

**TOWN OF PARADISE VALLEY
BOARD OF ADJUSTMENT
MARCH 2, 2011
MINUTES**

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

STAFF: Eva Cutro, Planning Director
George Burton, Planner
Bill Mead, Town Engineer
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 Chair Ozer at 5:00 p.m.

Chair Ozer introduced and welcomed Robert Nagle to the Board.

WORK/STUDY DISCUSSION ITEMS

Discussion of a variance from the Zoning Ordinance, Article X, Height and Area Regulations, to allow additions to the primary residence to encroach into the setback and article XXIII, Nonconformance, to allow an increase in height to non-conforming portions of the house. The property is located at 7002 N. 40th Street.

Mr. Burton presented this case as per the project coordination packet. The applicant requests a variance from Article X, Height, Section 1001, to allow a garage and patio addition to the main house to encroach into the front yard setback. The applicant also requests a variance from Article XXIII, Section 2307, to raise the height of the non-conforming guest room/laundry room area of the house. Section 1001 requires additions to meet a 40 foot front yard setback and Section 2307 prohibits an increase in height for any non-conforming portion of the house.

Mr. Burton stated the applicant is proposing to convert part of the existing two car garage into livable space and add a new three car garage. One bay of the existing garage will be converted into a new gym room and the other bay will be attached to the new addition to create a three car garage. The proposed garage addition is 13 feet 8 inches tall and is

setback 24 feet 11 inches from the front property line. The remodeled area will also be raised in height to 13 feet 8 inches in order to match the height of the new garage addition.

Mr. Burton also stated the applicant is proposing to add a covered patio in front of the existing exercise room. The patio addition is approximately 10 feet 5 inches tall and is setback 37 feet 3 inches from the property line.

Mr. Burton reported the property is zoned R-43 Hillside and is approximately 41,640 square feet in size (0.96 acres). The lot has a curvilinear frontage and has a steep topography. The existing garage/guest room area of the house is legal non-conforming and encroaches into the front yard setback. The existing garage/guest room area is setback approximately 27 feet from the front property line and is 10 foot 4 inches tall.

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

Mr. Burton explained staff cannot support the request based upon the criteria of the Arizona Revised Statutes and recommends denial.

Mr. Burton reported staff received one inquiry and one letter of opposition from the neighboring property owners.

Board Member Kile inquired if the variance were to be approved would there be adequate room for emergency vehicles to get in and out of the driveway. Mr. Mead replied in the affirmative. He provided information on the minimum width needed for a fire truck.

In response to a question from Board Member Kile, Mr. Miller explained that all variance requests come before the Board of Adjustment and then the plan will go before the Hillside Committee for approval. He further explained that even if the Board approves the variance the Hillside Committee can still deny the requested plan.

Board member Johnson inquired if the Town has any plans to widen 40th Street. Mr. Mead replied in the negative.

Board Member Johnson disclosed that his partner does business with Mr. Gilbert's law firm but he is not involved with the firm. He stated that he feels he can be objective.

PUBLIC HEARING

Consideration of a variance from the Zoning Ordinance, Article X, Height and Area Regulations, to allow additions to the primary residence to encroach into the setback and article XXIII, Nonconformance, to allow an increase in height to non-conforming portions of the house. The property is located at 7002 N. 40th Street.

Chair Ozer reviewed the meeting procedures.

Mr. Burton presented this case as per the project coordination packet. Staff recommends a motion to deny the 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.

Paul Gilbert, representing the applicant, provided an over view of the variance request. He also provided historical background information on the lot. He explained that the lot is situated at a point where 40th Street curves to the east, resulting in a curvilinear front lot line for the applicant's property. There are no other homes to the north, south, and west, and the northwest lot is extremely steep rising from east to west. The home actually sits on a "bench" that was carved from the hillside and is substantially higher than 40th Street.

Mr. Gilbert stated the combination of steep topography and curvilinear front yard, along with the fact that the lot is relatively long and narrow to begin with, make development within the setback lines impossible without either a variance or substantial disturbance of the hillside. In fact, portions of the existing home encroach into the front yard setback. The existing home was built at an angle to the northeast, not directly parallel to the orientation of the lot. This angle of construction was chosen because of the extreme topography of the lot and the need to provide enough room to allow vehicle turning movements. He further stated that a significantly greater amount of hillside would have had to been cutout, or will have to be cut, in order to fit within the building envelope.

Mr. Gilbert reviewed the hardships on this site. He also reviewed why the special circumstances are not self imposed. He discussed why the variance is in harmony with the intent of the Town Code. He stated the variance will not be a special privilege.

Board Member Nagle inquired if the applicant is planning on screening with landscaping. Mr. Gilbert replied in the affirmative. He noted it will not be visible from the street.

Chair Ozer opened public comment.

Anne Madigan stated the reason she came to this meeting is because her neighbor to the south rebuilt his house after it was struck by lightening and she did not come to this meeting to find anything out and they lost a lot of their views. So she decided that she had better come to this meeting and be a little more involved. She further stated that this request will probably not affect her as long as they are not proposing any hillside disturbance.

Chair Ozer stated as a point of information her neighbor did not come before this Board. Ms. Cutro noted they probably went before the Hillside Committee.

Jack Malcate stated they live one house north of the applicants. He further stated that despite knowing his neighbors for the past four years and has had them over to their house a number of times, he had no clue about the proposed renovations until just recently. He expressed his concern on the possible impacts the renovations will have on his views to the southeast and their view of Camelback Mountain.

Board Member Kile stated that she understands the neighbors concerns and they try to be sensitive to that issue.

Closed public Comment.

Board Member Kile stated that had this been a flat piece of land she would have said that there would be other options where things could go but the idea of pulling down part of the mountain for a garage is distasteful. She added it is frustrating to think we have to choose the lesser of two evils because she is not sure this variance request meets all the variance criteria.

Board Member Johnson stated that he would tend to be more in favor of this request if the height would remain the same.

Board Member Wainwright stated that this is a tough lot not just because of the topography but also because of the building sweet spot and the lack of depth to the lot. He further stated he would suggest postponing the vote until the applicant can come up with a plan that might be acceptable to the neighbors. He noted that he is not sure the neighbors understand the plan.

Chair Ozer stated that she visited the house and did not see how it would impact the neighbors' views.

Board Member Hagenah moved for approval of Case No. BA-11-1, a request by Mary and Woody Harrah, property owners of 7002 North 40th Street; for a variance from the Zoning Ordinance, Article X, Height and Area Regulations, to allow a garage and patio addition to encroach into the front yard setback and Article XXIII, Nonconformance, to allow an increase in height to an existing non-conforming portion of the house.

Board Member Hagenah stated he finds there are special circumstances, applicable to only the subject lot, meeting the variance criteria. He further stated that he would be willing to amend the motion to add a stipulation regarding the height.

Mr. Burton stated the existing height is 10 foot 4 inches.

Board Member Hagenah amended the motion to add a stipulation that the non-conforming portion of the house shall not be raised in height and the garage addition shall not exceed a height of 10 foot 4 inches tall.

Seconded by Board Member Johnson.

Board Member Nagle inquired if the motion should be amended to include landscape screening on the new portion of the building setback. Discussion was held. It was determined that landscaping was more appropriate for the Hillside Committee to address.

Chair Ozer requested staff read back the motion as amended.

Mr. Burton read the motion as follows:

Approval of variance request to allow a garage and patio addition to encroach into the front yard setback, subject to the following stipulations:

1. The non-conforming portion of the house shall not be raised in height,
2. The garage addition shall not exceed a height of 10 foot 4 inches tall, and
3. A landscape plan adjoining the garage addition shall be submitted to the Hillside Committee for review.

The motion passed by a vote of four to three with Board Members Kaufmann, Kile and Chair Ozer dissenting.

ELECTION OF CHAIR

Board Member Kile nominated Hope Ozer to serve as chair of the Board of Adjustment. Seconded by Board Member Kauffman. The Board unanimously elected Hope Ozer to serve a second term as chair of the Board of Adjustment.

CONSENT AGENDA

Minutes of the September 1, 2010 Board of Adjustment Meeting

Board Member Johnson requested a correction to the September 1, 2010 minutes on Page 2, paragraph under Public Hearing fourth paragraph; last sentence should be changed to read: "He further commented that in a small town Board members often know the applicant."

Board Member Wainwright moved to approve the consent agenda as amended. Second by Board Member Kile.

The motion passed unanimously by a vote of six (6) to zero (0) with Board Member Nagle abstaining.

FUTURE AGENDA ITEMS

Ms. Cutro reported there is an upcoming agenda item scheduled for April 6, 2011, a request for a variance from the Zoning Ordinance for walls and fences to allow a fence wall to encroach into the setback.

ADJOURNMENT

The meeting adjourned at 6:50 p.m.



Eva Cutro, Secretary