



Official Minutes of the Board of Adjustment Meeting
Held January 8, 2008 6:00 p.m. at the
City of Cottonwood Council Chambers
826 North Main Street, Cottonwood, Arizona

Call to Order

Chairperson Joens called the meeting to order at 6:11 p.m.

Roll Call

Table with 4 columns: Name, Status, Name, Status. Rows include Chairperson Joens (Present), Vice Chairperson Pfeifer (Present), Member Elinski (Present), Member Kirby (Present), Member Norman (Present), Member Pratt (Absent), and Vacant Seat.

Staff Present:

- George Gehlert, Community Development Director
Steve Horton, Magnum, Wall, Stoops, & Warden (city attorney)
Tim Costello, Public Works Director
Charlie Scully, Planner
Carol Hulse, Planning Technician

Public Present:

- Brian Aldrich David Gordon, Attorney Mrs. Brian Aldrich Connie Dedrick

Preparer's note: These are minutes (not a transcript). Although prepared in detail because of the nature of the hearing, they are not verbatim unless indicated by quotation marks.

Consideration of minutes of July 17, 2007.

Chairperson Joens noted one correction to be made on page 2, beginning of paragraph 4 - "Council deliberation" should be "Board deliberation."

Member Elinski moved to approve the Board minutes of July 17, 2007 with the above noted correction. Vice Chairperson Pfeifer seconded. The motion carried with all members present voting in favor.

APL 07-029 Consideration of an appeal of an administrative decision, as provided by Section 306.A.1 of the Cottonwood Zoning Ordinance, to deny placement of a second set of utility meters on a single-family lot zoned R-1 and located at 2650 Lobo Circle. APN 406-48-001. Owner/Agent: Patrick C. and Judith L. Aldrich.

Chairperson Joens introduced the item reading the description from the agenda. She asked Mr. Horton a procedural question regarding the appropriate time to adjourn into executive session. Mr. Horton advised that testimony should be heard first. Chairperson Joens asked Director Gehlert to give testimony.

Gehlert explained that the request was for a second set of utility meters to service a guesthouse after a conditional use permit was granted by the Planning and Zoning Commission for the guesthouse. He displayed a site plan on the wall and explained the surrounding area. He read the six stipulations included in the conditional use permit approval. They were as follows.

1. That no kitchen or cooking facilities be included in the guesthouse.
2. That the structure conform to all building code and fire safety standards.
3. That permits be obtained for any improvements.
4. That the applicant obtain a Certificate of Occupancy.
5. That the request be reviewed in one (1) year.
6. That plans for the structure be reviewed by the Verde Village Architectural Committee.

Gehlert also noted that the building permit that was issued stipulated "...needs to meet all setback requirements, it shall be fire sprinklered, dual (sic) plumbing for grey water, no kitchen facilities, conform to all building codes, no separate gas or electric utilities. Gehlert explained that it has been staff policy to disallow a second set of utility meters in single-family zones. However, there is no code to support the policy. Gehlert believed the Planning and Zoning Commission intended to prevent guesthouses from becoming rentals and a second meter would open that door. In addition, allowing a second set of meters for a guesthouse could set a precedent for allowing that for other accessory buildings.

Director Gehlert read the justifications for his interpretation as stated in the staff memo.

- Section 201 of the ordinance defines a guesthouse as "a dwelling unit within an accessory building for the sole use of the occupants of the premises and their guests."
- It also states that an accessory building is subordinate and incidental to the main building or use on the parcel.
- A guesthouse would also be considered an accessory use. An accessory use is also clearly subordinate to the main use of the lot.

Gehlert continued, explaining that the applicant asked to divide the property. Staff was OK with that. The property is in a subdivision and the process to divide a lot is to amend the plat. There was enough land to divide. The request for the guesthouse erupted later.

Gehlert further explained that the city annexed this property some time ago. Before that, the property was under county zoning, which allowed guest homes. The deed restrictions also allow guest homes. However, the city ordinance does not in the R-1 zoning. Staff went along with the guest home and that was the reason for the conditional use permit. The deed restrictions talk about a small guesthouse. Although the proposed guesthouse seemed out of character with related guidelines offered by the deed restrictions, staff did not receive a consistent response from the Homeowners Association (VVHOA) on this issue. Gehlert noted that the guest home is rather large and has its own garage and own driveway. Staff felt these features open the door to it becoming rental property, especially if the property were to sell.

Mr. Horton advised that the applicant could cross-examine Director Gehlert. David Gordon, the attorney for the applicant, said that Brian Aldrich is the agent for his father, Patrick Aldrich. Mr. Gordon asked the following questions (Q) and director Gehlert supplied the following answers (A).

Q Is the main issue the second electrical stub for the guesthouse?

A No. Defending the Planning and Zoning Commission (P&Z) concern about the guesthouse becoming a rental is the main issue.

Q You believe that the second stub could equal a rental?

A Yes.

Q Did the applicant obtain a conditional use permit?

A Yes.

Gordon reviewed the stipulations of the conditional use permit and resumed questioning.

Q Regarding the kitchen stipulation, did the applicants obtain building permits and have inspections been completed.

A Permits were issued. It would not be inspected until time for the certificate of occupancy (CofO).

Q Why was there a stipulation for a one-year review?

A Standard procedure.

Q Is that to be sure the stipulations are followed?

A Yes.

Q If stipulations were not followed, what would happen?

A The conditional use permit could be revoked.

Q Were you in contact with the VVHOA?

A Yes, but there was no consistent response.

Q You have no problem with it (the guesthouse) as it is?

A It depends on whether or not they already have a kitchen in there.

Q Have you received any complaints?

A No.

Q Did the letter dated June 25, 2007 come from your office?

A Yes.

Q Regarding the last paragraph that states, "No rental of the guesthouse is permitted," did the clients say at any time that they plan to turn the guesthouse into a rental?

A No.

Mr. Gordon distributed copies of correspondence to the Board members and returned to questioning Mr. Gehlert.

Q Is there an actual code or ordinance adopted that prohibits a second electrical stub/meter?

A No – written policy – no.

Q So your interpretation is an interpretation of what?

A Action by the P&Z Commission regarding guest homes.

Q Your interpretation of the conditional use permit?

A Yes.

Q Was that addressed at the P&Z hearing?

A No.

Q How many guest homes are there in the city?

A I don't know.

Q Are any stubbed for two electrical meters?

A Illegally, maybe. Don't know.

Q Did you know APS put in the stub?

A No. APS won't hook up until the CofO is issued.

Mr. Gordon turned his questioning to Mr. Aldrich.

Q Do you own the residence?

A No. My father and mother do.

Q How long has the main residence been there?

A A little over a year.

Q When did you approach the city about a guest home?

A April or May.

Q Did you apply for a permit?

A Yes. We went through P&Z.

Q Before P&Z, did you talk to city official?

A Yes.

Q Was the issue regarding the second stub raised?

A No.

Q Was this brought up at P&Z?

A No.

Q Is there a second stub there now?

A APS upgraded the transformer on Lobo Circle and ran a new line to the end of the cul-de-sac. They set a j-box for the second stub.

Q Clarify "stub". Is it for the main house and a hookup for the guesthouse?

A We discussed about it being a rental a lot.

Q What was your position?

A We were adamant that it would not be a rental – it was for my parents.

Q What did the city say regarding the second stub?

A We received a letter after the fact denying the guesthouse unless we reduced the size, which we did. We were not aware of any codes or ordinances that forbid the second stub.

Q You contacted the Verde Village Architectural Committee and met with them?

A Yes.

Mr. Gordon went through the six stipulations in the 6/25/07 P&Z Commission notice of action noting that stipulations 1,2,4,5 and 6 are resolved. Stipulation #3 is the issue of the appeal.

Q When did you become aware of the stub concern?

A The August 16 letter.

Q What would that require of your parents?

A Upgrade main house panel, run power under wall and concrete driveway, etc. It would be a large financial hardship – in excess of \$15,000.

Q Were you aware that the conditional use permit prohibited use of the guesthouse as a rental and that the permit could be revoked?

A Yes.

Q Do you intend to rent it?

A No.

Q Could it be rented without a cooking facility?

A Rental is not an option.

There was discussion between the Board and the city attorney. Mr. Horton noted that this was a less formal proceeding and that is OK as long as everyone gets to speak and the Board is satisfied. Also discussed was that there is no requirement to take public comment. It would be OK to do so but that would not be testimony.

Chairperson Joens opened the floor to the Board members.

Member Kirby pointed out his concern that the guesthouse would be used as a primary residence. That is a contradiction of terms, which helps justify staff's position. He asked how the Board could justify that. Mr. Gordon said that was discussed. Mr. Gordon's position was that the code is silent and absent language to justify the interpretation. His client should be free to have a second meter and that should not have been a stipulation. He described an analogy to adult businesses where the code prohibits them in certain locations and specifically allows them in others. Mr. Gordon said that if the code is silent, his client should be able to have the second stub. There is no code and no written policy on the issue and there could be a number of guest homes in this position. Interpretation should be of codes but this interpretation was based on what P&Z said. \$15,000 is expensive versus zero expense.

Member Kirby pursued questioning the reference to the guesthouse as a primary residence and asked why the applicant did not just go for the lot split. Mr. Gordon said there was initial discussion about the lot split but the applicant elected not to do that. Mr. Aldrich said the lot split was what they wanted to do. He said Director Gehlert advised that would require a plat amendment and he did not want to do that. His parents moved from Ohio and (paraphrased) were anxious to move into their own house using an outdoor grill for cooking facilities. There was an issue regarding putting a garage on a guesthouse but there is a garage there.

Member Kirby asked Director Gehlert why the lot split was a problem. Gehlert explained that the lot is in a subdivision. It would require Council action to amend the plat because he does not have authority to approve a minor land division in a platted subdivision. Additionally, deed restrictions prohibit lot division.

Member Elinski asked if APS stubbed in a J-box and a pole. Mr. Aldrich said there is no pole, it is all underground. APS still has to run it to the panel. Member Elinski asked what was on the plans for the electric. Mr. Aldrich said he did not have a copy and did not remember. He said he does not normally show utility layouts. Member Elinski asked if the site plan showed where the utilities come in. Mr. Aldrich said it showed electric and gas and they did not get a second water meter. Member Elinski said he was concerned that if something on the plans showed an additional panel it should have been noticed at code review.

Member Elinski asked Director Gehlert how many permits have been issued for second panels. Director Gehlert answered none, to his knowledge, for single-family lots. Member Elinski asked why. Director Gehlert said it was because of the rental issue.

Member Kirby asked if the J-box and the meter were set so APS goes to the end of the Aldrich property or past it. Mr. Aldrich asked that the site plan be displayed again and showed on the plan what the configuration is.

Member Elinski asked if APS stubbed the second meter in during construction. Mr. Aldridge said it was during construction of the main house.

Member Kirby asked if there was a place where the electric could be stubbed out to serve both houses – have a single meter split to serve both houses. Mr. Aldridge said they presented it to APS that they were going to split the lot. Member Kirby pursued this questioning by asking Director Gehlert if one meter was possible. Gehlert said he did not know.

Member Elinski asked for confirmation that when APS did the stub-out Mr. Aldrich planned to split the lot. Mr. Aldrich confirmed. He said the gas company wanted separate meters, also, for if and when the lot is split. Mr. Aldrich said, for the record, that the lot would not be split soon. He explained that it would require approval of 75% of the homeowners to amend the CC&Rs to allow the split. That is why he felt the conditional use permit was the best route to get his parents into the residence soon.

Chairperson Joens expressed her opinion that there is no code or legal leverage that “allows us to do what we are suggesting.” She said the homeowner purchased the land in good faith and got permits, which we want to encourage. Joens asked if the Board needed to go into executive session. Mr. Horton advised her to be sure all parties had presented all they want the Board to hear.

Mr. Aldrich said he hoped they understand that the double metering is not intended to create a rental. However, they cannot control the future owner. He went on to explain that there is a well on the property and they have to obtain a well-share agreement to serve the second house. There is city water available for the fire sprinkler system. Aldrich said he can run gas and water from one meter but the big concern is the electric.

Mr. Gordon thanked the Board. He reiterated the legal issue of the absence of code to say anything.

Chairperson Joens invited public comment. When there was none, she closed the floor to the public.

Mr. Gordon stated, for the record, they had presented all their evidence to the Board. Director Gehlert said he had nothing else to present.

Member Kirby moved that the Board adjourn into executive session. Member Elinski seconded. The Board voted unanimously to move into executive session at 7:07 p.m.

At 7:35 p.m., Member Kirby moved that the Board of Adjustment resolve back into regular session. Vice Chairperson Pfeifer seconded and all members present voted in favor.

Chairperson Joens asked if there was discussion from the Board.

Member Kirby suggested a resolution could be to direct the Zoning Administrator to meet with the applicant and APS to determine the economic feasibility of using a single meter and to stipulate that if it were not economically feasible, the second meter would be granted.

Chairperson Joens asked if the applicant could come to another hearing if he was not satisfied with the outcome. Mr. Horton said they could file an appeal.

Member Kirby moved to direct the Zoning Administrator to consult with APS and the applicant to determine if a single meter was economically feasible. If not, grant the second meter. Vice Chairperson Pfeifer seconded the motion. The motion carried four to one with member Elinski opposed.

Adjournment:

Member Norman made the motion to adjourn.

Mr. Gordon asked for clarification of the motion. Member Kirby said that they are to attempt to find a place on the street in front of both houses before the line splits to set the meter to serve both houses. Mr. Gordon asked if it was not economically feasible if the second meter would be granted. Member Kirby confirmed.

Member Kirby seconded. The vote to adjourn was unanimous.

Chairperson Joens adjourned the meeting at 7:40 p.m.

Prepared by: Carol Hulse, Planning Technician

Approved: September 2, 2008

(Date)