



City of Phoenix
PLANNING & DEVELOPMENT DEPARTMENT

June 27, 2022

Dr. Robert Cannon
President
Willo Neighborhood Association Board of Directors
P.O. Box 36506
Phoenix, Arizona 85067

RE: WILLO NEIGHBORHOOD ASSOCIATION

Dear Dr. Cannon,

Thank you for your letter date stamped March 23, 2022, please see response below to your letter. I apologize for the lengthy response time, the below information had several reviews by various city staff including the Law Department. In addition, the owner of the 309 West Monte Vista Road parcel was threatening a lawsuit, that has since been filed. Due to the lawsuit the City will not comment on 309 West Monte Vista Road, but instead focus this response on the 78 West Cypress concerns. Please see specific responses below and let me know if you have any questions. I am also happy to meet with you and a couple of other Association members to talk thru the issues if you believe that will be helpful.

78 W Cypress Street

Planning and Development Department (PDD) issued RSP 22013282 for a swimming pool on April 12, 2022. The owner has not called for any inspections to date. inspectors were out on June 20, 2022 to investigate an after-hours noise complaint. The excavator was off at the time of the inspector's arrival and no construction was taking place. The inspector provided info to the contractor on permitted construction hours. PDD staff also visited the site today June 27th. The inspector noted that the equipment was there, but no one was working on the site at the time. Staff will continue to monitor the construction process as this is an on-going concern.

First concern: That Historic Preservation (HP) staff had Ex Parte communication with the Zoning Administrator. The email was not ex parte communication as it was sent to Zoning Adjustment staff to be provided to the Hearing Officer and read at the variance hearing. There was no attempt to communicate with the hearing officer outside of the



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hearing. Staff is permitted to provide written comments to the Zoning Administrator for their consideration at the public hearing, just as is any member of the public.

Second concern: The Zoning Administrator email circumvented the process in Section 812 of the Zoning Ordinance. This email was provided to the Zoning Adjustment Hearing officer as a comment for their consideration. Historic Preservation staff have been asked by historic neighborhoods in the past to provide comments on items like this within historic districts. The Section 812 process took place after the conclusion of the zoning adjustment public hearing process.

Third concern: The action overstepped staff authority and deprived the public of due process. The overall process allowed for enhanced public discussion regarding the merits of a variance at two public hearings, where the neighbors could testify about their concerns, prior to undertaking the required Section 812 process. We did not find any evidence of depriving the public of any procedural requirement. The assigned planner brought this case forward at a staff meeting and the HP team had a group discussion regarding the proposal. The staff member then acted upon group consensus with review comments provided by HP staff.

Fourth concern: That staff acted in contravention to the legal requirements for a variance and in direct opposition to historic preservation guidelines. We did not find any evidence to support this claim, as the email to the Zoning Administrator is a comment for the Hearing Officer to have in evaluating the variance tests, and then the required Section 812 process was followed. HP staff comments are not meant to address the required variance tests as that is up to the Hearing Officer and the Board of Adjustment.

Fifth thru Seventh concern: These items express dissatisfaction with the Zoning Adjustment Hearing Officer actions of not addressing the four variance tests, lack of questioning the applicant and if the applicant met the variance tests. The variance process is quasi-judicial, and Zoning Adjustment Hearing Officer and Board of Adjustment Hearing decisions are reviewed by the Courts if either side appeals the decision. Questions such as these are the subject of appeals to the Board of Adjustment from the Zoning Administrator level and to Superior Court from the Board of Adjustment.

Eighth concern: The decision not addressing the legal requirements for a variance test and granting of a variance for an over-height fence violates the Willo Conservation Plan. The concern about the legal requirements was addressed in the response above and the Willo Conservation Plan principally is about preserving the residential character of the well-designed homes in a variety of styles, since this request is not modifying the homes exterior and it would be visible thru the wrought iron fence staff does not believe



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that it violates the Plan. I understand that your association disagrees with this assessment and to that end I am happy to further discuss with you how the HP office could further work with your association to ensure that we have a better understanding of the neighborhood perspective.

Please let me know if you have any questions or desire any further clarification on this matter. You can reach me at alan.stephenson@phoenix.gov or 602-262-6656.

Sincerely,

Alan Stephenson
Deputy City Manager/Planning and Development Director

c: Mayor Kate Gallego
Vice-Mayor Laura Pastor- Council District 4
Jeff Barton, City Manager
Helana Ruter, Acting Historic Preservation Officer
Kevin Weight, Principal Planner