

## Minutes of the Board of Adjustment STUDY SESSION April 23, 2025

Minutes of the Study Session of the Board of Adjustment, of the City of Tempe, which was held in Council Chambers  
31 East Fifth Street, Tempe, Arizona

**Present:**

**Staff:**

Chair Kevin Morrow	Jeff Tamulevich, Community Development Director
Vice Chair Palmer	Ryan Levesque, Deputy Director Comm Dev
Board Member Michael McCaffrey	Eric Anderson, City Attorney
Board Member Raun Keagy	Matt Mansfield, Assistant City Attorney
Board Member Siegal	Diana Kaminski, Comm Dev Principal Planner
Board Member Sean McCarley	Lucas Jensen, Planner II
	Jennifer Daniels, Administrative Assistant II
	Jason Wolf, Media

Meeting convened at 5:35 p.m. and was called to order by Chair Morrow.

**1) Chair/Staff Updates and Announcements**

Chair Morrow had no updates.

Ms. Diana Kaminski announced there will be a BOA Meeting on May 28<sup>th</sup> and June 25<sup>th</sup>.

**2) Review of April 23, 2025, Agenda.**

No comments or questions.

**3) Review of Open Meeting Law Training, Board of Adjustment Roles and Responsibilities and Procedural Discussion.**

Mr. Matt Mansfield, Assistant City Attorney, gave a presentation. Mr. Eric Anderson, City Attorney is also present for any questions the board may have.

Ms. Kaminski stated there was a question that came up prior to tonight's meeting. If there is an item on the agenda, we are not to discuss on calls. Is that correct? Mr. Mansfield stated that when thinking about open meeting laws, I am thinking about who I am communicating with, what I am saying and who that communication could end up with. If you ask yourself those questions you will be able to follow through the analysis on whether the open meeting law will apply to the communication. Ms. Kaminski asked if a member of the public were to call a board member before an item comes up, should the board member cut the conversation short and not engage? Mr. Mansfield stated yes, you do not want people to lobby you. You are an independent board. Your role is quasi-judicial. We limit all discussions to what happens to the items to only what happens in the Council Chambers.

Mr. Anderson stated each item on the BOA agenda has a public comment section available. In a situation where you are contacted by an interested resident, you decline to discuss and invite them to the public comment section. This provides the comment on the record. Mr. Mansfield suggested directing the public to the website.

Mr. Mansfield explained the role of the BOA Members. Tempe Code Section 1-306(B) refers to the BOA. As the BOA you have 3 items you may see. Variances, Appeals from decisions made by the Hearing Officer, and Appeals from any decision made by the Zoning Administrator. There are 2 specific roles that come from state statute. You cannot change Zoning Classification/Zoning Districts with any changes in the term of the Zoning Ordinance, except when it comes to a variance. You cannot grant a variance if the special circumstance is applicable to the property are self-imposed by the property owner. Authority is limited to that which is granted. The BOA must adhere to the applicable standards. For example, Variances (ZDC 6-309 (D)). All 4 criteria must be met. Mr. Mansfield asked Ms. Kaminski what some of the examples were that are outside of the scope of the BOA. Ms. Kaminski stated some examples would be design, use or popularity of the item.

Vice Chair Palmer recalled a few months ago hearing cases on appeals from the Hearing Officer. We all had a question about whether or not we can add additional stipulations or modify stipulations that the Hearing Officer put on the case. Mr. Mansfield stated that depends on the circumstances. Vice Chair Plamer stated there was one case where we were inclined to extend the amount of time. Chair Morrow stated there was an abatement years ago where we were struggling with the amount of the abatement. On the specific case work was done on the yard between the time of the Hearing Officers meeting and the appeal to the BOA. Mr. Jeff Tamulevich, Community Development Director stated the determination we gave you at that time was that you were reviewing the Hearing Officers work based on the information they were given. You were not able to make modifications to the conditions on that specific case. Vice Chair Plamer stated, yes that was the information given for that case. There were a few others where we were unsure as a board if we could change conditions. Mr. Mansfield stated that this is why we do the Study Sessions. If there is a question on a specific case that would be a discussion for Study Session. Ms. Kaminski stated that when you receive your BOA Agenda packet, if you have questions or suggestions for conditions, please get in touch with staff in advance so that staff can reach out to the abatement officer and find out if there has been movement in terms of completion. Then we can give you answers at Study Session. Mr. Tamulevich stated that when we are requiring a property owner to abate the property within 2 weeks. Do they have the ability to extend that to 4 weeks? Even though it was the ruling of the Hearing Officer to verify it was abated in 2 weeks. Mr. Mansfield stated that would be a modification that would be allowed if it were appropriate based on the evidence that was presented. Mr. Tamulevich stated that when an abatement appeal comes before the BOA there is a very long process that occurs prior to the case going to the Hearing Officer and prior to it coming to the BOA.

Board Member Keagy stated, the other issue that was brought up by Vice Chair Plamer regarding the cost of the abatement. Will the abatement fee be revised if the property owner did work between the time of the abatement and the abatement appeal? Mr. Tamulevich stated that is the case for every abatement. We always encourage the residents to clean up as much as they can prior to the abatement and if they can complete it that is even better.

Ms. Kaminski asked to clarify as a quasi-judicial board, typically with appeals you cannot introduce new information. If there was a decision by the Hearing Officer and then work done, in a sense that is new information. Mr. Mansfield stated that it depends on the appeal and the nature of the appeal. The appeals from the Hearing Officer are what we call de novo and that is essentially a new hearing. New evidence can be introduced. Appeals from the Zoning Administrator are more questionable. We will address those as they come up. Chair Morrow asked if in the case of a Zoning Administrator's appeal, if we thought there was new information, is there a procedure where we could kick something down for a new opinion by the Zoning Officer? Mr. Mansfield stated no, you would be overriding the decision based on the evidence you heard at the public hearing where you make the decision.

Mr. Mansfield stated there was a question about putting items on consent. Nothing on the BOA agenda is allowed to go on consent agenda.

Board Member McCarley stated that on some of the recent past BOA cases there was a lot of conjecture and personal feelings that were brought in that did not pertain to the actual variance. For a tattoo shop we started debating what constitutes as a tattoo. That is not our opinion, is it? When something like that happens do we need

to direct the conversation back to the variance? Mr. Mansfield stated that is ideal, but you have to allow the public to speak and provide the information they want to provide. The chair has the authority to direct the process of the meeting.

Board Member McCarley asked about the self-imposed part of the variance. We have had some cases where the structure was already built without building permits. Would staff consider that self-imposed because they already went through the process and built the building? Mr. Mansfield stated you are looking at the variance, not the building permit process. I would focus on the staff reports. If staff believes the variance is self-imposed you will likely see that in the report. Chair Morrow stated it doesn't matter to us if the building is there or not because the variance will continue to exist if the building was destroyed. Is that correct? Is it considered to run with the land? Mr. Anderson stated that a variance does run with the land. They are not a personal variance. Ms. Kaminski stated that one thing we have in our conditions of approval for a variance is that they are specific to the site plan that is granted, if a structure were specific to an area of the yard and it were damaged it could be rebuilt in the same location, but the variance would not apply to future structures or additions.

#### 4) Adjourn

**Motion** by Board Member McCarley to close the Study Session; second by Chair Morrow. Motion passed on **6-0** vote.

**Ayes:** Chair Morrow, Vice Chair Palmer, Board Members McCaffrey, Siegal, Keagy, McCarley

**Nays:** None

**Abstain:** None

**Absent:** Board Member Foy

The study session adjourned at 6:05 p.m.

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Prepared by: Jennifer Daniels, Administrative Assistant II

Reviewed by: Diana Kaminski, Principal Planner