

# Meeting Minutes

## Board of Adjustment

### Regular Meeting

April 13, 2022 | 6:00 p.m.  
Chandler City Council Chambers  
88 E. Chicago St., Chandler, AZ



## Call to Order

The meeting was called to order by Chairman Vasquez at 6:00 p.m.

## Roll Call

### Board Member Attendance

Chairman Bill Vasquez  
Board Member Manuel Ramirez  
Board Member Chad Wakefield  
Board Member Jim Ryan

### Absent

Vice Chairman Dean Ouellette  
Board Member Dan Henderson

### Staff Attendance

Kevin Mayo, Planning Administrator  
David de la Torre, Planning Manager  
Ben Cereceres, City Planner  
Harley Mehlhorn, City Planner  
Darsy Olmer, Associate Planner  
Mikayela Liburd, Associate Planner  
Thomas Allen, Assistant City Attorney  
Julie San Miguel, Clerk

## Pledge of Allegiance

The Pledge of Allegiance was led by Board Member Ryan.

## Election of Officers

### 1. Election of Chairman

BOARD MEMBER RYAN moved to reelect Bill Vasquez as Chairman; Seconded by BOARD MEMBER WAKEFIELD.

Motion carried unanimously (4-0).

## **2. Election of Vice Chairman**

BOARD MEMBER RYAN moved to reelect Dean Ouellette as Vice Chairman; Seconded by BOARD MEMBER WAKEFIELD.

Motion carried unanimously (4-0).

## **Scheduled and Unscheduled Public Appearances**

Members of the audience may address any item not on the agenda. State Statute prohibits the Board or Commission from discussing an item that is not on the agenda, but the Board or Commission does listen to your concerns and has staff follow up on any questions you raise.

THOMAS ALLEN, ASSISTANT CITY ATTORNEY stated items on the Consent Agenda can be enacted by one motion and one vote. He further stated, if a discussion is required by a member of the Board then the item may be removed from the Consent Agenda.

CHAIRMAN VASQUEZ announced Action Agenda Item No. 5 will be heard before the other Action Agenda Items.

## **Consent Agenda and Discussion**

### **3. Special Meeting and Regular Meeting Minutes of August 12, 2020, Board of Adjustment**

Move Board of Adjustment approve Board of Adjustment meeting minutes of the Special Meeting of August 12, 2020, and Regular Meeting of August 12, 2020.

## **Consent Agenda Motion and Vote**

BOARD MEMBER RYAN moved to approve the Consent Agenda of the April 13, 2022, Board of Adjustment Regular Meeting; Seconded by BOARD MEMBER WAKEFIELD.

Motion carried unanimously (4-0).

## **Action Agenda Item No. 5 and Discussion**

### **5. PLH22-0001 Puscau Residence**

BEN CERECERES, CITY PLANNER presented details regarding the request for variance to allow encroachment into the required setbacks on property located at 1839. W Alamo Drive, generally located south of Elliot Road and east of Dobson Road.

BOARD MEMBER RYAN stated it does not make a difference whether the requested variance is sixteen inches or two inches, that staff's position would still be the same.

BEN CERECERES, CITY PLANNER replied, that is correct.

CHAIRMAN VASQUEZ asked the Applicant if they could step forward.

BEN CERECERES, CITY PLANNER replied the Applicant is not present and was aware of the date and time.

## **Action Agenda Item No. 5 Motion and Vote**

BOARD MEMBER RYAN moved to deny PLH21-0090, a request for variance to allow encroachment into required setbacks on property located at 4745 W, Whitten Street; Seconded by BOARD MEMBER WAKEFIELD.

THOMAS ALLEN, ASSISTANT CITY ATTORNEY reminded the Board that Action Agenda Item No. 5 was presented first.

BOARD MEMBER RYAN withdrew the motion on the floor and moved to deny Action Agenda Item No. 5, of the April 13, 2022, Board of Adjustment Regular Meeting, PLH22-0001 Puscau Residence, request for variance to allow encroachment into the required setbacks on property located at 1839. W Alamo Drive; Seconded by BOARD MEMBER WAKEFIELD.

Motion carries unanimously (4-0)

CHAIRMAN VASQUEZ clarified Action Agenda Item No. 5 was denied.

## **Action Agenda Item No. 4 and Discussion**

### **4. PLH21-0090 Alarcon Residence**

HARLEY MEHLHORN, CITY PLANNER presented details regarding request for variance to allow encroachment into the required setbacks on property located 4745 W. Whitten Street, generally located south of Chandler Boulevard and west of McClintock Road.

BOARD MEMBER WAKEFIELD asked if there are other occurrences in this neighborhood of this type of structure within that set back area.

HARLEY MEHLHORN, CITY PLANNER replied this is not something studied by staff and explained the Applicant has noted there are other such structures; however, they have not been officially brought to staff's attention through a notice by code enforcement.

CHAIRMAN VASQUEZ asked if the Applicant could step forward.

CAMILIA ALARCON, 4757 W. WINTON STREET advised she is the daughter of Gemma and Ricardo who own the residence and a practicing attorney. She explained although she has not lived in the home since 1994, she grew up in this home and the trellis has been there for as long as she can remember. She stated the residents received a notice in November that the building structure was deteriorating, and this was not the case as they had just rebuilt it. She further stated the site is PAD zoning and they reviewed all the CCNRs through 1990 when the house was purchased. She explained these kinds of structures are legal as it is a landscaping structure, and its purpose is to hold grapes and provide shade. She further explained that it is not deteriorating property values or anything that is consistent to why zoning ordinances exist. She stated people are given the ability to enjoy their property, but they cannot have unlimited ability as the community needs to be kept in mind. She stated three sets of neighbors are present in support and they have seen this structure for as long as they have lived in their houses and do not oppose. She advised she is not a zoning attorney; however, she has looked through the code and it states there is a five-foot setback for structures, but this is a trellis and not a structure. She explained the purpose of the setback is to prevent a structure from impeding and there is no impediment in this case. She further explained the images presented in a moment will show that the trellis is there to support the plants and its confusing why the set back requirement applies to this trellis especially since the neighbors are in support of it.

GEMMA ALARCON 4757 W. WINTON STREET presented a narrative that was put together regarding this case and stated this trellis was built approximately thirty years ago. She further stated she did not have an image of what it looked like before they replaced the existing trellis, but they fixed it so it could last many more years. She presented further images of the backyard and stated they have a permit for their back patio and did not get a permit for the trellis because it had been there the whole time and it did not cross her mind. She explained the new trellis is well built and presented statements regarding the details of the trellis. She presented the plans and dimensions of the trellis and stated if this was moved to conform to the five-foot setback it would be blocking a door. She advised the purpose of the trellis is to provide food, fruit, and shade. She further advised she could not think of a reason why someone would call or fill out a complaint that the trellis was a nuisance, and she even invited the inspector to come to the house and explain the situation before this all happened. She said the inspector advised they received a complaint, and they must follow up. She mentioned in her neighborhood there are several things built without following the code. She stated she contacted her immediate neighbors and none of them had a problem with it and no one has had an issue with it in thirty years. She further stated she spends a lot of her time in her garden and asked for leniency and understanding from the Board in their decision. She stated she does not wish to tear it down and start over. She thanked the Board and encouraged her neighbors to come forward.

ANNE STEWART, 4737 W. WHITTEN STREET advised that she sent an email in support of this variance and they have been neighbors for over thirty years. She stated there has always been a shade cover and under it is a breakfast bar. She explained, it makes sense, so the sun is not beating into the breakfast bar. She further stated if anyone should have an issue with it, it would be them and she does not understand why it is a problem for the City. She stated they should be able to keep it for their grapes and to shade the breakfast bar.

GREG DUNLAP, 4709 W. KITTY HAWK advised they are the neighbors on the other side of the residence and their biggest concern is that a person on another street filed a complaint after no one has had an issue in thirty years and it is taking up everyone's time. He further advised that he often talks to Mark in Code Enforcement and Mark stated if the person did not complain than Code Enforcement would have not even pursued this. He further stated all the Applicant did was renew a deteriorating structure and he wished that someone would have compassion and common sense to work with them.

CHAIRMAN VASQUEZ asked the Board if they had questions for the Applicant, neighbors, or staff.

BOARD MEMBER RYAN asked staff if this trellis is a structure as defined by the City Code.

HARLEY MEHLHORN, CITY PLANNER replied, it is considered a structure by code as it has a roof element and quasi occupiable. He explained that per the code this is a structure that should have been permitted. He further explained under the zoning code definition, trellises and open air ramadas are structures that must adhere to building and zoning code requirements.

CHAIRMAN VASQUEZ asked if it is considered a structure because it is permanently attached to the home and asked for the definition.

HARLEY MEHLHORN, CITY PLANNER clarified this trellis is a structure whether it was attached to the home or not. He explained it is a structure because it is constructed out of materials that is intended to be utilized by people inside of it.

THOMAS ALLEN, ASSISTANT CITY ATTORNEY stated that he has the City Code before him and read aloud the definition of a structure; Structure that which is built or constructed, an edifice of building of any kind, or any piece of work artificially built up or composed or parts joined together in some definite manner. He further stated it's the Planning Administrator's interpretation of the code how we define the way it is applied through the City and that is why trellises such as this is defined as a structure.

GREG DUNLAP, 4709 W. KITTY HAWK interjected and asked how did the Applicant get by for thirty years when code enforcement drives by monthly.

CHAIRMAN VASQUEZ asked staff if this is something that can be grandfathered in as its been there for such a long period of time.

HARLEY MEHLHORN, CITY PLANNER stated that grandfathering is only typically applied to a structure that was once in compliance with zoning code or ordinance and explained this case the zoning ordinance over the property, PAD, has remained consistent since its application. He further stated this would not be eligible for grandfathering due to the fact that it was never a permitted structure since it violated setbacks.

GREG DUNLAP, 4709 W. KITTY HAWK stated for thirty years no code enforcement officer has ever stopped or took notice to this structure. He pointed out there are plenty of structures in the neighborhood that violate this issue and stated the code needs to be looked at again because it was written forty years ago. He has a problem that this is defined as a structure as the Applicant is looking to make shade for her grapes. He does not think its right that one person called in and complained and he requests the City makes everyone comply.

CHAIRMAN VASQUEZ asked the Assistant City Attorney to read aloud once again the definition of a structure.

THOMAS ALLEN, ASSISTANT CITY ATTORNEY stated City of Chandler Code Section 35-200 Definition, lists a number of definitions and this is the definition of structure; that which is built or constructed, an edifice of building of any kind, or any piece of work artificially built up or composed or parts joined together in some definite manner.

KEVIN MAYO, PLANNING ADMINISTRATOR stated this a shade structure by definition and structure is in the name, shade structure. He further stated this case is not a question of the interpretation of the zoning code and what is before the Board of Adjustment a request for variance to the zoning code for encroachment into the setbacks by the shade structure. He asked the discussion keep tailored to that and explained he can see how it can be twisted around, but first and foremost, this is a shade structure and requires a permit and setbacks. He clarified the request tonight is to encroach into the setback and ask that discussion be kept to that.

GREG DUNLAP, 4709 W. KITTY HAWK interjected this property has filed for two permits through the city, one for an addition and the other for the patio. He further stated the shade structure was existing at that time and the inspector walked by it.

KEVIN MAYO, PLANNING ADMINISTRATOR stated between himself and Planning Manager, David de la Torre, they have a combined forty-three years with the city. He further stated the city does not have the manpower or MO to systematically go through and look for any and all possible violations. He explained code enforcement is not in Development Services Department, but they simply act on a complaint basis, and it is unfortunate there was a call on this one and not others.

He reminded the Board Members and audience that code enforcement is not in the same department of planning, but that is how they operate. He further explained that under state statute that when inspectors go on property to look at something, they are not to look at the entire property or even go inside to look for building code violations. He stated inspectors are to keep the review type tailored to the permit and the only time they bring things to the homeowners attention is if it is truly life safety.

GEMMA ALARCON 4757 W. WINTON STREET agreed that the city does not go around looking for violations because she sees numerous violations. She asked why is so much power is given to one neighbor who calls and complains about others. She explained this is not a good way to do this, as people are suspicious to neighbors who they think called in. She mentioned that the city should not be giving this much power to one person as they could be complaining due to their personal biased against the homeowner. She stated she has been a teacher for over twenty years and currently teaches at the community college. She further stated, as an educator, she never assumes who is in front of her and must give out knowledge equally. She presented statements regarding teaching, listening, and providing flexibility fairly. She stated the city is giving the power to a neighbor who could have had a bad day and they are still trying to figure out who was the person who complained.

BOARD MEMBER RAMIRIEZ pointed out the Applicant applied for a permit on the previous structure and asked if the Applicant inquired about needing a permit to reconstruct this shade structure.

GEMMA ALARCON 4757 W. WINTON STREET replied that the shade structure had been there for so long, it did not even cross her mind that it may have needed a permit.

BOARD MEMBER RAMIRIEZ asked if they used a contractor to build it.

GEMMA ALARCON 4757 W. WINTON STREET stated a contractor was very expensive, so she got someone on the street to do it. She further stated when you see something every day, you stop seeing it and that is why she overlooked getting the permit.

THOMAS ALLEN, ASSISTANT CITY ATTORNEY pointed out the residents in support have spoken and as the Chair has the authority to allow additional statements but would like to remind the Board that request on the agenda tonight is for a variance. He stated the purview of the Board tonight is approval or denial to the request for variance on the zoning code.

CHAIRMAN VASQUEZ echoed the statements of the Assistant City Attorney and explained there are parameters that the Board must follow. He stated the nature of the complaints of the neighbors are more appropriate to address on the City Council level as the Board must stay within their guidelines and stated they are very limited on what they can do.

## **Action Agenda Item No 4. Motion and Vote**

BOARD MEMBER RYAN moved to deny Action Agenda Item No. 4, of the April 13, 2022, Board of Adjustment Regular Meeting, PLH21-0090 Alarcon Residence; Seconded by BOARD MEMBER WAKEFIELD.

BOARD MEMBER RYAN advised the audience that the Board of Adjustment is made up of volunteers who live in Chandler and they find themselves in the same situation as the Applicants who come in. He further stated the way the State Statute and City Code is written, they do not have discretion. He pointed out, if it violates the setback, it violates the setback and unless it fits under a set of very narrow circumstances, they cannot do anything. He explained there have been instances with a very beautiful structure already built and all the neighbors like it, but if it violates the setback there is very little they can do because they cannot exercise discretion. He encouraged the audience who do not like this, to talk to the City Council or their State Legislators. He stated the zoning code is the code and the Board's authority is determined by the code and State statute.

GREG DUNLAP, 4709 W. KITTY HAWK interjected asking when is the last time the Board granted a variance.

CHAIRMAN VASQUEZ advised this Board does not meet often, but three or four meetings ago one was granted.

GREG DUNLAP, 4709 W. KITTY HAWK interrupted stating one person complained in a neighborhood of one hundred sixty people and you can not grant a variance.

CHAIRMAN VASQUEZ attempted to explain that the Board of Adjustment is limited on the discretion they can exercise.

THOMAS ALLEN, ASSISTANT CITY ATTORNEY stated there is a motion on the floor and it has been seconded, there should not be further comments from the public. He recommended that the Board Members vote.

Motion carries unanimously (4-0)

CHAIRMAN VASQUEZ clarified Action Agenda Item No. 4 was denied.

RICHARDO ALARCON 4757 W. WINTON STREET asked what is their next step as he does not feel that the definition of a structure should be applied to a trellis. He stated the trellis does not have a ceiling and you can see through it. He further stated that it does not protect any property and he knows what a structure is as he is a professor of physics.

CHAIRMAN VASQUEZ stated there has already been a vote and he is not going to argue as the Board's purview is restricted by the guidelines.

THOMAS ALLEN, ASSISTANT CITY ATTORNEY clarified he is not legal counsel for the Applicant, but they have the option to file an appeal at Maricopa County Superior Court.

RICHARDO ALARCON 4757 W. WINTON STREET continued to present statements regarding definition of a structure.

CHAIRMAN VASQUEZ stated this item has been presented and voted on and the Board of Adjustment will move on to the next item.

GREG DUNLAP, 4709 W. KITTY HAWK interjected and stated if this cut and dry why didn't someone write a letter and save our time.

GEMMA ALARCON 4757 W. WINTON STREET asked what is their next step.

THOMAS ALLEN, ASSISTANT CITY ATTORNEY responded the Applicant has the option to file an appeal and recommend they seek legal counsel for legal advice.

## **Action Agenda Item No. 6 and Discussion**

### **6. PLH22-0004 Hunter Residence**

HARLEY MEHLHORN, CITY PLANNER presented details regarding the request for variance to allow encroachment into the required setbacks on property located at 2578 E. Beechnut Court, generally located south of Chandler Heights Road and west of Gilbert Road.

BOARD MEMBER RAMIREZ asked for clarification on the permit. He asked if the permit was approved then rescinded.

HARLEY MEHLHORN, CITY PLANNER responded that is correct, a permit was issued in error due to an interdivisional miscommunication that caused the building permit to be issued when it should not have been.

BOARD MEMBER RAMIREZ asked how much time had past before they discovered the mistake.

HARLEY MEHLHORN, CITY PLANNER stated one day and further stated staff does not believe even a full business day had passed.

BOARD MEMBER WAKEFIELD asked if any construction activity had started on the addition.

HARLEY MEHLHORN, CITY PLANNER confirmed that no construction activity had occurred.

CHAIRMAN VASQUEZ asked the Applicant to come forward if they wished to speak before the board.

HEATHER HUNTER, 2578 E BEECHNUT COURT presented a paper copy of the presentation she prepared for the Board and stated she has been going at this with the City for a year, although Staff is reporting that a quick little mistake happened. She explained the timeline began in April 2021 and her architect was in contact with the city to ensure there was no issues with setbacks as she was once a member of the Board of Adjustment. She stated in April the City advised that the proposed would meet the required setbacks and from May 2021 to December 2021 they worked on finding a builder and getting approval from the HOA. She further stated in December 2021 they submitted through the City and they received a note from the architect stating that "a building permit would be issued once all identified deficiencies are corrected" and at that time the deficiencies were due to engineering. She explained that Roper Engineering reached out to Sally from the City of Chandler and on January 3, 2022, and they clarified that they did not need on lot retention, and they were okay to proceed. She further explained after that date the architect waited for the building permit and continued to contact the City and on January 10, 2022, they were told it had setback issues. She stated the architect advised of the previous communication indicating there were no issues with setbacks and on January 19, 2022, city staff advised the architect there was no set back issues and the position of their water heater needed to be fixed. She further stated the water heater was flipped to face the opposite direction as recommended and they were once told they could not be given the building permit due to setback issues. She explained the architect sent correspondence to the city asking for clarification due to the issues and she set up a in person meeting on January 28, 2022 with City staff member, Lee Ray. She stated Lee Ray reviewed the plans and offered them a building permit, she further stated on that day they paid for the building permit immediately and put down a 60% deposit to the contractor due to the nature of her mother's condition they wanted to get the addition built without further delay. She stated the purpose of the addition is to have a hospice room for her mother and presented statements regarding hardships for patients and their families during the pandemic. She explained although they did not break ground, construction activity occurred because they paid the deposit and other fees in an amount over \$68,000. She mentioned that building costs have increased nationwide and every month that they face delay, they have accrued more costs. She stated that Lee Ray from the city had contacted them quickly after issuing the building permit to advise they would not be honoring the permit and although they contacted them immediately after issuing the building permit that the communications with the city regarding the addition has started may months prior. She stated Lee Ray told her to speak with Planning Staff and she asked if she should get an attorney, he stated she was welcome to get one but he did not think she needed one. She further stated at the meeting with planning staff, the Planning Manager had stated that the setbacks had been incorrectly determined and although a City Planner admitted to the mistake with the setbacks,

that the City could not honor the building permit and that a request for variance could be filed. She further explained that she understood the position that the Board is in and pointed out the Board is quasi-judicial, and the Arizona Supreme Court has power over them. She read an extract from the Arizona Constitution, Article 6, Section 5; the Arizona Supreme Court shall have power to make rules relative to all procedural matters in any court. She stated if there is any question about interpretation in any court including this Board's, the interpretation of the Arizona Supreme Court sets the precedence and they have already set precedence in 1<sup>st</sup> Pawn LLC v. City of Phoenix. She explained the ruling of this case establishes: 1) A variance cannot be issued per use. 2) The property owner cannot create a special circumstance. 3) The variance cannot be a detriment to the surrounding areas. She further explained this request for variance is not per use; they have not created a special circumstance as the circumstances they face are due to City staff's actions and design of the road; and they are not a detriment and that is why the HOA approved their request. She stated that the requested variance meets the guidelines for approval as this case established the following principal: the Board of Adjustments must determine whether or not the approval of the variance would alter the character of the neighborhood, if the variance does not alter the character of the neighborhood the Board ought to issue the variance. She pointed out the City's guidance to the board is either not based on the Arizona Supreme Court's guidance or is a misunderstanding of the legal precedence. She presented statements regarding other houses in the neighborhood having casitas. She stated some even are larger than what they are requesting and by the Courts opinion set fourth they are not changing the character of the neighborhood, therefore the Board ought to issue a variance. She stated her neighbors support the addition and their letters of support are included in the document that was given to the Board before the presentation began. She further stated the Board of Adjustment is compelled not to be arbitrary in their rulings and clarified the legal definition of arbitrary; that all persons shall be given a fair application under the law. She quoted the Boards and Commissions Handbook, "Never discriminate unfairly by dispensing special factors or privileges to anyone whether or not for payment", and mentioned a variance was granted .6 miles from her home for a RV garage and another variance was granted .3 miles away. She explained because variances have been granted so close that staff's finding that "the variance would be a detriment to the neighboring properties as they do not legally enjoy or have been granted approval to construct an addition or structure that does not abide by zoning regulations", is false. She further explained if the request for variance is denied with the Board knowing that variances have been granted to her neighbors, then that is not fair application of the law and could be discriminating per the Board's conduct rules. She stated another staff finding is approval would "be giving special privilege" and argued this is not the case as her neighbors are already receiving that privilege. She stated per the Arizona Revised Statues, a variance can be granted if the special circumstances apply to the land and are not self-imposed and asserted that she did not create hardships, and the city did with their continued mistakes. She appreciated staff members admitting to making a mistake; however, making it sound like one mistake when it was multiple mistakes is self-serving. She stated that the building permit was given for less than a day, but the promise of the permit lead on for months and almost \$70,000 has been paid that she cannot get back. She stated she cannot move it to the other side

of the yard due to its purpose and she would have not committed to building the addition if she knew it would have to be on the other side. She further stated if it is assumed that City staff does not normally make this many mistakes our special circumstance can be equated to a hardship and that is defined in Burns v. Spa Automotive. She stated that staff's finding regarding the self-imposed hardship due to the shape of the lot is directly challenged by Burns v. Spa Automotive. She presented images regarding her subdivision and presented statements on how the property is peculiar by definition and how special circumstances exist due to her earlier argument. She stated the following principals should be kept inline by the zoning board and members as they consider applications; 1) Consideration should be given to the character of the neighborhood. 2) Does the regulation interfere with the owners' right to use the property as he or she sees fit. She explained that the request for variance does not affect the character of the neighborhood; that they should be able to use their property as they see fit; and most of their neighbors have an addition or similar structures. She concluded the presentation by presenting statements regarding arguments previously made and the purpose of the Board of Adjustments.

BOARD MEMBER RYAN stated the Applicant pointed out two variances in the Circle G development and asked what where the nature of their variances.

HEATHER HUNTER, 2578 E BEECHNUT COURT stated one was a use variance and the other was for their RV garage that encroached into the setbacks.

CHAIRMAN VASQUEZ asked if the Applicant knew when the variances where approved.

HEATHER HUNTER, 2578 E BEECHNUT COURT stated she did not know when they were approved as she called city staff several times in attempts to get a list but was unsuccessful. She further stated she found those cases herself through her own research.

CHAIRMAN VASQUEZ asked staff if they knew when said variances were approved.

HARLEY MEHLHORN, CITY PLANNER stated staff is unfamiliar with the variances the Applicant is referring to; however, less than a fifth of a mile away, there were two requests for variances that were denied by this Board. He further stated both requests were for setback variances, one was for an addition and the other was for a garage.

HEATHER HUNTER, 2578 E BEECHNUT COURT replied that her neighbors being denied has nothing to do with her case as she has met the criteria.

BOARD MEMBER RYAN stated in a quasi-judicial way, the Board also decides disputes of decisions made by the Zoning Administrator and further stated the Applicant's presentation tonight blends into that kind of presentation. He further stated the agenda indicates this is a variance, but the Applicant has argued that the standards that the Board has been told to operate under are different than what is being applied.

HEATHER HUNTER, 2578 E BEECHNUT COURT clarified that she is arguing that she deserves a variance because she has shown to meet every criterion on the issue.

BOARD MEMBER RYAN mentioned the Applicant has cited cases, but the Board has not been given time to look at any case law or research.

HEATHER HUNTER, 2578 E BEECHNUT COURT stated that is unfortunate because she has discussed these cases with City staff and law department before the meeting tonight.

THOMAS ALLEN, ASSISTANT CITY ATTORNEY commended the Applicant on the thorough presentation tonight as a lot of information was provided and stated the Applicant presented one case citation to the City Attorney, the 1<sup>st</sup> Pawn LLC v. City of Phoenix. He further stated he respectfully disagrees with the Applicant's interpretation of the case and believes the facts are not on point with what she is proposing. He explained that the Board is constrained by State Statute and City Code and the special circumstances that would normally permit a variance are not present here and furthermore this Board cannot approve a variance when the special circumstances are self-imposed. The Applicant has a residence on the property that is able to be used as a residential property and in his legal opinion to the Board, those are not legal special circumstances. He explained her arguments are that staff made a mistake and that created a hardship for her, but that is different than the hardship that would be presented by the property itself.

CHAIRMAN VASQUEZ stated he would like to know more information on the approved variances mentioned in the Applicants presentation.

HEATHER HUNTER, 2578 E BEECHNUT COURT stated she would like to have a list of all the variances given.

CHAIRMAN VASQUEZ clarified that he is only interested in the variances that were approved near the Applicant's residence. He asked the Assistant City Attorney if they were allowed to ask for a continuance to get further information on those other cases.

THOMAS ALLEN, ASSISTANT CITY ATTORNEY stated it is in the Boards purview to continue this item to another meeting in order to seek that information.

## **Action Agenda Motion and Vote**

BOARD MEMBER RYAN moved to continue Action Agenda Item No. 6, of the April 13, 2022, Board of Adjustment Regular Meeting, PLH22-0004 Hunter Residence; Seconded by BOARD MEMBER WAKEFIELD.

HEATHER HUNTER, 2578 E BEECHNUT COURT interjected to make it clear, every month this continues, the price goes up. She stated she is trying to appreciate that the Board wants more time and information, but she has been trying to do this for the past year.

CHAIRMAN VASQUEZ stated he would like to make sure the Board is making the right decision.

THOMAS ALLEN, ASSISTANT CITY ATTORNEY stated staff does not have the information regarding the approved variance cases the Applicant is citing and it could be informative to know the dates of approval. He further stated if those variances were given in violation of the zoning code than the Board may have acted improperly in those cases and the solution is not to then continue to grant variances in violation of the zoning code. He explained it is up to the Board tonight to approve, deny, or continue this item and there is a motion offered and seconded, therefore proper thing to do now is to vote on the motion to continue.

HEATHER HUNTER, 2578 E BEECHNUT COURT asked if this were to be continued, when would the next meeting be.

THOMAS ALLEN, ASSISTANT CITY ATTORNEY clarified if the motion to continue was approved, the meeting tonight would be adjourned, and another meeting would be scheduled. He stated the next meeting would be to hear this item again to present the additional information. He further stated it is unknown if the Applicant would like this to be continued.

CHAIRMAN VASQUEZ stated the Board will now vote on the motion to continue.

Motion denied unanimously (0-4)

CHAIRMAN VASQUEZ stated the motion to continue is denied and asked if there was a motion to approve or deny the variance.

BOARD MEMBER RAMIERZ moved to approve Action Agenda Item No. 6, of the April 13, 2022, Board of Adjustment Regular Meeting, PLH22-0004 Hunter Residence; Seconded by CHAIRMAN VASQUEZ.

Motion Denied (2-2)

THOMAS ALLEN, ASSISTANT CITY ATTORNEY clarified that per City Code four votes are required for a variance approval.

CHAIRMAN VASQUEZ announced Action Agenda Item No. 6, is denied.

HEATHER HUNTER, 2578 E BEECHNUT COURT requested a roll call vote from the Board as her next recourse is to sue.

CHAIRMAN VASQUEZ – Aye

BOARD MEMBER RAMIREZ – Aye

BOARD MEMBER WAKEFIELD - Nay

BOARD MEMBER JIM RYAN - Nay

## **Member Comments/Announcements**

None.

## **Calendar**

Meetings will be scheduled as needed and are held the second Wednesday of the month at 6:00 p.m., unless advertised differently.

## **Adjourn**

The meeting was adjourned at 7:37 p.m.



Kevin Mayo, Secretary

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Bill Vasquez, Chairman