

Staff Summary Report



Board of Adjustment Hearing Date: October 22, 2008

Agenda Item Number: 2

SUBJECT: This is a public hearing for a request by the **COLEMAN RESIDENCE (PL080305)** located at 5426 South College Avenue to appeal the September 16, 2008 Hearing Officer decision to deny one (1) variance.

DOCUMENT NAME: 20081022dsdp01

PLANNED DEVELOPMENT (0406)

SUPPORTING DOCS: Yes

COMMENTS: Hold a public hearing for an appeal of the September 16, 2008 Hearing Officer's decision to deny the request by the **COLEMAN RESIDENCE (PL080305/VRA08004)** (Steven Coleman, applicant/property owner) located at 5426 South College Avenue in the R1-6, Single Family Residential District for:

VAR08020 Variance to reduce the south street side yard setback from ten (10) feet to one (1) foot.

PREPARED BY: Derek Partridge, Planner I (480-350-8867)

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

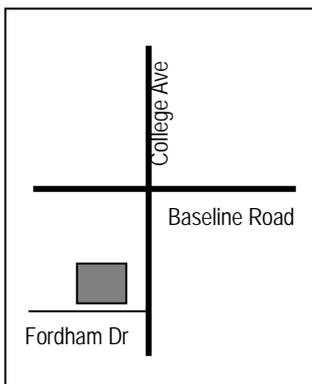
LEGAL REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: Staff – Denial of the appeal

ADDITIONAL INFO: The Coleman Residence is requesting an appeal of the Hearing Officer's decision on September 16, 2008 to deny the variance request to reduce the required side yard setback from ten feet (10') to one foot (1') for an existing freestanding accessory building. The building was constructed without a building permit in 2004 and is located at 5426 South College Avenue in the R1-6, Single Family Residence District. The approximate size of the building is one hundred eighty-six square feet (186 s.f.) and thirteen feet seven inches (13'-7") in height. To date, staff has received four (4) letters of support and a petition signed by fourteen (14) neighbors supporting the original request.

Staff recommends denial of the appeal, thus upholding the Hearing Officer's decision. In accordance with the Zoning and Development Code, the applicant held a neighborhood meeting on August 30, 2008 and no opposition has been received on this request.



- PAGES:**
1. List of Attachments
 2. Comments
 3. Reasons for Denial; 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. Elevation
 7. Applicant Photograph
 - 8-9. Staff Photograph(s)
 - 10-11. Neighborhood meeting signatures of support
 12. Hearing Officer Denial Letter
 13. Hearing Officer Minutes September 16, 2008
 14. Letter of Appeal to the Board of Adjustment
 - 15-18. Letters of Support
 19. Acknowledgement Letter of Appeal (October 1, 2008)

COMMENTS:

Background

The Coleman Residence is requesting an appeal of the Hearing Officer's decision on September 16, 2008 to deny the variance request to reduce the required side yard setback from ten feet (10') to one foot (1') for an existing 186 s.f. freestanding accessory building.

The accessory building is located in the (south) street side yard setback of a typical rectangular corner lot. The subject property is located at the northwest corner of Fordham Drive and College Avenue. The rear and side yards are surrounded by a 6'-0" masonry wall. The adjacent property owner to the south has direct visibility of the building, as it is seven feet, seven inches (7'-7") over the existing wall –with a total height of thirteen feet, seven inches (13'-7"). A use permit is required for any accessory building exceeding two-hundred square feet (200 s.f.) in area and/or eight (8') feet in height. However, the building must meet all required setbacks and since the property currently comprises of an accessory garage and pool, the applicant is unable to meet these requirements.

Variance

The variance is required for the applicant's accessory building because it is located within the required 10'-0" street side yard setback set by the Zoning and Development Code requirements in the R1-6, Single Family Residential District. It was constructed without a building permit, use permit or variance. The Coleman residence was cited by Neighborhood Enhancement for a non-compliant building.

Evaluating the variance, the proposal does not meet the criteria for approving the variance:

- a. There are special circumstances or conditions applying to the land, building, or use referred to in the application;
 - There is no evidence of special circumstance keeping with the land, building or use.
- b. That authorizing the variance is necessary for the preservation and enjoyment of substantial property rights;
 - A reduction of the required side yard setback from ten (10) feet to one (1) foot for an accessory building is not necessary for enjoyment of substantial property rights.
- c. A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner.
 - The owner has created a need for this variance by constructing an illegal non-conforming building without permit that encroaches into the required side yard setback and exceeds height limitations set forth by the Zoning and Development Code; therefore, this is self-imposed by the owner.

Conclusion

The Hearing Officer denied the **variance and use permit** based on the self-imposed nature of the case. However, the Board of Adjustment is taking action on appeal of the **variance** only.

If Approved

If the appeal of the variance is approved, the action will go on to the Development Review Commission to approve the use permit.

If Denied

If the appeal of the variance is denied, the appeal will fail and the applicant will be required to bring the structure into compliance.

Recommendation

Staff recommends denial of the appeal, thus upholding the September 16, 2008 Hearing Officer Decision.

REASON(S) FOR DENIAL:

1. No special circumstances or conditions applying to the land, building or use exist.
2. The authorizing of the variance and use permit are not necessary for the preservation and enjoyment of substantial property rights.
3. Authorization of the variance and use permit may be materially detrimental to persons residing in the vicinity, to adjacent property or to the neighborhood.

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. All required permits and clearances shall be obtained from the Building Safety Division.
2. Accessory Building shall be painted to match main residence.
3. Development Review Commission approval of the use permit for an accessory building as required.

HISTORY & FACTS:

October 5, 1971	Building Permit: #29614 for new single family dwelling
April 30, 1975	Building Permit: #43525 for new garage (accessory building)
June 17, 1975	Building Permit: #44026 for swimming pool
October 28, 1977	Building Permit: #50843 for study room, enclose carport with masonry walls
August 4, 2008	Code Enforcement: #CE085267 for unpermitted detached storage shed
September 16, 2008	Hearing Officer: #080305 use permit denial for accessory building
September 16, 2008	Hearing Officer: #080305 variance denial to reduce side yard setback from 10' to 1'

DESCRIPTION:

Owner – Steve Coleman
Applicant – Steve Coleman
Existing Zoning – R1-6, Single Family Residential District
Side Yard Setback Existing – 10'
Side Yard Setback Proposed – 1'
Accessory Building Height – 13'-7"
Accessory Building Area – 186 s.f.

ZONING AND DEVELOPMENT

CODE REFERENCE:

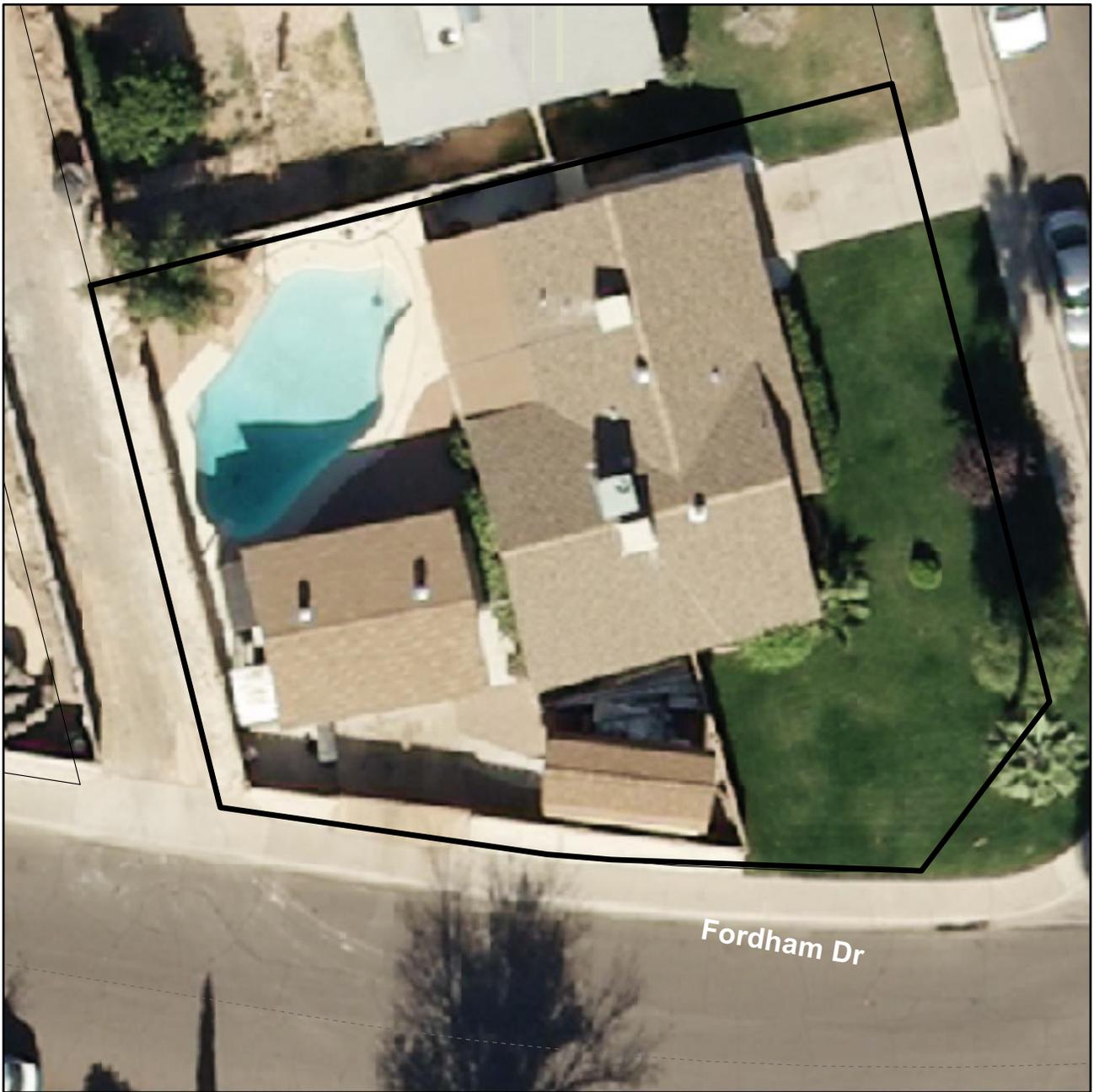
Part 3, Chapter 4, Section 3-401 – Accessory Buildings, Uses and Structures
Part 4, Chapter 2, Section 4-202 – Development Standards for Residential Districts
Part 6, Chapter 3, Section 6-308 – Use Permit
Part 6, Chapter 3, Section 6-309 – Variances

COLEMAN RESIDENCE

PL080305



Location Map



COLEMAN RESIDENCE (PL080305)

To Whom It May Concern

I Steve Coleman am applying for a variance for property at 5426 S College Ave. Tempe, Az 85283, parcel 301-80-081. A variance from zoning setback specifications from 10' to 1'6" for a free standing storage shed.

The shed is used for personal storage. It has no windows, one door, 3'9" x 7' & no electricity. There are two vents on west end, one on east end & one on north side. Also an 18' roof peak vent across top.

The free standing shed measures 10'2 1/2" x 18'3" x 13'7" & sets at back of side yard on Fordham. It is 47'7" from front setback on College Ave., 37'8" from alley setback & 1'6" from side yard setback on Fordham. The building has no over hang & water shed is on property.

Free Standing shed was built using screws for all lumber with vinyl siding & aluminum trim. It sets on four concrete slabs 4" x 8" x 18". Floor is framed with treated lumber 4" x 8" x 18" on each side & 2" x 6" x 112" across 16" on center with 3/4 OSB sheathing walls. 2" x 4" on 24" center with 1/2 OSB sheathing on outside of roof. 2" x 4" with 48" x 48" Pctek ^{48" x 15"} rafters ~~have~~ have 1/2 OSB screwed to both sides at all three joints areas. Has a shingled roof.

I will hold a neighbor hood meeting two weeks prior to public hearing.

Sincerely, Steve Coleman

To Whom It May Concern,

Starting in July of 2004 some neighbors helped me start building a portable storage shed. I had been told without a permanent foundation a permit wasn't needed.

The storage shed was built to store household, outdoor goods & holiday decorations. The house has no storage & no attic storage.

The ~~shed~~ which the shed is on is narrower in the back than the front. The back yard has a large pool & a car garage leaving the side the only place for the shed. The garage has my wife's 1st car, she's 55 & I work ~~in~~ the other side.

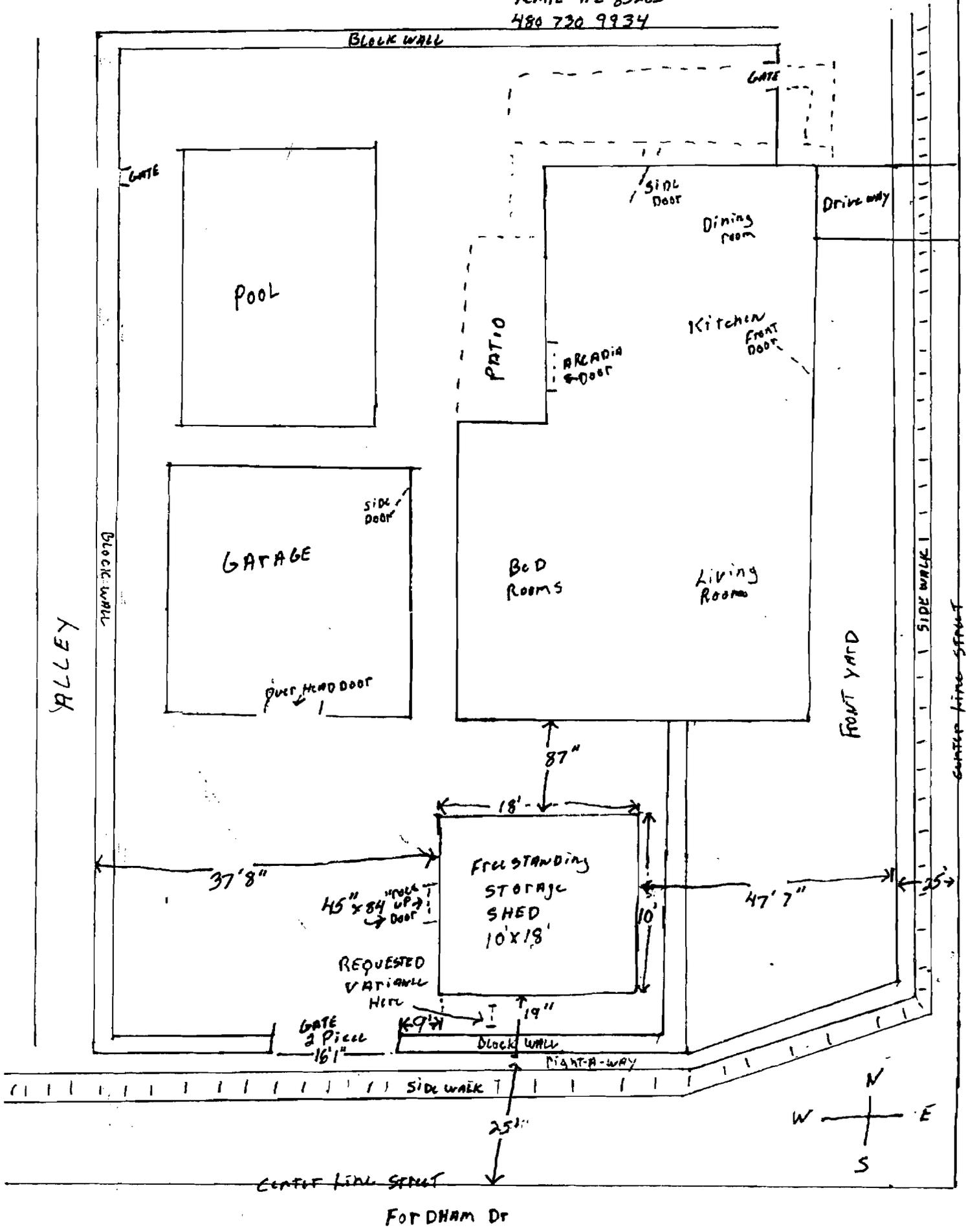
The storage shed has no utilities, vinyl siding, shingled roof, pavers around it & no vegetation growing around it. It's not obstructing views.

I had a neighborhood meeting Aug 30 & have 14 signatures from close neighbors who have no objection to the shed.

PLANNING DEPARTMENT
08 SEP - 4 AM 8:25

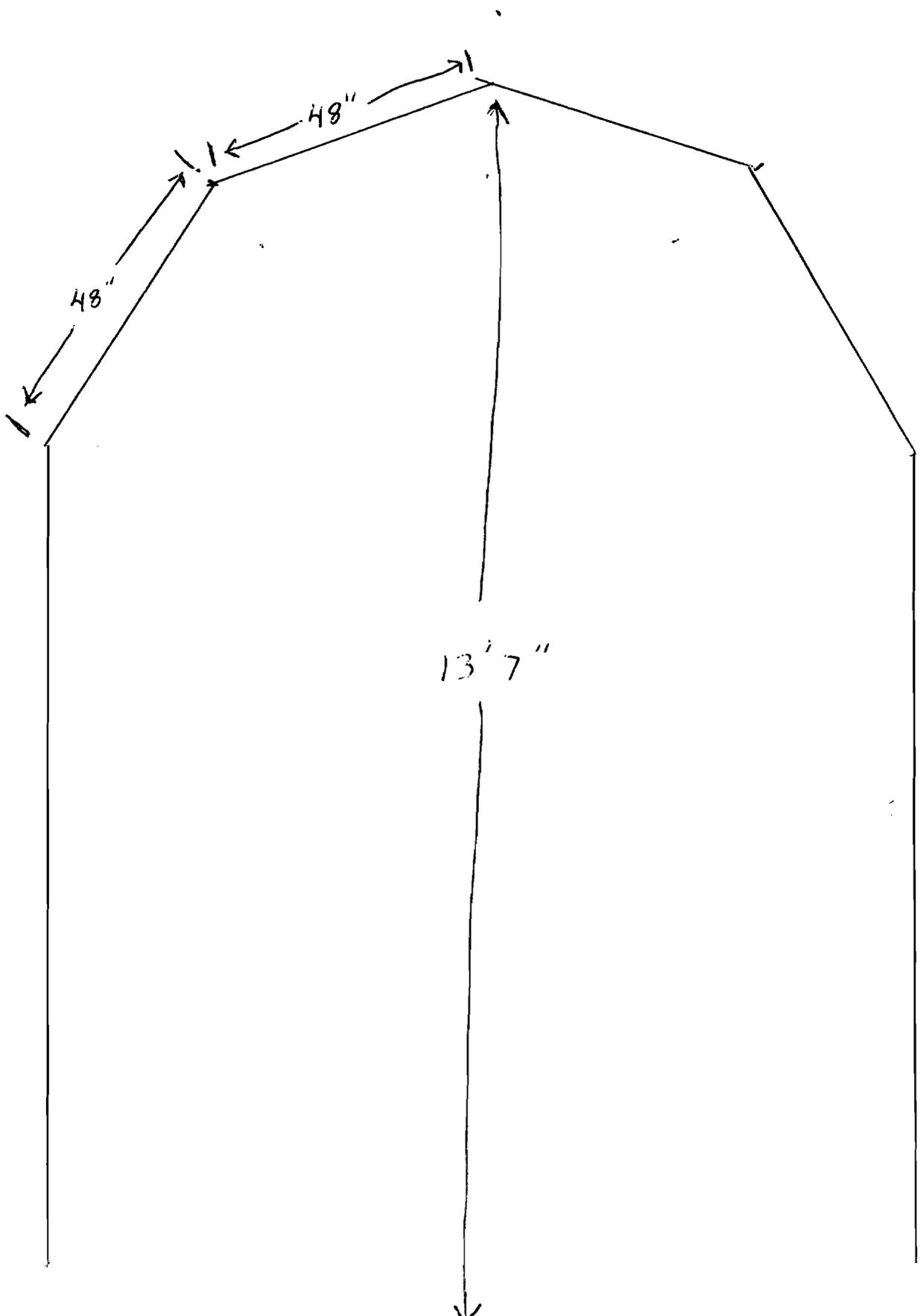
PARCEL 30 80-081

STEVEN GRIMMAN
5426 S COLLEGE AVE
TEMPE AZ 85283
480 720 9934



PARCEL 301-80-081

STEVEN COLEMAN
5426 S COLLEGE AVE
TEMPE AZ 85283
480-730-9934





ATTACHMENT 7



COLEMAN RESIDENCE

5426 SOUTH COLLEGE AVENUE

PL080305

FRONT OF RESIDENCE



COLEMAN RESIDENCE

5426 SOUTH COLLEGE AVENUE

PL080305

**EXISTING ACCESSORY BUILDING –
VIEW TO NORTHWEST**

NO OBJECTION	I OBJECT
ENRIQUE C RIVERA 5433 S. College Ave Tempe, AZ 85283	
JAMES L. ELLIOTT 226 E. FORDHAM DR. TEMPE AZ 85285	
Edward N. Lundy 247 E Fordham Dr Tempe AZ 85283	None
BARBARA S. STAGNER 221 E. FORDHAM DR. TEMPE, AZ. 85283	
John K. Winters 227 E. Fordham Dr. Tempe, AZ 85283	

STEVE COLEMAN
STORAGE SHED
5426 S COLLEGE AVE

neighborhood meeting

NO OBJECTION	I OBJECT
JOHN ARTHURS 5422 S. COLLEGE 85283	5422 S COLLEGE
Phil NETTLES 232 E FORDHAM Cir TEMPE AZ 85283	
KEVIN & KIRSTEN WHIPPS 5419 S. COLLEGE AVE. TEMPE, AZ. 85283	
Sandy & Ron Johnson 5445 S College Ave Tempe 85283	
MIKE LEE 224 E. FORDHAM TEMPE, AZ 85283	
MICHAEL & FELICIA OCHOA 5427 S. COLLEGE AVE TEMPE, AZ	
MR & MRS COSTA 5448 S EL CAMINO DR Tempe AZ 85283	
Robert & Teresa Hosten 236 E. Fordham Cir Tempe Az 85283	<p>RECEIVED SERVICENETWORKS 08 SEP 14 11:08:25</p>
SCOTT MOCH 243 E FORDHAM DR TEMPE AZ 85283	

Development Services
Department

(480) 350-8331 (Phone)

September 19, 2008

FILE COPY

Mr. Steve Coleman
5426 South College Avenue
Tempe, Arizona 85283

RE: **COLEMAN RESIDENCE**
PL080305 / ZUP08132 / VAR08020

Dear Mr. Coleman:

You are hereby advised that at the hearing held September 16, 2008, the Hearing Officer of the City of Tempe, acting in accordance with Section 1-305, Paragraphs C and D, of the Zoning and Development Code:

Denied the request by the **COLEMAN RESIDENCE (PL080305)** (Steven Coleman, applicant/property owner) located at 5426 South College Avenue in the R1-6, Single Family Residential District for:

ZUP08132 Use permit to allow an accessory building.
VAR08020 Variance to reduce the south street side yard setback from ten (10) feet to one (1) foot.

An appeal of this Hearing Officer's decision must be made to the Board of Adjustment within fourteen (14) days of the hearing. You have until **September 30, 2008** to file a formal appeal in writing to the Board of Adjustment if you so desire. Should you decide to submit this written appeal, the appropriate fee must be paid. If your appeal is received by Wednesday, September 24, 2008 it can be placed on the October 22, 2008 Board of Adjustment hearing.

Sincerely,



Derek Partridge
Planner I

DP:dm

cc: File

5. Hold a public hearing for a request by the **COLEMAN RESIDENCE (PL080305)** (Steven Coleman, applicant/property owner) located at 5426 South College Avenue in the R1-6, Single Family Residential District for:

ZUP08132 Use permit to allow an accessory building.

VAR08020 Variance to reduce the south street side yard setback from ten (10) feet to one (1) foot.

Mr. Steve Coleman was present to represent this case. He stated that he had built the building four (4) years ago and has had no complaints regarding the structure, which is 13 feet 7 inches high. It is just storage – there are no windows and no electricity or water to the building. He cannot obtain the use permit to allow the storage building without also getting a variance. The carport had been enclosed to become a room and a two car garage is also located on the property. He has lived in this residence since 2000.

Derek Partridge, staff planner, gave an overview of this case, and stated that no additional public input or information had been received since the staff report had been issued. He noted that 14 signatures of support had been received at the neighborhood meeting as well as letters and e-mails in support of this project.

Mr. John Arthurs, resident of Tempe, Arizona spoke in support of this request. He owns the residence to the north of the Coleman Residence.

Mr. Abrahamson noted that the original home was constructed in 1971 and a building permit was issued for the garage in 1975.

Mr. Partridge explained in response to a question from Mr. Williams that according to the Zoning and Development Code, if this structure was less than 200 s.f. and under 8 feet in height it would not require a variance.

Ms. Lesser stated that if a storage building meets the above criteria it can be located in the rear yard setback; the resident cannot exceed 45% total lot coverage per the ZDC. Any structure would be required to meet Building Code regulations such as distance of separation between structures.

It was noted that the wall could be moved to allow a larger rear yard as long as the wall did not exceed six (6) feet in height. Applicant was instructed to meet with staff with sketches and information on any proposed changes.

Mr. Williams noted that this structure was quite visible from the street due to the height, and did not meet the tests to allow for a variance as defined by the Zoning and Development Code rules and requirements.

DECISION:

Mr. Williams denied PL080305/ZUP08132/VAR08020.

Sept 20, 08
BOA Appeal

To Whom It Concerns,

I am filing ~~an~~ appeal on the denial of a variance & user permit for a portable storage shed which has been in the same place for 4 years. I had a neighborhood meeting Sept 16, '08 & obtained 14 signatures from close neighbors stating they have no objections & the building is in good taste & doesn't diminish the integrity of the neighborhood. Since the denial on the 16th I have obtained 4 letters & can get more if necessary, from close homeowners requesting the approval of the variance & permit.

The denial was only due to the height of the storage building, not the location. The portable shed height is lower than the house. Since there is less than 45% of property under roof there is room to cut top off & place it on ground for ~~an~~ additional storage. I prefer not to do this as ~~neighbors~~ letters state I take a lot of pride in my property keeping it looking quite nice & the only place I could put the roof section is in my side front yard. This would be outside our back yard fenced area.

There are no obstructed views, as far as the neighbors are concerned, due to the portable building.

Thank you for your time.

Sincerely
Steve Cohen

Partridge, Derek

From: felicia.leduc-ochoa@pni.com
Sent: Friday, September 12, 2008 8:32 AM
To: Partridge, Derek
Subject: Shed At 5426 S. College Ave.

I am writing in regards to the shed that Steve Coleman has in his backyard at 5426 S. College Ave. My Family & I have no issues with the shed being placed in his backyard. Nor do we have any issue with the height of the structure. It is well-built, and aesthetically appealing to the eye.

Steve Coleman keeps his yard clean and immaculate. His home & property bring pride to the neighborhood. My husband and I also take pride in our home. We always speak about how we wished that more neighbors were like Steve Coleman! We are surrounded by homes that have overgrown weeds, dirt in the front yard, and a few renters who don't care at all. Our neighbor next door has had a dead palm tree in the front yard for the past 3 years that pigeons nest in. They don't trim their many palm trees in the backyard. Every storm that comes, dumps a huge amount of refuse in our yard. On the North end of College from us, we have neighbors that have no shingles on their roof & cars/trucks everywhere. There are several homes in the neighborhood that are filthy & a disgrace. These issues are of greater concern to me than a well-built, attractive shed structure that is in Steve Coleman's backyard.

Derek, I don't know if I'll be able to make it to the hearing on Tuesday, Sept. 16th, because I am an Outside Sales Executive for the AZ Republic. My work schedule is pretty hectic. **I would like this e-mail to serve as my petition to have the shed stay where it is & at the height that it is.** If you would like to reach me in person, call me at 602-318-0545. Have a great Friday!

Check out [azcentral.com](http://best.azcentral.com)'s Best -- your guide to the Valley's top shopping, dining, e
<http://best.azcentral.com>

Partridge, Derek

From: Mike Ochoa [MOchoa@tdcinteriors.com]
Sent: Friday, September 12, 2008 9:46 AM
To: Partridge, Derek
Subject: Mr. Steve Coleman Residence @ 5426 S. College Ave Tempe AZ

Hello, Mr. Partridge, I am e-mailing you to let you know about my neighbor Mr. Steve Coleman at 5426 S. College Ave. I feel that the erected storage shed that Mr. Coleman has in place is not an nuisance to me and was designed and built in very good taste as far as making it appealing and blending with his home.

If any City Of Tempe Official or just an Individual looking into the neighborhood or surrounding homes, they would notice that Mr. Coleman's residence is one of the most well kept homes in the area. I feel Mr. Coleman's home and home improvements such as the shed he has built adds and gives a positive feedback to my/our neighborhood. I only wish that other surrounding residence would take pride in the upkeep of their properties like Mr. Coleman does! I am not trying to overcome or ignore a violation that City Ordinance's has put into place for keeping our city nice looking and safe keeping and many other good reasons that we can list, however I feel that this particular instance is NOT one of them. There are many other violations in my immediate surrounding neighborhood that need much greater notice and attention for violations than this case, such as neighbors with very tall Palm Trees that need serious upkeep and even a very tall Dead Palm tree that's truly a hazard on several levels! Our Alleyways are another Issue that need much attention, they either need to be grated, paved, or a very good cleaning at the very least! I and other also fell that the alleys are a health and safety issue concern.

As for Mr. Coleman's storage shed, the City OF Tempe and fellow residence, I hope all can make a positive and easy resolution for this case.

I hope you can take these facts and thoughts into consideration, and I thank you for your time.

Respectfully Yours,
Mr. Michael Ochoa
5427 S. College Ave
Tempe Az, 85283

Partridge, Derek

From: t miranda [happygrl3142@yahoo.com]
Sent: Tuesday, September 16, 2008 9:23 AM
To: Partridge, Derek
Subject: Steve Coleman - Hearing today RE: Structure

Mr. Partridge,

My name is Tina. I am a neighbor of Steve Coleman and am writing to let you know he is an asset to our community. He is hard working and always keeps his home and yard immaculate. He obviously cares about our community and the neighborhood appearance.

I understand there is some issue with the storage building he built in his back / side yard. If my opinion counts, I want you to know I have no issue with the structure. It does not detract for the aesthetic appeal on College Ave. It is not an " eyesore ". Steve built the unit with materials that blend with the surroundings and the structure is well maintained.

I work full time as an insurance agent for Progressive Auto Insurance, so will not be able to attend the hearing. I hope this email gets to you in time to consider the information for the hearing.

Sincerely,
Tina Miranda
480-220-6698

Partridge, Derek

From: Arthursk7wp@aol.com
Sent: Saturday, September 13, 2008 12:03 PM
To: Partridge, Derek
Subject: Steve Coleman Property/Hearing

Dear Mr. Partridge,

This letter comes to you in support of Steve Coleman and his request to maintain the structure that is currently in question.

I own the property north and immediately next door to the Colemans' at 5422 S. College. Steve always takes pride in the looks of his property, and even has mowed other neighbors lawns when they looked bad at his own time and expense. He is constantly trying to improve the looks of his home and landscape...in fact he is currently stuccoing and painting his exterior fence walls. In other words, I feel he would not intentionally put up something that he felt was a detriment to the neighborhood.

I have found him to be a great neighbor, and I want to be a good neighbor as well by supporting him in his request for variance.

The structure in question is no bother to me at all.

Thanks for your consideration,

John Arthurs
Arthurs Investments LLC
5422 S. College
Tempe, AZ 85283
602-531-7094

Pssst...Have you heard the news? [There's a new fashion blog, plus the latest fall trends and hair styles at StyleList.com.](#)

Development Services
Department

(480) 350-8331 (Phone)

October 1, 2008

FILE COPY

Mr. Steve Coleman
5426 South College Avenue
Tempe, Arizona 85283

**RE: COLEMAN RESIDENCE
PL080305 / ZUP08132 / VAR08020 / VRA08004**

Dear Mr. Coleman:

Your appeal of the September 16, 2008 Hearing Officer decision to deny the request by the **COLEMAN RESIDENCE (PL080305)** (Steven Coleman, applicant/property owner) located at 5426 South College Avenue in the R1-6, Single Family Residential District for a setback variance to reduce the south street side yard setback from ten (10) feet to one (1) foot has been received.

This appeal is scheduled to be heard at the **October 22, 2008** Board of Adjustment hearing which will be held at 6:00 PM in the Council Chambers at 31 East Fifth Street. A study session begins at 5:30 PM in the Council Chambers. The Board of Adjustment reserves this study session time to discuss informally any item(s) appearing on the Regular Hearing Agenda, including questions/answers. Only procedural decisions will be made in the Study-Session.

Should the Board of Adjustment approve this variance request, an appeal to September 16, 2008 Hearing Officer's denial of the use permit will need to be processed by the Development Review Commission.

If you have any questions, please contact me at 480-350-8867.

Sincerely,



Derek Partridge
Planner I

DP:dm

cc: File