

Board of Adjustment Hearing Date: January 23, 2013

Agenda Item Number: 3

SUBJECT: Hold a public hearing for an appeal of a previously approved variance request for the Ballard Residence located at 928 South Maple.

DOCUMENT NAME: BOAr_BallardResidence_012313 **PLANNED DEVELOPMENT (0406)**

COMMENTS: Appeal of the December 18, 2012 Hearing Officer's decision to approve a variance to reduce the south side yard setback from 10 foot to 4 foot for a detached storage/tool shed for the BALLARD RESIDENCE (PL120211) located at 928 South Maple Avenue. The appellant is Karyn Gittlis.

PREPARED BY: Sherri Lesser, Senior Planner (480-350-8486)

REVIEWED BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359)

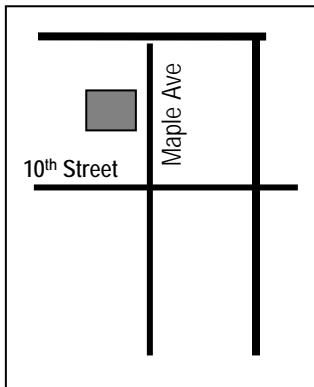
LEGAL REVIEW BY: N/A

DEPARTMENT REVIEW BY: N/A

FISCAL NOTE: N/A

RECOMMENDATION: N/A

ADDITIONAL INFO: Karyn Gittlis representing the Maple Ash Neighborhood Association is appealing a December 18, 2012 Hearing Officer decision for approval of a variance to reduce the side yard setback for an accessory building. The reduced setback is for the south side yard to accommodate a storage shed, four (4) feet from the south property line and located behind the front yard setback. The owner built the shed and located it on the most open and unused portion of his lot. The applicant held a neighborhood meeting on July 12, 2012 in accordance with the provisions of the Zoning and Development Code.



The appellant has provided a letter explaining their objections to the Hearing Officer's decision to approved the a setback variance for the Ballard Residence at 928 South Maple

COMMENTS:

The appellants are before the Board of Adjustment to appeal the December 18, 2012 Hearing Officer decision for the approval of a variance to reduce the side yard setback from 10' to 4' for a 9'-6" tall accessory building

Public Input

Staff has not received any new public input for the appeal.

CONDITIONS OF APPROVAL (as approved by Hearing Officer 12/18/2012)

EACH NUMBERED ITEM IS A CONDITION OF APPROVAL. THE DECISION-MAKING BODY MAY MODIFY, DELETE OR ADD TO THESE CONDITIONS.

CONDITION(S)

OF APPROVAL:

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)**

HISTORY & FACTS:

August 6th 2002

The Hearing Officer approved the request for the following by the Miller residence located at 928 south maple avenue in the R-3, Multi-Family Residential District:

- a. Variance to reduce the north side yard setback from 7' to 0' for a proposed freestanding garage.
- b. Variance to reduce the west rear yard setback from 7' to 0' for a proposed freestanding garage.
- c. Variance to reduce the south side yard setback from 10' to 0' for a new master suite.
- d. Variance to reduce the minimum allowed roof overhang from north property line from 3' to 0'.

February 28, 2004

The Hearing Officer approved the request by the Miller Residence for the following to allow a detached garage located at 928 South Maple Street in the R-3, Multi-Family Residential Limited District:

- a. Variance to reduce the north side yard setback from 10 feet to 0 feet.
- b. Variance to reduce the rear yard setback from 15 feet to 0 feet.
- c. Variance to reduce the minimum allowed roof overhang from the north property line from 3 feet to 0 feet.

March 17, 2011

The Community Development Department staff administrative approved the request to transfer an existing use permit to relocate a tattoo parlor from 2011 East 5th Street, Suite No. 6 to 2003 East 5th Street, Suite No. 7 and a portion of Suite No. 11 in the GID, General Industrial District.

August 4, 2004

The Hearing Officer approved the request for the following by the Miller residence located at 928 south Maple Avenue in the R-3, Multi-Family Residential District:

- a. Use permit to allow a second story addition.
- b. Variance to reduce the north side yard setback from 10 feet to 0 feet.
- c. Variance to reduce the west rear yard setback from 15 feet to 0 feet.
- d. Variance to reduce the minimum allowed roof overhang from north property line from 3' to 0'.

August 25, 2004 The Hearing Officer approved the request by the Miller Residence for a use permit to allow a second story addition located at 928 South Maple Street in the R-3, Multi-Family Residential Limited District.

August 21, 2012 The Hearing Officer continued the variance request to the 12/18/2012 meeting.

December 18, 2012 The Hearing Officer approved a variance to reduce the south side yard setback from 10' to 4'

DESCRIPTION: Owner – Mitchell Ballard
Applicant – same
Existing Zoning – R-3, Multi-Family Residential
Existing Building Area- 4882 s.f.
Proposed Building Area- 184 s.f.
Lot Size- 9675 s.f.
Existing Lot Coverage- 39.06%
Proposed Lot Coverage- 41 %
Required side yard setback- 10'
Proposed side yard setback- 4'

ZONING AND DEVELOPMENT

CODE REFERENCE: Part 4, Chapter 2, Section 4-202A – Multi- Family Development Standards
Part 6, Chapter 3, Section 6-309- Variances

Karyn Gitlis, Councilmember
Maple Ash Neighborhood Association
1206 S. Ash Ave.
Tempe, AZ 85281

Board of Adjustment
c/o Sherri Lesser, Senior Planner
Planning Department
31 East Fifth Street
Tempe, AZ 85281

January 15, 2013

**Re: Appeal of Ballard Residence Case #PL120211
Decision by Hearing Officer**

Board of Adjustment Commissioners:

The Maple Ash Neighborhood Association (MANA) Council **objects to the approval of variance from current zoning code** to allow an existing shed to remain in violation of side yard setback standards in the front yard.

We request that the shed be moved to a more appropriate location on the property, demolished or reduced in height.

As stated in the 12-18-12 Staff Summary Report regarding this case, there exist no special circumstances or conditions that create a hardship for Mr. Ballard and thus necessitate the granting of this variance, as delineated below:

1. That special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings;

A special circumstance applicable to this property is that it is larger than other lots on the block. The lot at 928 S. Maple is actually 1½ lots. It measures 75 ft. in width. Other parcels on this block are 50 ft. in width. The house to the south is on a lot that is 25 ft. wide. The property also appears to be covered by too much structure as viewed from the street. The effect of too much structure is amplified by the larger lot size. No other homes in the immediate area appear overbuilt to this extent. Although no current measurements are available, the 2004 preconstruction-plan-projections submitted to COT put lot coverage at approximately 40%.

These conditions should be considered special circumstances that dictate denial of variances for additional construction on the property.

2. 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;

Though not through agency of Mr. Ballard, this property currently enjoys privileges previously assigned through the granting of variances (2004) that bring construction on this property well beyond structure compatible with code and context.

The existence of other sheds in violation of current code in Gage Addition (platted 94 years ago) cannot be used as precedence to allow Mr. Ballard's shed variance although this privilege was granted by the Hearing Officer under this rationale.

- a) It is difficult to determine the age of many accessory structures and buildings in the neighborhood. Many were erected prior to zoning codes and even prior to well-defined zoning categories. Extensive research of available records will be necessary to substantiate the case.
- b) The current code shed requirements have been loosened dramatically from those in Zoning Code 808 which did not allow accessory buildings on the front 50% of a property. Mr. Ballard's shed qualifies as an accessory building based on height. These changes were not publicized and neighbors were unaware of the code changes.

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;

A variance for this shed at this location appears to grant special privilege inconsistent with limitations on other properties.

4. A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner.

The only special circumstance at this property is that it is larger than those surrounding it that it appears to be covered by too much structure.

As neighbors interested in neighborhood appearance and values, we assert that sheds do not belong in front yards. We believe there is reason to uphold this appeal.

Thank you for your hearing.

Submitted by Karyn Gitlis for Maple Ash Neighborhood Association

Additional points excerpted from 12-18-12 statement to Hearing Officer:

Mr. Ballard argues that he needs a place to store the many tools needed to maintain his property in its current condition. We would respond that given roughly 5000 square feet of protected structure, he has plenty of space to store tools securely and can choose one out of public view.

Mr. Ballard argues that most of the properties near him encroach on their setbacks, many to the zero lot line mark. As Staff points out, some properties may have been granted variances, or they may have been regulated under previous zoning codes. The subject property is located in the 1909 Gage Addition, Tempe's first suburban planned neighborhood. Given the age of many of these properties, accessory buildings and additions to existing buildings were very possibly erected prior to the existence of zoning regulations in Tempe. In any event, the legality of these structures cannot be ascertained without extensive research.

The Staff Summary Report further states that if the subject property was regulated under the previous ordinance's computation, the required setback may have matched the applicant's needs to build at this location. We would point out that if the property were regulated under zoning code 808:

"...all detached accessory buildings shall be placed in the rear half (1/2) of the lot..."
and determination of setback in the front yard would have been moot.

The second portion of this letter is intended to address and correct verbal and written misrepresentations; to pursue additional information; and to reiterate perceived historic mistakes or “takings” regarding zoning.

1. During the 8-21-12 Hearing Officer Meeting, Ms. McDonald questioned lot coverage for the property at 928 South Maple Avenue. According to my notes she specifically wanted to know how we know lot coverage is at 39 percent. To my knowledge, we have no additional data to shed light on this question.
2. A. Lot coverage on this site has been questioned prior to this case and prior to Mr. Ballard’s acquisition of the property. Lot coverage has been questioned each time a nuisance complaint was filed regarding uses, maintenance, parking or noise at this address following the poorly contested 2004 requests for a use permit to add a second story and variances to reduce side and rear yard setbacks and minimum allowed roof overhang. As viewed from the street or sidewalk, the site creates the impression of being overbuilt; of including too many stucco walls, gables, and pillars and too much height on too small a site. The unpermitted and un-reviewed addition of the shed makes this issue all the more salient.

B. There evidently exist no complete footprint measurements of the house post-2004 construction, and no complete and unambiguous plans of the proposed interior structure including measurements. There are incomplete preconstruction plans dated 7-8-04 on file in Tempe’s Planning Department.

C. According to the 12-18-12 Staff Summary Report

***the applicant measured the lot coverage** and conveyed to staff in an email message that the shed only adds 2% to the lot coverage. The last building permit issued for the lot shows the lot coverage as 39%; the 39% area includes all the patios and all the areas under any type of roof. The addition of the shed brings the coverage total up to 41% out of 45% allowed.*

D. It appears irregular, to say the least, that the applicant has been allowed to generate measurements for the Staff Summary Report for this case. Minor errors beg the question of more pronounced implications and errors or misrepresentations. For example, the applicant’s plan presents the shed footprint as 12 X 16 feet. On the same sheet under the heading Site Data Mr. Ballard presents the proposed addition as “184 Sq. Ft.” If the linear measurements are accurate, the area of the shed is 192 s.f.

E. The question here is, “Why, given the ongoing controversy and the past problems at this location (absolutely none of which are attributable to Mr. Ballard!), in addition to the current case that goes directly to the issue of the current lot coverage, has a complete set of City Staff measurements not been generated?”

Finally, we request that under conditions of approval, the Hearing Officer require planting of three trees in front of the back wall and/or in the public right of way to mitigate the visual impacts of the additional construction on the property. We furthermore suggest a third condition requiring that the applicant maintain the newly planted trees.

We feel that the property at 928 South Maple Avenue has been turned into an oversized, in relationship to the surrounding homes, fraternity house through an addition that was poorly contested by the neighborhood. The July 2004 partial plan shows the second story to include a theater and a game room with a wet bar. We are fortunate to find a neighbor in Mr. Ballard who is proud and excited to be in possession of this home with all its amenities, but we desire him to stop adding structure to this property.

Additionally, Mr. Ballard’s use and enjoyment of his property has not been intrusive in the way past uses have been. We regret that City Staff and Commissions allowed the 2004 addition to proceed without better oversight and decision making. The Maple Ash neighborhood has suffered negative impacts from this property in the past, and we hope that Mr. Ballard can turn this around through excellence in stewardship.

We request that you deny Mr. Ballard's request for a variance for the recently installed shed in violation of the side yard setback requirements.

We also request that you ensure collection of complete measurements of footprint and total structures on this property for safety reasons. Obviously these measurements will be useful in the event of future questions about uses on this property or requests for variance or any construction, especially in the front yard.

Sincerely,

Karyn Gitlis
Maple Ash Neighborhood Association

Hearing Officer Hearing Date: 12/18/2012

Agenda Item Number: 4

SUBJECT: This is a public hearing for a request by Ballard Residence located at 928 South Maple for one (1) variance

DOCUMENT NAME: HOr_BallardResidence_121812 **PLANNED DEVELOPMENT (0406)**

COMMENTS: 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.

PREPARED BY: Sherri Lesser, Senior Planner (480-350-8486)

REVIEWED BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359)

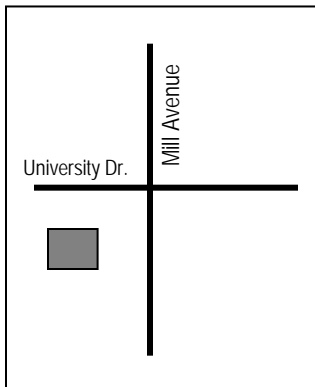
LEGAL REVIEW BY: N/A

DEPARTMENT REVIEW BY: Steve Abrahamson, Planning & Zoning Coordinator (480-350-8359)

FISCAL NOTE: There is no fiscal impact to City funds.

RECOMMENDATION: Staff – Denial

ADDITIONAL INFO:



This request was continued from the August 21, 2012 Hearing Officer meeting. The continuance was to allow time for the Hearing Officer to confer with the City Attorney's Officer regarding the parameters for approval of a variance. Additionally, the applicant was to verify the lot coverage and building height of the shed. The variance request is to reduce the side yard setback from 10' to 4'. The reduced setback is for the south side yard to accommodate a storage shed located on the south side of the house, four (4) feet from the south property line and located behind the front yard setback. The owner built the shed and located it on the most open and unused portion of his lot. From comments stated in the neighborhood meeting minutes; the homeowner perceived that since the floor area was less than 200 s.f. the structure did not require a building permit and the four (4) foot setback complies with building code requirements. Although it meets building code; the Zoning and Development Code has a greater setback for accessory buildings that exceed 8' in height and are located on a lot within a multi-family zoning classification. Staff recommends denial of the variance owing to lack of hardship, special circumstances or evidence indicating potential loss of substantial property rights. In accordance with the Zoning and Development Code, the applicant held a neighborhood meeting on July 12, 2012.

- PAGES:**
1. List of Attachments
 2. Comments
 3. Conditions of Approval; History & Facts

4. Description; Zoning & Development Code Reference

ATTACHMENTS:

1. Location Map(s)
2. Aerial Photo(s)
- 3-4. Letter of Intent
5. Site plan
6. Floor plan
7. Elevations date 12/18/2012
8. Meeting Minutes
- 9-10. Photos
11. Opposition
- 12-14. Petition of Support

COMMENTS:

The Ballard Residence is requesting a variance to reduce the side yard setback from 10 to 4' for a detached accessory building (tool shed). The structure is used for storing tools and is located in the side yard behind the 20' front yard setback; four (4) feet from the south property line. The structure is constructed of wood with a stucco finish to complement the existing dwelling in color and form. The building area for the shed is 184 s.f. and it has an overall height of 9'-6". It is located behind a block wall which extends south from the southeast corner of the house to the south property line. There is eight (8) feet of space behind the wall to the structure; which places the structure twenty seven (27) feet behind the front property line.

At the August hearing there was discussion regarding the additions to the existing house and wall surrounding the property. The applicant reiterated to staff that he did not construct the main house additions or property walls. He purchased the property 11/2 years ago with the additions and walls existing on site. For this hearing he provided an updated elevation drawing to reflect a 9'6" overall building height. The applicant measured the lot coverage and conveyed to staff in an email message that the shed only adds 2% to the lot coverage. The last building permit issued for the lot shows the lot coverage as 39%; the 39% area includes all the patios and all the areas under any type of roof. The addition of the shed brings the coverage total up to 41% out of 45% allowed.

Public Input

The applicant held a neighborhood meeting on July 12, 2012 in accordance with the Zoning and Development Code. Nine (9) residents from the surrounding area attended the meeting. On July 31, 2012, staff received a correspondence in opposition to the request. At the hearing on August 21, 2012, four (4) residents spoke in opposition to this request. The applicant provided a petition of support with thirty five (35) signatures from surrounding property owners. Since the notice of the 12/18/2012 hearing; staff received a call from the property owner across the street- Stephen Steffos. He stated that he has no opposition to the shed location and supports the request with additional landscape to soften the view from the street.

Variance

The Zoning and Development Code Development Standards for the R-3 Multi-Family Residence District setbacks for accessory buildings; requiring them to be located ten (10) feet from the side property lines. If the accessory building is 200 s.f. and less than eight (8) feet in height it may encroach into the side yard as long as it meets building code separation (which is typically 3'). The applicant is seeking a four (4) foot setback for the structure. They state in their letter that the placement is necessary due existing landscape garden areas, stone pathways, the layout for the stone block entryway and the sprinkler hub. Mr. Ballard travels frequently and wants the shed to be in an area secured by a block wall. He cites in his letter that there are other setback deviations which exist on abutting properties and vary from a 0' to 5' setback for other structures. The varying setbacks of neighboring properties may be attributed to variances granted to other properties, previous Zoning Ordinance 808 provisions which allowed for single family setback standards on multi-family zoned properties; if the use of the property was single family. If this property was regulated per the previous ordinance; the required setback would be between 4' to 5' based on the actual overall height as measured from top of curb at midpoint of the lot.

Analysis of this request, result in findings that there are no special circumstances or conditions affecting this building, land, or use to warrant approval of the variance. The property is rectangular in shape and is consistent with other properties on this block. Authorizing the variance is not necessary for the enjoyment of substantial property rights. It is possible to configure the proposed addition in compliance with current development standards by reducing the height of the structure.

Per the Zoning and Development Code variance(s) shall not be authorized unless the decision-making body finds upon sufficient evidence of the following:

1. That special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings; and

It is a rectangular shaped lot with no apparent shape or topography challenges.

2. 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; and

During a windshield survey of the area; staff noted several structures encroaching into the side yard setbacks which presumably were built per previous ordinance requirements or have benefit for variances unique to their property.

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; and

May be considered a special privilege inconsistent with other R-3 zoned properties.

4. A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner.

May be considered a self-imposed hardship since it was built with the past couple years

Conclusion

Staff recommends denial of the variance.

SHOULD THE HEARING OFFICER ELECT TO TAKE AFFIRMATIVE ACTION ON THE REQUEST, THE FOLLOWING CONDITIONS OF APPROVAL SHOULD APPLY.

CONDITION(S) OF APPROVAL:

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.

HISTORY & FACTS:

August 6th 2002

The Hearing Officer approved the request for the following by the Miller residence located at 928 south maple avenue in the R-3, Multi-Family Residential District:

- a. Variance to reduce the north side yard setback from 7' to 0' for a proposed freestanding garage.
- b. Variance to reduce the west rear yard setback from 7' to 0' for a proposed freestanding garage.
- c. Variance to reduce the south side yard setback from 10' to 0' for a new master suite.
- d. Variance to reduce the minimum allowed roof overhang from north property line from 3' to 0'.

February 28, 2004

The Hearing Officer approved the request by the Miller Residence for the following to allow a detached garage located at 928 South Maple Street in the R-3, Multi-Family Residential Limited District:

- a. Variance to reduce the north side yard setback from 10 feet to 0 feet.
- b. Variance to reduce the rear yard setback from 15 feet to 0 feet.
- c. Variance to reduce the minimum allowed roof overhang from the north property line from 3 feet to 0 feet.

March 17, 2011

The Community Development Department staff administrative approved the request to transfer an existing use permit to relocate a tattoo parlor from 2011 East 5th Street, Suite No. 6 to 2003 East 5th Street, Suite No. 7 and a portion of Suite No. 11 in the GID, General Industrial District.

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The Hearing Officer approved the request for the following by the Miller residence located at 928 south Maple Avenue in the R-3, Multi-Family Residential District:

- A .Use permit to allow a second story addition.
- B .Variance to reduce the north side yard setback from 10 feet to 0 feet.
- c. Variance to reduce the west rear yard setback from 15 feet to 0 feet.
- d. Variance to reduce the minimum allowed roof overhang from north property line from 3' to 0'.

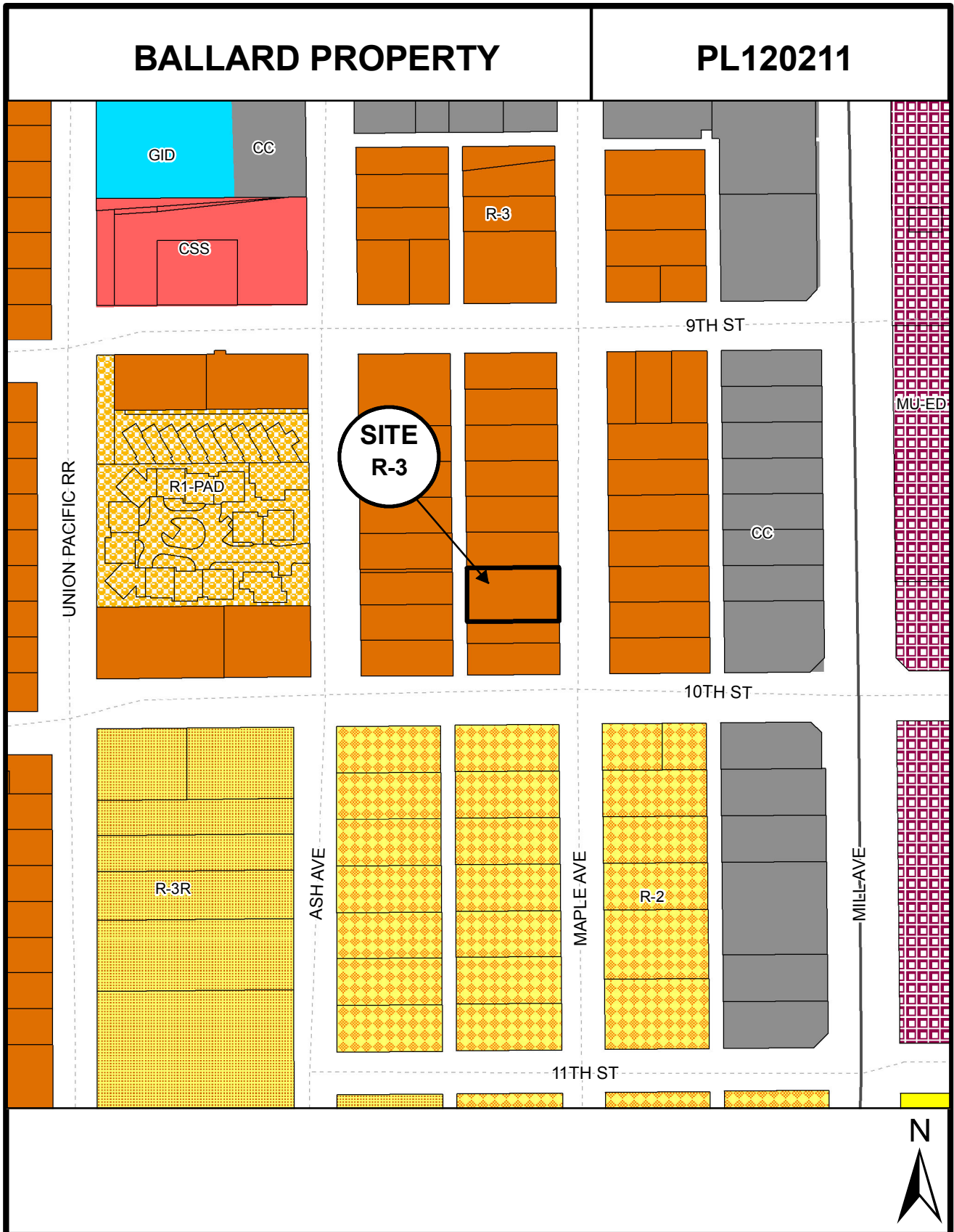
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August 21, 2012 The Hearing Officer continued the variance request to the 12/18/2012 meeting.

DESCRIPTION: Owner – Mitchell Ballard
 Applicant –same
 Existing Zoning – R-3, Multi-Family Residential
 Existing Building Area- 4882 s.f.
 Proposed Building Area- 184 s.f.
 Lot Size- 9675 s.f.
 Existing Lot Coverage- 39.06%
 Proposed Lot Coverage- 41 %
 Required side yard setback- 10'
 Proposed side yard setback- 4'

ZONING AND DEVELOPMENT

CODE REFERENCE: Part 4, Chapter 2, Section 4-202A – Multi- Family Development Standards
 Part 6, Chapter 3, Section 6-309- Variances



Location Map



BALLARD PROPERTY (PL110107)

06-04-2012

City of Tempe

Community Development Department

31 East Fifth Street Tempe, AZ 85280

SETBACK VARIANCE REQUEST FOR TOOL SHED

Site Address: 928 S Maple Ave. Tempe, AZ 85281

Thank you for taking time to read this explanatory letter and consider my request for a setback variance for a side yard tool shed.

I am proud to call the historic district of Tempe my home for its culture, sense of community, and varied architecture. According to neighbors and my personal experience at this address, less than two years ago, this house had no lawn, no landscaping, broken windows and doors, broken light fixtures, and a cracked, hideous stucco and paint job. Since closing on this property, I have been continually making improvements inside and out with many more gardening and beautification projects planned. Many have thanked me for my part in turning this spot from a detriment into an asset to the neighborhood. As part of that process, I have acquired many tools necessary for upkeep and improvements. Rather than the less efficient irrigation used by many in this neighborhood, sprinklers were installed prior to my purchase of the property. The pre-existing landscaping, garden areas, stone pathways, the layout of the cement block yard entryway, and the sprinkler hub leaves this as the only viable option for placing a storage shed to keep my tools safe while I am out of town. Please recognize the extraordinary circumstances of this property and of undertaking the task of fixing it up while only being in Tempe one week per month due to the underpaid accounting work I am doing for start-up companies. Sheltering expensive tools from the sun is as important as keeping them safe from theft in our climate. The minimum variance to alleviate the hardship is a 6' encroachment, leaving a 4' setback from the tall side wall.

Furthermore, granting this variance is necessary in the interest of fairness to preserve my property right as substantially the same as other owners in the vicinity. Every single one of my immediate neighbors on the block enjoys side yard setback variances which are more extreme than the one I am requesting. My neighbor to the south built a bungalow which is built right into my backyard wall, effectively a (negative) -5 inch setback on a 21 foot wall. The other buildings on that property are also less than 5 feet from the side. To the south of that house you may observe another 5 foot setback. My neighbor to the north has a large rusty shed with less than a 4 foot setback, and the house on that property has a

mere 2 foot setback. North of that house is a property with three buildings enjoying setbacks of 0', 0' and 1'. North of that house there is a shed with a 2' side yard setback, and some of these sheds are also less than a few feet from the back yard property line. Directly behind my house is a property with 3 sheds, each between 1' and 2' from the side wall. Neighbors on either side of that house have sheds that are between 1' and 6' from the side wall as well. No more than a cursory glance is necessary to see how comparatively conservative my above variance request is, as well as pleasing to the aesthetic sense of the neighborhood.

I have spoken with all of my immediate neighbors regarding the shed; none have voiced any objections or concerns. On the contrary, I have received encouragement and endorsement on my continued improvement plans. The shed shall be coated, painted, and shingled to match the house, adding to the beauty and decorum of the block, and not detracting from the neighborhood in any way. I will also be holding a town meeting at my property which all neighbors will be invited to at least 15 days in advance, which I am scheduling for the end of a business trip to North Dakota I must take until July. I will submit minutes from the discussions had at the meeting, and I welcome phone calls and questions anytime between now and then.

I appreciate the work you do. As I plan to be directly involved with MANA as soon as my schedule permits me to spend more time at home in Tempe, I hope to have the pleasure of working with you someday.

Regards,

Mitchell Ballard

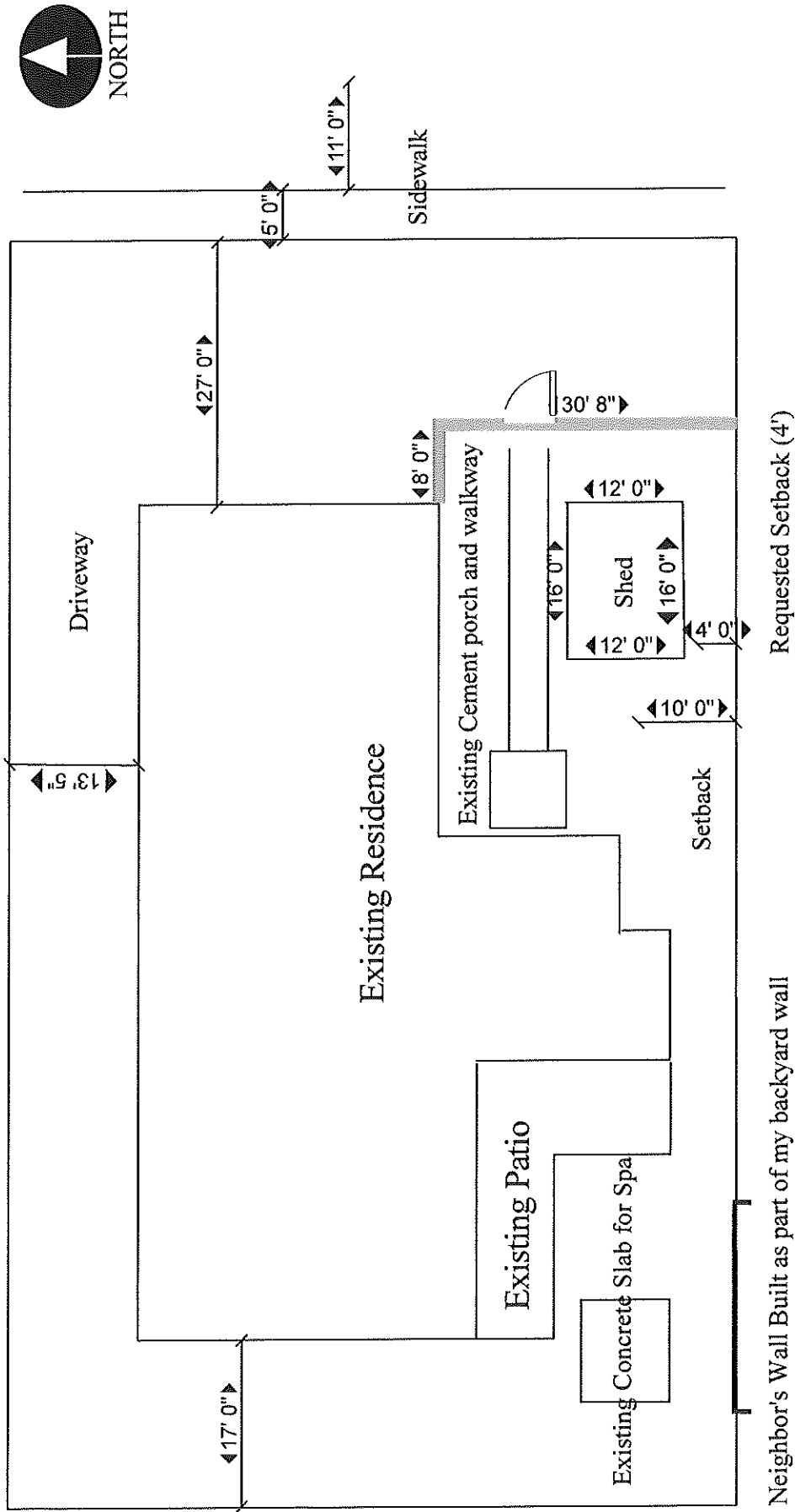
Direct: 480-600-0995

Email: MitchellBallard@Gmail.com

Attachments: Site Plan, Floor Plan, Building Elevations (N,S, E, W), Site Data. Electronic pdf documents available via email or mailed cd immediately upon request.

SITE PLAN

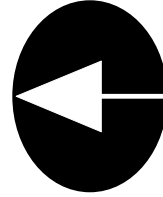
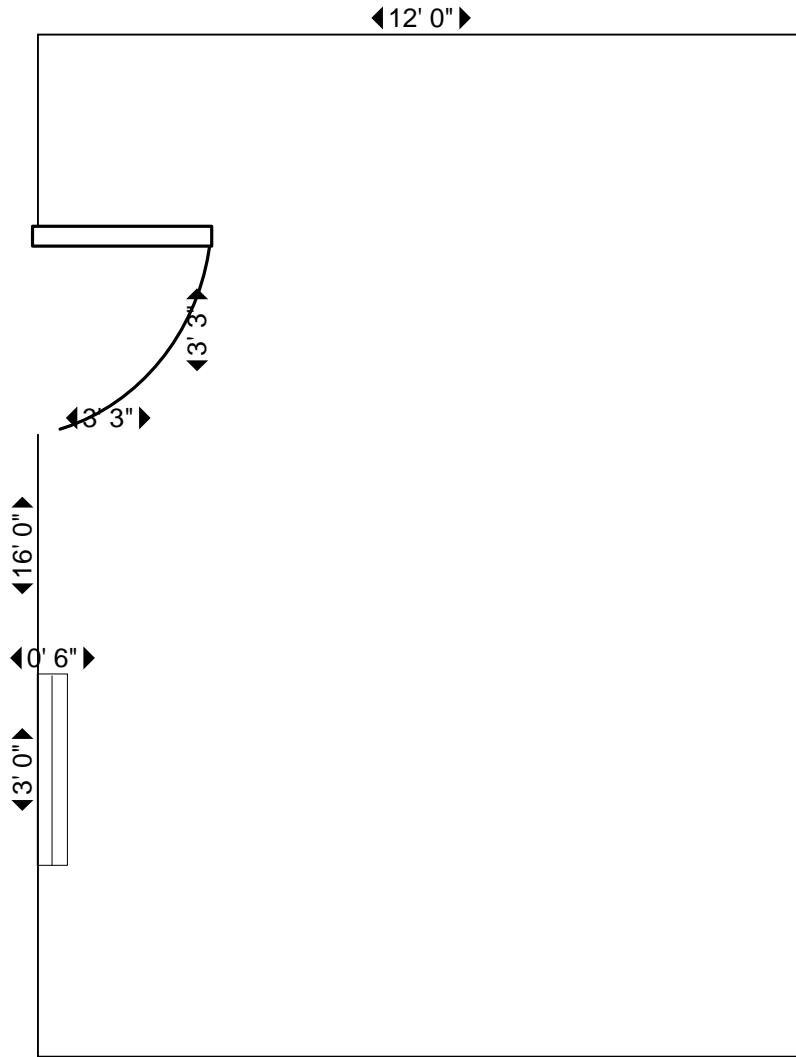
Scale 1" = 16'



FLOOR PLAN

SITE DATA:

- Submitted by Mitchell Ballard, 928 S. Maple Ave., Tempe, AZ 480-600-0995
- Project: Toolshed
- Scale 1" = 3'
- Zoning: R-3
- Lot Area: 9,675 Sq. Ft.
- Lot Coverage 39.06%
- Proposed Addition: 184 Sq. Ft.
- Setback Required:
 - 10' side yard
 - 25' front yard
 - 15' rear yard
- Setback Requested:
 - 4' side yard



ELEVATIONS



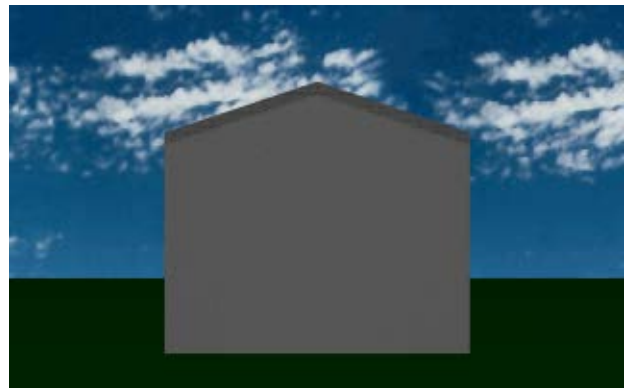
From West



From North



From South



From East

Shed dimensions:

Length = 16'

Width = 12'

Height = 7'1" on sides to 9'8" at apex

July 13th, 2012

Project: Tool shed
928 S. Maple Ave.
Tempe, AZ 85281

Neighborhood Meeting for Thursday, July 12th, 2012 7pm

Meeting Minutes:

Attendees –

Property owner, Mitchell Ballard

Neighbors, Shane Sylvester, Mandi Biocic, Adam Lyman, Mary Lynn Kotensli, Michael, Luke Clark, Sean Baccus, Phil Gitlis, and Karyn Gitlis, chair of MANA

Discussion—

The tool shed was discussed as well as other improvements recently made on the property and plans for other immediate improvements.

A tour of 928 S. Maple Ave. was given.

Opinions of many neighbors not in attendance were gathered prior to the meeting by door to door invitations; signatures were also obtained for a form letter regarding the very positive response to keeping the shed where it is. I shared this information at the meeting.

It was also determined in the opinion of the attendees that the shed in question fits the Tempe Zoning Code's definition for an ancillary structure, under 200 sq. ft., which only needs to be 3 feet from the side property lines, which technically renders this variance application process unnecessary.





Lesser, Sherri

From: Karyn Gitlis <kgitlis@interwrx.com>
Sent: Tuesday, July 31, 2012 1:15 AM
To: Lesser, Sherri
Subject: Ballard Residence Case Number PL120211

Sherri:

My husband and I are opposed to granting a variance to Mitchell Ballard so that he can keep his shed in the front yard. We attended the neighborhood meeting that he hosted, and saw no reason why he could not move it to the back concrete slab. It would be difficult and possibly require stucco patching. This would not be as difficult as it is for neighbors to look at a relatively large stucco shed in someone's front yard, especially when the entire property is overbuilt.

Since when is a detached shed an appropriate structure for a front yard?

We attended the neighborhood meeting that Mitchell hosted. My husband and I suggested that there was too much structure on this property visible from the street, and that it was out of character with the surrounding homes. We asked him to consider removing either the shed or the block wall that surrounds the house to mitigate the overbuilt effect. He was not inclined to do either.

It may be more effective to ask forgiveness than permission, but in this case I believe that something has to go.

Thank you for your consideration.

Karyn Gitlis
1206 S. Ash Ave.

June 15th, 2012

Project: Tool shed
928 S. Maple Ave.
Tempe, AZ 85281

To Whom It May Concern:

We would like to inform you that we have been notified of the tool shed built within the side courtyard of 928 S. Maple Ave. Although only its roof is visible behind the pre-existing 6 ft. wall encircling the yard, the structure adds to the beauty of the property and neighborhood. The association supports property owners who improve their property to the benefit of the entire neighborhood. The design was chosen to match the existing building on the lot in stucco texture, color, and roof material, and is in no way detrimental to any person or property in the vicinity.

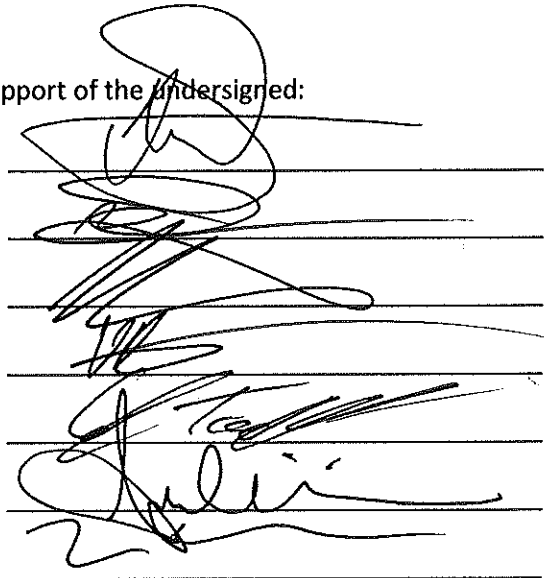
Furthermore, authorizing this side yard variance is necessary for the preservation of property rights substantially the same as those rights enjoyed by almost every single other property on the block, as well as many more in the extended neighborhood area, which have structures built much closer to the side yard wall than the tool shed in question. The pre-existing layout of the property, built in 1921, provides special circumstances which are not self-imposed. We strongly feel the structure and variance in question enhances the property as well as the neighborhood and does not provide relief from anything forbidden in city ordinances.

We, the undersigned residents of the Maple /Ash Neighborhood, support the project and approval of the variance.

Sincerely,

Mitchell J. Ballard, Property Owner and the full support of the undersigned:

LUKE EDWARDS
ADAM LYDALL
Mike Labadie
Victor Feliz
Giles Tamplin
APRIL KUAN
DAN SKROBEL

A column of seven handwritten signatures, each written over a horizontal line. The signatures are: 1. A large, stylized signature starting with a large 'M'. 2. A signature starting with 'A'. 3. A signature starting with 'M'. 4. A signature starting with 'V'. 5. A signature starting with 'G'. 6. A signature starting with 'A'. 7. A signature starting with 'D'.

Deborah Endrygo
Ann
Robert Edz
Alan
Mick DeJ...
A. White
K. Brundis
Alan W
Ant...
Tony...
Daph...
Eddie...
Sh...
Adam Doerhoefer
Lyn...
Will B. Lutz
Kelly A. Lof...
B. O. Young
Ann...
Michael Benedict
Kathryn M Watke

225 W. Seagull Pl.
2423E Fremont Rd.
4653 E. Sports Dr
928 S. Maple ave
3310 W Ceter Dr
936 S MAPLE AVE
336 S MAPLE AVE
1007 N. Parkside Drive
1020 1/2 S. Maple Ave
12919 W. Soledad St
921 S. Maple Ave.
310 EL Camino Rd Seborn AZ
922 MAPLE AVE TEMPE AZ
601 S. Farmer Ave.
1730 W Emelita Ave #1021
405 W. Farmer Ave.
" "
2045 S JACANA LN
918 S Maple
"
"

Jessica Ronald
Diana Schuler
Stephanie Wash
Zoe J. King
~~Michelle~~
Jocelyn Klein
Jan M. Koberg

1162 Kuchenski Dr. Apt 7
192 Palm Beach Rd
387 18th St W
1337 2nd St. West
1396 13th St W
1346 Gum Ave.
1113 S. Maple

**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.

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

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.

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.

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)**
