, shows: "Shall not be considered a special privilege inconsistent with other multi-family zoned properties." [from the Report] To be another False/Misleading statement!

Again: "The development was purchased with the modifications" [from the Report] This is one of the most supportive statements of SCL HOA, Inc. allegation of negligent complicity by CoT P&Z.

History & Facts:

- 1995-1996 Ottos purchase subject property from Luckings
- 1997-1998 Ottos WITHOUT CoT approvals, remove the existing wood fence, kill/remove existing lawn area and CHANGE LAND USE from landscape to parking area, in VIOLATION of ZO # 808 in effect.
- 1998 Hondorp/Rhombus permit and construct North & South perimeter walls of future SCL project, within surveyed property lines, in accordance with ZO #808 in effect at time.
- 1999 Ottos apply for Use Permit, specifically, BA990135 – OTTO BOARDING HOUSE/BED and BREAKFAST, submitting the required Site Plan showing parking area in back yard of subject property as "existing" (though in violation of ZO #808). Application is conditionally approved on June 24, 1999. (doc attached)
- December 11, 2000 Warranty Deed Ottos sell subject property to David I. Arkules (doc attached) The use permit, conditionally approved, specifically for Otto's Bed & Breakfast on June 24, 1999 became VOID on June 25, 2000, in accordance with ZO #808 in effect at the time. (doc attached)
- April 17, 2001 Warranty Deed Arkules conveys subject property to Ninth & Ash LLC, the current Owner of the subject property, represented by applicant Patricia St. Vincent according to CoT Project Submittal Application. (docs attached)

4. So, the applicant purchased the property AFTER the use permit became, null & void with exiting conditions in full violation of the ZO # 808 in effect at the time of both the expiration (VOID) of the use permit and continued to use the parking area in direct violation of the Ordinance, in ownership, thus became the "responsible party".
BUYER BEWARE

So, again, the Report fails to tell a complete, accurate representation of the "special circumstances". The above defects ALL Four (4) points under "sufficient evidence" from the Report, with exception to the "mature landscaping" issue raised.

The Old China Berry Tree and the wooden frame accessory building located along the East half of the South property line of the subject property do present hindrances to the construction on the required 8' wall.

SCL HOA, Inc. proposes that an acceptable solution would be to allow the variance for the portion of the required wall from the West exterior wall of the existing accessory building, East to the existing front wall (which extends from the front wall of the main house). This portioned variance would remain in effect as long as the occupancy of the main house remained residential in use and the accessory building and China Berry tree were still standing.

If future "Site Modifications/Development" includes the change in use of the main house or its removal, then the portioned variance would be voided.

Staff, should never have "recommended approval of the variance" because ALL three (3) of the "REASON(S) FOR APPROVAL" are without merit.

- In fact, 1. NO Special circumstances or conditions of merit exist, (mature landscape issue for the East half of the wall requirement – excepted)
2. The variance IS NOT necessary, and if approved would "substantially" further damage the "property rights" of SCL HOA, Inc. and its Member/Owners.
3. This variance WOULD BE "materially detrimental to persons residing or working in the vicinity, to adjacent property..." specifically SCL HOA, Inc. and its Member/Owners.

Conclusion:

SCL HOA, Inc. requests Denial in full or in portion as proposed here in.

Question(s)?

Thank You

Staff Summary Report



Hearing Officer Hearing Date: 12/06/11

Agenda Item Number: 2

SUBJECT: This is a public hearing for a request by the **ARKULES-SAINT VINCENT PROPERTY** located at 902 South Ash Avenue for one (1) variance.

DOCUMENT NAME: 20111206cdsl01 **PLANNED DEVELOPMENT (0406)**

COMMENTS: Request by the **ARKULES-SAINT VINCENT PROPERTY (PL100228)** (Patricia St. Vincent, applicant; Arkules-Saint Vincent, property owners) located at 902 South Ash Avenue in the R-3, Multi-Family Residential Limited District for:

VAR11008 Variance to waive the required masonry wall between the properties developed for multi-family and single family.

PREPARED BY: Sherri Lesser, Senior Planner (480-350-8486)

REVIEWED BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359)

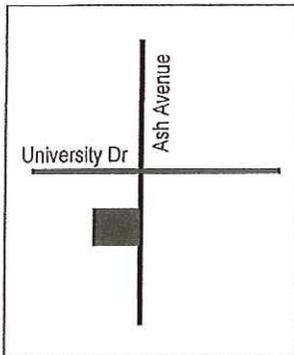
LEGAL REVIEW BY: N/A

DEPARTMENT REVIEW BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359)

FISCAL NOTE: There is no fiscal impact to City funds.

RECOMMENDATION: Staff – Approval, subject to conditions

ADDITIONAL INFO:



The Arkules-St. Vincent property is requesting a variance to waive the required masonry wall between the properties developed for multi-family and single family. The variance is the first step in the process to bring the property into compliance with the Zoning and Development Code. The site is located at the southwest corner of 9th Street and Ash Avenue. Staff is recommending approval of the variance with the finding that there are special circumstances unique to this lot to warrant support of the variance. **To date, we have received three (3) letters in opposition to the request.** The applicant held a neighborhood meeting in accordance with the Zoning and Development Code requirements.

PAGES:

1. List of Attachments
2. Comments; Reasons for Approval
3. Conditions of Approval; History & Facts/Description; Zoning & Development Code Reference

ATTACHMENTS:

1. Location Map(s)
2. Aerial Photo(s)
- 3-4. Letter of Intent
5. Site plan
- 6-11. Letter of Opposition from Rhombus LLC dated 11/28/11 w/photos
- 12-17. Letter of Opposition from Rick Hondorp dated 11/28/11 w/photos
- 18-33. Letter of Opposition from Sienna Court Lofts dated 11/28/11 w/attachments
34. Aerial from 1990
35. Aerial from 1993
36. Aerial from 1998

COMMENTS:

In 1999, Otto Bed and Breakfast located at 902 S Ash Avenue received a use permit to allow a bed and breakfast. The application for the use permit included a modified site plan with a parking area in the rear yard of the property; accessible from 9th Street. The parking area was installed per the site plan shown to the Board of Adjustment. Due to the conditions of approval not completed by the applicant; the ratification of the use permit was not completed. The property transferred ownership in 2000 to the current owner. They inherited the responsibility of the non-compliant modifications to the property. The property owners were cited by the Code Compliance Department and subsequently they made an application to waive the required buffer wall between their multi-family zoned property and the single family zoned property to the south. The variance process will be the first step in bringing the property into compliance with the Zoning and Development Code. The applicant will need to complete the Development Plan Review Process for the site modifications.

Variance

The Zoning and Development Code Development Standards requires a masonry wall buffer between properties development for multi-family from single family developments. Although the modifications to the site currently exist on the property; they will be processing all applications as a "new" development to bring everything into compliance.

Per the Zoning and Development Code variance(s) shall not be authorized unless the decision-making body finds upon sufficient evidence of the following:

1. That special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings and *The property is located on a corner with the parking to rear accessible from the street side. Due to the mature landscaping on site the structure of a wall would disruptive. Additionally, limiting the visibility from the surrounding neighbors (the intent of the buffer) would not be enhanced by the wall greater than existing conditions.*
2. 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; and
A windshield survey of the neighborhood produced evidence other developments where single family develop abuts multi-family developments do not have an 8' masonry wall to buffer the uses. Other materials such as a green screens serve as a buffer.
3. 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; and
Shall not be considered a special privilege inconsistent with other multi-family zoned properties.
4. A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner.
The development was purchased with the modifications.

Conclusion

Staff recommends approval of the variance

REASON(S) FOR APPROVAL:

1. Special circumstances or conditions applying to the land, building or use exist.
2. The authorizing of the variance is necessary for the preservation and enjoyment of substantial property rights.
3. Authorization of the variance(s) will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general.

SHOULD THE HEARING OFFICER ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE FOLLOWING CONDITIONS OF APPROVAL SHOULD APPLY.

CONDITION(S)
OF APPROVAL: 1. Obtain Development Plan Approval for all non-compliant modifications and future improvements to the site within 45 days or by 01/21/2012

HISTORY & FACTS:
1909

Gage Addition of Tempe Subdivison Plat created the infill lot.

1925

The house was constructed per information on the Historic Preservation Property Inventory Form

June 24, 1999

The Board of Adjustment approved a use permit for the Otto Boarding House Bed and Breakfast subject to conditions.

DESCRIPTION:

Owner – Arkules-Saint Vincent

Applicant – Arkules-Saint Vincent

Existing Zoning – R-3, Multi-Family Residential Limited District

ZONING AND
DEVELOPMENT
CODE REFERENCE:

Part 4, Chapter 7. Section 4-706- Land Use Buffers

Part 6, Chapter 3, Section 6-309- Variances

12 October 2011 HAND DELIVERED this Date

City Of Tempe
Development Services Dept. - Planning & Zoning
31 East 5th ST Garden Level
Tempe, AZ 85281

Chris Anaradian, Lisa Collins, Steve Abrahamson, Sherri Lesser, Hearing Officer- Vanessa MacDonald,
Jeff Tamulevich, et al.

RE: Opposition to: "Variance to Waive Wall Requirement" 902 S. Ash Ave. Tempe, AZ 85281
Parcel No. 132-42-073B, CoT #'s DS100748, DPR10162, PL100228, (no "VAR" has been assigned to
this Project Submittal Application according to Development Services Dept. Staff at this time.)

This letter shall serve as notification of Opposition to the above request for Variance "for relief
from the standards" from the City of Tempe (CoT) Zoning and Development Code (ZDC).

Since at this time Development Services Dept. does not have the "completed submittal" from
the applicant, there is very limited information available from which to determine the full scope of
the "site development" proposed by the applicant for this address. (why a Variance is being
requested?)

Since in two meetings with CoT P&Z Staff, First on 5 October 2011 w/ Steve Abrahamson and
the second on 10 October 2011 w/ Sherri Lesser, neither Staff person was forthcoming on the full "site
development" for this address and the reason(s) the Variance request was being processed, an
investigation into the validity of this request is incomplete at this time.

Sienna Court Loft HOA, Inc. [SCL HOA] (Owner of the property adjacent on the South of the
backyard of 902 S. Ash Ave.) cannot see any justification for this variance request and has been
filing complaints with CoT Code Enforcement regarding the illegal parking that has been in violation
of the ZDC, since SCL HOA has become Owner of the adjacent property.

We believe that the change in land use from a fenced, lawn area of the 902 S. Ash Ave.
property warranted/warrants not only a full public process, but a process that is in full compliance
with the #808 ZO then and the ZDC now.

So far, SCL HOA sees little to no evidence that anything 'legal' has been fulfilled, to date, that
validates any change in use as it has occurred.

SCL HOA has incurred compensatory damages due to what we allege has been negligent misconduct by CoT Staff both in Planning and Zoning and in Code Enforcement, at a minimum.

Make no mistake, documentation will be provided to fully support our claim that there is NO Valid chain of authority to substantiate the legal existence of "an existing parking area" in the backyard of 902 S. Ash Ave., NOT NOW, NOT EVER.

Based on this, the DPR10162 – Site Modification should NEVER have been allowed without full public process, FIRST being applied to that request.

Additionally, any inferences that the existing masonry wall currently existing directly South of the backyard of 902 S. Ash meets any intent or purpose of the "Wall Requirement" are equally INVALID. The existing masonry site wall, is located fully on SCL HOA Inc. property to the South, and neither the City of Tempe nor the applicant has any rights of usage to the wall for any purposes without the express written consent of the walls Owner.) Also, our wall does NOT meet the requirements as listed in the ZDC for the purposes that may be suggested, in that it is only six (6) feet in height as viewed from the 902 S. Ash property.

In the mean time, the Opposition to the above request, as stated herein, stands.

There appear to be NO Justification(s), under the requirements established in the ZDC and by Arizona Revised Statutes (ARS) for anything other than Denial of the application.

Further documentation in support of the Opposition declared herein, shall be forthcoming as it becomes available and will be presented to CoT either prior to or in the public hearing.

Sienna Court Lofts HOA, Inc. 920 – A South Ash Ave. Tempe, AZ 85281 Representing-
Eleven (11) individual Lots within the Sienna Court Lofts community

Mixed use means, in the MU-Ed zoning district, uses that are a combination of either a *Public University* use or *Public University* related use and a commercial and/or residential use within the same building or project.

Mobile home means a dwelling unit built on a chassis in excess of eight (8) feet in width and forty (40) feet in length and containing complete electrical, plumbing and sanitary facilities, and designed to be installed on a temporary or a permanent foundation for permanent living quarters.

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ORDINANCE NO. 2003.36

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, REPEALING ZONING ORDINANCE NO. 808 AND ADOPTING THE CITY OF TEMPE ZONING AND DEVELOPMENT CODE ESTABLISHING LAND USE CLASSIFICATIONS; DIVIDING THE CITY INTO DISTRICTS; IMPOSING REGULATIONS, PROHIBITIONS AND RESTRICTIONS FOR THE PROMOTION OF HEALTH, SAFETY, MORALS, CONVENIENCE, AESTHETICS, AND WELFARE.

WHEREAS, it has been found necessary for the public health, safety or general welfare of the City of Tempe that an amended Zoning Ordinance shall be enacted, and

WHEREAS, by authority conferred by Title 9, Chapter 4, Article 6.1, Arizona Revised Statutes, the City of Tempe is authorized and empowered to enact such an ordinance;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Zoning Ordinance No. 808 adopted by the City Council on September 2, 1976 is hereby repealed in its entirety.

Section 2. That the City Council hereby adopts the Zoning and Development Code, copies of which are on file in the office of the City Clerk.

Section 3. That all rights or remedies of the City of Tempe are expressly saved as to any and all violations of such repealed ordinance and all amendments thereto. Courts of competent jurisdiction shall have all the powers that existed prior to the effective date of the Zoning and Development Code as to all violations that have accrued at the time of the effective date of the Code. All existing violations of the Zoning Ordinance of the City of Tempe, Arizona, Ordinance No. 808, and all amendments thereto, which may otherwise become nonconforming uses under this Ordinance, shall not become legal nonconforming uses.

Section 4. If any section, subsection, sentence, clause, phrase or portion of the Zoning and Development Code is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.





VEHICLE PARKED

#2.



VEHICLE PARKING

S#3



EXISTING
WOOD FRAME
ACCESSORIL
BUILDING



VEHICLE FRAME

18-A ⊕

7-6 ⊕

⊕ #4



①

ACFT COURT:

1/8 1/4
⊗

SOUTH COURT
LOFTS

9#

10
11

ASST COURT.

STENN COURT
TOPS.

4-81

City of Tempe
1100 East McDowell
Tempe, AZ 85280
(602) 965-8572 FAX

FILE COPY



Development Services
Department
(480) 350-5331 (Phone)

June 24, 1999

Daniel H. & Cecelia K. Otto
16330 E. Crystal Point Drive
Fountain Hills, AZ 85268

RE: BA990135 - OTTO BOARDING HOUSE/BED AND BREAKFAST

Dear Mr. & Mrs. Otto:

You are hereby advised that at its meeting held June 23, 1999, the Board of Adjustment of the City of Tempe, acting in accordance with Section 1, Part II, H.3. of Zoning Ordinance No. 808, took the following action on your application:

Approved the following use permit request by the OTTO BOARDING HOUSE/BED AND BREAKFAST to allow a boarding house/bed and breakfast, located at 902 S. Ash in the R-3, Multi-Family Limited District.

The approval was subject to the following conditions:

1. The use permit is valid for OTTO BED & BREAKFAST only and is not transferable.
2. Any expansion or intensification of use shall require a new use permit to be approved.
3. All required permits and clearances shall be obtained by building Safety Division prior to the use permit becoming effective.
4. Security and lighting requirements shall be reviewed and approved by Police Department Representative Officer Roger Austin prior to the use permit becoming effective.
5. Signs shall be Design Review approved and permits obtained.

BA990135 OTTO BOARDING HOUSE/BED & BREAKFAST
June 24, 1999

2

6. The parking areas shall be paved, stripped and landscaped in accordance with Section 5 & 6 of Ordinance 808, or variances obtained.
7. The use permit is valid for the plans as submitted to and approved by the Board of Adjustment.
8. The trash containers shall be screened behind a permanent masonry wall enclosure. The CMU screen wall shall be Design Review approved.

Approvals are specifically conditioned upon the applicant proceeding with the proposed use(s) and/or variance(s) within twelve (12) months of the date of the approval by the Board of Adjustment and required by Zoning Ordinance No. 808.

In addition to proceeding with the approvals granted, it is understood that any and all conditions as stipulated by the Board as indicated above, shall be fully complied with.

If the action of the Board was required for the purposes of rectifying any violations of Zoning Ordinance 808, the violations shall be the responsibility of the applicant/owner to fully correct and achieve conformance. In sign-related violations, corrections shall be made within five (5) days of Board action; in all other matters, corrections shall be made within fifteen (15) days of Board action, unless specifically conditioned otherwise by the Board of Adjustment.

You are further advised that the above does not waive the requirements for obtaining building permits and other clearances as may be necessary.

Sincerely,

Terry Mullins
Deputy Director

TM/td

cc: File



Unofficial Document

Recording Requested by:
FIRST AMERICAN TITLE

When recorded mail to:

David Arkules
902 S. Ash Ave.
Tempe, AZ 85281

2001-0002000 0110212001 07
CLASS 31 01

1/3

WARRANTY DEED

Escrow No. 246-939-1315999

For the consideration of TEN AND NO/100 DOLLARS, and other valuable considerations, I or we,

A

DANIEL H. OTTO and CECELIA K. OTTO, husband and wife

the GRA

does hereby convey to

DAVID I. ARKULES, a married man, as his sole and separate property

the GRA

the following described real property situate in Maricopa County, Arizona:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREC

SUBJECT TO: Existing taxes, assessments, covenants, conditions, restrictions, rights of way and easem record.

And the GRANTOR binds itself and its successors to warrant the title against its acts and none other; subject matters above set forth.

DATED: December 11, 2000

DANIEL H. OTTO

CECELIA K. OTTO

STATE OF ARIZONA)
) ss.
County of Maricopa)

On December 29 2000, before me, the undersigned Notary Public, personally ap DANIEL H. OTTO and CECELIA K. OTTO, personally known to me (or proved to me on the basis of satis evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to i he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Unofficial Document

at the request of Title Guaranty Agency of Arizona, Inc.

when recorded mail to
DAVID I. ARKULES
902 South Ash
Tempe, Arizona 85281

2

VEZEHIA 1

09000427-MV

Warranty Deed

Courtesy of [unclear] No Title Liability

For the consideration of Ten Dollars, and other valuable considerations, I or we,
DAVID I. ARKULES, husband of **STACEY ARKULES** as his sole and separate property
do/does hereby convey to
NINTH AND ASH, L.L.C., an Arizona limited liability company
the following real property situated in Maricopa, County, Arizona:

The West 128.28 feet of Lot One (1), and West 128.35 feet of the North half of Lot Two (2), GAGE
ADDITION, according to the plat of record in the office of the County Recorder of Maricopa County
Arizona, in Book 3 of Maps, Page 58.

AFFIDAVIT EXEMPT PER ARS 11-1134 B(5)

SUBJECT TO: Current taxes and other assessments, reservations in patents and all easements, rights of way, encumbr
liens, covenants, conditions, restrictions, obligations, and liabilities as may appear of record.

And I or we do warrant the title against all persons whomsoever, subject to the matters set forth above.

Dated this 17th day of APRIL, 2001.

DAVID I. ARKULES

STATE OF ARIZONA

County of Maricopa

} ss



This instrument was acknowledged before
this 17 day of APRIL, 2001 by
DAVID I. ARKULES.

Notary P
My commission will expire 3/14/05

6 December 2011

City of Tempe Hearing Officer

For: 12/06/11 Public Hearing VAR11008

Variance to waive the required masonry wall between the properties developed for multi-family and single family.

Prepared Statement by: Rhombus LLC (an AZ Limited Liability Company) 275 West 9th St Tempe, AZ 85281 Representing seven (7) town home Land Parcels in the SCL community, 920 – 932 S. Ash Ave. (directly South of the subject property)

Rick D. Hondorp Managing Member speaking for Rhombus LLC.

Hearing Officer:

You should have received two letters of opposition from Rhombus LLC.

12 October 2011 two (2) pages no attachments (doc attached)*

28 November 2011 four (4) pages with attachments

*Staff Summary Report states: "To date, we have received three (3) letters in opposition to the request." There should be SIX (6) letters in opposition that we are aware of, so the Report is in error.

Has the HO thoroughly read and understands the information contained within them?

Does the HO have any questions regarding them you wish me to address?

As the majority property Owner in Sienna Court Lofts, Rhombus LLC supports the SCL HOA, Inc. position of opposition to the variance request by the applicant. Additionally, Rhombus LLC supports the "proposal" offered by SCL HOA, Inc., as it is written in their "prepared statement" for presentation at this public hearing.

Any NEW Development of any property is subject to Ordinances/Codes and costs of development to achieve the goal(s) of the development. Costs are NOT a "criteria applicable" for variances. The applicant/developer is attempting to avoid a required cost period.

In fact, went SCL was developed, Ash Court had been re-zoned from R-3 (previous/same as SCL) and Hondorp/Rhombus LLC was required, and complied, by building an 8' high masonry wall, again, within its property lines, as then ZO #808 required. (doc attached)

To grant this variance WOULD BE "considered a special privilege" and WOULD BE "materially detrimental to persons residing or working in the vicinity, to adjacent property."

Rhombus LLC has already had its "preservation and enjoyment of substantial property rights" damaged by the +10 years of Ordinance and Code Violation(s) occurring on the subject/applicant's properties and it continues daily still!

History & Facts:

In 1992, Hondorp/Rhombus purchased the South half of Lot 2 and Lot 3, Block 30, Gage Addition from Virginia Amos and proceeded to design a nine (9) unit multi-family housing project, originally called Ash Condominiums. Application was made for Design Review and was Approved. NO Variances were required. The subject property to the North was then owned by Lindleys and their rear yard @ 902 S. Ash Ave. was perimeter fenced and a lawn/landscape area.

In 1993, Lindleys sell 902 S. Ash Ave. to Luckings, who occupied the main house with their two children; rear yard remained a fenced, lawn area.

In 1995-1996, Luckings sell 902 S. Ash Ave to Ottos. Otto's son, Craig, moves into the main house, initially the rear yard remains fenced, lawn area.

In 1996-1998, Ottos apply for two CoT building permits, making alterations to the main house, perhaps in preparations for their impending request for a use permit in 1999? A 1998, CoT Engineering Dept. Aerial Photo reveals that in this time period Ottos have removed the portion of the wood fence in the back yard, removed/killed the lawn and started parking of vehicles in the rear yard. Ottos CHANGED the LAND USE from lawn/landscape area to parking area, in DIRECT VIOLATION of ZO#808, in effect at this time. (CoT P&Z has knowledge of this, yet fails to include in the Report). (doc attached)

In 1998, Hondorp/Rhombus LLC obtain building permits for the North and South perimeter site walls and start construction, within the surveyed property lines, in accordance with ZO#808, which required such location.

In 1999, Hondorp/Rhombus LLC obtain building permits for the building(s) of Ash Condominiums, which have been name changed to Sienna Court Lofts. Additionally, the project overall design was modified such that at a later date the Site could easily be sub-divided into common and individual lots with town homes, building(s) & site unaffected later.

In 1999, Ottos apply and are "conditionally approved" for a use permit June 24, 1999. (The "COMMENTS" portion of the Summary Staff Report spends an inordinate amount of verbiage, as if it has some relevance to the variance request.)

"The parking area was installed per the site plan shown to the Board of Adjustment." This is a FALSE statement - the parking area was created, in

Violation of the ZO#808, BEFORE application for the use permit was made. (Note: 05/24/99 Otto Letter of Explanation, "There are currently nine (9) off street parking spots available to residents and guests." Note: 06/23/99 Staff Summary Report, "Site visit by the Staff found the premises to be attractively maintained. While the existing parking and driveway areas are gravel, they should be paved stripped and landscaped to conform with ordinance requirements, or variances obtained.") The parking area was "existing", illegal, but there, prior to use permit application and conditional approval. (docs attached)

"Due to the conditions of approval not completed by the applicant (Otto); the ratification of the use permit was not completed." This statement is suspect, specifically the "ratification" word. There is one "edition" of the ZO#808 in effect here for the use permit, its effective date is: January 18, 1997. The word "ratification" does not exist in the "USE PERMITS" section of the ZO#808! The ZO#808 does say: "Such use permits as are granted by the Commission and Council, Hearing Officer or Board shall be void if the use is not commenced within twelve months of such granting..." "Commenced" means compliance with the Conditions of Approval, which was never done by Otto, who retained ownership of the subject property through and beyond the twelve (12) month time period granted. The 1999 use permit became VOID by July 2000. D. Arkules purchased the subject property in December 2000. The use permit was long since VOID. The subject property was "conveyed" to Ninth & Ash LLC in April 2001, again the use permit of 1999 was long since VOID. The VIOLATION(S) of the ZO #808, continued to become the responsibility of Ninth & Ash LLC, the current owner, as they do now under ZDC. (docs attached)

"The property transferred ownership in 2000 to the current owner."
As you can see from above and attached documents this is a FALSE statement in the Report.

In 2001, Arkules purchases: West 128.28 feet of Lot one (1) and the West 128.35 of the North half of Lot two (2), Block 30, Gage Addition [the parcel adjacent/congruent to the subject property on the West]. Arkules soon thereafter conveys ownership to Ninth & Ash LLC. Arkules soon thereafter notifies Hondorp that the usage of the Easement, {a legal part of the recently purchased parcel}, is in his terms "trespassing". (docs attached)

In 2002-2003, Hondorp/Rhombus LLC filed for and was granted a change in zoning classification from R3 to RTPAD. Arkules/Ninth & Ash LLC objects to change in zoning request. (doc attached).

In 2003, Arkules/Ninth & Ash LLC file law suit against Hondorp/Rhombus LLC and after Arkules rejects attorney's offer of resolution, Hondorp/Rhombus LLC counter-claim. (doc attached)

In 2004, Hondorp/Rhombus LLC prevail by summary judgment

In 2005, Hondorp begins the long process to abate ALL of the illegal parking taking place on both of the above parcels, 222 West 9th ST. (North side of W. 9th ST) and the landscape areas off street in the front yards and back yards by Casey Moore's patrons and employees.

In 2010, CoT Code Enforcement finally issues a Violation notice regarding the rear yard of subject property, 06-14-2010 Case # CE102154. Subsequently, applicant requested a "Site Modification" DPR10162 and was granted approval by S. Lesser (author of this case Report), on 2 September 2010. (There was no public notification, process or due diligence for this approval.) Had CoT P&Z been diligent, it would have found out that there was NO LEGAL APPROVAL(S) of the parking VIOLATION. Instead, the negligent actions of Lesser authorized the approval of DPR10162. This approval was unknown to Hondorp/Rhombus LLC or SCL HOA, Inc. until June 2011. (docs attached) The Lesser Report makes no mention of this SNAFU...

In 2011, Hondorp filed Complaint(s) with CoT City Manager regarding Zoning Administrator, P&Z Staff and Code Enforcement. A single meeting w/ CM takes place, but little is accomplished in resolution of the on going parking Violation(s) on the Ninth & Ash LLC properties. (subject and that to the West).

So, the applicant purchased the property AFTER the use permit became, null & void with exiting conditions in full violation of the ZO # 808 in effect at the time of both the expiration (VOID) of the use permit and continued to use the parking area in direct violation of the Ordinance, in ownership, thus became the "responsible party". BUYER BEWARE

So, the adjacent property was approved for a change in zoning, to a "higher and better" use. The creation of "In-fill zoning" has and will continue to present developers with "Costs of Development and there is no "criteria" for "costs" in the ZDC or the Arizona Revised Statutes that establish zoning criteria, as it pertains to variances, that we are aware of.

Staff, should never have "recommends approval of the variance" because ALL three (3) of the "REASON(S) FOR APPROVAL" are without merit.

Rhombus LLC had a "reasonable expectation" that CoT would abide by standards in effect for its development, which regrettably it appears haven't been applied in this case.

Rhombus LLC requests Denial in full or in portion as proposed by SCL HOA, Inc.

12 October 2011 HAND DELIVERED this Date

City Of Tempe
Development Services Dept. - Planning & Zoning
31 East 5th ST Garden Level
Tempe, AZ 85281

Chris Anaradian, Lisa Collins, Steve Abrahamson, Sherri Lesser, Hearing Officer- Vanessa MacDonald,
Jeff Tamulevich, et al.

RE: Opposition to: "Variance to Waive Wall Requirement" 902 S. Ash Ave. Tempe, AZ 85281
Parcel No. 132-42-073B, CoT #'s DS100748, DPR10162, PL100228, (no "VAR" has been assigned to
this Project Submittal Application according to Development Services Dept. Staff at this time.)

This letter shall serve as notification of Opposition to the above request for Variance "for relief
from the standards" from the City of Tempe (CoT) Zoning and Development Code (ZDC).

Since at this time Development Services Dept. does not have the "completed submittal" from
the applicant, there is very limited information available from which to determine the full scope of
the "site development" proposed by the applicant for this address, (why a Variance is being
requested?)

Since in two meetings with CoT P&Z Staff, First on 5 October 2011 w/ Steve Abrahamson and
the second on 10 October 2011 w/ Sherri Lesser, neither Staff person was forthcoming on the full "site
development" for this address and the reason(s) the Variance request was being processed, an
investigation into the validity of this request is incomplete at this time.

Rhombus LLC speculates that this request is related to illegal parking of vehicles owned by
employees and/or patrons of the business establishment Casey Moores located across on the North
side of West 9th ST. (for which numerous complaints have been made over the past many years and
continue to date)

Make no mistake, documentation will be provided to fully support our claim that there is NO
Valid chain of authority to substantiate the legal existence of any "an existing parking area" in the
backyard of 902 S. Ash Ave., NOT NOW, NOT EVER.

Based on this, the DPR10162 – Site Modification should NEVER have been allowed without full
public process. FIRST being applied to that request.

Any references to the CoT Board of Adjustment (BofA) Case BA990135 – Otto Boarding House/Bed and Breakfast “conditional approval” of a use permit are IN VALID:

1. Because: “The approval was subject to the following conditions:”
 - “1. The use permit is valid for the Otto Bed & Breakfast only and is not transferable.” (~~Ownership and use of the property changed in less than a year to David Arkules, then to Ninth and Ash LLC by year end 2000~~) ERROR -- SEE CODEBOOK HUSTOLY & FACTS
 - “3. All required permits and clearances shall be obtained by building Safety Division prior to the use permit becoming effective.” (the “permanent masonry wall enclosure”- approval condition #8, would have required a building permit, yet the condition was not met)
2. Because: It appears that NONE of the approval conditions were “fully complied with”.
3. Because: “In addition to the proceeding with the approvals granted, it is understood that any and all conditions as stipulated by the Board as indicated above, shall be fully complied with.” (from the June 24, 1999 letter of notification by CoT) It does not appear any/all were.
4. The “Use Permit” in question was never validated by compliance, as mandated by the CoT #808 Zoning Ordinance (ZO) this application was made under.

Any inferences that the existing masonry wall currently existing directly south of the backyard of 902 S. Ash meets any intent or purpose of the “Wall Requirement” are equally IN Valid. The existing masonry site wall, located fully on the 3rd party owned property to the South, (Sienna Court Lofts HOA, Inc) and neither the City of Tempe nor the applicant has any rights of usage to the wall for any purposes without the express written consent of the walls Owner.)

In the mean time, the Opposition to the above request, as stated herein, stands. At first glance, there appear to be NO Justification(s), under the requirements established in the ZDC and by Arizona Revised Statutes (ARS) for anything other than Denial of the application. Further documentation in support of the Opposition declared herein, shall be forthcoming as it becomes available and will be presented to CoT either prior to or in the public hearing.

Rhombus LLC 275 West 9th ST Tempe, AZ 85281 Owner of: 920-932 S. Ash Ave. Tempe, AZ 85281 Seven (7) individual Lots within the Sienna Court Lofts community

Staff Summary Report



Hearing Officer Hearing Date: 12/06/11

Agenda Item Number: 2

SUBJECT: This is a public hearing for a request by the **ARKULES-SAINT VINCENT PROPERTY** located at 902 South Ash Avenue for one (1) variance.

DOCUMENT NAME: 20111206cdsl01 **PLANNED DEVELOPMENT (0406)**

COMMENTS: Request by the **ARKULES-SAINT VINCENT PROPERTY (PL100228)** (Patricia St. Vincent, applicant; Arkules-Saint Vincent, property owners) located at 902 South Ash Avenue in the R-3, Multi-Family Residential Limited District for:

VAR11008 Variance to waive the required masonry wall between the properties developed for multi-family and single family.

PREPARED BY: Sherri Lesser, Senior Planner (480-350-8486)

REVIEWED BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359)

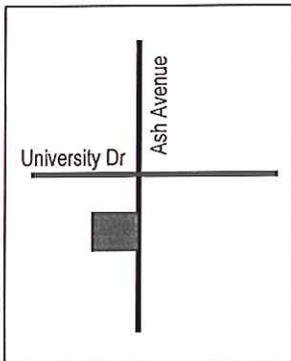
LEGAL REVIEW BY: N/A

DEPARTMENT REVIEW BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359)

FISCAL NOTE: There is no fiscal impact to City funds.

RECOMMENDATION: **Staff – Approval, subject to conditions**

ADDITIONAL INFO:



The Arkules-St. Vincent property is requesting a variance to waive the required masonry wall between the properties developed for multi-family and single family. The variance is the first step in the process to bring the property into compliance with the Zoning and Development Code. The site is located at the southwest corner of 9th Street and Ash Avenue. Staff is recommending approval of the variance with the finding that there are special circumstances unique to this lot to warrant support of the variance. To date, we have received three (3) letters in opposition to the request. The applicant held a neighborhood meeting in accordance with the Zoning and Development Code requirements.

PAGES:

1. List of Attachments
2. Comments; Reasons for Approval
3. Conditions of Approval; History & Facts/Description; Zoning & Development Code Reference

ATTACHMENTS:

1. Location Map(s)
2. Aerial Photo(s)
- 3-4. Letter of Intent
5. Site plan
- 6-11. Letter of Opposition from Rhombus LLC dated 11/28/11 w/photos
- 12-17. Letter of Opposition from Rick Hondorp dated 11/28/11 w/photos
- 18-33. Letter of Opposition from Sienna Court Lofts dated 11/28/11 w/attachments
34. Aerial from 1990
35. Aerial from 1993
36. Aerial from 1998

COMMENTS:

In 1999, Otto Bed and Breakfast located at 902 S Ash Avenue received a use permit to allow a bed and breakfast. The application for the use permit included a modified site plan with a parking area in the rear yard of the property; accessible from 9th Street. The parking area was installed per the site plan shown to the Board of Adjustment. Due to the conditions of approval not completed by the applicant; the ratification of the use permit was not completed. The property transferred ownership in 2000 to the current owner. They inherited the responsibility of the non-compliant modifications to the property. The property owners were cited by the Code Compliance Department and subsequently they made an application to waive the required buffer wall between their multi-family zoned property and the single family zoned property to the south. The variance process will be the first step in bringing the property into compliance with the Zoning and Development Code. The applicant will need to complete the Development Plan Review Process for the site modifications.

Variance

The Zoning and Development Code Development Standards requires a masonry wall buffer between properties development for multi-family from single family developments. Although the modifications to the site currently exist on the property; they will be processing all applications as a "new" development to bring everything into compliance.

Per the Zoning and Development Code variance(s) shall not be authorized unless the decision-making body finds upon sufficient evidence of the following:

1. That special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings and
The property is located on a corner with the parking to rear accessible from the street side. Due to the mature landscaping on site the structure of a wall would disruptive. Additionally, limiting the visibility from the surrounding neighbors (the intent of the buffer) would not be enhanced by the wall greater than existing conditions.
2. 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; and
A windshield survey of the neighborhood produced evidence other developments where single family develop abuts multi-family developments do not have an 8' masonry wall to buffer the uses. Other materials such as a green screens serve as a buffer.
3. 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; and
Shall not be considered a special privilege inconsistent with other multi-family zoned properties.
4. A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner.
The development was purchased with the modifications.

Conclusion

Staff recommends approval of the variance

REASON(S) FOR APPROVAL:

1. Special circumstances or conditions applying to the land, building or use exist.
2. The authorizing of the variance is necessary for the preservation and enjoyment of substantial property rights.
3. Authorization of the variance(s) will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood or to the public welfare in general.

SHOULD THE HEARING OFFICER ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE FOLLOWING CONDITIONS OF APPROVAL SHOULD APPLY.

CONDITION(S)

OF APPROVAL:

1. Obtain Development Plan Approval for all non-compliant modifications and future improvements to the site within 45 days or by **01/21/2012**

HISTORY & FACTS:

1909

Gage Addition of Tempe Subdivison Plat created the infill lot.

1925

The house was constructed per information on the Historic Preservation Property Inventory Form

June 24, 1999

The Board of Adjustment approved a use permit for the Otto Boarding House Bed and Breakfast subject to conditions.

DESCRIPTION:

Owner – Arkules-Saint Vincent

Applicant – Arkules-Saint Vincent

Existing Zoning – R-3, Multi-Family Residential Limited District

**ZONING AND
DEVELOPMENT
CODE REFERENCE:**

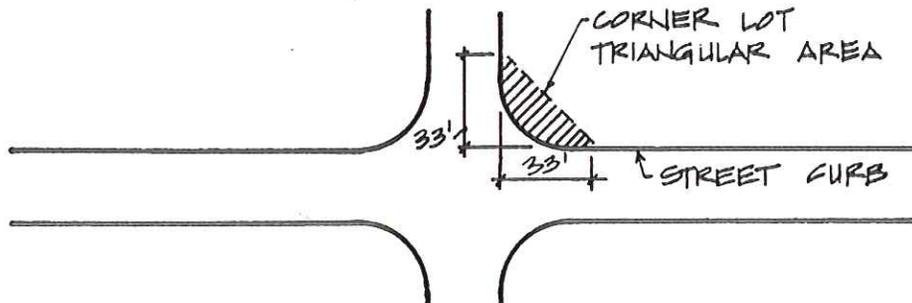
Part 4, Chapter 7. Section 4-706- Land Use Buffers

Part 6, Chapter 3, Section 6-309- Variances

4. When property lines are in common with or separated by an alley from a residence or residential district, a wall with a minimum height of six (6) feet, as measured from the highest adjacent grade within twenty (20) feet, shall be provided on the property line(s) of a site that is used for or zoned for:
- a. Multi-family,
 - b. Service,
 - c. Industrial,
 - d. Churches,
 - e. Private schools,
 - f. Public facilities, or
 - g. Any non-residential use permitted in a single family district.

The walls shall have no vehicular access points to or from the alley. Within the first twenty-five (25) feet from the street property line, the height of the wall may be reduced, gradually, to three (3) feet in height if there is potential of obstructed vision for pedestrian and vehicular traffic. In addition, trees shall be planted as specified in Part II of this Section.

5. All required walls shall be located on-site and be of masonry or concrete construction. All walls shall have an architectural texture, color and material compatible with the primary building on-site (or on respective sides). Where walls are along alleys, the alley side is only required to be painted. Alternate wall finishes to those noted above must receive written approval from the Zoning Administrator.
6. No walls, buildings or other obstruction to view in excess of two (2) feet in height (measured from street curb) shall be placed on any corner lot within a triangular area formed by the curb lines and a line connecting them at points thirty-three (33) feet from the intersection of lines, extended from the curbs. There shall be an exception for a reasonable number of trees pruned high enough to permit unobstructed vision to automobile drivers.



C. GENERAL REGULATIONS

- ***1. The provisions of Section 5 shall apply to all new buildings, all new uses of land, and any addition to existing buildings and uses, occurring in any Multi-Family Districts, Service Districts, Commercial Districts (except the RCC District), all Industrial Districts and non-residential uses in the AG and Single Family Districts. The RCC District is not subject to the standards of Section 5. Standards for landscaping, walls, screening and lighting in the RCC District shall be established through the Design Review Board and City Council. Maintenance requirements of this section shall apply to all sites and uses within the districts listed above.
2. Any expansion of building or use, or development of land shall be constructed in accordance with an approved site plan and landscape plan.
3. Prior to the issuance of a building permit, the Planning Division shall review and approve the site plan and landscape plan.
- *4. Prior to issuance of an Occupancy Permit, the walls, screening devices and lighting shall be installed in accordance with the approved construction plans.

In lieu of the installation of landscaping, irrigation system or public art prior to issuance of an Occupancy Permit, a cash deposit or an irrevocable letter of credit in an amount guaranteeing the complete installation of the landscaping, irrigation system or public art within six (6) months may be accepted by the Planning Division. Failure to install the landscaping, irrigation system or public art shall result in the forfeiture of the deposit or letter of credit, and be deemed a violation of this Section of the Ordinance.

5. No person, firm or corporation shall strip, excavate or remove top soil nor shall they berm up soil on a site, except to accommodate an approved building, building addition or facilitate necessary and approved site improvements.
6. Any landscape areas in the public right-of-way shall comply with all the requirements of Sections 29-44 of the Tempe City Code and with the criteria of the Arizona Department of Water Resources. These criteria specify plant material which have low water needs and encourage the conservation of our water resources.
- **7. Developers of commercial or office projects shall contribute to public art if the development either contains a total of more than 50,000 s.f. gross floor area, or is a phase of a larger project approved after February 24, 1990 that contains a total of more than 50,000 s.f. gross floor area.

- * Ordinance No. 808.9202, Effective March 14, 1992.
** Ordinance No. 808.9407, Effective March 11, 1995.
***Ordinance No. 808.9606, Effective May 25, 1996.

Hearing Officer / Board of Adjustments

City of Tempe Board of Adjustments

BA#

Project Address: 902 S. Ash Ave., Tempe, AZ 85281

Explanation of Use Permit: (Attachment)

a. Will there be any damage or nuisance arising from the noise, smoke, odor, vibration or illumination? There will be no change from the current conditions. The home is currently used as a multi-family rental home with all of the normal characteristics of the surrounding residential area. There is a resident manager, our son Craig Otto.

b. Identify any potential hazards to persons and property from possible explosion, contamination, fire, or flood. There will be no change from the current conditions. The home is used currently as a multi-family home. The proposed revision in rental style would have no negative affect on the above listed hazards.

c. Will the use contribute to an unusual volume or characteristic of traffic? The proposed use revision would have no negative effect on the current traffic volume or characteristics. There are currently nine (9) off street parking spaces available to residents and guests. That equates to two (2) for each of the three (3) proposed B&B rooms in the main house and two for the owners quarters in the existing "guest house", plus one extra. Since the proposal is to accommodate short term residents, there would be a propensity for a reduction in the associated traffic. Short term guests would not normally generate the usual patterns of visiting guests and friends associated with long term residency.

d. Describe the character of the proposed building site. The site as it exists today would essentially remain the same under this proposed use revision. The site consists of main house with approximately 2379 square feet of living space and a second dwelling (guest house) with approximately 580 square feet of living space. The architecture and landscaping is consistent with that of the surrounding residential neighborhood. There is significant off street parking (9) spaces, and the home is well maintained and has had plumbing and electrical upgrades within the last 10 years.

e. Is there a demonstrated need of such use? There are few, if any, offerings in the city of Tempe for Bed and Breakfast guest housing. The cultural and historical richness of the Tempe community, especially in the venue of the Mill and University area would greatly benefit from this offering of alternative guest housing. The existing hotel resort and motel establishments can not cater to the popular need of the Bed and Breakfast. The B&B clientele wishes accommodations in a residential atmosphere with the amenities associated with historical ambiance and access to traditional innkeeper hospitality. The B&B resident innkeeper serves as lodging provider, local historian and resident chef. The creation of this B&B would be an asset to the community by preserving a piece of Old Tempe culture and by providing a lasting good feeling about the city of Tempe to the many guests it would serve.

0524390

TO: The Hearing Officer/Board of Adjustments
City of Tempe
Community Development
115 E. Fifth Street
Tempe, AZ 85281

FROM: Daniel & Cecelia Otto
902 S. Ash Avenue
Tempe, AZ 85281
(480) 816-4554

BEARING HOUSE

Letter of Explanation / Use Permit, re (Bed & Breakfast) 902 S. Ash Ave., Tempe, AZ

The purpose of this request or a use permit from the city of Tempe is to obtain permission to use our home located at 902 S. Ash Avenue as a Bed & Breakfast. Tuesday, May 11th 1989, we had the opportunity to discuss briefly our intentions with two city officials, namely, Sean Prior in Community Development and Richard McFarland in Building Safety.

The proposed use revision would have no negative effect on the current traffic volume or characteristics. There are currently nine (9) off street parking spaces available to residents and guests. That equates to two (2) for each of the three (3) proposed B&B rooms in the main house and two for the owners quarters in the existing "guest house", plus one extra. Since the proposal is to accommodate short term residents, there would be a propensity for a reduction in the associated traffic. Short term guests would not normally generate the usual patterns of visiting guests and friends associated with long term residency. The proposed change in use is essentially only a revision to the current style of business. The business would be changing from offering tenancy based on annual leasing to one of short term rental, as is the nature of a Bed & Breakfast.

There will be no damage or nuisance or noise, smoke, odor, vibration or additional illumination from lighted rooms in the property above what is currently existing. There will be no hazards to persons and property from possible explosion, contamination, fire, or flood. The issuing of this Use Permit should have no negative effect on the surrounding commercial, single family, high density housing and retail establishments. On the contrary, it is our opinion that providing a Bed & Breakfast near ASU, downtown shopping and entertainment will provide a unique niche in the lodging availability for the area and will be a source of pride not only for ourselves, the owners, but also the community, particularly those residing in the Maple/Ash Neighborhood.

There are few, if any, offerings in the city of Tempe for Bed and Breakfast guest housing. The cultural and historical richness of the Tempe community, especially in the venue of the Mill and University area would greatly benefit from this offering of alternative guest housing. The existing hotel resort and motel establishments can not cater to the popular need of the Bed and Breakfast. The B&B clientele wishes accommodations in a residential atmosphere with the amenities associated with historical ambiance and access to traditional innkeeper hospitality. The B&B resident innkeeper serves as lodging provider, local historian and resident chef. The creation of this B&B would be an asset to the community by preserving a piece of Old Tempe culture and by providing a lasting good feeling about the city of Tempe to the many guests it would serve.

Sincerely Yours,
Daniel & Cecelia Otto

Daniel H. Otto & Cecelia N. Otto

FILE COPY

Staff
Summary
Report

To: Board of Adjustment
Through: Development Services Director

Agenda Item Number
Meeting Date: 06/23/99

SUBJECT: OTTO BOARDING HOUSE/BED AND BREAKFAST

SUMMARY: Public Hearing #BA990135

Use permit request by the OTTO BOARDING HOUSE/BED AND
BREAKFAST to allow a boarding house/bed and breakfast, located at 902 S.
Ash in the R-3, Multi-Family Limited District.

	Recommendation	Comments
Staff	Approval	See Report
Public	No Input to Date	

BA990135 - OTTO BOARDING HOUSE/BED AND BREAKFAST
June 23, 1999

2

HISTORY & FACTS: Refer to Tempe Preservation memo dated 5/28/99 in Staff Report.

DESCRIPTION: Property Owner - Daniel H. & Cecilia K. Otto/Craig Otto
Applicant - Daniel H. & Cecilia K. Otto/Craig Otto
Zone - R-3, Multi-Family Residence Limited District
Site Area - 10,650 s.f.
Parking required - 5
Parking provided - 9
Building Area - 2437.5 s.f.

COMMENTS: This use permit request for a Board House/Bed and Breakfast is before the Board because of a Zoning Administrator's Opinion on July 21, 1988 which stated that these facilities were allowed in all residential districts as long as a use permit was approved. The use also constitutes a Board House by ordinance definition which includes up to five rooms occupied as guest rooms and which may include food service.

Staff concurs that the proposed use would be less intense than the existing long term leases of rooms on the property. If customer patterns are similar to hotel/motel demand patterns, then occupancy trends would tend to be seasonal and intermittent as well, with peak demands occurring during the temperate months and for special events associated with downtown and ASU.

Site visit by the Staff found the premises to be attractively maintained. While the existing parking and driveway areas are gravel, they should be paved, stripped and landscaped to conform with ordinance requirements, or variances obtained. An acceptable alternative would be at least stabilization of the gravel surface provided that it is stripped and landscaped with variances approved.

To date Staff has not received a single complaint on the (3) Bed and Breakfast facilities approved in the City.

The use appears to be compatible and consistent with the site and adjacent properties in terms of decreasing traffic impact, creation of nuisance, or acceleration downgrading of neighborhood.

APPLICANT'S
JUSTIFICATION
FOR USE PERMIT: See Attached

RECOMMENDATION: Approval

THIS PRINTING OF ORDINANCE 808, THE ZONING ORDINANCE OF THE CITY OF TEMPE, HAS BEEN REPUBLISHED, TO INCORPORATE ALL AMENDMENTS TO SAID ORDINANCE WHICH HAVE BEEN ADOPTED AND ARE IN EFFECT AS OF **January 18, 1997**. AMENDING ORDINANCES INCLUDED IN THIS PRINTING ARE LISTED BELOW.

ORDINANCE NO. 808.17

Adopted by the Tempe City Council: February 3, 1977
Effective: March 3, 1977

ORDINANCE NO. 808.35

Adopted by the Tempe City Council: February 9, 1978
Effective: March 11, 1978

ORDINANCE NO. 808.41

Adopted by the Tempe City Council: February 9, 1978
Effective: March 11, 1978

ORDINANCE NO. 808.42

Adopted by the Tempe City Council: February 9, 1978
Effective: March 11, 1978

ORDINANCE NO. 808.121

Adopted by the Tempe City Council: April 10, 1980
Effective: May 10, 1980

ORDINANCE NO. 808.141

Adopted by the Tempe City Council: April 10, 1980
Effective: May 10, 1980

ORDINANCE NO. 808.142

Adopted by the Tempe City Council: April 10, 1980
Effective: May 10, 1980

ORDINANCE NO. 808.170

Adopted by the Tempe City Council: December 18, 1980
Effective: January 18, 1981

- *10. The Zoning Administrator may allow variance requests that are not accompanied by use permit requests to be heard by the Board of Adjustment or Hearing Officer regardless of the net site area of the lot. Variance requests that are accompanied by use permit requests shall be processed along with those use permits according to C. USE PERMITS immediately below.

C. USE PERMITS

- *1. The following requests shall be taken to the Zoning Administrative Hearing Officer/Board of Adjustment:
- a. All use permits required in all Section 2 Residential Districts;
 - b. Use permits required for any bar which occupies less than 4,500 s.f. in Gross Floor Area and use permits required for any other use which occupies less than 10,000 s.f. in Gross Floor Area in all Section 3 Service Districts except PCC-1 and PCC-2;
 - c. Use permits required for any use which occupies less than 20,000 s.f. in Gross Floor Area in every Section 4 Industrial District. For use permits to exceed the allowed percent of retail in an Industrial District, the square footage devoted to retail will be taken as the Gross Floor Area for the use requiring the use permit.
 - d. The Zoning Administrator may direct that a request defined by items a. through c. immediately above be heard instead by the City Council based on a review which includes but is not limited to the following factors:
 - 1) previous decisions by the City Council regarding the site on which the proposed use is located,
 - 2) the probable impact of the requested use on its immediate surroundings, and
 - 3) the consistency of the requested use with the projected land uses, policies and principles of General Plan 2000.
- *2. The following requests shall be taken to the City Council:
- **a. All use permits required in PCC-1, PCC-2 and RCC, with advice of the Planning Commission;

* Ordinance No. 808.9210, Effective November 7, 1992.

**Ordinance No. 808.9606, Effective May 25, 1996.

- b. Use permits required for any bar which occupies 4,500 s.f. or more in Gross Floor Area and use permits required for any other use which occupies 10,000 s.f. or more in Gross Floor Area in every other Section 3 Service District except the CCD, with advice of the Planning Commission;
 - c. Use permits required for any use which occupies 20,000 s.f. or more in Gross Floor Area in every Section 4 Industrial District, with advice of the Planning Commission. For use permits to exceed the allowed percent of retail in an Industrial District, the square footage devoted to retail will be taken as the Gross Floor Area for the use requiring the use permit;
 - d. All use permits required in the CCD.
 - e. The Zoning Administrator may direct that a request defined by items a. through d. immediately above be heard instead by the Zoning Administrative Hearing Officer/Board of Adjustment based on a review which includes but is not limited to the following factors:
 - 1) previous decisions by the Hearing Officer/Board of Adjustment regarding the site on which the proposed use is located,
 - 2) the probable impact of the requested use on its immediate surroundings, and
 - 3) the consistency of the requested use with the projected land uses, policies and principles of **General Plan 2000**.
3. Such use permits as are granted by the Commission and Council, Hearing Officer or Board shall be void if the use is not commenced within twelve months of such granting or within the time stipulated by the Hearing Officer, Board of Adjustment or Planning Commission and Council.
4. A use permit shall be granted only upon a finding by the Hearing Officer, Board or Commission and Council that the use covered by the permit, the manner of its conduct, and any building which is involved will not be detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or to the public welfare in general and that the use will be in full conformity to any conditions, requirements, or standards prescribed therefore by this Ordinance (or pursuant thereto).

In arriving at the above determination, the following factors shall be considered, but not be limited to:



Unofficial Document

Recording Requested by:
FIRST AMERICAN TITLE

When recorded mail to:

David Arkules
902 S. Ash Ave.
Tempe, AZ 85281

2001-0002630 01/02/2001 07:01
CLASS 21 of

1/3

WARRANTY DEED

Escrow No. 246-939-1315999

For the consideration of TEN AND NO/100 DOLLARS, and other valuable considerations, I or we,

A

DANIEL H. OTTO and CECELIA K. OTTO, husband and wife

the GRA

does hereby convey to

DAVID I. ARKULES, a married man, as his sole and separate property

the GRA

the following described real property situate in Maricopa County, Arizona:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREC

SUBJECT TO: Existing taxes, assessments, covenants, conditions, restrictions, rights of way and easem record.

And the GRANTOR binds itself and its successors to warrant the title against its acts and none other, subject matters above set forth.

DATED: December 11, 2000

DANIEL H. OTTO

CECELIA K. OTTO

STATE OF ARIZONA)
) ss.
County of Maricopa)

On December 29 2000, before me, the undersigned Notary Public, personally ap DANIEL H. OTTO and CECELIA K. OTTO, personally known to me (or proved to me on the basis of satis evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to i he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) instrument the person(s) or the entity upon behalf of which the person(s) acted executed the instrument.

Unofficial Document

at the request of Title Guaranty Agency of Arizona, Inc.

when recorded mail to
DAVID I. ARKULES
902 South Ash
Tempe, Arizona 85281

2

VEZENA 1

09000427-MV

Warranty Deed

Courtesy of [unclear]
No Title Liability

For the consideration of Ten Dollars, and other valuable considerations, I or we,
DAVID I. ARKULES, husband of **STACEY ARKULES** as his sole and separate property
do/does hereby convey to
NINTH AND ASH, L.L.C., an Arizona limited liability company
the following real property situated in Maricopa, County, Arizona:

The West 128.28 feet of Lot One (1), and West 128.35 feet of the North half of Lot Two (2), GAGE
ADDITION, according to the plat of record in the office of the County Recorder of Maricopa County
Arizona, in Book 3 of Maps, Page 58.

AFFIDAVIT EXEMPT PER ARS 11-1134 B(5)

SUBJECT TO: Current taxes and other assessments, reservations in patents and all easements, rights of way, encumbr
liens, covenants, conditions, restrictions, obligations, and liabilities as may appear of record.

And I or we do warrant the title against all persons whomsoever, subject to the matters set forth above.

Dated this 17th day of APRIL, 2001.

DAVID I. ARKULES

STATE OF ARIZONA

County of Maricopa

} ss



This instrument was acknowledged before
this 17 day of APRIL, 2001 by
DAVID I. ARKULES.

Notary P

My commission will expire 3/14/03

Unofficial Document

TITLE GUARANTY AGENCY OF ARIZONA, INC.

at the request of Title Guaranty Agency of Arizona, Inc.

when recorded mail to
DAVID ARKULES
902 South Ash
Tempe, Arizona 85281

09000427-MV

Warranty Deed

For the consideration of Ten Dollars, and other valuable considerations, I or we,
FRANK OBERPRILLER and MARY E. OBERPRILLER, Husband and Wife as Joint Tenants
do/does hereby convey to
DAVID ARKULES, husband of Stacey Arkules as his sole and separate property
the following real property situated in Maricopa, County, Arizona:

The West 128.28 feet of Lot One (1), and West 128.35 feet of the North half of Lot Two (2), GAGE
ADDITION, according to the plat of record in the office of the County Recorder of Maricopa County
Arizona, in Book 3 of Maps, Page 58.

SUBJECT TO: Current taxes and other assessments, reservations in patents and all easements, rights of way, encumb-
liens, covenants, conditions, restrictions, obligations, and liabilities as may appear of record.

And I or we do warrant the title against all persons whomsoever, subject to the matters set forth above.

Dated this 4th day of April, 2001.

Frank Oberpriller
FRANK OBERPRILLER

Mary E. Oberpriller
MARY E. OBERPRILLER

STATE OF ARIZONA

County of Maricopa

} ss

This instrument was acknowledged before
this 16 day of April, 2001
FRANK OBERPRILLER and MARY E
OBERPRILLER



Marie A. Volm
Notary I
My commission will expire 3/17/03

David Arkules
NINTH AND ASH LLC
249 West 9th Street
Tempe, Arizona 85281
480-922-4489

480-968-9935 Casey's
(480-922-7224 FAX.)

April 17, 2001

DELIVERED BY CERTIFIED MAIL

Rick D. Hondorp
275 West 9th Street
Tempe, Arizona 85281

Trespassing Notice for (249 W 9th St) Parcel 132-42-075-E for ingress and egress over and across the west 15 feet of lot 1 and the North half of lot 2, Block 30, Gage Addition

Dear Rick:

This certified letter is to put you on notice that you do not have permission to trespass across the west section of Parcel 132-42-075-E (249 W 9th St) to access the rear of your Parcel 132-42-074A (939 S Ash Ave). You do not have a legal easement. Cease trespassing immediately until you obtain written permission from me.

Regards,
David Arkules

Reason being my calling police on St. Armands Day due to bad fence problems!
D. Arkules

BEAVERCO, REASON FOR THIS LETTER, NO LACK OF RESURANCE TO VALIDATE.

PATTI
© Casey Moore
4/20 2:30 PM
Friday 20 APR 2001

DAVID ARKULES
NINTH AND ASH, LLC
902 SOUTH ASH AVENUE
TEMPE, ARIZONA 85281
480-922-4489

March 27, 2003

Hand Delivered to Development Services

Tempe City Council, DeeDee Kimbrell, Planner, Steve Venker, Planning & Zoning Manager
31 East 5th Street
Tempe, Arizona 85281

Re: Request for Continuance or Denial
Sienna Court City Council Hearing #ZON-2003.03, #SPD-2003.05, #SBF-2003.06

Dear Council Members and Staff:

I object to the requests by applicant for Sienna Court. The applicant has failed to provide a necessary legal road/drive/easement for the planned area development and subdivision. Applicant shows traffic exiting out an easement across my property at 249 West 9th Street adjacent to my house. This easement was made prior to 1960 for access to the backyard of a house that was on applicants' property. The Grantor/maker of the easement did not intend nor could it be contemplated at the time of the easement grant that the future owner of the dominant property would attempt to burden my servient property with a road/drive/easement across my property for use by owners of ten lots. While applicant may use the easement as granted, he does not have the right to overburden the easement and apportion the easement for the owners of nine lots plus owners of another lot he wishes attached to the property for a PAD and subdivision. Applicant also failed to disclose with his application that his easement is my driveway and this will be a dangerous use of my driveway adjacent to my house, since my driveway traffic goes both directions, and not one way as shown on his application.

Additionally the application for a change from R3 to R1 zoning will effectively down zone my adjacent property. I call your attention to the Tempe Zoning Requirement Matrix and Note C, which provides: "Where building heights exceed 15' and are located adjacent to a single family residence district, one additional foot of setback to the yard adjacent is required for every foot of building above 15'-0". As applied to my property, this severely limits the potential for future development and consequently the value of my property will be decreased. Please note that my property is not eligible for a PAD. While I could apply for a variance my understanding of the law for this situation does not allow a variance and when the time comes I will be facing strong objections from the Sienna Court owners.

I have discussed the above problems with applicant and have not been able to reach an accord at this time. I ask council to continue the hearing on this matter until I come to an agreement with applicant. If this matter cannot be continued I ask that applicant be denied his requests.

Regards,



David Arkules,
Ninth and Ash, LLC

Attachment: Supporting Case Law

Cc: Rick Hondorp, Hand Delivered to 275 West 9th Street, Tempe, Arizona 85281

**GUST
ROSENFELD**
ATTORNEYS SINCE 1921 P.L.C.

☐ 201 E. WASHINGTON, SUITE 800 ☐ PHOENIX, ARIZONA 85004-2327 ☐ TELEPHONE 602-257-7422 ☐ FACSIMILE 602-254-4878 ☐
CHARLES W. WIRKEN
602-257-7959
cwirken@gustlaw.com

May 30, 2003

HAND DELIVERED

Bryan K. Levy
Law Offices of Bryan K. Levy
3200 N. Central Ave., Suite 800
Phoenix, AZ 85012

RE: Ninth and Ash, LLC v. Hondorp
Maricopa County Superior Court no. CV2003-0078496
Our File No.: 017812-00001

Dear Mr. Levy:

Please be advised that I will be representing Rick Hondorp in the above referenced case in which your client seeks to limit the scope of the access easement across your client's property. The complaint seems to contend that use of the easement is limited to a single-family residence on the Hondorp property. However, at all times material to this case, in other words, from before the easement was created to the present, the Hondorp property has been zoned for multi-family use.

Therefore, I am enclosing a quit claim deed for your client to sign to acknowledge that the subject easement is for multi-family use consistent with applicable zoning laws. As you may know, R-3 zoning permits a density of 20 units per acre and R-1 PAD zoning has no density limit.

Demand is hereby made upon your client to sign the enclosed quit claim deed before a notary public and return it to me within twenty (20) days of your receipt of this letter. A check payable to your client in the amount of five dollars is enclosed as consideration for the execution and delivery of the deed.

Sincerely,



Charles W. Wirken
For the Firm

CWW:pja
cc: Rick Hondorp
486260

PHOENIX - TUCSON
WWW.GUSTLAW.COM

H 00145



DEVELOPMENT SERVICES DEPARTMENT
CODE COMPLIANCE
CORRECTION NOTICE

06-14-2010

PATRICIA ST VINCENT
902 S ASH AVE
TEMPE, AZ 85281

Case#: CE102154
Site Address: 902 S ASH AVE

SITE REINSPECTION ON OR AFTER: 08/28/2010

This is a notice to inform you that this site was inspected on 06/14/2010 and found to be in violation of the City of Tempe's Zoning and Development Code (ZDC) and/or Nuisances and Property Enhancement Ordinance, Chapter 21 Article I and/or II of the City Code (CC) as noted. Failure to comply may result in civil citation or criminal charges.

SECTION VIOLATION
ZDC 4-602.B Parking Standards Applicable in All Zoning Districts

2. Parking is allowed only on paved parking surfaces. Pavement may be concrete, asphalt, or a porous material approved by the Development Services Manager, or designee. Where decomposed granite or similar porous pavement is used, it shall conform to ADA guidelines and the parking lot entrance(s) and exit(s) shall have tire cleaning strips to remove loose particles from the tires of vehicles;

PLEASE TAKE THE FOLLOWING CORRECTIVE ACTION

ZDC 4-602 Cease using the rear yard area as additional parking for the multi-family unit. To use this area as additional parking you would need to process a site modification plan through Development Plan Review for approval.

Please contact me if you have questions or need further assistance. Thank you for your cooperation in this matter.

Senior Code Inspector: Michael Spencer

Direct: 480-350-8075
Code Compliance: (480)350-8372

Civil and Criminal Penalties

City Code Section 21-3, subsections (b) 1-8, 16 and 17-19; Section 21-4; Sections 21-13; Section 21-38, subsections (a-k) and (m-q): 1st occurrence \$150 per violation, 2nd occurrence \$250 per violation, 3rd occurrence \$350 per violation | Sections 21-31, 21-32, 21-33, 21-35, 21-36: 1st occurrence \$250 per violation, 2nd occurrence \$450 per violation, 3rd occurrence \$650 per violation | Section 21-3, subsections (b) 9-14, 16 and 20; Sections 21-34, 21-37; Section 21-38, subsection (l): 1st occurrence \$350 per violation, 2nd occurrence \$650 per violation, 3rd occurrence \$950 per violation. | Section 21-25: \$1000 per violation plus an additional \$100 for each month after the date of the original violation until compliance occurs. | Section 21-4 (B) Habitual Offender: 1st occurrence \$500 in addition to other fines, 2nd occurrence \$1000 in addition to other fines, 3rd occurrence, \$1500 in addition to other fines. | Zoning and Development Code: 1st occurrence \$120 per violation, 2nd occurrence \$370 per violation, 3rd occurrence \$770 per violation | The city has authority to abate the violation should the owner neglect, fail or refuse to correct the violation within 30 days and to assess a lien against the property for the cost of the abatement. | The city prosecutor is authorized to file a criminal class 1 misdemeanor complaint in the Tempe Municipal Court for violations of these codes.



DEVELOPMENT SERVICES DEPARTMENT
CODE COMPLIANCE
CORRECTION NOTICE

06-14-2010

DAVID ARKULES
7502 N EUCALYPTUS DR
PARADISE VALLEY, AZ 85253

Case#: CE102154
Site Address: 902 S ASH AVE

SITE REINSPECTION ON OR AFTER: 06/28/2010

This is a notice to inform you that this site was inspected on 06/14/2010 and found to be in violation of the City of Tempe's Zoning and Development Code (ZDC) and/or Nuisances and Property Enhancement Ordinance, Chapter 21, Article I and/or II of the City Code (CC) as noted. Failure to comply may result in civil citation or criminal charges.

<u>SECTION</u>	<u>VIOLATION</u>
ZDC 4-602.B	Parking Standards Applicable in All Zoning Districts

2. *Parking* is allowed only on paved *parking* surfaces. Pavement may be concrete, asphalt, or a porous material approved by the Development Services Manager, or designee. Where decomposed granite or similar porous pavement is used, it shall conform to ADA guidelines and the *parking lot* entrance(s) and exit(s) shall have tire cleaning strips to remove loose particles from the tires of vehicles;

PLEASE TAKE THE FOLLOWING CORRECTIVE ACTION

ZDC 4-602	Cease using the rear yard area as additional parking for the multi-family unit. To use this area as additional parking you would need to process a site modification plan through Development Plan Review for approval.
-----------	--

Please contact me if you have questions or need further assistance. Thank you for your cooperation in this matter.

Senior Code Inspector: Michael Spencer

Direct: 480-350-8075
Code Compliance: (480)360-8372

Civil and Criminal Penalties

City Code Section 21-3, subsections (b) 1-8, 15 and 17-19; Section 21-4; Sections 21-13; Section 21-38, subsections (a-k) and (m-q): 1st occurrence \$150 per violation, 2nd occurrence \$250 per violation, 3rd occurrence \$350 per violation | Sections 21-31, 21-32, 21-33, 21-35, 21-36: 1st occurrence \$250 per violation, 2nd occurrence \$450 per violation, 3rd occurrence \$650 per violation | Section 21-3, subsections (b) 9-14, 16 and 20; Sections 21-34, 21-37; Section 21-38, subsection (l): 1st occurrence \$350 per violation, 2nd occurrence \$650 per violation, 3rd occurrence \$950 per violation. | Section 21-25: \$1000 per violation plus an additional \$100 for each month after the date of the original violation until compliance occurs. | Section 21-4 (B) Habitual Offender: 1st occurrence \$500 in addition to other fines, 2nd occurrence \$1000 in addition to other fines, 3rd occurrence, \$1500 in addition to other fines. | Zoning and Development Code: 1st occurrence \$120 per violation, 2nd occurrence \$370 per violation, 3rd occurrence \$770 per violation | The city has authority to abate the violation should the owner neglect, fail or refuse to correct the violation within 30 days and to assess a lien against the property for the cost of the abatement. | The city prosecutor is authorized to file a criminal class 1 misdemeanor complaint in the Tempe Municipal Court for violations of these codes.

City of Tempe
P. O. Box 5002
Tempe, AZ 85280
www.tempe.gov



(480) 350-8331

September 2, 2010

David Arkules
Ninth and Ash, LLC
902 South Ash Ave
Tempe, AZ 85281

RE: **MULTI-FAMILY RESIDENCE @ 902 SOUTH ASH**
Site Plan Modification- new parking surface
PL100228 / DPR10162

Dear Mr. Arkules:

The Community Development Department staff has approved your request for a site plan modification- new parking surface. This site is located at 902 South Ash Ave, in R-3 Multi-family Residential District.

This approval is based on compliance with the plans submitted as part of the application with such modifications as may be required by any conditions listed below. Your proposal must be completed prior to final inspection. This approval is valid for one year or the Development Review approval will lapse.

Approved subject to the following conditions:

1. Approval is valid for the plans as submitted to and approved by the Development Review Staff.
2. The parking surface to be Envi-Rox 2000 and must be maintained annually to minimize dust.
3. Upon completion of the paving surface, the applicant shall contact Planning Inspector Bill Kersbergen at (480) 350-8839 for a final planning inspection.

If you have any questions, please contact me at (480) 350-8486. If there are any issues which remain after discussions with staff, you have the opportunity to have the case heard before the Development Review Commission. A written request must be forwarded to staff, in order to have the application placed on the next available agenda.

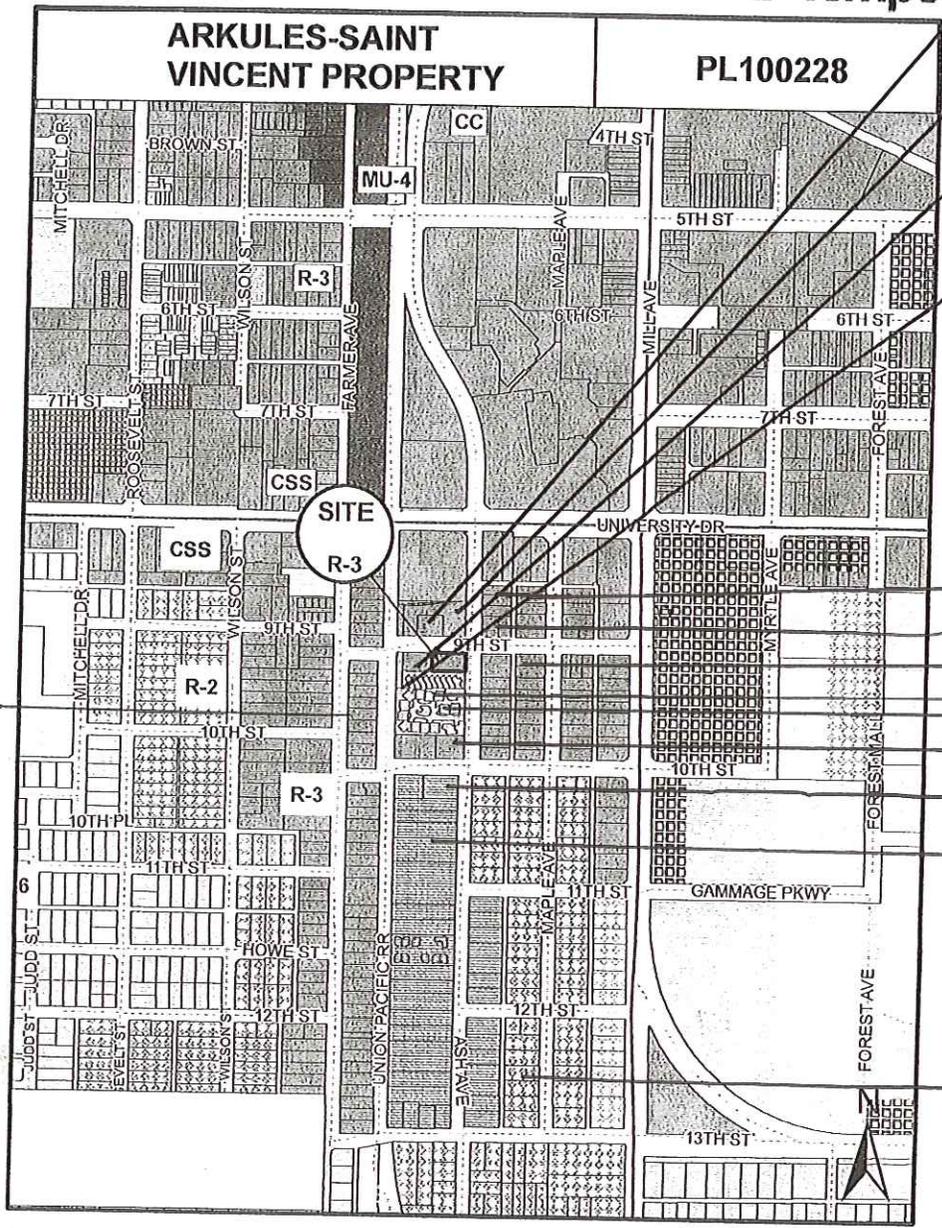
Sincerely,

A handwritten signature in cursive script that reads 'Sherri Lesser'.

Sherri Lesser
Senior Planner
Community Development Department

SL/in

NEARBY RESIDENTS WITH SUPPORT LETTERS

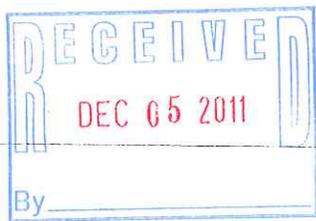


Location Map

- Candis McGovern
- Richard Bank
- Claire Krause
- Ali Arkules
- Jared Marshall
- Vick Mathis
- Chas Roberts
- Tom Allen
- Jim Cordalis
- Chris & Becky Rowley
- Brian Enos
- Jim Storm
- Karen Morrissey

Sam Remnap

ATTACHMENT 1



Brian Enos
303 West Tenth Street
Tempe Arizona 85281

November 15, 2011

Planning and Zoning
City of Tempe
31 East 5th St
Tempe AZ 85281

Arkules-St Vincent property (Ninth and Ash, LLC) PL10028
VAR11008 Variance to waive the required masonry wall
between the properties

Dear Sir or Madam:

I support the variance to waive the required masonry wall
between the properties developed for multi-family and single
family.

Many properties in the neighborhood, including my own, share
a common wall or fence.

Regards,



Brian Enos

Candis McGovern
222 West Ninth Street
Tempe Arizona 85281

November 15, 2011

Planning and Zoning
City of Tempe
31 East 5th St
Tempe AZ 85281

Arkules-St Vincent property (Ninth and Ash, LLC) PL10028
VAR11008 Variance to waive the required masonry wall
between the properties

Dear Sir or Madam:

I support the variance to waive the required masonry wall
between the properties developed for multi-family and single
family.

Many properties in the neighborhood share a common wall or
fence.

Regards,



Candis McGovern

Kyle Tederous
222 West 9th St
Tempe Arizona 85281

December 1 2011

Planing and Zoning
City of Tempe
31 East 5th St
Tempe Ari Arkules-St Vincent property 85281

SUBJECT: Arkules-St Vincent property (Ninth and Ash, LLC)
VAR11008 Variance to waive the required masonry wall between the properties

Dear Planing and Zoning

I support the variance to waive the required masonry wall between the properties developed for multi-family and single family.

I live across the street at 222 West 9th Street. Many properties in the neighborhood share a common masonry wall

Thanks



Kyle Tederous
222 West 9th St
Tempe Arizona 85281

TYLER COBURN
838 West 11TH Street
Tempe Arizona 85281

December 1, 2011

Planning and Zoning
City of Tempe
31 East 5th St
Tempe AZ 85281

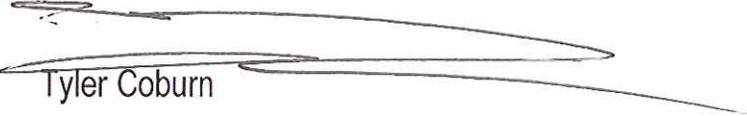
Arkules-St Vincent property (Ninth and Ash, LLC)
VAR11008 Variance to waive the required masonry wall between the properties

Dear Sir or Madam:

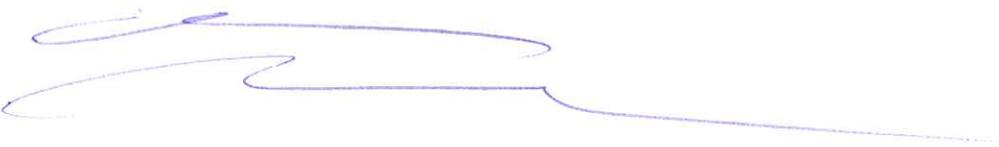
I support the variance to waive the required masonry wall between the properties developed for multi-family and single family.

I live down the street. Many properties in the neighborhood share a common masonry wall

Thanks



Tyler Coburn



Karen Morrissey
1216 S Maple Avenue
Tempe Arizona 85281

December 1 , 2011

Attention: Planning and Zoning
City of Tempe
31 East 5th St
Tempe AZ 85281

Regarding: Arkules-St Vincent property (Ninth and Ash, LLC)
PL10028 / VAR11008 Variance to waive the required masonry
wall between the properties

To Whom It May Concern:

I support the variance to waive the required masonry wall
between the properties developed for multi-family and single
family.

Many properties in the neighborhood, including my own, share a
common wall or fence.

Regards,



Karen Morrissey

Jim Storm
1211 South Ash Avenue
Tempe Arizona 85281

December 1, 2011

Attention: Planning and Zoning
City of Tempe
31 East 5th St
Tempe AZ 85281

Regarding: Arkules-St Vincent property (Ninth and Ash, LLC)
PL10028 / VAR11008 Variance to waive the required masonry
wall between the properties

Dear Sir or Madam:

I support the variance to waive the required masonry wall
between the properties developed for multi-family and single
family.

Many properties in the neighborhood, including my own, share a
common wall or fence.

Regards,

Jim Storm



December 1 , 2011

City of Tempe
Planning and Zoning
31 East 5th St
Tempe AZ 85281

Arkules-St Vincent property (Ninth and Ash, LLC) PL10028 / AR11008
Variance to waive the required masonry wall between the properties

To Whom It May Concern:

I support the variance to waive a required masonry wall between the properties developed for multi-family and single family.

Many properties in the neighborhood share a common wall or fence.

Thank you for your consideration,


831 S. ASH AVE
TEMPE, AZ 85281

Claire Krause
249 West Ninth Street
Tempe Arizona 85281

December 1, 2011

Planning and Zoning
City of Tempe
31 East 5th St
Tempe AZ 85281

Arkules-St Vincent property (Ninth and Ash, LLC) PL10028
VAR11008 Variance to waive the required masonry wall
between the properties

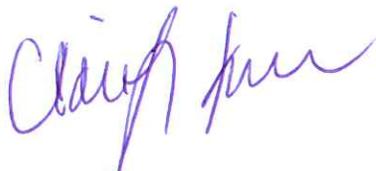
Dear Sir or Madam:

I support the variance to waive the required masonry wall
between the properties developed for multi-family and single
family.

I live next door. Many properties in the neighborhood share a
common wall or fence.

Thank you for your consideration,

Claire Krause



December 2, 2011

City of Tempe
Development Services
31 East 5th St
Tempe Arizona 85281

Subject: Support of PL100228 Variance to waive wall requirement
Arkules-St Vincent property (Ninth and Ash, LLC)

I support the variance to waive the required masonry wall between the properties by the applicant. A masonry block wall already separates the properties.

I am the neighboring property owner to the North.

Thank you,

A handwritten signature in blue ink that reads "Richard Bank". The signature is written in a cursive style with a long horizontal stroke at the end.

Richard Bank
850 S Ash Ave
Tempe AZ 85281
480-967-5378

December 2, 2011

City of Tempe
Development Services
31 East 5th St
Tempe Arizona 85281

Subject: Support of PL100228 Variance to waive wall requirement
Arkules-St Vincent property (Ninth and Ash, LLC)

I support the variance to waive the required masonry wall between the properties by the applicant. A masonry block wall already separates the properties.

Thank you,

Chas Roberts

902 South Maple
85281.

MissionAzice45@yahoo.com

December 2, 2011

City of Tempe
Development Services
31 East 5th St
Tempe Arizona 85281

Subject: Support of PL100228 Variance to waive wall requirement
Arkules-St Vincent property (Ninth and Ash, LLC)

I support the variance to waive the required masonry wall between the properties by the applicant. A masonry block wall already separates the properties.

Thank you,

A handwritten signature in black ink, appearing to read "JJ Johnstad", with a long horizontal flourish extending to the right.

902 S. MAPLE

JJohnstad@cox.net

December 2, 2011

City of Tempe
31 East 5th St
Tempe Arizona 85281

RE: Support of VAR11008 a Variance to waive masonry wall requirement
Arkules-St Vincent property (Ninth and Ash, LLC)

I support the variance to waive the required masonry wall. I live in the Maple Ash Neighborhood where the variance is being requested. Many properties share a common wall or fence in the neighborhood even though the wall or fence is built on one property.

Thank you,



Bryan Payne

ALI ARKULES
936 S ASH
TEMPE AZ 85281

December 2, 2011

City of Tempe
Development Services
31 East 5th St
Tempe Arizona 85281

RE: PL100228 VAR11008 Variance to waive wall requirement
Arkules-St Vincent property (Ninth and Ash, LLC)

I support the variance to waive the required masonry wall
between the properties developed for multi-family and
single family.

I live in the adjacent property at 936 S Ash, Tempe in
Sienna Court, Tempe Arizona.

Thank you,

A handwritten signature in black ink, appearing to read 'Ali Arkules', with a long horizontal flourish extending to the right.

Ali Arkules

December 4, 2011

Planing and Zoning

City of Tempe

31 East 5th St

Tempe Arizona 85281

Subject:

VAR11008 Variance to waive wall requirement

Arkules-St Vincent property (Ninth and Ash, LLC) 902 S As

I support the variance to waive the required masonry wall between the properties developed for multi-family and single family.

I live at 927 S Famer Ave, Tempe AZ

Thank you.



Sam Remnap

December 4, 2011

Planning and Zoning
City of Tempe
31 East 5th St
Tempe Arizona 85281

Subject: VAR11008 Variance to waive wall requirement
Arkules-St Vincent property (Ninth and Ash, LLC) 902 S Ash

I support the variance to waive the required masonry wall between the properties developed for multi-family and single family.

I live across the street at 819 S Ash Ave, Tempe AZ

Thank you.



Jared Marshall

December 4, 2011

Planning and Zoning

City of Tempe

31 East 5th St

Tempe Arizona 85281

Subject VAR11008 Variance to waive wall requirement

Arkules-St Vincent property (Ninth and Ash, LLC) 902 S Ash

We support the variance to waive the required masonry wall between the properties developed for multi-family and single family.

We live on the same street at 942 S Ash Ave, Tempe, Arizona.

TOM + Jill Allen

Tom and Jill Allen

December 4, 2011

Planing and Zoning

City of Tempe

31 East 5th St

Tempe Arizona 85281

Subject:

VAR11008 Variance to waive wall requirement

Arkules-St Vincent property (Ninth and Ash, LLC) 902 S Ash

We support the variance to waive the required masonry wall between the properties developed for multi-family and single family.

We live on the same street at 948 S Ash Ave, Tempe Az

Thank you.

Becky and Chris Rowley


Becky and Chris Rowley

<< /s / >>

Lesser, Sherri

From: David Arkules <arkules@yahoo.com>
Sent: Wednesday, February 01, 2012 1:04 PM
To: Lesser, Sherri
Subject: Fw: Re: Feb 22nd 2012 Appeal by Mr. Hondorp to for Applicant not be required to build additional walls between properties
Attachments: PastedGraphic-4.pdf

--- On Tue, 1/31/12, Jeanette Lucier <jill@djt-enterprises.com> wrote:

From: Jeanette Lucier <jill@djt-enterprises.com>
Subject: Re: Feb 22nd 2012 Appeal by Mr. Hondorp to for Applicant not be required to build additional walls between properties
To: "Lesser, Sherri" <sherri_lesser@tempe.gov>
Cc: "David Arkules" <arkules@yahoo.com>, "Patty St. Vincent" <pattysaint2@yahoo.com>
Date: Tuesday, January 31, 2012, 7:59 AM

Hello Sherri,

For the record, I am in support of granting this variance. I believe that another wall is redundant and therefore, completely unnecessary. I also believe that Mr. Hondorp's continual harassment of these people, who are considerate and conscientious neighbors, is rude, unethical and perhaps actionable.

Please consider this one email sufficient to represent the position of the owners (my husband and me) of the following properties (10 parcels) all in the Maple Ash neighborhood.

22 W. 9th Street
22.5 W. 9th Street
24 W. 9th Street
26 W. 9th Street
823 S. Maple Ave.
915 S. Maple Ave.
1104 S. Ash Ave.
1114 S. Maple Ave.
1114 S. Maple Ave. #1
1114 S. Maple Ave. #2
1114 S. Maple Ave. #3

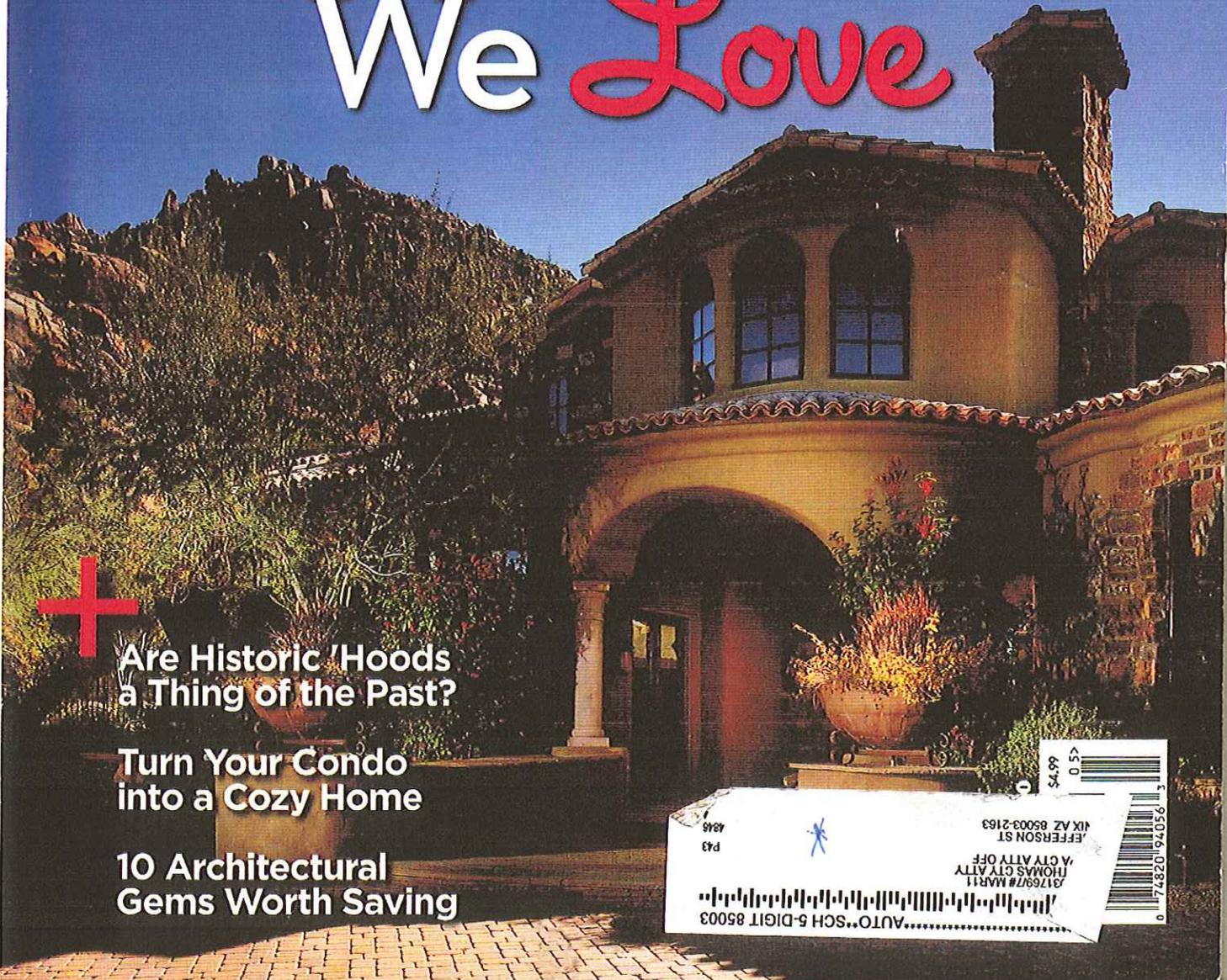
Jenny Lucier and Dan O'Neill
jill@djt-enterprises.com 602.579.9310
(Like us on facebook!)

Alpine, Arizona USA

PHOENIX

33

Neighborhoods We Love



Are Historic 'Hoods a Thing of the Past?

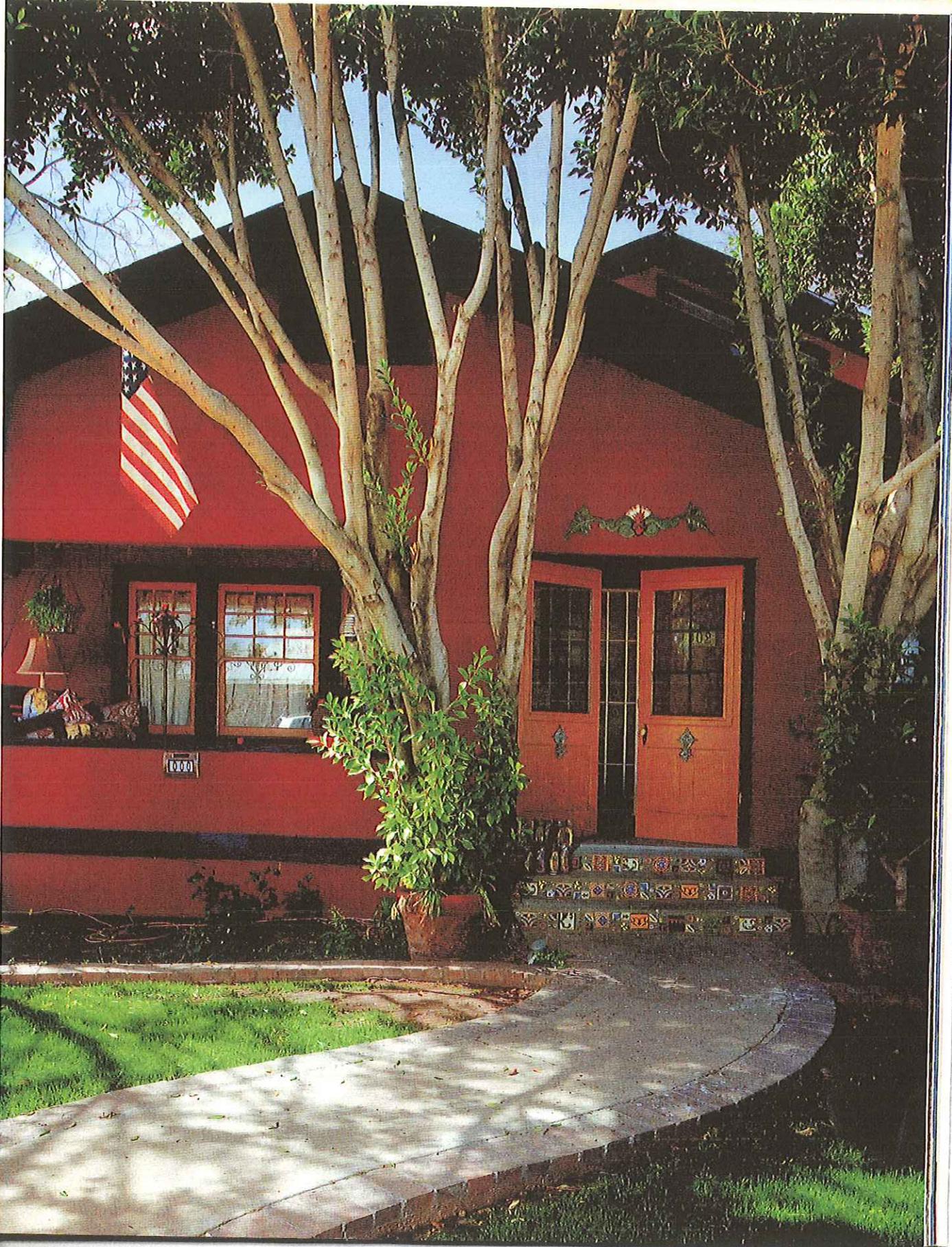
Turn Your Condo into a Cozy Home

10 Architectural Gems Worth Saving

4.99
0.50
JEFFERSON ST
10X AZ 85003-2163
PHX
A CITY ATTY OFF
THOMAS CITY ATTY
3/17/97# MAR11

AUTO**SCH 5-DIGIT 85003

0 74820 94056 3



Lesser, Sherri

From: David Arkules <arkules@yahoo.com>
Sent: Wednesday, February 01, 2012 1:01 PM
To: Lesser, Sherri
Subject: Feb 22nd appeal 902 S Ash Ave
Attachments: 902 S Ash Av Tempe photo shoot request.pdf; Phoenix Magazine 902 S Ash.pdf

VAR110088 PI100228

Hi Diane- Today we found another unsolicited note request from a photographer attached to the mail box at 902 S Ash requesting to take pictures of people at our house at 902 S Ash Ave which is the subject property requesting the variance.

I would like the note and Phoenix Magazine Neighborhoods We Love article and pictures included in the material given to the Board of Adjustment so it is clear we have a unique beautiful historic property.

I also have photographs and video and I wish to forward that show Mr. Hondorp days after our variance hearing maliciously cutting down branches from our irreplaceable historic China Berry Tree that separates our property from Mr. Hondorp's Sienna Court property along the wall line

Although the law allows a neighbor to cut branches that extend to his property they are not allowed to do so in a manner that will destroy the tree. I do believe Rick Hondorp's actions were malicious and he caused permanent damage to the China Berry tree.

His actions are relevant as the very old mature China Berry tree is historic and would prevent a additional wall from being built which is the subject of the variance.

What is the deadline for material to be included for the Board of Adjustment packet?

Thank you for your assistance

David Arkules
902 S Ash Ave
Tempe Arizona 85281
Cell. 602.430.4444

--- On Wed, 2/1/12, McGuire, Diane <diane_mcguire@tempe.gov> wrote:

From: McGuire, Diane <diane_mcguire@tempe.gov>
Subject: BOA AGENDA(S)
To: "Karyn Gittlis" <kgittlis@interwrx.com>, "arkules@yahoo.com" <arkules@yahoo.com>, "pattysaint2@yahoo.com" <pattysaint2@yahoo.com>
Cc: "Lesser, Sherri" <sherri_lesser@tempe.gov>
Date: Wednesday, February 1, 2012, 8:47 AM

As noted earlier these agenda(s) will appear in the legal advertisement section of the newspaper on Monday, February 6th. You will be receiving a postcard mailing notification next week.

Diane McGuire

Administrative Assistant II

Community Development Department

480-350-8332 (phone)

480-350-8872 (fax)

Lesser, Sherri

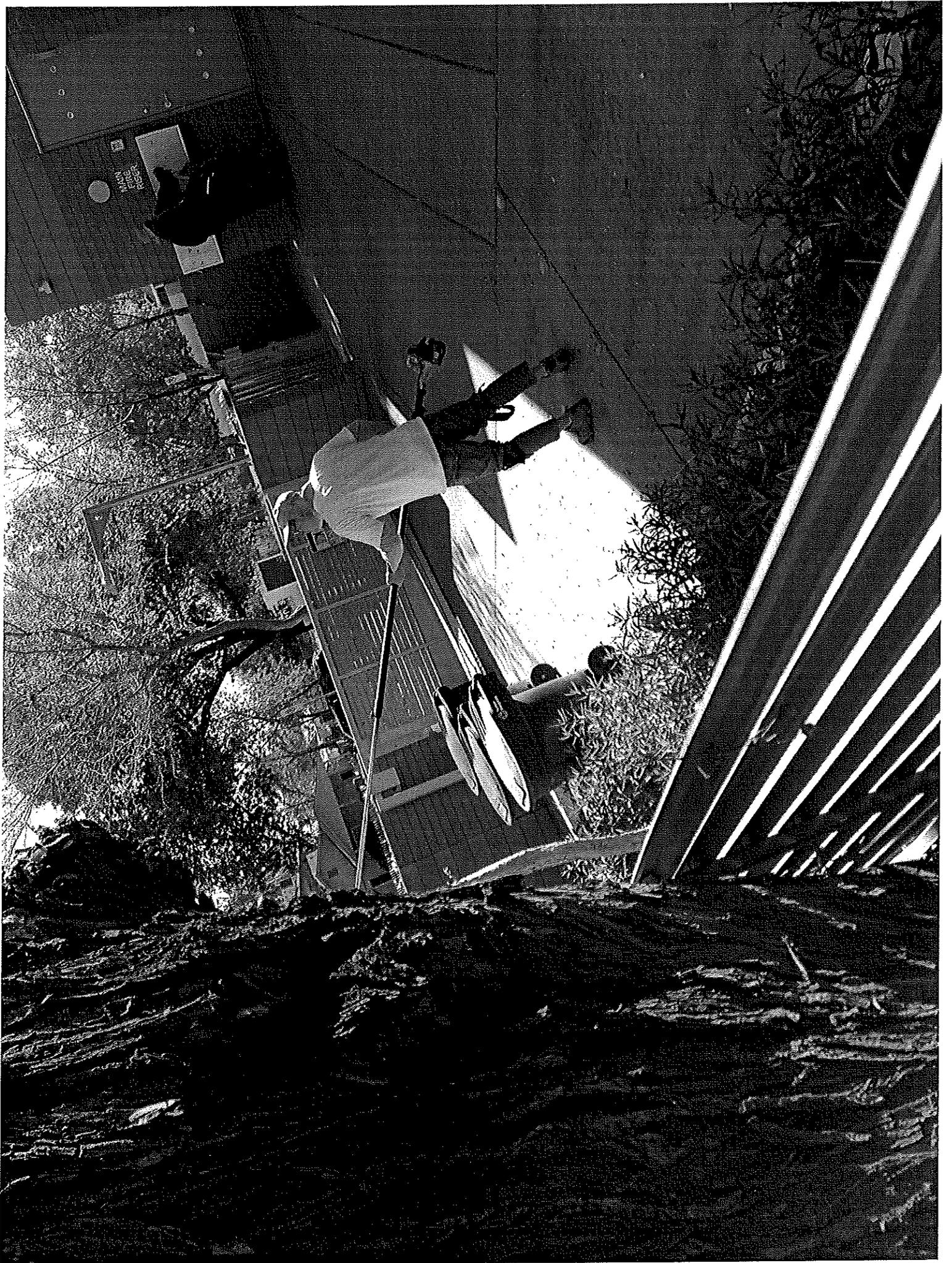
From: David Arkules <arkules@yahoo.com>
Sent: Friday, February 03, 2012 5:38 PM
To: Lesser, Sherri
Subject: Hondorp cutting China Berry tree
Attachments: photo.JPG

Please include attached photo taken on 12/24/11 of Mr. Hondorp using a chain saw on our China Berry Tree

--- On Sat, 12/24/11, **Patty St Vincent** <pattysaint2@yahoo.com> wrote:

From: Patty St Vincent <pattysaint2@yahoo.com>
Subject: Hondorp cutting my tree
To: arkules@yahoo.com
Date: Saturday, December 24, 2011, 2:05 PM

Sent from my iPhone



Lesser, Sherri

From: David Arkules <arkules@yahoo.com>
Sent: Friday, February 03, 2012 5:40 PM
To: Lesser, Sherri
Subject: 902 S Ash Appeal by Rick Hondorp
Attachments: photo.JPG

Please include two photos of Rick Hondorp cutting China Berry tree

--- On Sat, 12/24/11, **Patty St Vincent** <pattysaint2@yahoo.com> wrote:

From: Patty St Vincent <pattysaint2@yahoo.com>
Subject: Hondorp cutting my tree
To: arkules@yahoo.com
Date: Saturday, December 24, 2011, 2:07 PM

Sent from my iPhone

