

**TOWN OF PARADISE VALLEY  
BOARD OF ADJUSTMENT  
DECEMBER 3, 2008  
MINUTES**

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

**ABSENT:** O'Dell Kiel, Board Member  
Hope Ozer, 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**

**Consideration of a variance from the Zoning Ordinance, Article XXIV, Walls and Fences, to allow a fence wall to encroach into the setback and height limitations, located at 5247 N. Invergordon Rd.**

Chair Kile reviewed the meeting procedures.

Mr. Burton presented this case as per the project coordination packet. He stated the subject property is Lot 80 of the Camelback Lands subdivision, platted in 1945 and annexed into the town in 1961. The applicant purchased the lot in July 2006. The original house was demolished and a new residence was constructed in July 2007. The subject wall was built without a permit. The following is a chronological list of events:

- A stop work order/notice of violation was issued on March 17, 2008 when the Town's building inspector detected the unauthorized construction.
- The contractor applied for a building permit on April 4, 2008.
- The permit BD08-34640 was approved and issued on April 14, 2008 (as the plans showed the wall meeting all setback and height requirements).
- The building permit failed inspections on April 17, 2008 and again on May 21, 2008 due to encroachment into the front yard setback and the height limitation.

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. A discussion ensued regarding the fact that the wall was built incorrectly and in the wrong place.

In response to a question from Board Member Kauffman, Mr. Burton replied that the architect's signature certifies that the plan is compliant.

Board Member Johnson moved to adjourn the work study session. Seconded by Board Member Wainwright. The motion passed unanimously.

The regular meeting of the Town of Paradise Valley Board of Adjustment was called to order.

**PUBLIC HEARING: Consideration of a variance from the Zoning Ordinance, Article XXIV, Walls and Fences, to allow a fence wall to encroach into the setback and height limitations, located at 5247 N. Invergordon Rd.**

Chair Kile reported that nobody new has come in so there is not a need for the staff report.

Noel Griemsmann, Snell & Wilmer, representing the applicant, thanked staff for their assistance and added it has been a pleasure working with the Town. He provided an overview of the request. He discussed the design limitations that relate to this site which include noise, glare, drainage requirements, traffic and circulation/roadway safety. He further discussed how this request meets the variance criteria. He explained that the design limitations result in the design for the home that was approved by the Town. He further explained that even if the site were a "blank slate", the layout of the home, the driveway, site drainage and other features would remain as shown due to the need to respond to the constraints while programming a functional residential dwelling for the property owner. He stated that simply narrowing a driveway or repositioning the house is not viable options, even if the home had not yet been constructed. He concluded that variance relief is the only reasonable solution to address all of the multiple factors impacting the site.

Chair Kile commented that she did not understand how this meets all of the variance criteria. She further commented that she understood the need for a circular driveway on Invergordon but did not understand why the wall could not be removed. Mr. Burton replied that staff believes there are other alternatives to build a wall within the required setbacks.

Mr. Griemsmann responded to questions and comments from the Board members regarding the proposed variance. A discussion ensued regarding the Board members struggle to understand some of the statements and arguments made by the applicant's representative.

Bob Bates introduced himself stating he is an attorney with Snell and Wilmer and the applicants are his clients and that is why he is here.

Board Member Johnson moved for denial of Case No. BA-08-03, a request by Jeffrey Morgan, property owner of 5247 North Invergordon Road; for a variance from the Zoning Ordinance, Article XXIV, Walls and fences, to allow a fence wall to encroach into the front yard setback and corresponding height limitations.

Board Member Johnson stated he finds the variance requested does not meet the variance criteria.

Seconded by Board Member Hagenah.

Chair Kile stated that she finds the variance requested does not meet the variance criteria. She further stated that it is a shame that somebody made an error. She remarked given the size of the property and the opportunities that existed to do something different, and opportunities that currently exist to do something else with the property, she does not believe the request meets all of the criteria which are required to approve a variance.

Board Member Hagenah stated that he would echo Chair Kile sentiments because there are plenty of other ways to solve this situation.

Board Member Johnson stated that the applicant did a valiant job trying to convince the Board this variance was needed.

Chair Kile called for the vote. The motion passed unanimously by a vote of five (5) to zero (0).

## **MINUTES APPROVAL**

### **October 1, 2008 meeting minutes**

Board Member Wainwright moved to approve the meeting minutes of October 1, 2008 as presented. Second by Board Member Kauffman.

The motion passed unanimously by a vote of five (5) to zero (0).

## **BOARD/STAFF REPORTS**

### **Election of Chair-Designate**

Board Member Wainwright moved Emily Kile to serve as Chair of the Board of Adjustment for another one-year term. Seconded by Board Member Hagenah.

The motion passed unanimously by a vote of five (5) to zero (0).

### **Future Agenda Items**

Mr. Burton provided a brief overview of the two future variance requests. The next meeting will most likely be held in February.

### **Permit Documentation**

Mr. Burton reported that staff met to discuss the permit documentation process and it was determined that the applicant will be required to provide their contact information at submittal of permit revision and that the name of the person picking up the revision will be noted in a sign-out log.

Board Member Hagenah stated that the Board packet includes a lot of pages that are not necessary and he would request to save on paper that they are not included.

### **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**

Board Member Hagenah moved to adjourn the meeting at 6:30 p.m. Second by Board Member Johnson. The motion passed unanimously.

  
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Eva Cutro, Secretary