



Town of Paradise Valley

6401 E Lincoln Dr
Paradise Valley, AZ 85253

Minutes - Final

Board of Adjustment

Chair Hope Ozer
Boardmember Robert Brown
Boardmember Priti Kaur
Boardmember Leibsohn
Boardmember Jon Newman
Boardmember Rohan Sahani
Boardmember Quinn Williams

Wednesday, September 7, 2022

5:30 PM

Council Chambers

1. CALL TO ORDER

2. ROLL CALL

Present 5 - Boardmember Robert Brown
Boardmember Eric Leibsohn (via Zoom)
Chairperson Hope Ozer
Boardmember Rohan Sahani (via Zoom)
Boardmember Quinn Williams (via Zoom)

Absent 2 - Boardmember Priti Kaur
Boardmember Jon Newman

3. EXECUTIVE SESSION

4. PUBLIC HEARINGS

A motion was made by Boardmember Brown, seconded by Boardmember Sahani, to rearrange the agenda and move the Public Hearing item before the study session item. The motion carried by the following vote:

Aye: 5 - Boardmember Brown, Boardmember Leibsohn, Chairperson Ozer, Boardmember Sahani and Boardmember Williams

Absent: 2 - Boardmember Kaur and Boardmember Newman

- A.** [22-267](#) UR Project Variance - 7941 N 55th Street (APN 169-06-076B). Request for Continuance for Multiple Variances from the Zoning Ordinance. Case No. BA-22-06.

Mr. Mendez, Hillside Development Planner, provided the request for a continuance to the next Board of Adjustment meeting.

Ms. Collins stated that there was a request to change the published date of the next Board of Adjustment meeting.

Chair Ozer queried Board members for an acceptable date and decided on October 19, 2022.

Joan Levinson, a Paradise Valley resident, asked what the variances were for.

Mr. Mendez responded that the variance request was for disturbance, overall height, wall height, retaining wall, and setbacks.

Chair Ozer stated that the variance packet in its entirety will be published one week prior to the October 19th meeting on the Town's website so that residents can review the request in detail.

A motion was made by Boardmember Williams, seconded by Boardmember Sahani, to continue the UR Project Variance to October 19, 2022. The motion carried by the following vote:

Aye: 5 - Boardmember Brown, Boardmember Leibsohn, Chairperson Ozer, Boardmember Sahani and Boardmember Williams

Absent: 2 - Boardmember Kaur and Boardmember Newman

5. STUDY SESSION ITEMS

A. [22-268](#) Review of Board of Adjustment Handbook

Chair Ozer introduced John Gaylord, with the Town Attorney's office, to review the handbook that was sent to all board members via email prior to the meeting today.

Mr. Gaylord stated there were four areas of the handbook that he wanted to specifically address. These areas are:

1. Meetings at 6:00 p.m. and first Wednesday of the month

Boardmember Brown asked if they could change the start time.

Chair Ozer stated that in the past when the 5:30 pm study session ended

early, the Board had to wait until 6:00pm to start the regular meeting. They later began the practice of starting the regular meeting immediately following the study session. She stated that she would like to see one meeting, study session and regular meeting immediately following, begin at 5:30 p.m.

Boardmembers Liebson, Sahani, and Williams stated that they think it's appropriate.

Chair Ozer asked if this change was in the purview of the Board of Adjustment.

John Gaylord commented that the Board can make small changes to the rules and procedures and the study sessions are only required as needed per the rules of procedure.

Chair Ozer also indicated that the Board could change the meeting date from the first Wednesday of the month to a date certain as determined by the Board.

2. Deadlines for Applicants

Mr. Gaylord noted that past practice allowed permissive timelines for applicants and made allowance for late submittals. The change is to require all materials to be submitted by the deadline so that the Board and public can review all the materials.

Mr. Gaylord noted that this differs for the public who can submit questions and comments any time prior to or at the meeting.

Boardmember Brown asked about the concern over people showing up at the 11th hour with boatloads of documents that have not been submitted for review.

Mr. Gaylord stated this is a common problem and deferred to the Chair.

Chair Ozer also stated this is problematic and that having the rule makes sense as the Board is held accountable and can only make decisions based on published information submitted for review in advance and not new information that has not been published.

Boardmember Brown concurred.

Mr. Doug Jorden in the audience asked - if a neighbor submitted a question or comment to the applicant prior to the meeting and the applicant wanted to respond with information to the Board, would that be

permissible.

Mr. Gaylord stated that the applicant could respond to the question with any necessary documentation at the meeting and the Board would determine whether the new information was substantial enough to continue the hearing or if it was minor and would not constitute a material change.

Mr. Burton asked for clarity regarding cutoff dates.

Mr. Gaylord stated that the cutoff date for applicant submittals and everything that will be presented to the Board included power point presentations which are due by the date of publication.

3. Site Visits

Mr. Gaylord stated that it is the practice of the Board to visit site because of the unique properties and situations that need to be seen on site. He stated that rules and practice need to be compliant with the law. The new rules have an allowance for site visits and that they will occur within a window of published dates and times. The Town will notice a possible quorum in case several Board members happen to arrive at the same time. The notice would state that no vote will take place and that no discussion will occur.

Chair Ozer added that she understands that applicants may want to lobby the Boardmember, but she advises them that she cannot discuss the merits of the request due to the quasi-judicial basis of the proceedings.

Boardmember Brown inquired about visiting a property when no one is present and asked Mr. Gaylord for advice.

Mr. Gaylord discussed and stated that there is an element of judgment and did not disagree with Boardmembers concerns about not visiting the site when the property owner or a representative is not present.

Chair Ozer asked about when the site visit can occur and if it could include the morning of the Board of Adjustment meeting as many Board members travel and need various times to visit the sites.

Mr. Gaylord advised that this would be acceptable and that it should accommodate the Board.

Ms. Collins stated that staff is here to support the Board and work with the Board to facilitate the site visits.

4. Abstention

Mr. Gaylord stated that previously the rules were more flexible and had a third category which is not a valid conflict of interest and is now removed from the reasons for abstention. There are two valid legal reasons to abstain: 1) if you arrive at the meeting and miss the entire discussion and 2) if you have a legal conflict of interest, declare that you have one, and state the conflict. The third that is not valid, is that a Boardmember feels they cannot be fair and impartial. This is not a valid abstention and would be deemed a "no" vote.

Ms. Collins also noted that Mr. Gaylord will go over the three variance criteria that have been fine-tuned to align with state law (which is now codified in the Town Code).

Mr. Gaylord reviewed the three criteria stating that each must be met for a variance to be granted.

He explained that criteria #1 contains a list of examples of special circumstances and that it is not exclusive and read through criteria #1, "That there are special circumstances applicable to the property, which may include circumstances related to the property's size, shape, topography, location, or surroundings; and"

On criteria #2, he explained that there is what would seem to be a minor change in the language stating that special circumstances cannot be self-imposed by current property owners or predecessors. The new fine-tuned language says just property owner and does not include the guiding words current or predecessor leaving some ambiguity that is consistent with and matches the state statute. Criteria #2 now reads, "That the special circumstances applicable to the property were not self-imposed or created by the property owner; and"

He reviewed criteria #3 explaining "That the strict application of the Zoning Ordinance will deprive the property of privileges enjoyed by other property of the same classification in the same zoning district"

Boardmember Brown asked if the Board could grant a variance on a property where a previous property owner caused the hardship.

Mr. Gaylord responded that the previous language did allow that, but that the code is now ambiguous to reflect the statute and that a situation like this would need to be analyzed by the Board to determine whether the previous or current owner made a difference on how they would consider the variance request.

Chair Ozer gave the example of whether an existing house that was built per a previous code that would now violate current setbacks would have to be brought into compliance with the current code for a major renovation.

Ms. Collins stated that it would depend on the significance of the expansion.

Mr. Burton stated that a new addition to an existing home would need to meet the current code. He went on to say that if renovations to the existing home were cosmetic, the existing home would not have to meet the code unless those renovations were for more than 50% of the existing home and were more than cosmetic.

Ms. Collins asked if there was any further discussion on the variance criteria and asked Chair Ozer if she wanted to discuss the Code of Conduct.

Chair Ozer stated the following:

- Board members must attend a training session.
- To assure a quorum, Board members must notify staff within 2 days of notice if they will be attending.

Boardmember Brown asked about the timing to satisfy the training session to satisfy this requirement.

Ms. Collins responded that all new Board members will be provided a training session and that staff would work with the Board to determine an acceptable day and time.

- It is critical to show respect to applicants. Board members are to attend in person unless out of town or under extenuating circumstances. If attending via zoom, live camera is to be turned on and member's identity indicated.
- Board members must visit the property within the prescribed times in advance of the meeting.
- Board members are to have the Order of Procedure document at the meeting.

Ms. Collins stated that this document will be provided by staff for Board members at each meeting.

- The Board is a quasi-judicial body. As applicants may appeal the Board's decision to the Superior Court, it is critical that the Board function in an orderly, professional, and structured fashion.
- In the past, the Board meetings have been somewhat informal. Going forward, we will address the staff as [Mr. or Ms.] last name; and Board members as Boardmember [last name].

Boardmember Leibsohn wanted to follow up on the conflict-of-interest issue. He recounted a case where a prior Boardmember was a Facebook friend with an applicant, and posted an unrelated congratulatory message to the applicant, and was accused of a conflict.

Boardmember Leibsohn also asked about the earlier case continued and wondered whether the continuance would be posted.

Mr. Zuganelis responded that it would be noticed and reposted.

Ms. Collins added that because the case was continued to a date certain that was satisfactory but that we go above and beyond.

Mr. Gaylord concurred and added that if done outside the public hearing, re-noticing would be required.

There was discussion regarding the attendance in person and Boardmembers Leibsohn and Sahani expressed their understanding of how important that is.

Chair Ozer recounted the importance of the training and encouraged Board members to review the handbook, as they represent the Town, and adhere to the conflict-of-interest rules to protect the Board members.

Mr. Gaylord restated the importance of declaring a conflict of interest and understanding that violations apply to the individual Board member.

Chair Ozer asked if there was any additional discussion.

Received and Filed

6. ACTION ITEMS

7. CONSENT AGENDA

- A.** [22-272](#) Approval of the June 1, 2022 Board of Adjustment Meeting Minutes

A motion was made by Boardmember Williams, seconded by Boardmember Sahani, to approve the June 1, 2022 Board of Adjustment minutes. The motion carried by the following vote:

Aye: 5- Boardmember Brown, Boardmember Leibsohn, Chairperson Ozer, Boardmember Sahani and Boardmember Williams

Absent: 2- Boardmember Kaur and Boardmember Newman

8. STAFF REPORTS

9. PUBLIC BODY REPORTS

10. FUTURE AGENDA ITEMS

11. ADJOURNMENT

Motion for Adjournment made at 7:01 p.m.

A motion was made at 7:03 p.m. by Boardmember Brown, seconded by Boardmember Leibsohn, to adjourn the meeting. The motion carried by the following vote:

Aye: 5 - Boardmember Brown, Boardmember Leibsohn, Chairperson Ozer, Boardmember Sahani and Boardmember Williams

Absent: 2 - Boardmember Kaur and Boardmember Newman

Town of Paradise Valley Board of Adjustment

By: George Burton
George Burton, Secretary