

**TOWN OF PARADISE VALLEY
BOARD OF ADJUSTMENT
JUNE 2, 2010
MINUTES**

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

ABSENT: O'Dell Kiel, 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 Ozer at 5:30 p.m.

WORK/STUDY DISCUSSION ITEMS

Discussion of an appeal of the decision of the Planning and Building Director filed by Jonathan & Rachel Hoffer, appealing Section 1002 of the Town's Zoning Ordinance which designates the front yard for a property.

Chair Ozer stated that this is not a variance hearing or variance procedure. The appeal criteria are different from the variance criteria. She further stated the Board will be briefed on the appeal criteria during executive session.

Board Member Hagenah inquired why the Hoffer's did not apply for a variance. Ms. Cutro replied when staff met with the Hoffer's they were given both options and chose to apply for an appeal rather than a variance.

Mr. Burton presented this case as per the project coordination packet. He stated we are going to discuss an appeal of the Planning and Building Director's decision regarding a denial of the request to change the front yard designation for the property located at 5829 Caballo Lane. The subject property is located on the southeast corner of 58th Place and Caballo Lane.

Mr. Burton provided background regarding this application. In December 2007 staff received an inquiry regarding the front yard designation requirements and process from

the previous owner. On February 15, 2010, the request was denied due to lack of compliance with Section 1002 of the Town Zoning Ordinance. April 9, 2010, another application was submitted with a more detailed site plan asking for a change in front yard designation from Caballo Lane to 58th Place. April 30, 2010, the Planning and Building Director made the determination that the request did not meet the zoning criteria to change the front yard designation. May 3, 2010, the applicant was formally notified of staff's determination. As a result, the applicant submitted an application to appeal that decision.

Board Member Kile inquired within the materials there is a statement about the current owners of the property stating that they were told by the prior owner that there has been approval; however, in December 2007 it says staff received an inquiry and asked if there is any documentation about that. Mr. Burton stated that there is a note in the file.

Mr. Burton stated the request is to appeal the Planning and Building Director's decision regarding an interpretation of Section 1002 of the Town Zoning Ordinance; which determines designations for residentially zoned properties. The appeal is to allow the front yard designation to be changed from Caballo Lane to 58th Place. The house has access on 58th Place and also Caballo Lane. It is noted there is a drainage easement that abuts the property that is a dedicated wash and a separate parcel.

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

Board Member Johnson inquired if the house has two fronts. Mr. Burton replied the applicant has access to both streets.

Chair Ozer stated one of the things that she would like to clarify what we are dealing with tonight is strictly whether they can change the frontage from the Caballo Lane to the 58th Place and orient the house accordingly.

Mr. Burton explained the existing home on subject property was demolished, creating a vacant lot. Therefore, staff's determination to deny the request for a change in front yard designation was based upon section 1002.B of the Town Zoning Ordinance: For a vacant lot with double or multiple frontage, if not already designated, shall be determined based upon the following three criteria:

1. The primary frontage as depicted on the recorded subdivision plat; or where the primary frontage is not shown on the subdivision plat, as is consistent with and in harmony with the original subdivision design.
2. The arrangement and location of the primary frontage is consistent with and in harmony with the established character of the adjacent properties.
3. The primary frontage should be on the street that is a lower level in the Town's Street Classification System.

Mr. Burton explained the request was denied due to lack of compliance with criteria 1 and criteria 2. Criteria 3 is not relevant because Caballo Lane and 58th Place have the same classification as local streets. The current frontage of the property is consistent with the original subdivision design and established character of the adjacent properties. All of the adjoining properties along Caballo Lane Lots 4, 5, 6, and 7 have established frontages in which the front doors and driveways face Caballo Lane. Lot 13, which is directly across the street from the subject property, is also fronting on Caballo Lane even though the home is angled towards the corner of 58th Place and Caballo Lane.

Mr. Burton reported staff received comments from eleven neighboring property owners and resident regarding the appeal request. Nine of the eleven residents' comments were provided by the applicant. Four neighboring property owners are opposed to the change in frontage, six neighbors stated they support the request, and one resident outside the 600 foot designation support the request. Staff also received inquires from two neighbors regarding fence wall and tennis court regulations for the subject lot.

EXECUTIVE SESSION: The Board of Adjustment may convene into an executive session at one or more times during the meeting as needed to confer with the Town Attorney for legal advice regarding any of the items listed on the agenda as authorized by A.R.S. §38-431.03.A.3.

The Board moved into executive session.

PUBLIC HEARING

Consideration of an appeal of the decision of the Planning and Building Director filed by Jonathan & Rachel Hoffer, appealing Section 1002 of the Town's Zoning Ordinance which designates the front yard for a property. The appeal is to allow the front yard designation to be changed from Caballo Lane to 58th Place. The property is located at 5829 E. Caballo Lane.

Chair Ozer called the public hearing to order at 6:30 p.m.

Chair Ozer reviewed step by step how they are going to proceed tonight so everyone has a clear understanding of how these procedures work. She explained that anyone wishing to speak must be sworn in.

Mr. Burton presented this case as per the project coordination packet. He reviewed the appeal criteria.

Chair Ozer requested all of those who wished to speak during this proceeding to rise and raise your right hand to be sworn in.

(The people in the audience wishing to speak were sworn in.)

Board Member Hagenah disclosed the he received a phone call from a friend who wanted to discuss this case and he told him that he could only discuss the case in a public forum and suggested he write a letter which he did and is included in the material.

Jonathan Hoffer, 210 West Glenn Drive in Phoenix is our current address. He stated that he wanted to briefly thank the Board tonight for their time and introduced himself and his wife. They have three young children and this is the first home they will be building. It will be their family dream home. They are not developers. They wanted to clarify that this is not a spec home.

He provided information on the significant time and effort that has gone into this process. He also provided information on how they have addressed the neighbors concerns. He discussed what they are trying to accomplish by changing the frontage yard designation from Caballo Lane to 58th Place.

Mr. Jorden stated that this is not a variance it is an appeal and there is criteria that the Board will apply in terms of making their decision this evening. He provided information on the justification for the Board to grant this request. He also provided information on how they have addressed the neighbors concerns.

Mr. Jorden stated if 58th Place is designated as the front yard the Hoffers will: Build a home that under the Zoning Ordinance has an arrangement and location consistent and in harmony with the neighborhood for both 58th Place and Caballo Lane. They will ensure that both 58th Place and Caballo Lane will have a consistent and visually pleasing entrance. They will commit to not have a long tall wall along Caballo Lane. They will create a home that will add value to both streets and have no negative impact on the neighborhood, while at the same time allowing them reasonable use of their property consistent with the neighborhood.

Chair Ozer opened public comment.

Mel Bottner, 5746 East Caballo, stated he has resided at 5746 E. Caballo since 1984. He further stated that he is not going to address any of the variance because he is not knowledgeable in that area. He commented what he does know are that my neighbors up and down the street have been wonderful neighbors. He further commented that the Hoffer's have been a part of this community for a significant number of years and as a neighbor and as a couple and individuals in the community they have been very charitable. They have helped a great deal in building their community in Phoenix and hopefully will do the same in this particular area. He added that he believes based on their character they will make wonderful neighbors. And everyone should be very lucky to think that the Hoffer's will be a part of this area to raise their children for years to come.

Steven Schwartz, 5048 E Caballo Drive, stated that he is not within the 600 foot area, we live about a mile and a half or so away but we do come to this area quite often. He further stated that he would like to second what Mel just mentioned. He commented that we have known the Hoffers for years and they are wonderful people that will be great neighbors to anybody is fortunate to have them. He further commented that he knows the kind of passion and time and money that they have put into building their dream house for their family.

He noted that he feels more educated after being here tonight and hearing what a positive impact this change would aesthetically do to the home and the minor impact on the neighbors around it. So he feels very much in support of what they are trying to do.

Chair Ozer stated there are six opposed and three people who wish to speak in opposition.

Chip Gerber, 5923 West Caballo Lane, stated that their house backs up to the wash. He further stated when we built our home one of the issues was the 40 foot setback to the wash and they built their guesthouse 40 feet from the wash. He noted that since we have lived there when you do get monsoon rains we have had flooding in our yard and if our house would have been in the 20 foot setback it would have flooded. He further noted he is sure there was a reason why the town put setback at 40 feet. The Cherokee wash is a major wash and when you get rain, especially when there are a couple days of rain, the wash fills up pretty dramatically.

He remarked that we built our house within the requirements. He further remarked he thought if you look at the aesthetic value of having the house face Caballo Lane that is important when you turn onto that street. He noted they have done a great job working with their architect but again since he lives on the street and he shares the same with other neighbors that actually live on Caballo Lane that are in opposition we all fell the same way. We still think it changes the character of the street. We feel strongly about that.

Stacy Gerber stated that Chip Gerber is her husband. She provided information regarding how she got involved in this process. She also provided information on the misleading information that has been provided to the neighbors. She noted that she does not know why they want to change it. Our street is what it is. We are all in agreement. There are more than four people that oppose it. Some of them don't have email addresses but all are here.

Hilary Brothers stated that she lives across the street from the Gerber's. She further stated she believes that she was in the paper as the most expensive home purchased in Paradise Valley. She further remarked when she purchased her home for 5 million dollars all the homes were facing along Caballo Lane, so she was assuming that when their house was built, they would drive down a street with all the homes facing Caballo

Lane. Mainly because the lot is so long, along Caballo Lane, that it made sense that the house was going to face Caballo. She commented that she is not against much of what they are doing at all. She just would really prefer that the house face Caballo Lane and her husband supports that too. She added that she is sure whatever house they end up building it's going to be beautiful. She concluded that she is adamant that it should face Caballo Lane.

Christine Cole, 8551 N. 58th Place, stated that she is directly opposite the property on the other side of the wash. She further stated that one of the main concerns to what Mr. Gerber said about the flooding is that her side of the wash is about three feet higher than the other side of the wash and you can actually see where the wash starts to deteriorate on that side; so to move things in 20 feet in towards the wash would cause concerns about the flooding and the impact on the actual wash itself.

Mr. Jorden stated the house elevation on Caballo is the same regardless of whether this is approved or not and you have seen the elevations and it's beautiful. He further stated that he has in his file here a survey that was handed to us by Russ Mason's engineer that showed two 20 foot setbacks.

Board Member Kauffman inquired if Mr. Jorden would agree that if the front was on 58th Place, that whoever owned the property could put a six foot wall on Caballo for the length of Caballo. Mr. Jorden replied that is what the Town Ordinance allows but that is not their intent and that can be addressed through a stipulation or a deed restriction. They are willing to do whatever is necessary to give the Board and the neighbors' comfort that is simply not going to happen. Discussion ensued regarding the possibility of placing a deed restriction or stipulation to address this issue.

Board Member Wainwright inquired if this were a virgin plat would there be anything about this lot that would discourage you from having 58th Place be the front yard. Ms. Cutro replied the Town has a circle rule where you have a 165 diameter circle that has to touch the front yard setback. We didn't test that on this lot but assuming that it met that requirement on either side, there would be no preference.

In response to a question from Board Member Wainwright, Ms. Cutro explained when she made her interpretation, she looked at the entire subdivision plat of equestrian trails. Ms. Cutro stated she paid particular attention to the lots that were directly adjacent to this property and looked at the whole area. She looked at how other corner lots fronted. She looked at the entire subdivision plat.

Board Member Kile moved for denial of Appeal Case No. BA-10-2. Seconded by Board Member Johnson.

Board Member Kile stated this isn't a popularity contest and she is sure that the Hoffer's are wonderful people. This looks like a beautiful home. She further stated this isn't a

variance request where there is a lot of wiggle room to try and figure out what works on the lot and what doesn't work on the lot. This is an appeal where we have basically two criteria and those are whether it is consistent with and in harmony with the original subdivision and with the established character. There are six homes that face Caballo lane. If the decision were made to change one of these homes so that it fronts on 58th Place that's a decision of all eternity and Caballo becomes a side yard with five neighbors that are no longer part of its neighborhood.

She stated the house that keeps being discussed across the street is an old ranch house that is for sale. It is true that it is at an angle. She further stated it is her guess it's not going to stay standing at all in that position or look like what it looks like right now since most of the other homes in that neighborhood have turned over and those other four homes still face Caballo. She further stated it's a beautiful neighborhood. She spent a lot of time over there. She walked the wash. She walked the neighborhood twice. She road her car through there three times. She agrees wholeheartedly that this does not meet or help or in anyway is in harmony with the established character of this neighborhood.

She remarked, in addition, that it seems to her from what Mr. Jordon said that the owner can still have the home they want.

She noted again it isn't a variance request. So that is my reason for making the motion for denial of the appeal.

Board Member Wainwright stated that he completely agrees with her although he comes to a different conclusion. It absolutely it's not a popularity contest. And if you look at the harmony of the subdivision it's a tough call. He thinks if you look at houses that are on 58th Place, most are rectangular lots in this subdivision. As he drove around, the front yard was on the small part that faces the street. So while he completely agree with her analysis, he has come to a different conclusion that is based on being a fairly rectangular street and based on the fact it is on 58th and most homes on 58th actually have a front yard there. He completely agrees with her analysis but would disagree with the motion at this point and would be in favor of granting it.

Chair Ozer stated having driven it and walked it and looked at it from various perspectives, as well as other homes that have a front yard facing the street and because of the setbacks and the shrubbery it is not objectionable. She does not have an objection to changing the frontage to 58th Place.

Board Member Hagenah stated he is not going to support the current motion that is in front of us.

Chair Ozer stated that she does not think they are going to put up a six foot block wall but she would like to know what the neighbors across the street are going to be looking at. Mr. Hoffer provided information on the wall that is planned along Caballo.

Board Member Kile stated that again that you need to look at this as an empty lot, rather than a house we like. It doesn't matter what the house looks like and it doesn't matter what they say is going to happen today. The question when looking at this lot is if it is in harmony with the neighborhood. And since 1961 or whenever the house was built, and was then knocked down, has always had a frontage that faces Caballo rather than a frontage that faces 58th Place.

She stated she hopes that as you make your decisions and vote that you remember that we are not approving their house. We are not approving their tennis court. We are not approving walls. We are not approving the vegetation. We are not approving the setbacks. We are saying, in looking at the lot, does it fit within the character of that community as to where the front should be versus where the side should be. And that is what she has tried to take into consideration. She doesn't think it makes any sense for the front of that property to be 58th Place especially when for the last 50 years it has always been Caballo Lane.

She stated that if you have a concern about the wall on Caballo that says to me that you do not believe this is in character with the neighborhood. We go by what the criteria is and if you feel uncomfortable with a six foot wall on Caballo Lane, she doesn't know how you could decide any other way but to say it would be the front where you can't have a six foot wall.

Chair Ozer called for the vote: The motion tied by a vote of three (3) to three (3) with Board Members Hagenah, Wainwright and Chair Ozer dissenting.

Board Member Wainwright stated that it appears that we have three to three deadlock here. Again he completely agrees with Emily that we have to figure out what's in harmony with the neighborhood. Her point was well taken that since the year I was born in 1964 the orientation has been there. Of course, there is not a house there. Times have changed. A large percentage of the neighborhood has been redeveloped and as a result orientations can change. He doesn't believe in leaving a hung jury and he can make exactly the opposite motion but he assumes the vote will be three to three.

Board Member Kauffman commented if we designate this frontage it is forever. So regardless of who lives there in 20 or 30 years, if we designate 58th or Caballo that is the end. Mr. Burton replied that is correct, it runs with the land.

Board Member Kile stated this all seems that the only reason the request is being made is not because there is a preference to have all of their neighborhood, all of their friends and family come in off of 58th Place; rather it's because the addition that is in yellow would have to turn into a breezeway and separate ancillary buildings and the hope is to not have to do that. Had that not been the issue she doesn't think we would be here.

Board Member Kile stated this is the house that they bought that fronts on Caballo Lane with five other homes that front on Caballo Lane. And she can't support the granting of the appeal under any circumstances. It just doesn't make any sense to her.

Mr. Miller provided information on the Board's options when there is a tie vote.

Board Member Kile re-urged the motion to deny Appeal Case No. BA-10-2. Seconded by Board Member Johnson. The motion tied by a vote of three (3) to three (3) with Board Members Hagenah, Wainwright and Chair Ozer dissenting.

Board Member Hagenah moved to grant Appeal Case No. BA-10-2 with a condition that a deed restriction is in place that the fence along Caballo Lane will meet the front yard requirement for fence walls, with the exception of the wall around the tennis court. Seconded by Board Member Wainwright.

Board Member Kile stated the fact that that you want to put a stipulation or deed restriction to make sure that Caballo Lane meets all the requirements of a front yard says to her it's a front yard and your concerned it will change the character of the neighborhood.

She stated the criteria says it has to be consistent and in harmony with the original plan and the current character and you want it to look like a front yard then make it the front yard and we don't have to do anything. That is the whole point.

She stated it's not my house. She doesn't live in the neighborhood but she feels like we have rules for a reason we have guidance for a reason and if you want it to look like a front yard then leave it alone and let it be the front yard.

Board Member Johnson stated he seconds Board Member Kile's comments, to him the consistency of the neighborhood and the harmony of the neighborhood is having the front of the house remain where it has been for 50 years.

He remarked that he believes the appellant would be able to construct a beautiful, wonderful house with the front being on Caballo and have the tennis court.

He commented the deed restriction comments make perfect sense, it's just that we are not talking about varying setbacks or anything, we are talking about what is consistent and in harmony and exactly as she explained before. I agree with her one hundred and ten percent.

Chair Ozer called for the vote. The motion tied by a vote of three (3) to three (3) with Board Members Johnson, Kauffman and Kile dissenting.

Board Member Kile moved to deny Appeal Case No. BA-10-2. Seconded by Board Member Johnson.

Board Member Wainwright stated I think your point is very well taken that if it's a front yard it ought to be the front yard. What Phil's motion and stipulation did is it in affect made it an unusually restrictive front yard. If you go back to the original premise and look at this plat from the air and initially determine the logical spot to have the front yard, he would hate the change be all of a sudden in which we allow the tennis court to interfere with it when it shouldn't be part of it. Since the appellant is happy with having their side yard more restrictive than most, he sees that is an opportunity which doesn't change the fact that most houses front 58th and that the small portion of the rectangle is usually where the front yard is.

Board Member Hagenah stated that he agrees with Jonathan.

Chair Ozer called for the vote: The motion tied by a vote of three (3) to three (3) with Board Members Hagenah, Wainwright and Chair Ozer dissenting.

Chair Ozer stated that they will have to wait until there is a full Board because they need one person to break the tie. Discussion ensued regarding possible dates to continue this matter to. The consensus of the Board was to have staff contact the missing Board member and try to find out a date that works for everyone. Mr. Miller suggested the Board make a motion to a date uncertain and have staff re-advertise and re-post.

Chair Ozer moved to continue Appeal No. BA-10-2 to a date uncertain. Seconded by Board Member Wainwright and passed unanimously.

In response to a question from Board Member Wainwright, Mr. Miller provided information on the procedure the Board should follow regarding emails and contact regarding this case.

MINUTES APPROVAL

April 7, 2010 Work Session and Regular Meeting

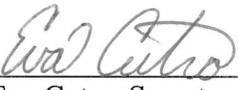
Chair Ozer and Board Member Kile provided staff with written corrections to the minutes.

Board Member Hagenah moved to approve the Study Session and regular meeting minutes of April 7, 2010 as amended. Second by Board Member Wainwright.

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

ADJOURNMENT

Board Member Kile moved to adjourn the meeting at 8:15 p.m. Second by Board Member Wainwright. The motion passed unanimously.



Eva Cutro, Secretary