

# DRAFT

## MINUTES OF THE REGULAR MEETING BOARD OF ADJUSTMENT TOWN OF CHINO VALLEY

THURSDAY, OCTOBER 8, 2020  
6:00 P.M.

CHINO VALLEY COUNCIL CHAMBERS  
202 N. STATE ROUTE 89, CHINO VALLEY, AZ

1) **CALL TO ORDER**

Chair Tuttobene called the meeting to order at 6:01 p.m.

2) **PLEDGE OF ALLEGIANCE**

Chair Tuttobene led the Pledge of Allegiance.

3) **ROLL CALL**

Present: Chair Sandra Tuttobene; Board Member Michael Ditta; Board Member Julie Northington;  
Board Member Billie James

Staff: Joshua Cook, Development Services Director; Will Dingee, Assistant Planner; Frank Marbury,  
Present: Public Works Director/Town Engineer; Erin Deskins (recorder), Deputy Town Clerk; Traci  
Lavelle (recorder), Deputy Town Clerk

a) Selection of Chair and Vice-Chair.

Members nominated Sandra Tuttobene as Chairman.

MOVED by Board Member Michael Ditta, seconded by Board Member Julie Northington to appoint Sandra Tuttobene as Chairman

AYE: Chair Sandra Tuttobene, Board Member Michael Ditta, Board Member Julie Northington, Board Member Billie James

**4 - 0 PASSED - Unanimously**

MOVED by Board Member Michael Ditta, seconded by Board Member Billie James to appoint Beverly Duffy as Vice Chair.

AYE: Chair Sandra Tuttobene, Board Member Michael Ditta, Board Member Julie Northington, Board Member Billie James

**4 - 0 PASSED - Unanimously**

**4) APPROVAL OF MINUTES**

- a) Consideration and possible action to approve the October 10, 2019, regular meeting minutes. (Jami Lewis, Town Clerk)

MOVED by Board Member Julie Northington, seconded by Board Member Michael Ditta to approve the October 10, 2019 regular meeting minutes.

AYE: Chair Sandra Tuttobene, Board Member Michael Ditta, Board Member Julie Northington, Board Member Billie James

**4 - 0 PASSED - Unanimously**

**5) RESERVATION FOR AGENDA ITEMS**

**6) PUBLIC HEARINGS**

- a) Discussion and possible action regarding Harry Owens variance application located in the Colonial Villa's subdivision at 1003 Ashburn Way, Lot #15. (Will Dingee, Assistant Planner)

Assistant Planner Will Dingee presented the following:

- Item 6(a) is a requested variance to construct a structure within the property setbacks
- The applicant and property owner were attending the meeting.
- The site plan included in the packet was incorrect for the property, but all other information in the packet was accurate.
- Staff reviewed the correct site plan for the application. The carport was 16 feet from the west property line, and it abutted N Road 1 East, which was an arterial roadway.
- Town code required property adjacent to an arterial road to have a 75-foot setback, measured from the presumed street's centerline, whether the road was constructed or not. In the case of the subject property, it measured 20 feet setback from the western property line.
- The recorded plat for Colonial Villa specified that all setbacks on a property lines that abutted a street were to be 20 feet.
- Town code specified that a variance could only be granted due to a special circumstance such as size, shape, topography, location and surroundings of the property. Additionally, Arizona State Statutes state that a variance could not be granted if a special circumstance was self-imposed.
- This hardship was self-imposed because the previous property owner made a conscious decision to place the manufactured home in the current location. The property had an additional 20 feet of room to the east of the home's current location.
- Staff recommended a denial of the requested variance on the grounds that it was against Arizona Revised Statutes to approve a variance when it was a self-imposed circumstance.

Board Members and Staff discussed the following:

- Code required the setback to be 25 feet from the centerline of the road, with an arterial

roadway width of 100 feet. The measurement for this property would be 25 feet from the centerline, plus an additional 50 feet to make a total setback of 75 feet off the centerline of the road.

- The property owner wanted to add a carport to the property that would encroach into the required setback. There was a driveway, but driveways were not considered structures. The concrete pad for the carport extended four feet into the required setback.
- The placement of the doublewides throughout the development was not relevant to the variance request because the developer could place the home anywhere on the lot if the minimum setbacks were met.
- Regardless of the reasons for the 75 foot setback, the requirement was an ordinance adopted by the Town Council and Town was required to enforce the code as written. Staff did not have the authority to vary the requirement.
- The Public Works Director determined the centerline of a street based on where the section line was located. The section line requirements were set statewide. Public works had determined that the carport would encroach into the required setback.
- Even though the structure would be within the property owner's walled property, the required setbacks still applied.
- It would not matter if the developer had told a prospective buyer they could build a carport because the home was placed at its current location within the setbacks, and any additional structures added had to meet those same minimum building setbacks. It was self-imposed because the previous property owner chose to put the structure at the location it currently stood, and the consequences passed to subsequent owners as well.
- Depending on the decision of the Board, either the applicant or the Town could appeal the decision.
- Staff explained to Board Members that it was not their duty to help the applicant or help the Town. The Board's job was to look at the variance on the merits of the variance itself and determine if the Town's position was correct or if there was a special circumstance that could be granted by the board.
- There was a way to fix the issue and staff had talked to the developer about bringing a Planned Area Development (PAD) forward to amend the subdivision and allow for flexible setbacks, which the developer turned down. A PAD would affect all the properties in the subdivision, not just the subject property.
- A medical reason could not be used as a special circumstance.
- Board Members could ask questions of the applicant. The public could also comment on the application.
- The reasons the application could not be approved included the adopted ordinance for required setbacks and State Statutes prohibited a Board of Adjustment from approving a variance if there were no special circumstances involved.
- The last variance the Town considered involved a fence and staff was not aware of any other variance requests.
- There were other properties in the subdivision who could have a carport. This did not just affect the applicant. This same issue would affect any property owner that had a home placed in such a way that any further structure added would encroach into the required setbacks.
- Staff had very few options to help the applicant with the setback issue other than the PAD, which was a rezoning process that would be considered by Planning and Zoning and Town Council. It would allow for the setback flexibility and would alleviate the current situation through the proper channel, which was not a variance.
- The Board of Adjustment's job was not to grant variances just to help out an individual. The job was to look at the code and look at the situation and determine if there was a special circumstance or not. Whether the Board agreed with the setback requirement or not, was irrelevant. In this case, staff said there was not a special circumstance, but the

property owner said there was.

- Staff did not miss anything during their initial review of the subdivision development. The developer chose to put the house in the current location. The current lot was big enough to have a carport but lost the ability to have one because of where the developer put the home.
- Any decision the Board made would set a precedent for all future variances going forward. The current code was being evaluated and going through a rewrite. The subdivision regulations and the arterial lane widths were changed. Arterials were now required to have only 80 feet of right-of-way.

Board Members, property owner Harry Owen and Colonial Villas Developer Jim Fletcher discussed the following:

- Pictures of the property's layout were provided.
- The property owner did not think it was logical to argue this application for only four feet. He thought there should be a way to grant the application. There was an issue with both he and his wife's health. Staff had explained that medical issues were not one of circumstances allowed for a variance.
- The house had a door and a patio on the other side of the home. The requested carport location was reviewed.
- The developer stated at the time the home was placed on the property, he was not told there wasn't enough room for a carport, but he did not have one on the application. The driveway was placed on the property with the intent of having a carport if the buyer so chose, and he did not realize they were four feet off from the setback requirements.
- The developer questioned why the variance at the pet food depot was approved and how it differed from the current variance request. He also questioned if the new right-of-way requirements would change the setback requirements for this request. Staff stated the new setback requirements would have to be verified. It was possible that this issue may not be relevant when the new requirements took effect.
- All the homes in the subdivision were similarly placed on the lots, with a ten-foot side setback.
- The developer did not want a PAD because 15 lots had already abided by the required setbacks. Staff explained that the flexible setbacks for the entire subdivision provided greater freedom to all the property owners to have a smaller setback.
- The plan design on this lot was a mistake.
- Staff explained that if the new requirements changed the necessity of the variance request, staff would ask the property owners to withdraw their application. The Board could make a motion to postpone with a specific date that allowed time for the Town to research any new requirements for the property.
- The property owner understood that the new subdivision regulations may not require a variance application request.

MOVED by Board Member Billie James, seconded by Board Member Michael Ditta to continue the application until November 12, 2020.

AYE: Chair Sandra Tuttobene, Board Member Michael Ditta, Board Member Julie Northington, Board Member Billie James

**4 - 0 PASSED - Unanimously**

## 7) UNFINISHED BUSINESS

**8) NEW BUSINESS**

A Board member brought up two concerns about the changes to the UDO under 1.5.2, the Powers and Duties of the Board of Adjustment, regarding the Board's discussion. Staff explained that it could not be discussed during the meeting and needed to be specifically added as a future agenda item and any discussion could violate the open meeting law.

**9) ANNOUNCEMENTS**

**10) PUBLIC COMMENTS**

*Members of the public may address the Board of Adjustment on items not on the printed agenda. State your name for the record and please observe the time limit of 3 minutes. Be advised that the Board cannot/will not respond to your comments at this time.*

**11) ADJOURNMENT**

MOVED by Board Member Michael Ditta, seconded by Board Member Julie Northington to adjourn the meeting at 6:42 p.m.

AYE: Chair Sandra Tuttobene, Board Member Michael Ditta, Board Member Julie Northington, Board Member Billie James

**4 - 0 PASSED - Unanimously**

Submitted: October, 28, 2020.

By: *Traci Lavelle, Deputy Town Clerk*

Approved: MONTH DAY, 2020.