

Board of Adjustment

Minutes

City Council Chambers, Lower Level November 13th, 2012

Board Members Present:

Danette Harris- Chair
Chanel Fitch-Kirkpatrick- Vice Chair
Tyler Stradling
Trent Montague

Staff Present:

Gordon Sheffield
Angelica Guevara
Jeff McVay
Kaelee Wilson
Jason Sanks
Wahid Alam

Board Members Absent:

Wade Swanson
Greg Hitchens
Cameron Jones

Others Present:

Luci Scott
Toni Smith
Lyle Richardson
Scott Belford
Lance Baker
Tara Anastasi
David M. Brown
Mike Frost
Kolton Day
Andrew Hubler
Ronald Dew
Shauna Robinson
Pat White
Warren Bodine
Jim Langford
E. Daniel Shoemaker

The study session began at 4:44 p.m. The Public Hearing meeting began at 5:50 p.m. Before adjournment at 7:26 p.m., the following items were considered and recorded.

Study Session began at 4:44 p.m.

A. Zoning Administrator's Report:

- i. Mr. Sheffield reported the status of the Sign Code update to the board. Mr. Sheffield stated he needs a new volunteer from the Board of Adjustment to sit on his Sign Code Update committee.
- ii. Mr. Sheffield gave a brief report on case BA12-040 concerning additional livestock. He stated that since the hearing, Planning staff has received letters from concerned neighbors. Mr. Sheffield stated he has referred the case to Diane Brady in Animal Control.

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

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Study Session was adjourned at 5:24 p.m.

Public Hearing began at 5:50 p.m.

- A. Consider Minutes from the October 16th, 2012 Meeting a motion was made to approve the minutes. Vote: Passed 4-0

- B. Consent Agenda a motion to approve the consent agenda as read was made by Board member Stradling and seconded by Board member Fitch-Kirkpatrick. Vote: Passed 4-0

Case No.: BA12-037

Location: 1858 West Baseline Road

Subject: Requesting a Substantial Conformance Improvement Permit to allow the redevelopment of a commercial building in the LC-PAD zoning district. (PLN2012-00331)

Decision: Withdrawn

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

Motion: It was moved by Board member Stradling seconded by Board member Fitch-Kirkpatrick to withdraw case BA12-037.

Vote: Passed 4-0

**Board of Adjustment Meeting
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Case No.: BA12-038

Location: 606 West Caballero Circle

Subject: 1) a Variance to allow an accessory shade structure to encroach into the required side yard; and 2) a Variance to allow a garage addition to encroach into the required side yard in the RS-9 zoning district. (PLN2012-00332)

Decision: Approved with Conditions

Summary: Toni Smith, the applicant and property owner, represented the case to the Board. Mr. Smith stated the shade structure extends towards his neighbor's property. Mr. Smith stated he spoke with his neighbor prior to constructing the shade structure and his neighbor did not have an issue with the structure. The purpose of the shade structure is to shade equipment from the sun. Mr. Smith then discussed the second part of his request which is for a variance to encroach into his required side setback to construct a new garage. Mr. Smith stated a variance would be necessary to build a two car garage to code requirements.

The Board opened the hearing up for public comment.

Rick Bodine spoke on behalf of several neighbors present. He stated the neighbors are not in support of either of the variance requests.

Staff Planner Angelica Guevara presented staff's recommendation. She stated staff is supportive of the variance request for the new garage construction but is not supportive of the variance request for the existing shade structure.

Discussion ensued between board members.

Board member Fitch-Kirkpartick stated she thinks the garage addition will improve the exterior of the property.

Board member Stradling said he does not feel comfortable approving the side yard encroachment.

Motion: It was moved by Board member Stradling seconded by Board member Harris to approve case BA12-038 with the following conditions:

1. *Compliance with the site plan submitted, except as modified by the conditions listed below.*
2. *The shade overhang shall be reduced in size so as to not require a variance approval, but rather comply with code provisions allowing an awning overhang to extend up to 3' into any required yard. This may require removal of support columns, fire proofing, and the addition of other structural items to ensure it meets building code requirements for attachment to the home and proximity to the property line.*
3. *Compliance with all requirements of the Development Services Division with regard to the issuance of building permits.*

Vote: Passed 4-0

Findings

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1. The denied variance would have allowed an attached shade structure and garage addition to encroach into the side yard setback of the subject parcel. The shade structure would have encroached 7' into the required 7' side yard setback. The approved garage addition would encroach 2' into the required 7' side yard setback. Although the exact lot coverage of the home is unknown, it does not appear that the additions would cause the home to exceed the allowable 45% lot coverage for the RS-9 district.

2. The justification provided by the applicant related to this request notes that the existing shade structure provides weather and fire protection to electrical, pool, and air condition equipment located in the side yard. Furthermore, the applicant notes that this prevents a fire hazard by protecting these items. The Board does not find that this constitutes a special condition that applies to the land or the building as in most cases this type of equipment is: 1) common and not generally understood to need shade structure protection, and 2) could have been located in the larger street side yard or rear yard had the owner preferred to provide a shade structure for its protection. The applicant has noted that they are willing to trim the structure back a few feet, but prefer to keep the columns in place and therefore would still require a variance. The zoning code provision for awning projections, however, would allow them to project into the side yard (up to 3') without the need for a variance. The Board's decision allows modification to the shade structure to remove the columns, make it an awning, and allow the encroachment into the side yard as a matter of right. This may require additional bracing for structural support, and the proximity to the property line may require fire proofing by applicable building codes.

Justification for the garage addition variance request, however, does constitute a special condition. The required minimum dimensions for new residential enclosed garages are 20'x22'. At the time of construction, those dimensions were only 18'x18'. Since the footprint of the home, its respective floor plan and front door location, and driveway have all been set and would require significant reconstruction to accommodate the new garage within the required setbacks, a 2' variance in this instance is justified.

3. The subject parcel is of similar size (9,553 SF) and orientation as the other parcels adjacent to Caballero Circle and is consistent with the minimum required size for lots in the RS-9 zoning district (9,000 SF). In regards to the existing shade structure, staff finds no special conditions apply to this property to support this portion of the variance request since the lot is of regular dimensions and size has no unique topographical features. The addition of the shade structure within the required setback was a self-imposed hardship by the property owner and compliance with the Code would not deprive the property of privileges legally enjoyed by other properties in the same zoning district. Lastly, the granting of a 0' setback for this shade structure would constitute a special privilege unavailable to other properties in the vicinity and zoning district. As for the garage addition, the new larger dimensions for the garage were imposed by a change in the zoning ordinance and were not imposed by the owner of the property. It is important to note, however, that the proposed garage will meet the required 25' front yard setback.

4. Not related to the Zoning Ordinance requirements, the Building Code requires a five-foot fire-separation of all buildings from adjacent property lines, or use of fire-rated construction methods. As shown, the shade structure is not in compliance with Building Code fire separation requirements and significant modifications would be required before building permits would be issued. The garage, as proposed, would meet the 5' separation requirement from the property line.

**Board of Adjustment Meeting
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- Case No.:** BA12-048
- Location:** 931 East 6th Place
- Subject:** Requesting a Variance to allow an addition to encroach into the required side yard in the RS-9 zoning district. (PLN2012-00396)
- Decision:** Approved with Conditions
- Summary:** This item was on the consent agenda and was not discussed on an individual basis. The request was for a variance to allow an existing garage to encroach on side setbacks.
- Motion:** It was moved by Board member Stradling seconded by Board member Fitch-Kirkpatrick to approve case BA12-048 with the following conditions:
1. *Compliance with the site plan and exhibits submitted.*
 2. *Compliance with all requirements of the Development Services Division in the issuance of building permits.*
- Vote:** Passed 4-0

Findings

1. The applicant was approved for an addition that is proposed 6-feet from the side property line to line up with the existing original construction on the lot.
2. The approval allows the remodel of the existing carport into a garage.
3. The roof area of the home has existed in this configuration for the last 30 years.
4. The existing roof area of the home is pre-existing and was not created by the current property owner.
5. The strict application of the Zoning [Ordinance](#) will deprive the property of privileges enjoyed by other properties of the same classification in the same zoning district.
6. The lot is 8,854 s.f. in area where 9,000 s.f. lots are typically required.
7. The structures would encroach 4-feet into a required ten-foot side yard.

**Board of Adjustment Meeting
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Case No.: BA12-049

Location: 840 West Inglewood Street

Subject: Requesting a variance to allow an existing addition to encroach into the required side and rear yard in the RS-9 zoning district. (PLN2012-00398)

Decision: Continued to the December 11th, 2012 hearing.

Summary: Board member Fitch-Kirkpatrick declared a conflict of interest. As a result, there were not enough board members present for a quorum and the case was continued to the December 11th, 2012 hearing.

Motion: N/A

Vote: N/A

**Board of Adjustment Meeting
November 13th 2012**

Case No.: BA12-050

Location: 1303 East Main Street

Subject: Requesting a Substantial Conformance Improvement Permit to allow the redevelopment of an existing commercial building in the GC zoning district. (PLN2012-00400)

Decision: Continuance to the January 8th, 2013 hearing.

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

Motion: It was moved by Board member Stradling seconded by Board member Fitch-Kirkpatrick to continue case BA12-050 to the January 8th, 2013 hearing.

Vote: Passed 4-0

**Board of Adjustment Meeting
November 13th 2012**

Case No.: BA12-051

Location: 116 West Broadway Road

Subject: Requesting a Special Use Permit to allow a small indoor collection facility in the DB-2 zoning district. (PLN2012-00402)

Decision: Tabled

Summary: This item was on the consent agenda and was not discussed on an individual basis. The request was for a SUP to allow an indoor recycling facility.

Motion: It was moved by Board member Stradling seconded by Board member Fitch-Kirkpatrick to table case BA12-051.

Vote: Passed 4-0

**Board of Adjustment Meeting
November 13th 2012**

Case No.: BA12-052

Location: 3832 and 3838 East Alder Avenue

Subject: Requesting a Special Use Permit to allow a recreational vehicle (RV) to be used as a caretaker's unit in the RS-6 zoning district. (PLN2012-00399)

Decision: Continued to the December 11th, 2012 hearing.

Summary: Ronald Dew, the applicant and property owner, represented the case in front of the Board. Mr. Dew stated that he has lived at this property for twelve years. During these twelve years, there has always been someone living in the RV which is parked on the property line of Mr. Dew's property and his parent's property. Mr. Dew stated his parent's health is declining. The resident of the RV that is parked in between the properties looks after his parents. The resident of the RV is able to call for an ambulance if his parents are in need.

Board member Harris asked the applicant if the resident of the RV provides day to day care or if she is just there if the need should arise. The applicant stated the resident of the RV is there if his parents needed her. Board member Harris then asked the applicant if the resident of the RV paid him rent. The applicant stated the resident does not pay any rent.

Staff member Angelica Guevara presented staff's recommendation of denial to the board.

Conversation ensued amongst board members on options for the applicant.

Board member Stradling moved to den the case. The motion died for lack of a second.

Motion: It was moved by Board member Montague seconded by Board member Fitch-Kirkpatrick to continue case BA12-052 to the December 11th, 2012 hearing.

Vote: Passed 4-0

**Board of Adjustment Meeting
November 13th 2012**

Case No.: BA12-053

Location: 146 West Baseline Road

Subject: Requesting a Variance to allow a reduction to the width of the required landscape yard in the LI-CUP zoning district. (PLN2012-00413)

Decision: Continued to the December 11th, 2012 hearing.

Summary: Board member Stradling declared a conflict of interest. As a result, there were not enough board members present for a quorum and the case was continued to the December 11th, 2012 hearing.

Motion: N/A

Vote: N/A

Case No.: BA12-054

**Board of Adjustment Meeting
November 13th 2012**

Location: 2136 East Baseline Road

Subject: Requesting a Special Use Permit to allow a wireless communication facility to exceed the maximum height allowed in the LC zoning district.

Decision: Continued to the December 11th, 2012 hearing.

Summary: Michael Fritz and Scott summer, the applicant and architect, represented the case to the Board. Mr. Fritz stated that AT&T went to both Mesa and Gilbert to find a location to fill their coverage gap. The only feasible location is 2136 East Baseline. Mr. Fritz stated the location is a great distance from any residential home. He also stated AT&T is open to all conditions set forth by staff.

The Board opened the hearing up for public comment.

David M. Brown, a resident, stated he lives 600' from the proposed cell tower site and was not notified because the notification radius is 500'. Mr. Brown stated his concerns about the height and decrease in property values.

Tara Anastasi, a resident, stated she would be able to see the cell tower from her home. She stated she is also concerned about property values declining.

A letter from Councilmember Dennis Kavanagh was read into the record. The letter stated that Councilmember Kavanagh would like the board to continue the case to the December 11th, 2012 Board of Adjustment Hearing so the applicant has time to hold a community meeting.

The applicant stated he is open to holding a community meeting.

Board member Fitch-Kirkpatrick stated she would like to see a depiction of the coverage map with a lower cell tower.

Motion: It was moved by Board member Fitch-Kirkpatrick seconded by Board member Montague to continue case BA12-054 to the December 11th, 2012 hearing.

Vote: Passed 4-0

**Board of Adjustment Meeting
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1. Other Business:

None

Respectfully submitted,

Gordon Sheffield, AICP
Zoning Administrator

Minutes written by Kaelee Wilson, Planning Assistant