



Minutes of the Board of Adjustment REGULAR MEETING November 29, 2023

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:

Vice Chair John 'Jack' Confer	Jeff Tamulevich, Community Development Director
Board Member Raun Keagy	Ryan Levesque, Comm. Development Deputy Director
Board Member Kaelee Palmer	Michelle Dahlke, Principal Planner
Board Member Kevin Morrow	Drew Yocom, Comm Enhancement Deputy Director
Board Member Brett Siegal (Alt)	Jack Scofield, Senior Code Inspector
Board Member Robert Miller (Alt)	Chris Jasper, Senior Planner
	Jennifer Daniels, Administrative Assistant II

Meeting convened at 5:59 p.m. and was called to order by Vice Chair Confer.

1) Voting of the Meeting Minutes:

Study Session & Formal Meeting Minutes from September 27, 2023.

Motion by Board Member Palmer to approve Meeting Minutes from Study Session and Regular Meeting September 27, 2023; second by Board Member Keagy. Motion passed on **4-0** vote.

Ayes: Vice Chair Confer, Board Members Keagy, Palmer and Miller

Nays: None

Abstain: Board Members Siegal and Morrow

Absent: Chair Watson, Board Member Gans

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- 2) Request to appeal the Hearing Officer's October 3, 2023, decision to approve an abatement request for the **JORDAN RESIDENCE**, located at 1930 East Minton Drive. The appellant is Aaron Jordan. (**PL230328/CE226242**)**

Applicant Presentation:

Mr. Aaron Jordan gave a presentation on previous abatements issued on his home. He was unaware of the time and date of the abatement hearing with the Hearing Officer. Since he was not aware of the meeting, he did not attend the Hearing Officer meeting to state his case. Mr. Jordan stated that he spoke with Code Inspector Rich on the phone and told him what was going on with his situation. He explained that he had already been through the abatement process once previously and that the city came out to the house 3 times and placed a lien on the home for the cleanup. He explained that his fiancé inherited items from her father passing away. Mr. Jordan stated that he did not take the situation seriously and was unaware of the ramifications. He stated that items did build up on the property and the city came in and did the abatement. He further explained that when the city came in and did the abatement

process, it was very odd because they walked around and choose what they would take and would not take and that they picked items with value. He stated that the city said they would take litter, trash, and debris, but that the items they took were not litter, trash, and debris. He stated that this was from the previous case not the most recent case. He said that it was concerning and upsetting to watch.

Vice Chair Confer asked Mr. Jordan if he was speaking of the first abatement? Mr. Jordan stated, yes. Vice Chair Confer stated that he was leading up to the second one because it seems like some of this stuff is tied into both cases. Vice Chair Confer stated that he would like Mr. Jordan to focus on this appeal and abatement and that the Board is going to be reviewing the facts of the current case, and they cannot go back to the previous case.

Mr. Jordan stated that he is looking at the email about the process and it includes documentation from the previous inspector and the things that happened on the last abatement. He said that he did not know if they would be using anything from that abatement for the current one.

Mr. Jordan stated that the inspector looked over his wall and saw the pool. He stated that a saltwater pool is hard to keep clean, as algae builds up fast. Since then, Mr. Jordan said the pool has been drained. Mr. Jordan stated that the other item he was hit on was a trailer he was actively moving stuff from. He indicated that he was loading and unloading from storage units he has. He said that he had a hard time understanding the setback code for trailers on the property. He said the trailer was in his driveway and was in the front yard setback. Mr. Jordan said they are trying to organize and get stuff situated. He said he has lots of clothes he can donate to people and have a yard sale. He said that they don't know how to get on top of everything when every time they move something, someone calls code compliance on them. He said he is doing the best that he can. He said that he called the inspector and told him they need more time and the next thing he knew, they were having a meeting with the Hearing Officer again and granting the abatement.

Vice Chair Confer asked if Mr. Jordan is referring the hearing that was on October 3, 2023? Mr. Jordan, said yes, it was the most recent one.

Mr. Jordan stated that he did get a dumpster and that they have filled it up and had it taken away a week and ago. He said that they have another one coming and that they are working on this.

Board Member Morrow asked Mr. Jordan if the pool is drained. Mr. Jordan stated that the pool is drained and that there is no water in it. Board Member Morrow asked Mr. Jordan if he has any unregistered or inoperable vehicles on the property anymore? Mr. Jordan stated that he does not. He said that one vehicle was inherited, and it is now registered and insured. He said that the Mustang is also insured and registered.

Board Member Keagy stated that he is looking at the appeal materials and that Mr. Jordan stated that he was not given notification. He stated that in the last sentence, it states that he was not given notice that the Hearing Officer was having a meeting or that a decision was made. He said he was looking at a Notice to Intent to Abate Public Nuisance dated August 31st addressed to Mr. Jordan. He asked if Mr. Jordan could comment on how he is looking at the notice? Mr. Jordan stated that he got the notification after the fact, after they had the Hearing Officer meeting. Mr. Jordan said that the notification prior that said that if they did not clean the property up, there would be a reinspection and he would take it in front of the Hearing Officer. Mr. Jordan said that he did not get any notification that they were actually having the meeting. Board Member Keagy stated that the notice dated August 31st states that it is going before the Hearing Officer on October 3, 2023. Mr. Jordan stated he does not know if he got that notification.

Board Member Siegal asked Mr. Jordan when he drained the pool. Mr. Jordan stated he did not know the exact date. He said that it was after he received notice that something had to be done with it. He said he drained it after the fact because he was having trouble getting the green out of it. Board Member Siegal asked Mr. Jordan if he could give an approximation? Mr. Jordan stated it was about a week after he received the notification from the Code Inspector, whenever he issued that violation.

Staff Presentation:

Mr. Chris Jasper, Senior Planner, gave a presentation on the appeal of the Hearing Officer's October 3, 2023, decision to approve an abatement request for the Jordan Residence at 1930 East Minton Drive, a decision to either uphold or reverse the Hearing Officer's decision based on the information provided at that meeting.

Vice Chair Confer stated that one of the items that came up during Mr. Jordan's presentation was the status of the property today. He asked if anything else changed besides the pool being drained since October 3rd that staff is aware of? Mr. Drew Yocom, Community Enhancement Deputy Director, stated that yes, the pool was taken care of. Mr. Yocom stated that the Hearing Officer made a decision regarding violation of items stored on the exterior of the property, outside of an enclosed area. That is what the request was, to have that cleaned up. He stated that the pool was not part of today's case. Vice Chair Confer asked if it was just the front yard, back yard or both? Mr. Yocom stated that the request was for both because there were items stored in both the front and back yard throughout the course of this case.

Board Member Keagy asked to clarify the presentation. He states that there are multiple citations, all unpaid at this point, and several abatements as well. He said that he is assuming the liens have been placed on the property for those. He said that on the staff report dated June 1, 2023, it says abatement conducted to bring the property into compliance, and that the owner interfered and prevented the abatement from being completed. He asked for Mr. Yocom to elaborate on that. Mr. Yocom stated that there have been a couple of abatement attempts over the course of this case to bring it into compliance. He said that there were a few occasions where there was interference by the property owner or members on site, preventing contractors by the City of Tempe to complete the work. Because of the scenario, Mr. Yocom said that they decided to pull back and reattempt an abatement at a later date, and that is the reason there were several abatement attempts.

Board Member Morrow stated that in the timeline, the last abatement was in July of this year, and asked if this was when the property was brought into compliance after that abatement? Mr. Yocom stated yes, on July 27th it was the 3rd attempt at the abatement, which was successful. The property was brought into compliance. He explained that on August 25th, the city received another complaint for the same items, the same type of material stored in the backyard again. He stated that the city then reinspected the property again and found the violation had reoccurred, so they continued the case from where it left off. Mr. Yocom stated that the city issued a notice for intent to abate on August 31st, that then led to the Hearing Officer hearing. Board Member Morrow stated that in July there was not a lot of junk on the property and then in August there was junk on the property and a citation was issued. Mr. Yocom stated that in July there was a lot of junk on the property, but the city cleaned it up and brought it into compliance. He said that when the city received the complaint a few weeks later, they discovered there were more items on the property again. Board Member Morrow stated that the abatement is for items not stored in an enclosed area. Does that include the enclosed carport on the property? He said that he assumed the items stored in that area are not part of the abatement. Mr. Yocom stated that is correct, an enclosed area could be a carport as long as it is not visible from public right of way. In the back yard if it were a shed or a structure to keep the items in it would be allowed but in this case, they were not in an enclosed area.

Board Member Miller stated that on page 58, there is a date of 10/3/2023 and a time of 8:18am. He said that the following three photos do not appear to have dates or times and asked if those taken at the same time? Mr. Yocom stated that the photos without the dates were part of the case leading up to the Hearing Officer meeting. He explained that the photos that are stamped 10/3/2023 were the photos taken the morning of the Hearing Officer meeting. Board Member Miller asked Mr. Yocom if he has a rough date of when the other photos were taken? Mr. Yocom stated that photos were taken August 25th, at the time of the 2nd citation. Board Member Miller asked if they are representative of the current state of the property? Mr. Yocom stated that he believes there have been some minor improvements but there are still items that need to be addressed in both the front and back yard. Board Member Miller stated that there is a metal shed and accessory building in some of the pictures and asked if they still are present and asked if that would be part of the abatement to remove those? Mr. Yocom stated the abatement is only for the items stored outside of an enclosed area, not the structures at this time.

Board Member Morrow mentioned that the Hearing Officer meetings are public, and the city posts the agenda ahead of time. Mr. Yocom stated that is correct, that the city does notify the property owner 30 days prior to the Hearing Officer meeting, which was in the notice and intent to abate. He said that the city does publicize it on the Community

Development website 2 weeks prior to the meeting. He added that the city also posts it on the City Clerk website two weeks prior to the meeting, and that it is posted outside the Council Chambers also.

Applicant Response:

Mr. Jordan stated that is hard to keep up with all of this stuff. He said that he works nights and things get busy with kids. He said that he did not see all of the notifications. He said that the bottom line is that he is working on it. He said that they are making progress and going in the right direction. He said that he does not need the city to come when he can handle it himself.

Board Member Morrow asked how did more stuff get on the property between July and August? Mr. Jordan stated in the original round of the abatement, he got storage units to store items in. He said that his wife wants to start a business redoing furniture. He said that he did not realize he was not allowed to store furniture on his property. He said that he has 4 storage units. He also said that the inspector said if the items are out of sight, it is fine. He said that he went and got a couple sheds, but he has to pull stuff out and reorganize it and that it is hard to go through when it's all packed in one small area as it gets scattered a little when they are going through it. Then they can put it back into its place.

Vice Chair Confer asked staff to remind him of the timeframes that happen after the board's decision tonight. Mr. Jasper explained that if there was an approval of the appeal it would restart the abatement request process. The property would need to be re-noticed and then proceed to another Hearing Officer meeting and decision. Mr. Yocom stated that is a requirement for a 30-day notification. There would be a minimum of 30 days prior to a new Hearing meeting that could be scheduled. Those meetings only take place twice a month so it could be longer than that. Vice Chair Confer asked if the board were to deny the appeal, what kind of timeframe would Mr. Jordan be looking at for any type of abatement? If he were to make the property suitable before the contractor shows up what affect would that have on the abatement? Mr. Yocom stated the abatement would only take place if the violations were still persistent. If the abatement were allowed to go forward after tonight's meeting, it would still be reviewed by city staff, and the city would have to coordinate with city-approved contractors to schedule a time. Typically, we would be looking at one week out. If during that time progress is made city staff has the ability to work with the property owner and make a decision if an extension should be made or not.

Board Member Keagy asked to clarify for the board members that they are there to determine whether or not the Hearing Officer made any material error in their decision on this abatement regardless of all other facts. I don't see that there has been an error in the Hearing Officer's decision.

Vice Chair Confer stated that when he originally read over the reports he was concerned about the notice. Who actually sent the letters out? Mr. Yocom stated that the notices are issued by the code compliance inspector assigned to the case. They generate the notice and send it out. Vice Chair Confer asked is it possible that it did not get mailed? Mr. Yocom stated that it is possible but according to city code it is deemed delivered upon issuance to the postal service and that from the city's standpoint, the letter was delivered by the city. Vice Chair Confer stated he was looking for proof they were mailed, and he understood the process and it is obvious this has been going on for a long time. Mr. Yocom stated that the notice was issued in the same manner as every other notice and a determination letter was issued. The determination letter has the same information about the appeal process as well.

Board Member Miller asked if this appeal is granted and the hearing process starts again, would that hearing consider the same facts that were before the Hearing Officer that generated the notice of abatement that we are hearing now. Mr. Yocom stated that if this process would be restarted it would have the date of tomorrow. If the violations persist tomorrow, the city would then send a letter of intent notice to abate for a Hearing Officer meeting based on what we find tomorrow. Board Member Miller stated it would essentially start the entire process over. Mr. Yocom stated that is correct.

Board Member Siegal stated he noticed some of the notices were mailed and emailed. Then others were just mailed. He said that he wanted to clarify that, because Mr. Yocom stated that all notices were delivered in the same manner each time. Mr. Yocom stated that when he says they were all delivered in the same manner, he meant they were all delivered by U.S. First Class Mail with a request for return if they were not to be delivered by the postal service. None of the mail came back or was returned from the start of the case in 2022 to today. Board Member Siegal asked if

there had been any communication with Mr. Jordan or any family members since the August 25th citation? Mr. Yocom stated yes after August 25th the city had a phone call with the homeowner on September 12th. He said that Mr. Jordan did advise the city that he was cleaning up the pool which is why the pool was not part of the case. Mr. Yocom said that they discussed the violations that remained and the items that still needed to be cleared. He stated that the city checked the property a couple of weeks later and the violations were still persistent. He said that there was a court date that was scheduled, and the property owner failed to appear, so no discussion was held there. A notification after that court date was sent, intent to abate which outlined the date of the Hearing Officer meeting.

Mr. Jordan stated that he did not miss the court date. He said he worked the night before and hurried over here as quickly as he could, but said the parking is terrible and the machines that take the money were having issues. He said he got in at 8:20am and that the only person that was in the court was the clerk. He said he spoke with her about it and that is when he filed an appeal for that decision because he did not make it.

Public Comment:

Mr. Francisco Najar, Tempe, Arizona spoke on behalf of the Jordan Residence. Mr. Najar stated that they are trying. He said that recently moved out of the house with his daughter. Mr. Najar stated he was there every day and would help throw stuff away and make sure stuff was getting done. He said that they were there last night, and they were cleaning. The family is really trying and is just looking for a little bit of time.

Ms. Faith Erikson, Tempe, Arizona spoke on behalf of the Jordan Residence. Ms. Erikson stated she is the daughter to the homeowners. Ms. Erikson stated that some past events have led the family to the situation they are in today. Ms. Erikson stated that when code inspector Ms. Julie Scofield was at the home, comments were made towards her mother that were disrespectful.

Commission Discussion:

Board Member Miller stated that as emotional as these issues tend to be, the fact is that unless there was a material error on the part of the Hearing Officer, which there does not appear to be we do not have grounds to grant the appeal. Therefore, I would move that we reject the appeal as presented.

Motion by Board Member Miller to deny the appeal of the Hearing Officer's October 3, 2023, decision to approve an abatement request for the Jordan Residence: second by Board Member Palmer. Motion passed on **6-0** vote.

Ayes: Vice Chair Confer, Board Members Keagy, Palmer, Morrow, Siegal and Miller

Nays: None

Abstain: None

Absent: Chair Watson, Board Member Gans

3) **Staff Announcements**

Vice Chair Confer stated he has no updates.

Ms. Michelle Dahlke stated that there will not be a BOA Meeting in December. There will be one on January 24th. Chair Watson will be completing his 2nd term on the board at the end of December. Ms. Dahlke wanted to thank Chair Watson for service, and we will reach out to him before the end of the year.

4) **Adjourn**

Motion by Board Member Keagy to adjourn meeting; second by Board Member Morrow. Motion passed on **6-0** vote.

Ayes: Vice Chair Confer, Board Members Keagy, Palmer, Morrow, Siegal and Miller

Nays: None

Abstain: None

Absent: Chair Watson, Board Member Gans

Hearing adjourned at 6:54 p.m.

Prepared by: Jennifer Daniels, Administrative Assistant II
Reviewed by: Michelle Dahlke, Principal Planner