

**Minutes
HEARING OFFICER
JULY 19, 2011**

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

Present:

Vanessa MacDonald, Hearing Officer
Steve Abrahamson, Planning & Zoning Coordinator
Sherri Lesser, Senior Planner

Number of Interested Citizens Present: 8

Meeting convened at 1:30 PM and was called to order by Ms. MacDonald. She noted that anyone wishing to appeal a decision made today by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) days by August 2, 2011 at 3:00 PM to the Community Development Department.

1. Ms. MacDonald noted that the Hearing Officer Minutes for July 5, 2011 had been reviewed and approved.

2. Ms. MacDonald noted that the following items had been removed from today's agenda:
 - Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **MORALES-PUNIT-INDUCIL PROPERTY (PL110228 /ABT11016 /CE111101)** (Michael Spencer, Inspector; Reynaldo Morales, Alex Punit and Noel Inducil, property owners) located at 1436 South Kenneth Place in the R-4, Multi-Family Residential General District.
WITHDRAWN BY CODE COMPLIANCE

 - Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **ZANOTTI PROPERTY (PL110235 /ABT11022 /CE111417)** (Brandy Zedlar, Inspector; Chris Zanotti, property owner) located at 1059 West Cornell Drive in the R1-6, Single Family Residential District.
WITHDRAWN BY CODE COMPLIANCE

 - Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **NICHOLSON PROPERTY (PL110236 /ABT11023 /CE111648)** (Brandy Zedlar, Inspector; Zachary Nicholson, property owner) located at 1220 West Malibu Drive in the R1-6, Single Family Residential District.
WITHDRAWN BY CODE COMPLIANCE

- Request by **SOUTHWEST COLLEGE OF NATUROPATHIC MEDICINE - SHINE COFFEE LLC (PL110238)** (Laryn Callaway-Blok, applicant; SW College of Naturopathic Medicine, property owner) located at 2140 East Broadway Road, in the GID, General Industrial District for:

ZUP11058 Use permit to allow outdoor retailing (mobile merchant).
WITHDRAWN BY APPLICANT

3. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **BAC HOME LOANS SERVICING LP PROPERTY (PL110230 /ABT11017 /CE111539)** (Jack Scofield, Inspector; BAC Home Loans Servicing LP, property owner) located at 254 West Krista Way in the R1-7, Single Family Residential District.

No one was present to represent the property owner.

Jack Scofield, Code Inspector explained that there have been complaints regarding deteriorated landscaping (over height weeds and grass) and a deteriorated pool with green stagnant water. Staff is requesting an open abatement period of 180 days to prevent repeated property neglect and neighborhood decline.

Ms. MacDonald noted that this request meets the criteria for properties in disrepair.

DECISION:

Ms. MacDonald approved abatement proceedings for PL110230 /ABT11017 /CE111539 for an open period of 180 days.

4. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **LAMB PROPERTY (PL110231 /ABT11018 /CE111465)** (Jack Scofield, Inspector; Candice Lamb, property owner) located at 4406 South Stanley Place in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Jack Scofield, Code Inspector explained that complaints had been received regarding deteriorated landscape, trash/debris, and an unsecured deteriorated pool. Inspection revealed that the side gate leading to the rear yard pool had broken down, and a deteriorated pool with green stagnant water existed. An emergency abatement was performed to rectify the pool area issue(s) for \$243.00. The remainder of the conditions have been resolved, Mr. Scofield stated, and staff is only asking that the amount of the emergency amount of \$243.00 be abated.

Ms. MacDonald noted that this request meets the criteria for properties in disrepair.

DECISION:

Ms. MacDonald approved emergency abatement costs of \$243.00 for PL110231 /ABT11018 /CE111465.

5. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **STEFANIAK PROPERTY (PL110232 /ABT11019 /CE111386)** (Jack Scofield, Inspector; Thomas Stefaniak, property owner) located at 1849 East Harvard Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Jack Scofield, Code Inspector explained that complaints had been received regarding deteriorated landscape. Grass and weeds are growing in the gravel areas of the front and side yards, and over height grass and weeds are present in the rear yard. Staff is requesting an open abatement period of 180 days to prevent repeated property neglect and neighborhood decline.

Ms. MacDonald noted that this request meets the criteria for properties in disrepair.

DECISION:

Ms. MacDonald approved abatement proceedings for PL110232 /ABT11019 /CE111386 for an open period of 180 days.

6. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **TILLEY PROPERTY (PL110233 /ABT11020 /CE110231)** (Brandy Zedlar, Inspector; Felix Tilley Jr., property owner) located at 23 West Fairmont Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Brandy Zedlar, Code Inspector explained that complaints had been received regarding deteriorated landscape. The property had been abated on 4/30/10 but continues to be a problem. As of 6/16/11 there was still one (1) dead tree in the back yard, and over height grass and weeds in the front and back yards. Staff is requesting an open abatement period of 180 days to prevent repeated property neglect and neighborhood decline.

Ms. MacDonald noted that this request meets the criteria for properties in disrepair.

DECISION:

Ms. MacDonald approved abatement proceedings for PL110233 /ABT11020 /CE110231 for an open period of 180 days.

7. Request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **BAC HOME LOANS SERVICING PROPERTY (PL110234 /ABT11021 /CE111152)** (Brandy Zedlar, Inspector; BAC Home Loans Servicing, property owner) located at 120 East Balboa Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Brandy Zedlar, Code Inspector explained that complaints had been received regarding deteriorated landscape and a green pool. The property has a green pool, height grass and weeds as well as junk and debris in the front and back yards. The property is in foreclosure. Staff is requesting an open abatement period of 180 days to prevent repeated property neglect and neighborhood decline.

Ms. MacDonald noted that this request meets the criteria for properties in disrepair.

DECISION:

Ms. MacDonald approved abatement proceedings for PL110234 /ABT11021 /CE111152 for an open period of 180 days.

8. Request by the **BROWN RESIDENCE (PL110239)** (Douglas Brown, applicant and property owner) located at 12244 South 71st Street, in the AG, Agricultural District for:

VAR11004 Variance to reduce the street side yard setback from 30 ft. to 0 ft. for a detached accessory building (garage).

Mr. Doug Brown was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case. She noted that the applicant proposes a detached accessory building (garage) that is approximately 2,910 s.f. in area and 16 ft. in height on the south side of the property. Although staff does not support the street side yard setback as proposed, a recommendation for a 20 ft. setback consistent with ZDC use permit standard reductions allowed for a standard street side yard setback (not adjacent to a key lot) has been made. Staff has received one (1) letter in opposition to this request, as well as e-mails and numerous calls from surrounding neighbors, one of which expressed support of this request. Previous variances granted by the Hearing Officer in 1996, oriented the setbacks to create a lot adjacent to a 'key' lot requiring an additional 10 ft. setback on the street side yard. The second variance granted at that time reduced the street side yard setback from 35 ft. to 30 ft. The applicant held a neighborhood meeting on July 2, 2011. In response to a question from Ms. MacDonald, Ms. Lesser confirmed that it is within the Hearing Officer's authority to approve the 20 ft. setback should the applicant agree.

Mr. Brown presented enlarged color-coded drawings of the proposed plan(s). He stated that presently Warner Road is like living near a freeway due to the amount of traffic. He explained that his hobby is antique cars and the proposed design allows for this activity. His property is only an acre in size, he noted. The house is very contemporary architecture and the proposed building would blend in with the existing design. The dimensions of the curved block wall was discussed. He proposes to adjust the height of the proposed garage from 16 ft. to 14 ft. to accommodate the neighbors' desires but that is as low as the height can be decreased and still allow for an interior garage lift. This request would affect no utilities or existing landscaping.

Mr. Brown presented several enlarged photos that depicted his home, the block wall and surrounding area, including existing vegetation. Additional photos on the surrounding neighborhood properties were also presented by Mr. Brown. This request would increase the functionality of his property, he explained. A large garden area, small orchard and chicken area on the property are enjoyed by his wife.

Mr. Brown presented a petition of support that was obtained after meeting with neighbors in the area.

Mr. Brown referred to the requirement of special circumstances that would permit the granting of a variance. He stated that the Zoning Ordinance should allow for the difference of a home being located next to a quiet residential street as opposed to one being located to a street with heavy traffic similar to a freeway. Cars go thru this area at 45 to 50 miles an hour. This circumstance does not allow for enjoyment of his property and there is no other function for the proposed space that makes any sense due to the nearby traffic and congestion.

Mr. Todd Stevens, spoke in opposition, stating that as a career home builder and built over 6,000 homes. During that period he only found it necessary to request one (1) setback variance. Special circumstances are those over which someone has no control over, he stated that this variance request is based on a self-imposed hardship.

Mr. Glenn Gittos, spoke in opposition, stating that he worked in the building trades for 35 yrs. and his experience is that there are very few allowable variances. This residence is located on Warner Road and there is potential for expansion. In his opinion, this is a self-imposed hardship. The structure looks like a warehouse and the modern design provides greater emphasis on this appearance. He has no issues with the vegetation but there are alternatives to the design as proposed. Less than 50% of the residents signed the support petition circulated by Mr. Brown. Some of those depicted as being in support, are actually vacant lots whose land owners signed it. Mr. Gittos feels that the location of the proposed building could be re-configured to accommodate the existing circumstances and property area.

Mr. Jim Arneson, spoke in opposition, stating that he has been a homebuilder for 35 yrs. Himself, and as Mr. Stevens indicated earlier, he has never seen a variance granted due to a self-imposed hardship such as this request. He explained that several years ago a program was utilized that buried all the utility lines so that no exposed poles or utilities were present. This enhanced the area along Warner Road for the residents. This variance is unadvisable as the resulting structure would be aesthetically unpleasing and look like a commercial bank or similar structure. The applicant is an architect, but if there was an architectural committee or homeowners association for the neighborhood, they would probably have not approved the plans because there should never be a zero lot line variance granted. Mr. Brown is an architect, Mr. Arneson noted, and if he had visions of this type of structure he should have allowed for it when he made the original plans for the home. This is a self-inflicted problem due to the original design of the applicant.

Mr. Michael Myrick, spoke in opposition, noting that he had sought a variance 4 yrs. ago. Although he had 100% support of his neighbors he was not able to obtain approval of this request, and had to start over with his design. He does not like a zero lot line setback. He does like modern architecture and feels that Mr. Brown did an appealing home design.

Mr. John Hodgson, spoke in opposition to this request. He stated that this is a very special development area. He feels that this design is visually intrusive. To inject this warehouse type of design into this very special neighborhood is visually unpleasing. He suggested the possibility of creating a sunken structure to reduce the visibility massing. He emphasized that he just learned of this proposed project this morning from his neighbors, and would have like to have been notified in advance. He objected strenuously to this proposed structure and the lack of advance notification, including having the neighborhood meeting on a 4th of July holiday. This is an extremely intrusive proposal, he stated.

Mr. Dennis Cling, spoke in opposition, indicating his opinion that the location and size of this proposed structure has massing similar to huge billboards and the setback is too much.

Mr. Harold Waits, spoke in opposition, stating that he was in agreement with all of the neighbors comments who had spoken and asked that this request be denied.

Mr. Brown returned to the podium. He stated that the City of Tempe officials had led him to believe 10 yrs. ago that this proposed plan would be feasible. He explained that the remainder of the property would not allow for a structure of this type.

Ms. MacDonald thanked those present for attending today's hearing. She clarified that today's hearing was to consider the request for the setback variance not whether the design is aesthetically pleasing or not. Her responsibility is to review the requirements of the Zoning and Development Code for variances in relation to this request.

DECISION:

Ms. MacDonald denied PL110239 /VAR11004 stating that this is a self-imposed hardship and that this denial would not result in any reduction of property rights for the applicant. There are no special circumstances and to approve this request would set precedence for special privileges, Ms. MacDonald noted.

Ms. MacDonald noted that staff has indicated that a modification to allow a 20 ft. setback could be allowed. Ms. Lesser explained the particulars of that modification. Mr. Brown returned to the podium and requested a continuance to allow him to work with the neighbors and perhaps resolve the issues presented and determine what they would support.

Mr. Brown was strongly encouraged to work with his neighbors to resolve these issues as presented. It was noted that Mr. Brown does have the opportunity to appeal this decision by the Hearing Officer to deny this request to the Board of Adjustment by August 2, 2011.

The next Hearing Officer public hearing will be held on **Tuesday, August 2, 2011.**

There being no further business the public hearing adjourned at 3:02 PM.

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



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

SA:dm