

SUPREME COURT OF THE STATE OF ARIZONA

Pawn 1st, LLC v. City of Phoenix

242 Ariz. 547 (2017) · No. CV-16-0107-PR · Decided August 10, 2017

SUMMARY

The Arizona Supreme Court reviewed a municipal zoning board’s grant of an area variance allowing a pawn shop to operate subject to a residential setback requirement. The court held that the setback was a technical requirement supporting an area variance, that the property’s unique characteristics constituted special circumstances, and that the applicant’s selection of the property did not make those circumstances self-imposed. The court vacated the court of appeals’ opinion and affirmed the superior court’s judgment upholding the variance.

CASE DETAILS

COURT	Supreme Court of the State of Arizona
WRITING FOR THE COURT	Justice Lopez; Chief Justice Bales; Vice Chief Justice Pelander; Justice Brutinel; Justice Timmer; Justice Bolick; Justice Gould
JURISDICTION	Arizona
DECIDED	August 10, 2017
DOCKET	CV-16-0107-PR
DISPOSITION	vacated
PROCEDURAL POSTURE	Pawn 1st sought review of the court of appeals' decision reversing the superior court's judgment upholding a municipal zoning board's grant of an area variance. The Arizona Supreme Court vacated the court of appeals' opinion and affirmed the superior court's judgment.
STANDARD OF REVIEW	Statutory-interpretation issues are reviewed de novo. Agency action is affirmed unless unsupported by substantial evidence, contrary to law, arbitrary and capricious, or an abuse of discretion; the Board's determination is presumed valid unless against the weight of the evidence, unreasonable, erroneous, or illegal as a matter of law.
PRECEDENTIAL VALUE	Published Arizona Supreme Court opinion; precedential.
PARTIES	Pawn 1st, LLC v. City of Phoenix, Board of Adjustment of the City of Phoenix, Bob Ford, Emilio Gaynor, Patrick Paul, Alex Tauber, Yvonne Hunter, Bettina Nava, Emily Ryan, William Jachimek dba Central Pawn

TOPICS

zoning municipal law judicial review of agency action statutory interpretation appellate procedure

PRACTICE AREAS

zoning municipal law administrative law real estate statutory interpretation

QUESTIONS PRESENTED

1. Whether the requested variance permitting a pawn shop despite the 500-foot residential setback was an area variance or a use variance.
2. Whether the Phoenix Board of Adjustment had statutory authority to grant the variance.
3. Whether the property had special circumstances creating peculiar and exceptional practical difficulties that justified an area variance.
4. Whether Jachimek's selection of the property, with knowledge that a variance was required for the intended use, constituted a self-imposed special circumstance barring the variance.

HOLDINGS

1. The requested variance was an area variance, not a use variance, because a pawn shop was a permitted use in the applicable commercial zoning classification and the 500-foot requirement was a technical setback-type restriction rather than a use regulation.
2. The Board acted within its discretion in finding special circumstances that justified the area variance.
3. An owner's selection of property, even with knowledge that an area variance is required for an intended use permitted on other similarly zoned properties, does not itself constitute a self-imposed special circumstance that bars an area variance.
4. The Board acted within its discretion and authority in granting the variance, and the superior court properly upheld the Board's decision.

KEY QUOTATIONS

"We hold that to obtain an area variance, an applicant must show that strictly applying a zoning ordinance will cause "peculiar and exceptional practical difficulties" that deprive a property of privileges enjoyed by other similarly zoned properties." (§ 1)

"Accordingly, we reject the court of appeals' rule and hold that an applicant or owner's selection of a property, even with knowledge that an area variance is required for an intended use allowed on other similarly zoned properties, does not itself constitute a self-imposed special circumstance precluding an area variance." (§ 32)

FACTUAL BACKGROUND

The property was a small C-3 commercial parcel in Phoenix whose dimensions and commercial utility had been substantially affected by a prior eminent-domain action. The property was smaller than surrounding C-3 corner

parcels, directly abutted a public sidewalk, and had restricted parking. William Jachimek sought to operate a pawn shop, a permitted use in the relevant commercial zoning classification, but required an area variance from the 500-foot residential setback requirement.

PROCEDURAL HISTORY

The Phoenix Board of Adjustment conditionally granted William Jachimek an area variance allowing operation of a pawn shop despite a 500-foot residential setback requirement. Pawn 1st challenged the decision in a special action; after an initial standing appeal, the superior court upheld the variance. The court of appeals reversed and declared the variance invalid, and the Arizona Supreme Court granted review.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The court of appeals' opinion was vacated, and the superior court's judgment upholding the Board's variance and granting summary judgment in Jachimek's favor was affirmed. No further remand instructions were given.

CASES CITED

- Baker v. University Physicians Healthcare, 231 Ariz. 379, 387 ¶ 30 (2013)
- Mueller v. City of Phoenix ex rel. Phoenix Board of Adjustment, 102 Ariz. 575, 581 (1967)
- Arkules v. Board of Adjustment of Paradise Valley, 151 Ariz. 438, 440-42 (App. 1986)
- Ivancovich v. City of Tucson Board of Adjustment, 22 Ariz. App. 530, 535-38 (1974)
- Cardon Oil Co. v. City of Phoenix, 122 Ariz. 102, 103 n.1 (1979)
- Burns v. SPA Automotive, Ltd., 156 Ariz. 503, 504-05 (App. 1988)
- Rivera v. City of Phoenix, 186 Ariz. 600, 602-03 (App. 1996)
- Pawn 1st, LLC v. City of Phoenix, 231 Ariz. 309 (App. 2013)
- Pawn 1st, LLC v. City of Phoenix, 239 Ariz. 539, 542-45 ¶¶ 11-12, 26-28 (App. 2016)
- Minney v. City of Azusa, 330 P.2d 255, 257 (Cal. Dist. Ct. App. 1958)
- Tovrea v. Umphress, 27 Ariz. App. 513, 517 (1976)
- Lamb v. Zoning Board of Appeals of Taunton, 923 N.E.2d 1078, 1081 (Mass. App. Ct. 2010)