

**Minutes
BOARD OF ADJUSTMENT
AUGUST 28, 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:

John Puzauskas – Acting Chair
Anthony Gallese
Richard Kausal
Richard Dalton, Alternate

Steve Abrahamson, Planning & Zoning Coordinator
Sherri Lesser, Senior Planner
Julie Stennerson, Executive Assistant

Absent:

Chris Dodd, Chair
Jan Sell
Dr. Wallis Stemm, Vice Chair

Number of Interested Citizens Present: 2

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

On a motion by Chairman Puzauskas, seconded by Board Member Kausal, the Board by a vote of 4 – 0 approved the Board of Adjustment Minutes for January 23, 2013.

THE BOARD DISCUSSED THE FOLLOWING CASE(S):

- Request appeal of the June 18, 2013 Hearing Officer's decision to deny a Variance to reduce the side yard setback from 15 foot to 8 foot – 6 inches for a new garage and a second story addition for the **WATSON RESIDENCE (PL130184)** located at 6231 South Rita Lane. The appellant is Richard Watson.

STAFF REPORT: [BOAr WatsonResidence_082813.pdf](#)

Richard Watson was present to represent this case.

Sherri Lesser introduced the case. Ms. Lesser clarified the Use Permit for the second story addition was approved by the Hearing Officer. The Board of Adjustment will be discussing the Variance to reduce the side yard setback for a new garage. The homeowner is appealing the Hearing Officer's decision to deny the Variance. The property is

located north of Guadalupe Road, east of Rural Road adjacent to Marcos de Niza High School in the R1-15, Single Family Residence. The property is located in a cul-de-sac lot that backs up to the High School. Staff recommended approval of the Variance at the Hearing Officer meeting. The lot is an irregular shaped lot and the house does not sit squarely on the lot. Staff is not making a recommendation regarding the appeal. The decision is up to the discretion of the Board of Adjustment. Staff has not received any additional input besides the information received at the Hearing Officer meeting in support of the Variance.

Mr. Watson stated he went through the process with the Hearing Officer and his Variance was denied. He feels by not getting the Variance he is denied the property rights his neighbors are able to enjoy. He noted four other homes in his neighborhood in his letter of appeal. Two of the homes were granted less of a Variance than he is requesting and two of the homes were granted a greater Variance. His home sits irregularly across the lot. He would like to build an addition to his existing three car garage. Mr. Watson would like to change the orientation of the garage and add two additional stalls. He was asked during the Hearing Officer meeting if he could use smaller garage doors. The standard opening for a garage is 16 foot. There are 14 foot garage doors available, but that would allow very little space between the vehicles once parked in the garage.

Mr. Watson stated the property behind his lot is the football stadium for Marcos de Niza High School. There is a 14-15 foot hedge/buffer between his property and the bleachers. He is keeping the 15 foot setback in the back of his property. The Variance is for the side setback of the house. The neighbor located near the proposed garage addition does not have any windows on that side of the house. The garage would not be encroaching into the neighbor's viewable space. The garage would not have any windows on the side near the neighbor. Mr. Watson wants to respect the privacy of his neighbor. The Agricultural lots on Guadalupe Road are zoned R1-5, which allows for a 5 foot Variance on the sides. If the high school was sold for development, homes could be built on the property with a 5 foot side clearance.

Board member Kausal asked Mr. Watson if he knew the distance from the property line to his neighbor's house south of his property. He stated it did not look like 15 feet.

Mr. Watson believed the distance from the property line to the neighbor's house was 12 feet. He did measure the distance, but was unsure at this time.

Chair Puzauskas stated Mr. Watson went through a lot of work planning the proposed structure. He asked Mr. Watson if he had a back-up plan if the Variance is denied.

Mr. Watson stated he has had some thoughts. He is not going to get upset and move away from Tempe. He has invested and put a lot of work into his house. He purchased his house in 1999. The home was built in 1977 and had not previously been updated. He has made several improvements to his home and the garage addition is a continuation of the improvements. Mr. Watson stated he could make adjustments to the proposed garage but the adjustments would not fully accommodate his needs. The purpose of the garage is to move all of his cars inside to keep them protected.

Chair Puzauskas asked Mr. Watson if he could work with less of a setback. He realizes the garage was designed for an 8'-6" setback.

Mr. Watson stated his design would not work with less of a setback. His design actually requires a 9 foot setback. The additional 6 inches is for a buffer. He is asking for the 8 ½ foot setback for assurance if something is not measured property during construction.

Board member Gallese asked Ms. Lesser about the community input during the Hearing Officer meeting.

Ms. Lesser stated there was support from Mr. Watson's neighbor, Mr. Felty. Mr. Felty lives across the street from Mr. Watson.

Mr. Watson stated he has support from the neighbor on the other side of his house as well.

Board member Kausal asked if the house directly to the south is in foreclosure.

Mr. Watson stated the house was in foreclosure. The new owners just moved in two weeks ago.

Board member Kausal asked Mr. Watson if he has had any conversation with the new owners.

Mr. Watson indicated he did inform the new neighbor of his proposed addition. He did not plead his case.

Chair Puzauskas asked Mr. Watson about the location of the air conditioners he did not want to relocate.

Mr. Watson stated the air conditioners are located behind the area proposed for the new garage addition. If the air conditioners are relocated the center section of the garage could be moved farther back. Moving the air conditioners and shifting the garage structure would still require a setback. Shifting the garage farther back would encroach into the back property line setback.

Mr. Kausal asked Mr. Watson if a 12 foot setback would help at all.

Mr. Watson stated 12 feet would allow him to add a 1 ½ car garage, not a 2 car garage. If a car is 6 feet wide, 3 ½ foot is essentially ½ a car. He can make it work, but it is not ideal and it does not accommodate his needs.

Mr. Dalton stated Mr. Watson's letter states other Variances have been granted in the neighborhood for setbacks of 7', 7'6", 9'6" and 10' respectively to the property line. The Hearing Officer and Staff response was that Codes were less stringent in the 70s than they are today. Mr. Dalton asked staff if there is any knowledge on any case or any setback request in this neighborhood that has been denied.

Ms. Lesser stated in her research of that area there were no cases denied of Variances.

Mr. Watson asked the board for their support. He stated he would really like to improve and invest in his property. He likes his neighborhood and would like to stay in this neighborhood.

Mr. Abrahamson stated with only four board members present this is the minimal quorum. Any approval or denial for consistency requires a unanimous decision.

Chair Puzauskas asked staff if the case could be continued until a full board could be in attendance.

Ms. Lesser stated a continuance is an option. The Board can approve, deny or continue the case.

Board member Kausal stated he would like to approve the Variance but is concerned as to where you draw the line. There are examples of other Variances that exist in the neighborhood. The Board does not know how they came about. At what point do the Variances set precedence? If there are 100% of the properties in your neighborhood in violation, what good is the Zoning Code? He stated his concerns allowing this to go forward based on principal. He feels as if the Zoning itself is inappropriate for the area. The lots in the neighborhood are large. Setbacks of 15 feet are not standard in other neighborhoods. Board member Kausal has mixed feelings regarding the Variance.

Board member Dalton shared his commitment to principal. As board member Kausal stated there are other neighborhoods where the setbacks are a lot less than 15 feet. There are other examples in this neighborhood where the setbacks are also less. He does not feel it is fair to make an example of the setback principal at the expense of the Watsons. He believes their intent is pure and Mr. Watson does have a commitment to the neighborhood. The request for the garage addition looks reasonable. The fundamental spirit of a board like this is to take something that is in question and interpret the code. The idea is to take the interest of everyone involved. The request is not detrimental to others in the neighborhood. While sharing commitment to the principal it is not prudent to make that statement at the expense of the Watsons.

Board member Gallese agreed with board member Dalton. There are similar existing Variances in this neighborhood, with no record of denials. Staff recommended approval of the Variance when it went before the Hearing Officer. Mr. Watson has support from his neighbors. Staff has not received any opposition from the neighbors regarding the request of the Variance. Board member Gallese would recommend approval of the Variance.

Chair Puzauskas agreed with all of the board members. Variances have been given in the neighborhood. It is difficult to decide what a hardship is. The Hearing Officer made a point stating she couldn't understand how this situation was a hardship. This request did not meet the hardship test according to the Hearing Officer. This is probably why the Variance was denied. The neighborhood has supported the request for a Variance without any objection. The plans are very well designed. This is probably a good addition for the neighborhood. Chair Puzauskas stated his concern as to where you draw the line for setbacks. He stated this is a tough decision.

Board member Dalton agreed with Chair Puzauskas. He stated the setbacks need to be looked at by an individual case by case basis, and applying the broad scope of what a judiciary board is supposed to do. He agrees there may not be an undue hardship against the Watsons if this is denied. On the other hand, he does not see an undue hardship against the neighborhood or the City if the Variance is approved. He sees this as an ancillary benefit that would beautify the neighborhood and increase value of the home. It will also give the homeowner a sense of commitment to the community. Board member Dalton sees no reason to proceed in any other way but to approve the appeal.

Chair Puzauskas stated there was a discussion regarding the Use Permit Standard with the Hearing Officer. The Use Permit Standard would allow a relief of 20% in the case of a setback. The side yard setback could be reduced from 15 feet to 12 feet in this case. Chair Puzauskas questioned if 12 feet would give Mr. Watson enough room to come up with a compromise in his design.

Board member Dalton stated the Watsons have done their homework. They clearly had architectural intervention. The 8 foot – 6 inches is very precise. The justification for not wanting to go any lower than that is that Mr. Watson did not want to create a traffic congestion situation for his cars. Board member Dalton stated he did not have any technical data to support that the 12 feet would do anything other than alter his plans as prescribed.

Board member Kausal agreed with board member Dalton. He also read where the Hearing Officer offer Mr. Watson the 12 feet with the Use Permit Standard. Mr. Watson was not interested in the Use Permit Standard. Board member Kausal stated as this point the Variance should either be approved or denied. A degree of change is not going to accommodate Mr. Watson's wishes.

Board member Gallese noted some of the board members are talking about a hardship as part of the criteria for a decision. He referenced criteria number 2. The strict application of this Code will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district. The strict application of the Code would deprive Mr. Watson of privileges enjoyed by other property in the area.

Board member Kausal stated that was his one perpetuation of the irrelevancy of rule to begin with.

MOTION: Board member Dalton made a motion to approve the appeal of the applicants Mr. and Mrs. Watson for the Variance; Board member Kausal seconded the motion.

VOTE: The motion passed.
Approval of the appeal overturned the June 18, 2013 Hearing Officer's decision.
Vote 4 - 0

DECISION: The Board approved the appeal and overturned the June 18, 2013 Hearing Officer's decision to deny the Variance for PL130184/VAR13010.

The next Board of Adjustment hearing is scheduled for September 25, 2013.

There being no further business the hearing adjourned at 6:34 p.m.

Prepared by: Julie Stennerson, Executive Assistant
Reviewed by:



Steve Abrahamson, Planning & Zoning Coordinator

SA:js