BOARD OF ADJUSTMENT HEARING
JULY 1, 2021

The Board of Adjustment was held virtually.

PRESENT: Mr. Richard Cole, Chairman
Mr. Abraham James, Vice Chairman
Mr. Jonathon Ammon
Mr. Steve Beuerlein
Mr. Tim Eigo
Ms. Gail Knight

ALSO PRESENT: Mr. Paul Li, representing the Law Department
Ms. Tricia Gomes, representing the Planning and Development Department
Ms. Julie Garcia, Board Secretary

ABSENT: None

Chairman Cole called the meeting to order at 12:10 p.m. and the Board members introduced themselves. City staff introduced themselves and Mr. Cole swore in Ms. Gomes.

***

Mr. Ammon read the Board of Adjustment opening statement for the benefit of those present.

***

A. Approval of Minutes

Mr. James MOTIONED to approve the May 6, 2021 meeting minutes. Mr. Beuerlein ***SECONDED***. The motion ***CARRIED*** by a vote of 6-0.

***

B. Approval of Agenda

Mr. Beuerlein ***MOTIONED*** to approve the July 1, 2021 agenda. Mr. James ***SECONDED***. The motion ***CARRIED*** by a vote of 6-0.

***

C. Requests for Continuance and/or Withdrawal

1.	Application #:	**ZA-589-20-4 (Continued from May 6, 2021)**
	Existing Zoning:	C-2 WSNSPD
	Location:	5126 North 7th Street
	Quarter Section:	19-28(H8)
	Proposal:	**1)** Use permit to allow outdoor dining as an accessory use to a restaurant (Café Vita Phoenix) within 500 feet of a residential zoning district. Use permit required. **2)** Use permit to allow a drive-through facility as an accessory use to a restaurant (Café Vita Phoenix) less than 300 feet from a residential district zoning line. Use permit required.
	Ordinance Sections:	623.D.157.c, 623.D.157.d
	Applicant:	Brian Fracasse, Taylor: Fracasse Architecture, Inc.
	Representative:	Brian Fracasse, Taylor: Fracasse Architecture, Inc.
	Owner:	Deming Maclise, Café Vita AZ, LLC
	Appellant:	Thomas Hilditch, Windsor Square Special Planning District

Ms. Gomes stated Item No. 1 was ZA-589-20-4, located at 5126 North 7th Street. The applicant submitted a request to withdraw the entire application.

Mr. James MOTIONED in ZA-589-20-4 to WITHDRAW.

Mr. Beuerlein SECONDED the motion.

Mr. Cole asked Mr. Earl if he had any comments.

Mr. Earl thanked the Board for the consideration and gave additional background on the reason for the withdrawal. He stated the coffee shop was going to be moved to a different location in the City and noted there was communication with the neighborhood.

Motion CARRIED by a vote of 6-0.

***

D. Items for Consideration

2. Application #: **ZA-94-21-7**
   Existing Zoning: R-5 RI HP CMOD
   Location: 1310 West Monroe Street
   Quarter Section: 10-26(F8)
   Proposal: Variance to reduce the required side yard (east) setback to 3 feet. Minimum 10 feet required.
   Ordinance Sections: 618.B.Table B
   Applicant: Aleta Lynch
   Representative: Aleta Lynch
   Owner: Aleta Lynch
   Appellant: Nicholas Krump

Mr. Eigo recused himself from ZA-71-21-7.

Ms. Gomes stated Item No. 2 was ZA-94-21-7, located at 1310 West Monroe Street. It was a request to overturn the Zoning Adjustment Hearing Officer's approval with stipulations of a variance to reduce the required side yard setback (east) to 3 feet. Minimum 10 feet required. The case was appealed by Mr. Nicholas Krump. Mr. John Saccoman also spoke for the appellant. Mr. John Lynch spoke for the applicant.

Mr. Nicholas Krump stated he owned the home at 1306 West Monroe Street, east of the subject residence. He said the subject was built in 1908 and development of the neighborhood was thoughtful in allowing adequate distance between the homes to prevent fires from spreading. Mr. Krump believed the zoning code was being circumvented. He noted at least four homes in the immediate area were laid out identically so there was a large enough gap between them.

Mr. Krump felt the proposed addition was self-imposed and did not believe the property was unique. He stated his property was at risk because the proposed addition would be fire rated and his property would not.

Mr. Krump stated the property was protected by the setbacks in place. He felt the applicant's proposal on how they would meet the criteria was subjective. He said he was not opposed to them tying into the space in their home and understood they had a growing family. Mr. Krump stated he used to live in the home and also had a growing family. He described that he added an addition to the upstairs section in the rear and it did not encroach on the 10-foot or 7-foot setbacks, but ultimately it was not what they wanted and moved. He mentioned he planned on moving back into the home as part of his retirement plan when it fit the needs of his family.

Mr. Krump said his main concern was the nature of the choice for the addition, the risk of fire and protection of his property. He did not see a uniqueness in the plotting of the subject property since it was similar to his and other houses on Monroe Street.

Mr. John Saccoman stated the applicant was proposing an addition that imposed on Mr. Krump and on the entire neighborhood. He believed the applicant could enjoy reasonable property rights without the variance because they could build the addition in the back. He felt the applicant did not meet the four criteria for granting the variance, and even if they could prove three of them, they could not show four.

Mr. Saccoman argued that the hearing officer granted the variance because of misconstrued facts. He said the Hearing Officer noted 60 percent of the homes in the neighborhood violated the zoning ordinance. Mr. Saccoman believed the application was unprecedented in the neighborhood and unsafe, with homes in the neighborhood being burned often throughout the years. He said the neighborhood was particularly vulnerable and this information was not taken into consideration adequately by the Hearing Officer.

Mr. Saccoman believed the proposed addition would lower property values in the neighborhood and would encourage others to do the same. It undermined the zoning ordinance leaving the neighborhood vulnerable, not just for fire damage but to decreased property values.

Mr. John Lynch stated he understood the concerns of the appellant and felt the disagreement was on the different assessments of risk. He said everyone was committed to the preservation of the neighborhood as well as the safety of properties.

Mr. Lynch stated the narrow east/west dimension of the house, its placement on the lot, and the existing floor plan and roof line, created unique difficulties in the placement of the addition. He said many single-family residences in the neighborhood and in nearby historic neighborhoods had additions in existing building portions very similar to what was proposed. He believed the precedence was reflected in similarly designed homes in the area and when working with the Historic Preservation Committee on design, they confirmed the precedence and approved the proposal as congruent with the design of residences in historic Phoenix neighborhoods.

Mr. Lynch stated the hardship was a result of the original property structure design and was not created by the current property owner. He mentioned the suggestion by the appellant of placing the addition on the north side of the home would increase lot coverage to retain the interior square footage. He said it would decrease the usable backyard space which resulted in a less sensible interior floor plan. It would create an extension of the property to the north which created a more visual impediment to the neighbor on the west side because it encroached into their backyard space. If the proposed addition was placed on the north side, the neighbor's backyard view would be blocked. The current placement was designed not to impede backyard views on either side.

Mr. Lynch said the home currently had two bedrooms preventing reasonable use by a growing family. With the help of the Historic Preservation Committee, a design and location was selected for the proposed addition to promote reasonable use of the

structure and property to preserve features such as the driveway, the historic windows and the backyard, while also protecting the quality of the home.

Mr. Lynch stated the requested variance would not be materially detrimental to persons residing or working in the vicinity and in addition to reasonable use objectives, the location of the proposed addition was selected to be minimally visible from the street without creating an imposing visual barrier to either neighbor's backyard or compromise their privacy.

Mr. Krump stated he asked Historic Preservation to comment on the setbacks and the code who said the design worked but was not their area of expertise in terms of city code, so they would not make comment. He noted Historic Preservation commented in their acceptance that the placement of the addition was "not ideal". Mr. Krump noted there was not a home in the neighborhood that had an addition similar to the one proposed. Many of the homes with additions had been built into the attic space or rear of the property to add space and square footage.

Mr. Saccoman emphasized the four criteria and said the property had been in existence for over 100 years. He felt the zoning ordinance was compromised for the needs of the current owners. He stated the applicant needed to show something objective that was unique to the property and not to other properties in the neighborhood. If the variance was allowed to stand, there would be no other house in the neighborhood that should not get a variance similar to this one. Mr. Saccoman stated it was a failure of the current owner's imagination to come up with a plan that would work within the parameters set in the zoning ordinance.

Mr. Saccoman believed if the variance was allowed to stand, the zoning ordinance was essentially undone. He asked the Board to overturn the granting of the variance because of the detrimental effect it would have on the neighborhood, not only in terms of breaking a 100-year precedent for the safety of the neighborhood, but also decreased property values.

Mr. Cole asked for comments or a motion from the Board.

With no motion made, Mr. Cole stated the decision of the Zoning Adjustment Hearing Officer would stand.

For the record, Mr. Cole asked Ms. Gomes to reflect none of the Board members made a motion.

Ms. Gomes stated with no motion, the decision of approval stands with stipulations.

Stipulations:

1. ***Per site plans and elevations approved by Historic Preservation Office and submitted as part of this application, date stamped February 23, 2021.***

2. 1 year to apply and pay for building permits.

***

Mr. Eigo rejoined the meeting.

3.	Application #:	**ZA-33-21-8**
	Existing Zoning:	A-2
	Location:	330 East Maricopa Freeway
	Quarter Section:	7-28(E8)
	Proposal:	Formal Determination: Whether the nonuse of the legal nonconforming property for 180 consecutive days was due to some conduct within the control of and attributable to the property owner.
	Ordinance Sections:	903.B
	Applicant:	Patrick F. Lyons, Premier Media, LLC
	Representative:	William E. Lally, Tiffany & Bosco, PA
	Owner:	Phoenix EZ8 Motel Limited Partnership
	Appellant:	William E. Lally, Tiffany & Bosco, PA

Mr. Cole recused himself from ZA-33-21-8.

Ms. Gomes stated Item No. 3 was ZA-33-21-8, located at 330 East Maricopa Freeway. It was a request for a formal determination on whether the nonuse of the legal nonconforming property for 180 consecutive days was due to some conduct within the control of and attributable to the property owner. The Zoning Adjustment Hearing Officer found that the nonuse was within the control and attributable to the property owner. The case was appealed by Mr. William Lally, Tiffany & Bosco, PA, who spoke on behalf of the appellant. Mr. Michael Zimmerman, Berry Riddell, spoke in opposition to the appeal and supported the Zoning Adjustment Hearing Officer's decision. Mr. Taylor Earl, Earl and Curley, also spoke and was neither in favor nor opposed.

Mr. William Lally stated he was representing Premier Media. He said it was a unique case and one he had not argued before. He questioned if a legal nonconforming use was abandoned, could the legal nonconforming use be restored if there was evidence showing the owner had nothing to do with the abandonment. He believed his client's actions did not lead to the abandonment.

Mr. Lally indicated the property was located on Interstate 10, the Maricopa Freeway, just west of 7th Street. He noted the property was adjacent to a hotel and was a vacant lot. He said two billboards existed on the property which had been maintained by numerous billboard companies over the years. The billboards were difficult to see from the freeway and were legally nonconforming due to the spacing between the two boards. The underlying zoning was industrial which allowed for billboards. He exhibited a photo of the two billboards to show their age.

Mr. Lally proceeded to give a history and stated the billboards that existed on the site were subject to CCR's, per a lease by a local company. He said the landowner was not the owner of the easement rights which he felt made the case confusing. He stated the billboard company decided they wanted to remove one of the billboards and in December 2019, the billboard company, through another application to rebuild one of

their other existing billboards in the Valley, included one of the subject property's billboards as a trade in.

Mr. Lally stated when there was a digital conversion of a legal nonconforming billboard, one of the items used to meet the use permit test was trading in another legal nonconforming billboard within the City. At the January 2020 Zoning Adjustment hearing, one of the billboards on the subject property was approved for trade-in for conversion of a digital billboard on I-17. Mr. Lally stated his client, the easement holder of the property, was not contacted in December/January when the application went through the City, nor told the billboard was subject to a trade in.

In March 2020, Mr. Lally stated the billboard company removed the billboard. He said the structure was owned by the billboard company and they had a right to remove. Another company was contacted to replace the billboard and a permit was submitted to the City in April 2020. The permit was denied which was the first time the owner was notified that the billboard was traded in and they could no longer rebuild.

Mr. Lally said any legal nonconforming use that was abandoned for 180 days loses its legal nonconforming ability to be re-erected, so timing was important to get permits to rebuild the billboard after its removal in March. Mr. Lally stated he applied for a new use permit and a variance because the billboard would be too close to the other billboard on the subject site. The requests were denied around the 180-day timeframe in July 2020.

Instead of appealing the decision, Mr. Lally decided to file an informal interpretation which he felt would prove his client had nothing to do with the original decision of the billboard trade-in. He noted every possible path was taken to resurrect, and that his client should fall within the code for it to be restored.

Mr. Lally said the informal interpretation was turned down by staff and then a formal interpretation was submitted. At the hearing, Mr. Lally said there was discussion about the lease and whether the prior billboard company had a right to remove, how the City was involved, and what was initiated between the two private property owners.

Noting the Zoning Code, Mr. Lally stated, "the abandonment of a nonconforming use, if due to some conduct within the control and attributable to the property, including negligent or inadvertent acts of the property owner". He explained that a legal nonconforming status could not be resurrected if any acts existed that caused the abandonment. Mr. Lally said EZ-8 was the owner, pursuant to the lease with the prior property owner. It was a recorded easement.

Mr. Lally stated there was no evidence that showed the property owner/easement owner of the billboard abandoned their right with any intentional or negligent act. He felt they did everything in their power to resurrect it by applying for a permit, applying for a use permit and variance, and applying for the current application.

Mr. Lally mentioned the uniqueness of the application and felt the section of the code existed for the narrow set of facts.

Mr. Michael Zimmerman stated he was speaking on behalf of the opposition, Outfront Media LLC. He said overturning the decision would allow the construction of a new billboard that would encroach on numerous existing billboards. He stated the request was under Section 903 of the Zoning Ordinance and overturning the decision would require a finding that the take down of the sign was not due to conduct within the control of and attributable to the property owner or a previous property owner.

Mr. Zimmerman noted Mr. Taylor Earl's letter to the Board which outlined the lease and provided for the removal of the sign. Mr. Zimmerman did not comprehend how it would be unintentional when the lease provision of Section 5 provided the owner of the structures "the right to remove the structures at any time or within 120 days following the termination of the lease."

Mr. Zimmerman stated the applicant was provided with appropriate notice of the billboard removal on March 16, 2020. The construction of a new billboard would encroach on multiple existing billboards less than 1,000 feet away. Mr. Zimmerman stated more than 180 days had passed without a nonconforming use and the Board should enforce Section 903 of the Zoning Ordinance and uphold the Zoning Adjustment Hearing Officer's denial.

Mr. Earl stated he was speaking on behalf of Clear Channel Outdoor. He was not taking a position on the interpretation request and was speaking to make sure the record was clear regarding Clear Channel and its actions. He stated Clear Channel acted 100 percent within its legal right and was pushing back on any suggestion that Clear Channel acted inappropriately.

Mr. Earl stated Clear Channel had the right to remove the billboard which was a right negotiated under the lease. He noted Clear Channel also provided notice to the property owner that the billboard was being removed.

Mr. Earl explained that the ordinance allowed companies to convert an illegal nonconforming billboard to digital and could stipulate to remove another billboard within the City. He said Clear Channel's concern was giving up a nonconforming billboard as a public benefit, but then the billboard would be reconstructed and not conforming to proper spacing. Mr. Earl felt this might reflect poorly on Clear Channel in the eyes of the public and it would seem to undermine the intent of the ordinance provision. He stated Clear Channel acted fully within its legal rights under the lease and was in adherence to the Zoning Ordinance.

Mr. Lally indicated Mr. Earl was correct. He noted the lease was clear between the two private landowners that Clear Channel could remove the billboard at any given time. He mentioned the billboard was traded without notice to the landowner.

Mr. Lally pointed out that when applying for a new billboard through the City, ownership authorization must be provided, and if an easement owner, recorded documents must be provided. He stated the same process was not a requirement when taking down a billboard. He stated the land right to construct a billboard was held by the landowner. He mentioned the land could be leased and used by a billboard company, but the billboard company was not the landowner. By losing the legal nonconforming status, the property was losing a land right which allowed a billboard to be constructed in A-1 zoning. He said Section 903 allowed for the resurrection of a legal nonconforming right when a landowner did not cause the abandonment. He believed had the landowner been involved from the beginning and negotiated away the land right, there would be no case because they would have taken action or been aware of an action that caused the legal nonconforming abandonment.

Mr. Lally stated the closest billboard was operated by his client and the landowner on the same property. They were not proposing to build a billboard anywhere else other than where the billboard existed. He argued the City of Phoenix failed to require ownership authorization and said there was no other entitlement opportunity in the City where a private property owner lost their entitlement through their fault with no notice. He stated this was their last hope for a landowner who had the land right for 40 years to resurrect and build the same billboard in the same location with zero harm to anyone in the area.

Mr. Ammon noted he was trying to balance the idea of a landowner losing a land right and the creation of a nonconforming use. He did not want to set a precedent of overturning the Zoning Adjustment Hearing Officer's decision only to create additional nonconformities. He asked Mr. Zimmerman for his thoughts.

Mr. Zimmerman stated in Section 903 a landowner's right was clear and required that a nonconforming use that was not used for 180 days or more "shall not be renewed or re-established without conforming to the regulations of the zoning district in which it is located." He added the only exception to the requirement was "the non-use of the property was not due to some conduct within the control of and attributable to a property owner or a previous property owner."

Mr. Zimmerman stated that Mr. Lally mentioned the previous landlord was EZ8 Motels which granted an explicit contractual right for the billboard company to remove the structures at any time. Whether it was the property owner or the easement holder, Mr. Zimmerman felt it was confusing the issue. He believed there was a contractual right to remove the board and Section 903 of the ordinance was clear that a board could not be resurrected or built if the use had not gone on for 180 days or more.

Mr. Zimmerman said there were a number of other existing billboards that were pre-existing and nonconforming that would be infringed upon at the 1,000 foot spacing, at 2020 South 7th Street, 123 East Durango Street, 111 East Maricopa Freeway, and at 708 East Durango Street. He felt Outfront was looking for enforcement of Section 903

as it understood there was a contracted right to remove a billboard with notice provided by Clear Channel pursuant to the lease.

Mr. Ammon asked Mr. Lally for a response.

Mr. Lally said there was a lease written in 1989 that gave the right to the billboard company to take down the billboard at some point in the future. He felt this was not the same as getting zero notice and believed if the property owner or the prior property owner had agreed to taking the sign down and trading it for a billboard, it would be understood it could not be rebuilt. He believed it was incorrect to say a future take down of a billboard was an action under the code that could be attributable to conduct.

Mr. Lally stated Mr. Zimmerman failed to attend the last three hearings. Mr. Lally explained if the numerous billboards Mr. Zimmerman noted were within 1,000 feet, they had existed for a number of years and creating a new nonconformity was not the case because the nonconformity had existed for 40 years.

Mr. Lally noted the case was different than what the Board had heard where a new billboard that never existed was proposed in an area where it created a hinderance and/or created new legal nonconforming statuses of the billboards in the area. He mentioned the 2011 application of the new zoning code, and said the billboards had existed for 10 years in a legal nonconforming status with no impact on each other. He mentioned the property owner had not taken any action to abandon the use and the property owner was proposing a billboard in the same location that existed for 40 years.

Mr. Ammon felt the fundamental part of billboard applications had to do with a swap on another property. He was concerned about going against the City's direction and overturning the decision would create a nonconformance and set a precedent.

Mr. Lally felt it would be a terrible precedent and believed the remedy would be the City must require notice and/or written approval to the primary property owner. He stated the billboard company did not own the underlying entitlement. The landowner was not given the opportunity to respond.

Based on what the code indicated, Mr. Eigo noted one of the net results of approving the interpretation might be more billboards than the public expected. He asked Mr. Lally if he agreed.

Mr. Lally said he would slightly disagree. He felt the community accepted the property had two billboards for 40 years. He mentioned the I-17 billboard was being converted from static to digital. Mr. Lally said the net effect would be the subject property would go back to the same situation it had for 40 years and believed it was not additional billboards in general, but Clear Channel would get a digital billboard on I-17 without trading anything.

Mr. Eigo asked Mr. Lally for an explanation of the rarity of the situation and the legal relationship between the leaseholder and the property owner.

Mr. Lally said the case was extremely unique and would be surprised if it happened again. He explained the demo permit was signed by the property owner, but his client was the owner of the billboard lease, which was recorded with CCR's. Mr. Lally indicated he had not seen a situation where a property owner was burdened with an easement and CCR's that granted the rights to someone else with the landowner not knowing and signing a demo permit. He believed the majority of cases had a property owner, even if they were a subsequent buyer, who bought a property subject to a billboard lease and then they were the lease owner and the property owner. It would make sense to the City that authorization existed, but that was not the case.

Mr. Eigo stated he was trying to figure out where the communication failure occurred and where the equities laid.

Mr. Lally believed the City of Phoenix could require notice to a property owner. He felt the application was very case specific to the subject property and was not an interpretation of the code as it applied to all properties. He believed it was case specific to the property owner in whether their action/inaction led to a legal nonconforming right being abandoned and how they were interpreted under Section 903.

If the Board upheld the Zoning Adjustment Hearing Officer's decision, Mr. Eigo asked Mr. Lally what advice he would give to his client in the future.

Mr. Lally said he would advise a property owner to place a section in the lease that the billboard company would give notice if the legal nonconforming board was being traded. To make sure billboard companies' leases and landowners' land rights were protected, Mr. Lally said the City of Phoenix should require notice and/or ownership authorization, and/or make billboard companies and landowners aware and make sure it was incorporated into their leases.

Mr. Eigo said the Board was guided by the code, by preserving ownership rights and by the public interest. He stated he would hate to see a reoccurrence where a billboard was demolished as part of a trade-in and the owner did not know about it. He noted Mr. Earl made it clear they were not opposing the action. Mr. Eigo was not sure where the public interest was served. He asked for Mr. Lally's response.

Mr. Lally stated he represented the billboard industry and billboard companies, but was also an attorney and believed landowner rights matter. He felt landowners were the inexperienced parties and should be made aware of their rights and through no fault of their own, they could lose those rights. He did not feel Clear Channel acted inappropriately by providing the City what was asked.

Mr. Eigo asked Mr. Earl why Clear Channel did not oppose the request and asked how he would advise a client if he was in Mr. Lally's situation.

Mr. Earl said his purpose was singular and just wanted to make sure the record was clear regarding Clear Channel's action. He was not prepared to make a comments regarding policy, procedures moving forward, or what the ordinance should say.

Mr. Li explained the ownership issue and said the property was owned by California Field Iron Workers Apprentice Training Retirement Fund, not EZ-8 Motel. He stated EZ-8 Motel had an easement right. He mentioned the City had not heard any objections from the underlying property owner.

Mr. Li said there were a bundle of rights for property owners. He noted if staff was required to provide notification to everyone who had an interest in the property when someone applied for a permit, it could be a significant obligation on the City and applicant. He gave an example of applying for a permit for a remodel with an existing mortgage. It would pose a challenge for the City to require applicants to notify all parties of interest. Mr. Li hoped the owner of the property would manage the bundle of rights and make sure they were properly protected. He hoped the Board would consider his comments in deliberation.

Mr. James asked for questions or comments from the Board. Due to the complexity of the case, Mr. James offered the Board to go into Executive Session to discuss further.

Mr. Eigo explained he was less concerned about future notice requirements since it was a rare circumstance, and moved that the Board would find that the non-use of the legal nonconforming property for 180 consecutive days was not in the control of and could not be attributable to the property owner and therefore, the legal nonconforming status should be restored.

Mr. Eigo MOTIONED in ZA-33-21-8 to OVERTURN the Zoning Adjustment Hearing Officer's decision that the nonuse was not within the control and attributable to the property owner.

Ms. Knight SECONDED the motion.

Ms. Gomes stated since this was overturning the Zoning Adjustment Hearing Officer's decision, a clear finding of the decision was required.

Mr. Eigo wanted the record to reflect that through the unique series of circumstances and events, the owner was not alerted to the removal of the sign and therefore had no real opportunity to participate in the legal takedown and would like the motion to say that the status should be restored.

Mr. James asked if Mr. Eigo's findings were sufficient.

Ms. Gomes responded that was the finding of the Board.

Mr. James asked for any additional comments from Mr. Eigo.

Mr. Eigo stated as long as the second motion stood and thought Ms. Gomes said it may be legally sufficient.

Before voting on the motion, Mr. Li asked the Board if they would like to go into Executive Session because the decision could have a rippling effect.

Mr. Eigo motioned to move into Executive Session at 1:55 p.m. Ms. Knight seconded.

Mr. Beuerlein clarified with Ms. Gomes that the Board could go into Executive Session when there was a second motion.

Ms. Gomes responded yes.

Motion carried unanimously.

The Board returned from Executive Session and Mr. James called the meeting to order at 2:12 p.m. A quorum was established.

Ms. Gomes reiterated the motion was to overturn the Zoning Adjustment Hearing Officer's decision and found that it was not contributable to the property owner for the findings stated by Mr. Eigo. The motion was seconded by Ms. Knight.

Motion FAILED by a vote of 1-4 (Beuerlein, Knight, Ammon, James) (Cole recused).

Ms. Gomes asked Mr. James if he wanted to entertain a new motion.

Mr. James asked the Board if there was a new motion.

Mr. Beuerlein MOTIONED in ZA-33-21-8 to UPHOLD the Zoning Adjustment Hearing Officer's decision that the nonuse was attributable to the property owner.

Mr. Ammon SECONDED the motion.

Motion PASSED by a vote of 3-2 (Eigo, Knight) (Cole recused).

***

Mr. Cole rejoined the meeting.

4. Update on next Board of Adjustment agenda.

   Ms. Gomes stated there were five items on the August agenda.

5. Update on pending appeals of the Board of Adjustment.

   Mr. Li stated there was a decision in the lawsuit for the relocation of the variance of the billboard located at the I-10 and I-17 interchange which was approved by the Board in December 2019. Superior Court affirmed the Board's decision because the person who filed the lawsuit did not appear to make his case. Since the plaintiff did not appear, the judge waived his right to raise issues at trial. Mr. Li stated the Court seemed to be sympathetic to the Board's decision.

6. Q & A: Procedure and Process - Board of Adjustment case law.

7. The Board may vote to go into Executive Session pursuant to A.R.S Section 38-431.03.A.3. for the purpose of receiving legal advice regarding any of the above Items A-E.

F. Adjournment

Mr. Cole adjourned the meeting.

There being no further business, the meeting was adjourned at 2:17 p.m.

Respectfully submitted,

_____
Julie Garcia, Secretary to the Board