



MINUTES
BOARD OF ADJUSTMENT
CITY OF PRESCOTT
Thursday, July 19, 2007 - 9:00 AM
City Council Chambers

MEMBERS PRESENT:

E. Calvin Fuchs, Chairman
Mike Klein, Vice Chairman
Johnnie Forquer
Ken Mabarak
Bill Warren

MEMBERS ABSENT:

Duane Famas
Tom Kayn

OTHERS PRESENT:

George Worley, Assistant Community
Development Director
Matt Podracky, Sr. Assistant City Attorney
Mike Bacon, Community Planner
Bob Luzius, Councilman
Kathy Dudek, Recording Secretary

PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE

I. CALL TO ORDER

II. ATTENDANCE

III. REGULAR AGENDA

1. Approve the minutes of the 06-21-07 public hearing.

Mr. Mabarak, **MOTION:** to approve the minutes of the June 21, 2007 public hearing. Ms. Forquer, 2nd. **Vote: 4-0-1** (abstention due to absence: Warren).

2. V07-004, 1837 Autumn Drive. APN: 108-14-082 and totaling ± 0.20 acre. Zoning is Single Family 9, (SF-9). LDC Section 2.7.3.D.5.a. Request side yard variance for accessory building. Owner/applicants are Edmond A. & Carol J. Webster. Community Planner is Mike Bacon.

Mr. Bacon reviewed the staff report and indicated:

- the request is for a side yard variance for an accessory building;
- the request is for a 1' setback from the property line for a shed;
- the City received a complaint and the applicant was served with a notice that the shed needed to be moved;
- a letter with concerns about the property line was received from an adjoining property owner;
- a letter with from the neighbor to the north was received and explains the concerns;
- color photos have been submitted [*the photos were passed to the Board and made a part of the official record*];

- the criteria under which a variance may be approved;
- after a search, no other similar variances have been found;
- the hardship is the result of the owner's actions;
- the staff report needs to reflect an 8" distance from the property line; and,
- staff is not offering a recommendation.

Mr. Edmond Webster, 1837 Autumn Drive, owner/applicant stated:

- the request for a variance is for a garden shed;
- the front part of the shed is 1-foot from the property line and [tapers] to 8-inches at the back;
- he wanted to preserve existing trees;
- to place the shed elsewhere would interrupt the view of the neighbors and also the view from his bedroom;
- he asked the neighbor for an affidavit to leave the shed in place; and,
- he talked to the neighbor's husband and told him he would install gutters.

Mr. Webster then asked what type of information he needs to present to the Board.

Chairman Fuchs explained that the Board of Adjustment is a quasi-judicial board charged by the City to grant variances only in exceptional circumstances. If not, people would be coming before us [the Board] all the time asking to violate City Code. Persons are not permitted to seek a variance where a self-imposed hardship exists. Two questions need to be answered: 1) what are extraordinary circumstances which would justify your [Mr. Webster] violating the zoning code by having this building 8-inches to 1-foot away from your neighbor's property; and, 2) why didn't you come to the City first and ask for a variance before violating City Code.

Mr. Webster responded there are buildings all over Prescott that violate the rule. The garden shed is considered a temporary building without electricity or plumbing involved. It didn't occur to me to get a building permit. In answer to the other question, long-time residents told me the City doesn't like to chop down trees or interrupt the environment. He asked Chairman Fuchs if that answered his question.

Chairman Fuchs referenced the materials submitted by the applicant and noted that there is another place where the applicant could move the shed that would not involve knocking down trees.

Mr. Webster answered by stating that is right. However, it [the shed] would be visible from the street.

Board members queried the applicant and Mr. Webster's answers are paraphrased in the brackets:

- were you aware of zoning codes when purchasing the house [no];
- were you aware that permits would be needed before constructing the shed [no];
- did you think you could do anything without building department review [that is not true because I have lived in five other houses in other cities and have never been cited for building garden barns. This was a temporary building, had I been looking at a permanent building using concrete or electrical I would have gone to the City];
- why some other areas where the shed could have been constructed weren't selected [there were very few places without bringing in the jackhammer, that is one of the locations where I can plant roses and have them grow]; and,

- the placement into (?) the neighbor's backyard appears unsightly and "un-neighborly" and there are several other places where the shed might not impede the enjoyment of the neighborhood [neighborhood had no problem, nothing was said about problem until landscaping started].

Chairman Fuchs submitted that there is a zoning code in the City of Prescott and that the applicant has an obligation to comply with the zoning code. The Board cannot explain actions of neighbors with respect to this item. The bottom line is that we [the Board] don't get involved in people's motivations.

Mr. Webster asked what he has to do, or present, to make you [the Board] grant the variance; i.e., what is the recourse? Chairman Fuchs response indicated the applicant was to move the shed.

The public were invited to speak by Chairman Fuchs.

Ms. Marilyn Taylor, 1896 Forest Meadows Drive, indicated she learned of the situation from the notice mailed to her. She knows of other sheds that sit on property lines and wanted to know if others who have sheds will have to comply.

Chairman Fuchs responded by saying that the City Council has amended the *Land Development Code (LDC)* over a number of years. Some buildings are grandfathered because they went into place before the existing *LDC*. Individuals who are now putting sheds on their property have to meet the current *LDC* requirements.

Mr. Klein, **MOTION: to deny variance request V07-004**, 1837 Autumn Drive. Mr. Warren, 2nd. **Vote: 5-0.**

3. **V07-005, 1717 Claire Street.** APN: 106-18-582 and totaling ± 0.19 acre. Zoning is Single Family 6 (Manufactured Housing) [(SF-6 (MH))]. *LDC* Section 3.7.3.F.4. Request variance for encroachment into the side corner setback. Zoning is Single Family 6 (Manufactured Homes) [(SF-6 (MH))]. Applicant is Scott Nalda for owner Rising Star Homes of Yavapai County, LLC. Community Planner is Steve Gaber.

Mr. Worley reviewed the staff report and indicated:

- the subdivision was originally platted with the intention of placing manufactured homes on the parcels;
- the ownership of the subdivision changed hands after the platting process;
- the new owner wishes to construct "stick built" housing in the subdivision;
- the *Land Development Code (LDC)* designates the entire street frontage on Claire Street as front yard;
- as a result of the *LDC*, the current owner is unable to fit any of his four model homes onto the property;
- the request asks the Board to perceive the lot as a corner with 20' at the front and 10' at the corner/side;
- staff understands the applicant's concerns, and it is unusual to have a curve this steep on a corner lot;
- the model home to be placed on the lot is approximately 1800 SF;
- staff does not feel that the developer is trying to cram too large a home on the lot; and,
- staff is recommending approval of this request.

Mr. Scott Nalda, applicant for Rising Star Homes of Yavapai County, 6737 Corsair Avenue, was present to answer questions. He stated he was never made aware that there was a special consideration for a triangular lot. The rear of the property has a drainage easement of 10 feet. By pushing the house back, it puts the rear of the home on the edge of the drainage easement. Rotation of the home places the driveway in the center of the radius.

Board members queried the applicant and Mr. Nalda's answers are paraphrased in the brackets:

- why not slide the house towards the south property line [the covered patio would turn into a covered porch and overhang into the ditch];
- if other models would fit better on the property [we have four model homes that are all within a foot of the overall envelope and were made so that they could basically fit on any of the lots];
- a concern with the impedence to the drivers on the street;
- three 20' setbacks on the sides is an extremely unusual situation; and,
- conflicting feelings about the owner's knowledge, or lack thereof, of the special requirements of the lot in regard to due diligence.

Mr. Mabarak: **MOTION:** to approve variance request V07-005, 1717 Claire Street. Mr. Warren, 2nd. Vote: 3-2 (dissenting votes: Fuchs, Klein). **Motion fails to carry; therefore, V07-005 is denied.**

4. **V07-002, 325 E. Gurley Street (The Cleaning Machine).** APN: 109-01-055A and totaling ± 0.21 acre. LDC Section 3.6. Zoning is Business General (BG). Request variance to reduce side and rear setbacks. Owners are Loren Q. and Linda R. Rowling. Applicant/agent is Mark Peugh. Community Planner is Ryan Smith. **WITHDRAWN PER APPLICANT**

Chairman Fuchs verified that this request is being withdrawn at the request of the applicant. Mr. Worley confirmed the withdrawal.

IV. REVIEW ITEMS

None.

V. SUMMARY OF CURRENT OR RECENT EVENTS

None.

VI. ADJOURNMENT

Chairman Fuchs Adjourned the meeting at 9:50 AM.

E. Calvin Fuchs, Chairman