

Staff Summary Report



City Council Meeting Date: February 5, 2009

Agenda Item Number: 14

SUBJECT: This is a public hearing for an appeal by the **COLEMAN RESIDENCE (PL080305/UPA08007)** (Steven Coleman, applicant/property owner), located at 5426 South College Avenue in the R1-6, Single Family Residential District, of the November 18, 2008 Development Review Commission's decision to uphold the September 16, 2008 Hearing Officer's denial for one (1) use permit.

DOCUMENT NAME: 20090205dsdp01

PLANNED DEVELOPMENT (0406)

SUPPORTING DOCS: Yes

COMMENTS: Hold a public hearing for the appeal by the **COLEMAN RESIDENCE (PL080305/UPA08007)** (Steven Coleman, applicant/property owner), located at 5426 South College Avenue in the R1-6, Single Family Residential District, of the November 18, 2008 Development Review Commission's decision to uphold the September 16, 2008 Hearing Officer's denial of the following:

ZUP08132 Use permit to allow an accessory building.

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

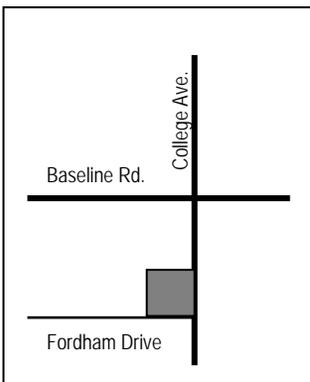
REVIEWED BY: Lisa Collins, Development Services Planning Director (480-350-8989)
Chris Anaradian, Development Services Department Manager (480-858-2204)

LEGAL REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: Staff – Approval

ADDITIONAL INFO: The applicant, Steve Coleman, is requesting an appeal of the November 18, 2008 Development Review Commission's decision to uphold the September 16, 2008 Hearing Officer's denial of a use permit request 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 approval of the appeal, thus overturning the Hearing Officer's decision. The use permit complies with the Zoning and Development Code criteria for granting approval. 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. Comments; Reasons for Approval
 4. Conditions of Approval; History & Facts; Description
 5. 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 of Hearing Officer Decision
 - 15-18. Letters of Support
 19. Acknowledgement Letter of Appeal (October 1, 2008)
 20. Board of Adjustment Approval Letter (October 27, 2008)
 21. Board of Adjustment Approval Letter MODIFIED (November 3, 2008)
 - 22-24. Board of Adjustment Minutes October 22, 2008
 - 25-26. Development Review Commission Minutes November 18, 2008
 27. Development Review Commission Minutes December 9, 2008
 28. Letter of Appeal to City Council (December 15, 2008)
 29. Acknowledgement Letter of Appeal (December 16, 2008)

HEARING OFFICER, SEPTEMBER 16, 2008, SUMMARY:

The Hearing Officer denied a variance (reduce side yard setback from 10' to 1') and a use permit for an accessory building.

The Hearing Officer Minutes are attached – see Attachment No. 13

BOARD OF ADJUSTMENT, OCTOBER 22, 2008, SUMMARY:

The Board of Adjustment approved an appeal (6-0 vote) of the September 16, 2008 Hearing Officer decision to deny the variance (reduce side yard setback from 10' to 1'), thus overturning the Hearing Officer decision to deny the variance.

The Board of Adjustment Minutes are attached – see Attachment Nos. 22, 23 & 24

DEVELOPMENT REVIEW COMMISSION, NOVEMBER 18, 2008, SUMMARY:

The applicant requested a continuance of the appeal of the September 16, 2008 Hearing Officer decision to deny the use permit request to allow an accessory building due to a short commission. Out of the six (6) commission members present, three (3) were for the request and three (3) were against the request.

The Development Review Commission Minutes are attached – see Attachment Nos. 25 & 26

DEVELOPMENT REVIEW COMMISSION, DECEMBER 9, 2008, SUMMARY:

The Development Review Commission denied the appeal (4-3 vote) of the September 16, 2008 Hearing Officer decision to deny the use permit request to allow an accessory building in the R1-6 Single Family Residence District, thus upholding the Hearing Officer decision to deny the use permit.

The Development Review Commission Minutes are attached – see Attachment No. 27

COMMENTS FOR CITY COUNCIL, FEBRUARY 5, 2009:

The applicant, Steve Coleman, has filed for an appeal to the Development Review Commission's decision to uphold the September 16, 2008 Hearing Officer's denial for a use permit. This application comes after Development Review Commission members denied the appeal for a use permit to allow an existing accessory building to remain in the R1-6 Single Family Residence District. Staff initially recommended denial of the use permit and variance based on the finding that the request did not meet the tests for approval of a variance. Through an appeal, the Board of Adjustment granted a variance to this property which reduced the setback for the accessory building. Staff was moreover opposed to the location of the structure versus the use of the structure, thus staff has modified their recommendation of the use permit to approval for the accessory building. Staff's review of the use permit, without consideration of the variance, resulted in the finding that the request meets the criteria for approval of a use permit. The Coleman Residence has received enormous neighborhood support for their request with no opposition received to date.

Use Permit

The Zoning and Development Code requires a use permit for accessory buildings that exceed 8 feet in height and/or 200 square feet in area in all zoning districts.

Evaluating the use permit, the proposal meets the use permit criteria listed below:

- a. Any significant increase in vehicular or pedestrian traffic in adjacent areas;
 - There will be no significant increase in vehicular or pedestrian traffic in adjacent areas.
- b. Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat, or glare at a level exceeding that of ambient conditions;
 - The use should not create any nuisances.
- c. Contribution to the deterioration of the neighborhood or to the downgrading of property values which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the City's adopted plans, or General Plan;
 - The proposed development would not contribute to neighborhood deterioration or downgrade property values. This use permit request is consistent with the General Plan 2030's Land Use Element.
- d. Compatibility with surrounding structures and uses;
 - The proposed use appears to be compatible with surrounding uses as many adjacent properties also utilize accessory buildings for storage.
- e. Adequate control of disruptive behavior both inside and outside the premises, which may create a nuisance to the surrounding area or general public;
 - The proposed accessory building will be utilized for storage and should not create nuisance to the surrounding area or general public.

Conclusion

Staff recommends approval of the appeal, thus overturning the December 9, 2008 Development Review Commission's decision to uphold the September 16, 2008 Hearing Officer's decision to deny the use permit for an accessory building.

REASON(S) FOR APPROVAL:

1. Traffic generated by this use should not be excessive.
2. There will be no apparent damage or nuisance arising from noise, smoke, odor, dust, vibration or illumination.
3. The use appears to be compatible/ancillary to the single family residence.

THE FOLLOWING CONDITIONS OF APPROVAL WERE ASSIGNED BY THE BOARD OF ADJUSTMENT AS INDICATED:

**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. One (1) 24" box tree shall be planted in the front yard east of the existing accessory building to screen the view from College Avenue.

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
February 3, 1977	808 Zoning Code in effect
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 and variance denial to reduce side yard setback from 10' to 1'
October 22, 2008	Board of Adjustment: #080305 appeal of September 16, 2008 Hearing Officer decision to deny the variance (reduce side yard setback from 10' to 1') approved, thus overturning the Hearing Officer decision and approved the requested variance (6-0 vote)
November 18, 2008	Development Review Commission: #UPA08007 appeal of September 16, 2008 Hearing Officer decision to deny the use permit continued by request of the applicant to the December 9, 2008 Development Review Commission meeting due to a short commission (3 for request, 3 against)
December 9, 2008	Development Review Commission: #UPA08007 appeal of September 16, 2008 Hearing Officer decision to deny the use permit denied (4-3 vote)

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**

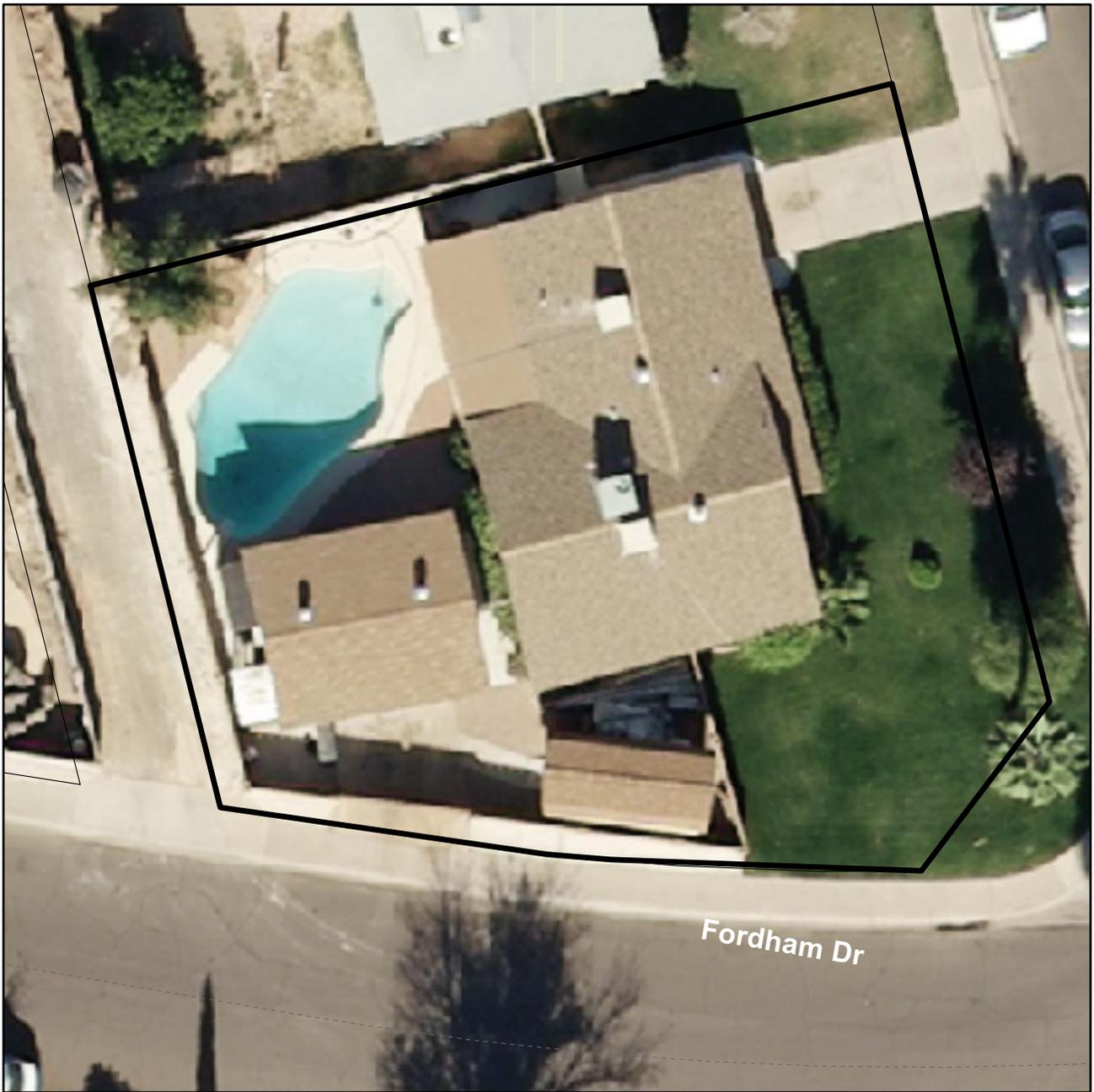
CODE REFERENCE: Part 3, Chapter 4, Section 3-401 – Accessory Buildings, Uses and Structures
Part 4, Chapter 2, Section 4-202 – Development Standards for Residential Districts
Part 6, Chapter 3, Section 6-308 – Use Permit
Part 6, Chapter 3, Section 6-309 – Variances

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.

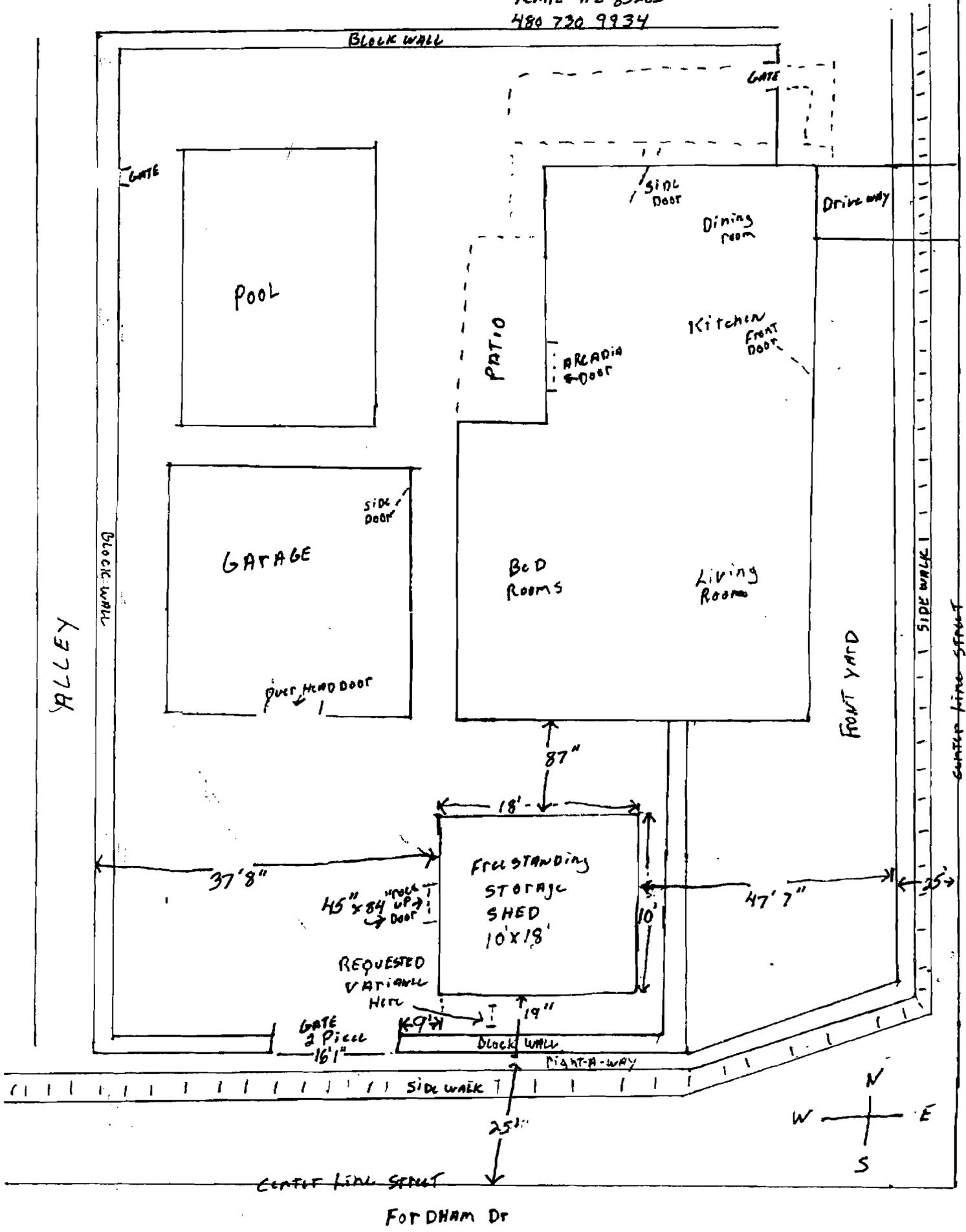
The storage shed has no utilities, vinyl siding, shingled roof, pavers around it & no vegetation growing around it. It's not obstructing views.

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

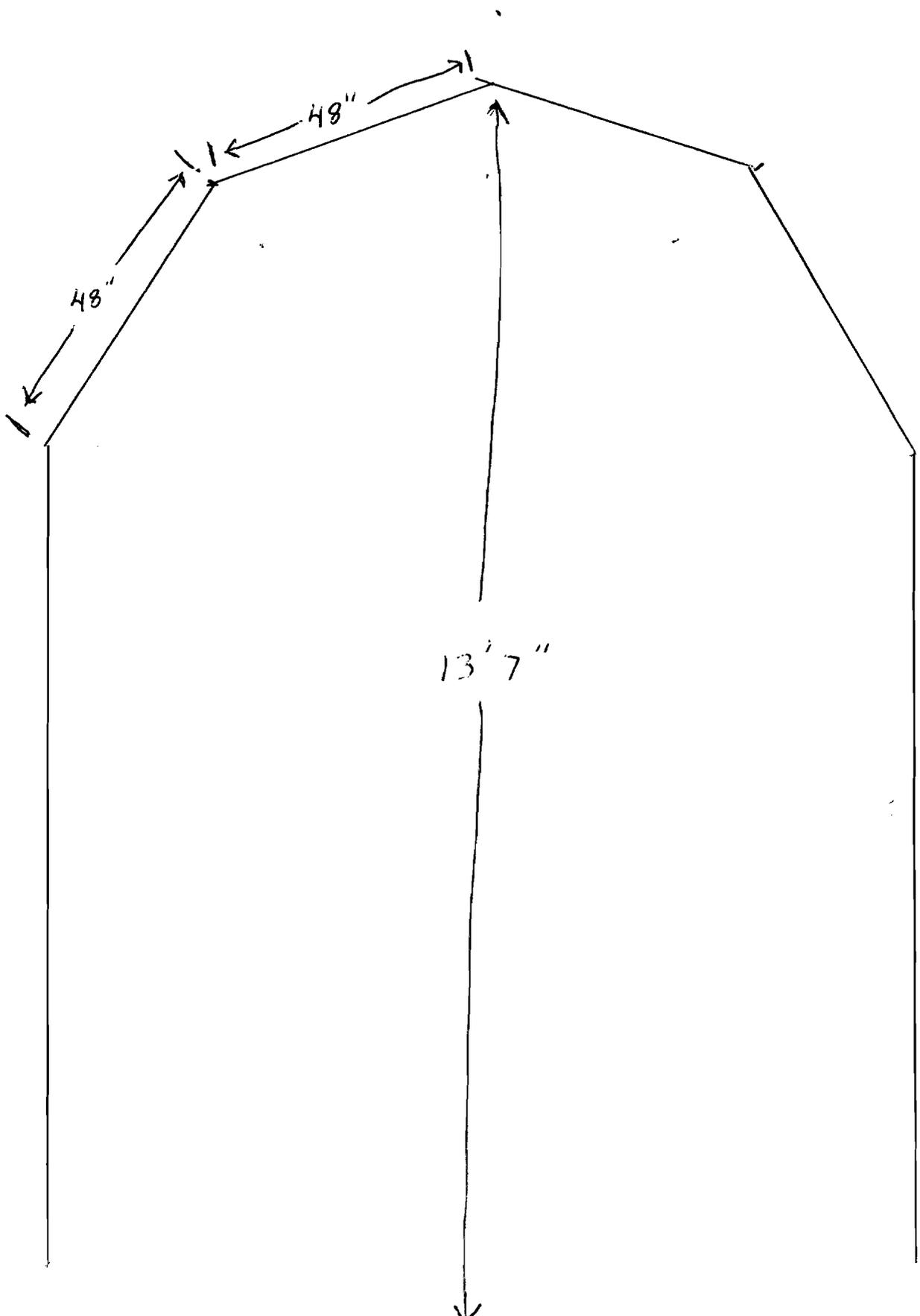
PARCEL 30 80-081

STEVEN CRAMER
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	08 SEP 14 11:08:25 SERVICENETWORKS
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 felt 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

Development Services
Department

(480) 350-8331 (Phone)

October 27, 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 was heard by the Board of Adjustment on October 22, 2008.

At that time, the Board approved this variance subject to the following conditions 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.

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

Sincerely,



Derek Partridge
Planner I

DP:dm

cc: File

Development Services
Department

(480) 350-8331 (Phone)

~~October 27, 2008~~ November 3, 2008

MODIFIED
To include COA #4

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 was heard by the Board of Adjustment on October 22, 2008.

At that time, the Board approved this variance subject to the following conditions 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.
4. **One (1) 24" box tree shall be planted in the front yard east of the existing accessory building to screen the view from College Avenue. ADDED BY BOARD OF ADJUSTMENT**

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

Sincerely,



Derek Partridge
Planner I

DP:dm

cc: File

FILE COPY

Joe Arredondo

Number of Interested Citizens Present: 3

Hearing convened at 6:00 p.m. and was called to order by Vice Chairman Winter. He noted that a short Board was present tonight although there was a quorum present to approve or disapprove any request. It was the applicant's right to proceed or to ask for a continuance, Mr. Winter stated.

On a motion by Dr. Adhikari, seconded by Matt Taillon, the Board by a vote of 4-0 approved the Board of Adjustment minutes for March 26, 2008.

(Todd Green and Jonathan Gillan abstained from this vote as they were not in attendance at the March 26, 2008 Board of Adjustment hearing.)

MR. ABRAHAMSON, PLANNING AND ZONING COORDINATOR, NOTED THAT THE FOLLOWING AGENDA ITEM HAD BEEN CONTINUED AT THE REQUEST OF THE PROPERTY OWNER DUE TO THE PRESENCE OF A SHORT BOARD THIS EVENING:

Appeal of the September 16, 2008 Hearing Officer's decision to approve the request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **BROWN RESIDENCE (PL080244/ABT08015/ABA08003)** (Kenton Brown, appeal applicant/property owner) Complaint CE080124 located at 1208 West Malibu Drive in the R1-6, Single Family Residential District for an open period of 180 days.

THE BOARD DISCUSSED THE FOLLOWING CASE(S):

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.

Mr. Steve Coleman was present to represent this case. He stated that he would like to proceed with the case this evening rather than continue it due to the short Board.

Sherri Lesser, staff planner, gave a brief overview of the case. The structure was built in 2004 without benefit of a permit. Four (4) letters of neighborhood support have been submitted by this applicant in addition to a petition of fourteen (14) signatures of support for this request.

Mr. Coleman noted that he used the building for storage only, that there was no electricity or water in the building or do any work in it.

In response to a question from Dr. Adhikari, Mr. Coleman explained that the height of the building was due to the fact that there was an upstairs inside. Should this request for a variance not be approved, he would remove the top half of the storage building (i.e. upstairs area) and place it next to the existing building as a secondary/additional storage unit. He has too much invested in the building to just destroy the top half in order to decrease the height of the existing building. He stated that he could not understand that rather than have an over-height building, the City would rather that there be more structures on his property. All of his immediate as well as the surrounding neighbors were in support of this request.

Mr. Coleman responded to questions by Mr. Gillan that he was unaware that there were height/size restrictions as the building was considered a portable building. The upstairs of this storage area is used to house Christmas lights/decorations and camping equipment.

Mr. Bill Barone, Tempe resident, spoke in support of this request stating that this is a beautiful shed and the property is well maintained by the owner. He did not see any reason why this request should not be granted.

Mr. Winter complimented Mr. Coleman on the condition of his property and his obvious pride in the neighborhood.

Ms. Lesser stated, in response from a question from Mr. Green, that there is only support, no opposition from the neighborhood.

Possible alternatives, such as shifting the front wall, were discussed. Mr. Coleman noted that moving the wall would adversely affect his front yard landscaping. This is a solidly constructed building, and, other than the height, there is no problem with the building.

Ms. Lesser noted that staff was not opposed to Mr. Coleman having this building, it was more the location of it.

Board members addressed the issue that Board had to consider that approval of this case may set a precedent for other property owners in this neighborhood. It was noted that this storage shed has existed for four year without any complaint or negative comment from the surrounding neighbors.

MOTION: Dr. Adhikari made a motion to approve the appeal and allow the variance thereby overturning Hearing Office decision of September 16, 2008 subject to four (4) conditions of approval; Jonathan Gillan seconded the motion.

VOTE: Approved 6-0

Approval subject to the following conditions 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 is required.

4. **One (1) 24" box tree shall be planted in the front yard east of the existing accessory building to screen the view from College Avenue. ADDED BY BOARD OF ADJUSTMENT**

The next Board of Adjustment hearing is scheduled for November 19, 2008.

There being no further business the hearing adjourned at 6:42 p.m.

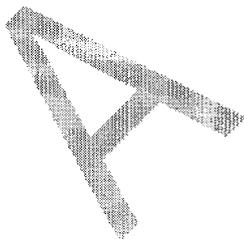
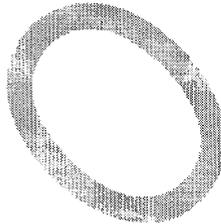
Prepared by: Diane McGuire, Administrative Assistant II

Reviewed by:



Steve Abrahamson
Planning & Zoning Coordinator

SA:dm



5. Request for **SUNRISE PRESCHOOL (PL080400)** (Robert Orsi, GRRO VI LLC, property owner; Eric Leibsohn, Eric Leibsohn & Assoc. LTD., applicant) for the redesign of an existing building and site for a childcare facility consisting of a 16,657 s.f., single story building on 1.72 acres, located at 1628 East Broadway Road in the CSS, Commercial Shopping and Services District. The request includes the following:

DPR08238 – Development Plan Review including site plan, building elevations and landscape plan.

STAFF REPORT: [DRCr_Sunrise_111808.pdf](#)

REGULAR AGENDA

3. Appeal of the September 16, 2008 Hearing Officer's 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. The request includes the following:

UPA08007 – (ZUP08132) Use permit to allow an accessory building.

STAFF REPORT: [DRCr_ColemanResidenceAppeal_111808.pdf](#)

This case was presented by Derek Partridge and represented by Steven Coleman.

Mr. Coleman made a brief presentation regarding the purpose of the shed and how it came to be built. Mr. Coleman stated he designed and built the shed himself and was unaware of the height restriction and did not become aware of the issue until four years later. Mr. Coleman held a neighborhood meeting and received 14 signatures, with no complaints.

Commissioner Oteri: You were involved in construction industry, were you ever concerned there might be a permit necessary?

Coleman: No. Many of my neighbors have portable buildings so in speaking with them, I was under the impression one was not needed since the building is less than 200 s.f.

Commissioner Webb: Your house is by far the nicest house in the neighborhood; do you feel that since your house is kept up that the neighbors are more supportive of the shed than if you didn't maintain your property as well?

Coleman: I feel it's because the shed looks nice and is well built. The variance was granted 6-0.

Commissioner Attridge: Referring to the location map, which neighbors signed in favor of the Use Permit?

Coleman pointed out the neighbors on the map.

Chair MacDonald: Structure is out of scale with the surroundings and I don't feel it's appropriate.

Chair MacDonald opened the hearing to public input:

Two citizens spoke in support of the Use Permit.

Chair MacDonald closed the hearing to public input.

DiDomenico: We see universal support from the neighborhood, I will support.

Attridge: Architecture of structure is not compatible with his house or any other house and he may not always live in this house and it may not always be kept up in the manner in which it is now, I will not support.

Tinsley: I believe a phone call should have been made to the City but the structure has been there for four years with no complaints, I will support it.

Webb: The shed is very tall and very out of place, will not support.

Oteri: Four years is almost grandfathered. While I think it sets bad precedent, due to the time frame it has been there, I will support.

Chair MacDonald: I cannot support it. At this point in time, we have three Commissioners each for and against the Use Permit. Ms. Collins can you give us some direction?

Lisa Collins: We have a process in which we can ask the applicant if they wish to continue the case due to a short commission. Since you are in a split decision, I suggest that the applicant be asked if he would be interested in continuing the case.

DiDomenico: If we took a vote right now and it was a split vote, would that not leave the denial in place and allow the applicant to move forward to the next body, which would be City Council?

Collins: Yes, if there was not a majority voting in favor, the denial would stand and the applicant would then have the opportunity to appeal your decision to the City Council.

Chair MacDonald to Mr. Coleman: Do you have a preference as to how you wish to proceed?

Coleman: If you vote it will just stay split and we'll have to come back.

On a motion by Commissioner DiDomenico and seconded by Commissioner Webb, the Commission with a vote of 6-0 continued this case to the December 9, 2008 hearing.

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4. Request for **BASELINE RETAIL (PL080308)** (Steven C. Cooper, owner; Chris Fergis, Fergis & Harding, Inc., applicant) for a 10,000 s.f. retail and restaurant building on +/- 1.59 net acres. The site is located at 2005 West Baseline Road in the CSS, Commercial Shopping and Services District. The request includes the following:

DPR08178 – Development Plan Review including site plan, building elevations and landscape plan.

THIS CASE WAS CONTINUED FROM THE SEPTEMBER 9, 2008 AND OCTOBER 28, 2008 DEVELOPMENT REVIEW COMMISSION HEARINGS

STAFF REPORT: [DRCr_2nd_Baseline_Retail_111808.pdf](#)

Chair McDonald leaves the hearing and Vice Chair DiDomenico becomes Acting Chair. Commissioner Nicpon is in the audience and takes his seat on the dais.

This case is presented by Kevin O'Melia and represented by Michael Murray (the developer's legal representative).

Acting Chair DiDomenico advised the applicant of the opportunity for a continuance due to a short Commission.

Mr. Murphy made a brief presentation regarding the design, meeting with the hotel and driveway design/access.

Chris Fergis, the architect, briefly presented site plan, landscape plan and elevations which included east patio.

Oteri: Is there access into this site for westbound traffic on Baseline Road?

Fergis: Not directly. They will have to go down the street and turn around.

REGULAR AGENDA

3. Appeal of the September 16, 2008 Hearing Officer's 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. The request includes the following:

UPA08007 – (ZUP08132) Use permit to allow an accessory building.

THIS CASE WAS CONTINUED FROM THE NOVEMBER 18, 2008 HEARING

STAFF REPORT: [DRCr_ColemanResidenceAppeal_120908.pdf](#)

This case was presented by Derek Partridge and represented by Steven Coleman, applicant.

Mr. Coleman made a brief presentation regarding the purpose of the shed and how it came to be built. Mr. Coleman stated he designed and built the shed himself and was unaware of the height restriction and did not become aware of the issue until four years later. Mr. Coleman held a neighborhood meeting and received 14 signatures, with no complaints.

Mr. Coleman answered questions from Commissioners regarding the painting of the building, how it is secured to the foundation and how portable it is.

Chair MacDonald questioned staff as to whether or not a building permit would be required if the appeal was upheld. Mr. Partridge indicated it would be.

The hearing is opened for public comment.

One citizen spoke in support of the appeal.

Chair MacDonald closed the hearing to public comment and called Mr. Coleman back to the podium.

Mr. Coleman stated he would be willing to comply with any terms of a building permit or conditions the Commission would place on an approval of the appeal.

Commissioner Nicpon: Due to the location of the house, I support the appeal.

Commissioner Webb: I can't support the appeal.

Commissioner Attridge: My position hasn't changed, I can't support the appeal.

Commissioner Torregrossa: As long as the neighbors don't have an issue and he's willing to abide by any and all conditions, I will support the appeal.

Commissioner Kent: The structure is well built but out of scale so I cannot support the appeal.

Commissioner Swanson: Is it possible that if a new neighbor moves in that they could speak against the Use Permit?

Lisa Collins: There is a revocation process for Use Permits but there would need to be grounds and it would go back to a board or commission to determine if it is revocable. Typically revocation of a Use Permit is more use based; this Use Permit is for a structure, so it's a little unique.

Chair MacDonald: My opinion hasn't changed, I don't think it's compatible and I will not support the appeal.

A motion by Commissioner Nicpon and seconded by Commissioner Torregrossa was made to approve the appeal and over turn the Hearing Officer's denial, the Commission with a vote of 4-3 denied the appeal and upheld the Hearing Officer's denial of the Use Permit (Commissioners MacDonald, Webb, Kent and Attridge opposed).

To Whom It May Concern,

12-15-2008

I Steve Coleman of 5426 S College Ave, Tempe, AZ am requesting a meeting with the Tempe City Council. The purpose is to appeal the denial of user permit by the Development Review Commission 12-9-2008.

10-22-2008 The Board of Adjustments approved a variance ^{with} 6 votes.

In 4 yrs, there have been no complaints with the building. Thank You,

Sincerely,
Steve Coleman

City of Tempe
P.O. Box 5002
31 East Fifth Street
Tempe, AZ 85280
480-350-8872 (FAX)



Development Services
Department

(480) 350-8331 (Phone)

December 16, 2008

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

**RE: COLEMAN RESIDENCE
PL080305 / ZUP08132 / UPA08007**

Dear Mr. Coleman:

Your appeal of the November 18, 2008 decision by the Development Review Commission to uphold the Hearing Officer's decision of September 16, 2008 that denied your request for a use permit to allow an accessory building has been received.

This appeal will be placed on the City Council Agenda for January 22, 2009. This hearing will be held at 7:30 PM in the Council Chambers at 31 East Fifth Street.

Sincerely,

A handwritten signature in black ink, appearing to read 'Derek Partridge'.

Derek Partridge
Planner I

DP:dm

cc: File