



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**PAWN 1ST v. CITY OF PHOENIX, et al., WILLIAM JACHIMEK
dba CENTRAL PAWN (Real Party in Interest)
CV-16-0107-PR**

PARTIES:

Petitioner: William Jachimek, dba Central Pawn

Respondent: Pawn 1st, LLC

City Respondents: City of Phoenix, its Board of Adjustment, and Board members Bob Ford, Emilio Gaynor, Patrick Paul, Alex Tauber, Yvonne Hunter, Bettina Nava, and Emily Ryan

Amicus Curiae: American Planning Association, Arizona Chapter

FACTS:

William Jachimek acquired commercial property zoned C-3 on the southwestern corner of McDowell Road and 32nd Street in Phoenix, intending to operate a pawn shop. “Pawn shop” is a permitted use in the property’s C-3 district, but because of street widening through eminent domain, the property no longer is set back 500 feet from a residential street, as required by Phoenix zoning laws.

Jachimek applied for a setback variance to allow use of the property as a pawn shop. Pursuant to Phoenix ordinance, to succeed in securing a zoning variance, Jachimek had to establish: (1) special circumstances or conditions apply to the property; (2) the owner or applicant did not create the special circumstances; (3) authorizing the variance is necessary to preserve the enjoyment of substantial property rights; and (4) granting the variance does not compromise the general welfare.

The City of Phoenix’s Zoning Administrator denied the request, but, on appeal, the City of Phoenix Board of Adjustment approved Jachimek’s requested variance.

Pawn 1st, a competing business, filed a complaint in superior court for special action review of the Board’s decision, but the superior court dismissed the complaint, holding that Pawn 1st lacked standing to contest the variance.

The court of appeals reversed and remanded for consideration of Pawn 1st’s special action. *Pawn 1st, LLC v. City of Phoenix*, 231 Ariz. 309, 294 P.3d 147 (App. 2013).

On remand, the superior court denied Pawn 1st’s requested relief on the ground that the variance granted to Jachimek was an area variance relating to setback dimensional requirements, not a use variance relating to a request to use the property for a purpose not permitted by Phoenix Zoning Ordinances.

Pawn 1st appealed.

The court of appeals agreed that Jachimek had satisfied the hardship requirement that did not apply to other similar properties, but it held that the Board of Adjustment had acted without authority in granting a setback variance. It viewed Jachimek’s desire to use the property as a pawn shop, knowing the setback limit was not met, made the hardship “self-imposed.” Under the statute

creating the Board of Adjustment, granting a variance is prohibited if the special circumstances applicable to the property are self-imposed by the property owner. Accordingly, the court of appeals concluded that the Board's approval of the variance exceeded its powers and was void.

ISSUES:

“1. Whether an applicant’s selection of particular property and a use permitted in the zoning district requiring an area variance constitutes a self-imposed hardship requiring denial of the application even though the application otherwise satisfies the mandatory factors for the variance.

“2. Whether the ‘no reasonable use’ standard applicable to use variance applications should be extended to area variance applications.

“3. Whether the Court of Appeals erred in holding that the City of Phoenix Board of Adjustment’s granting of Petitioner’s area variance application was beyond its jurisdiction and ultra vires on the grounds that it violated the prohibition against creating a self-imposed hardship.”

DEFINITIONS:

Pursuant to A.R.S. § 9-462.06, which created the Board:

G. A board of adjustment shall:

...

2. Hear and decide appeals for variances from the terms of the zoning ordinance only if, because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will deprive the property of privileges enjoyed by other property of the same classification in the same zoning district. Any variance granted is subject to conditions as will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is located.

...

H. A board of adjustment may not:

...

2. Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.

This Summary was prepared by the Arizona Supreme Court Staff Attorneys’ Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.