

**MINUTES
BOARD OF ADJUSTMENT
NOVEMBER 25, 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.

STUDY SESSION 5:30 PM

Present:

Jan Sell, Chair

Richard Dalton, Vice Chair

John Puzauskas

Richard Kausal

David Naugle

Albert Dare, Sr. (Alternate)

John 'Jack' Confer (Alternate)

Steve Abrahamson, Principal Planner

Karen Stovall, Senior Planner

Diane McGuire, Administrative Assistant II

Suparna Dasgupta, Principal Planner

Absent:

Kevin Cullens

David Lyon

There were 6 interested citizens present at the study session.

- Staff and the Board Members discussed overview and updates to the scheduled case for this hearing.
- Senior Planner, Karen Stovall, answered questions regarding the building height, and in response to a query from the Board members, explained that if the Hearing Officer decision to deny this requested variance is upheld, then the applicant cannot move forward to the Development Review Commission (DRC) with his application for approval of a site plan, building elevations, landscape plan and a Use Permit to increase the building height from 30 ft. to 33 ft.
- Steve Abrahamson was questioned by Board members as to why the Hearing Officer did not approve the requested variance. He responded that the Hearing Officer was not comfortable with the variance request as presented by the applicant in relation to the variance criteria in the Zoning and Development Code. Mr. Abrahamson stated that he did not want to speculate on the Hearing Officer's possible reasons.
- It was noted that the Draft Board of Adjustment Minutes dated April 22, 2015 (Regular Session) had a correction relative to the Giguere Residence case (PL140422) made on Page 5, 'Vote', to indicate that the Board Member dissenting was Richard Kausal.

REGULAR SESSION 6:00 PM

Present:

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

Steve Abrahamson, Principal Planner
Karen Stovall, Senior Planner
Diane McGuire, Administrative Assistant II
Suparna Dasgupta, Principal Planner

Absent:

Kevin Cullens
David Lyon

There were 6 interested citizens present at the regular session.

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 Naugle, the Board by a vote of 6-0 approved the Board of Adjustment Minutes for April 22, 2015. (Member Confer abstained from this vote as he was not present at the regular session of the April 22, 2015 hearing.)

THE BOARD DISCUSSED THE FOLLOWING CASE(S):

- Request appeal of the October 20, 2015 Hearing Officer's decision to deny a request for a variance to reduce the front yard setback from 20 ft. to 10 ft. for **HARDY TOWNHOMES (PL150108)** located at 506 South Hardy Drive. The applicant is Stephen Earl/Earl, Curley & Lagarde P.C.

Attorney Earl was present to represent this case.

Karen Stovall, Senior Planner, introduced the case and presented an overview of what the applicant is proposing on a site plan. The site is located at the southwest corner of Hardy drive and 5th Street and is zoning R-3, Multi-Family Residential Limited District. It is surrounded on the west and south by apartments, to the east, across hardy drive, by Jaycee Park, and to the north, across 5th Street, by a new 19 unit apartment development currently under construction. She explained that there are eight (8) townhome residences with a driveway entrance off of Hardy Drive. The variance is required in order to provide a legal separation per the Zoning and Development Code. A neighborhood meeting was held on September 9, 2015 with two (2) individuals in attendance who both indicated support of the project.

Ms. Stovall noted that the site has been vacant since at least 1993 and that the project consists of two (2) parcels the applicant intends to replat into 8 townhome lots. Based on a Zoning Administrator's Opinion from 2014 pertaining to townhomes, building setbacks are measured from the overall project boundaries instead of from individual townhome lot lines. As a corner lot, the front property line for this project is the north property line on 5th Street.

Attorney Earl presented his case to the Board members. He referenced the information he had submitted as an addenda to the Staff Summary Report.

He stated that the subject site is 'L' shaped and comprised of 2 small long vacant parcels. The subject site is zoned R-3, Multi-Family Residential Limited District which allows 20 dwelling units per acre, while the City's General Plan designates the property for residential development of up to 25 dwelling units per acre. Eighteen (18) dwelling units per acre are proposed.

Attorney Earl stated that this property has been vacant and passed over for redevelopment for almost 25 years due to its size, narrowness and irregular shape. He indicated that the City has approved setback reductions in similar circumstances and that it would be unfair for the developer to seek a PAD overlay to obtain relief from one setback standard for 5th Street that was consistent with other setbacks on 5th Street. The off-site driveway is located very close to the subject site and due to its proximity, the City is requiring the new proposed driveway to be located 10 ft. farther north than anticipated to maintain a flat section of sidewalk to meet ADA requirements. This shifts 6 units closer to 5th Street and the width of the proposed units cannot be reduced in size because the garages are at the minimum garage width required by the City.

An additional hardship, Attorney Earl explained, is the requirement to meet the required turning radius on site for a fire truck. The required 20 ft. deep front yard setback on 5th Street is the pivotal point for this case, as all other setbacks have been met.

The units being proposed are designed with most of the livable space above the 2 car garage in a total of 3 floors and will have between 1800 and 1900 livable s.f. The adjacent condominium units to the west are 864 s.f. in size, built in 1962 and were converted to condominiums in 2000. This project will significantly boost the area lifestyle. There is actually 21 feet of excess right-of-way from the property line of the subject site to the actual street curb for 5th Street. Due to the landscaping design, this property line cannot be moved.

Attorney Earl presented an Area Map with dimensions of several other properties in the immediate area of the proposed project along 5th Street and Hardy Drive, and noted that they have street setbacks similar to this request. He indicated that reducing the overall unit count of only 8 townhomes or reducing the width of the units to compensate for the 10 ft. reduction will in turn reduce the size and quality of the units and compromise the garages which make this home ownership project unviable. The small size and shape for the project site were not self-imposed by the property owner and they have worked diligently with City staff for 4 or 5 months to resolve difficulties with the proposed project. By working with staff, they have been able to eliminate all variances except for the one.

Attorney Earl asked the Board to recognize the special circumstances of this case. The property has been vacant for so long it has become a blight to the area, he stated.

Chairman Sell asked the Board if they had any questions. Board members indicated that they did not.

MOTION: Board member David Naugle. made a motion to approve the appeal of the applicant and overturn the October 20, 2015 Hearing Officer's decision to deny this variance request; Board member Richard Dalton seconded the motion.

VOTE: The motion was approved, and the October 20, 2015 Hearing Officer's decision to deny the variance was overturned. Vote 7-0

DECISION: The Board approved the appeal and overturned the October 20, 2015 Hearing Officer's decision to deny the variance for PL150108. The variance to reduce the front yard setback from 20 ft. to 10 ft. for **HARDY TOWNHOMES (PL150108)** was approved subject to the following conditions of approval:

1. Development shall be in substantial conformance with the site plan dated September 1, 2015, subject to further review and approval by the Development Review Commission. The setback may not be reduced further without approval of another variance.
2. This Variance is valid only after a Building Permit has been obtained, the required inspections have been completed, and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention is required to be accomplished on this Site.

The next Board of Adjustment hearing is scheduled for December 23, 2015.

There being no further business the hearing adjourned at 7:00 p.m.

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



Steve Abrahamson, Principal Planner

SA:dm