

## Minutes of the Board of Adjustment STUDY SESSION June 21, 2023

Minutes of the Study Session of the Board of Adjustment, of the City of Tempe, which was held in Council Chambers  
31 East Fifth Street, Tempe, Arizona

**Present:**

**Staff:**

Board Member John 'Jack' Confer	Jeff Tamulevich, Community Development Director
Board Member Richard Watson	Ryan Levesque, Comm. Development Deputy Director
Board Member Raun Keagy	Steve Abrahamson, Principal Planner
Board Member Kevin Morrow	Jennifer Daniels, Administrative Assistant II
Board Member Kaelee Palmer	

Meeting convened at 5:40 p.m. and was called to order by Staff Mr. Steve Abrahamson

Mr. Steve Abrahamson explained to the board how an appeal vote should work for tonight's agenda item. Tonight's item is an administrative appeal. If the board chooses to approve the appeal it overturns the Zoning Administrator's decision. If the board finds themselves in a negative vote the motion would need to be turned around to deny the appeal so that it is an affirmative vote.

Mr. Abrahamson stated that at this point there is no agenda items for the BOA Meeting on July 19, 2023. Mr. Abrahamson introduced Mr. Chris Jasper, the Planning Department's new Senior Planner. Mr. Jasper comes to Tempe from Peoria.

Vice Chair Confer asked Mr. Abrahamson if the Board is reviewing a building permit denial? Mr. Abrahamson stated no. Staff Mr. Ryan Levesque explained that it is a group home application. Part of the building permit application is reviewed for zoning clearance, the separation requirement for regulations that are found in the Zoning Development Code. The second step is then to proceed with a permit of inspection for the occupancy of the use. This particular group home was identified because they were not in compliance with the number of allowed residents. The site met the separation requirements but not the requested number of occupants.

Board Member Keagy asked Mr. Abrahamson what authority the board has regarding abatement appeals. Is the board strictly limited to upholding or overturning the Hearing Officers decision? There has been discussion from long time board members stating that the Board can possibly make changes to timeframes or those types of things. Board Member Keagy asked if the board can have a briefing on exactly what the board's ability is and what decisions can be made as it relates to abate appeals. Mr. Abrahamson asked for a specific example. Board Member Keagy stated that he was not part of the discussion, and it was before his time on the board. Vice Chair Confer stated that it was him that brought up the example in a previous BOA meeting. Board Member Keagy stated that it was his understanding the Board members were not to modify changes and just to uphold or overturn the Hearing Officer's decision. Chair Watson stated that there was a case in the past where the appellant had junk in the back yard, and they were given 3 months to get that resolved. As a board it was discussed that given the appellants circumstances and the progress, she had made the Board agreed on giving the appellant 6 months, not the 3 months. Staff Mr. Jeff Tamulevich spoke with the board members to explain what their role is on abatement appeal cases. Mr. Tamulevich stated that as a board member when they have an abatement appeal come before them, they are to base all information on the information that was provided to the Hearing Office at the time of the abatement. You are making

a decision on whether that Hearing Officer made the correct decision on that particular case. Mr. Tamulevich stated that there is not much else the board members can do with respect to modifying conditions. This is the information that has been provided to Community Development in the past from the city attorney's office. Vice Chair Confer asked Mr. Tamulevich about the record that should be provided to the Board members. Vice Chair Confer stated that the Board is not given access to a recorded testimony from the appellant. Vice Chair Confer asked how do we make a decision without all of the records? Mr. Tamulevich stated that the Board members should receive all of the same information that the Hearing Officer received at the time of the abatement hearing. This is to include photos, report and everything. Vice Chair Confer speaks about a case in the past (inaudible). Vice Chair Confer states the Board does have the authority to put parameters or a timeframe on the decision, correct? Mr. Tamulevich asked Mr. Confer if there were cases in the past where the Board issued other conditions with the decision. Vice Chair Confer stated yes. Mr. Tamulevich asked Staff Mr. Ryan Levesque if he recalled the cases Vice Chair Confer is speaking of. Mr. Levesque (inaudible). Vice Chair Confer asked if the Board could have some refreshing on what their duties are since there are new Board members. Board member Morrow stated that the case in January was an abatement appeal and the Hearing Officer's hearing has a recording on You Tube. Mr. Tamulevich stated that all meetings are televised. Chair Watson stated that going forward the board needs to follow the letter of the law where they are approving or denying the Hearing Officer's decision. Mr. Tamulevich stated that he will provide the Board with some follow up after speaking with the City attorney's office to verify that if the Board cannot modify conditions or make extensions that is 100% accurate. Board Member Keagy asked if one additional option would be to allow a continuance of the case to a date certain? Can the Board initiate that continuance? Or does the request of continuance have to come from the applicant? Mr. Tamulevich stated that he believed any Board/Commission or applicant could continue a case, but it depends on what you are basing that information on would be the question. These are code cases that include violations that must be kept in mind. Mr. Tamulevich stated that he will come back to the next BOA Meeting with more information for the board members.

Hearing adjourned at 5:56 p.m.

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Prepared by: Jennifer Daniels, Administrative Assistant II  
Reviewed by: Steve Abrahamson, Principal Planner