TO: BOARD OF ADJUSTMENT

FROM: Laura Blakeman, City Planner

MEETING DATE: August 25, 2015

REQUEST

Request by Deborah Martin, T C Paramount, L.L.C., appealing the following administrative decision:

1. DSA-15-00104: Appeal of a Notice and Order regarding the requirement to obtain a Right-of-Way Encroachment Permit for existing air conditioning equipment and fencing improvements located in the public alley behind 416 N. Florence Street.

APPLICANT/OWNER

Deborah Martin
PO Box 12586
Casa Grande, AZ 85130
P: 520-450-0705
Email: debbymartin7@aol.com

Same as applicant

HISTORY

July 20, 2015: Casa Grande Code Enforcement Specialist Jeff Palmer issues a Notice & Order Letter to Deborah Martin requesting that a right of way encroachment permit be obtained (See Exhibit B).

July 29, 2015: Deborah Martin filed an Appeal of the Administrative Decision as allowed under sections 17.68.350 and 17.72.030 of the City Code.

July 31, 2015: Appeal scheduled for hearing on August 25, 2015 Board of Adjustment Special meeting.
Overview:

As the tenant improvement was in progress for the Ale House located at 412 N. Florence Street, Staff found that the Ale House proposed to locate their condenser for the walk-in cooler outside of the building (behind 416 N. Florence Street). Staff discovered that the area behind the building, where the proposed unit is to be located, falls within the City’s right-of-way (ROW) for the adjacent alley. Because the condenser would be located in the alley ROW, the Ale House was required to get a ROW encroachment permit (See Exhibit A). The right-of-way encroachment permit serves to indemnify the City from liability and damages and acknowledges that the existing improvements could be removed if the City has to perform work on the public infrastructure located within the ROW.

It was during the review of the Ale House improvements, that Staff discovered other existing improvements that are located in the public ROW. There is an existing gated chain link fence (the lock belongs to Deborah Martin), a condenser, and other materials located behind the fence (see picture below).
**Staff's Analysis:**

It is the policy of the City that private improvements may only be located in the public ROW in accordance with an approved Right-of-Way Encroachment Permit. Private improvements placed with the right of way without Encroachment Permit approval are considered illegal. The policy of requiring Encroachment Permits for private improvements located within the public right of way is intended to protect the City's interest as it requires the applicant to agree to hold the City harmless if someone is injured on the private improvements or to move them at their expense should they need to be removed or relocated to allow for future public improvements or infrastructure repairs.
Once staff realized that the air conditioner and fence was constructed within a public alley efforts were made to contact Ms. Martin regarding the need to apply for a Right-of-Way Encroachment Permit. Because the permit was not applied for, staff asked Code Enforcement to follow up on this issue. Code Enforcement Specialist Jeff Palmer issued a Code Violation Notice & Order Letter on July 20, 2015 (See Exhibit B) to Deborah Martin.

Deborah Martin filed an appeal (See Exhibit C) of staff's administrative decision requiring a Right-of-Way Encroachment Permit be obtained. Said appeal was filed in accordance with sections 17.68.350 and 17.72.030 of the City Code (see below) which allows that any administrative decision or code enforcement action undertaken by staff can be appealed to the Board of Adjustment.

17.68.350 Application for appeal.
A. Any aggrieved person, property owner, or any officer or department of the city affected by a decision of an administrative officer, pertaining to this title, may appeal to the board of adjustment by filing an application with the zoning administrator. The board of adjustment shall serve as the city's hearing officer in appeals of required dedications and exactions. The application shall state the name and address (or city office) of the applicant and the reasons for filing the appeal. The application shall be made within thirty days of the date of the decision which is being appealed. The zoning administrator shall then transmit to the board the complete record of the action for which the appeal is made. Appeals to the board may be made only in conjunction with an action.

17.72.030 Right of appeal.
Decisions of the zoning administrator may be appealed to the board of adjustment in accordance with Article VI. of this chapter.

The City Code does not set forth specific review criteria, nor guidelines for the Board of Adjustment to follow, in the consideration of appeals of administrative decisions and code enforcement actions. However, the Arizona Revised Statues do contain provisions regarding the Board of Adjustment authority to consider appeals. These provisions are as follows:

9-462.06. Board of adjustment

A. The legislative body shall, by ordinance, establish a board of adjustment, which shall consist of not less than five nor more than seven members appointed by the legislative body in accordance with provisions of the ordinance, except that the ordinance may establish the legislative body as the board of adjustment. The legislative body may, by ordinance, delegate to a hearing officer the authority to hear and decide on matters within the jurisdiction of the board of adjustment as provided by this section, except that the right of appeal from the decision of a hearing officer to the board of adjustment shall be preserved.

B. The ordinance shall provide for public meetings of the board, for a chairperson
with the power to administer oaths and take evidence, and that minutes of its proceedings showing the vote of each member and records of its examinations and other official actions be filed in the office of the board as a public record.

C. A board of adjustment shall hear and decide appeals from the decisions of the zoning administrator shall exercise such other powers as may be granted by the ordinance and adopt all rules and procedures necessary or convenient for the conduct of its business.

D. Appeals to the board of adjustment may be taken by persons aggrieved or by any officer, department, board or bureau of the municipality affected by a decision of the zoning administrator, within a reasonable time, by filing with the zoning administrator and with the board a notice of appeal specifying the grounds thereof. The zoning administrator shall immediately transmit all records pertaining to the action appealed from to the board.

E. An appeal to the board stays all proceedings in the matter appealed from, unless the zoning administrator certifies to the board that, in the zoning administrator’s opinion by the facts stated in the certificate, a stay would cause imminent peril to life or property. Upon such certification proceedings shall not be stayed, except by restraining order granted by the board or by a court of record on application and notice to the zoning administrator. Proceedings shall not be stayed if the appeal requests relief which has previously been denied by the board except pursuant to a special action in superior court as provided in subsection K of this section.

F. The board shall fix a reasonable time for hearing the appeal, and shall give notice of hearing by both publication in a newspaper of general circulation in accordance with section 9-462.04 and posting the notice in conspicuous places close to the property affected.

G. A board of adjustment shall:

1. Hear and decide appeals in which it is alleged there is an error in an order, requirement or decision made by the zoning administrator in the enforcement of a zoning ordinance adopted pursuant to this article.

2. Hear and decide appeals for variances from the terms of the zoning ordinance only if, because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district. Any variance granted is subject to such conditions as will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.

3. Reverse or affirm, wholly or partly, or modify the order, requirement or decision of the zoning administrator appealed from, and make such order, requirement, decision or determination as necessary.
In consideration of this appeal the Board should evaluate whether staff made any error in their administrative decision regarding the right-of-way encroachment permit.

Staff believes that no error in the enforcement of policy exists as:

1) Staff has researched the legal description on the warranty deed for the property which clearly refers to the 18 ft. public alley; a portion of which was previously vacated to create a portion of Ms. Martin’s current ownership (See Exhibit D)
2) Staff has drawn the property boundaries, vacated alleyway and the public alley (ROW) based on the legal description of the property and surrounding properties (See Exhibit E).
3) Pinal County Assessor’s Office indicates that the property in question is public right-of-way (See Exhibit F).

Based on the above research, Staff has determined that the area in question is public alley right-of-way.

**PUBLIC NOTIFICATION/COMMENTS**

**Notification**

Public hearing notification efforts for this request meet or exceed those requirements set out by City Code. They include:

1. A notice of time, date, place, and purpose of the public hearing was published in the Casa Grande Dispatch on August 9, 2015.
2. A notice was mailed on August 7, 2015 to adjacent property owners and within close proximity of the subject site. An affidavit confirming this mailing is within the project file.

**Inquiries/Comments**

Staff has not received any comments on this request.

**RECOMMENDED MOTION**

The Board of Adjustment has the ability to reverse, affirm or modify staff’s decision and enforcement action in this matter. Staff recommends that the Board affirm staff's decision that Ms. Martin be directed to obtain a Right-of-Way Encroachment Permit for the private improvements she has constructed within the alley right-of-way.

**Attachments:**
- Exhibit A – ROW Encroachment Plan for Ale House
- Exhibit B - July 20, 2015 Code Violation Notice & Order letter from Jeff Palmer,
Code Compliance Specialist

- Exhibit C – Appellant’s Justification Letter
- Exhibit D – Special Warranty Deed for Ms. Martin’s 416/420 N. Florence St. property
- Exhibit E – Property boundary map generated by City Planning staff
- Exhibit F – Excerpt from the Parcel map from Pinal County Assessor Office
CODE VIOLATION NOTICE & ORDER

T C PARAMOUNT LLC
Attn: Deborah Martin (Trustee)
PO BOX 12586
Casa Grande AZ 85130

Ref: 420 North Florence Street

An inspection of the above-referenced property on July 20, 2015 indicates that it is in violation of the following municipal code(s): 17.72.010 Use Of Land In Violation of Zoning

Said violation is more specifically described as: You installed an air conditioner in the alley for your building without obtaining the require Right of Way Encroachment permit. This is in violation of the Casa Grande City Code. I am directing you to contact City Planner Mrs. Blakeman to discuss this issue and to submit for the required Right of Way Encroachment Permit. Failure to comply by July 31, 2015 will result in me filing charges against you in the Casa Grande City Court.

You are hereby ordered to take one of the following steps regarding this notice by July 31, 2015:
1) Remove the violation or otherwise bring your property into compliance.
2) Enter into an Agreement to Abate providing for additional time for compliance.
3) Apply for a variance if your violation involves a development standard (i.e., building setbacks, building height, number/dimension of parking spaces, etc.).
4) File an Appeal of this Notice to the Board of Adjustment.

Variance and Appeal applications may be obtained at the City Development Center or downloaded from the City website at http://casagrandez.gov/dept/planning/planning-division/devforms/

Failure to take one of the above referenced actions will result in additional code enforcement action, which may include:
1) Filing of criminal charges, which may result in fines/suit time.
2) Initiation of a civil lawsuit.
3) Direct abatement by the City which will involve the removal, or direct abatement, of the violation and billing the property owner or occupant for the costs involved.

Your cooperation in addressing this matter is appreciated. If you have any questions please feel free to contact me.

Jeff Palmer, Code Compliance Specialist
jpalmere@casagrandez.gov
520.421.8637 x3180
Cellular: 520-251-3451

City Hall: 510 East Florence Boulevard - Casa Grande, Arizona 85122

July 20, 2015 / 11:00 A.M.
Date/Time
July 25, 2015

CITY OF CASA GRANDE
510 East Florence Blvd.
Casa Grande, AZ 85222

Att: MR. JEFF PALMER, Code compliance officer

ATT: MR. BRETT WALLACE, CITY ATTORNEY

CC: MR. PAUL TICE, PLANNING AND ZONNING DIRECTOR
CC: MS. LAURA BLAKEMAN, PLANNER

Ref: 420 North Florence Street – CODE VIOLATION NOTICE & ORDER received -07-25-15 from Jeff Palmer dated 07-20-15

Dear Sirs/Madam:

This is a letter of reply to Mr. Palmer’s above mentioned letter of Code Violation Notice – accusation of code violation stating that “I installed an air conditioner in the alley for my building...” It is the first I have heard of this false and mistaken accusation.

I did NOT and have NOT installed an air conditioner in the alley for my building. All Air Conditioning equipment of all my properties in the Historic Downtown district, were all installed and pre-existing on the buildings years prior to my purchase of the properties, through the State of Arizona, through Arizona Department of Real Estate licensed real estate agent/broker, and all transactions through Licensed Title Insurance Companies, warranted to be free and clear of all violations, liens and encumbrances. They have all been inspected by City of Casa Grande entities and given occupancy permits with no violations, inside or out.

I am a law abiding, tax paying citizen and have always worked closely with the City of Casa Grande. Just to mention a few, after purchasing the Paramount Theatre, when the City of Casa Grande requested that I restore, through the Arizona State Historic Preservation Office, the Paramount Theatre to its Historic grander, it was a huge task and a large financial undertaking. After much consideration I obliged the City’s request. It was done with a Historic and Licensed Architect, permits and inspections.

After completion of the Historic renovations, the Paramount along with SHPO, the City of Casa Grande and Main Street, we were very proud the day it was made part of and listed on the National Registry of Historic Places. My efforts provided the City of Casa Grande, Casa Grande Main Street and the Paramount Theatre credit of awards and recognition with the State of Arizona and the Governor’s Office.

During the Florence Street renovation, when asked, I allowed the City and its Contractor to park construction equipment and a construction equipment trailer on my cement pad downtown. Also every
year during the Saturday of the Electric Light Parade I allow the CG Boys and Girls to use it for the WINTER WONDERLAND and Ice Skating Rink and the Paramount venue for their SANTA AND PICTURES GIVE AWAY, with myself bearing all cost.

After all these years I do not understand why I am being threatened with fines and jail time for something I did not do.

I do hope that we can clear this up and continue a good working relationship.

Sincerely,

[T.C. PARAMOUNT LLC.]

[Signature]

Deborah Martin

Cc: Tom Stoops, Atty at Law
SPECIAL WARRANTY DEED

FOR THE CONSIDERATION of Ten Dollars, and other valuable considerations, I, DEBORAH MARTIN, a single woman, do hereby convey to T C PARAMOUNT, LLC, an Arizona limited liability company, whose address is P.O. Box 12995, Casa Grande, AZ 85230, the following described real property situated in Pinal County, Arizona:

PARCEL NO. ONE:

Parcel # 507-07-13002 - CASA GRANDE TOWNSITE - North 50' of South 50' of Lots 1, 2, 3, 4, and of the W 16' of Lot 5, Block 20, same being a part of the NE¼, NW¼, of Section 29, T6S, R6E [sic], G&SRB&M, Pinal County, Arizona.

A portion of Block 20, of CASA GRANDE TOWNSITE, according to the plat of record in the office of the County Recorder of Pinal County, Arizona, recorded in Book 1 of Maps, Page 11, more particularly described as follows:

The Westerly 70 feet of the alley running Easterly and Westerly through said Block 20, and being that portion of said alley heretofore vacated by the Common Council of the City of Casa Grande, and being more particularly described as follows:

The North 9 feet of Lots 1 and 2 and the South 9 feet of the Westerly 20 feet of Lot 3, and the North 9 feet of Lots 11 and 12 and the North 9 feet of the Westerly 20 feet of Lot 13, all in said Block 20, and being that portion of said lots hereafter used for alley purposes.

PARCEL NO. TWO:

A portion of Block 20, of CASA GRANDE TOWNSITE, according to the plat of record in the office of the County Recorder of Pinal County, Arizona, recorded in Book 1 of Maps, Page 11, more particularly described as follows:

The Westerly 70 feet of the alley running Easterly and Westerly through said Block 20, and that portion of said alley heretofore vacated by the Common Council of the City of Casa Grande, and being more particularly described as follows:

The North 9 feet of Lots 1 and 2 and the South 9 feet of the Westerly 20 feet of Lot 3, and the North 9 feet of lots 11 and 12 and the North 9 feet of the Westerly 20 feet of Lot 13, all in said Block 20, and being that portion of said lots heretofore used for alley purposes.

SUBJECT TO all taxes and other assessments, reservations in patents and all easements,
rights-of-way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record. And the Grantor hereby binds itself and its successors to warrant and defend the title, as against all acts of the Grantor herein and no other, subject to the matters above set forth.

DATED March 7, 2006.

DEBORAH MARTIN

STATE OF ARIZONA  }  ss
County of Maricopa  }

The foregoing instrument was acknowledged before me on March 7, 2006 by DEBORAH MARTIN, for the purposes therein set forth, being authorized to so act, as her own free act and deed.

NOTARY PUBLIC
My Commission Expires

Unofficial
Exhibit E

PARAMOUNT THEATER