

Minutes of the Board of Adjustment STUDY SESSION July 19, 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:

Chair Richard Watson	Jeff Tamulevich, Community Development Director
Vice Chair John 'Jack' Confer	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	
Board Member Rickey Lynn Gans	
Board Member Robert Miller (Alt)	

Meeting convened at 5:40 p.m. and was called to order by Chair Watson.

Chair Watson asked the Board if there were any questions about tonight's agenda item.

Board Member Miller asked about the specific statute the appellant is sighting. It appears it requires an aggrieved party. The aggrieved party must be disabled. The appellant is a corporation. The aggrieved party is hypothetical residents that don't reside in the facility because it is they are not licensed to allow that number. Board Miller stated that he is not sure if it is the appropriate statute to be coming it.

Staff Mr. Ryan Levesque stated that comment might be more appropriate for the applicant to respond to during the hearing process.

Board Member Morrow asked Mr. Levesque what is an alternative way for the applicant is to have 10 residents, other than this statute? Would it be a rezoning? A change in building code? Mr. Levesque stated that other option would be a variance to waive the requirement to comply with the maximum number of residents in a group home.

Board Member Miller asked if the facility is currently listed as R3? Mr. Levesque stated that is correct. Board Member Miller asked if it could be rezoned to R4. Mr. Levesque stated that R3 is a building code and not a zoning district. R3 to R4 just has different building code standard requirements. Board Member Miller stated that if the applicant said the building was R4 and meets the safety code requirements he could have 10 residents, correct? Mr. Levesque state that if the Planning Department did not have jurisdiction in this manor, then a R4 category could be sought by Building and Safety through a building permit request. Our current zoning code restricts the ability to have more than 5 residents in a group home.

Board Member Gans stated the conversation should be held until the actual hearing. Mr. Levesque stated he agrees.

Chair Watson asked if there were any questions on last months meeting minutes. No questions from the Board.

Mr. Levesque updated the Board on conditions of approval and past litigations cases. Mr. Levesque stated that after consulting with the City Attorney's Office in regard to adding conditions of approval as it relates to an appeal, it is noted in the Zoning Development Code, Section 6-802 about the appeal process and criteria. Any appeal granted may be subject to

such conditions as the decision-making body deems applicable. It gives you the authority to add conditions, but it's conditions when granting an appeal. In the case where you have an abatement where the appeal is requesting to overturn the Hearing Officers decision you do not have the granting of the appeal. The process itself, the ability for an applicant to file an appeal or to challenge that decision does give that applicant more time to resolve the issue or address the issue. During that time the City works with the applicant to see if the issues were resolved, and the abatement can be pulled.

Chair Watson asked where in the past the Board executed by approving the appeal with conditions would be invalid as of now. Mr. Levesque state that is the concern of staff identifying or adding a condition to an appeal that is not overturning the decision.

Board Member Palmer asked in the circumstance of abatement that typically relates to city code, the nuisance ordinance. In Section 6 of the Zoning Ordinance would that still pertain to appeals for nuisance complaints or is that appeals? Mr. Levesque stated abatement appeals only.

Vice Chair Confer asked as a Board looking at appeals how do we take that direction from the same staff that we are reviewing the appeal for? The Board is reviewing a decision that staff made on an appeal and the same staff is giving advice on what the Board can and can not do. Board Member Palmer stated that the abatements come from the Hearing Officer. Vice Chair Confer stated that it is a Hearing Officer decision based on staff's recommendation.

Mr. Levesque stated that there may be a scenario where the Board will need to ask for a continuance for the case and not act on it. There may be missing information or information that needs to be gathered for the next meeting, that's an example of where a continuance would be appropriate.

Mr. Levesque updated the Board on prior litigations pertaining to Board of Adjustment actions regarding Image Productions and Moon Shadow.

Hearing adjourned at 5:58 p.m.

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