

MINUTES BOARD OF ADJUSTMENT AUGUST 24, 2016

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
Kevin Cullens
David Lyon
Richard Kausal
David Naugle
John Puzauskas
Albert Dare, Sr. (Alternate)
John 'Jack' Confer (Alternate)

Steve Abrahamson, Principal Planner
Dean Miller, Planner II
Michael Glab, Code Inspector
Diane McGuire, Administrative Assistant II

There were 4 interested citizens present at the study session.

- Board members reviewed the cases on the scheduled agenda.
- Pertaining to the abatement appeal, Michael Glab, Code Inspector, provided Board members with updated photographs (taken on 8/24/16) of the property located at the Boettcher Property at 2050 East Laguna Drive, and noted that the property was now in compliance.
- Board members had various questions regarding the abatement process such as what happened to the items when removed as part of an outside vendor process; were the items disposed of? recycled? Mr. Glad indicated that the assigned vendor provided the Code Department with a receipt for items removed.
- Board Member Albert Dare questioned the Board's role in this abatement appeal due to the fact that the property had now been brought into compliance; do they need to provide a yes or no decision? Steve Abrahamson, Principal Planner, explained that as Mr. Glab is withdrawing the abatement request, as the property had been brought into compliance, the property owner would have a chance to speak to the Board; then Mr. Glab would note for the record, that the abatement request was withdrawn as the property is now in compliance.
- The processing aspects of approved abatement cases and their related time periods for resolution were discussed as well as whether the state of non-compliant properties affected the emergency vehicle access. It was also noted by the Board that non-compliant properties have a negative impact on the community.
- Board Member Albert Dare referred to a shade structure that he had recently seen in the area, and asked if a variance was required for this type of structure. Mr. Abrahamson responded that shade structures are required to meet the same criteria as an accessory building.
- Board Member Richard Dalton noted that there had been no letter(s) of opposition in the packet relating to the Miller Residence request for variance (i.e. appeal of HO decision to deny that variance) and asked if any had been received. Dean Miller, Planner, stated that there were none.
- Board Member Kevin Cullens questioned if a variance request has to meet all four (4) criteria, as outlined in the Zoning and Development Code, before it can be approved. Mr. Abrahamson confirmed that this was the case.

- Board members questioned if variance(s), when granted, impact the access of emergency vehicles to properties. A brief discussion of emergency vehicles and related access standards ensued.
- The subject of discussion(s) of cases assigned to the Board of Adjustment was addressed. Mr. Abrahamson reminded the Board that members were not to have conversations about the scheduled cases outside of the actual Board of Adjustment session(s).
- Diane McGuire, Administrative Assistant, reminded the Board to turn on their mikes when speaking, otherwise their statements are not clearly recorded. She also reminded the Chair that, when a motion is made, the Chair should state the motion, who made the motion and who seconded it to reconfirm the process for the record.
- Mr. Abrahamson noted that three (3) Board members (Richard Dalton, David Lyon & David Naugle) had terms scheduled to expire in December 2016. He asked those members if they wished to be re-appointed to serve another term. All were in accord that they wished to do so. This response will be given to the City Clerk's office so that approval of those additional terms can be processed through the City Council.

REGULAR SESSION 6:00 PM

Jan Sell, Chair
Richard Dalton, Vice Chair
Kevin Cullens
David Lyon
Richard Kausal
David Naugle
John Puzauskas

Steve Abrahamson, Principal Planner
Dean Miller, Planner II
Michael Glab, Code Inspector
Diane McGuire, Administrative Assistant II

Present but not needed due to full Board:

Albert Dare, Sr. (Alternate)
John 'Jack' Confer (Alternate)

There were 11 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 Chair Richard Dalton, seconded by Board Member Richard Kausal, the Board by a vote of 6-0 approved the Board of Adjustment Minutes for May 25, 2016. (Board Member Jan Sell abstained from this vote as he was not present at the public hearing of May 25, 2016.)

THE BOARD DISCUSSED THE FOLLOWING CASE(S):

1. Appeal of the July 5, 2016 Hearing Officer's decision to approve the request by the City of Tempe – Code Compliance Section to abate public nuisance items in violation of the Tempe City Code for the **BOETTCHER PROPERTY (CE160196)** located at 2050 East Laguna Drive in the R1-6, Single Family Residential District for an open period of 180 days. The applicant is Alex Boettcher.

Mr. Alex Boettcher, property owner, was present to represent this case. He spoke of his efforts to bring his property into compliance.

Michael Glab, Code Inspector, stated that he had re-inspected the property today, August 24, 2016, and agreed that the property is now in compliance, and that the request for abatement was withdrawn.

DECISION: Abatement request was withdrawn by Michael Glab, assigned Code Inspector, as the property is now in compliance.

2. Appeal of the July 5, 2016 Hearing Officer's decision to deny the request for a variance to reduce the east side yard setback from 9 ft. to 6 ft. for the **MILLER RESIDENCE (PL160187)** located at 1536 East Caroline Lane. The applicant is Leland Miller.

Dean Miller, Planner II, gave an overview of the case, noting that the applicant is requesting this variance to reduce the east side yard setback from 9 ft. to 6 ft. to allow the construction of a RV garage. Mr. Miller noted that the site is located at 1536 East Caroline Lane, west of McClintock Drive and south of Warner Road in the R1-15, Single Family Residential District.

Mr. Leland Miller was present to represent this case. He stated that he would try to clarify his request for the Board members. He referred to an e-mail that he had sent to staff (Ms. McGuire) asking that it be forwarded to Board members along with the indicated link (within the e-mail message) which referenced a Hearing Officer public hearing from 7/21/15 during which a variance request located at 1327 East Caroline which is less than 2 blocks away from his property was heard. Mr. Miller stated that, in his opinion, this video referenced a list of at least 21 other properties which were granted setback variances that existed in his neighborhood. He felt that although that particular variance was not an RV Garage, it did establish the common place issuing of setback variances in his area. That actual list of 21 properties was not available thru a Public Records Request, Mr. Miller stated, as research of the case file material indicated the list was not part of the material retained as documentation. Mr. Miller stated that some of those variances, for the addresses on the list, were granted for a minimum of 3 ft.

Mr. Miller noted that he had many letters of support from neighboring homeowners and there had been no opposition to his request.

Mr. Miller presented the following:

- Sketch of the RV Garage and the related dimensions of the structure, which would be 16 x 36 x 14 ½ feet.
- Front elevation sketch with the proposed RV Garage.
- Site plan sketch of the existing home in relation to the proposed garage.
- The recorded plat for Mission Ridge Unit One which indicated the lot locations and size.
- Location map indicating variances previously granted in the location of his immediate block which indicated 18 total approvals of residents approving variances by homeowners.
- List of thirteen (13) addresses which he stated were known neighborhood approved variances for side yard setbacks. Seven (7) of those addresses were marked to indicate properties on his immediate block.
- Photograph of his existing driveway with the established driveway gate leading into his yard area.
- Photograph of his existing driveway and the location of his AC unit. He explained that moving the structure to the west would place it too close to the existing AC unit to meet the ADA 4.13.5, Clear Width Opening and the ADA 4.13.6 Minimum Maneuverability requirements. The AC unit cannot be moved without undue and unreasonable expense due to the fact that the return air system is underground below the house foundation.
- Physician signed statement on a Scottsdale Family Health form that indicated Mr. Miller had health and mobility issues. Mr. Miller indicated that ADA requirements are applicable to his case as he was very likely to have future need for a mobility scooter, walker or possibly a wheel chair due to extreme leg neuropathy and poliotis which have been diagnosed by his physician.

Board Member David Lyon thanked Leland Miller for his presentation, and questioned if there are other homes in the City which have been granted a similar variance; if there was anything other than Mr. Miller's opinion that was the case? Was there documentation of variances granted in his area?

Mr. Miller responded in the affirmative, and presented a photographic presentation of the following addresses of homes that he stated showed the privileges enjoyed by others; specifically garages, workshops, carports and accessory buildings:

1. 9252 South Oak
2. 1339 East Caroline
3. 1317 East La Vieve
4. 1301 East Myrna
5. 1415 East Myrna
6. 1539 East Caroline
7. 1748 East Caroline
8. 1343 East Knox

Mr. Miller also referred to the Zoning and Development Code criteria for a variance, and stated that, in his opinion, he meet the criteria as indicated below:

1. **Size and Shape.** Mr. Miller stated that while his lot meets the minimum R1-15 area requirements and is larger in area than some neighborhood lots, the average lot width of 120.33 feet for the neighborhood would alleviate the variance need. 74.35% of the lots are wider.
2. **Topography.** There are features affecting the development of the site. Elevated topography at the rear of the lot precludes taking out hardscape and landscape to move the proposed building to the back. Lot water retention would also be compromised potentially causing water to run on to the adjoining neighbors' lots.
3. **Surroundings.** There is a mature oak tree in the rear yard and mature palm trees in the front yard that would have to be sacrificed/destroyed to place the RV garage in any other location on the lot.
4. **Accessibility & Maneuverability Requirements.** As indicated earlier, maneuverability standards cannot be realized without the variance due to the existing home air conditions and that his medical condition(s) which potentially require accessibility with a walker or scooter. It would be an undue hardship to replace the existing AC system.
5. **Special Circumstances.** Mr. Miller stated that he did not create the lot grade and none of the special circumstances were imposed by him. The original development of the home was done by the previous owners. Water retention is required to control water and push it to the street. Putting the proposed structure into the setback is necessary due to the lack of buildable area elsewhere on the lot.

Board Member David Lyon asked Mr. Miller if he had architectural design documents for his project. Mr. Miller responded that although he did not at this time, Architect Ilan Baldinger lives down the street from him.

Board Member David Lyon questioned staff as to what was the purpose of a setback?

Dean Miller responded that the purpose is to provide a separation as defined by the Zoning and Development Code.

Chairman Sell noted that he had two (2) speaker request cards as follows:

Paul Harbour stated that he is the neighbor located directly north of Mr. Miller's property. He indicated that there had been many projects within the area, some legal, some illegal. Mr. Harbour stated that he is in support of Mr. Miller's request.

Ben Porritt stated that he lives to the side of Mr. Miller's property. He stated that he would be the neighbor most affected by this variance, and that he was in support of this request.

Vice Chair Dalton stated that Leland Miller has the support of his neighbors and asked for a quick interpretation of what the term of 'special privileges' involves.

Dean Miller responded that the interpretation of special privileges was to compare Mr. Miller's request with other lots in the neighborhood.

Vice Chair Dalton stated that there were some comparable structures/setbacks very close to Leland Miller's residence and questioned whether staff had compared Mr. Miller's request to those properties.

Dean Miller responded that he had reviewed other properties in the area.

Vice Chair Dalton asked if any of the nearby properties had applied for variances and had their requests denied as well.

Steve Abrahamson responded that the actual test (i.e. gauge) should be based on Leland Miller's particular property. He explained that what has happened is, in the past, there was a change in philosophy which occurred around 2006/2007. Due to a change in management in the Development Services Department (now known as Community Development), staff was admonished that they were not reviewing variance requests as they should. Variances were being granted without regard to the established variance criteria. Mr. Abrahamson stated that the Planning Department is tasked by the State of Arizona to ascertain that requests of this nature meet the established criteria for variances. Subsequently, during the years that followed 2007, staff took a closer look at variance requests to make sure they meet all of the required criteria.

Board Member John Puzauskas asked Mr. Abrahamson if staff felt that this appeal meet the criteria for a variance.

Mr. Abrahamson responded that Leland Miller's case was an appeal case and that Board needs to make their own decision on whether the variance meets the criteria based on the staff report and documentation, as well as Leland Miller's presentation.

Board Member David Lyon stated that his feeling was, in looking at the variance criteria, he felt that the request meets the criteria as there were other properties in the close vicinity whose property owners enjoyed having setbacks close to their property lines.

Board Member Lyon noted that, in his opinion, this request meet variance criteria numbers 2, 3 & 4:

2. The strict application of this code will deprive the property of privileges enjoyed by other properties of the same classification in the same zoning district.
3. The adjustment authorized shall not constitute a grant of special privileges inconsistent with limitations upon other properties in the vicinity and zone in which such property is located.
4. A variance may not be granted if special circumstances applicable to the property are self-imposed by the property owner.

Board Member Lyon indicated that the only question may related to the first criteria for a variance; 'Special circumstances including its size, shape, topography, location of surroundings.' Mr. Lyon stated that he thinks that Leland Miller qualifies for this variance criteria as, if the purpose of a setback is to separate a specific property from the neighbors' properties, then the ones that might be most affected in Mr. Miller's case are fine with the request and are in full support.

Chairman Sell asked if any of the other Board members had any comments or questions. They indicated they did not.

Chairman Sell explained that the decision before the Board was whether to overturn the July 5th Hearing Officer's decision and approve the variance.

MOTION: Board Member Lyon made a motion to approve the appeal and overturn the July 5, 2016 Hearing Officer decision to deny the variance request. Vice Chair Dalton seconded the motion.

VOTE: Board Members approved the motion by a vote of 6-1. (Board Member David Naugle dissenting.)

DECISION: The July 5, 2016 Hearing Officer decision to deny the variance request was overturned and the variance to reduce the east side yard setback from nine (9) feet to six (6) feet was approved subject to one (1) Condition of Approval.

The next Board of Adjustment hearing is scheduled for September 28, 2016.

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