

**Minutes
HEARING OFFICER
OCTOBER 4, 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
Kevin O'Melia, Senior Planner

Number of Interested Citizens Present: 5

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 October 18, 2011 at 3:00 PM to the Community Development Department.

1. Ms. MacDonald noted that the Hearing Officer Minutes for September 6, 2011 had been reviewed and approved.

2. Ms. MacDonald noted that the following item(s) 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 **PAOLUCCI PROPERTY (PL110323 /ABT11037 /CE112166)** (Michael Spencer, Inspector; Emma Paolucci, property owner) located at 730 East Cavalier Drive in the R1-6, Single Family Residential District.
ABATEMENT REQUEST WITHDRAWN BY CODE COMPLIANCE
- Request by **CRICKET SITE PHX 190 (PL110329)** (Scott Quinn/Quinn United Enterprises, applicant; ADOT, property owner) located at 2055 South Price Road in the AG, Agricultural District for:

ZUP11086 Use permit to increase the height of an existing monopole from 53 ft. to 59 ft. for the addition of communication antennas.

CONTINUED TO THE NOVEMBER 2, 2011 HEARING OFFICER AT THE REQUEST OF APPLICANT

3. Request by the **MCMANUS RESIDENCE (PL110313)** (Judith McManus, applicant/property owner) located at 1428 South Oakley Place in the R1-6, Single Family Residential District and the CRA, Cultural Resource Area for:

ZUP11084 Use permit to increase the maximum allowable height of a wall in the front yard setback from 4 ft. to 6 ft. as measured from the highest adjacent grade within 20 ft. of the fence.

Ms. Judith McManus was present to represent this case.

Kevin O'Melia, staff planner, gave an overview of this case, noting that a wooden fence has existed on the south side of this property for approximately 25 years. The site is a corner lot. The fence was taken down and re-constructed to include a base of concrete unit masonry and the location of the fence/wall was changed slightly to place the fence entirely on the subject property. Previously the southern portion of the fence/wall adjacent to the 15th Street was located in the public right-of-way. The weathered wood is part of the original fence. The purpose of the masonry base is to keep the wood above the level of the flood irrigation in the lawn basin. Mr. O'Melia noted that the front door faces east. The fence as reconstructed is the subject of a citizen complaint received by the Code Compliance Section. Staff is in support of this request.

Ms. McManus acknowledged her understanding of the Conditions of Approval. She read her letter of explanation that she had written to Shawn Daffara, Code Inspector, in response to Correction Notice CE112153. She noted that a Petition of Support with 18 signatures from neighbors had been submitted supporting this request. She noted that the fence that faces 15th does not surround her front yard which is located on the east side of the property. Therefore she did not feel that the fence should be subject to codes for a 4 ft. height and a 20 ft. setback.

Mr. John Ball, spoke in support of this request and stating that this request did not harm the neighborhood in any way. He stated he was sorry that the landscape architect who designed the yard was not present.

Ms. Jo Johnson, spoke in opposition of this request. She stated that she is a long time resident of this neighborhood, having lived in the Oakley Place area since 1964. She agreed that the property was an eyesore prior to McManus purchasing it. She had discussed this case at length with Mr. O'Melia. In the 47 years she has lived at her current address, she has called the police more in the past month than at any earlier time due to noise, loud music and other issues connected with the rental property at 1420 South Oakley.

Ms. Johnson stated that the fence materials should match the construction of the house. In her opinion the fence as constructed looks like a do-it-yourself project. She requested a continuance so she could encourage people to understand the impact that this fence construction has on this historic neighborhood. She felt that this was a non-conforming use and should have been processed as a variance to the Zoning and Development Code. She noted that she had researched the property values in this neighborhood and felt that the property changes implemented by Ms. McManus would have an adverse impact.

Ms. MacDonald noted that this request did not address the aesthetic aspects of the fence, only the height of the fence.

Ms. Johnson expressed her opinion that the 32 trees which had been planted on Ms. McManus' property and dredged out irrigation basin that was deepened were detrimental to the historical character of the neighborhood.

Ms. Anne McManus-Spitzer stated that she was the daughter and would not feel as safe or secure with a lower fence height.

Ms. McManus noted that after she purchased her home, she discovered that there were cracks on the house from the flooding and irrigation. She was advised to have the cinder block sandblasted to prevent any additional structural damage to her home. She went to every house in the neighborhood and if someone was not there she left a message letting them know what she was doing, what her plans were and when the work would take place. In addition to working 60 hrs. a week, she did a walking tour of Oakley Place to try to keep the residents informed of her plans. She was not trying to avoid people in Oakley Place she noted, as she likes the neighborhood and finds this opposition disheartening.

In response to a question from Ms. MacDonald, Mr. O'Melia explained that postcard notifications containing specifics of this request went to any property owners within 300 ft. of the property 15 days prior to this hearing. The physical site was posted within this 15 day time period also.

Mr. Abrahamson, Planning & Zoning Coordinator, explained that the agenda is also advertised in the legal notification section in the newspaper.

Ms. MacDonald reviewed the criteria for a use permit noting that there were good reasons to approve this request. The fence had been in existence for 25 yrs. Although there was some confusion over what was the front yard and what was the side yard, the fence provides security for this property owner at the height it has been erected. It is compatible with the neighborhood and controls disruptive behavior and allows for safety/security issues. Ms. MacDonald stated that this neighborhood is a gem in Tempe, and this request is consistent with that area.

DECISION:

Ms. MacDonald approved PL110313 / ZUP11084 subject to the following conditions:

1. Complete one of the two following processes no later than October 4, 2012, which is one (1) year from the date of approval, or the Use Permit will expire:
 - a. Prepare structural detail and structural calculation of fence-wall construction, sealed by a registered structural engineer, and submit the detail and calculation along with the site plan of the fence-wall layout to the Building Safety Division. Obtain Building Permit from the Building Safety Division for fence-wall construction in excess of six (6) ft. height. For the Building Safety application, height is as measured from the lowest adjacent grade in flood irrigation basin to top of fence-wall, which is in accordance with Building Safety criteria for measurement of height of structures. Complete structural modifications (if any) to existing fence-wall in accordance with documents that have been approved by the Building Safety Division.
 - b. Remove the top of the fence-wall so the fence-wall, as measured from the lowest adjacent grade in the flood irrigation basin, is no greater than six (6) ft. in height. A building permit is not needed for a structure of this height.

4. Request by **CHUNG RESIDENCE (PL110327)** (Samuel Chung, applicant/property owner) located at 1720 East Minton Drive in the R1-6, Single Family Residential District for:

ZUP11085 Use permit standard to allow a 15 ft. high accessory building (art studio/storage) at the R1-6 Zoning District allowed setback of 5 ft. from the east side yard property line.

Mr. Wisner was present to represent this case for Mr. Chung.

Sherri Lesser, staff planner, gave an overview of this case. She noted that the proposed structure, which will be a private artist studio, is 600 s.f. in area with a height of 15 ft. The building placement is 5 ft. from the east side yard property line and 1 ft. from the north rear yard property line (the required 9 ft. rear setback is measured from midpoint of the 16 ft. wide alley). No public input on this case has been received, Ms. Lesser stated.

Ms. MacDonald stated that this request met all the use permit criteria.

DECISION:

Ms. MacDonald approved PL110327 / ZUP11085 subject to the following conditions:

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

The next Hearing Officer public hearing will be held on **Wednesday, November 2, 2011**.
The October 18, 2011 Hearing Officer public hearing has been cancelled.

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 & Zoning Coordinator
for Vanessa MacDonald, Hearing Officer

SA:dm