



**MINUTES
BOARD OF ADJUSTMENT
COMMUNITY CHAMBERS
20727 E. CIVIC PARKWAY
OCTOBER 22, 2018
5:00 PM**

1. Call to Order

The meeting was called to order at 5:00PM.

2. Roll Call

Board Members in attendance: Board Member Bartes, Board Member Moyer, Board Member Schuett, Board Member Rotier, and Chairman Allison Brague.

3. Public Comment: Members of the public may address the Board on items not on the printed agenda. Please observe the time limit of (3) three minutes.

None.

4. Items for Discussion and Possible Action:

- a. Approval of the June 5, 2018 Meeting Minutes
Board Member Rotier moved to approve the June 5, 2018 Meeting Minutes, with the correction to reference Board Member Rotier as Vice Chair.
1st: Rotier
2nd: Schuett
Vote: 5-0 (unanimous)
- b. Case P18-0094: Hearing Officer Decision Appeal for Case # P18-0211 (Code Compliance Case 18-1492) a request from Alfredo Lopez, owner of Platinum Paint & Body LLC, appealing the decision of the Town of Queen Creek's Hearing Officer made on August 21, 2018. (Victor Martinez, Code Compliance Supervisor)

Scott Holcomb of Dickinson Wright spoke on behalf of the Town. Mr. Holcomb noted that the hearing has already been held and the purpose of the appeal is to determine if the Hearing Officer's decision was made in error.

Victor Martinez, Code Compliance Supervisor, provide an aerial exhibit of the location of the subject site. Mr. Martinez summarized the request by Alfredo Lopez, the owner of Platinum Paint & Body LLC, who is requesting to appeal the Hearing Officer's decision made on August 21, 2018.

Mr. Martinez noted the role of the Board of Adjustment, which is to reverse or affirm the Hearing Officer's decision. Mr. Martinez summarized the history and proceedings to date, which included:

- Complaint received April 17, 2018
- Notice to Comply (Building Official) issued April 17, 2018
- Notice of Violation (Code Compliance) issued July 18, 2018

- Hearing held August 16, 2018
- Hearing Officer Order issued August 21, 2018
- Appeal filed September 20, 2018

Mr. Martinez presented the approved Site Plan for the property, which was approved in 2007. Mr. Martinez summarized the space leased by Platinum Paint & Body. Mr. Martinez summarized the Code Violations issued for the business including storage container visible above the wall/fence, temporary shade structures in violation of the Site Plan and Zoning Ordinance, and building without a permit. Mr. Martinez presented photo exhibits of the violations.

Board Member Rotier inquired: are the shade structure shown on the photos the same shade structures visible on the aerial photo? Mr. Martinez responded, stating the aerials for the property show the shade structure.

Mr. Martinez noted that \$6,000 in fines have been accrued and \$0 of said fines have been paid. Staff recommends that the Hearing Officer's decision be affirmed. Mr. Martinez noted that the property, as of that morning, is in compliance with the Hearing Officer's stipulations.

Board Member Rotier inquired: are white structures on the west side of the building temporary? Mr. Martinez responded, stating that the small white tents are temporary, and the larger shade structure was a permanent structure.

Board Member Schuett inquired: what day were the photos taken? Mr. Martinez responded stating, July 18, 2018.

Board Member Bartes inquired: as of today, is the site in compliance? Mr. Martinez responded, stating yes the site is in compliance.

Mr. Holcomb noted that the burden is on the defendant to show that there was an error in the Hearing Officer's decision. Mr. Holcomb added that there were two types of fines in this case, the first was for the violation when they didn't cure the issue when given the opportunity and the second is the Hearing Officer's additional daily fine of \$50 per day if they didn't correct the issue within 60 days.

Tom Swift, representative of Platinum Paint & Body LLC, spoke on behalf of the appellant. Mr. Swift noted that notice to comply was provided on April 17, 2018. Mr. Swift noted that the Landlord told Platinum Paint to address any remaining issues with the Town and threatened terminate the lease if compliance is not adhered to. Mr. Swift added that Mr. Lopez wanted to install temporary shade structures for employees. Mr. Swift said, that in response, Mr. Lopez met with the Building Official to discuss potential solutions and to discuss temporary shade structures. Mr. Swift noted that Mr. Lopez said that the Building Official stated that temporary shade tents for employees were allowed.

Mr. Swift stated that the storage units on the site previously had two tiered storage unit. Mr. Swift stated that the Building Official stated that they could take off the top unit. Mr. Lopez removed the shade canopies, set up temporary tents, and removed the second tier of storage units.

Mr. Swift noted that the applicant has moved his business.

Mr. Swift requested that the Hearing Officer's decision be reversed or the fines be removed.

Board Member Brague inquired: when was the meeting held with the Building Official? Mr. Swift responded, stating that they do not have a meeting date, but it was an informal meeting.

Board Member Bartes inquired if the solutions discussed with the Building Official were presented to the Hearing Officer at the hearing. Mr. Swift said that Mr. Lopez testified at the Hearing regarding his discussion with the Building Official.

Board Member Brague noted that their job as a Board is to affirm or reverse the Hearing Officer's decision which was made on August 16, 2018.

Board Member Schuett asked the Hearing Officer, Charles Ayers, if he had any comments regarding the discussion on August 16, 2018. Mr. Ayres noted that Mr. Williams did not contradict what Mr. Lopez said, but Mr. Williams did not indicate that Mr. Lopez should ignore the notice to comply. Mr. Ayers stated as part of his deliberation, he took into account the previous violations and it had been 3 months since Mr. Lopez received a notice to comply.

Board Member Bartes: was there continued conversation between Mr. Lopez and Mr. Williams in an effort to bring the site into compliance? Mr. Ayres noted that there was not any testimony regarding Mr. Lopez and Mr. Williams following up with one another regarding compliance.

Mr. Martinez noted that the notice to comply was issued after the informal meeting between Mr. Williams and Mr. Lopez.

Mr. Williams, Building Official, introduced himself to the Board. Board Member Bartes inquired: was there any discussion or contact between Mr. Lopez after your informal meeting following up on the changes made to the site? Mr. Williams responded, stating that there was not follow up from Mr. Lopez following the meeting.

Board Member Rotier inquired if the storage container is moved as of today. Mr. Martinez responded, stating that the shipping container has been moved as of today.

Board Member Schuett inquired: is there an opportunity for the Board to suggest alternative fees? Scott Holcomb stated that the defendant is responsible for the violation then the Hearing Officer's fees are appropriate.

Motion to affirm the Hearing Officer's decision for case.

1st: Schuett

2nd: Bartes

Vote: 5 – 0 (unanimous)

5. Announcements

6. Adjournment

Motion to adjourn at 5:31PM:

1st: Rotier

2nd: Moyer

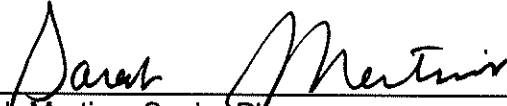
Vote: 5-0 (unanimous)

Town of Queen Creek Board of Adjustment



Allison Bague, Chairman

ATTEST:



Sarah Mertins, Senior Planner

I, Sarah Mertins, do hereby certify that, to the best of my knowledge and belief, the forgoing Minutes are a true and correct copy of the Minutes of the October 22, 2018 Meeting of the Queen Creek Board of Adjustment. I further certify that the meeting was duly called and that a quorum was present.



Sarah Mertins, Senior Planner

Passed and approved on December 3, 2018.