Legal Alert

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ARIZONA SUPREME COURT WEIGHS IN ON VARIANCES TO ZONING REGULATIONS

The Arizona Supreme Court has issued an extremely rare opinion in a zoning case. What began as a simple variance application turned into a long odyssey in Arizona's appellate courts, which ultimately got the result correct but made some strange rulings along the way.

The case started with a request for a variance to modify the 500-foot separation requirement for a pawn shop, due to the parcel's unusual size and shape. The Arizona Court of Appeals held that any hardship here was self-imposed, because the applicant purchased the parcel with knowledge that a variance would be required to operate a pawn shop. This decision would have fundamentally changed the landscape for future variances and made it much more difficult to obtain one. The Arizona Supreme Court agreed to hear the case when the development community cried foul over this expansive definition of "self-imposed" hardship.

In a unanimous ruling, the Arizona Supreme Court has clarified that knowing a property's attributes at the time of purchasing it does not constitute a self-imposed hardship. The Court also clarified that waiving a separation requirement is not a variance of use (meaning a variance to allow a use that is otherwise prohibited in a zoning district – and forbidden in Arizona), but it is instead a mere "area variance" that a Board of Adjustment may grant.

Nonetheless, the opinion does contain language that will sound very strange to the development community. Arizona case law and statutes have always prevented the grant of use variances—a creature that exists in other states. Nonetheless, the Supreme Court opinion extensively discusses the different standards that apply to use vs. area variances and proclaims these differences to be part of Arizona law. In paragraph 16, the Court explains legislative bodies (such as a City Council) can grant use variances, implying that someone can only get a rezoning if they can show the "exceptional hardship" needed for a use variance. This is fundamentally inconsistent with the way rezoning cases are handled. While the opinion should not affect the routine handling of rezoning cases, it remains open if a savvy neighbor or political activist group may pick up on this and pipe up about the need to show "exceptional hardship" for a rezoning to be granted.

The bottom line is that the Supreme Court correctly ruled regarding the issue of self-imposed hardships. While there has been much concern over the outcome of this case, the ruling effectively validates our historical approach to use

variances. Business as usual.

The full opinion can be found here:
http://www.azcourts.gov/Portals/0/OpinionFiles/Supreme/2017/CV-16-0107-PR%20Opinion.pdf