

**Minutes  
HEARING OFFICER  
DECEMBER 18, 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

**Number of Interested Citizens Present: 15**

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 January 2, 2013 at 3:00 PM, to the Community Development Department.

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1. Ms. MacDonald noted that the Hearing Officer Minutes for December 4, 2012 had been reviewed and approved.

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2. Request approval to abate public nuisance items at the KNOX PROPERTY (PL120378) located at 2030 East Magdalena Drive. The applicant is the City of Tempe – Code Compliance.

**THE PROPERTY WAS REMOVED FROM THE AGENDA AS IT HAS BEEN BROUGHT INTO COMPLIANCE BY THE PROPERTY OWNER.**

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3. Request approval to abate public nuisance items at the DONNELL PROPERTY (PL120380) located at 2045 East Yale Drive. The applicant is the City of Tempe – Code Compliance-

**THE PROPERTY WAS REMOVED FROM THE AGENDA AS IT HAS BEEN BROUGHT INTO COMPLIANCE BY THE PROPERTY OWNER.**

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4. Request approval for a Variance to reduce the south side yard setback for a storage shed for THE BALLARD RESIDENCE (PL120211) located at 928 South Maple Avenue. The applicant is Mitchell Ballard.

**CONTINUED FROM THE AUGUST 21, 2012 HEARING**

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

Sherri Lesser introduced the case. This is a variance to reduce the south side yard setback from 10 feet to four feet, for a tool shed for the residence at 928 South Maple Avenue. This property is located within the Maple Ash Neighborhood Association, south of University, west of Mill Avenue. The storage shed is located behind the front yard setback, behind a block wall. The homeowner built the shed with an understanding that an accessory building could be constructed at a single family residence as long as it was less than 200 square feet and a certain distance from the property line. The issue with this project is that the neighborhood is zoned as multi-family. Multi-family has different zoning requirements than single family. The Zoning Ordinance under accessory buildings and accessory structures considers this an accessory building since it exceeds 8 foot in height. The ordinance discusses accessory buildings for single family uses. There is nothing in the ordinance stating what multi-family can do. The multi-family chart requires a 10 foot setback.

Ms. MacDonald asked why this request could not be processed as a Use Permit Standard since the height is a 20% variation from the 8 feet.

Ms. Lesser stated the project does not meet the other tests on the chart to meet the requirements of a Use Permit Standard.

Ms. Lesser noted this case has been continued from the August 21, 2012 Hearing Officer meeting. At that hearing there were some discrepancies in the drawing. The height of the structure was questioned. The drawing showed the shed at the height of 11 feet. The structure sits just above the six foot wall. The applicant was asked to verify the height of the structure. There were also some other determinations and research that needed to be done regarding the Hearing Officer rights to issuing variances. The case was continued to a date that was feasible for the applicant to be in town. Staff has not modified the recommendation. Staff initially recommended denial of the project. This is based on the state law requirements. Staff does not have the latitude to change the recommendation. This project does not meet all the tests for a variance. This does not meet a hardship. The property is a fairly substantially sized rectangular lot. There are a lot of these structures that exist in the neighborhood and there have been a lot of variances granted in the neighborhood. Several structures also exist without variances. Under previous codes and previous leadership within the Planning Department, some of the houses have been viewed as single family and were able to enjoy the single family rights. The policies have changed as the administration in the Planning Department has changed.

Ms. MacDonald asked if she purchases a home and it is being used as a single family residence how would she know if the zoning district is something other than single family zoning.

Ms. Lesser stated if the realtor did not give someone that information you would not know until you were going to do an improvement to your house. You would have to go to the City office to find out what your setbacks and your rights are. This has been a predicament in this neighborhood. Homeowners in this neighborhood have had to modify their plans to meet the current setbacks.

Ms. MacDonald asked Ms. Lesser about lot coverage in the R-3, Multi-Family Residential Limited District.

Ms. Lesser stated R-3, Multi-Family Residential allows 50% lot coverage. There was information submitted by the applicant stating he was well within the 45% lot coverage. The applicant's house currently covers 39% lot coverage on the first floor. The second floor which is not included in the lot coverage is approximately 1,100 square feet. The total square footage of the house is around 5,000 square feet. The total building area is at about 4,887 feet. The storage shed structure is 192 square feet; this adds 2% to the lot coverage.

Mr. Ballard stated this has been a learning experience. He is a first time homeowner and is trying to improve his property. He felt there was a need for a shed to store all of his tools. He had an experienced builder help him construct the tool shed. The shed was constructed, painted and shingled to match the house. The additions to the house were added by previous owners. The shed and the side yard setback is the only thing Mr. Ballard has received a correction notice for. He feels like the shed should be allowed by some of the exceptions noted in the Zoning Code by his interpretation. The shed was placed at that location so that it would not block the walkway. The variance is not self-imposed. Due to safety purposes the shed should not block ingress/egress to the property. The tool shed could be moved over 6 feet; however this would not benefit the neighborhood. He

realizes there is opposition to the house as well that really is not relevant to this case. The next door neighbor, Shane Sylvester, who is impacted by the tool shed built adjacent to his property sent a letter of support. He has no problems or concerns with the storage shed being near his north wall or close to the property line.

Ms. MacDonald read the letter of support from Shane Sylvester.

Karyn Gitlis stated she was present representing the Maple Ash Neighborhood Association. The neighborhood association opposes the variance proposed by Mr. Ballard. They appreciate what he has done to improve the appearance of the property. They do not appreciate a shed in the front yard. No other neighborhood allows sheds in the front yard. There appear to be no special circumstances or hardships that require a front yard shed to store tools. Mr. Ballard has upwards of 5,000 square feet of structure under roof space. In all of this space Mr. Ballard should be able to find a nook to store his tools. She suggested using the garage for storage. This issue was addressed in the previous Zoning Code. No accessory buildings were allowed in the front half of the property in residential zones.

Ms. MacDonald clarified that the issue was not the front yard setback.

Ms. Gitlis believes the shed should be moved or demolished. She feels it would be most appropriate to move the shed to the back pad or some place that it would not be visible from the front yard. Ms. Gitlis believes the City rules should work for the neighborhood.

Ms. MacDonald stated she looks at the Zoning Development Code to see how the City of Tempe rules apply.

Ms. Gitlis stated the City rules are set to include that variances will depend on a reasonable expectation on mitigating a hardship that is imposed by a condition on the property. There is no hardship on that property that made the placement of the shed to be necessary where it is. She requested that the shed be moved. Ms. Gitlis indicated there are problems in the Staff Report. She has been working with Ms. Lesser the last few weeks and feels the information on file does not have accurate measurements of the property. The plans are incomplete and they are not detailed for the 2004 addition. The coverage of the property is questionable and should be verified. After all the difficulty with this property and past uses these issues need to be addressed.

Ms. MacDonald stated she had a copy of a Building Permit dated August 26, 2004 at this property address showing the lot coverage at 39%. That is the most recent Building Permit the City of Tempe has. At 39%, that's 3,773 square feet and you add 192 square feet, the total is 3,965. He is allowed up to 4,837 square feet for 50% lot coverage. There is a difference of 800 square feet.

Ms. Gitlis asked for a denial of the variance and for the structure to be moved.

Ms. MacDonald asked Ms. Gitlis since she was here on behalf of the neighborhood association if the neighbors meet and vote on these issues.

Ms. Gitlis stated the neighborhood association meets monthly. When issues come up they are discussed and voted on. She wrote a letter in opposition representing her husband and herself for the first hearing in August. She did not respond on behalf of the neighborhood association in August because they had not met that month. When the neighborhood association met it was discussed and unanimously felt that this was a very poor addition to a front yard and to the landscape of the neighborhood. This house is over mass, there is no other house that takes up as much of the property viewed from the street. The shed is an additional distraction. She objected to the fact in the Staff Report that a petition was characterized as being signed by 35 property owners. She did not recognize a property owner on the list besides Mr. Ballard. She has lived in the neighborhood for over 30 years now and has been active in the neighborhood association for 26 years. She does not believe the signatures were from property owners and that is a misrepresentation of support for the shed. She still feels the site footprint should be measured with the hardscape on the property included. The rear setback also needs to be looked at. In terms of formulation lot coverage, that is very important. If this variance is approved a condition should be included to require three trees in front of the block wall. This would help shield the shed from the street view.

Ms. Lesser made a correction that it was her error in the Staff Report noting the signatures on the petition as property owners. The intention was to note that the signatures were from citizens.

Mr. Ballard stated the signatures on the petition were from neighbors on Maple Avenue within a few block of his house. Many of the signatures are from renters. Many of the houses on the street are vacant. His house was vacant for several months before he purchased it. He has made several home improvements. When he first received the notice he spoke with Ms. Lesser. Ms. Lesser thought he would be able to get a variance. It was difficult to find the necessary information in the Zoning Code. After discovering he was part of a multi-family district he was able to look up the rules in the Zoning Code. Setback exceptions in Section 4-205 B for accessory structures would be allowed if the tool shed was a foot and a half shorter. The other exception refers to Section 3-401, Accessory Buildings, Uses & Structures, which is a source of confusion. The multi-family section of the code refers to the section of the code that relates to single family districts. Mr. Ballard displayed a diagram of the properties in his neighborhood that have sheds that may be in violation under the current code. Many of the sheds are closer to the side yard property line than his. Some of the properties have several storage sheds. The objections stated by Ms. Gitlis all seem to be aesthetics of her personal taste. He would be happy to add landscaping. He showed several photos of other storage sheds on the block. He is asking to enjoy substantially the same property rights as other owners on his block.

Mark Chase, Tempe resident, stated from listening to the facts it sounds like Mr. Ballard built a shed in good faith that does not seem to be grossly outside the boundaries of what other homeowners have done. It sounds like some of the rules may have changed or are becoming stricter. Some of the properties may have been grandfathered in. It is difficult to determine what the exact rules are. It seems if he moves his shed over 6 feet it would block his gate. That would be inadequate for aesthetics and visual view. Trees or some other foliage to hide the shed would be the most reasonable thing to do.

Ms. MacDonald stated she relies on the Staff Report given to her and her own observations of the site and the surrounding area. She wishes the request would have been processed differently, possibly with a Use Permit Standard. The Zoning and Development Code is kind of vague as to how this type of case can be processed. This application is for a variance. There are criteria outlined in State Statute and the Zoning and Development Code.

Ms. MacDonald reviewed the criteria for a Variance and found as follows:

1. She does not believe 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 this 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 exist.

Ms. MacDonald stated that she drove through the neighborhood today. Driving north on Maple Avenue from 13th Street to University, she took 21 pictures of different structures which were all within 3 or 4 feet of the property line. Some of the materials are in disrepair. Due to the precedents already set in this neighborhood, it would not be right to deny the variance. This variance is not giving the applicant a special privilege.

#### **DECISION:**

Ms. Macdonald approved PL120211/VAR12009 subject to the following conditions:

1. Provide landscape material on or around the accessory structure to soften the appearance from the street i.e. trees in front of the wall or structure and/or a crawling vine on the east wall of structure.
2. Variance valid for this application/building only and does not apply to future improvements to the property.
3. **Provide landscape materials, one (1) tree in front of the shed. (Added by Hearing Officer)**

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5. Request approval for a Use Permit to allow a massage establishment for YOUR HEALTH STATION (PL120387) located at 1700 East Elliot Road, Suite 1. The applicant is Yuting Fillmore.

Yuting Fillmore, Your Health Station was present to represent this case.

Diana Kaminski introduced the case. The property is located on the northwest corner of Elliot Road and McClintock Drive in an existing commercial shopping center. The applicant has indicated the primary use would be for reflexology. Staff has received one call of inquiry. Staff is recommending approval of the Use Permit.

Ms. MacDonald asked the applicant if she wanted to change the hours of operation.

Ms. Fillmore wanted to keep the hours as noted in the conditions of approval.

Ms. Fillmore 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 PL120387/ZUP12119 subject to the following conditions:

1. 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.
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. 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, which may result in termination of the Use Permit.
4. The hours of operation for this use Sunday through Saturday 10am-9pm.

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6. Request approval for a Use Permit to allow an auto broker business for BLACK CAT AUTO BROKERS (PL120403) located at 1855 East Baseline Road. The applicant is Diane Barrera.

Diane Barrera, Black Cat Auto Brokers was present to represent this case.

Diana Kaminski introduced the case. This property is located on the south side of Baseline Road in an existing commercial center. The applicant is requesting the business primarily as an office use with the auto sales being done off site. Staff has received one call of inquiry regarding the project. The applicant has reviewed the conditions of approval. Staff is requesting approval of the Use Permit.

Ms. Barrera agreed to the conditions of approval.

Mark Chase, Tempe resident had concerns with bodywork.

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 PL120403/ZUP12120 subject to the following conditions:

1. 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.
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. 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, which may result in termination of the Use Permit.
4. All nonconforming building lighting shall be removed and replaced with compliant light fixtures. Details can be resolved during Building Safety Plan Review.
5. The Property Owner shall replace all dead or missing trees along the street frontages (minimum of 1 tree per 30 linear feet of street frontage) and within the existing required landscape islands within the parking lot.
6. Update the data for parking file for this building prior to the Use Permit becoming effective. Provide information within 14 business days (excluding holidays) or by January 9<sup>th</sup>, 2013.
7. BLACK CAT AUTO BROKERS shall have no more than three (3) exterior parking spaces for customers and employees. Vehicles for sale may be located within these spaces however; no signage, flags, banners or outdoor sales/promotional material shall be located on the vehicles or in the lot.

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7. Request approval for a Use Permit to allow a fitness center for SPOT FITNESS/AUTHORITY FITNESS (PL120405) located at 1828 East University Drive, Suite 5, 6 & 7. The applicant is Toby Wright.

Toby Wright, Spot Fitness/Authority Fitness was present to represent this case.

Diana Kaminski introduced the case. This property is located in a General Industrial District on the north side of University Drive east of McClintock. This business was advertised as being located in suites 4 and 5. The applicant just informed Ms. Kaminski there has been a shift in the suites he will be occupying. The suites for the proposed business will be 5, 6 and 7. There is about 100 square foot difference in the space. The parking on the site has been reviewed and the change in the suites does not create a problem. The applicant has reviewed the conditions of approval. Staff has not received any public input on this case. Staff recommends approval of the Use Permit.

Mr. Wright stated the change in suites was just a discrepancy.

Mr. Wright 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 PL120405/ZUP12121 subject to the following conditions:

1. 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.
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. 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, which may result in termination of the Use Permit.
4. The hours of operation for this use Monday through Saturday 5:30am-8:30pm.
5. All fitness training shall be conducted inside the building, not outside

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8. Request approval for a Use Permit to allow off-premises real estate signage for THE DISTRICT ON APACHE TEMPORARY LEASING OFFICE (PL120408) located at 903 East Apache Boulevard. The applicant is Caitlin Bayley.

Caitlin Bayley, The District on Apache, Campus Apartments, LLC was present to represent this case.

Diana Kaminski introduced the case. The signs would be located on Apache Boulevard, adjacent to the Tempe Chamber of Commerce, and on Rural Road, adjacent to Four Points by Sheraton. This would be temporary signage for two years to allow leasing for The District on Apache. Staff has not received any public input. Staff is recommending approval of this request.

Ms. Bayley 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 PL120408/ZUP12122 subject to the following conditions:

1. The Use Permit is valid for the plans as submitted within this application.
2. The use permit is valid for two (2) years from December 18, 2012 until December 18, 2014.
3. All business signs shall receive a Sign Permit. Contact sign staff at 480-350-8372.

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The next Hearing Officer public hearing will be held on January 2, 2013.

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There being no further business the public hearing adjourned at 2:53 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

SA:js