



At nearly 1,000 homes, the Willo Historic District is one of Phoenix's largest and oldest historic neighborhoods. We are proud of our preservation partnership with the City of Phoenix since 1986 – when the Willo Conservation Plan was adopted by the City Council.





Dr. Robert Cannon, President

Brad Brauer, Vice President

Opal Wagner, Board Member

Ann Bommersbach, Board Member

Maria Hidalgo, Cypress Street Resident







78 W. Cypress – System Failures

1. The Hearing Officer ignored the law on variances by failing to apply the 4 conditions required by law.
2. Historic Preservation Office (HP) staff gave a de facto, “back-door” approval via email, circumventing Section 812 of the City of Phoenix Zoning Ordinance.
3. The project does not meet the City’s HP Certificate of No Effect (CNE) guidelines, because over-height front-yard fences and front-yard pools are not eligible for a CNE, but HP staff granted a CNE anyway, precluding public engagement in the HP process.

78 W. Cypress - System Failure #1: Ignoring the Law on Variance Requirements

The Zoning Adjustment Hearing Officer and Board of Adjustment violated Arizona State Law and the City of Phoenix Zoning Ordinance by failing to apply the 4 tests for a variance to this case.

Negative Consequence: The homeowner was granted a variance for a claimed hardship that was self-imposed, contrary to law.

- Hearing Officers are **REQUIRED BY LAW** to apply the 4 tests for a variance in **EVERY** case.
- The Applicant must **PROVE** the variance satisfies **ALL FOUR TESTS** including:
 - “The special circumstances or conditions described above were not created by the applicant or owner. The property hardship cannot be self-imposed. (Background: Owners include current and previous owners).”

78 W. Cypress – System Failure #1 (cont.) Ignoring the Law on Variance Requirements

- The Applicant's claimed hardship is that his house is set far back on the lot. Who created this "hardship", if not the homeowner/previous owners?
- If the owner created the hardship, per law, the variance cannot be granted – but the City granted it anyway.

78 W. Cypress – System Failure #2:

Back-door Approval by HP Staff

A Historic Preservation staff planner, acting on behalf of the City of Phoenix Historic Preservation Office, overstepped her authority when she contacted the Zoning Adjustment Office and gave “back door” approval of the project via email, outside the public process, without applying historic preservation principles and guidelines, and without the benefit of a staff report or review by a Historic Preservation Hearing Officer.

78 W. Cypress – System Failure #2 Back-door approval by HP staff (cont.)

From: Elizabeth S Wilson
Sent: Thursday, December 2, 2021 11:48 AM
To: PDD Zoning Adjustment
Cc: Zach Causer; Maura B Jackson; Jazmine Braswell
Subject: ZA-380-21-4, Historic Preservation Office comments - hearing scheduled 12/9/2021 at 9 a.m.

Historic Preservation recognizes the unusual circumstance and hardship at this property due to the house's location toward the rear of the lot. The HP Office supports the proposed 5' tall view fence in front of the house that that is necessitated by the new pool to be built in the front. The new fence would be 70'-80' back/north of the front property line, and the owner has limited the height to 5' and agreed to an open view design to maintain visibility of the house from the right-of-way.

Thank you for this opportunity to comment.



PLANNING & DEVELOPMENT
**PRESERVE
SHAPE
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Liz Wilson
Planner III
PDD/Historic Preservation Office
City of Phoenix
200 West Washington Street, 3rd Floor
Phoenix, AZ 85003
Direct: 602-262-6883 / Main: 602-261-8699
phoenix.gov/PDD/historic-preservation
*currently telecommuting

78 W. Cypress – System Failure #2

Back-Door Approval by HP Staff (cont.)

Negative Consequences:

- The HP staffer's actions circumvented the Historic Preservation Process set forth in Section 812 of the City of Phoenix Zoning Ordinance and excluded the public from participation in the HP process.
- The planner's actions undoubtedly exerted influence on the Zoning Adjustment Hearing Officer's (ZAHO) decision to grant the variance, since the ZAHOs are not experts in historic preservation and defer to HP staff on cases involving historic properties. In lobbying for the variance, the staffer virtually assured the ZAHO would grant it, which he did.

78 W. Cypress – System Failure #3

This project did not meet the City’s Certificate of No Effect (CNE) Guidelines, but HP staff granted a CNE anyway

- The City of Phoenix “Projects Eligible for Certificates of No Effect” publication (TRT/DOC/00133HP) does not include over-height front-yard fences or front-yard pools in its list of “Minor Work” items eligible for a CNE. Clearly, this project should have gone through the Certificate of Appropriateness process, which requires a hearing and opportunity for public engagement and input.

78 W. Cypress – System Failure #3 (cont.)

- Negative Consequences – The public was deprived of benefit of an evidence-based staff report, the expert decision of a Historic Preservation Hearing Officer, and a chance to be heard in the HP process because the HP staff granted a CNE for this project, even though it does not meet the criteria for a CNE.

Other Concerns

- The City's failure to consistently enforce its own regulations and guidelines causes confusion and animosity among neighbors.
- Historic neighborhoods are left to feel they have to fight the HP Office in order to ensure historic guidelines and Conservation Plans are upheld.
- There is no process in place for appealing a CNE, even though Section 812(E) of the Zoning Ordinance permits such an appeal.

Other Concerns (cont.)

- Failure to fully comply with Public Records Requests not only leaves the public at a disadvantage in engaging in the process, IT IS ILLEGAL.
- Parking of earth mover and other large equipment in the front yard at 78 W. Cypress for months on end with no discernible action from NSD
- Decrease in public engagement by the Historic Preservation Office.

Proposed Solutions

- ZAHOs and the BOA must be retrained on the 4 tests for a variance and must understand they are LEGALLY REQUIRED to apply them in ALL cases, and the burden of proof is on the applicant. ZAHOs and BOA members who do not follow the law should be removed.
- Zoning and HP decisions are separate processes under two separate ordinances and should be treated as such by staffers. (HP staffers should not interfere in the zoning process and vice versa).
- An application to HP that requires a variance is not “Minor Work” and should not be granted a CNE. Granting a CNE excludes the public from having their concerns addressed at an HP hearing.

Proposed Solutions (cont.)

- The CNE process should not be hidden from the public, decisions should be posted on My Community Map, and meet public notice requirements.
- The Public Records Request process must be scrupulously complied with. The public is entitled to examine documents on site upon reasonable request under Arizona State Law.
- Neighborhood Services needs to respond to enforcement requests within a reasonable time period.