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**Minutes  
BOARD OF ADJUSTMENT  
FEBRUARY 22, 2012**

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The study session of the Board of Adjustment began at 5:30 p.m., in the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

**Present:**

Jan Sell

Chris Dodd

Christopher Diba

Dr. Wallis Stemm

John Puzauskas

Jonathan Gillan

Anthony Gallese

Richard Dalton

Richard Kausal

Steve Abrahamson, Planning & Zoning Coordinator

Sherri Lesser, Senior Planner

**Absent:**

There were 5 citizen(s) at the study session.

Selection of the new Board Chair and Vice Chair appointments were made.

Chair is Chris Dodd.

Vice Chair is Dr. Wallis Stemm

The Study Session adjourned at 5:55 p.m.

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**Present:**

Jan Sell  
Chris Dodd  
Dr. Wallis Stemm  
John Puzauskas  
Jonathan Gillan  
Anthony Gallese  
Richard Dalton  
Richard Kausal  
Richard Dalton (in audience)

Steve Abrahamson, Planning & Zoning Coordinator  
Sherri Lesser, Senior Planner

**Absent:**

Christopher Diba

Minutes of the regular hearing of the Board of Adjustment, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

**Number of Interested Citizen(s) Present: 17 (Arkules/St. Vincent Appeal)**

**Hearing convened at 6:00 p.m. and was called to order by Chairman Dodd.**

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On a motion by Board Member Sell, seconded by Board Member Stemm, the Board by a vote of 5-0 approved the Board of Adjustment Minutes for October 26, 2011.

(Jonathan Gillan, Anthony Gallese, Richard Dalton and Richard Kausal abstained from this vote as they were not in attendance at the October 26, 2011 Board of Adjustment hearing.)

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**THE BOARD DISCUSSED THE FOLLOWING CASE(S):**

Chair Dodd indicated that the order of the cases would be modified.

- Appeal (**ABA12001**) of the January 3, 2012 Hearing Officer's decision to approve the request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **KAMPER PROPERTY (PL110426 /ABT11047 /CE113682)** (Jack Scofield, Inspector; Naida Kamper, property owner) located at 1087 East Minton Drive in the R-2, Multi- Family Residential District for an open period of 180 days.

Jeff Tamulevich, Code Compliance Administrator, gave an overview of this case. Mr. Tamulevich indicated that this is a townhome and the violation is occurring on the patio area. Mr. Tamulevich shared photos of the property and an email from Assistant Fire Chief Marc Scott, which was read into the record. The email indicated that there are structural concerns with the patio roof and this coupled with the storage of cardboard boxes and debris on the patio; pose a hazard to responding emergency crews as well as any immediate neighbors.

Mr. Abrahamson stated that the patio structure is not part of the abatement. Mr. Tamulevich agreed but stated that the patio roof was part of the original violation letter and although we do not include those types of items in the abatement due to cost, it is still part of the violation and will be ongoing until it is repaired.

Naida Axford, property owner, was present to represent this case. Ms. Axford addressed the Board and indicated that she has tried to work with the City.

Board member Puzauskas asked Ms. Axford how she asked the City to work with her.

Ms. Axford indicated that she said she would be happy to remove all of the items if they would contact the person who works as a mediator and assist the townhome community with an HOA/homeowner issues that have become statutorily volatile.

Chair Dodd asked if anyone lives in the townhome. Ms. Axford indicated no.

Board member Puzauskas asked Ms. Axford if she was concerned over the potential fire hazard or rodent and insect infestation.

Ms. Axford indicated this was the first she'd heard about the fire hazard and she has been there on multiple occasions and is not concerned over insects or rodents causing issues for the surrounding neighbors.

Board member Stemm asked if the property was used for storage only.

Ms. Axford indicated that she is in litigation with the homeowners association.

Board member Puzauskas asked if this had City of Tempe bulk refuse pickup. Ms. Axford indicated no.

Chair Dodd closed the hearing to public input.

Board member Stemm asked if there were other past situations like this as it relates to the fire hazard portion of this case.

Mr. Tamulevich indicated that he could not speak to this and it would be a question for our fire officials. Mr. Tamulevich stated that the City has had several fires over the past several months due to this type of situation.

Board Member Sell indicated there appears to be an issue between the homeowner and the homeowner's association and has nothing to do with the debris in the backyard.

**DECISION:**

The Board denied the appeal and upheld the January 3, 2012 Hearing Officer's decision to approve the abatement request for PL110426 /ABT11047 /CE113682 for an open period of 180 days.

**MOTION:** Board Member Sell made a motion to uphold the Hearing Officer's decision of January 3, 2012 and deny the appeal; Board Member Gillan seconded the motion.

**VOTE:** Denied the appeal and upheld the January 3, 2012 Hearing Officer's decision.  
Vote 7 to 0

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- Appeal (**VRA11002**) of the December 6, 2011 Hearing Officer's decision to approve the request by the **ARKULES-SAINT VINCENT PROPERTY (PL100228)** (Patricia St. Vincent, applicant; Arkules-Saint Vincent, property owners) located at 902 South Ash Avenue in the R-3, Multi-Family Residential Limited District for:

**VAR11008** Variance to waive the required masonry wall between the properties developed for multi-family and single family.

Sherri Lesser, staff planner, gave an overview of this case.

Rick Hondrop was present to represent this case. Mr. Hondrop indicated the variance is not necessary if the backyard is not used for parking vehicles. The location of the 8' wall along the west 1/3 has no negative effect on the neighborhood.

Board member Gillan questioned Mr. Hondrop to clarify that he is not asking for the entire wall, just a portion. Mr. Hondrop indicated that was correct and stated the backyard has been an illegal parking area.

David Arkules and Patricia St. Vincent addressed the Board. They stated that they have planted trees, to act as a visual buffer, at the City's suggestion and made many efforts to improve the properties and it would not be in the best interest of the area to construct another taller wall next to an existing wall. This would be redundant and could cause rodent and insect issues to occur in the area between the two walls.

Board member Kausal asked if cars were being parked on the property. Ms. St. Vincent indicated it is her backyard and she parks her car there and the Otto family had initiated a process of using the property as a bed and breakfast and it was their intention to complete that process that would allow cars to be parked onsite. Mr. Arkules stated when the property was purchased it was being used as a boarding home and several residents lived onsite and the assumption was made that all the permits had been obtained.

Board member Puzauskas asked if there had been discussion regarding increasing the height of the existing block wall. Mr. Arkules indicated no, there had been no discussion.

Board Member Gillan questioned whether or not patrons or employees of the restaurant, Casey Moore's, ever parked in the lot and if it is overflow parking. Mr. Arkules pointed out that two of the employees live in the adjacent rentals and it is not overflow parking for the restaurant.

Board Member Gillan also asked if the guest house is rented and Ms. St. Vincent indicated no. He also questioned staff whether or not there is a designation between onsite parking and a parking lot and how is parking lot defined.

Residences are required to have onsite parking and you may have additional parking in the rear yard. If it is a commercial parking area, there are standards for parking areas that need to be adhered to. Mr. Abrahamson stated that the definition of parking lot in the Zoning and Development Code means a parcel of land in which vehicle parking is provided. He also stated that the bed and breakfast that the Otto Family had required additional parking and as part of the Use Permit, they were required to be able to park the guests of the bed and breakfast. As part of that parking, the vehicles do need to be screened from the adjacent properties. Mr. Arkules and Ms. Vincent applied for the variance of the required wall due to the existing wall.

Board Member Gillan asked the how many cars could be parked in that area and Mr. Arkules indicated four or five.

Chair Dodd opened the hearing to public input.

Four residents spoke and they do not support the appeal and are in support of the Arkules/St. Vincent variance.

Chair Dodd closed the hearing to public input and called Mr. Hondorp back to provide a closing statement.

Chair Dodd asked Mr. Hondorp to clarify who he represents in this appeal. Mr. Hondorp stated he represents the Sienna Court Homeowners Association and Rhombus LLC.

Mr. Hondorp stated the wall can be done and can be sealed to provide protection from insects and rodents. He also stated that parking is being used by employees and patrons of the restaurant and that should they wish to develop that property and use that area for formal parking, the wall is the most expensive piece of the equation. He also indicated the wall is beneficial to the residents of Sienna Court Lofts.

Board Member Gallese asked Mr. Hondorp if he had any photos showing the existing wall from ground to the top. Mr. Hondorp referenced photos (Attachment 95, 96 and 97) that had been shot from his view standing on the driveway.

Board Member Puzauskas questioned Mr. Hondorp about the possibility of adding block to the existing wall. Mr. Hondorp stated he didn't feel the cost should be his responsibility and the existing wall is on Sienna Court property and not on the property line.

Chair Dodd stated he felt that they have addressed the issues associated with a variance request and is in support of the variance.

Board Member Kausal stated he felt Mr. Hondorp has made a case for denial of the variance and his property will be negatively impacted by this variance request.

Board Member Gillan stated there is an answer to this situation and that the appellant has a point to the technicality of this variance but there is an issue between the property owners that is keeping a solution from being addressed.

**MOTION:** Board Member Sell made a motion to uphold the Hearing Officer's decision of September 6, 2011 and deny the appeal; Board Member Gillan seconded the motion.

**VOTE:** Denied the appeal and upheld the September 6, 2011 Hearing Officer's decision.  
Vote 7-0

**DECISION:**

The Board denied the appeal and upheld the September 6, 2011 Hearing Officer's decision to approve the variance for PL100228/VAR11008.

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The next Board of Adjustment hearing is scheduled for March 28, 2012.

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There being no further business the hearing adjourned at 8:05 p.m.

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Prepared by: Lisa Novia, Administrative Assistant II  
Reviewed by: Steve Abrahamson, Planning & Zoning Coordinator



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Steve Abrahamson  
Planning & Zoning Coordinator

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