

MINUTES BOARD OF ADJUSTMENT DECEMBER 16, 2020

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:	Staff:
Chairman David Lyon	Steve Abrahamson, Principal Planner
Vice Chairman James Frazey	Karen Stovall, Senior Planner
Board Member Richard Watson	Brittainy Nelson, Administrative Assistant
Board Member Whitney Baker	
Board Member Kevin Cullens	
Board Member John 'Jack' Confer	
Board Member Robert Miller (Alternate)	

- Meeting Minutes

Chairman Lyon asked if there were any corrections or changes. Everyone was ok with the minutes as is.

- **HARL INDUSTRIAL**

Board member Miller asked how long the applicant has owned the property. Chairman Lyon stated that would be a question would need to asked during the meeting. The study session is for interpreting the variance requirement questions. Chairman Lyon also reminded the Board Members that there are the four criteria that a variance has to meet to pass. One being the undue hardship. Board Member Miller stated that is fuzzy term how would one determine that? Chairman Lyon asked Staff Mr. Abrahamson to help explain. Mr. Abrahamson stated that it is hardship that is not self-imposed. This is determined by the other criteria's in the process to help determine like a topography, an odd shaped lot, the actual location. The criteria are; is it an unusual condition that causes a hardship? granting the variance can't provide a privilege which that others in a similar category do not get, the hardship can't be of their own making. Board Member Miller stated that a hardship by its very nature is a hardship of one's own undoing. Hardship suggest that it is something above and beyond what could responsibly be something to overcome. Anytime you use terminology in that manor there is room for a lot of interpretation and a lot of problems; what is a hardship for one person is not to someone else. Chairman Lyon stated that he used the wrong term it is special circumstance not undue hardship. Chairman Lyon also agrees it is a gray area which is why it is suited to having a Board give a ruling on it rather than something that is cut and dry and obvious. Chairman Lyon stated that his take is what does it look like other properties in the area can do and is there a reason that this property should be able to do what they are requesting but can't. The property is a weird shape or an easement that is inconvenient or some other factor. Is it responsible to say yes, we really want this property to do this and there is a way to do this by easing City standards? Is this a special circumstance and does it warrant a variance? Mr. Abrahamson stated that the approval criteria can be considered separately or as an amalgam. There are different ways of granting a variance as far as the four questions are concerned. Every variance request is granted or denied based on the 4 questions.

Regular Meeting 6:00 PM

Present:

Staff:

Chairman David Lyon	Steve Abrahamson, Principal Planner
Vice Chairman James Frazey	Karen Stovall, Senior Planner
Board Member Richard Watson	Brittainy Nelson, Administrative Assistant
Board Member Whitney Baker	
Board Member Kevin Cullens	
Board Member John 'Jack' Confer	
Board Member Robert Miller (Alternate)	

1) Voting of the Meeting Minutes

Motion by Vice Chairman Frazey to approve the Meeting Minutes of August 26, 2020; second by Board Member Baker. Motion passed on **6-0** vote.

Ayes: David Lyon, James Frazey, Richard Watson, Whitney Baker, Kevin Cullens, John Confer

Nays: None

Abstain: Robert Miller

Absent: Raun Keagy

2) Request a Variance to increase the maximum building height from 35 feet to 58 feet for **HARL INDUSTRIAL CENTER, located at 6840 South Harl Avenue. The applicant is Withey Morris PLC. (PL200268)**

Presentation from Applicant: Jason Morris

Mr. Morris informed the Board that Insight is the owner of the property and the property was built in the Mid 90's. They are updating the property to comply with the industrial standards. The site is located on Harl and Mineral the area is surrounded by industrial uses with the expectation of the freeway which is the western boundary. The area is part of the Industrial area but not the overlay. The building was developed in 1996 as global headquarters for Insight. Insight is consolidating their location and will not be using the property anymore. With the surrounding locations and industrial use, it makes sense to use the property as industrial. One of the things that is unique about the site is the topography. The existing building deals with the geographical challenge by having multiple levels within the office itself. There is not one consist floor height. It works in an older office setting but in an industrial setting that is a very challenging issue. In terms of actual design, it is better to have a finished floor consistent in uniform which is what they are seeking in the application. Any other use would be very difficult and in an office perspective it does not translate well even to insights use which is what it was purposely built for. For industrial warehousing distribution typical of the GID district the modern standard is a 32-foot minimum clear height. To give the Board Members an overview of the property Mr. Morris showed a couple pictures of the area. The elevation numbers on the West property line is 1, 272 approximately 12 feet higher than west property line of 1260. The highest point being up against the freeway and the lowest point on Harl. This is significant information because the City of Tempe measures height from the curb at Harl. This cost the property at least 9 feet assuming that they are not developing at the heights point. If one was to develop in the first part of the property, they are at least 9 feet in grad. The grade is working against the property and in this circumstance, it is typical that they would need to move forward with a variance. The underlining zoning works for the property the area is conducive to the use it is just the single development standard that is creating an issue for the site. The other challenge of the site is that they are dealing with finished floors that must be uniform and the cross facility of the docks, that are between the buildings that are being purposed. Also, must be at a level grade as well as the resist truck wells, they need to start at a level grad and need to be consist. There are ADA requirements of grade differentials in order to meet require mass grading. There also needs to be mass retaining walls to make sure the topography is leveled. Mr. Morris showed

the Board what it would look like if they continued to develop at the current height limitations with in the GID. The current property does not permit a clear height that the Industrial Standards today would require. In fact, because of the change in slope they would be only able to accomplish a 17-foot clear height for the ceiling. Where a typical standard is 32 feet. When you add the elevation from the top of the curve from where you measure from it is subtracted from the overall height of 35 feet. From the ceiling height you would need to have both the roof with the appropriate slope and any of the trusses or any of the HVAC in between which adds about 10 feet to the ceiling. Mr. Morris is requesting a maximum building height to be changed to 58 feet. Mr. Morris provided a site plan for the North and South buildings. The building itself is a Class A industrial building. They are well articulated and have architectural elements that have both changes to the rise and fall in elevations and texture and material changes. In the staff report it points out very well how important the truck wells, dock doors, and driveway both meet the industrial standard and the ADA standards. None of which can be accomplished without the variance that is being requested. In regard to the variance test the first topic is special circumstances. The topography does create a special circumstance. The existing building is obsolete by a feature tenant and new construction is going to be needed regardless of the next user. In this instance other surrounding uses because of the southwest overlay have the benefit of 60 feet in height where this property does not and is capped at 35 feet. The strict application of the zoning code will deprive this property of privileges enjoyed by other properties. As pointed out earlier this is an Industrial park where a vast majority of the properties enjoy a 60-foot maximum height. The request is for less than that total height but keeping with the industrial nature. Provided the Board a visual of the Southwest Overlay and how it impacts the Industrial area. Mr. Morris then moved to the next area of the test; adjustment authorized shall not constitute grant of special privileges. The topography goes to the heart of the request. The GID zone immediate adjacent to the site enjoy the 60-foot height limit. Then finally that the request is not self-imposed which is one of the key elements in granting the variance and the reason that it is so important is that one cannot ask for a variance and then point out that the variance is required only because of what one self has done to the property. There is a topography issue and the challenge that occurs from West to East which has a significant impact not only on this applicant but on any applicant that would move forward needing a uniform floor. The applicant is not responsible for the topography of the site. In summary the approval of the proposed variance will allow applicant to move forward with development of 350,000 square feet of new, class A warehouse/distribution space in a prominent and visible location along I-10. Existing conditions on the site limit the development due to the topography of the site. The additional height is warranted due to the additional height considers several things. The building necessity brings the height to 58 feet. If one was to work backwards from the clear height that the industry requires of 32 feet and then above that will be gutters and equipment and the roof that will have a slope to it because of the size of the building itself that added another 10 feet of the ceiling height then there needs to be room for equipment and visibility which will take you to under the 58 feet. However, looking at where the City of Tempe measures that from is where the need for the 58 feet comes from. With that Mr. Morris believe that they meet all the variances test requirements so that they are following the general guidance of the industrial, so zoning is not necessary if the variance is granted.

Chairman Lyon asked the Board if they had any questions for Mr. Morris.

Chairman Lyon acknowledged Vice Chairman Frazey.

Vice Chairman Frazey stated that he noticed in the report that a public meeting was not required and wanted to know why it was not required? He also asked has the applicant reached out and got any feedback from the property on the North that might be impacted differently from the property to the East from Harl or the I-10.

Mr. Morris stated that they did reach out to surrounding property owners. In terms of why they did not have a traditional neighborhood meeting was because they were going through the Board of Adjustment and not the traditional rezoning process. In terms to where the development site is within an existing zoning where the area is predominantly of that use the Planning department did not require a neighborhood meeting.

Presentation by Staff, Karen Stovall, Senior Planner

Ms. Stovall informed the Board Members that the zoning of the site is GID as well as the adjacent properties on the Northeast and South. The properties on the South side of Mineral Road are in the Southwest overlay district. The district does permit a 25-foot increase for the maximum allowed building height for those properties within the overlay and those that are also West of Kyrene Road. Staff did do research as to why the Overlay stopped at

Mineral Road and at there is not a definite answer but on the East side of the Highland Canal there is single family residential zoning in the City of Tempe. The guess is that Tempe made a cut at the Western Canal to make an even East West line and that is probably why the Overlay didn't continue the North side of Mineral Road. The site currently has a single-story office building that was constructed in the 90's. The applicant wishes to demolish it and reconstruct two single story warehouse buildings. At this time the applicant has only completed one preliminary review with planning staff and will also need to process a Development Plan Review to receive approval by the Development review commission for the site design and building elevations. Ms. Stovall presented the Board Pictures of the elevation in regard to the height. The preliminary elevation shows a height of 53 feet 9 and ½ inches but the applicant is requesting the maximum height of 58 feet to allow flexibility as they go through the design process. In reviewing the variance criteria, the topography of the site puts the grade at approximately 9 feet below the development. Which restricts the height to 26 feet instead of 35 feet permitted by the code. Grade changes within the property also create challenges in creating level floors for the building to share truck port and to comply with maximum floor communications across the parking lot. In general, the topography of the site is a special circumstance. The strict application of the Code would strict 35 feet with 25 feet less then the properties zoned GID and or located on South side of Mineral Road. The elevation of property compared to elevation at grade and the overall sloping of the site from West to East deprives the property of enjoying the privileges without those challenges. The requested variance would not grant special privileges inconsistent with limitation of the property in same facility and zoning subject site. The properties to the south are also zoned GID just like the subject site and the granting of the variance would allow height that is consistent with that allowed with other properties. The site's location just outside the boundary of Southwest Tempe Overlay district and the topographical challenges are not self-imposed. A neighborhood meeting was not required of this applicant the reason being is that the site was not within 600 feet of a lot line of residential use the code does not require a neighborhood meeting. Planning received three online comments in support of the request. Staff received an email and spoke on the phone to an individual who had questions and concerns about the design of the project. Staff answered the question about the process and suggested that she speak with the applicant for more details and purposed building design and specific business operations.

Chairman Lyon asked the Board if they had any questions for Ms. Stovall.

Chairman Lyon acknowledged Board Member Miller.

Board Member Miller asked if the nature and topography as reflected in the renderings of the site are they generally available to people.

Ms. Stovall stated that not the applicant provided a topo survey with their submittal in order to demonstrate the grad changes on the site but they had to have that prepared.

Board Member Miller stated that they then had prior knowledge. The concern that he is trying to point out is that the applicant is requesting that they have a variance because it doesn't allow the applicant to do what they have in mind.

Ms. Stovall stated in looking at the variance approval criteria it requires that there be special circumstance applicable to the property. Those circumstance exist regardless of the applicant. There are elevation changes on the site and an overlay district adjacent to the site that exist regardless of the developer.

Board Member Miller stated that with respect to the overlay it is frankly immaterial. The overlay district exists where it does the boundaries for the overlay district are established where they were. Regardless of rather this site is in it or not does not matter.

Chairman Lyon acknowledged Board Member Confer.

Board Member Confer asked is the reason that the special circumstance is not self-imposed is because they do not own the property yet.

Ms. Stovall stated that the reason that it would not be considered self-imposed is because the applicant did not create the topography of the site and the applicant did not create the boundary of the site or the Overlay district. Regardless of who the owner or applicant is the circumstance will still exist.

Board Member Confer asked if not being an owner of the property is something that normally happens with applications.

Ms. Stovall stated that the applicant must receive owner authorization before pursuing a variance or any kind of planning application for that matter. It is very common to process applications before they own the site before knowing rather or not the purposed development is feasible.

Board member Confer asked that how it is in this case.

Ms. Stovall stated that is correct the developer is not the owner of the property. The owner did give authority to the project.

Public Comment:

Flossie Miller – Tempe Businesswoman

Ms. Miller stated that her company owns property directly across the street on Harl Ave. There are a couple of concerns one being aesthetics in terms of the height variance blocking the view of South Mountain. Which could decrease the value of the property. The preliminary plans appear to create an equivalent of a 1 ½ block 58-foot-tall wall. And the original CC&R for Harl crossing stated a 35-foot maximum building height this seems like a significant difference. The truck is another issue that should be considered. Harl Ave is a subdivision street more of a park like setting. There are no parking signs along the road. There are concerns about compliance issues with trailers in the past. Want to make sure that with the loading docks want assurance that it won't be happening.

Timothy Louis - Tempe Businessman

I own and house my company across the street from the property requesting the variance. The City of Tempe has my full support in granting this variance. It is only fair considering the challenges of the site, City Code, and zoning.

James Harper – Tempe Businessman

We are the owners of the property directly to the north of the subject property. We strongly support the City granting this variance due to the hardship of the site.

Daryl Burton – Tempe Businessman

I believe the project is well thought out and will bring jobs to the area.

Noel Griemsmann - Tempe Businessman

On behalf of the owner of the property and in support of the project.

Public Comments Closed

Chairman Lyon advised the applicant that they could respond to the public comment.

Mr. Morris stated that he did speak with Ms. Miller yesterday. He would like to address the loss view of South Mountain; regardless of the height of the building across street the existing height of 35 feet will block any views at street level. The existing height allowed would have impact on the views to the West of the building. Also, many of the buildings don't have window or view openings. There is significant landscaping at the street which is mature landscaping almost building height which will also stop any views. The truck was also considered in the design and

the layout of what was purposed. The site is overparked to ensure that there are not any on street parking. The site was also designed so that it is self-contained and has access to circulation around the building without creating any issues back on the street. Lastly it is an industrial area just outside of the industrial overlay but surrounded of the freeway back where there are other similar industrial uses with truck traffic. Where the character of the traffic is appropriate in the area.

Regarding the Board's comment; the test for a variance to be granted. The reason that there is a variance process is that sometimes when you apply it every property is unique. And sometimes when you apply the zoning ordinance as it stands to a property it unfairly restricts the owner of the property. Which really encompasses the test for a variance in this instance if you apply the city of Tempe zoning ordinance without making a variance for the fact that the property has 12 feet of fall. It requires this property to do something to a similarly situated property does not have to do which is go underground to get roof height. It would be something if the property was trying to be unique in the area for instance if they were trying to create a use that was not incorporated in the area already. However the argument that he is making and that Staff has supported is that this industrial use is different than any other industrial use and deserves the variance that is being requested because the topography of this site is different from the topography of other sites and has an inordinate impact on the developability of this site. that all other aspects of the ordinance notwithstanding because they can be meet. They can't achieve the height because of the change in topography. The overlay is referenced to show the character of the area but also to show that the buildings have the ability to go to 60 feet while this building at 35 feet cannot even achieve 35 feet because of how grade it measures at the City of Tempe those the tool in that instance is not to rezone the property but to request a variance so that one gets the benefit of the variance in the existing zoning. In the instance where one is having new development is contingent upon whatever action is being taken by the city and that property will not be purchased unless or until the variance is granted or the rezoning is completed. So, in this instance the fact that the applicant does not own the property is not significant. Only that the owner of the property has authorized the request. The ideal that the applicant was aware of it is completely irrelevant. Being aware of a condition does not make it self-imposed there is an actual state law that reflects this information as well.

Commission Discussion

Chairman Lyon acknowledged Vice Chairman Frazey.

Vice Chairman Frazey has a question on what the truck noise was and what was allowed since the applicant is not looking to change the zoning. Is the zoning property to the East the same since there is no truck traffic?

Chairman Lyon stated that the issue with the traffic is not part of the Boards concertation in respect to the variance. The traffic issue is concerned if they are requesting a use permit. The property is zoned General Industrial and they intend to use it as such.

Chairman Lyon acknowledged Board Member Watson.

Board Member Watson stated that he has a concern that the increase in height is by 2/3 from what the stated code is at 35 feet. Second is one of the reasons for the variance is that the applicant is claiming that it is from the property, but the applicant is trying to put a warehouse on the property. The property would serve well for other uses.

Chairman Lyon acknowledged Board Member Miller.

Board member Miller stated that he would have to echo the previous comment that the applicant wants to put a building on this site and the site doesn't appear to want the building on it. To be functionally specific. In order to make it work, the applicant wants to be granted a variance which is outside of the CC&R of development and is outside of the zoning requirements for the area in question. Going back to the comment about special circumstance and rather it is self-imposed. It is self-imposed in the sense that the site requires significant modification in order to do what the applicant wants to do. Failing to modify the site sufficiently the applicant wants the Board to grant the ability to build a very large building on an area where it is not supposed to be a very large

building. In turn he has a hard time granting the approval of the variance he does believe that it does not meet the test.

Chairman Lyon acknowledged Board Member Cullens.

Board member Cullens stated that it appears that to the North of the site there is already a warehouse.

Ms. Stovall stated that yes there is a warehouse with truck bays on the South side of the building.

Board Member Cullens stated that in discussing rather something was trying to be built on the property was designed for clearly that area is a warehouse with trucking traffic. It appears that it is the most functional use of the area.

Chairman Lyon acknowledged Board Member Baker.

Board Member Baker stated that she likes where the conversation is going and that if there is a warehouse just North of the property with truck bays did the property receive the same variance to do this. Since they are going to be very similar and line that cut off the zoning because the district that allowed the higher buildings just South of the property does the property already enjoy the variance.

Ms. Stovall stated that to her knowledge there are not other variances in the immediate area for building height however as the applicant stated that more modern warehouses are requiring higher heights.

Chairman Lyon acknowledged Board Member Miller.

Board Member Miller stated that Board Member Baker asked his question of was the building to the North in compliance with current zoning. Is it in compliance with the height specifications?

Ms. Stovall stated that if one is asking if the building has received any variance there are no variance on record that she has found. It is a very general question to ask if a site is complying that can be answered unless the City the does an inspection of every property. She is not aware of what the height of the building is.

Mr. Morris stated that the site to the North has a different topography then the property that they are on.

Chairman Lyon stated that he would refer back to the preamble of the Board of Adjustment regarding the purpose. Its function is to grant relief where a literal enforcement of the Zoning Ordinance would result in an unnecessary property hardship. The entire existence of the Board is to look at cases where rules say no you may not. On occasions to rule the Board thinks you should anyway. He believes this is one of those cases. As been pointed out this is a General Industrial district zoned piece of property the intent is to make sure that it is used as industrial purposes. Chairman Lyon has done designs for industrial buildings and concerns that 32-foot clear interior height is a standard for modern industrial buildings. It used to be lower but the process that are used are changing and that there are a lot of new things going into the building and the additional height lets the workers move much faster and be more efficient. So, the 32-foot clear interior plus several feet of interior structure plus several feet of roof slope plus several feet of parapet height which the city uses to fully screen mechanical units adds up very quickly. It is his belief that it is the city intention and the city Tempe best interest to see the property used for an industrial use. For a modern variety which means that the Board needs to make the accommodations. That leads to the question of Special circumstance. There is nothing in the language that says that nothing has to be a surprise to the applicant one can be aware that there is a slope or an easement or some other oddity about the size. If this site has a property which the Board can eliminate there would be no need for the variance. It appears that other sites have not yet encounter this problem which would then deem this as a special condition. This condition alone makes it considerably more difficult to complete the project. The Southwest Overlay directly to the South allows for one to do exactly what the applicant is requesting with the additional 25 feet. One could say that they do not have the right to ask that because they are not in the district however there is an imaginary line that makes one to believe what is so different from this property to the others. Looking at the Google Earth

image it is very apparent that this area is very much a part of the industrial area. The Board should make sure that it is used for Industrial purposes. Which is why he is in support of the variance.

Chairman Lyon acknowledged Board Member Baker.

Board Member Baker stated that she agrees with Chairman Lyon and that she would like the other Board Members to consider for a moment is that there is an invisible line. The applicant is not asking for a huge building they are just trying to meet the manufacturing requirements that are set. It is also extremely important that the Board Members listen to the City Staff who has made it abundantly clear that no matter who comes in and wants to develop the property something is going to have to give. Right now, there is a viable member of the community that wants to come and put a business there that meets the zoning. If the Board does not do this now, then it will come back the next time a developer comes along.

Chairman Lyon called for a motion:

Motion by Board Member Baker to approve the Variance to increase the maximum building height from 35 feet to 58 feet for **HARL INDUSTRIAL CENTER**, located at 6840 South Harl Avenue; second by Board Member Cullens. Motion passed on 5-2 vote.

Ayes: David Lyon, James Frazey, Whitney Baker, Kevin Cullens, John Confer

Nays: Richard Watson, Robert Miller

Abstain: None

Absent: Raun Keagy

Staff Mr. Abrahamson did not have any announcements.

Hearing adjourned at 7:08 pm

Prepared by: Brittainy Nelson, Administrative Assistant
Reviewed by:

Steve Abrahamson, Principal Planner

SA:bn