

## Board of Adjustment Meeting Minutes December 6, 2023

A regular meeting of the Board of Adjustment was held on Wednesday, December 6, 2023, at the Town of Chino Valley Council Chambers, 202 N. State Route 89, Chino Valley, Arizona.

**BOARD OF ADJUSTMENT MEMBERS** present: A roll-call was taken and present were Chair Sandra Tuttobene, Vice-Chair Beverly Duffy, Board Member Michael Ditta, and Board Member Julie Northington. Not present was Board Member Billie James.

**STAFF MEMBERS** present: Laurie Lineberry, Development Service Director, Will Dingee, Assistant Director, Jessica Barragan, Senior Planner, Gerreann Froberg, Senior Processing Coordinator, Spencer Guest, Audio/Video.

**CALL TO ORDER:** Chair **Tuttobene** called the meeting to order at 6:00 p.m. Board meeting began with the Pledge of Allegiance led by **Northington**.

**CONSENT CALENDAR** – A motion was made by **Ditta** to accept the consent calendar and minutes. The motion was seconded by **Northington** and passed unanimously by a 4-0 vote.

**PUBLIC HEARING #D.1 – Case# VAR-2023-01** – This is a request by Jonathan Funk, on behalf of the Funk Family Trust, for a Variance to waive Section 5.3.7(D), of the Town of Chino Valley Unified Development Ordinance (UDO), which requires that the depth to width ratio of a lot shall be no greater than three (3) to one (1) for Property located at the southeast corner of West Road 4 North and North Road 1 West in Chino Valley, APN#306-14-047B.

**Chair Tuttobene** asked if anyone on the Board had a disclosure to declare regarding this project. There were none.

Senior Planner **Jessica Barragan** presented the staff report and stated applicant's request to waive lot planning provisions. The property had been recently acquired and was currently vacant, zoned AR-5 and will remain as such. The applicant wished to develop as residential use. The applicant was in attendance. Staff recommended approval.

**Ditta** asked if someone bought the property knowing it did not meet the standard and now they are asking the Town to waive the standard.

**Barragan** stated that was not revealed to the property owner, staff discovered the error. The historical lot configuration was done in the 1980's.

**Ditta** asked if there were plans in the Planning Department to develop the property.

**Barragan** stated not currently, but the owner may wish to do so in the future.

**Ditta** stated that technically the applicant could sub-divide his property into two lots.

**Barragan** replied that the property was zoned AR-5 and could not currently split it.

**Tuttobene** asked if the applicant were planning on changing the zoning.

**Barragan** stated no.

**Northington** asked if it would be a single-family residence.

**Barragan** stated nothing would change; it's just the lot configuration that does not meet the current code.

**Tuttobene** stated that in the staff report analysis, it discusses the inception of the current configuration dated back to 1989, and staff also noted the configuration was established before the 2006 UDO. She

asked **Barragan** to elaborate on the lot inception and configuration, and the fact that it was non-conforming.

**Barragan** stated there were no records other than surveys of surrounding lots.

**Dingee** shared that the rough approximation of lot configuration had been established in 1989, however, due to recent lot line adjustments, specifically parcel B encroaching into parcel C, the original configuration gets lost and ultimately loses its non-conforming status. This occurred in 2020.

**Tuttobene** pointed out surveyor's example, parcel 306-14-047, that in 2012 the parcel consisting of 14.48 acres was created by merging 2 previous parcels, 306-14-004S and 306-14-004X, however she could not find any images, when it became a single 14.48-acre parcel. For the taxation period 2014-2020, taxes were paid on 14.48 acres. In 2020 the land was sub-divided, which created an inappropriate lot formation of 5.45 acres. For three years the taxes were paid, so **Tuttobene** queried the inception, and the fact that it occurred in 2020.

**Dingee** stated for the 14.48-acres record of survey indicates the right of way dedication has occurred and under Town Code with any land divisions right-of-way dedication is counted toward net acreage, including the 25 feet of dedication, nets out at over 5 acres. For the 2020 survey lot split, it was not processed by the Town. It was done by a prior property owner and did not receive Town approval. The current property owner purchased it from the prior owner, unaware of the situation, and was now looking to rectify it.

**Tuttobene** reiterated that the owner requested a land division, but did not follow Town protocols.

**Dingee** replied that the prior owner did not request a land division from the Town. The prior owner simply recorded the record of survey for the lot split, with County Recorder's Office.

**Tuttobene** stated that was astounding, and wanted to clarify this did not date back to 1989, this occurred in July 2020.

**Jonathan Funk** stated he was a member of the Trust and they had purchased Parcel A and Parcel C together as a property, Parcel B had been purchased by his brother. They were not told that there would be any problems permitting a house on the property. He was going to build a house on Parcel C and when he came to the Development Services Department to submit for a building permit, he was told he was not able to build. He stated he was requesting a variance to make the lot a usable property.

**Tuttobene** asked when that request was made.

**Funk** said roughly three months ago.

**Tuttobene** asked the applicant when the land split occurred, (and it occurred at the same time he acquired the property, July 2020,) if at that time he was not aware of the lot status.

**Funk** stated that was correct. The property was put on the market as three different properties. When he chose the two properties to buy, he was going to develop some agriculture on Parcel C, but have since decided not to do that.

**Ditta** asked what their plans were for Lots A and C.

**Funk** stated he was now trying to sell Lot C to his neighbor.

**Tuttobene** stated that the property next door was also a linear split, so adding Lot C it would make it double the width but perhaps the same length.

**Funk** stated that would make it a better property for his neighbor.

**Duffy** asked if the applicant had a plan of putting a home on the property, or was his intention only to sell it.

**Funk** stated that originally they wanted to put a house on it, but when they found out that they couldn't, they tried to figure out what they could do, and discussed it with the neighbors to the east and his neighbors decided they would like to have the property.

**Tuttobene** asked **Funk** why they were having the Variance meeting.

**Funk** stated he was following what the staff recommended.

**Tuttobene** asked **Dingee** to explain.

**Dingee** stated for the Variance, the property owner does not have to combine it, so if a new owner should acquire the property, the new owner could sell the property or build a house and sell it, they have every right to do so.

**Tuttobene** stated she thought the Variance meeting today was so to allow the current owner to build a home on the property.

**Dingee** stated that the owner just needed for the property to be buildable.

**Tuttobene** asked if the property did not sell now, the owner could still build on the lot.

**Northington** asked if the lot was sold to the neighbor, then it would comply with the Ordinance size requirement.

**Dingee** replied yes, if the new owner chose to combine the parcels. The new owner could choose to sell it or construct a home on the property. The idea here is to rectify this configuration issue and make it a viable lot.

**Ditta** stated with that in mind, if the neighbor buys the property as is, without the Variance, and he has the property next to it, then technically the new owner owns two properties that combined would be within the Variance and would not even need to be a Variance.

**Dingee** replied that was true, if the new owner chose to do that. However, the current request was for the Variance of the current configuration.

**Chair Tuttobene** opened the meeting for public comments.

**William Kidd** – 825 W. Road 4 N – stated he was the property owner next door and had no intention of joining the two properties. He wanted to buy the property strictly so he could have a vacant five acres of ground between him and whoever ended up with Parcels A and B. He owns horses, and didn't need another neighbor, but wants to keep the lot as a separate parcel and would like it to be buildable. Immediate plans are not to do anything with the parcel, but if, in the future, his wife chooses to sell, he wants it to be a saleable parcel unto itself. He asked about the condition on the attachment regarding the owner signing a Waiver of Claims. He was curious what the Waiver of Claims might be, and if it would transfer to a new owner.

**Lineberry** stated the Waiver of Claims was signed by the current owner. All of the land use actions that the Town now takes, requires the property owner to say, yes I want this action and no, it is not going to devalue my property by having this action approved by the Town. The current owner has already signed the Waiver and it has been recorded.

**Kidd** stated that if the property was transferred to him, he wanted to know what it was.

**Tuttobene** asked Mr. Funk if he would like to respond to Mr. Kidd's comments.

**Funk** stated he was glad to hear the neighbor wanted to keep the property clear. He thinks the property is great and he is thrilled that they may get it.

**Ron Romley** stated he used to be Vice-Mayor and lived just south of the property in question. He stated his main concern was that his property is within Appaloosa 1, and there would end up being a trailer park

or something of that nature on this lot because it is such a thin piece. He said it didn't sound like all ducks were in a row yet, but it would take a rezone. He stated he feels in limbo right now, on what is going to happen. He asked if the two neighbors get together and sell the property, that eliminates what the Board action was for.

**Tuttobene** stated that the Board sets the future, and gives a variance because it is an irregular shaped parcel, so if indeed in the future someone wants to build a home, it protects that property, with not giving any benefit to anybody else in Chino Valley to do it to their same, thus just giving an exception, a variance to this one piece of property. The Board can't speak to the future, if 20 years from now somebody wanted to change its zoning, that's future discussions for future leadership.

**Romely** stated he would be there for that and it sounds like the neighbors are going to work something out and he would be ok with a home or animals.

**Tuttobene** closed the public hearing.

**Motion was made by Ditta, seconded by Northington to approve VAR-2023-01, as presented, subject to the staff report and information provided during the hearing, and the Conditions of Approval in Attachment A. A roll-call vote was taken and the motion passed with a 3:1 vote, with Ditta voting nay. Chair Tuttobene asked the Board to explain their votes.**

**Tuttobene** stated the reason she voted yes had nothing to do with the rational as provided in the staff report. Her rational was to provide a precedent, in case this ever occurs again, in case someone else in the Town decides to create parcels that are not configured appropriately. The Town UDO was created long ago and in 2004 a consulting firm came in and took the time to take two separate documents, reflect in those documents what mattered to the Town and create a new document known as the UDO, and it was approved in November of 2006. This became the UDO that we know today. The Funks acquired the property in July 2020, and the previous owners sub-divided it into three lots. At the very same time in September 2020 the UDO was updated, and this is important because the documents presented before you talk about how it is not compliant to the 2020 UDO. What was the difference in the Code section 5.3.7D? In 2006 when the UDO was created by the consulting firm the Town hired, it read "the depth to width ratio of usable area "should" be no greater than 3:1. In September 2020, the new Code reads "the depth to width ratio of usable area "shall" be no greater than 3:1. To split hairs, "should" is a suggestion, "shall" is an edict. So if we look at this property, the 2020 UDO was giving a hard line, "shall", and the previous UDO dated two months earlier said "should". **Tuttobene** believed because it wasn't a hard word and that "should" allows for her to say yes to the Funks, because it was a softer profile in the UDO in word selection.

**Ditta** stated it was splitting hairs, the person buying property has the responsibility to research before he buys. The Board was told that a house would be put on the property and now the Board was told the property would be sold to someone else. And that person says he may want to keep the lot agriculture, a field. **Ditta** stated that was confusing to him and when he gets confused, he votes "no". He would follow the UDO and the UDO says the property shall not be greater than 3:1 ratio.

**Duffy** stated she wanted the property to become more viable and by allowing this variance, in the event it is sold, the variance would allow for a home, a single-family/single dwelling, to be put on the parcel making it a better use of the land as residential.

**Northington** stated she voted yes for the property to be a usable piece of property, for a single home, that was her hope for the future.

**ACTION ITEMS:** There were no action items for this meeting.

**INFORMATION ITEMS – FROM STAFF:** There were no information items for this meeting.

**INFORMATION ITEMS – FROM THE Board Members:** none

**INFORMATION ITEMS – FROM THE CHAIR:** **Tuttobene** – none

**INFORMATION ITEMS – FROM THE PUBLIC:** there were no further comments from the public.

**ADJOURN** – A motion was made by **Ditta** and seconded by **Duffy** to adjourn the meeting at 6:35 p.m.

  
\_\_\_\_\_  
Sandra Tuttobene – Chair

  
\_\_\_\_\_  
Prepared By: Gerreann Froberg