

Board of Adjustment

Minutes

City Council Chambers

57 East 1st Street

Wednesday, January 15, 2020

Study Session 5:00 p.m. | Hearing 5:30 p.m.

Boardmembers Present:

Chair Chris Jones
Vice Chair Kathy Tolman
Boardmember Adam Gunderson
Boardmember Ken Rembold
Boardmember Nicole Lynam
Boardmember Steven Curran
Boardmember Wade Swanson

Boardmembers Absent:

Staff members Present:

Margaret Robertson, City Attorney
Nana Appiah, Planning Director
Rachel Prelog, Senior Planner
Charlotte Bridges, Planner I
Jennifer Gniffke, Planner I
Heather Omta, Planning Assistant

Other City members Present:

The study session began at 5:00 p.m. and concluded at 5:35 p.m. The Public Hearing began at 5:35 p.m., before adjournment at 6:44 p.m., the following items were considered and recorded.

Board of Adjustment Study Session

1. Call meeting to order

Study Session began at 5:00 p.m.

2. Staff Report

Senior Planner, Rachel Prelog, advised the Board that City Council adopted the Quality Development Design Guidelines which will go into effect on 2/10/2020. Agreed to schedule a presentation of the guideline changes.

3. Review and discuss items listed on the Public Hearing agenda for January 15, 2020.

The items scheduled for the Board's Public Hearing were discussed.

- Planner Charlotte Bridges presented case BOA19-00847
- Planner Charlotte Bridges presented case BOA19-00929
- Planner Jennifer Gniffke presented case BOA19-00925
- Planner Jennifer Gniffke presented case BOA19-00926

4. Adjournment

Without objection, the study session was adjourned at 5:35 p.m.

Board of Adjustment Public Hearing

- 1. Call meeting to order at 5:35 p.m.**
- 2. Take action on all consent agenda items.**

Items on the Consent Agenda

- 3. Consider the Minutes from the December 4, 2019 meeting.**

A motion by Boardmember Gunderson and seconded by Boardmember Curran unanimously approved the December 4, 2019 minutes and Consent Agenda as read by Vice Chair Tolman.

Vote: 7-0

Upon tabulation of vote, it showed:
AYES – Jones, Tolman, Swanson, Rembold, Curran, Gunderson,
Lynam
NAYS – None

- 4. Take action on the following cases:**

A motion to approve the following cases on the consent agenda as read by Vice Chair Tolman was made by Boardmember Gunderson and seconded by Boardmember Curran.

Vote: 7-0

Upon tabulation of vote, it showed:
AYES – Jones, Tolman, Swanson, Rembold, Curran, Gunderson, Lynam
NAYS – None

***4-a Case No.: BOA19-00847 (Approval with Conditions)**

Location: 550 West 9th Street (District 1)

Subject: Requesting a Special Use Permit (SUP) to allow an enlargement of a nonconforming structure for a second-floor addition to an existing multi-residence building in the RM-3 District.

Decision: Approval with Conditions

Summary: This item was on the consent agenda and not discussed on an individual basis.

Motion: A motion to approve case BOA19-00847 was made by Boardmember Gunderson as read by Vice Chair Tolman with the acceptance of Findings of Fact and Conditions of Approval, and seconded by Boardmember Curran to approve the following conditions:

1. Compliance with site plan as submitted, except as modified by the conditions of approval.
2. Compliance with all City development codes and regulations, and all requirements of the Development Services Department regarding the issuance of building permits.
3. Prior to the issuance of a building permit for the subject site the following items shall be provided to City of Mesa Planning staff for review and approval:
 - a. A revised site plan showing the minimum rear yard setback of 30-feet to the second-floor addition per Table 11-5-5 Development Standards of the MZO for the RM-3 District.
 - b. A landscape plan showing the replacement of dead or missing landscape material per the approved 1982 landscape plan with building permit #155141 or landscape material that is “equal to or better than” the material approved with the 1982 building permit.

Vote: 7-0

Upon tabulation of vote, it showed:

AYES – Jones, Tolman, Swanson, Rembold, Curran, Gunderson, Lynam

NAYS – None

The Board’s decision is based upon the following Findings of Fact:

- A. The existing 4-unit multiple residence was constructed in 1982.
- B. The existing multiple residence structure is considered “existing and legal nonconforming” due to nonconforming side yard setbacks.
- C. The proposed second-floor addition is in-line with the footprint of the existing structure and does not further reduce the existing nonconforming side yards.
- D. The proposed second-floor addition, with staff recommendations, meets the criteria of Section 11-36-7(B) of the MZO to request a SUP to allow alterations and enlargements that extend into a nonconforming yard.
- E. This request conforms with the criteria for the granting of a SUP as outlined in Section 11-70-5 of the Mesa Zoning Ordinance.
- F. This multiple residence is located in the Neighborhood character type of the Mesa 2040 General Plan and in the West Mesa Economic Activity Area. The proposed second-floor addition is consistent with the policies of the General Plan for residential neighborhoods.
- G. The project is consistent with the purposes of the RM-3 District.

- H. The proposed project is consistent with the scale of development of the surrounding neighborhood and will not be detrimental or injurious to the surrounding properties, the neighborhood or the City.
- I. The proposed project is served by existing City of Mesa utilities and public infrastructure.

***4-b Case No.: BOA19-00925 (Approval with Conditions)**

Location: 409 East 1st Avenue (District 4)

Subject: Requesting a variance from the Form Based Code Building Form Standards and Building Type Standards to allow for development of a single residence in the T4NF Transect.

Decision: Approval with Conditions

Summary: This item was on the consent agenda and not discussed on an individual basis.

Motion: A motion to approve case BOA19-00925 was made by Boardmember Gunderson as read by Vice Chair Tolman with the acceptance of Findings of Fact and Conditions of Approval, and seconded by Boardmember Curran to approve the following conditions:

1. Compliance with the final site plan and elevations as submitted.
2. Compliance with all City development codes and regulations, except as modified by the variance request listed in Table 1 and Table 2 of this report.
3. Compliance with all requirements of the Development Services Department regarding the issuance of building permits.
4. Prior to the submittal of a building permit, submit and obtain approval from the City of Mesa for:
 - a. Zoning Clearance for compliance with the Form Based Code; and
 - b. Certificate of Appropriateness for compliance with the Historic District Overlay.

Vote: 7-0
Upon tabulation of vote, it showed:
AYES – Jones, Tolman, Swanson, Rembold, Curran, Gunderson,
Lynam
NAYS – None

The Board’s decision is based upon the following Findings of Fact:

- A. There are special circumstances, including the existing parcel dimensions and the style and scale of surrounding homes, which pose challenges to the developer to fully conform to all requirements of the Form-Based Code.
- B. The subject lot was not created by the applicant and has been in existence for over 50 years.
- C. The strict application of the MZO will deprive the property of privileges enjoyed by other properties of the same classification in the same zoning district.
- D. Approval of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the form-based code zoned district.

***4-c Case No.: BOA19-00926 (Approval with Conditions)**

Location: 105 South Mesa Drive (District 4)

Subject: Requesting a variance from the Form Based Code Building Form Standards and Building Type Standards to allow for development of a single residence in the T4NF Transect.

Decision: Approval with Conditions

Summary: This item was on the consent agenda and not discussed on an individual basis.

Motion: A motion to approve case BOA19-00926 was made by Boardmember Gunderson as read by Vice Chair Tolman with the acceptance of Findings of Fact and Conditions of Approval, and seconded by Boardmember Curran to approve the following conditions:

1. Compliance with the final site plan and elevations as submitted.
2. Compliance with all City development codes and regulations, except as modified by the variance request listed in table 1 and table 2 of this report.
3. Compliance with all requirements of the Development Services Department regarding the issuance of building permits.
4. Prior to the submittal of a building permit, submit and obtain approval from the City of Mesa for:
 - a. Zoning Clearance for compliance with the Form Based Code; and
 - b. Certificate of Appropriateness for compliance with the Historic District Overlay.

Vote: 7-0

Upon tabulation of vote, it showed:

AYES – Jones, Tolman, Swanson, Rembold, Curran, Gunderson,

Lynam

NAYS – None

The Board's decision is based upon the following Findings of Fact:

- A. There are special circumstances, including the existing parcel dimensions and the style and scale of surrounding homes, which pose challenges to the developer to fully conform to all requirements of the Form-Based Code.
- B. The subject lot was not created by the applicant and has been in existence for over 50 years.
- C. The strict application of the MZO will deprive the property of privileges enjoyed by other properties of the same classification in the same zoning district.
- D. Approval of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the form-based code zoned district.

Items not on the Consent Agenda

5. Take action on the following cases:

5-a Case No.: BOA19-00929 (Denial)

Location: 4230 East Hale Street (District 5)

Subject: Requesting a variance from the minimum side yards to allow for an addition to the existing home.

Decision: Denial

Summary: Item was discussed at length.

Motion: A motion to deny the variance request for case BOA19-00929 was made by Boardmember Swanson and seconded by Boardmember Rembold.

Vote: 5-2

Upon tabulation of vote, it showed:

AYES – Lynam, Swanson, Jones, Rembold, Gunderson

NAYS – Tolman, Curran

- Chet Welch, Homeowner and applicant, 4230 E. Hale Street. Addressed the Board with the justification for the variance.
- Mark Hunsaker, Builder, 4224 E Hackamore. Went through the timeframe of the construction.
- ❖ Vice Chair Tolman
 - Stated her opinion that the Board is the human element which allows Boardmembers to look at circumstances outside of the normal scope of Code.
 - Stated that the blame lands on the City inspectors for not catching the encroachment earlier, feels the City bears the fault.
 - Stated that the encroachment is minimal.
 - Posited that the Board has approved much larger variances and that she would support the requested variance.
 - Posited that the uncertainty of the property line is the pre-existing condition.
- ❖ City Attorney Margaret Robertson
 - Advised the Board of their quasi-judicial status and informed the Board that the City's variance criteria are based on the Arizona Revised State Statute.
 - Advised the Board that an appeal goes to Superior Court rather than City Council.
- ❖ Boardmember Rembold
 - Asked about the architect and if he was taking any responsibility in the error and how he determined the property line.
 - Mr. Welch stated that the architect/draftsperson hand measured the lot when drawing up the original plans.
 - Concerned that the contractor did not verify property lines.
 - Doesn't believe Building Inspection bears all the responsibility. The project wasn't designed or built to meet specification. Fault falls on architect and builder.
 - Posited that a property line adjustment was a better solution.
- ❖ Boardmember Swanson

- Asked if the neighbor would consider selling 16 inches of his property to the Welch's.
 - Mr. Welch responded that yes, they had talked to him; however, the variance option was more suitable for both parties.
 - Asked if and when a survey was conducted.
 - Mr. Welch confirmed the property was surveyed in December of 2019.
 - Asked if the architect had insurance and encouraged the homeowner to explore going back to the design professional.
 - Raised concerns about setting a precedent in the approval variance cases that do not meet required criteria.
 - Stated his sympathy for the property owner and feels the architect should take responsibility.
- ❖ Boardmember Curran
- Asked if the architect admitted a mistake.
 - Mr. Welch doesn't believe the architect has taken responsibility.
 - Asked what it would cost to revise the already constructed structure.
 - Mr. Welch stated that he would need to sell the home to revise what had been constructed thus far.
 - Asked City staff what the purpose was of the 5 and 7 feet setback between houses?
 - Margaret Robertson explained setbacks allow fire access to the rear of the property and provide a fire break between structures.
 - Asked the builder (Mr. Hunsaker) if he noticed it was too close to the property line.
 - Mr. Hunsaker replied, no because many cases are close to the lot lines. Plus, the lot line is not the same distance from the structure all the way down the lot line.
 - Stated that the conditions are not pre-existing. Through no fault of their own, the homeowners are in a difficult situation. Doesn't feel the homeowner should be penalized.
 - Feels the builder and inspectors bear responsibility.
- ❖ Chair Jones
- Asked what the applicant's thoughts were of hitting the four variance criteria.
 - Mr. Welch stated that being located on a corner they could not build on the west side of the property because the hydrant impedes on west side setback. Not enough space to meet the two-car garage on west side. Corner reduces usability.
 - Feels sympathetic for the situation.
 - Repeated concerns raised by Boardmember Swanson regarding precedence setting.
 - Stated his disappointed in the circumstances but feels this is worthy of a claim with the design professional and contractor.
 - Struggles with justification of criteria 2 & 3.
- ❖ Boardmember Gunderson
- Stated that the variance criteria are not limited to just size and shape; however, he was having a hard time with the justification which constituted special circumstances
 - Stated that the property owner was not at fault but struggles with pre-existing conditions causing the need for the variance.

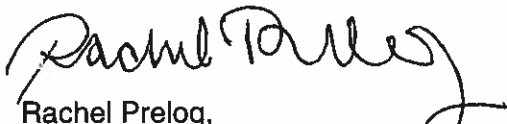
6. Items from citizens present

None.

7. Adjournment

Without objection, the public hearing adjourned at 6:44 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rachel Prelog". The signature is fluid and cursive, with a large loop at the end.

Rachel Prelog,
On behalf of Zoning Administrator (Nana Appiah)