

**Minutes
BOARD OF ADJUSTMENT
MARCH 26, 2008**

The study session of the Board of Adjustment began at 5:30 p.m., in the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

Present:

Joe Arredondo
Slade Lawson
Dr. Adhikari
Dave Maza
Matt Taillon
Jeff Winter
Wallis Stemm

Steve Abrahamson, Planning & Zoning Coordinator
Shawn Daffara, Planner II

Absent:

There were 4 citizens at the pre-session.

The Study Session adjourned at 5:56 p.m.

Minutes of the regular hearing of the Board of Adjustment, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

Present:

Joe Arredondo
Slade Lawson
Dr. Adhikari
Dave Maza
Matt Taillon
Jeff Winter
Wallis Stemm

Steve Abrahamson, Planning & Zoning Coordinator
Shawn Daffara, Planner II

Absent:

Number of Interested Citizens Present:

8

Hearing convened at 6:00 p.m. and was called to order by Chairman Arredondo.

Chairman Arredondo referenced Page 4 of the February 27, 2008 Minutes and asked that those meeting minutes reflect that a 30 day not 14 day period of appeal to Superior Court – the Minutes read:

“Steve Abrahamson, Planning and Zoning Coordinator, asked that the Board advise the Kerbers of their right to appeal this decision to the City Council within fourteen (14) days of this hearing. After further discussion among staff, that information was corrected to inform the Kerbers of their right to appeal this decision to Superior Court within thirty (30) days of this hearing.”

On a motion by Dr. Adhikari, seconded by Dave Maza, the Board by a vote of 6-0 approved the Board of Adjustment minutes for February 27, 2008 as adjusted.

(Wallis Stemm abstained from this vote as she was not in attendance at the February 27, 2008 Board of Adjustment hearing.)

THE BOARD DISCUSSED THE FOLLOWING CASES:

Appeal of the December 4, 2007 Hearing Officer's decision to deny the request by the **LEWIS PROPERTY (PL070403)** (Joseph Lewis, applicant/property owner) located at 241 East 15th Street in the R1-6, Single Family Residential District for:

- VRA07003 (VAR07024)** Variance to reduce the front yard setback from twenty (20) feet to ten (10) feet four (4) inches.
- VRA08001 (VAR07025)** Variance to reduce the required driveway from twenty (20) feet to ten (10) feet four (4) inches.

Mr. Joseph Lewis was present to represent this case and noted that this request related to a hardship that was not self-imposed. They want to extend the garage ten (10) feet to make it useable. Mr. Lewis said there was only one (1) neighbor to the east opposed to this request; 95% of the neighbors were in support of this request. Mr. Lewis presented photographs to the Board and pointed out that there was extensive landscape coverage. Presently the Lewis' were required to park their vehicles on the street which presented a safety issue. Church related traffic presented a hazardous situation to residents and vehicles.

Shawn Daffara, staff planner, gave a brief overview of the case and that the right-of-way encroached on this property's front yard area.

Jeff Winter asked why the neighbor across the street from Mr. Lewis did not require a variance to build their existing garage. Mr. Lewis explained that the setback on his side of the street was ten (10) feet greater than that of those neighbors residing across the street – that they had a ten foot greater setback on Lewis side of the street.

Dave Maza confirmed with the applicant that he was just extending the current garage ten (10) feet.

Mrs. Wallis Stemm asked about alley way access to this property and asked if there was access to this property from both College and McKellister; Mr. Lewis responded that this would most likely antagonize the opposing neighbor more than the present request, and that alley access would not easily be obtained to this property.

Shawn Daffara in response to a question from Dr. Adhikari confirmed that there are no plans to modify the property line or widen the street. There are no plans to rededicate this street to move the property line where it should be.

Slade Lawson asked about the lot coverage to the south; Shawn Daffara said that technically the Lewis property may have less of a lot because of the ten (10) foot difference between the south and north side of 15th Street.

Chairman Arredondo asked if there was alley trash pickup on 15th Street; it was stated that there was not.

Steve Abrahamson stated that regardless of which side of the street it is still 45% lot coverage allowed in this zoning district.

Bruce Cormier of the City of Tempe spoke in support of this request. He stated that the Hearing Officer's concern was the aesthetics and that the opposing aesthetics between the north and south side of the street. He has lived in the area for 15 years and cars on the street have always been a problem. As a property owner he has no objection to this request, and asked that the Board approve this request by Mr. Lewis.

Carl Hertenstein of the City of Tempe spoke in opposition. He stated that there were politics in this neighborhood, and that he finds the garage sticks out in front of the yard. He finds no other neighborhoods where this exists. Mr. Hertenstein stated that the Hearing Officer, David Williams, had found no hardship relating to this request, that it would have a negative impact on the neighborhood, and would be too much building mass too close to the street. The alley is paved, and there is access to College Street. He said he received no notifications of any hearings on this property although several signs appeared and re-appeared, which were confusing. He asked if the City intended to change the setback code requirements for all houses on the south side of 15th Street, or if this is a special ruling for this circumstance. He stated that Mr. Lewis owns a large parcel of land, and that a previous owner had converted a portion of the garage into living space. If Mr. Lewis was to remove that living space, it would solve his problem and he could use the garage as it was intended.

Dave Maza asked staff if this request was approved, would it set a precedent to allow other variances in the same area. Shawn Daffara responded that requests are considered on a case-by-case basis, and that it is possible that it could happen that someone would refer to this request if it were similar.

Wallis Stemm stated she was confused as to whether the alley was used for access or not. Shawn Daffara stated that looking at the aerials he wanted to point out the railroad to the rear of the property line was 77% percent of the right-of-way. There was a 16 ft. easement that City granted to the alleyway which has been 'improved' although he would not call it paved, but there is some kind of material other than dirt. The properties further to the east have a dirt alleyway.

Mr. Cormier explained that some neighbors had placed gravel on the alley way but it was dirt in most areas.

Mr. Hertenstein stated that the alleyway was paved (blacktop with oil) and there were a number of properties that have garages facing this alley. They now have better access because this alley is no longer dirt.

Chairman Arredondo explained that pavement is considered to be asphalt or concrete.

Steve Abrahamson noted to the Board and this alleyway easement is there due to the railroad. Chairman Arredondo asked if access could be denied at any time? Mr. Abrahamson said there is that possibility.

Shawn Daffara further explained that the railroad had the ability to void the use of that easement at any time. It is unknown when the right-of-way easement was actually dedicated.

Dr. Adhikari asked what the intent of use for this easement was originally. Shawn Daffara stated that he believed it was for the use of maintenance by the railroad.

Mr. Lewis made final comments that the proposed project would have a much smaller impact on Mr. Hertenstein than what they would be allowed to do legally without a variance within five (5) feet of the property line to Mr. Hertenstein. This request is being done from the perspective of a good neighbor intent.

Mr. Hertenstein responded that if that is what Mr. Lewis would like to do he would have no objection. Chairman Arredondo asked, 'even if it is two or three stories?' Mr. Hertenstein stated that he would be ready to deal with that.

MOTION: Dr. Adhikari made a motion to approve the appeal and allow the variances subject to the three (3) conditions of approval; Jeff Winter seconded the motion.

VOTE: Approved 6 - 1
(Jeff Winter dissented.)

Approval subject to the following conditions of approval:

1. Obtain all necessary clearances from the Building Safety Division.
2. The proposed structure shall match the existing residence in materials, color and design.
3. The north elevation of the garage shall have address numbers, visible from 15th Street.

MOTION: Dr. Adhikari made a motion to adjourn this hearing; Matt Taillon seconded the motion.

VOTE: Approved 7 - 0

The next Board of Adjustment hearing is scheduled for April 23, 2008.

There being no further business the hearing adjourned at 6:55 p.m.

Prepared by: Diane McGuire, Administrative Assistant II
Reviewed by:



Steve Abrahamson, Planning & Zoning Coordinator
SA:dm

APPROVED