



Staff Report

TO: City Council
FROM: Peter Nolan, Asst. City Attorney
DATE July 20, 2021
SUBJECT: **Notice of Appeal Hearing from Final Order of Hearing Panel and Order to Abate Public Nuisance: Code Case 001038-2020 1421 Faircliff Street (APN 428-100-028)**
OWNER: Nneka and Ezekwesili Iloputaife

Background and Analysis:

A request and application for appeal to City Council was received by the City Clerk's office within the permitted time frame per Beaumont Municipal Code (BMC) Section 8.32.495 - Appeal to the City Council.

Case Background and Information

In June 2014, the property at 1421 Faircliff Street (APN 428-100-028), herein after referred to as "the property", applied for a permit for a structural addition of 2,780 square feet with extensive interior remodeling. On May 1, 2017, permit BP2017-00691 was issued for an addition and remodel. On July 16, 2018, an inspection was conducted and determined a reinspection was needed. Subsequent inspections were conducted on July 19, 2018, August 7, 2018, and August 13, 2018, all requiring reinspection. An inspection was scheduled for August 15, 2018, but was not conducted due to the fact that the owner or a representative of the owner did not make themselves available for the inspection.

On June 4, 2019, a letter was sent stating permit BP2017-00691 had expired. On September 4, 2019, the City's Building Official visited the property at Mr. Iloputaife's request. On September 10, 2019, the City's Building Official sent a letter summarizing the visit and providing the following corrective measures:

There are a few things worth noting in order for you to proceed with your project considering the direction and scope of work already performed. The areas in which you have undertaken work which are not covered by the approved plans will require City approval before proceeding with construction or inspection of those areas.

1. *The front has a 2nd story dormer pop-out which has been enlarged into an enclosed room. This area has lateral design issues with improper seismic bracing as currently constructed. Due to the amount of glazing added, energy efficiency must be addressed with revised T-24 energy calculations.*
2. *The rear deck has been covered by a solid 2nd story roof of over 400 sf which is not on the approved plans. Lateral structural support for this area is lacking which should be addressed with structural calculations. Also, the roof joists may be overspanned unless the grade lumber used is select structural. The tie-in from the patio roof to the house is not visible and the out-of-plane (pull away) connection should be detailed in the revised plans and verified.*
3. *The stair rise/run doesn't comply with Code since the steps were noticeably inconsistent when walking them. This is simply worth noting so they can be corrected at framing stage rather than at a later date.*

In order to proceed, revised plans should be prepared indicating the increased scope of work. Structural calculations and T-24 energy calculations will also be needed. Once approved, an additional permit (or addendum) will be issued to allow the additional areas to be constructed. Prior to investing any substantial design team time, I recommend that either you or your design professional visit the Planning Division with schematics of the increased areas to make sure heights, areas, and setbacks will comply with the Zoning Ordinance, prior to incurring design costs.

A copy of this letter is included as an attachment to this report. On March 18, 2020, an additional letter was sent stating permit BP2017-00691 had expired. There is no record of Building and Safety inspections beyond this date.

On March 19, 2020, as a follow up to the expired permit, Code Enforcement provided a Courtesy Notice for the following issues:

8.32.060 - Building Code violations; All premises, both permanent and temporary, including, but not limited to, buildings, structures, or appendages, maintained in violation of the uniform building codes adopted by the City pursuant to Sections 15.04.010, 15.08.010, 15.12.010, 15.16.010, 15.17.010 and 15.20.010 of the Beaumont Municipal Code, or subject to any of the following conditions, are declared a public nuisance.

8.32.070 - Zoning ordinance violations; Any premises, including, but not limited to, any building, sign or other structure set up, erected, constructed, altered, enlarged, converted, moved or maintained contrary to the provisions of the City's zoning

ordinance, as amended, and any use of premises, including, but not limited to, land or building, established, conducted, operated or maintained contrary to the provisions of the City's zoning ordinance, as amended, is declared a public nuisance. Any and all uses not expressly permitted in the City's zoning ordinance, as amended, are not permitted, and are declared a public nuisance.

Upon observation of the premises, the following additional violations were noted:

8.20.020 Nuisance vehicles; The accumulation and storage of abandoned, wrecked, dismantled, or inoperative vehicles or parts thereof on private or public property, not including highways, is found to create a condition tending to reduce the value of private property, to promote blight and deterioration, to invite plundering, to create fire hazards, to constitute an attractive nuisance creating a hazard to health and safety of minors, to create a harborage for rodents and insects and to be injurious to the health, safety and general welfare. Therefore, the presence of an abandoned, wrecked, dismantled or inoperative vehicle or part thereof, on private or public property not including highways, except as expressly hereinafter permitted is declared to constitute a public nuisance which may be abated as such in accordance with the provisions of this Chapter.

8.32.030 Refuse and Waste; *"Refuse and waste matter"* is defined for the purpose of this Chapter as unused or discarded matter or material; having no substantial market value, and which consists of such matter and material as rubbish refuse, debris, and matter of any kind, (including, but not limited to, rubble, asphalt, concrete, plaster, tile, rocks, bricks, soil, building materials, crates, cartons, containers, boxes, machinery or parts thereof, scrap metal and other pieces of metal, ferrous or nonferrous, furniture or parts thereof, trimmings from plants or trees, cans, bottles and barrels.) Refuse and waste matter as defined which by reason of its location and character is unsightly and interferes with the reasonable enjoyment of property by neighbors, detrimentally affects property values in the surrounding neighborhood or community, or which would materially hamper or interfere with the prevention or suppression of fire upon the premises is declared a public nuisance.

8.32.050 - Sewage on ground; It is declared a nuisance to permit any part of the contents of any privy, vault, cesspool, septic tank, water closet, urinal, pipe, sewer line, or any sewage, slop water or any other filthy water, matter or substance, to flow or discharge upon the ground or upon the surface of any premises, or in any public street or other public place.

8.32.110 Insect and Vermin; Any premises, including, but not limited to, any building, vacant lot, setback, yard, vehicle, or place, maintained in such a manner as to permit

the breeding or harboring therein or thereon of flies, bedbugs, cockroaches, black widow spiders, lice, fleas, termites or any other insects or vermin is declared a public nuisance.

8.32.180 Premises Maintenance; Maintenance of premises in such a condition so as to cause significant diminution in use, enjoyment, or value of adjacent premises; or in such a condition so as to be detrimental to the public health, safety, or general welfare; or in such a condition so out of harmony or conformity with the maintenance standard of adjacent premises as to cause substantial diminution of the enjoyment, use or property values of such adjacent premises is declared a public nuisance.

17.06.100F, Parking on yard prohibited; Rear yards shall not be used for off-street parking of vehicles.

8.32.210 - Salvage materials; Any lumber, junk, trash, debris, refuse, waste matter or other salvage materials visible from a public right-of-way or adjoining premises is declared a public nuisance.

Upon reinspection of the property by Code Enforcement, all issues with the exception of Building Code and Zoning Violations had been remedied.

In January 2021, Code Enforcement again observed construction at the property. Upon checking with Building and Safety, it was determined there was no active permit on file for the construction taking place. Code Enforcement issued a citation for 8.32.060 Building Code Violations and 8.32.070 Zoning Ordinance Violations on January 7, 2021.

Since the January 7, 2021, Code Enforcement continued citations as allowed per the Beaumont Municipal Code. On February 26, 2021, a formal stop work notice was posted at the property after scaffolding was observed installed at the property. Between February 26, 2021, and April 20, 2021, City staff had telephone and email communication with Mr. Iloputaife. City staff sent a letter to Mr. Iloputaife on March 19, 2021, providing a path to compliance. As of April 20, 2021, compliance has not been achieved. Pictures showing the progression of unpermitted work, a list of citations and City correspondence are included as attachments to this report.

Administrative Appeal Hearing

In accordance with BMC Section 1.17.120 - Appeal of administrative citation, an Administrative Hearing was noticed and scheduled for April 22, 2021. It should be noted the property owner invited the press, David Heiss from the Record Gazette, to this hearing. Mr. Iloputaife also included Mr. Heiss on his email correspondence with the

City. The Administrative Hearing was rescheduled due to the illness of a panelist, and ultimately heard on May 6, 2021. The Hearing Panel consisted of Elaine Morgan, Mandy Stephens and Allen McNabb. Hearing participants were provided with a hearing packet, consisting of a staff report and exhibits. (Attachment A). The property owner also submitted exhibits for consideration. (Attachment B)

After hearing all testimony and considering all exhibits, on May 25, 2021, the Hearing Panel issued its decision and order to abate public nuisance (Attachment C). The panel determined:

- a) that there is substantial evidence to support a finding that BMC Section 8.32.060 Building Code Violations and 8.32.070 Zoning Ordinance Violations were violated;
- b) that the property in question is a residentially zoned property, the second story rear terrace/balcony, second story dormer and any and all other unpermitted work shall be abated as a public nuisance pursuant to BMC Section 8.32.420;
- c) that the owners thereof shall abate such nuisance within 30 days hereof; or
- d) submit plans accurately reflecting the increased scope of work and containing all other requested information for completeness to the Building Department for plan check, unless the owners file a timely appeal of this decision in accordance with BMC Section 8.32.420.

Property Owners filed a timely notice of appeal to City Council on June 8, 2021, pursuant to BMC Section 8.32.495. The appeal packet submitted by the owners consisted of a Notice of Appeal, an Application for Appeal Hearing and a letter to City Manager, Todd Parton (Attachment D). The code requires the notice to state the objections of the person filing the notice. The property owners note the following on their Notice of Appeal:

1. Denial of a fair hearing,
2. No opportunity to confront important City staff, and
3. City manipulated hearing process creating "false narratives."

Property owners note the following in their Application for Appeal:

1. Denial of their request for a variance;
2. City sent "new" inspector, rather than prior inspectors;
3. Owner did not receive a "General Stop Work Notice" prior to February 26, 2021;
4. Owner never stopped work for 180 days; and

5. City is harassing and threatening owner.

Pursuant to BMC Section 8.32.495 the City shall set the matter for hearing “at the next regular City Council meeting at least 14 calendar days after the date of the mailing of the Notice of Hearing on the appeal.” The appeal, scheduled for July 20, 2021, complies with this code section.

Standard of Review

In reviewing property owner’s Appeal, the following standard, pursuant to BMC Section 8.32.495(C) of the City of Beaumont Municipal Code will govern:

- C. The hearing before the City Council shall be conducted in a manner consistent with the provisions of Sections 8.32.360 and 8.32.370.

§ 8.32.360 states:

The Nuisance Abatement Hearing Officer shall, at the scheduled time as specified in the notice of hearing to abate public nuisance, proceed to hear and consider any relevant testimony or evidence offered by the Fire Chief, Police Chief, Director, Health Officer, City Manager, other officials or employees of the City or other qualified witnesses, as well as the owner, a responsible person in charge and control of the affected premises, his representatives, a mortgagee or beneficiary under any trust deed, lessee, any other person having any estate or interest in such premises, or any other competent person who may be present and desire to testify, respecting:

- A. The condition of the affected premises,
- B. The estimated cost of abating the alleged nuisance by repair or removal, and
- C. Any other pertinent matters.

The Nuisance Abatement Hearing Officer may continue the hearing from time to time as it shall deem advisable.

§ 8.32.370 states:

The hearing shall be conducted formally, although the technical rules of evidence shall not apply, except that irrelevant and unduly repetitious evidence shall be excluded. All evidence taken shall be sworn evidence and the proceedings shall be recorded. During the course of the hearing, the Nuisance Abatement Hearing Officer may visit and inspect any premises involved in the proceeding.

When reviewing an appeal, the review authority may by written decision:

Affirm, reverse or modify, in whole or in part, any final decision or order of the Hearing Officer which is appealed from.

The written decision shall be issued within fourteen (14) calendar days of the close of the hearing.

The City Clerk shall serve the written resolution representing the decision of the City Council on the appeal on all interested parties in the same manner as set forth in Sections 8.32.310 through 8.32.330. The written resolution served shall contain a notice that judicial review, if desired, must be sought within 30 days after the date of posting on the subject premises a notice of the passage of the resolution declaring the nuisance to exist to contest the validity of any proceedings leading up to and including the adoption of the resolution; otherwise, all objections shall be deemed to have been waived.

Fiscal Impact:

There are approximately \$76k in unpaid fines associated with this property. The cost to prepare this staff report is approximately \$1,250. Cost recovery is typically handled through liens placed on the property.

Recommended Action:

Affirm Final Decision and Order to Abatement of Public Nuisance made by Administrative Hearing Panel and deny the appeal in Code Case 001038-2020.

Attachments:

- A. Hearing Panel Packet
 - a. Hearing Staff Report
 - b. Attachment A – Location Map
 - c. Attachment B – Photos
 - d. Attachment C – Citations as of 4/20/21
 - e. Attachment D – 9/10/19 Letter
 - f. Attachment E – 3/19/21 Letter
- B. Property Owner Exhibits
 - a. Photograph of handwritten note
 - b. Permit Inspection History Report (BP2017-00691)