

**MINUTES  
CITY OF GLENDALE  
BOARD OF ADJUSTMENT  
COUNCIL CHAMBERS BUILDING  
CONFERENCE ROOM B-3  
THURSDAY, DECEMBER 8, 2016  
4:00 PM**

CALL TO ORDER

The meeting was called to order at approximately 4:07 p.m.

ROLL CALL

Board members Martinez, Zarra, Dietzman, Vice Chairperson Feiner, and Chairperson Vescio were present.

CITY STAFF

Tabitha Perry, Assistant Planning Director, Russ Romney, Deputy City Attorney, Thomas Ritz, AICP, Senior Planner, Diana Figueroa, Recording Secretary, and Alex Shaw, Recording Secretary were present.

APPROVAL OF THE MINUTES

Chairperson Vescio called for approval of the September 8, 2016 Regular Meeting Minutes.

**Board member Dietzman made a motion to approve the September 8, 2016 Regular Meeting minutes as written. Board member Zarra seconded the motion, which was approved unanimously.**

WITHDRAWALS AND CONTINUANCES

Chairperson Vescio asked staff if there were any requests for withdrawals or continuances. There were none.

PUBLIC HEARING ITEMS

Chairperson Vescio called for staff's presentation on the public hearing item.

1. **VAR16-09:** A request by Francisco Mendoza, representing Samuel Bermudez, to allow the construction of a single-family home on an 11,019 square foot lot where the required minimum lot size, per the city's Zoning Ordinance, is 17,000 square feet. The property is zoned SR-17 (Suburban Residence). The site is located southwest of 83rd and Missouri Avenues at 8358 West Oregon Avenue, and is in the Yucca District. Staff Contact: Thomas Ritz, AICP, Senior Planner.

Mr. Thomas Ritz, AICP, Senior Planner, stated this was a request by Francisco Mendoza, representing Samuel Bermudez, to allow the construction of a single-family home on an 11,019 square foot lot where the required minimum lot size, per the city's Zoning Ordinance, is 17,000 square feet. Mr. Ritz stated the property is zoned SR-17, is located southwest of 83rd and Missouri Avenues at 8358 West Oregon Avenue, and is in the Yucca District.

Mr. Ritz explained that during the latter half of 2015, the property owner's representative communicated with City of Glendale staff inquiring about the ability to construct a new home on parcel #102-11-308A; 8358 W. Oregon Avenue. He noted that during these communications the property owner's representative identified that the approximate lot size was 11,000 square feet and that the property was zoned SR-17. He explained that the property owner's representative was informed by city staff on both September 18, 2015 and December 31, 2015 that a new home could be built on the existing lot as long as the SR-17 setbacks and other requirements were met. Staff wrote to the owner's representative on March 15, 2016 informing the owner's representative of the need to file for a variance because the subject lot size is approximately 11,019 square feet; and current zoning classification, SR-17, requires lots be a minimum of 17,000 square feet. He said the owner's representative subsequently initiated the process to request a variance to allow them to construct a home on the lot.

Mr. Ritz stated that a neighborhood meeting was held on March 24, 2016 at the Finley Residence located at 8329 West Oregon Avenue. He explained the meeting was an opportunity to discuss the existing lots on Oregon Avenue, along with the proposed Dignity Health Urgent Care located at 8310 West Camelback Road. However, those in attendance supported the existing SR-17 zoning and were not concerned with the urgent care. He said the applicant and owner supported the ability to construct a home at 8358 W. Oregon Avenue. He noted that the applicant mailed notification letters on approximately August 16, 2016 to adjacent property owners and interested parties, and the applicant did not receive any response regarding the request. He noted that due to the short time provided for citizen comments contained in the applicant's initial Citizen Participation letter, the applicant was required to send additional letters offering additional time for citizen comments.

Mr. Ritz stated that Planning received letters and telephone calls concerning this request.

He said telephone comments included that the applicant needed to work with the city's Planning Division and not deviate from those plans. Another telephone caller indicated that the lot size was too small to build on and that although the notification letter was dated April 27 the letter was postmarked August 16. They only received the letter on August 23 and residents were requested to comment by August 22. An additional telephone caller noted there was insufficient notice given between the time that the letter was received and the time given for comments. He noted another telephone caller who stated opposition to having an 11,000 square foot lot in the neighborhood. They noted there was more profit on smaller lots and it would diminish the property value of the neighborhood. They also noted that the notification letter bashed the City of Glendale, and that the applicant was trying to get through as quick as possible, only allowing 12 hours for comments. They noted that the original buyer bought a two and a half acre lot, and then sold to someone else. Another caller noted that the second letter was not clear and they were not sure what it was about. Another caller noted that he would not like an undersized lot in the neighborhood. An additional caller noted that the original owner sold the lots and the remaining 11,000 square foot lot was left over.

Staff noted that Planning received an additional letter and petition concerning this request which is attached to this report. The letter opposes the variance to build a house on a lot that is less than the

required minimum lot size and would negatively affect property values. Planning received a second letter concerning this request which is attached to this report. The letter opposes the request and notes the applicant's inability to meet all four findings to grant a variance.

Mr. Ritz stated the Board of Adjustment must analyze four findings based on the evidence in the record prior to granting a variance. Each finding is presented below along with staff's analysis.

Mr. Ritz reviewed staff's findings.

**1. There are special circumstances/conditions applicable to the property including size, shape, topography, location or surroundings, which were not self-imposed by the owner;**

He said the size of the lot, approximately 78 feet wide by 140 feet deep, or 11,019 square feet, creates a special circumstance which was not self-imposed by the property owner. He explained that the property dimensions and size were created by a previous property owner who created the substandard lot. While the construction of a new home on this lot would require some level of relief from the required lot size, the intent of the zoning ordinance is that new lots created in the neighborhood are at least 17,000 square feet in size.

**2. Due to the special circumstances, the strict application of the Zoning Ordinance would deprive the property of privileges enjoyed by other properties in the same classification in the same zoning district;**

He said the strict application of the Zoning Ordinance would require that all new lots created in the zoning district and neighborhood be at least 17,000 square feet in size. He stated that when the property owner purchased this lot it was only 11,019 square feet in size.

**3. The variance requested is the minimum necessary to alleviate the property hardships.**

He said the variance requested is the minimum necessary to construct a single-family residential home on the lot. He noted that a single-family home is a permitted land use in the zoning district. The requested variance is not the result of a property hardship created by the present property owner.

**4. Granting the variance will not have a detrimental effect on the property, adjoining property, surrounding neighborhoods or the city in general.**

He said it is debatable if granting the variance will have a detrimental impact on the property, adjoining property, the surrounding neighborhood, or the city in general. He explained that a determination cannot be made based on the information available.

Mr. Ritz stated that the zoning ordinance, including the designation of zoning districts which have minimum lot sizes, is designed to protect the health and safety of the residents of the city and established performance standards for development in the various zoning districts of the city.

Additionally, the lot size is out of character with other lots in the neighborhood. He noted the existing residents of the neighborhood have relied on the requirements of the existing SR-17 zoning and 17,000 square foot minimum lot size in purchasing their homes and living in the neighborhood.

Mr. Ritz stated the variance request appears to meet the first three findings. He stated that a decision cannot be made on the fourth finding, thus the variance should be approved.

Chairperson Vescio opened the floor for the Board to ask questions.

Chairperson Vescio asked if there were any other lots that were less than the 17,000 square feet requirement in the neighborhood. Mr. Ritz responded that there were not. Chairperson Vescio asked if it was known if the property had become littered or any blight associated with it. Mr. Ritz responded no. Chairperson Vescio asked what communication occurred between the city and the property owner prior to purchase. Mr. Ritz noted that during these communications the property owner's representative identified that the approximate lot size was 11,000 square feet and that a new home could be built on the existing lot as long as the SR-17 setbacks and other requirements were met. Staff wrote to the owner's representative informing the owner's representative of the need to file for a variance because the subject lot size is approximately 11,019 square feet; and the current zoning classification, SR-17, requires lots be a minimum of 17,000 square feet. He said the owner's representative subsequently initiated the process to request a variance to allow them to construct a home on the lot. Chairperson Vescio asked if this was communicated before the land was purchased.

Vice Chair Feiner asked if it was known if the first contact was after the purchase was completed. There were no comments. The applicant representative will address.

Chairperson Vescio asked for any other questions from the Board.

Vice Chair Feiner asked if it was known when this zoning SR-17 was established for this area. Mr. Ritz stated it was a considerable amount of years prior to this occurrence.

Chairperson Vescio called for the applicant to make a presentation.

Francisco Mendoza, representing Samuel Bermudez, stated they had a very special situation in this application. He explained that before he purchased the property the applicant went to the city and asked if he could build on that lot and the city said he could. He said the applicant then purchased the property and began the process to build on the lot, then was told to get a variance. Mr. Mendoza passed out a handout regarding Jon Froke, AICP, Planning Director, citing his gross negligence in this matter.

Mr. Russ Romney stated that as a point of order, the only thing that the Board should receive are just the materials that involve the statute that governs granting variances. He noted the Board does not receive any other items or any information on any allegations. He said that if he was making any allegations against staff, the Board will not be receiving any of that material. He stated that those were items he had to present himself and to note that they were not simply allegations without merit. He explained that if mistakes were made, this was the time to air them out and move forward with the application as presented.

Chairperson Vescio agreed with Mr. Romney's assessment. She explained that the Board is limited to the four findings and that they were not a court.

Mr. Mendoza explained that this was a unique situation as he stated earlier. He noted that the applicant never intended to apply for a variance and he believes the materials he presented will shed some light of how they came to be in this predicament and the damage the City of Glendale has caused to Mr. Samuel Bermudez. He said he believes the Board should know everything that led up to this situation.

Mr. Russ Romney reiterated that the Board of Adjustment is limited to the four findings by state statute. He added that Mr. Mendoza was free to bring his information to a court. Mr. Mendoza agreed, however, he would like the public and the neighbors to know about the gross negligence. Mr. Romney stated it was now on record.

Mr. Mendoza stated that Councilmember-elect Joyce Clark's letter should not be considered because it was submitted after the deadline. Chairperson Vescio asked to move things along since many in the audience would like a chance to speak. Mr. Mendoza agreed.

Mr. Mendoza stated that in response to Chairperson Vescio's earlier inquiry regarding vandalism, he stated that vandalism had occurred with trash being dumped on the property two weeks ago which goes to show vandalism and criminal activity happens in an empty lot. He reiterated his claim that Mr. Bermudez was damaged by the city and they have not done right by him, therefore, now he has to apply for a variance. He noted that a vacant lot would not benefit a community like a nice house would.

Mr. Mendoza stated that his strongest point was that the applicant was told by the city that he could build on the lot and now he has to apply for a variance. Nevertheless, he would like to hear a good reason why the city would not abide by their earlier word that he would be allowed to build on that lot. He stated it was very painful to say but he did hear that it might be because the community did not want any more Mexicans in this neighborhood. Chairperson Vescio asked him to come back to the four findings. Mr. Mendoza reiterated his earlier points that Mr. Bermudez was given wrong information and now is a victim of the city's carelessness.

Chairperson Vescio asked the Board if they had any questions regarding the four findings.

Vice Chair Feiner asked if the applicant made contact with the city before the purchase was finalized. Mr. Mendoza said he was correct. Vice Chair Feiner asked if it was a verbal conversation. Mr. Mendoza replied yes and added the applicant had no reason to doubt a public official's word.

Vice Chair Feiner asked what would the property value be if the request is denied? Mr. Mendoza stated the property would be almost worthless.

Chairperson Vescio opened the public hearing.

Megan and Daniel Wenke, speakers, stated they opposed this application. Ms. Wenke stated they owned the lot to the west. She said this dilemma had been brought to their attention since they were new to the neighborhood. She noted that race was not an issue regarding their opposition to this application. She said that no one has approached them to buy that lot or to try to absorb that land to bring it to a proper size property. She heard that the applicant had wanted to sue the city and have them give up their property as a resolution. Ms. Wenke went through the four findings commenting on each one. She added that they left their home to come to a low density area and hopes the Board opposes this application.

Mr. Mendoza asked if he could clarify some comments made. Chairperson Vescio said not at this time.

Rafael Castro, speaker, stated he supported this application. He stated that he was supporting Mr. Bermudez in his endeavor since he was here through no fault of his own. He reiterated the fact that he had been told by the city that it was okay to build and now he has to apply for a variance. He noted that empty lots create problems for the community and this home would benefit the community.

Joyce Clark, speaker, stated she opposed this application and hopes the Board votes in favor to deny. She said that although she was Councilmember Elect, she is still a private citizen coming before the Board with regard to this issue. She explained that the Board was charged with only looking at the four findings. She said for finding one, the seller and buyer knew the lot was not the correct size. She noted that for finding two, there are no special circumstances as well as for finding three because both the seller and buyer were negligent and there was no special hardship. She said that all owners on the street complied with the rules and regulations of SR-17 zoning district. She noted that this tiny house does diminish and damage property values in the community of large homes.

Chairperson Vescio asked how a nice but smaller home would diminish property values. Ms. Clark stated that by doing so it destroys the original intent of the SR-17 zoning district. She noted that a smaller home does not fit into the area design or character of the street.

Board member Dietzman asked if they would rather have a vacant lot other than a small home in their community. Ms. Clark explained that the area in question had always been a very special area with large lot properties, she would rather it remain vacant than the variance be approved. She added that it was her understanding that some property owners had tried to purchase that property but was not sure. She provided information on housing along 83rd Avenue.

Kelly Goodrich, speaker, stated he supported this application. He stated he was a real estate broker and believes the applicant had done his due diligence in this matter by first going to the city. He noted that from a realtor's standpoint, this property would not negatively affect the community as would an empty lot. He added that the homes along 83rd Avenue Ms. Clark spoke highly about do have multiple and different densities to them. He questioned if the sellers did their due diligence before selling this lot.

Chairperson Vescio asked if Mr. Goodrich had any personal involvement with this property in the sale or purchase. Mr. Goodrich responded no and added he just wants what is best for Glendale.

Rezan Finley, speaker, stated she opposed this application. She stated she lives across from the lot in question. She explained the history surrounding the SR-17 lot issue that has been in question for some time. She noted that other lots had been grandfathered in but this lot was not. She said that on the week of August 15, a week after closing, Mr. Bermudez said he had gotten all the permits from the city to build which was a surprise to her. She noted that after that, they checked with the city and no permits were ever filed. She wondered if the city was not enforcing this zoning because they are afraid of legal action from Mr. Bermudez. She hopes they deny this application.

Board member Martinez asked a question regarding the original lot back in 2013.

Ms. Finley stated the lot was divided and some were sold. However, they soon found out the last of the lots were too small to build on. She noted that at some point, the lot has been used for storage.

Chairperson Vescio asked for a five minute recess. The hearing resumed.

Ray Finley, speaker, stated he opposed this application. He would like to talk about a timeline regarding this property. He said that in 1983, SR-17 was imposed in that area and in 2000, 2 plus acres were sold to Mr. Sable by Mr. Cotterman. He noted that Mr. Sable owned a little less than 5 acres at that time. In 2003, Mr. Sable sold 2 one-acre parcels and created this residual lot. He said that at the time, he went to the city to see if he could build on the lot, however was told he could not do it. In 2007, Mr. Sable sold the lot to another party who was unable to build but stored materials on it. However, the city would not let him build, and soon after it was sold to Mr. Bermudez. He noted that nothing has changed with the zoning, the lot size or with anything else on this property except the personnel in the city. He reiterated that this does not meet SR-17 standard requirements. He provided photos of the large lots that are in the neighborhood. He said that a small house next to a large house will be a detriment to the area.

Dee Dee Garcia Blase, speaker, writer and advocate for Hispanics, said she was here because it was being alleged that the community does not want Mexicans on this vacant property that used to be filled with trash. She noted that as she has been told, a city employee gave their permission to the applicant to build a nice house on this lot and now the applicant was being told he could not. She said it was her understanding that the role of BOA was to approve special circumstances such as these. She noted that what she sees was an applicant wanting to build a nice house and not getting a warm reception from the neighborhood.

Chairperson Vescio stated that the Board of Adjustment's role was to determine whether or not the variance sought meets the four criteria. She noted that special circumstances were also part of their discussions but not the entire picture.

Mr. Romney cited the state statute and the four findings as the rule to determine this case.

Ms. Garcia Blase asked about the special circumstances and the possibility of the applicant suing the city for wrong information. Mr. Romney replied that the city gets sued often so that was not a reason for this hearing. Ms. Garcia Blase commented that the applicant did come in good faith. Chairperson Vescio remarked on cities being sued and the good faith process.

Ms. Finley noted that Mr. Mendoza had brought up the racism card at one of their meetings. She said it was in poor taste since four of the neighbors were Hispanic.

Chairperson Vescio asked if anyone else would like to speak or fill out a speaker card.

Chairperson Vescio asked the applicant's representative if he would like to make any closing statements.

Mr. Mendoza noted that the seller did not disclose to the buyer that he could not build on that property. He explained that Mr. Bermudez still had 90 days to back out of the deal, however, was told by the city that it was okay to build. He said that Mr. Bermudez was the victim here not the villain. He noted that the Director of Planning with the city was the one that gave the approval and told them they had decided that this law did not apply to this lot because this lot was purchased before. He stated he believes there is a conspiracy to profit by now buying this property at a loss if the application does not go through. He added that the Board, regardless of the 4 findings, have a moral obligation to do what is right. He hopes that no one has to go through what Mr. Bermudez has had to go through.

Chairperson Vescio asked for any other comments. There were none.

Chairperson Vescio closed the public hearing.

Chairperson Vescio asked if there was any guidance from counsel. Mr. Romney noted that if the Board requires guidance, they would have to go into Executive Session. Chairperson Vescio called for a motion to go into Executive Session. Vice Chair Feiner made a motion to go into executive session. Board member Martinez seconded the motion.

Chairperson Vescio resumed the meeting after Executive Session. She asked if the Board had any disclosures they would like to share regarding this hearing.

Board member Martinez stated he wanted to disclose that he was Facebook friends with members in the room.

Board member Zarra stated he wanted to disclose that he was a SR-17 property owner but not in this neighborhood.

Vice Chair Feiner stated he had good relationships with two people in the room but they do not live in this neighborhood.

Chairperson Vescio asked the Board if any of those disclosures would affect their decision. The response was no.

Chairperson Vescio asked the Board for any further questions or comments. There were none.

Based on the facts and evidence presented, Mr. Romney requested a vote from the Board. He read each finding and waited as the Board responded.

**Finding One. Chairperson Vescio called for a voice vote on Finding One. The Board responded with a 3-2 vote. (Dietzman, Martinez, Feiner - Aye) (Zarra, Vescio - Nay)**

**Finding Two. Chairperson Vescio called for a voice vote on Finding Two. The Board responded with a 3-0 vote. (Vescio, Dietzman, Feiner - Aye) (Martinez, Zarra - Abstained)**

**Finding Three. Chairperson Vescio called for a voice vote on Finding Three. The Board responded with a 2-1 vote. (Dietzman, Feiner - Aye) (Vescio - Nay) (Martinez, Zarra - Abstained)**

**Finding Four. Chairperson Vescio called for a voice vote on Finding Four. The Board responded with a 3-1 vote. (Dietzman, Martinez, Feiner - Aye) (Zarra - Nay) (Vescio - Abstained)**

Mr. Romney asked that if based on the findings, does the Board wish to grant variance **VAR16-09**.

Chairperson Vescio called for a motion.

**CHAIRPERSON VESCIO MADE A MOTION TO DENY THIS ITEM. BOARD MEMBER ZARRA SECONDED THE MOTION. THE MOTION FAILED. 2-3 (Zarra, Vescio - Aye) (Dietzman, Martinez, Feiner - Nay)**

**VICE CHAIRPERSON FEINER MADE A MOTION TO APPROVE THIS ITEM. BOARD MEMBER MARTINEZ SECONDED THE MOTION. THE MOTION PASSED. 3-2 (Dietzman, Martinez, Feiner- Aye) (Zarra, Vescio - Nay)**

Mr. Romney stated that **VAR16-09** has been granted.

**OTHER BUSINESS FROM THE FLOOR**

Chairperson Vescio called for Other Business From The Floor. There was none.

PLANNING STAFF COMMENTS AND SUGGESTIONS

Chairperson Vescio called for Planning Staff Comments and Suggestions. There was none.

BOARD COMMENTS AND SUGGESTIONS

Chairperson Vescio called for Board Comments and Suggestions. There were none.

ADJOURNMENT

Chairperson Vescio called for a motion to adjourn.

**BOARD MEMBER ZARRA MADE A MOTION TO ADJOURN THE MEETING. VICE CHAIRPERSON FEINER SECONDED THE MOTION, WHICH WAS APPROVED UNANIMOUSLY.**

The meeting adjourned at 6:00 p.m.

NEXT MEETING: January 12, 2017