

City of Gilbert
Minutes of Special Council Meeting
Thursday, December 12, 2019
Council Chambers

Mayor Oberstar called the meeting to order at 5:30 p.m.

Present: Councilors Robich, Pulles, Skenzich, Mayor Oberstar, Jr., City Attorney Bryan Lindsay, Special Projects Clerk Taryn Greiner, Deputy Clerk Gulan, Executive Administrative Clerk Paulsen.

Absent with Notice: Councilor Leoni

Quorum established.

1. Planning & Zoning Commission Variance Recommendation for parcel
ID 060-00330-02600

- Clerk: background explanation regarding parcel ID 060-00330-02600
- Differs from original variance agreement by location and size, setback area.
- November 2019 Planning & Zoning Commission denied variance request.

Mr. Lonnie Gulbranson: Planning and Zoning Commission member

- Precedence should not be set by allowing variance on parcel.

Mr. Dennis Sandstrom: Gilbert resident

- Presents petition from residents near parcel owner's property regarding their approval of the building in question.
- Presents background information, request and input.

Mr. Carver Richards: property owner's attorney

- Discussion regarding similar building variances.
- Council and Zoning Commission has authority to change or adjust existing variance parameters
- Hardship for property owner to modify the structure.

Mr. Scott Engelstad: Gilbert citizen

Input supporting the Planning & Zoning Commission decision to deny variance.

Mayor Oberstar, Jr.:

- Statement of purpose and commitment to the position of Mayor. City of Gilbert variance compliance and consistency moving forward.
- Sewer, water and electricity in structure to be considered apartment status, therefore possible variance allowable.

City Attorney Bryan Lindsay:

- Importance of Council consideration within the Finding of Fact 3-part test determining compliance, and the answers therein.
- Importance of addressing each specific question, why/why not each question's answer has been determined as such.
- City has duty to act on variance petition within the 60-day state statute.
- Determined Planning & Zoning commission considered the correct factors in their determination and recommendation.

- The Finding of Fact test on this structure addresses three (3) criteria:
 1. Set-back restriction
 2. Height restriction
 3. Essential character All considered with regard to zoning requirements
- Suggests the Planning and Zoning commission re-evaluate and fact-find, taking other factors into consideration.
- To pre-approve a variance contingent on requirements per council's conditions.

Clerk Paulsen:

- Clarification and reading of full Planning & Zoning Commission recommendations. Discussion.
- IF owner's variance is granted, a permit is required as there is no current permit.
- Determination that owner does not have a current and proper building permit for structure as it exists.
- Issues must be addresses within the 60-day period.

Ms. Linda Milos: Gilbert resident

- Input regarding denial of building variance in 1996.

Mayor:

- Structure, as exists, is not in compliance with City of Gilbert. Suggests various compliance options by a set date or fines to be assessed.

Robich:

- Inquiry re: City of Gilbert Height variances previously granted.
- With all information presented, states is prepared to move on a variance denial.

Motion by Robich, second by Pulles to approve the Planning & Zoning recommendation to deny the variance petition of property ID 060-00330-02600. MCU

Aye: Robich, Pulles, Skenzich, Oberstar, Jr.

Nay: 0

Motion by Mayor Oberstar (stepping off the chair), second by Skenzich to grant a variance and permit, after-the-fact, per the following two (2) options:

- 1) Variance for garage to height of 16 feet (1 foot over 15 feet per Gilbert Ordinance), variance for alley setback of 1.5 and 2 feet from property lot line.

OR

- 2) Permit and variance granted of 1.5 and 2 feet setback from property lot line; and water, electric and sewer utilities must be installed for use as apartment per City of Gilbert code.

Conditions need to be completed by June 30, 2020. Non-compliance fine of \$10.00 per day will be imposed, thereafter, until all conditions are met.

Aye: Oberstar, Skenzich

Nay: Pulles, Robich

Motion fails due to 2-2 vote.

Clerk and Lindsay: Prior to granting any variance request, the Practical Difficulties Test/Finding of Facts questions must be asked to Council to determine why/why not variance(s) is to be granted.

Practical difficulties Test/Finding of Facts Questions as per Minnesota Statutes, section 462.3587, subd.6 – For the Record:

1. “The property owner proposes to use the property in a reasonable manner not permitted by zoning ordinance.” Council agrees unanimously 4-0. The use complies with evidence given.

2. “The plight of the landowner is due to circumstance unique to the property not created by the landowner”. Council agrees unanimously 4-0. Evidence supports this.

3. “The variance, if granted, will not alter the essential character of the locality”. Does council agree? Council agrees unanimously 4-0. Neighbors petition in owner’s favor and evidence supports.

Additionally:

A. Is the variance *in harmony with* the purposes and intent of the ordinance? Council agrees unanimously 4-0.

B. Is the variance *consistent with the comprehensive plan*? Council agrees unanimously 4-0.

Motion by Skenzich, second by Pulles to grant the variance with the following conditions:

1. Building permit needs to be applied for.
2. Variance for garage to height of 16 feet (1 foot over 15 feet per Gilbert Ordinance).
3. Alley setback variance of this structure will be 1.5 and 2 feet.
4. Conditions need to be completed by June 30, 2020. Non-compliance fine of \$10.00 per day will be imposed, thereafter, until all conditions are met. MCU

Aye: Robich, Pulles, Skenzich, Oberstar

Nay:

Absent: Leoni

Motion carries unanimously, 4-0

Motion by Robich, second by Pulles to adjourn meeting at 7:10 P.M. MCU

ATTEST:



Karl Oberstar Jr., Mayor



James Paulsen, Executive Administrative Clerk