

**TOWN OF PARADISE VALLEY
BOARD OF ADJUSTMENT
JUNE 4, 2008
MINUTES**

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

STAFF: George Burton, Planner
Steven Zraick, Assistant Town Attorney
Bob Lee, Building Safety Manager

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 for non-conforming walls to remain at their current location and heights, located at 5012 E Mockingbird Ln.

Mr. Burton provided an overview of the case. He reported this is a request by the applicant for a variance from Article XXIV, Section 2404 and 2415, to maintain existing non-conforming walls at their current location and height. Section 2415 states any wall that is non-conforming due to its height or location within a required setback area shall be made to conform to the current zoning requirements when a permit is issued for a new house or when permits are issued for structural additions, remodels, alternations or repairs of more than 50 percent of the original square footage of the main house. Since the applicant is in the process of constructing a new home, the non-conforming walls have to be demolished and set back further away from the property lines. Section 2404 requires fence walls in a side yard along a right-of-way to be set back 20 feet for solid straight walls, 15 feet for solid meandering walls and 10 feet for view fences. Walls in the front yard require a 10 foot setback for 3 foot high walls and a 40 foot setback for 6 foot walls.

Mr. Burton explained that the applicant purchased the lot in May 2006, the applicant was issued a demolition permit for a partial demolition of the existing home. The final demolition inspection was approved on October 18, 2006. However, shortly after that time, the inspector noticed the remaining portion of the house had also been demolished.

The inspector notified the contractor the non-conforming walls on site must be brought into compliance with current zoning requirements.

Mr. Burton reported the applicant obtained a building permit for a remodel/addition to the house in December 2006. However, the remodel/addition permit was reclassified as a new single family residence in May 2007 because the entire house was demolished. After several discussions with Mr. Kearns and the contractor, Building Safety Manager, Bob Lee, informed the applicant the non-conforming walls must be removed prior to issuance of the Certificate of Occupancy for the new home.

Mr. Burton stated that staff received one inquiry from a neighbor notified during the hearing process. No comment was given. He further stated that staff has received nine letters of support.

Mr. Burton reported that staff is recommending denial.

Mr. Burton and Mr. Lee responded to questions and comments from the Board Members regarding the proposed variance.

In response to a question from Chair Kile, Mr. Burton stated that section of the house that was rebuilt basically follows the same footprint of the house.

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

The regular meeting of the Town of Paradise Valley Board of Adjustment was called to order at approximately 5:50 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.

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

Mr. Burton responded to questions regarding the timeline regarding when the permits were issued and the demolition took place. Mr. Lee provided information on how far along the construction was when the applicant learned they would need to move the walls.

Board Member Ozer inquired why there was not a stop work order issued. Mr. Lee replied that all of the conversations with the applicant were amicable and they had agreed the fences were not in compliance and agreed to take them down.

Stephen Tully, 4533 E. Desert Cover, Phoenix, AZ, reported that the applicants purchased the home with the intent to remodel it. The renovations of the home have been approved by the Town. The entire remodel was not designed to exceed 50 percent of the main house. After the two sections of the home that were to be remodeled were reconstructed and ready to be tied into the main home, it was discovered that the existing framing in the middle section of the house was damaged and needed to be replaced. During the process of replacing the middle section, the Kearns were informed by the Town that the walls would need to be brought into compliance. He further reported that the Kearns disagree with the Town's assessment of the law and regulations governing their wall.

Mr. Tully discussed the reasons why the Kearns should be granted a variance.

In response to a request from Board Member Johnson, Mr. Tully reviewed the chronology regarding when the permits were issued and when the construction was done to the structure and when they were informed of the damaged area that needed to be replaced.

In response to a request from Board Member Johnson, Mr. Burton provided the definition of remodel.

Mr. Tully responded to questions and comments from the Board Members regarding the sequence of events.

Mr. Tully provided the Board with a copy of the letter from the framer regarding the damaged portion of the house.

James Kearns, applicant, stated that they did not demolish the entire house but rather just replaced the walls that had been fire damaged. He provided information on the meetings that took place with Mr. Lee. He also provided additional information on the sequence of events. He reported that he never received anything in writing.

Board Member Ozer expressed her concern that there are not a lot of details such as dates on permits and cancelled checks that would provide the Board with a much better road map to make a decision. She suggested continuing this meeting to allow staff and the applicant to provide the Board with that information. Chair Kile expressed her concern regarding continuing the meeting because the applicant is not able to obtain the certificate of occupancy.

In response to a question from Chair Kile, Mr. Kearns explained that they did not intent to replace the other walls but they had to take off the roof to put in the new trusses. He further explained that the damaged area caused an unsafe condition for the rest of the house. He reviewed the construction sequence.

In response to a question from Board Member Ozer, Charles Ellis, contractor, stated that he is well versed in the Town's codes. He explained that it all boils down to the intent, which was to remodel the house and stay within the footprint. Due to the safety issues they had to retrofit rather than remodel. He stated that he was surprised that this house was assembled in such a shoddy manner. He further stated that they discovered this house was unsafe once they started doing the work.

Board Member Wainwright inquired if the condition of wall, roof and trusses came as a complete surprise. Mr. Ellis replied in the affirmative. Board Member Wainwright inquired if those repairs resulted in a significant cost to the job. Mr. Ellis replied in the affirmative noting that it increased the cost easily to six figures.

Board Member Keil inquired how the damaged areas were discovered. Mr. Ellis replied when they started the project they found the problem and just started looking at the wall to determine what the problem was.

Board member Keil inquired if it would be possible to have a meandering wall to comply with the code. Mr. Kearns's replied no because it also serves as a pool fence. He stated that there has been no agreement that they would take down the wall.

Chair Kile opened public comment.

Larry Pike 4927 E. Crestview Drive, stated that he lives a block south of the Kearns's and he is here tonight as a friend and a neighbor. He disclosed that he is with the public affairs company that collected the letters in support. He further stated that he was able to collect nine letters. He added that he felt he would have been able to collect more but a lot of people were on vacation. He further added that he did not speak to any neighbors that were opposed to the wall. He reported that this is the same house visually and the intent was to remodel an older house and integrate the existing wall with the remodel. He further reported that the existing wall is an important element of the house.

John Brown, 5000 E Sky Desert Lane, stated that he supports this wall. He further stated that it is a very attractive wall and there is no reason that it would need to come down. He discussed the safety reasons why he felt that this wall should stay.

Chair Kile closed public comment.

Board Member Wainwright inquired if staff is confident that the structure that exists today is consistent with the original permit. Mr. Lee replied in the affirmative that there is not a substantial difference.

Board Member Ozer inquired when the permit was reclassified if the property owner was notified in writing. Mr. Burton replied that staff called the applicant and requested that they come and pickup the reclassified permit. Mr. Kearns stated that he was never given

the new permit. Mr. Burton stated that the intake log indicates that the reclassified permit was picked up on 5/17/07. Mr. Kearns stated that he was in California on that date. Board Member Ozer inquired if people are required to sign for the permits. Mr. Burton replied for original permits yes but for revisions no.

Board Member Wainwright stated the fire damage appears to be the result of an unforeseen consequence that has cost the property owner a substantial amount of money. Mr. Kearns replied approximately \$130,000.

Board Member Kauffman moved to approve the variance request to allow the existing non-conforming wall to remain on the west side and to require the wrought iron fence on the south side to continue to the pillar at the driveway entrance.

The motion died due to lack of a second.

Board Member Johnson moved for approval of Case No. BA-08-01, a request by James and Judy Kearns, property owners of 5012 E Mockingbird Lane, for a variance request from the Zoning Ordinance, Article XXIV, Walls and Fences, Section 2404 and Section 2415, to maintain existing non-conforming walls at their current height and location. Second by Board Member Ozer.

Board Member Wainwright stated that he felt there were probably some misunderstandings between the applicant and the Town. He further stated that the total demolition was the result of the surprise due to the fire damage.

Board Member Johnson stated this is a situation where we had a remodel and then it was discovered that structural repairs needed to be made. He further stated that he looks at this as repairs that needed to be done. He added the property owners are victims of circumstance.

Chair Kile stated that she felt it would be a major hardship to the property owners if they were required to take down the existing walls. She further stated that the existing wall is attractive. Removing the wall would destroy their privacy as well as any safety features. She added that she felt the homeowners were using the information that they were provided with. She further added that she would request an amendment to the motion that the northeast section of the wall matches the remaining section of the wall.

Board Member Johnson stated that he would accept the amendment to the motion that the northeast section of the wall match the exterior wall and will remain in the same place. Board Member Ozer stated that she concurs with the amendment.

The motion carried by a vote of six (6) to one (1) with Board Member Kauffman dissenting.

Board Member Hagenah stated that he felt staff was absolutely right in bringing this up and having them apply for a variance. He further stated that he felt this is a good example of when a variance is needed.

MINUTES APPROVAL

January 9, 2008 Work Session and Regular Meeting

Chair Kile requested a correction to the minutes on Page 3 the word incompliance should be two words.

Board Member Hagenah moved to approve the Study Session and regular meeting minutes of January 9, 2008 as amended. Second by Board Member Ozer.

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

BOARD/STAFF REPORTS

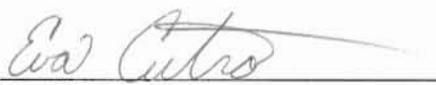
Board Member Ozer stated that we have run into this situation many times where staff has not provided the applicant with information in writing. She further stated that she would recommend any changes in procedures be provided to the applicants in writing and have both parties sign off. Also, require them to sign and provide identification when picking up permits. She added she would like staff to prepare the Board with timelines when cases like this come up.

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 AIR'S. 38-431.03.A.3.

ADJOURNMENT

Board Member Ozer moved to adjourn the meeting at 6:50 p.m. Second by Board Member Hagenah. The motion passed unanimously.



Eva Cutro, Secretary