

MINUTES BOARD OF ADJUSTMENT NOVEMBER 15, 2017

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.

STUDY SESSION 5:30 PM

Present:

David Lyon, Vice Chair

James Frazey

Kevin Cullens

Jan Sell, Chair

David Naugle

John Puzauskas

John 'Jack' Confer (Alternate)

Steve Abrahamson, Principal Planner

Lee Jimenez, Senior Planner

Jeff Tamulevich, Deputy Director – Code Compliance

Andres Lara-Reyes, Code Compliance Officer

Chad Weaver, Director- Community Development

Ryan Levesque, Deputy Director – Planning

Sarah Adame, Executive Assistant

Absent:

Richard Kausal

Albert Dare, Sr. (Alternate)

There were 2 interested citizens present at the study session.

- Chad Weaver, Director Community Development, informed the Board that due to a lack of legal advertisement, Quick Quack Car Wash (PL170240) was to be continued to the December 20, 2017 Board of Adjustment. He informed the Board that both the appellant and the applicant have agreed to continuing the case to the December 20, 2017 Board of Adjustment.
- Mr. Weaver provided background information on the situation including that the same lack of legal advertisement, specifically sign postings at the site, caused two separate cases to be continued at the previous Development Review Commission that took place on the previous night on November 14, 2017.
- Quick Quack Car Wash (PL170240) was then requested to be moved to Agenda Item No. 2 to be heard before Gay Property (PL170321/CE170321).
- The Board had several questions regarding the Gay Property (PL170321/CE170321).
- Steve Abrahamson, Principal Planner, and Jeff Tamulevich, Deputy Director Code Compliance, provided an overview of the abatement process to the board and answered questions regarding the abatement process and Code Compliance's involvement in the process.
- The Board Inquired about the public involvement aspect of the abatement, more specifically if the public had submitted complaints, to which Mr. Tamulevich explained that there had been citizen complaints regarding the property on several occasions.
- The Board asked Andres Lara-Reyes, Code Compliance Officer, about the property and discussed the pictures provided by Mr. Lara-Reyes for the case.
- The Board inquired about the remedies available for the appeal to which Mr. Abrahamson went over the options in detail.
- Mr. Abrahamson reviewed the procedures for the meeting to the Board.
- Ryan Levesque, Deputy Director Planning, explained the process of reconsideration to the Board in context of the current case and the previous heard case on Medical Marijuana.

REGULAR SESSION 6:00 PM

Present:

David Lyon, Vice Chair

James Frazey

Kevin Cullens

David Naugle

John Puzauskas

Jan Sell, Chair

John 'Jack' Confer (Alternate)

Steve Abrahamson, Principal Planner

Lee Jimenez, Senior Planner

Jeff Tamulevich, Deputy Director – Code Compliance

Andres Lara-Reyes, Code Compliance Officer

Sarah Adame, Executive Assistant

Absent:

Richard Kausal

Albert Dare, Sr. (Alternate)

There were 4 interested citizens present at the regular session.

Hearing convened at 6:00 p.m. and was called to order by Chair Jan Sell.

Chair Jan Sell had a roll call of Board members present. Each Board member acknowledged their individual names as present for tonight's public hearing.

On a motion by Chair Jan Sell, the Board by a vote of 6-0 approved the Board of Adjustment Minutes for October 25, 2017. (John 'Jack' Confer abstained from this vote as he was not present during the regular session of the October 25, 2017 Board of Adjustment public hearing.)

Chair Jan Sell noted that the request to appeal the October 3, 2017 Hearing Officer's decision to approve a variance to reduce the required landscape buffer from the street sidewalk for a maneuvering lane from 20 ft. to 11 ft. -8 in. for Quick Quack Car Wash (PL170240) would not be heard and would be continued to the December 20, 2017 Board of Adjustments due to the property not being properly posted.

THE BOARD DISCUSSED THE FOLLOWING CASE(S):

- 1. Appeal of the September 19, 2017 Hearing Officer's decision to approve the request to abate public nuisance items at the GAY PROPERTY (PL170321/CE170321) located at 625 West 3rd Street. The appellant is William Gay.**

Lee Jimenez, Senior Planner, gave an overview of the case:

- The Gay Property is located on Lot 16 of the Roosevelt Addition subdivision situated west of South Roosevelt Street and south of West 3rd Street in the R1-6, Single-Family Residential District.
- The property has been in violation since January 13, 2017 for trash, litter and debris consisting of discarded appliances, furniture, metals, construction material, roof tile shingles, tarps, and vehicle parts among other items.
- On September 19, 2017, the Hearing Officer heard and approved the request by the City for a 180 day open abatement for the nuisance items.
- At the hearing, Mr. Gay explained that personal circumstances have prevented him from bringing the property into compliance.

- His neighbor to the west, Mike Meyer, spoke during the public comment period and requested leniency on Mr. Gay's behalf.
- Mr. Gay formally appealed the Hearing Officer's decision on October 3, 2017.
- In Mr. Gay's appeal, he is requesting dismissal of the abatement to seek additional time to bring the property into compliance. Furthermore, Mr. Gay cites that the Code Compliance Division has not been clear regarding what can remain in his back yard considering that it is screened from the street and alley.
- To date, staff has not received any public input.
- Code Enforcement Officer, Andres Lara-Reyes, is on hand to answer any questions related to this abatement case, and provide an update on Mr. Gay's progress towards compliance.

Vice Chair Lyon: Mr. Jimenez I may have misheard you, could you tell us again the date to which the property was found to be out of compliance with standards?

Lee Jimenez: January 13, 2017.

Vice Chair Lyon: Thank you.

Board Member Puzauskas: There were some photos in here (referring to the staff report) dated August 9th but when was this aerial that you are showing us dated? (referring to the aerial photo Mr. Jimenez presented to the Board) Is that a recent photo?

Lee Jimenez: This was created using the City's web ArcMap, the photo was likely taken some time within the last year or two. I don't have the exact date for this aerial, usually it is stamped on the photo, so I am uncertain what the exact month and day that this aerial photograph was taken.

Board Member Puzauskas: Would you say that the aerial represents the condition of the property today?

Lee Jimenez: I cannot answer that, but I do have photographs of the property, provided in your packet, which are dated August 9, 2017.

Board Member Puzauskas: I have those, I was just wondering about this one (referring to the aerial). Thank you.

[Appellant called to podium]

William Gay: Hello, my name is William Gay and I reside at the address 625 West 3rd Street. We are here because I filed an appeal. The reason I filed an appeal is because number one, I cannot afford to pay the amount to have the property cleared by the City's abatement program and number two, I have been working very diligently on bringing the property into compliance.

I realize it has been six or eight months since I received my first notice that the property was out of compliance. The reason the property got out of compliance was because I supplement my income by recycling metal. Three years ago, the bottom fell out of the market and so I stopped selling the metal because it wasn't bringing in any money but I continued to stockpile the metal and it got to be quite a bit of stuff in the back yard. Since I have been in contact with the Code Compliance Division, I have gone ahead and sold quite a bit of the metals. I am not finished with it, I still have several loads that I need to take to the scrap yard. I have also taken several loads to the transfer station and the town dump and I can only do two loads a month to the transfer station before it costs me money.

As a matter of fact, I was at the transfer station yesterday and I was 300 pounds over and that cost me 50 dollars. Which that was a little unexpected but I also have had other financial problems. My ex-wife filed for a bankruptcy last year. We have been divorced for over 20 years, her name was still on the title and the trustee of the bankruptcy at first attempted to put a hold on the property. Then sell the property and split the proceeds between my ex and I, and since I was living there they lightened up a bit and they settled on \$7500 that I had to pay on her bankruptcy to keep my property.

I struggle to make my utility payments, I struggle to make my tax payments, my parents have been kind enough in the past to help me out with taxes. Essentially what I would like to see happen here is not to overturn the decision of the Hearing Officer, but to extend the time frame in which I can bring the property into compliance. I have owned the property for 32 years, and I have been living there for 9 years. There has been a lot of accumulation in 9 years, and it takes quite a bit longer than the time frame that the City has been allowing me to take care of it. As you can see by the aerial photo, there is quite a bit of stuff back there that I am more than willing to bring the property in compliance. I just need more time. That's about all I have to say.

Chair Sell: Thank you Mr. Gay. Since you were cited in January, how much of the material in the backyard has been removed? What kind of percentage have you moved so far?

William Gay: Probably about 60 to 70 percent.

Chair Sell: About how much more time would you need to remove the rest of the material?

William Gay: Maybe two months.

Board Member Puzauskas: Have you talked to the City about the time period, or the certain date by which you could get substantially in compliance to remove a bulk of the material?

William Gay: Yes, I have, and they indicated that I have already had enough time, since it has been out of compliance since January.

Board Member Puzauskas: Did they offer anything to you in terms of a certain date that you can accomplish a certain amount of clean up, and maybe they can work with you?

William Gay: They did right from the start. They gave me quite a bit of time, month to month, and as long as I was making progress, they were going to be okay with it. But apparently my progress wasn't enough.

Board Member Frazey: Question sir, regarding the statement about it not being clear about what can stay and what needs to be removed. Has there been any further clarification to you? Does the whole yard need to be cleared out or is there a clarification of what can stay?

William Gay: The only thing that I have really been told about that is if the abatement happens, anything that I want to keep needs to be out of there. Which to me, that tells me that they are just going to go in and clear the whole property. Now there is a few structures on the property with large tool boxes attached that contain my tools. I don't know if they are meaning to take the shed or what exactly. It has never really been clarified. I have a lot of tools and a lot of equipment back there that I don't have anywhere else to put it. It is my backyard and you cannot see the backyard from the alley, unless you stand on the back of your truck. You can't see the backyard from the front, so everything is concealed. I don't know who has been registering these complaints, because my neighbors on both sides do not have a problem with the recycling I have been doing or anything else. Everybody seems to be friendly and comfortable with it.

Board Member Cullens: Mr. Gay, thank you again for coming down and giving us clarification. One of the options this Board has is to approve this appeal with conditions. If we were to approve this appeal with conditions to give you an additional three months to take care of your property; do you feel that you understand what you need to remove, and you feel that you have the ability to remove those items within three months?

William Gay: Yeah, I can remove anything. I'm sure as of this meeting now, maybe we will have some better clarification. I have looked through the City Code and there is nothing that I could find that says what you can and cannot have in the backyard.

Board Member Cullens: I guess my concern is that, if we approve an extension that is based on your understanding of what you need to remove; you are saying that you do understand what you need to remove, if given the extension?

William Gay: Yes.

Board Member Cullens: Thank you.

Chair Sell: Thank you Mr. Williams. Is there any question for the City staff at this point?

Board Member Puzauskas: Mr. Gay indicated that the property was 60 percent abated. Over a period of time, he has removed a lot of material, is that right in your mind? This has been going on for a year, there has been some progress, some progression of abatement.

Andres Lara-Reyes: There has been some progress over the ten months, since the first notice was mailed out. I did take pictures this morning, and I reviewed the case with an administrator. We came to the conclusion that the property is still in violation.

[Mr. Lara - Reyes then displayed to the Board the photos he had taken during his inspection that morning.]

Chair Sell: Would you be able to estimate how much of the material has been removed? Is it 60 percent or less than 60 percent?

Andres Lara-Reyes: I would probably estimate maybe 50 percent. At this point you can now walk through the back yard, an improvement from the initial inspection.

Chair Sell: Thank you. Any other questions?

Vice Chair Lyons: I would like a little clarification on the 180-day open abatement period. I'm not sure who exactly I should address this question to. I am curious if we can hear what exactly is supposed to happen during that 180-day period. Is that the time during which the City will abate the property? Or during which the owner will abate the property?

Andres Lara-Reyes: The City will abate the property, it will stay open for 180-days. In the event that the owner has a violation again, the City then has the authority to clean it up again during those 180-days as many times as we need to. To bring the property into compliance.

Vice Chair Lyons: I see, thank you.

Board Member Puzauskas: If the decision was that you were going to abate, would you start that tomorrow? Or would that be something that you would start in two or three months?

Andres Lara-Reyes: We would start immediately.

Board Member Puzauskas: Alright, thank you.

Board Member Cullens: It's not so much a question as it is a statement. I have a concern, and I asked this question during the study session earlier. I asked if the City had any kind of programs that would help abate the property for those in financial need. I was told that there are not any programs available. That is part of my concern, that we are going to create a financial hardship for the homeowner and he has no options within the City to help him with the issue to have his property be abated. We are basically saying we are going to abate the property if this gets approved, and we are going to put a lien on his property. I have some concerns with that.

Chair Sell: Thank you. Do we have any other questions?

Board Member Puzauskas: For the homeowner, you mentioned that you are in the recycle business. I understand that a little by the way, my grandfather did that for a living. But how much of this material in your backyard is recyclable? How much can you take off to the metal recyclers? How much is going to the dump?

William Gay: Of the remaining items left on the property probably 75 to 80 percent is recyclable and that is how most of it got there to begin with was because I collected it there to recycle. Like I said, the bottom fell out of the market and I didn't cash them in like I normally would.

Board Member Puzauskas: But understanding this abatement issue that is before you, would you be able to in two months? Could you take 75 percent of that material off to the recyclers? Is that possible for you to do that?

William Gay: Absolutely.

Vice Chair Lyons: I have one more question for City staff. There has been some discussion on if we were to approve the appeal with the condition that the owner abate the property themselves, within a certain time frame. Can we get clarification of how that would work if that were something that we decided to undertake? Is that a remedy we have?

Steve Abrahamson: Yes, Mr. Lyon that is. If there was a condition on the approval of the appeal that would indicate two months, as we have discussed before, there could be an additional condition placed on this that, after two months, there would be an inspection. Should the property not be cleaned up, then it could go through an immediate abatement. That could be a condition that you write into it.

Margaret Strength, Tempe Resident, spoke in support of the request:

I live to the east of Ken's property, I have owned my home for over 20 years there. I just want to speak on Ken's behalf that he is a good neighbor, he is working on cleaning out the property, and he is making progress. I would like to see the City to allow him to continue what he is doing and not fine him. I like our neighborhood. It has always been a unique neighborhood, no HOAs and that kind of stuff. I just feel like the City is reaching too far on this one. I don't understand it. There are other properties around that have issues as well. This just seems like this is going too far, and like I said, I would like to see him given more time. I would say even more than two months, I think at least 90 days would be more adequate. That's all thank you.

Randolph Strength, Tempe Resident, spoke in support of the request:

I live next door. Basically, I echo what my wife just said. I would add that they are working on it all the time. They are making progress. I feel like if the City can have 180 days to do it, with all the resources of the City, then I feel that it is unfair that Ken not be given an additional 60 to 90 days. Especially given your concern about the lack of programs to help him. He is doing the best he can on his own, and he has always been a good neighbor. Always there to help anytime, even to help me in the middle of the night with things. Somebody crashed into my wall, and he was there to help me take care of that. He is a good guy, and deserves a little bit of a break.

Chair Sell: Well, it has been 10 months now since the citation was issued, and it appears that he is making progress towards cleaning up his yard. I think it would be reasonable to approve this with conditions of 90 days, or by the end of January. Something like that.

Board Member Puzauskas: I agree with you. This is a case where I can understand that if he keeps working at it, and the neighbors feel he is working at it, I think 90 days would be acceptable. I do think that there needs to be a little bit of teeth to it at the end of the 90 days. That if it does not get abated, or at least significantly abated, that an abatement takes place by the City. That is what I think would be appropriate, personally.

Chair Sell: I would think that maybe the City staff can go take a look at it after 60 days, and tell him what else needs to be removed?

Randolph Strength: That was what I was going to offer. I was going to suggest that there be some type of time period in there, so it's not just pulled out from under him all of a sudden. That there is a little bit of a warning on that. Do you feel like you have clarification on what can stay? (Talking to Mr. Gay) I don't feel like in reading some of the documents and stuff that I understand that. Maybe there could be some type of formal clarification on what needs to go or not? That's all.

Chair Sell: Is that something that the City staff could monitor and give him an idea of what can stay?

Andres Lara-Reyes: What I am going to do is, I am going to sit down with an administrator to go over it. To make sure that everything gets included that needs to be removed in detail. That way he can know.

Board Member Cullens: I think that is a great idea. I appreciate that you are looking to help the citizen so that they can meet the needs that are required of the code. Thank you for offering to do that.

James Frazey: When you look at the financial aspect of the abatement, if within a 90-day period the decision is made to abate, this dollar amount referenced would be adjusted based on what materials might still be there then, correct? The dollar amount would theoretically go down.

Andres Lara-Reyes: Correct.

Board Member Frazey: Thank you.

Vice Chair Lyon: I would like to say that I don't know that I feel that the appellant is having the rug pulled out from under them, and this is not an all of a sudden thing. There have been a number of notices, and this process has been ongoing for some time. I would feel a little bit more encouraged, if there was more progress on the property during that period. That being said, I could still support a condition that allowed 90 days to abate the property, and I do believe that the appellant is making a real effort to clean things up, and that satisfies me.

Board Member Confer: I may be reading between the lines here with this. He is supplementing his income with recycling, scrap metal, that type of thing. I don't see this problem stopping unless he stops that business. Before I make a notion to approve another 90 days, I would like to find out if the intent is to discontinue that, because as mentioned in one of the staff reports, it is probably going to happen again. I just want to find out what the homeowner's intent is with that portion of the business. Thank you.

Board Member Cullens: I don't know if it is within our purview to ask the appellant to tell us how he is going to use his property in the future. That is not the case that we have right now. That is not what we are making our decision on. I would feel uncomfortable telling him what he can and can't do with his property in the future. That does not fall within our purview.

Board Member Confer: To me, there is a direct correlation. We have an issue where staff has discovered that there is a public nuisance there so to me, it goes hand-in-hand. I just don't want to see it come back up in six months. I guess what I'm suggesting is that I'm not telling him what to do with his property, I'm just suggesting a way in which there is a longer-term solution, or we will be right back here in another year. Just a thought, thank you.

Board Member Naugle: A question to the staff. There is an Ordinance that prohibits operating a business within a residence, is that correct?

Andres Lara-Reyes: That is correct. In this case, the compliant was just for the litter and debris in the backyard. Nothing about a business.

Board Member Naugle: And is that something that your group enforces as well?

Andres Lara-Reyes: Yes.

Chair Sell: Mr. Gay can you step up to address some of the issues and concerns of the Board members?

Board Member Confer: Mr. Gay thank you for your time tonight. I do appreciate the appeal. What does your future look like with all the stuff that is an issue in your backyard? If this Board gives you an additional 90 days to clear it out, is it not going to be an issue in the future? Or is it going to be an up and down hill thing where you have more things in your backyard in six months because scrap metal prices rise. Can you shed any light on that?

William Gay: I don't see the prices going up anytime soon, and the owners of the scrap yards that I have talked to, they don't see it going gangbusters like it was four or five years ago. Quite frankly I am a little bit tired of doing the scrap business. Number one, it only pays about 50 cents an hour and it is very time consuming. It was something that I could do to supplement my income. I would like nothing more than to be done with the scrap business. It is something that I have had to fall back on in the past just to pay bills.

I am a third-generation plumber. My grandad had a business at 117 Sixth Street where the high-rise is now. His plumbing business was where the lobby is now located in that high-rise. I went to work with him at the tender age of five, tending his lead pots for him. I have been in the business for quite some time. I have recently landed a new job with another outfit, and I will be working in some apartments, as soon as the city approves some portion of the plan, but that's on Ninth Street and Willison. So, it will be very convenient. I could probably walk to work, if I had to. That should take care of the scrap business.

Chair Sell: Thank you Mr. Gay, appreciate it. One more discussion then we will call for question.

Board Member Naugle: I have a question. I am comfortable with extending another three months however, at the end of three months, I would be interested if a motion were to then automatically give staff the authority to move in and abate the property. I don't understand the process, and whether it would come back again to us or not.

Chair Sell: It is my understanding that if we approve with conditions, and the condition is 90 days to clean up, if he didn't finish within 90 days then the staff would then start immediate clean up. Is that correct?

Steve Abrahamson: That would still be an abatement and this is an appeal of an abatement. I am not an attorney, but I feel after that, a new abatement would have to be started at that point.

Jeff Tamulevich: You would give an abatement at 90 days, that is correct. If a condition were placed on an approval that gave Mr. Gay 90 days to clean up his property then yes, the City would move forward and conduct the abatement at that time.

Board Member Cullens: While you are here, I have some questions. If you do move forward then you would be adjusting the cost of the abatement based upon what he has successfully removed?

Jeff Tamulevich: That is correct.

Board Member Puzauskas: When would you start the clock on the 90 days? Immediately?

Jeff Tamulevich: We would start today.

Chair Sell: There seems to be no more discussion or questions, thank you. I call for motion.

Vice Chair Lyon: Mr. Chair, I move that we approve the appeal with the condition that the appellant has 90 days to abate the property himself, after which time the City period of 180 day abatement commences. If the property has not been abated by the appellant.

Chair Jan Sell: It is my understanding that after the 90 days the City would commence the abatement. Is that your motion?

Vice Chair Lyon: If the appellant has not cleaned up the yard yes.

Chair Jan Sell: Is there a second?

Board Member Confer: I'll second that motion.

Chair Sell: It was moved by Mr. Lyon, and seconded by Mr. Confer, that the appeal be approved with conditions, and that condition being a 90 day period for which the appellant could have to clean up the yard at which time after 90 days if it is not clean then the City would move forward with the abatement. All those in favor?

[The motion is approved unanimously, 7 – 0.]

Chair Sell: With no other orders of business I make a motion to adjourn. Mr. Lyon?

Vice Chair Lyon: Mr. Chair, I move that we adjourn.

Board Member Frazey: I second that.

Chair Jan Sell: All those in favor say I. Carries with a 7 – 0. Thank you everyone.

DECISION: Appeal was approved with conditions and the Hearing Officer's decision, dated September 19, 2017 to approve the request to abate public nuisance items at the GAY PROPERTY (PL170321/CE170321) located at 625 West 3rd Street was appealed.

VOTE: Appeal was approved by a vote of 7 to 0.

Steve Abrahamson made the following announcements:

- The next Board of Adjustment hearing is scheduled for December 20, 2017.

Vice Chair David Lyon made a motion to adjourn tonight's public hearing; Board member Richard Kausal seconded the motion. Motion was approved by a vote of 7 – 0.

There being no further business the hearing adjourned at 6:39 p.m.

Prepared by: Sydney Bethel, Administrative Assistant
Reviewed by:



Steve Abrahamson, Principal Planner

SA:sb