

**TOWN OF PARADISE VALLEY
BOARD OF ADJUSTMENT
APRIL 7, 2010
MINUTES**

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

STAFF: Eva Cutro, Planning Director
George Burton, Planner
Andrew Miller, 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 the primary residence to encroach into the setback. The property is located at 7016 East Hummingbird Lane.

Mr. Burton presented this case as per the project coordination packet. He stated the applicant requests a variance from Article X Sections 1001, to allow an addition to the primary residence to encroach into the side setback. Section 1001 requires a 20 foot yard setback measured from the property line. The applicant is proposing an exercise/storage room addition remain at a setback of 12 feet from the west property line. The addition is approximately 14 feet 6 inches tall.

Mr. Burton provided background information on the lot history. He reported that a stop work order and notice of violation were issued on July 21, 2009 for the encroachment into the setback and constructing the addition without building inspection.

Mr. Burton stated staff does not support this variance request.

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.

In response to a question from Board Member O'Dell Kiel, Mr. Burton reviewed what was approved through the building permit versus what was built.

In response to a question from Chair Kile, Mr. Burton stated that there are no restrictions on roof decks.

In response to a question from Board Member Johnson, Mr. Burton reviewed the inspections that were missed.

In response to a question from Board Member Ozer, Mr. Burton stated the stop work order was issued at the framing stage.

In response to a question from Board Member Johnson, Mr. Burton stated that the applicant applied for the building permits as an owner/builder. Mr. Miller explained for violations purposes the owner is responsible to ensure that the contractor adheres to the codes.

ELECTION OF THE CHAIR

Board Member Kile moved to nominate Hope Ozer as Chair of the Board of Adjustment. Seconded by Board Member Wainwright.

The motion passed unanimously by a vote of seven (7) to zero (0).

Mr. Miller stated that the appointment of Chair needs to be approved by the Town Council before the new Chair of the Board can take over the position.

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 to deny the variance request to allow an addition to the primary residence to encroach into the side yard setback.

Board Member Ozer stated that this is not a conflict of interest but she would like this to mention on the record that Mr. Jordan is an ongoing supporter and contributor to Valley Youth Theatre.

Doug Jorden, 7272 East Indian School Road, Scottsdale, Arizona, representing the applicants. He stated that one thing to keep in mind as he presents is that this work took place in the summer. He further stated that the Glascock's were out-of Town most of the

summer, and when they returned, the person building the addition had been made aware by the Town Building Inspector that the new addition encroached into the side yard setback to the west. He explained that the current location of the addition is the only place a functional expansion of the master bedroom can occur to preserve the home's original design yet enhance the livability. He reported that the neighbor immediately to the west side is in support of the request.

Board Member Hagenah inquired if the house on the lot to the west is for sale. Mr. Jordan replied in the affirmative. He reported the neighbors did not want anything done that would negatively impact the sale of their home. He further reported that there have been on-going discussions with the neighbor to the west. He discussed how the applicant has addressed the concerns of the neighbors.

Mr. Jordan provided information on the special circumstances and hardships associated with this lot.

Mr. Jordan reviewed the history of the improvements.

Mr. Jordan responded to questions and comments from the Board regarding why the first stop work order was ignored and the inspections were not done.

Mr. Jordan reviewed the variance support map that indicates everyone in the neighborhood is fine with what they are trying to do. He stated that the request meets the spirit of the ordinance. He further stated that as a result of the discussion with neighbors, they are proposing the following three stipulations:

1. Remove the window on the west side of the addition.
2. Landscaping shall be installed in the neighbor's yard to the west adjacent to the addition as determined by the neighbor.
3. The stairs to the roof and railing on the deck shall be removed.

Mr. Jordan reiterated that this is the most logical place for the improvement with the least impact to the neighbors.

Board Member O'Dell Kiel stated with regard to the proposed stipulations who will be in charge of maintaining the landscaping. He commented that there is no way to know what the new owner of the property will think. Mr. Jordan stated the intent is the property owners will maintain the landscaping.

Board Member O'Dell Kiel commented that the residents were out-of-town for the summer but with all the forms of technologies, such as phones being able to take pictures and emailing documents back and forth, he is not sure why the applicant was not kept up to speed. He further commented that he would agree the most logical place to add to the master bedroom is where the addition is, but he felt the master bedroom addition could

have been built in a manner that did not encroach in the setbacks. He inquired when the plans were changed, and why they did not consider adding a section to the east side of the house or place the addition further north. Mr. Jordan explained that construction of the addition occurred over the summer and the applicant was not aware of the changes.

Bonsal Glascock, applicant, discussed why placing the addition on the east side would not be preferable.

Chair Kile inquired if the original plan that was submitted to the Town was acceptable. Mr. Glascock replied in the affirmative. Chair Kile inquired if the applicant was aware that the configurations that were built were significantly different from what was asked for in the permit. Mr. Glascock replied he was not aware until he came back into Town.

Chair Kile stated what she is trying to understand is why the applicant submitted permitted plans that were acceptable and now you are requesting a variance for plans that are not acceptable.

Mr. Glascock responded to questions and comments from the Board regarding what occurred during the Summer while he was out-of-town that led up to the miscommunications regarding why the addition was not build according to the building permit.

Board member Johnson inquired why the contractor never called for the inspections. Mr. Glascock stated that he cannot speak for the contractor but he does know that they were putting a lot of pressure on the contractor to finish the job before the school year started.

Raul Matta stated that he works for a company called Montecito Homes. He stated that the homeowner wanted the project done quickly and he made a huge mistake and never realized all the problems it would cause for his friends.

Board Member Johnson inquired if Mr. Matta was aware from previous jobs that he worked on that inspections are required. Mr. Matta replied a little bit yes.

Board Member Kauffman inquired if Mr. Matta was working as an independent contractor or working as somebody's foreman. Mr. Matta replied that he was working for someone and was not in charge of calling for inspections. Mr. Glascock stated as the owner/builder it was his responsibility to ensure he was taking care of that and it was a miscommunication on his part.

Chair Kile stated it is obvious things happened that should not have, but inspections are necessary for safety. She further stated that everyone agrees the addition was built without inspection. She requested that they focus on whether this request meets the variance criteria.

Chair Kile opened public comment.

Lawrence Hayware spoke in favor of the variance. He stated that he lives three doors to the west and have owned their home approximately the same time as the Glascock's. He further stated that they are wonderful neighbors. He noted that not having had the chance to watch this process work it is very enlightening to see how seriously the Town takes these matters and that there is a forum for these types of issues. He further noted that this is a variance that makes a lot of sense.

John Kelly spoke in favor of the variance. He stated that he lives six houses to the west at 6824 E. Hummingbird Lane, and he supports this improvement whole heartedly. He further stated that there are greater issues in the neighborhood that deserve more attention than this one.

Rick Munson spoke in favor of this request. He stated that he lives just east of the Glascock's home and is the President of the HOA for Cheney Place. He further stated that all the Cheney Place neighbors are in favor of this request.

Brooks Vitalone spoke in favor of this request. She stated that she is the interior designer for the Glascock's and has known them for 11 years. She further stated when she drives down their street she does not see anything happening with that house that would impact the neighborhood.

Paul Butzler spoke in favor of this request. He stated that he has been friends with the Glascock's for 10 years and has been to the property many times and the addition is very low impact and barely noticeable from the street.

Pammy Markle spoke in favor of this request. She stated that she owns the property behind the Glascock's and did not see the addition. She further stated that anything these people do to their home will raise my property value because they have exquisite taste. She reported that the area of Mexico the Glascock's were in had poor cell service. She further reported that the Glascock's are good people who give back to the community.

Victoria York is in favor of the request but does not wish to speak.

Chair Kile stated that the Board greatly appreciates that the applicant has worked so well with the community and agreed to stipulations to lessen the impact on the neighborhood.

Chair Kile closed public comment.

Board Member Wainwright move for approval of Case No. BA-10-1, a request by Bonsal and Alexis Glascock, property owners of 7016 East Hummingbird Lane; for a variance from the Zoning Ordinance, Article X, Height and Area Regulations, to allow an addition

to the primary residence to encroach into the side yard setback with the following stipulations:

1. The Window on the west side of the addition shall be removed.
2. Landscaping shall be installed in the neighbor's yard to the west adjacent to the addition, as determined by the neighbor.
3. The stairs to the roof and railing on the deck shall be removed.

Ms. Cutro recommended the following change to Stipulation No. 2 as follows:

2. Landscaping shall be installed in the neighbor's yard to the west adjacent to the addition, as determined by the neighbor. **The neighbor shall alert staff in writing once this has been done.**

Board Member Wainwright amended the motion to reflect the above listed change.

Seconded by Board Member O'Dell Kiel.

Chair Kile stated in order to approve a variance it must meet the criteria and although she understands there was a misunderstanding where the property line was originally it has not been built in accordance with the plan. She further stated that she does not see anything about the property that creates a hardship to build the additional square footage. She concluded that she does not see how this request meets the six variance requirements.

Board Member Ozer stated that they need to take all the emotional aspects out of this. She further stated the role of this Board is to determine whether this request meets the variance criteria. She further stated that even if the applicant had come to the Board for a variance before construction, the request would not have been approved. She commented there were a lot of apparent missteps that have absolutely nothing to do with what this Board is empowered to do by State Statutes.

Board Member Johnson stated that he would echo Chair Kile and Board Member Ozer's comments. He further stated there are six criteria that the Board has to follow and he does not see where any six of the criteria has been met. He noted that we have an un-permitted structure and un-inspected structure that was built. He further noted that there are inspections that are required by this Town for safety of the residents living in the structure. He remarked that there was a phone call made to the Town after the first stop work order. He further remarked that he cannot support the variance.

Board Member Wainwright stated that he felt these were good faith mistakes and there are hardships. He further stated that he would have been inclined to grant the variance even if the structure had not been built. He commented that he did not feel the six criteria

are an exact science. He further commented that he felt what is being proposed is far superior to what could have been built.

Chair Kile stated that she is not opposed to the variance as punishment for not having received prior inspections and not doing things the way they are typically done, she just feels the request does not meet the criteria for this particular lot.

Board Member Ozer stated that it is nowhere written that all homes should have a larger closet on the master bedroom and placed where the homeowners want it. She shared her personal experience of not being able to build a larger closet addition to her home where she wanted it because it would not fit within the rules. She reiterated that we need to take the emotional elements out of this and look at the legal role the Board is charged with. She further reiterated that she does not see in this case a variance should be granted. Chair Kile called for the vote.

The motion failed by a vote of four (4) to three (3) with Chair Kile, Board Member Ozer, Board Member Johnson and Board Member Kaufman dissenting.

Board Member Johnson moved the Board denial of Case No. BA-10-1, a request by Bonsal and Alexis Glascock, property owners of 7016 East Hummingbird Lane; for a variance from the Zoning Ordinance, Article X, Height and Area Regulations, to allow an addition to the primary residence to encroach into the side yard setback. Seconded by Board Member Kauffman.

Board Member Wainwright stated that the six variance criteria are not an exact science.

Chair Kile stated that she appreciates the comments that have been made but because much of the community is not here when the Board has voted on other variance requests, where there are real hardships such as a wash running through the middle of the property or odd shaped lots with no other way to configure it. She further stated that it is a shame this happened because the applicants are wonderful people in the community but this does not meet the six variance criteria.

Board Member Wainwright stated clearly there are other options but most of the other options would be a lot harder on the neighborhood. He further stated that this is a very modest proposal.

Board Member Hagenah stated that he would like to echo Board Member Wainwright's comments. He further stated that he was ready to vote for denial but changed his mind. He added there are times you need to look at things in a more sensible manner.

Chair Kile called for the vote.

The motion passed by a vote of four (4) to three (3) with Board Member Wainwright, Board Member O'Dell Kiel and Board Member Hagenah dissenting.

MINUTES APPROVAL

September 2, 2009 meeting minutes

Chair Kile stated that she has provided staff with the minor typographical errors to the minutes.

Board Member Wainwright moved to approve the meeting minutes of September 2, 2009 as amended. Second by Board Member O'Dell Kiel.

The motion passed unanimously by a vote of seven (7) to zero (0).

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 7:30 PM.



Eva Cutro, Secretary