

**Minutes  
HEARING OFFICER  
MAY 7, 2013**

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  
Diana Kaminski, Senior Planner  
Brandy Zedlar, Code Inspector  
Tyler Jackson, Intern  
Julie Stennerson, Executive Assistant

**Number of Interested Citizens Present: 11**

Meeting convened at 1:38 PM and was called to order by Ms. MacDonald. She noted that anyone wishing to appeal a decision made by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) days, by May 21, 2013 at 3:00 PM, to the Community Development Department.

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1. Ms. MacDonald noted that the Hearing Officer Minutes for April 16, 2013 had been reviewed and approved.

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2. Request approval to abate public nuisance items at the ORRAS PROPERTY (PL130118) located at 26 West Erie Drive. The applicant is the City of Tempe.

Mr. Orras was present to represent this case.

Brandy Zedlar requested a 180 day open abatement for the property located at 26 West Erie Drive. The Code Compliance Division received a complaint on the property in October of 2012. The property is in violation of deteriorated landscape, a deteriorated fence and three inoperable/unregistered vehicles. Two notices have been sent to the property as well as a citation with no change to the condition of the property. Ms. Zedlar spoke to the property owner and he indicated he would take care of the issues. As of today there has not been any change to the property.

Ms. MacDonald asked Ms. Zedlar if the vehicles are inoperable.

Ms. Zedlar stated a Recreational Vehicle is parked at the property with inflated tires but it is unregistered. There are two other trucks at the property, both with expired registration and flat tires.

Mr. Orras resident of 26 West Erie Drive stated he had not received the violation notices until December. The notices were sent in an envelope similar to the water bill. He does not pay his water bill in person or with a check, he pays it online. He also works a lot and is not home for several weeks at a time. The property owner was unemployed for 18 months. That is why the vehicles have not been registered. Vehicles cannot be

registered without being emission tested and insured. The vehicles are all operable but will not pass emissions. Only one vehicle had a flat tire. The tire has a loose valve stem which has been repaired, but continues to leak. Mr. Orras spoke with a previous inspector regarding the unregistered vehicles. He was informed if the vehicles were turned around and not visible from the street, they would not be an issue. The weeds have been cleared a few times from under the RV. The RV has a temporary tag. Mr. Orras has been working a lot to keep his house from going into foreclosure. He indicated he has kept his yard maintained. He stated he does have grass growing in his yard due to the fact that both of his neighbors have grass yards and overwater. He will not spray herbicides by choice. The fence was removed to place a vehicle in the back yard. He was informed he could have up to two unregistered vehicles in the back yard. He currently has one vehicle parked in the back yard.

Ms. MacDonald asked Mr. Orras if four weeks would be adequate to address the issues and correct the code violations.

Mr. Orras requested clarification regarding the deteriorated landscape and debris.

Ms. Zedlar stated the violation was not for junk and debris. The violation was for a deteriorated landscape, a deteriorated fence and inoperable vehicles. Ms. Zedlar explained weeds over 12 inches in height only apply to grass yards, not gravel landscape.

Mr. Orras stated there are other unregistered vehicles on the block. He wanted to know if the other property owners have been cited as well. He also wanted to know who was complaining about his yard.

Ms. MacDonald stated she did not have that information. She would like to continue this case for 30 days to respect the time constraints of the property owner. Code Compliance will inspect the property prior to the 30 days. If the violations are corrected the case will be withdrawn.

**THIS CASE WILL BE CONTINUED TO JUNE 4, 2013 BY THE REQUEST OF THE HEARING OFFICER.**

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3. Request approval for a Use Permit to reduce the front yard setback for a porch and garage addition; and a Variance to reduce the required on site driveway length for the SHAW RESIDENCE (PL130099) located at 613 East Loyola Drive. The applicant is Tessa Jones Dailey, The Phactory.

Tessa Jones Dailey was present to represent this case.

Diana Kaminski introduced the case. The property is located south of Alameda Drive, between College Avenue and Rural Road in the R1-6 Residential District. The applicant is requesting a Use Permit to reduce the front yard setback from 20 feet to 16 feet to allow an addition to the front porch and an expansion of the garage. She is also requesting a Variance to reduce the driveway length from 20 feet to 16 feet. The length of the driveway will still be long enough to maintain a vehicle safely parked in the driveway without interfering with the public sidewalk. The applicant held a neighborhood meeting and included information from the residents in support of the project. Staff reviewed the surrounding area in terms of other Variances that have been granted for similar uses. Staff recommends approval of the project. Staff has not received any further public inquiry aside from the public input listed in the Staff Report.

Tessa Jones Dailey of The Phactory is representing Lind Shaw for this request. Ms. Jones-Dailey stated they would like to add a pantry in the existing garage and expand the garage to accommodate the depth of the car and construct a porch on the front of the house to provide shade. This addition will also enhance the front elevation of the property. The new projection of the garage is 9 feet. Similar Variances have been granted in the neighborhood. Ms. Shaw has been very open with her neighbors and has over 20 signatures in support of the project.

Ms. Jones-Dailey agreed to the conditions of approval.

Paul Hubbell, Vice-Chair of the Brentwood Cavalier Neighborhood Association spoke in support of the project. The Brentwood Cavalier Neighborhood encompasses this area from Rural Road to College Avenue and Southern Avenue to Alameda Drive. This neighborhood association includes about 460 households. In general the association encourages improvements of this nature. He was present to offer his support of the project.

Ms. MacDonald stated this proposed project is similar to other uses in the area. She commended the applicant and the property owner for their outreach efforts. This project will be a nice addition to the community.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

1. Traffic generated by this use should not be excessive.
2. It won't create a nuisance resulting from odor, dust, gas, noise, vibration, smoke, heat or glare.
3. It won't contribute to the deterioration of the neighborhood.
4. It is compatible with existing surrounding structures and uses.
5. Will allow you to adequately control disruptive behavior both inside and outside the property.

Ms. MacDonald noted that this request meets the criteria for a Variance and found as follows:

1. She believes that special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings.
2. She believes the strict application of this Code will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district.
3. The adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.
4. She does not believe that special circumstances are self-imposed.

**DECISION:**

Ms. MacDonald approved PL130099/ZUP13026 and VAR13005 subject to the following conditions:

1. This Use Permit and Variance are valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.
2. The Use Permit and Variance are valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.

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4. Request approval for a Use Permit to allow an auto title loan store for BROADWAY PLAZA - TITLEMAX (PL130112) located at 19 East Broadway Road. The applicant is Reese L. Anderson, Pew & Lake PLC.

**THIS CASE WILL BE HEARD BY THE DEVELOPMENT REVIEW COMMISSION ON MAY 28, 2013 BY THE REQUEST OF THE HEARING OFFICER DUE TO A CONFLICT OF INTEREST.**

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5. Request approval for a Use Permit to increase the wall height in the front yard from 4 feet to 5 feet for the DUBOIS RESIDENCE (PL120421) located at 2122 East Balboa Drive. The applicant is Walt Dubois.

**Continued from April 16, 2013**

Walt Dubois was present to represent this case.

Diana Kaminski introduced this case. The property is located on the north side of Balboa Drive between Country Club Way and Price Road. The request is for a Use Permit to increase the wall height in the front yard from 4 feet to 5 feet. This is a reduction from the original request for a wall 6 feet in height. The Use Permit was approved by the Hearing Officer. The case was appealed to the Development Review Commission. The case was overturned by the Development Review Commission. They found the wall was not in character with the area. The new request takes the wall back to the 15 foot setback for a patio wall which is allowed to be 4 feet

high by code. The applicant is asking for a 12 inch increase in wall height. The applicant has also reduced the length of the wall so it does not cover as much of the front of the property and he has added openings in the wall so that it is in character with the area. There are other houses with walls of varying depth within the front yard in the area. The Staff Report does not indicate a recommendation. Staff is recommending approval based on the criteria. Staff has received considerable input from the residents in the area who feel the application does not meet character of intent in the area. Neighbors have provided letters of opposition as well as photographs of other properties in the area. Staff requested the applicant have a neighborhood meeting. Unfortunately Staff was not informed of the meeting. Attendance and meeting minutes have not been provided to Community Development to include in the Staff Report. The recommendation of support is being based on the application and the context of the surrounding community adjacent to the site and across the street.

Mr. Dubois stated this has been an interesting journey. He indicated he was confronted by threats after the first Hearing Officer meeting. He was told if he built his wall he would not want to live in the neighborhood. He was compared with the behavior of a drug lord or human smuggler at the previous Hearing Officer meeting. Mr. Dubois was surprised with the procedures at the Development Review Commission. He thought he would be included in the process. By the time he was going to be called the Commission was ready to make a decision. He was initially going to appeal the Development Review Commission decision. After communicating with staff he felt it would be better to make amends and make changes to his original proposal. A traffic count was presented at the Development Review Commission meeting. The study showed a car goes by every four and a-half minutes. Mr. Dubois registered over 90 decibels from the traffic. The noise issue is one of the reasons he would like to construct the wall out front. Mr. Dubois shared a presentation showing the traffic on his street with buses and cars speeding by.

Ms. MacDonald stated the case had been continued to give her additional time to review the material. She also encouraged Mr. Dubois to have a neighborhood meeting and try to work with the neighbors to come up with some sort of compromise. Staff was not included in the neighborhood meeting. She asked Mr. Dubois if he had notes from his efforts of the neighborhood outreach. She asked if he had a neighborhood meeting, if so how many people attended, and the results of the meeting.

Mr. Dubois stated he spoke with Mr. Randall, a resident of the neighborhood. He asked Mr. Randall if he could get the neighbors together and have a meeting. Mr. Randall offered to have a meeting at his house. Before Mr. Dubois knew it the neighbors already had a meeting without him. Mr. Randall came back with some suggestions for the wall. Mr. Dubois revised his plans and adjusted his wall to 5 feet, and changed the setback of the wall. He gave Mr. Randall a set of his plans to share with the neighbors in opposition.

Mr. Dubois presented a photograph of his neighbors palm tree that encroaches in his back yard. He is disappointed that the neighbor does not keep the tree trimmed. Mr. Dubois does not believe constructing a wall for a front patio would affect the property values in the neighborhood. He would like the wall so he can enjoy his property out front. The wall would provide privacy, help with the noise on the street and contain his dogs on the property.

Dawn Sinclair requested the emails and letters of opposition received after the report was published to be noted from: Deborah Holen, Herself and Werner Bruckner  
She also asked that all the materials Mr. Dubois used today be part of the record in case of an appeal. The materials include videos and photographs.

Dawn Sinclair spoke in opposition of the Use Permit. She stated the design is not compatible with Shalimar. Shalimar is the basis of comparison. The house is not located in the Walled Villas. The Walled Villas are not the basis of comparison, neither is the Goodwin/Ching house. The wall on Balboa is a side yard fence. The examples of front walls used by Mr. Dubois are either not in the Shalimar neighborhood or not similar to his proposal. There are no walls around patios that have all of the attributes the neighbors object to in this case. The proposal looks like a walled fortress. The neighbors object to a wall being 5 feet tall, covering the entire front of the house, and all of the windows and doors. The neighbors decided to get together and develop alternatives to present to Mr. Dubois. The alternatives included building a 4 foot wall, moving the wall closer to the house and not covering the front door. He has an approximate 300 square foot patio. The neighbors

suggested constructing some type of rod iron gate in front of the patio. Mr. Dubois rejected all of those ideas. Ms. Sinclair indicated Mr. Dubois was not willing to work with the neighbors to resolve this issue.

Ms. Sinclair stated the traffic study was conducted by the City of Tempe. The reason for Mr. Dubois wall seems to be a moving target. First it was traffic. This is the city and there is going to be traffic moving up and down the streets. There are children who live in cities who take school busses. It is unreasonable for Mr. Dubois to request The City of Tempe change the character of one of its premier neighborhoods in order to accommodate his need for quiet. He should have bought a house in the country. If the reason for the wall is for the dogs there are things you can do to make sure your dogs don't escape or hurt anybody. The dogs can be kept in the back yard. He can be careful when he opens the front door so the dogs don't run out. He can train the dogs. The neighbors are not saying no wall, no way. The neighbors would like the wall to be built in a way that does not affect their enjoyment of their property or property values.

As far as property values are concerned, a letter was sent to Staff from Kathleen McMullen. She is a real estate with recent experience in the Shalimar Neighborhood. She stated the wall is going to hurt property values. Her opinion as a professional real estate broker who deals with the Shalimar area is entitled to a lot more weight than Mr. Dubois guess work about why a house is taking so long to sell. A 4 foot wall would not help things but it would not create the fortress feel. The wall should not cover the front door or the window and it should be set back closer to the house.

Ms. Sinclair would like the Hearing Officer to look at two criteria. Traffic, nuisance and disruptive behavior do not apply to structures like a wall. The Development Review Commission essentially agreed. They based their unanimous granting of the appeal on one criterion alone. It was based on the incompatibility of the neighborhood. Ms. Sinclair encouraged Ms. MacDonald to do the same thing. She is concerned about the code and what Mr. Dubois could theoretically build. The code is not clear. Ms. Sinclair asked the Hearing Officer not to grant the Use Permit for this particular design. Mr. Dubois should come back with something that meets the expectation of the neighbors. There are designs to meet Mr. Dubois need for privacy and to keep his dogs in without decreasing the property values and depriving property owner's enjoyment of their property.

Neil Bearce spoke in opposition of the Use Permit. He stated Mr. Dubois does not do outreach. The photograph of the tree presented by Mr. Dubois is in Mr. Bearce's back yard. Mr. Bearce told Mr. Dubois when he first moved in to his house to feel free to cut any of the vegetation that intrudes into his yard. The previous owner would help trim the tree twice a year. Mr. Bearce trims the tree in June and October every year. There are no special or compelling circumstances here to allow the front wall. The neighbors should not be punished. Mr. Dubois mentioned in his own testimony that his wife asked what he was thinking when he bought this house. There are expectations because there are codes in place to maintain the neighborhood the way it is right now. Relevant criteria include home values and the character of the neighborhood. The other Use Permit criteria do not apply. The City did an accurate traffic study in the neighborhood. There are four buses that go down the street every day, two in the morning, two in the afternoon. They do not make any stops, they just go by. Mr. Dubois crowed a lot of traffic in his video that lasted a couple of minutes. If Mr. Dubois is downsizing from one acre it is hard to maintain the same amount of space and use of space on a small lot on Balboa. The front yard is not a suitable space for the dogs.

Ms. MacDonald asked Ms. Kaminski if she has seen the traffic study for this area.

Ms. Kaminski stated the residents requested the traffic study. Staff has not received a copy of the study.

Ms. MacDonald stated she had not received a copy of the traffic study in her packets.

Mr. Bearce stated the traffic study was presented to the Development Review commission. The study results noted there were 329 vehicles in a 24 hour period. That is about four and a-half minutes per vehicle on average during a 24 hour period. The study was conducted on a week day. Typically the week days are busier than the weekends. This traffic count does not qualify for speed humps.

Mr. Modares spoke in opposition of the Use Permit. He stated he is one of the newest residents in the Shalimar

Neighborhood. He bought a house less than three years ago. He has been renovation his house and has received several compliments from his neighbors. When he bought his house he wanted to be in Tempe. There were many homes on the market a few years ago. He selected his house for the appearance and character of the neighborhood. Mr. Modares also addressed the noise. Overall he believes it is a very quiet neighborhood. He would like Mr. Dubois to be part of the community but respect the culture and look of the neighborhood.

Tom Brethauer spoke in opposition of the Use Permit. If you live on an acre in west Phoenix in a semi-rural area where it is quiet and then buy a house in a city where the house is much smaller there is obviously going to be more traffic. He should not be upset because two school busses go by the street in the morning. The neighborhood is between three freeways. One of the freeways is less than a fourth of a mile away. The neighborhood is less than a mile from a train track. Traffic helicopters fly over constantly in the morning and evening. There is going to be noise in the neighborhood. Other neighbors use their front yards. Mr. Brethauer also stated his concern that initially Mr. Dubois wanted the wall for noise, but about two weeks ago he stated the wall was for large dogs he wanted to put in the fenced front yard.

Mr. Dubois addressed the issued brought up by the neighbors. He stated it is amazing how things get explained incorrectly. The video he created was from singular shots and they just happen to run in a row. The traffic study included 329 cars, that does not mean only one car goes by every four and a-half minutes. He stated the cars are a nuisance when he is sitting on his porch and he is looking for a way to fix it. He stated when he lived in Phoenix on Greenway and 43<sup>rd</sup> Avenue there was more noise than what he experiences in Tempe. He lived near two six lane streets with traffic all day long. He would like to build a wall 6 feet high at the 15 foot setback with a window.

Ms. Sinclair stated the neighbors did not like the combination of elements. She has no objection to a 6 foot wall moved farther back towards the house. It would be helpful to see drawings for the proposal.

Mr. Dubois explained his drawing is to scale. He proposed to put a window in over the planter. He would like to capture the porch as a quiet refuge, but does not want to move the wall closer to the property.

Ms. Kaminski explained the 20 foot setback is the building line. The house could be expanded out to that line. The 20 foot setback is the building envelope, or buildable area of the lot. The 15 foot setback is the allowable envelope for patio walls.

Mr. Dubois stated he is at the point he can build his objective without the Use Permit.

Ms. MacDonald asked him why he did not want to do that.

Mr. Dubois stated he liked his last design. He indicated after he planted vegetation the wall would be obscured. He would like to use low water plants for the landscape. Within two to three years the wall would not be visible.

Ms. MacDonald asked what the point would be in putting all the iron rail work in the wall if it will not be visible.

Mr. Dubois stated the wall would not include iron rail, it would be decorative block.

Ms. MacDonald stated this is a difficult case. There has been a lack of outreach efforts that have taken place. The applicant has demonstrated some flexibility in the proposed plan. He moved the wall back 13 feet from where it was originally. The height of wall the wall reduced from 6 feet to 5 feet. Decorative block and openings in the wall have been included to enhance the design. Ms. MacDonald reviewed the minutes from the Development Review Commission hearing to see how they handled the Use Permit criteria. She agrees how the Commission looked at the criteria. Clearly some of the criteria are not applicable to this particular case so it should be disregarded.

Ms. MacDonald reviewed the criteria for a Use Permit:

1. Traffic generated by this use should not be excessive. – Not Applicable
2. It won't create a nuisance resulting from odor, dust, gas, noise, vibration, smoke, heat or glare. – Not

Applicable

3. It won't contribute to the deterioration of the neighborhood. – Questionable
4. It is compatible with existing surrounding structures and uses. – There are examples from the neighborhood which show walls of various heights, materials and locations within the yard
5. Will allow you to adequately control disruptive behavior both inside and outside the property. – Not Applicable

Ms. MacDonald believes Mr. Dubois could build a wall 4 feet high that would meet his needs. He has to consider the surrounding structures and uses. The emotions and sentiments of the residents need to be considered. A 4 foot wall is allowable by right in the Zoning Code.

**DECISION:**

Ms. MacDonald denied PL120421/ZUP13029 for a Use Permit to increase the patio wall height from 4 feet to 5 feet.

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6. Request approval for a Use Permit to allow a drive-thru for a RESTAURANT (PL130084) located at 1420 North Scottsdale Road. The applicant is Fred Stern, Stern & Associates.

**Continued from April 16, 2013**

**THIS CASE WILL BE CONTINUED TO MAY 21, 2013 BY THE REQUEST OF COMMUNITY DEVELOPMENT STAFF.**

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The next Hearing Officer public hearing will be held on May 21, 2013.

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There being no further business the public hearing adjourned at 3:14 PM.

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Prepared by: Julie Stennerson, Executive Assistant  
Reviewed by:



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

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