

**MINUTES
BOARD OF ADJUSTMENT
STUDY SESSION
APRIL 22, 2015**

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:

Jan Sell, Chair
Richard Dalton, Vice Chair
David Lyon
Richard Kausal
David Naugle
John Puzauskas
Albert Dare, Sr.
John 'Jack' Confer

Steve Abrahamson, Planning & Zoning Coordinator
Sherri Lesser, Senior Planner
Steve Nagy, Administrative Assistant II

Absent:

Number of Interested Citizens Present: 5

Meeting called to order: 5:30 p.m.

Board members and staff introduced themselves.

Review of April 22, 2015 Agenda

Jan Sell was appointed Chair.

Richard Dalton was appointed Vice Chair.

Steve Abrahamson reviewed the meeting procedures and order.

The Board of Adjustment members discussed the case for the Giguere Residence. Sherri Lesser clarified the Staff Report details and answered questions.

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

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

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Steve Abrahamson, Planning & Zoning Coordinator

SA:DM

**MINUTES
BOARD OF ADJUSTMENT
APRIL 22, 2015**

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:

Jan Sell, Chair
Richard Dalton, Vice Chair
David Lyon
Richard Kausal
David Naugle
John Puzauskas
Albert Dare, Sr.

Steve Abrahamson, Planning & Zoning Coordinator
Sherri Lesser, Senior Planner
Steve Nagy, Administrative Assistant II
Martin Perez, Deputy Director COT Building Safety

Absent:

John 'Jack' Confer (Alternate)

Number of Interested Citizens Present: 10

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

On a motion by Vice Chairman Dalton, seconded by Board Member Kausal, the Board by a vote of 3-0 approved the Board of Adjustment Minutes for August 28, 2013. (Jan Sell, David Lyon, David Naugle & Albert Dare abstained from this vote as they were not present at the August 28, 2013 hearing.)

THE BOARD DISCUSSED THE FOLLOWING CASE(S):

- Request appeal (VRA15004) of the February 17, 2015 Hearing Officer's decision to deny a request for a variance (VAR14008) to reduce the front yard building setback and a variance (VAR15001) to reduce the required on site driveway length for the **GIGUERE RESIDENCE (PL140422)** located at 534 West 15th Street in the R1-6, Single Family Residential District.

Robert Giguere was present to represent this case.

Sherri Lesser, Senior Planner, introduced the case. She noted that the applicant sought a variance to reduce the south front yard setback from 20 ft. to 10 ft., and a variance to reduce the on-site driveway length from 20 ft. to 10 ft. The applicant replaced his damaged residence with a new single family home. The site location is south of University, east of Hardy and north of Broadway Road. The variance request(s) for the reduced front yard setback is necessary in order to complete the construction process for the new house. Sherri Lesser noted that there were almost a dozen homes within a two block area that have received reduced setback variances in the past including carport(s) at the street and other beautifications.

Sherri Lesser explains that there were originally two sets of plans – one for the Building Safety Permit and one that was a civil or engineering set. One shows the correct right-of-way dimension and one does not.

Board Member David Lyon asks for clarification on the two different plans.

Martin Perez, Deputy Director COT Building Safety clarified property lines shown correctly on both sets of plans. One shows the correct right-of-way dimension and one does not.

Board Member Puzauskas questioned what set of plans the inspector had with him at the time he signed off on the permit.

Sherri Lesser – deferred to Martin Perez to explain how footing inspections occurs.

Martin Perez noted that footing inspection looks at rebar size and how many pieces of rebar and the dimension of the footing.

Board Member Puzauskas clarified his question wanting to know if inspector measures the setback before green tagging.

Martin Perez explained that he assumed the inspector had demolition set with setback dimension showing 20ft property line.

Board Member Dare, Sr. questioned the Hearing Officer subdivision put in the 1950's - questioned the variances in the past . . . have they been altered significantly from the original designs?

Sherri Lesser answered that yes there have been several changes to various properties; they all have their own characterization . The variances on 15th street are mostly carport structures.

Board Member Dare, Sr. asked if the property is owner occupied. There are only two (2) on the north side

Chair Jan Sells notes that is out of the current scope of this case.

Board Member Dalton asked if the research indicated if any of the variances had been denied.

Sherri Lesser answered that she didn't find any, but did find some modified by the Hearing Officer.

Board Member Kausal requested clarification on the difference between the property lines.

Board member Naugle asked if in research this case if Sherri found anything else besides carports as an example.

Ms. Lesser noted that on February 17, 2015 the Hearing Officer denied this request for the two (2) variances based on the finding that the variances did not meet the criteria to warrant approval.

Robert Giguere owner of property clarifies the previous house was a foreclosure that had cracks in foundation, structural damage, termites, added bathrooms and carport that had not been permitted. It was determined it was better to tear down the structure. The measurement of 15ft comes from the center of the street. The new house structure was required to have a 100 year flood plan hence there is two site plans for the pad of the house. Engineering plan shows 25ft from the center of the street and the variance is the difference between the two plans. During the building process there were over 20 inspections throughout and all passed through the month of November. It was brought to Giguere's attention then that there was an error in the setback and there would need to be certain conditions to proceed including redoing the entire civil site plans and redoing the front yard after it was already complete to meet building safety standards. The construction was completed and passed inspection.

Robert Giguere was surprised with the Hearing Officer Mrs. MacDonald's decision to deny the variance. Her decision was based on three cases she found in her research. After the decision, Mr. Giguere requested from the

Hearing Officer how these cases pertain to his situation and he never heard back from Mrs. MacDonald. Robert later reviewed the cases and research and questioned Ms. MacDonald's due diligence. The first case the Hearing Officer referenced was a house painted a bright white and the Hearing Officer referenced that it was denied due to an occurrence that is a personal hardship. This case was eventually appealed and overturned by the Board of Adjustment. Robert Giguere stated his structure is real estate and not personal and was built and exists. The second case the Hearing Officer referenced was a Chinese restaurant in Tucson that the couple wanted to expand the project bigger than what the zoning ordinances allowed. The third case the Hearing Officer referenced was about a couple who overbuilt their property from 25% to 40% and was found to doctor their documents that went into the city and were given a stop work.

Mr. Giguere noted his disappointment with the Hearing Officer's decision. This hardship is a unique property. The City was encouraging the development and to take care of this eyesore and he went into this project not to gain financial gain but in goodwill. He thought he was doing the right thing and followed all the rules and specifications. He has heard from the decision that this isn't a public safety issue but an aesthetic issue.

Mr. Giguere stated this is his third time here and there are other houses that he has pictures of that have variances as well. He relied on the City's discussions to complete the house and the variances that they are given. When he had inspections he redid the whole side of the side to be in compliance with fire safety.

Mr. Giguere believes the variance should be granted due to the hardship that is caused through the unique and oppressive situation of the City to continue to approve these plans on the continuous amounts of money he invested. His property is not a hazard to the public safety and isn't any different than variances that have been granted to other homeowners. In total he had twenty five inspections completed to the property by the city and believes Hearing Officer erred in her decision.

Board member David Lyon thanks Robert Giguere for his patience and calm manner. He noted that he has two issues he would like more information on. One, he would like to see photos of other properties that have 0 ft. setbacks and two, he would like to see the set of plans that were permitted and show where the right of line falls on the set of plans in regards to the street.

Mr. Giguere showed a picture from a property north of his that was granted with a 10 ft. right-of-way.

Sherri Lesser clarified 0 ft. set back.

Board Member Dalton asks to see the plans again for property with the 0 ft. setback in relationship to the street and the setback

Board Member Albert Dare Sr. acknowledges property in the past has been put in the wrong place and it will be done again.

Mr. Giguere explained his frustration with the process and the lack of the Hearing Officer knowledge of other variances allowed in the neighborhood if they were grandfathered or if they were permitted. He states there are added bedrooms, chickens in backyards and other violations. He has followed all the recommendations of adding trees and hedges.

Board Member John Puzauskas clarified that when house was almost completed the issue of the setback was brought up. He questioned Mr. Giguere as to what the house was approved for what?

Mr. Giguere responded that he received a temporary occupancy with building safety, drainage and every inspection passed.

Board member Puzauskas asked at that point in time how did this variance come about?

Mr. Giguere stated he meet the head building inspector on the job and said there was a mistake in regards to the setback and there wasn't anything that can be done with the house but you will need to come into the City and will have to meet other conditions and file for a variance.

Board member David Lyon asked to see the plan.

Mr. Giguere showed the plan that was approved in June 2014.

Board Member Dalton asks Mr. Giguere to clarify if all conditions were met.

Mr. Giguere confirmed that he met all conditions for variances.

Chair Jan Sells opened the floor to concerned citizens.

Resident Kim Pearce lives at 519 W 15th Street and has lived in home for over 30 + years wants to clarify some facts. First, need to focus that the setback is not in compliance of the home. Second, the variance was applied for after the fact. Third, the owner is a professional builder and should have been aware. Wants the board to go and look for themselves.

Resident Karen Adams lives at 531 W 15th Street - southeast of property and is very concerned about precedent being set by granting variance. She and other neighbors called the city several times that there was something not right in the construction while construction was occurring.

Board Member Albert Dare asked what bothers you the most about the house?

Resident Karen Adams states it takes away the green spaces of the neighborhood because the house is set 10 ft. closer to street.

Resident Karyn Gitlis lives at 1206 S Ash. Believes zoning standards need to be followed and the massing of the house is much different than an open carport. She asks that the city abides by the standards.

Board Member Puzauskas clarified should the variance for a carport should be different than a garage?

Resident Gitlis doesn't understand question related to this property

Board Member Puzauskas questioned would be she be ok with a carport vs. garage?

Resident Gitlis reiterates she doesn't understand how this relates to this property.

Resident Freda Rothermel lives at 509 W 15th St and did remodel house and did not have variances on dwelling but did on a carport. She spoke to several architects and is worried about precedent setting. She walked the neighborhood from Hardy to railroad tracks and all the houses are in a line with the exception of the carports. She believes owner should move house back.

Board Member David Naugle stated he has looked at google maps and confirms all the other houses in neighborhood have the same setback. He asked Ms. Rothermel does your house have a variance?

Resident Freda Rothermel states she does not have a variance on the property.

Sherri Lesser referred to properties that do have variances located at 509, 543, and 519 to the front, back and side of properties.

Chair Jan Sells moved to next resident.

Resident Chet Myers lives at 530 W 15th Street disputes the variances of Sheri Lesser presented. The variance was asked for after the process and he believes it needs the house moved. Asks Board how many Board members work for City of Tempe or have previously worked for city.

Steve Abrahamson, Planning & Zoning Coordinator states that the Board is very aware of conflict of interest and wouldn't put themselves in that position.

Resident Barbara Lloyd lives at 515 W Parkway and co-chair of the neighborhood association. She believes the Hearing Officer denied this request for good reason. The dwelling is abundant and overdone lot coverage and doesn't want a precedent set. This is ground up construction and should meet the parameters of the integrity and character of the neighborhood. The error was discovered during construction and is a self-imposed hardship. It is meaningful to the neighborhood that the house is too big and too close to the street.

Board Member Albert Dare Sr. asked what the feel of the neighborhood is.

Resident Barbara Lloyd sees the same neighbors and not much turnover and continued improvements.

Robert Giguere states hardship is in the actual property. The neighborhood was designed by Del Webb and was supposed to be a historical neighborhood but with all the deterioration it did not become one. The designer of his property was Ralph Haver out of Phoenix and designed in the style of the mid-century to fit into the neighborhood.

Chairman Jan Sells asked to see only one more picture would have liked addresses associated with pictures because it is hard to determine which property it is.

Mr. Giguere stated that this project was a huge financial hardship.

Board Member Richard Dalton asked were all required inspections and permits completed properly?

Martin Perez responded all permits were obtained.

Board Member David Lyon stated Robert Giguere did receive permission from the City to complete the project.

Martin Perez stated that both sets of plans were correct

Board Member David Lyon states that it was the right-of-way that was incorrect.

Board Member Naugle stated it was the mistake of the construction since in isn't in the plans.

Board Member David Lyon did not agree it's a construction problem, but how the plans were prepared.

Martin Perez states there was a footing inspection.

Chairman Jan Sells states for motion of the floor.

MOTION: Board member Albert Dare Sr. made a motion to approve the appeal of the applicant, Robert Giguere for two (2) variance(s); Board member David Naugle seconded the motion.

VOTE: The motion was approved, and the February 17, 2015 Hearing Officer's decision to deny the two (2) variances was overturned. Vote 6-1 (Board Member Kausal dissenting.)

DECISION: The Board approved the appeal and overturned the February 17, 2015 Hearing Officer's decision to deny the variance(s) for PL140422 / VAR14008 / VAR15001.

The next Board of Adjustment hearing is scheduled for May 27, 2015.

There being no further business the hearing adjourned at 7:39 p.m.

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

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Steve Abrahamson, Planning & Zoning Coordinator

SA:dm