

**Minutes
HEARING OFFICER
JANUARY 20, 2009**

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
Sherri Lesser, Senior Planner
Shawn Daffara, Planner II

Number of Interested Citizens Present: 13

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 February 3, 2009 at 3:00 PM to the Development Services Department.

1. Mr. Williams approved the Hearing Officer Minutes for December 16, 2008 and January 6, 2009.

2. Request by the **DENGLER RESIDENCE (PL080434)** (Sean Dengler, applicant/property owner) located at 1658 East Del Rio Drive in the R1-6, Single Family Residential District for:

VAR08025 Variance to reduce the east side yard setback from five (5) feet to zero (0) feet.

VAR08026 Variance to reduce the west side yard setback from five (5) feet to three (3) feet.

Mr. Sean Dengler was present to represent this case.

Shawn Daffara, staff planner, gave an overview of this case and stated that no additional public input information had been received since the staff report had been issued. This relates to an existing covered canopy on the west side and a covered carport on the east side. The house was originally built in 1968.

Mr. Williams noted that this construction had been completed thirty (30) years ago, and there had been no complaints during that time from adjacent property owners.

DECISION:

Mr. Williams approved PL080434/VAR08025/VAR08026 subject to the following conditions:

1. The variance is valid for the plans as submitted to and approved by the Hearing Officer.
2. Obtain all necessary clearances from the Building Safety Division.

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3. Request by the **COREY RESIDENCE (PL080446)** (Tom Corey, applicant/property owner) located at 1425 East Bell De Mar Drive in the R1-6, Single Family Residential District for:

ZUP08183 Use permit to allow RV parking in the front yard setback.

Mr. Tom Corey was present to represent this case.

Shawn Daffara, staff planner, gave an overview of this case and stated that no additional public input information had been received since the staff report had been issued. A notice from the Neighborhood Enhancement Department had been issued to Mr. Corey. A petition of support containing twenty (20) signatures have been submitted by Mr. Corey.

Mr. Williams noted that there were several homes in the neighborhood who had trailers parked in the driveway – some partially screened, some not.

Mr. Corey questioned whether the complaint was specifically due to the length of the RV. Mr. Daffara stated that it was not, that the Zoning and Development Code does not allow recreational vehicles over twenty-one (21) feet in length to be parked in the driveway.

Mr. Corey referenced the staff summary report which indicated that parking of the RV would lead to deterioration of the neighborhood and decreased property values. He asked if there was an evidence to support those statements such as a study. Mr. Daffara explained that the language within the report was based on the terminology used in the General Plan to keep neighborhoods free of boats and RV's parked in the front yard setback.

Mr. Williams explained the process of the General Plan which was based on public input on neighborhood quality and preservation. He noted for the record that Mr. Corey's front yard was outstanding and well maintained.

Mr. Corey stated that after reviewing the General Plan 2030 he could not find specific reference to questions pertaining to RV's. Mr. Williams asked if there was a specific reference in the code that staff could provide to Mr. Corey. Mr. Daffara responded that in the Zoning and Development Code, Part 4, deals with the use permit and the language for boats and RV's and that no boat, RV or trailer exceeding twenty-one (21) feet in length may be parked in the front yard setback without obtaining a use permit.

Mr. Corey stated that he had researched similar cases and that his RV does not overhang the sidewalk or prevent pedestrian access and is kept in a presentable manner and parked on concrete. It is in compliance with all Federal standards and regulations and is not located on a corner lot. He presented several photographic depictions of other boats and trailers parking in nearby neighborhoods which were reviewed by Mr. Daffara with comments as to whether they were in compliance with the City code. He presented an additional letter of support from the neighbor located directly across the street, as well as a location map indicating property owners in support of this request.

Mr. Russell Shay, City of Tempe residence, spoke in support of this request.

Mr. Williams stated that this is a difficult case with local support for the applicant. He noted that Mr. Corey had presented a well researched presentation, but looking at the larger picture for the entire city, and based on the goals of the General Plan, he was unable to support this request.

DECISION:

Mr. Williams denied PL080446/ZUP08183.

4. Request by the **TEMPE FARMERS MARKET (PL080462)** (Daryle Brett Dutton, (applicant; Javan LLC, property owner) located at 805 South Farmer Avenue in the GID, General Industrial District for:

ZUP08192 Use permit to allow a farmers market retail business.

Mr. Daryle Dutton was present to represent this case. He noted that he had a total of 140 letters of support for this request.

Sherri Lesser, staff planner, gave an overview of this case and stated that additional public support had been received since the staff report had been issued in the form of sixty-six (66) letters of support.

Mr. Williams stated that this case had broad public support and was an excellent use for this location.

DECISION:

Mr. Williams approved PL080462/ZUP08192 subject to the following conditions:

1. The use permit is valid for Tempe Farmers Market and may be transferable with approval from the Development Services staff. Should the business be sold, the new owners must contact the Development Services staff for review of the business operation.
 2. Obtain all necessary clearances from the Building Safety Department for tenant improvement plans.
 3. Any intensification or expansion of the use shall require the applicant to return to the Hearing Officer for further review.
 4. 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 to re-evaluate the appropriateness of the use permit.
 5. Obtain the necessary clearances from the Maricopa Health Department for the handling and disposal of produce.
 6. Phase 1 portion of the improvements as shown on the site plan/landscape plan which includes installing plant material in the planters next to the building on the north side of the building to be completed by **06/20/2009**.
 7. Phase 2 portion of improvements as shown on the site plan/landscape plan which includes saw cutting asphalt to create street front landscape areas; the planting of shrubs; installation of decomposed granite to be completed by **01/20/2010**.
 8. Phase 3 portion of improvements as shown on the site plan/landscape plan which includes installation of the remainder of the landscape material including planting trees and installation of a refuse enclosure to be completed by **06/20/2010**.
 9. All business signs shall receive a Sign Permit. Please contact Planning staff at (480) 350-8331.
 10. Obtain a sales tax license from the City of Tempe Tax and License Division.
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5. A request by the **CUEVAS RESIDENCE (PL080469)** (Edgar Cuevas, applicant/ property owner) located at 1040 East Knox Road in the AG, Agricultural District for:

ZUP08191 Use permit to increase the height of the wall in the front yard setback from four (4) feet to six (6) feet.

Mr. Edgar Cuevas was present to represent this case.

Shawn Daffara, staff planner, gave an overview of this case and stated that no additional public input information had been received since the staff report had been issued.

Mr. Williams asked if the wall would match the wall of the adjoining Nannapanini Residence in color, design and setback. Mr. Daffara confirmed that it would.

Discussion between Mr. Cuevas and Mr. Williams confirmed that the new wall would match the Nannapanini wall in all respects. Particular attention was addressed to the setback of Mr. Cuevas' wall – if it would match the setback of the Nannapanini wall or be set back further. Mr. Cuevas stated that the setback would match the Nannapanini wall.

Mr. Williams noted that due to the loss of privacy issues and the impact of the nearby high school he would support this request.

DECISION:

Mr. Williams approved PL080469/ZUP08191 subject to the following conditions:

1. The use permit is granted based on the plans submitted and approved by the Hearing Officer.
2. Obtain all necessary clearances from the Building Safety Division.
3. The wall shall be designed to match the existing wall at 1026 East Knox Road in color, form and material **and shall include the pilasters and illustrations (details) to match. MODIFIED BY HEARING OFFICER**
4. **The wall footprint to match. ADDED BY HEARING OFFICER**

6. A request by the **FARLING RESIDENCE (PL080473)** (Brian Farling, applicant/property owner) located at 2046 South College Avenue in the R1-6, Single Family Residential District for:

ZUP08193 Use permit to allow an accessory building (freestanding garage).

Mr. Brian Farling was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case and stated that no additional public input information had been received since the staff report had been issued.

Mr. Williams questioned whether this property complied with the restrictions for maximum lot coverage; Ms. Lesser stated that they were within the requirements.

DECISION:

Mr. Williams approved PL080473/ZUP08193 subject to the following conditions:

1. Obtain all necessary clearances and permits from the Building Safety Division.
2. Accessory building (garage) to complement the main residence in color, form and material.

3. The new garage shall have address numbers on the west 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.

7. A request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **KOEN RESIDENCE (PL080465/ABT08042)** (Adrienne Koen, property owner) Complaint CE086895 located at 132 West Balboa Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Mr. Jody Benson, City of Tempe – Neighborhood Enhancement Inspector, stated that landscaping issues and that this property has been owned by this person since 1977 and has had numerous complaints. Some of the work had been done. Mr. Benson stated that Ms. Koen has some health issues/problems.

Mr. Williams noted that since there were no neighbor complaints, this case would be continued to give this property owner additional time to bring it into compliance.

DECISION:

Mr. Williams continued abatement proceedings for PL080465/ABT08042 for thirty (30) days until the February 17, 2009 Hearing Officer hearing.

8. A request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **STEFANIAK RESIDENCE (PL080466/ABT08043)** (Thomas Stephen Stefaniak, property owner) Complaint CE087639 located at 1849 East Harvard Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Mr. Don Alexander, City of Tempe – Neighborhood Enhancement Inspector, stated that no progress had been made by the property owner. He has been a repeat violator and the property continues to be a fire hazard.

DECISION:

Mr. Williams approved abatement proceedings for PL080466/ABT08043 for an open period of 180 days.

9. A request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **GUTIERREZ RESIDENCE (PL080470/ABT08045)** (Jesus Gutierrez, property owner) Complaint CE088299 located at 1222 West Manhattan Drive in the R1-6, Single Family Residential District.

No one was present to represent the property owner.

Mr. Jody Benson, City of Tempe – Neighborhood Enhancement Inspector, stated that the property has been brought into compliance.

DECISION:

Mr. Williams noted that abatement proceedings for PL080470/ABT08045 have been withdrawn by the Neighborhood Enhancement Department.

10. A request by the City of Tempe – Neighborhood Enhancement Department to abate public nuisance items in violation of the Tempe City Code for the **GRAFFIS RESIDENCE (PL080471/ABT08044)** (William Herbert Graffis, Jr., property owner) Complaint CE043321 located at 210 East Vaughn Drive in the R1-6, Single Family Residential District.

Mr. William Graffis was present to represent the property owner. He stated that he was unaware that he was in violation and had not heard anything since Thanksgiving 2004. He stated that he had received the notice to abatement on last Thursday, January 15th. He purchased the house 34 years ago and it had an RV gate at that time. Everything that was on the list issued by Neighborhood Enhancement has been taken care of. He explained that he was dealing with personal and family health issues, and had tried to work with the Neighborhood Enhancement Department personnel to resolve these compliance issues.

It was noted by Shawn Daffara that staff has received five (5) phone calls of support for this abatement from neighbors in close proximity to this address.

Mr. Don Alexander, City of Tempe – Neighborhood Enhancement Inspector, stated that junk and debris exist, as well as the remains/framework of a storage building. Violations have existed over a five (5) year period of time. Mr. Alexander stated that there had been no significant effort to remove debris, although the property owner had covered up some of the items.

Mr. Williams asked Mr. Graffis what was the last time he had contact with the City of Tempe on code violations. Mr. Graffis responded that it was the day before Thanksgiving 2004.

Mr. Alexander presented recent photographs of the property to Mr. Graffis. Mr. Williams explained that under the City code materials of this type were not permitted to be stored in a residential yard; landscape and debris were present on December 20th according to the Neighborhood Enhancement photographs. Mr. Graffis stated that he would do whatever necessary to avoid paying fines as he hoped to re-roof his home and remodel to obtain additional storage space.

Mr. Alexander explained that Mr. Graffis has been aware of what needed to be done since 2004 and that he had personally made an effort to obtain funds/assistance for Mr. Graffis' use from the Housing Department. Mr. Graffis was given an opportunity to complete the paperwork to receive these funds/assistance and he refused. Everything possible was extended to Mr. Graffis to bring this property into compliance, and he has had contact with the City since 2004. There is a pending criminal complaint on this property due to the violations.

Mr. Williams noted that the abatement estimate was not included within the report; Mr. Alexander stated that there was approximately \$4,000 worth of abatement expenses.

Mr. Bob Stafford, City of Tempe resident, spoke in support of this abatement. He noted that the garage was packed completely with materials and the landscaping debris present a fire hazard. This property has affected the property values in the neighborhood adversely.

Mr. Graffis stated that he did not have a fire hazard or dead trees on his property. He was unable to take advantage at the time the funds/assistance were offered by the City of Tempe as he did not have homeowners insurance which was a requirement. He now has homeowners insurance, and stated that he was ready to take advantage of this assistance. He has spoken with roofing contractors and just needs time to accomplish the roof repairs.

Mr. Graffis stated that if Mr. Williams was to view the property today that he could see that it was not in the state that the photographs indicate. Mr. Williams stated that he had driven by the property and could see that there were cleanup efforts being done. Mr. Williams questioned staff as to whether the property owner had an additional two weeks from the date of today's meeting before abatement proceedings would progress, and, should the property be brought into compliance within that time frame would the abatement be withdrawn.

Mr. Daffara stated that there is a two week time frame before the abatement would actually proceed. Mr. Williams stated that he expected that Mr. Graffis would have all of the violations cleared up except for the roof issue within the next two weeks.

DECISION:

Mr. Williams approved abatement proceedings for PL080471/ABT08044 except for the roof issue which would be continued until it is appropriate to re-address.

The next Hearing Officer public hearing will be held on **Tuesday, February 3, 2009.**

There being no further business the public hearing adjourned at 2:54 PM.

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



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

SA:dm