

**Minutes
BOARD OF ADJUSTMENT
STUDY SESSION
JANUARY 23, 2013**

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:

Chris Dodd, Chair

Anthony Gallese

Jonathan Gillan

Richard Kausal

John Puzauskas

Jan Sell

Dr. Wallis Stemm, Vice Chair

Richard Dalton, Alternate

Steve Abrahamson, Planning & Zoning Coordinator

Sherri Lesser, Senior Planner

Julie Stennerson, Executive Assistant

Absent:

Number of Interested Citizens Present: 3

Meeting called to order: 5:36

Board members and staff introduced themselves.

Review of January 23, 2013 Agenda

Steve Abrahamson reviewed the meeting procedures and order.

The Board of Adjustment discussed the Ballard case. There was discussion regarding the Maple Ash Neighborhood Association. The Maple Ash Neighborhood Association is not a Home Owner's Association; they do not have Covenants, Conditions & Restrictions. Sherri Lesser answered technical questions as they applied to the Zoning and Development Code.

The Study Session adjourned at 5:54 p.m.

Prepared by: Julie Stennerson, Executive Assistant
Reviewed by:

A handwritten signature in blue ink that reads "Steve Abrahamson". The signature is written in a cursive style and is placed on a light green rectangular background.

Steve Abrahamson, Planning & Zoning Coordinator

SA:js

**Minutes
BOARD OF ADJUSTMENT
JANUARY 23, 2013**

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.

Present:

Chris Dodd, Chair

Anthony Gallese

Jonathan Gillan

Richard Kausal

John Puzauskas

Jan Sell

Dr. Wallis Stemm, Vice Chair

Steve Abrahamson, Planning & Zoning Coordinator

Sherri Lesser, Senior Planner

Julie Stennerson, Executive Assistant

Absent:

Richard Dalton, Alternate

Number of Interested Citizens Present: 6

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

On a motion by Board Member Sell, seconded by Board Member Kausal, the Board by a vote of 7-0 approved the Board of Adjustment Minutes for February 22, 2012.

THE BOARD DISCUSSED THE FOLLOWING CASE(S):

- Request appeal of the December 14, 2012, Zoning Administrator's Opinion to allow construction of a single family home for the **MARTINEZ RESIDENCE (PL120414)** located at 900 South Una Avenue. The appellant is Justin Martinez.

This case was removed from the agenda. The appellant would like to postpone the hearing until February.

- Request appeal of the December 18, 2012 Hearing Officer's decision to approve a variance to reduce the south side yard setback from 10 foot to 4 foot for a detached storage/tool shed for the **BALLARD RESIDENCE (PL120211)** located at 928 South Maple Avenue. The appellant is Karyn Gitlis and the Maple Ash Neighborhood Association.

STAFF REPORT: [BOAr_BallardResidence_012313.pdf](#)

Karyn Gillis, resident of 1206 South Ash Avenue was present to represent this case.

Ms. Gitlis has appealed a decision by the Hearing Officer for the City of Tempe regarding the storage shed at 928 South Maple Avenue. She is speaking as a representative of the Maple Ash Neighborhood Association. The neighborhood association is not a home owner's association. Participation is voluntary and there are no demands, rules or assessments. The neighborhood associations are supported by the City of Tempe and they work closely with the City of Tempe. Home owners and renters are represented and may participate. The neighborhood association covers approximately 50 acres including Maple, Ash, the west side of Mill Avenue and the north side of Hudson Lane. It includes about 190 properties. Counting back yard cottages and condo/apartment households there are roughly 330 households in the neighborhood. The neighborhood association was founded in October 1986. The neighborhood association has met without interruption 10 times each year, once a month excluding July and August. They have held 264 meetings. During the meetings they plan annual events, projects, potlucks, parties and elections. They review plans for development, redevelopment, new business proposals and requests for variances and use permits. There are currently 16 duly elected members on the neighborhood council. Meetings generally include 10 to 14 council members and guests. The meetings are publicized and open – all are welcome. They communicate through newsletters, hand-delivered flyers, a Facebook page, an email list and city neighborhood office mailings. The neighborhood association mission is: to preserve and enhance the historical and residential character of the neighborhood. The challenges include a high percentage of non-resident owners and pressure to tear down and redevelop at higher densities. During the most recent bid for neighborhood character preservation, the Maple Ash Neighborhood received letters of support from the owners of 60 properties, totaling 90-100 people, many of them resident owners. They received several dozen letters of support from renters. Ms. Gitlis recently completed six years' service as chairperson of the neighborhood association.

Switching topics to the shed: Ms. Gitlis asked since when is it standard operating procedure to build a shed in the front yard of a residential property? This is not in front of the house, but it is in the side yard at the front of the property. Do any of you live in a neighborhood that has a detached accessory structure in the front yard? How would you feel about a 9½ foot high shed in the front yard across the street from you? The rear of the structure is closer to the street than is the front porch of the house. Front-back (or east-west) separation from the house is such that the owner would be able to move the shed directly to the north by several feet so it would be out of the side yard setback and in conformance. Mr. Ballard said he would have to do this in the second Hearing Officer meeting if his variance was turned down. He wondered out loud whether neighbors would like to see a front shed blocking the front door or his sidewalk.

Once the shed at 928 South Maple was standing the issue came up at a neighborhood council meeting. Conjecture was that it had not been permitted and must be out of conformance. After following up with city staff they found out the shed was out of conformance. The shock was the rules have changed and the shed was only out of conformance because it was higher than 8½ feet and also encroaching on the side yard setback. Otherwise this shed would have been allowable under the new City of Tempe ordinance. Without notice, the old regulatory language has been replaced by new rules that allowed accessory structures that conformed to the front yard setback and height restrictions. Under the previous 808 Zoning Code, detached accessory structures had to be on the rear 50% of the property. This is not the first time zoning rules for developments have been changed in the neighborhood without notification.

Maple Ash is a neighborhood struggling to maintain standards and property values given the nonconforming nature of much of its historic platting, construction and existing deviation from modern code. Maintaining property value is also challenging given the high number of rental properties in the neighborhood.

The nonconforming conditions on many properties are an important point here. The Hearing Officer cited a precedence of nonconforming side setbacks in the neighborhood of detached accessory structures as a reason to approve this variance. One could use that argument to approve nearly any construction in the neighborhood. The circumstance is bound to exist elsewhere in the neighborhood. In fairness it is not known how the nonconformities came to be.

After walking through Maple Ash between 9th Street to 11th Street with another neighborhood councilmember last week it was determined that:

1. It was difficult to determine where the lot lines were and therefore what might be encroaching.
2. Within the area covered there were only two free-standing accessory structures potentially in side yard setbacks. Both of these accessory structures were to the rear of the house. They were not in the front or side yard.

928 South Maple is one of the most non-conforming properties in the neighborhood. There were some obscene additions done to the property in 2004. On the west side of the 900 block of Maple the properties are typically 50 feet wide. The 928 property is 75 feet wide. The house to the south, 934 South Maple is on a lot that is 25 feet wide. This house is very small. In 2004 the owner of 928 South Maple requested and received variances to build an addition into the side and back setbacks. The two-story house addition is massive. At that time a stucco wall was built around the front and sides of the property with an opening aligned with the front door. The shed is close to this wall and rises above it. The front setbacks on the block are shallow, from the street the appearance of this house is over massed, especially given the small house to the south. The porch is close to the small house to the south, and the gable of the shed is actually higher than the house to the south. The property is visually aberrant.

The circumstances described constitute a special circumstance of this property. A special circumstance that indicates denial of additional structure including this shed at the front of the property. There is no denial of any rights to this owner by denying this request although the conditions on the site are not of Mr. Ballard's making. There are 4,000-5,000 square feet of structure on the property. Surely Mr. Ballard has a place to put his garden tools. This house has a lot of circumstances which mitigate against any additional lot coverage. This shed and the visual presentation of the property detract from the value of the properties around it and contribute to an anything-goes characteristic in this neighborhood. The Maple Ash Neighborhood Association asks the Board of Adjustment to deny this variance.

Chair Dodd stated the Board of Adjustment cannot do anything to change the Zoning Code. The Code would need to be addressed with the City Council and sub-committees. The Board of Adjustment would have to look at what is in place for the hearing tonight.

Board member Kausal asked Ms. Gitlis how she came about a decision that the Maple Ash Neighborhood Association (MANA) is opposed to the storage shed.

Ms. Gitlis stated they have a vote of those board members present at the neighborhood meeting. There are typically 10-14 people at the meeting. The majority would take the vote. In this case there was consensus that a shed is not a front yard application. The owner inadvertently built the shed in the side yard setback. Because of the height of the shed a variance is required.

Board member Kausal asked if the consensus is the official position of MANA to oppose the shed.

Ms. Gitlis indicated there was a consensus by MANA and a letter was written to that effect.

Board member Puzauskas stated if the shed was moved to the north 6 feet it would have the required side yard setback. Wouldn't the shed still be visible from Maple?

Ms. Gitlis stated the visual appearance would be worse because it would be in the middle of the house.

Board member Puzauskas asked Ms. Gitlis if she would agree to this if the homeowner would move the shed.

Ms. Gitlis stated No, she would not like to see that.

Board member Puzauskas indicated that would be an acceptable option. He stated Ms. Gitlis mentioned this property is unique and it has so many buildings Mr. Ballard should have ample locations to store his tools and equipment and he doesn't necessarily need the shed. He asked Ms. Gitlis if she is suggesting the shed should not be there.

Ms. Gitlis stated she would like to see the shed torn down or moved to the back of the property.

Vice Chair Stemm asked if the 28 people that signed Mr. Ballard's petition in consensus with the variance were members of the Maple Ash Neighborhood Association.

Ms. Gitlis stated they are members of the neighborhood association. Everyone who lives in the neighborhood or owns property in the neighborhood is a member. Ms. Gitlis indicated the people Mr. Ballard got signatures from are all renters. The addresses outside the neighborhood would not be members of the neighborhood association.

Mitchell Ballard, homeowner of 928 South Maple Avenue was present to represent this case.

Mr. Ballard stated he appreciates the character of the neighborhood. He objects to many things that were just said. Many of the comments were not part of the issue. He noted the specific parts of the Zoning Code that apply to the side yard setback and the R-3 Multi-Family Housing District. This is his first home; he saw a need for storage and addressed it. He had help with the storage shed from an experienced builder. There is no concrete in the structure. He could move the structure but it would cause problems with ingress and egress. Mr. Ballard shared a letter from a paramedic in support of the location of the storage shed. Mr. Ballard indicated most of the remarks from Ms. Gitlis were not about the side yard setback. He has received nothing but compliments from virtually everyone else including his immediate neighbors. The signatures obtained on the petition of support were from knocking on doors on Maple and the surrounding area. The structure was built to match the house. Mr. Ballard was not invited to the Maple Ash Neighborhood meeting. He asked a few other neighbors about the meeting as well and they were not aware of it either. Mr. Ballard displayed a drawing of his neighborhood showing other sheds in violation of the side yard setback. He would like to have the same property rights as others in the neighborhood. Mr. Ballard had a letter of support from his next door neighbor. It would be very expensive and it would cause damage to relocate the shed.

Board member Kausal asked Mr. Ballard if it occurred to him that there might have been any rules or regulations that he might have been violating while he and the experienced builder constructed the storage shed.

Mr. Ballard stated he was relying on the experience of his friend. He was concerned about building everything to code and checked to see if permits were necessary. The side yard setback did not cross his mind since he had seen other sheds in the neighborhood closer to the side yard than his. When he received the violation notice there was confusion regarding the applicable section of the Zoning Code. His house is a single family home. He did not realize his house was located in a Multi-Family Zoning District.

Chair Dodd asked Ms. Lesser to explain the sections of the Zoning Code that Mr. Ballard provided the Board and if Section 3-401 of the code is for a single or multi-family standard.

Ms. Lesser stated Section 3-401 of the Zoning Code is for a Single Family Standard District. The Zoning Code does not specifically mention Multi-Family, but you infer that if it is not mentioned then it is not allowed. The provision in the table is referring the allowance for structures under 8 feet in height, and fewer than 200 square feet. If the structure is over 8 feet in height the District setback must be met, which is 10 feet. This information is not clearly stated in the Zoning Code.

Chair Dodd asked if Mr. Ballard's house is a single family or multi-family home.

Mr. Ballard stated he has roommates, but the house is a single family home.

Board member Puzauskas asked if Section 3-401 of the Zoning Code item C, 2. Setback applied.

Ms. Lesser stated this is a single family use in a multi-family district. The Code states the provision is for accessory buildings.

Board member Puzauskas asked if this section of the code is irrelevant.

Ms. Lesser stated this section of the code is referenced but unclear.

Chair Dodd asked if this is a Multi-Family District.

Ms. Lesser stated Mr. Ballard's home is a Single Family dwelling in a Multi-Family District. The standards would be the same as a Multi-Family District. Historically prior to the adoption of this code the City has had prior interpretations that did not carry forward. If you were a single family resident within a multi-family district you could enjoy the benefits of the single family. When the code was adopted those sort of compromises have created a lot of confusion. Several structures were built at the single family 5 foot setback; the multi-family setback is 10 foot.

Chair Dodd asked if there was intent in the new Zoning Code to eliminate the 5 foot setback.

Ms. Lesser indicated it was just a policy of past administration to allow the exception. Historically this district has variance setbacks because of the historic nature. There are a lot of single family residences located on multi-family lots.

Chair Dodd asked what the policy is today.

Ms. Lesser stated the policy is a 10 foot setback if the structure is over 8 feet in height. When the Zoning Code was adopted extensive research was done on granted variances during the prior 10 years. There were a significant number of variances requested to encroach in the front half of the lot. Typically people like to put their sheds on the side of the house. The ordinance was changed but unfortunately the standard may not work in this neighborhood.

Board member Kausal asked Mr. Ballard if it would be acceptable to bring the height of the shed down to 8 feet to make it less visible from the street.

Mr. Ballard stated it would do unimaginable damage. The wall in front of the shed is 6 foot high. He has agreed to plant another tree in front of the shed. He would also like to include vines in his landscaping. Most of the trees in the front yard obscure the view unless you are directly in front of the storage shed. If the shed is moved over it would look awful, it would cause problems for safety and it would be an inconvenience for anyone living in the house. Due to parking regulation the garage is needed for parking. In this neighborhood only one visitor pass per house is issued for street parking.

Board member Gillan asked Mr. Ballard how the inside of the storage shed was finished.

Mr. Ballard stated the inside of the shed has not been completed due to the violation issued. Currently the inside of the shed consists of carpeting and stucco paper. He plans to add sheetrock and shelves.

Board member Gillan asked the height of the ceiling in the shed from the floor to the bottom of the truss.

Mr. Ballard stated it is about 7 feet.

Board member Gillan asked Mr. Ballard if he has talked to a contractor or his friend about lowering the roof.

Mr. Ballard stated he has and it is not a feasible option. If the shed was lowered one foot he would be well within his rights. Moving the shed over would be dangerous and it would ruin the yard. Building the shed was a tremendous expense and he does not have the funds to make any changes.

Chair Dodd stated he works for the law firm of Ballard Spahr. There is no relation to Mr. Ballard.

Vice Chair Stemm asked Mr. Ballard if he checked on the requirement before building his shed.

Mr. Ballard stated he did not check into the requirements until he received his violation notice.

Vice Chair Stemm asked how long the storage shed was under construction.

Mr. Ballard stated he considered building the shed for about a year. He did not want his tools exposed to the elements. He and his friend built the shed in about a two week period in February of 2012. It took an additional

week to stucco and paint the shed. He received the violation notice in April of 2012. Mr. Ballard checked the code specifications and it seemed for a temporary structure a permit was not needed. He did not realize a side yard setback would be an issue given the surroundings of the house and the precedence in the neighborhood.

Chair Dodd asked Mr. Ballard how many of the accessory buildings shown on his map throughout the neighborhood were front yard accessory buildings.

Mr. Ballard stated there are two on his block. He never considered it front yard given that it was behind the front yard setback and behind a wall that was built before he bought the property.

Vice Chair Stemm asked if the other structures in the neighborhood were portable structures.

Mr. Ballard indicated they looked permanent, he was not sure.

Chair Dodd opened the hearing to public input.

Virginia Sandstedt, resident of 1117 South Ash Avenue spoke in opposition of the storage shed. She feels Ms. Gitlis did a good job presenting the case. Variances have been requested and granted to increase the mass on this lot. This lot is out of character with the rest of the neighborhood.

Shane Sylvester, resident of 934 South Maple Avenue spoke in favor of the storage shed. He is Mr. Ballard's next door neighbor. He and his wife have owned the property since 2002. He respects keeping the historical integrity of the neighborhood. The storage shed is located next to the side wall of his property. The storage shed is not that big of a deal. The wall blocks the view of the storage shed and it is not an eyesore. If you walk down the alley there are so many worse looking structures that are rusted and dilapidated. Mr. Ballard's structure blends in and matches the house.

Chair Dodd closed the hearing to public input.

Ms. Gitlis returned to address concerns. She wanted to apologize for her misstatement of where the shed is in relation to the front porch. She appreciates what Mr. Ballard is doing in terms of his desire to be a good neighbor and participate. She is very sorry for his troubles. It would be desirable to have the height of the shed lowered so it could not be seen from the street.

Vice Chair Stemm indicated that viewing the shed from the street really bothers Ms. Gitlis. She noticed that the Hearing Officer recommended some landscaping. She asked Ms. Gitlis if the same goal would be achieved with the completed landscaping.

Ms. Gitlis stated the massing is still there. She does not think landscaping would do the same as lowering the height.

Chair Dodd stated this is an unfortunate case because we have a homeowner who has done a lot of good things with his house. It looks really nice and he has a bit of an appealing argument. You cannot do good things to make your house look nice and disregard other requirements of the code. Mr. Ballard had access to resources. The blame is on the homeowner. Is the remedy to reduce the shed to 8 feet or is it a better remedy to put in appropriate landscape?

Board member Gillan made a motion to approve the appeal.

Chair Dodd clarified that would overturn the Hearing Officer's decision, and deny the variance.

Board member Kausal seconded the motion.

Board member Puzauskas stated besides the landscape option or lowering of the structure there is a third option. The third option would be to move the building. This would be a more reasonable option, but it would block the walkway.

Chair Gallese stated the board needs to decide if they want to uphold the variance or deny it. The Zoning Code is confusing. Mr. Ballard did not know he was going against the Code. He also has neighborhood support.

Chair Dodd stated as part of the decision of the Hearing Officer the approval of the variance did include landscape. The Board needs to focus on approving or denying the appeal.

Board member Sell agrees with the Homeowner's Association. The property is overbuilt. That is not the issue here. Lowering the roof of the storage shed would be absurd, it would be costly and destroy the building. Moving the building to the north does not make practical or logical sense either. The Hearing Officer's idea to screen the shed with landscaping would be the best option. Technically the shed is in the side yard, not the front yard. He would vote against the motion as it stands. He would vote to uphold the Hearing Officer's decision.

Vice Chair Stemm stated Mr. Ballard's diligence was somewhat misguided and wasn't completed. She believes his intentions were to make this as aesthetically pleasing as possible and match the overall building flow. Landscaping would make a significant improvement creating a visual barrier. She would uphold the Hearing Officer's decision and vote against the motion.

Board member Kausal believes a flat roof should be on the shed.

Board member Gillan stated no one likes to undo the work that they have done. Nobody likes to undo stucco, cut through stucco, redo framing, but it happens every day in the construction world. A mistake was made and the way to fix it would be to remove the roof, lower the trusses and put the roof back on.

Board member Puzauskas indicated the argument seems to be the amount of building structure on the site. No matter what is done to mitigate this it is still the issue. You can lower the roof or move the building but it is still another structure on the site which is another issue. A lot of work has been done here to make this storage shed blend in with the neighborhood. There have been a few mistakes technically. With some landscaping the mistakes can be mitigated pretty well. He is going to agree with the Hearing Officer's decision.

Board member Gillan stated everything the Board of Adjustment does sets precedence. A mistake was made, construction was done the right intent was there. This opens up the door asking for forgiveness instead of permission.

Chair Dodd stated the issue before the board is whether this shed is in compliance with the code, not whether this lot is overbuilt.

Vice Chair Stemm stated it is part of the benefits of being a resident of any city to be able to go before the Hearing Officer and the Commission to request a variance to different types of nuances. In this case they have uncovered a lot of nuances in this code, the policies and interpretations. She feels that Mr. Ballard fell in his diligence in checking more thoroughly and meeting with the City. It's not just asking for forgiveness Mr. Ballard is trying to comply in some way and the Board should consider those things when looking at the overall picture.

Board member Gallese indicated the complaint is really about any opposition to this shed, not the Zoning Code requirements.

Chair Dodd brought up a counterpoint. What if the neighbor four houses down built a great big shed without a permit that is an eyesore? He could come in and say my neighbor built one. Under a different fact pattern the board might be more offended. How would the Board tell that homeowner that this violation is worse? It's either a violation or it's not.

Board member Sell asked how far north the shed would have to be moved to be in compliance.

Ms. Lesser stated the shed would have to be moved six feet to the north.

Board member Sell asked how high the shed could be if it was moved.

Ms. Lesser stated the shed could be up to 30 feet in height.

Chair Dodd noted he is struggling with the logic of some of the remedial action.

Vice Chair Stemm asked if the shed would be more aesthetically pleasing if it was moved six foot to the north.

Board member Kausal noted if the shed was moved it would not be in violation.

Board member Sell stated from a practical standpoint Mr. Ballard could move the shed over six feet and go up 20 feet and it would be more objectionable to the neighborhood.

Chair Dodd indicated practical and logical are not always considerations when evaluating compliance with the code.

Mr. Abrahamson asked the Board if they were going to approve the appeal or deny the appeal. The variance exists at this point in time.

MOTION: Board member Gillan made a motion to approve the appeal which overturns the Hearing Officer's decision to grant the variance; Board member Kausal seconded the motion.

VOTE: The motion did not pass.
Denied the appeal and upheld the December 18, 2012 Hearing Officer's decision.
Vote 4-3 (Board member Galtese, Puzauskas, Sell and Vice Chair Stemm denied the appeal)

DECISION: The Board denied the appeal and upheld the December 18, 2012 Hearing Officer's decision to approve the variance for PL120211/VAR12009.

The next Board of Adjustment hearing is scheduled for February 27, 2013.

There being no further business the hearing adjourned at 7:20 p.m.

Prepared by: Julie Stennerson, Executive Assistant
Reviewed by:



Steve Abrahamson, Planning & Zoning Coordinator

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