

**Minutes
HEARING OFFICER
FEBRUARY 19, 2008**

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:

David Williams, Hearing Officer
Steve Abrahamson, Planning & Zoning Coordinator
Shawn Daffara, Planner II
Alan Como, Planner II
Nick Graves, Planning Intern

Number of Interested Citizens Present: 12

Meeting convened at 1:30 PM and was called to order by Mr. Williams. He 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 March 4, 2008 at 3:00 PM.

1. Mr. Williams approved the Hearing Officer Minutes for February 5, 2008.

2. Hold a public hearing for a request by the **RICHARDSON RESIDENCE (PL070545)** (James Richardson, applicant/property owner) located at 2006 South El Camino Drive in the R1-6, Single Family Residential District for:

VAR08001 Variance to increase the wall height to eight feet (8') in the front yard setback.

Mr. James Richardson was present to represent this case.

Shawn Daffara, staff planner, stated that no additional public input or information had been received since the staff report had been issued. He noted that staff is recommending approval of this request due to special circumstances of the property adjacent to Broadway Road. Wall was built without understanding that walls about four (4) feet need a special variance. The reason for the wall was that property to the north backs up to Broadway Road and the property owner wanted this wall to aid in traffic calming and noise reduction.

Mr. Williams asked if the actual date of the wall construction was known. Shawn Daffara responded that he did not have this information. Mr. Williams asked if the date that the street was closed was known. Mr. Daffara stated that he did research the records and although the exact date was undetermined, it appeared that it occurred during the 1980's.

Mr. Williams noted that the installation of the wall was well positioned against the oleanders, which reduced the visibility of the wall and that there was a significant noise factor due to the traffic in that area. He stated that traffic noise and loss of privacy for this family residence constituted special circumstances for this property.

DECISION:

Mr. Williams approved PL070545/VAR08001 subject to the following conditions:

1. The variance is granted an eight (8) foot wall along the north portion of the front yard; based on the plans reviewed and approved by the Hearing Officer. The variance is not valid for the remainder of the front yard.
2. Obtain all necessary clearances from the Building Safety Division.

3. Hold a public hearing for a request by the **MINGUA RESIDENCE (PL080002)** (Sam Mingua, applicant/property owner) located at 1530 West 5th Place in the R1-6, Single Family Residential District for:

ZUP08005 Use permit to allow an accessory building.

ZUP08006 Use permit standard to reduce the rear yard setback by twenty percent (20%) from fifteen feet (15') to twelve feet (12').

ZUP08011 Use permit to allow parking in the front yard setback.

Mr. Sam Mingua was present to represent this case.

Alan Como, staff planner, stated that no additional public input or information had been received since the staff report had been issued except for one (1) letter of opposition from Mr. Bill Butler, Riverside Sunset Neighborhood Association.

Mr. Williams asked if the Riverside Sunset Neighborhood Association was assigned to the area in which the applicant resided. Mr. Como replied that he was not certain, however he believed that it was a neighborhood that was in close proximity to the applicant's residence. Mr. Abrahamson clarified that the applicant resided within the Lindon Park Neighborhood Association boundaries. The Riverside Sunset Neighborhood Association was about a quarter to a half mile to the east from the applicant's residence.

In response to a question from Mr. Williams, Mr. Como explained that the maximum lot coverage allowed in the R1-6, Single Family Residential District was 45%. The applicant's lot was approximately 7,644 s.f. with the house, gazebo and proposed accessory building totaling about 2,100 s.f. amounting to 27% of lot coverage so the applicant's request would not exceed the standard.

Mr. Williams asked if the rear yard setback was now measured from the center of the back alley and that the proposed garage was to be 2 ft from the property line? Mr. Como responded that in cases where the home has a dedicated alley behind it the setback is permissible to be measured from the center line of the back alley which is what applicable to this request which would be 12 ft. from the center line of the alley. He confirmed that is was a single bay garage which was requested.

Mr. Mingua said that the neighbors didn't know that the twenty feet setback was his front driveway, that he was not parking in his front yard setback. He noted that all of his six (6) vehicles were all licensed. If the driveway was paved, it is double wide and forty feet long. The carport is semi-enclosed and so four (4) cars are parked in the driveway.

Mr. Mingua explained that he was getting close to retirement and would use the workshop to work on some of his old cars. There would not be increased driving back and forth in the alley. It would be used to enter and depart the workshop on a limited basis and some cars would be worked on for six (6) months or whatever it takes.

Mr. Williams noted that during his site visit today he noticed that there was some work going on in the alley pertaining to gas line work and also that there were numerous miscellaneous items in Mr. Mingua's back yard. Mr. Mingua responded that he had a metal storage building that he had taken down and that the miscellaneous items and swamp cooler that Mr. Williams viewed in the back yard were items that would be placed in the proposed garage. The gas line is being relocated for easier access should problems arise in the future and it is being moved so it will be about ten (10) feet away from the structure.

Mr. Williams suggested that Mr. Mingua familiarize himself with the City requirements regarding items kept in yards just so he would be aware of them. He noted that he did have concern about the number of cars being kept at Mr. Mingua's residence.

Mr. Williams noted that he was in support of the detached garage in the back yard and that this would give Mr. Mingua a place to keep some of the vehicles because it seemed like six (6) vehicles was an over-intensification of a normal single family residence and enclosing the carport exacerbates the situation.

Mr. Williams stated that he would approve the use permit to allow an accessory building in the rear yard, and the use permit standard to reduce the rear yard setback by twenty (20) percent to allow maximum utilization of the yard especially for vehicle related uses. He appreciates that Mr. Mingua would be keeping excess items in the garage in order to comply with City codes. Mr. Williams stated that he would not be able to support the request to park in the front yard setback – that it should be clear that this request is actually for two (2) spaces in the front yard in the setback. Mr. Williams noted that he had observed a shade structure in the front yard setback for parking and that this is not in compliance with the City code. This needs to be removed. If Mr. Mingua would like to apply for an attached carport that is structurally compatible with the house that would be something that could be approved. Mr. Mingua responded that he had been told that the shade structure which was erected on a metal frame (12 x 20) and encroaches into the front yard setback approximately three (3) feet was acceptable. Mr. Williams stated that it was not allowed in the front yard setback and would need to be removed – he asked Mr. Abrahamson what the particular code was that applied to this restriction. Mr. Daffara responded that the City code stipulates that whenever there is a detached structure it can be no larger than 200 s.f. or 20 x 10 for example and no taller than eight (8) feet in height – the goal is to have it be compatible with the intent and goals of the General Plan and to be aesthetically pleasing. If the existing shade structure is 12 x 20 it would automatically need a use permit similar to the detached garage.

DECISION:

Mr. Williams denied PL080002/ZUP08011.

Mr. Williams approved PL080002/ZUP08005/ZUP08006 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division.
2. The accessory building shall not be converted to livable space. Any such conversion would be determined to be an intensification of the use and would require that the use permit appear before the Hearing Officer for re-evaluation.
3. If there are any complaints arising from the use permit that are verified by a consensus of the complaining party and the City Attorney's office, the use permit will be reviewed by city staff to determine the need for a public hearing set to re-evaluate the appropriateness of the use permit.

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4. Hold a public hearing for a request by the **STEWART RESIDENCE (PL080013)** (William & Cinderella Stewart, applicants/property owners) located at 1903 East Citation Lane in the R1-7, Single Family Residential District for:

ZUP08012 Use permit standard to reduce the west street side yard setback by twenty percent (20%) from ten feet (10') to eight feet (8').

Mr. William Stewart was present to represent this case and noted that they were proposing a garage in which to park their vehicles and protect them from theft.

Alan Como, staff planner, stated that no additional public input or information had been received since the staff report had been issued.

Mr. Williams asked if there was a picture of the front elevation and any drawings that would depict what the structure would look like. Mr. Stewart presented a sketch of the proposed garage and confirmed that they had resided in the home for twenty (20) years since 1987.

Mr. Williams clarified that this is a use permit request not a variance, and that it meets all the criteria for approval.

DECISION:

Mr. Williams approved PL080013/ZUP08012 subject to the following condition:

1. Obtain all necessary clearances from the Building Safety Division.

5. Hold a public hearing for a request by **T-MOBILE (PL080018)** (Declan Murphy, applicant; Salt River Project (SRP), property owner) located at 988 West Washington Street in the GID, General Industrial District for:

ZUP08013 Use permit to allow additional antennas on an existing monopole.

Mr. Declan Murphy was present to represent this case and noted that the additional antennas were needed for T-Mobile to meet its obligations to their customers.

Shawn Daffara, staff planner, stated that no additional public input or information had been received since the staff report had been issued. Mr. Daffara presented a site plan sketch and indicated that it was top elevation where T-Mobile intended to add the three (3) additional antennas. He noted that co-location is encouraged whenever possible rather than a new monopole installation facility.

DECISION:

Mr. Williams approved PL080018/ZUP08013 subject to the following conditions:

1. Obtain all necessary clearances from the Building Safety Division of the Development Services Department.
2. Any intensification or expansion of use, including co-location of additional antennas, will require a new use permit.
3. The proposed antennas shall match the existing antennas on the site.
4. The wireless device shall be removed within 30 days of discontinuance of use.

6. Hold a public hearing for a request by the **CARR RESIDENCE (PL080019)** (Brett Carr, applicant/property owner) located at 614 West 11th Street in the R1-6, Single Family Residential District for:

ZUP08014 Use permit to allow an accessory building (garage).

Mr. Brett Carr was present to represent this case.

Shawn Daffara, staff planner, stated that no additional public input or information had been received since the staff report had been issued. He noted that the property is under a major remodel and that this request pertains to vehicle coverage/storage as part of the remodel.

Mr. Williams noted that the lot was in a bit of an unusual circumstance as it is at the junction of an alley and the street. Mr. Daffara noted that yes the property line was close to a city dedicated alley as well as a street location. Mr. Williams that this building will be very visible from the street so that architectural compatibility is essential. Mr. Daffara stated that was correct and Condition of Approval No. 2 stipulated that the garage match the residence and be compatible.

Mr. Williams questioned the applicant as to whether the roof of the garage would be a pitched roof and the pitch generally match the home. Mr. Carr stated that was correct. Mr. Williams questioned what type of rear yard treatment was planned, would there be fencing or a wall around the back yard. Mr. Carr stated that there was a large existing tree and the garage had been situated so as to preserve that tree; a fence would be placed in the open boundary area next on the other side of the garage. Mr. Williams asked if there was a wall planned? Mr. Carr responded that there would be a wall to meet the next door neighbor's wall to the east property line.

DECISION:

Mr. Williams approved PL080019/ZUP08014 subject to the following conditions:

1. Obtain all necessary clearances and permits from the Building Safety Division.
2. Garage to complement the main residence in color, form and material.
3. The new garage shall have address numbers on north elevation, facing the alley. Address numbers to contrast with the garage color.
4. The alley shall be maintained in a dust free condition per City Code, Chapter 29-3.

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7. Hold a public hearing for a request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **ROWE RESIDENCE (PL070487/ABT07029)** (Richard Rowe, property owner) Complaint CE073237 located at 1405 North Rose Street in the R1-6, Single Family Residential District.

Mr. Rowe was present to represent the property owner. He stated that if Andres Lara had given him a plan of attack to deal with the problem, that the problem would have probably been taken care of a long time ago. Now that he is aware of the three (3) items he has left to take care of, he can deal with it. Mr. Rowe noted that he had met with Jeff Kulaga of the City Manager's office and would take care of one of the items today.

Jan Koehn, representing the City of Tempe – Neighborhood Enhancement Department stated that Mr. Rowe was 80% in compliance, that he had three (3) items left to take care of, and that the recommendation was to continue this case to the March 18, 2008 Hearing Officer hearing.

Ms. Sandy Ingersol of Apache Junction spoke in support of Mr. Rowe, stating that she had known him for ten (10) years and had been his significant other for eight (8) years. She wanted to bring to their attention that he did not take this abatement problem lightly however he had taken an early retirement due to suffering from chronic fatigue syndrome, that he is concerned about doing what is right and he is making a valiant attempt to bring the property into compliance. She would appreciate any consideration given Mr. Rowe for continuance of this case.

Mr. Williams stated that he would abide with staff's recommendation to continue this case.

DECISION:

Mr. Williams continued abatement proceedings for PL070487/ABT07029 to the March 18, 2008 Hearing Officer.

The next Hearing Officer public hearing will be held on **Tuesday, March 4, 2008.**

There being no further business the public hearing adjourned at 2:20 PM.

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



Steve Abrahamson, Planning and Zoning Coordinator
for David Williams, Hearing Officer

SA:dm