

**Minutes
HEARING OFFICER
SEPTEMBER 17, 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
Michael Spencer, Senior Code Inspector
Brandy Zedlar, Code Inspector
Julie Stenner, Executive Assistant

Number of Interested Citizens Present: 2

Meeting convened at 1:42 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 October 1, 2013 at 3:00 PM, to the Community Development Department.

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1. Ms. MacDonald noted that the Hearing Officer Minutes for September 3, 2013 had been reviewed and approved.

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2. Request approval to abate public nuisance items at the **ZIPF PROPERTY (PL130305)** located at 3706 South Wilson Street. The applicant is the City of Tempe – Code Compliance.

There was no one present to represent the property owner.

Brandy Zedlar requested a 180 day open abatement for the property located 3706 South Wilson Street. The property is in violation of deteriorated landscape, junk and debris. A complaint was filed in May of 2013. Multiple notices have been sent to the property owner in West Virginia. The property owner has not contacted Code Enforcement. The property appears to be vacant at this time. The water bill has not been paid since last April.

Ms. MacDonald stated notices have been posted on the front door and mailed to the property owner in West Virginia. There have been no improvements in the condition of the property. The property is in disrepair and needs to be cleaned up.

There was no public input.

DECISION:

Ms. MacDonald approved abatement proceedings for PL130305/ABT13025 for an open period of 180 days.

3. Request approval to abate public nuisance items at the **MUELLER PROPERTY (PL130313)** located at 408 East Garfield Street. The applicant is the City of Tempe – Code Compliance.

There was no one present to represent the property owner.

Michael Spencer requested a 180 day open abatement for the property located 408 East Garfield Street. A notice was issued on June 13, 2013 for deteriorated landscape. A final notice was mailed to the property owner on June 27, 2013. There has been no change in the condition of the property. A citation was issued for violation of the Tempe City Code. The property owner failed to appear in court. The property was inspected this morning and there has been very little change in the condition of the landscape.

Ms. MacDonald asked Mr. Spencer if the property is vacant.

Mr. Spencer stated there does not appear to be an active water bill at this residence. However, a truck has been seen occasionally at the property.

Ms. MacDonald asked if that is what necessitates the Police Officer on site during the abatement.

Mr. Spencer stated the Police Officer on site was requested since it is unknown if the property is occupied.

Ms. MacDonald stated the photographs clearly indicate the property needs to be cleaned up. There is a lot of combustible landscape material that is dead, located near the house.

There was no public input.

DECISION:

Ms. MacDonald approved abatement proceedings for PL130313/ABT13026 for an open period of 180 days.

4. Request approval for a Use Permit to allow tandem parking for **LAKE COUNTRY VILLAGE RESIDENTIAL (PL130217)** located at 1030 East Baseline Road. The applicant is Charles Huellmantel, Huellmantel & Affiliates.

This case will be continued to October 1, 2013 by the request of Community Development Staff.

5. Request approval for a Use Permit to allow a philanthropic organization to operate a youth day center for **TUMBLEWEED YOUTH RESOURCE CENTER (PL130257)** located at 505 West University Drive. The applicant is Chris Tompkins, Tumbleweed C.F.Y.D.

This case is continued from August 6, 2013.

This case has been withdrawn by Community Development Staff.

6. Request approval for a Use Permit to allow outdoor live entertainment for **C.A.S.A. (PL130291)** located at 15 East 6th Street, Suite 101. The applicant is Charles Huellmantel, Huellmantel & Affiliates.

This case will be continued to October 1, 2013 by the request of Community Development Staff.

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7. Request approval for a Use Permit to allow a bar in the General Industrial District and a Use Permit to allow temporary outdoor vending for **FOUR PEAKS ANNEX (PL130299)** located at 2401 South Wilson Street. The applicant is Michael W. Kelly, Michael Wilson Kelly – Architects, Ltd.

This case will be continued to October 1, 2013 by the request of Community Development Staff.

8. Request approval for a Use Permit to allow live entertainment for **GLUTTONS (PL130315)** located at 203 East 7th Street. The applicant is Ryan Praedel, LLP Food Company L.L.C.

This case will be continued to October 1, 2013 by the request of Community Development Staff.

9. Request approval for a Use Permit to allow a tobacco retailer (electronic cigarette retail business) for **BUTT OUT (PL130318)** located at 401 South Mill Avenue, Suite 106. The applicant is Matthew Berger, Seditious Vapours.

This case will be continued to October 1, 2013 by the request of Community Development Staff.

10. Request approval for a Use Permit to allow a Restaurant/Sandwich Shop in the General Industrial District for **PS BUSINESS PARKS – PORT OF SUBS (PL130320)** located at 1755 West University Drive, Suite 115-117. The applicant is Healey Mendicino.

This case will be continued to October 1, 2013 by the request of Community Development Staff.

11. Request approval for a Variance to reduce the front yard setback; a Variance to allow a fence/wall in excess of 6'-0" in height; and a Variance to increase the lot coverage from 45% to 52% for the **HIPPS RESIDENCE (PL130108)** located at 1404 East Lemon Street. The applicant is William Hipps.

Continued from September 3, 2013

William Hipps was present to represent this case.

Ms. MacDonald stated this case is being revisited from the September 3, 2013 hearing. The applicant is requesting two Variances. The first Variance, VAR13006 is to reduce the front yard setback from 15 feet to 9 feet for an open shade structure. Variance, VAR13007 is to allow a 6 foot tall rolling gate with columns in the front yard setback.

Ms. Kaminski stated Staff was in support of the applicant retaining the existing 6 foot fence, but not allowing the fence to be raised.

Ms. MacDonald stated the third Variance, VAR13008 increasing the lot coverage, was not applicable or necessary.

Ms. Kaminski stated the Variance is not applicable since the use is for outdoor patio space.

Diana Kaminski introduced the case. The property is located on Lemon Street, between Rural Road and McClintock Drive, north of Apache Boulevard. The property is a corner lot, with an irregular shaped front yard located on a curve. The applicant has requested a Variance to retain the existing fence that was built with two gates across the property. The fence falls within the front yard setback which has a four foot restriction for fence

and wall heights. The property owner would like to retain the fence at six feet to secure the backyard area. Staff is in support of the request. The neighbors that attended the neighborhood meeting were in support of the request and are pleased with the appearance of the exterior of the property. The other Variance request is for a shade structure. The existing canopy would be removed and replaced with a new structure. The encroachment for the Variance request is a small portion of the property. Staff questioned the amount of paving in the front yard area which extends beyond the driveway. Staff spoke with Mr. Hipps regarding landscaping the area. A proposed solution was saw cutting the existing concrete and putting in a checkerboard pattern with concrete and turf. This would still enable a drive access to the gate into the back area of the property.

Ms. MacDonald asked if cutting the concrete and putting in grass would meet the intent of the code for landscape.

Ms. Kaminski stated there are not usually requirements for front yard landscape designs in single family residential areas. A lot of people put patios in the front yard. Single family residential areas usually do not have two large sets of rolling gates either. Traffic Engineering indicated the driveway could not exceed 30 feet in width. Cars are not to be parked on the east end of the property due to the depth of that portion of the yard. A separate Use Permit would be needed to park in the front yard setback.

Ms. MacDonald asked the current width of the paved area from east to west.

Ms. Kaminski stated the portion of the concrete to be saw cut and removed would be 23 feet. The remaining driveway would be 30 feet, which is allowed by Traffic Engineering. The current width of the paved area is 53 feet. The aerial photograph shows vehicles parked in the front yard setback. In reviewing the curvature of the lot, staff is recommending approval of both Variances being requested.

Mr. Hipps displayed a photograph of his property that was taken one day after the last hearing. The back of the property has been cleaned up. The items stored in the back yard can no longer be seen over the fence. The back sheds are visible.

Ms. MacDonald asked Mr. Hipps what he did with the material stored in his back yard.

Mr. Hipps stated a majority of the material was taken to the dump. The area is now nice and clean with the remaining materials stacked neatly.

Ms. MacDonald asked Mr. Hipps about the new drawings submitted in the Staff Report.

Mr. Hipps addressed the elevation plan. He explained the back portion of the house is not a two-story addition. The addition is a family room with a 14 foot high ceiling. He noted the roof elevations and the height of the rolling gate. He feels the plan for the open shade structure works really nice architecturally and it would be a nice addition to the house.

Ms. MacDonald stated she did not doubt Mr. Hipps would be using quality materials. Her overall concern regarding this project is the fact that the applicant is operating a home occupation at the site in a manner that is not allowed by the City Code.

Mr. Hipps stated he is working towards rectifying that situation. He indicated he was going to rent a space so he can do most of his work for his business offsite. He would still work on his hobbies at his residence. The business trucks would also be offsite and there would only be two vehicles at his home. Mr. Hipps stated there would not be nearly as much stuff at his residence.

Ms. MacDonald asked Mr. Hipps why the large shade structure was necessary if there was not going to be as much stuff at his property.

Mr. Hipps stated he had skin cancer and he loves to go outdoors to work on his projects. He would like to retire in the near future. He enjoys working on sculptures and needs a shaded place to work outdoors at his home.

Ms. MacDonald stated a Variance has really high standards for approval. State Statute outlines the requirements to grant a Variance. One of the requirements includes special circumstances are applicable to the property, which would necessitate a Variance.

Mr. Hipps stated his lot is 74,000 square feet. With the front setback and the back setback he has 31% less property than the average home in the area to building on. His property is also located on a curve. He has no back yard. The only place available for his shade structure is the side yard.

Ms. MacDonald noted Mr. Hipps has already built one addition to his home at the back of the house.

Mr. Hipps stated he added on a master bedroom and an additional bathroom.

Ms. MacDonald stated when he added on to the property he decreased his allowable building envelope.

Mr. Hipps stated he is still within the allowable area. He has not gone over the 45% limit.

Ms. MacDonald stated Mr. Hipps does not have a hardship due to the amount of space. He has already built a large structure on his property. This would be a self-imposed hardship. One of the Variance criteria states any hardship that goes along with the property shall not be self-imposed by the homeowner.

Mr. Hipps stated he would not be requesting the Variance if he had a regular sized lot. He would have plenty of room to do exactly what he wants to do. His lot from front to back is only 51 feet and his property is located adjacent to a curved portion of the street. Most of the lots in the neighborhood are 100 feet deep. He feels he is at a huge disadvantage that is not self-imposed.

Ms. MacDonald stated Mr. Hipps could build a shade structure, but not to the extent he wants to build it.

Mr. Hipps stated if his property was a regular sized lot he could build the shade structure he wants.

Ms. MacDonald stated they were just going to disagree on this fact. She has studied this case carefully and given it a lot of thought in regards to the criteria. She does not want Mr. Hipps to have to take down his fence. She believes the fence is good looking and should be able to remain. She supports the Variance to allow the 6 foot tall rolling gate at it exists today. She does not support the Variance to reduce the front yard setback for the shade structure to the size indicated in the plans. The size of the shade structure is excessive. Mr. Hipps stated at the last hearing he had a roofing company as a home based business.

Mr. Hipps stated he does have a roofing company and he will still keep his equipment at his home to prevent it from being stolen. The rest of the stuff will be kept off site.

Ms. MacDonald stated everything is supposed to be enclosed for a home based business. A home based business would require a building for the material, not just a shade structure. Combustible materials are not supposed to be stored in a tightly enclosed space. She does not want to give Mr. Hipps permission to operate a home based business in a manner that is inconsistent than what is outlined in the City Code.

Mr. Hipps stated he understands that.

Ms. MacDonald stated she would also like to eliminate the 53 foot run of concrete. If she approves the Variance to allow the 6 foot rolling gate she would also include a stipulation which reads: The area to the east of the 30 foot established driveway shall be planted with trees and shrubs, landscaped as yard, not to be used as additional driveway. This would help restore the home back to a single family residence. This would not allow for parking in the front yard.

Mr. Hipps stated his concern regarding access to his back yard. He stated he has a rock water feature placed on the side of the carport which would make access to the back yard difficult. The gate on the east is more

accessible to the back yard.

Ms. Kaminski stated there may be Building Safety issues with the carport now that it is an enclosed area.

Mr. Hipps indicated the rock water feature does not enclose the entire area. Open space remains on both sides of the water feature.

Ms. MacDonald stated she was not asking Mr. Hipps to remove the rolling gate on the east. She would like the area in front of the gate to be landscaped with more of an effort than saw cutting 12 inch squares. Concrete squares are used in a lot of commercial applications. The concrete squares could still be driven and parked on. The goal for the City is for the property owner to not have the ability to park on the 53 foot run of surface.

Mr. Hipps stated the eastern side of the concrete is not parked on due the limited space between the rolling fence and the sidewalk.

Ms. MacDonald stated she has aerial photographs showing vehicles parked on the concrete.

Mr. Hipps was unaware of the vehicle parked on the east end of the property in the aerial photograph.

Ms. MacDonald stated from the east pillar of the house to the corner of the house would be one parking stall which would remain. The concrete from the corner of the house to the pillar between the rolling gates would also remain to retain 30 feet of driveway. The concrete in front of the second rolling gate on the east would need to be removed.

Ms. Kaminski stated another option would be to remove the concrete in front of the house leaving the walkway up against the house and the sidewalk, and shift the 30 feet so it aligns with the corner of the house. Parking would not be allowed in front of the rolling gate on the east due to the front yard setback, but it would give Mr. Hipps access to the back yard. He would have to park his two vehicles in the carport. The driveway in front of the carport would be available for guest parking, but vehicles cannot overhang onto the sidewalk.

Ms. MacDonald asked about the rock water feature in the carport.

Ms. Kaminski asked Mr. Hipps if the carport is available for parking two vehicles.

Mr. Hipps stated there is still enough room in the carport for two vehicles.

Ms. Kaminski stated she was unsure if there would be any issues from Building Safety regarding the water feature and the amount of opening required for a carport. This may change the lot coverage from the definition of Building Safety and the definition of a garage versus a carport which can only have two sides enclosed.

Mr. Hipps stated the rock water feature is not a wall, it is a fountain. The water feature faces west. He stated they don't turn it on anymore because it makes too much of a mess.

Ms. MacDonald asked Mr. Hipps if he parks in the carport.

Mr. Hipps stated he wants to once his work is done. He stated he could live with parking arrangement proposed by Ms. Kaminski if it is acceptable by code.

Ms. Kaminski stated the requirement for a single family residence is for two primary parking spaces to be located on the property in the carport or garage, but outside of the front yard setback. In designing this with the carport, the two vehicles for the residence will be parked in the carport, parking would be allowed in front of the gate as long as the vehicles are not hanging over the sidewalk. The driveway is only allowed to be 30 foot wide. If the driveway is moved to the east it would allow use the second gate to back in the yard to drop off supplies. Landscape would be placed on both sides of the driveway.

Ms. Kaminski asked Mr. Hipps the width of the gate near the house.

Mr. Hipps believed the gate was approximately 21 or 22 feet wide.

Ms. Kaminski stated an additional 9 – 10 feet would be available east of the gate for the driveway.

Mr. Hipps stated his truck was too long to park in the carport or in front of the carport. He currently parks on the driveway area in front of the house.

Ms. Kaminski stated it would require a Use Permit for primary parking to be in the front yard setback. She asked Mr. Hipps if he would be able to roll his gate open to park his truck in the back yard utilizing the plan with the additional 10 foot of concrete to the east.

Mr. Hipps agreed parking his truck in the back yard would be the best solution.

Ms. Kaminski added the following language to condition of approval number 6: The driveway accessing the carport shall be 30 feet in width starting at the eastern corner of the house, extending east 30 feet, with landscape area with trees and shrubs to replace existing concrete on either side of the driveway.

Ms. MacDonald stated the goal is to not have the applicant radically alter what he has existing on the premises, but also not allow him to continue to operate a home based business in violation of the code. Code Compliance informed Ms. MacDonald that complaints have been received regarding the fact Mr. Hipps is operating a home based business. She noted some bullet points listed in the Staff Report under Section 3-412 Home Occupation: The home occupation shall be restricted to lawfully build enclosed buildings and be conducted in a manner so as not to give an outward appearance of the business. The home occupation shall not result in any structural alterations or additions to a building that will change its primary use or building code occupancy classification. Products and or equipment produced or used by the home occupation shall not be displayed or visible from outside any building. No offensive noise, vibration, smoke, dust, odor, heat or glare shall be produced.

There was no public input.

Ms. MacDonald stated her goal is to allow Mr. Hipps to work on his projects on his property undercover but not to the intensification such that it is a home based occupation in violation of the code. She feels by granting both Variances it would be giving him a license to continue the home based business. She stated she would approve Variance VAR13007 which will allow Mr. Hipps to retain his 6 foot rolling gate with the stipulation added to condition number 6 which reads: The driveway accessing the carport shall be 30 feet in width starting at the eastern corner of the house, extending east 30 feet, with landscape area with trees and shrubs to replace existing concrete on either side of the driveway. Ms. MacDonald stated she is going to deny Variance VAR13006 to reduce the front yard setback from 15 feet to 9 feet for an open shade structure. She believes Mr. Hipps has adequate building area for a substantial shade structure which will allow him to work on his hobbies.

Ms. MacDonald reviewed the Variance criteria:

1. She does not believe that special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings. She understands it is an irregularly shaped lot, but the property already has been added on to which took some of the building envelope away.
2. She does not believe 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. A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner.

DECISION:

Ms. MacDonald denied PL130108/VAR13006 – Variance to reduce the front yard setback from 15 feet to 9 feet for an open shade structure.

Ms. MacDonald approved PL130108/VAR13007 – Variance to allow a 6 foot tall rolling gate subject to the following conditions:

1. The Variances are valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.
2. The Variances are valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. The new carport and patio additions shall remain for exterior (outdoor) use and not be enclosed to become part of the indoor livable area.
4. The gate and wall in the front yard setback (facing south) shall remain as currently constructed at 6', and not modified to increase the height. The side yard gate (facing east) may be increased in height to 8' due to elevation change in alley.
5. Show compliance with no more than 35% paving in front yard per City Code Chapter 21.
6. 30' maximum driveway width for single family residence. Remove paving on east side of front yard and restore with landscape material, including vegetation, to make driveway defined width and restore landscape to street frontage. **The driveway accessing the carport shall be 30 feet in width starting at the eastern corner of the house, extending east 30 feet, with landscape area with trees and shrubs to replace existing concrete on either side of the driveway. (Modified by Hearing Officer)**
7. Any uses associated with the business or hobby that are considered a nuisance or in excess of typical noise, dust, heat, odor or glare shall not be conducted on site, but taken off site to a more appropriate location for that use.

The next Hearing Officer public hearing will be held on October 1, 2013.

There being no further business the public hearing adjourned at 2:33 PM.

Prepared by: Julie Stennerson, Executive Assistant
Reviewed by:



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

SA:js