

**TOWN OF PARADISE VALLEY  
BOARD OF ADJUSTMENT  
JANUARY 9, 2008  
MINUTES**

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

**ABSENT:** O'Dell Kiel, 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 maintain a legal non-conforming wall at its current location, to increase the height of part of the non-conforming wall and to allow for a fence wall addition to encroach into the side yard setback. The property is located at 6006 N Kachina Lane.**

Mr. Burton provided an overview of the case. He reported this is a request by the applicant for a variance from Article XXIV, Sections 2404 and 2415, to maintain a legal non-conforming wall at its current location, to increase the height of part of the non-conforming wall and to allow for a fence wall addition to encroach into the side yard setback. Section 2415 states that 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. Since the applicant is in the process of constructing a new home, the legal non-conforming wall would have to be demolished and setback further from the south side property line. Section 2404 requires fence walls in a side or rear yard along a right-of-way to be setback at a minimum of 20 feet for solid walls.

Mr. Burton stated that staff recognizes there is a large amount of unpaved right-of-way that creates the appearance of a larger setback, but does not believe this poses a hardship that prevents the applicant from relocating the wall to conform to current code. Therefore, staff recommends denial of this variance. A discussion ensued regarding whether the right-of-way could be abandoned. Ms. Cutro replied that it can be abandoned but it would be expensive for the applicant to purchase it.

Chair Kile stated the other concern with abandoning the right-of-way is that the Town may need it in the future for things like road widening or under grounding of utilities.

Mr. Burton responded to questions and comments from the commissioners' regarding the proposed variance.

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 5:55 p.m.

Mr. Burton presented this case as per the project coordination packet. Staff recommends a motion to deny the variance request to maintain a legal non-conforming wall at its current location, to increase the height of the non-conforming wall and to allow for a fence wall addition to encroach into the side yard setback.

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

Board Member Johnson reviewed the meeting procedures.

In response to a question from Board Member Hagenah, Mr. Burton reported that the original house permit plan showed the wall meandering. Mr. Burton stated if the wall meandered it would comply with the code.

Steven Schramm stated that he and his wife Sara own this property. He further stated that they purchased this property in 1998 and were aware of the right-of-way. In 2005 they did contact the Town about purchasing the right-of-way and went through the pre-application process and they determined that the cost was prohibitive and decided not to pursue the issue. He further stated that according to the General Plan McDonald is listed as a minor arterial and the right-of-way would not be expanded unless there is a change to the general plan. He outlined why this request conforms to the General Plan goals. He reported since they pulled the new permit the ordinances have changed from the time the original permit was pulled and the wall has not moved.

Board Member Wainwright inquired if the applicant is allowed to have the wall stay where it is and change the appearance of the wall. Mr. Schramm replied that the current ordinance would require the wall to have a finish consistent with the house.

Board Member Wainwright inquired if the glass block would stay. Mr. Schramm replied at this point he did not know.

In response to a question from Board Member Wainwright, Mr. Schramm provided information on the landscape plans for the south area of the property from the wall to the street and sidewalk.

Board Member Ozer inquired if the applicant was considering a meandering wall. Mr. Schramm replied in the negative.

In response to a question from Board Member Wainwright, Ms. Cutro provided information on the wall ordinance changes.

Board Member Ozer moves for approval of Case No. BA-07-07, a request by Steven and Sara Schramm, property owners of 6006 N Kachina Lane, for a variance request from the Zoning Ordinance, Article XXIV, Walls and Fences, Section 2415, to maintain a legal non-conforming wall at its current location, to increase the height of part of the non-conforming wall and to allow for a fence wall addition to encroach into the side yard setback. With additional stipulation that the fence wall shall comply with Section 2403, Wall Finishes, of the Town Zoning Ordinance. Second by Board Member Hagenah.

Board Member Wainwright stated we have a situation where the right-of-way would be punitive to the homeowner to have to purchase for the setback. Board Member Hagenah concurred with Board Member Wainwright.

Chair Kile stated that a beautiful new home is being built on this lot and she has a hard time understanding how the removal of an additional wall is a hardship. She further stated that she did not think the homeowners are being harmed by having to comply with the wall setback requirements. She noted that they could do a meandering wall that would be in compliance with the ordinance. She further noted that she would understand if the applicants wanted to keep this wall because it is architecturally significant but it is not particularly attractive and does not meet the criteria for approval of a variance.

Chair Kile stated her other concern is what happens in the future if some of that right-of-way is needed for street improvements.

Chair Kile called for the vote. The motion passed by a vote of four (4) to two (2) with Chair Kile and Board Member Kaufmann dissenting.

#### **MINUTES APPROVAL**

**November 7, 2007 Work Session and Regular Meeting  
December 5, 2007 Work Session and Regular Meeting**

Board Member Johnson moved to approve the Study Session and regular meeting minutes of November 7, 2007 as presented. Second by Board Member Wainwright.

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

Board Member Ozer requested a correction to the December 5, 2007 meeting minutes, on page 5; right-or-way should be changed to right-of-way.

Board Member Wainwright moved to approve the Study Session and regular meeting minutes of December 5, 2007 as amended. Second by Board Member Hagenah.

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

**BOARD/STAFF REPORTS**

Mr. Burton informed the Board that the conflict of interest statements are due the end of the month.

Board Member Hagenah inquired about the fees associated with a variance. Ms. Cutro reviewed the costs associated with applying for a variance.

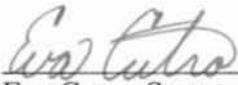
Mr. Burton reported that there would not be a February Board of Adjustment meeting.

**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 6:30 p.m. Second by Board Member Wainwright. The motion passed unanimously.

  
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Eva Cutro, Secretary