

**BOARD OF ADJUSTMENT
PUBLIC HEARING
MAY 21, 2009
PRESCOTT, ARIZONA**

MINUTES OF THE PUBLIC HEARING OF THE BOARD OF ADJUSTMENT held on **MAY 21, 2009** in **COUNCIL CHAMBERS, CITY HALL** located at **201 S. CORTEZ STREET**, Prescott, Arizona.

I. CALL TO ORDER

Chairman Klein called the public hearing to order at 9:00 AM.

II. ATTENDANCE

MEMBERS PRESENT Michael Klein, Chairman E. Calvin Fuchs Johnnie Forquer Tom Kayn Ken Mabarak Bill Warren	OTHERS PRESENT Richard Mastin, Development Services Director Mike Bacon, Community Planner Kelly Sammeli, Recording Secretary
MEMBERS ABSENT Duane Famas	

III. REGULAR AGENDA

1. Approve the minutes of the March 19, 2009 and the April 16, 2009 public hearing.

Mr. Fuchs, **MOTION: to approve** the minutes of the March 19, 2009 public hearing.

Ms. Forquer, **2nd. VOTE: 6-0.**

Mr. Mabarak, **MOTION: to approve** the minutes of the April 16, 2009 public hearing.

Mr. Warren, **2nd. VOTE: 4-0-2.**
(Abstention due to absence, E. Calvin Fuchs, Tom Kayn).

2. V09-003, 319 S. Mt. Vernon Street. APN: 110-03-034 and totaling ± 0.17 acre. LDC Section 3.6.3.D. Zoning is Single-Family 9 (SF-9). Request a variance to increase lot coverage to 46% where 40% is allowed for a free-standing garage and reduce the corner lot setback from 15-feet to 7-feet which would be compatible and in line with the existing 7-foot corner setback of the home. Owner is Warren C. Kuhles. Applicant/agent is Robert Burford, Robert Burford Architects. Community Planner is Mike Bacon (928) 777-1360.

Mike Bacon, Community Planner reported that the variance request was for an increase in the maximum lot coverage from 40% to 46%, and to reduce the corner lot setback from 15 feet to 7 feet. The property is located on the corner of S. Mount Vernon and Oak Street which is within a Historical District. Mr. Bacon placed a map

of the location on the overhead and indicated that the owner has been before the Historic Preservation Commission on two separate occasions to seek support for the variance request. Mr. Bacon reported that the Preservation Commission voted 6:0 to support the variance for maximum lot coverage at the March 8, 2009 meeting, and voted 5:1 to support the variance for the corner lot setback at the April 10, 2009 meeting with conditions which include; 1) Substantial conformance with the site plan dated March 8, 2009; 2) A building permit may be obtained if the Variance is granted by the Board of Adjustment, if the garage architecture is not changed and the observation deck was noted on the notices sent out for the BOA hearing. Mr. Bacon further reported that all the conditions were complied with. Mr. Bacon noted that the garage will be located so the entrance will be off of the alley and will meet the rear setback requirement of 6 feet. Mr. Bacon indicated that several years ago a variance was granted to allow for a covered porch to encroach into the same side setback as requested today, and the applicant is seeking the reduced setback to maintain the compatibility of the porch and deck area of the new garage. Mr. Bacon placed photographs of the property on the overhead projector and noted the area where the garage would be located, the alley access, the rear yard, and an accessory structure that will need to be removed, if the Board approves the variance. Mr. Bacon reviewed the variance criteria and reported that staff recommended approval of the variance request with the conditions noted; 1) the development is to be in substantial conformance with the attached Exhibit "A4"; 2) the garage architecture is not to be changed; and, 3) the accessory building along the north property line in the rear yard is to be removed prior to the issuance of a Building Permit. Mr. Bacon noted that both the applicant and the owner were present to answer any questions that the Board might have.

Chairman Klein inquired if a variance was previously granted, if it obligated the Board to grant the current variance request.

Mr. Bacon indicated no however, it did provide a basis that there was other reduced corner yard setbacks in the area.

Mr. Fuchs asked Mr. Mastin if there were any concerns with the garage placement blocking the line of sight for traffic coming in or out of the alley.

Mr. Mastin, Development Services Director noted that the garage would be located out of the line of sight area.

Chairman Klein inquired about the six foot setback for the garage.

Mr. Bacon reported that for a detached garage, if the garage door faces the alley, the setback requirement is six feet however, if the garage door faces off of the alley the setback would only be four feet.

Mr. Mabarak inquired about the 5' 6" setback that was noted for the building on the site plan.

Mr. Bacon reported that the measurement is from the eve which can encroach into the required setback area.

Mr. Warren noted that the staff report indicated that there were other properties that have encroachments into the setbacks and inquired how many other locations there were.

Mr. Bacon reported that as part of the application, there was a list provided that was taken in 2007, of the immediate area reflecting the corner lot setbacks, and it was included in the staff report.

Chairman Klein invited the owner or applicant to the podium to speak to the Board.

Mr. Robert Burford, Architect, 339 S. Cortez Street indicated that the variance request was previously reviewed and supported by the Preservation Commission. The Commission helped to finalize where the garage, which is being moved from another historical district location, would best be located on the property. Mr. Burford noted that the list of other properties with reduced setbacks that was submitted as part of the application was provided from a visual inventory and from the county recorders, which indicates that most of the properties were developed prior to the new zoning requirements. Mr. Burford added that there are many detached garages or carriage houses within this neighborhood, and that this property does not have a garage. Mr. Burford indicated that is why they are requesting to have this relocated garage placed on the property although it will be above the allowed lot coverage.

Mr. Fuchs asked Mr. Burford if he could explain why there was one dissenting vote from the Preservation Commission against the corner lot setback.

Mr. Burford noted that he thought the concern was the roof deck sight lines and how it would impact the neighboring property.

Mr. Bacon reiterated that one Board member was concerned about the deck and the privacy of the neighbors. Mr. Bacon explained that the Commissioner felt that observers on the deck would have direct view of the neighbors' rear yard, and that is why the roof deck was advertised as part of the variance request. Mr. Bacon further explained that it would be no different than any house having a deck at a higher elevation having the same effect.

Mr. Fuchs inquired if there had been any objections from the adjoining property owner.

Mr. Bacon reported that he had received only one phone call regarding the variance request, and that was for information about the variance.

Chairman Klein inquired why the applicant was asking for a reduced setback.

Mr. Burford indicated that they wanted to move the garage further over so that the roof deck would not be looking right on the neighbor's yard and to give their property some rear yard by locating the garage as a buffer.

Mr. Warren Kuhles, 319 S. Mt. Vernon inquired if they could keep the Conex box in the rear yard to keep the tools in during the initial construction and remove the box when the garage was finished.

Mr. Bacon reported that there would only be a final inspection to close the permit, not on the garage itself. However, it would be up to the Board.

Mr. Kayn inquired about the parking of the vehicles on the gravel area in the alley and asked if they belonged to Mr. Kuhles.

Mr. Kuhles indicated that the concrete parking in the alley belongs to the apartment complex on Virginia Street but they park in the alley location on occasion.

Mr. Kayn inquired if parking would be allowed in the alley.

Mr. Mastin reported that the alley is considered a public right of way and short term parking is allowed however, if parking is continuous it becomes a police matter.

Chairman Klein called for other questions from the Board hearing none, called for a Motion.

Mr. Kayn, **MOTION: that the Board approve Variance request V09-003, to allow the maximum lot coverage to be increased not to exceed 46% of the area of the lot itself, and the Variance to include reducing the corner lot setback from 15' to 7' allowing for the garage to be located there with the following conditions: 1) the development be in substantial conformance with the attached Exhibit "A4"; 2) the garage architecture is not to be changed; 3) the accessory building along the north property line in the rear yard is to be removed prior to the final building inspection.**

Mr. Warren, 2nd.

Chairman Klein noted that there was a motion and a 2nd and inquired if there were any further comments.

Mr. Mabarak indicated that he questioned the portion of the motion regarding the architecture as the Board did not review any portion of the architecture and further added that it might be better to **amend the motion to reflect that the garage architecture to be in compliance with the Historic Preservation Commission.**

Mr. Kayn accepted the amendment.

Mr. Warren amended his 2nd.

Chairman Klein indicated that he had concerns with not removing the container until after the final inspection because they have granted conditional approvals in the past and the containers do not get removed. Chairman Klein further indicated that he feels that overall, the applicant is asking for a variance to conditions that have been created by the applicant.

Mr. Kayn mentioned that one of the positive things with the placement of the garage at the requested location is that it keeps the visual line of the buildings in tact and that the Preservation Commission may have considered that.

Mr. Fuchs indicated that he concurred with Chairman Klein with respect to the accessory structure being removed and that there is a better possibility that the structure would be removed with the condition attached to the issuance of the building permit.

Mr. Kayn noted that he would add a time element of sixty days to his motion.

Mr. Bacon noted that the motion indicates prior to the final building inspection and it is not determined when that will occur.

Mr. Kayn inquired if the applicant could address the amount of time that may be needed to remove the container after the permit was issued.

Chairman Klein asked if the applicant would like to address the container.

Mr. Kuhles noted that ninety days from the issuance of the permit would be enough time to remove the container.

Mr. Kayn amended the motion: **that the accessory building along the north property line in the rear property line is to be removed within ninety days of the issuance of the building permit.**

Mr. Warren amended his 2nd again and asked the secretary to read the motion back.

Ms. Sammeli, recording secretary read the motion as stated and modified. Motion: **that the Board approve Variance request V09-003, to allow the maximum lot coverage to be increased not to exceed 46% of the area of the lot itself, and the Variance to include reducing the corner lot setback from 15' to 7' allowing for the garage to be located there with the following conditions: 1) the development be in substantial conformance with the attached Exhibit "A4"; 2) that the garage architecture should be in compliance with the Historic Preservation Commission; 3) that the accessory building along the north property line in the rear is to be removed within ninety days of the issuance of the building permit.**

Mr. Mabarak inquired about the purpose of the storage container.

Mr. Kuhles indicated that the container was brought in when the remodel of the house was taking place and it was left there for outside storage for yard tools. Mr. Kuhles further indicated that the container would be left on the property long enough to keep the construction tools in it as they placed the garage and then it would be removed.

Mr. Mabarak suggested that the storage container should be removed immediately as it should have been removed a long time ago.

Mr. Kayn noted that he would like to know how the other Board members felt about the removal before the motion was amended.

Chairman Klein called on the members for their comments regarding the container.

Mr. Fuchs concurred with Mr. Mabarak noting that container should be removed prior to the issuance of the building permit.

Ms. Forquer indicated that she felt the container could be used during construction as long as it was removed when the garage was placed.

Chairman Klein indicated that he thought the container should be removed prior to the issuance to the building permit and that he still has concerns with the whole request because, he feels that this is a self imposed condition, there is room for the garage to be placed at the required setback of 15' and the lot increase is also self imposed.

Mr. Mabarak indicated that he agrees with Chairman Klein that the storage container should be removed immediately, that the garage is being placed for the benefit of the applicant, and he has concerns with crowding the corner.

Mr. Warren indicated that he did not like storage containers either and that by placing a time limit on the use of container should resolve that matter. Mr. Warren further indicated that he also has concerns that the request is because of a self imposed condition. Mr. Warren added that because the property is in an historical area and the garage will be in character with the other area residences he would be supportive of the request.

Chairman Klein noted that there was a motion on the floor which includes the ninety days for the accessory structure.

Mr. Fuchs indicated for the record he felt that it was the duty of the Board to enforce the zoning unless there was a specific good reason to grant a variance such as this. Mr. Fuchs further indicated that he did not have a problem with the lot coverage in the area however, he felt the corner setback request was for a self imposed hardship.

Chairman Klein asked Ms. Forquer if she would like to add anything with regard to the structures.

Ms. Forquer indicated no.

Mr. Kayn asked Mr. Bacon how far the garage would have to be moved back to be in compliance.

Mr. Bacon reported that in 2007, the applicant submitted evidence to the Board of Adjustment that he would be denied a similar privilege that was enjoyed by others in the area if he was not granted the reduced setback and that the information was provided in the staff report for this request and that is the basis of the granting of the variance. Mr. Bacon added that the garage would have to go back an additional 8' to meet the current setback requirements for the area.

Chairman Klein noted that he thought the deck was already covered when the request was brought before the Board in 2007.

Mr. Bacon reported that the deck was there but it was not a porch.

Mr. Kuhles indicated that the deck was open.

Mr. Kayn indicated that he thought that the Board should not require the garage to be in full compliance of the setbacks because, it would eliminate the usable yard space on the property and nothing would be gained except the argument that it is a self imposed hardship. Mr. Kayn further indicated that the Preservation Commission found reason to support the request and that the Board should take that into consideration and support the request as purposed.

Mr. Mabarak indicated that he recalls the last request for this property and he based his decision on the fact that the porch did not appear close to the street and he liked the architectural elements for the porch. Mr. Mabarak further noted that the current request to place the garage with a seven foot setback is different because it will place a structure that is 20' in height close to the street and visually box the property in and it will not be visually appealing to the neighborhood.

Chairman Klein asked Mr. Kuhles if he thought the two separate requests for the variance had to both be approved in order to make the garage work at the location.

Mr. Kuhles indicated that he felt that the two requests were married because the site characteristics have to be carried through and if the garage has to be moved it will distort the architectural design of the house and the property, and reflect that it was added on. Mr. Kuhles added that by locating the garage any where else on the property would throw off the aesthetics of the house and the entire property.

Mr. Burford reminded the Board that due to the topography of the lot, the garage would be approximately one level lower than the house.

Chairman Klein called for other comments or questions from the Board, hearing none called for vote on the motion as it was read and amended.

VOTE: 3-3.

Motion was denied.

Board of Adjustment member(s) voting against:

E. Calvin Fuchs, Mike Klein, Ken Mabarak.

Board of Adjustment member(s) voting for:

Johnnie Forquer, Tom Kayn, Bill Warren.

IV. REVIEW ITEMS

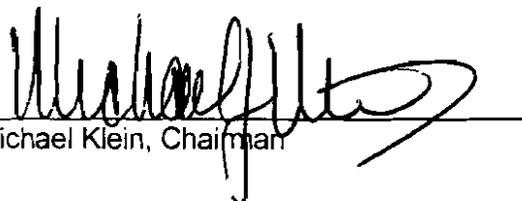
None.

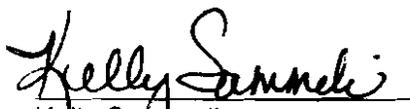
IV. SUMMARY OF CURRENT OR RECENT EVENTS

None.

VI. ADJOURNMENT

Chairman Klein adjourned the meeting at 10:00 AM.


Michael Klein, Chairman


Kelly Sammeli
Recording Secretary