

Regular Meeting
October 09, 2012

**MINUTES OF A REGULAR MEETING OF THE CASA GRANDE BOARD
OF ADJUSTMENT HELD ON TUESDAY, OCTOBER 09, 2012 AT 6:00
P.M. IN THE COUNCIL CHAMBERS LOCATED AT CITY HALL, 510 E.
FLORENCE BOULEVARD, CASA GRANDE, ARIZONA**

I. Call to Order and Pledge:

Chairman Gentzkow called the meeting to order at 5:59 p.m.

II. Roll Call:

Members Present:

Member Gordon Beck
Member Roger Badger
Member Mark Zeibak
Vice-Chairman Rueben Garcia
Chairman Stephen Gentzkow

Members Absent:

Member Charles Wright	Excused
Member Harold Vangilder	Excused (Medical)

City Staff Present:

Paul Tice, Planning and Development Director
Carl Metz, Planner
Melanie Podolak, Administrative Assistant
Duane Eitel, Traffic Engineer

**III. Approval of Minutes:
September 11, 2012**

Member Beck made a motion to approve the minutes dated September 11, 2012.
Member Garcia seconded the motion. A voice call vote was called, all were in favor.

**IV. Changes to the Agenda:
There were no changes to report.**

V. Unfinished Business:

- A. Request by Richard Loewenhagen, 1121 N. Olive Ave., for the following
request on 0.5 acre located at 1121 N. Olive Avenue, APN 506-06-080:**

1. **DSA-12-00047: Variance** from the following City Code parking provisions for the **Olive Branch Assisted Living Group Home** located at 1121 N. Olive Avenue:
 - a. Section 17.56.040: To have a parking area design which requires backing into a public street where it is prohibited
 - b. Section 17.56.190: To not construct a five (5) foot-high wall where one is required
 - c. Section 17.56.220: To provide eight (8) on-site parking spaces where nine (9) are required

Chairman Gentzkow stated there are not enough Board Members present tonight to motion for approval of the Variance. This is the third time the applicant's case has been continued due to lack of Member's in attendance.

Chairman Gentzkow informed the applicant that the Board will be discussing a change to the voting procedures tonight.

Director Tice pointed out that a motion to postpone the case to the November 13, 2012, meeting needs to be made.

Member Beck made a motion to continue case DSA-12-00047, to the November 13, 2012, meeting. Member Zeibak seconded the motion. A voice call vote was called and all were in favor.

Chairman Gentzkow thanked the applicant for attending.

Member Beck apologized to the applicant for the inconvenience.

VI. Discussion – New Board Voting Requirements:

Director Tice overviewed the handout that was prepared for the Board. He stated there are two different sections of the zoning code that address the Board's voting procedures and requirements. The first is set forth in section 17.54.050 – Board of Adjustment action, which reads "Approval may be granted only upon the affirmative vote of three-fourths of all the members of the board". The Board consists of seven members; therefore three-fourths of the members will always require six members for an affirmative vote on a Variance under this section of code. Director Tice noted that since the Board has seven members they only need a quorum which is four members present to hold business.

Director Tice stated the other section of the code that addresses the Board voting is section 17.68.380 – "Review and decision of the board", which is under the appeals section of the code. The requirement for an Appeals states "The board may, by three-fourths vote of the members present approve or deny an appeal". He pointed out that the appeal vote only requires three-fourths of the member present, not of the entire

board, which is what is required for a Variance. Director Tice cited that in the last sentence of this section it reads "The requirement of the three-fourths vote of the members present shall also pertain to Variance requests outlined in Chapter 17.54 of this title". He commented this provision states that voting on Variances will be the same standard of three-fourth's members present, but it conflicts with the voting requirements set forth in section 17.54.050. Director Tice explained that he believes section 17.54.050 was adopted in 1987, and section 17.68.380 was adopted in 1995 with the intent to change the provision of 17.54.050, but it was not done in a way that deleted 17.54.050. So at this point we have two sections of the Zoning Code which have conflicting provisions for the board's voting requirements on variance. However, there is a section of the city code which specifically states when there are two provisions that conflict, then the more restrictive of the two shall prevail.

Director Tice then addressed the tables showing the number of members required to pass motion of approval for each of the provision.

Director Tice stated he has drafted two proposals for the Board's consideration, with two objectives he would like to achieve. One would be that the same voting requirements apply for both variance and appeal cases. He noted they tried to do this in 1995 with the modification to section 17.68.380 but not successfully. He went on to state the other objective he would like to achieve is that the board be able to make an affirmative or negative vote on an application when there is a quorum present; both of the proposals can achieve this objective.

The first proposal would be that three-fourths of members present would be required for an affirmative vote on a variance or appeal application. The second proposal would be the majority of the Board would be required for an affirmative vote, which is what is used for both the Planning Commission and the City Council's decisions regarding Conditional Use Permits.

Director Tice stated he has spoke with the City Attorney, and he is comfortable with either proposal. He then stated that he checked other communities in Arizona as to what their voting rules were, and he found that Chandler required the majority of the Board (four), and Glendale used a majority of a quorum.

Director Tice concluded by asking the Board Members for feed back. He stated if there is a consensus as to which direction they want to go, he will then draft a formal proposal for the Planning Commissions consideration at a public hearing. The Planning Commissions recommendation will be forwarded to the City Council for another public hearing and reading of the ordinance.

Chairman Gentzkow questioned the timeline.

Director Tice stated the proposal will be brought before the Planning Commission on November 1, 2012, and then on to the December 3, 2012, City Council meeting for the first reading and December 17, 2012, for the second reading.

Chairman Gentzkow commented he does not feel it is bad to allow a contrarian view point, but still be able to move forward with an issue. He stated he favors proposal one; it allows for descending view points, but allows the process to move on.

Member Zeibak agreed with Chairman Gentzkow. He stated he would like to see the Board have the ability to conduct business and not have the applicant repeatedly come back due to lack of members present.

Member Beck also agreed with Chairman Gentzkow and Member Zeibak. He stated Variance's are forever and careful consideration needs to be made.

Member Zeibak noted this change will also affect Appeals.

Director Tice stated proposal one is already the voting standard for Appeals. We would just be making the same standard apply for both Appeals and Variances.

Member Badger stated he likes proposal two. He explained that in the voting process if there are two "nays" and five "ayes" then the decision is for the "nays". Member Badger stated he does not like the fact that it could just take one person to block a request, which would discourage business owners and/or new businesses from coming into our community.

Director Tice stated Member Badger is correct. Proposal one does give a heavier weight to the vote for those who may oppose Variances for whatever reason.

Member Beck questioned if then the Board could be looked at as a "rubber stamping" Board.

Director Tice stated the Planning Commission and the City Council are not "rubber stamping" groups, and they both use the standards of proposal two.

Vice-Chairman Garcia commented he also favors proposal two. He stated it keeps the voting consistent with what the Commission and Council.

Chairman Gentzkow remarked that Member Badger made a good point; we should not be too restrictive on our policies. Chairman Gentzkow stated he is ok with proposal two; the Board just needs some way to allow business to be conducted.

Member Zeibak questioned if there are any difference as far as processing the two proposals.

Director Tice stated the process will be the same. Both proposals are minor changes in terms of "word smithing".

Member Beck questioned if the Board was to go with proposal two, should they also consider changing the voting requirements for Appeals.

Director Tice replied he would recommend that the Board keep the voting consistent. He then questioned if the Board would agree that whatever the voting structure is, they be allowed to approve or deny, as long as there is a quorum present.

All Board Members present agreed.

Director Tice reiterated that what he has heard from the Board is that they can live with either proposal.

Chairman Gentzkow replied that from what he has heard from the Board Members is that proposal two would be the consensus.

Member Beck stated he prefers proposal one, but could live with proposal two.

Vice-Chairman Garcia commented proposal two gives the Board a better opportunity to conduct business.

Member Beck remarked his only concern with proposal two is that in the instance where only have four members are present it does not allow for any leeway.

Director Tice stated he will move forward with drafting the formal proposal.

Member Beck questioned if there is anyway the case tonight could be postponed until the voting requirements have been modified.

Director Tice explained that there was supposed to be another item on this evening's agenda for a height Variance for a new manufacturing building that is proposed in the Highway 84 corridor, but due to posting issues the case was postponed until the November 13th, Board meeting. He stated staff is hopeful that we will have at least six members present at the November meeting considering the case tonight has been postponed again and the industrial facility is time sensitive. Director Tice mentioned the industrial facility is scheduled to go before the Planning Commission for consideration on December 6th.

Chairman Gentzkow questioned how large of a project is the industrial facility.

Director Tice stated the industrial project is for a new manufacturing facility of about 86,000 square feet. He then stated he would not advise postponing all the cases until after the first of the year.

Member Zeibak commented there also is no guarantee that the proposal will transpire as planned.

Director Tice mentioned that in the by-laws the Board has the option to hold special meetings. The Chairman can poll Board Members to see what date would work for everyone and then call for a special meeting. Director Tice explained that staff does need to advertise the meeting and needs 18 days prior to a public hearing in order to comply with the required public notice requirements.

VII. Call to the Public:

There were no comments received from the public

VIII. Report by Planning Director:

There were no items to report.

Note: Case DSA-12-00047 was continued prior to the approval of the meeting minutes as shown on the agenda.

IX. Adjournment:

Member Beck motioned for adjournment, a voice call vote was called and all were in favor.

Chairman Gentzkow called for adjournment at 6:26 p.m.

Submitted this 15th day of October, 2012 by Melanie Podolak, Administrative Assistant to the Casa Grande Board of Adjustment, subject to the Board's approval.

Approved this 13th day of November, 2012 by the Casa Grande Board of Adjustment.


Chairman Gentzkow

Board of Adjustments – Voting Options

17.54.050 - Board of adjustment action.

In the event the board of adjustment can determine that substantial conformity to the standards previously established in the zone may be secured and that detriment or injury to the neighborhood will not result from the granting of a variance as applied for, it may approve or conditionally approve the issuance of the permit and transmit notice of its action to the zoning administrator. Approval may be granted only upon the affirmative vote of three-fourths of all the members of the board. A report of its findings and recommendations and any conditions imposed or required shall also be submitted promptly to the planning and zoning commission and the city council.

3/4's of Members of the Board	Min. # Required to Pass Motion for Approval
7 Members (Full Board)	6
6 Members	6
5 Members	6
4 Members (min. # for quorum)	6

17.68.380 - Review and decision of board.

C. The board may, by three-fourths vote of the members present approve or deny an appeal, or, by simple majority, table the appeal. The decision by the board must be made within five working days after the appeal is heard. If tabled, the board shall make a decision on the appeal at its next regularly scheduled meeting. A decision shall not be tabled for more than two consecutive meetings. The board may impose such conditions and safeguards as it deems necessary to satisfactorily correct the situation in question, but it shall not attempt to infringe upon matters not specifically contained in the appeal. The requirement for the three-fourths vote of the members present shall also pertain to variance requests outlined in Chapter 17.54 of this title.

3/4's of Members Present	Min. # Required to Pass Motion
7 Members (Full Board)	6
6 Members	5
5 Members	4
4 Members (min. # for quorum)	3

Alternative Board of Adjustment Voting Requirements

Current BOA Variance Voting Requirement – 17.54.050		Proposal #1 – Current Voting Requirement for BOA Appeals – 17.68.380.C.	Proposal #2- Current Voting Requirements for Planning Commission & City Council CUP's (17.68.120.B.& 17.68.150)
	3/4's of Members of the Board – Min. # Required to pass motion	3/4's of Members Present – Min. # Required to pass motion	Majority of the Board – Min. # Required to pass motion
7 Members (full Board)	6	6	4
6 Members	6	5	4
5 Members	6	4	4
4 Members (min. # for quorum)	6	3	4