

Attachment B



City of Phoenix

Planning and Development Department

DENIAL AS FILED, CONDITIONAL APPROVAL FOR ALTERNATIVE ABND 200566

Your abandonment request was **DENIED AS FILED**, but **CONDITIONALLY APPROVED IN PART** by **Christopher DePerro, Abandonment Hearing Officer**.

A summary of the hearing, and the Hearing Officer's findings and rationale, are included in this letter.

You have the right to appeal this decision to City Council if an appeal application is received by the Planning and Development Department within 15 calendar days of this decision (latest appeal date: April 2, 2021). Please contact the Abandonment Coordinator, Maggie Dellow at 602-262-7399, or **abandonments@phoenix.gov**, for questions regarding appeals.



City of Phoenix

Planning and Development Department

March 18, 2021

Abandonment Staff Report: **ABND 200566**

Project# **94-0000656**

Quarter Section: **19-27**

Location:

Northeast Corner of 3rd Avenue and Colter Street

Applicants:

Ryan House
Richard Mountjoy

Request to abandon:

To abandon 20-foot right-of-way, adjacent to Lots 1-9, on the north side of Colter Street between 3rd Avenue and Central. To abandon 8-foot alleyway, bounded by 3rd Avenue & Central Avenue and Oregon Avenue and Colter Street. To abandon 16-foot alley bounded by parcels addressed 10 W Colter Street and 5202 North Central Avenue. To abandon 12 feet of right-of-way along 3rd Avenue, adjacent to Lot 1.

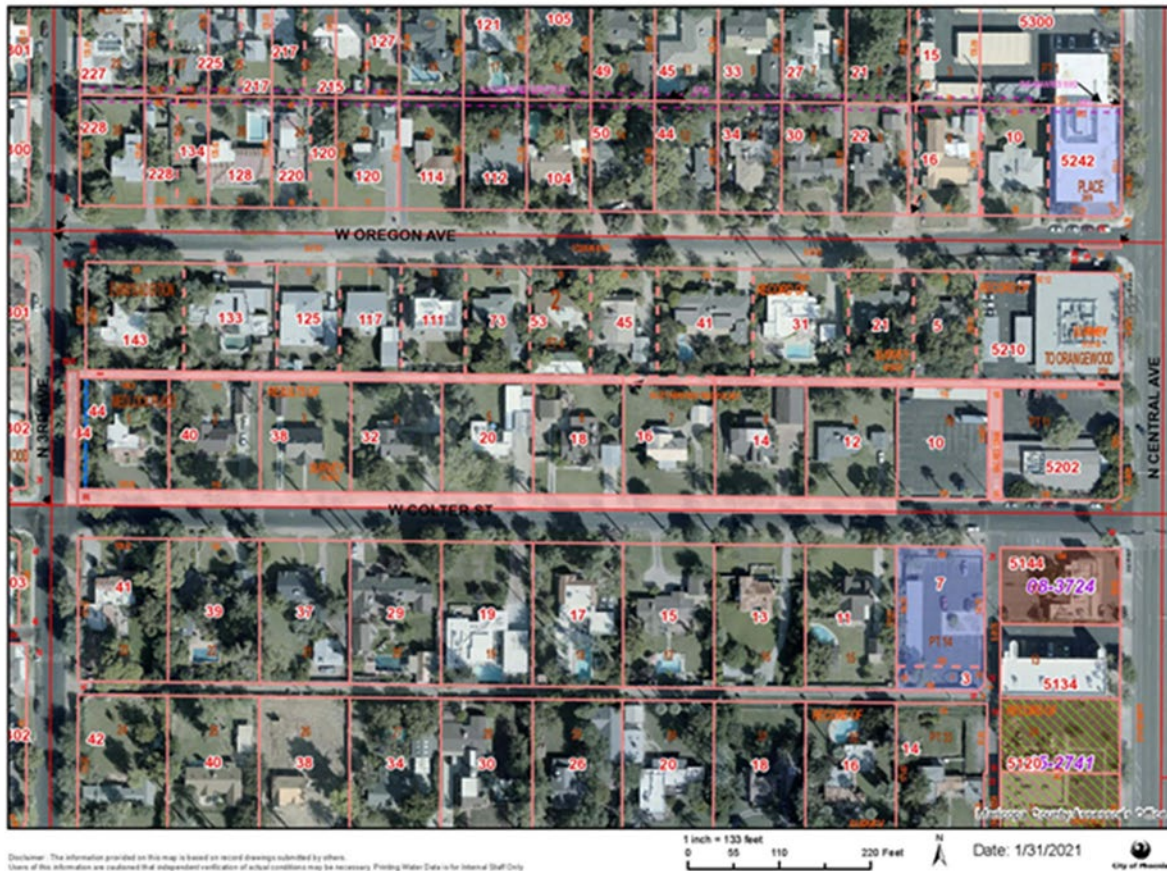
Purpose of request:

The applicant states: To align ownership with maintenance responsibility and improve homeowner/pedestrian safety.

Hearing date:

**March 4, 2021
TAKEN OUT FROM UNDER
ADVISEMENT MARCH 18, 2021**

Planning and Development



Hearing Summary

Ms. Maggie Dellow, Abandonment Coordinator, read the abandonment case into the record by stating the applicant, location, abandonment request, and purpose of the request, as well as City staff research.

Mr. Christopher DePerro, Abandonment Hearing Officer, then started the discussion by asking the applicants if they would like to add any additional comments regarding the abandonment request.

Mr. Ryan House, applicant, explained that the rear 8-foot alley has never been functional, that there is no ingress or egress, and that the City has previously approved a partial abandonment of that alley. Mr. House explained that the request to abandon the remainder of the alley would help clean up property lines and align ownership with property use. Mr. House went on to explain that the purpose of the request to abandon the northern 20 foot of right-of-way along Colter Street is to rectify landscaping issues within the right-of-way. Mr. House explained that it is his understanding that homeowners are not allowed to make landscaping improvements or maintain landscaping in the right-of-way. As a result, there are unmaintained dirt patches within the right-of-way. Through abandoning this portion of the right-of-way, Mr. House explained he would be better able to improve and maintain the right-of-way with landscaping. Mr. House

explained that the unmaintained landscaping was not only unappealing to look at but also contributed to a widening effect along the street which has resulted in increased traffic speeds.

Mr. Richard Mountjoy, applicant, provided comments in relation to the proposed abandonment along 3rd Street. He explained that the purpose of this request is for the homeowner to be able to better maintain landscaping within the right-of-way.

Mr. House added that he believed the public ownership of the streetscape is the cause of the deterioration of the streetscape.

Mr. DePerro explained to the applicants that City Code requires adjacent property owners to maintain landscaping in the right-of-way, between the curb and the property line, which includes planting grass, shrubs, trees, etc. Mr. DePerro explained that there may be restrictions related to the historic palm trees, but landscaping shall be maintained in the right-of-way.

Ms. Maja Brkovic with the City of Phoenix Street Transportation Department explained that landscape improvements are permitted and expected in the right-of-way. Ms. Brkovic also explained that per the Street Classification map, Colter Street is required to have 25' half streets. With a 20' half street, Colter Street is actually under the required width. She continued to explain that there are currently two Street related projects underway within this area, and that the Streets Department would be unable to approve any sort of abandonment until those planning efforts are addressed and resolved.

Ms. Dellow then read the comment from the Historic Preservation Department which recommended denial of the 3rd Avenue and Colter Street abandonment requests, citing private ownership would create inconsistencies with streetscape maintenance.

Mr. DePerro then opened the hearing to those in attendance that request to speak.

Ms. Linda Vincent indicated that she is not in support of the proposed abandonment requests explaining that she believes a right-of-way abandonment along Colter Street would negatively impact other areas of the neighborhood and that the abandonment would not positively serve the neighborhood. Ms. Vincent also shared that she was concerned that some neighbors may have been indirectly excluded from participating in the hearing due to the time the hearing was held, its modality and its posting period.

Ms. Janice Paul indicated that she is not in support of the proposed abandonment requests, explaining that she is concerned the applicants may be trying to close off Colter Street at Central Avenue which would result in negative impacts for the rest of the neighborhood. Ms. Paul indicated that she liked the look of the existing street landscaping and echoed Ms. Vincent's sentiment that the period for posting the abandonment did not provide neighbors with adequate notice.

Mr. DePerro clarified that the proposed abandonment would not have the effect of closing the street.

Ms. Luci Willis indicated that she is not in support of the proposed abandonment requests, explaining that homeowners are allowed to maintain landscaping in the adjacent right-of-way, that the abandonment request is not the result of a comprehensive traffic study or plan, and that she believes abandoning the 20' right-of-way along Colter Street could set a dangerous precedent for future requests.

Mr. Derrick Hoffman indicated that he is in support of the proposed abandonment requests. He indicated that he believed there is a benefit to abandoning the 3rd Avenue and Colter Street rights-of-way in order to allow homeowners to maintain landscaping in these areas. Mr. Hoffman indicated that if landscaping the right-of-way is permitted, then there is no reason for the abandonment, but he did indicate that there is a bit of confusion around what a homeowner is and is not allowed to do in the right-of-way.

Ms. Hallie House indicated that she is in support of the abandonment so that homeowners can have more control over the landscaping on the lots and improve safety along the street.

Mr. Larry Gere indicated that his is in support of the abandonment.

Mr. DePerro and Ms. Dellow reviewed the comments provided from City reviewers and utility Companies.

The Hearing Officer took the abandonment request under advisement.

Hearing Officer Findings and Decision

This request for abandonment consists of two distinct portions: the alley located north of Colter Street between 3rd and Central Avenues ("Alley"); and a portion of street right of way for the east side of 3rd Avenue just north of Colter, plus the north 20' of the Colter Street right of way ("3rd Avenue and Colter Street"). Each will be addressed separately:

Alley. This alley exists only as partial dedication for what an alley requires—8' of a standard 16' wide dedication—and does not exist physically; it is not a thoroughfare, nor is it paved or dustproofed. It therefore does not appear to be necessary to retain as a fully dedicated right of way. However, stipulations have been written to retain a public utility easement, since the sewer line for the abutting homes runs within this area, as well as some other dry utility lines.

3rd Avenue and Colter Street. This request is to narrow the right of way for 3rd Avenue by abandoning the area from back of curb to the east ROW line adjacent to 44 E Colter Street, together with the northern 20' of Colter Street between 3rd and Central Avenues. It seems to the Hearing Officer that there are incorrect perceptions as to what can be done with this area of ROW in relation to landscaping. Landscape which does not obstruct visibility at driveways, and within a 33' x 33' triangle as measured from the property lines at the corner of 3rd Avenue and Colter Street, as extended in the ROW, is permitted. Structures/fences are not permitted by right with the ROW. Restoration of turf within the ROW is permitted under State law for single-family lots—there was perhaps a misconception that it was not allowed, which is only true for multi-family and non-residential development. It does not appear to this Hearing Officer that there is a sufficient reason for abandoning this section of ROW. Furthermore, opposition to this request was heard from neighbors present at the hearing, as well as from the Historic Preservation Division, who oppose it based upon a desire to retain the status quo for a designated historic neighborhood, and from the Street Transportation Department, who oppose it based upon an in-progress study regarding possible traffic calming improvements within the existing ROW. Street Transportation staff also pointed out that approval of the request would result in non-standard ROW dedications for the street types, for which approval of a technical appeal (with accepted technical reasons) is required through a separate process.

Therefore, the Hearing Officer's decision for this request is **DENIED AS FILED**, and **CONDITIONALLY APPROVED** for only the following portion of the request:

- **Abandonment of the alley located north of Colter Street, extending from 3rd Avenue to Central Avenue.**

This conditional approval is subject to the following stipulations:

1. Either a or b shall be complied with:
 - a. All utilities shall be relocated to locations approved by each affected utility company. All work is to be done by each affected utility company at no expense to the affected utility company. An appropriate performance agreement, in an approved form and cost amount, must be posted with the Planning and Development Department to guarantee the improvements.
 - b. All right-of-way shall be retained as a public utilities easement with 24-hour vehicle maintenance access.
2. Consideration which provides a public benefit to the City is required in accordance with City Code Art. 5, Sec. 31-64 and Ordinance G-5332. Cost for abandoned Right-of-Way adjacent to property not zoned single family residential will be \$500 OR Fair Market Value whichever is greater. Cost for property zoned single family residential is \$1.00 a square foot for the first 500 square feet, \$0.10 a square foot thereafter; OR Fair Market Value at the option of the Planning and Development Director or designee. The applicant shall submit calculation and fee to Planning and Development Department. The applicant shall request a selection of approved appraisers from the current list maintained by the Real Estate division of the Finance Department.
3. No right-of-way within 30 feet of the 3rd Avenue monument line may be abandoned.
4. No right-of-way within 50 feet of the Central Avenue monument line may be abandoned.
5. All stipulations must be completed within **two years** from the Abandonment Hearing Officer's decision.

This report has been reviewed and approved by the Abandonment Hearing Officer.

Hearing Officer Signature:  _____ Date: 3.18.2021

REPORT SUBMITTED BY: Alyssa Neitzel, Abandonment Secretary

cc: Applicant/Representative, Ryan House
Christopher DePerro, Abandonment Hearing Officer