

**TOWN OF PARADISE VALLEY
BOARD OF ADJUSTMENT
SEPTEMBER 2, 2009
MINUTES**

PRESENT: Emily Kile, Chair
Rick Johnson, Board Member
Catherine Kauffman, Board Member
O'Dell Kiel, Board Member
Jonathan Wainwright, Board Member
Hope Ozer, Board Member

ABSENT: Phil Hagenah, Board Member

STAFF: Eva Cutro, Planning Director
George Burton, Planner
Steven Zraick, Assistant Town Attorney

CALL TO ORDER

The work study session meeting of the Town of Paradise Valley Board of Adjustment was called to order by acting Chair Kile at 5:30 p.m.

REGULAR BUSINESS

PUBLIC HEARING: Consideration of a variance from the Zoning Ordinance, Article X Height and Area Regulations, to allow a new single family residence to encroach beyond the height limit and exceed the maximum floor area ratio. The property is located at 7026 East McDonald Drive.

Mr. Burton presented this case as per the project coordination packet. He stated the applicant requests a variance from Article X, Section 1001, to allow a new single family residence to:

1. Encroach into the Open Space Criteria.
2. Exceed the maximum Floor Area Ratio

Mr. Burton reported staff supports the variance for an encroachment into the Open Space Criteria, but is opposed to any variance to the Floor Area Ratio. The applicant is aware of staff's position, but wishes to proceed with both variance requests.

Mr. Burton reviewed the findings in favor and the findings opposed for this request.

Mr. Burton responded to questions from the Board members regarding the variance request.

Mr. Burton reported staff has received a letter from resident, Richard Driml expressing concerns regarding the massing of the house that it will block some views and concern regarding second story balconies.

In response to a question from Board Member Kiel, Mr. Burton reviewed the proposed livable square footage.

Board Member Johnson inquired if the previously mentioned code violation regarding the pool has been rectified. Mr. Burton replied in the affirmative.

In response to a question from Chair Kile, Mr. Burton reviewed the difference between the previously approved variance and the proposed variance.

Mr. Kiel inquired about the mechanisms in place to ensure the stipulations are enforced. Mr. Burton explained staff is charged with enforcing the stipulations and that the plans must be compliant with the stipulations before the building permit is issued.

Chair Kile adjourned the study session at 5:45 p.m.

Chair Kile called the public hearing to order at 5:55 p.m.

Chair Kile reviewed the meeting procedures.

Mr. Burton presented this case as per the project coordination packet. Staff recommends a motion for approval for a variance from the Open Space Criteria in the Zoning Ordinance, Article X, Height and Area Regulations, to allow a new single family residence subject to the following stipulations:

1. The single family residence shall not exceed a maximum Floor Area Ratio of twenty-five (25) percent
2. The variance approved on March 4, 2009 for the property located at 7026 East McDonald Drive, Case Number BA-09-1, shall be null and void.

Mr. Burton reviewed the findings in favor and the findings opposed for this request.

Mr. Burton reported staff has received a letter from resident, Richard Driml expressing concerns regarding the massing of the house that it will block some views and concern regarding second story balconies.

Chair Kile stated that it is her understanding that second story balconies are allowed regardless if this variance is passed. Mr. Burton replied there are no prohibitions in the code regarding balconies.

David Dick, 6220 E. Thomas Suite 205, Scottsdale, AZ, stated he is the architect for this project. He explained that balance is the key to this design and with staffs help they have tried to work the design based on the owner's needs and the restrictions placed upon them by the Open Space Criteria and the FAR. He further explained that the scale of the house did not change and that a great deal of the FAR comes from eaves and overhangs. He discussed the special circumstances and hardships associated with this lot. He stated that the proposed design will minimize the impact on the neighbors.

Chair Kile stated that the architect's report indicates that the prior design was abandoned because it failed to meet many of the basic criteria of any home in Paradise Valley. She inquired what that statement means. Mr. Dick replied that he is very sensitive about talking about another architect's design but the design was reviewed by several peers and he was told that the design did not have livable spaces to fit normal living.

Chair Kile stated it is her concern that the applicant will come back to the Board next month because they have found that they just need a little more. Mr. Dick stated that a lot of work and thought has been put into this design and there is no goal to have anything bigger than what is being presented.

In response to a question from Board Member Ozer, Mr. Dick provided information on the dimensions of the great room and the bedrooms.

Board Member Ozer stated that she would assume during the applicant's numerous meetings with staff he was discouraged from going over the FAR. Mr. Dick replied in the affirmative and provided information on why he felt the extra 300 feet of FAR is important.

Chair Kile disclosed that 10 years ago Mr. Dick was interviewed regarding a remodel of her home but was not hired. She stated that she did not think there is a conflict.

Chair Kile opened public comment.

Robert Rasmussen spoke in opposition to this request. He stated that he spoke at the hearing in March when the applicant was in front of the Board asking for a variance. He further stated that the Town has a Zoning Ordinance, except we always grant variances. In his opinion, why have a Zoning Ordinance. He remarked that the applicant requested a variance in March and now he is back requesting another variance and has designed a new house. He further remarked that the applicant knew about the hardships when he bought the property.

Chair Kile stated that she understands Mr. Rasmussen's concerns and thanked him for taking the time to come and express his concerns.

Chair Kile closed public testimony.

In response to a question from Board Member Kauffman, Mr. Burton explained that there is the potential for a second floor balcony but there is no intent to build it. He further explained that a balcony would be allowed as long as it meets the height and setback requirements.

Chair Kile stated that she finds it disturbing that at the last meeting the Board approved a variance and the same property owner seemed happy with the plan they presented and told us this plan was acceptable and they needed the additional height to build their dream home and now they come back with a totally new plan with significant additional square footage. She stated that she does not want to end up here next month with another house. She reported that the Board took the previous request very seriously and spent a lot of time deliberating.

Board Member Kauffman inquired what will happen with the variance granted in March. Mr. Burton replied it would be null and void.

Board Member Wainwright moved for approval of Case No. BA-09-2, a request by Mathew Keister, property owner of 7026 East McDonald Drive; for a variance from the Open Space Criteria and the maximum allowable Floor Area Ratio in the Zoning Ordinance, Article X, Height and Area Regulations, to allow a new single family residence. Seconded by Board Member Ozer

Chair Kile stated that she would only be willing to support a motion that does not allow the FAR to exceed 25 percent.

Board Member Wainwright withdrew his motion. Board Member Ozer withdrew the second to the motion.

Board Member Wainwright moved for approval of Case No. BA-09-2, a request by Mathew Keister, property owner of 7026 East McDonald Drive; for a variance from the Open Space Criteria and the maximum allowable Floor Area Ratio in the Zoning Ordinance, Article X, Height and Area Regulations, to allow a new single family residence. This motion of approval does not allow the Floor Area Ratio to exceed twenty five (25) percent.

The motion failed due to lack of a second.

Board Member Johnson moved for approval of Case No. BA-09-2, a request by Mathew Keister, property owner of 7026 East McDonald Drive; for a variance from the Open

Space Criteria an the maximum allowable Floor Area Ratio in the Zoning Ordinance, Article X, Height and Area Regulations, to allow a new single family residence. Subject to the following stipulations:

1. The single family residence shall not exceed a maximum Floor Area Ratio of twenty-five (25) percent
2. The variance approved on March 4, 2009 for the property located at 7026 East McDonald Drive, Case Number BA-09-1, shall be null and void.

Seconded by Board Member Kiel.

The motion passed unanimously by a vote of six (6) to zero (0).

MINUTES APPROVAL

March 4, 2009 meeting minutes

Board Member Wainwright moved to approve the meeting minutes of March 4, 2009 as presented. Second by Board Member Ozer.

The motion passed unanimously by a vote of six (6) to zero (0).

Board Member Ozer commented on the difficulty of remembering what occurred when there are many months in between each meeting. She requested the Board receive the minutes sooner.

ELECTION OF CHAIR

Mr. Burton reported that the Board will need to elect a new Chair at the next meeting for the upcoming year.

FUTURE AGENDA ITEMS

Mr. Burton stated staff has not received any new variance requests but has received an inquiry.

EXECUTIVE SESSION

The Board of Adjustment may convene in executive session at one or more times during the meeting as needed to confer with the Town Attorney for legal advice regarding the requests described under Regular Business as authorized by ARS. 38-431.03.A.3.

ADJOURNMENT

Chair Kile adjourned the meeting at 6:50 PM.



Eva Cutro, Secretary