



BOARD OF ADJUSTMENT AGENDA

**BOARD OF ADJUSTMENT
PUBLIC HEARING
THURSDAY, AUGUST 18, 2011
9:00 AM**

**COUNCIL CHAMBERS
201 S. CORTEZ STREET
PRESCOTT, ARIZONA
(928) 777-1207**

The following agenda will be considered by the BOARD OF ADJUSTMENT at its PUBLIC HEARING to be held at 9:00 AM on AUGUST 18, 2011, in COUNCIL CHAMBERS, CITY HALL, 201 S. CORTEZ STREET, PRESCOTT, ARIZONA. Notice of this meeting is given pursuant to Arizona Revised Statutes, Section 38-431.02.

I. CALL TO ORDER

II. ATTENDANCE

Members

Mike Klein, Chairman
Duane Famas, Vice Chairman
Johnnie Forquer
Tom Kayn

Greg Lazzell
Dick Rosa
George Wiant

III. REGULAR AGENDA / PUBLIC HEARING ITEMS

- 1. Approve the minutes** of the July 21, 2011 public hearing.
- 2. V11-001, 917 E. Gurley Street.** APN: 110-02-072B and totaling ± 0.25 acre. Zoning is Business General (BG). LDC Section 9.3 and Table 2.3. Request variance to allow encroachment into the rear setback to construct an exterior vestibule for an existing stairway. Owner/applicant is Gurley Street Partners, LLC/ William R. Dougherty. Community Planner is Ruth Hennings (928) 777-1319.
- 3. Appeal 11-001, 215 N. Pleasant Street.** APN: 114-05-046, and totaling .016 acre. Zoning is Single-family 9 (SF-9). Appeal of Administrative Decision relating to LDC Sections 6.4.2, 6.4.3 and 6.4.4.E. Appeal of staff denial of an after-the-fact permit for the installation of a fence. Applicant/owner is Gina Engelman. Planning Manager is George Worley. (928) 777-1287.

THE CITY OF PRESCOTT ENDEAVORS TO MAKE ALL PUBLIC MEETINGS ACCESSIBLE TO PERSONS WITH DISABILITIES. WITH 48 HOURS ADVANCE NOTICE, SPECIAL ASSISTANCE CAN BE PROVIDED FOR SIGHT AND/OR HEARING IMPAIRED PERSONS AT PUBLIC MEETINGS. PLEASE CALL 777-1272 OR 777-1100 (TDD) TO REQUEST AN ACCOMMODATION TO PARTICIPATE IN THIS MEETING.

IV. REVIEW ITEMS

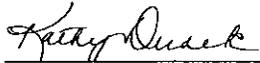
None.

V. SUMMARY OF CURRENT OR RECENT EVENTS

VI. ADJOURNMENT

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Prescott City Hall and on the City's website on August 10, 2011 at 4:00 PM in accordance with the statement filed with the City Clerk's Office.



Kathy Dudek, Administrative Assistant
Community Development Department

BOARD OF ADJUSTMENT
PUBLIC HEARING
JULY 21, 2011
PRESCOTT, ARIZONA

MINUTES OF THE PUBLIC HEARING OF THE BOARD OF ADJUSTMENT held on JULY 21, 2011 in COUNCIL CHAMBERS, CITY HALL, located at 201 S. Cortez Street, Prescott, Arizona.

I. CALL TO ORDER

Chairman *pro tempore* Famas called the meeting to order at 9:02 a.m.

II. ATTENDANCE

MEMBERS PRESENT

Duane Famas, Vice Chairman
Johnnie Forquer
Tom Kayn
Greg Lazzell
George Wiant
Dick Rosa

STAFF PRESENT

George Worley, Planning Manager
Matt Podracky, Sr. Assistant City Attorney
Dick Mastin, Development Services Manager
Ryan Smith, Community Planner
Kathy Dudek, Administrative Assistant &
Recording Secretary to the Board

MEMBERS ABSENT

Michael Klein, Chairman
Dick Rosa

III. REGULAR AGENDA

1. **Approve the minutes** of the April 21, 2011 public hearing.

Mr. Wiant, **MOTION: to approve the minutes** of the April 21, 2011 public hearing.
Mr. Kayn, 2nd. **Vote: 5-0.**

2. **CUP11-006, 1455 Willow Creek Road.** APN: 116-17-270B and totaling ± 6.37 acres. Zoning is Single-Family 9 Residential (SF-9). LDC Section 9.3 and Table 2.3. Request conditional use permit to amend CUP09-008 (granted to operate a private school in place of a church) to allow for the operation of the school with simultaneous, limited operation of the church. Owner is First Assembly of God of Prescott. Applicant is Mountain Oak Charter School. Community Planner is Ryan Smith (928) 777-1209.

Mr. Smith reviewed the requested amendment and indicated:

- the school, in February 2010, as a school facility only without the church;
- in order to allow the church to operate on even a limited basis, an amendment to the CUP is needed;
- the church is requesting that they only be allowed to operate on Sunday;
- there were no conditions of approval in CUP09-008;

- the church has split the property since CUP09-008 and will retain the 2.3 parcel that fronts Willow Creek Road;
- the school has purchased the remaining property towards Northside Drive;
- the site plan, traffic issues, drainage, etc., were discussed prior to CUP09-008's approval;
- no further improvements are improved as the church plans to use the existing sanctuary in the northeast corner (which also doubles as a basketball court);
- staff is recommending approval;
- in addition to noticing the surrounding properties, an area meeting was held last week;
- five persons attended the area meeting and did not voice concerns about the church itself, the questions were all related to traffic issues;
- the school held a meeting this week that was attended by 14 neighbors who had very few concerns about the church but did have questions about the site;
- staff is recommending that the church can operate simultaneously with the school, church services be limited to Sunday only, and church activities other than service within the sanctuary itself are prohibited; and,
- the applicant is present to answer questions.

Queries and comments from the Board included:

- why this item is an amendment and not a new, separate CUP because the property has been split after the approval of CUP09-008 [Mr. Smith: the church intends to operate in the building now owned by the school. A separate CUP could be requested by the Board. It would be prudent to amend the current CUP.] [Mr. Worley: Staff prefers the addendum as the request becomes an additional use to the property. The church is proposing to use the school's property as an adjunct use to the school. The amendment also makes record keeping easier];
- concern with ingress and egress and ensuing congestion [Mr. Smith: the school's CUP has been granted use from Monday through Friday, the church may only operate on Sunday];
- the traffic study [Mr. Mastin: a Traffic Impact Analysis was done several years ago when the church was looking to develop a medical office. Mr. Mattingly, traffic engineer, noted that the church/school use is less intensive than that of a medical office. When the commercial property, The Boulders, develops across the street, a median will preclude traffic movement to the drive and will be right-in, right-out only]; and,
- rezoning the front parcel [Mr. Smith: no application has been received by the City].

Ms. Cindy Rowe, Principal, Mountain Oak Charter school, responded to questions:

- the school will post a "suggested right turn only" sign at the egress;
- both the school and the neighbors are concerned about traffic;
- the church has a very small congregation and we will be careful not to let it get too big;
- there are between 50-75 cars between 7:45 and 8:15 a.m. and again between 2:45 and 3:15 p.m.; and,
- a maximum projection of 250 students has been made.

When asked, no one from the public came forward to speak.

Mr. Kayn, **MOTION: to approve** Conditional Use Permit Amendment CUP11-006 (amending CUP09-008) with the following conditions: 1) the church may operate simultaneously with the school; 2) church services are limited to Sunday only; and, 3)

church activities other than service within the sanctuary building are prohibited. Ms. Forquer, 2nd. **Vote: 5-0.**

IV. REVIEW ITEMS

None.

V. SUMMARY OF CURRENT OR RECENT EVENTS

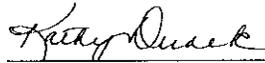
Mr. Kayn wanted to inform the public about an independent redistricting meeting that will be held Thursday, July 28, 2011 at 6:00 p.m. in City Hall.

Mr. Worley added that the Yavapai County website provides a range of four options that will be proposed for the redistricting.

VI. ADJOURNMENT

Chairman Famas adjourned the meeting at 9:26 a.m.

Duane Famas, Chairman *pro tempore*



Kathy Dudek, Administrative Assistant
Community Development Department

- 3) **Special privileges:** Special privileges will not be granted to the applicant. There are several properties in the area with structures that do not meet current setbacks.
- 4) **Self-induced hardship:** The hardship is existing and does not result from any action by the applicant.
- 5) **General Plan:** There is no anticipated effect on the General Plan.
- 6) **Utilization:** Because of the existing condition and safety concerns regarding the staircase, the owners are not able to fully utilize the covered parking and entrance.

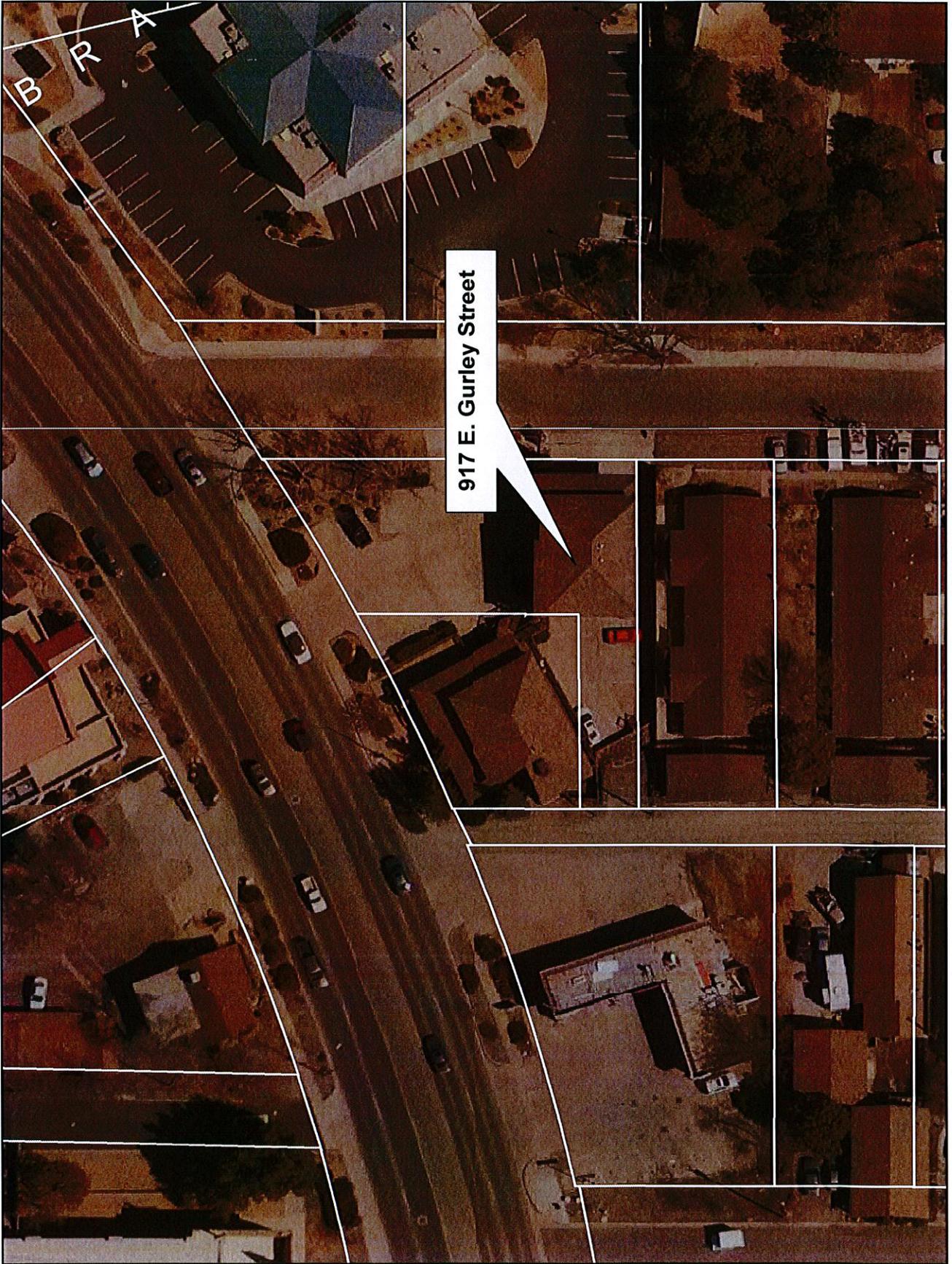
STAFF RECOMMENDATION: Staff recommends approval of V11-001. The project meets all criteria required for the granting of a Variance as set in the Land Development Code. The new owners of this building are requesting this Variance to address a current safety issue, which cannot be mitigated otherwise without substantial modification to the building.

No inquiries or written comments from the public have been received to date.

SUGGESTED MOTION: Move To Approve V11-001.

Attachments:

- Aerial Map
- Site Plan



917 E. Gurley Street

B
R
A

APPEAL OF ADMINISTRATIVE DECISION
Denial of Fence Permit
215 N. Pleasant Street

COMMUNITY DEVELOPMENT – PLANNING AND ZONING DIVISION
BOARD OF ADJUSTMENT MEETING on **August 18, 2011.**

STAFF REPORT

TO: Board of Adjustment Members

FROM: Tom Guice, Community Development Director 
George Worley, Planning Manager 

Date: August 5, 2011

Location: 215 N. Pleasant Street

Parcel No: 114-05-046

Zoning: Single-family 9 (SF-9)

Owner: Regina Engelman
215 N. Pleasant Street
Prescott, Arizona 86301

REQUEST:

This is an appeal of an administrative action which denied the issuance of a Fence permit to the applicant.

BACKGROUND:

The house on this property was constructed circa 1910 and is a contributor in the East Prescott National Register District. In June of this year the applicant began installation of a six-foot high wood fence to enclose the rear yard. A complaint was received from a neighbor that the installation was in progress without a permit. Contact was made with a representative of Ms. Engelman (Ms. Cantelme) by Code Enforcement personnel who advised that installation of the fence must cease and that a permit must be obtained. An application for a fence permit was given to Ms. Cantelme at that time. Several days later a written notice was sent from Code Enforcement to Ms. Engelman reiterating the requirement for a permit.

Following receipt of the written notice, Ms. Engelman visited City Hall with the uncompleted Fence Permit application and spoke to Mike Bacon (Community Planner). Mr. Bacon attempted to assist Ms. Engelman in completing the application. During that endeavor Mr. Bacon advised Ms. Engelman of the requirement to place the finished side of the fence to the exterior of the property. Ms. Engelman objected and noted that the handout page attached to

the application implied that the fence could be faced either in or out. A review of the attachment by Mr. Bacon revealed a typographical error on the handout sheet. Mr. Bacon consulted the Land Development Code and confirmed for Ms. Engelman that the code requirement was clear that the finished side of the fence had to be presented to the exterior of the property. Ms. Engelman completed the application and submitted it to Mr. Bacon indicating the finished side of the fence facing inward. Mr. Bacon subsequently reviewed the application and contacted Ms. Engelman to advise her that he was not able to approve the application based upon the nonconformance with provisions of the Land Development Code relating to fence facing, Mr. Bacon further advised Ms. Engelman that she had several options to remedy the situation. Mr. Bacon noted that remedies included reinstalling the fence per code, installing additional boards to finish both sides of the fence and applying for a Variance. Ms. Engelman inquired about appealing the permit denial and Mr. Bacon described the process.

Ms. Engelman filed an appeal, dated July 19th and received by the Community Development Department on July 21st.

The following is included for the Board of Adjustment's consideration of the timing of events.

CHRONOLOGY OF EVENTS:

- June 17 – Complaint received by Code Enforcement.
- June 17 – Code Enforcement visited site, took photographs and provided Fence Permit Application to Ms. Cantelme.
- June 20 – Ms. Engelman visits City Hall and discusses application for Fence permit with Mr. Bacon.
- June 24 – Second site inspection by Code Enforcement and written notice sent by Code Enforcement.
- June 26 – Ms. Engelman sends email to Kelly Sammeli, Code Enforcement Supervisor.
- June 27 – Ms. Sammeli forwards email to George Worley, Planning Manager.
- June 27 – Planner Mike Bacon denies Fence permit application.
- June 28 – Mr. Bacon sends denial letter to Ms. Engelman detailing code requirements.
- June 28 – Mr. Worley replies to Ms. Engelman's email of June 26, including notice that appeal must be received within 30 days of permit denial.
- July 5 – Letter (dated July 1) received from Engelman | Berger, PC objecting to denial of application.
- July 5 – Letter from Engelman | Berger forwarded to City of Prescott Legal Department.
- July 15 – Final Notice sent to Ms. Engelman by Code Enforcement.
- July 19 – Letter received from Ms. Engelman appealing the denial of the Fence permit.
- July 26 – Mr. Worley requests information from Mr. Bacon relating to permit denial via email.
- July 26 – Mr. Bacon replies to Mr. Worley via email with details.

Staff would note that the letter from Engelman | Berger letter contains several inaccuracies as to the timing of events and as to the document containing the typographical error. The Engelman | Berger letter does not acknowledge that the fence was installed prior to Ms. Engelman obtaining a permit application. It does not acknowledge that the typographical error was discovered when Ms. Engelman applied for the after-the-fact Fence permit. It also does not acknowledge that the typographical error was on handout material attached to the application, not in the Land Development Code language.

STAFF RECOMMENDATION:

Staff recommends that the Board of Adjustment affirm the administrative decision by Planning Staff to deny the permit application based upon nonconformance with LDC Section 6.4.4.E. Staff bases this recommendation on these key points:

1. The installation of the fence began prior to the property owner applying for a permit.
2. The application, with the flawed attachment, was provided to the property owner by Code Enforcement after they discovered that the installation of the fence was substantially completed.
3. The typographical error was on an attachment to the application for permit. The typographical error on the attachment was unknown to the property owner at the time the fence was installed.
4. The Land Development Code did not contain any error relating to the facing of the fence.
5. Mr. Bacon could not have approved and issued a permit for the installation of the fence knowing it was in violation of provisions of the adopted Land Development Code of the City of Prescott.

Sec. 9.17 / Appeals of Administrative Decisions

9.17.1 / Applicability

Any person aggrieved with the final administrative decision(s) of the Community Development Director (including written interpretations pursuant to Sec. 9.14) may appeal to the Board of Adjustment.

9.17.2 / Effect of Appeal

The filing of an appeal stays all legal proceedings in the matter appealed from, unless the officer from whom the appeal is taken certifies to the City Attorney that by reason of facts stated a stay would cause imminent peril to life and property. In such case, proceedings shall not be stayed except by an order of a Court of record.

9.17.3 / Appeal Process

A. Deadline for Submission of Application

An appeal from any final decision of the Community Development Director shall be filed in writing with the Director within 30 calendar days of the decision. If no appeal is filed within 30 days, the decision shall be considered final.

B. Application Submittal

A complete application for an administrative appeal shall be submitted to the Community Development Director as set forth in Sec. 9.1.3, Application Forms and Fees and Sec. 9.1.5. Application Completeness.

C. Public Notification

Upon receipt of a complete application, Public Notices shall be issued in accordance with the requirements of Sec. 9.1.7, Public Notice. Additional notice may also be provided to parties having specific interest in the appeal in accordance with the provisions of Sec. 9.1.10, Additional Notice.

D. Record of Administrative Decision

Immediately following receipt of an appeal application, the Community Development Director shall forthwith transmit to the Board of Adjustment all the papers constituting the record of the action appealed.

E. Board of Adjustment Action

1. Public Hearing

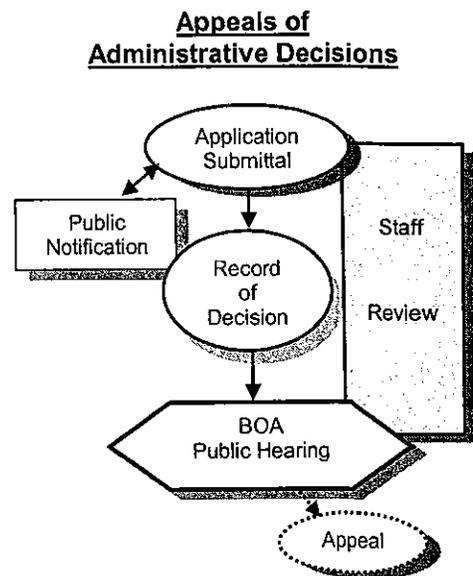
The Board of Adjustment shall hear the appeal in a public hearing within 60 days of the date of the appeal application or such extension as requested by the applicant. During the public hearing, any party may appear in person or by agent or by attorney. The Board of Adjustment's consideration is limited to the specific interpretation of the Community Development Director.

2. Final Action

After the hearing, the Board shall vote to reverse, affirm wholly or partly, or modify the appealed interpretation. The Board may then provide direction for the appropriate action on the final interpretation. In any case, the Board shall only present findings regarding specific errors made in the Community Development Director's interpretation or permit issuance.

F. Written Decision

The decision shall be communicated in writing to the applicant within 15 days from the decision.



Parcel Report for APN: 114-05-046

Site Address: 215 N PLEASANT ST

Owner:
ENGELMAN REGINA A
215 N PLEASANT ST
PRESCOTT AZ 86301

Subdivision Name: EAST PRESCOTT

Max. Lot Coverage: 40%
Max. Bldg Height: 35 ft
Setbacks
Front: 25 ft
Side: 7 ft
Rear: 25 ft
Corner: 15 ft

Acres: 0.16 acres
Square Ft:
TRS: T14-R2-S34

DOR Usage Code: 0141-SFR-010-4 URBAN-SUBDIVID
Description:

Zoning Information

Zoning: SF-9

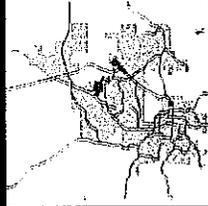
Flood Zone: X;
FIRM Panel: 04025C2065G

Overlay District Information

HPD District: Outside
NR District: East Prescott
Willow Creek District: Outside
Whipple-Zuma District: Outside
Hwy 69 District: Outside
Prescott East Area Plan: Outside
Prescott Enterprise: Inside
Airport Noise District: Outside
Wildlife Urban Interface: Outside

Planner's Actions:

RZ-04-023: Rezones
Ord 4460



215 N PLEASANT ST

This map is a product of The City of Prescott



Legend

- Current Features
- Street Name Labels
- Address
- Parcels
- Building

Zoning:

- BG
- BR
- DTB
- IG
- IL
- IT
- MF-H
- MF-M
- MF-M MH
- MU
- NOS
- NOS
- REZ AC
- RO
- RS
- SF-9
- SF-12
- SF-18
- SF-35
- SFG-MH
- SPC





CITY OF PRESCOTT

P.O. BOX 2059
Prescott, AZ 86302

6/24/2011

ENGELMAN REGINA
215 N PLEASANT
PRESCOTT, AZ 86301

COPY

Reference: **PRELIMINARY NOTICE**
Investigation of Municipal Code Violation
APN # 11405046 / Case # CE1106-064

Dear MADAM:

The property under your control at 215 N PLEASANT ST was inspected on 6/24/2011 regarding Prescott City Code violations:

<u>Violation(s) Noted</u>	<u>Recommended Action for Compliance</u>
Building Permits Required 6 FT FENCE INSTALLED W/O PERMIT WRONG SIDE	6 FT FENCE HAS BEEN INSTALLED WITHOUT APPROVED PERMIT. FENCE INSTALLED IN VIOLATION OF LDC 6.4.4 E. FENCES AND WALLS SHALL BE ERECTED WITH THE FINISHED SIDE PRESENTED TO THE EXTERIOR OF THE PROPERTY BEING FENCED.

YOU MUST OBTAIN A PROPERLY APPROVED PERMIT FOR THE FENCE WITHIN TEN DAYS OF RECEIVING THIS NOTICE.

The property will be re-inspected on 7/12/11. We would appreciate your cooperation in resolving this matter. If you would like to be present at this inspection, or have any questions, please contact Kelly Sammeli at (928) 777-1271, or e-mail to KELLY.SAMMELI@PRESCOTT-AZ.GOV.

Respectfully,

Kelly Sammeli
KELLY SAMMELI
CITY OF PRESCOTT
CODE ENFORCEMENT OFFICER *Supervisor*



City of Prescott Fence Approval Application

201 S. Cortez St.

Prescott, AZ 86303

(928)-777-1356 Fax (928) 777-1258

Permit No: 81106-129
Address: 215 N. Pleasant St.

Site Address: 215 North Pleasant St

Assessor's Parcel #: 114-05-046

Subdivision:

Lot#:

Description of Work: - Replacing fence
new fencing

Chain Link Fence Wooden Fence Masonry Fence Wrought Iron Fence

Site Approval
 Misc Fence Shed Uncovered Deck Accessory Structures

Mailing Address: same

APPLICANT/CONTACT: Gina Engelman Phone: 602 295 7143

Address: 215 N Pleasant St Email Address: ginaengelman@gmail.com

City: Prescott State: AZ ZIP: 86301

OWNER: Phone:

Address: Email Address:

City: State: ZIP:

CONTRACTOR: By Owner Phone:

Address: Email Address:

City: State: ZIP:

Lic#: Sales Tax #: State Tax #:

The undersigned, under penalty of perjury, does hereby certify that all improvements made to the above project, at the address as stated above, by means of the building or improvement of structures or appurtenances of such property, have been performed by a duly licensed contractor unless the entire structure is intended for the undersigned's sole occupancy as owner and no part is provided for occupancy by the public, employees or business visitors and no part of the premises are intended for sale or rent.

I understand the owners who sell or rent property not completed with a licensed general contractor, may be subject to a Class 1 Misdemeanor under Arizona Revised Statutes § 32-1151 and § 32-1154. A Class 1 Misdemeanor is punishable by a fine not to exceed \$2500.00 and/or one year in the County jail. I understand and acknowledge the above certification.

Owner/Contractor: Gina Engelman Date: 6-20-2011



**CITY OF PRESCOTT
COMMUNITY DEVELOPMENT DEPARTMENT
BUILDING SAFETY DIVISION
PLOT PLAN SKETCH**

Building Permit #:

Job Address:

Scale: 1 inch = **ft.**

Assessor's Parcel Number (s):

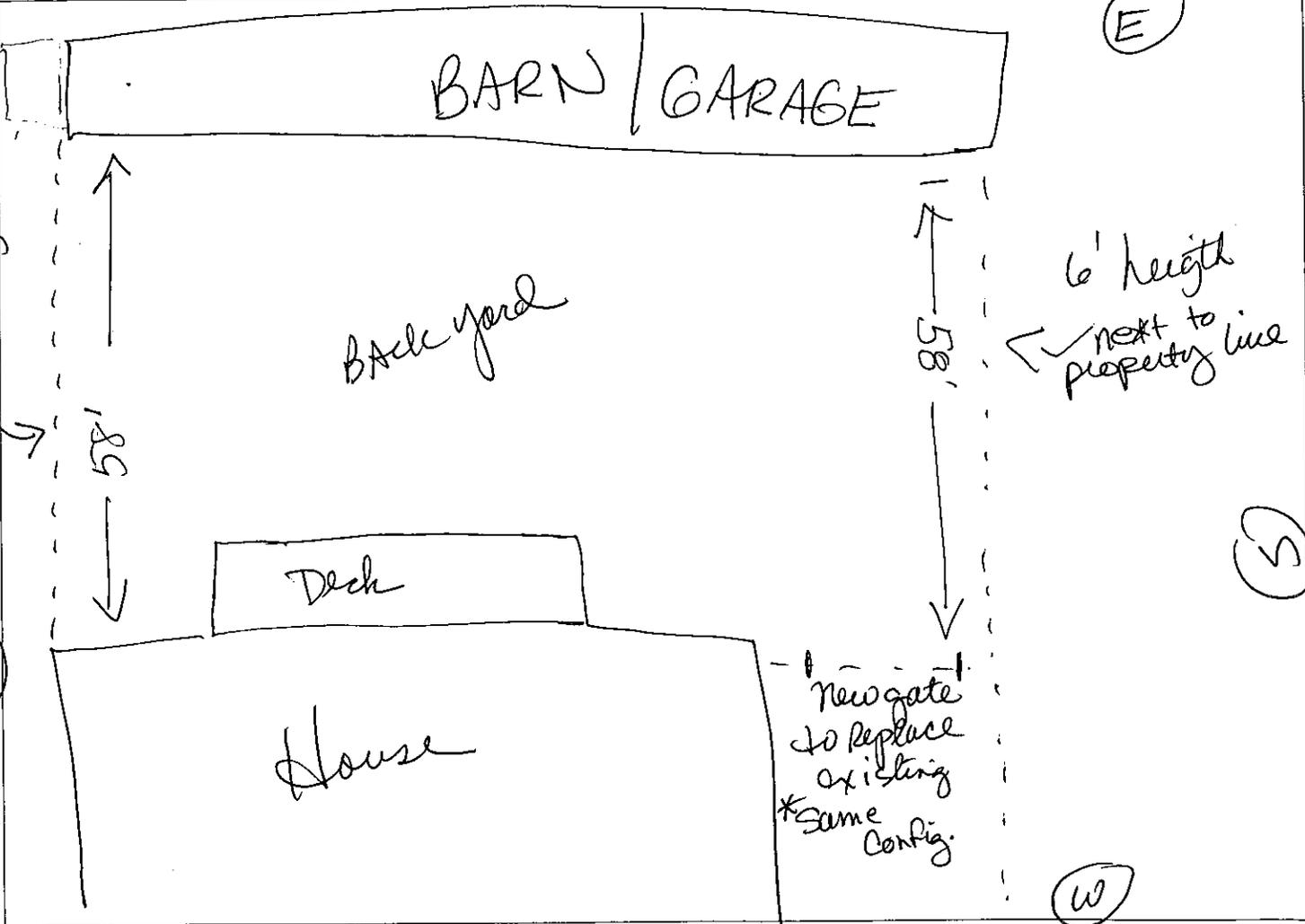
1. It is the responsibility of the owner or contractor to field verify ALL UTILITY MAINS prior to construction. *None*
2. Any improvement in City right-of-way requires permit issued by City Engineering Department per Ordinance #1338. *None*
3. No structure shall encroach onto any easement or right-of-way. Driveway entrance may require dip section or minimum 12 inch corrugated metal pipe. *N/A*
4. DO NOT ALTER SIDEWALK. SIDEWALK MUST MEET AMERICANS WITH DISABILITIES ACT (ADA) STANDARDS. *N/A*
5. All mailbox installations must be to City of Prescott standard detail 1-08. Any deviation must be specially permitted by the Engineering Department. *N/A*
6. Approval of the Planning & Zoning Department is subject to all other easements, encumbrances, etc. or restriction which may apply to said property by virtue of any City Ordinances and/or state law and deed restrictions. The City takes no responsibility for said restrictions or requirements and the burden to comply with such restrictions lies solely with the property owner and/or applicant.

Property line

next to

6' height fence

N



I, Gina Engelwan, the owner's agent or the owner of record, for the structure to be located at:

215 N. Pleasant St, parcel number _____, do certify that the structure will meet all required setbacks, the property corner pins are correct and the footings are excavated upon the property as shown on the City approved site plan. If for any reason any deviation from the approved site plan becomes necessary, a revised site plan will be submitted for approval before any additional construction takes place.

Owner/Contractor Signature

Gina Engelwan

6-20-2011
Date

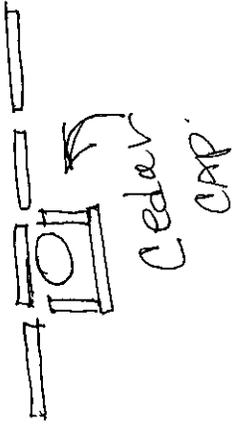
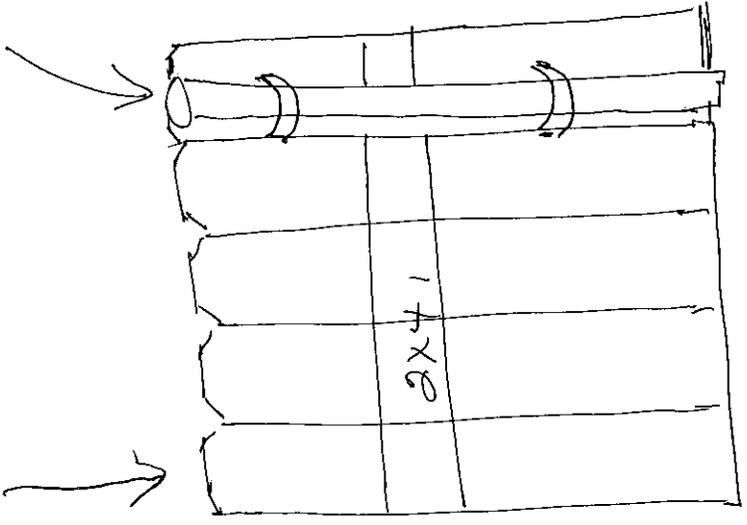
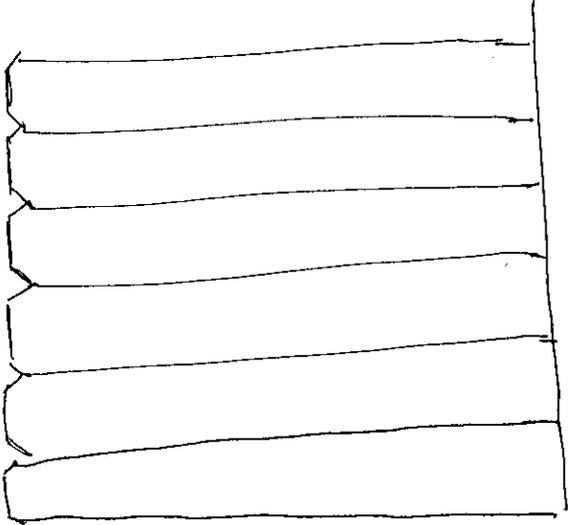


Materials:

2x4 Cedar Framing

metal pulley

Proposed
Fix poles -
CAP





FENCES AND WALLS

Purpose

The purpose of this policy is to provide general guidelines on the erection and installation of fences, walls and various retaining walls on private property within the City of Prescott. Additional information and/or requirements may be found in the *International Building Code (ICC)* or the *Land Development Code (LDC)*.

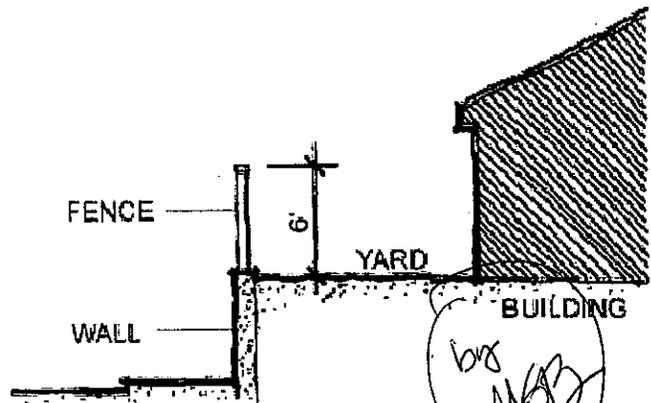
Definitions

- **Fence:** A fence is a freestanding structure that has no imposed load on it designed to restrict or prevent movement across a boundary. It is generally distinguished from a wall by the lightness of its construction. (ie chain link, vinyl, wrought iron or wood)
- **Wall:** A wall is a free-standing structure from both sides that has no imposed load on it. Walls are generally made out of decorative block or another solid surface that blocks both vision and passage.
- **Concrete or Masonry Retaining Wall:** A retaining wall is a reinforced concrete or masonry wall that is engineered *or designed per the ICC* for the purpose of retaining (or holding back) soil, earth, or rock to prevent erosion.
- **Dry Stack Retaining Wall:** A dry stack retaining wall is the stacking of bricks or blocks in a manner that interlock (ie versa-lock) for the purpose of retaining (or holding back) soil, earth, or rocks to prevent erosion.
- **Boulder Stacked Retaining Wall:** A boulder stacked retaining wall is the stacking of rocks and boulders on top of each other with layers of soil to form a decorative wall with no imposed load without the benefit of reinforcement.
- **Pre-Cast Walls:** Pre-Cast Walls are concrete walls poured on the ground or manufactured off-site and then raised in place to create a wall.

Location and Height of Fences and Walls

- In all zoning districts, fences and walls located in a required front yard shall not exceed 4 feet in height except for qualifying flag lots, fences and walls 6 feet in height are allowed in a required front yard in instances where the front property line of a flag lot adjoining a rear lot line of an adjoining lot or parcel.
- In all zoning districts, fences and walls located within the required side or rear yards shall not exceed 6 feet in height; except in the IL district and the IG district, such fences may be 8 feet in height when used for non-residential purposes.
- The height of fences, walls and required screening devices shall be measured as the vertical distance between finished grade on the highest side of the fence or wall to the top of the fence or wall. Fence height shall be measured from the top of the footing to the top of the wall or fence.

Fences and walls shall be erected with the finished side presented to the exterior of the property being fenced.



Please correct to read ~~of~~ "of"

Worley,George

From: Gina Engelman [reginaengelman@gmail.com]
Sent: Sunday, June 26, 2011 8:44 PM
To: Sammeli,Kelly
Subject: Fwd: APN #114045046 / Case #CE 1106-064

Dear Kelly,

I received the Preliminary Notice, dated June 24, 2011. I wanted to let you know that I did speak with Mike Bacon last week and he did give me several options in the matter of my fence. I did ask him if it were possible to appeal it the board level; and he told me that was, in deed, an option. I have chosen to do go that route at this time. Mike did tell me that the board meets again in August; and I will have the fee, and letter submitted by the due date in July.

I also wanted you to know that I did seek legal advice with regards to the 'misprint' of the material that was handed out to me; and you may be hearing from my attorney.

I do look forward to settling this matter so that all parities are satisfied, at no additional cost to me.

Sincerely,
Gina Engelman

7/29/2011

Worley,George

From: Worley,George
Sent: Tuesday, June 28, 2011 9:01 AM
To: 'reginaengelman@gmail.com'
Cc: Sammeli,Kelly
Subject: RE: APN #114045046 / Case #CE 1106-064

Ms. Engelman,

I am the Planning Manager for the City of Prescott. I am writing to clarify your situation and your options relating to the fence recently installed on your property.

Per the Land Development Code, you may appeal administrative decisions, not code provisions. The appeal that Mike Bacon described to you last week is an appeal of the denial of your after-the-fact Fence Permit application. You will receive a written denial of the permit application within the next several days citing noncompliance with Section 6.4.4.E. You may then submit your appeal immediately thereafter. The appeal procedures of the Land Development Code require that you submit your appeal, in writing, within 30 days of notice of the violation. Please submit the appeal to me for processing.

Please understand that the appeal will be evaluated by the Board of Adjustment based upon the specificity of the code language and whether or not the language is debatable. The Board cannot waive provisions of the code; only interpret them where interpretation is possible. If the Board finds the code language clear and unambiguous, they will have no option but to deny your appeal.

I understand your desire to resolve this matter with no additional cost to you. However, had a permit been sought prior to the installation of the fence, this matter would have been resolved during the application review and prior to issuance of the permit. The violation of the codes requiring a permit and requiring the finished side of the fence to be faced out had already occurred by the time you obtained the handout materials.

Another avenue for you to consider is that this code provision was enacted in 2005 and, as this was different than the previous code, all local fence companies were provided copies of the requirements at that time. If your fence contractor failed to advise you of this long standing requirement, you may have recourse to have the violation corrected by that contractor at no cost to you or you may appeal to the Arizona Registrar of Contractors for assistance in gaining the contractor's cooperation.

If you have any questions regarding any of the above information, please do not hesitate to contact me.

George Worley
City of Prescott
Planning Manager
928-777-1287

From: Gina Engelman [mailto:reginaengelman@gmail.com]
Sent: Sunday, June 26, 2011 8:44 PM
To: Sammeli,Kelly
Subject: Fwd: APN #114045046 / Case #CE 1106-064

7/5/2011



CITY OF PRESCOTT
COMMUNITY DEVELOPMENT DEPARTMENT
RESIDENTIAL BUILDING PERMIT REVIEW
201 S. CORTEZ STREET
PRESCOTT, AZ 86302
(928)777-1207

PERMIT STATUS: NOT APPROVED

DATE: 6/28/2011

TO: REGINA ENGELEMAN
215 N. PLEASANT ST
PRESCOTT, AZ 86301

PERMIT #: B1106-129

RE: 215 N PLEASANT ST

ROUND OF REVIEW: 1ST

THE FOLLOWING LIST INCLUDES REVIEW COMMENTS AND REQUIRED CORRECTIONS FOR THIS PROJECT. ALL ITEMS LISTED, BY DEPARTMENT, REQUIRE CORRECTION AND RESUBMITTAL TO THE COMMUNITY DEVELOPMENT DEPARTMENT.

PLANNING AND ZONING

Reviewer: Mike Bacon NOT Approved 777.1360

1. The application is not compliant with Section 6.4.4.E of the Land Development Code:
6.4.4 / Fence and Wall Location and Height
 - E. Fences and walls shall be erected with the finished side presented to the exterior of the property being fenced.
2. It is my understanding that a fence contractor was utilized in the construction of the fence; however, the applicant is listed as the contractor.

WHEN RESUBMITTING PLANS FOR REVIEW PLEASE INCLUDE THE FOLLOWING:

1. Two (2) new sets of all plans (building, site and civil) with corrections as noted above. All changes shall be clouded.
2. The original or previous review round redline plans (building, site and civil) and any attached paperwork from the previous review set.

• **PLEASE ALLOW A MINIMUM OF FIFTEEN (15) WORKING DAYS FOR REVIEW OF RESUBMITTED PLANS.**

• **ALL RESUBMITTALS MUST BE REVIEWED AND APPROVED BY ALL DEPARTMENTS PRIOR TO THE ISSUANCE OF A RESIDENTIAL BUILDING PERMIT.**

COPY



RECEIVED

JUL -5 2011

David Wm. Engelman
(602) 222-4975
dwe@eblawyers.com

ENGELMAN | BERGER, P.C.
ATTORNEYS AT LAW

CITY OF PRESCOTT
COMMUNITY DEVELOPMENT

July 1, 2011

City of Prescott
P.O. Box 2059
Prescott, AZ 86302
Attn: Code Enforcement

**Re: Regina Engelman
215 N. Pleasant (the "Property")
Prescott, AZ 86301
APN # 11405046/Case # CE1106-064**

To Whom It May Concern:

This firm has been retained to represent Ms. Engelman in the above entitled matter. This letter is written to request that, considering all the circumstances of this dispute, the above referenced case be dismissed and Ms. Engelman's fence on the Property remain intact without further revision. This request is based upon the following understanding of the relevant facts.

Ms. Engelman fairly recently purchased the Property. She has been enhancing her property and that of her neighbors by new landscaping and replacement of a dilapidated fence. Ms. Engelman recently installed a fence around the Property, with the finished side of the fence facing inward toward the Property. This, apparently, is contrary to the city code requirement that the finished side of a fence face the exterior of the property.

However, that is not what the written code language that the office of the City of Prescott disseminated to my client and the public when Ms. Engelman erected this fence. The language of the code stated:

"Fences and walls shall be erected with the finished side presented to the exterior *or* the property being fenced." [Emphasis added].

As it turns out, the city made a typographical error in this sentence of the code requirements for fences and walls. The word "or" was intended to mean "of". I understand that this mistake has now been corrected.

However, when Ms. Engelman investigated the city requirements for erecting a fence on the Property, she saw the above-quoted language. It is not an unreasonable interpretation of this quoted section, from the standpoint of the reading public that the finished side of the fence could point inward toward the fenced property. That is how Ms. Engelman understood this language. In reliance upon this phrase, Ms. Engelman erected the fence with the finished side facing the Property.

ENGELMAN BERGER, P.C.

ATTORNEYS AT LAW

City of Prescott

July 1, 2011

Page 2

Now the City of Prescott is complaining that the fence is not in compliance with code. In fact, it was erected in compliance with the code as written, prior to the change of the typographical error. The city seeks to penalize Ms. Engelman with its subsequent modification of the code, which is both improper and contrary to law.

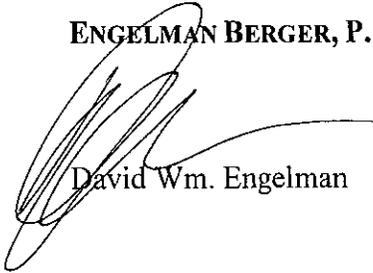
Ms. Engelman fully understands and respects the City of Prescott's need to regulate building in its community. Ms. Engelman also understands the logic behind the regulation of fences as it pertains to the "enjoyment of the public". But in this instance, the public cannot see or enjoy this fence as it is not visible to the public. The rear yard, the only area accessible to public view, is completely occupied by a large barn that runs the full length of the rear of the Property. .

Ms. Engelman investigated the rules and regulations regarding the fence prior to its erection. It is improper and unfair to now penalize Ms. Engelman because of the mistake made by the city. I would urge the City of Prescott to withdraw its complaint against Ms. Engelman. I would further urge the City of Prescott to either (1) permit Ms. Engelman to keep the fence without modification or (2) fund the cost of turning the fence to its finished side faces away from the Property.

I would appreciate a response to this letter prior to the inspection date of July 12, 2011.

Sincerely,

ENGELMAN BERGER, P.C.



David Wm. Engelman

DWE:kac

cc: Regina Engelman



CITY OF PRESCOTT

P.O. BOX 2059
Prescott, AZ 86302

7/15/2011

ENGELMAN REGINA
215 N PLEASANT
PRESCOTT, AZ 86301

COPY

Reference: **FINAL NOTICE - CERTIFIED**
Investigation of Municipal Code Violation
APN # 11405046 / Case # CE1106-064

B1106-729

Dear MADAM:

Property under your control at 215 N PLEASANT ST has been reported to the City of Prescott Community Development as a source of a municipal code violation. An inspection of the property was conducted on 7/15/2011 to verify the violation(s) and a letter was mailed to you notifying you of the violation(s) on 6/21/2011.

<u>Violation(s) Noted</u>	<u>Recommended Action for Compliance</u>
Building Permits Required 6 FT FENCE INSTALLED W/O PERMIT WRONG SIDE	6 FT FENCE HAS BEEN INSTALLED WITHOUT APPROVED PERMIT. FENCE INSTALLED IN VIOLATION OF LDC 6.4.4 E. FENCES AND WALLS SHALL BE ERECTED WITH THE FINISHED SIDE PRESENTED TO THE EXTERIOR OF THE PROPERTY BEING FENCED. YOU MUST COMPLY WITH CITY CODE REQUIRMENTS INCLUDING OBTAINING A PERMIT BY THE REINSPECTION DATE. FAILURE TO DO SO WILL RESULT IN THIS CASE BEING FORWARDED TO THE CITY ATTORNEYS OFFICE FOR PROSECUTION

A final inspection will occur on 8/2/11. If the property is not code compliant at this time pursuant to PCC 7-5-19, (C) Violations and Penalties; a civil violation is punishable by a minimum sanction of \$250, up to a maximum sanction of \$2,500 for each day that a property is in violation and a citation will be issued. Please direct any questions or concerns to Kelly Sammeli, Code Enforcement Officer, Community Development (928) 777-1271, or emailed to KELLY.SAMMELI@PRESCOTT-AZ.GOV.

Kelly Sammeli

KELLY SAMMELI
CITY OF PRESCOTT
CODE ENFORCEMENT OFFICER / *Supervisor*

Gina Engelman
215 N Pleasant St
Prescott, AZ 86301



July 19, 20110

George Worley
City Of Prescott
Community Development Dept.
Residential Building Permit Review

Ref: APN 11405046 / Case # CE1106-064

Dear Mr. Worley,

I am writing to inform you of my intent to appeal the decision made by the plan reviewer, Mike Bacon, concerning the installation of my new fence.

First, I would like to clear up some misunderstandings:

The Fence was constructed by a friend of my, NOT a contractor.

Neither my friend, nor myself were aware that a permit was necessary.

The actual construction of the Fence began while I was out of town

Prior to the construction of the Fence, I talked with my neighbor to the North, Mary, (last name unknown)

She was very excited at the prospect of the new fence; and offered to keep her dog locked up during construction

I did NOT ask for any monetary contributions for the Fence, (which benefits both properties) from Mary.

My friend was given a copy of the Fence and Walls policy from code enforcement officer, Kelly Samilli, and it was forwarded to me. As soon as I got back into town, I went to City Hall and talked with Mike Bacon. It was then that a typo was discovered. The typo leads me to believe the fence was being constructed according to your guidelines. Nevertheless, I offered to 'cap' the metal poles facing Mary's property, at MY expense. That proposal, however, was denied by your office.

I spoke with an attorney, who wrote a letter to your office, (dated June 28, 2011) confirming my interpretation of the guidelines handed to me (see attached), and asking for a withdrawal of the complaint.

As of this date, neither my attorney, nor I have received a response to his letter. As of this date, no one has even acknowledged the typo in the guidelines given to me, other than 'dismissing' it, and telling me...' well, this is what it is SUPPOSE to say".

I would appreciate a response to this letter, as well as a response to the letter from my attorney... and I would certainly appreciate an acknowledgment that there was, in fact, a typo that could have, and was, in fact, misinterpreted.

I will gladly appear before the Council if you deem that necessary. I await your response.

Sincerely,
Gina Engelman



RECEIVED

JUL 21 2011

CITY OF PRESCOTT
COMMUNITY DEVELOPMENT

Worley, George

From: Bacon, Mike
Sent: Tuesday, July 26, 2011 4:23 PM
To: Worley, George
Subject: 50 words or less

In assisting with the completion of the Fence application at the counter, I mentioned that the good side of the fence had to be on the "outside" i.e. facing her neighbor. The applicant (_____) pointed out to me that this is not what is stated in our application.

I noticed the ambiguity of the application and consulted the Land Development Code which revealed the typographical error (of which I later informed you). I indicated that the LDC was the rule to follow...and not our application. During the conversation with the applicant I had learned that she had already been cited by Code Enforcement (via a complaint) for erecting a fence without a permit, and (as I recall) came prepared to the counter with the application to file--though not having completed it. I indicated that we would take the application, once completed, and I would later contact her regarding her question on the Code interpretation.

I called her later to inform her of the 3 options she would have for remedying the situation, and she later asked if there was an appeal process. I mentioned to her the appeal process and the cost to the Board of Adjustment.

Mike Bacon, Community Planner
City of Prescott Community Development Dept.
201 S. Cortez Street
Prescott, AZ 86303

One of America's 10 Great Public Places: Yavapai County Courthouse Plaza in Prescott, AZ!

Phone: 928.777.1360
Fax: 928.777.1258

To ensure compliance with the Open Meeting Law of the State of Arizona, the recipient(s) of this message should not forward it to other members of the public body. Members of the public body may reply to the sender of this message, but under law are *not* permitted to send a copy of the reply to other members.

