



Minutes of the Board of Adjustment REGULAR MEETING April 23, 2024

Minutes of the Regular Meeting 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
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
	Eddie Garcia, Media
	Matt Mansfield, Assistant City Attorney
	Diana Kaminski, Comm Dev Principal Planner

Meeting convened at 6:10 p.m. and was called to order by Chair Morrow.

1) Voting of the Meeting Minutes:

Study Session & Formal Meeting Minutes from November 20, 2024.

Motion by Board Member McCarley to approve Meeting Minutes from Study Session and Regular Meeting November 20, 2024; second by Board Member McCaffrey. Motion passed on **4-0** vote.

Ayes: Chair Morrow, Board Members McCarley, McCaffrey and Keagy

Nays: None

Abstain: Vice Chair Palmer and Board Member Siegal

Absent: Board Member Foy

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- 2)** Request a Variance to reduce the required rear yard setback from 8 feet to 1 foot for a detached accessory building in the R1-6 zoning district for **POWELL RESIDENCE**, located at 1659 North Circle Drive. The applicant is Toni Powell. **(PL240273)**

Applicant Presentation:

Ms. Toni Powell and Mr. Dave Powell, homeowners of 1659 North Circle Drive gave a presentation. The accessory building was built during Covid to give Ms. Powell a place to work outside of the home. The building blends with the home being that the same stucco, roof shingles and color was used to match the house. Our lot is a reverse pie shape. The large part of the lot is in the front of the property. The back of our lot has 36 feet of property line. Most other homes in the neighborhood range from 70-90 feet on the back of the lot. We also have a topography issue. The

lot is tiered. The far back is at grade with the alley and the office is on that level. The house itself and patio are 16 inches lower. The lot continues to slope downward towards the street as much as 2 feet once you are at the front street. The sewer line also runs from the back of the house out to the alley dividing the highest tier of the backyard in half. We were mindful of not building on the sewer line.

Chair Morrow asked if the terracing in the backyard was done by the homeowner or how it was when the home was purchased? Mr. Powell stated that it was that way when he purchased the home. The retaining wall was built from the same block as the fences in the neighborhood. We put stucco over the block to make it look more current. All of the patios and hardscape existed when the home was purchased 29 years ago.

Staff Presentation:

Mr. Lucas Jensen, Community Development Planner II gave a presentation. The accessory building built in the backyard was built without building permits. Based on Maricopa County aerial imagery appeared sometime between 2023-2024. R1-6 setback for a 14-foot accessory building requires an 8-foot side and rear setback. Modifications may need to be made to this building to meet building code. The building is approximately 136 square feet. Due to the special circumstances of the lot, including shape, topography and utility locations, staff considers this project to have special circumstances. 3 variances have been approved in the past in the same zoning district. 2 of these were located on one lot. 18 residents signed in at the Neighborhood Meeting on March 24, 2025. Staff received two emails from the property owner directly to the east of where the structure was constructed. They are in opposition, stating that allowing the variance on this property would restrict the buildable area on the adjacent property. Staff consulted with Building and Safety on this concern and did verify that there would be no new restrictions on the adjacent property.

Board Member Keagy stated that the presentation from the applicant indicated that this would be used for an office. I saw that there was a letter of support that referred to it as an ADU. If we approve this variance for the use of an office, if in the future the applicant wished to make this an ADU. Would it still be in compliance with setbacks? Mr. Jensen stated that at this time it is not an ADU. It would be permitted to convert to an ADU if there were no changes made to the footprint of the building. However we would have to verify that the size would be allowed to be an ADU based on size restrictions and ADU requirements.

Board Member McCarley stated, putting myself in the place of the property who has opposition to this would be noise and light. I am curious if there is any room on the conditions to make sure there is no light that encroaches on the neighbor's property. Mr. Jensen stated that the noise would be dictated by the City of Tempe Noise Ordinance. They would have to adhere to those requirements. Our light limitations at single family property lines is measured at a half of foot candle. Ms. Kaminski stated that it would need to comply with Zoning Code lighting requirements. There will be required changes to the building to meet building code, the window on the eastern rear property line would need to be removed. You could add a condition that they don't add security lights that might create glare.

Chair Morrow stated it strikes me as a bad idea to build an ADU over a sewer line. Is there anything in the zoning code that prohibits building over it? Mr. Jensen stated that there is nothing in the zoning and development code that would restrict building over a sewer line. Ms. Kaminski stated that the public sewer line ends when it hits the property line it becomes private. I do not know if there are engineering standards for that but it would be at the property owner's discretion.

Public Comment:

Mr. Anthony Champy, homeowner at 1619 North Day Drive and purchased 1653 North Circle as an investment property. I was not living at that house during construction of the accessory building. The gutter from the building is over the property in my yard. The building sits at a higher level it shades the entire backyard. I own another home in the neighborhood. I permitted and enclosed the garage. The variance that was mentioned by Lucas on Saguaro was against the alleyway and not someone's house. This building eclipses my yard. I have two properties that look at this building, which looks giant because of the small size of the yard. They could have put the building in the area where the turf is located without encumbering the sewer line, but they chose to set it back to give it more curb appeal from their window. This is unsightly for me and negatively affects the value of my property.

Board Member McCarley asked, when you are on the street, since the back of the subject's property is the highest point of the property, are you able to see the top of this building? Mr. Champy stated you can see much more than the top. Board Member McCarley stated that it would have been interesting if there was a line of sight exhibit from the street that could have been prepared. It does appear that there is a flood light on the building as well.

Vice Chair Palmer asked staff, when they go through the building permitting process will they need to remove the gutters? Ms. Kaminski stated, yes anything that does not meet the building code would need to be modified.

Mr. Champy asked if there was a survey done. Mr. Jensen stated no, there was no survey provided for this application.

Ms. Kathy Brand, Tempe resident, is in support of the Powells. I have walked past the house many times and never noticed the building. The contractor is to be blamed for this; the Powell's trusted someone to build something. This helps the neighborhood. I am in support of the variance.

Mr. Lane Carraway, Tempe resident. Mr. Carraay stated that the Powell's hired an architect and there was no intent of decept. Their property is the nicest one on the street. Nothing is hanging over the property. Neighbors came over to my home asking how they can support the Powell's. It was not their intent to end up in this situation. It is not an eyesore.

Applicant Response:

Mr. Powell stated that the picture of the side of the house is not from the street. I am standing on the block wall to get the picture. From the street view it does not look like that picture at all. You can't see it as you walk by. I don't believe the gutter overhangs into the neighboring property. I am happy to remove the gutters, but if I do then the water would shed down on the ground by the wall. There used to be an awning and large orchid tree in the same spot as the building. There were no complaints about either one of them. I don't believe this is an eye sore for anyone.

Ms. Powell addressed that the neighbor stated that the building eclipses his property. It is higher but so is our entire yard. His trees receive plenty of sunlight. My son uses the building to watch tv. He does not party. He rarely stays in the office past 9pm. The tv is facing towards the door. The security light falls down directly on our property. The security light is motion detected and only comes on when walking by the building at night, it is for safety. It comes on for 30 seconds and shuts off.

Staff Response:

None

Commission Discussion:

Chair Morrow stated that he came in today thinking this would be really easy and the neighbors' comments have given me an amount of pause. Chair Morrow asked staff, we would be granting them a variance for 1 foot setback, so the eaves or gutters would have to be 1 foot from the property line as well, correct? That would resolve the neighbors' concerns regarding that. (Staff nods). It may require modifications to the building to meet the requirements of code. I think it meets all four definitions of what is required for a variance. With a couple reservations I am inclined to support the request. The shape of the lot the topography of the lot, the height difference on site support the request.

Board Member McCaffrey stated he also believes it meets the four criteria as well. To the neighbors' point, does it devalue his property? I don't know if that is a question for us to answer. Chair Morrow stated that it is not one of the four criteria to consider.

Board Member Keagy asked staff, if the property owner to the east wished to build a similar structure 14 foot high, they would also be required a 8 foot setback from the property line correct? Mr. Jensen stated that is correct. Board Member Keagy asked if they can reduce the setback by reducing the height of the building? Mr. Jensen stated that is correct.

Board Member Keagy noted that this is a building that was built without permits. A contractor and architect were involved. I would like to think that between the two of professionals, they would have been able to determine that a building permit was required. It was constructed illegally and not with the required setbacks. I don't believe due diligence was done prior to construction so I don't think I can support this variance. Chair Morrow asked Board Member Keagy if they were coming to us with no current building would you still not be in support? Board Member Keagy stated that it would depend on if the property owner to the east still had concerns about his ability to construct on the property. I believe they could have moved the building closer to the sewer line. I don't think I would have supported it.

Vice Chair Palmer asked staff, I know detached regulations are different in every city. Can you help me understand why they would need a permit. In Tempe do all accessory structures require a permit? Mr. Jensen stated if there is plumbing, sewer, electric anything of that nature to any structure it will require building permits. If there are no utilities, then it is the size threshold. In this case it meets both the size threshold and the provision of electric utilities. Vice Chair Palmer asked what is the size threshold? Mr. Jensen stated anything larger than 200 square feet or over 8 feet tall.

Board Member Keagy stated that his long-term concern is that this could be converted to an ADU that does not meet the ADU requirements. Is there plumbing to this structure? Mr. Powell said, no plumbing (from the audience). Vice Chair Palmer asked if that was something Board Member Keagy would like to put in a condition? Is that a stipulation we can put on this? Mr. Mansfield reminded the board what is before you today is a variance application. A single request to modify a setback requirement. There are four standards that the applicant must meet to have that variance approved. Assistant City Attorney Matt Mansfield reminded the Board that their role is to look at the presentation and evidence presented here and make a determination as to whether the applicant meets those four requirements. Ms. Kaminski stated that the city's ADU requirements are allowed at a five-foot setback. There are also requirements on the livability of the space. This building may not meet the standards for an ADU. They would have to come back for permits on any revisions that were done for that use. Vice Chair Palmer asked if the applicant comes back and wants to convert it to an ADU do they have to come back for a different variance since this is for a detached structure? Ms. Kaminski stated they would already have the variance for 1 foot.

Board Member Keagy thanked Mr. Mansfield for the reminder of where the focus of the BOA should be. When I look at the four conditions they so meet them. Chair Morrow stated that in regard to condition #2 what makes this property unique is the shape of the lot. The adjacent lot is rectangular; if the adjacent lot wanted to put in a ADU, it probably wouldn't need a variance it would just need an eight-foot setback.

Motion by Vice Chair Palmer to approve the variance request; second by Board Member McCaffrey. Motion passed on **6-0** vote.

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

Nays: None

Abstain: None

Absent: Board Member Foy

3) Chair/Staff Announcements

Chair Morrow has no updates. We have meetings on May 28th and on June 25th.

Board Member Keagy asked if the board was down one board member? Ms. Kiminski stated yes, Board Member Gans has resigned. We will be looking for another board member.

4) Adjourn

Motion by Board Member Keagy to adjourn meeting; second by Chair Morrow. Motion passed on **6-0** vote.

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

Nays: None

Abstain: None

Absent: Board Member Foy

Hearing adjourned at 7:06PM

Prepared by: Jennifer Daniels, Administrative Assistant II

Reviewed by: Diana Kaminski, Principal Planner