



# Minutes of the Board of Adjustment REGULAR MEETING December 14, 2022

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

**Present:**

**Staff:**

Chair David Lyon	Steve Abrahamson, Principal Planner
Vice Chair James Frazey	Diane Kaminski, Senior Planner
Board Member John 'Jack' Confer	Lily Drosos, Planner I
Board Member Raun Keagy	Jeff Tamulevich, Community Development Director
Board Member Brett Siegal (Alternate)	Ryan Levesque, Comm. Development Deputy Director
	Drew Yocom, Code Compliance Administrator
	Jennifer Daniels, Administrative Assistant II

Regular Meeting 6:03pm

Chair Lyon stated that due to the quorum of only having five (5) Board members present the applicant may choose to ask for a continuance to be voted upon by the board. If approved the case would move to the January BOA Meeting.

Staff Steve Abrahamson was authorized to vote on the Meeting Minutes by The City Attorney's Office due to not having a quorum present to vote on the minutes from September 28, 2022.

**1) Voting of the Meeting Minutes:**

Study Session & Formal Meeting Minutes from September 28, 2022.

**Motion** by Board Member Confer to approve Meeting Minutes from September 28, 2022; second by Board Member Keagy. Motion passed on **4-0** vote.

**Ayes:** Chair Lyon, Board Members Confer and Keagy, Staff Steve Abrahamson

**Nays:** None

**Abstain:** Vice Chair Frazey and Board Member Siegal

**Absent:** Board Members Gans and Watson

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**2) Appeal the October 19, 2022, Hearing Officers decision to approve abatement request for the **DAVIS PROPERTY**, located at 2923 South Albert Drive. The applicant is John Davis. (PL220307/CE222546)**

**Applicant Presentation:**

Mr. Davis gave a presentation. Mr. Davis stated that due to health issues he has become unable to take care of his property. Mr. Davis spoke with Care 7 prior to entering the hospital and was told by a Care 7 representative that they would speak with Code Compliance on his behalf. Anytime Mr. Davis had an issue or received a letter he would contact Care 7. Mr. Davis was under the impression that the situation was under control. When Mr. Davis was released from the hospital, he received a letter stating that an abatement approval was done for his

property. Mr. Davis then contacted Care 7 and the City to appeal the process. Mr. Davis is unable to take care of his property on his own. He has hired 2 people to do the work on his yard for him. He stated they have already done a significant amount of work on his property. Mr. Davis asked that he be approved to do what he can on his own to avoid abatement.

Board Member Keagy asked Mr. Davis if he any type of a timeframe he would be willing to commit to on coming into compliance with the city.

Mr. Davis stated that when he was in contact with Care 7 he was unable to meet his stated timeframes of being in compliance due to being hospitalized. Mr. Davis stated that he could be in compliance by sometime in January.

Board Member Siegal asked if Mr. Davis was given the option for a continuation for his case.

Chair Lyon asked Staff Steve Abrahamson if this was a case where a continuance should be offered.

Mr. Abrahamson stated that Chair Lyon may offer a continuance.

Mr. Davis stated that this issue has been stretched out far too long. One of Mr. Davis' concerns was that he was not made aware Neighbors Helping Neighbors did not work during the summer and he would have to wait until fall for the help.

Vice Chair Frazey asked for clarification on the letter Notice to Intent to Abate dated September 9, 2022. Chair Lyon asked for Ms. Lily Drosos to clarify during the Staff Presentation.

Chair Lyon asked Mr. Davis once the situation is taken care of is this something he will be able to keep under control going forward. Mr. Davis stated that at this time he is unsure due to his health.

**Staff Presentation:**

Ms. Lily Drosos gave a presentation. Ms. Drosos stated that the case was initiated on April 12, 2022, by Inspector Heredia for junk, trash, debris, and deterioration landscape. Two complaints were submitted to the Code Compliance Division. On October 19, 2022, Hearing Officer MacDonald approved the 180-day open abatement request.

Vice Chair Frazey asked Ms. Drosos to elaborate on the assistance Care 7 had provided or offered Mr. Davis. Ms. Drosos deferred the question to Staff Drew Yocom, Code Compliance Administrator for the situation with Care 7. Mr. Yocom stated that Care 7 is a partner that Code Compliance uses on many cases. Mr. Yocom stated that Care 7 had an extensive amount of contact with Mr. Davis. A summary includes 4 times in May, once in June and a couple times in July, August, September, October, and November. Contact was either over the phone or on site. Care 7 has kept Code Compliance up to date on all contact. Care 7 looked to grant extension and opportunities through Code Compliance. Care 7 tried to partner with Tempe Neighbors Helping Neighbors to clean up the property. Mr. Yocom asked Care 7 to provide a current quote so it could be provided to the Board. Care 7 stated that the property was not in a state for a proper referral. The scope of the project was too large for Tempe Neighbors Helping Neighbors.

Vide Chair Frazey asked Mr. Yocom to elaborate on the comment Mr. Davis made about Care 7 stating that everything was being taken care of. Mr. Yocom stated that the during the earlier months Care 7 tried to get Mr. Davis to agree to a voluntary abatement that would have reduced administrative fees and would allow Code Compliance to skip the Hearing Office hearing and work with Mr. Davis to perform the abatement. That offer was met by denial by Mr. Davis on several occasions. Mr. Yocom stated that in reference to the summertime comment regarding Tempe Neighbors Helping Neighbors was due to the program not being able to work during the summer.

Board Member Confer stated he was not familiar with voluntary abatement and asked Mr. Yocom to elaborate on the process a little more. Mr. Yocom stated that a voluntary abatement is a simple contract agreement between the city and property owner. The property owner would sign the agreement that they agree to the abatement

process. Which then would allow the city onto their property, skip the Hearing Officer process and waive administrator fees. The city would then contract with an abatement contractor to clean up the property. In the end there would still be a lien on the property.

Board Member Keagy asked for current pictures of the property. Mr. Yocom showed pictures of the property that were taken the morning of December 14, 2022. The pictures showed junk, debris, and dead landscaping still on the property. Board Member Confer asked Mr. Yocom if he had pictures from the same angles as the first pictures were taken of the property. Mr. Yocom stated he did not.

Staff Jeff Tamulevich addressed the Board regarding the decision that would be made by the Board is based on the Hearing Officers decision during the hearing to approve the abatement. The information being used to decide tonight will be the information presented prior to the Hearing Officer making the decision. Did the Hearing Officer make the correct decision based on the information she was provided?

Board Member Confer asked about the timeline of the appeal. Ms. Drosos stated that the 180-day open abatement starts the day the Hearing Officer approves the abatement. The abatement was approved on October 19, 2022. Board Member Confer asked when the 180-day abatement ends. Board Member asked if there was a copy of the order signed off by Hearing Officer MacDonald in the packet. Mr. Yocom stated that the letter was not part of the packet presented to the Board. The Board was given the packet that was presented to the Hearing Officer. Mr. Abrahamson stated that the 180-day abatement would end on April 19, 2023.

**Public Comment:**

None

**Applicant Response:**

Mr. Davis stated that the yard is in progress. The two people that were hired by Mr. Davis are in the process of putting up a shed in the backyard to store the items that are being moved into the backyard. Most of the items seen in the new pictures are items that will be put out for bulk pickup next week. Mr. Davis stated that he has been dealing with theft and that when he was able to get outside to clean up, he no longer has the tools to clean with due to them being stolen. Mr. Davis stated that the extensive communication between himself and Care 7 was due to him contacting them. He was never told his yard was too much of an ordeal to give to Tempe Neighbors Helping Neighbors. He was only told it would be submitted. Mr. Davis reached out to Care 7 and asked when help would be provided during the summer and that is when he was told the program does not operate during the summer.

Chair Lyon explained the Mr. Davis that the Board was to decide only on the appeal of the Hearing Officers decision.

Mr. Davis asked why he was not involved in the initial hearing with the Hearing Officer. Chair Lyon stated he was not a part of the process and unable to answer.

Mr. Davis stated that he thought as long as he kept everyone informed of his status and the progress he was or was not making that everything was good. Chair Lyon is unable to speak to that process.

**Commission Discussion:**

Board Member Confer wanted to see if the appeal was received by the City in an appropriate time. He stated that he does not have any documents to show what the Hearing Officer decision was. Ms. Drosos stated that the staff report, and Hearing Officer Minutes were included in the attachments given to the Board. Board Member Confer asked what day Mr. Davis was served with the Hearing Officer notice. Mr. Yocom stated that in order to move forward with the Hearing Officer process a sign must be posted 30 days in advance and mail a copy of the notification to the property owner. On September 9, 2022, the notification was issued, and it was discussed with Care 7 to communicate with Mr. Davis as well. Board Member Confer asked what day Mr. Davis was notified of the Hearing Officers decision. Mr. Yocom stated the following day after the hearing which was October 20, 2022. A determination letter was mailed to Mr. Davis. Care 7 was also notified of the decision on October 20, 2022. Mr.

Abrahamson stated that Mr. Davis received the determination letter in a timely manner because the appeal was filed with in the 14 days.

Board Member Siegal references a page in the report stating that there were notes in the report from August 26th there were failed attempts to reach city agencies. Could that have been Care 7 and Tempe Neighbors Helping Neighbors. The communication is from Hector Heredia to Julie Scofield. Mr. Yocom stated that this was possibly a communication between the Code Compliance staff and Care 7. Between April 20<sup>th</sup> and October 28<sup>th</sup> there were approximately 30 times Care 7 communicated with Code Compliance staff to give updates on the case.

Board Member Keagy commented that the Board is there to vote on whether the Hearing Officer made the correct judgment in authoring the abatement. At the time of the hearing in Board Member Keagy's opinion that decision was correct. Board Member Keagy stated that Mr. Davis was given the opportunity to receive a continue of the case for 30 days or until the next BOA Meeting takes place. Chair Lyon stated that he did not offer Mr. Davis that opportunity.

Mr. Abrahamson stated that Chair Lyon asked his opinion on offering a continuance to Mr. Davis. Mr. Abrahamson's opinion is that the city wants to move cases along, but it is at the decision of the Chair to offer a continuance. Mr. Davis may ask for a continuance, Chair Lyon may accept that, and the Board must vote upon it.

Chair Lyon asked Mr. Davis is he wished to ask for a continuance. Mr. Davis then asked Chair Lyon to explain what a continuance was. Chair Lyon explained that the Board has 5 members tonight. A full board is 7 members. Any motion must be approved by 4 votes in the affirmative. This would mean of the 5 members voting tonight 4 would need to approve. As opposed to 4 out of 7 members or 6 if 6 members were present. If Mr. Davis asks for a continuance and it is granted it would push the case approximately 1 month. At that time there is a possibility there could still be 5 Board Members. Chair Lyon asked Mr. Davis if he wished to ask for a continuance at this time. Mr. Davis stated that he did not want to go through this again and wanted it over with. Mr. Davis asked for a continuance for 30 days to show more progress. Chair Lyon told Mr. Davis any progress made to the property would not affect the Board's consideration on the Hearing Officer's decision for abatement. Mr. Davis then decided not to ask for a continuance.

Chair Lyon stated he has feelings about this situation for Mr. Davis and it is very challenging. Unfortunately, there is no way to make the feelings useful for Mr. Davis. From what Chair Lyon's sees is a property that could not be cleaned up effectively and through unfortunate circumstances the applicant could not get to the cleanup. It sounds like the Hearing Office made the right decision. This is a property that needs some help form the outside and that is why we have the abatement process. Chair Lyon stated he will be voting to deny the appeal.

Board Member Siegal state that he shares Chair Lyon's sediment. This is an extremely tough decision. It sounds like there were a lot of missteps. It appears Mr. Davis is trying to do the best he can in this situation. It did appear some progress was made in yard in the current pictures. Board Member Siegal does not see a valid bases to overturn the Hearing Officer's decision.

Vice Chair Frazey stated he concurred with the 2 previous statements that the abatement process was handled correctly. Vice Chair Frazey stated that the way the notice for an offer of continuance and the discussion on how the continuance works was very confusing. Chair Lyon stated that he will do his best to better explain.

Board Member Confer asked Mr. Abrahamson if over the last 5 years the BOA has not denied or approved an appeal and instead made a concession and given more time in these types of cases. Mr. Abrahamson explained that if you have a full board, yes. With a short board that is why a continuance is offered. Board Member Confer asked if that is allowed with a full board and a decision can be made with a partial board why can't the partial board offer more time to an applicant. Can the Board say that if the issue is not corrected by a certain day, then the abatement is approved? Mr. Abrahamson state that he does not know of any cases where a conditional continuance. The Board would either approve the continuance or deny it.

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**Motion** by Board Member Keagy to deny the appeal of the Hearing Officer's decision to approve abatement request for the DAVIS PROPERTY, located at 2923 South Albert Drive; second by Board Member Confer. Motion passed on **5-0** vote.

**Ayes:** Chair Lyon, Vice Chair Frazey, Board Members Confer, Keagy and Siegal

**Nays:** None

**Abstain:** None

**Absent:** Board Members Gans and Watson

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- 4) Request a Variance to reduce the street side yard setback from 15' to 8' in the R1-10 Zoning District for an addition to a single-family house for the **HLADIK RESIDENCE**, located at 8017 South College Avenue. The applicant is Michael Hladik. **(PL220165)**

- *PL220165 was moved to Agenda Item 4 tonight due to a communication issue with the applicant.*

**Applicant Presentation:**

Mr. Hladik gave a presentation on the Hladik Residence. The lot is an irregular shape. The back is narrower, and the front of the lot is larger. The side street wall is not directly parallel to the house. Mr. Hladik is looking to add the addition for a home office. Mr. Hladik's wife works from home 100% and Mr. Hladik works from home at times. An office would help give them the room. A neighborhood meeting was held with 3 neighbors attending. The only comment Mr. Hladik received was that as long as the addition was behind the wall and any s.f. added to the home would add home values in the neighborhood. No negative feedback was received.

Vice Chair Frazey asked Mr. Hladik why the agenda stated 15' to 8' when the pictures in the presentation show a 7' setback. Mr. Hladik accidentally uploaded the wrong plan that showed 7' and have since provided Mr. Abrahamson the correct plan showing 8'. Mr. Abrahamson stated that he does have the 8' plan and inadvertently uploaded the wrong slide to the power point. It is 8'.

**Staff Presentation:**

Mr. Abrahamson gave a presentation on the Hladik Residence. The applicant is requesting a variance to reduce the street side yard setback from 15' to 8'. This is an irregular shaped property with the street side yard setback tapering from West to East. Within this immediate area the property side yard street has a wider than usual right-of-way. The right-of-way is 35' where in most of this neighborhood it is 30'. This has reduced the Hladik setback by 5'. Additionally, there is another home in the neighborhood that was granted a street side yard setback of 9'.

**Public Comment:**

None

**Applicant Response:**

No further comments from the applicant.

**Commission Discussion:**

Chair Lyon offered Mr. Hladik a continuance. Mr. Hladik declined the continuance.

**Motion** by Board Member Siegal to approve Request a Variance to reduce the side yard setback from 15' to 8' for Hladik Residence, located at 8017 South College Avenue: second by Vice Chair Frazey. Motion passed on **5-0** vote.

**Ayes:** Chair Lyon, Vice Chair Frazey, Board Members Confer, Keagy and Siegal

**Nays:** None

**Abstain:** None

**Absent:** Board Members Gans and Watson

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- 3) Request a Variance to reduce the side yard setback from ten (10) feet to six (6) feet in the R1-6 Zoning District for an existing addition to a single-family house for the **GIPSON RESIDENCE**, located at 2002 West Garden Drive. The applicant is Darryl Jackson. **(PL220276)**

- *PL220276 was moved to Agenda Item 3 tonight due to a communication issue with the applicant from PL220165 the Hladik Residence.*

**Applicant Presentation:**

Mr. Darryl Jackson gave a presentation on the Gipson Residence. The addition has already been added to the home. A Variance was approved prior and has since expired. Mr. Jackson is seeking a new approval to obtain a new permit to continue building the addition. The existing house was built in the 1970's when Wendler Drive was a through street. It was closed around 2000 just south of Garden Drive and is wider than other residential streets. It is 33' wide while other streets are only 25' wide. The first variance was granted in 2009, the project was not completed but is now needed for our expanded family. Strict application would only allow an 8'6" wide addition instead of the 12'6". Reducing the livable area by 100 s.f. The addition is 360 s.f. The side setback is larger than a standard side yard setback because of the office across the street. Most houses in the neighborhood have a 5' setback with a 25' or 30' wide street right-of-way. We are asking for a 6' setback next to a 33' wide street side. The prior approved variance expiring was caused by a contractor that left the job unfinished and the owner without money to finish the work, this is not self-imposed.

Chair Lyon offered Mr. Jackson a continuance on the case due to having a short Board tonight. Mr. Jackson declined the continuance.

**Staff Presentation:**

Ms. Diana Kaminski gave a presentation on the Gipson Residence. The applicants are requesting a variance to reduce the side yard setback from ten (10) feet to six (6) feet. The addition has been started and is unfinished. The perimeter walls, floor and roof were constructed with windows. The interior was not completed. Special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings which was previously stated by Mr. Jackson. The applicant previously was granted a variance for this setback reduction and hired a contractor who applied for building permits but did not complete the permitting process prior to starting construction of the addition. The contractor did not finish the construction and left the homeowner with plans, permits or a completed project, which resulted in the variance expiring.

**Public Comment:**

None

**Applicant Response:**

No further comments from the applicant.

**Commission Discussion:**

No further comments from the Board.

**Motion** by Board Member Confer to approve Request a Variance to reduce the side yard setback from ten (10) feet to six (6) feet with the conditions of approval identified in the staff report for Gipson Residence, located at 2002 West Garden Drive: second by Vice Chair Frazey. Motion passed on **5-0** vote.

**Ayes:** Chair Lyon, Vice Chair Frazey, Board Members Confer, Keagy and Siegal

**Nays:** None

**Abstain:** None

**Absent:** Board Members Gans and Watson

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**Staff Announcements:**

Mr. Abrahamson informed the Board both Chair Lyon and Vice Chair Frazey have termed out. Mr. Abrahamson thanked them for their service to the city. Mr. Abrahamson announced that Board member Whitney Baker has resigned from the BOA. The BOA will be seeking 3 new board members in January 2023. The next BOA Meeting is scheduled for January 25, 2023. We currently do not have any cases for the meeting. At that meeting the Board will be voting on a new Chair and Vice Chair.

Hearing adjourned at 7:27 p.m.

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Prepared by: Jennifer Daniels, Administrative Assistant II

Reviewed by: Steve Abrahamson, Principal Planner