

**BOARD OF ADJUSTMENT
PUBLIC HEARING
APRIL 16, 2009
PRESCOTT, ARIZONA**

MINUTES OF THE PUBLIC HEARING OF THE BOARD OF ADJUSTMENT held on **APRIL 16, 2009** in **COUNCIL CHAMBERS, CITY HALL** located at **201 S. CORTEZ STREET**, Prescott, Arizona.

I. CALL TO ORDER

Chairman Klein called the public hearing to order at 9:00 AM.

II. ATTENDANCE

MEMBERS PRESENT Michael Klein, Chairman Duane Famas, Vice-Chairman Johnnie Forquer Ken Mabarak Bill Warren	OTHERS PRESENT George Worley, Asst. Community Development Director Matt Podracky, Asst. City Attorney Mike Bacon, Community Planner Steve Gaber, Community Planner Kelly Sammeli, Recording Secretary
MEMBERS ABSENT E. Calvin Fuchs Tom Kayn	COUNCIL MEMBERS PRESENT Bob Bell Bob Luzius

III. REGULAR AGENDA

Chairman Klein announced that the minutes from the March 19, 2009 Board of Adjustment meeting will be postponed until the May 21, 2009.

- V09-003, S. Mt. Vernon Street.** APN: 110-03-034 and totaling ± 0.17 acre. *LDC* Section 3.6.3.D. Zoning is Single-Family 9 (SF-9). Request a variance to increase lot coverage to 46% where 40% is allowed for a free-standing garage. Owner is Warren C. Kuhles. Applicant/agent is Robert Burford, Robert Burford Architects. Community Planner is Mike Bacon (928) 777-1360.

Mr. Worley, Assistant Community Development Director noted that the request was for a lot coverage variance however, the applicant had made some adjustments to the site plan to modify the building location, during the review by the Preservation Commission, and would have an additional Variance request to be added to the current request for a setback Variance. Mr. Worley noted that the request had occurred after the fact of the public notice advertisement; and, staff and the applicant have requested that the item be deferred until the next Board of Adjustment meeting where staff will provide a complete report on the lot coverage and setback Variance together.

Chairman Klein announced because the item was advertized they would hear from the public on the item and opened the item for public comment. Hearing no public comment Chairman Klein closed the item and called for a motion.

Mr. Warren, MOTION: to postpone the decision on the Variance request for 319 S. Mt. Vernon Street until the May 21, 2009 meeting.

Ms. Forquer, 2nd.

VOTE: 5-0.

2. **V09-002, 1108 Wood Spur Circle.** APN: 108-26-055 and totaling ± 0.36 acre. LDC Section 3.5.3.F.2. Zoning is Single-Family 12 (Planned Area Development) ([SF-12(PAD)]). Request a variance for a reduced side yard setback. Owners/applicants are Michael M. and Dawn E. Grant. Community Planner is Steve Gaber (928) 777-1206.

Mr. Gaber reported that the variance request was for a side yard setback in the area of Timber Ridge where the setbacks are noted in the plat. Mr. Gaber further noted that in a typical SF-12 zoning the setbacks would be nine feet and in the Timber Ridge area it is seven feet. Mr. Gaber continued the report and indicated that the Grant's have owned the home since 2000 and have been making ongoing improvements to their home when an issue arose with the replacement of the deck. Mr. Gaber noted that the original permit for the house was issued in 1985 and the site plan does not indicate that there was a deck as part of the original building however, common sense would indicate that there was something there because of the doorways opening on the side of the house. Mr. Gaber further noted that any type of structure that was in the location on the side would be non-conforming even from the original build date. Mr. Gaber placed photographs of the deck on the overhead projector and reported that the Grant's have been making improvements to the home and over the years have tried to maintain the old deck however, it was falling apart and had to be removed and rebuilt. Mr. Gaber reported that there were no building permits issued for the removal or replacement of the new deck and so the property setback issue was not discovered until the last couple of months. Mr. Gaber indicated that the staff report provides information on what to do about non-conforming uses. Mr. Gaber added that the code does allow for non-conforming structures to be continued as long as they are not expanded or replaced. Mr. Gaber reported that the replacement would be allowed only by an act of nature and the long term decay of the deck would not qualify for the replacement of the deck. Mr. Gaber added that in the staff report, at the end of the explanation of the non-conforming uses there is information on how to resolve the situation, which could be removal, corrections, or applying for a variance or a rezoning. Mr. Gaber placed a photograph of the new deck on the overhead which showed that the deck is to be located about two and a half feet from the property line. Mr. Gaber explained to the Board that the adjoining property is owned by the Kelly's and that he has had detailed conversations with Mrs. Kelly regarding the encroachment. Mr. Gaber noted that both the Kelly's and the Grant's have acknowledged frustration and the mistakes that were made with the original deck and the replacement of the deck. Mr. Gaber indicated that the Kelly's noted that they would like everything be in compliance however, they did not feel there was a significant impact to their property. Mr. Gaber added that he also heard from the Crozier's, who are the neighbors on the opposite side of the property who submitted an email indicating that they supported the variance. Mr. Gaber indicated that the support was based on a neighborhood relationship and also the upgrades that are occurring on the Grant's house having a positive effect on the neighborhood. Mr. Gaber concluded the staff report by noting that the standard criteria for the variance is in the rest of the staff report however, it would be best for the Board to hear from the Grant's and the most effected neighbor, the Kelly's, who were both present at the meeting.

Chairman Klein invited the applicant to the podium to speak.

Mr. Michael Grant, 1108 Wood Spur Circle, Prescott noted that he and his wife Dawn, own the property and did appreciate the time to speak to the Board. Mr. Grant indicated that he would first like to apologize. Mr. Grant further indicated that when they started the renovation of the deck they did not think of variance, setbacks, or permit issues as the deck was there when they purchased the house in 2000. Mr. Grant added that they thought they could use the existing supports and posts however, when they got into it, they discovered that the deterioration was too bad and the work was not done right as the photographs provided reflected. Mr. Grant noted that the posts were just stuck in cement and dirt and there was not an adequate foundation to build on and it turned out to be a very extensive renovation. Mr. Grant acknowledged that they now know that was a mistake. Mr. Grant indicated that they did reduce the size of the deck considerably; it was pulled closer to the house and away from the lot line about 18 inches, and they also eliminated a 5' X 8' overhang that was originally there. Mr. Grant noted that there is 22 feet between the edge of the deck and the side of the house at 1106 Wood Spur Circle, and if the purpose of the 7' setback was to allow a minimum of 14' between structures that is being met by more than 8'. Mr. Grant added that the area between the houses has several large trees. Mr. Grant indicate that the old deck was not only unsafe but was also unsightly and a fire hazard which was a concern for them. Mr. Grant added that the new deck has been built out of superior fire rated wood with a 25 year warranty and asked to Board to support their request for the 4 ½ foot variance.

Chairman Klein inquired if anyone on the Board had any questions for the applicant.

Mr. Warren asked Mr. Grant how the deck was brought to the City's attention.

Mr. Grant indicated that he thought the Kelly's had called it in.

Mr. Warren noted that if the deck had been reduced by 18 inches it would have originally been located one foot from the property line.

Mr. Grant noted that was correct.

Mr. Warren inquired if any of the original deck still existed.

Mr. Gaber placed the photographs of the old deck and the various parts on the overhead for all to see.

Mr. Grant indicated that the ledger plate was still in tact. Mr. Grant indicated that they had intended on using the old posts but they were in too bad of condition.

Mr. Warren made note that one of the things the Board has to consider when they allow for a variance is not only the location, but also the neighbors, and how the variance will apply to the future developments of the property. Mr. Warren added that side yard setbacks are important for the light, ventilation, and fire department access. Mr. Warren noted that currently the area is open however, future owners could build a side yard fence in that area and the access could be blocked.

Mr. Warren asked Mr. Gaber to explain what the requirements for a remodel would be, and if the ledger plate could be considered as part of the original non-conforming deck. Mr. Warren then indicated that before Mr. Gaber answered that he would like to commend the Grant's for doing a nice job and upgrading the property which is an asset to the neighborhood and Prescott.

Mr. Gaber reported that a non-conforming structure could be repaired or renovated but it has to stay within the boundaries of the original structure. Mr. Gaber further reported that it is addressed in the Land Development Code under Article 10.3 and indicated that some of the original structure needs to be in place.

Chairman Klein noted that there were a number of photographs provided that documents the old decks location, footings, attachments, etc; and, the new deck and the asked Mr. Grant what was the reason for the documentation of the deck.

Mr. Grant indicated that he had gotten his wife a new camera last year and that she had taken photographs for everything. Mr. Grant added that his wife was the superintendant of the project.

Chairman Klein called for any other questions from the Board for Mr. Grant. Hearing none Chairman Klein invited Mrs. Kelly to the podium to speak.

Mrs. Kathleen Kelly, 1105 Wood Spur Circle, Timber Ridge noted that she would speak on behalf of her husband John. Mrs. Kelly indicated that they have lived in their home since building it in 1984, and it is directly across the street from the property under review. Mrs. Kelly noted that they own five additional properties on the street, one of which in next door to 1108 Wood Spur Circle. Mrs. Kelly indicated that the property was originally owned by her father-in law who is now deceased. Mrs. Kelly added that after the estate settlement they had a survey of the 1106 property, found the discrepancy, and then inquired to the City about the setbacks between the two properties, and did not hear anything until the variance request arrived for 1108 Wood Spur Circle. Mrs. Kelly indicated that they were offered a copy of the staff report by Mr. Gaber which detailed the variance request and the code violations for the property. Mrs. Kelly stated that they appreciate the rules, regulations, and codes that the City has in place and also appreciated Mr. Gaber who provided them with information. Mrs. Kelly further noted that after reading the staff report, the situation seems too complicated for inexperienced home owners to make the proper decision, and that they appreciated the Board of Adjustment members who have knowledge and experience, and would take into the consideration all of the codes to make a decision that is fair to the situation and set the proper outcome for the current request.

Chairman Klein called for questions to Mrs. Kelly. Hearing none Chairman Klein called for questions of staff.

Mr. Mabarak inquired what the setbacks would be in a single family subdivision.

Mr. Gaber reported that it would vary on the zoning district and gave an example of a Single-Family-9 (SF-9) which would be a seven foot setback and noted that the setbacks would increase as the lots got bigger. Mr. Gaber added that in this case the setbacks are seven feet.

Mr. Mabarak inquired what the intention of a setback was.

Mr. Gaber reported that in most single family homes it is a safety requirement which also includes light, air, and access.

Mr. Mabarak noted that when he was at the site he had observed that the deck was approximately twenty feet from the Kelly's which is almost three times more that what the code calls for and does not have a problem with it.

Mr. Famas indicated that a person could tell by the condition of the old deck that it was probably built at the same time as the house was as it takes a long time to get that type of deterioration.

Chairman Klein called for other comments or questions, hearing none called for a motion.

Mr. Mabarak, MOTION: move to approve Variance Application V09-002 with a condition that the Grant's provide plans and information necessary to obtain a building permit and appropriate inspections for the deck and the associated improvements to their home.

Mr. Famas, 2nd.

VOTE: 5-0.

IV. REVIEW ITEMS

None.

IV. SUMMARY OF CURRENT OR RECENT EVENTS

None.

VI. ADJOURNMENT

Chairman Klein adjourned the meeting at 9:32 AM.


Michael Klein, Chairman

Kelly Sammeli
Recording Secretary