

# MINUTES BOARD OF ADJUSTMENT FEBRUARY 28, 2018

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 5:36 PM**

### **Present:**

David Lyon

Whitni Baker

Kevin Cullens

James Frazey

David Naugle

John Puzauskas

Richard Watson

John 'Jack' Confer (Alternate)

Albert Dare (Alternate)

Steve Abrahamson, Principal Planner

Diane McGuire, Administrative Assistant II

**There was 1 interested citizen present at the study session.**

- Steve Abrahamson reviewed the procedures for making a motion and how that motion may be presented.
- Steve Abrahamson noted that the election of the Chair and Vice Chair positions would need to occur during the regular session of tonight's hearing. Board members discussed choices for these two (2) positions and indicated their inclination to nominate David Lyon as Chair, and James Frazey as Vice Chair.
- Board members discussed the abatement appeal to be heard at tonight's hearing.
- Board Member Cullens referred to a previous appeal of an abatement request, which had been heard by the Board. He noted that, at that time, he had questioned whether the property owners are being offered assistance to bring their properties into compliance with the help of a non-profit agency. He asked if the Code Compliance Department provides that contact information as a resource to property owners who are facing abatement proceedings.
- Board Member Baker indicated that her review of the Staff Report and related materials indicated that Ms. Davis had health issues and questioned whether there was any support of that issue affecting the abatement.
- Mr. Abrahamson questioned Ms. Davis (who was sitting in the audience) as to the circumstances of her health issues. Ms. Davis responded that they originated from an accident.

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**REGULAR SESSION 6:00 PM**

**Present:**

David Lyon  
Whitni Baker  
Kevin Cullens  
James Frazey  
David Naugle  
John Puzauskas  
Richard Watson

Steve Abrahamson, Principal Planner  
Diane McGuire, Administrative Assistant II

**Absent:**

(The alternates were not needed at tonight's hearing and left.)  
John 'Jack' Confer (Alternate)  
Albert Dare (Alternate)

**There was 1 interested citizen present at the regular session.**

**Hearing convened at 6:00 p.m. and was called to order by Vice Chair David Lyon.**

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Vice Chair David Lyon introduced City staff (Steve Abrahamson & Diane McGuire).

Board members present at tonight's public hearing introduced themselves.

Vice Chair Lyon welcomed the two (2) new Board members (Whitni Baker and Richard Watson).

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Mr. Abrahamson stated that the first order of business tonight should be the selection of the Chair and Vice Chair positions.

**Election of Chair**

Vice Chair Lyon asked for nominations for the position of Chair.

Board Member Frazey made a motion to elect Board Member David Lyon for the position of Chair; Board Member Cullens seconded the motion.

**VOTE:** 7-0

**DECISION:** Board Member David Lyon elected as Chair.

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**Election of Vice Chair**

Chair Lyon asked for nominations for the position of Vice Chair.

Board Member Puzauskas made a motion to elect Board Member James Frazey for the position of Vice Chair; Board Member Baker seconded the motion.

**VOTE:** 7-0

**DECISION:** Board Member James Frazey elected as Vice Chair.

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**Approval of Board of Adjustment Minutes for December 20, 2017**

On a motion by Vice Chair Frazey, seconded by Board Member Puzauskas, the Board by a vote of 4-0 approved the Board of Adjustment Minutes for December 20, 2017.

Board Members Baker, Watson and Naugle refrained from this vote, as they were not present at the December 20, 2017 Board of Adjustment public hearing.

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

Steve Abrahamson read the following request into the record:

Appeal of the January 16, 2018 Hearing Officer's decision to approve the abatement request for the **DAVIS PROPERTY (PL180035 / CE174675)** located at 513 East Fremont Drive. The applicant is Ms. Sarah Davis.

Board Member Baker questioned whether the correct address was 513 or 531; it was confirmed that the correct address is '513 East Fremont Drive'.

Steve Abrahamson, Principal Planner, gave an overview of the case:

- The Davis Property is located on Lot 71 of the College Park 2 Subdivision situated on the southwest corner of East Fremont Drive and South McAllister Avenue in the R1-6, Single Family Residential District.
- The property has been in violation since June 6, 2017 for trash, litter and debris in the back yard and back porch area.
- On January 16, 2018, the Hearing Officer heard and approved the request by the City for a 180 day open abatement for the nuisance items.
- At the hearing, Ms. Davis explained that personal circumstances have prevented her from bringing the property into compliance.
- Ms. Davis formally appealed the Hearing Officer's decision on January 30, 2018.
- In Ms. Davis' appeal, she indicated that she has since cleared the patio, as well as other areas, but still has some work to do.
- Ms. Davis is requesting an extension of time to finish accomplishing a task she began before being cited for code violations.
- To date, staff has not received any public input.
- Code Enforcement Officer, Julie Scofield, is present to answer any questions related to this abatement case, and to provide an update on Ms. Davis' progress towards compliance.

Mr. Abrahamson asked if the Board had any questions for him.

Chair Lyon asked the Board if anyone had any questions they wanted to ask. There were no questions.

Chair Lyon requested Ms. Davis to approach the podium and present her case.

Ms. Davis presented her appeal, indicating the following:

- She stated that she had called the City about using the sewer line for her pool as part of getting her yard back in order and getting the pool started up as she had used the sewer line in previous years. She stated that the City staff was insistent on knowing her address, although she explained she was just asking and did not need anyone to come out. She stated that she was bringing this instance up, as she did not think just because you call the City that they should come out and then cite you for something else.
- She stated that she had been working in her backyard from June to August 2017 trying to get it organized. Most of the work was a lot of organization due to deterioration of plastic containers (i.e. plastic bags) over time.
- She stated that she had stuff covered up with tarps and things like that because some of them were antiques. She acknowledged that she had too much stuff. She stated that she goes out looking, because that is her treasure hunt during the day, and she loved doing that.
- She stated that, in her opinion, it is not junk, it is just stuff, and she failed to see how just having stuff deteriorates a property.
- She stated that she is aware that it doesn't look good, but it doesn't do any harm to any permanent structures by having stuff.
- She stated that, apparently, the theory would be that your house would not deteriorate if you did not have stuff, but because you have stuff it deteriorates.
- She indicated frustration and unhappiness with the whole process of bringing the property into compliance, stating that although the City may say there is no progress, she was, in her opinion, making progress.
- She stated that she has been making progress by throwing things away with two (2) solid waste cycles; one in June and the other in August. She stated that Ms. Scofield kept saying that she wasn't doing anything, and that is not true.
- Ms. Davis stated that she questioned Ms. Scofield if she could use/buy containers so she could sort the different items, and Ms. Scofield indicated that could be done for a while. She then went and bought a whole bunch of containers and then got a notice saying no, you cannot use containers.
- Ms. Davis stated that she had 2 wire shelving units on the back patio to put plants on to block the west sun. She was advised by Ms. Scofield that the shelf units were too high and could be seen from the street. Ms. Davis stated that she took pictures from the sidewalk, and that her backyard is about 25 to 30 feet from the sidewalk so anyone would be hard pressed to see those shelving units and all the other stuff that was on there.
- She agreed that she had a mess but stated that she did put a cover around the fence to cover it up because she knew it was an eye sore but did not know it was a violation.
- She stated that she did not feel like the City has done enough to tell people what is a violation.
- Ms. Davis stated that she had been informed by Ms. Scofield that she could not use indoor furniture outside, that it all has to be patio furniture. She indicated that her response to Ms. Scofield was that everybody uses indoor furniture outside sometimes, they just do.
- Ms. Davis stated that she had done so many things wrong that she was unaware that she was not supposed to do and so she feel that it has not been a real fair process.
- She stated that Ms. Scofield had not been honest about the improvements that she did make, and that she had made a lot of improvements since January 2018 because she has come out of a body cast and is getting over pneumonia, but still taking antibiotics for the pneumonia, so her health issues have affected her progress.
- Ms. Davis stated that she had consulted an attorney about the abatement notifications and that he had informed her that the citing was for trash, litter and debris. She stated that she has cleaned up what she considered to be trash, litter and debris although she did not know if Ms. Scofield was identifying all the things that she had as trash.

- Ms. Davis stated that it is hard to know how to solve the problem when she doesn't know exactly what Ms. Scofield is talking about, and that Ms. Scofield should come into her yard and point to her as to what is trash and debris.
- Ms. Davis stated that she had cleared out the patio and now had a nice sitting area there. She confirmed that she still had a lot of miscellaneous things that she needed to dispose of, or give back to Goodwill.
- She stated that she gave books to the library, a lot of them, probably 200 books that she donated because she was told she had to get rid of all this stuff.
- She stated that she found it difficult to meet an agenda, when she did not know what the real agenda was.
- She had been advised by Ms. Scofield that she had too much furniture and that she had thrown away a lot of furniture because some had deteriorated as the covers she had would move or the wind would blow of whatever and they were not fixable.
- She stated that she liked to redo furniture.
- She stated that she had thrown away a lot of stuff, but for Ms. Scofield to say she had not done anything is just incorrect. Ms. Davis stated that she felt that Ms. Scofield was doing this because somebody is going to make \$3,000 to \$5,000 because of her saying that she had not done anything and she did not feel that is right. Ms. Scofield out to recognize when people are trying to comply.
- Ms. Davis stated that Ms. Scofield had identified landscaping issues in the original complaint and that she had some weeds. Ms. Davis took care of that issue, but that Ms. Scofield continued to keep it as part of the citation although she called that to her attention.
- Ms. Davis stated that she had called the company that the City of Tempe uses, but that Ms. Scofield needs to tell her what else she needs to do to bring the property into compliance as she feels she has already complied.
- Ms. Davis stated that she has lived here probably since 1969 and has always complied with all the laws, and that this has not been a good experience. She stated that she feels like if there is a speed limit, then people know about it, and that the City needs to tell its residents what are the rules about their back yard.

Chair Lyon stated that he appreciated Ms. Davis' remarks to this point, but requested that they direct the conversation to what specifically she had done to deal with the issue, and what were her plans to accomplish the remainder from this point.

Chair Lyon noted that Ms. Davis' request is for an extension and asked how long she felt she needed, and what she would do with that extra amount of time.

Ms. Davis responded that one of the things she had asked Ms. Scofield about was the area on the side of her house, if she could have a gate put there and fence and store stuff there. She stated that Ms. Scofield responded that as long as the neighbors did not complain. She indicated that she had pool decking, patio and hedge beds in the backyard and had made significant progress cleaning the area up. She has swept and cleaned and sacked up all the trash and put it out to be picked up on February 25<sup>th</sup>.

Ms. Davis further reiterated that she had been working on the property all along from June to August 2017 until her accident occurred on August 30<sup>th</sup>, then she could not do anything and could not lift more than 6 pounds for 8 weeks. She noted that it takes a long time for her back to heal, and that lifting anything isn't good for her back because it takes a really long time to heal as it is upper back issues.

Ms. Davis stated that she had containerized and sorted out a lot of stuff and thrown away a lot of stuff, so she did not know exactly what the Board wanted her to tell them. She acknowledged that she did have a lot of miscellaneous things that were kitchen stuff such as copper, pewter, silver, porcelains and things like that.

Chair Lyon stated that perhaps it would be helpful if the Board asked more questions, if that was agreeable to her.

Ms. Davis agreed that it would be acceptable.

Board Member Puzauskas thanked Ms. Davis for attending tonight's public hearing. He questioned whether Ms. Davis had taken any pictures or documentation of her progress.

Ms. Davis responded that she just had a little cheap phone, and had tried to get somebody to transfer the pictures or print them for her but you cannot print it off the phone. She offered to pass the phone around, so the Board could look at her pictures of her yard as it is now and see that it is not like it was.

Board Member Puzauskas asked Ms. Davis as to what percentage of the stuff versus trash and rubbish needs to be taken away at this moment in time. Are you down to just stuff? Or is there still some debris?

Ms. Davis responded that there is not debris and there is no trash remaining on her property and that she had met that level of the code violation. From what she understands, she is supposed to get rid of all the furniture in her backyard, but she had bought covers for that anything is out in the elements, and it is now covered. She stated that there is furniture underneath the patio like any normal person would have.

Board Member Puzauskas asked, 'so everything there now is your personal items that you intend to keep?'

Ms. Davis responded that she did not intend to keep some of the miscellaneous items, that she will just donate them. She stated that she wanted to have a place in an antique mall where you can rent a spot. Her goal was to have a little side business to reduce her taxes, because she has a background in interior design and likes home furnishings.

Chair Lyon asked if any other Board members had any questions for Ms. Davis.

Board Member Baker noted that Ms. Davis mentioned that she wanted to put some things on the side of her house as an alternative, and asked if she was referring to some sort of storage unit or shelves.

Ms. Davis responded that the area was too narrow for a storage unit and that she had placed some of the containers she understood were acceptable but were not acceptable. She stated that was what she had planned to do on that side, putting covered bar racks. She stated that nobody has complained about it.

Ms. Davis stated that she had investigated the metal, aluminum type sheds that could she could buy, and she found one at Home Depot. It has a plywood bottom, but it is a little bigger. She thought it was like 32 cubic feet bigger than what is allowed, which is 4 x 8 x 8, but she does have space in her garden area for that.

Board Member Puzauskas indicated that he had one more question. He referred to the photograph of the property that was included in the backup documentation to the staff summary report. Ms. Davis interrupted to state that was a picture taken at the beginning of the complaints, and that she was willing to pass her phone around to show the pictures she had taken with it.

Board Member Puzauskas stated that he understood that the picture was taken at the beginning of the complaints, and did not know how Ms. Davis was able to get in and out of the house. He questioned whether this state of affairs was a fire hazard to Ms. Davis, or if she had any concerns in that direction.

Ms. Davis responded that she went over to the Fire Department and asked what the codes are regarding residences. She was informed that there is no code.

Board Member Puzauskas asked if, in an emergency situation, did Ms. Davis feel confident that the Fire Department could come into the house and help her.

Ms. Davis responded that the house had both a front and back entrance and she felt confident it would not be a problem. She also indicated, in her opinion, that the earlier situation of limited access no longer existed and that currently it was all open.

Board Member Cullens indicated that one of the options is that the Board can allow an extension for Ms. Davis to continue to clean up the yard. However, it sounds like Ms. Davis feels she has cleaned up the yard and an extension is not needed; that she is not clear on what she needs to remove.

Ms. Davis responded that she did not say she was finished.

Board Member Cullens asked, 'are you asking for more time?'

Ms. Davis said that in talking with the attorney, he advised her that they were not complaining about her stuff, they were complaining about the trash, litter and debris. She stated that she has raked it clean, all the hedge beds of the pool decking and moved everything, but yes, she still has a lot of stuff. However, the stuff that was the problem, all the surfaces were clean, and then she got more containers with stuff, so she had to put that stuff on top of what she had cleared.

Board Member Cullens asked, if Ms. Davis were given more time, could she bring the property into compliance?

Ms. Davis stated that she could.

Board Member Cullens asked how much time Ms. Davis felt she needed to come into full compliance.

Ms. Davis responded that she felt like the 2 months would certainly be helpful to her. She stated that, although it was hard to judge, she would certainly aim for that, and had been working on it every day.

Board Member Cullens asked Ms. Davis if she felt that were she given an additional 60 days, could she bring the property into compliance.

Ms. Davis stated yes, however, she needs to be told how many chairs and tables are too much? How many pots are too much?

Board Member Watson stated that he had taken the opportunity to drive by the property, and that the pictures were not representative of the current condition, that Ms. Davis had made progress. He noted that he thought there was still more progress to be made, but that yes, she has made progress, and he could verify that. He also noted that he would like to point out that the front of her house is completely clean, and that the issues are isolated to the backyard.

Chair Lyon asked if any of the Board members had any future questions. There were none.

Chair Lyon directed Ms. Davis to have a seat, noting that she would have further opportunity to speak to the Board.

Chair Lyon requested that Ms. Davis tell the Board what specifically she has done to date to bring the property into compliance.

Ms. Davis responded that she had asked Ms. Scofield if she could store stuff in the patio area, and stated that what she has done is cleaned up the area by gathering up all of the trash. She worked on the property from June to August 2017 until she had an accident and could not do anything further for 8 weeks as lifting things was not good for her back. Ms. Davis acknowledged that she did have a lot of miscellaneous stuff including silver, porcelain and items of that nature.

Chair Lyon thanked Ms. Davis for her input.

Chair Lyon called Ms. Julie Scofield, Code Inspector, to present her case.

Ms. Scofield presented the following overview of this case:

- She explained that this abatement did not originate due to a proactive action on the part of the Code Compliance Department. A complaint had been received about the backyard specifically.
- The complaint on this property was received on June 2, 2017 and subsequent inspection revealed an extremely large number of items being stored in the back yard and back porch area. Items included boxes, containers, furniture, household items and miscellaneous items. Additionally, there were also some dead bushes in the back of the property.
- Ms. Davis acknowledged the complaint notice on June 16, 2017 and requested a time extension. A one (1) month time extension to July 18, 2017 was granted. At that time, the property was reinspected. The dead bushes had been addressed, but the remainder of the junk and debris remained. A final notice was issued to Ms. Davis.
- Ms. Davis contacted Ms. Scofield about adding storage units, and was given the codes for accessory building and accessory structures.
- Ms. Davis requested another time extension on August 10, 2017. An additional time extension was granted to September 12<sup>th</sup>.
- On September 8, 2017, a legal representative for Ms. Davis advised Ms. Scofield that Ms. Davis had been in an accident and was unable to get the items cleaned up. A time extension was requested and granted to October 31<sup>st</sup>.
- On October 31, 2017 Ms. Davis' legal representative advised that Ms. Davis was in rehab and requested an additional 2 month time extension.
- A request to abate the property was heard at the January 16, 2018 Hearing Officer and approved, as no progress had been made to bring the property into compliance.
- Although multiple complaints had been received, Ms. Scofield stated that it did not seem like any clean-up had been made in the condition of the property until that abatement was approved on January 16, 2018.
- Ms. Davis has begun to use her side yard as a storage area, and there are still a large number of items.
- Ms. Scofield presented photo depictions of this property beginning with the original inspection, the condition of the property as of the January 16<sup>th</sup> HO hearing, and the current condition of the property in a photograph taken this morning.
- She noted that this latest photograph indicated that there has been some improvement in the back yard, but there are now items being stored on the west side of the property. She was not sure what they are, but they are covered items.
- Ms. Scofield indicated on an enlarged photograph (taken this morning) that there is a large amount of furniture, clothing, baskets, wood, containers, as well as clothing and household items. Some of the areas have covers on them, so it is unclear what is underneath them.
- Ms. Scofield noted that this property is a corner lot and very visible to the neighborhood or anyone going through the alley.
- Ms. Scofield acknowledged that since the original complaint, Ms. Davis has installed screening on a short chain link fence, but that due to the corner location, the chain link fence area is very visible and the items can be seen.
- She noted that Ms. Davis has been given multiple time extensions (4 to be exact) ranging anywhere from a month to 2 months at a time.
- The time that this case has been open is now 38 weeks or 9 ½ months and multiple complaints have been received on the condition of this property.
- Ms. Scofield asked that the abatement process still be approved.



Chair Lyon thanked Ms. Scofield for her explanation(s) of this case, and asked if any Board members had any questions.

Board Member Baker stated that one of her big questions has been, since this started, is given the length of time Ms. Scofield has worked on the case, has Ms. Davis had been presented with any options of neighborhood assistance. If there were any groups or any types of assistance, especially given Ms. Davis' health issues, that we, as a City, offered her, other than she personally go out and get this done.

Ms. Scofield responded that Ms. Davis had been mailed a pamphlet with contact information, for the Heart Program, that the City of Tempe endorses for assisting their residents. That this program could put together a group of people who could come out and help her, but that is up to her to contact them.

Board Member Baker acknowledged Ms. Davis' responsibility to make that phone call. She referred to the last photograph of the property, and asked if some of the stuff on the side of the house looks as though it is going over the fence line, where, because of the placement of this property, it would be visible. Even though it is on the side, it would be visible from the front, is that correct?

Ms. Scofield responded that is correct, and that it appears that things are starting to travel to the west side of the front of the property, but she is not sure what exactly of what those items consist. Although Ms. Davis appears to be making an effort to get it organized, unfortunately that is what appears to be the current situation.

Board Member Baker thanked Ms. Scofield for clarifying.

Vice Chair Frazey questioned, in regards to the code compliance standards, looking at the photograph taken this morning, what would be the acceptable number of items that could remain; what is code going to say that Ms. Davis needs to be removed from here to zero. He asked Ms. Scofield to provide some clarification on what is going to be an acceptable condition that would meet the code standards as to what needs to be removed and what can stay.

Ms. Scofield responded that, according to code, household items are just one of the items not to be stored outside of the property. She noted that it is quite the list, but that it includes anything from cans, bottles, wood, plastic, rags, boxes, paper, tires, appliances or any other household items. Pretty much anything that is meant for use in the outside would be acceptable to stay in the backyard of the property such as plants, a barbeque, patio furniture. But, as seen in the photograph taken this morning, Ms. Davis has a lot of clothing, containers, furniture, items that you would not normally see or have stored outside, especially in this weather.

Vice Chair Frazey stated, 'I guess that is kind of a judgement call, as far as the value of the items, but specifically relating to code, anything that is a household items is not, by code, to be stored outside?'

Ms. Scofield responded, 'that is correct'.

Board Member Cullens stated that he had a question, noting that during another recent abatement appeal, he had asked if any information was given for volunteer programs to the property owner, something that would help the resident, if they were not able to do it themselves. He stated that he was glad to hear Ms. Scofield mention the Heart Program earlier, and wondered if that was something new or a standard process of information that they offer to anyone.

Ms. Scofield responded that if a property owner asks, or requests any information, that is what is provided to them, if they feel that maybe they cannot do the project on their own. Ms. Scofield noted that Ms. Davis was provided that information back in August 2017.

Board Member Cullens stated, 'right, I think that is a great resource'. He went on to note that Tempe Neighbors Helping Neighbors is already on the Tempe website, the City of Tempe website and Community Services link with that organization, so that may be another opportunity to provide a resource for residents.

Ms. Scofield responded that, 'honestly, I don't know if she would be willing to participate in that program'. She further explained that they may not clean up such a big size, but that would be for Ms. Davis to contact them, and see if they could help her out.

Board Member Cullens thanked Ms. Scofield for the updated pictures, noting that they help a lot, comparing the recent photos to the earlier photos that were part of the packet.

Board Member Naugle asked Ms. Scofield if the staff she works for, do they coordinate at all with the Tempe Fire Department regarding hazardous situations? He explained that what he was thinking about, was the flammability factor of the stuff stored in the yard and around the structure, as well as impeding access if there was a fire or an emergency in the structure itself.

Ms. Scofield responded that usually if there is a fire issue, the Fire Department will contact Code and let them know that something needs to be looked at, or that a possible fire issues exists. Code does not typically call the Fire Department, because they just take care of it and send the notices, but that when the Fire Department sees something like that, they will contact Code and register a complaint.

Board Member Watson noted that Ms. Davis had indicated that she was unclear as to the criteria. Was she provided with a list of what is in the code that should not be residing in the back yard?

Ms. Scofield responded that yes, Ms. Davis had been provided with that information. That she had been provided with that information with the notices, which contained the code in its entirety, and lists everything that does not need to be out there. On the bottom of the notices, Ms. Scofield had indicated what needed to be done to bring the property into compliance. Also, she had been in contact with Ms. Davis via email and on the phone.

Additionally, Ms. Scofield noted that Ms. Davis had been provided with the links to look up the storage codes for storage buildings as she was interested in maybe using that type of structure for storage. Even if she was to move the items into her house, then she would be okay.

Board Member Watson thanked Ms. Scofield for that information and stated that Ms. Scofield had said that items meant for indoor use are not to be stored outside. Mr. Watson stated that he could see the additional complication that the applicant might say, 'but these chairs, these tables, those could be used outside'. So, if you have 87 chairs and 15 tables, it is obvious they are being stored, rather than used as patio furniture?

Ms. Scofield responded that if she had seen that many tables she would think it was in excess. It is not really a common practice to use a dining room table outside, and if you have got as many as you are talking about, it would be an excess amount of tables. If you had 1 or 2 at most, it might be okay, but with everything else surrounding it, and all of the other items, it is really hard to say. For instance, you do not typically see a hutch being stored outside, but Ms. Davis has one.

Board Member Watson responded, 'Well, if I could just come at it again. I want to try to make sure I find good clear language that we are all happy with. So, you can't store your stuff outside, and if you have so much stuff that you couldn't be using it, it is obvious you are storing it, not using it?'

Ms. Scofield responded that, 'Then it is in excess. The outside area is not to be used as a storage area.'

Board Member Cullens stated that he was looking at the BOA packet information for tonight, and there's a letter that was sent to Ms. David, Notice of Intent to Abate Public Nuisance. It references the City code violation of City of Tempe 23.V.1, and he looked to see, as he is kind of curious when she mentioned indoor items cannot be stored outside, but it does not say that in the code. This code specifically says inoperable, worn out, discarded appliances or other household items, but it prefaces it with inoperable or worn out, so he was a little unclear. And Ms. Davis said she was unclear as to what things she could keep or not keep, so the discussion came up that some things are worn, and some things are not. When I read this code, it only says inoperable or worn out household items.

Ms. Scofield responded, 'Mr. Cullen I would also like to point out it also says including exterior areas under any roof not enclosed by walls, doors or windows. This is clearly out in the open. In the verbiage it says worn out or discarded appliances or other household items.'

Board Member Cullens responded, 'Okay, thank you. I guess the question is interpretation of code, as I was reading it. Thank you very much.'

Board Member Baker stated that in looking at the code, she had a concern. She asked Ms. Scofield, 'in your experience with this, we have already brought up the concern of health and safety as far as fire, and what would happen if Ms. Davis or anybody at the home were to need assistance, and needed to get in or out.' From the pictures it looks like that part has been cleared up a little bit, but one of my other concerns is simply stated directly in the code, which is public health and safety, and which could be harboring insects or rodents. I know that portion of town very well, is that any part of what your concern is of what you are seeing? Now we are going back to the health of not only Ms. Davis, but her neighbors, and I would like your input on that, because I think it is something we have to consider with the zoning and how the code reads.

Ms. Scofield responded that it certainly could be an issue, and that, in her experience, she has been at properties where they have done abatement cleanups and you will see rats run out of the items, as well as cockroaches. So that can be an issue. Ms. Scofield explained that she was not saying that Ms. Davis has any sort of infestation, but with all those items, you just don't know what could possibly be there.

Board Member Baker thanked Ms. Scofield for her input.

Chair Lyon stated 'okay, let's make this our last question'.

Board Member Watson stated that Ms. Scofield had mentioned that Code had received numerous complaints. How many complaints and how many were unique? Meaning not the same person complaining time and again.

Ms. Scofield responded that unfortunately she has no way of knowing if it was the same person complaining. She did know that it was multiple times with the first one being on June 2<sup>nd</sup> with the very first picture of the property that she had shown the Board. There was another complaint back in November, but she did not know if it was made by the same person or not.

Chair Lyon thanked Ms. Scofield for her input, and noted that there were no further questions, that they had 'grilled her long enough'.

Chair Lyon asked if there was anyone in the audience who wished to address this appeal. There was no one.

Chair Lyon invited Ms. Davis to the podium to address any comments she had heard or raise any other issues.

Ms. Davis returned to the podium, and noted that she had asked Ms. Scofield for information on the Heart or whatever that program was called. She stated that she did see the program about Neighbors Helping Neighbors and asked Ms. Scofield for information on that, as well as a contact person. She was given a phone number by Ms. Scofield, but when she called that number, a person called her back and said that was a 911 number for City employees to use, so she did not get anywhere with that. That is the only help Ms. Scofield offered her in that regard.

Ms. Davis said as far as the pests, there are probably 30 cats in her neighborhood, so they do not have a rat problem. She stated that she was well aware of rats, not that she had any, but she had canisters and little pellet things you put in there, so she did not have a problem. She also put diatomaceous earth down.

Ms. Davis stated as far as these people who are complaining, I've had that stuff a long time going on in my backyard. It is a little strange that the complaint happened after I called the City and then City staff wanted to know her address and wanted to come out. That is when she 'got nailed'.

Ms. Davis asked why the Board does not make Ms. Scofield reveal who these complaints were coming from.

Chair Lyon stated at this point, that he would cut Ms. Davis off there as he was confident that no one came in response to her phone call to the City, as she did not provide her address to them.

Ms. Davis stated, 'yes I did'.

Chair Lyon said, 'I thought you said you had not provided your address.'

Ms. Davis responded that, 'I did, she asked me for it and I gave it to her. I was afraid because we had that line around the chain link fence from the pool equipment to the sewer line that we used years ago. When I found out from the appraiser that I know, that you could now use it, I called the City. City staff did ask me for my address and I was afraid not to give it to her for fear she would think I was hiding something, so I gave her my address.'

Chair Lyon responded that 'all right, be that as it may, you have described that you have had this stuff in our backyard for some time. We've heard that the City code says you cannot store your stuff in your backyard. Do you understand that?'

Ms. Davis responded that she understood that now, but did not know it before. It took us to get here to be heard and now we know, but why find out after the fact? Why didn't they tell me before? Why don't they tell everybody to prevent other people from going through the same thing?

Chair Lyon stated, 'if this Board were to grant you an extension of 60 days, would you be able to remove your stuff from your backyard?'

Ms. Davis responded 'yes'.

Chair Lyon asked, 'Is that what you would want us to do? Would you like us to grant you a 2 month extension or are you here to ask for something different?'

Ms. Davis responded, 'no, that is what I was asking for'.

Chair Lyon asked Ms. Davis if there was anything else she would like to add at this time?

Ms. Davis responded that no, but that she just thought you make people feel like they are a common criminal when you have a process like this. It is not a process that wants a solution by offering you suggestions, especially in her situation.

Chair Lyon responded that, 'I will tell you, we are all here as volunteers (i.e. the Board members), and what we are doing now is offering you a solution and help. We are here to discuss the matter, and talk about what resolutions make sense. So, right now you are part of volunteers helping you. So now I will ask, do we have any Board members who wish to ask any additional questions of Ms. Davis?'

Board Member Baker stated that her question was very sincere. She stated that Ms. Davis had indicated that she has called these groups and that she could tell Ms. Davis that she has lived in this community and been part of these groups reaching out and helping neighbors. So, it makes her a little concerned that Ms. Davis feels that she has not received any answer, and doesn't really have the information. She asked Ms. Davis if she were to be provided with the information, would she be willing to reach out? If she were to be given 60 days to get the assistance, because there is assistance out there. Neighbors Helping Neighbors is just a beautiful one.

Board Member Baker continued, if you had that, instead of feeling as though you don't understand what needs to happen, would you be willing to take a step back and say, okay, I have to get this done. I do need help and will you reach out for that help and get it done? That is a straight forward question, without any other meaning behind it.

Ms. Davis responded, 'I tried to do it before, when I wasn't able to do it myself'.

Board Member Baker stated, it sounds like you were not successful in reaching the right person. If you truly feel you would reach out and get help and do this, and not just come back and say, well I tried and it was the wrong number. You do not feel you need help, you feel you can do this?'

Ms. Davis stated, 'no, I will be glad to talk to someone about helping me. I wanted to have a garage sale and I couldn't lift stuff.'

Board Member Baker said, absolutely, and that is why I am asking the question. I am sincerely concerned about your health with this.

Chair Lyon stated, 'let's move on then'.

Board Member Watson, stated that he would just like to ask, you have asked for a 60 day extension. What is your confidence level that at the end of 60 days we won't be reviewing this again?

Ms. Davis responded that, 'well I've made a lot of progress since I have been able to lift more and my lungs are better. So, yes, I feel I can accomplish it.'

Chair Lyon stated that at this time we will have time for Board member comment and discussion amongst themselves, and that it would not be appropriate for the Board members to ask further questions of Ms. Davis.

Chair Lyon further stated that Board members should probably abstain from asking more questions of City staff, unless they really need to, and just discuss the matter amongst themselves.

Chair Lyon asked the Board, so what would we like to see done?

Board Member Puzauskas stated that he had a question for staff. His question was if the Board upholds the Hearing Officer's decision, he assumed there is a certain amount of time before a contractor would go out there and do the work. Is that a fair assumption?

Mr. Abrahamson responded that it would be 14 days (2 weeks).

Board Member Cullens stated that it doesn't sound like there is an immediate safety issue, and that he was inclined to give the additional 60 days with the caveat that if it is not brought up to complete compliance, it goes immediately into the abatement.

Board Member Puzauskas stated that he agreed with that too, and noted that he was a little concerned, since there have been 4 time extensions already, from what they have heard. He was also concerned that this stuff is personal stuff, that it is not rubbish or trash in Ms. Davis' mind. While he appreciated her thought process, he felt that it was appropriate, if the property was not brought into compliance within 60 days, that it would go into abatement.

Board Member Puzauskas stated that he would agree with the comments of the last two Board members that were made. The understanding is that if the Board does provide the 60 day extension, that at the end of the 60 days, staff will go and reassess the situation to determine that the property is now in compliance. Ms. Davis understands that any household items need to be moved inside the house, garage rooms or whatever. That they are taken care of and that staff will come back, not come back to us (i.e. the Board), but just make that determination that the compliance has been completed, that is acceptable, or it is going to be abated immediately.

Board Member Naugle noted his concern is public safety. He believes that the ordinance has a lot of safety implications, and that we have been aware of this situation now for over, almost a year since last year. If it was just an eye sore issue, fine, but as a safety issue, it needs to be done and done quickly.

Board Member Baker stated that she was concerned about the time that has already passed, and leans more to what has been previously said about what the Board, in looking at the code say shouldn't be there and what Ms. Davis is attached to and that is human nature and natural. She further noted that she was concerned about the health and safety of the entire property, and that it does affect the neighborhood, it truly does. They say one man's trash is another man's treasure. There are a lot of people that keep all sorts of things in their backyard, which I am sure they are very attached to, but our code doesn't function on each individual person's view of what is good to keep. Our code says basically you cannot store your stuff outside. I think there are good reasons for that.

Chair Lyon stated that he is inclined to say a 60 day extension is appropriate. With the belief that if Ms. Davis does not take care of the items, then the abatement will kick in and that will settle the matter. So that is his opinion.

Chair Lyon stated that, having said that, he would like to hear a motion.

Vice Chair Frazey made a motion to approve the appeal conditioned upon a 60 day time period for the property owner to remove the items to bring the property into compliance.

Chair Lyon asked Board Member Puzauskas, do you wish to propose some other stipulation?

Board Member Puzauskas responded, well, I agree with that motion. I think we also talked about, at the end of that 60 days, if there has not been sufficient progress acceptable to the City, then the abatement will automatically be enacted, something of that nature.

Board Member Watson remarked, I understood that to mean if it is not complete in 60 days and compliant with the code that it automatically goes into abatement.

Chair Lyon stated that having said that, is there a second for Vice Chair Frazey's motion.

Board Member Watson stated that he seconded the motion.

Chair Lyon stated that all those in favor of granting a 60 day extension before the abatement takes place, show by a raise of hands please.

**MOTION:**

Vice Chair Frazey made a motion to approve the appeal and overturn the January 16, 2018 Hearing Officer's decision to approve the abatement request, granting Ms. Davis a sixty (60) day time extension. If the property remains in violation, an abatement will be conducted after April 29, 2018. Board Member Watson seconded the motion.

**VOTE: 5 – 2**

**Board Members approved**

(David Lyon, Kevin Cullens, James Frazey, John Puzauskas, Richard Watson)

**Board Members dissenting**

(Whitni Baker, David Naugle)

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Steve Abrahamson made the following announcements:

- The next Board of Adjustment hearing is scheduled for March 28, 2018.

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Board Member Baker made a motion to adjourn tonight's public hearing; Board Member Naugle seconded the motion. Motion was approved by a vote of 7 – 0.

There being no further business the hearing adjourned at 7:06 p.m.

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Prepared by: Diane McGuire, Administrative Assistant II

Reviewed by:



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Steve Abrahamson, Principal Planner

SA:dm