

**Minutes
BOARD OF ADJUSTMENT
AUGUST 24, 2011**

The study session of the Board of Adjustment began at 5:30 p.m., in the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

Present:

Joe Arredondo
Chris Dodd
Jonathan Gillan
Dave Maza, Chair
Dr. Wallis Stemm
John Puzauskas
Jan Sell

Steve Abrahamson, Planning & Zoning Coordinator
Sherri Lesser, Senior Planner

Absent:

Christopher Diba

There were 5 citizen(s) at the study session.

Selection of the new Board Chair and Vice Chair appointments were made.

Chairman is Dave Maza.

Vice Chairman is Chris Dodd.

The Study Session adjourned at 5:50 p.m.

Present:

Joe Arredondo
Chris Dodd, Vice Chair
Jonathan Gillan
Dave Maza, Chair
Dr. Wallis Stemm
John Puzauskas
Jan Sell

Steve Abrahamson, Planning & Zoning Coordinator
Sherri Lesser, Senior Planner

Absent:

Christopher Diba

Minutes of the regular hearing of the Board of Adjustment, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

Number of Interested Citizen(s) Present: 20

Hearing convened at 6:00 p.m. and was called to order by Chairman Maza.

On a motion by Joe Arredondo, seconded by Dr. Wallis Stemm, the Board by a vote of 5-0 approved the Board of Adjustment Minutes for April 28, 2010.

(Jan Sell and David Maza abstained from this vote as they were not in attendance at the April 28, 2010 Board of Adjustment hearing.)

THE BOARD DISCUSSED THE FOLLOWING CASE(S):

- Appeal of the July 19, 2011 Hearing Officer's decision to deny the request by the **BROWN RESIDENCE (PL110239/VRA11001)** (Douglas Brown, applicant and property owner) located at 12244 South 71st Street, in the AG, Agricultural District for:

VAR11004 Variance to reduce the street side yard setback from 30 ft. to 0 ft. for a detached accessory building (garage). **MODIFIED BY APPLICANT**

Mr. Doug Brown was present to represent this case.

Sherri Lesser, staff planner, gave an overview of this case and noted that Mr. Brown's request for a variance to allow a street side yard setback from 30 ft. to 0 ft. for a detached garage was denied by the Hearing Officer on July 19, 2011. Mr. Brown has since modified his request to reduce the street side yard setback from 30 ft. to 10 ft. The proposed structure is approximately 2,910 s.f. in area and 14 ft. in height. Staff does not support the variance as proposed or modified but supports a reduction (20 ft. setback) consistent with ZDC use permit standard reductions allowed for a standard street side yard (not adjacent to a key lot). Since the appeal advertisement one (1) e-mail of opposition and 24 letters of support have been received.

Mr. Brown presented his modified request with several exhibits, including a location map indicating support and opposition of this request, and gave a history of the site. He explained that he felt that special circumstances applied to his one acre property due to the location of this residential property's proximity to Warner Road. This variance would allow him to maximize the use of his property for his enjoyment. He stated that since 1965 when the property was developed, the surrounding area had developed in a manner to establish special circumstances.

Mr. Brown indicated his plan to plant additional trees south of the block wall to enhance the sight line of the property once the building was erected and to shield the building itself. Ms. Lesser noted that it would be Mr.

Brown's responsibility to maintain these trees. Mr. Brown responded to questions from the Board as to the size and type of trees and his plan for watering/maintaining those trees.

Mr. Brown stated that this was the only location that he feels the structure can be accommodated on his property. He feels that he has adjusted his original plan to the bare minimum due to the thickness of the walls, building structure and related issues.

The following individuals spoke in support of this request, as modified by the applicant: Mr. David Scheatzle, Catherine Britt, Archer Shelton III, David Brown, Bob Hunt, Barbara Jane Shelton, Nancy Shelton, Darin Sender, Tom Brown, Joe Salvatore, Jack Hoffman, Linell Cady, Stephen Parady and Sharon Ashby. Reasons given for support were that Mr. Brown has done a wonderful job of developing his property, and that this request is a reasonable one to provide a buffer to Warner Road. They felt that the request was consistent with other residences in the area and would increase the value of properties in the area. The design as presented does not impact the health and safety of the area. The property is well maintained and enhances the neighborhood.

Ms. Barbara Shelton indicated that she represented the Tally Ho Neighborhood Association and that they were in support of this request.

Mr. John Hodgson spoke in opposition to this request. He stated his opinion that there was a legacy of agriculture in this neighborhood, and that Mr. Brown's request to have a 14 ft. high plain stucco wall that runs 100 ft. in length is aesthetically detrimental to the area. Mr. Hodgson noted that Mr. Brown was well aware of the requirements when he purchased this property. Mr. Hodgson stated that the setback variance requirements are there for a reason, and, while he sympathized with Mr. Brown, if this request is granted by the Board it will negate the purpose for the variance requirements. This neighborhood is a treasure, Mr. Hodgson stated, and this request will not enhance it. Mr. Brown has available alternatives with his property that can be utilized. This wall will look industrial in nature and he strongly opposes this request.

The present and future design components and intent were addressed by Jonathan Gillan and Mr. Brown responded that the original design was changed due to the denial by the Hearing Officer of the original setback request which would have allowed the garage to be part of the block wall structure. He was disappointed that he was unable to utilize the original design, however the current design is functional based on intent of garage usage.

The proposed trees were discussed and Board members addressed when the trees would mature and the initial appearance of the wall until they did mature.

Mr. Christopher Dodd noted that great projects should not be approved just because they are great projects and that, as an architect, Mr. Brown is perhaps better aware than most of limits imposed by building permits and the Zoning Code. He did not see where special circumstances applied.

Mr. Sell indicated that he felt that there were special circumstances due to the proximity of Warner Road. Joe Arredondo stated that no matter how far back the setback was set, the building structure would still be seen. He felt that the important issue was whether Mr. Brown's enjoyment of his property was being encroached upon due to lack of a variance.

Dr. Stemm noted that the Board needed to be aware of the surrounding properties and the aesthetics of the proposed project.

Mr. Maza addressed the sense of community that the City of Tempe enjoys and concessions that have been made for properties within the area.

Mr. Gillan noted that a lot of time and effort went into creating a well-developed Zoning Code that addressed issues of Tempe property and provided a guideline of what was acceptable.

Ms. Lesser noted that staff feels that a 20 ft. setback would be in line with what staff feels would be acceptable.

Board members discussed the criteria for approving this request and whether it would set a precedent for other properties in the area.

MOTION: Joe Arredondo made a motion to overturn the Hearing Officer's decision of July 19, 2011 and approve the appeal granting this variance as modified to allow a street side yard setback from 30 ft. to 10 ft. subject to the three (3) modified Conditions of Approval; Jonathan Gillan seconded the motion.

VOTE: Approved the appeal and granted VAR11004 as modified to allow a street side yard setback from 30 ft. to 10 ft. by a vote of 5 to 2.
(Dr. Wallis Stemm and Christopher Dodd dissented.)

DECISION:

The Board approved PL110239/VAR11001 as modified based on the following conditions:

1. Modify the street side yard setback to ~~twenty (20)~~ **ten (10) feet. MODIFIED BY BOARD**
2. Obtain all necessary clearances and permits from Building Safety and Engineering.
3. Trees to be planted in the Right-of-Way as proposed. ~~A maintenance agreement with the City of Tempe may be required to tree maintenance.~~ **MODIFIED BY STAFF**

MOTION: Joe Arredondo made a motion to adjourn this hearing; Jan Sell seconded the motion.

VOTE: Approved 7 – 0

The next Board of Adjustment hearing is scheduled for September 21, 2011.

There being no further business the hearing adjourned at 7:55 p.m.

Prepared by: Diane McGuire, Administrative Assistant II
Reviewed by:



Steve Abrahamson
Planning & Zoning Coordinator

SA:dm

APPROVED