

Minutes of the Board of Adjustment STUDY SESSION May 22, 2024

**Minutes of the Study Session of the Board of Adjustment, of the City of Tempe, which was held in Council Chambers
31 East Fifth Street, Tempe, Arizona**

Present:

Staff:

Chair John 'Jack' Confer	Jeff Tamulevich, Community Development Director
Vice Chair Kevin Morrow	Ryan Levesque, Deputy Director Comm Dev
Board Member Kaelee Palmer	Drew Yocom, Comm Enhancement Deputy Director
Board Member Raun Keagy	Matthew Mansfield, Assistant City Attorney
Board Member Mary Foy	Ambika Adhikari, Principal Planner, Comm Dev
Board Member Rickey Lynn Gans	Lily Drosos, Planner II, Comm Dev
Board Member Sean McCarley	Jennifer Daniels, Administrative Assistant II

Meeting convened at 5:34 p.m. and was called to order by Chair Confer.

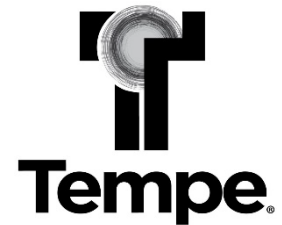
Chair Confer stated that there was a new "Revised BOA Agenda" that he had not previously seen. Chair Confer asked if this was revised and published within the 24 hours' notice needed. Administrative Assistant, Jennifer Daniels stated the "Revised Agenda" was published and sent out to the board on May 7, 2024.

Chair Confer asked the board if there were any questions for staff on agenda item #2, The Robinson Property. The board had no questions.

Chair Confer asked the board if there were any questions for staff on agenda item #3, Dazey Aesthetic Collective. Board Member Palmer asked, with reconsideration, does one of the members that voted against the item have to make a motion or is there any type of procedure like that? Mr. Adhikari stated the board made a decision on April 17th and approved the appeal and overruled the Zoning Administrators decision. The applicant is now asking for you to reconsider that decision, as a board. Mr. Mansfield stated that is correct and it is a board decision. If the board believes that the motion for reconsideration meets the standards set forth in Section 6-702, both A and B then any board member can make a motion to grant or deny that motion for reconsideration.

Vice Chair Morrow asked, int their motion for reconsideration they discuss special action appeals to Superior Court or to City Council. Does the City of Tempe have an appeal to the City Council from our decision or do they have to go to Superior Court? Mr. Mansfield stated that motion for reconsideration does not impact the appeal. That is a separate process. You do not need to consider the appeal process at this part of the motion for reconsideration. The appeal for the Board of Adjustment would go to the Superior Court in this case.

The study session adjourned at 5:40 p.m.



Minutes of the Board of Adjustment REGULAR MEETING May 22, 2024

Minutes of the Regular Meeting of the Board of Adjustment, of the City of Tempe, which was held in Council Chambers
31 East Fifth Street, Tempe, Arizona

Present:

Staff:

Chair John 'Jack' Confer	Jeff Tamulevich, Community Development Director
Vice Chair Kevin Morrow	Ryan Levesque, Deputy Director Comm Dev
Board Member Kaelee Palmer	Drew Yocom, Comm Enhancement Deputy Director
Board Member Raun Keagy	Matthew Mansfield, Assistant City Attorney
Board Member Mary Foy	Ambika Adhikari, Principal Planner, Comm Dev
Board Member Rickey Lynn Gans	Lily Drosos, Planner II, Comm Dev
Board Member Sean McCarley	Jennifer Daniels, Administrative Assistant II

Meeting convened at 6:00 p.m. and was called to order by Chair Confer.

1) Voting of the Meeting Minutes:

Study Session & Formal Meeting Minutes from April 17, 2024.

Motion by Vice Chair Morrow to approve Meeting Minutes from Study Session and Regular Meeting April 17, 2024; second by Board Member Keagy. Motion passed on **7-0** vote.

Ayes: Chair Confer, Vice Chair Morrow, Board Members Palmer, Keagy, Foy, Gans and McCarley

Nays: None

Abstain: None

Absent: None

-
- 2) Request to appeal the Hearing Officer's March 19, 2024, decision to approve the abatement request for **ROBINSON PROPERTY**, located at 2215 South Sierra Vista Drive. The appellant is Brittany Robinson. (PL240117/CE235624)

Appellant Presentation:

Ms. Brittany Robinson, homeowner gave a presentation on her home located at 2215 South Sierra Vista Drive. Ms. Robinson stated that she understood the board was unable to provide additional time or other considerations when voting to approve an appeal. The board is to review whether or not the correct and factual information was presented to the Hearing Officer which could have changed the decision. Notices are produced by the inspectors, and they choose when to put them in the mail. Even though the compliance deadlines start with the date of the notice and not when they are mailed. In this case you are seeing the dated notice not the post mark. You have no information on when the actual notice was put in the mailbox. The packet produced for this hearing which was labeled as additional photos from March 19, 2024. These photos were requested by me in a records request, which was ignored. Inspector

Rich stepped on to my property to take some of the photos, which is in violation of trespassing laws. I thought the only issue was my front yard based on conversations with Code Compliance staff. Only after finding out in the abatement notice that my backyard and side yard was an issue have, I have been remedying that. I am working on getting a landscaper to help with the remaining work. I ask the board to approve my appeal based on the information stated in my memorandum.

Board Member Keagy stated that he notes Ms. Robinson was not at the abatement hearing, can you comment on that? Ms. Robinson stated that she believed she had remedied the issue at the time of the abatement hearing. It was not until she received the notice of the decision that she realized how wrong she was and went back through and read the minutes and decision.

Vice Chair Morrow asked, in following up in the 2 months since the Haring Officer's meeting, what have you done in the backyard? Ms. Robinson stated that she has removed some trash toward the alleyway. She had cut some of the grass, there are some trees that need to be removed before the rest of the grass can be cut down. She had cut down some of the overgrowth. About some of it, she truly has an objection to cutting down. She needs to hire a landscaper to do some of as she does not have the ability or the resources to do.

Staff Presentation:

Ms. Lily Drosos, Planner II gave a presentation on 2215 South Sierra Vista Drive. Mr. Drosos gave an overview of the March 19, 2024, Hearing Officer Meeting Minutes.

Mr. Drew Yocom, Community Enhancement Deputy Director. Mr. Yocom stated he was here to clarify any questions the board may have on the case.

Chair Confer stated that it is not clear to him what needs to be abated right now. I assume it is all in the backyard. Do you have a list of what needs to happen to clean up the property? Mr. Yocom stated it is many of the items listed at the Hearing Officer's meeting. Deteriorating vegetation on the front side, side property and rear. Junk, trash and debris. Those are two different codes, whether it is in the front or back yard at the time of abatement it still applies because that was the request during the meeting. We will admit there has been progress made but due to the extensive amount of time, the issues are still persisting, that is why we want to move forward with the abatement request. Chair Confer stated that it looks like there were multiple extensions given, can you comment on those? Mr. Yocom stated that during the course of this case that began in October 2023, we have had several members of the Code Compliance staff in communication, through email or phone calls. That included a Senior Inspector, supervisor of inspector David Rich, Jack Scofield, Code Compliance Manager, and me as well. Early in the case, the discussion was a landscaper was being hired to take care of some of the landscaping. That was the reason for a long-time extension. The goal is compliance. If there is a way we can work together to get there, that was the intent. After continuing to receive complaints from members of the public and still not being compliant and extensions were exhausted, we moved forward with the request to abate.

Board Member Keagy asked were the violations noted in the abatement present at the time of the abatement hearing? Mr. Yocom stated yes, that is correct. There was junk, trash, debris and deteriorated landscaping in the front and backyard. Board Member Keagy asked, "was the Hearing Officer provided evidence of the existing violations noted in the abatement notice? Mr. Yocom stated yes, not only through testimony with the inspector but also through photo evidence, including the photos taken the day of the hearing. Board Member Keagy stated based on that it does not appear the Hearing Officer erred in their decision, in her opinion.

Vice Chair Morrow asked with the city staff's communication with the property owner around October or November of last year, was the focus more on the junk, trash and debris in the front yard or the back yard also discussed? Mr. Yocom stated that the focus was on the front yard because that is what many of the complaints were for. During the course of the case, we also received complaints about the back yard. In the middle of the case, we added that to our violation notices, which was about the time inspector David Rich took over in December. Vice Chair Morrow stated he only has copies of the October, November and February correction notices. Am I missing one? Mr. Yocom showed the notices on the projector. Vice Chair Morrow stated that the February notice states take the following corrective actions and remove items in the front, sides and back. The earlier notices refer to trash, liter and debris in the carport and front yard. Mr. Yocom stated that the initial notices were for the front yard. The February notice does include

items that are in the front, sides and rear of the property. On the notice of Intent to Abate which was issued February 14th, it states front, sides and rear of the property. This was issued 30 days prior to the Hearing Officer's Meeting.

Chair Confer stated the notice of abatement letter was issued on February 14th and the hearing took place on March 19th. Is it a 30-day notice given? Mr. Yocom stated that is correct.

Board Member Foy asked if the board upholds the abatement, what does that mean for the homeowner? Mr. Yocom stated that the 180-day open abatement request would be 180 days from the Hearing Officer's decision. We are already into that 180-day window. During that time, if the property falls into violation with the things we requested, deteriorated landscaping or junk, trash, and debris, we will then have the ability to work with a city approved contractor to clean up the violations. Once the 180-day window expires we would then have to start over with a new case and a new process. Board Member Foy asked if the homeowner would have the opportunity to fix anything before the property was cleaned? Mr. Yocom stated yes, we wouldn't be able to schedule anything until next week.

Chair Confer asked if the city has already received bids for the abatement? Can you share those with the board? Mr. Yocom stated that prior to going to the Hearing Officer we collect bids as part of our abatement process to identify the cost. The cost itself is going to be less than what the request was because improvements were made. On the day of the abatement, we will identify what the remaining items would be. I do believe it was about \$5800.

Board Member Palmer asked if the property owner continues to improve on her property and takes care of some of the issues the cost of the abatement can be substantially lower than what was quoted. Mr. Yocom, that is correct.

Board Member Gans stated she has some confusion on the original abatement being for the front yard and somewhere along the line the back yard was thrown into it. I do not understand how we do that. Mr. Yocom stated starting back in October when the case began it was for items in the front yard. Prior to the December 15th transfer to our Senior Inspector, David Rich, that is when it was brought to our attention by public complaints that the back yard had also fallen into deterioration. The following notices and the notice of intent to abate identified that the back yard was added along with the front yard. That was also noted in conversations with the property owner as well. Board Member Gans asked if a neighbor can look over the fence and they can say they have whatever in their back yard and I want it cleaned up? Mr. Yocom stated that is correct. They can make that complaint to the city and then the city must verify it is valid violation or not. Board Member Gans asked why that is not a separate abatement request? Why are they together and not here is the front yard get that done and then we have another complaint on the back yard and now take care of that one. Mr. Yocom stated that it is through process and policy we have established with the City of Tempe. For example, if we are working through a process to clean up the front yard and then we add a second process to the back yard we are duplicating efforts. We would have to go to the Hearing Office multiple times. It also gives the property owner more time to work through because once we add the back yard, we want to add additional time to allow the back yard to get cleaned up. The codes we enforce are for the entire property.

Board Member Palmer asked Mr. Yocom how do you inspect the back yard? How do you get the pictures? Mr. Yocom stated they must be able to see it from a public access or private property that we have been granted access to. In this case we have access through the public alley way behind the property that we took photos from, and we were also granted authority to step on to the neighbor's property and took photos from that location as well. Board Member Palmer stated so just to reiterate you did not step foot on her property to take pictures in the back yard? Mr. Yocom stated that is correct.

Public Comment:

None

Applicant Response:

Ms. Robinson stated that there are factual misstatements that were made. If you read my appeal, it states why there have been factual misstatements. He stated there were several members of the Code Compliance staff that I spoke to. That is false. I had one phone conversation and a couple email exchanges with Mr. Scofield, in which he asked for proof that I had obtained not a landscaper as Mr. Yocom stated but had engaged a tree company to cut down the tree. The tree company I picked was unable to do so until January which I informed him and provided proof.

Chair Confer stated that he needed to get to the factual misstatement to your appeal. Ms. Robinson stated that she was responding to his misstatements on this record. Ms. Robinson stated that it was said there were several conversations via phone and email with Code Compliance employees and that is false. Chair Confer said to make the segue to why we should grant the appeal with that. Ms. Robinson stated that the information that was provided to the Hearing Officer in the memo as I pointed out has several factual inconsistencies. I pointed out a couple in my memo. The abatement changed from the front yard to including the back yard after I contacted the City Manager. I do not deny that on the day of the Hearing Officer's hearing that my backyard had issues that they are claiming. My actions show that my belief was the only issues at play were the front yard. That is all that had been discussed with me by Code Enforcement staff.

Chair Confer stated, you got notice of the hearing, but chose not to go because you thought it was already remedied. Ms. Robinson stated that is correct. Chair Confer stated that is the same methodology that they send out all other letters. Ms. Robinson stated she does not deny that she received all notifications. Chair Confer asked Ms. Robinson to walk him through the ones she received in February. Ms. Robinson stated that she did not read it, she knew she needed to finish the front yard and she did.

Commission Discussion:

Chair Confer asked the board if there were any more questions or discussion on this agenda item. No comments. Chair Confer called for a motion.

Board Member Keagy stated he appreciates the information provided regarding the practices and procedures of Code Enforcement and recognize that when you receive things in the mail there is a tendency to read the envelope and then move on from there. With that said based on the information that was provided, it does not appear that the Hearing Officer erred in their decision on approving the appeal. I will not be supporting the appeal.

Board Member Gans stated she still has a problem with how we can add on to what somebody has already been told to abate. To me it does not seem right. Chair Confer stated he was looking at that too. The testimony we received from staff and the letters that went out in February included the information. Unfortunately, the appellant chose not to go to the hearing and argue the facts that she brought up today. Board Member Morrow stated he went back and forth on the notice issue. With the first two citations, it addresses the grass and foliage in the front and back. That is a big part of what needs to be abated in the back is the foliage. Although the first two notices do not address trash, junk and debris in the back yard. I am not sure if this is what happened in this case but in other cases there's junk, trash and debris in the front yard and they just move it to the back yard. It is still the same code violation. I will support the motion.

Board Member Foy stated she has some of the same issues brought up by other board members. At the end of the day the notice was given, and she was given time to rectify them. She did not make these arguments in front of the Hearing Officer. I am going to support the denial of the appeal.

Motion by Board Member Keagy to deny the appeal of the Hearing Officer's decision on March 19, 2024, to approve the abatement request for the Robinson Property, located at 2215 South Sierra Vista Drive: second by Board Member Palmer. Motion passed on **6-1** vote.

Ayes: Chair Confer, Vice Chair Morrow, Board Members Palmer, Keagy, Foy and McCarley

Nays: Board Member Gans

Abstain: None

Absent: None

-
- 3) Request for reconsideration of the Board of Adjustment's decision made on April 17, 2024, to approve an appeal and overturn the Zoning Administrator's Opinion regarding the exemption of **DAZEY AESTHETIC COLLECTIVE**, located at 522 South Mill Avenue from being defined as a tattoo establishment. The applicant is Darin Sender or Sender Associates. (Note: This is not a public hearing item.) (PL240091)

Appellant Presentation:

Ms. Darin Sender, Sender Associates gave a presentation. Ms. Sender is requesting a reconsideration of the April 17th decision by the Board of Adjustments. There were a lot of facts and information being thrown around at the last meeting. The Zoning Administrator, Mr. Ryan Levesque did a good job in his interpretation of explaining how the facts apply here. The zoning code has the definition of tattoo. Is fine line tattooing the way it is being done here at Dazey Aesthetic under that definition to be considered a tattoo establishment? It was clear that the other tattoo shops state that they lighten tattoos using the procedure but can not take them off. Whereas her client stated yes this is how they are removed. They can be removed without any type of surgical procedure. Even passing of time can remove the tattoo. In this reconsideration request there are two criteria. Whether or not the board made a mistake of fact or law and whether that mistake created a hardship for the applicant. With all the information about needles, colors, and depth there was a lot of information that was not about what the definition of tattoo is. The definition is: simply can the ink that is placed on the skin with the aide of a needle or other type of device that cannot be removed without a surgical procedure. We believe the mistake of law is that those two criteria made clear and discussed clearly at the hearing. The definition was not actually adhered to, whereas the Zoning Administrator did so. The half of this reconsideration is about hardship. This created a hardship for my client. A big portion of her business is shut down.

Staff Presentation:

None

Public Comment:

None

Applicant Response:

None

Commission Discussion:

Board Member Keagy stated he can understand if we look at it in the narrow confines of what the appellant is saying that we should have applied non-surgical removal as part of our decision. However, when I look at this definition it appears that this is not the only condition that could apply to a tattoo establishment. When you look at the definition, it uses semi colons which can be used as "or". It is my opinion that the business does engage one or more of these alternate things that are there. I don't think we should be looking at it strictly whether surgical removal is part of the process. I will not be supporting the motion. I believe this business does engage in activities different than what the applicant is describing that is in the narrow focus of surgical removal.

Board Member Palmer stated she previously voted in upholding the Zoning Administrator's decision, but I don't feel like the determination was just based on surgical removal. That is where I am torn. That was not the consensus of the board. For me personally, it was about the permanent makeup exception to the definition and how that is similar to fine line tattoo.

Board Member Foy stated that there was a lot of information given. I personally would like to go back and look at it in view of the entire legal definition and narrow the scope a little. There was a lot of information that was not pertinent to what we should be hearing about whether the decision is right. I would like to have another hearing on this.

Chair Confer stated that for him the original application submitted was not as accurate as it should have been. There was testimony that was not included in the original application. That is what swayed my decision. The other part is that the Zoning Administrator made a tough decision based on the information provided by the applicant, but I do not agree with his opinion.

Motion by Board Member Foy to approve the motion for reconsideration: second by Vice Chair Morrow. Motion failed. **(CHAIR DID NOT CALL A NAY VOTE)**

Ayes: Vice Chair Morrow, Board Members Foy and McCarley

Nays: None

Abstain: None

Absent: None

Motion by Board Member Keagy to deny the request for reconsideration of the April 17, 2024, City of Tempe Board of Adjustments action approving an appeal and overturning the Zoning Administrators code interpretation of the Tempe Zoning and Development Code Section 7-121, definition of a tattoo establishment for the business **DAZEY AESTHETIC COLLECTIVE**, located at 522 South Mill Avenue: second by Board Member Gans. Motion passed on **4-3** vote.

Ayes: Chair Confer, Board Members Palmer, Keagy and Gans
Nays: Vice Chair Morrow, Board Members Foy and McCarley
Abstain: None
Absent: None

4) **Staff Announcements**

Chair Confer has no announcements.

Mr. Ambika Adhikari let the board know a meeting next month is planned for June 26th.

5) **Adjourn**

Motion by Vice Chair Morrow to adjourn meeting; second by Board Member Gans. Motion passed on **7-0** vote.

Ayes: Chair Confer, Vice Chair Morrow, Board Members Palmer, Keagy, Foy, Gans and McCarley
Nays: None
Abstain: None
Absent: None

Hearing adjourned at 6:45PM

Prepared by: Jennifer Daniels, Administrative Assistant II
Reviewed by: Ambika Adhikari, Principal Planner