Tempe

Minutes
HEARING OFFICER
AUGUST 21, 2012

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
Diana Kaminski, Senior Planner
Michael Spencer, Senior Code Inspector
Brandy Zedlar, Code Inspector
Shawn Daffara, Code Inspector
Craig Hittie, COT Housing

Number of Interested Citizens Present: 11

Meeting convened at 1:30 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 September 4, 2012 at 3:00 PM, to the Community Development Department.

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1. Ms. MacDonald noted that the Hearing Officer Minutes for August 7, 2012 had been reviewed and approved with changes noted and made into the record.

   Item #3, Spindler Property Abatement was withdrawn by Code Compliance.
   The case will not be continued to September 18, 2012.

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2. Hold a public hearing for a request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the DASS PROPERTY (PL120253 / ABT12046 / CE121396) (Michael Spencer, Inspector; Sandra Dass, property owner) located at 1019 South George Drive, in the R1-6,Single Family Residential District.

   There was no one present to represent the property owner.

   Michael Spencer requested an abatement for the property located at 1019 South George Drive. The property is in violation of inoperable, unregistered vehicles, lawn parking, litter, trash, debris and deteriorated landscape. Two notices have been sent to the property owner. There has been little change in the condition of the property. One citation was issued. The property owner failed to appear in court. Mr. Spencer stated the City has not received any response from the property owner.

   Ms. MacDonald asked how many vehicles would be towed away from this property.

Mr. Spencer stated there were approximately five unregistered vehicles that would be towed from the front of the property.

Staff requested approval of a 180 day open abatement.

DECISION:
Ms. MacDonald approved abatement proceedings for PL120253 for an open period of 180 days.

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3. Hold a public hearing for a request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the FERGUSON PROPERTY (PL120256 / ABT12047 / CE122228) (Brandy Zedlar, Inspector; William Ferguson, property owner) located at 1213 West Hermosa Drive, in the R1-6, Single Family Residential District.

There was no one present to represent the property owner.

Brandy Zedlar requested an abatement for the property located at 1213 West Hermosa Drive. The property is in violation of deteriorated landscape. The property has already been abated in February of this year. Staff has not received any contact from the property owner. Staff requested approval of a 180 day open abatement.

Ms. MacDonald agreed the property is in a state of disrepair and needs to be monitored.

DECISION:
Ms. MacDonald approved abatement proceedings for PL120256 for an open period of 180 days.

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9. Hold a public hearing for a request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the KING PROPERTY (PL120271 / ABT12048 / CE122141) (Shawn Daffara, Inspector; Helen King, property owner) located at 814 West 12th Street, in the R1-6, Single Family Residential District.

There was no one present to represent the property owner.

Shawn Daffara received a complaint regarding the King property located at 814 West 12th Street on June 1, 2012. The property is in violation of deteriorated landscape and an inoperable vehicle in the driveway. Staff was informed by a neighbor, that the property owner passed away a month prior to the violation being issued. Code Compliance has had some communication with a family member that was familiar with the property. The family member had no interest in the property and made no effort to clean up the property. The property has a reverse mortgage on it through Wells Fargo. The bank has not started the foreclosure process yet. Staff requested approval of a 180 day open abatement.

DECISION:
Ms. MacDonald approved abatement proceedings for PL120271 for an open period of 180 days.

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5. Hold a public hearing for a request by HABITAT FOR HUMANITY CENTRAL ARIZONA (PL120255) (Tana Nichols, applicant; City of Tempe, property owner) located at 1130 South Stratton Lane, in the R-4, Multi-Family Residential General District for:

ZUP12072 – Use Permit to allow the replacement of a one story structure with a two-story single-family residence.

Tana Nichols, Habitat for Humanity Central Arizona was present to represent this case.

Diana Kaminski introduced the case. The property is located east of McClintock, south of Don Carlos Avenue on Stratton Lane. The area is zoned R-4, there are multi-family and single-family homes in the area. The applicant is requesting to construct a two-story single-family home on a multi-family lot. Staff is recommending approval of the Use Permit. Staff has not received any input from the public regarding this request. Ms. Kaminski read into the record a modification for condition number 1, strike the words *or Variance*. This request is only for a Use Permit.

Ms. Nichols agreed to the conditions of approval.

Ms. Kaminski stated the conditions of approval address privacy issues for the adjacent properties and additional security for the residents of the new home.

There was no public input.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:
1. The manner of conduct and the building for the proposed use will not be detrimental to persons residing or working in the vicinity, to adjacent property, or to the neighborhood.
2. Traffic generated by this use should not be excessive.
3. It won't create a nuisance resulting from odor, dust, gas, noise, vibration, smoke, heat or glare.
4. It won't contribute to the deterioration of the neighborhood.
5. It is compatible with existing surrounding structures and uses.
6. Will allow you to adequately control disruptive behavior both inside and outside the property.

DECISION:
Ms. MacDonald approved PL120255/ZUP12072 subject to the following conditions:
1. This Use Permit ~~or Variance~~ is 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 Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.
3. Provide clerestory windows or glass block on the north and south elevations for increased architectural detail while maintaining privacy to the adjacent residents.
4. Provide photo-cell light at front door and garage door for security.
5. Provide shade trees on south side of yard for energy conservation.
6. Provide a minimum of 2 street trees within the front yard landscape area.
7. Provide a shade canopy cover over west facing patio slab for energy efficiency.

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6. Hold a public hearing for a request by HAIR-IT-AGE (PL120258) (Jeremiah J. Power, applicant; Cal Eaton Properties, property owner) located at 2003 East 5th Street, Suite 6, in the GID, General Industrial District for:

ZUP12073 – Use Permit to allow a beauty salon in the GID, General Industrial District.

Jeremiah J. Power, Hair-It-Age was present to represent this case.

Sherri Lesser introduced the case. The applicant is requesting a Use Permit for a hair salon in the General Industrial District. The site is located east of McClintock, north of University Drive in the industrial park south of Tempe Marketplace. This space was previously occupied by a tattoo parlor. Staff is recommending approval of the Use Permit.

Mr. Power agreed to the conditions of approval.

There was no public input.

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.

DECISION:
Ms. MacDonald approved PL120258/ZUP12073 subject to the following conditions:
1. The use permit is valid for Hair-It-Age and may be transferable with approval from the Hearing Officer staff. Should the business be sold, the new owners must contact the Hearing Officer staff for review of the business operation.
2. All business signs shall be Development Plan Review approved and permits obtained.
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 to re-evaluate the appropriateness of the use permit.
4. Obtain all necessary clearances and permits, for the occupancy and plumbing additions to the space, from the Building Safety Division.

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7. Hold a public hearing for a request by GRACIE'S THRIFT STORE (PL120264) (Paul Neighbors, applicant; Stoneman Properties, property owner) located at 53 East Broadway Road, in the CSS, Commercial Shopping & Services District for:

ZUP12074 – Use Permit to allow resale retail in the CSS, Commercial Shopping & Services District.

WITHDRAWN BY APPLICANT

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8. Hold a public hearing for a request by WESTERN INTERNATIONAL UNIVERSITY (PL120265) (Gensler – Philip Westermann, applicant; KBSII Fountainhead LLC/CBRE, Inc., property owner) located at 1601 West Fountainhead Parkway, Suite 100, in the GID/PAD, General Industrial District/Planned Area Development for:

ZUP12075 – Use Permit to allow a private educational use in the GID, General Industrial District.

Philip Westermann, Gensler was present to represent this case.

Diana Kaminski introduced the case. The property is located within the Fountainhead Corporate Development off of 55th Street. The primary use would be educational. The General Industrial District requires a Use Permit for educational uses. Staff has not received any comments from the public prior to the hearing.

Mr. Westermann agreed to the conditions of approval.

There was no public input.

Ms. MacDonald stated this is an appropriate use for the area. The other office buildings contain higher education uses as well. There is plenty of parking for vehicles and adequate bicycle parking.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:
1. The manner of conduct and the building for the proposed use will not be detrimental to persons residing or working in the vicinity, to adjacent property, or to the neighborhood.

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

DECISION:
Ms. MacDonald approved PL120265/ZUP12075 subject to the following conditions:
1. The Use Permit is valid for the plans as submitted within this application.
2. This Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed for educational use and occupancy.
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 to re-evaluate the appropriateness of the Use Permit.

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4. Hold a public hearing for a request by MITCHELL BALLARD (PL120211) (Mitchell Ballard applicant/property owner) located at 928 South Maple Avenue, in the R-3 Multi-Family Residential Limited District for:

VAR12009 – Variance to reduce the south side yard setback from 10 foot to 4 foot for a detached storage/tool shed.

Mitchell Ballard, property owner was present to represent this case.

Sherri Lesser introduced the case. This residence is located in the Maple/Ash Neighborhood located south of University Drive, west of Mill Avenue. Variances have been approved in the past to reduce the side yard setbacks. A Variance was approved in 2002 to reduce the north side yard setback from 7' to 0' for a proposed freestanding garage. A Variance was also approved to reduce the south side yard setback from 10' to 0' for a new master suite. A Use Permit was approved in 2004 to allow a second story addition. The residence has been expanded and the south side property line setback is about 3 to 4 feet. The applicant is requesting a variance for a tool/storage shed that is less than 200 square feet. The applicant built the shed with the understanding that he did not need a building permit, which is correct. However, there are zoning requirements. Since this is in a multi-family zoning district the setbacks in the Zoning and Development Code apply. The Zoning and Development Code requires a 10 foot setback. The structure has been built 4 feet from the property line. The applicant is asking for a variance for relief from the setback. The storage shed meets the required setbacks from the front and rear of the property; it is the south side yard setback we are discussing today. Staff has the test to strictly apply the rules for a Variance. Staff recommends denial of the Variance. Staff recognizes there are a lot of deviations within the area for the setbacks.

Ms. MacDonald noted that if the homeowner requested a Use Permit Standard reduction the setback would be 8 feet.

Ms. Lesser noted the structure could remain where it is if the height was reduced to 8 feet.

Mr. Ballard stated he has done a lot of work to improve the property since December 2010. He has received positive feedback from his immediate neighbors. He presented petitions of support signed by his neighbors. The storage/tool shed was built believing the neighborhood was zoned single-family, not multi-family use. Photographs were presented of similar circumstances of other sheds located on his block and in the neighborhood. Variances have already been approved for the property in the past that have not been taken advantage of. He should be able to have the same rights as his neighbors.

Ms. MacDonald asked Mr. Ballard if he knew the height of the shed.

Mr. Ballard stated the storage shed extends four feet above the six foot wall. The shed has been stucco

textured, shingled and painted to match the house.

There was public input.

Virginia Sandstedt resides on Ash Avenue about three blocks away from the applicant's property. She stated her concern with the massing and lot coverage.

Lee Cruz resides on Ash Avenue about four blocks away from the applicant's property. She believes Mr. Ballard has done a good job fixing up the house. She would like to keep the neighborhood special. She believes the property has been overbuilt and the shed is an eyesore since it is above the fence. She also noticed a structure covered with canvass.

Jenny Lucier, Tempe resident, strongly opposed of granting this application. She does not believe a storage shed should be located in the front yard. She believes this is an exploitation of the property. She does not feel this is a hardship, it is an overbuild of the property. Ms. Lucier requests denial of the application. She realizes there are situations in the neighborhood similar to this, but does not want to add to it. She believes the other storage sheds were grandfathered in.

Ms. MacDonald noted the storage shed does meet the setback criteria from the street. It is the side yard setback in discussion.

Karyn Gitlis resides on Ash Avenue. She does not believe a garden shed should be in the front yard, it looks trashy. The old 808 Zoning Code would not allow accessory structures to be built on the front half of the property. This needs to be addressed and the code needs to be adjusted. The house at 928 South Maple Avenue was a single story adobe bungalow built in 1921. It included a well-integrated duplex apartment at the rear. The 2005 addition of a massive two-story structure on the back of this house and a block wall down the sides and across the front ruined the blocks aesthetic and it context. This site is overbuilt. The fact the shed supersedes the allowable height for an accessory structure is enough rational and reason to deny this permit.

Ms. MacDonald questioned the lot coverage. According to the Building Safety Department, the lot coverage is 39%.

Ms. Lesser stated when the applicant submits for building permits they provide a roof plan and lot coverage is calculated by anything that is under the roof. The last addition made the total building area 4,882 square foot, but it is not all on one level. The lot coverage is shown at 39%. This storage shed is 184 square feet. It does not substantially change the lot coverage. The lot coverage allowed in this area is up to 45%.

Ms. Lesser stated the 808 Zoning Ordinance was changed in 2005. Prior to the change all accessory structures were required to be located on the back half of the lot. When the Zoning Development Code was adopted structures could be located just behind the front yard setback.

Ms. MacDonald asked Mr. Ballard about the canvass covered structure in his yard.

Mr. Ballard stated the canvass is a shade structure over a swing. He was not aware that it bothered anyone and would be willing to move it to his backyard. Mr. Ballard feels most of the comments made today have not been about the side yard setback.

Ms. MacDonald read the petition letter of support for Mr. Ballard's tool shed into the record.

Mr. Ballard agreed to the conditions of approval.

Ms. MacDonald stated this case is difficult. There is some confusion between the 808 Zoning Ordinance and the Zoning Development Code. The language in the Code and the Arizona Revised Statute is not clear. She would like to get further direction by the City Attorney's Office. Ms. MacDonald stated she would like to continue the hearing and confirm the lot coverage.

Mr. Abrahamson noted staff would be able to get more detailed history regarding the other adjustments to the property before the next hearing.

CONTINUED TO DECEMBER 18, 2012

The next Hearing Officer public hearing will be held on September 4, 2012.

There being no further business the public hearing adjourned at 2:51 PM.

Prepared by: Julie Stennerson, Executive Assistant
Reviewed by:

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

SA:js